

Thoughts on the UN at Fifty

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I

Studies of the United Nations seem to have come full circle. In the years that followed the adoption of the Charter in San Francisco, most of them dealt with the functions that were stressed in the Charter – the maintenance of peace and security, which the League of Nations had signally failed to ensure. The outbreak of the cold war and its effects on an organization whose most important body, the Security Council, could only function if the permanent members – the victors of World War Two – remained in agreement – inspired many works that examined the ways in which the UN was managing to avoid total paralysis. Gradually, after the Korean war, the Suez crisis, and the protracted drama of decolonization in the Belgian Congo, the scholars' attention moved away from the rather unrewarding scene of Chapters VI and VII, toward the other activities of the UN. This shift coincided with the vast increase in membership that resulted from decolonization, and with the growing importance of the developing and non-aligned countries that now made up the majority of the General Assembly.

In the 1970s, scholarly explorations of international economic interdependence and of the 'regimes' which were being set up to regulate and manage it thus led to a view of the UN in which the central 'peace and security' functions had dwindled almost to the point of disappearance. It is as if the study of world affairs had been split into two halves. The dark half was accounted for by a Realist (or Neo-realist) theory that emphasized the inescapable security dilemma faced by States competing in an anarchic system where the distribution of power largely determined their strategies, and where international and regional organizations other than military alliances were of little significance, except as arenas and echo chambers for the major contests. The light or more cheerful half was the domain of a theory that called itself institutionalism (or, sometimes, liberal institutionalism). It stressed both the services that international and regional institutions and regimes could perform

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even for States defined as self-interested actors, in areas in which the satisfaction of State needs and preferences required cooperation and common solutions, and in the absence of any rational possibility of using force. It also tried to show how the resort, by States, to the institutions that provided such services could gradually affect the way in which States saw and defined their preferences. Thus, the specialized agencies of the UN were often studied as important actors in this process, and the debates in the General Assembly over the nature of the global economic order were seen as attempts to define, so to speak, the terms and rules of 'interdependence' in a world of highly unequal States, with profoundly different views about the best economic system and the priorities for economic development.

After the fading away of the cold war, the collapse of the Soviet Empire in Europe, and the disintegration of the Soviet Union itself, there was a brief moment of hope, and great expectations for the UN. It appeared to many statesmen and academics that the optimistic vision of liberal institutionalism might perhaps at last cross the great divide that had separated the realm of economic interdependence from that of strategic and diplomatic interaction, and also that the UN could now at last perform, in the latter, the mission that had been entrusted to it by the Charter for the preservation and defence of peace and security. Gorbachev's 'new thinking', which seemed to convert Soviet foreign policy to the key concepts of American institutionalists, the Gulf war which came pretty close to the collective security model of the Charter (despite departures duly noted in the papers of this symposium, but mainly because of the relative harmony of the permanent members), the American hope that the 'Big Five' would (as in FDR's scheme) remain united under American leadership, all this allowed for talk about a new world order. Four years after the Gulf war, it is a new disillusionment that prevails.

As in the 1950s, and early 1960s, we have seen a mass of symposia, books and articles that examine the performance of the post-1989 UN in the political-military realm, the role played by the Secretary-General and the Security Council in conflict resolution, peace-keeping and enforcement. The essays which follow provide a scrupulous and comprehensive analysis. But for reasons that are no longer the superpowers' bipolar conflict and the violence it engendered, the conclusions often tend to be gloomy, and to highlight the new obstacles encountered by the UN in its current activist phase. Perhaps because the authors of these essays are lawyers, they tend to emphasize the responsibility of the UN's own institutions, or the misuse of Charter provisions, or mistaken strategies adopted by the political organs. They are right to do so; but it is necessary to step outside the UN. For many of the flaws that are deplored here result from the nature of the current international system, so radically different from the one both the Realists and the Liberal institutionalists had in mind.¹ It has always been a problem that specialists of international politics dealing primarily with the diplomatic and strategic scene dismissed the UN from their analyses, whereas lawyers and political scientists specialized in the study of the

1 See my essay, 'The Crisis of Liberal Institutionalism', *Foreign Policy* (Spring 1995).

UN's political functions tended to lock themselves up, so to speak, within the UN and to look at the world outside only dimly, as it was filtered into and through the UN.

It is striking, for instance, that the essays deal much more with the (undoubtedly important) distinction between Chapter VI and Chapter VII, between the settlement of disputes and peace-keeping on the one hand, and enforcement on the other, than with the distinction between inter-State conflicts and domestic turbulence or civil wars. It is attempts at dealing with the latter that have dominated the UN agenda in recent years. And when one examines what is at stake in such internal crises, one realizes that the distinction between order and justice, between 'police' and 'temple' that Prof. Koskenniemi embraces *con brio* is untenable. Even in inter-State relations, while 'anarchy' – the absence of a world centre of power – obliges States to deal first with order (or disorder), every scheme of order incorporates certain conceptions of justice (or injustice), or at least certain forms of justice or injustice emerge from it; and the Charter makes of the Security Council not only a policeman but a 'good officer' or mediator: one cannot resolve disputes without being concerned with justice (especially, as Prof. Ratner notes, because the Security Council is not bound to offer only terms of settlement proposed or accepted in advance by the parties). One cannot be in charge of 'peace' without worrying about the justice of that peace. In intra-State disorders, rival conceptions of both order and justice are almost always at stake, and while the very 'cause' (in the *jus ad bellum* meaning) that the Council has invoked to justify its interventions in domestic affairs despite the principle of State sovereignty, i.e. the notion that the (internal) trouble constitutes a threat to international peace and security, appears to stress only order, the cases in which interventions have occurred are all instances in which disorder provoked massive violations of justice (ethnic cleansing, famine, refugees) – or else massive violations of human rights, the supreme form of injustice, constituted the disruption of order.

II

During its fifty years, the UN has been remarkable for two reasons in particular. The first is the variety of the functions it has carried out. One (which these essays do not address, given their emphasis on peace, security, human rights and institutional issues) is the promotion of cooperation in the vast realm of economic, social and ecological interdependence. This may well form the most valuable part of the UN's activities. A second function is of the highest importance: the production of norms of international legitimacy, a task that has been carried out through a large number of treaties and declarations as well as through such policies as the drive for decolonization and against apartheid. The relation between this function of legitimization and the cornerstone of the international order, sovereignty, is especially interesting – and ambiguous. Decolonization has led to the multiplication

of States formally endowed with all the trappings of sovereignty. The emphasis put by the UN on the principle of self-determination has resulted both in encouraging the disintegration of Empires and multiethnic States and in promoting new, successor 'sovereign' States. The norms proclaimed in the realm of human rights impose sharp limitations on the internal sovereignty of States, and establish a set of standards for the treatment of individuals that all States are supposed to observe, as Prof. van Boven shows.

A third function is the settlement of disputes among States. The essays by Profs. Ratner, Franck and Higgins examine the difficulties encountered by the UN, partly because of the cold war, partly because of the intractable character of some of these disputes (India-Pakistan, Israel and the Arabs, Cyprus, etc.), and partly because the UN has often been preempted, as a mediating agency, by some of its members or by other organizations. The essay by Prof. Franck points out that the Secretary-General has found, in this area, one of his main opportunities for influence.

The fourth key function is the legitimate collective resort to force against threats to peace, breaches of peace and acts of aggression, as provided for by Article 2(4) and by Chapter VII. Prof. (now Judge) Higgins, in her trenchant analysis, observes that there have been only two instances of collective security: Korea and the Gulf war, and that, in the absence of the agreements for military enforcement called for by Article 43, neither operation was fully in conformity with the prescriptions of the Charter: 'the authorization of "coalition forces" appears to be all that is on offer'.

And yet, Chapter VII has been invoked with increasing frequency, especially after the end of the cold war. This points to the second characteristic of the UN: its flexibility. The UN has been extraordinarily creative both in avoiding the paralysis to which the bipolar conflict seemed to condemn it and in finding new techniques for dealing with situations unforeseen by the drafters of the Charter (like almost every international or regional organization the UN was set up to cope with the problems that had defeated 'international society' in the recent past). Thus, at the time of the Korean war, the Uniting for Peace resolution transferred in fact some of the deadlocked Security Council's powers to the General Assembly. During the Belgian Congo crisis, Dag Hammarskjöld, Ralph Bunche and the General Assembly gradually established some principles for dealing with a civil war, as Brian Urquhart has reminded us in his very fine biography of Bunche.² The greatest mark of flexibility, in the realm of peace and security, has been the development of 'peace-keeping': both after the political settlement of a dispute, and in the (frequent) absence of such a resolution but after a cease-fire (often brokered by the UN), UN observers or peace-keepers have been sent all over the world to try to use the prestige of the organization as a deterrent against a breakdown of peace – often successfully, often not (as in the Sinai in 1967 or in Croatia in 1995), and sometimes the very success of peace-keeping has made the ultimate resolution of a dispute even more remote (Cyprus, Kashmir). Prof. Ratner distinguishes two

2 See B. Urquhart, *Ralph Bunche* (1993).

'generations' of peace-keeping, the second one entailing a variety of new executive responsibilities for the UN. Much of this goes beyond what was envisaged by Chapter VI.

Is such flexibility an unmitigated blessing? Prof. Higgins denounces its drawbacks: excessive flexibility, indifference to categorization and a 'pragmatic', case by case approach can lead to 'operational uncertainty' and non-compliance. Above all, the blurring of the border between peace-keeping and enforcement action, the resort to what Prof. Ratner calls 'interpositional peace-keeping' in a conflict in which there is no cease-fire at all (as in Bosnia) or a very shaky one (Croatia) or when there are no organized parties (Somalia), the removal – implied, according to Prof. Higgins, by Secretary-General Boutros Ghali's Agenda for Peace – of 'the condition of prior agreements firmly in place' for these new, ambitious forms of peace-keeping, risks precipitating the UN into fiascos such as its Yugoslav conundrum, where what should have been, as she rightly states, a case of collective security (to protect one of the UN's members – Bosnia – from aggression), was treated by a mix of diplomatic procedures for the settlement of ordinary disputes, peace-keeping (in the absence of peace), and ill-advised, limited and unenforced enforcement measures. Of course, the reason for the frequent resort to Chapter VII, in recent years, was the felt need for the UN to deal with a variety of often horrendous civil conflicts: given the barrier constituted by sovereignty or domestic jurisdiction, a finding that domestic strife threatened peace and security in the whole region or in the world was necessary. But the fact is that Chapter VII-type enforcement measures are often inadvisable in civil wars (one of the principles established in the Congo crisis was the non-choosing of sides) and unlikely to receive much support from the members. Although Chapter VII may remain necessary as providing a *basis* for action, it is Chapter VI that ought to be 'stretched' so as to allow the UN to deal, through preventive good offices, mediation, or the provision of humanitarian aid, with the avoidance, the resolution or at least the mitigation of civil war. The distinction between enforcement action and the settlement of disputes ought to be maintained, as Prof. Higgins states. It is the distinction between international and internal disputes that ought to be softened or even abolished – whenever the latter are, or should be, of general concern. Here, as I have suggested elsewhere,³ two norms for collective intervention are needed; one, already in place, deals with order, and concerns domestic strife that is a genuine threat to peace and security across borders; the other one, that is painfully and slowly emerging, deals with justice, and concerns massive violations of human rights; these ought to be seen *ipso facto* as a legitimate cause for collective intervention in a civil war.

3 In a lecture at Notre Dame University on sovereignty and intervention, to be published soon.

III

The essays in this symposium remind us, most appropriately, of the many services rendered by the UN in the realm of peace and security, at a time of great discouragement. Failures often attract more attention than successes – both because the media feed on fiascos, and because the triumphs are usually modest or unspectacular. It is true, however, that some fiascos seriously affect the reputation and future effectiveness of the UN – the Yugoslav debacle may be a sinister turning point – and that the difficulty of reforming the UN, lamented by several of the authors, and particularly by Prof. Bertrand, is a cause of dismay.

And yet one always has to remember that many of the UN's problems result not from a top-heavy bureaucracy, inadequate international public servants or stuffy procedures, but from the behaviour of the members. It is they who are responsible for the financial plight of the UN, for the absence of military forces at its disposal. How can there be an effective international tribunal dealing with war crimes in Yugoslavia and Rwanda, or a pool of trained conflict managers as suggested by Prof. Franck, without adequate resources? How can the UN strive for 'sustainable development' without some international taxation? How can it succeed in Yugoslavia given the division and flickering concern of its key members? (In the Congo crisis, as in the Gulf war, the US was a prime mover). In the US, at present, there is a kind of obscene convergence between an Administration whose retreat from multilateralism in peace and security matters was signalled by its directive on peace-keeping in May 1994, and a Republican majority in Congress whose foreign policy consists largely of denouncing, hampering, and financially starving the UN. An international or regional organization's impotence is always the result of its members' policies.

The difficulties and failures of the UN can be explained by two sets of factors. First, strict limits on its possibilities are imposed by the anarchical structure of inter-State society. Success, for the UN, depends on the convergence of its members' preferences and imperatives, especially those of its more powerful members, and on their willingness to let long-term considerations of order and justice prevail over short-run calculations of gains and losses. It is therefore not surprising to find that the UN can do little or nothing to affect the domestic policies of its major powers (Chechnya, Tibet); that it is seriously handicapped, despite torrents of well-meaning suggestions in recent years, in preventing the outbreak of domestic conflicts, given the principle of sovereignty; that this same principle makes it difficult for the UN to prevent States from pursuing within their borders policies (such as disastrous environmental ones, or the production of weapons of mass destruction, or policies of racial discrimination) that could ultimately result in international violence and calamity. It is not surprising that collective security is a rare occurrence, and anything but the quasi-automatic or axiomatic response to aggression which the theory of collective security requires – indeed it has often been stated that this theory is quite incompatible with the logic of the States' competition. It is not

surprising that international criminal justice remains embryonic, given the number of skeletons States have in their closets and their determined resistance to handing over State criminals voluntarily; that States remain reluctant to grant extensive competences to the international Court of Justice; that disputes are very difficult to settle when the stakes for the parties are high, and in particular when the self-image of a State is involved in a conflict (*cf. the importance of Kashmir both for the Moslem State of Pakistan and for the multi-ethnic and secular State of India*) or when old ethnic hostilities are in collision (as in Cyprus) or when there are conflicting claims on the same territory (Jerusalem). Nor is it surprising that in a world in which different conceptions of the rights and duties of subjects *vis-à-vis* their governments coexist, it should be difficult to agree on the execution even of those provisions on human rights that almost all States have pretended to endorse; or that the different conceptions of distributive justice, and the conflicting economic systems advocated by the champions of these conceptions, should make agreement on the nature, mutual obligations, practices and institutions of global economic order difficult – and should lead, at the end of the day, to the preponderance of the most rich and powerful. All of this is true, whether the inter-State system is bipolar, multipolar or, as today, pretty indeterminate.

Secondly, the UN suffers also from a grave discrepancy between its own structure, defined in a 50 year old Charter, and the structure of the international system (or, to be more accurate, the world political system). The Charter is a scheme of cooperation, a (weak) regime for a 'Westphalian' inter-State system. But even though the States remain the most visible agents in the global system, they are neither the only ones nor always – despite their 'monopoly of the use of legitimate force' – the most powerful. There are two other sets of agents (beside the various international and regional bodies). On the one hand, there are all the actors in the global capitalist economy, other than the States that have set it up by providing it both with a huge deregulated sphere of free movement for goods, services and capital, and with a framework of rules for trade, monetary transactions, etc. These actors are either corporations, banks, firms, or the millions of investors and speculators who can move funds almost instantaneously across borders. Their effects are often profoundly disruptive: capital flows capable of overwhelming the reserves of central banks and of forcing governments to devalue their currencies, investment flows that aggravate inequalities both between advanced and less advanced countries and within each country, illicit but prospering traffics of drugs and weapons, etc. This global economy raises a formidable problem of accountability, which governments and international agencies have so far dodged, partly out of fear of killing the golden goose of capitalism by strangulating rules, partly because of powerful domestic pressure groups whose interest is *not* to be accountable at the national or the world level.

On the other hand, there are – again – individuals and groups, operating not across and so to speak above borders, but within and under them: all the forces that disrupt the existing States, either because they deny the legitimacy of these States

for ethnic or religious reasons or because they revolt against leaders they deem oppressive or illegitimate. These phenomena existed even while the cold war went on, but they received less attention than they should have, partly because the rival superpowers interfered with, provoked, or exploited those trends, partly because they tended to be equated with decolonization. Now we can see them unobstructed, and we face a world in which many States are 'failed States', in a situation of chaos, anarchy or permanent strife, either because of disintegration along ethnic or religious lines, or because of the flimsiness and corruption of their institutions, or because of the artificiality both of their borders (arbitrarily traced by colonial rulers) and of the Western-based notion of the State when it is imposed on parts of Africa and Asia. Many of the UN's current difficulties result from the multiplication of these cases, but we must remember that less recent examples already showed how little the UN could do when the 'floor' of States on which it is established crumbles: it stayed away from the Nigerian civil war, it averted its eyes from the plight of the Kurds, it left behind, in Zaire, a nightmarish one man show. Both Prof. Higgins and Prof. Koskenniemi point out that the UN is simply not equipped to deal with collapsing States or with rulers who systematically violate human rights, and that 'social transformation for the better might sometimes necessitate revolution'. (It is true that there have been some successes here too – in Central America, Cambodia, Namibia, Mozambique; but they have been connected with the liquidation of the cold war).

One needs, ideally, a world organization capable of coping with all three dimensions of the global system – the world economy, currently out of control, the inter-State system and the groups and peoples trying to reshape their fates at the expense of the status quo. Prof. Bertrand's final suggestions are both farsighted and, for the time being, utopian. This does not mean that we have to be satisfied with the UN as it is. Several of the essays here suggest how useful a control of the legality of Security Council and General Assembly resolutions might be (there are strong grounds for believing that the arms embargo on Bosnia violates this State's right to self defence). Such a task might be entrusted to the International Court of Justice, and provide it with much needed new business. Indeed, the whole issue of the legal and political accountability of international agencies deserves imaginative study (only in the case of the European Union has there been a genuine debate, because it is more than a regional organization, albeit less than a Federation). One should think of some body that would have to be less than a 'Parliament of peoples', in a world where democracies are still only an endangered minority, but more than an assemblage of official representatives. Could this be a task for the next fifty years?