

UNITED NATIONS AND GLOBAL PEACE AND SECURITY

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While this paper is being written, the United Nations is attempting to resolve and contain the refugee crisis in Eastern Zaire and Rwanda. This situation is, in many senses, illustrative of the global peace and security agenda that the community of Nations will have to engage with in the post Cold War world. In this paper an attempt is made to locate the role of the U.N. in this sphere of international activity, as also to identify ideological, geopolitical and structural limitations on this role. That we are negotiating with a time-period of radical restructuring of world politics provides the context for the study.

THE U.N. AND COLLECTIVE SECURITY

The main aim of the founders of the U.N., in the immediate aftermath of the Second World War, was a lasting arrangement for international peace and security.¹ At its heart was the age old ideal of collective security,² which was instrumented by vesting legal power in a central authority, the Security Council, that could require that force and non-forcible sanctions be applied by all the states³ to achieve the stated goal.

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1 Roosevelt added China to the Big Three Allied powers to form the 'four policemen' to keep peace, and later, France was added on in the San Francisco conference to form the Big Five. This idea could not stand alone and was linked as early as 1942, to the conception of a New World Organization with a constitution that embraced a wide range of aims and principles. The great power dominance is the cornerstone of the U.N. Charter that sought to consolidate and preserve the victors peace.

2 Expressed as the obligation of states to 'protect each and all' and to 'treat an attack on one as an attack on all', the idea goes back to the Italian city state system of the 15th century or more famously to the Treaty of Munster, 1648 [was a part of the peace of Westphalia]. O. Schachter, *The Charter's Origins In Today's Perspective*. ASIL, 45 (1992).

3 The League of Nations also had a Collective Security system, which failed primarily because the states refused to contribute resources and personnel where they did not perceive a distinct national interest. The drafters of the Charter, in the light of the League experience, provided for armed forces and other resources to be provided by states to the central authority, the Security Council, under a fairly elaborate provision, viz., Art. 43.

The U.N. was an international organisation based on the principle⁴ of *sovereign equality* of all peace loving States for the *collective maintenance* of international peace and security. This juxtaposition of ideals in the organisations structure⁵ had not resolved the clash between collective and national interests and, in this, the major lesson of the League had not been learned.

The realisation of this collective security ideal was crippled⁶ by the structural paralysis of the Cold War. The committed use of the veto, by the permanent members of the Council,⁷ to further national interests and foreign policy objectives of their respective nations. The General Assembly⁸ partially redressed this poten-

4 [T]he two most rudimentary structural elements of the contemporary world order are its *constitutive principles* and *governing ideas*. The constitutive principles are the rules that determine the nature of relations in international society. These include: the sovereign state as the subject of international law; the principle of non-intervention in the internal affairs of states; the principle of self determination. The governing ideas present at the creation of the U.N. system include: the primacy of peace and security issues; the legitimacy of great power governance of these matters; the validity of the resort to war as an ultimate arbiter; an essentially liberal individualist conception of human rights; a capitalist global economy based on comparative advantage, a separation of state and market and an international division of labour.

These underlying ideas have been challenged in various institutions since 1945. Some of these have found limited expression in the U.N. system. These include: the decolonisation process and the expansion of the U.N. system; changing definitions and strategies of development; the financial crisis in the U.N. system of the 1980's; the adoption of new issues such as the environment and sustainable development, or democratization and human rights. K. Krause. *The United Nations in the Post Cold War World: Adaptation, Transformation, Openness or Obsolescence?*, ASIL Proceedings, 272, 274 (1993).

5 [T]he U.N. system is essentially the institutional incarnation of a particular world order and crystallizes and embodies the power relationships of post-1945 international society. A world order may be understood as the political, economic, social, ideological, and cultural structures that define behaviour and power relationships among human groups. These historically determined structures in which the U.N. system is embedded are the persistent patterns of thought and actions that define the frameworks within which people and states act. Hence, the possible evolutionary trajectories for the U.N. system are constrained and challenged by these underlying structures, which frame what is considered politically desirable or possible at any moment. K. Krause, *Id.* at 273.

6 The U.N. was not completely marginalized in security issues, as it endorsed a U.S. led response to the North Korean attack in 1950, and then only because the Soviet Union was boycotting the Security Council (on the issue of the representation of the Peoples Republic of China in the Council).

7 Ideological conflict between the Superpowers incapacitated institutional mechanisms for responding to threats to peace. Collective Security measures could then be disregarded by either of the Superpowers or by any state commanding strong support from either of them. Repetition of this sort of manipulation cast a shadow upon the credibility of the Council. Though, it is not altogether clear whether a mobilisation of the Council would have been entirely desirable. E.M. Smith, *The United Nations: Meeting the Challenges of the Post Cold War World*, ASIL Proceedings, 269, 270 (1993).

8 The Charter gave the Security Council "*primary responsibility*" for the maintenance of international peace, accompanied by comprehensive powers to enable it to fulfil that role. The Great powers did not foresee the General Assembly having any substantive powers, intending merely to have it as a 'meeting place' for the representatives of states. However, the smaller powers at San Francisco managed to secure sufficient provisions in the Charter to enable the Assembly to develop an important subsidiary role. N.D. White, *Keeping the Peace*, (1995). See n.22.

tially *explosive* scenario by adopting the Uniting for Peace Resolution,⁹ which enhanced its powers to maintain international peace.¹⁰ The range of operations¹¹ that developed under the umbrella of Dag Hammarskjold's 'preventive diplomacy'¹² came to be defined by the term 'peacekeeping'.

The common elements of these operations was that action was not against states, but with their consent; and not by compelling U.N. members to take part, but by inviting them to do so. These operations were instituted on an ad-hoc basis¹³ by the resolution of the Assembly, with the consent or toleration of the permanent members of the Council. The operations adopted structures and formats that the international climate would afford and in fact the only nonconsensual element was financing.¹⁴

9 G.A. Res. 377 UN G.A.O.R., 5th Sess., Supp. No. 20, at 10-12, U.N. DOC. A/1775 (1950).

10 This allowed the creation of the United Nations Emergency Force (UNEF) in the Suez crisis. Using the UNEF as precedent and the Resolution in part as legal support, the Secretary General Dag Hammarskjold began to broker peace by utilising troops from any nation that would volunteer them, typically after a mediated ceasefire.

11 The typical mode of Peacekeeping was to place troops between warring parties as a buffer to prevent further conflict, as in Congo (1960-64). Further developments included, Military Observation as in Lebanon (1958) to prevent supply of arms to Muslim rebels, The UN Transition Assistance Authority in Cambodia (1991 to present) that has engaged in temporary governance. See *generally*, N.D.White, *supra* note 8, at 213 (for a detailed review of all U.N. security operations).

12 Hammarskjold the 'official theorist of the movement', envisaged preventive diplomacy as 'a matter of preventing engagement or facilitating disengagement on the part of the Superpowers..... by proposing a preemptive and neutralizing collective intervention to forestall an unilateral intervention'. It is important to note that this scheme is not contemplated by the Charter. B.N. Mehrish, *The Concept of Peace in the U.N. Charter, in The United Nations and World Peace*. 92, at 97 (Shresh Jugal and B. Ramesh Babu (Ed.), (1990).

13 The legal bases for these operations are at best ambiguous, and the Uniting for Peace resolution is controversial. The Peacekeeping operations were described by Dag Hammarskjold as being under *Chapter 6 1/2* in his 1965 Report on Peacekeeping France and the Soviet Union had contested peacekeepings legality with respect to its Finances at the International Court of Justice. The court observed that peacekeeping was not outside the language of the Charter, and found the power of the General Assembly to initiate peacekeeping under Art. 11(2) and Art. 14. It maintained the obligation of states to pay under Art. 17(2); *Certain Expenses of the U.N.* 1962 I.C.J. 151, 169.

Notwithstanding the case, the practise and acceptance of U.N. peacekeeping operations among so many countries over such a long period of time may very well provide it legal basis as a customary rule of international law.

14 Financing (except for the Cyprus operation) was (generally) done by assessed contributions on a special scale for peacekeeping operations in which the poorest countries pay less and the permanent Council members make up the difference. The basis of the scale was the ability to pay, measured in terms of GNP. P. Szasz, *From Keeping The Peace to Maintaining It: The Changing Role Of U.N. Security Forces*, ASIL Proceedings, 340, at 341 (1994).

Several innovations were adopted to suit specific operations: UNSF (1962-63) and UNYOM (1963-64) the parties agreed to share the cost; UNIPOM (1965-66) Security Council endorsed financing out of the regular budget; UNIKOM(1991-present) the Kuwait government agreed to pay two-thirds of the cost. Saxena A.K.P., *The U.N. and Collective Security*, (1974).

The period commencing from 1989,¹⁵ witnessed the collapse of the erstwhile Soviet Union and with it the Cold War polarities. This undid the geopolitical limitations on the Security Council, which embarked on a strident course¹⁶ of action and consequently expanded the doctrinal notions of peacekeeping¹⁷ to its margins and frequently dissolved them. The Gulf War and the 'humanitarian interventions' in Somalia and the former Yugoslavia were prominent among these.¹⁸ The post Cold War World witnessed striking changes in the nature of conflict that the U.N., now had to negotiate with.¹⁹

15 The turning point in 1989 was the deployment of a decolonization mission to Namibia, with a wider range of tasks than the mandates of previous verification observers or interposition forces; The U.N. Transitional Assistance Group in Namibia (1989-90). In January 1992, the Security Council held its first heads of state summit and the joint statement that closed the summit noted that: 'The absence of war and military conflicts does not in itself ensure international peace and security. The non military sources of instability in the economic, social, humanitarian and ecological fields have become threats to peace and security. The U.N. membership as a whole needs to give the highest priority to the solutions of these matters.' Edwin Smith, *The Need for Effective Multilateral Sanctions*, ASIL Proceedings, 303 (1992). These expressions of intent seem far-fetched, and are highly improbable to be realised in today's context.

16 The UN has moved from five operations in 1988 to sixteen in late December 1994; from military forces numbering about 9000 to about 70,000 in the field; from a budget of about \$230,000,000 to about \$3,600,000,000. Michael Doyle, *U.N. Peacekeeping: An Early Reckoning of The Second Generation*, ASIL Proceedings, 275 (1995).

17 The term 'peacekeeping' has never formally been given a fixed and detailed meaning by the collectivity of nations and such a development is most unlikely. Instead, what happened was that states, often in their capacity as members of the U.N., authorised and embarked on certain activities which, with hindsight, were seen as having certain basic factors in common. In the late 1950's it was possible to invent a term, to refer in an overall way to the activity, as conceptualisation had taken place. This kind of procedure is necessary if the international world (or any societal situation) is to be spoken of in terms of any generality. To the extent to which there are clear elements of commonality in a variety of separate happenings, it is also firmly in accordance with empirical reality. Scholarly work of this kind, runs into two loosely connected problems. The first is that life does not fall neatly into pre-existing categories. So any abstract scheme of a definitional sort is probably going to encounter difficulties at the margin. A greater difficulty has to do with the identification of peacekeeping as a distinct type of international activity. While scholars use definitions and categories with precision States are under no such professional obligation. Alan James, *Peacekeeping in International Politics*, (1990).

18 The two key elements of the so-called second generation peacekeeping operations are: firstly, that they have mandates well beyond the simple idea of interposition of troops between opposing forces; and secondly, that the delegation to and cooperation with regional agencies is necessitated due to (the perceived) lack of technical and financial resources on the part of the U.N. Rosalyn Higgins, *Second Generation Peacekeeping*, ASIL Proceedings, 275, 276 (1995).

Brian Urquhart distinguishes U.N. military operations into three types: classic peacekeeping which is a voluntary consensual activity that does not rely on the use of force; major enforcement action as in Kuwait; peace enforcement or armed police action where international forces having authority to use at least a limited degree of force to restore peaceful conditions. These three characters of military operations are distinct in that, it is extremely dangerous to try to mix them. Brian Urquhart, *The United Nations: Meeting the Challenges of the Post Cold War World*, ASIL Proceedings, 268, at 287 (1993).

19 The Gulf War maintained the illusion of vitality for state-centric notions of collective response, however, these seem inadequate when confronted with intrastate conflict. In order to invoke the rules and procedures of international organization and state-centric notions of peace and security

The necessary transformation in doctrine was set-out by the Secretary General in June, 1992 in a document titled 'The Agenda For Peace'.²⁰ It asserted a broad U.N. mandate including preventive diplomacy, preventive deployment and peace enforcement under Chapter 7.²¹ However, in January 1995, the supplement to the Secretary General's report was infused by a theme of retrenchment from the mandate announced by the U.N. in the Agenda for Peace just two and a half years before.²² Irrespective of the official position, the community of nations are still confronted with several conflicts that involve grave humanitarian concerns, and defy easy resolution.

in intrastate violence, these have been conveniently characterised as 'threats to international peace and security'. This expanding scope intervention coupled with the Council's selectivity, has generated fears among weaker developing nations of rebirth of colonial forms of domination and a crisis of legitimacy of the U.N. itself. E. M. Smith, *supra* n. 8, at 270.

- 20 31 ILM 953 (1992). When placed in the perspective of the changes in global politics, seems a confusing and interesting document, and a curious mixture of the following stances. The argument that both will fail, as they are not in tune with the current historical phase of world politics as one of late modernity which opposes the fundamental structures that constitute the U.N. is put forth convincingly by K. Krause, *supra* n. 4, 282.

The first stance is the reformist status quo orientation which concedes the great power governance of world order and focusses on the need to enhance U.N. capabilities to deal with new challenges to international peace and security. Proposals under this heading essentially view the U.N. as a crucial buttress to the existing principles of the world order and they also place the greatest emphasis on maintaining order. This approach fundamentally views the problem as a technical or instrumental one, with technical/administrative solutions. In the process, it ignores entirely the deeper political questions: who makes decisions, what are the political values and priorities at stake, whose interests are served by particular U.N. interventions? Both so-called realists and proponents of a more liberal conceptions of world order can hew to this line. While these will somewhat enhance the U.N. capacity for response to military conflicts and humanitarian crisis, it will do little to avoid the potential for failure and popular disaffection, especially among the major contributing countries of the West.

The second stance called idealist vanguardism rejects great power governance of international peace and security and views the U.N. as a vehicle for transformation, once it has been unshackled from the ideological chains of the Cold War. The U.N. will provide a forum for the promotion of democratization, international rule of law, respect for human rights and will consequently assume a higher profile in the political life of peoples around the world. This stance operates primarily outside the ambit of traditional concepts of peace and security and envisages an expansive definition of security to include the construction of democratic institutions and societies. This assumes that a consensus can be easily created around the political values embodied in such peacebuilding operations, however, as in the case of Cambodia this is not the case.

- 21 The *march towards a viable and just state* was to be guided by widened notions of peacekeeping involving both civilian and military elements; peacebuilding was to include the monitoring and supervision of human rights, economic rehabilitation and the supervision of national elections. It would be quite correct to say that all of that has changed now.
- 22 This is influenced by the budget crises, and by a sense that the U.N. cannot undertake extensive enforcement operations. There is also a new sense of delegating peace enforcement to states and regional organizations. R. Higgins, *supra* n. 18, 276.

GLOBAL SECURITY IN THE POST COLD WAR WORLD

We need to appreciate that the U.N. is an extension of the state system rather than an alternative to it.²³ States are the only entities eligible for membership and, in terms of peace and security, completely dominate patterns of access and participation. Furthermore, it is not only states, as such, but rather the hierarchy of states,²⁴ that has given structure to international political life as the states system has unfolded over time.

As in the Cold War, to the extent that the U.N. is paralyzed formally,²⁵ states will tend to revive more unilateral patterns of diplomacy, especially reliance on spheres of influence or regional frameworks. These patterns have become increasingly evident in the past few years.²⁶ This new arrangement of geopolitical priorities, subordinates most peace and security concerns to the issues of economic stability and the expansion of trade.²⁷

Here it is necessary to avoid the tendency, in much academic writing, to *reify institutions like the state or the U.N.*²⁸ The state acts through its governmental leaders, responsive to a range of social and political forces expressive of a specific power and ideological configuration and subject to change through time. The states are being shaped, although not deterministically, by forces beyond their control and this loss can be phrased as an erosion of sovereignty as a result of a more integrated world economy.²⁹

23 When we are attempting to interpret expectations of the United Nations, it should be within the larger setting of global restructuring, especially the displacement and realignment of the sovereign state. R. Falk, *Appraising the UN at 50: The Looming Challenge*, 48 J. Int'l. Aff., 625, 629, (1995). (This article provides the basis for the understanding of the post cold war world in this paper)

24 The UN experiences this geopolitical imprint of inequality among states in all of its formal structures: the veto power of the permanent members of the Security Council is the most glaring example.

25 The veto of the Cold War has now been replaced by the budgetary constraints resulting out of the non-payment of debts by the U.S. among others. On the whole there seems to be a lack of will on the part of the major geopolitical actors in the U.N., to invest it with the requisite capacity to act.

26 France's role in *containing* genocide in Rwanda in 1994; Russia's continuing role in overcoming ethnic strife in the Commonwealth of Independent States; US's revived reliance on a Monroe Doctrine rationale and practise with respect to its diplomacy in Central America.

27 This is borne out by the *selectivity* practised with respect to threats to the peace or severe abuses of human rights and the implementation of decisions taken by the Security Council. The alacrity with which it reacted to the situation in Iraq provides a neat contrast to its relative impotence in responding to China or the conflict in Chechnya. In this respect the UN, essentially, embodies the geopolitical priorities of the permanent members of the Security Council.

28 Depicting these forces in relation to given government at a particular time is bound to be inconclusive and controversial, yet indispensable. R. Falk, *supra* n. 23, at 632-33.

29 The globalized state is increasingly responsive to global economic priorities, tending to push aside opposing societal claims of policy. The interaction of globalizing pressure and responsive domestic conditions is disjunctive for each state, although the general pattern of is towards conformity and subordination to global market forces.

If this a correct assessment, then the U.N.'s peace and security activities will reflect this reduction in the State's autonomy as a global actor. The overall impact of these global market forces³⁰ could either weaken or strengthen the capacity of the U.N. to fulfill the security needs of the World community. Further, in the absence of strategic rivalry,³¹ the outcomes of internal conflicts are of far less perceived consequence, with the major states interest being the containment of a conflict and its ramifications, especially potential refugee flows.³² Therefore any reformulation³³ must engage the globalized state in fashioning significant action in the peace and security domain.

THE NATURE OF CONFLICT

The end of the Cold War³⁴ accentuated some powerful pre-existing trends in international society, including an expanding claim of the right to self determination and a growing pre-occupation with the politics of identity, relating to ethnic and national consciousness.³⁵ While some of these re-assertions have been relatively

30 While global market forces could emphasize the importance of an overall climate of stability and the U.N. could expand its roles and capabilities, *but* it is also possible that market forces will simply 'write off' or 'ghettoise' areas of turmoil and warfare as is the case with the Zairean refugee crisis.

31 During the Cold War almost every territorial struggle was perceived in global strategic terms, thus inviting interventions that were put forth as tests of strength and will and incurring costs often disproportionate to the material interests at stake

32 The UN is now encouraged to do its best to keep displaced persons from crossing borders, or remaining outside, while little effort is made to overcome the underlying cause of distress that accounted for the movement of people in the first place.

33 Such action is most likely to reflect a combination of pure economic considerations with more traditional efforts to restrain challenges to the established political and economic order in the World but not elsewhere. The globalizing of media activity may generate public pressures on states and indirectly on the U.N. to act in the face of disaster or atrocity, but it does not create the rationale necessary for producing serious commitments of life and resources. The tendency then is to do something about these humanitarian challenges, but not enough, thus rendering the pattern of response exceedingly vulnerable to any serious effort to disrupt it. The U.N. experience in erstwhile Yugoslavia and Somalia stands testimony to this trend. R. Falk, *supra* n. 23, at 637.

34 [T]he end of the Cold War may be part of a much more fundamental transformation of the global political system that is unfolding over a longer time scale. We are entering a 'late-Westphalian' or 'late-modern' period, in which the *constitutive principles and underlying norms* of world politics are under challenge from several quarters. The U.N. system is not immune to these challenges, and in some cases, it has been the site for contention between *clashing views of the future*. A failure to make the U.N. system 'open' to these challenges will render it increasingly obsolete, or maladapted, to meet the challenges of the 20th century. K. Krause, *supra* n. 4, at 272.

35 During the decades following the Second World War, the emergent norm of self determination was mainly confined in practise to the struggle against the colonial order. Throughout the Cold War there was a consensus that transcended the East West divide to the effect that claims of self determination had to be satisfied within existing state boundaries, even those that were artificial and had been contrived by colonial rulers. This conception of the limits of self determination was endorsed by UN and its full membership. With the breakup of the Soviet Union and Yugoslavia, a new form of state shattering self determination came into being.

unproblematic,³⁶ more severe tensions arose in those regions where overlapping ethnic identities and anguished historical memories³⁷ of abuse led to passionate expressions of ethnically exclusive nationalisms that sought to ensure that whatever political entity was constituted would, to the extent possible, embody their aspirations of identity and security.³⁸

It is at this point, that the politics of identity has become pathological, with respect the values and presuppositions of a world order resting upon the major premise of the territorially (not ethnically) defined sovereign state. The U.N., although not empowered to intervene in matters essentially within domestic jurisdiction unless a threat to international peace is posed, has done so, albeit in a modest fashion,³⁹ under the current vocabulary of 'humanitarian intervention'.⁴⁰

36 As is the case with the claims of the Baltic States.

37 The imposition of the Nation State through colonization balkanized Africa into ahistorical units and forcibly yanked into the *Age of Europe*; permanently disfiguring it. Unlike their European counterparts, African states and borders are distinctly artificial and are not the visible expression of historical struggles by local peoples to achieve adjustment and balance. Colonization interrupted this historical and evolutionary process and since then, Africa has attempted, unsuccessfully to live within the structural and conceptual confines of the post colonial state; all too frequently the consequences have been disastrous. Makau-Wa-Mutua, *Conflicting Conceptions of Human Rights: Rethinking the Post Colonial State*, Am. J. Int'l. L. 487 (1996).

This historicisation of conflict is essential to develop an understanding on the nature of conflict and its probable causes.

38 The crisis of identity undermines the primary loyalty between citizens and their state, as individuals find their identities captured and expressed more fully as women, indigenous peoples, or members of a shared faith. In the contemporary world, these crises of identity *are* to be resolved within the sovereign state through political struggles [that seldom are peaceful], however, as individuals and groups that have made common cause with others outside their state this becomes increasingly difficult. K. Krause, *supra* n. 4, at 281.

39 By mandate and capability, the U.N. role has been confined to the substantial mitigation of civilian suffering through provision of food, medicines and other forms of relief, especially to displaced populations. Such efforts may reduce the impact of barbarism to a significant degree but persistent violence and unresolved political settings deny lasting peace.

The crises of borders is not simply the problem of how to fragment existing states into smaller constituent units [that comprise homogenous groups] because identities are formed by a continuously dynamic process and the nation state has never been [and will never be] delimited over politically unproblematic territory. Peacekeeping in its present form cannot address such struggles, because it attempts simply to discover where the 'proper' boundary should be inscribed and what the limits of statehood should be. It is no longer possible to push these choices inside the borders of states, where repression could occur beyond the concern of the world community. K. Krause, *supra* n. 4, at 280-81.

40 The ethnic nationalist crusades in Northern Iraq, Bosnia and Rwanda are prominent examples. Another form of criminalization of state power, where a tiny privileged elite exploits and brutalizes its own citizenry to such an extent as to depend upon the continuing commission of crimes against humanity to remain in power. South Africa in the apartheid era, Haiti after the 1991 coup are illustration of this form. Finally, the interplay of extreme poverty, ethnic strife, tribal and clan rivalry and religious extremism in several African countries illustrates yet another variant of pathological anarchy. R. Falk, *supra* n. 23, 641.

It is important to realise that these pathological breakdowns are marginal to the dynamics of the world economy and so draw a limited response. The result is a tendency by states to 'dump'⁴¹ the situation on the Security Council, thereby shifting the focus of blame and at the same time eroding confidence in the peacemaking capabilities of the U.N. Given the instrumental relationship of leading states to the Security Council, the true locus of responsibility lies elsewhere, in a realist tradition of statecraft that is conditioned to disregard humanitarian claims unless intertwined to Great Power claims or threatening to wider patterns of political and economic stability.⁴²

THE ROLE OF THE U.N. IN CONFLICT PREVENTION

The U.N. as an instrument of uneven state power is being shaped, primarily in relation to peace and security activities, by the priorities of an increasingly globalised world economy.⁴³ Until this preponderant pattern of influence is offset by the further growth of a transnational democracy or by a resurgent labour movement, the role of the U.N. is bound to be limited to contexts where the geopolitical interests of the G-7 countries are involved.

The U.N. can only contribute to peace and security in those settings where capabilities and mission are more or less congruent. Hence it is imperative that we identify the conflicts⁴⁴ that the U.N. has the capacity and willingness to engage with. It is imperative, here, to establish the norm that human suffering on a large scale is a legitimate matter of international concern⁴⁵ and intervention.⁴⁶

41 It is 'dumping' because states that call on the UN to act also control its purse strings and mandate. By withholding the means to be effective, leading states both shift some responsibility for inaction away from themselves and foster an impression of the UN as inept and ineffective.

42 The maintenance of the multi-ethnic, secular state as the legitimate foundation of territorial sovereignty enlists widespread rhetorical support, but is not seen as integral to either economic growth or global security. As long as ascendant states and their public are not threatened by pathological anarchism, the level of response is bound to be minimal. Richard Falk, *supra* note, at 643.

43 If the U.N. seeks to play a positive role it must not remain as an institutional embodiment of Western values masquerading as a universal meeting place, and should rather become an open site for contestation between opposing perspectives. This will require an institutional openness, uncharacteristic of modern bureaucracies, providing a forum where political resolution can be sought. This provides the U.N. with relevant perspective to deal with the emerging world order. K. Krause, *supra* n. 18, at 283.

44 'Conflict' is a term that stretches from major wars to nonviolent clashes of various kinds between political, social and economic groups. Not all conflicts *can or should* be prevented, we lack the commitment of resources to do so, and it is altogether clear that preventing all of them would be a positive phenomenon. A. Chayes, *Conflict Prevention for a New Century*, ASIL Proceedings, 142 (1992).

45 This is a problematic especially after our detailed evaluation of the geopolitical inequalities that shape international society. But in the past few years, we have seen a significant erosion of the constraints implicit in Art. 39 and 2(7), and it would be accurate to note it as a trend, that establishes the proposition.

46 'Intervention' is a word that stretches in meaning from military action to diplomatic pressures of various kinds. The capacity of the U.N. to formulate policies and operations to vitalize the

The capacity to identify potential conflicts⁴⁷ and intervene at an appropriate stage would be crucial to the success of any operation. Preventive Diplomacy could occupy a central role in scenarios, where the parties cannot or will not settle the conflicts or issues between them on their own. Nevertheless, a settlement cannot, in the nature of things, be imposed from outside.⁴⁸ In these situations, modest capabilities⁴⁹ can suffice if the political will of the parties are sustained, but if consent is withdrawn, these efforts can end up inconclusively or in failure.⁵⁰

Peacemaking arises in those circumstance⁵¹ where the early measures have failed, and the challenge is more formidable as it engages the use of force, which is the special domain of the state.⁵² There is a vision of mature, competent and

latter half of the spectrum is crucial for its future role, where military intervention is action of the final resort, if feasible. The means described in the Agenda for Peace are fact finding, confidence building measure, early warning, preventive deployment of troops, establishment of demilitarized Zones and formation of regional information/ risk reduction centres. A. Chayes, *supra* n. 44 at 143.

47 The U.N. has already evolved a practise of using Fact-finding teams as also Observer missions to several parts of the world. The preventive deployment of troops in Macedonia is illustrative of the essence of timing.

48 We know little about conscious intervention to shape human behaviour and outcome, and the function of the outside intervenor is not really to intervene, but to clear a space within which the parties themselves can begin to lower their voices and work on the settlement of their dispute. Abram Chayes, *supra* n. 44 at 144.

49 The U.N. can usefully provide auspices for this process, resting its role on the consent of the parties. This prospect of augmenting first generation peacekeeping in the spirit of Hammarskjöld's original emphases, should remain a source of guidance, counselling action and restraint as appropriate.

50 The central paradox is that a clash among parties calls for some intervention, but the form of intervention available is almost necessarily not knowledgeable enough or close enough to the problem. This suggests that NGO's have a wide role to remedy these handicaps, but they have their problems too. At least at the preventive end, the process of judicializing and legalizing the conflict prevention process is likely to be the wrong way to go; as a more flexible and political approach is more likely to succeed. A. Chayes, *supra* n. 44 at 143.

51 We must also be aware that in Bosnia once *peacekeepers*, with the prime mandate to deliver humanitarian aid, were put in place, then realistic prospects of 'enforcing the peace' was lost. Fear of reprisals against a national contingent becomes a dominant concern, and safety of the *peacekeepers* becomes a primary objective. A continued understanding of the nature of conflict and the corresponding response, whether *peacekeeping* or *peacemaking*, is crucial for the achievement of any objectives that the U.N. sets for itself.

Rosalyn Higgins strongly urges for a clear differentiation between an enforcement action and peacekeeping. She suggests that only consequent to securing the peace on the ground should ancillary functions be added and not in lieu of it. R. Higgins, *supra* n. 18, at 279. This serial, rather than parallel, arrangement of priorities provides conceptual clarity to the new terminologies that cropped out of the Agenda For Peace.

52 Notwithstanding the end of the Cold War, there seems little movement towards what was intended under Art. 43. This is clearly set out in the *U.S. Administration Policy on Reforming Multilateral Peace Operation, Presidential Decision Directive 25*, 33 ILM 705 (1994). While only a handful of states have an enforcement capacity their use is governed by realist conceptions of national interest.

effective regional organizations⁵³ acting professionally in coordination with the U.N. to 'lighten the burden' on the Security Council and help 'democratise' international affairs but this has not yet materialised.⁵⁴

The U.N. for its part should not intervene in situations it cannot reasonably expect to resolve, especially if it involves a radical political restructuring, displacing by force patterns of governance in a state responsible for generating pathology. Under these circumstances it should proceed with a good degree of humility and caution and restrict its role to relief work and make this restriction on its mission as clear as possible.⁵⁵

An ambitious approach⁵⁶ would emphasize the need for a more autonomous U.N., more capable of responding to the needs of the people of the world, without soliciting the heavy involvement of its leading members on an ad hoc basis. However, before this may come about a comprehensive overhaul of geopolitical patterns and structures would be essential.

53 Chapter 6 of the Charter identifies, resort to regional organizations, as one means of peaceful settlement of disputes; Chapter 8 addresses these organizations at great length and The Agenda for Peace sets out an expansive vision of the role of regional organizations.

54 [T]he encouragement of 'regionalism', however loosely defined, has led to disturbing phenomena. We have seen proliferation of institutions involved in the former Yugoslavia, as much for reasons of competition and of regional politics as of appropriate functional capacity. We have seen first the embargo of the European Community, its observer mission to Yugoslavia, discussions in the Conference on Security Co-operation in Europe and the Western European Union, and the eventual, and tardy, reference to the Security Council. Rosalyn Higgins, *supra* n. 18, at 277. (Similar trends persist, with the quality of contribution of regional organizations to the response in Somalia, Rwanda and now eastern Zaire).

55 The International Committee of the Red Cross delimits its role in manageable terms that do not generate disappointment, as unlike the U.N. it does not generate unrealistic expectations. However, this seems difficult given that many governments use the U.N. as a shield for their low levels of commitment.

56 The organization and its member states will have to address the question of purposes of an organization established in a different era. A reform of the institutional structure is necessary to preserve the legitimacy of the Organization. Just as the credibility of the Organization at its founding turned on its consistency within the contemporary distribution of political power, reforms are necessary to adapt it to our current order of political power and importance. E. Smith, *supra* n. 8, at 272.