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**AMERICAN AMBIVALENCE TOWARD THE UNITED NATIONS
SINCE THE END OF THE COLD WAR**

A Thesis

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BY

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Introduction

As the preeminent power in the current world system the United States potentially has more to offer international organizations than any other state, and American support is crucial to the survival and success of most major international institutions. At the same time, the US stands to gain important benefits from membership—increased goodwill, cooperation, and security, to name but a few. Historically, however, American attitudes toward international organizations have been mixed at best. The United Nations (UN) is inarguably the most important international institution in the world today working to achieve peace and collective security. Both are desirable goals for the US, but American support for the UN has wavered through the years, its ambivalence frequently revealing itself through the decades in a willingness to bypass or ignore the UN, despite being one of its principle founders. Such ambivalence—guided by pragmatism, an emphasis on national sovereignty, and ideas of American exceptionalism—has characterized the US' interaction with the UN since the creation of that organization. For more than 60 years Republican and Democratic presidents alike have regarded the UN as a potential tool of foreign policy, to be utilized when convenient and sidestepped when not. Since the end of the Cold War, as America has emerged as the world's lone superpower, this pattern has only become more noticeable.

In order to comprehend America's seemingly fickle attitude toward such a widely respected institution whose goals and values are so consistent with that of its own, it is helpful to place this relationship in the broader context of nation states and international institutions in general. As undeniably the most powerful nation in the world, the US is now the current hegemon of the international system. This paper begins by looking at

key questions of how states interact with international institutions. How relevant are institutions to the states which participate in them, and what benefits may be gained from membership? Under what circumstances (if any) are institutions able to shape and change states' behavior?

International relations scholars offer a variety of theories to explain America's (or any nation's) approach to international organizations like the UN. One dominant theory is realism. Realism begins with five assumptions about the international system: it is anarchic (that is, it is made up of independent states with no central authority above them all); states possess "offensive military capability"; states cannot trust other states' intentions; survival is the basic driving motive for all states; and states think strategically about how to survive.¹ Genuine and lasting peace is unlikely because of the brutally competitive atmosphere in which states exist, always looking to rise above others.

In realist thinking institutions are only useful and relevant when states let them be, holding no real power on their own. States decide whether or not to allow institutions to influence their behavior and will quickly discard them when they are no longer useful. John Mearsheimer, a leading realist, asserts that institutions are "basically a reflection of the distribution of power in the world. They are based on the self-interested calculations of the great power, and they have no independent effect on state behavior."² Realists believe that since great powers are typically the forces creating the institutions, they do so in ways which will help them maintain or even increase their power. Cooperation between states *does* sometimes occur, but only when they have similar objectives; even then it is not likely to last long, because of the fundamental principle that states cannot

¹ John J. Mearsheimer, "The False Promise of International Institutions," *International Security*, Vol. 19, No. 3 (Winter, 1994-1995), 9-10.

² *Ibid*, 7.

trust each other. For realists, what is most remarkable about institutions is how little they actually influence state behavior.³ Neorealists are especially critical, seeing institutions merely as constraints on state behavior; traditional realists, on the other hand, take a slightly less harsh view, arguing that institutions can be important because of how they provide basic rules for interaction between states.⁴ Realists of all stripes, however, agree that self interest, not a general desire for the welfare of all states, determines state actions. A state's power and its interests are closely intertwined. "Power tells us how much influence a state will have over others; interests tell us when and for what purposes that influence will be used."⁵ International institutions reflect the superior power of the ruling states and wind up promoting their interests over those of weaker states. Institutions are not an important cause of peace and are not able to greatly affect international stability.

On the opposite end of the spectrum, proponents of liberalist or institutionalist theory maintain international institutions are important for world order; by building multilateral alliances, they help promote legitimacy and reduce uncertainty. Institutions develop norms and rules which states will follow, making their behavior more predictable. They also foster legitimacy, and legitimacy reduces resistance when those institutions or states within them take action. Joseph Nye and Robert Keohane, in their classic liberal text *Power and Interdependence*, write that institutions further cooperation and communication by bringing officials face to face. The value of institutions lies not in their power of enforcement, but in their ability to bring states together and get them on the same page, through discussions and persuasiveness. "Leadership will not come from

³ Ibid, 12.

⁴ Randall L. Schweller and Davis Priess, "A Tale of Two Realisms: Expanding the Institutions Debate," *Mershon International Studies Review*, 41 (May, 1997), 2.

⁵ Ibid, 10.

international organization, nor will effective power; but such organizations will provide the basis for day-to-day policy coordination”.⁶ According to liberalists, states must not only seek short term victories, but should look to the future and recognize the benefits of preserving international goodwill. One arena through which to pursue this is that of international institutions, which have the ability to change states’ behavior by altering their preferences. Realists find such thinking idealistic; policies based on these premises are bound to fail, they argue, because they do not accurately describe the basic principles of the international system.

Kenneth Abbott and Duncan Snidal posit that states create and act through international organizations (IOs) for two reasons: centralization and independence. Collective and global activities are made more efficient through their centralization in IOs. The independence and autonomy of these organizations—which are not controlled by the wishes of any individual state—grant legitimacy to individual or collective action, for the organization acts as a neutral (in theory, at least).⁷ In the minds of these two authors, realism underestimates the usefulness of international institutions. They recognize that powerful states create the organizations in order to advance their own interests, but they “must do so in a way that induces weaker states to participate.”⁸

The UN embodies the two principles of centralization and independence. Formed in the aftermath of World War II, the UN—like the League of Nations founded nearly 30 years earlier—was a reaction to the devastation wreaked by the catastrophic violence of a global conflict. Its founders intended it to be part of a global arrangement seeking to

⁶ Joseph S. Nye and Robert O. Keohane, *Power and Interdependence: World Politics in Transition*. (Boston: Little, Brown, and Company, 1977), 240.

⁷ Kenneth W. Abbott and Duncan Snidal, “Why States Act through Formal International Organizations,” *The Journal of Conflict Resolution*, Vol. 42, No. 1 (February, 1998), 4-5.

⁸ *Ibid.*, 8.

provide collective security as a means of preventing another world war from occurring, “a series of international institutions aimed at promoting and fostering the social and economic conditions necessary for peace to prevail.”⁹ Its goal is to provide an international forum for discussion and cooperation, and it works to develop friendly relations between states and harmonize their actions, maintaining collective security. The UN was founded on the idea of the sovereign equality of all states: no matter the size or relative power of a state, it holds an equal right to participate in international policy making. Since its creation, the UN has weathered a somewhat roller coaster-like history of highs and lows in international opinion. During its initial years of existence, the world seemed to place great hopes in the institution as an important arena for international interactions. Yet as the Cold War developed and then dragged on the UN moved to the back burner, as many major states (particularly the US and USSR) often bypassed world organizations. Other states tired of the fact that the UN frequently failed to follow up its resolutions with a commitment to action.¹⁰ A renewed dedication to the institution developed in the 1990s, and throughout its ups and downs the UN has been involved in many important diplomatic decisions on the international stage.

With the collapse of the Soviet Union and the Cold War, the US now holds an unrivalled position of power in the international arena, unique in its history. This dominance is much maligned throughout many areas of the world, by nations and individuals who either fear the implications of American hegemony or simply disagree with American politics. The US is the single largest economy in the world and—with the additional spending caused by the recent Iraq War—it now spends more money on its

⁹ Thomas G. Weiss, David P. Forsythe, and Roger A. Coate, *The United Nations and Changing World Politics*, 4th edition (Boulder, CO: Westview Press, 2004), xxxix.

¹⁰ *Ibid.*, xl.

military than the rest of the world combined. Former French foreign minister Hubert Védérine coined the term ‘hyper-power’ to describe the US. Yet being the sole superpower does not permit the US to do whatever it wishes without being challenged. Increasingly, even formerly reliable allies have been opposing American domination. What is unique about the current situation is the ability of the US to bypass the world system altogether when it does not support America’s objectives.

In pursuit of perceived national interests the US is often willing to do whatever is necessary to achieve its goals, and it remains traditionally wary of any multilateralism which seeks to limit its power. While Europeans are generally more comfortable with a “pooling” of national sovereignty, Americans remain jealous of their sovereignty and suspicious of attempts to constrain it. Former chairman of the Senate Foreign Relations Committee Jesse Helms spoke for many Americans when he told the Security Council in January of 2000 that, “A UN that seeks to impose its presumed authority on the American people, without their consent, begs for confrontation and—I want to be candid with you—eventual withdrawal.”¹¹ Yet the US was the principle force in the creation of the UN. How can such ambivalence and occasional downright hostility be reconciled? Realism offers one answer: great powers wish to maximize their ability to use power, and “power imbalance breeds noncompliance.”¹² Multilateralism is usually more attractive to weak powers than to the strong, who may find it too constraining. During the creation of the UN, smaller states recognized the inevitability of giving veto power to the permanent members of the Security Council in order to gain their support for the

¹¹ Stewart Patrick, “Don’t Fence Me In: The Perils of Going it Alone,” *World Policy Journal* (Fall, 2001), 7.

¹² Steven Holloway, “US Unilateralism at the UN: Why Great Powers Do Not Make Great Multilateralists,” *Global Governance*, Vol. 6 (2000), 364.

institution; the powerful states therefore were more ambivalent in their commitment.

“This explanation would predict that the US, as the largest of the great powers, would exhibit in the long term the greatest unilateralism and ambivalence toward the UN.”¹³

America’s sense of exceptionalism also helps explain its shifting support for the UN. As one author explains, Americans’ faith in their nation’s founding principles and their belief in the unique destiny of the US provides them with a sense of exceptionalism and responsibility, sometimes prompting efforts at international cooperation in an attempt to positively influence the world, and sometimes leading the US to go it alone when its faith in the mission is strong but international support is weak.¹⁴ The country’s great military and economic power reinforces this idea of exceptionalism, with Americans believing “They have both the ‘right’ as exceptional power to determine policies and only they have the military capacity to enforce the decisions.”¹⁵ The Assistant Secretary for International Organization Affairs (a bureau within the State Department dedicated to creating and executing policy in the UN and other international organizations) told the House Appropriations Committee in May of 2001 that “the US’s status as the largest contributor to the UN allows us to ensure that UN actions are consistent with our national interest.”¹⁶

Clearly, the US is able to act without the support of the UN in most instances. Its great military and economic power ensures it a level of independence not enjoyed by other states. Yet there is a paradox at work. As the world’s most powerful nation the US

¹³ Ibid, 365.

¹⁴ Patrick, “Don’t Fence Me In,” 5.

¹⁵ Karen Mingst, “Troubled Waters: The United States—United Nations Relationship,” *International Peacekeeping*, Vol. 10, No. 4 (Winter, 2003), 84.

¹⁶ “US Contributions to the UN and Other International Organizations,” Statement for the Record to the House Appropriations Committee, Subcommittee on Commerce, Justice, State, and the Judiciary, by C. David Welch, Assistant Secretary for International Organization Affairs (May 10, 2001), www.state.gov/p/io/rls.rm.2001/2853.htm.

has the ability to act alone when it desires, but doing so only undermines its role as the “benevolent hegemon.” And taking any action which challenges the authority of the UN weakens its efforts “to lead the international system according to a set of rules...which benefit its long term interests and help legitimize its power,”¹⁷ undermining the very system it helped create. The values and goals of the US and the UN are overwhelmingly similar, and the US should work to strengthen the UN, if only in order to promote its own interests.

The end of the Cold War brought with it enormous changes in the world of international politics. President George H.W. Bush touted his plan for a “new world order” which included an emphasis on multilateral cooperation, and the Clinton administration spoke of “assertive multilateralism,” promoting an increased reliance on international institutions, rules, and partnerships. Both agendas contrasted somewhat with the often unilateralist stance of the Reagan years and made attempts to strengthen the UN and America’s role in it. American optimism toward the UN briefly flourished following the end of the Cold War but faded significantly by 1995. Dissatisfaction centered mainly on the peace and security role of the organization and the problems which came with increasingly complex peacekeeping missions, state-building, and issues of compliance (played out in Iraq, Somalia, Haiti, Rwanda, and Bosnia).¹⁸ The US Congress demanded considerable reforms be carried out at the UN (mostly having to do with increasing efficiency), and refused to pay its dues to the organization between 1994 and 1999.

¹⁷ Caitlin Talmadge, “The Restrained Hegemon,” *Harvard International Review* (Fall, 2002), 26.

¹⁸ Mingst, “Troubled Waters,” 86-87.

Contrary to popular belief, no “golden age” of US-UN relations ever existed. Since helping to create the UN, America’s attitudes toward the organization have fluctuated, going through recurrent periods of varying levels of support. The recent willingness of the US to bypass the UN during the Iraqi conflict does not represent a dramatic change of policy. Perhaps the most consistent aspect of American policy toward the UN is its ambivalence. The years since the Cold War’s end have only continued a long standing pattern of the US supporting the UN when its position is favorably received and it is able to promote its agenda, and of bypassing the system when not. This development is not new, and observers should not be surprised that the current administration of George W. Bush would choose its own course of action after finding itself unable to secure Security Council authorization for its war in Iraq. Even President Bill Clinton realized his much touted ideal of assertive multilateralism proved to be more complicated in practice than theory. His administration soon retreated to a “more pragmatic internationalism,” embodied in the phrase “multilateral when we can, unilateral when we must.”¹⁹

As one author points out, “For the first time a state can project its military power into any corner of the world without substantial risks of incurring serious costs.”²⁰ The US has clearly been willing to pursue its own interests—alone or with a small number of supportive nations—at certain times in recent history, ignoring or even defying the UN while conducting offensive military operations. At other times it has made a concerted effort to secure UN authorization for its actions, working hard to gather international support. Throughout the 1990s and the early part of the twenty-first century, America

¹⁹ Patrick, “Don’t Fence Me In,” 2.

²⁰ Detlev F. Vagts, “Hegemonic International Law,” *The American Journal of International Law*, Vol. 95, No. 4 (October, 2001), 844.

has participated in and led numerous international military interventions. This thesis intends to analyze four of those confrontations—in Haiti, Kosovo, Afghanistan, and most recently Iraq—as case studies to examine US attitudes toward the UN since the end of the Cold War. Has there been any discernible change in American attitudes in the post-Cold War world? If so, what does that change look like and how great is it? In studying this topic, I will look at all the issues involved: the background to intervention and what unfolded, what the US desires and interests were in each situation, and how the UN responded. The four case studies span two presidential administrations: the first two occurred during the Clinton years and the latter during the current Bush presidency. In addition, two of these interventions had the support of the UN (Haiti and Afghanistan), while two did not (Kosovo and Iraq). This means that, during both the Clinton and Bush years, the UN supported American military intervention in one situation and withheld approval during another. In each circumstance, however, the US made a humanitarian argument to justify its actions, claiming the moral high ground when criticized on legal terms.

Haiti

Introduction

On September 19, 1994, a team of UN-authorized forces deployed to Port-au-Prince, Haiti. The US-led multinational force was dispatched to secure a stable environment for the return of Haiti's democratically elected government, in exile for nearly three years. Three days earlier, President William Clinton had sent a delegation including former president Jimmy Carter and General Colin Powell to meet with the

ruling military regime (which grabbed power in a 1991 coup d'état) and negotiate an agreement ensuring their surrender of power and the return of Haitian president Jean-Bertrand Aristide. The internationally supported military intervention encountered little resistance, and the transition of power occurred in a surprisingly peaceful manner. Parliament reconvened on September 28, and on October 15 Aristide returned to resume his leadership.

An uncommon degree of cooperation and agreement between the US and the UN characterized their joint intervention in the Haitian crisis. The usurpation of power by military coup in a Caribbean country threatened the democratic nature of the Western Hemisphere. When the Clinton administration realized events in Haiti jeopardized stability in the region generally—and in the US specifically because of its large influx of Haitian refugees—it resolved to act militarily. The administration had come into office espousing the ideals of international cooperation and partnerships, promoting what Madeleine Albright would call “assertive multilateralism.” UN authorization would confer international legitimacy to any US action. The UN, for its part, condemned Aristide’s overthrow from the beginning, demanding the military regime hand over power and urging the two sides to work through the UN to resolve the situation.

Historical Background

When Haiti elected Aristide president in December 1990 by an overwhelming majority, international observers (including the US, the UN, and the Organization of American States) declared the election to be the first free and honest one in the nation’s history. Various military regimes and presidents for life had long dominated Haiti, which experienced 22 changes of government between 1843 and 1915, many coming through

military coup. The country seemed poised for true change with President Aristide's inauguration in February 1991. Only seven months passed, however, before another military coup overthrew his government.²¹

International reactions to the coup were swift and condemning. Speaking in October 1991, US Secretary of State James Baker stated "it is imperative that we agree—for the sake of Haitian democracy and the cause of democracy throughout the hemisphere—to act collectively to defend the legitimate government of President Aristide... We do not and we will not recognize this outlaw regime."²² Thus followed three years of protracted bargaining, coaxing, and threatening by the US and the UN. For despite tough talk early on, America soon backed down from its initial strong support for Aristide's return. Though they continued to publicly demand surrender by the military regime, many in the US government were actually ambivalent or downright hostile toward Aristide's government. The Haitian president's election platform had centered on empowering the nation's peasants and reforming state institutions, especially the armed forces. This position caused many American officials to qualify their support for his return; subsequent US policy was built on pressuring Aristide to agree to limit his powers upon return and keep the military strong, in order to maintain stability.²³

The Central Intelligence Agency (CIA) emerged as the "locus of hostility" toward Aristide's regime even before the 1991 coup, and began campaigning to discredit him soon after his election. A July 1992 CIA memorandum characterized General Raoul Cedras—head of the armed forces and leader of the coup—as a "conscientious military

²¹ US Department of State Background Notes: Haiti (June 12, 1995), www.state.gov/r/pa/ei/bgn/1982.htm.

²² Baker, James, "Attack on Democracy in Haiti—Transcript," *US Department of State Dispatch*, Vol. 2, No. 40 (October 7, 1991), 749.

²³ Morris Morley and Chris McGillion, "'Disobedient' Generals and the Politics of Redemocratization: The Clinton Administration and Haiti," *Political Science Quarterly*, Vol. 112, No. 3 (Autumn, 1997), 365.

leader” who wished to minimize his political role and reform the armed services and police force.²⁴ In April 1994, Deputy Under Secretary for Policy Walter Slocombe described Aristide as a “psychopath.”²⁵ Throughout negotiations during the three year crisis, the US did much negotiating on behalf of the military, pressuring Aristide to guarantee amnesty for those who supported the regime, even if they had committed horrendous human rights abuses.

American ambivalence revealed itself early in the crisis. The Bush administration only reluctantly and halfheartedly supported a trade embargo against Haiti organized by the Organization of American States (OAS), the leading organization to handle negotiations before the UN took control at the end of 1992. The deteriorating situation in Haiti intensified the already significant flow of desperate citizens fleeing the country; increasing numbers of Haitian “boat people” took to the seas in an attempt to reach the US. Newly elected President Clinton continued the Bush policy of forcibly repatriating the refugees, despite his campaign promises to the contrary. To soften the negative image resulting from this move, he announced plans to accelerate efforts to restore Aristide to power. The UN, meanwhile, was consistently denouncing the situation and demanding an end to the crisis. Less than two weeks after the coup, the General Assembly passed the first of many resolutions condemning the coup and the rampant violence and human rights abuses committed by supporters of the military regime (see for instance Resolutions 46/7 and 46/138). Aristide wrote to the UN and the OAS requesting a “major international presence” be deployed to Haiti in light of the abuses taking place there.

²⁴ Ibid, 367.

²⁵ Ibid, 370.

Dante Caputo—a former Argentine foreign minister—became the special envoy to Haiti for the UN and OAS secretaries-general. When he approached regime leaders in April 1993 with demands that they step down under assurances of amnesty, he was rebuffed. The US had earlier threatened stronger sanctions if the regime refused to comply, but backed down under this latest rejection, deciding the Haitian army needed further reassurances for their future and thus revealing its unwillingness to follow tough talk with tough actions. Indeed, regime leaders trusted the US (which hoped to preserve the Haitian military) much more than they did the UN (which was a more committed supporter of Aristide than the US).²⁶ “Throughout this period, US policy makers seemed less committed to restoring democracy than to creating political stability in Haiti.”²⁷ The Clinton administration used a “carrot and stick” policy, offering a seat at the negotiating table for dictator General Raoul Cedras, his chief of staff, and the police chief of Port-au-Prince, or else face gradually increasing sanctions.

After months of questionable commitment, the US finally became frustrated and in June 1993 declared measures preventing coup supporters from entering the US, and froze military leaders’ assets in the US. Later that same month, the UN Security Council unanimously passed Resolution 841 announcing a global embargo of oil, arms, and military equipment and material, with a pledge to lift sanctions if the Secretary-General were to report that the military leaders were working toward reinstating Aristide.²⁸ On July 3, 1993, President Aristide and General Cedras signed the Governors Island

²⁶ Ian Martin, “Haiti: Mangled Multilateralism,” *Foreign Policy*, Issue 95 (Summer, 1994). <http://plinks.ebscohost.com.ezproxy1.lib.depaul.edu/ehost/detail?vid=5&hid=101&sid=1d09a1bd-3461-43ae-a0d4-0ff738e509d3%40sessionmgr4>

²⁷ Morley and McGillion, “Disobedient Generals,” 369.

²⁸ Security Council Resolution 841, UN document S/RES/841 (June 16, 1993). All UN documents in this paper were taken from the official UN website, www.un.org.

Agreement, which led to the Security Council voting to suspend sanctions in August under Resolution 861. Facing increasing pressure, under the terms of Governors Island Cedras agreed to step down and allow for Aristide's return by October 30 and resumption of the Haitian Parliament. In return, the UN would help modernize the armed forces and create a new police force under supervision of the proposed UN Mission in Haiti (UNMIH). Under Security Council Resolution 862, the UN approved the dispatch of advance personnel to prepare for police and military assistance components and to report on the regime's cooperation.²⁹

On October 11, 1993, the *USS Harlan County* approached Port-au-Prince, attempting to dock and begin the fulfillment of the Governors Island Agreement. It immediately met resistance from armed civilian supervised by the military, which reneged on its promise to allow this first contingent of the UNMIH to initiate the military training mission. Rather than face a confrontation, the *Harlan County* turned around and came home. Two days later, the Security Council adopted Resolution 873, reinstating sanctions.³⁰ Three days after that, it passed Resolution 875, calling on all Member States to strictly comply with Resolutions 841 and 873 and promising to consider "further necessary measures" to ensure compliance by the military regime.³¹ During discussions on 875, Council representatives reaffirmed their commitment to ending the crisis and supporting Aristide. The Haitian representative, Mr. Fritz Longchamp, asserted that "A handful of criminals cannot be allowed to defy with impunity the international community and hold hostage an entire people that desires to recover its rights and its freedom." China voted in favor of the resolution, but declared that "it should not

²⁹ Security Council Resolution 862, UN document S/RES/862 (August 31, 1993).

³⁰ Security Council Resolution 873, UN document S/RES/873 (October 13, 1993).

³¹ Security Council Resolution 875, UN document S/RES/875 (October 16, 1993).

establish a precedent;” violence or the threat of violence should not be used to settle disputes.³² Madeleine Albright, the American ambassador to the UN, stated in a speech before the Security Council that “We [the US] have never suggested or threatened an intervention in Haiti over the opposition of the military... This has never been—nor should it be—some kind of gunboat diplomacy.”³³ In fact, amidst an atmosphere of disagreement and debate in the American foreign policy establishment (with the State Department supporting and the Pentagon firmly opposing), National Security Council Adviser Tony Lake ordered the first invasion scenario in Haiti to be drafted. Many in the US maintained their dislike of Aristide; a CIA profile drawn up that month concluded that the Haitian president was mentally unstable.³⁴

After Governors Island and the turning away of the *Harlan County*, the human rights situation in Haiti deteriorated even further. Hundreds of instances of horrific abuses were reported, including public assassinations, the rape of young girls, and the mutilation of mothers in front of their children. Two days after the *Harlan County* incident Haiti’s Minister of Justice, Guy Malary, was assassinated. Within days, the international presence in Haiti was basically nonexistent. UN police monitors and the OAS/UN International Civilian Mission—the largest human rights monitoring mission in history—were pulled out.³⁵ The flow of refugees to the US continued. During discussions of the General Assembly’s 69th Plenary Meeting on December 3, the Haitian representative noted that some observers believed the situation challenged the UN’s credibility: “How can a group of individuals hold an entire people hostage and scornfully

³² Security Council Meeting Notes on Resolution 875, UN document S/PV.2393 (October 16, 1993).

³³ Albright, Madeleine, “UN Security Council Adopts Resolution 873 on Haiti,” *US Department of State Dispatch*, Vol. 4, No. 43 (October 25, 1993), 758.

³⁴ Morley and McGillion, “Disobedient Generals,” 370.

³⁵ Martin, “Haiti: Mangled Multilateralism.”

deny the international community? The UN is facing a problem involving its moral authority.”³⁶

Yet when in January 1994 regime leaders still had not met any of the conditions of Governors Island, Washington failed to fulfill its threat to request expanded UN sanctions. Rather, it used the opportunity to push Aristide to be even more flexible and ensure additional concessions for the military. Aristide refused, however, and Clinton finally lost patience with regime leaders. In May 1994, for the first time in public Clinton declined to rule out the possibility of a US military intervention to remove the regime. On May 6, the Security Council passed Resolution 917, reinforcing and expanding sanctions.³⁷ Two days later, Clinton outlined tougher sanctions in line with the resolution, and announced a change in policy toward Haitian migrants: the US would no longer automatically repatriate boat people intercepted at sea, but would review asylum requests on board ship or in other countries. On July 13 Cedras and his regime expelled all remaining international human rights monitors.

With the situation spiraling out of control, UN Secretary-General Boutros Boutros-Ghali submitted a report to the Security Council laying out his recommendations for reconfiguring the UN Mission in Haiti (UNMIH), detailing costs, duration, and composition. The tasks of this “force” had been outlined in Resolutions 867 and 933, and the secretary-general suggested that the original plan be revised, sketching out two phases to the operation. First, the “force” would need to establish “a secure and stable environment;” next, it would assist with the modernization of the armed forces and police. After providing three different possible scenarios for this, Boutros-Ghali

³⁶ General Assembly 69th Plenary Meeting, UN document A/48/PV.69 (December 3, 1993).

³⁷ Security Council Resolution 917, UN document S/RES/917 (May 6, 1994).

recommended separating the two phases of operations into two different forces. The first phase would be accomplished by a multinational force (MNF), composed of troops from volunteering member states, while the original UNMIH would move in to take charge of the second. Since it was likely that the deployment of any such force would take place in a hostile environment, he wrote that it could not “be excluded that the expanded force would have to use coercive means in order to fulfill its mandate.” Boutros-Ghali estimated the force would need about 550 civilian and 15,000 military personnel (including 5,000 combat troops). The Security Council would need to authorize the use of military force under Chapter VII of the UN Charter, which deals with threats to international peace and security.³⁸

Resolution 940, passed on July 31, declared Haiti’s military regime to be in breach of relevant Security Council resolutions. Under Chapter VII, it authorized the formation of an MNF “to use all necessary means” to rid Haiti of the regime and bring about the return of Aristide and the restoration of legitimate government authorities. It also approved an advance team of UNMIH personnel to prepare for the deployment of a full team after the MNF finished its mission.³⁹ On August 26, Clinton authorized a military invasion plan—under draft for many months—which Madeleine Albright had first mentioned the previous month. During this period, US officials were making numerous statements preparing the American public for action and defending the coming military intervention. In an address to the nation on September 15 Clinton explained, “I know that the US cannot—indeed, should not—be the world’s policemen...But when

³⁸ Report of the Secretary-General on Haiti, UN document S/1994/828 (July 15, 1994).

³⁹ Security Council Resolution 940, UN document S/RES/940 (July 31, 1994).

brutality occurs close to our shore, it affects our national interests, and we have a responsibility to act.”⁴⁰

In the face of this finally unified, strong international threat of military action, General Cedras met with Clinton’s delegation of Carter, Powell, and Senator Sam Nunn. Together, they reached an agreement which allowed the regime to stay in power for one more month, until Aristide’s return. The agreement also granted amnesty to human rights abusers, offered “early and honorable” retirement to some members of the Haitian military, and made certain that the military and police would work closely with the US to reform their forces.⁴¹ This somewhat surprising surrender by the coup leaders more or less precluded any real military action. When on September 19 American ships entered Port-au-Prince carrying the MNF to begin Operation Uphold Democracy, they met little resistance, and the mission was carried out remarkably peacefully. On October 15, upon Aristide’s return, the UN lifted sanctions against Haiti.

Analysis

In remarks at Georgetown University’s Institute for the Study of Diplomacy one year later in September 1995, Ambassador James F. Dobbins—Special Advisor on Haiti, US Department of State—lifted up Operation Uphold Democracy as a “paradigm of post-Cold War peacekeeping,” stating that “any large scale international peace operation that begins peacefully, proceeds smoothly, and seems likely to end on schedule is so unique in the annals of peacekeeping that it justifies close study.”⁴² It established many now

⁴⁰ Clinton, William J., “US Interests in Haiti—Transcript,” *US Department of State Dispatch*, Vol. 5, No. 38 (September 19, 1994), 606.

⁴¹ Morley and McGillion, “Disobedient Generals,” 381.

⁴² Ambassador James F. Dobbins, “Haiti: A Case Study in Post-Cold War Peacekeeping,” Remarks at the ISD Conference on Diplomacy and the Use of Force, September 21, 1995, *ISD Report: Window on the*

common features in situations of international action, including an “all necessary means” resolution by the Security Council, followed by an MNF and then a UN peacekeeping force, an internal (instead of external) conflict, and the “significant” use of international police alongside military troops.⁴³ The credible threat of military action proved effective, finally pressuring the Haitian coup leaders to surrender to international demands.

One distinguishing feature of the Haitian conflict which led to widespread international cooperation—particularly between the US and the UN—was that it was unlike other recent international peacekeeping missions. The situation in Haiti was different from that in Somalia, Bosnia, and Rwanda. Haiti was not a failed state, was not involved in or recovering from a civil war, and was not a “society of warring nomads.”⁴⁴ The Haitian military regime benefited from the recent debacle in Somalia—fresh in the minds of many observers—in which American troops, sent in on a humanitarian mission, became embroiled in an urban battle with Somalian warlords, resulting in the deaths of 18 US soldiers and traumatizing the American people. The public and some officials were wary of getting involved in another such fiasco. Speaking on the “no more Somalias” debate, Ambassador Dobbins observed that “Unfortunately, few can absorb more than one historical lesson at a time, and it is usually the most recent and most traumatic, rather than the most relevant, event that dominates our public discourse.”⁴⁵ The spectacle of Somalia caused the US to hesitate at the prospect of military intervention; when it finally decided to act, it did so through the UN, and the uniquely favorable circumstances of the situation ultimately contributed to a successful operation.

World of the Foreign Affairs Practitioner, Vol. II, No. 1 (October, 1995).

www.georgetown.edu/sfs/programs/isd/files/haiti.htm

⁴³ Ibid.

⁴⁴ Ibid.

⁴⁵ Ibid.

Cooperation between the US and the UN was strengthened over time. No outright conflict ever existed between the two on the question of Haiti. Initially, both President Bush and President Clinton worked merely to restore stability and prevent the situation from becoming a “problem” for Washington. For a long time they played down repression and abuses in the country in order to defend their policy of denying asylum to refugees. Only when events threatened to get out of control did Clinton shift his position and decide to take action. Clearly, the US would have been able to easily handle a military operation on the scale of Haiti by itself, but it opted to seek UN approval and assistance because of the legitimacy that would bestow. The UN’s search for a similar resolution to the crisis ensured cooperation between the two entities. Had the UN not supported military intervention it is possible the US would have pursued unilateral action, in light of its troubles caused by the refugee crisis. This is not probable, however. The White House was building its reputation for being internationally minded; it could have dealt with the problem in another manner without directly challenging the international community (by continuing the earlier policy of intercepting and forcibly repatriating refugees, for instance). It believed the best solution would come through cooperation with the UN. In his autobiography, Clinton writes that Haiti validated the prudence of responding to crises multilaterally, as a way of encouraging international cooperation, spreading the burden of leadership, and reducing resentment towards America.⁴⁶ Working with and through the UN conferred legitimacy and international authority on US actions, and allowed other nations to contribute support without offending the international community.

⁴⁶ Bill Clinton, *My Life* (New York: Alfred A. Knopf, 2004).

The US and the UN needed each other's support to end the crisis. "The [Clinton] administration wanted UN involvement because of its compelling domestic need for a solution that would stem the refugee flow. The UN could achieve nothing without US support."⁴⁷ There existed more *internal* conflict within the US foreign policy establishment over the appropriate course of action than between the US and the UN. The Central Intelligence Agency (CIA) and the Pentagon, traditionally suspicious of Aristide, were both against American military aggression in Haiti, in opposition to the wishes of the State Department. Yet the factors in support of intervention were strong: the clearly illegal overthrow of a democratically elected government by military coup, and a regime which repeatedly ignored and flouted the international community.

Both the US and the UN couched their arguments in legal and humanitarian terms, but for the US an equally important reason to support intervention was pure domestic interest: to stop the flow of boat people and the destabilizing effect in the Western Hemisphere. One cannot overlook the significance of this massive migration problem in the Clinton administration's decision making. Desperate to stop the influx of asylum seekers, the US chose to work with the UN due to the legitimacy this would confer on its actions and because it was painless to do so in this situation: the two shared a similar goal. The US' work with the UN on resolving the crisis was somewhat belated and nominal. A number of resolutions—mostly outlining punitive sanctions on Haiti—passed the Security Council (of which the US is, of course, a member), but there was no hard lobbying by the Americans until late in the crisis. Once Washington became serious about the situation, the compatibility of their objectives led to easy agreement and cooperation between the US and the UN. Both were interested in returning peace and

⁴⁷ Martin, "Haiti: Mangled Multilateralism."

stability to the region and in relieving the humanitarian crisis. Other nations within the UN supported the intervention in part because they did not feel threatened by US actions. The increase of American influence in Haiti would not significantly alter the international power structure. The Haiti crisis illustrates how the US chooses to work through the UN when the goals of the two are aligned.

Kosovo

Introduction

Such harmonious relations were not as obvious during the Kosovo crisis. When it became evident that the UN Security Council would not authorize military intervention in this latest Balkan emergency, the US decided to act without the Council's explicit approval. Instead, the North Atlantic Treaty Organization (NATO) took control of the situation, authorizing and carrying out a bombing campaign in Yugoslavia aimed at compelling the Serbian government to withdraw federal troops from the Kosovo province and stop human rights abuses in the region. As the most powerful member of NATO, the US played the largest role in the military campaign, never formally seeking endorsement from the UN. Yet it is incorrect to say the US "disobeyed" the UN or disregarded it. American opinions and actions concerning Kosovo were in agreement with much of the rest of the world, including the majority of Security Council member states.

Historical Background

Serbia has felt a deep attachment to the Kosovo region for hundreds of years. It was there that the Ottoman Empire defeated an alliance of Serbian and Bosnian forces in

1389, leading to 500 years of Ottoman rule. Since that period, Kosovo has played a special part in defining national and cultural identity for millions of Serbians. Marshall Tito—the Communist dictator of Yugoslavia from the end of World War II until 1980—made Kosovo part of the Federal Republic of Yugoslavia, but it never attained the status of a republic within the new nation (as did, for instance, Serbia and Bosnia). In 1974, a constitutional amendment declared Kosovo an autonomous province within greater Yugoslavia; this gave substantial new freedoms to the Kosovo people, most of whom were of Albanian descent. By 1991, 90% of Kosovars were ethnic Albanians, while only 10% or so were Serbian. Throughout the 1980s, the Albanian majority used its dominance to discriminate against the Serbian minority. Slobodan Milošević exploited this issue during his rise to power, which culminated in his election in 1989 as President of the Serb Republic. In September 1990 a new amendment to the federal constitution abolished Kosovo’s autonomy, Serbia dissolved the Kosovo Assembly, and severe repression of ethnic Albanians followed. In response, Kosovo legislators declared the province to be a republic.⁴⁸

When in 1991 the Federal Republic of Yugoslavia (FRY) broke up, the region quickly succumbed to chaos. Within a few years, bloody conflicts erupted in Bosnia, Slovenia, and Croatia, as these republics attempted to secede from the rest of the nation. The Dayton Peace Accords of 1995—which resolved the Bosnian conflict—did not address the issue of Kosovo, although the international community already recognized it as a potential problem. President George H.W. Bush’s “Christmas message” on December 27, 1992 had warned Milošević that America would consider a Serbian led

⁴² Michael Mccgwire, “Why Did We Bomb Belgrade?” *International Affairs (Royal Institute of International Affairs, 1944-)*, Vol. 76, No. 1 (January, 2000), 3-4.

war in Kosovo a direct threat to US interests and would respond accordingly. When President Clinton took office, he reiterated the threat, reflecting the broadly held American view that problems in former Yugoslavia stemmed from Serbian territorial aggression.⁴⁹

One possible reason Kosovo was not included on the Dayton agenda may be that the campaign of nonviolent resistance by Albanian Kosovars against Serbian control was ironically too effective for its own good.⁵⁰ In 1992, Ibrahim Rugova was elected president of the “Republic of Kosovo” and instituted an official policy of nonviolent protest to Serbian repression, following Mahatma Gandhi’s famous example. But keeping the situation peaceful may actually have caused the international community not to pay much attention. Kosovar Albanians eventually lost patience with the lack of results nonviolence had brought them and began gravitating toward armed struggle, supporting the Kosovo Liberation Army (KLA). The citizens of Kosovo would no longer be content with the restoration of their former autonomy, but now were fighting to secede completely. When the Albanian state collapsed in 1997, stolen arms flooded into Kosovo.

In March 1998, the KLA began a strong offensive; as they ‘liberated’ territory the Kosovo uprising spread quickly. The Serbs, after a brief period during which they offered little resistance, responded harshly. On March 31, 1998, in light of escalating violence on both sides, the UN Security Council passed Resolution 1160, which condemned the actions of both the Serbs and the Kosovars. The resolution expressed support for increased autonomy for Kosovo, but stated that any solution should be based

⁴⁹ Ibid, 5.

⁵⁰ Richard Caplan, “International Diplomacy and the Crisis in Kosovo,” *International Affairs (Royal Institute of International Affairs, 1944-)*, Vol. 74, No. 4 (October, 1998), 751-752.

on preserving the territorial integrity of Yugoslavia. It called upon the Kosovo Albanian leadership to condemn acts of terror by the KLA and pursue peaceful means, while counseling Belgrade that the best way to defeat terrorism would be to offer a “genuine political process.” It urged both sides to “enter without preconditions into a meaningful dialogue on political status issues” and established an arms embargo to Yugoslavia.⁵¹ The Security Council hoped these measures would encourage a swift conclusion to the situation; as the US representative noted, “We must avoid the mistakes of the past, when the international community waited too long before taking decisive action.”⁵² Vladislav Jovanović—the Serbian Chargé d’Affaires who observed the Council meeting—predictably objected to the content of the resolution, stating that no international forum had any right to deliberate an internal question such as the Kosovo situation without the consent of Yugoslavia, which it would not give. He referred to the situation as “local anti-terrorist action,” and charged that the Council was encouraging a double standard by condemning Serbian action but not the similar behavior of other governments around the world, while insisting that there existed no danger of spillover or threat to the region. Russia agreed, and found it “extremely difficult” to support an embargo, but reluctantly voted in favor of the resolution. China abstained, stating the resolution would not bring the parties to negotiation. The resolution passed with 14 states in favor and China abstaining.⁵³

The US, Germany, France, Britain, Italy, and Russia reconvened the Contact Group; originally created in response to the crisis in Bosnia, the group now turned its attention to Kosovo. It would come to play a key role in the Kosovo War. In May of

⁵¹ Security Council Resolution 1160, UN document S/RES/1160 (March 31, 1998).

⁵² Security Council Meeting Notes on Resolution 1160, UN document S/PV.3868 (March 31, 1998).

⁵³ Ibid.

1998, Christopher Hill, then Ambassador to Macedonia, was named US Special Envoy to Kosovo and began a shuttle diplomacy between Belgrade and Pristina (the capital of Kosovo.) This process continued for a number of months, with Hill searching to find an agreement acceptable to both Milošević and the Kosovo leadership. In August, the UN called for a ceasefire after Serb forces overran the Kosovar village of Junik. The Serb military's aggressiveness produced huge numbers of refugees and internally displaced Kosovars; as it moved forward, the KLA retreated to the hills. By mid-September, an estimated 250,000 Kosovo Albanians had been driven from their homes, with 50,000 still out in the open as winter approached.⁵⁴

The urgency of the humanitarian situation spurred the international community to increased action. The Security Council approved Resolution 1199 on September 23, reiterating its position from Resolution 1160: the resolution called both sides to enter “meaningful” dialogue while curbing violence. In addition, the Council demanded that Yugoslavia withdraw its security forces, give complete access to international monitors, and facilitate the return of refugees.⁵⁵ Once again China abstained, claiming that the Council created a bad precedent by becoming involved in an internal dispute without being requested to do so by countries in the region.⁵⁶ The next day, NATO approved two contingency plans for operations in the area, one for air action against Serbia and one to monitor a ceasefire if an agreement was reached. This constituted the first formal step toward armed intervention.

Three weeks later, Ambassador Holbrooke—the US Ambassador to the UN—reported that after ten days of meetings Milošević had agreed to the deployment of an

⁵⁴ Peter Ronayne, “Genocide in Kosovo,” *Human Rights Review* (July-September, 2004), 60-61.

⁵⁵ Security Council Resolution 1199, UN document S/RES/1199 (September 23, 1998).

⁵⁶ Security Council Meeting Notes on Resolution 1199, UN document S/PV.3930 (September 23, 1998).

unarmed Organization for Security and Cooperation in Europe (OSCE) verification mission to monitor and report on human rights violations. That same day, NATO authorized an activation order for air strikes to begin three days later if Milošević did not comply with UN resolutions and withdraw his troops. The October 16 deadline was extended until October 27; on that day, hours before air strikes were set to begin, Serbia began withdrawing 4,000 troops from Pristina. In talks during the passage of Resolution 1203 (on October 24), the US noted that NATO had “the authority, the will and the means to resolve this issue.”⁵⁷ With China and Russia abstaining, the resolution welcomed the two agreements signed by Yugoslavia with the OSCE and NATO (both establishing verification missions in Kosovo) and demanded compliance by both sides with previous resolutions. Brazil, a member of the Security Council at that time, expressed concern that the Council was transferring its role in ensuring compliance with its own resolutions to another organization. The next month, the Kosovo Verification Mission began operations.

NATO member states—and numerous other countries—pointed to gross human rights violations as the main justification for international involvement in the Kosovo conflict. Noted international relations scholar Joseph Nye points out that, contrary to widespread belief, Americans are willing to accept troop casualties, but not when “their *only* foreign policy goals are unreciprocated humanitarian interests.”⁵⁸ Robert Kaplan agrees, explaining that historically in US foreign policy, moral arguments may be strong enough to send troops abroad, but when casualties begin there must be an “amoral reason

⁵⁷ Security Council Meeting Notes on Resolution 1203, UN document S/PV.3937 (October 24, 1998).

⁵⁸ Joseph S. Nye, Jr., “Redefining the National Interest,” *Foreign Affairs*, Vol. 78, No. 4 (July/August, 1999), 32.

of self-interest” in order to keep them there.⁵⁹ The situation in Kosovo offered a number of “amoral” reasons for involvement. A fact sheet released by the US Department of State in March 1999 enumerated those reasons: American and NATO interests and objectives in Kosovo were to prevent a humanitarian crisis, to preserve stability in a “key part” of Europe, and to maintain NATO credibility. The fact sheet went on to remind readers that World War I began in this “tinderbox,” and violence in the Balkans threatened Europe because no natural boundary exists to stop it.⁶⁰ While moral, humanitarian motives did exist, they were not the only or even the most important reasons for intervention.

Another important factor in NATO’s decision making was that in April of 1999 the organization was set to celebrate its 50th anniversary. Members wanted the Kosovo situation sorted out before the commemorative summit, to be held April 23-25 in Washington. Kosovo presented a dramatic test of NATO’s credibility at a very high profile time for the organization, just before a celebration “intended as a powerful affirmation of NATO’s continuing relevance in the post-Cold War world.”⁶¹ Shortly after the beginning of the new year, the bodies of 45 ethnic Albanians were discovered in a mass grave in the village of Racak, Kosovo. Evidence of the massacre galvanized the international community once again. On January 29, 1999 the Contact Group met in London, demanding that Serbia and the Kosovo leadership attend peace talks in France.

⁵⁹ Robert D. Kaplan, “Why the Balkans Demand Authority,” in *Kosovo: Contending Voices on Balkan Interventions*, edited by William Joseph Buckley (Grand Rapids, Michigan: William B. Eerdmans Publishing Company, 2000), 345.

⁶⁰ “US and NATO Objectives and Interests in Kosovo,” fact sheet released by the US Department of State, Washington, DC (March 26, 1999), www.state.gov/www/regions/eur/fs_990326_ksvobjectives.html.

⁶¹ Mccgwire, “Why Did We Bomb Belgrade?”, 9.

With mediators from the US, the European Union, and Russia presiding, both parties met in Chateau Rambouillet on February 6 to begin negotiations. The talks paused on February 23 when the ethnic Albanian delegation (including the KLA) agreed in principle to sign the agreement, but asked for permission to return home to consult their leadership further. The Rambouillet Accords proposed a three year interim agreement providing “self-government, peace, and security for everyone living in Kosovo.”⁶² The agreement included stipulations that Kosovo citizens would govern through democratic institutions and have their own constitution providing for all branches of government (president, assembly, court system). NATO would guarantee security by deploying a military force (KFOR) to ensure compliance with the Accords and protect international institutions in the province. Serbia was to withdraw all military forces with the exception of a limited number of border police, and a small number of civil police would be allowed to stay until local police were trained, an accomplishment to be completed within a year. The KLA was instructed to demilitarize itself and hand over security to NATO troops; a final agreement would be negotiated at the end of three years.⁶³

Some observers argue that Rambouillet was set up to fail: Serbia would never agree to NATO having sole control of international operations and security in Kosovo. The KLA initially rejected the agreement because it did not guarantee the right to self-determination and secession, but the international community continued to insist upon protecting the territorial sovereignty of Yugoslavia. The US cajoled the Kosovo delegation into signing the agreement. The KLA complied with the wishes of the

⁶² “Understanding the Rambouillet Accords,” fact sheet by the Bureau of European Affairs, US Department of State, Washington, DC (March 1, 1999), www.state.gov/www/regions/eur/fs_990301_rambouillet.html.

⁶³ Ibid.

international community only because its strategy for winning the conflict was to isolate Serbia internationally.⁶⁴ It had taken away from Bosnia the lesson that “to gain their independence, they would need to draw the US in on their side.”⁶⁵ By the February 23 pause in talks, Serbia may have realized that war was inevitable; it began building its troop level back up after earlier reductions. Negotiations resumed on March 15 but were suspended four days later when Serbia refused to sign an agreement.

NATO began its air campaign against Serbian targets on March 24, 1999; that day, the Security Council met to discuss the military action. Several countries emphasized Belgrade’s repeated breaching of UN demands. The US insisted that the bombing was undertaken only with the “greatest reluctance” and that while KLA provocations contributed to the situation, it was Belgrade’s thwarting of diplomatic efforts that prevented a peaceful solution. Belarus disagreed, saying that even if the intervention truly was launched for humanitarian reasons, two wrongs do not make a right. The Russian Federation demanded immediate cessation of NATO action, claiming the use of force to be illegal since the Council never approved it. It threatened to reconsider its relationship with NATO, accusing the organization of attempting to enter the new century as the world’s policeman, something to which it would never agree.⁶⁶ Two days later, it submitted a draft resolution with Belarus and India—both nonvoting observers—condemning NATO action and demanding a halt to the air strikes. The resolution claimed NATO intervention was a threat to international peace and security and that such “unilateral force” violated the UN Charter. During voting, Russia

⁶⁴ Harry Papasotiriou, “The Kosovo War: Kosovar Insurrection, Serbian Retribution and NATO Intervention,” *The Journal of Strategic Studies*, Vol. 25, No. 1 (March, 2002), 49.

⁶⁵ Mccgwire, “Why Did We Bomb Belgrade?”, 6.

⁶⁶ Security Council Meeting Notes, UN document S/PV.3938 (March 24, 1999).

contended that the humanitarian justification for action was a “pretext” for the use of force and that supporters of the bombing were acting illegally. Serbia’s Chargé d’Affaires Jovanović asserted that NATO and the US were “engaged in a mad orgy of destruction and havoc against one small and peace loving country.” Most member states present objected to this characterization of the situation, and Slovenia pointed out that the Security Council held the *primary* but not *exclusive* responsibility for maintaining peace and security.⁶⁷ The resolution failed by a vote of 3 to 12, with only China, Namibia, and Russia voting in favor.

The Bosnian precedent of quick submission by Yugoslavia to NATO military intervention led Western leaders to believe that Milošević would capitulate in the face of military threats, or at least shortly after air strikes began. Yet they underestimated both his personal resolve and the commitment of the Serbian people to Kosovo. The bombings—which lasted 78 days—caused Serbs to rally around their leader. In a report released by the State Department, the US made clear what it would take for NATO to halt its campaign: an end to all violence and repression in Kosovo, the withdrawal of Serb forces, the safe return of all refugees and internally displaced citizens, the presence of an international security force, and a political framework based on the Rambouillet Accords.⁶⁸ Serbian forces ratcheted up their attacks on ethnic Albanians after the bombings began. In mid-April UNHCR estimated that over 500,000 Kosovars had fled since the start of strikes. Shortly after the bombings began, refugees were crossing the Kosovo border at an estimated rate of 4,000 people an hour. By the end of the conflict, 1.5 million Kosovars (the majority of the population) had been driven from their homes;

⁶⁷ Security Council Meeting Notes, UN document S/PV.3989 (March 26, 1999).

⁶⁸ “Erasing History: Ethnic Cleansing in Kosovo,” report released by the US Department of State, Washington, DC (May, 1999), www.state.gov/www/regions/eur/rpt_9905_ethnic_ksvo_1.html.

Serb forces burned hundreds of settlements and destroyed numerous mosques and schools. At least 6,000—and up to 11,000—Kosovar Albanians were murdered, dumped in more than 500 mass graves.⁶⁹

UN Resolution 1239 passed on May 14, 1999, with Russia and China abstaining from the vote. The resolution commended the international efforts already underway to address the humanitarian emergency and urged greater assistance and complete access for humanitarian personnel.⁷⁰ Nearly one month later the Security Council approved Resolution 1244, which again demanded a complete withdrawal of Serb troops from Kosovo while at the same reaffirming its commitment to the sovereignty of the Federal Republic of Yugoslavia (FRY) and the autonomy of Kosovo. It set forth guidelines for international security and civil police forces which echoed the requirements enumerated in the State Department report referred to above (the presence and authority of KFOR, promotion of Kosovo self-government, secure environment for returning refugees, etc).⁷¹ The resolution was prepared by the Ministers for Foreign Affairs of the G-8 countries; once again, China abstained, stating it was not wholly satisfied with the resolution but would not block it. During discussions, Jovanović claimed Serbia had successfully defended itself from the “unilateral and brutal aggression” of the US and NATO, but demanded that NATO states compensate the FRY. The Netherlands pointed out that the UN Charter is not the only source on international law; admittedly it is more specific about the rights of sovereignty for nations than about human rights, but over the decades the world has come to value human rights more than sovereignty, which is why it was

⁶⁹ Ronayne, “Genocide in Kosovo,” 63.

⁷⁰ Security Council Resolution 1239, UN document S/RES/1239 (May 14, 1999).

⁷¹ Security Council Resolution 1244, UN document S/RES/1244 (June 10, 1999).

necessary to act.⁷² That day, upon receiving evidence that Serb forces had begun to withdraw, NATO suspended air strikes. An estimated 2,000 Kosovar and Serb civilians had died during the bombings in Serbia.

Analysis

The fact that Kosovo was never granted the status of a republic (as Bosnia and Croatia were) was a major obstacle to its secession attempts, and neither Serbia nor the international community recognized its right to secede. In the international order, “the principle of the inviolability of borders and the territorial integrity of sovereign states” is greater than the principle of self-determination.⁷³ Serbian sovereignty was never in dispute and never debated by the international community. Writing the year after the conflict ended, NATO Secretary-General Javier Solana expressed his opinion that Kosovo represented perhaps the “greatest challenge the international community has faced since the end of the Cold War,” raising a host of political, military, and legal problems.⁷⁴ The fact that the Security Council never authorized NATO action troubled many observers. In fact, no resolution was ever drafted or submitted that requested UN authorization for any military action. The reason behind this was fear of a Russian or Chinese veto. Some NATO members wanted to obtain the UN’s permission, but “the US did not want to validate the principle that the Security Council held an effective veto over NATO decisions, a position that Congress would never accept.”⁷⁵ The actions of Russia and China throughout the conflict seem to support fear of a veto. China abstained from

⁷² Security Council Meeting Notes on Resolution 1244, UN document S/PV.4011 (June 10, 1999).

⁷³ Papatotiriou, “The Kosovo War,” 40.

⁷⁴ Javier Solana, “Fresh Cause for Hope at the Opening of the New Century,” in *Kosovo: Contending Voices on Balkan Interventions*, edited by William Joseph Buckley (Grand Rapids, Michigan: William B. Eerdmans Publishing Company, 2000), 217.

⁷⁵ Thomas W. Lippman, *Madeleine Albright and the New American Diplomacy* (Boulder, Colorado: Westview Press, 2000), 214.

voting on numerous resolutions, and the proposed resolution of March 1999 (submitted by Russia) gave further proof that these two countries did not share the majority opinion. They—along with some smaller states—were alarmed at the violation of state sovereignty and viewed NATO and Western actions with suspicion. Russia in particular did not wish to support international intervention in an “internal conflict in a sovereign country,” because of its situation in Chechnya; moreover, it felt threatened by an expansion of NATO and any move which went beyond its original mission as a defensive organization.⁷⁶ After its own military conflict in Chechnya, Russia pointed to NATO’s precedence of action without UN approval, saying at least it was acting in its own sovereign territory and not interfering unilaterally in a foreign country.

The legality of the air strikes continues to be debated. It is true the UN never approved NATO’s decisions, but neither did it censure them. UN Secretary-General Kofi Annan—a well known supporter of UN primacy and responsibility—admitted the danger in circumventing UN authority, but also acknowledged the failings of the Security Council in Kosovo, writing:

“unless the Security Council is restored to its preeminent position as the sole source of legitimacy on the use of force, we are on a dangerous path to anarchy. But equally important, unless the Security Council can unite around the aim of confronting massive human rights violations and crimes against humanity on the scale of Kosovo, then we will betray the very ideals that inspired the founding of the United Nations.”⁷⁷

Throughout the conflict, the US stressed NATO’s goals and downplayed questions of legality. It is difficult to conclude, however, that the US really went against the

⁷⁶ Ibid.

⁷⁷ Kofi Annan, “The Effectiveness of the International Rule of Law in Maintaining Peace and Security,” in *Kosovo: Contending Voices on Balkan Interventions*, edited by William Joseph Buckley (Grand Rapids, Michigan: William B. Eerdmans Publishing Company, 2000), 222.

preponderance of international opinion in this situation. A large majority of the Security Council was of a similar opinion on the matter as the US; only Russia and China strongly disagreed. The threat of either of these two countries using their veto power to block a resolution was very real. The only choice left to those nations concerned about the situation and desiring military intervention was NATO. American action was not unilateral, but actually multilateral, as evidenced by the near unanimous passage of numerous Security Council resolutions, the 12-3 rejection of Russia's proposed resolution, and the support of fellow NATO states. Although some observers condemned the attacks—specifically highlighting America's role—the US chose to move ahead without UN authorization because it believed strongly in the mission. Its vague desire for multilateralism yielded to its unwillingness to be constrained when developing foreign policy. Moreover, it believed the sizeable membership of NATO provided sufficient legitimacy to its actions.

During NATO's 50th anniversary celebrations in April, President Clinton welcomed the attendees by affirming that NATO's actions were not about politics but about upholding the values which led to its founding: "we are fundamentally there because the Alliance will not have meaning in the 21st century if it permits the slaughter of innocents on its doorstep."⁷⁸ NATO accomplished what the UN—because of a tiny minority within the Security Council—could not. As the Netherlands pointed out during the Council's March 24th meeting, if one or two permanent members block action, the international community cannot sit back and watch a humanitarian catastrophe occur.⁷⁹ It is true that moral principles alone do not explain the insistence on intervention; around

⁷⁸ Speech by the President of the United States, William J. Clinton, at the NATO Summit, Washington, DC (April 23, 1999), www.nato.int/docu/speech/1999/s990423j.htm.

⁷⁹ Security Council Meeting Notes, UN document S/PV.3938 (March 24, 1999).

the world many cases of even worse human rights violations had recently occurred. Geopolitics certainly played a part; this emergency was taking place in Europe itself, and NATO wished to demonstrate its continuing relevance. But throughout the unfolding of the conflict, the Council repeatedly condemned Serb aggression (as well as the KLA's contribution to tensions). Milošević refused to comply with the demands of numerous resolutions, placing himself and his country at odds with the majority of the international community, which wished to avoid another Balkan disaster.

The UN Charter is written in such a manner that the question of whether military intervention not directly authorized by the Security Council is in fact legal is open for debate. The Preamble to the Charter explains that the UN exists to ensure "that armed force shall not be used, save in the common interest."⁸⁰ Article 2(1) instructs member states to refrain from "the threat or use of force against the territorial integrity...of any state."⁸¹ In Kosovo, NATO members were not debating or threatening the sovereignty of Serbia; as stated above, its territorial sovereignty was never in question. Paragraph 7 of Article 2 prohibits the UN from intervening "in matters that are essentially within the domestic jurisdiction of any state."⁸² Some may argue that is what happened in Kosovo, but it must be remembered that the overriding priority of the Charter is to preserve international peace and stability. On more than one occasion, the Security Council determined that the conflict there constituted a threat to regional security. Moreover, a more recent understanding in international affairs is that protecting human rights is

⁸⁰ UN Charter, www.un.org/aboutun/charter/index.html.

⁸¹ Ibid.

⁸² Ibid.

“equally fundamental to the aims of the Charter.”⁸³ However, it is true that the Charter contains no explicit mention of permitting force for humanitarian causes. Chapter VIII is especially relevant to what unfolded in Kosovo. Article 52(1) states that “Nothing in the present Charter precludes the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security” provided they “are consistent with the Purposes and Principles of the United Nations.”⁸⁴ Shortly thereafter, however, Article 53(1) explains that the Security Council may utilize such regional agencies for enforcement activity, but those agencies must *first* obtain the authorization of the Council (which NATO clearly did not do).⁸⁵ Most legal observers and political commentators seem to conclude that NATO’s actions were technically illegal according to international law, but many also argue that such illegality was justified because of the humanitarian situation on the ground, in effect elevating moral legitimacy over legality. Kofi Annan writes that military action in Kosovo was *necessary*, and there “are times when the use of force may be legitimate in the pursuit of peace.”⁸⁶ Similarly, in his June 1992 report to the Security Council, former UN Secretary-General Boutros Boutros-Ghali claimed that “The time of absolute and exclusive sovereignty...has passed,” urging a “commitment to human rights with a special sensitivity to those of minorities.”⁸⁷ Although Cuba asserted during meetings on Russia’s failed resolution in March 1999 that “never before has the unipolar order

⁸³ David Little, “Force and Humanitarian Intervention: The Case of Kosovo,” in *Kosovo: Contending Voices on Balkan Interventions*, edited by William Joseph Buckley (Grand Rapids, Michigan: William B. Eerdmans Publishing Company, 2000), 357.

⁸⁴ UN Charter.

⁸⁵ *Ibid.*

⁸⁶ Annan, “The Effectiveness of the International Rule of Law,” 222.

⁸⁷ Boutros Boutros-Ghali, “An Agenda for Peace: Preventative Diplomacy, Peacemaking and Peace-keeping,” www.un.org/docs/SG/agpeace.html.

imposed by the United States been so obvious and so disturbing,”⁸⁸ it does not seem true that, regarding the situation in Kosovo, the US flouted or ignored the UN. The US addressed the situation repeatedly in Security Council meetings and resolutions. It was not America’s intention or preference to work outside of the UN or to be in conflict with it over the Kosovo issue, but when it became clear that explicit authorization was unlikely it chose to seek multilateral support and legitimacy through another organization, NATO. The UN did, in fact, belatedly convey some measure of legitimacy when it approved a relief and recovery mission after the conflict ended. In Kosovo the US showed that, while cooperation and UN approval is its preferred option, it will bypass the organization when necessary in order to promote a chosen course of action.

Afghanistan

Introduction

The terrorist attacks against the US on September 11, 2001 shocked and traumatized the American people like no other event in recent history has. For most Americans this was the first time in living memory their homeland had been physically assaulted. The world responded with emotional outpourings of sympathy and shared grief, mourning the victims, citizens of more than 90 countries. In the week immediately following, President George W. Bush declared a national emergency and called reserve troops to active duty. Shock soon turned to bitter outrage and Americans began to search for those responsible, with hopes of exacting revenge. Hours after the attacks President Bush told the nation, “We will make no distinction between the terrorists who committed

⁸⁸ Security Council Meeting Notes, UN document S/PV.3989 (March 26, 1999).

these acts and those who harbor them.”⁸⁹ Already the US government was formulating its response, paving the way for future reprisals against foreign countries which may not have been directly involved in the planning or executing of September 11.

Nine days later—as New York City and Washington, DC busied themselves with clean up and rehabilitation—Bush addressed Congress, preparing the nation for the war to follow by explaining it would be unlike any other the country had experienced. He also sent notice to the rest of the world that he expected their cooperation in the ensuing efforts to root out terrorism: “Every nation, in every region, now has a decision to make. Either you are with us, or you are with the terrorists.”⁹⁰ International reaction to his speech was positive, with most countries supporting US efforts to identify those responsible and take action against them. A number of states and organizations rushed to show their sympathy and support. On September 12, the Security Council “unequivocally” condemned the attacks in Resolution 1368, calling on states to work together to bring the terrorists to justice, and declaring itself ready to “take all necessary steps” to respond, according to its responsibility outlined in the Charter. It stressed that “those responsible for aiding, supporting or harboring the perpetrators, organizers and sponsors of these acts will be held accountable,” and recognized America’s “inherent right of individual or collective self-defense.”⁹¹ That same day, the General Assembly passed Resolution 56/1, which basically contained the same content as Resolution 1368 except that it did not mention the right of self-defense.⁹² NATO announced that if the

⁸⁹ “Address to the Nation on the Terrorists Attacks (Sept. 11, 2001),” 37 *Weekly Compilation of Presidential Documents* 1301 (September 17, 2001).

⁹⁰ Address to a Joint Session of Congress and the American People (September 20, 2001), www.whitehouse.gov/news/releases/2001/09/20010920-8.html.

⁹¹ Security Council Resolution 1368, UN document S/RES/1368 (September 12, 2001).

⁹² General Assembly Resolution, UN document A/RES/56/1 (September 18, 2001).

attacks originated from abroad they would be covered by Article 5 of the Washington Treaty, whereby an attack against one member state constitutes an attack against all members. On October 2 it decided this was, in fact, the case, and gave its full support to future US actions. The Organization of American States also recognized the US right to self defense, in a resolution passed ten days after September 11.

Historical Background

The US government quickly concluded the Al-Qaeda terrorist network was responsible for the attacks. Al-Qaeda was led by Osama bin Laden, a wealthy Saudi national preaching hatred of the West and a fanatical version of Islamic extremism. The US had kept track of bin Laden's movements and actions for a number of years; the Al-Qaeda organization was suspected of perpetrating the 1993 World Trade Center bombing, the 1996 bombing of US military housing in Saudi Arabia, the 1998 bombings of American embassies in Tanzania and Kenya, and the 2000 bombing of the American warship the *USS Cole*. Bin Laden's reported objectives were to rid the Middle East of pro-Western governments, to remove US forces from the region, and to prevent a peace settlement between Israel and Arab nations.⁹³ In February of 1998 he issued a *fatwa*—an Islamic legal pronouncement—basically declaring war on the US. In it, he proclaimed killing Americans to be a religious duty for all Muslims and called on “every Muslim who believes in God and wishes to be rewarded to comply with God's order to kill Americans.”⁹⁴ He believed the necessity of attacking the US excused civilian deaths, even if some of those killed happened to be Muslim.

⁹³ Sean D. Murphy, “Contemporary Practice of the United States Relating to International Law: Legal Regulation of Force – Terrorist Attacks on World Trade Center and Pentagon,” *The American Journal of International Law*, Vol. 96, No. 2 (January, 2002), 238-239

⁹⁴ *Ibid*, 240.

Since the mid-1990s bin Laden had taken sanctuary in Afghanistan. After decades of war, this ravaged country was in the hands of the Taliban, a group practicing an exceptionally conservative form of Islam. King Mohammad Zahir Shah ruled Afghanistan from 1933-1973, when his cousin, former Prime Minister Sardar Mohammad Daoud, overthrew him in a military coup, declaring himself president and prime minister of the new republic. Succeeding years brought more coups. During this time the People's Democratic Party of Afghanistan (a communist organization) tenuously held on to power. Supported by Moscow, it became increasingly dependent on Soviet military equipment as the Afghan army collapsed and instability mounted, with insurgency against the government growing rapidly. In December of 1978 Afghanistan signed a bilateral treaty of friendship and cooperation with Moscow. One year later, the Soviets killed Hafizullah Amin—who had earlier seized power—after he disagreed with Moscow over how best to stabilize the government, and installed Babrak Karmal as prime minister. On December 27, 1979 the Soviets began a massive invasion from the north. After the invasion Karmal was unable to establish authority outside of Kabul, the nation's capital. The Afghan people overwhelmingly rejected communist rule, and 80% of the countryside remained outside government control.⁹⁵

The Mujahidin—Afghan freedom fighters—led the resistance to Soviet rule. Beginning in 1984, they received weapons and training from the US and other nations looking to curb communist expansion. The conflict lasted a decade, exacting a high price from both countries; Afghanistan was in ruins and the Soviets paid both militarily and diplomatically, as their relations with much of the rest of the world suffered. The Geneva

⁹⁵ US Department of State Background Notes: Afghanistan (December, 2000), www.state.gov/r/pa/ei/bgn/5380.htm.

Accords of 1988 settled differences between Afghanistan and Pakistan (which had been actively supporting the resistance), called for non-interference by the US and USSR and the right of return for refugees, and set a timetable for Soviet withdrawal by February 15, 1989. Roughly 14,500 Soviets and one million Afghans lost their lives between 1979 and 1989. To this day, Afghanistan remains one of the most heavily mined countries in the world.⁹⁶

The Mujahidin were party to neither the negotiations nor the final agreement and they refused to acknowledge the accords. After the Soviet withdrawal a civil war continued between various factions within the country. The Taliban rose to power in the mid-1990s and grew in strength. Taliban members came principally from the southern rural Pashtun areas of the country and were educated in Pakistani madrassas. They captured Kandahar in 1994 and Kabul in 1996. By the end of 1998 they controlled 90% of the country, resistance being limited mostly to remote northern areas. Taliban members practiced a strict form of Islam based on Pashtun tribal codes and committed massive human rights violations, especially against women, girls, and minorities. Concern over the situation in Afghanistan led to a number of UN resolutions condemning the violations. In 1996, Osama bin Laden moved to Afghanistan after being expelled from Sudan; the former Mujahidin fighter provided financial support to the Taliban government in return for safe haven.⁹⁷

Prior to September 11, the international community had more than once focused its attention on the Taliban's role in providing sanctuary to terrorist organizations. Security Council Resolution 1267 of October 15, 1999 condemned the Afghan

⁹⁶ Ibid.

⁹⁷ Ibid.

government for sheltering and training terrorists and demanded it turn over bin Laden. When the Taliban refused to do so, the UN called upon member states to impose measures denying the take off and landing of Taliban aircraft in their country and to freeze funds and assets generated by the Taliban both directly and indirectly. The resolution also established a committee—the Al-Qaeda and Taliban Sanctions Committee—to monitor states’ efforts to implement sanctions against Afghanistan.⁹⁸ One of the main responsibilities of the committee was to maintain a consolidated list of groups and individuals associated with bin Laden, Al-Qaeda, or the Taliban. The committee, made up of all fifteen members of the Council, included a monitoring group of five independent experts. It highlighted implementation problems in each of the three parts of the sanctions regime—the asset freeze, travel ban, and arms embargo (added later)—and made recommendations for overcoming these. States were to submit reports detailing their efforts to implement sanctions; these reports were the main source of information for assessing the effectiveness of sanctions.⁹⁹

The US had never recognized the Taliban as the legitimate government of Afghanistan. In the weeks following the attacks, the US government communicated its demands to Taliban leaders—who, for their part, did not want to deal with the Bush administration directly—through Pakistan. President Bush issued an ultimatum to the Taliban: deliver Al-Qaeda leaders living in Afghanistan to the US, release foreign nationals in prison, and close terrorist training camps. The Taliban offered to hand over bin Laden to a neutral third country if the US could prove his involvement in September 11, but Bush rejected this offer. Instead, on October 7 the US informed the Security

⁹⁸ Security Council Resolution 1267, UN document S/RES/1267 (October 15, 1999).

⁹⁹ Eric Rosand, “The Security Council’s Efforts to Monitor the Implementation of Al Qaeda / Taliban Sanctions,” *The American Journal of International Law*, Vol. 98, No. 4 (October, 2004), 747-748, 755.

Council that it would take action against the camps and the Taliban military. That day, the US and Great Britain launched their attacks, using cruise missiles, long-range bombers, and carrier-based aircraft, mainly targeting the areas around Kabul, Kandahar, Jalalabad, and Mazar-e-Sharif. Hours after the attacks began bin Laden appeared on videotape worldwide, celebrating September 11.¹⁰⁰

The US never approached the UN to gain permission for its military campaign in Afghanistan, nor did the UN ever explicitly authorize the Americans' use of force. It did, however, refer in a number of resolutions to the inherent right of self-defense guaranteed in the UN Charter, Article 51. International support for US action was nearly unanimous, with very few nations actually opposing the attacks; only Iraq, Sudan, and North Korea strongly condemned the use of force, while Cuba, Malaysia, and Iran were more subtle in their critiques.¹⁰¹ Numerous states offered logistical support to the US; within weeks 89 countries had granted over-flight authority for US military aircraft, 76 countries granted landing rights for the aircraft, and 23 countries agreed to host US forces involved in the operations.¹⁰² On the day the attacks began, Prime Minister Tony Blair justified British involvement by explaining, "The world understands that whilst, of course, there are dangers in acting the dangers of inaction are far, far greater. The threat of further such outrages, the threat to our economies, the threat to the stability of the world."¹⁰³ Even the Organization of the Islamic Conference did not criticize the attacks, only wanting reassurance that military action would not extend beyond Afghanistan.

¹⁰⁰ Murphy, "Legal Regulation of Force," 243-246.

¹⁰¹ Steven R. Ratner, "Jus ad Bellum and Jus in Bello after September 11," *The American Journal of International Law*, Vol. 96, No. 4 (October, 2002), 909-910.

¹⁰² "The Global War on Terror: The First 100 Days," report released by the White House (December, 2001), www.whitehouse.gov/news/releases/2001/12/100dayreport.html.

¹⁰³ Prime Minister's Statement on Military Action in Afghanistan (October 7, 2001), www.number10.gov.uk/output/Page1615.asp.

The Northern Alliance consisted of a coalition of Afghan tribes opposed to Taliban rule. It held power mostly in the northeastern part of the country, earning UN recognition as the legitimate government of Afghanistan (over the Taliban). In late October, the US proceeded with attacks against the Taliban front line and encouraged the Northern Alliance to move toward Kabul. Taliban forces fled the capital on November 12, marking the beginning of the Taliban's collapse across the country. In early December, four Afghan factions signed an agreement creating a "broad-based interim government" which would take power in six months and lead to the formation of a transitional government, to rule for two years. After that time a new constitution would be written and elections for a permanent government would take place. The US war in Afghanistan lasted barely over two months; on December 20 the Security Council authorized deployment of international peacekeepers under British command.¹⁰⁴

Analysis

UN support for American military action throughout the Afghanistan campaign was clear, and was perhaps taken for granted by the Bush administration. Some observers do question the legality of US force; one author writes that the US made "only the most minimal effort" to reconcile its actions with the UN framework.¹⁰⁵ But others disagree with the notion that such action violates the UN Charter. One issue concerns the prohibition on unilateral use of force contained in Article 2(4); defenders point out this paragraph must be read in the context of Article 51, which guarantees the right of self-defense.¹⁰⁶ The US did not need to approach the UN for permission to respond to the

¹⁰⁴ Murphy, "Legal Regulation of Force," 250.

¹⁰⁵ Richard A. Falk, "What Future for the UN Charter System of War Prevention?" *The American Journal of International Law*, Vol. 97, No. 3 (July, 2003), 592.

¹⁰⁶ UN Charter.

September 11 attacks because that right is inherent. Targeting Al-Qaeda (an organization, not a state) was also not illegal, as self-defense is not limited to actions against states; when explaining the right to self-defense, Article 51 refers to an “armed attack,” not to a specific type of attacker. One scholar notes that, “If the [Security] Council can act against Al-Qaeda, so can an attacked state.” Neither does the fact that the Taliban was not the actual attacker on September 11 invalidate US actions against Afghanistan; any state which supports terrorists becomes a legitimate target.¹⁰⁷

The US and UN had been working in concert for a number of years to defeat terrorism in general and to address the situation in Afghanistan in particular. Security Council Resolution 1333 (December 19, 2000) repeated the demands of earlier resolutions for the surrender of bin Laden, an end to the sheltering of terrorists within Afghanistan, and the closing of terrorist training camps.¹⁰⁸ The Security Council’s strategy for fighting terrorism consists of four prongs: 1) resolutions condemning specific attacks, holding no legal effect; 2) binding counterterrorism obligations for states (detailed in Resolution 1373); 3) capacity building; and 4) sanctions.¹⁰⁹ Sanctions against Afghanistan and Taliban leaders were gradually expanded, to eventually include an asset freeze (against bin Laden, Al Qaeda leaders, their supporters, and the Taliban), flight ban, and arms embargo. The Al-Qaeda and Taliban Sanctions Committee—established under Resolution 1267 in 1999—showed sanction implementation had a mixed record. Reports to the Committee by individual states illustrated the problems. The travel ban and arms embargo provided few real results (being mostly regarded as political statements rather

¹⁰⁷ Thomas M Franck, “Terrorism and the Right of Self-Defense,” *The American Journal of International Law*, Vol. 97, No. 3 (July, 2003), 839-840.

¹⁰⁸ Security Council Resolution 1333, UN document S/RES/1333 (December 19, 2001).

¹⁰⁹ Rosand, “Security Council’s Efforts to Monitor Implementation of Al Qaeda / Taliban Sanctions,” 745-746.

than substantive policy with real “teeth”), while the asset freeze proved much more effective. By December of 2001, 142 countries had issued orders freezing the assets of suspected terrorists and organizations, and by October 2004 the international community had frozen \$130 million in assets of people and groups associated with terrorist networks (including Al-Qaeda).¹¹⁰

Throughout the campaign in Afghanistan, President Bush took pains to make clear this war was directed against terrorists and their supporters, not against the Afghan people. Acknowledging their sufferings under Taliban rule, he proclaimed “the oppressed people of Afghanistan will know the generosity of America and our allies. As we strike military targets, we’ll also drop food, medicine and supplies.”¹¹¹ Civilian casualties did occur, of course. In the weeks after fighting began, the UN High Commissioner for Human Rights warned that Afghanistan could turn into a humanitarian disaster on the scale of Rwanda. Seven and a half million people risked starvation as winter approached if food and humanitarian assistance did not arrive shortly. Bombing raids routinely interrupted the efforts of aid workers, and several groups condemned the use of cluster bombs as too indiscriminate in the damage they caused.¹¹² The American government, however, continued to give generously to Afghanistan; even before Sept 11 it was the leading humanitarian aid donor to that country. Between October and December of 2001 alone, the US provided more than \$187 million in humanitarian

¹¹⁰ Ibid, 755, 760.

¹¹¹ Presidential Address to the Nation (October 7, 2001), www.whitehouse.gov/news/releases/2001/10/20011007-8.html.

¹¹² “UN Pleads for Break in Bombing in Afghanistan,” *The Lancet*, Vol. 358 (October 20, 2001), 1352.

assistance.¹¹³ Total contributions between fiscal years 2001 and 2006 amounted to more than \$10.3 billion.¹¹⁴

Although the Bush administration never sought explicit permission by the UN to conduct military operations in Afghanistan against the Taliban and terrorist forces, it was plain that it did in fact have their approval. The UN Charter clearly grants states the right to respond in self-defense to attacks conducted either by an organization or another nation. The Security Council upheld this entitlement by referring in a number of resolutions to America's "inherent right of individual or collective self-defense." The horrific and audacious nature of the September 11 attacks guaranteed international support for retaliatory action. The US—although prepared to act unilaterally if necessary—did seek to enlist assistance and pledges of support. American operations in Afghanistan enjoyed near universal backing. Even if the international support for US retaliation was not so widespread, however, it is unlikely the US would have allowed itself to be restrained in its course of action. The conviction of the American people was so strong, and emotions ran so high in the aftermath of the terrorist attacks, that the US would in all probability have pushed ahead even in the face of UN condemnation. Interaction between the US and the UN in this situation seemed to consist more of the US *informing* the UN of its plans rather than seeking its permission. Washington basically took UN consent for granted and its right to respond was widely acknowledged. As the US government extended its war on terrorism to Iraq, however, the situation would change dramatically.

¹¹³ "The Global War on Terrorism: The First 100 Days."

¹¹⁴ "Summary of US Assistance—London Conference on Afghanistan," US Department of State Fact Sheet, Office of the Spokesman, Washington, DC (February 1, 2006), www.state.gov/r/pa/prs/ps/2006/60214.htm.

Iraq

Introduction

By the time the US-led “coalition of the willing” began military operations in Iraq on March 20, 2003, opposition to the war was pervasive in most countries around the world. The support for the so called “war on terrorism” which President Bush’s administration enjoyed in the immediate aftermath of September 11 had largely vanished. Massive anti-war demonstrations occurred frequently in a number of nations during the weeks and months leading up to the start of hostilities, and continued during and even after the course of the war. Iraq had resisted UN supervision of its weapons programs and defied Security Council resolutions for more than a decade, yet Bush’s assertions that Iraq posed an immediate threat to the US and to other nations and that it may have been tied to the September 11 attacks generally failed to convince the international public. American belief in the right of preemptive self-defense—the White House’s newly released *National Security Strategy* proclaimed “We cannot let our enemies strike first”¹¹⁵—struck many as dangerously unjustified aggression. In a national press conference two weeks before the war began, President Bush announced his confidence that the American people supported his policy and understood that “if we need to act, we will act, and we really don’t need UN approval to do so...when it comes to our security, we really don’t need anybody’s permission.”¹¹⁶

Despite tough talk such as this, the US did seek to gain international approval for its actions, and many nations supported its position. The “coalition of the willing”

¹¹⁵ *The National Security Strategy of the United States* (September, 2002), www.whitehouse.gov/nsc/nss.pdf.

¹¹⁶ President Bush Discusses Iraq in National Press Conference (March 6, 2003), www.whitehouse.gov/news/releases/2003/03/20030306-8.html.

consisted of 49 states under American leadership. Some nations wished to keep their cooperation with the US on a low profile, however, facing domestic opposition at home. Only Australia, Poland, and the United Kingdom (UK) contributed combat troops to the conflict, but other states provided support by other means. Yet within the Security Council the US faced a daunting challenge in its efforts to broaden support and obtain authorization for military action. France repeatedly announced it would veto any resolution authorizing force, and the threat of a Russian or Chinese veto was also great. Even after major combat operations concluded, many nations refused to deploy peacekeeping forces without explicit Security Council endorsement. The war with Iraq was one of the most divisive occurrences in recent Security Council history, causing some observers to predict an end to the Council's power and relevancy. America's actions in Iraq (which many deemed to be unilateral, despite the existence of the coalition) have greatly harmed its reputation throughout much of the world.

Historical Background

The roots of the current Iraqi crisis stretch back more than a decade. On August 2, 1990, Iraq invaded the neighboring country of Kuwait. The next day, the Security Council passed Resolution 660, the first of many to condemn Iraq's actions and demand withdrawal from Kuwait.¹¹⁷ At the end of November, Resolution 678 declared Iraq to be in "flagrant contempt" of the Council for failing to meet the obligations of 660 and a number of resolutions passed since then. Resolution 678 gave Iraq "one final opportunity," demanding it comply by January 15, 1991 or else member states would be authorized "to use all necessary means to uphold and implement resolution 660 (1990)

¹¹⁷ Security Council Resolution 660 (August, 2, 1990), www.un.org/Docs/scres/1990/scres90.htm.

and all subsequent relevant resolutions to restore international peace and security in the area.”¹¹⁸ The meaning and implications of 678 would become a matter of great debate twelve years later. Upon Iraq’s refusal to withdraw its presence in Kuwait, Operation Desert Storm began January 16, 1991, one day after the deadline passed. By February 27 Iraq had been expelled from Kuwait. Resolution 687 of April 3, 1991 established conditions for the ceasefire; among the demands made on Iraq were that it “unconditionally accept” the destruction or removal of all chemical, biological, and nuclear weapons and the destruction of all facilities for research, development, and manufacturing of such weapons. Iraq was given fifteen days to submit a declaration of the amount, type, and locations of the items mentioned above and agree to on-site inspections. Sanctions implemented under Resolution 661 the previous summer would be withdrawn when Iraq met all its obligations, although the arms embargo would remain in place.¹¹⁹

On April 6, 1991 Iraq accepted the terms of the cease-fire brokered between Iraq on one side and Kuwait and its allies (including the US) on the other. Less than two weeks later, however, in Resolution 707 the Security Council found Iraq to be in “serious violation” of numerous obligations related to destroying and dismantling its weapons of mass destruction (WMD) program, and determined that such violations constituted a “material breach of the relevant provisions” of 687.¹²⁰ Thus, within weeks of the Gulf War’s conclusion Iraq embarked on a path of repeated violations and defiance toward the UN which would continue until the second Iraq war, in 2003. During that time, American and allied forces conducted a number of limited military operations against

¹¹⁸ Security Council Resolution 678 (November 29, 1990), www.un.org/Docs/scres/1990/scres90.htm.

¹¹⁹ Security Council Resolution 687 (April 3, 1991), www.un.org/Docs/scres/1991/scres91.htm.

¹²⁰ Security Council Resolution 707 (August 15, 1991), www.un.org/Docs/scres/1991/scres91.htm.

Iraq. The first such incursion took place in January of 1993 when the US—joined by the UK and France—attacked surface-to-missile sites in the no-fly zone which had been established in the southern area of Iraq. President George H.W. Bush justified the attacks by pointing out they came in response not only to Iraqi violations of the no-fly zone, but also to Iraq's "failure to live up to the resolutions."¹²¹ In the ensuing years, the Security Council passed several resolutions condemning Iraq's refusal to cooperate and fulfill its obligations, warning of "serious consequences" should it not do so. Various bombing campaigns conducted by the US and its allies attempted to force Iraq into compliance, but in December of 1998 Iraq threw out all UN inspectors, who would not return for four more years.

In the aftermath of the September 11 terrorist attacks the US initially turned its attention toward Afghanistan as the first step in eliminating international terrorism. Within a year of the conclusions of its successful campaign to rid Afghanistan of the Taliban, President George W. Bush turned his attention toward Iraq. Fed up with its long history of defiance and convinced that it continued to harbor or was in the process of developing WMD, he began to push for a more aggressive, determined stance among the international community toward Iraq. On September 12, 2002 he spoke in the General Assembly of the UN and challenged the organization to address the Iraqi threat. On October 7, noting that no course of action the international community had pursued thus far had resulted in Iraqi cooperation, he proclaimed the UN must adopt a resolution with "tough, immediate requirements," for "the longer we wait, the stronger and bolder

¹²¹ President George H.W. Bush, quoted in John Yoo, "International Law and the War in Iraq," *The American Journal of International Law*, Vol. 97. No. 3 (July, 2003), 570.

Saddam Hussein will become.”¹²² Later that month, in a two day open debate on the subject of Iraq, more than 40 nations and regional organizations took part in Security Council discussions on how to handle the Iraq situation. The American position was already well known, and Iraq accused Washington of being in the grips of “war hysteria” stemming from its “desire to settle old accounts.”¹²³ It claimed the US was not interested in enforcing resolutions, a fact proven by its continued support of Israel, which had refused dozens of resolutions in its short history; instead, its goal was to colonize Iraq and the Middle East and to gain control of the oil fields. Similar charges were brought against the US by a number of nations, mostly Arab. The discussions centered on whether or not to draft a future resolution which would authorize force to bring Iraq to compliance with its obligations.

Most states present either rejected outright the use of force or stressed heavily that it was to be used *only* as a last resort. On September 16 Iraq had agreed to the return of weapons inspectors in a letter to the Secretary-General. Many states applauded this move, offering it up as evidence that diplomacy could work and was in fact already working. Others—including Australia, New Zealand, Argentina, and Canada—maintained that Iraq posed a clear danger to international security, highlighting the years of defiance and insisting on Iraq’s continued desire to develop WMD. The UN had been patient, they argued, but it could not wait any longer: Iraq must face consequences if it did not immediately comply. Some countries had complained in the General Assembly that they were being left out of the negotiations; in the weeks leading up to the debate some of the five permanent members of the Council had been meeting privately. The

¹²² “President Bush Outlines Iraqi Threat,” remarks by the President on Iraq, Cincinnati Museum Center, Cincinnati, Ohio (October 7, 2002), www.whitehouse.gov/news/releases/2002/10/20021007-8.html.

¹²³ Security Council Meeting Notes, UN document S/PV.4625 (October 16, 2002).

Libyan representative called the situation “unbelievable.” “Is this democracy? The UN is not allowed to participate. The ten non-permanent members are not allowed to participate and the other three [presumably referring to China, Russia, and France] are just fighting.”¹²⁴ The open debate, requested by leaders of the Non-Aligned Movement, was in response to such criticisms. Clearly, action in Iraq was not something the White House was going to be able to push through the Security Council without a fight. During the meeting, the US representative called Bush’s speech to the General Assembly “a declaration of purpose, not a declaration of war.”¹²⁵ Secretary-General Kofi Annan urged the Council to remain unified, lest the authority and credibility of the UN suffer.

On November 8 Resolution 1441—submitted by the US and UK—came before the Security Council for vote. Although it passed unanimously it was preceded by weeks of intense negotiations. Labeling Iraqi non-compliance a threat to international peace and security, it recalled Resolution 678 of 1990, which authorized member states to use force to uphold 660 and all following resolutions. It decided to “ensure full and immediate compliance by Iraq without conditions or restrictions with its obligations under resolution 687 (1991) and other relevant resolutions.”¹²⁶ It declared Iraq to be in “material breach” of its obligations, especially in its failure to cooperate with UN inspectors and the IAEA (International Atomic Energy Agency). The resolution offered Iraq “a final opportunity to comply with its disarmament obligations” and it decided to set up an “enhanced inspection regime” to ensure disarmament completion.¹²⁷ Iraq was given 30 days to submit “a currently accurate, full, and complete declaration of all aspects” of its WMD

¹²⁴ Ibid.

¹²⁵ Ibid.

¹²⁶ Security Council Resolution 1441, UN document S/RES/1441 (November 8, 2002).

¹²⁷ Ibid.

programs.¹²⁸ Any false statements or omissions would constitute a further material breach, and lead to “serious consequences.” The heads of the IAEA and UNMOVIC (the UN Monitoring, Verification, and Inspection Commission) would report on Iraqi progress to the Council.

Calling the resolution a new opportunity for Iraq, Kofi Annan nevertheless stated, “If Iraq’s defiance continues, however, the Security Council must face its responsibilities.”¹²⁹ During negotiations, several states worried over the possibility of automaticity—that is, the automatic resort to force if Iraq refused to conform to its duties—and requested a two stage approach before any future hostilities were undertaken, in order to ensure Security Council control at each stage. John Negroponte, the US representative, assured members that the resolution contained no “hidden triggers” or automaticity with respect to the use of force, but warned that nothing in the resolution prevented states from taking action to defend themselves against the Iraqi threat or to enforce the resolution should the UN fail to act decisively in the event of continued non-compliance.¹³⁰ Five days after the passage of 1441 Iraq agreed to permit the resumption of inspections, which got under way on November 27.

On December 7 Iraq submitted a declaration of its disarmament efforts but the document it presented was incomplete and inaccurate. Hans Blix and Mohamed ElBaradei (the respective heads of UNMOVIC and the IAEA) came before the Security Council a number of times in the following months, often reporting that while progress was being made, Iraq still had not cooperated unconditionally. On February 14 they reported that no sign of weapons of mass destruction had been found after eleven weeks

¹²⁸ Ibid.

¹²⁹ Ibid.

¹³⁰ Ibid.

of inspections. Nevertheless, the US maintained that Iraq's incomplete obedience necessitated further actions. Though many countries, prominently France and Germany, wanted more time, eighteen European nations soon signed letters supporting the US position. Yet the next week the foreign ministers of the Non-Aligned Movement member states signed a declaration opposing the use of force; the organization consisted of 114 countries, mostly in the developing world, and represented 55% of the world's population and two-thirds of total UN membership.¹³¹

The Bush administration took things to a higher level in the following weeks, as the White House announced in late February it was looking not merely for disarmament but for a regime change in Iraq, though it was still aggressively pushing for disarmament. Iraq continued to defend its cooperation to the Security Council and insist that it had no weapons to produce to inspectors, telling members on February 14, "You cannot give what you do not have."¹³² While most nations remained skeptical of such claims, many also defended the inspections regime, asserting that inspections were working and needed to be given more time. War was undesirable and unnecessary. France contended Resolution 1441 made clear that a second resolution would be justified only if inspections failed, which had not yet happened. In contrast, the UK pointed out that no council member was willing to suggest Iraq was fully and actively complying, and that twelve years of noncompliance had been humiliating for the Council and the UN at large. Secretary of State Colin Powell told the Security Council in the same meeting that 1441 was "not about inspections...[it] was about the disarmament of Iraq."¹³³ The only reason

¹³¹ Michael J. Glennon, "Why the Security Council Failed," *Foreign Affairs*, Vol. 82, Issue 3 (May/June, 2003), 21.

¹³² Security Council Meeting Notes, UN Document S/PV/4707 (February 14, 2003).

¹³³ *Ibid.*

Iraq had agreed to let inspectors back in, he continued, was because of the threat of force first raised in Bush's September 12 speech to the General Assembly.

The US Congress had passed a resolution in October of the previous year granting the president permission to use force in Iraq without UN approval. As Speaker of the House Dennis Hastert put it, "This resolution...supports the President's effort to work with the United Nations, but it doesn't require him to seek UN approval first."¹³⁴ The president himself echoed such sentiments, saying, "I've never felt we needed [an additional] resolution; 1441 speaks very clearly."¹³⁵ In the minds of key administration officials Resolution 1441 offered sufficient grounds to go to war with Iraq, and a further resolution, while desirable, was certainly not necessary. After all, 1441 twice evoked Resolution 678, explicitly recalling its authorization for member states "to use all necessary means to uphold and implement" Resolution 660 and all subsequent relevant resolutions.¹³⁶ The Security Council understood the implications of this, and devoted much time during negotiations on 1441 to discussing the use of the phrase "material breach." Paragraph one made it clear Iraq's actions did indeed constitute such a breach, while paragraph four stated that false or incomplete declarations by Iraq would represent a further breach, promising "serious consequences." As Colin Powell noted in February, referring to 1441, "No council member present in voting on that day had any allusions about the nature and intent of the resolution or what serious consequences meant if Iraq

¹³⁴ "President, House Leadership Agree on Iraq Resolution," remarks by President Bush at the Rose Garden (October 2, 2002), www.whitehouse.gov/news/releases/2002/10/20021002-7.html.

¹³⁵ Remarks by the President to the Press Pool, outside the Treasury Building (February 7, 2003), www.whitehouse.gov/news/releases/2003/02/20030207-3.html.

¹³⁶ Security Council Resolution 1441.

did not comply.”¹³⁷ Many in the Bush administration believed that 1441’s finding that Iraq was in breach of earlier resolutions triggered 678’s authorization of force.

Nevertheless the US did return to Council. Throughout the entire affair, Powell in particular fought hard to ensure the US went before the UN and sought international approval. On February 24 the US and UK circulated a draft resolution—cosponsored by Spain—which would authorize force against Iraq and declare that “Iraq has failed to take the final opportunity afforded to it in Resolution 1441.”¹³⁸ The two nations wanted at least nine “yes” votes; even if one or more permanent members cast a veto, they believed this would provide them with the “moral, if not legal, legitimacy to the use of force.”¹³⁹ On March 5 France and Russia announced they would veto any resolution authorizing force, and China followed suit the next day. By the middle of the month it was clear insufficient support existed even among the other ten members for authorizing force, and its sponsors withdrew the resolution on March 18 without submitting it for a vote.

That same day, President Bush announced Iraqi President Saddam Hussein and his sons had 48 hours to leave Iraq or else be subject to forceful removal. Hussein rejected the ultimatum, and in the evening of March 19 Bush announced the war had begun. Military action in Iraq got underway, beginning with the bombing of three compounds in southern Baghdad where Hussein and other leaders were believed to possibly be hiding. Soon after, American and British forces crossed into Iraq from Kuwait. Operation Iraqi Freedom had officially begun. By April 9 the Iraqi ambassador

¹³⁷ “US Secretary of State Colin Powell Addresses the UN Security Council” (February 5, 2003), www.whitehouse.gov/news/releases/2003/02/20030205-1.html.

¹³⁸ Sean D. Murphy, “Contemporary Practice of the United States Relating to International Law: Use of Military Force to Disarm Iraq,” *The American Journal of International Law*, Vol. 97, No. 2 (April, 2003), 423.

¹³⁹ *Ibid.*

to the US conceded defeat, and on April 14 the Pentagon announced the end of “major combat operations.”¹⁴⁰ The official war lasted just 26 days, claiming the lives of about 97 US personnel in fighting and more than 2,300 Iraqi soldiers.

During discussion on the US and UK’s proposed resolution, a general opposition to the use of force was apparent. Though some nations—including Australia, Albania, Macedonia, and the Philippines—supported the resolution, most others did not. Many admitted Iraq’s failure to fully live up to its obligations but still insisted on seeking a diplomatic solution. Resistance was even stronger immediately preceding the beginning of hostilities. In a Security Council meeting on March 19, a few hours before operations began, Germany rejected the impending war, claiming peace was still possible and “substantial” progress towards disarmament had been made in the last few weeks. It went on to say the unsatisfactory cooperation by Iraq was not grounds for war and there was no basis for regime change under the UN Charter.¹⁴¹ Syria derided statements by American officials who questioned the legitimacy of the Council “simply because they did not succeed in imposing their will and positions on the Council and the UN.”¹⁴² Many states expressed regret that a common position had not been reached.

Predictably, debates raged concerning the legitimacy and legality of the US-led war. Some observers noted diplomacy had failed for years, and the resort to military force was a necessary escalation. They justified the war by recalling Resolutions 678 and 687 of more than ten years earlier. The Gulf War cease-fire had been founded on Iraq’s promise to give up its WMD programs and stockpiles, and to abide by the relevant resolutions. A decade of efforts to force disarmament and compliance followed. Critics

¹⁴⁰ Ibid.

¹⁴¹ Security Council Meeting Notes, UN Document S/PV/4721 (March 19, 2003).

¹⁴² Ibid.

made much of the American doctrine of preemptive self-defense, spelled out in the *National Security Strategy* released in 2002:

“The United States has long maintained the option of preemptive actions to counter a sufficient threat to our national security. The greater the threat, the greater is the risk of inaction—and the more compelling the case for taking anticipatory action to defend ourselves, even if uncertainty remains as to the time and place of the enemy’s attack. To forestall or prevent such hostile acts by our adversaries, the United States will, if necessary, act preemptively.”¹⁴³

Yet despite talk of self-defense, the US, the UK, Spain, and Australia all justified their actions not only on the doctrine of self-defense, but by appealing to earlier resolutions. A

March 21, 2003 letter from the US to the Security Council explained:

“The actions being taken are authorized under existing Council resolutions, including its resolutions 678 (1990) and 687 (1991)...It has long been recognized that a material breach of these obligations removes the basis of the ceasefire and revives the authority to use force under resolution 678 (1990). This has been the basis for coalition use of force in the past and has been accepted by the Council.”¹⁴⁴

When Iraq failed to meet its deadline for compliance in 1991, the Security Council did not require coalition forces to return to the Council for a “further determination;” military operations began the next day.¹⁴⁵ Member states evaluated the situation themselves and used force under the legitimacy provided by Resolution 678. Although the US did return to the Council for discussions in 2003—as promised in 1441—nothing in the resolution “required the Council to adopt any further resolutions, or other form of approval” to establish that a further breach had taken place.¹⁴⁶ Paragraph twelve says the Council will “consider” the matter, in contrast to previous resolutions which stated the Council would

¹⁴³ *The National Security Strategy of the United States*.

¹⁴⁴ UN Document S/2003/351 (March 21, 2003).

¹⁴⁵ Todd F. Buchwald and William H. Taft IV, “Preemption, Iraq, and International Law,” *The American Journal of International Law*, Vol. 97, No. 3 (July, 2003), 558.

¹⁴⁶ *Ibid*, 562.

meet again to “decide.” In the minds of Bush administration officials (and some observers), Resolution 1441 triggered earlier resolutions authorizing force, allowing the US and its allies to terminate the cease-fire of 1991 and resume force. Moreover, the UN was not actually a party to the cease-fire agreement, which was brokered between Iraq and Kuwait and her allies (including the US). In light of this, the US was allowed unilateral use of force to suspend it, so some believed, without UN approval.¹⁴⁷

Others disagreed, arguing that Resolution 678’s authorization had expired, or was negated by Resolution 1441. This claim is somewhat unconvincing though, in light of the fact that when the Security Council has wanted to rescind other past decisions it has done so by either explicitly terminating the prior authorization or by establishing a time limit in the original document. Neither situation occurred with regards to 678, however, so the authorization of force appears to remain relevant. As one author notes, disagreement with the tenet of 678 does not mean its authorization has expired, as seemed to be the view of France, Germany, Russia, and others.¹⁴⁸

Analysis

Whatever the legality of the war with Iraq, the US unmistakably challenged the consensus of the majority of UN member states. Though President Bush professed to not understand criticisms that the US defied the UN—stating that “it’s hard to say the United States is defiant about the United Nations, when I was the person that took the issue to the United Nations... We’ve been working with the United Nations”¹⁴⁹—it is clear most nations around the world did not feel the war was justified. America’s actions cannot fairly be described as unilateral, however; after all, 49 states joined the “coalition of the

¹⁴⁷ Yoo, “International Law and the War in Iraq,” 567-569

¹⁴⁸ Ibid.

¹⁴⁹ “President Bush Discusses Iraq in National Press Conference.”

willing.” In a March 26 meeting of the Security Council, several states denounced the war. Yet others merely regretted the conflict, stopping short of condemning it. As Singapore put it, “the onus was always on Iraq to avoid a war.”¹⁵⁰ In that meeting more than twenty states offered similar sentiments, demonstrating there was some measure of support for the US position. Other states so strongly refused to excuse the war that they would not contribute peacekeeping troops after combat ended without explicit UN authorization, and others (including Germany), declined to do so at all. Many of these countries insisted on a substantial role for the UN in decisions relating to security, aid, and reconstruction. While voting on the passage of Resolution 1472 (March 28, 2003)—which called on the international community to provide immediate humanitarian assistance to Iraq and make additional funds available—Russia emphasized that the “adoption of the resolution, of course, in no way signifies any type of legitimization of the military action being carried out by the coalition in violation of the Charter of the UN.”¹⁵¹ Ultimately, Operation Iraqi Freedom was neither formally approved nor condemned by the Security Council.

It is noteworthy that the nations supporting war justified the use of force by appealing to Charter law and to previous Council resolutions. As one critic of the war observes, in this way they were arguing “from within, not outside, the system” and “even the most determined proponents of the use of force against Iraq relied on (fictive) Council authorization so as to establish the lawfulness of their action.”¹⁵² Even the US wished to secure UN authorization in order to bestow legal legitimacy on its actions. When this

¹⁵⁰ Security Council Meeting Notes, UN Document S/PV.4726 (March 26, 2003).

¹⁵¹ Security Council Meeting Notes, UN Document S/PV.4732 (March 28, 2003).

¹⁵² Carsten Stahn, “Enforcement of the Collective Will after Iraq,” *The American Journal of International Law*, Vol. 97, No. 4 (October, 2003), 814.

failed to occur it claimed moral legitimacy by purporting to act on humanitarian grounds and in the interests of international peace and security, while at the same time exercising its Charter-guaranteed right to self-defense. Some observers doubted the truly humanitarian motivations of the US, however, in light of the fact that the humanitarian claim was offered so late in the discussion, after substantial challenges arose. They viewed these claims merely as an attempt by Washington to distract from questions of legality. The security argument was also unconvincing to many; as one author writes, “Such post hoc efforts at legalization should not be accorded much respect.”¹⁵³ In general, widespread suspicions existed over American intentions in Iraq, in contrast to the earlier situation in Kosovo in which the US was not seen as having any meaningful ulterior motives. For this reason many viewed the campaign in Kosovo as legitimate and that in Iraq as illegitimate.

When faced with considerable resistance to its agenda the US decided to act anyway. As the most powerful nation in the world it was able to do so, with or without UN approval, and could probably have done so even without the “coalition of the willing.” The course it pursued, however, brought enormous costs, both financial and political. America’s reputation suffered greatly, as million of people around the world demonstrated in anti-war and anti-American rallies. Iraq represents the most blatant confrontation between the US and the UN since the end of the Cold War, and proved extremely divisive to the Security Council. Realist theory can explain American actions, however. As the ancient Athenian general and historian Thucydides put it thousands of years ago, “You and everybody else, having the same power as we have, would do the

¹⁵³ Falk, “What Future for the UN Charter?”, 597.

same as we do.”¹⁵⁴ While this may not make US actions right (morally or legally), it is true that states pursue their own interests and national security, and when a state is the most powerful nation in the world it is often able to get away with defying the international community. The price it pays for doing so, however, may not be worth the benefits gained. The Iraq war was pursued by President George W. Bush, whose foreign policy contrasted sharply with that of his predecessor, President Clinton. However, Bush’s chosen course of action is a clear continuation of the Clinton administration’s idea of “multilateral when we can, unilateral when we must.” By sidestepping the UN after failing to obtain its support, Bush merely extended a long standing pattern of the US utilizing the UN when the two are in agreement, and circumventing it when disagreements arise.

Conclusion

Throughout the history of the UN, the US has viewed that organization as a tool to use when convenient and to ignore when not. Recognizing the international legitimacy it confers, American presidents repeatedly have sought UN cooperation and support but have refused to be constrained when they do not receive it. Pragmatism and a sense of American exceptionalism guide US foreign policy, which seeks to promote its own national interests in the international arena and jealously guards its national sovereignty. “The United States, like all other nations, participates in multilateral organizations to advance its national security and foreign policy interests and to promote its values.”¹⁵⁵ This statement comes from the State Department’s Bureau of International Organization

¹⁵⁴ Quoted in Glennon, “Why the Security Council Failed,” 26.

¹⁵⁵ “US Contributions to the UN and Other International Organizations.”

Affairs. Clearly, humanitarian concerns should be a motivating factor in determining a state's foreign policy, but no country will willingly harm its own self-interest in order to favor another's. The US is not wrong to actively seek and promote its own interests. What it must remember, however, is that pursuing international cooperation and being willing to make compromises is also in its interests. Multilateralism can be reconciled with realist theory, as a way to legitimize US power. The UN offers legitimacy to US actions and an opportunity to enhance America's "soft power" throughout the world. As President Truman articulated in 1945, "We all have to recognize that no matter how great our strength, we must deny ourselves the license to do always as we please...Unless we are willing to pay that price, no organization for world peace can accomplish its purpose."¹⁵⁶ It is not in the US' interests to discredit the UN or the Security Council. While these institutions sometimes oppose American policy decisions, by and large they support our goals and share similar values.

For the most part American officials have recognized this truth, and time after time they have come before the UN to obtain authorization for military action or to work together in an international forum in order to solve some pressing global problem. As one author writes, "Despite...severe limitations, the fact that [international organizations] have not been abandoned by states is testimony to both their actual value and their perhaps greater potential."¹⁵⁷ This is particularly true of the UN. Notwithstanding some tough talk and the occasional threat by government officials, the US has never withdrawn from the UN or blatantly flouted it for long. The US was a founding member of the UN,

¹⁵⁶ Quoted in Shashi Tharoor, "Why America Still Needs the United Nations," *Foreign Affairs*, Vol. 82, No. 5 (September/October, 2003), 79.

¹⁵⁷ Abbott and Snidal, "Why States Act through Formal International Organizations," 29.

and at the time of its creation former Secretary of State Cordell Hull called it “the fulfillment of humanity’s highest aspirations.”¹⁵⁸

Many American officials—and the majority of citizens—recognize the value of the UN and generally respect and support it. The nearly two decades since the end of the Cold War have not brought a dramatic transformation in American policy toward the UN. The ambivalence and wavering support characterizing this time period merely continue a well established trend which stretches back for decades, to the founding of the organization. The US appreciates and values the institution and is willing to play by its rules so long as they do not directly or indirectly threaten American national interests, whether genuine or merely conceived. This is evident through the four case studies presented above. In each of the four situations the US determinedly pursued its own interests. In Haiti and Afghanistan, it shared comparable interests with the UN and was able to easily convince the body of the rightness of its actions. At no time was it forced to confront the UN or to disregard or disobey its wishes. In Kosovo, circumstances were a little less clear. The US never obtained authorization for the military intervention, but this was due to the likelihood of a Russian or Chinese veto of the matter and not to overwhelming opposition within the Security Council. It is reasonably clear that most members of the Council supported US and NATO actions in Kosovo and Serbia. When the threat of veto blocked the possibility of formal authorization, the US and its allies were forced to circumvent the Council, seeking support and legitimacy through another multilateral organization.

The recent war in Iraq is different because the US openly disregarded the wishes of the Security Council. Although not all UN members opposed the war, most did. As

¹⁵⁸ Glennon, “Why the Security Council Failed,” 16.

one author points out, “states use those institutional tools that are available to them.”¹⁵⁹

In the controversy preceding the war each state used whatever level of power it held. For smaller states that meant opposing US actions through words and symbolic gestures, both in the public sphere and within the UN. For more powerful states like France, Russia, and China, that meant utilizing their veto power, and for the US that meant the ability to circumvent the UN system altogether when it became necessary. In the aftermath of the Iraq War, President Bush’s query on whether or not the UN would prove itself relevant can be answered in two ways. The first—held by some in the US—is that the UN has shown itself to be irrelevant because it failed to authorize the war, which they claimed should have been approved for moral and humanitarian reasons. The second answer is offered by opponents of the war; they believe the Security Council served its purpose by refusing to endorse a war which they consider to be contrary to the UN Charter.¹⁶⁰

Since the end of the Cold War many nations—including France, Russia, and China—have tried to return the international system to a more balanced state, preferring a multipolar world over American unipolarity as a means of maximizing their power relative to the US. But the US, as the powerful hegemon, seeks to maintain its primacy. It is unrealistic to expect the US to voluntarily abandon its position of preeminent power. Yet the US must remember that ultimately it seeks the same goals as the UN: a more stable, peaceful international system. It should keep this in mind while formulating foreign policy and pursuing any course of action which may prove damaging to the effectiveness or credibility of the UN. Observers should not expect steady, wholehearted support by the US for the UN, however. As one scholar notes, “The United States has

¹⁵⁹ Ibid, 125.

¹⁶⁰ Falk, “What Future for the UN Charter System?”, 590.

long been of two minds about multilateral cooperation. No other nation has so fervently championed international institutions. Yet few have been as resistant to the constraints of multilateralism, as well positioned to obstruct it, or as tempted to act unilaterally.”¹⁶¹ The most consistent aspect of American policy toward the UN is its ambivalence, and this will likely continue as long as the US retains its hegemonic status.

¹⁶¹ Patrick, “Don’t Fence Me In,” 5.

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