Uncertain Steps into a Post-Cold War World: The Role and Functioning of the UN Security Council after a Decade of Measures against Iraq

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Abstract

The 'case of Iraq' is the most important single issue the UN Security Council dealt with in the 1990s. It has strongly influenced the role and functioning of the Council in the international legal order. The case, which began with Iraq's invasion of Kuwait in 1990 and continued with a prolonged effort to induce Iraq's compliance with the post-conflict regime imposed by the Council, has brought together and exemplified the manifold problems, opportunities and pitfalls encountered by the Council on its way to establishing itself as the principal executive organ of the international community. The history of how the Council proceeded in the Iraq case since 1991 is one of the Council taking uncertain steps into a post-Cold War world. The Council was able to revitalize the collective security scheme devised in the UN Charter of 1945, thereby claiming and maintaining its validity after the ruptures in the international system brought about first by the East-West antagonism and then by its sudden conclusion. Further, the Council embarked on a programme of work with profound normative consequences in international law. In a sort of tour d'horizon, this article tries to single out and discuss the most important aspects of the Council's role and functioning as influenced or altered by its handling of the Iraq case, in particular the problem of sanctions and the comprehensive post-conflict regime of Resolution 687 (1991), the extent of the Council's powers, the constitutional reform and procedure of the Council, and the enduring problem of 'legitimacy'.

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1 Introduction

In this contribution to the symposium, I wish to examine whether, how and to what degree the 'case of Iraq' has influenced the role and functioning of the UN Security Council in the international legal order, and whether any of these developments have had a lasting impact such that we may say that the Council of today is in certain respects different from the Council prior to Iraq's invasion of Kuwait in August 1990.

This symposium identifies a number of specific areas of international law which may have particularly felt the impact of the measures taken against Iraq since 1990: the use of force, sanctions, arms control and disarmament, compensation of damages, human rights. Although the respective developments in international law originate in action taken by the Security Council, and presumably have had repercussions on the Council, I will only discuss them in so far as they seem to be of significance for the role of the Security Council under the United Nations Charter and, more broadly, in the international community and in relation to the Council's institutional functioning. I will close the paper with some remarks on the transformation of expectations regarding the Council's role and on the present standing of the Council.

2 The Liberation of Kuwait: Original Success and Early Critique

Let me begin with the rather obvious. Iraq's invasion of Kuwait in the summer of 1990 provided the Council with a chance to demonstrate that it had, following the end of the East-West conflict, reassembled its strength and was able once more to shoulder its responsibilities as they are laid down in the Charter. The invasion appeared to be a unique chance to prove wrong all those who had declared the Council dead or terminally ill. The question was whether the Council could become once more what the founders of the UN had intended it to be, so that the past 40 years would seem, when looking back, like a kind of temporary, albeit prolonged, interruption of its work.

The Council resolutely seized this opportunity when it authorized, with its famous Resolution 678 of 29 November 1990, 'Member States co-operating with the Government of Kuwait ... to use all necessary means' in order to free Kuwait from the Iraqi troops.[1] The resolution was adopted with 12 against two votes (those of Cuba and Yemen); the People's Republic of China abstained. For the first time since the UN intervention in the Korean War in 1950,[2] the United Nations allowed certain states — in both cases, in fact, the United States and its allies — to wage war under its flag. And this time, in contrast to the case of Korea, the decision of the Security Council was based on agreement among the permanent members and a regular functioning of the Council.

[1] For the history of the adoption of SC Res. 678, see C. R. Hume, *The United Nations, Iran, and Iraq: How Peacemaking Changed* (1994), at 187–216.

[2] See SC Res. 83 and 84 of 27 June and 7 July 1950, respectively.

Iraq's violation of what is widely regarded as perhaps the most precious value protected by international law, a state's political independence and territorial integrity,[3] was as clear and plain as its unwillingness to pay attention to the appeals from all corners of the world unanimously calling from the beginning of August 1990 to withdraw its troops from Kuwait.[4] Accordingly, there was almost unanimous global support for the decision taken by the Security Council, notwithstanding the obvious fact that this decision had been proposed and attained by the United States in line with its national interests.

By generally judging Resolution 678 lawful under the UN Charter, the members of the international community confirmed the view that the Security Council can authorize the use of force by individual states for the purpose of enforcing Chapter VII decisions, although the text of the Charter only provides for the use of armed forces of the UN made available to the Security Council by Member States (Article 43), with the Council being at least responsible for the 'strategic direction' of those forces (Article 47(3)).[5] This confirmation is of the utmost importance to the functioning of the Security Council because, in the absence of UN forces as provided for in Articles 43 and 45, such authorization of individual states or groups of states provides the only means by which the Council can compel obedience to its decisions through a use of military force. At the same time, the history of the Iraq case has exemplified the problems inherent in this method of 'contracting out', which 'leaves individual states with wide discretion to use ambiguous, open-textured resolutions to exercise control over the initiation, conduct and termination of hostilities'.[6]

After several weeks of aerial bombardment, US-led troops began a ground assault

[3] See the statement of the British Foreign Secretary D. Hurd in the Security Council meeting of 29 Nov. 1990: 'In a world of nation states the obliteration of one state by another undermined and threatened the whole structure of international order, threatening the safety of all.' UN Doc. S/PV.2963, at 81, quoted in Hume, *supra* note 1, at 214.

[4] For respective calls of the Security Council, see its Resolutions 660 (2 Aug. 1990), 661 (6 Aug. 1990), 662 (9 Aug. 1990), 664 (18 Aug. 1990), 665 (25 Aug. 1990), 666 (13 Sept. 1990), 667 (16 Sept. 1990), 669 (24 Sept. 1990), 670 (25 Sept. 1990), 674 (29 Oct. 1990), 677 (28 Nov. 1990). Resolution 670 included a particularly frank warning directed at Iraq: '*The Security Council . . . Underlining* to the Government of Iraq that its continued failure to comply with the terms of resolutions 660 . . . could lead to a further serious action by the Council under the Charter, including under Chapter VII' (preamble, para. 11).

[5] For a discussion of the Council's competence to authorize UN Member States with respect to Chapter VII powers, and of limitations on this competence, see White and Ülgen, 'The Security Council and the Decentralised Military Option: Constitutionality and Function', 44 *Netherlands Int'l L.Rev.* (1997) 378, D. Sarooshi, *The United Nations and the Development of Collective Security* (1999), at 142–163, and Blokker, 'Is the Authorization Authorized? Powers and Practice of the UN Security Council to Authorize the Use of Force by "Coalitions of the Able and Willing"', 11 *EJIL* (2000) 541. Sarooshi deals with the Kuwait case at 174–186 and 200–207.

[6] See Lobel and Ratner, 'Bypassing the Security Council: Ambiguous Authorizations to Use Force, Cease-Fires and the Iraqi Inspection Regime', 93 *AJIL* (1999) 124, at 125. For a pointedly critical view, see Quigley, 'The "Privatization" of Security Council Enforcement Action: A Threat to Multilateralism', 17 *Michigan J. Int'l L.* (1996) 249. See also Weston, 'Security Council Resolution 678 and Persian Gulf Decision Making: Precarious Legitimacy', 85 *AJIL* (1991) 516 (holding that 'the Resolution 678 decision process was not legitimate in any rigorous or thoroughgoing sense').

on 23 February 1991 which completely liberated Kuwait in four days. This liberation, the reinstatement of the Kuwaiti government and the military defeat of Iraq in its own territory clearly also entailed a huge success for the Council. The 'machinery' provided for in the Charter to maintain world peace and protect the independence of states had, it seemed, worked marvellously. However, the Council wisely abstained from celebrating this success, and only reservedly in early April of 1991 'welcom[ed] the restoration to Kuwait of its sovereignty, independence and territorial integrity and the return of its legitimate Government'.[7] By that time, clouds had already somewhat darkened the blue Security Council sky. There was disagreement among members about the question whether Resolution 678 had provided a legal basis for chasing the Iraqi army inside Iraq with the aim of ousting Saddam Hussein and his political and military command structure, or whether that resolution had been 'used up' in the moment when the last Iraqi soldier had been driven out of Kuwait. This disagreement had already been reflected in the first Council resolution after the military strike, Resolution 686 of 2 March 1991, in which the Council 'noted' 'the suspension of offensive combat operations by the forces of Kuwait and the Member States cooperating with Kuwait and the intention expressed by those states 'to bring their military presence in Iraq to an end as soon as possible'. UN Secretary-General Pérez de Cuéllar remarked that the way in which Resolution 678 was implemented 'shows that there is a need for an improved and more institutionalized mechanism for reporting to the Council by the concerned states'. The Council, he said, 'needs to preserve for itself the authority to exercise guidance, supervision or control with respect to the carrying out of actions authorized by it'.[8] While this opinion is widely supported by UN Member States, can be based on a sound reading of Chapter VII[9] and is likely to be presented again in the future, Member States acting on behalf of the Council will not easily share with the Council the command and control of their military forces.

At the same time critical voices grew stronger, saying that the Council, rather than having objectively assessed the case, had been put in the service of the United States and its interest in an unhampered oil supply from Kuwait.[10] Other critics argued that the scale of the military operation, and the loss of human lives it involved, was out of proportion to the defended territory of less than 18,000 square kilometres, which makes Kuwait slightly smaller than New Jersey, and a people counting less than a million.[11]

[7] See SC Res. 687 of 3 April 1991, preamble.

[8] J. Pérez de Cuéllar, Address delivered at the University of Bordeaux, 22 Apr. 1991, UN Press Release SG/SM/4560, quoted in Sarooshi, *supra* note 5, at 184 n. 62.

[9] See Art. 47 of the Charter. See also Sarooshi, *supra* note 5, at 186: 'The Security Council will always retain overall authority and control over the exercise of Chapter VII powers it has delegated to UN Member States.'

[10] According to the 2000 *CIA World Factbook*, Kuwait has proven crude oil reserves of about 94 billion barrels which equals 10% of world reserves. See <http://www.odci.gov/cia/publications/factbook/geos/ku.html>.

[11] Kuwait had an estimated population of 1,973,572 in July 2000, including 1,159,913 non-nationals, *ibid.*

In the following period, the Council met with steadily increasing criticism. Resolution 687 of 3 April 1991 was the first target for criticism of the Council, particularly for its peace terms and the broad definition of Council competencies it, as well as subsequent resolutions, set out. Later on, continuation of the sanctions regime became the subject of controversy and criticism. Further, the fact that members proved unable to agree on an interpretation of important resolutions shed an unfavourable light on the Council. A subject of great controversy has been the question whether the air embargo of Resolution 670 (1990) covers not only cargo air transport but also passenger aircraft. France, Russia and China argued that it does not, whereas the United States and the United Kingdom held the opposite opinion.

In early 1998, the Council left it in doubt whether the United States was entitled to use military force in order to ensure Iraqi compliance with its disarmament obligations.[12] While the US government believed that it could rely on Resolution 678, other permanent members of the Council, namely China, France and Russia, held that any military action would require a new express authorization by the Council. This dispute regarding a question so vital to the UN, the legitimate use of force in international relations, could not be resolved in the Council because of the veto power held by each permanent member. Resolution 1154 (1998), by which the Council on 2 March 1998 endorsed the diplomatic solution accomplished by the UN Secretary-General at the very last minute, spoke of 'severest consequences for Iraq' in the event of a violation of its obligations, without making clear whether or not such consequences could include the use of military force. On 16 December 1998, the United States and the United Kingdom launched four days of air strikes against Iraq, arguing, as they had before, that they had legal authority to use force to respond to Iraqi ceasefire violations. Russia, China and a number of non-permanent members again disagreed.

A third disagreement in the Council concerned the establishment and defence by means of military force of 'safe havens' for the Kurdish refugees in northern Iraq and of 'no-fly zones' to protect the Kurds in northern Iraq and the Shiites in the south. The United States, the United Kingdom and France justified these measures as having been implicitly authorized by the Council.[13] Clearly, the concept of 'implied authorization'

[12] See Wedgwood, 'The Enforcement of Security Council Resolution 687: The Threat of Force against Iraq's Weapons of Mass Destruction', 92 *AJIL* (1998) 724 (arguing in favour of the US position), and Tomuschat, 'Using Force against Iraq', 73 *Die Friedens-Warte–Journal of International Peace and Organization* (1997) 75, at 79 *et seq.*, Denis, 'La résolution 678 (1990): Peut-elle légitimer les actions armées menées contre l'Iraq postérieurement à l'adoption de la résolution 687 (1991)?', 31 *Revue belge de droit international* (1998) 485, den Dekker and Wessel, 'Military Enforcement of Arms Control in Iraq', 11 *Leiden J. Int'l L.* (1998) 497, Krisch, 'Unilateral Enforcement of the Collective Will: Kosovo, Iraq, and the Security Council', 3 *Max Planck U.N.Y.B.* (1999) 59, at 64–73, and Lobel and Ratner, *supra* note 6, at 149 *et seq.* (arguing against it).

[13] The governments referred, in particular, to SC Res. 688 of 5 Apr. 1991, which 'condemn[ed] the repression of the Iraqi civilian population in many parts of Iraq, including most recently in Kurdish populated areas'. See Lobel and Ratner, *supra* note 6, at 132 *et seq.*, and Krisch, *supra* note 12, at 73–79 (concluding that 'the attempt to justify the use of force [against Iraqi aircraft and sites in late 1998 and early 1999] fails').

belongs to the dangerous legacy of the Iraq case. It stands in contradiction to the UN Charter, which 'requires the Security Council to approve affirmatively of nondefensive use of force'. 'Acquiescence does not suffice. To infer Council authorization either from silence, or from the obscure interstices of Council resolutions, undermines this Charter mandate.'[14]

In each of these three cases, Russia and China felt, similarly to Goethe's *Zauberlehrling*, that things had gotten out of control and that they were unable to prevent the United States from pursuing and enforcing what they perceived as a specifically American policy in the Middle East. They reacted by increasingly challenging this policy as one-sided, counterproductive and questionable from a humanitarian point of view, and also, it would appear, by not implementing the sanctions regime in the strictest possible manner. Russia and China were joined to some extent by France. In this way the original success achieved by the Security Council faded, and today it is hardly remembered beyond the circles of diplomats and specialists of international relations. In May 2001, the United States and Great Britain, as the only permanent members of the Council still favouring and advocating the sanctions imposed on Iraq, acknowledged the growing international criticism, including from human rights organizations, by proposing a partial lifting of the ban on international trade with Iraq. But even by the early autumn no agreement had been reached among the Permanent Five on the details of such so-called 'smart sanctions'.[15] It is by no means unproblematic for the future role of the Security Council in international relations, for its authority and credibility, that the Council has allowed public opinion to associate it so closely with a policy of imposing economic sanctions over a very prolonged period of time, a policy which in the several cases of the 1990s led to only the same highly limited success as in the past history of the League of Nations and the United Nations.[16]

[14] See Lobel and Ratner, *supra* note 6, at 130.

[15] See *infra* Section 7.

[16] For a brief but enlightening analysis of the sanctions practice up to the Rhodesian case, see M. P. Doxey, *Economic Sanctions and International Enforcement* (2nd ed., 1980). Her conclusions (at 131 *et seq.*) were the following: '[E]xcept in the hypothetical case of extreme vulnerability amounting to total economic dependence on the states imposing sanctions, or of universal economic ostracism, the coercive properties of economic sanctions are limited. Their impact can be reduced, overcome, or sustained, and the will to resist in the target may be strengthened . . . Coercion is an expensive means of social control, destructive of many of the values which it seeks to conserve.' For a similar assessment of the more recent UN sanctions, see M. Bennouna, 'L'embargo dans la pratique des Nations Unies: Radioscopie d'un moyen de pression', in E. Yakpo and T. Boumedra (eds), *Liber Amicorum Judge Mohammed Bedjaoui* (1999) 555, at 577–579.

3 The Council's Vigorous Interpretation of Its Powers: The Post-conflict Regime of Resolution 687 (1991) and the Problem of Sanctions

A *Resolution 687 as a 'Substitute Peace Treaty'*

Resolution 687 (1991) has often been referred to as the 'ceasefire resolution'. It in fact goes far beyond the regulation of modalities for a cessation of hostilities. By setting down what the Council perceived as the conditions for a stable peace in the region and for the readmittance of Iraq into the international community, as well as by prescribing what Iraq accordingly had to do and could not do, the resolution did no less than substitute for what used to be a peace treaty between belligerent parties. It is, as Christian Tomuschat put it, an '*Ersatz-Friedensvertrag*' ('substitute peace treaty'). Moreover, the effectiveness of the ceasefire was made conditional on Iraq's formal acceptance of the terms of the Resolution (para. 33). This comprehensive resolution dealt with the boundary between Iraq and Kuwait (A), the deployment of a UN observer unit and the establishment of a demilitarized boundary zone (B), the demilitarization of Iraq and the creation of a special commission for its supervision (C), the return of Kuwaiti property seized by Iraq (D), Iraq's liability for losses, damages and injuries arising from its invasion and occupation of Kuwait, and the establishment of a fund and administering commission to pay compensation for respective claims (E), maintenance of the full trade embargo against Iraq imposed by Security Council Resolution 661 of 6 August 1990, pending periodic reviews of Iraqi compliance with the Council resolutions (F), the repatriation of all Kuwaiti and third-state nationals (G), Iraq's condemnation of all acts of terrorism (H), and lastly, as mentioned above, the formal ceasefire on condition that Iraq accepted all the provisions of the Resolution.[17]

This was the first time ever that the Security Council adopted, on the basis of Chapter VII of the Charter, such a comprehensive post-conflict regime, making it binding on an aggressor state. Its competence to do so, in the absence of any specific rules in the Charter on the role of the Council following a cessation of hostilities, has only occasionally been challenged. Generally, it has been accepted that the Council's mandate under Article 39 of the Charter ('to ... restore international peace and security') includes the authority to direct the process of reconstruction and reconciliation,[18] an authority which stands independently beside the right (and duty) of the Council to take necessary measures for the prevention of a new threat to the peace and security, i.e. measures directed towards the future.[19]

Indeed, the comprehensive task assigned to the Security Council of safeguarding

[17] For a careful record of the drafting and implementation (until 1993) of Res. 687, see I. Johnstone, *Aftermath of the Gulf War: An Assessment of UN Action* (1994).

[18] See, e.g., Tomuschat, 'Obligations Arising for States without or against Their Will', 241 *RdC* (1993, IV) 195, at 343.

[19] It is this latter right which mainly supports the demilitarization measures of Res. 687.

world peace does not support the argument that the Council, as a mere 'policeman' of the international community, is only entitled to fight aggression and put an end to imminent threats to international peace and security.[20] That the Council itself has adopted a contrasting view is not only demonstrated by its measures against Iraq, but also by its actions to establish the tribunals for the former Yugoslavia and for Rwanda in 1993 and 1994 respectively. In these instances, the Council declared the prosecution of individuals responsible for serious violations of international humanitarian law to 'contribute to the restoration and maintenance of peace'.[21]

In the framework of the Charter, it would seem to be appropriate that a conflict which, as a result of the action taken by the Security Council under Chapter VII, was removed from the sphere of bilateral relations between states and made a concern of the international community should be ended by another measure of the Council as the responsible community organ. It is true that this form of peace-making departs from the traditional institution of peace treaties concluded between the parties to a conflict, and could appear to infringe upon the sovereignty of the defeated state or states. However, apart from the fact that this traditional institution has been seriously challenged, beginning with the experience of the Paris Peace Treaties of 1919, a measure taken, or authorized, by the Security Council under Chapter VII yields neither winners nor losers in a classical sense. The Council has accomplished its mission if and when international peace and security is restored. A state which has breached the peace must be reintegrated into the international community, and the Security Council is the only community institution called upon, and able, to perform this task. It also appears that in the framework of the Council the interests of a defeated state can be better protected than through alternative modes of peace-making. Lastly, one must keep in mind that today, unlike pre-Charter times, a defeated state's consent to a peace treaty cannot be procured by an explicit or implicit threat of force.[22] For these reasons, it is likely that in the future major international conflicts will more often than not be brought to an end by comprehensive peace resolutions of the Council, whether or not UN or UN-authorized troops have taken part in such conflicts. In this respect, Resolution 687 can be regarded as an important precedent.[23]

B *Sanctions in a Post-conflict Situation*

In the first paragraph of Resolution 687, the Security Council 'affirm[ed] all thirteen resolutions' noted at the very beginning of the preamble, among them Resolutions 661 and 670 which imposed a comprehensive package of sanctions on Iraq regarding trade, financial transactions and transportation, in particular air transportation.

[20] For this and the following, see B. Fassbender, *UN Security Council Reform and the Right of Veto: A Constitutional Perspective* (1998), at 212–214.

[21] See SC Res. 827 of 25 May 1993, preamble, para. 6, and SC Res. 955 of 8 Nov. 1994, preamble, para. 7.

[22] See Art. 52 of the Vienna Convention on the Law of Treaties.

[23] But see, e.g., F. Baroni, *Völkerrechtliche Auswirkungen der Friedenssicherungspraxis der Vereinten Naitonen nach Ende des Kalten Krieges* (1995), at 200 *et seq.* (emphazising that Res. 687 was the result of a particular historical situation and will rather remain an exception).

Resolution 687 maintained these sanctions,[24] originally imposed in order to induce Iraq to end the invasion and occupation of Kuwait, with the (new) objectives of compelling Iraq to comply with the terms of the ceasefire[25] and preventing it from again becoming a threat to international peace and security.[26] It has been rightly remarked that these objectives are similar to those underlying the terms imposed upon a defeated aggressor in a peace treaty.[27] They fundamentally changed the character of the sanctions; they no longer represented, in accordance with the established practice of the Council, 'measures not involving the use of armed force' (Article 41) as one step in a graded series of stages provided for in Chapter VII of the Charter, with the last one being the application of military force. Instead, the sanctions became mainly a means of securing Iraq's compliance with the conditions of the post-conflict regime of Resolution 687.

The Council thus took hold of a potentially far more effective means than that traditionally (in pre-Charter international law) placed at the disposal of a party to a peace treaty in the case of its violation by another party, i.e. the resumption of hostilities. Realistically, the Council made use of the only effective means of making Iraq comply with the measures of Resolution 687 because in the then prevailing political situation it would have been unlikely that a majority for a new use of force against Iraq could be procured. Chapter VII of the UN Charter does not prevent the Council from using sanctions in this manner; all it requires is that the respective measures are necessary to maintain or restore international peace and security.

However, later developments brought to light the problematic nature of this novel combination of a post-military conflict regime and sanctions imposed prior to the conflict with the intention of preventing it. Although maintenance of the sanctions could be justified, both as a means of inducing Iraq's compliance with Resolution 687 and as a preventive action, precluding a new threat to the peace originating from Iraq, based on Articles 39 and 41 of the Charter, the sanctions were increasingly perceived as punitive measures. This perception was intensified by the knowledge that behind the two 'official' objectives described above a third one was present and had been since the beginning — the objective of a 'permanent containment' or even the overthrow of the regime of Saddam Hussein.[28] This objective, sometimes openly acknowledged by the United States, was never accepted by the Security Council. However, it did reinforce the view that the sanctions had become a disguised form of punishment of a defeated aggressor state, similar to the 'action in relation to [an enemy state]' of World War II (Article 107), a punishment which should have been avoided in favour of the

[24] With certain modifications in paras 21 (regarding foodstuffs and 'materials and supplies for essential civilian needs') and 24 (arms embargo).

[25] See para. 22 of the resolution and the provisions on periodic reviews in paras 21 and 28.

[26] See preambular para. 4: '*The Security Council* . . . *Reaffirming* the need to be assured of Iraq's peaceful intentions in the light of its unlawful invasion and occupation of Kuwait'.

[27] See Alting von Geusau, 'Recent and Problematic: The Imposition of Sanctions by the UN Security Council', in W. J. M. van Genugten and G. A. de Groot (eds), *United Nations Sanctions: Effectiveness and Effects, Especially in the Field of Human Rights* (1999) 1, at 12.

[28] See D. Cortright and G. A. Lopez, *The Sanctions Decade: Assessing UN Strategies in the 1990s* (2000), at 56 *et seq.*

application of the international law of state responsibility. The Security Council was unable to explain convincingly which of these different rationales prevailed at a given time, whether their relative importance could change, and how this could influence the Council's preparedness to modify the sanctions regime.

Continuing the sanctions by means of Resolution 687 would probably have been less open to criticism if the Council had been able to adapt the sanctions regime to changed circumstances in a more flexible manner in the years following 1991.[29] But the Council's voting system, in particular the right of veto of the permanent members, stood in the way of such flexibility. More pointedly, it has been said that the Council's refusal to reciprocate Iraqi concessions and to create an incentive for the Iraqi government to take further steps towards compliance resulted primarily from the unyielding position of the United States.[30] A different view, certainly the one held by the United States, maintained that Iraq's blatant and constant policy of non-compliance with the Council's demands, and of non-cooperation with the UN and its specialized agencies, left little or no room for modifying the sanctions regime,[31] with the effect that Iraq succeeded, in a cynical diplomatic game at the expense of its own civil population, in tying the Council down to an all-or-nothing approach which became harder and harder for the Council to defend.

Whether one or the other reading of events is closer to the truth, '[t]he result was a steady weakening of the political commitment to continued sanctions within the Security Council ... The Council became deadlocked, unable to agree on a plan for resolving the current impasse and equally unable to ease sanctions pressures or end the sanctions-related suffering of the Iraqi people.'[32] Nor did the Council succeed in improving the devastating human rights situation in Iraq.[33]

The history of the failed efforts to make Iraq comply with the conditions of Resolution 687 illustrates that the broad powers of the Security Council under

[29] The most important modification was the introduction of the oil-for-food programme in Res. 986 of 14 April 1995. The programme, enabling Iraq to sell up to $1 billion of oil every 90 days and use the proceeds for humanitarian supplies to the country, went into effect on 10 Dec. 1996, and was subsequently renewed (with changes as to the sum of oil revenues) in Res. 1111 (4 June 1997), 1129 (12 Sept. 1997), 1143 (4 Dec. 1997), 1153 (20 Feb. 1998), 1158 (25 March 1998), 1210 (24 Nov. 1998), 1242 (21 May 1999), 1266 (4 Oct. 1999), 1281 (10 Dec. 1999), 1302 (8 June 2000), 1330 (5 Dec. 2000), 1352 (1 June 2001) and 1360 (3 July 2001). Res. 1284 (17 Dec. 1999) removed the ceiling on Iraqi oil exports and provided for additional arrangements for facilitating humanitarian supplies to Iraq. Res. 1175 (19 June 1998) authorized states to permit the export to Iraq of equipment to enable Iraq to increase the exportation of petroleum. On the other hand, Res. 1137 (12 Nov. 1997) imposed travel restrictions on certain Iraqi officials and members of the Iraqi armed forces.

[30] See Cortright and Lopez, *supra* note 28, at 56.

[31] For an expression of this view, see, e.g., Reuther, 'UN Sanctions against Iraq', in D. Cortright and G. A. Lopez, *Economic Sanctions: Panacea or Peacebuilding in a Post-Cold War World?* (1995), 121.

[32] Cortright and Lopez, *supra* note 28, at 57.

[33] See, in particular, GA Res. 55/115 of 4 Dec. 2000, and Res. 2001/14 of the UN Commission on Human Rights of 18 Apr. 2001, both condemning, *inter alia*, '[t]he systematic, widespread and extremely grave violations of human rights and of international humanitarian law by the Government of Iraq, resulting in an all-pervasive repression and oppression sustained by broad-based discrimination and widespread terror' (para. 3(a)).

Chapter VII to deal with the consequences of a breach of the peace have not solved the old problem of securing implementation of the terms of peace which were actually imposed upon, and not freely accepted by, a militarily defeated state. Knowledge of the 'art of making peace', a lasting peace, has not become superfluous.[34]

4 The Debate about the Council's Powers, Its Legal Constraints and Judicial Control

To accept that a peace-making authority of the Security Council is in accord with the UN Charter does not, however, mean that the Council can prescribe whatever it pleases. In the case of Resolution 687, a number of specific stipulations have been criticized as not being in accordance with international law. These include the demand regarding the international boundary between Kuwait and Iraq (para. 2),[35] the 'invitation' (effectively made binding because of the link with the ceasefire regulation) that Iraq shall ratify a particular disarmament treaty (para. 7), the decision that Iraq shall destroy all chemical and biological weapons and all ballistic missiles with a certain range and shall not develop or acquire such weapons in the future (paras 8 and 10), the extent of the regime of supervision and inspection of Iraq's military capabilities (paras 9, 12 and 13),[36] the establishment and functioning of the Compensation Commission (para. 9), and the Council's very broadly framed statement of Iraq's liability (para. 16). Further, the sanction regime upheld and modified by Resolution 687 and subsequent resolutions has been challenged on the ground that it violates international law due to the suffering it has provoked for Iraq's civilian population.[37]

It is not my present task to establish whether or not these allegations of unlawful Council behaviour are justified or not. Other authors in this symposium have addressed the most important subject areas relating to this question. In this context it suffices to say that the Council's Iraq resolutions, in particular Resolution 687, have triggered an intense debate among international lawyers regarding the powers of the Council under the Charter, as well as the question whether or not the Council is bound by international law and, if so, which norms of international law (the UN Charter, 'general international law', *jus cogens*, and/or guarantees of fundamental human

[34] See Tomuschat, 'How to Make Peace after War: The Potsdam Agreement of 1945 Revisited', 72 *Die Friedens-Warte* (1997) 11, and *Idem*, 'Die Kunst, Frieden zu schliessen und zu sichern', 74 *Die Friedens-Warte* (1999) 361.

[35] Among others, Professor Brownlie held that it was unlawful for the Council 'to impose a boundary in the absence either of bilateral negotiation and agreement or an arbitration or reference to the International Court'. See Brownlie, 'The Decisions of Political Organs of the United Nations and the Rule of Law', in R. St.J. Macdonald (ed.), *Essays in Honour of Wang Tieya* (1993) 91, at 97.

[36] For discussion, see, e.g., Baroni, *supra* note 23, at 189–198, 208–211.

[37] For discussion, see, e.g., Reisman and Stevick, 'The Applicability of International Law Standards to United Nations Economic Sanctions Programmes', 9 *EJIL* (1998) 86, and Reinisch, 'Developing Human Rights and Humanitarian Law Accountability of the Security Council for the Imposition of Economic Sanctions', 95 *AJIL* (2001) 851.

rights), and regarding the problem of judicial control of the Council.[38] This debate, which interestingly is reminiscent of the legal scruples characterizing the first years of the UN,[39] has been active for about 10 years. It has certainly been useful and has brought more attention to the Council in law journals and conferences than it had received since the founding period of the United Nations. However, the debate proved in part to be premature, starting as it did from the assumption that the activism demonstrated by the Council in the Iraq case would last and would necessitate not only political but also legal ways and means of restricting and controlling Council action.

The list of matters considered and actions taken by the Security Council during the past decade is impressively long. If we take just last year, the year 2000, not only do we find on the Council's agenda the familiar names of the Balkan states and Kosovo, the Middle East countries and East Timor, we also see that the Council extensively dealt with African states and territories, namely Angola, Burundi, the Central African Republic, the Democratic Republic of the Congo, Eritrea, Ethiopia, Guinea, Guinea-Bissau, Rwanda, Sierra Leone, Somalia, and Western Sahara. Further, the situations in Afghanistan, Georgia, Tajikistan, Cyprus, Haiti and in the Solomon Islands were discussed in the Council.[40] Yet despite this agenda, which represents the major (though not by any means all — consider, for instance, Chechnya) sites of contemporary inter-or intra-state violence or threat of violence, an assessment of the Security Council's activities over the last 10 years hardly leads to the conclusion that the body is a danger to the international rule of law or the independence of states. In many conflicts (it appears in almost all those on the African continent) the Council has not played an effective role and is quite understandably perceived as the proverbial paper tiger. In order to militarily intervene in a conflict, the Council must find states that are willing to contribute troops, equipment, logistics and money. 'At least part of this normally comes from industrialized states, but they hesitate more and more to engage themselves, if the U.S. does not take the lead', as former German Ambassador to the UN Eitel recently remarked.[41]

Today, scholarly writings display broad agreement in affirming that the various post-1990 ventures of the Council into the previously unknown have been well within the limits of its powers under the Charter. Legally, the Council is well equipped to carry out its mandate to safeguard international peace and security, even in the face of new dangers and constellations. At the same time, the present structure and possibilities for political and legal control of the Council's conduct do not seem to be out of all proportion to the needs of the international community and the action the

[38] For discussion, see Fassbender, '*Quis judicabit?* The Security Council, Its Powers and Its Legal Control', 11 *EJIL* (2000) 219.

[39] See Kirgis, Jr., 'The Security Council's First Fifty Years', 89 *AJIL* (1995) 506, at 509–512.

[40] See UN Dag Hammarskjöld Library, 'List of Matters considered/Actions taken by the Security Council in 2000', last updated 19 Apr. 2001; <http://www.un.org/Depts/dhl/resguide/scact2000.htm>. Reprinted *infra*, at 299–303.

[41] See Eitel, 'The UN Security Council and its Future Contribution in the Field of International Law', 4 *Max Planck UNYB* (2000) 53, at 64 *et seq.*

Council can take under the prevailing circumstances. Having drawn these conclusions, the debate regarding the powers, the legal constraints of the Council and possible legal means of controlling its actions seems to have passed its peak. Of the critical items mentioned above, it is only the question of the human suffering caused by the continued sanctions against Iraq that continues to elicit significant interest among international lawyers.

5 Constitutional Reform of the Security Council

In several ways, the measures taken by the Council against Iraq since 1990 have influenced the debate on a constitutional reform of the Security Council, i.e. an amendment of the rules of the UN Charter in relation to the Council's composition and decision-making powers.[42] The resolute military action of 1991 and the expectation, at the time, that the Council would tackle other international conflicts in a similar manner drew governments' attention to the fact that the composition of the Council, as provided for in Article 23 of the Charter, did not correspond to the political, economic and military changes the world had experienced since 1945. There was broad agreement that a Council having the potential to become a true centre of international public policy and an effective force in the prevention and settlement of international disputes should reflect global conditions of the present rather than those of the final stage of World War II. Much more so than prior to the historical watershed of 1990, the Council became a body to which one wanted to belong and where one wished to play a role, either as a permanent or non-permanent member. With the help of the old arguments of 1945 and some new ones as well, the fight against the so-called 'privileged position' of the five permanent members of the Council, and particularly against their right of veto set down in Article 27(3) of the UN Charter, was taken up again. Candidates for permanent or semi-permanent membership sought to line up support. Other states invested considerable energy in preventing rivals from rising to a higher rank in the hierarchy of states. The so-called enemy states of the Second World War (those states which fought against the Allied Powers, the founders of the United Nations Organization) glimpsed an opportunity to have the files of the past eventually closed and to gain recognition as benevolent members, with equal rights, of the international community.

When, after some time, it became apparent that a successor to the case of Kuwait-Iraq would not easily be found, interest in a reform of the Council did not diminish. To be sure, the cheerful optimism and enthusiasm following the successful war against Iraq, which found expression in the Secretary-General's report *An Agenda*

[42] For the development up until 1998, see Fassbender, *supra* note 20, at 221–275, and *Idem*, 'Reforming the United Nations', *Contemporary Review* 272 (1998) 281.

for Peace,[43] did not last. It disappeared when the events in Somalia, Rwanda and Yugoslavia filled prime time television. For many these country names soon became short forms for the United Nations' failure to safeguard peace and basic human rights in the post-Cold War world. However, governments maintained their interest in the Council, concerned as they were now about the selectivity practised by the body, its partially predictable, partially unpredictable choices for involvement in situations of a breach of or a threat to the peace. The issue was not, as in the times of the Cold War, arbitrary obstruction of Security Council action by one of its permanent members, but arbitrary Council performance — something which was bound to become even more of a problem as the gap widened between the need for Council action and available UN resources.

Following the very first meeting of the Security Council at the level of heads of state and government in January 1992 and the summit meeting of the Non-Aligned Movement in Jakarta in September 1992, both of which discussed, in the words of the then Prime Minister of Japan, the need 'for the UN to evolve while adapting to a changing world',[44] almost global consensus developed on the need for a thorough review of the structure and working methods of the major UN organs, including the Security Council. The increase in membership of the UN since the first, and until only enlargement of the Council in 1963, the fundamentally changed international situation after the end of the Cold War, and the new challenges faced by the Organization all pointed to this necessity.

As a result of discussions in the General Assembly in 1992 and 1993, and of a report of the Secretary-General presenting the views of Member States on the question of Council reform,[45] the General Assembly established in December 1993 an 'Open-ended Working Group on the Question of Equitable Representation on and Increase in the Membership of the Security Council'.[46] The Working Group began its substantive work in March 1994. From 1995 onward, its discussions were organized around two major topics or 'clusters', namely (1) equitable representation on, and increase in, the membership of the Security Council, and (2) other matters related to

[43] See 'An Agenda for Peace: Preventive Diplomacy, Peacemaking and Peacekeeping. Report of the Secretary-General pursuant to the statement adopted by the Summit Meeting of the Security Council on 31 January 1992', UN Doc. A/47/277 (1992) and S/24111 (1992), reprinted in *ILM* 31 (1992) 956.

[44] See the statement of Prime Minister K. Miyazawa at the Security Council meeting of 31 Jan. 1992, in Ministry of Foreign Affairs (ed.), *Diplomatic Bluebook 1992 — Japan's Diplomatic Activities*, at 399, 401.

[45] See 'Question of equitable representation on and increase in the membership of the Security Council. Report of the Secretary-General', UN Doc. A/48/264 of 20 July 1993 and Add. 1, Add. 2 and Add. 2/Corr. 1, Add. 3 and 4. The submissions compiled in this report can be regarded as the most comprehensive statement of the policies of UN Member States with regard to a reform of the Council as they stood at the beginning of the discussion of the last decade.

[46] See GA Res. 48/26 of 3 Dec. 1993.

the Security Council, particularly measures and practices to enhance the Council's transparency and to improve its working methods.[47]

During the first two years of discussions in the Working Group, when delegations basically presented their ideas, identified areas of agreement and disagreement and sought to enlist the support of other states, there appeared to be some justification for hope that a compromise could in the end be reached, both regarding the general structure of the Security Council and the crucial question of the veto power of the permanent members. This optimism, however, vanished after some time. By the spring of 1994, it had become clear that the present P-5 would not agree to an abolition or any major limitation of their right of veto, and would not support new permanent seats for developing countries endowed with that full-fledged right. On the other hand, the Movement of Non-Aligned Countries and the Organization of African Unity declared that they expected the new African, Asian and Latin American permanent members to enjoy the same rights as all the other permanent members, and that they would not agree to any new permanent seats for industrialized states (i.e. Japan and Germany) if this condition were not met. Apart from the veto question, not one of the developing regions has been able so far to agree on one country to be its new permanent representative. Europe is divided too. 'Unless and until the European Union straightens out a common position on Security Council reform, there will not be reform.'[48] Finally, the developing countries advocate raising the number of Council members (permanent and non-permanent) to 24 or even 26, but the United States opposes this, fearing that a thus enlarged body will make it difficult for it to mobilize majority support.[49]

This deadlock has not been overcome to date.[50] Given the lack of a common view among members of the European Union, the reluctance of Japan to assume a more active role in international security affairs beyond the Asian-Pacific region, Russia's instability, and China's cautious policy, it still appears that only the United States

[47] The 'Programme of work of the Working Group during the 54th session of the GA' (UN Doc. A/54/47, annex III) distinguished four topics: '1. Working methods of the SC and transparency of its work, 2. Decision-making in the SC, including the veto, 3. Expansion of the SC: (a) Total size of the enlarged SC; (b) Increase in the permanent membership (including issues of extension of the veto to the new permanent membership and permanent regional representation); (c) Increase in the non-permanent membership (including the possibility of an increase, for the time being, only in this category of membership), 4. Periodic review of the enlarged SC.'

[48] Statement by Ambassador R. C. Holbrooke, US Permanent Representative to the UN, 11 Jan. 2001; US Mission to the UN Press Release no. 4(01), at 3.

[49] For a concise explanation of the present US position, see 'UN Security Council Expansion: Fact sheet released by the Bureau of International Organization Affairs, US Department of State, April 5, 2000', available at <http://www.state.gov/www/issues/fs-unsc_expan_000405.html>. See also Lyman, 'Saving the UN Security Council: A Challenge for the United States', 4 *Max Planck UNYB* (2000) 127, at 137–140.

[50] For the latest annual report of the Open-ended Working Group, see UN Doc. A/54/47 of 25 July 2000. According to para. 30, '[t]here was no agreement this year on any general observations' of the group. For a summary of the GA plenary discussion on 16 and 17 Nov. 2000, see UN Press Releases GA/9824–9827.

could advance a substantial proposal for Security Council reform. However, it is very unlikely that the Bush Administration will develop a stronger interest than its predecessor in this matter. Underlying not only the American position is what Richard Falk described as the unwillingness of leading states to compromise their predominance in relation to violent conflict by building up the autonomous capabilities of the UN to ensure peace and security to the peoples of the world.[51] In the laconic words of an observer, 'a veto reform and an enlargement of the Council will have to wait until pursued with more energy by those who are interested'.[52] In conclusion, the Kuwait-Iraq incident gave impetus to efforts to reform the Council, but this impetus has not been strong enough to make governments of UN Member States bring about a constitutional compromise.

Elsewhere I have written that the challenge of adapting the UN Charter, and above all the Security Council, to the needs of humankind in the 21st century is a unique opportunity because for the first time in human history a universal order could be built upon a peacefully articulated global consensus rather than upon the will of a victorious power or an alliance of victors, as was the case in 1648 after the Thirty Years' War, in 1815 after the wars of the French Revolution and Napoleon I, in 1919 and in 1945.[53] But perhaps the Charter is too closely, too intrinsically, associated with the international power structure of 1945 or, from a somewhat different perspective, with the specific stage of development that the international state system had reached at the end of World War II, to be 'adapted' to the present situation. It may even be the case that we cannot speak of a different 'stage' in the development of a structurally permanent and enduring 'state system', but that we have actually left this system behind altogether and entered a new mode of global relations. Perhaps this, and not an unwillingness or incompetence on the part of governments, is the true reason for the failure of all efforts over the last ten years to bring about a substantial reform of the Organization. However, if this view is correct, the prospects of the Security Council are rather dismal. Like a dinosaur having survived the Mesozoic Era, the Council would totter along for a while, increasingly wondering about a world which is not its world any more, and be doomed to extinction in the end.

6 Procedure and Working Methods of the Security Council

As mentioned earlier in this paper, the issue of the Council's working methods has also been addressed during the course of the reform discussion since 1991. A keyword in this context is 'transparency'. The concept of transparency is a response to the increasing secretiveness of the Security Council and, in particular, its permanent members.

[51] See Falk, 'The United Nations and the Rule of Law', in S. H. Mendlovitz and B. H. Weston (eds), *Preferred Futures for the United Nations* (1995) 301, at 328.

[52] See Eitel, *supra* note 41, at 62.

[53] See Fassbender, *supra* note 20, at 17 *et seq.*

Despite a number of declarations of intent issued by the Council both as a body and by individual permanent members, the situation, first critically described by Michael Reisman in 1993,[54] has not really changed.[55] Discussions in the Council that have some bearing on decision-making take place exclusively in the daily 'Informal Consultations' behind closed doors. In the words of the former German Ambassador to the UN, '[o]nly decisions (resolutions or presidential statements) that have been agreed upon to the last comma are taken to the well-known "Security Council Chamber" and are there publicly adopted, and only there interested members of the UN that are not members of the Council have a chance to address the Council — of course too late to change anything'.[56] Ambassador Eitel discerned a 'complete loss of transparency and of the right of the concerned parties, e.g. Iraq, to address the Council *in corpore* while it is still in the process of deliberation'.[57]

This problem is dealt with by the Charter itself, although Articles 31 and 32 provide states not sitting on the Council with a rather weak legal position. It is for the Council to decide whether a state's interests are 'specially affected' (Article 31), or whether or not a party to a dispute under consideration by the Security Council should be invited to participate in the discussion (Article 32). Given the range and weight of Council decisions since the Iraq case, and their possible consequences for a particular state and its population, these provisions seem to be inadequate. If a Member State whose interests are without doubt specially affected by a question brought before the Council or if a state who is a party to a dispute under consideration by the Security Council is generally excluded for a lengthy period from the respective deliberations of the Council, this constitutes a violation of its equal status under the constitution of the international community or, more briefly, the principle of constitutional equality as guaranteed in Article 2(1) of the UN Charter.[58] As regards the position of a state accused of having violated the Charter, Article 32 is not in accordance with the right to a fair hearing, which is a general principle of international law.[59] As Ian Brownlie has remarked, 'a body determining facts and applying legal principles with dispositive effect, even if it is not constituted as a tribunal, should observe certain standards of procedural fairness'.[60] However, an amendment of these two articles will only be

[54] See Reisman, 'The Constitutional Crisis in the United Nations', 87 *AJIL* (1993) 83, at 85 *et seq.*

[55] See, e.g., statement by the President of the Council of 16 Dec. 1994 (UN Doc. S/PRST/1994/81) and notes by the President of the Council of 30 Oct. 1998 (S/1998/1016) and of 30 Dec. 1999 (S/1999/1291, reprinted in: Report of the Security Council, A/55/2, at 215 *et seq.*). For the introduction of 'open briefings' in late 1998 and 'open debates' (or 'orientation debates') in Jan. 2000, see Soltau, 'The Right to Participate in the Debates of the Security Council', *ASIL Insight*, Oct. 2000, available at <http://www.asil.org/insigh52.htm>. For additional 'moves in the direction of greater transparency', see Wood, 'Security Council Working Methods and Procedure: Recent Developments', 45 *ICLQ* (1996) 151, at 156–159.

[56] See Eitel, *supra* note 41, at 59.

[57] *Ibid.*

[58] For this principle, see Fassbender, *supra* note 20, at 287–295. See also Eitel, *supra* note 41, at 59.

[59] For the view that the Council performs not only political but also judicial functions, see Fassbender, *supra* note 20, at 330–332.

[60] See Brownlie, *supra* note 35, at 92.

possible as part of a more comprehensive reform of the Council's membership and procedure which, for the reasons stated above, is unlikely to take place in the near future.

Articles 31 and 50 of the Charter are closely related. According to the latter provision, a state which is confronted with special economic problems resulting from the carrying out of preventive or enforcement measures taken by the Security Council against another state has 'the right to consult the Security Council with regard to a solution of those problems'. While Article 31 also covers the period prior to a Council decision, Article 50 presupposes that measures have already been taken. Once again, a state's entitlement under Article 50 is very weak. To consult means no more than to seek advice or information or guidance. In other words, Article 50 entitles a state to write a letter to the President of the Security Council, which it could in any case do. Certainly, the provision also allows us to infer an obligation on the part of the Council to take note of such a letter in good faith, but in practice this only requires that the President circulate the letter among the members of the Council rather than dispose of it. In January 2001, the UN General Assembly recognized once again the 'desirability of the consideration of further appropriate procedures for consultations to deal in a more effective manner with the problems referred to in Article 50 of the Charter' and renewed its invitation to the Security Council to consider the establishment of such procedures and mechanisms.[61]

As regards the substance of the issue rather than just its procedural aspect, there is no doubt that economic sanctions imposed by the Council have often placed immense hardships on third states, in particular neighbouring countries that have extensive commercial relations with the targeted state and developing countries whose foreign trade can be severely hit by sanctions on certain raw materials or products. This problem has been aggravated by the number of sanctions imposed by the Council in recent years. However, the granting of commercial exemptions to neighbouring states or a permission to maintain 'economic activities with a humanitarian purpose', as proposed by the Turkish Government, could easily impair the effectiveness of economic sanctions, as indeed could requirements for prior assessments of possible detrimental effects of sanctions on third states.

In the context of the procedure and working methods of the Council, two other developments may be mentioned here which at first glance are of a merely technical character. However, a closer look reveals their legal and political implications.

First, the measures taken against Iraq led for the first time to the establishment of a so-called *sanctions committee* of the Council as a subsidiary organ (Article 29 of the UN Charter). According to Resolution 661 of 6 August 1990, the committee consists of all the members of the Council. Its tasks are to examine reports submitted by the

[61] See GA Res. 55/157 of 30 Jan. 2001, preamb. para. 3 and para. 1. See also the reports of the Secretary-General on the implementation of provisions of the Charter related to assistance to third states affected by the application of sanctions (UN Docs A/54/383 and A/55/295), the report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization (UN Doc. A/55/33, at 2–6), and the discussions in the GA's Sixth Committee in Oct. 1999 (UN Press Releases GA/L/3108 of 13 Oct. 1999, GA/L/3109 of 14 Oct. 1999, and GA/L/3110 of 15 Oct. 1999).

Secretary-General on the implementation of sanctions, seek respective information from all states, and report to the Council with its observations and recommendations. Subsequent resolutions expanded the committee's mandate, making the body responsible for enforcement of the trade control regime on the one hand, and for a mitigation of that regime for humanitarian purposes on the other.[62]

Since then, the Council has established 10 more sanctions committees.[63] Their meetings are not open to the public, and the only available documentation is the annual reports submitted by the committees to the Council.[64] It is therefore difficult to assess their work. The reports of the Iraq sanctions committee now posted on the Internet are one-page documents which lack any substantial content.

A note by the President of the Council of 29 January 1999 on proposals to improve the work of the sanctions committees[65] shows that Council members themselves recognized their rather severe shortcomings. One academic observer, in a very general statement, found that the committees 'varied in effectiveness according to the degree of politicization of the particular episode, its relative priority for the major powers, and the leadership provided by the committee chairs', but concluded that in all cases the Council and its sanctions committees lacked sufficient resources to evaluate and implement sanctions.[66] The difficulties are not surprising, in view of the fact that the Council was not constructed as a body with a form of permanent governmental machinery.

Second, the Iraq case led to the discovery of the *'reverse veto'* and, subsequently, in response to this problem, the introduction of '*sunset resolutions*'. In the words of Professor David Caron, the reverse veto 'does not block the Security Council from authorizing or ordering an action but, rather, blocks it from terminating or otherwise altering an action it has already authorized or ordered'.[67] Practice supports the proposition that Council action must be terminated by subsequent Council action, to

[62] See SC Res. 666 (1990), 670 (1990), 687 (1990). For an examination of the work of the committee in its first years, see Conlon, 'Lessons from Iraq: The Functions of the Iraq Sanctions Committee as a Source of Sanctions Implementation Authority and Practice', 35 *Virginia J. Int'l L.* (1995) 633, and P. Conlon, *United Nations Sanctions Management: A Case Study of the Iraq Sanctions Committee 1990–1994* (2000).

[63] See SC Res. 748 (1992) (Libya), 751 (1992) (Somalia), 864 (1993) (Angola/UNITA), 918 (1994) (Rwanda), 985 (1995) (Liberia) (terminated pursuant to Res. 1343 (2001)), 1132 (1997) (Sierra Leone), 1160 (1998) (Yugoslavia/Kosovo), 1267 (1999) (Afghanistan), 1298 (2000) (Eritrea/Ethiopia), 1343 (2001) (Liberia). For the present chairpersons and vice-chairpersons of the committees, see UN Press Release SC/6984 of 5 Jan. 2001.

[64] On the UN website, documents concerning the sanctions committees are posted at <http://www.un.org/Docs/sc/committees/INTRO.htm>. Recently, the Iraq sanctions committee was also included (<http://www.un.org/Docs/sc/committees/IraqKuweit/IraqSanctionsCommEng.htm>). At present (30 Aug. 2001), its general reports and reports on the implementation of the oil-for-food programme are made available here.

[65] UN Doc. S/1999/92.

[66] See Cortright and Lopez, *supra* note 28, at 5. See also *ibid,* at 234–237 and Conlon, 'Legal Problems at the Centre of United Nations Sanctions', 65 *Nordic J. Int'l L.* (1996) 73.

[67] See Caron, 'The Legitimacy of the Collective Authority of the Security Council', 87 *AJIL* (1993) 552, at 577.

which the right of veto of the permanent members applies.[68] This practice is in line with the Charter which, by not specifying any voting procedure for a termination or modification of an action, implies that a resolution remains in force until it is revoked by the Council.

In the case of Iraq, this has meant until now that the sanctions cannot be partially or completely lifted against the will of one of the permanent members, even if a majority of Council members is in favour. This situation led the members of the Council to 'invent', as an auxiliary means to prevent the reoccurrence of such a possible eternalizing of sanctions, a provision for the automatic termination of measures. The Council took as a model a type of legislation developed by the United States Congress, the so-called 'sunset law' which is defined as 'a statute that includes provision for automatic termination of a government program, agency, etc., at the end of a specified time period unless it is reauthorized by the legislature'.[69] Further, the Council followed its established practice of authorizing peacekeeping operations for only a certain period of time. The Council used this new sunset clause for the first time in May 2000, when it decided that the arms embargo imposed on Ethiopia and Eritrea should last for (only) 12 months, and that at the end of that period the Council would decide whether to extend the measures for a further length of time.[70]

7 'Legitimacy' and the 'Pull toward Compliance'

It has become a recurring theme in the academic (international law and international relations) and political discourses on the Security Council of recent years to question the 'legitimacy' of the Council as such or certain decisions made by it, or to say that particular developments either in the Council or in the international community at large threaten the Council's legitimacy. In particular, the measures taken against Iraq have increasingly been described as posing a legitimacy problem.

As a legal, political and philosophical concept, 'legitimacy' has many faces.[71] It is often difficult to establish in which sense the concept is being referred to. Political perceptions that a process is 'illegitimate' tend to reflect, as Caron has remarked, 'subjective conclusions, perhaps based on unarticulated notions about what is fair and just, or perhaps on a conscious utilitarian assessment of what the process means for oneself'.[72] In an effort to explain 'what it is about rules and the rule process that conduces to uncoerced compliance',[73] Thomas Franck has defined legitimacy as those 'factors that affect our willingness to comply voluntarily with commands'[74] — a

[68] See *ibid,* at 582. For a proposal that a Charter reform should generally exclude from the scope of the veto decisions providing for a termination or modification of actions already initiated, see Fassbender, *supra* note 20, at 338 *et seq.*

[69] See *Random House Webster's Unabridged Dictionary*, CD ROM edition (1999). According to the dictionary, the word was first used in 1975–80.

[70] See SC Res. 1298 of 17 May 2000, para. 16.

[71] See Fassbender, *supra* note 20, at 315 *et seq.*

[72] See Caron, *supra* note 67, at 557.

[73] See T. Franck, *The Power of Legitimacy among Nations* (1990), at 50.

[74] *Ibid,* at 150.

willingness that is particularly relevant in the case of the Security Council which has no own means to enforce its orders. A more comprehensive definition, again by Franck, goes as follows:

> Legitimacy is a property of a rule or rule-making institution which itself exerts a pull toward compliance on those addressed normatively because those addressed believe that the rule or institution has come into being and operates in accordance with generally accepted principles of right process.[75]

To the extent that not only legal standards (i.e. in the case of the Security Council those established by the UN Charter) but also other (particularly political) criteria are considered to be such a 'property of a rule or rule-making institution', a conflict between lawfulness (legality) or constitutionality and legitimacy can arise.[76] A legal act, for instance a resolution passed by the UN Security Council, may be legal (constitutional) in the sense that it is in accordance with the letter of the Charter, and yet be challenged as illegitimate, for instance as going against 'the promise and spirit of the organization'.[77] Legitimacy is a legal category in so far as it affects the authority of a rule-making institution, defined as its ability to have its decisions implemented. In other words, legitimacy becomes a legal category in conjunction with the problem of compliance of someone subject to the law with a legal rule or decision.

In the context of the Iraq sanctions, 'legitimacy' has been critically evoked in relation to a number of issues, most of which I have already addressed above: (1) the Council's representativeness as reflected in its composition; (2) the particular role played by the United States in the Council; (3) the Council's procedure, in particular the right of veto of the permanent members; (4) the nature and duration of the sanctions; (5) the lack of accountability of the Council, in particular the absence of procedures of judicial review of Council acts; and (6) the alleged 'selective activism' or arbitrariness of the Council which is said to concern itself with certain situations and not with others, and to show firmness in some cases and not in others. In this latter respect, Richard Falk decried 'a lack of consistency in practice, a failure to articulate principled lines of distinction when a UN response [to threats to international peace and security] is appropriate'.[78] Another observer described the Council as seeming 'rather confused and uncertain about its new responsibilities in dealing with situations not envisaged by the drafters of the Charter'.[79] It is often overlooked that the Council's 'inconsistent' practice largely arises from the fact, already emphasized by Hans Kelsen, that the Council does not have at its disposal the means by which its

[75] See *ibid.* at 24. In a later book, Professor Franck described legitimacy as the procedural aspect of fairness. See T. M. Franck, *Fairness in International Law and Institutions* (1995), at 7 *et seq.*

[76] A classical study distinguishing the two concepts with a view to the German Constitution of 1919 is C. Schmitt's *Legalität und Legitimität* (1932). For a recent analysis, see G. Balakrishnan, *The Enemy: An Intellectual Portrait of Carl Schmitt* (2000), at 155–163.

[77] See Caron, *supra* note 67, at 559 *et seq.*

[78] See Falk, *supra* note 51, at 318 *et seq.*

[79] See Alting von Geusau, *supra* note 27, at 18.

sanctions can be executed, and therefore must rely on the goodwill of Member States, which in turn is dependent on political considerations.[80]

In addition, certain sanctions, and the fact that the sanctions regime is still in place, have also been attacked as a violation of the UN Charter and general international law;[81] here the assertion that a measure taken by the Council is illegitimate and the assertion that it is unlawful or unconstitutional blend into one.

After 10 years, the 'pull toward compliance' exerted by the Security Council resolutions imposing sanctions on Iraq has certainly become weaker and weaker. It has not gone unnoticed within the international community that one of the permanent members of the Council which participated with its troops in the liberation of Kuwait, the French Republic, has taken an increasingly critical stance with respect to the sanctions: 'An entire society is today living without structure and being destroyed . . . [T]he Security Council can no longer disregard its own responsibility in the matter, which is indisputable and increasingly condemned by international public opinion.'[82] The official Security Council website notes that 'a great number of States and humanitarian organizations have expressed concerns at the possible adverse impact of sanctions on the most vulnerable segments of the population, such as women and children'.[83]

Without doubt, this development will influence the Council's readiness to impose sanctions in the future. '[A] palpable sense of "sanctions fatigue" has set in . . . Because of the Iraqi ordeal, the UN has become wary of imposing general trade sanctions, and concerns about humanitarian consequences have become paramount. The trend toward more targeted and selected sanctions emerged in very large part as a result of the Iraqi experience.'[84]

Apart from the humanitarian concerns, there is also considerable controversy about the effectiveness of the sanctions, i.e. their success in achieving the declared objectives (Iraq's compliance with the terms of Resolution 687 and prevention of a new threat to the peace originating from that country). According to a well-informed German observer, the sanctions 'have proven their complete inefficiency and the collateral humanitarian damage is therefore grossly out of proportion'.[85] This seems to be the prevailing view today, although another assessment described the 'political

[80] See H. Kelsen, *Collective Security under International Law* (1957) (International Law Studies of the Naval War College, vol. XLIX), at 106.

[81] See, e.g., Normand, 'A Human Rights Assessment of Sanctions: The Case of Iraq, 1990–1997', in van Genugten and de Groot, *supra* note 27, 19, at 28–32 (holding that the sanctions policy is violating fundamental human rights and norms of humanitarian law).

[82] 'The Situation between Iraq and Kuwait', statement by Mr. J.-D. Levitte, Permanent Representative of France to the UN, in the Security Council on 24 March 2000, available at <http://wwwun.int/france/declamain.htm>.

[83] See 'Security Council Sanctions Committees: An Overview', at <http://www.un.org/Docs/sc/committees/INTRO.htm>.

[84] See Cortright and Lopez, *supra* note 28, at 57.

[85] See Eitel, *supra* note 41, at 66.

effectiveness' of the sanctions as 'moderate to high' because out of eight conditions set down in Resolution 687 'six [were] partially or fully met' by Iraq.[86]

In April 2000, the Council established a 'Working Group on General Issues on Sanctions' to develop general recommendations on how to improve the effectiveness of United Nations sanctions.[87] This body studied not only the sanctions imposed on Iraq but also the cases of the Balkan states, Haiti, Libya, Sudan, Afghanistan, Cambodia, Angola, Sierra Leone, Somalia, Liberia and Rwanda where sanctions were applied in the 1990s. In this context, NGOs and individual authors made a number of useful suggestions of which the Council could and should take advantage.[88] In particular, so-called 'smart sanctions', which seek to pressure regimes rather than peoples and thus reduce humanitarian costs, have been gaining support. Such sanctions would allow a targeted country to import a broad range of 'civilian' or 'non-military' goods so that it can supply its population with food and medications, and maintain its basic physical and social infrastructure. On the other hand, 'smart' sanctions could, for instance, include the freezing of financial assets and blocking of financial transactions of responsible political elites or entities.[89]

In May 2001, a new set of proposals for modifying the Iraq sanctions regime was launched by the United Kingdom, with the backing of the United States.[90] To date, no agreement has been reached among the permanent members of the Council,[91] and the oil-for-food programme[92] is continuing as before. Under the terms of Security Council Resolution 1360 of 3 July 2001, it shall remain in force for a new period of 150 days, i.e. until 30 November 2001. Russia, in particular, is working towards lifting the present sanctions, while the United States wishes to reshape and revitalize them by addressing international criticism as well as by stopping an apparently extensive practice of government-controlled oil smuggling across the Iraqi land borders. If the United States is not successful in winning the other permanent members over to its project of sanctions reform, it might adopt a unilateral approach, including what in fine diplomatic language is called a 'revival of escalated military options'.

[86] See Cortright and Lopez, *supra* note 28, at 205.

[87] For relevant documents, see <http://www.un.org/sc/committees/sanctions/documents.htm>.

[88] See, e.g., a synthesis of 'Recommendations for a New Sanctions Policy' in Cortright and Lopez, *supra* note 28, at 221–253.

[89] See Lopez and Cortright, 'Financial Sanctions: The Key to a "Smart" Sanctions Strategy', 72 *Die Friedens-Warte* (1997) 327.

[90] For the texts of various draft resolutions submitted by the UK, France and Russia, see the website of the 'Campaign Against [Non-Military] Sanctions on Iraq', a student society at the University of Cambridge, at <http://www.cam.ac.uk/societies/casi/info/scdeb0105a06.html>.

[91] For a recent public exchange of arguments, see the record of the SC meeting of 26 June 2001; UN Doc. S/PV.4336.

[92] See *supra* note 29.

8 The Role of the Security Council: Transformed Expectations, Mixed Record, Future Potential

The precarious present status of the Council in the international system is perhaps most clearly revealed by two cases located on the opposite and extreme ends of a continuum. One is Iraq, the other is Kosovo. The one possibly represents an overuse of the instruments made available by the Charter; the other a disregard and bypassing of the Council when its approval of a certain intended action could not be obtained.

What exactly is the 'role of the Security Council' which may have been influenced or altered, strengthened or weakened by or during the Council's dealing with the Iraq–Kuwait case? 'Role' has aptly been defined as 'the actions and activities assigned to or required or expected of a person or group'; as synonyms, 'function', 'office' and 'part' are listed.[93] From the perspective of international law, the role of the Council is mainly described in Article 24(1) and in Chapters VI and VII of the UN Charter.

This legal definition of the Council's role of 1945 was still valid in 1990, when Iraq invaded its tiny but rich neighbour, and it is still valid today. However, while the words of the Charter have remained unaltered, their meaning has not. The understanding of the members of the international community (states, international organizations and non-state actors) of what it actually means to 'maintain and restore international peace and security' has changed since the days of the San Francisco Conference, partly because political, economic and social conditions of life on this planet are now dramatically different from what they were 55 years ago, partly because the attention of community members has shifted towards other or new concerns. One central shift in understanding is probably that there is no longer an unequivocally 'common' understanding.

To the founders of the UN, the maintenance of international peace basically meant the prevention of another major war — not each and every form of interstate violence, but a war which, similar to the two 'World Wars' of the twentieth century, would shake the foundations of the established state system and threaten the survival of humankind. It is in this sense that the preamble of the UN Charter speaks of the determination of the peoples of the United Nations 'to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind'. The Charter did not devise the Council as an agent of change. (It situated the rather lame provision about measures for the peaceful adjustment of a situation, Article 14, in the General Assembly chapter.) In conservative language the Charter entrusted the Council with the task to 'maintain' peace, i.e. the *status quo*, and to 'restore' peace, i.e. the *status quo ante*, if it has been disturbed.

But in the lastingly impressive, even moving, words of the preamble we find a more ambitious vision of a future world, a world which the UN would help to bring about: 'We the peoples of the United Nations determined . . . to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights

[93] See *WordNet 1.6 — a Lexical Database for English* (Cognitive Science Laboratory Princeton University), available at <http://www.cogsci.princeton.edu/~wn/>.

of men and women and of nations large and small, and to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and to promote social progress and better standards of life in larger freedom'.

By 1990, such a 'positive' description of peace had gained ground throughout the world. What was now expected and hoped for by many governments and vocal parts of domestic societies was not just the absence of armed conflict between the major world powers (conflict which at the same time had become rather unlikely after the collapse of the communist bloc) but the existence of a 'just' peace among nations — even though there was, and still is, no general agreement about what would constitute such a state of international justice.

This changed perception has led to different expectations regarding what the Security Council should do or help to accomplish. The end of the 'Cold War' and the fall of the Soviet Union promised an end to the blockade of the Security Council caused by the use of the veto power by the antagonistic powers, and encouraged an optimistic view of the potentially new and more activist role the Council could play in international affairs. For a moment, even sceptical diplomats believed that the time had come for the United Nations to bring about a better world, and that the Security Council could assume a decisive part in that process.

That moment quickly passed. The present situation can be understood in two different ways, both of which however show the Security Council in a rather unfavourable light. First, it may be said that over the past decade the Council has remained far behind the expectations placed upon it in accordance with a broad, 'positive' notion of international peace. Or, looking back on those 10 years one might say that, in the post-Cold War world, too, very little beyond the originally defined mandate could rightly be expected of the Council. Thus, we would have a combination of a much broader understanding of peace and a 'realistic' narrow view of the Council's role — a combination which nonetheless makes the Council appear inadequate.

However, the history of the way in which the Council has dealt with Iraq since 1991 shows the limits of such generalizations, which arise from an understandable sense of disappointment. This history is one of the Council taking uncertain steps into a post-Cold War world, a world of uncharted territory. For an institution that had almost become a symbol of the antagonism of a bipolar world, the Council managed these first shaky steps rather well. While it 'occasionally stumbled badly — as in Bosnia, Somalia and Rwanda — its optimistic experimentation ... opened new perspectives for multilateral action and changed the way in which sovereignty is perceived'.[94] The Council demonstrated its will and general ability to prevent or at

[94] See Malone, 'The UN Security Council in the Post-Cold War World: 1987–97', 28 *Security Dialogue* (1997) 393, at 404. For a plea that the Council, on its innovative path, should pay more attention to legal considerations, see Kirgis, *supra* note 39, at 538 *et seq.* For a more critical assessment of the Council's performance and an accordingly more pessimistic outlook, see Neuhold, 'Collective Security after "Operation Allied Force"', 4 *Max Planck UNYB* (2000) 73, at 103–106, and Krisch, *supra* note 12, at 100–103.

least restrict inter- and intra-state violence and to foster individual human rights in a much more complex and unruly environment than that of the pre-1990 period. In a world marked by an accelerating process of globalization of economic, social and political affairs, but still holding to a legal order based on the principle of national sovereignty, the Council has tried to provide a certain regulatory guidance even beyond the field of peace and security narrowly understood.[95] As has rightly been asked: '[T]o what standard or to what precedent are we comparing the Council? What body has done a better job? What body is better equipped? At what point in its half-century history was the Council much more effective?'[96]

The Iraq–Kuwait case encapsulates the opportunities and pitfalls the Security Council has encountered on its way to establishing itself as 'an organ acting in the name of the international community as a whole in defence of the interests and values regarded by the same community as being fundamental for the maintenance of its own integrity'.[97] One must admit that the Council's performance in this case has been particularly troublesome due to the strong commercial interests in oil and export contracts involved and the conflicting geopolitical calculations of the major powers. Nevertheless, it is of lasting importance that the Council was able to revitalize the collective security scheme set down in the UN Charter, thereby claiming and maintaining its validity in the wake of the ruptures in the international system brought about first by the East-West antagonism and then by the sudden ending of that antagonism. Further, the Council embarked on a programme of work with profound normative consequences.[98] It adopted, on the basis of Chapter VII of the Charter, a comprehensive post-conflict regime, making it binding on the aggressor state and its neighbours. This must be seen together with other normative developments, such as the Council's repeated interventions in intra-state conflicts, its involvement in the control of weapons of mass destruction, the establishment of international criminal tribunals and a compensation commission, and the creation of international trusteeships or protectorates in Kosovo and East Timor. This is a remarkable legacy of the 1990s, a legacy upon which one can, and should, build in the future, notwithstanding the threats to the Council's authority which are inherent in the disunity between the major powers and in the tendency towards unilateralism.

[95] See Owada, 'The Reform of the UN and its Organs', in Japanese-German Center Berlin (ed.), *The United Nations in the 21st Century: Japanese, German and U.S. Perspectives* (2001) 13, at 15.

[96] See Luck, 'Statement', in Stiftung Wissenschaft und Politik (ed.), *The Security Council and the G8 in the New Millennium: Who is in Charge of International Peace and Security?* (2000) 31, at 33.

[97] See Dupuy, 'The Constitutional Dimension of the Charter of the United Nations Revisited', 1 *Max Planck UNYB* (1997) 1. For the importance of such a characterization of the Council for a constitutional reading of the Charter, see also Fassbender, 'The United Nations Charter as Constitution of the International Community', 36 *Columbia J. Transnat'l L.* (1998) 529, at 566–568, 574–576.

[98] See Malone, 'Statement', in Stiftung Wissenschaft und Politik, *supra* note 96, 21, at 22.

Annex

List of matters considered/Actions taken by the Security Council in 2000
(in reverse chronological order)

Meeting Record	Date	Press Release	Topic	Security Council Action
S/PV.4253	22 Dec.	SC/6981	Sierra Leone	*S/RES/1334 (2000)*
S/PV.4252	21 Dec.	SC/6980	Guinea	*S/PRST/2000/41*
S/PV.4251	19 Dec.	SC/6979	Afghanistan	*S/RES/1333 (2000)*
S/PV.4250	19 Dec.	SC/6978	Kosovo (Yugoslavia)	*S/PRST/2000/40*
S/PV.4249	19 Dec.	SC/6977	Kosovo (Yugoslavia)	no action
S/PV.4248	18 Dec.	SC/6976	Middle East situation including the Palestinian question	no action
S/PV.4247	14 Dec.	SC/6975	Democratic Republic of the Congo	*S/RES/1332 (2000)*
S/PV.4246	13 Dec.	SC/6974	Cyprus	*S/RES/1331 (2000)*
S/PV.4245	12 Dec.	SC/6973	Bosnia and Herzegovina	no action
S/PV.4244	6 Dec.	SC/6972	East Timor	*S/PRST/2000/39*
S/PV.4243	6 Dec.	SC/6971	Responsibility of the SC in the maintenance of peace and security	*S/PRST/2000/38*
S/PV.4242	6 Dec.	SC/6970	Responsibility of the SC in the maintenance of peace and security	no action
S/PV.4241	5 Dec.	SC/6969	Iraq-Kuwait	*S/RES/1330 (2000)*
S/PV.4240	30 Nov.	SC/6967	International Tribunals for Yugoslavia and Rwanda	*S/RES/1329 (2000)*
S/PV.4239	29 Nov.	SC/6965	Guinea-Bissau	*S/PRST/2000/37*
S/PV.4238	29 Nov.	SC/6963	Guinea-Bissau	no action
S/PV.4237	28 Nov.	SC/6962	Democratic Republic of the Congo	no action
S/PV.4236	28 Nov.	SC/6961	East Timor	no action
S/PV.4235	27 Nov.	SC/6960	Middle East	*S/RES/1328 (2000) + S/PRST/2000/36*
S/PV.4234	27 Nov.	None issued	Middle East situation including the Palestinian question	Communique
S/PV.4233	27 Nov.	None issued	Middle East situation including the Palestinian question	Communique
S/PV.4232	22 Nov.	SC/6959	Kosovo (Yugoslavia)	*S/PRST/2000/35*
S/PV.4231 + Corr.1	22 Nov.	SC/6958	Middle East situation including the Palestinian question	no action
S/PV.4230	21 Nov.	SC/6957	Eritrea–Ethiopia	*S/PRST/2000/34*
S/PV.4229	21 Nov.	SC/6956	International Tribunals for Yugoslavia and Rwanda	no action
S/PV.4228	20 Nov.	None issued	East Timor	Communique
S/PV.4227	17 Nov.	SC/6954	Eritrea–Ethiopia	no action
S/PV.4226	17 Nov.	None issued	Briefing by the Secretary-General	Communique
S/PV.4225	16 Nov.	SC/6953	Kosovo (Yugoslavia)	no action
S/PV.4224	16 Nov.	SC/6952	Solomon Islands–peace agreement	*S/PRST/2000/33*
S/PV.4223 (Resumption 1)	15 Nov.	SC/6951	Exit strategy for peacekeeping operations	no action

Meeting Record	Date	Press Release	Topic	Security Council Action
S/PV.4223	15 Nov.	SC/6951	Exit strategy for peacekeeping operations	no action
S/PV.4222	14 Nov.	SC/6950	Bosnia and Herzegovina	no action
S/PV.4221	14 Nov.	SC/6949	Georgia	*S/PRST/2000/32*
S/PV.4220	13 Nov.	SC/6948	Role of SC in the maintenance of peace and security	*S/RES/1327 (2000)*
S/PV.4219	10 Nov.	SC/6947	Briefing by UN High Commissioner for Refugees	no action
S/PV.4218	10 Nov.	None issued	Middle East situation including the Palestinian question	Communique
S/PV.4217	10 Nov.	None issued	Middle East situation including the Palestinian question	Communique
S/PV.4216	3 Nov.	SC/6946	Sierra Leone	*S/PRST/2000/31*
S/PV.4215	31 Oct.	SC/6944	Yugoslavia–membership	*S/RES/1326 (2000)* + *S/PRST/2000/30*
S/PV.4214	31 Oct.	SC/6943	Yugoslavia–membership	no action
S/PV.4213	31 Oct.	SC/6942	Women and peace and security	*S/RES/1325 (2000)*
S/PV.4212	31 Oct.	None issued	Briefing by ICJ President	no action
S/PV.4211	30 Oct.	SC/6941	Western Sahara	*S/RES/1324 (2000)*
S/PV.4210	26 Oct.	None issued	Western Sahara	Communique
S/PV.4209 S/PV.4208 (resumed)	26 Oct.	SC/6940	Bosnia and Herzegovina	no action
S/PV.4208	25 Oct.	SC/6939	Women and peace and security	no action
S/PV.4208	24 Oct.	SC/6937	Women and peace and security	no action
S/PV.4207	13 Oct.	SC/6935	Democratic Republic of the Congo	*S/RES/1323 (2000)*
S/PV.4206	12 Oct.	None issued	East Timor	Communique
S/PV.4205	7 Oct.	SC/6934	Middle East situation including the Palestinian question	*S/RES/1322 (2000)*
S/PV.4204 (resumed)	5 Oct.	SC/6932	Middle East situation including the Palestinian question	no action
S/PV.4204 (resumed)	4 Oct.	SC/6931	Middle East situation including the Palestinian question	no action
S/PV.4204	3 Oct.	SC/6930	Middle East situation including the Palestinian question	no action
S/PV.4203	29 Sep.	SC/6928	East Timor	no action
S/PV.4202	29 Sep.	None issued	Burundi	Communique
S/PV.4201	29 Sep.	SC/6927	Burundi	*S/PRST/2000/29*
S/PV.4200	27 Sep.	SC/6926	Kosovo (Yugoslavia)	no action
S/PV.4199	20 Sep.	SC/6925	Sierra Leone	*S/RES/1321 (2000)*
S/PV.4197	15 Sep.	SC/6922	Eritrea–Ethiopia	*S/RES/1320 (2000)*
S/PV.4196	14 Sep.	SC/6921	Somalia	Communique
S/PV.4195	8 Sep.	SC/6920	East Timor	*S/RES/1319 (2000)*
S/PV.4194	7 Sep.	SC/6919	Democratic Republic of the Congo	*S/PRST/2000/28*

Meeting Record	Date	Press Release	Topic	Security Council Action
S/PV.4194	7 Sep.	SC/6919	Security Council Summit: maintaining peace and security	*S/RES/1318 (2000)*
S/PV.4193	5 Sep.	SC/6918	Sierra Leone	*S/RES/1317 (2000)*
S/PV.4192	31 Aug.	SC/6917	Adoption of report of Security Council (A/55/2)	Note (S/2000/839)
S/PV.4191	29 Aug.	SC/6915	East Timor	no action
S/PV.4190	24 Aug.	SC/6914	Kosovo (Yugoslavia)	no action
S/PV.4189	23 Aug.	SC/6913	Democratic Republic of the Congo	*S/RES/1316 (2000)*
S/PV.4188	15 Aug.	SC/6912	Bosnia and Herzegovina	no action
S/PV.4187	14 Aug.	SC/6911	Eritrea–Ethiopia	no action
S/PV.4186	14 Aug.	SC/6910	Sierra Leone	*S/RES/1315 (2000)*
S/PV.4185	11 Aug.	SC/6908	Children and armed conflict	*S/RES/1314 (2000)*
S/PV.4184	4 Aug.	SC/6906	Sierra Leone	*S/RES/1313 (2000)*
S/PV.4183	3 Aug.	None issued	Democratic Republic of the Congo	Communique
S/PV.4182	3 Aug.	SC/6905	East Timor	*S/PRST/2000/26*
S/PV.4181	31 July	SC/6903	Eritrea–Ethiopia	*S/RES/1313 (2000)*
S/PV.4180	28 July	SC/6902 + Corr.	East Timor	no action
S/PV.4179	28 July	SC/6901	Georgia	*S/RES/1311 (2000)*
S/PV.4178	27 July	SC/6899	Angola	no action
S/PV.4177	27 July	SC/6897	UNIFIL	*S/RS/1310 (2000)*
S/PV.4176	26 July	SC/6895	Children and armed conflict	no action
S/PV.4175	25 July	SC/6894	Western Sahara	*S/RES/1309 (2000)*
S/PV.4174	20 July	SC/6892	Prevention of armed conflicts	*S/PRST/2000/25*
S/PV.4173	17 July	SC/6891	Sierra Leone	*S/PRST/2000/24*
S/PV.4172	17 July	SC/6890	HIV/AIDS	*S/RES/1308 (2000)*
S/PV.4171	13 July	SC/6889	Kosovo (Yugoslavia)	no action
S/PV.4170	13 July	SC/6888	Croatia	*S/RES/1307 (2000)*
S/PV.4169	13 July	SC/6887	Bosnia and Herzegovina	*S/PRST/2000/23*
S/PV.4168	5 July	SC/6886	Sierra Leone	*S/RES/1306 (2000)*
S/PV.4167	29 June	SC/6884	Somalia	*S/PRST/2000/22*
S/PV.4166	29 June	SC/6883	Somalia	no action
S/PV.4165	27 June	SC/6882	East Timor	no action
S/PV.4164	23 June	SC/6881	Briefing by Special Envoy for the Balkans	no action
S/PV.4163	21 June	None issued	Sierra Leone	Communique
S/PV.4162	21 June	SC/6880	Bosnia and Herzegovina	*S/RES/1305 (2000)*
S/PV.4161	20 June	SC/6879	International Tribunal–Yugoslavia	no action
S/PV.4160	18 June	SC/6878	Middle East–Lebanon	*S/PRST/2000/21*
S/PV.4159	16 June	SC/6877	Democratic Republic of the Congo	*S/RES/1304 (2000)*
S/PV.4158	16 June	SC/6877	Democratic Republic of the Congo	no action
S/PV.4157	15 June	SC/6876	Democratic Republic of the Congo	no action
S/PV.4156	15 June	SC/6876	Democratic Republic of the Congo	no action
S/PV.4155	14 June	SC/6875	Cyprus	*S/RES/1303 (2000)*
S/PV.4154	13 June	SC/6874	Bosnia and Herzegovina	no action
S/PV.4153	9 June	SC/6873	Kosovo (Yugoslavia)	no action
S/PV.4152	8 June	SC/6872	Iraq–Kuwait	*S/RES/1302 (2000)*

Meeting Record	Date	Press Release	Topic	Security Council Action
S/PV.4151	2 June	SC/6871	Democratic Republic of the Congo	*S/PRST/2000/20*
S/PV.4150	2 June	SC/6870	International Tribunals	no action
S/PV.4149	31 May	SC/6869	Western Sahara	*S/RES/1301 (2000)*
S/PV.4148	31 May	SC/6868	Middle East	*S/RES/1300 (2000)* + *S/PRST/2000/19*
S/PV.4147	25 May	SC/6866	East Timor	no action
S/PV.4146	23 May	SC/6865	Middle East	*S/PRST/2000/18*
S/PV.4145	19 May	SC/6864	Sierra Leone	*S/RES/1299 (2000)*
S/PV.4144	17 May	SC/6863	Eritrea–Ethiopia	*S/RES/1298 (2000)*
S/PV.4143	17 May	SC/6862	Democratic Republic of the Congo	no action
S/PV.4142	12 May	SC/6861	Eritrea–Ethiopia	*S/RES/1297 (2000)*
S/PV.4141	12 May	SC/6860	Tajikistan	*S/PRST/2000/17*
S/PV.4140	12 May	SC/6859	Tajikistan	no action
S/PV.4139	11 May	SC/6857	Sierra Leone	no action
S/PV.4138	11 May	SC/6856	Kosovo (Yugoslavia)	no action
S/PV.4137	11 May	SC/6855	Georgia	*S/PRST/2000/16*
S/PV.4136	9 May	SC/6854	Bosnia and Herzegovina	no action
S/PV.4135	5 May	SC/6853	Democratic Republic of the Congo	*S/PRST/2000/15*
S/PV.4134	4 May	SC/6852	Sierra Leone	*S/PRST/2000/14*
S/PV.4133	27 April	SC/6850	East Timor	no action
S/PV.4132	25 April	None issued	Democratic Republic of the Congo	Communique
S/PV.4131	20 April	SC/6849	Lebanon–withdrawal of forces	*S/PRST/2000/13*
S/PV.4130	19 April	SC/6847	Civilians in armed conflict	*S/RES/1296 (2000)*
S/PV.4129 (Resumption 1)	18 April	SC/6846	Angola	*S/RES/1295 (2000)*
S/PV.4129	18 April	SC/6846	Angola	no action
S/PV.4128	17 April	SC/6845	Sanctions	no action
S/PV.4127	14 April	SC/6843	Rwanda [Report on 1994 genocide]	no action
S/PV.4126	13 April	SC/6842	Angola	*S/RES/1294 (2000)*
S/PV.4125	7 April	SC/6841	Afghanistan	*S/PRST/2000/12*
S/PV.4124	7 April	SC/6840	Afghanistan	no action
S/PV.4123	31 March	SC/6838	Iraq–Kuwait	*S/RES/1293 (2000)*
S/PV.4122	29 March	SC/6836	Guinea-Bissau	*S/PRST/2000/11*
S/PV.4121	29 March	SC/6835	Guinea-Bissau	no action
S/PV.4120	24 March	SC/6833	Iraq	no action
S/PV.4119	23 March	SC/6832	Maintaining peace and security—post-conflict peace building	*S/PRST/2000/10*
S/PV.4118	23 March	SC/6830	Maintaining peace and security—post-conflict peace building	no action
S/PV.4117	22 March	SC/6829	Bosnia and Herzegovina	no action
S/PV.4116	21 March	SC/6828	Tajikistan	*S/PRST/2000/9*
S/PV.4115	21 March	SC/6827	Tajikistan	no action
S/PV.4114	21 March	SC/6826	East Timor	no action
S/PV.4113	15 March	SC/6825	Angola	no action
S/PV.4112	15 March	SC/6824	Haiti	*S/PRST/2000/8*
S/PV.4111	13 March	SC/6821	Sierra Leone	no action

Meeting Record	Date	Press Release	Topic	Security Council Action
S/PV.4110	9 March	SC/6820	Maintaining peace and security—humanitarian aspects	*S/PRST/2000/7*
S/PV.4109	9 March	SC/6818	Maintaining peace and security—humanitarian aspects	no action
S/PV.4108	6 March	None issued	Kosovo (Yugoslavia)	Communique
S/PV.4107	2 March	SC/6813	ICJ–election	voting to fill vacancy
S/PV.4106	29 Feb.	SC/6812	Western Sahara	*S/RES/1292 (2000)*
S/PV.4105	28 Feb.	SC/6810	Briefing by Special Envoy for the Balkans	no action
S/PV.4104	24 Feb.	SC/6809	Democratic Republic of the Congo	*S/RES/1291 (2000)*
S/PV.4103	17 Feb.	SC/6807	Tuvalu–membership	*S/RES/1290 (2000)* + *S/PRST/2000/6*
S/PV.4102	16 Feb.	None issued	Kosovo (Yugoslavia)	Communique
S/PV.4101	10 Feb.	SC/6805	Central African Republic	*S/RES/1290 (2000)* + *S/PRST/2000/5*
S/PV.4100	9 Feb.	SC/6803	Protection of UN personnel	*S/PRST/2000/4*
S/PV.4099	7 Feb.	SC/6801	Sierra Leone	*S/RES/1289 (2000)*
S/PV.4098	7 Feb.	SC/6800	Sierra Leone	no action
S/PV.4097	3 Feb.	SC/6799	East Timor	no action
S/PV.4096	31 Jan.	SC/6796	Africa	no action
S/PV.4095	31 Jan.	SC/6795	UNIFIL	*S/RES/1288 (2000)* + *S/PRST/2000/3*
S/PV.4094	31 Jan.	SC/6794	Georgia	*S/RES/1287 (2000)*
S/PV.4093	28 Jan.	SC/6793	Tuvalu–membership	no action
S/PV.4092 (resumed)	26 Jan.	SC/6791	Democratic Republic of the Congo	*S/PRST/2000/2*
S/PV.4092	24 Jan.	SC/6789	Democratic Republic of the Congo	no action
S/PV.4091	19 Jan.	SC/6787	Burundi	*S/RES/1286 (2000)*
S/PV.4090	18 Jan.	SC/6785	Angola	no action
S/PV.4089	13 Jan.	SC/6783	Humanitarian assistance to refugees in Africa	*S/PRST/2000/1*
S/PV.4088	13 Jan.	SC/6782	Croatia	*S/RES/1285 (2000)*
S/PV.4087	10 Jan.	SC/6781	AIDS in Africa	no action

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