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The Security Council at the Dawn of the Twenty-First Century

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To What Extent Is It Willing and Able to Maintain International Peace and Security?

Pascal Teixeira



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to Maintain International Peace and Security?**

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Geneva, Switzerland

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PREFACE

This study was originally published by UNIDIR, jointly with the Institut Français des Relations Internationales, in 2002 under the title “Le Conseil de sécurité à l’aube du XXI^{ème} siècle”.

The present edition, updated and translated into English, comes after heated controversy surrounding the role of the Security Council with reference to Iraq, and a continued upsurge of concerns related to terrorism and to weapons of mass destruction, notably in the hands of non-state actors.

The author, an experienced practitioner of Security Council diplomacy, brings a personal and sobering perspective on the Council’s performance in carrying out its “primary responsibility for the maintenance of international peace and security”, entrusted by the Charter of the United Nations.

Unlike numerous existing works, which deal with the Security Council through the angle of one or a few specific international crises, Pascal Teixeira’s focus is on the Council in itself, through the successive prisms of major international security issues since the end of the Cold War. In so doing, he provides a valuable contribution to explaining the day-to-day functioning of an institution often in the headlines, but whose numerous specificities and various practical modes of operation are all-too little known outside the circle of experts and diplomats with direct experience of the Security Council.

In the midst of numerous categorical—and often hasty—judgements about the Security Council’s supposed irrelevance or obsolescence, this book should provide food for better-informed thought.

As with all UNIDIR publications, the Institute takes no position on the views and conclusions expressed by the author. UNIDIR, however, does consider that this work is a useful addition to constructive debate, and commends it to the attention of its readership.

Christophe CARLE
Deputy Director, UNIDIR
Geneva
October 2003

ACRONYMS

Peacekeeping operations or forces

ECOMOG	ECOWAS military observation group
IFOR	Implementation Force
INTERFET	International Force in East Timor
ISAF	International Security Assistance Force
KFOR	International Security Force in Kosovo
MICAH	International Civilian Support Mission in Haiti
MINUCI	United Nations Mission in Côte d'Ivoire
MINURCA	United Nations Mission in the Central African Republic
MIPONUH	United Nations Civilian Police Mission in Haiti
MISAB	Inter-African Mission to Monitor the Implementation of the Bangui Agreements
MONUA	United Nations Observer Mission in Angola
MONUC	United Nations Organization Mission in the Democratic Republic of the Congo
SFOR	Multinational Stabilization Force in Bosnia and Herzegovina
UNAMSIL	United Nations Mission in Sierra Leone
UNAVEM	United Nations Angola Verification Mission
UNDOF	United Nations Disengagement Observer Force
UNFICYP	United Nations Peacekeeping Force in Cyprus
UNIFIL	United Nations Interim Force in Lebanon
UNIKOM	United Nations Iraq-Kuwait Observation Mission
UNMEE	United Nations Mission in Ethiopia and Eritrea
UNMIBH	United Nations Mission in Bosnia and Herzegovina
UNMIH	United Nations Mission in Haiti
UNMIK	United Nations Interim Administration Mission in Kosovo
UNMOGIP	United Nations Military Observer Group in India and Pakistan
UNOMIG	United Nations Observer Mission in Georgia
UNOMIL	United Nations Observer Mission in Liberia
UNOMSIL	United Nations Observer Mission in Sierra Leone
UNPREDEP	United Nations Preventive Deployment Force
UNPROFOR	United Nations Protection Force

UNSMIH	United Nations Support Mission in Haiti
UNTAC	United Nations Transitional Authority in Cambodia
UNTAES	United Nations Transitional Administration for Eastern Slavonia, Baranja and Western Sirmium
UNTAET	United Nations Transitional Administration in East Timor

Other acronyms

ACRI	African Crisis Response Initiative
ECOWAS	Economic Community of West African States
IAEA	International Atomic Energy Agency
ICC	International Criminal Court
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the Former Yugoslavia
IGAD	Intergovernmental Authority for Development
KLA	Kosovo Liberation Army
KPC	Kosovo Protection Corps
MIF	Multinational Interception Force
MLC	Movement for the Liberation of the Congo
NATO	North Atlantic Treaty Organization
NPT	Nuclear Non-proliferation Treaty
OAU	Organization of African Unity
OSCE	Organization for Security and Cooperation in Europe
RCD-ML	Congolese Rally for Democracy-Liberation Movement
RCD-G	Congolese Rally for Democracy-Goma
RECAMP	Renforcement des capacités africaines de maintien de la paix (Strengthening of African peacekeeping capacities)
RUF	Revolutionary United Front
SHIRBRIG	Standby High-Readiness Brigade
UNHCR	Office of the United Nations High Commissioner for Refugees
UNITA	National Union for the Total Independence of Angola
UNMOVIC	United Nations Monitoring, Verification and Inspection Commission
UNSCOM	United Nations Special Commission
WEOG	West European and Others Group
WMD	Weapons of Mass Destruction

The Charter in the Light of Reality and Experience

With the end of the Cold War the Security Council has undoubtedly begun to assume the place and to play the role that the founders of the United Nations had hoped it would play, but which it could not do during the time of the confrontation between East and West. The growing number of issues it deals with and peacekeeping operations it mandated over the past ten years or more testify to this. Can it thus be said that the Council is now properly discharging its “primary responsibility for the maintenance of international peace and security” conferred upon it by the Charter of the United Nations? Critics maintain that the post-Cold War Security Council remains an instrument in the hands of its permanent members, particularly one member, the United States of America, the only remaining super-power. The Security Council is certainly not an institution acting only in the general interest, deciding from Olympian heights on good and evil and remaining ever and consistently vigilant in banishing the spectre of war and bestowing peace on earth. The Security Council is also a place where divergent views and interests confront each other and seek accommodation. As the representative of a non-permanent member once acknowledged “Council decisions are the outcome of a mix of principles and geopolitical considerations.” The founding fathers, in any event, invested it with an element of *realpolitik*. By conferring the veto power on the five permanent members (P5), they recognized that, if it was to have any chance of influencing the course of events, the Security Council could do nothing that might cause any of the recognized great powers of the day to object. The fact is that the permanent members—in particular the United States—have a decisive influence on the Council’s agenda and on how it is dealt with.

Moreover, the Security Council is not a ubiquitous, omnipotent body. Having “primary responsibility for the maintenance of international peace and security” does not mean that it has sole responsibility. The extent to which it intervenes in crises and conflicts depends on the strategies of the great powers—which may seek to use the Security Council as a vehicle for their influence or, on the contrary, to limit its action—on the determination and capacity of regional organizations to assume responsibility for crisis management themselves, and on the attitude of the states involved. In that sense, the world is somewhat like a patchwork in which areas in which the Security Council is a real presence and active, and others in which it is in retreat, lie side by side.

The growth in Security Council activities since the end of the Cold War has been accompanied by a change in its main means of intervening in keeping with changes in the types of conflict and threats to the peace with which it has had to deal. This development has been due both to the lessons of its, on occasion unhappy and painful, experience of peacekeeping operations in the first half of the 1990s (Somalia, Bosnia, Rwanda) and sanctions (Iraq), and to empirical consideration of the need to adapt these instruments to the, essentially internal, conflicts with which the Security Council is dealing.

A new strategic situation has arisen with the hegemony of the United States, new threats to international peace and security, and new criteria for dealing with such threats. The Security Council is now challenged to remain not only efficient in tackling these problems, but also relevant in the eyes of the big powers, in particular the biggest of all. If the Council has succeeded to adapt its principles and criteria of action by mere pragmatism to an extent that was unthinkable a few decades ago, reality moves faster still than the Council's practice. Kosovo and Iraq have been the hallmarks of these crucial challenges and some predict, after a short rise in the 90s, a decline or at least a marginalization to non-strategic issues, in particular in Africa. It is too early to pass a definite judgement but the stakes are certainly high. The Council was largely deadlocked during the Cold War. Does it run the risk of being bypassed by the American "hegemon" that views security problems from a very national angle? And what are the necessary conditions for its continuing to be a source of legitimacy and to play a role in promoting and organizing the collective security?

The aim of this study is not, however, to explore all the problems that arise today in security threats and conflict management but to seek to understand the role of a particular institution—the Security Council—and the changes now affecting its modes of intervention and its interaction with international actors—great powers, regional organizations, non-state actors.

CHAPTER 1

NEW THREATS, NEW CHALLENGES

Without embarking on a classification of current conflicts and threats to peace, which would be less than perfect and perhaps not very useful, it is helpful to look at the changes that have occurred and, more particularly, the problems they pose for the Security Council in the discharge of its responsibilities.

“CLASSIC” OR INTER-STATE CONFLICTS

It was such conflicts that the drafters of the Charter of the United Nations had in mind at the close of the Second World War. They are still on the Security Council agenda, most being old, frozen as it were, conflicts. These are border conflicts, which have escalated into war (India/Pakistan over Kashmir, even though antagonism between the two countries is not limited to this one territorial dispute), outright invasions (Iraq/Kuwait), prolonged states of belligerence with occupation or annexation of territory (Israel/Syria, Israel/Lebanon), or secession with foreign intervention (Cyprus). In all these cases the Security Council has deployed an operation tasked with monitoring the ceasefire and maintaining the status quo, if not peace.¹ The Council can also propose the terms of a settlement, but it may well remain without effect owing to the attitude of one or more parties.²

Inter-state disputes, in particular border disputes, have, of course, not disappeared. At times they may be resolved before an armed conflict breaks out, thanks to intervention by mediators, the International Court of Justice or arbitration tribunals. Even if they escalate into military confrontation, the Security Council is not systematically seized of them and settlement may be entrusted to a regional organization. In the case of the war between Ethiopia and Eritrea from June 1998 to December 2000, the Security Council did intervene from the outset, but it did not take mandatory measures and it did not impose an arms embargo until May 2000, two years

after the start of the conflict; the peace agreement was largely negotiated by the Organization of African Unity (OAU). The Council, on the other hand, decided the deployment of the peacekeeping operation to monitor the Algiers Agreement.

“FAILED STATES” AND INTERNAL CONFLICTS

These conflicts originate within a state that is torn by internal oppositions and/or is not able to carry out some of its basic functions—namely to provide internal and external security, and to ensure a minimum degree of cohesion. Many of these conflicts often have a regional dimension. Their numbers increased in the 1990s and they now form the bulk of the active questions before the Security Council. They involve:

- **Disintegration of states, with clashes between national groups or secessionist movements**, in particular the former Yugoslavia (Croatia, Bosnia and Herzegovina, Kosovo, the western region of South Serbia, the northern and western regions of Macedonia) and the former Soviet Union (Abkhazia and South Ossetia in Georgia, Nagorny Karabakh in Azerbaijan, the Transdniestrian region of Moldova, Chechnya in Russia);
- **The collapse of states and/or civil wars between political and/or ethnic or tribal groups**, largely in sub-Saharan Africa (Rwanda, Burundi, Mozambique, Angola, Somalia, the Central African Republic, Guinea-Bissau, Liberia, Sierra Leone) but also in Central America (El Salvador, Guatemala) and Afghanistan;
- **Conflicts that fall into both of the preceding categories but that also involve large-scale foreign intervention, including occupation of territory** (the conflict in the Democratic Republic of the Congo being the foremost example).

This classification is very rough, as the first two categories frequently involve, although to varying degrees, foreign intervention and a regional dimension (e.g. the conflict in Sierra Leone).

These new conflicts have characteristics, which make their management and settlement by the Security Council difficult:

- In many of these conflicts it is **almost impossible to limit their geographical extent** because of the porousness of borders owing to a weak state presence or lack of a state presence, aggravated by the nature of the terrain (mountains and/or dense forests), cross-border ethnic solidarity (in Africa, also in the Balkans and the Caucasus), and the presence of cross-border networks and trafficking which sustain conflicts and involve neighbouring countries. The Security Council has long neglected this aspect and has made little effort to confine the geographical extent of crises. It has only recently begun to consider this aspect and attempt to take corrective action.
- It is often **difficult to identify all the actors in a conflict** which are not strong and legitimate governments in the sense of classic inter-state conflict but weak and/or contested governments, more or less organized and coherent politico-military groups (e.g. the RUF³ in Sierra Leone or the warlords in Somalia) very often linked with private criminal networks. Efforts in the Security Council to devise a settlement are rendered more complicated and means of exerting pressure on the parties to the conflict (sanctions adopted under Article 41 of the Charter) are more difficult to implement effectively than in the case of states.
- **The boundary between civilians and military personnel is becoming blurred**—the combatants are armed civilians rather than professional soldiers—and the victims are essentially civilians. The fate meted out to civilian populations sometimes becomes one of the prime factors in crisis situations (e.g. Rwanda, Kosovo). Protection of civilians has thus become a major concern of the Council, but this is not an easy goal to attain and it may be incompatible with the means of action available to the Security Council.
- **Different types of trafficking and criminal activities are often connected with these conflicts:** arms smuggling, trafficking in drugs, diamonds and other high value commodities, racket, use of mercenaries and forced recruitment of child soldiers. These phenomena that fuel—and sometimes motivate—conflicts need to be addressed through traditional measures—embargoes—which sometimes prove to be inadequate or insufficient.

- Lastly, **it is hard to find and implement a lasting solution to these conflicts**. In effect it means restoring peace and stability in a society torn by internal conflict, and thus requires dealing with the underlying causes (governance; social, regional or inter-ethnic inequalities; power-sharing; respect for human rights; respect for minority rights) and convincing the parties to choose political rather than military means of defending their political, economic and cultural interests.

INTERNATIONAL TERRORISM

Following the terrorist attacks of 11 September 2001, the Security Council took the view that all acts of international terrorism constitute a threat to international peace and security, which previously it had done in certain cases only. The Security Council declared early its competence in such matters.⁴ This phenomenon has posed a challenge for the Council, for it is particularly difficult to identify and determine the whereabouts of all the protagonists (perpetrators, organizers, sponsors of terrorist acts and those who assist, protect and shelter them). There are two kinds of situations: when it can be proved—or is strongly suspected, at least initially—that a state is involved and responsible, the Security Council can make use of the means traditionally available to it; in contrast, when non-state groups are involved—which is more and more the case—tools used to contain, deter or obtain compliance may prove insufficient: containment is hard to organize when there is no clear territorial basis, deterrence may have no bearing on this kind of extremists ready to die for their cause, and sanctions should be designed not to change these individuals' behaviour but to reduce their capacity to do harm. In that case a collective response relies on the cooperation of states. But the Security Council faces problems of evaluation and monitoring, and, as with the implementation of sanctions, the question of what to do with states that do not co-operate genuinely. In that case the most difficult challenge to the Security Council is about when and how force can be used to counter international terrorism: if self-defence has been recognized as a legitimate response in the context of the 11 September attacks—namely a response to an attack that had already taken place—the question arises about whether force can be used in a pre-emptive manner, thus expanding the concept of self-defence beyond the traditional understanding of the UN Charter and customary law, and whether the Council has to adapt its set of criteria.

PROLIFERATION OF WEAPONS OF MASS DESTRUCTION

Until 1990 the Security Council has been little involved in actual questions of proliferation of weapons of mass destruction (WMD). In the wake of Kuwait's invasion by Iraq, the Council took very innovative measures aimed at ridding a country of all its WMD—prohibited items and programmes—and at preventing the reconstitution of proscribed capabilities in that area. But although it is very unlikely that similar circumstances would lead to taking such exceptional measures, the Council has proved its ability to implement an effective disarmament program, notwithstanding largely biased criticism.⁵ Loopholes in, or non-respect of, non-proliferation regimes pose the question of the Security Council's role in coping with these potential threats to international peace and security, because the dissemination and possession of WMD could raise the level of risks entailed by traditional inter-state tensions and disputes (e.g. India versus Pakistan), or give unprecedented capabilities to terrorist undertakings. The Security Council's records in that area are not convincing enough to draw conclusions on its ability to cope with this growing challenge. The Council is not the centrepiece of the non-proliferation regimes, though its contribution may help in some circumstances. Again it has to devise new approaches and instruments if it is to remain relevant vis-à-vis a threat whose scope and degree will undoubtedly expand over the coming years.

CHAPTER 2

BETWEEN DEMOCRACY AND OLIGARCHY

The United Nations is founded on the principle of democracy applied to states. The General Assembly offers the perfect illustration (one state, one vote). The Security Council departs from this principle as it is composed of a small number of states, and has five permanent members with veto power. Its composition and mode of operation have frequently been criticized on the grounds that the Council is no longer representative enough and that it does not work in an egalitarian fashion. These criticisms must be measured against reality.

IMPERFECT COMPOSITION, YET DIFFICULT TO REFORM

The states comprising the Security Council hold a mandate under the Charter that five of them⁶ exercise on a permanent basis and ten others exercise for two years. This organ is supposed to act on behalf of the members of the United Nations.⁷ It is by virtue of this that it is, or should be, representative of the state of the world. This is why the number of members was increased from 11 to 15 in 1963, when, as a result of decolonization, the United Nations gained several dozen new member states. It is for the same reasons that there has been a virtual consensus for some years now on the principle of enlarging the Council to reflect the fact that there are now 189 member states (in 1963, the last time the Council was enlarged, there were only 109).

Critics of the current composition of the Security Council and, by extension, of its representativeness, put forward the following arguments:

- The Council is **too limited** (15 members out of 189 member states, a ratio of 1:12.4, as opposed to 1:10 in 1963);

- **European countries** are overrepresented (two permanent members, France and the United Kingdom, two non-permanent members representing the Western European and Others Group (WEOG),⁸ one non-permanent member representing the Eastern European states⁹), or a third of the Council membership even though Europe accounts for a little more than one-fifth of member states;
- On the contrary **Africa and Asia are underrepresented**—Asia which alone accounts for 51 member states, or more than one half of the world's population, apart from China (a permanent member), is represented in the Council by two non-permanent members;
- **The concept of permanent membership** is criticized for two conflicting reasons: some states¹⁰ consider it an anachronism and a **distortion of the democratic principle**, which is supposed to govern the United Nations. If not in favour of eliminating this privilege, critics are, at the very least, opposed to having it extended to other states aspiring to become permanent members;¹¹ however, others, especially the candidates for a permanent seat, believe that the status of permanent member should be granted to states which, by virtue of their population and their economic, financial, technological and military weight, represent powers comparable to those of the permanent members when appointed in 1945. However, even more significant than status as a permanent member is veto power, which is considered inordinate and is believed by some states to be the source if not of the Council's paralysis, then of its impotence, in some cases. Eliminating or, at the very least, strictly limiting the exercise of the right to veto, is regarded as a prerequisite to Security Council reform.

In spite of this criticism, efforts to enlarge the Council have come to a standstill. There has been no progress in discussions over the past ten years because of profound disagreement on the number of additional members and, above all, on whether there is need for enlargement of both permanent and non-permanent membership. While the Security Council has done its bit to reform by improving its working practices (transparency, relations with troop-contributing countries, direct contacts with parties to conflicts), the General Assembly has shown itself unable to do anything about expanding the Council.

In the context of the Iraqi crisis in 2002-2003 some critics have questioned the composition of the Security Council. According to them the current P5 are outdated and countries like Japan or India would have more valid reasons to be permanent members than, say, France. More radically they have derided the fact that the defence of US security interests can depend on the good will of countries like, say, Cameroon or Guinea. From that point of view an expansion of the Security Council would aggravate this fundamental defect and make even more difficult for the Americans to get a majority in support of their initiatives in the Council on matters of vital importance to them. This is a fundamental criticism of the Council as a collective body, representing, and acting on behalf of, the world community. Its composition can be regarded as obsolete and incomplete. But each member is entrusted with a responsibility that reaches far beyond its individual weight and influence. Correcting the imbalance through an increase of the membership and an addition of new powers as permanent member is a legitimate and necessary step. But the presence of more African countries and even of India and Japan will not satisfy those who think that the Security Council, if it is to remain relevant, should be reshaped in such a way that it reflects better the current balance of power. From this point of view the US should have more weight than all other Council members.

INEQUALITARIAN AND CONSENSUAL OPERATION

The Advantages of the Permanent Members

The first instance of inequality is that between permanent and non-permanent members and is due to several factors:

- **Continuity:** having been in the Council since its foundation in 1945,¹² the permanent members possess the institutional memory not only with respect to procedural matters, but also with respect to the Security Council's affairs. Non-permanent members must hastily familiarize themselves with issues with which they are unacquainted.
- **Access to information:** along with some regional powers and certain Western states, the five permanent members maintain a worldwide diplomatic network that allows them to be directly informed of crises and conflicts that concern the Security Council. Most of the time, the

majority of non-permanent members must rely solely on papers and reports prepared by the United Nations Secretariat and public information available through the Internet and the media.

- **Capacity to influence:** compared to the majority of non-permanent members, the five permanent members have diplomatic representation in practically every country of interest to the Council, as well as in countries which rotate as non-permanent members, and are therefore able to approach the local authorities at the appropriate level at any moment.
- **Right of veto:** the privilege granted to each permanent member whereby it can prevent the Security Council from taking action if it is firmly opposed to such action. Although it has become the Council's usual mode of operation to seek consensus (see below), consensus among the five permanent members—or at least achieving a *nihil obstat*—is a requirement for all decisions. The scope of this privilege must nevertheless be put into perspective. In practice, in many cases there is no question of anyone exercising their veto or even threatening to do so, not only because of the political cost to the party doing so but because the stakes do not at all justify it. However, there are still cases in which the veto or threat of its use is still relevant.¹³ But there are different types of threat or use of the veto: it can be completely solitary—a permanent member opposes the decision supported by the 14 other members—or co-ordinated with other Council members. For example, during the heightened discussions within the Council about the Iraqi problem in February and March 2003, France and Russia made clear that they did not want to let pass a resolution that could be interpreted as an implicit authorization to use force. But these two “trees” should not hide the “forest” of the vast majority of non-permanent members that shared the same view but argued that they could more easily stick to their choice to abstain if some permanent members took on the responsibility to make full use of their prerogative. Indeed the so-called “second resolution” sponsored by the US and the UK was not put to the vote not only because it would have been vetoed but also because it was not supported by more than four Council members. That is why the use of the veto (or the threat of its use) by countries other than the US and against the US has been challenged.¹⁴ Such a stance is germane to the idea that the composition and functioning of the Council should reflect the actual

balance of power. From that point of view, the veto right should be uneven, the US being able to use it as it wants but no other permanent member—or majority of Council members—should oppose it.

There is much criticism, but also much fantasy about this “club of five” permanent members. The permanent members do not confer with each other about all Security Council matters and they act collectively only in very few areas.¹⁵ Although hardly anything happens in the Security Council without the involvement of, or pressure from, one (or more) permanent member(s)—in particular the most powerful of them, the United States—or at least, without their *nihil obstat*, it would nonetheless be false to claim that the Security Council could be summed up by the P5 alone.

The Increasing Role of the “Group of Friends”

If one looks at how the issues on the Council’s agenda are handled one can see that decisions are very often drafted by a group of interested states (mainly the “group of friends”¹⁶), which may include states which are not members of the Council, and in which always includes one or more permanent members of the Council:

- **The Balkans:** Since 1993 political pressure has been exerted by the “Contact Group” which includes France, Russia, the United Kingdom and the United States of America—four of the five permanent members—as well as Germany, Italy, or in times of tension between the five Western powers and Russia, by them alone.¹⁷ Draft decisions of the Security Council (resolutions or presidential statements) are usually prepared by this small group.¹⁸ These texts are often the product of subtle and delicate balancing acts and other members of the Council are asked to accept them as presented,¹⁹ a situation which can provoke frustration and unpleasantness within the Council.
- **Cyprus:** The five permanent members are the authors of all texts adopted on the situation in Cyprus. Three among them (the United Kingdom as a guaranteeing power, the United States and Russia) have particular influence in the management of this conflict, which has been at an impasse for nearly 30 years.
- **Abkhazia (Georgia):** Russia plays the greatest role in this other conflict, which has reached a standstill, but four countries (France, the United

Kingdom, the United States and Germany²⁰) try to wield influence in Tbilisi and New York through the “group of friends of the Secretary-General”.

- **Western Sahara:** In this instance, the “group of friends” is again comprised of four of the five permanent members (France, Russia, the United States and the United Kingdom) in addition to Spain. Over the past three years, the United States and France have been particularly supportive of the efforts of Mr James Baker, Personal Envoy for the United Nations Secretary-General on Western Sahara, to resolve this problem by exploring the possibility of a political solution between the status quo and a referendum, the organization of which has up to now posed insurmountable problems. Again, draft resolutions prepared by this “group of friends” in closed negotiations often conflict with the wishes of the non-permanent Council members to have their say on this question, on which they have rather firm positions.
- **Lebanon:** As there is no “group of friends”, since the implementation of resolution 425 (1978) and the Israeli withdrawal from Southern Lebanon in May 2000, the initiative has come from close coordination between France and the United States. France sponsors draft resolutions on this question.
- **Tajikistan:** Russia was the leader for the entire period in which the situation in that country was on the Council’s agenda.
- **Afghanistan:** Russia played constantly an active role, jointly with the United States since 1999 and the reversal of the US position with respect to the Taliban as a result of the latter’s support to Osama Bin Laden (who was suspected of having been involved in the terrorist attacks against United States citizens in Dar-es-Salaam and Nairobi). Since 11 September 2001, the preparation of draft resolutions has involved close coordination between France and the United Kingdom, then among the five permanent members.
- **Timor-Leste:** A “core group” is comprised of Australia, Japan, New Zealand, Portugal, the United Kingdom and the United States, and draft decisions of the Council are sponsored by the United States and/or the United Kingdom.

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- **Iraq:** Coordination among the five permanent members is required for any discussion in the Council.²¹
 - **Democratic Republic of the Congo:** The involvement of the Security Council in this conflict is due in large measure to initiatives taken by France—which prepares draft decisions of the Council—in consultation with the United States and the United Kingdom; these three permanent members form the “group of friends” established at the time that the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC)²² was deployed.
 - **Central African Republic:** France played a key role in getting the Security Council to approve the mandate of MISAB²³ in 1997 and to establish a UN peacekeeping operation—MINURCA²⁴—that withdrew in February 2000. France sponsors draft decisions that are first discussed among the “group of friends”²⁵ before presentation to the Council.
 - **Sierra Leone:** The United Kingdom has played a comparable role in this case—inter alia by preparing draft Council decisions—in addition to being involved on the spot in supporting the United Nations Mission in Sierra Leone (UNAMSIL) and Sierra Leonean authorities. Since there is no “group of friends”, London has maintained close coordination with Washington in the management of this conflict.
 - **Ethiopia and Eritrea:** Since the start of the conflict between these two states, the United States has participated in mediation efforts, and has sponsored draft decisions in the Security Council. Then Norway took on this responsibility in 2001/2002.
 - **Angola:** The Lusaka Protocol conferred a unique role on the troika, of the United States, Russia and Portugal. The freezing of this agreement and the withdrawal of the United Nations Observer Mission in Angola (MONUA), in February 1999, in effect reduced the influence of the troika but the few initiatives taken by the Council, beyond the strengthening of sanctions against the National Union for the Total Independence of Angola (UNITA), were left to the United States and Russia. There was, however, a larger group of interested countries serving as a framework for coordination and support for the work of the representative of the Secretary-General.

- **Guinea-Bissau:** France played the most active role in the Security Council's limited involvement in the settlement of this internal conflict in 1998 and 1999.
- **Burundi:** France has played a guiding role since 1997 and sponsors draft texts for the Security Council.
- **Côte d'Ivoire:** Since France plays a crucial role in fostering the political process and deploys peacekeeping troops, it has initiated the Council's involvement and prepared statements and resolutions.
- **Liberia:** In the context of this country's involvement in Sierra Leone's conflict, the US and the UK have played a leading role in preparing and leading the Council's deliberations and decisions—in particular regarding sanctions—over that issue.
- **Haiti:** The United States, France and Canada have been the main forces behind the formulation of Security Council policy on Haiti, together with Venezuela, Argentina and Chile, members of the "group of friends".

Other Council members criticize these "group of friends" of interested states saying that members are often coopted, that membership is sometimes closed and that they tend to want not only to draft Council decisions but also to force the Council to accept their opinions without any changes. They also question why non-members of the Council who are members of these groups should have greater influence on the decision-making process than them.

If we look at the main types of decisions rather than the crisis areas it becomes apparent that such decisions are taken at the instigation of a small number of states:

- **Sanctions:** The Western Contact Group initiated sanctions against the Federal Republic of Yugoslavia (resolution 1160 (1998)); the United Kingdom and the United States initiated the ones concerning Sierra Leone—resolutions 1132 (1997), 1171 (1998) and 1306 (2000)—and resolution 1343 (2001) on Liberia;²⁶ and the United States and Russia initiated sanctions against the Taliban (resolutions 1267 (1999) and 1333 (2000)). All changes in the sanctions regime against Iraq (the

notion of suspension, as contained in resolution 1284 (1999), or refocusing sanctions on dual-use goods, as provided for in resolutions 1382 (2001) and 1409 (2002) emanate from the permanent members.

- **Peacekeeping operations** have more complex beginnings since the parties to a conflict often request them and since the technical proposal (concept of operation, mandate, format) originates with the Secretary-General. However, these proposals are supported and promoted in the Council by some of its members: for instance, France pleaded ardently for a United Nations peacekeeping operation—MINURCA—to take over from the multinational African force, MISAB in the Central African Republic;²⁷ the United Kingdom pushed for United Nations involvement in Sierra Leone, first in the form of an observation mission—United Nations Observer Mission in Sierra Leone (UNOMSIL)—then through the deployment of a peacekeeping operation, UNAMSIL, with responsibility to support the programme of disarmament, demobilization and reintegration of combatants of the RUF and Civil Defence Forces²⁸ and the re-establishment of the authority of the state in the territory of Sierra Leone;²⁹ France pressed for United Nations involvement in the Democratic Republic of the Congo with the deployment of MONUC.³⁰

The United Nations Secretariat sometimes plays a considerable role in the preparation of decisions. On many issues, including African issues, the positions expressed and the proposals made by the Secretary-General constitute a point of reference, particularly for the non-permanent members who often have neither a direct interest in nor their own analysis of the situation and are inclined to systematically support the proposals of the Secretariat. In a manner of speaking, the Secretariat seems to be a sixth permanent member of the Security Council—hence some members are tempted to try to influence upstream the recommendations of the Secretary-General.

What Role Can the Regional Groups Play in the Security Council?

- Members of the **Non-Aligned Movement** (NAM) who are members of the Council deliberate regularly and attempt more rarely to take initiatives. However, whereas in the early 1990s, major players from the Movement were on the Council and the non-aligned countries could have a decisive influence on the decision-making process, for

instance by opposing or amending drafts prepared by the Western powers on Bosnia, nowadays the only issues about which they have something specific to say are Libya (until the suspension of sanctions in April 1999) and the Israeli-Palestinian question. Fewer non-aligned countries are on the Council and they are becoming less united because of the growing diversification of their economic and geopolitical situations. The Near-East question provides a recent example. Between November 2000 and December 2001 the non-aligned countries made four attempts to have the Council adopt a resolution regarding the situation in the Palestinian territories, and requesting the presence of protection troops or, at the very least, international observers. Twice they did not even get to the point of submitting a draft resolution because they were unable to gather support from the necessary nine members (inter alia because the threat of a United States veto discouraged some Council members from supporting them), and twice they were met with a United States veto.

- **European Union (EU)** members who are members of the Council deliberate among themselves and inform other members of the EU on a regular basis as required under article 19 of the Treaty on European Union.³¹ The three or four European states that are Council members do not act as a block, on the one hand because the Treaty on European Union does not commit them to do so, and on the other because there are still substantial differences between them on some issues (for instance the situation in the Great Lakes Region and Iraq). However, when possible and necessary, the Europeans at the Council can act collectively and as such take the initiative in the Council. That was what happened with the Israeli-Palestinian question in 2001 when, facing an American refusal to start negotiations on a draft, the three EU members (plus Norway) were the interlocutors of the non-aligned countries in order to try and find a compromise acceptable to the majority of Council members. When two prominent EU member states—Germany and Spain—joined the Council in 2003, they agreed with France and the United Kingdom to make full use of article 19 and develop coordination among them, so as to enhance the EU profile in the Council.³² However, the split among EU countries over the Iraqi question in early 2003 has raised the question of the practicability of such an endeavour. It shows that EU coordination in the Security Council—let alone a unified representation—will result from a greater

convergence of individual foreign policy visions and goals, in particular on sensitive issues, rather from establishing procedural obligations.

“Tyranny of Consensus”

Whatever the role played by the small groups—and sometimes it is a predominant one—or the influence of the permanent members, it would be wrong to say that the other Security Council members have mere token roles and that the 15-member Council is just a place where decisions taken elsewhere are rubber stamped.

Currently the Council’s usual working method is to systematically seek consensus, particularly when preparing and adopting texts.³³ It is felt that if the Council is unanimous that strengthens the political weight of its decisions. Nearly all draft resolutions, as we have seen, are prepared either by a Council member or by a group of states (including groups of friends). However, they are then, with the occasional exception,³⁴ discussed by the 15 members and each member therefore can influence the drafting by trying to introduce expressions or items it deems important or by acting on behalf of a state that is not a member of the Council (in general, the state directly or indirectly concerned). For example, during the negotiation of resolution 1264 (1999), which was adopted a few days after the referendum on independence in East Timor and the ensuing violence and which authorized the intervention of a multinational force, Bahrain became a staunch advocate of the Indonesian cause and perspective, sometimes going even beyond what Indonesia itself was requesting. Similarly, we saw Brazil and Namibia trying to radicalize the resolutions on Angola in favour of the Luanda Government and resolutely against UNITA, or Namibia and Jamaica becoming fervent defenders of the Frente POLISARIO and of the exclusive implementation of the settlement plan and the referendum on self-determination.³⁵

Because of this systematic search for consensus, any member(s) of the Council who seek to promote a policy and therefore a draft resolution view the other members, at some point, as actors in the negotiations with whom they will have to reckon:

- Either as allies in order to overcome the reservations of another permanent member³⁶ or to make the latter part of the minority. A recent and very good example of this was the time limits for sanctions

regimes which a vast majority of Council members (including France, Russia, China and all non-aligned countries) favoured, and which the Americans and the British were forced to agree to four times—sanctions against Ethiopia and Eritrea,³⁷ against the Revolutionary United Front of Sierra Leone, and against Liberia and the Afghan Taliban;

- Because they oppose or complicate the negotiations, either by introducing specific elements or by weakening others. The draft resolution on sanctions against Liberia, which was submitted by the British and supported by the Americans, had to be softened a little in order to take into account the reservations of several non-aligned members and France (this resulted in a slight delay in the imposition of the sanctions, in timber being excluded from the scope of sanctions and in the imposition of a time limit).

Broadly speaking, the Security Council is a place where on a daily basis the policies of the powerful are clarified—in a coded manner that is nevertheless perfectly understandable for diplomats—and clash—albeit softly most of the time. It is because it is both a barometer and a modulator that the institution, whatever its limits, plays an irreplaceable role.

To Join or Not to Join

Given this subtle interaction between the most active and influential members and the others, the make-up of each Council is important (half of the non-permanent members are renewed each year). Much depends, we have seen, on the ability of the non-aligned members to have their viewpoints accepted and to act together against one or another of the permanent members. In that regard, some states are more assertive than others³⁸ and much may depend on the personality of the permanent representative. In any case, permanent members are very attentive to those who want to join the Council. Some states may be deemed *persona non grata*. Thus the United States waged a campaign against the Sudan, which was a candidate in the fall of 2000 and which had the support of the OAU, although the circumstances were not entirely clear. Its main reason for doing so was that it would have been astonishing for a state that was still the object of sanctions imposed by the Council, to be elected a member of the Council. Another, perhaps even more compelling reason was the Khartoum authorities' attitude on certain issues (war in the South, respect for human

rights, accusations of support for terrorism). The United States promoted a competing candidate, Mauritius, and succeeded thanks to intensive lobbying; Mauritius was elected and Sudan lost.

Some states may wonder whether there is any point in being a member of the Council: why engage in a competition when, due to lack of discipline in the regional group, it is sometimes the General Assembly that decides which of the competing candidates will be chosen,³⁹ when it requires a long and demanding self-promotion endeavour to reach often uncertain outcomes, when the ability to influence the course of events may seem limited and when the possibilities of being lobbied, somewhat forcefully, by one or another of the permanent members—in particular the United States—are myriad? Mexico, for example, has been a member of the Council only once in 55 years—1980-1981—judging that it was not worth the trouble.⁴⁰ Ironically its presence in the Council in 2002-2003 coincided with a period of intense diplomatic pressure over the Iraqi question, thus confirming the validity of the position held by Mexico for 50 years. Yet Mexico has had a hard time in finding its way between its own convictions and its relationship with the US.

Nevertheless competition is fierce and few states turn down the chance to be a member. Their ambitions and their behaviour can be quite different. They may:

- Set goals that have to do with the idiosyncrasies of their diplomacy (Canada, for instance, emphasizes “human security”);
- Concentrate on a few issues that they hold dear—particularly matters regarding their regional environment—and on which they will try to influence the course of events in order to suit their wishes;⁴¹
- Become the spokesmen for their regional or ideological group (this is the case for each Arab member of the Council regarding Near- and Middle Eastern issues, or for the African countries that put the case for their continent);
- Lastly, beginning six years ago, almost all non-permanent members have prompted the Security Council to hear and debate thematic questions and to adopt declaratory and/or normative resolutions. Many have sought to mark their stint in the Council—particularly the one or

two months during which they have presided during their two-year mandate⁴²—with such an initiative;⁴³ (contrariwise, permanent members have rarely taken similar initiatives).⁴⁴

These debates and thematic texts have the advantage of enhancing the status of the country initiating⁴⁵ the topic—often a topic that has a strong humanitarian connotation—without too much risk of going against the interests of permanent members. This does not mean, however, that delicate negotiations are not needed sometimes, in particular as concerns provisions that could have an impact—even if indirectly—on the budget (United States problem), that could touch human rights (Chinese problem), or that relates to the concept of humanitarian interference (Russian and Chinese problems). The countries that take these initiatives hope thus, through some kind of soft diplomacy in the Security Council, to influence its criteria for action or its areas of interest; this sometimes can have an impact in the long run, even if reality imposes its constraints (see below, in particular, the issue of protecting civilians through peacekeeping operations).

Ironically these initiatives, which come from non-permanent members, are criticized by other member states who are not members of the Security Council and who blame the Council for turning away from its main responsibility—maintenance of international peace and security, and thus prevention and settlement of specific conflicts—and for trespassing on the domain of other United Nations bodies by becoming a normative institution or by expanding its competence too much to other areas (for instance to post-conflict peace-building or to small arms).

CHAPTER 3

A PATCHWORK WORLD

MAINTENANCE OF INTERNATIONAL PEACE AND SECURITY: A FLEXIBLE CONCEPT

An uninitiated observer would be surprised at the sharp contrast that sometimes exists between the most momentous current events and the Security Council agenda. For instance, in the summer of 2001, the Council was busy with other things than the conflict between the Palestinians and Israelis or the serious crisis in Macedonia, which filled the headlines of the international media. He would also be surprised at the disparity between the seriousness of a crisis or a conflict and the weakness of the Council's response or of the means it apportions to that.

An initial explanation for this somewhat surprising state of affairs can be found in the Charter of the United Nations. The Security Council has primary, but not exclusive, responsibility for the maintenance of international peace and security. The absence of Macedonia from the Council's agenda⁴⁶ during the spring and summer of 2001 was due to the fact that management of that crisis was left in the hands of the European Union and of the North Atlantic Treaty Organization (NATO). The Council's silence on the tragic events in the Near-East⁴⁷ can be attributed to the United States veto of March 2001 that blocked any possible intervention by the Council in the course of those events.

Besides these explanations of particular circumstances, it should be acknowledged that the Council's agenda and the way in which the Council deals with that agenda, merely reflect the degree of interest shown by its members, and especially by its permanent members. In that respect, not all situations are equal, since notions of "international peace and security" and "threats to international peace and security" may vary quite considerably. Whereas those who drafted the Charter were no doubt thinking about the inter-state conflicts and wars of aggression that had ravaged Europe and the

world between 1937 and 1945, over the past 20 years, most of the conflicts dealt with by the Security Council have been internal in character (see chapter I above). Nevertheless, this does not mean that all internal conflicts appear at some point on the agenda of the Council: the situations in Sri Lanka, Senegal (Casamance), Indonesia (Aceh, the Moluccas), Burma Colombia, and the Sudan,⁴⁸ to name but a few, have so far never reached the Council's agenda.

A PRACTICE OF DIFFERENTIATION

The following represents an attempt to draw up a rough classification of the conflict situations examined and dealt with by the Security Council.

We can start by ruling out immediately **situations that directly affect one of the permanent members**. This is perhaps the greatest of taboos. For a permanent member, it would be unthinkable to allow the Council to address matters directly concerning its national territory: the situations of Ulster,⁴⁹ New Caledonia,⁵⁰ Chechnya⁵¹ and Tibet have never been addressed and never will be.⁵²

- **Situations in respect of which one of the permanent members wants to prevent or restrict to a minimum any intervention by the Council**

Thus, the United States has consistently done its utmost to prevent the Council from dealing with the Israeli-Palestinian conflict, except in certain cases when emotions run too high (the attack in Hebron in 1994) or when it is possible to keep utterances by the Council to a bare minimum.⁵³ The argument often used is that any statement by the Council, not to mention a decision with practical implications, would be counterproductive, as well as damaging, either to the United States sponsorship of the peace process or to the parties, who should resolve their disputes by themselves, rather than trying to turn them into an international problem. Nevertheless, in rare cases, the US can take the opportunity to strike a balance between the pressure to act in the Council and the advancement of key principles.⁵⁴

Russia has almost succeeded in keeping the Council at bay concerning the question of Abkhazia, a secessionist province of Georgia. Although it has accepted the renewal of the United Nations Observer Mission in Georgia (UNOMIG), it has done nothing to resolve the fundamental problem and,

by pursuing a policy of procrastination and double standards,⁵⁵ is preventing or delaying attempts, by the group of friends of the Secretary-General, the Security Council or the Special Representative of the Secretary-General, to achieve a rapid resolution of the conflict (as has been the case with the document drafted by the Special Representative of the Secretary-General on the basic principles for the distribution of competences between Tbilissi and Sukhumi).

- **Situations in which the permanent members have a stake and in respect of which they have major differences**

Iraq is the most telling example. As sanctions were maintained and deadlocks occurred in the disarmament process, the permanent members took different approaches concerning the priorities as well as the means of achieving them. The Americans and the British favoured the use of force (such as the bombings of December 1998 or the regular strikes carried out in the no-fly zones since then) and, above all, the maintenance of sanctions—even if that meant giving them more “bite”—with a view to containing Saddam Hussein’s regime. When push came to shove, they had more faith in sanctions than in monitoring on the ground. In defence of their economic interests, the Russians turned Iraq into one of the few cards in their hand to remind the Americans that they were a force to be reckoned with. France was trying to find a middle way, that combined security guarantees with the renewal of normal economic activity, which it saw as the only way of putting an end to the restrictions affecting the Iraqi people and loosening the regime’s hold on the population. From 1998 to 2001, the permanent members failed to agree clearly and without reservations on an exit strategy from the crisis: resolution 1284 (1999) was the result of a laborious process of negotiation among the permanent members that lasted throughout 1999; Russia, France and China abstained when the resolution was eventually adopted, arguing that some of its key elements were still too ambiguous,⁵⁶ and it was barely implemented the following year; the United States proposed the concept of “smart sanctions”, refocused on dual-use goods. It took the five permanent members several months in 2001 to agree to adopt the goods review list⁵⁷ and to clarify resolution 1284 (1999). Then in 2002-2003 the P5 had major differences over the goals to be pursued—regime change, or strengthened and sustained though peaceful efforts to complete the disarmament process—until the US and the UK finally waged a war to topple Saddam Hussein’s regime.

- **Situations where there is a consensus in favour of a Security Council intervention and a United Nations presence with adequate means**

The crisis in East Timor was a case in point:

- There was nothing at stake for the permanent members, since Timor was located far from their main areas of strategic interest and the only important consideration was the internal situation in Indonesia;

- There was an agreement to authorize a multinational force—the International Force in East Timor (INTERFET)—led by Australia, to restore peace and security to East Timor in September 1999 and to put an end to the violence and destruction that followed the referendum on independence. Despite the existence of divergent views,⁵⁸ the Russians and the Chinese, for instance, insisting on obtaining the agreement of Jakarta, which the Americans achieved through the application of strong pressure;⁵⁹

- There was agreement to set up a United Nations transitional administration with the task of preparing the country for independence, and to provide it with the material, human and financial resources to accomplish that task.⁶⁰

In a more traditional vein, there was unanimous agreement over the setting up of a United Nations mission on the border between Ethiopia and Eritrea with a view to assisting implementation of the Algiers Agreement, thereby bringing an end to a bloody and pointless war that had lasted for two years. Divergent views only emerged with the imposition of sanctions (arms embargo). No embargo had been introduced at the time the conflict broke out, owing to the lack of consensus, with some members of the Council arguing that the aggressor and victim should not receive equal punishment, while others maintained that both parties were to blame and that the supply of arms to such a deadly conflict should be stopped. Only in May 2000, following a renewal of hostilities initiated by Ethiopia, was the embargo imposed.

- **Situations in which the United Nations intervenes in support of and/or takes over from a regional initiative with means that are limited or restricted in qualitative and/or quantitative terms**

In the Central African Republic, France wanted a United Nations operation to take over from the Inter-African Mission to Monitor the

Implementation of the Bangui Agreements in 1998, for several reasons: to distribute costs more evenly (since logistical and financial support to MISAB was provided entirely by France); to give to the intervention by the international community the political authority provided by a Security Council mandate and incarnated by the person and activities carried out by a special representative of the Secretary-General; to allow an extension of the mandate of the international presence to encompass police training activities, monitoring and promotion of respect for human rights, and political mediation, tasks which the inter-African force was incapable of fulfilling, for material as well as political reasons. The American administration did not support such a step, since it rightly assumed that Congress would not approve a contribution to the budget of the operation, and considered the operation to be more a peace-building than a peacekeeping mission in the strictest sense and that it should therefore be supported by other modes of intervention funded by voluntary financial contributions. The United States eventually came round to the French position, in the context of a fresh policy on Africa (which coincided with President Clinton's visit to Africa) but not without attempting to limit the duration, scope, mandate—and therefore cost—of the operation. The British shared the United States concerns, but France obtained their acquiescence by exchanging favours and supporting them on Sierra Leone. Lastly, the Chinese took advantage of the situation to obtain a pledge from President Patassé that he would break off relations with Taiwan and restore links with Beijing.

In the conflict in the Democratic Republic of the Congo, the Security Council let the regional initiative, led by the President of Zambia, reach an agreement in July 1999 (Lusaka Agreement). In no rush to approve the United Nations involvement on the ground, as requested by the signatories of the Agreement, the Security Council, in particular some of its permanent members, waited to see how firm the various commitments would prove. It was also bound to take into account the fact that mobilizing troops to take part in an operation in a difficult environment and where the parties were unwilling was likely to be difficult. Not until six months later, on 30 November 1999, did the Council decide to set up MONUC to help the parties implement the agreements they had reached. Another year went by, during which there were many violations of the ceasefire and various disengagement plans were painstakingly drawn up, before the first steps were taken to deploy MONUC at the beginning of 2001. France, supported by Russia and China, was the staunchest advocate of United Nations

involvement with a view to consolidating the fragile peace process that seemed to have begun. The United States, however, did not want the operation to exceed 5,500 men, for they believed it would be costly, given the country's size and characteristics (total absence of infrastructure), and put pressure on the Secretariat to ensure that the concept of the operation remained within that limit. The British expressed scepticism for they doubted the good faith of Kinshasa and its allies and did not wish to encourage any action that ran contrary to the interests of Uganda and Rwanda. Against this background of ambiguities and reservations, MONUC was conceived as a modest operation, justified because its role was simply to monitor the implementation by the parties of their commitments, and ruled out any more ambitious task.⁶¹

- **Situations in which United Nations action is strongly supported on the ground by one of the permanent members**

In Sierra Leone, it became clear in the spring of 2000 that the RUF was once again failing to honour its undertakings pursuant to the Lomé Agreement of 7 July 1999. UNAMSIL, designed to assist with implementation of the Agreement, was literally being held hostage—several peacekeepers had been murdered and hundreds more had been captured or surrounded in May—and was unable to deal with a situation for which it possessed no mandate and was not equipped. To help to resolve this serious crisis, which was undermining not only the peace process but also the credibility of the United Nations, the British sent troops not as part of UNAMSIL, but in conjunction with it, to provide back-up, assist with the freeing of prisoners and train a new Sierra Leonean army, to be used to strengthen the authority of the government and, subsequently, to recover territory under RUF control. The British and the Americans—who gave their full support to this strategy, albeit without contributing any troops on the ground—pushed strongly for an increase in UNAMSIL personnel so that it might be in a better position to resist possible future attacks by the RUF, and help to restore the authority of the government in the country. In 2001, with an authorized staffing level of 17,500 men, UNAMSIL was, in fact, the largest United Nations peacekeeping operation.

In the Democratic Republic of the Congo, while France played a leading role in diplomatic activity, unlike the British in Sierra Leone, it did not commit troops on the ground. Nevertheless, it made a substantial contribution towards training and providing equipment to the Senegalese

battalion of MONUC, which could not have been deployed in the same conditions and the same time frame without that assistance. And in June 2003 France provided the bulk of a multinational force deployed in Bunia (Ituri province) in order to provide security, pending the deployment of MONUC's units.

- **Situations in which the United Nations is reluctant to deploy (or to redeploy), since there is no agreement between the parties to the conflict, and nothing at stake for the main powers**

Somalia now falls clearly into this category. The United Nations intervention from 1992 to 1994 was characterized and undermined by the discrepancy between the stated objectives, which were both humanitarian (to provide assistance to distressed populations) and political (to help restore civil harmony and national institutions), the means employed and the real situation, in which the local protagonists displayed no desire to seek peace. Following the United Nations withdrawal at the beginning of 1995, the country was left to its own devices and, more particularly, to its warlords. There were two possible paths towards the restoration of peace: either the so-called "building blocks" strategy, consisting of the emergence and subsequent consolidation of regional entities (such as Somaliland in the north-west of the country and Puntland in the north-east), with a view, in the longer term, to forming a confederation of those entities; or a process of restoring national institutions, by mobilizing civil society, customary and religious chiefs, and bypassing the warlords. This was the purpose of the Arta process and the subsequent Arta Conference promoted by Djibouti, which led to the appointment of a President of the Republic and a Transitional National Government.

The Security Council adopted a passive, wait-and-see attitude, partly because of the traumas of the years 1992-1994 and partly out of a desire to see whether the Somali parties were capable of somehow putting an end to their constant internal wars. It paid no more than lip service to the Arta process and its position was in the view of some permanent members,⁶² sceptical and cautious. In fact, the National Transitional Government was unable to extend its authority to either the regions in the north or those in the centre or south of the country and also had to cope with rival initiatives promoted by Ethiopia.

- **Situations that remain untouched because the major powers do not want to put pressure on any of the parties**

The Kashmir dispute has virtually disappeared from the Council's agenda, although tensions flare up regularly, there is one bloody incident after another and the problem remains basically unresolved. A United Nations observer group—United Nations Military Observer Group in India and Pakistan (UNMOGIP)—has been on the ceasefire line since 1948, but the last resolution relating to the Kashmir problem was taken back in 1971 (resolution 307). In 1998, following nuclear tests by India and Pakistan, resolution 1172 (1998) again called on the two states to resolve their differences, including the question of Kashmir, but in terms that were not very forceful and did not impose any *modus operandi*.⁶³ Neither the Western powers nor Russia wish to put any pressure on India, which considers the Kashmir issue an internal matter and refuses not only to allow that the question should be internationalized but even—contrary to the calls consistently made by Pakistan—that it should be raised at all in the Security Council.

The United Nations Peacekeeping Force in Cyprus (UNFYCIP) has been stationed in Cyprus since 1964, and preserves the status quo on the 1974 ceasefire line by preventing any renewal of the fighting. Successive Secretaries-General have conducted a mission of good offices in an attempt to reach a negotiated solution and have made several proposals for a settlement. However, the Western powers do not wish to put pressure on Turkey—a member of NATO and an essential element in Western operations on the borders between Europe, the Caucasus and the Middle East—which is the only country that recognizes the TRNC,⁶⁴ the state proclaimed by the Turkish Cypriots, and helps to keep it afloat. After a dramatic attempt made by the Secretary-General in 2002-2003, in the context of Cyprus joining the EU, to draw up a settlement plan and have it accepted by both parties, the Turkish side and Turkey failed to seize that opportunity and the problem remains unsolved.

Balkan affairs are something of a special case, in that the Security Council gradually shifted, from Dayton to the Macedonian crisis, from acting as the central crisis management body to playing a less central role, largely because of the policy pursued by the Europeans and the Americans.

Throughout the wars in Croatia, and then in Bosnia and Herzegovina, the Contact Group was already taking the lead in directing and preparing Security Council decisions, especially those relating to the various sanctions regimes and the United Nations Protection Force (UNPROFOR). The Dayton negotiations, however, were conducted under American leadership and the Peace Accords gave the task of overseeing their implementation to a High Representative who had no organic link with the United Nations. The latter was restricted to the training of police and judicial institution personnel in Bosnia and Herzegovina, while responsibility for security was given to NATO. Under its resolution 1031 (1995) of 15 December 1995, the Security Council gave its backing to the Dayton-Paris Agreement, established the United Nations Mission—UNMIBH⁶⁵—and authorized the deployment of NATO troops (Implementation Force (IFOR), Multinational Stabilization Force in Bosnia and Herzegovina (SFOR)). Subsequently, the principal decisions on implementation were taken by the steering committee of the Conference on the Implementation of the Dayton Accords, which was composed of the main Western powers and Russia. The Council restricted itself to periodically reviewing the situation—which was little more than a formality—and it renewed the provisions of resolution 1031 (1995). Finally in December 2002, the EU took over the police operation conducted so far by the UN. Since then the UN presence in Bosnia is very limited and the Council's supervision remote and very episodic.

When tensions mounted in Kosovo at the beginning of 1998, the Western members of the Contact Group took the problem before the Security Council. On 31 March 1998, they obtained a decision to impose an embargo on arms destined for the Federal Republic of Yugoslavia (FRY) and then, in August of the same year, another demanding that the Government in Belgrade stop its security forces from using force against civilians and calling for the opening of a real political dialogue that would lead to a negotiated settlement.⁶⁶ On the other hand, the action taken against FRY after the failure of the Rambouillet Conference was carried out by NATO from March to June 1999, even though the Security Council had not authorized it in due and proper form, in accordance with Article 53 of the Charter.⁶⁷ The negotiations that brought an end to the conflict and culminated in the development of an international administration regime, temporarily removing from the Federal Republic of Yugoslavia the exercise of sovereignty over Kosovo, were conducted by the Western powers and Russia, while the Security Council did no more than adopt, on 12 June

1999, resolution 1244 that had been negotiated by those powers, without making even the smallest change.

As in Bosnia, NATO (International Security Force in Kosovo (KFOR)) provided the security presence, while the United Nations shouldered the responsibility of providing a civilian presence, headed by the Special Representative of the Secretary-General. In practice, the Special Representative's policy was directly inspired by the five Western countries—that is, everyone except Russia in the Contact Group (the "Quint")—and particularly by the leading member, the United States. The Security Council reviewed the situation almost every month but did not really exercise a leading role through the Special Representative or the United Nations Interim Administration Mission in Kosovo (UNMIK). The main regulations adopted for the needs of the interim administration of Kosovo, particularly as regards the establishment of the Kosovo Protection Corps (KPC), which aimed to rehabilitate Kosovo Liberation Army (KLA) combatants, and the definition of the Constitutional Framework for Provisional Self-Government (dated 15 May 2001) were drawn up by the Special Representative at the instigation of the "Quint". The Security Council was not asked to give its formal approval. This position, in accordance with the text of resolution 1244 (1999), confirmed that Russia was to some extent marginalized in the decision-making process regarding Kosovo. It would hardly be an exaggeration to say that, setting aside the political support and the authority that it confers on the activities of the international community, the Security Council played no more than a secondary role in management of affairs in Kosovo. The Western countries also managed to ensure that the mandate of UNMIK would be automatically renewed every year unless a majority of Council members decided on termination, thus guarding against an untimely initiative by Russia or China. However, the Security Council meetings concerning Kosovo provided Russia with a regular platform—at least during the first two years—for expressing its disapproval of numerous aspects of the policy pursued by the Special Representative, UNMIK and KFOR.

The unevenness of subsequent developments in the former Yugoslavia underlined this relative marginalization of the Security Council. The uprising of Albanian armed groups in southwest Serbia (Presevo valley), beginning in November 2000, was settled through direct negotiations between the Serbs and NATO. In Macedonia, the conflict between Albanian armed groups and the Skopje authorities was the subject of

diplomatic activity by the European Union and the United States in the spring and summer of 2001. In both cases, the Security Council, in its resolution 1345 (2001), adopted in March 2001, merely condemned extremist violence, expressed support for the efforts of the governments of FRY and Macedonia and called for the resolution of differences by dialogue. It is interesting to note that this resolution was adopted on the initiative of Russia, which had otherwise been absent from the political process pursued by the European Union and NATO, so this was a way for it to try to get back into the game. Lastly, on 13 August 2001, the Security Council welcomed the conclusion of the Framework Agreement between the Albanians and the Macedonians and, in its resolution 1371 (2001) of 26 September 2001, it supported the establishment of a military security presence, without making any explicit reference to the mandate of the NATO operation.⁶⁸

Thus, paradoxically, at a time when the United Nations, after having been so discredited in Bosnia, started providing able services (UNMIBH in Bosnia and UNMIK in Kosovo), the Security Council saw its role as the international community's principal political decision-maker in the Balkans diminish.

CHAPTER 4

THE SECURITY COUNCIL AND REGIONAL ORGANIZATIONS

COMPLEMENTARY OR COMPETITORS?

Chapter VIII of the Charter acknowledges the role of regional arrangements or agencies,⁶⁹ however, the latter must inform the Council of their actions⁷⁰ and may not engage in coercive activities without its authorization (see above).

The activities of NATO and the European Union in the former Yugoslavia (see above) show that intervention by one or several regional organizations may tend to relegate the Security Council to a secondary role. This is not a rivalry between institutions but the result of a deliberate policy by the permanent members of the Security Council with regard to other permanent members, reinforced by the power and legitimacy enjoyed by these organizations.

The principle of subsidiarity—whereby those who consider themselves the most capable take action—is not the only one involved. Other factors enter into the reckoning: how high the stakes are for the main powers; the political and material capabilities of the regional organizations; the political legitimacy of the regional organizations concerned; and the attitude of the parties to the conflict.⁷¹ The regional organizations may often have a “diplomatic engineering” capability for what may often be a long and complex enterprise, requiring geographical mobility and physical availability from those involved.⁷²

The interaction between the Security Council and regional organizations varies considerably according to the situation:

EXCLUSIVE MANAGEMENT

In some cases, crisis management devolves almost exclusively to the regional organization. This situation may arise as much because the regional organization wants to retain control as because of the Security Council's reluctance to get involved.

Thus IGAD,⁷³ a regional organization in the Horn of Africa, has been trying to find a solution to the conflict in Southern Sudan without, for a long time, achieving any results, apart from ceasefires that do not hold. Despite timid attempts by some of its members, the Security Council has, for lack both of ideas and of political will, taken very little interest in this conflict, which has been going on for over 30 years and has left over a million people dead.⁷⁴ Similarly, since 1995 it has been left to IGAD to try to find ways of achieving national reconciliation in Somalia, even though its members include states—Ethiopia and Djibouti—which are pursuing different strategies.

The OSCE⁷⁵ has taken on the management of several conflicts in Europe (Transnistria, South Ossetia, Nagorny Karabakh). It has not, so far, managed to resolve any of them, since their resolution depends largely on the goodwill of Moscow (particularly in the case of the first two). The only results achieved so far have been a cessation of hostilities.⁷⁶ Yet the consequence of this assumption of responsibility by the OSCE has been that these issues are no longer on the agenda of the Security Council, which has intervened only once, in relation to Karabakh, in 1993: in other words, before the conclusion of a lasting ceasefire, but never again since then. It has never issued a statement on the other two conflicts.

JOINT MANAGEMENT

In Central Africa, ECOWAS⁷⁷ has had more success although not without setbacks. It was that organization that has endeavoured to find new ways and means of settling conflicts in Liberia,⁷⁸ Sierra Leone⁷⁹, Guinea-Bissau⁸⁰, and Côte d'Ivoire. In the conflict between Ethiopia and Eritrea, it was the OAU—in particular its Algerian Presidency—which spearheaded the long and laborious process that was to lead to the ceasefire and the peace agreement signed in Algiers in December 2000. In Central Africa, in

the absence of a regional organization, it was ad hoc regional initiatives that sought to settle the conflicts in the Democratic Republic of the Congo (Lusaka process conducted by Zambia) and Burundi (Arusha process conducted by the countries of the region⁸¹).

Cooperation between the United Nations and the regional organizations on the ground may take a variety of forms:

- Operational support furnished by a regional organization to a United Nations peacekeeping operation;⁸²
- Joint deployment of operations, with responsibility for peacekeeping generally held by the regional organization, while the United Nations carries out observer missions;⁸³
- A succession of operations: first, a multinational force, followed by a peacekeeping operation.⁸⁴

When the Security Council is involved in the settlement-seeking process, the link with the regional organization raises a whole series of problems:

- The regional organization sometimes requests the support of the Security Council—without necessarily keeping it adequately informed of its own diplomatic efforts or involving it in the formulation of the provisions contained in the peace accords—calling on the United Nations to intervene on the ground by deploying a peacekeeping operation. Thus, the Lusaka Agreement concluded in July 1999 to end the conflict in the Democratic Republic of the Congo provides that the United Nations will be entrusted with responsibility for tracking down and disarming armed groups,⁸⁵ an operation that the Security Council is not at all ready to mandate and which no troop-contributing country is in fact prepared to execute. Similarly, the countries comprising the regional initiative for Burundi (see above) requested the Security Council, at their fifteenth summit meeting in July 2001, to “mandate the deployment of a peacekeeping force as envisaged in the Arusha Peace and Reconciliation Agreement” without first consulting it. The Security Council reacted with reservations on the grounds that such a deployment could not be made until a lasting and reliable ceasefire between the government and the armed rebel groups had been achieved.

- The regional organization requests the support of the Security Council but the latter is not in a position to exercise genuine control over what the former does on the ground. In both Liberia and Sierra Leone, the ECOWAS force, ECOMOG,⁸⁶ comprising mainly contingents from Nigeria, was primarily a tool in that country's hands. In supporting the ECOWAS intervention, the Security Council was in fact closing its eyes both to ECOMOG's sometimes questionable actions with regard to respect for human rights and international humanitarian law, and to the attitude of certain military leaders (involvement in various forms of trafficking, including diamonds, and personal enrichment).⁸⁷ In any event, ECOMOG has never received a formal mandate from the Council.

In quite a different vein, the Security Council's authorization to NATO in Bosnia and Kosovo has not resulted in the exercise of any monitoring of its action. The regular reports submitted by SFOR and KFOR to the Security Council not only contain little of substance, but are not examined by the Security Council.

In the case of ECOMOG, everyone was basically satisfied that a regional force should try to restore order in Liberia and Sierra Leone, thus relieving the Security Council of the responsibility, even though it meant not looking too closely at the force's conduct. In the case of NATO, the organization's political clout and democratic legitimacy enabled it to escape close supervision by the Security Council.

- The strategy adopted by the regional organization may be different from that promoted by one or more of the permanent members of the Security Council.

In Sierra Leone, the withdrawal of ECOMOG early in 2000, determined by Nigeria's new civilian government, caught the United Kingdom and the United States off balance, both countries being advocates of a strategy of robust resistance to the RUF. Later, those same two countries, which had supported the conclusion of the July 1999 Lomé Peace Accord between the Government of Sierra Leone and the RUF, under ECOWAS auspices, advocated the military option of "containment" followed by the pushing back of the RUF as opposed to the political option promoted by the regional organization.⁸⁸

- The regional organization does not always possess the means to attain its goals.

This is especially true in Africa. ECOWAS was never able to finally defeat the RUF in Sierra Leone even when it had over 15,000 troops on the ground, because its troops were inadequately equipped and trained. In early 2000, Nigeria's new civilian government deemed the cost too high and withdrew ECOMOG, leaving the United Nations, at very short notice, to take over, albeit with a different mandate. In Guinea-Bissau, ECOMOG laboriously established itself at the beginning of 1999 to monitor the implementation and enforcement of the Abuja Agreement concluded in November 1998. France alone made a financial and logistical contribution to help deploy the regional force, but even so, the latter was unable to quickly reach the critical mass necessary in order to fulfil its mandate and dissuade the troops loyal to the Junta. The latter, in an act of force, succeeded in regaining power, in breach of the Abuja Agreement, resulting in ECOMOG's withdrawal in May 1999. In Côte d'Ivoire both the political process leading to the Marcoussis agreement and the peacekeeping presence on the ground could not be handled effectively enough by ECOWAS alone—though it played an important role—and a strong involvement of France—politically and physically—was necessary to achieve results.

- Lastly, in the absence of a regional organization, the diplomatic initiative may be taken by a group of interested states in the region, which still do not succeed in resolving their differences.

The so-called six plus two group, comprising the six states neighbouring Afghanistan⁸⁹ plus the United States and the Russian Federation, never succeeded to settle the Afghan conflict—despite the adoption, in July 1999 in Tashkent, of the Declaration on Fundamental Principles for a Peaceful Settlement of the Conflict in Afghanistan, which remained a dead letter—for it consisted entirely of actors external to the conflict and with their own decidedly conflicting strategies. The Security Council, beyond paying a vague ritual tribute to the six plus two group, simply supported the efforts of the envoy of the Secretary-General—no more successfully, in fact. The regional initiative bore within it the seeds of its own failure, since none of the principals was willing to relinquish its strategy of support to one of the two Afghan parties. It was not until the events of autumn 2001 that the situation was completely overturned and

the United Nations—the Secretary-General, his Special Representative and the Security Council—resumed its place as a central element in the management of the Afghan crisis in the wake of the military operation launched by the US to topple the Taliban regime.

CHAPTER 5

CHANGING INSTRUMENTS FOR ACTION

The Charter of the United Nations is somewhat vague about the means of action available to the Security Council for discharging its responsibilities. In addition to diplomatic action in the broad sense of the term,⁹⁰ Chapter VII provides, in the event of a threat to the peace, breach of the peace, or act of aggression, for the imposition of measures,⁹¹ commonly called sanctions, and the use of armed force.⁹² Peacekeeping operations, the concept of which is not defined in the Charter, appeared as early as 1948, and their role has evolved considerably since they have embraced and still embrace interim administrations, such as that in Namibia, Cambodia, Croatia (East Slavonia), Kosovo and East Timor.

The means initially envisaged or those developed in practice during the early years of the United Nations were basically devised to address conflicts between states. During the 1990s, the Security Council was constrained, as we have seen, to deal with new types of conflict which required an array of far more diversified and sophisticated instruments ranging from prevention to peace-building. The instrument of sanctions, as traditionally applied, has revealed its limitations and must therefore be adapted to the new conditions. Likewise, the notion of peacekeeping has come up against complex and sometimes ambiguous situations, necessitating rapid adjustments and the implementation of strategies to deal not only with the military aspects of a conflict, but also with the external environment and the civil, economic and social context. In one case (Iraq), the Security Council devised a whole set of completely new instruments dealing with disarmament activities. And in the aftermath of the 11 September attacks, the Security Council took a series of innovative measures to bring its own contribution to the international fight against terrorism.

The Security Council, as the body that authorizes use of those instruments, has been empirical in its adaptations, has drawn lessons from failures, some of which have been tragic (Somalia, Srebrenica and Rwanda),

and will have to continue to refine its tools as threats to international peace and security change.

PREVENTION, VITAL YET DIFFICULT

Prevention has been the theme of countless symposiums and seminars for a number of years; while it is certainly an excellent idea, putting it into practice presents a host of problems. In the case of conflicts between states, it means intervening before the tension has reached breaking point. Mediation and good offices involving the authorities of the countries in dispute may be used to prevent the outbreak of armed conflict. In the case of domestic conflicts, there are many triggering factors and the attitude of the protagonists is often hard for the Council to fathom, which makes the undertaking that much more difficult. In such situations, the Security Council is ill-equipped to address prevention for a variety of reasons:

- Preventive action often calls for discretion and determination. But everything the Security Council says and does is, by definition, public (even what occurs in behind-the-scenes consultations). All that the Security Council can do in such a context is mandate and/or support the Secretary-General, for he is in a position to engage in diplomacy, if not silently, at least more discreetly.⁹³
- So long as a crisis, especially an internal crisis, has not degenerated into open conflict, the thesis that international peace and security, of which the Security Council is the main guardian, are threatened or may be threatened is open to challenge. Certain states, in particular the Russian Federation and China, but also countries of the South, in their anxiety to preserve a narrow definition of sovereignty, are in fact reluctant to see an internal conflict attract the attention of the Security Council. It was therefore difficult not only to place the situation in Kosovo on the Council's agenda (it only arrived there on humanitarian grounds), but more so to prove the need for preventive measures (arms embargo) to try to check the spiral of violence that was beginning to develop.⁹⁴
- Another difficulty is a psychological one: a crisis or a conflict may be perceived as changing its nature once the Security Council is seized of it. The effect on the parties may be counterproductive, since they may be tempted to toughen their behaviour or exploit the Security Council.

- In addition, the Secretary-General of the United Nations has no permanent diplomatic network at his service that could serve him as an early-warning network. He depends on public information or data furnished by the member states the use of which, as a basis for preventive action, is delicate and sometimes questionable. In order to try to fill that lacuna, the Brahimi report on United Nations peacekeeping operations contained the proposal to equip the Secretariat with an organ—the Executive Committee on Peace and Security Information and Strategic Analysis Secretariat (EISAS)—that would enable it better to assemble, analyze and synthesize available information and so be better placed to play its warning and preventive role. But many countries of the South opposed it, fearing lest the United Nations equip itself with an instrument for monitoring, not to say interfering in, their internal affairs.
- The Security Council acts in a media-oriented world. Unless a crisis has degenerated into open conflict, there may not be enough pressure from public opinion and the media—particularly on the Council’s more recalcitrant members—to get it to act.
- Lastly, the Council does not have the necessary instruments at its disposal (e.g. benchmarks, analytical framework) to detect adequately the early signs of a conflict sufficiently in advance or, better still, to mobilize the international community’s efforts to endeavour to check it.

Even if it had the will, the Security Council has few means for taking preventive action:

- It is not within the Council’s competence to tackle the causes of internal conflicts. That means dealing with a country’s political, social, ethnic, religious and economic order—or lack thereof. Certain remedies call for in-depth, long-term action that better pertains to good governance, the rule of law and development than to diplomacy. In such situations what is actually required is action on the part of the international community as a whole—bilateral donors, international financial institutions, major trading partners, countries of the region and regional organizations.

- The joint action taken by the European Union and NATO in Macedonia over the spring and summer of 2001 was part of a preventive approach involving the promotion of new institutional and political parameters so as to take account of Albanian demands before a large-scale conflict inflamed the entire country, by using political and economic levers (possibility of joining the European Union and NATO). The Security Council is ill-equipped to provide such incentives on its own.
- In some instances, however, deploying peacekeeping forces in a preventive capacity can play a useful protective and/or deterrent role. The United Nations Preventive Deployment Force (UNPREDEP) in Macedonia did so from 1992 until February 1999, when its mandate was not renewed owing to the Chinese veto.⁹⁵ We will never know whether deployment of a force in the north and west of the country—in the frontier zone with Serbia, including Kosovo, and Albania—would have helped restrict, if not suppress the activity of Albanian armed factions. Dual monitoring on both sides of the border between Kosovo and Macedonia (with the Kosovo Force) might indeed have hampered the movement of weapons and the transit of its combatants by the KLA. A further lesson to be drawn from this uncompleted exercise is that there is no point to preventive deployment unless it is part of a comprehensive strategy. UNPREDEP might have made a useful contribution and yet been unable to solve Macedonia's underlying political and inter-ethnic problems.

In Rwanda, the inquiry by the international commission chaired by Ingvar Carlsson⁹⁶ demonstrated that strengthening the United Nations Assistance Mission for Rwanda (UNAMIR) in April 1994 might have stemmed the outbreak of genocide and had a preventive function. However, on 21 April, following the assassination of 10 Belgian peacekeepers, the Security Council reduced the Mission's peacekeeping forces from nearly 2,500 to 270.

Preventive deployment, though not a panacea, is difficult to achieve. First, the security problem must be circumscribable; it is also necessary to obtain the agreement of the government concerned, for the authorities may have reservations about foreign intervention, either because it would mean that they are unable to control the situation or because it would thwart their objectives. However, such agreement is essential, for without it no troop-

contributing country would send contingents, and certain Security Council members (China, the Russian Federation) would be against any Security Council decision that sought to dispense with such agreement, although it would, in theory, be possible to have preventive deployment in a zone not under a government's control, or for the purposes of protecting a population from government oppression.

Prevention may, however, be just as relevant once the initial armed clashes have begun. Then, the aim is to ensure that the clashes do not degenerate into a larger scale armed conflict, which would make a settlement more difficult to achieve.

The response to the challenges of conflict prevention lies in the interaction of different but complementary institutions and levels: the UN Security Council, the "development community" (UN funds and programmes, the Bretton Woods institutions), regional organizations, major bilateral partners and regional powers. But a comprehensive and coordinated strategy has yet to be worked out and, as for peace-building, there is no overarching body entrusted with such a mandate. At best the Security Council can do its part of the job, but it cannot do it alone.

STATEMENTS (THE MESSAGE AND THE WORDING) AND DIPLOMATIC ACTION (HOW THE SECURITY COUNCIL CONDUCTS NEGOTIATIONS)

Statements

Much of the Security Council's action is conducted through statements. These can take the form of ordinary statements to the press made by the president, on behalf of Council members, following informal consultations.⁹⁷ For several years now, it has been customary to have a press statement on virtually all matters considered by the Security Council. This practice owes as much to the wish to demonstrate that the Security Council is actively involved as to the need to respond to media requests. Sometimes, Council members decide that nothing should be said in public, even though everything that is said during informal consultations eventually leaks out one way or another. Many of the Council's statements are routine in nature or lacking in substance; not only do they fail to arouse media follow-up, they also sometimes go unnoticed by the parties concerned.

Others, on the other hand,⁹⁸ are followed very closely by the latter and each and every word is scrutinized.

Despite the fact that their reach can be very uneven, depending on the issue or the moment, the preparation of press statements may involve intense negotiations between Council members.⁹⁹ The nuances introduced by a particular speaker are often just as telling of his country's position as any comments made during the meetings. However futile or pointless they may seem from the outside, these negotiations are an exercise that makes it possible to measure the balance of opinion within the Council on a particular issue. With such a *modus operandi*, the jargon used by the Council for public statements may seem so coded that one wonders whether it is actually understood by those for whom it is intended, and whether the concepts used truly correspond to ground realities and to stakeholders' interpretation.

Presidential statements are conspicuously more formal in character. They are read out in public session and feature among the Council's official decisions.¹⁰⁰ They are more detailed than press statements and are negotiated at greater length. Resolutions tend to be more operational in character, but also contain numerous statement-like elements.

Such texts serve to convey the Council's position. Press statements and presidential statements convey the unanimous views of Security Council members, being adopted by consensus. Resolutions alone are put to the vote, although in recent years, the 15 Council members in virtually all instances have voted in favour.¹⁰¹

Diplomatic Action

Not only does the Council issue a significant number of statements, but those statements can also have a significant impact on the parties to a conflict. They often carry more weight, however, when combined with other diplomatic efforts:

Consultations with the parties

The purpose of such consultations is to convey a targeted message, whether it is an appeal, demand, word of caution or warning. They are conducted either by the president of the Security Council with a permanent

representative of the state concerned, or in situ with the local authorities or non-state parties by a representative of the Secretary-General or ambassadors of Security Council members.¹⁰² Such action may be consolidated by bilateral consultations, usually conducted by permanent members of the Security Council, the only ones with both the necessary diplomatic connections and political weight.

Direct negotiations with the parties

Currently, there is renewed interest in this form of action. Sporadic and often official in nature, the Council's meetings with the parties to a dispute or conflict may develop into a real opportunity for negotiation. The dialogue initiated in May 2000 with the Political Committee of the Lusaka Agreement, which has continued steadily ever since in Central Africa and in New York, has made it possible to put pressure on the parties to the conflict in the Democratic Republic of the Congo, to persuade them to meet and consolidate, clarify or supplement their obligations, or the sequence in which those obligations are to be put into effect.

Security Council in situ missions

In situ missions, which have sometimes been used in the past, were reintroduced in the autumn of 1999. Since then there have been nine such missions,¹⁰³ and more and more Council members are participating. The primary objective of such missions is information gathering. They make it possible for Council members to better assess realities on the ground, inter alia by talking directly to the protagonists and usually also with actors within the United Nations system.¹⁰⁴ They also allow messages from the Council that have the prior agreement of its 15 members to be transmitted in a more direct and official manner.¹⁰⁵ Finally, Security Council missions may sometimes have to negotiate with the parties. This function—begun in September 1999 when the Council despatched a mission to urge Jakarta to accept an international intervention in East Timor for the purposes of restoring order—was twice repeated in Central Africa, when Security Council missions were despatched to the capitals of the warring countries and met with the Political Committee of the Lusaka Agreement¹⁰⁶ while in Addis Ababa and Asmara in May 2000.

The Secretary-General's role

Aside from the initiatives he may undertake pursuant to the broad interpretation of the mandate accorded him under Article 99 of the

Charter,¹⁰⁷ the Secretary-General is a vital partner of the Council.¹⁰⁸ Indeed, it is sometimes through his efforts, or those of his special envoys or representatives,¹⁰⁹ and by supporting such efforts, that the Security Council performs its role. It is thus that a vital relationship between the Security Council and the Secretary-General's envoys is created, strengthened or weakened. The parameters governing such action involve genuine political stakes (as in the case of the mission entrusted to Mr James Baker concerning the question of the Western Sahara) and the negotiation powers of an envoy or representative of the Secretary-General can be directly proportional to the support accorded to him by the Council and each of its most powerful members (see, for example, the difficulties encountered by his special representatives in Georgia or in Cyprus).

Statements, initiatives, missions and envoys are approaches that complement each other, but they have much more impact when they are supported by parallel action by the major powers—beginning with the permanent members—and other international institutions. Thus, the firm language used by the Security Council with the belligerents in the war in the Democratic Republic of the Congo, for example, with Uganda and Rwanda, who with their Congolese confederates (the Movement for the Liberation of the Congo (MLC), the Congolese Rally for Democracy-Liberation Movement (RCD-ML), the Congolese Rally for Democracy-Goma (RCD-G)) occupy half of the country, has that much more weight when it is also used bilaterally by the United States and the United Kingdom, their main supporters. Similarly, the appeals for a policy of peace and disengagement would be paid greater heed if the bilateral and multilateral donors took steps to sanction states which, going beyond security imperatives, invade a neighbouring country, pillage its wealth and use part of the international aid to make up for what they spend from other sources on the war effort. The Security Council is actually only one of several levers, but its action can be weakened or reinforced, depending on the course taken by other parties. Such synergy, sometimes oblique, rarely comes into play, because of the ambiguous policies followed by the great powers and also because of the compartmentalization of decision-making among international institutions and even within states.¹¹⁰

This is a sphere of action that is only beginning to be appreciated but that should be developed much further than it is at present (as will be seen also apropos of peace-building—(vide infra)).

SANCTIONS: MAKING THEM AN EFFECTIVE TOOL

As envisaged in the Charter (Article 41), sanctions constitute an intermediate stage between diplomatic action and the use of armed force. In the context of a dispute or a conflict between states, they are meant to put pressure on a government to bring it to its senses and make it change course. With the proliferation of internal conflicts, however, the purpose and the effectiveness of sanctions begin to seem less obvious. The issue there may be to persuade one or several parties to negotiate or to respect its (or their) commitments, or to deprive it (or them) of the means of waging war or, in the case of a government, of conducting military operations against a region or an ethnic or religious group. When a peacekeeping operation has been deployed, sanctions can be an element in “containment”, that is, controlling outside communications in the area to be brought to heel. This can cover arms and munitions trafficking, supply of fuel, means of transport, especially air transport, but also—and this is a recent development—shipments of raw materials (diamonds, gold, rare metals) make it possible to procure weapons and fuel. The Security Council should, in general, integrate better the different facets of the action it takes with respect to a conflict situation—especially the sanctions and the field operations.

Except in some special cases (Iraq, for example), sanctions, and mainly arms embargoes, have not been strictly observed and have proven to be of limited effectiveness, for several reasons:

- **Lack of political will**, especially on the part of certain great powers that are Security Council members. The United States, for instance, closed its eyes to—if it did not actually encourage—the arms deliveries that Iran was making to Muslims during the war in Bosnia, in violation of the arms embargo decreed by the Security Council. Likewise, it did not really try to stem the arms flow from Albania to the KLA, notwithstanding the earlier adoption of Security Council resolution 1160 (1998).¹¹¹
- **Absence of the means of investigation**. Each time a sanctions regime is established, the Security Council sets up a sanctions committee, a subsidiary body composed of members of the Council, responsible for monitoring the application of the sanctions, authorizing exemptions and submitting reports to the Security Council.¹¹² The sanctions

committees have administrative support from a small unit within the Secretariat. Yet they lack the technical expertise and the means of inquiry to enable them to perform their tasks. In the absence of real monitoring or knowledge of any violations that occur, many of the sanctions regimes have, in actual fact, remained largely a dead letter.

- **Absence of a mandate and the means to ensure the physical observance of sanctions.** The application of sanctions is contingent upon the good will and cooperation of states and the observance by individuals and corporate bodies of the international legal norms that have been incorporated into national laws. But without any monitoring of the air, land and sea frontiers of an area where the aim is to prohibit given products from going in or coming out, the prohibition is often violated, especially since unequal access to certain resources automatically generates contraband activities.

The kinds of blockades that are the only way to ensure that frontiers are well sealed are politically onerous and materially costly, and difficult to put into effect (they depend, moreover, on the use of armed force provided for in Article 42 of the Charter). The only monitoring to date has been done by a regional organization or an ad hoc coalition. That is true of the monitoring of maritime transports into or out of Iraq carried out since 1990 in the Persian Gulf by the Multinational Interception Force (MIF),¹¹³ the monitoring of navigation on the Danube and in the Adriatic Sea between 1992 and 1995 by Europeans acting under Security Council mandate, or the monitoring done by ECOWAS off the coast of Sierra Leone to enforce the arms and petroleum embargo against the military junta that took power in Freetown.¹¹⁴

- **Absence of pressure and dissuasion applied to the violators of embargoes.** Aside from the fact that they have been hardly hampered in their activities and little is known of them, the violators of sanctions have not suffered from either blame or punishment for very long.

After years of relative passivity—when sanctions, in a widespread climate of indifference, were not being applied, except in some cases—the Security Council became increasingly aware of the need to restore the efficacy of this tool and thus regain some of its own credibility. It did so because at times sanctions were the only tool at its

disposal, either because a peacekeeping operation had failed when one of the parties had stopped living up to its commitments (the case of Angola), or when consent had not been given for a peace-making operation (the case of Sierra Leone). This new policy led to the establishment of commissions of inquiry or panels of experts. The first such commission of inquiry was the one established at the request of the Security Council in 1995¹¹⁵ with a mandate to oversee the implementation of the embargo on the supply of arms to non-Rwandese-government forces (former Rwandan army troops (ex-FAR) and Interahamwe militias) that were rampaging in eastern Zaire and on the northern and western borders of Rwanda and threatening the new regime in place in Kigali since July 1994. The successive reports submitted by that Commission of Inquiry in 1996 and 1998 did not, however, lead to any specific action to revive the embargo.

Subsequently, the Council has established panels of experts for almost all sanctions regimes: Angola,¹¹⁶ Sierra Leone,¹¹⁷ Afghanistan,¹¹⁸ Liberia¹¹⁹ and Somalia.¹²⁰ Their purpose is:

- **To dissuade violators**, especially governments and economic actors—by what has become known as “naming and shaming”—which for the first time saw their misdeeds, admitted or suspected, exposed to international opprobrium;
- **To help improve the implementation of sanctions** in refining their design or providing technical advice to member states;
- **To recommend that additional sanctions be put in place** aimed at combating related factors such as resources (as in the Sierra Leonean embargo against all diamonds except those bearing a government Certificate of Origin), or neighbouring countries suspected of aiding the party to the conflict which did not respect its commitments (as in the sanctions against Liberia).

In the case of Angola, the usefulness of this arrangement was confirmed by the establishment in April 2000¹²¹ of a monitoring mechanism that was extended in January, April and November 2001 and carried on its investigations until the end of the sanctions.

By contrast, **physical inspection arrangements** raise such operational and funding difficulties that they have not been resorted to as often as needed. In the case of Iraq—which, of all the sanctions regimes, has been the one the Security Council and especially the United States wanted to see enforced the most strictly—the country’s land frontiers were not subject to systematic monitoring, and there was only the maritime monitoring done by the MIF (see above).¹²² The only thing monitored was the flow of merchandise—exports of oil and imports of goods—under the “oil-for-food” programme set up by Council resolution 986 (1995). Trade between Iraq and Jordan, which benefited from a special arrangement,¹²³ was subject to monitoring only by the Jordanian authorities. All the rest¹²⁴ was contraband trade. The United States tried in spring 2000 to tighten the Iraq sanctions regime by having changes made in the “oil-for-food” programme and by establishing monitoring mechanisms at Iraq’s land borders. This attempt was unsuccessful primarily because of the opposition of the Russian Federation (which relayed Iraq’s hostility to such “refocused” sanctions) and of the countries neighbouring Iraq, which had little desire to deprive themselves of the advantages of the present system (special arrangements in the case of Jordan, contraband in the case of the others) or to risk reprisals by Baghdad.

The idea of physical inspection has come up in other instances notably in the case of Angola (the idea being that radar-equipped aircraft could detect the flights by which UNITA disposed of its diamonds and acquired weapons and fuel), but it could not be acted upon because of the cost.

The Taliban sanctions monitoring mechanism established in 2001¹²⁵ provided that a 15-member support team would be deployed in the states bordering the territory of Afghanistan and would cooperate closely with them to strengthen their capacity to implement the sanctions. That was an uncomplicated provision relying essentially on the good will of the states concerned, but it could not be put into effect because of the events of September 2001.

Some Security Council members have advocated adding an element beyond “naming and shaming”, intended to reinforce the effectiveness of the sanctions regimes by taking steps against states that are known to have deliberately violated the sanctions. This concept of “secondary sanctions” is defended by several Western countries¹²⁶ but has met with more or less strong reservations on the part of others,¹²⁷ their reason being that if the

sanctions—and the number of countries falling under them—were multiplied in this way, their legitimacy would suffer and consequently their effectiveness, for sanctions should remain an instrument to be used only in the cases provided for by the Charter (that is, threats to the peace, breaches of the peace and acts of aggression). So far, no “secondary” sanction has ever been imposed, the Council having done no more in several cases than expressing “its readiness ... to consider appropriate action ... in relation to states it determines to have violated”¹²⁸ the sanctions.

Nevertheless the Security Council has not taken care of all existing sanctions regimes in the same way. Panels of experts and monitoring mechanisms have been put in place only for those attracting a high political interest:

- Angola: because UNITA did not comply with its obligations with regard to its disarmament and to the extension of state administration, and the UN was not able to prevent and verify UNITA's failures, the Security Council focussed its policy vis-B-vis the Angolan conflict on tightening sanctions against Jonas Savimbi's movement;
- Sierra Leone and Liberia: because the US and the UK, followed by the whole Council, opted for a strategy of strong pressure on the RUF and its Liberian supporters combining a strengthened military presence (UNAMSIL and Sierra Leone Army trained by the British) and sanctions, in particular on diamond trafficking;
- Afghanistan: because the United States and Russia joined efforts to combat the Taliban's support of terrorists (Osama Bin Laden in the case of the United States of America, and the Chechens for the Russian Federation).

On the other hand, where no particular self-interest was clearly involved, as in the case of the arms embargo against Somalia (until the setting up of a panel of experts in 2002, ten years after the establishment of the sanctions), the Rwandan non-governmental forces or the Federal Republic of Yugoslavia,¹²⁹ the Security Council did not feel it was useful to have an investigative and/or monitoring mechanism, and the sanctions committees remained relatively inactive.

The effort to make sanctions—or at least some of them—more effective was accompanied by a refinement of the instrument itself. The example of Iraq revealed the limits of comprehensive economic sanctions, which had made it possible to achieve substantial results in the early years¹³⁰ but subsequently led to the paradoxical situation in which the primary victim was the civilian population, while the regime in power tightened its control over the people and sanctions lost both their legitimacy (see the campaigns against the sanctions which decried the killing Iraqi children) and their effectiveness.¹³¹

The Security Council then imposed so-called “targeted” sanctions, that is, sanctions against the leaders (and not the civilian population)—through travel bans or freezing of assets—or against the implements of armed conflict—weapons and ammunition, petroleum products, air transport, diamonds and extraction equipment, or drug precursors.

At the same time, the Security Council tried to make the criteria for the lifting of sanctions more precise, since the case of Iraq had shown, to the contrary, that defining a virtually unattainable or unverifiable objective (to strip Iraq of its weapons of mass destruction) could lead to an impasse. These efforts did not, however, prevent either differences of interpretation, as in the case of the arms embargo against Ethiopia and Eritrea,¹³² or the maintenance of sanctions for reasons other than those for which they had been imposed, as in the case of the arms embargo against Liberia.¹³³

Lastly, a majority of Council members, led by France, advocated setting time limits on sanctions regimes as from 2000. Such a step would be a significant innovation, also inspired by the Iraqi example. In the latter case, the sanctions were renewed automatically and prior to the 2003 military intervention could therefore be lifted only if the Security Council so decided after considering, in the light of the opinion of the responsible monitoring bodies,¹³⁴ that the conditions set by resolution 687 (1991) (to remove from Iraq all weapons of mass destruction) had been met. This mechanism allowed a single permanent member to oppose the lifting of sanctions, even for reasons having nothing to do with the criteria set by the relevant Security Council resolutions.¹³⁵

On the other hand, by adopting sanctions of limited duration, the Security Council must take a positive decision if it wishes to renew them. This means it must consider whether these sanctions are still justified or well

suited to their purpose. This approach is consistent with an incentive-based rather than punitive notion of sanctions. The first case in which a time limit was set was resolution 1298 (2000), which imposed an arms embargo against Ethiopia and Eritrea. The United States and the United Kingdom, which were against such a provision on the grounds that it was artificial (what counts is whether the sanctioned government meets the conditions) and that it provided little incentive (it encouraged the government concerned to do nothing while awaiting the expiration of the time limit), nonetheless had to resign themselves to it because 12 out of 15 members of the Council were in favour of it. A precedent was established that was followed in subsequent decisions concerning sanctions against the RUF in Sierra Leone, the Afghan Taliban and Liberia.

These new notions and practices with regard to sanctions regimes arose at the same time as an awareness of the link between the outbreak, pursuit and motivation of armed conflicts on the one hand, and the illegal exploitation and trafficking of natural resources on the other. The imposition of an embargo against the Angolan diamonds of UNITA (in 1998), those of the RUF from Sierra Leone (in 2000) and those from Liberia (in 2001) illustrate this new approach. At France's suggestion, the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo was set up in June 2000 to make this approach more systematic and comprehensive. The Panel's reports¹³⁶ confirmed suspicions not only about the real situation but also about the extent of such pillaging, which for some protagonists had become one of their primary motivations for continuing to fight. The issue of imposing sanctions against states involved in such actions was raised, but the United States of America and the United Kingdom, in line with their policy towards Uganda and Rwanda, were very reluctant to consider such a possibility, and France at first advocated a path of incentives and dissuasion.

The first investigations carried out at the instigation of the Security Council in the case of Angola and subsequently in those of Sierra Leone and the Democratic Republic of the Congo convinced the countries which export, process and import rough diamonds of the urgent need to take steps to prevent these "conflict diamonds" (estimated at 4% of the total) from adversely affecting the entire legal diamond market. This awareness led to the so-called Kimberley process and the setting up of an international certificate of origin system for rough diamonds.

In addition to the steps taken by states and the diamond industry, the Security Council undertook a study—which has not yet led to concrete decisions—on whether to establish a standing mechanism for monitoring targeted sanctions and illicit trafficking in valuable raw materials in connection with armed conflicts. This idea, which grew out of similar Canadian and French initiatives, raised some questions among the members of the Security Council. The United States, Russian and Chinese delegations feared the possibility that the United Nations would establish a permanent supranational body having legitimacy conferred on it by the Security Council and having broad investigative powers, and they were concerned about the exercise of these prerogatives in their own countries; these three countries preferred the option of having ad hoc panels, with prescribed time limits and mandates, that would be auxiliary to the sanctions committees. Some non-permanent members—nearly all of which presided over a sanctions committee—feared, for their part, that they would lose power with respect to a body which, even though mandated by the sanctions committees to carry out a given investigation, would have the advantage of an authority conferred by expertise, experience and time.

The growing awareness that sanctions could be a useful and effective tool in the Council's overall approach of conflict prevention and management, and the practical decisions taken to this effect have been accompanied and supported by initiatives from NGOs and member states aimed at refining the design and implementation of sanctions. The so-called Interlaken (on financial sanctions), Bonn/Berlin (on travel bans and arms embargoes), and Stockholm (on implementation and monitoring) processes brought a useful contribution, in particular in providing patterns of resolutions or national legislations. The UN secretariat has started to strengthen its ability to take stock of all the work done by the panels of experts and to play an advisory role for the Security Council.

Although much has already been done, it is fairly clear that the Security Council still needs to improve its tools and modes of intervention in order to have a more effective impact on the various causes of conflict.

For sanctions should be one element of a comprehensive strategy. Too often, as we have seen, they have served as the sole response by the Council to a conflict situation, be it as an alibi—because sanctions were a mere symbolic gesture, not really implemented—or as an effective instrument—absent any other element. Sanctions are often necessary, but

they are never sufficient. They must offer a real incentive to the targeted government or armed group. The “rules of the game” must be clear and the Council must avoid maintaining sanctions while changing its objectives. That is why they ought to be regularly reviewed and extended, if need be, to make sure that they serve the Council’s purpose and fit correctly into its strategy. That is also why their humanitarian impact has to be assessed so that they do not lose their legitimacy in the eyes of the international community and the public. Otherwise sanctions could have counterproductive effects and disrupt efforts to find a lasting settlement to the conflicts concerned.

PEACEKEEPING OPERATIONS: FROM CRISIS TO REFORM

The first half of the 1990s saw an unprecedented development of peacekeeping operations. In December 1994, United Nations peacekeeping troops reached a record number of 77,783. It was during those years that, in addition to the unquestionable successes (Cambodia, Mozambique and El Salvador), peacekeeping operations suffered humiliating defeats (Somalia, Srebrenica and Rwanda) or only mixed results (Angola, Haiti). The United Nations criticized its own actions in two of the most tragic events (Rwanda¹³⁷ and Srebrenica¹³⁸) and then, at the initiative of Secretary-General Kofi Annan, undertook a complete, in-depth evaluation of peacekeeping operations that resulted in the Brahimi report, named after the Chairman of the Panel on United Nations Peace Operations.¹³⁹ In addition, a study was initiated by the Security Council on, among other things, “exit strategies”, i.e., on how to bring a peacekeeping operation to a close.¹⁴⁰

The rich and ambiguous experience of those years, some positive and some ill-fated, yielded a somewhat more circumscribed picture of the challenges confronting United Nations peacekeeping operations. These had to do with the purposes and means of peacekeeping operations.

Purposes

Just what is peacekeeping? The theoretical response seems obvious and clear, since it should be a matter of maintaining the peace, which assumes that peace exists before the peacekeeping operation begins, and

that the latter helps it to be kept. In reality, however, the situation is rarely that simple. There are cases where, although an agreement has been signed, peace is not maintained because one or more of the parties does not respect its commitments. This is what happened not only in Bosnia and Somalia, but also in Angola and Sierra Leone. There are other cases where localized incidents occur that constitute a threat to the whole peace process and which, for that very reason, must and often can be contained. In such cases, in order to deal with the crisis locally, it may be necessary to have a different *modus operandi* to that of the operation as a whole. A peacekeeping operation is not, however, intended to restore the peace and act as a substitute for the will of the parties to seek peace.

Means

The means used should ideally be adapted and in proportion to the peacekeeping mandate, both quantitatively and qualitatively. Setting an objective that is too ambitious in relation to the means at hand may endanger not only the peacekeeping operation itself, including the safety of its staff, but also the peace process it is supposed to be upholding and consolidating. Reality demands that objectives be set in proportion to the actual means available.

United Nations peacekeeping operations in Angola (the United Nations Angola Verification Mission (UNAVEM) and later MONUA) failed because those two elements were lacking: UNITA did not respect the commitments it had made in the Bicesse Agreement and the Lusaka Protocol of 1994, and the United Nations never had sufficient means to verify and denounce, in a timely manner, the serious violations committed by UNITA. When wide-scale hostilities resumed between UNITA and the Luanda government and the latter decided to choose the military option to put down the rebel movement—or at least to hit it hard enough to significantly weaken its military capacity and territorial hold—the United Nations had no choice but purely and simply to withdraw.

The most tragic consequence of the unfortunate and sad experiences of Bosnia and Somalia was, however, the disengagement of the Western countries from United Nations peacekeeping operations. Calling into question a system which they themselves had first designed and used, these countries felt that the problem stemmed entirely from the decision-making

and command structure of the United Nations, including decisions taken by a Security Council in which conflicts of interest between members—especially permanent members—and their domestic policy constraints led to ambiguous management, a lack of determination and a failure to provide a clear mandate; this command structure was by definition a composite between a Secretary-General, subject to pressure from the existing powers and concerned with handling the other countries carefully, and troops, especially those from the Western countries, having a tendency to obey their national hierarchy rather than the multinational chain of command, especially in tense situations.

This distrust of United Nations peacekeeping operations was expressed in a drastic way by the United States first through Presidential Decision Directive No. 25,¹⁴¹ which defines the conditions for American participation in peace operations in such a draconian fashion that it practically excludes all United Nations peacekeeping operations, and subsequently through a sharp cut in the number of United States blue helmets.¹⁴² But the European countries were not far behind in this withdrawal movement. For many years, Belgium and the Netherlands remained in shock over the events in Rwanda in the former case¹⁴³ and Srebrenica in the latter,¹⁴⁴ and their participation in United Nations peacekeeping operations remained minimal;¹⁴⁵ France, the United Kingdom, Italy, the Nordic countries and Canada transferred the bulk of their peacekeeping contributions to NATO operations in Bosnia and Kosovo¹⁴⁶ and avoided any significant commitment in Africa.¹⁴⁷ In fact, the Western countries showed a preference for multinational forces, in particular those led by NATO, which offered assurances of consistency and cohesion, qualities that they felt were lacking in the United Nations peacekeeping operations.¹⁴⁸ Since then they have accepted to take their part of the collective burden of peacekeeping, in particular in Africa, but by working alongside, not within, UN or regional operations.¹⁴⁹

This Western disaffection,¹⁵⁰ which was roundly criticized by the developing countries, no doubt added to the structural problems of United Nations peacekeeping operations. The Organization had to call on the developing countries to provide the majority of troops, who were often poorly trained and ill-equipped, and sometimes under inadequate leadership. At a time when the United Nations had to build an army out of nothing, it was given troops that did not have enough national logistical support to be self-sufficient. These factors created the impression that

United Nations peacekeeping forces were third-rate, as opposed to the first-class NATO troops in the Balkans.

The lack of means is not, however, the only culpable factor; the concept of the mandates and the strategic conduct of the operations also bear part of the responsibility. Mandates are given by the Security Council, generally on the basis of a proposal by the Secretary-General that may be substantially modified by the Council. Several factors must be taken into account in this difficult and delicate exercise, but, for various reasons, some are not always given enough weight.

- **The adaptation of the mandate to the situation** assumes having a correct perception of the realities in the field, of the avowed or hidden strategy of the actors and of external interferences. However, whatever their quality and degree of precision, the Secretary-General's reports, which form the common basis on which the members of the Security Council take their decisions, cannot describe the whole truth, whether because it is beyond the Secretariat's means to investigate and assess that truth, or because the latter cannot be openly stated for political reasons.¹⁵¹ This is why the Brahimi report insists that the Secretary-General should tell the Security Council what it must know, not what it wants to hear.
- This remark also applies to the **adaptation of the means to the mandate**. Too often, however, the latter is tailored to the former. The operational concept of MONUC provides a good illustration. Only a limited observation mission, with a small amount of autonomous resources, had any chance of obtaining the necessary troops. A more ambitious operation would have had few chances of being set up. Moreover, the United States put pressure on the Secretariat, essentially for financial reasons, to ensure that the proposed operational concept did not exceed 5,000 to 6,000 troops.

The Council is here confronted with a dilemma: on the one hand, it should start from the assessment of what the situation requires and design the mandate accordingly, then infer what are the means necessary to discharge it. But if the means available are, from a quantitative or qualitative point of view, insufficient, the operation runs the risk of failure. That is why the mandate is often adjusted to the expected means. It may not be ideal but at least it is realistic. But that

does not prevent criticism that the operation is not shaped to the extent required.

In that regard, **the protection of civilians** offers a good example of how it is difficult to strike a balance between the means and the mandate of an operation and of a “stop-and-go” policy by a Council torn between diverging imperatives. Indeed civilians are the main victims of present-day conflicts. Their protection has therefore become a matter of considerable concern to the Security Council, as can be seen by the organization of its debates and its adoption of several resolutions on the subject. More specifically, these resolutions contain precise provisions defining the tasks of peacekeeping operations¹⁵² whose primary mandate is not to protect civilians. These provisions were added at the request of states that considered it intolerable that civilians were being massacred right in front of the peacekeeping troops without those troops being allowed to intervene, as happened in Rwanda in April 1994. Nonetheless, no matter how many precautions are taken to avoid promising too much (action only in the areas of operation, and according to means, to protect civilians under immediate threat), it is sometimes necessary to scale down ambitions or even eliminate this task of protection in order to remain within the available means as was done in the case of MONUC in early 2001.¹⁵³ But some months later, the pendulum swung in the opposite direction. In June 2002 the Council, confronted with an insecure and unstable situation in the Eastern part of the DRC, reverted to its original decision that MONUC should protect civilians under imminent threat of physical violence when and where it can,¹⁵⁴ although the Secretary-General had warned that, to be properly carried out, such a responsibility required a strengthening of MONUC.¹⁵⁵ Six months later the Council authorized the expansion of the UN Mission in the DRC.¹⁵⁶ But this was not sufficient. In May 2003 the deterioration of the security and human rights situation in the Ituri province prompted the Secretary-General to recommend that an ad hoc multinational force be temporarily set up to provide protection to civilians, pending the effective deployment of MONUC’s task forces.

The **strategic conduct of an operation** raises problems of the same nature:

- When the operation is under way, **the assessment carried out by the Security Council is sometimes insufficient, incomplete or partial.** Some members may acquire a significant influence on the collective

perception. Thus, after the Israeli withdrawal from South Lebanon in June 2000, the United States and France led the Security Council, whether willing or not, into a reconfiguration of UNIFIL, including a substantial reduction in its troops and, ultimately, a revision of its mandate, to the great displeasure of the Lebanese authorities, who had been satisfied with the status quo and reluctant to assume all their responsibilities in the zone evacuated by Israel. In Sierra Leone, the United Kingdom, determined to put a stop by any means to the RUF, a recalcitrant and unreliable movement, advocated a policy aimed at strengthening UNAMSIL and making it more robust, a policy which provoked a crisis with some troop-contributing countries (see below). In fact, UNAMSIL, with an authorized ceiling of 17,500 troops, was the largest United Nations peacekeeping operation in 2001.

- A peacekeeping operation has a better chance of succeeding if **the Security Council on the one hand, and the troop-contributing countries on the other, have a common and shared understanding**, from start to finish, of the objectives of the operation and the way to achieve them. Similarly, it is essential to have a unity of command, that is, to ensure that the orders given by the United Nations are not contradicted by those coming from national hierarchies. Only a constant, frank and open dialogue will allow for the creation of such conditions. Too often, however, the Security Council has had a tendency to consider the troop-contributing countries as mere service providers. This imperative of trust and dialogue is especially crucial in periods of tension in the field, or where a modification of the mandate and/or the rules of engagement is being considered. To prevent a recurrence of the humiliation suffered by UNAMSIL, in May 2000, with the taking of hostages or the encircling of several hundred blue helmets, and to attempt to put a decisive end to the RUF, the United Kingdom and the United States of America, together with the Secretariat, advocated a reinforcement of UNAMSIL troops,¹⁵⁷ and an expansion of the mandate to more “robust” tasks related to peacemaking.¹⁵⁸

This essential reorientation, which was conceived of without consulting the troop-contributing countries in the field, provoked a virulent reaction from India and Jordan, two troop-providers, who decided to withdraw their troops because they had accepted certain rules of the game

but did not agree that those rules could be changed without asking their opinion.¹⁵⁹

This crisis accelerated the awareness, reinforced by the conclusions of the Brahimi report, that there was a need to improve the relationship between the Security Council, the troop-contributing countries and the Secretariat. A public debate was organized on this topic in January 2001, and resolution 1353 (2001) was adopted in June of the same year, providing for a strengthening of consultation with troop-contributing countries at all stages of a peacekeeping operation. The troop-contributing countries sometimes advocated going further, towards a quasi-joint decision-making process, to which some permanent members of the Security Council were opposed, as guardians of the Council's prerogatives.¹⁶⁰ It is indeed essential to consult the troop-contributing countries before making any changes in the mandate, especially where that mandate is being strengthened, in order to hear their views as participants in the field, and to be sure that they are still prepared to be a part of the operation under the new conditions. On the other hand, the Security Council should not change its mind, if it considers that the situation justifies it, on the pretext that the present troop-contributing countries are not prepared; rather, they should find other countries that are willing to take on the responsibility.

In some cases, the deployment of a peacekeeping operation cannot be the only contribution the Security Council makes to the settlement of the conflict. As has been demonstrated, the containment of the crisis area by imposing an embargo on weapons and natural resources (see above) can also play a role. Action at the regional level should not be neglected, either by taking suppressive measures, such as by extending the containment measures,¹⁶¹ or by providing an incentive by eliciting among neighbouring countries an interest in supporting a peace process.

The reforms undertaken on the basis of the Brahimi report and subsequent reports¹⁶² have been intended to improve the effectiveness of United Nations peacekeeping operations as a tool in relation to the Secretariat's task of studying, conceptualizing, setting up and conducting the operations on the one hand and, on the other to the preparation of the military and civilian elements provided by member states. The Security Council's role, which is essential, is difficult to plan. It has at least set out general principles and objectives in its resolution 1327 (2000) of 13

November 2000, undertaken to improve its relations with the troop-contributing countries (see resolution 1353 (2000)) and engaged in thinking about “exit strategies”, that is, about the best way of bringing an operation to a close after having achieved its objectives as far as possible. This does not mean that the Security Council will necessarily stop taking decisions which, to a greater or lesser extent, appear to contradict or at least diverge from, the wise precepts it has issued in another connection. Thus, in the Democratic Republic of the Congo, the revised concept of MONUC, approved in June 2001, broadened the Mission’s mandate without raising the troop ceiling set in February 2000 and it took almost two years for the Council to allow an increase in the number of soldiers.

The “exit strategy” problem is interesting, but translating it into specific terms often means facing difficulties relating to the above-mentioned paradox. Programmes of disarmament, demobilization and reintegration of former combatants are a decisive factor in ensuring lasting stabilization of a post-conflict situation. Peacekeeping operations are often asked to handle disarmament operations, but in most cases these programmes, in particular demobilization and reintegration, are essentially conducted and financed by other actors. Voluntary financing often fails, thereby compromising the success of the entire programme. In Sierra Leone, it is paradoxical to see members states spending nearly US\$ 500 million annually to fund the peacekeeping operation (UNAMSIL) and being unable to collect even a tenth of that amount to carry out the disarmament, demobilization and reintegration programme. In another vein, the exit strategy of the United Nations Mission in Ethiopia and Eritrea is in the process of delimiting and demarcating the border between the two countries. There also, a rapid conclusion of the Boundary Commission’s work is being endangered by insufficient financing, which is the responsibility not only of the parties themselves, but also, given their limited resources, of international donors.

One of the declared aims of the reforms under way is to enable United Nations peacekeeping operations to deploy more rapidly than they generally do.¹⁶³ The slow pace of deployment is due in part to the lack of significant participation by the Western armies in United Nations peacekeeping operations: contingents supplied by the countries of the South must be equipped, supported and transported, and the United Nations must provide for this within the framework of strict budgetary rules and at a cost so low as to be without equivalent among today’s modern armies. The slow pace at which the United Nations moves has been

criticized when the urgency of a crisis, like that in East Timor in September 1999, for example, calls for immediate action. In this instance, in spite of friction within the Security Council between those—for instance, the Russian Federation, China and certain non-aligned countries—who wanted to see Indonesia's wishes scrupulously respected and those who believed that the United Nations must provide immediate assistance to the East Timorese civilian population, a multinational force mandated by the Security Council and structured, commanded and supported by one Western country (Australia) was able to deploy in less than three days. Even if all the proposed reforms are actually implemented, it is doubtful that United Nations peacekeeping operations will one day have this capacity. Certainly, the use and improvement of the Standby Arrangements System are going some way towards addressing the problem, but it is significant that it is, for the most part, the armies of the Western countries that have contributed to it and are bringing with them the national support components essential for rapid deployment, in which the armies of the South are cruelly lacking.

Furthermore, the emergency deployment phase is the most dangerous. This is the phase in which the situation can swing from peace to war and in which the uncertainties and risks confronting a peacekeeping operation are at their highest. In these conditions, it is more necessary than ever that the troops who are part of it demonstrate robustness and cohesion. A multinational force, supported by a solid lead nation, is more likely to possess these qualities.

More generally, multinational forces have characteristics that give them an advantage over United Nations peacekeeping operations in a certain number of situations:

- Efforts to protect deliveries of humanitarian assistance or to create a secure environment for humanitarian purposes, as in Somalia in 1992/93,¹⁶⁴ Rwanda in 1994¹⁶⁵ or Albania in 1997;¹⁶⁶
- Efforts to secure an area, as in Bosnia, Kosovo and Afghanistan.¹⁶⁷

Beyond the differences in their mandates, all these operations have in common the urgency with which they acted and/or the fact that force was used, albeit in varying degrees, in order to implement their mandates. It is quite difficult, however, not only to put together the necessary elements to see such operations through to a successful conclusion, but also to secure

political agreement within the Security Council, unless it is bypassed as happened with the intervention by NATO against the FRY in spring 1999.

But the intervention of a multinational force is not, for all that, a guarantee of success. The conditions deemed necessary for a United Nations peace operation (see above) also apply to multinational forces. The operation in Somalia in 1993 provides a good illustration of this: the humanitarian and political objectives set¹⁶⁸ did not take into account the historical and social realities of the country (lack of a shared national past, strong clan structures, absence of desire on the part of the warlords to make peace); the means were not adequate given the declared goals and the scale of the task and because it is not possible to restore peace and civil concord without the support of the local political actors and solely through military force unless one is prepared to pay the price.

However, United Nations peacekeeping operations can intervene more easily in the following situations:

- When taking over from multinational forces during a calmer phase, as in East Timor¹⁶⁹ or the Central African Republic;¹⁷⁰
- When implementing complex mandates in a secure and generally stable environment, as in Cambodia,¹⁷¹ Eastern Slavonia (Croatia),¹⁷² Kosovo¹⁷³ or East Timor,¹⁷⁴ which requires both a great variety of expertise and a legitimacy and authority that the Security Council alone can confer;
- When carrying out interposition and/or observation missions in frozen conflicts, as in Cyprus,¹⁷⁵ Kashmir,¹⁷⁶ Lebanon¹⁷⁷ and the Syrian Golan,¹⁷⁸ or on the border between Iraq and Kuwait,¹⁷⁹ where there is no political settlement between the states concerned.

The disengagement of the West could, if it persists, give the impression that United Nations peacekeeping operations inherit situations, especially in Africa, for which no one wants or is able to take responsibility. However, a cautious but genuine movement is taking shape, notably in support of the reforms undertaken in the wake of the report of the Panel on United Nations Peace Operations (A/55/305-S/2000/809):

- The first step consists of Western countries—since they are not intervening directly—forming, training, equipping, transporting and supporting contingents from the South that are participating in United

Nations peacekeeping operations. Such a contribution is, in fact, essential not only to enable these blue helmets to be deployed in good conditions and within a reasonable time frame, but also to increase their effectiveness. This concept, which is known in France as RECAMP¹⁸⁰ and which is also practised in the United States, where it was known as ACRI,¹⁸¹ was applied, for example, within the framework of MONUC, the Senegalese battalion having been entirely trained, equipped and transported by France, and in the context of UNAMSIL, a Senegalese battalion, a Ghanaian battalion and three Nigerian battalions having been trained and partially equipped by the United States.¹⁸²

- Indispensable though it is, this first element is not enough and could lead to the Western countries being criticized for buying themselves substitutes, like the rich young men in France who, during the era of the draft lottery, paid poor young men to spend a few years of their lives doing military service in their place. It is necessary and possible for the Western countries to reengage in United Nations peacekeeping operations either through SHIRBRIG,¹⁸³ the rapid-deployment brigade, or through the European Union, in the context of the development of its rapid reaction capacity. Conceivably Western or European units could form the initial framework for the rapid deployment of an operation; they could always hand over later to other contingents from the South that required more time to deploy.¹⁸⁴ As to intervention by the European Union as such, only intervention through a multinational force (along the lines of INTERFET) would be conceivable under the existing instruments if it wished to maintain political and strategic control.

In conclusion, the Security Council has two types of operation available to it, depending on the circumstances: United Nations operations and multinational forces. Clearly, it has less control over the latter. Although the fact of having mandated and authorized them reinforces its power *de jure*, its capacities *de facto* remain limited, especially if the countries constituting them enjoy strong political influence and/or legitimacy, as in the case of NATO. They are, however, a vital tool for implementing the decisions of the Security Council. What is now at stake is a kind of untold division of labour that might take root: “soft” peacekeeping—i.e., policing—in Europe (the Balkans and possibly beyond) would be entrusted to the European Union,¹⁸⁵ “robust” peacekeeping to NATO or *ad hoc*

forces under US leadership from the Middle East to South Asia,¹⁸⁶ and “dubious” or “shaky” peacekeeping to the UN and/or regional organizations¹⁸⁷ in Africa. If this trend became a pattern, the principles of universality and solidarity embodied in the UN Charter and institutions would be put in jeopardy. In this regard the dispatch in June 2003 of an EU multinational force to the DRC—Operation “Artemis” deployed in Bunia—is hopefully the prelude to a better sharing of responsibilities between the North and the South.

TRANSITIONAL ADMINISTRATION OF TERRITORIES

Born of the evolution of the concept of the peacekeeping operation in a context in which state authority is disappearing or losing its legitimacy, the transitional administration of territories poses special problems for the Security Council, linked to the exercise of a new and complex role and to the Council’s position vis-à-vis other international authorities.

The mandates of peacekeeping operations have been progressively supplemented with diverse elements that go far beyond the classical interposition or military observation missions.¹⁸⁸ This development is attributable to the fact that the majority of the conflicts with which the Council has dealt over the past 15 years have been internal ones. Preparing for and organizing elections is, in fact, the first phase of a peace process. This task has often been entrusted to the United Nations.¹⁸⁹ But assisting with the establishment of new political institutions has quickly gone beyond the mere holding of elections and been expanded to include forming, or even temporarily replacing, some elements of the government.

In Cambodia, UNTAC was established to ensure the implementation of the Agreements on a Comprehensive Political Settlement of the Cambodia Conflict, signed in Paris in October 1991, and was entrusted, from February 1992 to September 1993, with organizing and holding elections, questions of a military nature, civilian administration, maintaining order, repatriating and resettling displaced persons and refugees, and rebuilding the country’s basic infrastructure.

In Eastern Slavonia (Croatia), the Security Council was requested, under the Basic Agreement on the Region of Eastern Slavonia, Baranja and Western Sirmium of 12 November 1995, to establish a transitional

administration, UNTAES, which was entrusted, from January 1996 to January 1998, with supervising and promoting the demilitarization of the region, supervising the return of refugees and displaced persons, helping to maintain peace and security in the region, establishing a police force, carrying out tasks in the areas of civilian administration and public service operation, organizing elections, helping to coordinate the development and reconstruction plans, and ensuring respect for human rights.

In Kosovo, in June 1999, after the intervention by NATO, the Federal Republic of Yugoslavia had to agree to entrust the administration of the province to an international civilian presence, UNMIK, for as long as the final status issue remained unresolved, the international security presence being the responsibility of NATO.

Finally, in East Timor, following the referendum organized by the United Nations, in which the majority of the population voted in favour of independence, and the subsequent departure of the Indonesian administration, the task of administering the territory from October 1999 on, and preparing it fully to assume its political independence by 2002, fell to the United Nations—UNTAET.

In addition to the significant problems that setting up a substitute state administration and forming an indigenous government, sometimes *ex nihilo*, pose for the United Nations, the Security Council is confronted with two types of situations:

- On the one hand, there is an exit strategy, consisting in organizing, as harmoniously as possible, the transfer of the territory's administration to the state of origin (as in Eastern Slavonia) or to the institutions of the restored state (as in Cambodia) or the new independent state (as in East Timor). Decisions are taken with this in mind, although the difficulties posed by rifts in the local political class and the issue of the return and reintegration of refugees should not be minimized. Since the course is known, the running of the operation, as in the case of UNTAET in East Timor, falls largely within the competence of the Secretariat and the special representative, with the Council exercising only distant control. The Council had, however, to assume its responsibilities when it came to reorganizing the United Nations presence following East Timor's independence. In that case the Council wisely decided not to withdraw too quickly the military and

civilian components that were necessary to help consolidate the nascent and fragile institutions of the new state of Timor Leste. Nation-building does not stop with the admission of a state as member of the UN. The Council has to make sure that the huge investment made by the UN does not run the risk of being put in jeopardy.

- On the other hand, when the transitional administration is a stopgap solution and the prospects for the future are unclear or are the subject of conflicting views among the local populations and the local political actors (as is the case in Kosovo), the Security Council runs the double risk of becoming divided internally and finding itself in opposition to all or some of the local actors. Indeed, while the Security Council has generally acted by consensus where Eastern Slavonia and East Timor are concerned, it remains uncertain and divided on the question of Kosovo (the Russians and the Chinese object to anything that, in their view, paves the way—without openly acknowledging this—for independence and, *a contrario*, weakens the links between Kosovo and the Federal Republic of Yugoslavia) and is heavily criticized by Kosovar Albanians (for not going as far and as fast as they would like) as well as by Kosovar Serbs (for exactly the opposite reason). Moreover, this awkward position is made worse by the strategies followed, more or less openly, by the leading members of the Council or by the other members' perceptions thereof. Under these conditions, the Security Council instead of being proactive as it should—and as the Russians, moreover, are constantly demanding—is reacting to local or international forces pulling in different directions. The policy of the transitional administration is effectively shaped by the five Western members of the Contact Group and the Special Representative of the Secretary-General, the chief of UNMIK. Absent a consensus on the final status of Kosovo and conducive conditions for changing the current status quo, the strategy of the international community consists in developing self government and setting benchmarks to the local actors so that they can demonstrate their ability to rule themselves peacefully and effectively, and to establish good relations with their regional environment. But to succeed peace-building needs stability and at least an idea of how future will look like. These elements are largely missing in Kosovo. Hence foreign investments are scarce, unemployment rate is high and criminal activities flourish. It should be the responsibility of the European

Union to devise an “exit strategy” encompassing all the scattered parts of the former Yugoslavia. In the meantime, the Security Council is a temporary manager but cannot do more.

The second problem that the transitional administration of territories poses for the Security Council relates to its position vis-à-vis other international authorities. The Security Council has the primary responsibility for the maintenance of international peace and security, but the transitional administration of territories unquestionably goes beyond even a broad conception of this. Of course, donors, international financial institutions and regional organizations are mobilized to contribute to the transitional administration and to the rebuilding of the infrastructure and the economic development of the territory, which often go hand in hand. However, it is the Security Council, which remains in charge of the undertaking and, through its resolutions, sets the objectives and the rules of the game. Some member states are questioning whether the Security Council’s responsibilities should be broadened thus; they consider that, once the phases of restoring and maintaining peace, *stricto sensu*, are over, it is the General Assembly, not the Council, that should be in charge of preparing a territory for the resumption of the normal functioning of its institutions. This criticism remains largely theoretical for, apart from the fact that the Security Council has no intention of relinquishing its current responsibilities for transitional administrations and that its own assessment confirms its claims, the General Assembly is not capable, given its current *modus operandi*, of exercising the least executive authority. Finally, some believe that the transitional administration of territories is much like the former trusteeship system and that the Trusteeship Council, which has been idle since the independence of Palau in 1994, could take up its work again. But this organ is too closely linked to the decolonization process for there to be any real possibility of revitalizing it in this context, and the transitional administration of territories is fundamentally different from trusteeship in that the management of the territory is undertaken directly by the United Nations, rather than being entrusted to a third state.

Moreover, transitional administrations are complex operations involving not only the Security Council but also many international actors and they require close coordination to ensure that everyone is working together towards the same goal. The appointment of a special representative of the Secretary-General—chief of the transitional administration with authority over all the international components—is one

way of achieving this. In this regard, the situation in East Timor seems preferable to that in Kosovo, where the Special Representative, who is the chief of UNMIK, does not have authority over the international security presence, the KFOR, which comes under NATO, although problems arising from a dual hierarchy can be overcome through personal relations. That being said, even when there is only one chief, the various components may be entrusted to organizations¹⁹⁰ whose decision-making centres, criteria for action, speeds of intervention and “institutional cultures” are very different and sometimes difficult to reconcile. In this regard lessons will have to be learned from the not entirely satisfactory experiment of the so-called “pillars” in Kosovo.

In the aftermath of military interventions in Afghanistan in 2001 and in Iraq in 2003 the question was raised of whether the UN would be entrusted with the responsibility to run these countries, at least on a temporary basis. No pattern is relevant, for all situations are specific. In the case of Afghanistan, a political and institutional framework was agreed by Afghan parties at the Bonn-Petersberg conference held under the auspices of the UN and under the leadership of the special envoy of the Secretary-General, Lakhdar Brahimi. Neither the size of the country, nor the background of traditional and strong ethnic and regional differences among its population, nor the quasi feudalistic nature of governance, were conducive to setting up a kind of international administration. The problems encountered in Kosovo would have been considerably multiplied. The Council gave the special representative of the Secretary-General the responsibility to coordinate multilateral peace-building activities and to help the Afghan interim authority assert itself.¹⁹¹ On Iraq there was a debate over the role the UN should play. Some countries were of the view that a role similar to the one played in Afghanistan could be entrusted to the UN. But the US was determined to keep full control of the situation in all areas—security, political process, and economy—and merely asked the Security Council to recognize and endorse this transfer of authority. It is not the ability of the UN to discharge such a mandate that was questioned. But the US waged that war in Iraq without the Council’s consent, prevailed, and was determined to “finish the business” alone, with a UN presence limited to humanitarian assistance.¹⁹²

POST-CONFLICT PEACE-BUILDING: WHO ORCHESTRATES IT?

A set of issues not far removed from the prevention of conflicts and the interim administration of territories concerns peace-building. The line between peacekeeping and peace-building is sometimes blurred. The United States Congress, because it considered the United Nations Mission in the Central African Republic as more of a “nation-building” operation than a “peacekeeping” operation, refused to authorize the government to pay its contribution to the Mission’s budget. Indeed, more and more peacekeeping operations involve peace-building components: training the army, the police and the judiciary; monitoring and promoting the observance of human rights; disarming, demobilizing and reintegrating former combatants. While there is a relative consensus within the Council as to the value of such components that are peripheral to security mission as such, judgements differ on operations essentially devoted to the task of providing training in police matters and to a lesser extent judicial matters.¹⁹³ While the usefulness of UNMIBH in Bosnia and Herzegovina has never been challenged, Russia and China opposed the indefinite extension, in its different transformations, of the police mission in Haiti, on the grounds that such activities should be taken over under bilateral or multilateral programmes conducted by bodies other than the Security Council.¹⁹⁴ In the case of Haiti, the matter was transferred to the General Assembly, which set up the International Civilian Support Mission in Haiti (MICAH), an operation that lasted less than a year and could not overcome the problem of financing.

The issue of financing has, in fact, increasingly become a subject of interest in the Security Council, even though the Council has no budgetary authority. The peacekeeping budget is a mandatory expenditure for which member states are responsible.¹⁹⁵ Indeed, it is normal to consider that operations intended to ensure international peace and security must not depend on unpredictable financing. This common-sense reaction does not necessarily extend to the peace-building activities integrated into peacekeeping operations. Many such activities are financed from the budget of the operation in question, but, encouraged by the United States, the trend has been to add to the mandatory budget voluntary contributions meant to supplement and alleviate it. There, too, consistency is not the norm, and strict adherence to the budget can be tempered by the interest which given permanent members of the Security Council attach to the peacekeeping operation in question.¹⁹⁶ The question is still more crucial

when an interim administration is set up in a territory, and some permanent Security Council members wonder why they must pay an additional contribution for activities that are only indirectly related to maintaining international peace and security, and would instead be much more properly financed by bilateral or multilateral donors.

The thinking that has been going on for some time on exit strategies provides an opportunity to raise the question whether the insistence on continuity between a peacekeeping operation conducted by the Security Council, with a secretariat and budget covered by assessed contributions, and a peace-building phase that is more diffuse and uncertain, with no institution to guide it and no assured financing, does not in fact pose risks to a still fragile country just emerging from an armed conflict. One solution to the problem consists, we have seen, in integrating some precursor elements of peace-building into the mandate of a peacekeeping operation as a way of somehow priming the pump and mobilizing the institutions and the sources of funding that are likely to take over.¹⁹⁷ Some attempts have been made to involve the international financial institutions in Security Council meetings devoted to situations that have as much, if not more, to do with peace-building than with peacekeeping.¹⁹⁸

More generally, it is important to mobilize and raise the awareness of all the actors on whom responsibility falls most naturally for peace-building activities. Yet, in an odd example of faulty reasoning, a certain number of member states refuse to give the Security Council the right to play any role whatsoever in this respect. Thanks to such an attitude, it has been impossible, up to now, to organize a joint Security Council-Economic and Social Council meeting where they can together consider these problems of coordination among the main organs of the United Nations. The problem, however, still stands. In a deserving though still modest effort ECOSOC has set up an ad hoc group on peace-building¹⁹⁹ aimed at filling this gap and providing the sort of coordination and leadership that have lacked so far. The Security Council therefore has a tendency to add peace-building—or at least some of its components—to the activities it conducts, not so much from institutional imperialism as because of the non-existence and impotence of the other bodies. The absence of a satisfactory solution is, in the end, prejudicial to the states with the fewest resources, and increases the gap between those who are able to count on the support of a strong and rich regional organization (as the Balkans can with the European Union) and the others who receive much less solicitous attention (in Africa in

particular). There are already enough examples of countries—from Liberia to the Central African Republic to Haiti—where the investment made by the Security Council in crisis management and peacekeeping is put in jeopardy by the lack of a sustained, coordinated, and substantial peace-building endeavour.

THE INTERNATIONAL CRIMINAL TRIBUNALS: THE DELICATE BALANCE BETWEEN JUSTICE AND PEACE

The International Criminal Tribunals are an innovation the implications of which are, in some respects, beginning to escape oversight by the Security Council even though it was the Council that gave birth to them.

In 1993 and 1994, respectively, the Security Council created the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) in the context of the serious violations of international humanitarian law, including war crimes, crimes against humanity and crimes of genocide, committed in those two countries. In creating the tribunals, the Council had a twofold objective directed partly towards the past—to put an end to impunity for crimes already committed—and partly towards the future—to deter potential perpetrators of crimes. That initiative was based on the idea that the most serious crimes are threats to international peace and security as they exacerbate inter-ethnic or inter-state tensions and contribute to the destabilization of local or regional situations. One can also argue that the Security Council chose this path because it was unable or unwilling to address the root causes of these two conflicts and to take the necessary measures to put an end to them.

The very existence and the operation of these two institutions raise essentially different problems.

Their operation has proved, in both cases, to be ponderous, slow, costly and, particularly in the case of the ICTR, of limited effectiveness. This was why, when the question of establishing special tribunals to try persons who had been guilty of war crimes, crimes against humanity and other serious violations of international humanitarian law during a conflict came up again, the Council was unwilling to create a new institution on the model

of the ICTR or the ICTY. The Secretary-General's initial proposal for Sierra Leone²⁰⁰ did, however, include many of the features of those tribunals but the Security Council now tends to prefer national tribunals with international assistance and voluntary financing.²⁰¹ Finally, the International Criminal Court (ICC), which entered into force on 1 July 2002, now obviates the need for ad hoc institutions since it has permanent jurisdiction over genocide, war crimes and crimes against humanity.

The problem raised by the very existence of the international criminal tribunals (later of the ICC) bears on the delicate balance between justice and national reconciliation. Certain people consider that long-term national reconciliation cannot be achieved unless justice is done. Others are of the opinion that, in certain circumstances and if the populations involved so decide, reconciliation should take precedence over justice. Indeed, certain peace agreements can only be secured at the cost of an amnesty. Such was the case with the Lomé Agreement signed between the Sierra Leonean Government and the RUF at Lomé on 7 July 1999.²⁰² But because of the seriousness of the atrocities committed by the RUF, the Special Representative of the Secretary-General added his signature, as a witness to this Agreement, to a statement to the effect that it was the understanding of the United Nations that the amnesty provisions of the Agreement should not apply to international crimes of genocide, crimes against humanity, war crimes and other serious violations of international humanitarian law. The Security Council endorsed that position in its resolution 1315 (2000) which called for the establishment of a special court to try such crimes on the grounds that efforts to end the situation of impunity would contribute to the reconciliation process.

The same applies to the disarmament, demobilization and reintegration of former combatants, a necessary process that may be adversely affected if the efforts to end impunity are overly systematic and wide-ranging. The ex-combatants of the RUF, who are in many cases adolescents who were seized and forced to commit atrocities, have thus expressed the fear that the rehabilitation camps are just a step on the way to prison.

It is necessary to strike a balance between bringing to justice—nationally, if the nation has the material capacity and the necessary independence, or with international assistance—those chiefly responsible for the most serious violations of human rights and international

humanitarian law, and resorting to truth and reconciliation commission-type arrangements—such as that used in South Africa after the end of apartheid—for the vast majority of combatants. The example of Rwanda where more than 120,000 people have been rotting in jail awaiting trial for over seven years shows that justice which moves too slowly and lacks the resources to fulfil its aspirations may be the greatest enemy of national reconciliation and therefore of a lasting settlement to a civil war.

Another danger is that justice may be used for political ends. Criminalizing one's adversary is a way of continuing the conflict—and of trying to bring it to an end—by other means. A case in point was the indictment of Slobodan Milosevic by the Prosecutor of the ICTY while NATO's military action against the Federal Republic of Yugoslavia was at its height. The request by the Luanda Government to have Jonas Savimbi tried in an international court was seen as a means of adding to the military pressure and the sanctions against UNITA. In the same vein, the indictment of Charles Taylor by the prosecutor of the Sierra Leone Special Tribunal—while peace negotiations on Liberia were being held—raised the concern that the peace process could derail since the president of Liberia could see no incentives to cooperate. For the Security Council, such initiatives raise the question of when does a party to a conflict cease to be a partner in a peace process and become an adversary to be attacked with all available means.

With the entry into force of the ICC, this will become an ongoing issue since the Court will be able to assume jurisdiction or remove a case from national jurisdiction if it considers that the sentences handed down are inadequate and that an amnesty of the type envisaged in the Lomé Agreement would, for the states that have acceded to the Statute of the Court, be an unacceptable unilateral act in that it would side-step the Court's competence. The only way to strike a balance between international justice and national reconciliation, in other words between justice and peace, will be through practice and judicial precedents.

The question is now open as to what relationship will be established between the ICC and the Security Council. The Rome Statute organizes a relationship between both institutions in two opposite directions: the Council can refer a matter to the Court or ask it not to intervene in a matter. Under Article 13(b) of the Rome Statute the Security Council may refer a situation to the Court to investigate situations posing a threat to

international peace and security. *Mutatis mutandis* this is the same rationale that led the Council to establishing ad hoc tribunals. On the contrary under Article 16 the Council may ask the Court that no investigation or prosecution be commenced or proceeded with for a renewable period of 12 months. The purpose of this provision is to make sure that the Court's action does not risk interfering in a negative way with a crisis or conflict management by the Council. It illustrates the problem—referred to above—of the delicate relationship between peace and justice.

It is too early to predict what use will be made in the long term of these provisions and how they will impact on the respective competences of the Council and the Court. Nevertheless one can assume that this relationship may be not as smooth as hoped by the supporters of the Court. As soon as twelve days after the entry into force of the Statute of the ICC, the Council, on the initiative of the US, passed a resolution that, on the basis of Article 16 of that Statute, “requests that the ICC, if a case arises involving current or former officials or personnel from a contributing state not a party to the Rome Statute over acts or omissions relating to UN established or authorized operations, shall for twelve months not commence or proceed with investigation or prosecution of any such case, unless the Council decides otherwise”, and “expresses its intention to renew the request for a further twelve months.”²⁰³ This resolution is not in contradiction with the letter of Article 16, which is vaguely formulated, but is not in keeping with its spirit. Actually its purported intent is to give the Security Council free rein for a limited period of time to deal with a specific matter without untimely and counterproductive interference from the ICC. Its purpose is not to protect an entire category of personnel from action by the Court under any circumstances and for a quasi-indefinitely renewable period of time. The US has become a determined opponent to the Court on the ground—among many—that, given its worldwide and exceptional responsibilities, politically motivated investigations and prosecutions would be proceeded with against its personnel and officials. So the Council has been very accommodating to US concerns.²⁰⁴ But it is highly questionable that the Court would consider itself bound by this resolution that exceeds the scope of the Rome Statute.

This resolution and its likely effect are a bad omen for the future relationship between the Council and the Court. Given the fact that only a minority of Council members are parties to the Rome Statute, hence committed to defend its integrity, and that two permanent members (US

and China) are not signatories, it is unlikely that the Council will easily cooperate with the Court either to refer cases to it or to assist it in its proceedings, in particular in ensuring state cooperation with the Court.

Lastly, the ongoing discussions on the definition of the crime of aggression illustrate another aspect of the delicate balance between the Security Council, as the organ with principal responsibility for the maintenance of international peace and security, and the future ICC. On the one hand, the permanent members want the Security Council, and thus the members themselves by virtue of their veto, to have sole competence to decide whether a crime of aggression has occurred, while on the other, the countries of the South consider, for precisely converse reasons, that the matter is for the Court alone to determine. Even though the area of responsibility is not the same for the two institutions—states or political-military movements in the case of the Council, individuals in the case of the Court—the question is central to the competence of the Security Council.

DISARMAMENT AND MONITORING OF WEAPONS OF MASS DESTRUCTION

In its Statement of 31 January 1992 the Security Council recognized that “the proliferation of all weapons of mass destruction constitutes a threat to international peace and security” and its members “committed themselves to working to prevent the spread of technology related to the research for or production of such weapons and to take appropriate action to that end.” On nuclear proliferation, the Council stated that it would “take appropriate measures in the case of any violations notified to them by the IAEA.”

But despite this general commitment, over the last 12 years the Security Council has been little involved in actual questions of disarmament and monitoring of WMD.

In the aftermath of operation “Desert Storm” that forced Iraq to withdraw from Kuwait, the Council devised a highly innovative set of measures aimed at ridding a country of all its WMD and ballistic missiles.²⁰⁵ It did so because of Iraq’s record of aggressive behaviour and actual use of such weapons against its neighbours and its own population. To deal with

chemical and biological weapons and missiles, the Council established a subsidiary body—UNSCOM—entrusted with the task of verifying Iraq's declarations, destroying or supervising the destruction of the prohibited items, and establishing and running an ongoing monitoring and verification system (OMV). The IAEA was given the same mandate for nuclear weapons and programmes. Despite all the difficulties, obstacles and crises with which these two bodies were confronted between 1991 and 1998, the panel established in 1999 to assess the situation (and chaired by the Brazilian Ambassador, Celso Amorim) recognized that "although important elements still (had) to be resolved, the bulk of Iraq's proscribed weapons programmes (had) been eliminated."²⁰⁶ The UN inspection and monitoring system was suspended after operation "Desert Fox" was launched in December 1998 by the US and the UK and resumed only in November 2002 after Baghdad, under strong political and military pressure from the US, accepted the return of the inspectors.²⁰⁷ In March 2003 inspections were again and definitely stopped when the US decided to resort to force to change the Iraqi regime (see below).

The final assessment that can be made of this first experience in the field of disarmament and monitoring of WMD is not as negative as those who want to justify the use of force against Iraq on this ground alone contend. A critical assessment has to be made in order to draw lessons if the concept of internationally supervised monitoring is to be preserved.

- The concept of WMD is falsely homogeneous. The technologies, *modus operandi*, equipment, and industrial infrastructures involved comprise significant differences. It is much easier to identify, track and monitor nuclear programmes and installations than chemical and biological programmes. The IAEA reached the conclusion in 1998 that it had a coherent picture of Iraq's nuclear programme and was ready "to dedicate its resources to implement the ongoing monitoring and verification system." UNSCOM then UNMOVIC were not able to give similar assurances in the chemical and biological fields. They could neither contend that Iraq still detained chemical and biological weapons and programmes, nor confirm that Iraq had been completely rid of such weapons. Because of unilateral destructions by Iraq that were not supervised by UNSCOM and loopholes in evidence and documentation handed over to the inspectors, a small portion of weapons and material remained unaccounted for.

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- Hence it is almost impossible to have a 100% assurance that a country has disposed of all its WMD programmes and intellectual and industrial capabilities in this area. Therefore ongoing and reliable monitoring is absolutely necessary to complete and follow up on the disarmament tasks. The “Amorim Panel” came to the conclusion that “although disarmament and monitoring address different dimensions of the broader problematique of disarmament/reacquisition of proscribed weapons, both can be implemented through the use of the same—or similar—tools (...) and the OMV is not incompatible with the continuing search for satisfactory resolution of outstanding elements from proscribed weapons programmes.”²⁰⁸ In other words, the disarmament process reaches “points of impasse” that need to be overcome. That is the purpose of the OMV system. From this perspective, resolution 1284 adopted in December 1999 was a wobbly compromise: on the one hand it recognised the value of OMV, which needed to be reinforced; on the other it insisted that disarmament tasks should be completed.
 - An efficient and credible inspection regime must rely not only on the active and genuine cooperation of the country concerned but also on a professional, intrusive and rigorous mechanism. In February-March 2003 Council members had a vivid discussion on this matter: whereas the US and the UK had insisted in November 2002 that the inspection regime should be considerably strengthened (that was one of the purposes of resolution 1441), they contended a few months later that the ways and means by which inspections are conducted do not matter; only the strategic decision of the Iraqi regime to disarm does. In fact both are necessary: inspectors should not play “hide and seek” as was too often the case in Iraq; but it would be naive to expect a non-democratic regime, forced to give up its weaponry to do so spontaneously and enthusiastically.
 - The state to be disarmed must comply, but the Council must also offer a credible mixture of carrots and sticks. In the Iraqi case, the Council often balked at recognizing progress (e.g. when it refused in 1998 to “close” the nuclear file and to have the IAEA transfer all its resources to the OMV) and, notwithstanding—or because of—Baghdad’s procrastination and deceit, gave Iraq few incentives to cooperate. Again resolution 1284 was an attempt in this direction as it offered the suspension of sanctions as a “reward” for Iraq’s cooperation with the

inspectors in the process of completing the disarmament tasks. But the mistrust between Iraq and the Council as well as Baghdad's failure to seize that opportunity explain why this resolution was not implemented.

- Lastly it is of paramount importance that the Council remains united on its original and common objectives. Disarming Iraq should have been the sole goal pursued by the Council since 1991, notwithstanding differences to be resolved on the best ways and means to achieve it. However from 1997-1998, the US set other varying objectives: regime containment ("to keep Saddam in his box"), then regime change (to liberate Iraq). Consequently, divergences between Council members widened and the Council's policy became blurred.

The second way in which the Council deals with WMD consists of measures (political pressure, sanctions, authorization to use force) taken against states that renege on their commitments—as has been twice the case with North Korea found to be in violation of its obligations under the nuclear Non-proliferation Treaty (NPT)²⁰⁹—or whose behaviour with regard to WMD may constitute a threat to international peace and security—as was the case with India's and Pakistan's nuclear tests in 1998. In 1993 the Council called upon North Korea "to honour its non-proliferation obligations under the TNP and comply with its safeguards agreement with the IAEA."²¹⁰ It did not go beyond this exhortation, which was a first step in the scale of demands that can be expressed by the Council. Although it stood ready "to consider further action if necessary", the Council relied on member states to secure the implementation of its resolution. In fact, after intense North Korean/US negotiations, the Council welcomed the agreement reached by North Korea and the US, which included the North Korean "decision to suspend the effectuation of its withdrawal from the NPT", and North Korea's consent to inspections activities by the IAEA. But the Council saw itself as a kind of ultimate guarantor whose further action might be necessary "in order to achieve full implementation of the IAEA-DPRK²¹¹ safeguards agreement".²¹² Ten years later a new crisis arose: on 10 January 2003 North Korea notified its decision to withdraw from the NPT. The IAEA conveyed to the Security Council that North Korea was still in breach of its IAEA safeguards agreement and that the Agency was unable to verify the non-diversion of nuclear material in North Korea. The United States proposed that the

Security Council adopt a presidential statement condemning North Korea's decisions and urging it to rescind them.²¹³ After several weeks of consultations within the P5 and the holding of a tripartite meeting (US, North Korea, China) that produced no results, the Council remained unable to agree on any substantial pronouncement because of China's (and to a lesser degree Russia's) strong preference, at this stage, for crisis management within an ad hoc framework—as was the case ten years earlier. China feared that the Council's involvement would be counterproductive and stiffen North Korea's stance. This process of ad hoc multilateral talks has continued but it was still unclear in early fall 2003 for how long a possible action by the Security Council would still be put on hold.

At the same time the question arose as to if and when the case of Iran—its possible non-compliance with the safeguards agreement—would be submitted to the Council. Some countries yearned to do it quickly while other wanted to let the IAEA exhaust all its possibilities.

These latest developments illustrate the dilemma that the Council faces:

- On the one hand the Council should be able to play its role with regard to the violation of non-proliferation regimes, which constitutes a threat to international peace and security.²¹⁴ Attempts to find negotiated solutions among the most interested countries should not prevent the Council from setting out the objectives of the international community and its demands to the rogue state. Such an approach offers an opportunity for collective management of a problem that entails various aspects—from proliferation to regional tensions—as well as the best chance that any enforcement actions would be taken multilaterally.
- On the other hand, this Security Council's responsibility could be overturned at some point by decisions taken unilaterally. Crisis management by the Security Council in such proliferation crises is not only legitimate and necessary, but also it requires resolve and steadfastness at all stages. Otherwise one or several states might want to enforce the Council's decisions without its explicit mandate to do so—as was the case for Iraq. That is perhaps one of the reasons why China resisted the adoption by the Council of the draft presidential

statement prepared by the US. It may not have wanted to prepare the legal and political ground for US pre-emptive action against North Korean nuclear facilities.

Beyond the handling of specific cases the question arises as to whether the Security Council could translate into political decisions of a broader nature the general commitment made in its Statement of 31 January 1992. Several—and complementary—avenues could be explored. First the Council could devise a more coherent and pro-active approach of the non-proliferation threat. As was done after the 11 September attacks in the field of counter-terrorism, a comprehensive resolution could call on member states to adhere to all relevant international instruments and to strengthen their capacities—internally and through international cooperation—to prevent and combat the proliferation of WMD. The Council could also set up a “counter-proliferation committee” tasked to examine the reports presented by all member states, serve as an interface for the development of the international cooperation, and alert the Council on worrying facts that constitute—or may constitute—a threat to international peace and security. The Council could also preserve the expertise of UNMOVIC—in particular in the ballistic and biological fields where there is no such organization like the IAEA—and, when a specific situation warrants it, send inspectors to inquire, verify or monitor, and report to the Council.

COUNTER-TERRORISM: WHAT AMBITIONS FOR THE SECURITY COUNCIL?

When a state has been involved either as sponsor²¹⁵ or as accomplice,²¹⁶ the Council has adopted sanctions against it.²¹⁷ But the frightening emergence of a worldwide terrorist network such as Al-Qaeda and its ability to launch anywhere and at any time attacks of an unprecedented nature and scale, using all possible kinds of *modus operandi*, have challenged the Council.

The Council has been swift and innovative in its responses:

- In resolution 1368, adopted the day after 11 September 2001, the Council qualified these attacks and any act of international terrorism as threats to international peace and security, whereas in the past it

had made this qualification on a case-by-case basis. It has recognized that the right of self-defence can be invoked to respond to a terrorist attack by military means. This served in advance as a blank authorization by the Council to Operation “Enduring Freedom” launched by the US and the UK on 7 October and formally notified to the Council the same day.²¹⁸ In calling for measures not only against the perpetrators, organizers and sponsors of acts of international terrorism, but also against those who aid, support or harbour them, the Council had recognised the validity of an action not only against Osama Bin Laden and Al-Qaeda, strongly suspected of being the organizers and sponsors of the attacks on New York and Washington, but also against the Taliban who were accused of harbouring and supporting that criminal organization. The question arises now of the future use of the provisions included in this resolution to justify reprisals or military action in response to further acts of international terrorism. The US hinted at that possibility in its letter of 7 October.²¹⁹ Given that this resolution broadens the scope of application of the right to self-defence without specifying its conditions, one could argue that, as customary law provides for in similar circumstances, the principles of necessity and proportionality should be respected. However this might trigger a sensitive debate within the Council, in particular if it is connected to the concept of pre-emptive action (see conclusion below).

- In its resolution 1373 (2001), adopted on 28 September 2001, the Council requires all member states to take a series of measures to prevent and combat terrorism and to report on how they implement those measures. It decides to examine these reports and, on that basis, to ask them to improve their legislation and administrative resources. Thirdly it gathers information on offers of and requests for cooperation and facilitates the mobilization and involvement of all actors concerned—states, international financial institutions, and regional organizations. It is worth stressing that in resolution 1373 the Council has transformed (by virtue of Article 25 of the Charter)²²⁰ into universal obligations several provisions contained in the International Convention for the Suppression of the Financing of Terrorism, which was concluded in 1999 and is open for accession. For the past 50 years, the Council has taken mandatory measures to deal with individual crises and conflicts or, more recently, has adopted texts of general scope but of a non-binding nature. For the first time on such a

scale, it combines the two approaches and, in an unprecedented innovation, “short circuits” an international convention that had not yet entered into force. The process of transparency and mobilization established by resolution 1373 is useful, but does not concern operational measures implemented through other channels (bilateral, G8, regional organizations). But the question might arise as to what the Council would do if it were found that some states are not able or willing to implement resolution 1373 completely and seriously, or what would happen if a member state would avail itself of this resolution and argue that, in the absence of decisive action by the Council, it should resort to force against a reluctant state to secure compliance with that resolution. The fight against terrorism was invoked by the US to justify its military intervention in Iraq, but the case is not entirely significant since very little compelling evidence has been produced to substantiate this assertion.

- In its resolution 1390 (2002), the Council imposed sanctions on members of Al-Qaeda. For the first time this sanctions regime is not applied to a specific territory. Its objective is not to get people change their behaviour, but to prevent them from carrying out criminal activities (through travel restrictions, freezing of assets and economic resources, arms embargoes). It is an ambitious though relatively circumscribed regime. Its expansion beyond the Al-Qaeda network—i.e., the establishment of a worldwide list of terrorists—would certainly raise huge political and practical problems, although pressure might be exerted to move in that direction.

THE USE OF FORCE: A NECESSARY INSTRUMENT BUT FOR WHAT PURPOSE?

The use of force is one of the instruments that the Charter gave to the Council to discharge its mandate.²²¹ During the Cold War there were very few instances of actual use of this tool. The situation changed in 1990 when the Security Council authorized, in its resolution 678, an ad hoc coalition to use all necessary means to secure Kuwait’s liberation from Iraq.²²²

Since then Article 42 of the Charter has been used in different ways.

In some instances, the Security Council has authorized multinational forces—set up by regional organizations or ad hoc coalitions—to use force for different purposes ranging from the complete restoration of order and security, as in Haiti in 1994²²³ or East Timor in 1999,²²⁴ to the creation of a secure environment for humanitarian purposes (see above). The Council has also authorized a certain degree of force in the context of peacekeeping operations conducted by multinational forces or by the United Nations. The first instance was UNPROFOR²²⁵ in Croatia, which was allowed to use force to ensure the safety and freedom of movement of its personnel.²²⁶ A limited reference was made to chapter VII of the UN Charter in order to make clear that the Council was then acting in the context of the actions provided for in that Chapter—namely article 42. The Council progressively broadened the scope of these limited authorizations, from the safety and freedom of movement of the mission in the discharge of its mandate,²²⁷ to the protection of civilians under imminent threat,²²⁸ to the fulfilment of the mandate.²²⁹ It may be a paradox to authorize the use of force in a peacekeeping context, but the evolution of the environment in which peacekeeping operations are deployed (instability, parties not living up to their commitments, local insurgencies or unrest, attempts to instrumentalize peacekeeping forces or to involve them in the disputes, etc.) explain it easily. Then the trauma generated by the inability of peacekeeping forces—in particular in Bosnia and in Rwanda—not only to discharge their mandates under unstable circumstances, but also to ensure a minimum degree of protection to civilians, explain this tendency to give more robust rules of engagement to operations whose core-mandate is still of a peacekeeping nature. This mixture of peacekeeping mandate and enforcement elements has raised political and practical problems and triggered a debate between those who prefer to stick to the so-called “Chapter VI” approach and those who argue that rules have to be adapted to operational and moral necessities. When UNAMSIL or MONUC mandates were being discussed, there was a vivid debate about the meaning and implications of the Council’s decisions on these missions’ ability to discharge their mandate effectively and cope with unexpected challenges. The outcomes of these debates were rarely a clear-cut choice, but rather a compromise between high-minded concerns and tough realities.

From a full-fledged peacemaking operation, as in Kuwait, to a robust peacekeeping operation containing elements of enforcement, there are a variety of possible mandates. In most cases the Security Council has been

able to grant the authorization required by the circumstances. Yet, in 1999, in the context of the Kosovo crisis, the Council did not explicitly authorize the operation launched by NATO against the Federal Republic of Yugoslavia. The Council made firm demands on the FRY and supported a political process (the Rambouillet Conference), but fell short of concluding that force was the only remaining means at the disposal of the international community to solve the problem and prevent a humanitarian disaster. This was due to the threat of a very likely Russian veto on a resolution that would have authorized the use of force. Interestingly, the Council rejected, by twelve votes against three, the draft resolution introduced by Russia on 26 March 1999 that demanded an immediate halt to NATO's action. But a few months later, the Council succeeded in reaching an agreement on authorizing the use of force to put an end to mass violations of human rights and international humanitarian law in East Timor, in the immediate aftermath of the referendum on independence. These two dramatic events, notwithstanding the different outcomes of the Council's deliberations, illustrated a remarkable evolution of its criteria of action, in particular vis-à-vis the conditions in which force may be used. It triggered a vivid—and not yet concluded—debate at the United Nations (that was the dominant topic of interventions at the General Assembly in Fall 1999) and in academic circles.²³⁰ But it seems that the doctrine has gone faster and farther than the Council—and member states. In other situations that would have justified the use of military force to put an end to mass and unabated violations of human rights and international humanitarian law—as in the Eastern part of the Democratic Republic of the Congo since 1996—no coalition volunteered to do the job and the Council was not required to authorize any enforcement action. Yet the question remains of which steps could be taken to improve the Council's ability to authorize the use of force in such exceptional, but justified circumstances. In the context of Russia's likely veto on Kosovo and building on the former French foreign minister Hubert Védrine's proposal, the Sahnoun-Evans Commission recommended that "the five permanent members of the Council should agree not to apply their veto power, in matters where their vital interests are not involved, to obstruct the passage of resolutions authorizing military intervention for human protection purposes for which there is otherwise majority support." Regrettably this idea has not yet received a favourable response from three of the P5.

In the Iraqi case, the use of force has been a legitimate tool to secure compliance, but there have been strong differences among Council

members as to when and how force might actually be resorted to. Resolution 687 that set out Iraq's obligations in different fields stipulates that Iraq's acceptance of these obligations formed the conditions for a formal cease-fire. The US and the UK have thus always contended that a material breach of these obligations revived the authorization given by resolution 678 to the coalition to uphold international law. The three other permanent members have held the view that, in accordance with paragraph 34 of resolution 687,²³¹ it is for the Council to take the decision to resort to force. This substantial divergence remained and grew wider over the period from 1998 to 2003. In December 1998 the US and the UK launched operation "Desert Fox" without clear Council authorization, but justified by repeated instances of Iraq's non compliance with its obligations; in March 2003 the same powers launched operation "Freedom for Iraq" on the basis of resolutions 678, 687 and 1441 and the determination by them that Iraq had not complied, and although they had not succeeded to have the Council pass a new resolution the sole purpose of which was to give a kind of green light to the use of force.

The Security Council has demonstrated its ability to use force—or more precisely to authorize the use of force by member states for the purposes directed by it. When the process has not gone through smoothly—as in the cases of Iraq or Kosovo—it is because there has been a difference between the goals and the methods supported by the vast majority of the Council on one hand and by one (or two) permanent member on the other.

Given the number of new threats that have arisen and/or grown over the last decade, enforcement action is more and more necessary. In most cases, the Security Council provides the authority and legitimacy but often relies on strong military powers to do the job. The US sees itself not only as the sole credible enforcer of the most serious Council decisions, but also as the ultimate guarantor of international peace and security (e.g. its decisive role in countering Kuwait's invasion, ethnic cleansing in the Balkans, mass terrorist attacks, proliferation of WMD in Iraq or North Korea). From this point of view an enforcer like this cannot be constrained like other states, in particular the "rogue states" that do not play by international rules. It is as if a police car chasing gangsters trying to escape had to stop at traffic lights while the gangsters did not. Hence this reluctance to be entangled in norms, commitments, constraints (see for example the rationale behind the opposition to the International Criminal Court) that would undermine the

US ability as enforcer while not seriously deterring, let alone punishing, those responsible for massive and unabated violations of international law and rules. Law should be backed by force when and where necessary. In this regard the Council has made an extensive and flexible use of the competence entrusted to it by the Charter. This evolution has certainly not exhausted all its possibilities. Therefore there is an urgent need for the Council and its member states—in particular the P5—to reflect on the question of the use of force so that it can preserve its role as the centre piece of a collective security system.

**The Security Council in the Era of US Hegemony:
Conditions for Relevance**

The end of the Cold War enabled the Security Council to play, for the first time, the role assigned to it by the Charter of the United Nations. Indeed, the 1990s saw an unprecedented increase in interventions by the Security Council to try to resolve crises and to put an end to conflicts. The results were mixed. But the experience accumulated and the lessons drawn from it have enabled the Security Council to incorporate new criteria of action—human rights, protection of civilians, democracy and power sharing, fight against impunity—to improve its *modus operandi*—particularly with regard to sanctions, peacekeeping operations, and the use of force—and to take into account dimensions that had previously been underexplored—conflict prevention, peace-building, the background and environment of conflicts.

Paradoxically, at a time when the Security Council is becoming more capable, its central role in peacemaking, peacekeeping and international security is being challenged, not, admittedly, in legal terms, but by the realities manifest on the international stage.

Regional organizations are becoming stronger throughout the world although the pace and extent of the change vary from region to region. They wish to have primary responsibility for conflict management in their own space even though not all of them yet have resources equal to their ambitions, and they may be tempted to relegate the Security Council to a role of auxiliary or safety net.

The growing number of actors involved in internal conflicts and the increasing complexity of their interrelationships, the proliferation of criminal and terrorist networks and trafficking of all kinds, the access to new technologies and the emergence of new types of threat make crisis management and the use of its traditional tools more complex and difficult.

Most importantly, the United States has now acquired an unprecedented and unrivalled pre-eminence in the military, political, scientific, technological and economic fields. It has the ability to defend and promote its interests when, where and how it wants. Since the end of the Cold War it has prevailed in all the military actions it has undertaken.²³²

The new national security strategy issued in 2002 lays out the principles, objectives, and means to cope with all actual and potential

threats to US security. In particular, it contends that, given the characteristics of international terrorism and proliferation of WMD, deterrence and containment are no longer sufficient. Pre-emptive action may be required. This new and bold stance challenges the UN Charter's principles on which the Security Council's action rests. (In this context it is worth recalling that in 1981 the Council unanimously condemned in its resolution 487 the pre-emptive strike by Israel on the Osirak nuclear reactor in Iraq.) No genuine application of this concept has been enacted yet. The war in Afghanistan was not pre-emptive and was waged with the Council's assent; the war in Iraq had multiple and changing motivations—toppling a dictatorial regime and establishing democracy in Iraq, preventing the possible combination (poorly substantiated in this case) between terrorism and WMD, reshaping the whole Middle East, protecting Israel's long-term security interests, securing access to oil resources, etc.—and these goals were not endorsed by the Council. But in both cases the Security Council has been involved and seen as a source of legitimacy—hence, on Iraq, resolution 1441, then the desperate efforts to obtain the “second resolution”—and the size and solidity of coalitions assembled by the US seem so far to depend directly on it. A pre-emptive action by the US without any prior involvement of the Security Council would certainly represent a major tectonic change in world politics. On the contrary if the Security Council is requested to decide on potential threats to international peace and security for the sole purpose of providing some kind of legal “fig leaf” to military action that the US would then unilaterally decide and conduct, Council members might second-guess and hesitate.

The Security Council must therefore continue adapting to an international environment and to threats and conflicts that are constantly evolving. It is a political organ that tries to reconcile the principles of universal democracy inscribed in the UN Charter with the “realpolitik” of the major powers. US hegemony has opened a new chapter. It is a formidable challenge to the Council's *raison d'être*. Since the end of the Cold War the Council has proven its ability to tackle new problems and, to this end, to be innovative in the definition of its criteria of action, and the design of its instruments. The US vision and practice of its security interests have and will continue to have a strong bearing on how the Council works in the future. Again a new balance will have to be struck between the founding principles and “realpolitik” for the sake of a collective security system that is more needed than ever.

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- ¹ UMOGIP in Kashmir since 1948, United Nations Iraq-Kuwait Observation Mission (UNIKOM) on the Iraq/Kuwait border since 1991, United Nations Disengagement Force (UNDOF) on the Golan since 1974, United Nations Interim Force in Lebanon (UNIFIL) since 1978, United Nations Peacekeeping Force in Cyprus (UNFICYP) since 1964.
- ² Iraq/Kuwait with Security Council resolution 687 (1991); the Golan, West Bank and Gaza with resolutions 242 (1967) and 338 (1973); Lebanon with resolution 425 (1978), which Israel did not implement until June 2000.
- ³ Revolutionary United Front.
- ⁴ In 1970, resolution 286 (1970) on the hijacking of aircraft.
- ⁵ In 1999 it was recognized that, thanks to the work done by the United Nations Special Commission (UNSCOM) and the International Atomic Energy Agency (IAEA) since 1991, the bulk of Iraq's WMD had been uncovered.
- ⁶ China, France, the Soviet Union (succeeded in December 1991 by the Russian Federation), the United Kingdom and the United States.
- ⁷ Article 24 of the Charter: "In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf."
- ⁸ This group includes all the Western European countries, which were not formerly communist during the Cold War, and other Western states such as Canada, Australia and New Zealand (Israel has been a temporary member since 2000). One of the two WEOG seats may be held by one of the three non-European states, but for the most part, it is occupied by a European state.
- ⁹ This group consists of the former communist Central and Eastern European states and the newly independent states of the former USSR.
- ¹⁰ The members of the "coffee club" oppose an increase in the number of permanent members.
- ¹¹ Brazil, Germany, India and Japan. Some states, including from the European region, support the replacement of the seats held by France and the United Kingdom with a single European seat, in the interest of strengthening the common foreign and security policy of the European Union as a united player on the international stage.
- ¹² Except for China, when the nationalist Taipei regime was replaced with the communist regime of Peking in 1971.

- ¹³ Recent examples are several vetoes—or threat of veto—cast by the United States on the Israeli-Palestinian conflict in 2000, 2001 and 2002; the veto cast by China with respect to Taiwan in 1999; and the threat of a veto by France and Russia with respect to Iraq in 2003.
- ¹⁴ See statements by British officials on the “unreasonable” use of the veto by France.
- ¹⁵ Contrary to the belief held by many member states and almost all those who join the Security Council as non-permanent members, the five permanent members systematically coordinate their action on only a few topics: Iraq, Cyprus and, since 11 September 2001, terrorism and Afghanistan; which does not exclude more informal exchanges of views, where no decisions are taken, and bilateral cooperation between permanent members on various subjects. At the political level, the Ministers for Foreign Affairs of the five permanent members meet once a year with the Secretary-General during the opening of the United Nations General Assembly. The five permanent members met for the first time at the level of heads of state or government in September 2000 alongside the Millennium Assembly.
- ¹⁶ The “group of friends”, on a given geographic question, consists of particularly interested Security Council members, but also other states, either from the region, or donors, or major troop contributors to peacekeeping operations in the country concerned. These more or less open groups allow for the exchange of information, and discussion of policy to be pursued, fine-tuning of diplomatic approaches and the preparation of texts for adoption by the Security Council on the topic in question.
- ¹⁷ Generally known as “the Quint”.
- ¹⁸ One recent exception was the resolution on the situation of refugees from Kosovo (resolution 1239 (1999) adopted on 14 May 1999) at the initiative of some Muslim countries (Bahrain, Egypt, the Gambia, Iran, Jordan, Kuwait, Malaysia, Morocco, Pakistan, Qatar, Saudi Arabia, Senegal, Turkey, United Arab Emirates and Yemen). However, the Western Contact Group managed to postpone the presentation of and voting on this text to a time they deemed more appropriate.
- ¹⁹ This was especially true in the case of resolution 1244 (1999) on the situation relating to Kosovo, which placed this region under the administration of the United Nations, following the North Atlantic Treaty Organization’s intervention against the Former Republic of Yugoslavia.

- 20 It should be noted that, when Ukraine then Bulgaria were a member
of the Council (respectively in 2000/2001 and 2002/2003), they
belonged to the Group of friends of the Secretary-General on Georgia,
but their participation was limited to the meetings held in New York.
- 21 Resolutions 1284 (1999), 1382 (2001) and 1441 (2002) were
negotiated among the five permanent members.
- 22 This “group of friends” includes Belgium, the three African members of
the Security Council and troop-contributing countries.
- 23 Inter-African Mission to Monitor the Implementation of the Bangui
Agreements, a multinational force composed of African contingents,
logistically and financially supported by France, which was deployed
from January 1997 to April 1998.
- 24 United Nations Mission in the Central African Republic, which took
over from MISAB in April 1998.
- 25 Apart from France, the group includes the United States, troop-
contributing countries and donors.
- 26 Even though, technically, sanctions against Liberia resulted from the
report of a panel of experts on Sierra Leone, the United States and the
United Kingdom largely inspired that report, they later promoted strict
sanctions against the regime of President Taylor.
- 27 It had to convince the United States, which did not much like that idea,
mainly for financial reasons. Furthermore, the United States Senate did
not authorize payment of its contribution to the budget for that
operation.
- 28 Civil Defence Force, allied to the Government of President Kabah.
- 29 The United Kingdom had to negotiate in October 1999 with the
United States that wished to maintain the size of that operation within
more modest limits and, in vain, pressured the Secretariat for the
proposal to conform to its wishes.
- 30 Also in this case, the United States put pressure on the Secretariat for
the size of the proposed operation not to exceed 5,500 men.
- 31 “... Member States, which are also members of the United Nations
Security Council, will concert and keep the other Member States fully
informed. Member States which are permanent members of the
Security Council will, in the execution of their functions, ensure the
defence of the positions and the interests of the union, without
prejudice to their responsibilities under the provisions of the United
Nations Charter.”
- 32 For example these four countries took the lead to prepare the
extension of the sanctions against Al-Qaeda.

- ³³ Besides the presidential declarations, which are by definition consensus documents, in 1999, 92% of all resolutions were adopted unanimously (in 2000, it was 95%).
- ³⁴ For instance, resolutions 1244 (1999) on Kosovo and 1284 (1999) on Iraq, were adopted without amendment.
- ³⁵ This position did not prevent the adoption of resolutions 1282 (1999) in December 1999, and 1301 (2000), in May 2000, which opened the way to the search of an alternate solution; however, Namibia abstained on the former and, voted against the latter, while Jamaica and Mali abstained.
- ³⁶ That was the case, for instance, when the non-aligned countries helped France to convince the United States to support the idea of replacing MISAB with a United Nations Mission.
- ³⁷ This arms embargo (resolution 1298 (2000) of 17 May 2000) was sought by the United States. The only way for the latter to get it adopted was to agree that it should be limited in time (one year, renewable if the Council so decided).
- ³⁸ For instance, in 1999-2000 Namibia was a particularly active member with regard to two topics that it particularly cared about: the Democratic Republic of the Congo, since it was an ally of Kinshasa, and Western Sahara, since it identified with the fate it had itself known a few years earlier. It was, moreover, the only non-permanent member to vote in favour of the resolution submitted by Russia on 26 March 1999, which called for the immediate cessation of the use of force against the Federal Republic of Yugoslavia (this resolution had also received the support of China). Malaysia, for its part, was the only non-permanent member to abstain on resolution 1284 on Iraq, along with three permanent members (China, France, Russia).
- ³⁹ Each regional group selects the candidate(s) for the elections to fill the vacancie(s), but sometimes no agreement is possible between the different candidates.
- ⁴⁰ It was not until President Vincente Fox was elected that Mexico decided to come back to the Council; it put forward its candidacy for 2002-2003 and was elected by beating the Dominican Republic for the Latin American vacancy.
- ⁴¹ This happened with Namibia, already mentioned (see above) and Bahrain, which asserted itself only to defend the cause of Muslim people (Albanians from Kosovo, Palestinians) and states (Indonesia in the East Timor matter), although it was eloquently silent on the Iraqi issue.

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- 42 Members take turns presiding over the Council for one month; the
presidency rotates according to the English alphabetical order.
- 43 It was protection of civilians in armed conflicts for Canada; women and
children in armed conflicts for Namibia and Jamaica; prevention of
conflicts for Jamaica, Bangladesh and Slovenia; post-conflict peace-
building for Tunisia and Bahrain: disarmament, demobilization and
reintegration of former combatants for Malaysia and Bangladesh; small
arms for the Netherlands and Colombia; humanitarian activities for
Brazil and Bangladesh; the protection of humanitarian personnel for
Argentina; exit strategies for the Netherlands.
- 44 The Russians did with regard to terrorism (against the backdrop of
Chechnya) and the Americans did with regard to AIDS, prompted by
the permanent representative, Richard Holbrooke, though internal
political considerations were not entirely absent from that initiative.
- 45 Very often the Council's public debates are chaired by the Minister for
Foreign Affairs of whatever country is in the presidency.
- 46 Apart from a presidential statement adopted on 13 August, welcoming
the signing of the framework agreement in Ohrid.
- 47 Apart from a public debate organized on 20 and 21 August 2001.
- 48 Despite, in this case, attempts by the United Kingdom, Canada and the
Netherlands to address the situation in southern Sudan, initially from a
humanitarian perspective, with a view to preparing the ground for an
examination of the military and political situation. On three separate
occasions, during informal consultations, the Council heard statements
by the Secretariat concerning the humanitarian situation, but several
states, including Russia and China, refused to take the matter any
further.
- 49 Although the delegation of the United States once announced, during
informal consultations, that it intended to raise a number of issues
relating to Ulster, it never did so, since the delegation of the United
Kingdom put an end to this bold and unexpected move through
bilateral talks.
- 50 Although this matter did appear on the agenda of the Committee on
Decolonization (of the Fourth Committee) along with the other
overseas territories belonging to the United States and the United
Kingdom.
- 51 Although, in 1999, the Muslim states members of the Council tried to
make a request for information on the humanitarian situation in
Chechnya. Russia, however, strongly opposed the move, in the

- knowledge that the humanitarian angle had also been used to address the issue of Kosovo in the Council in 1998.
- 52 It should be pointed out that, in the 1950s and 1960s, the colonial wars were not, as a general rule, discussed by the Security Council.
- 53 Since the Europeans, including the Russians, refuse to engage in negotiations, which are bound to end with a United States veto.
- 54 As was the case with resolution 1397, adopted unanimously, by which for the first time the Council affirms a vision of two states—an Israeli and a Palestinian—living in peace side by side.
- 55 It has been very accommodating with regard to the question of Abkhaz secession, while repressing an identical movement by the Chechens.
- 56 In particular, those elements were the criteria for suspension of sanctions (the notion of progress in reaching key disarmament targets) and the financial modalities in the event of such suspension, but also the unilateral policy objectives pursued by the United States (assistance for the overthrow of the regime, bombings in the no-fly zones).
- 57 A list of dual-use items subject to approval by the Sanctions Committee. Contracts concerning other goods were required only to be notified.
- 58 In this respect, it is interesting to note that, according to a statement made on 7 September 1999 by the ambassador of a European country, a non-permanent member of the Council, and a staunch advocate of NATO intervention in Kosovo against the Federal Republic of Yugoslavia, a country's sovereignty could not be violated like that, even though Indonesia's "sovereignty" over East Timor, which had never been recognized by the United Nations, was far more easily contested than that of the Federal Republic of Yugoslavia over Kosovo!
- 59 For instance, by using bilateral and multilateral financial mechanisms.
- 60 Only a few countries expressed the view that the means should be proportionate to the needs, including in the area of security, and that East Timor should not remain dependent for too long on a transfusion of international aid.
- 61 It is worth noting in this regard that the operation and initial mandate approved by resolution 1291 of 24 February 2000 envisaged that MONUC might "take the necessary action (...) to protect United Nations ... personnel, facilities, installations and equipment, (...) ensure the security and freedom of movement of its personnel, and protect civilians under imminent threat of physical violence", but that the last two of these tasks were deleted from the revised operation approved by resolution 1355 (2001) of 15 June 2001.

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- ⁶² Particularly the British, who were anxious to look after the interests of Somaliland, a region covering their former colony, and the Americans, who were anxious to avoid any premature revival of United Nations involvement on the ground.
- ⁶³ See paragraph 5 of the resolution: “[The Security Council] *urges* India and Pakistan to resume the dialogue between them on all outstanding issues ... in order to remove the tensions between them and *encourages* them to find mutually acceptable solutions that address the root causes of those tensions, *including Kashmir*” (emphasis added). That is the sole reference to Kashmir in the resolution, and a very restrained one, at that.
- ⁶⁴ Turkish Republic of Northern Cyprus.
- ⁶⁵ United Nations Mission in Bosnia and Herzegovina.
- ⁶⁶ Resolutions 1199 (1998) of 23 September 1998 and 1203 (1998) of 24 October 1998.
- ⁶⁷ Article 53: “The Security Council shall, where appropriate, utilize such regional arrangements or agencies for enforcement action under its authority. But *no enforcement action* shall be taken under regional arrangements or by regional agencies *without the authorization of the Security Council ...*” (emphasis added). Several explanations have been given by the Western powers to justify their intervention: they point to a number of elements in previous Security Council resolutions concerning Kosovo adopted under Chapter VII of the Charter (which relates to action with respect to threats to the peace, breaches of the peace, and acts of aggression); the moral need for intervention on serious humanitarian grounds, given that the Security Council was unable to provide support because of Russian and Chinese objections; and legitimation a posteriori, after the Security Council had, on 26 March, rejected by 12 votes to 3 the draft resolution submitted by Russia and India, which demanded “*an immediate cessation of the use of force against the Federal Republic of Yugoslavia*” (emphasis added).
- ⁶⁸ Operation Amber Fox.
- ⁶⁹ Article 52 of the Charter: “Nothing in the present Charter precludes the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action, provided that such arrangements or agencies and their activities are consistent with the Purposes and Principles of the United Nations ... The Security Council shall encourage the development of specific settlement of local disputes through such regional arrangements or by such regional

agencies either on the initiative of the States concerned or by reference from the Security Council.”

70 Article 54: “The Security Council shall at all times be kept fully informed of activities undertaken or in contemplation under regional arrangements or by regional agencies for the maintenance of international peace and security.”

71 In that context, the governments of the states that emerged from the former Yugoslavia undoubtedly now turn more to the European Union and NATO than to the Security Council to help them in resolving their problems.

72 See, for example, the constant shuttle diplomacy engaged in by the Special Representative of the NATO Secretary-General, Mr Feith, to resolve the conflict in the Presevo valley or the numerous trips to Macedonia by the Secretaries-General of the European Union and NATO as well as by the Special Envoys of the European Union (Mr Léotard) and the United States (Mr Pardew).

73 Intergovernmental Authority for Development.

74 It should be noted that the Secretary-General’s special envoy to the Sudan is concerned only with humanitarian affairs.

75 Organization for Security and Cooperation in Europe.

76 With the agreements concluded in 1992, 1992 and 1994 respectively. Economic Community of West African States.

78 With the 1993 Cotonou agreement, the 1994 Akosombo and Accra agreements and the 1995 Abuja agreement.

79 With the 1997 Conakry Agreement, the 1999 Lomé Accord and the 2000 Abuja Agreement.

80 With the 1998 Praia and Abuja agreements.

81 Uganda, Rwanda, Tanzania, Zambia, Kenya and South Africa.

82 For instance, NATO aerial support to UNPROFOR in Bosnia.

83 ECOMOG was deployed by ECOWAS in Liberia, Sierra Leone, and Côte d’Ivoire, while the United Nations sent observer missions—UNOMIL, UNOMSIL, and UNMICI; CIS peacekeeping forces are deployed in Abkhazia (Georgia) and the United Nations has an observer mission—UNOMIG.

84 As in the Central African Republic, with MISAB and MINURCA, or in East Timor with INTERFET followed by the United Nations Transitional Administration in East Timor (UNTAET).

85 Article 8.2: “The mandate of the United Nations force shall include peacekeeping and peace enforcement operations as outlined below: (...) Tracking down and disarming Armed Groups; (...) Working out

such measures (persuasive or coercive) as are appropriate for the attainment of the objectives of disarming, assembling, repatriation and reintegration into society of members of the Armed Groups.”

⁸⁶ ECOWAS Military Observer Group.

⁸⁷ As pointed out by the permanent representative of a member of the Council, the latter’s support to ECOWAS efforts to settle the Sierra Leonean conflict does not mean that it is ready to monitor all of ECOMOG’s actions on the ground.

⁸⁸ Although there was dissent within ECOWAS, with Sierra Leone rallying to the Anglo-American strategy, as well as Guinea, a victim of armed incursions by the RUF supported by Liberia, that dissent did not prevent the expression of positions common to ECOWAS, even though they might be rejected by individual countries (Guinea, for instance) or not implemented (for instance, the plan to deploy an ECOWAS force to the borders separating Sierra Leone, Guinea and Liberia which had been approved at the ECOWAS summit in December 2000).

⁸⁹ Pakistan, Iran, Turkmenistan, Uzbekistan, Tajikistan and China.

⁹⁰ In Chapter VI devoted to the pacific settlement of disputes.

⁹¹ Article 41: “The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.”

⁹² Article 42: “Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.”

⁹³ See, for instance, the role of Kofi Annan and his Special Coordinator for the Middle East Peace Process, Mr Roed-Larsen; the mission entrusted by Kofi Annan to Razali Ismaël as Special Envoy for Myanmar; the role played by Boutros Boutros-Ghali in requesting France to undertake a good-offices mission with Eritrea and Yemen to settle the Hanish Islands dispute.

⁹⁴ China abstained from the vote on resolution 1160 (1998) imposing an arms embargo on the FRY.

- ⁹⁵ The official explanation provided by China, namely that the mission was no longer needed, was flawed, as the unrest in early 2001 demonstrated. The real explanation for China's veto was that the government in Skopje had just established diplomatic relations with Taiwan in return for at least a billion dollars from Taipei.
- ⁹⁶ Issued on 16 December 1999 as document S/1999/1257.
- ⁹⁷ These statements are given very unequal follow-up by the media. They are to be found on the websites of the country holding the Council's presidency. Eventually, they are communicated to the parties, non-state actors or the states concerned, most significantly by representatives of the Secretary-General in situ.
- ⁹⁸ Such as those concerning the Democratic Republic of the Congo or Burundi.
- ⁹⁹ As in the case of the press statement made on 8 May 1999 in response to the bombing of the Chinese Embassy in Belgrade, which was negotiated for almost seven hours, from 10 p.m. to 5 a.m.
- ¹⁰⁰ Neither the Charter of the United Nations nor the provisional rules of procedure of the Security Council distinguish between resolutions and presidential statements. These instruments and concepts have evolved as part of the Council's practice.
- ¹⁰¹ 92% in 1999, 95% in 2000.
- ¹⁰² For example, the approaches made by French, American, British, Russian and Chinese Ambassadors to the Presidents of the Democratic Republic of the Congo, Rwanda and Uganda and the leaders of Congolese rebel movements.
- ¹⁰³ To Indonesia and East Timor (September 1999 and November 2000), Central Africa (May 2000 and May 2001), Ethiopia and Eritrea (May 2000), Kosovo (April 2000 and June 2001) and Sierra Leone (October 2000).
- ¹⁰⁴ Special representatives of the Secretary General, the Force commander, those primarily responsible for the United Nations peacekeeping operation, representatives of United Nations funds and programmes and international financial institutions, etc.
- ¹⁰⁵ Not that there might not be disagreement, as in the case of the two Kosovo missions, during which the Russian Ambassador made a statement relatively critical of action undertaken by the international community.
- ¹⁰⁶ Such as in May 2000, when the Mission negotiated a ceasefire agreement between Ugandans and Rwandans in the Kisangani area.

- ¹⁰⁷ “The Secretary-General may bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security.”
- ¹⁰⁸ See the role he played in February 1998 during the crisis between the United Nations and Iraq over UNSCOM access to certain sites in the country.
- ¹⁰⁹ For example in helping to devise a solution to the problems of Western Sahara, Cyprus, Afghanistan and Abkhazia (Georgia).
- ¹¹⁰ It is not rare for finance ministers or cooperation ministers to pursue appreciably different policies from that of foreign ministers. The approach to Uganda and Rwanda offers some interesting illustrations.
- ¹¹¹ The Kosovo Verification Mission (KVM) of the Organization for Security and Cooperation in Europe (OSCE), deployed in October 1998 and led by a United States general, had also followed a deliberate policy of, if not disregarding such trafficking, at least making light of it.
- ¹¹² See François Alabrune, “La pratique des comités des sanctions du Conseil de Sécurité depuis 1990”, *Annuaire français de droit international*, 1999.
- ¹¹³ Composed of United States and British ships and mandated by Security Council resolution 665 (1990) of 25 August 1990.
- ¹¹⁴ Paragraph 8 of Security Council resolution 1132 (1997) of 8 October 1997.
- ¹¹⁵ Resolution 1013 (1995) of 7 September 1995.
- ¹¹⁶ Resolution 1237 (1999) of 7 May 1999.
- ¹¹⁷ Resolution 1306 (2000) of 5 July 2000.
- ¹¹⁸ Resolution 1363 (2001) of 30 July 2001.
- ¹¹⁹ Resolution 1343 (2001) of 7 March 2001.
- ¹²⁰ Resolution 1425 (2002) of 22 July 2002.
- ¹²¹ Resolution 1295 (2000) of 18 April 2000.
- ¹²² It should be noted that the MIF has not reported on its activities to the Security Council for several years, and the Russian Federation complained of this once in 2000.
- ¹²³ Jordan is, in fact, authorized to export goods to Iraq in payment for deliveries of petroleum by Iraq at an advantageous price. This trade is estimated to have been worth US\$ 300 to US\$ 400 million annually.
- ¹²⁴ Estimated at US\$1 billion annually.
- ¹²⁵ By Council resolution 1363 (2001) of 30 July 2001.
- ¹²⁶ The United States and the United Kingdom, but also Canada and the Netherlands.

- ¹²⁷ The Russian Federation, China, France and some non-aligned countries.
- ¹²⁸ Paragraph 5 of Council resolution 1295 A (2000) of 18 April 2000 relating to Angola.
- ¹²⁹ The arms embargo against the Federal Republic of Yugoslavia imposed by resolution 1160 (1998) was, above all, a political gesture, since it had hardly any effect on the Belgrade authorities, and the arms trafficking for the benefit of the Kosovo Liberation Army was evidently under little or no control.
- ¹³⁰ UNSCOM, in charge of the disarmament of Iraq, did most of its work from 1991 to 1995.
- ¹³¹ The Iraqi regime took in approximately US\$ 2.3 billion annually, either from smuggling outside the “oil for food” programme or from illegal commissions on sales of oil and purchases of goods under the “oil for food” programme. But most of this income went to the leaders, not to the population in general.
- ¹³² Resolution 1298 (2000) provided that sanctions would be lifted if the two states met three conditions: the cessation of all military action, the withdrawal of their forces from military engagement and *the conclusion of a peaceful definitive solution of the conflict*. The United States of America twice argued that the embargo, established for a period of one year from May 2000 to May 2001, should be lifted as soon as the two parties had signed the peace agreement in Algiers in December 2000. A majority of the members of the Council felt, however, that the situation was not very clear and rejected the idea of an early lifting of the embargo.
- ¹³³ Resolution 788 (1992) had imposed an arms embargo in the context of the devastating civil war in Liberia. The ending of that war, the holding of fair, free and democratic elections in July 1997 and the installation of an elected constitutional government—that of President Taylor—should have justified the lifting of that embargo, as the Liberian Government repeatedly requested. Several countries, however, in particular the United States of America and the United Kingdom, advocated the maintenance of the embargo in the context of the war in neighbouring Sierra Leone because they suspected the Taylor Government of taking sides with the RUF. For its part, China had no reason to do any favours for a country that maintained relations with Taiwan Province of China.
- ¹³⁴ UNSCOM from 1991 to December 1999 and the United Nations Monitoring, Verification and Inspection Commission (UNMOVIC)

- since January 2000, for chemical and biological weapons and missiles, and the IAEA, for nuclear weapons.
- ¹³⁵ As, for example, the removal of the Saddam Hussein regime.
- ¹³⁶ Issued respectively in April and November 2001 as documents S/2001/357 and S/2001/1072.
- ¹³⁷ Report of the Commission chaired by Mr Carlsson (S/1999/1257 of 16 December 1999).
- ¹³⁸ Report of the Secretary-General on the fall of Srebrenica (A/54/549 of 15 November 1999).
- ¹³⁹ Report of the Panel on United Nations Peace Operations (A/55/305-S/2000/809 of 21 August 2000).
- ¹⁴⁰ Report of the Secretary-General entitled "No exit without strategy: Security Council decision-making and the closure or transition of United Nations peacekeeping operations (S/2001//394 of 20 April 2001).
- ¹⁴¹ Presidential Decision Directive on multilateral peace operations, May 1994.
- ¹⁴² The only operation with a significant United States contingent was UNPREDEP in Macedonia, with 360 soldiers, until February 1999, when it was abruptly halted (by a Chinese veto). Since then, United States participation in United Nations peacekeeping operations has been limited to providing civilian police, and these are only retired police officers, not those on active duty.
- ¹⁴³ The murder of 10 Belgian blue helmets in Kigali in April 1994.
- ¹⁴⁴ The failure of the Netherlands blue helmets to prevent the massacre of 7,000 Muslims by Bosnian Serb troops in July 1995.
- ¹⁴⁵ In July 1998 there were 169 blue helmets from the Netherlands and 10 from Belgium.
- ¹⁴⁶ In the summer of 2000, Italy was the third largest contributor to United Nations peacekeeping operations or those mandated by the Security Council, with 8,100 personnel—essentially in the Stabilization Force (SFOR) and Kosovo Force (KFOR)—while its blue helmets numbered no more than a few dozen. At the same time, France had 8,700 peacekeeping troops, of which 8,200 were under NATO command and almost 500 were blue helmets.
- ¹⁴⁷ Except, in the case of France, the logistical support unit for the United Nations Mission in the Central African Republic (MINURCA), which took over from MISAB, but to which France put a stop before the mandate of the Mission had been fulfilled.

- ¹⁴⁸ This situation has been compounded by the priority given to operations in Europe as compared to those in more distant regions, where the countries of the European Union have fewer strategic interests.
- ¹⁴⁹ As the British who in Sierra Leone helped UNAMSIL resist armed groups and trained the new Sierra Leone army, or the French who in Côte d'Ivoire help restore peace and monitored the line of cease-fire together with the ECOWAS force.
- ¹⁵⁰ In 2001, the Western countries (the European countries including the Russian Federation, plus Canada, New Zealand, Australia and Japan) provided 22% of the blue helmets, while the developing countries contributed 78%!
- ¹⁵¹ Thus it seems that between May and September 1999 the Secretariat minimized the risk that there would be a violent reaction by the pro-integrationists of Timor-Leste if the independence party won. The fact that the United Nations mission in charge of organizing the referendum came under the Department of Political Affairs, while the planning of a deployment of security elements came under the Department of Peacekeeping Operations—which had been shut out of this case for the entire period—might have compounded this error of judgement with elements of bureaucratic rivalry.
- ¹⁵² For example, that of UNAMSIL (see paragraph 10 of resolution 1289 (2000) of 7 February 2000): “The Security Council, acting under Chapter VII of the Charter of the United Nations, (...) affirms that, in the discharge of its mandate, UNAMSIL may take the necessary action to ensure the security and freedom of movement of its personnel and, within its capabilities and areas of deployment, to afford *protection to civilians* under imminent threat of physical violence, taking into account the responsibilities of the Government of Sierra Leone” (emphasis added) or that of MONUC in the Democratic Republic of the Congo (see paragraph 8 of resolution 1291 (2000) of 24 February 2000): “The Security Council, acting under Chapter VII of the Charter of the United Nations, decides that MONUC may take the necessary action, in the areas of deployment of its infantry battalions and as it deems it within its capabilities, to protect United Nations (...) personnel, facilities, installations and equipment, ensure the security and freedom of movement of its personnel, and protect civilians under imminent threat of physical violence.”
- ¹⁵³ Resolution 1341 (2001) of 22 February 2001 accepts the new operational concept presented by the Secretary-General that “the

function of the 1,900 armed personnel will be exclusively to guard United Nations facilities, equipment and supplies” but not to “extract other United Nations personnel at risk, or accompany humanitarian convoys, *nor will they be able to extend protection to the local population*” (emphasis added) (S/2001/128, para. 77).

¹⁵⁴ In paragraph 7 of resolution 1417 of 14 June 2002 the Council, “recalling paragraph 8 of resolution 1291, reaffirms MONUC’s mandate to take the necessary action in the areas of deployment of its armed units and as it deems it within its capabilities (...) to protect civilian under imminent threat.”

¹⁵⁵ See paragraph 72 of S/2002/621.

¹⁵⁶ Up to 8,700 military personnel, with the creation of two task forces whose main purpose is to facilitate disarmament and rehabilitation operations.

¹⁵⁷ Up to 20,500 soldiers.

¹⁵⁸ “To maintain the security of the Lungi and Freetown peninsulas, and their major approach routes”, “to deter and, where necessary, decisively counter the threat of RUF attack by responding robustly to any hostile actions or threat of imminent and direct use of force”, and “to deploy progressively (...) at key strategic locations and main population centres and, in coordination with the Government of Sierra Leone to assist, through its presence and within the framework of its mandate, the efforts of the Government of Sierra Leone to extend state authority, restore law and order and further stabilize the situation progressively throughout the entire country” (extract from a draft resolution submitted by the United Kingdom on 11 September 2000 and never put to the vote).

¹⁵⁹ This position was expressed very frankly and eloquently by the representatives of these two countries at a memorable meeting between the members of the Security Council and the troop-contributing countries, held on 4 October 2000.

¹⁶⁰ The non-permanent members are more favourable to it because, although they are Council members for only two years, many of them are nearly permanent troop-contributing countries.

¹⁶¹ See the sanctions imposed against Liberia in the framework of the attempt to force the RUF to acknowledge its fault, including by depriving it of its resources and support system.

¹⁶² Report of the Secretary-General on the Implementation of the Report of the Panel on United Nations Peace Operations (A/55/502) of 21 October 2000; Report of the Secretary-General on the

- Implementation of the Recommendations of the Special Committee on Peacekeeping Operations and the Panel on United Nations Peace Operations (A/55/977) of 1 June 2001.
- ¹⁶³ Specifically, the goal set by the report of the Panel on United Nations Peace Operations (A/55/305-S/2000/809) was to be able to deploy a simple mission within 30 days and a complex mission within 90 days.
- ¹⁶⁴ Multinational force (Operation Restore Hope) led by the United States and instructed to “establish as soon as possible a secure environment for humanitarian relief operations in Somalia” (resolution 794 (1992)).
- ¹⁶⁵ Multinational force (Operation Turquoise) led by France and charged with “contributing to the security and protection of displaced persons, refugees and civilians at risk in Rwanda” (resolution 929 (1994)).
- ¹⁶⁶ Multinational protection force for Albania (Operation Alba) led by Italy and deployed from March to August 1997 to “facilitate the safe and prompt delivery of humanitarian assistance, and to help create a secure environment for the missions of international organizations” (resolution 1101 (1997)).
- ¹⁶⁷ Multinational force known as the International Security Assistance Force (ISAF), led by the United Kingdom and deployed from December 2001 to “assist the Afghan Interim Authority in the maintenance of security in Kabul and its surrounding areas.”
- ¹⁶⁸ The Secretary-General communicated to the President of the United States on 8 December 1992 his concept of the division of labour between the United Nations and the United States: “The United States has undertaken to [create] the secure environment which is an inescapable condition for the United Nations to provide humanitarian relief and promote national reconciliation and economic reconstruction, objectives which have from the outset been included in the various Security Council resolutions on Somalia.”
- ¹⁶⁹ UNTAET taking over from INTERFET.
- ¹⁷⁰ United Nations Mission in the Central African Republic (MINURCA) replacing MISAB.
- ¹⁷¹ United Nations Transitional Authority in Cambodia (UNTAC).
- ¹⁷² United Nations Transitional Administration for Eastern Slavonia, Baranja and Western Sirmium (UNTAES).
- ¹⁷³ UNMIK.
- ¹⁷⁴ UNTAET.
- ¹⁷⁵ UNFICYP.
- ¹⁷⁶ UNMOGIP.
- ¹⁷⁷ UNIFIL.

- 178 UNDOF.
179 UNIKOM.
180 Renforcement des capacités africaines de maintien de la paix
(Strengthening African Peacekeeping Capacities).
181 African Crisis Response Initiative.
182 Operation Focus Relief.
183 United Nations Standby Forces High-Readiness Brigade, composed of
elements provided by several countries, the large majority of them
European, and capable of being deployed rapidly.
184 Following the example of the rapid deployment of SHIRBRIG units in
the context of the United Nations Mission in Ethiopia and Eritrea
(UNMEE).
185 As has already been the case with the handing over of the International
Police Task Force (IPTF) run by the UN to the EU Police Mission, with
the transfer of responsibility from NATO to the EU in Macedonia, and
the prospect of similar transfer in Bosnia (from SFOR run by NATO to
a EU-led PKO).
186 For example, with the involvement of NATO in the command of ISAF
in Afghanistan by June 2003 and the setting up of a stabilization force
in Iraq from May 2003.
187 ECOMOG in West Africa, CEMAC in Central Africa, SADC in Southern
Africa.
188 These were at the heart of the first peacekeeping operations and
remain the chief tasks of a certain number of operations, particularly
the older ones.
189 Notably in South Africa, Cambodia and Namibia.
190 Like the different pillars of UNMIK in Kosovo: reconstruction is
entrusted to the European Union, elections to the Organization for
Security and Cooperation in Europe (OSCE), and refugees to the Office
of the United Nations High Commissioner for Refugees (UNHCR).
191 Resolution 1401 of 28 March 2002.
192 Some US officials have contended that that role could have been
larger, had the Security Council backed the US military intervention.
193 Such as the United Nations Mission in Bosnia and Herzegovina
(UNMIBH) and the successive missions in Haiti (the United Nations
Mission in Haiti (UNMIH), the United Nations Support Mission in Haiti
(UNSMIH), the United Nations Transition Mission in Haiti (UNTMIH)
and the United Nations Civilian Police Mission in Haiti (MIPONU)).
194 It is interesting to note instead that the United States Congress did not
apply its "nation-building" standard as strictly in the case of Haiti. It is

true that the United States has a direct interest in seeing the situation stabilized in this country, whose migrants pose a threat, while the Central African Republic is thousands of miles away from its territory and its concerns.

- ¹⁹⁵ The scale of assessment differs from that of the regular budget, with the five permanent members of the Security Council paying a greater share of the peacekeeping budgets.
- ¹⁹⁶ For instance, the United States wanted the police training activities under MINURCA, modest as they were, to be financed from voluntary contributions whereas they willingly agreed that the police missions in Haiti could be financed from assessed contributions. The Russians, instead, not very concerned about the situation in Haiti, argued that this type of mission ought to be financed from outside the peacekeeping budget.
- ¹⁹⁷ This is particularly necessary when former combatants are disarmed, demobilized and reintegrated, because it is crucial for a successful peace process to disarm and demobilize armed men; but, aside from the fact that such an operation cannot be handled completely by a peacekeeping operation and its budget, the third facet—reintegration—is still more crucial for the future but presupposes action to transform the economic and social situation that goes far beyond the competence of the Security Council or a peacekeeping operation.
- ¹⁹⁸ Representatives of the World Bank, the International Monetary Fund and the United Nations Development Programme (UNDP), for instance, participated in the Security Council debates on the situations in East Timor, Guinea-Bissau and the Central African Republic.
- ¹⁹⁹ On Guinea-Bissau where the situation remains very volatile and risks are high that this country slips again into political violence.
- ²⁰⁰ Resolution 1315 (2000): “Requests the Secretary-General to negotiate an agreement with the Government of Sierra Leone to create an independent special court” (emphasis added).
- ²⁰¹ That is the solution adopted for trying the former Khmers Rouges leaders, though it was the General Assembly—not the Security Council—that was involved in the negotiations between the UN and the Cambodian government.
- ²⁰² Article 9 of the Agreement: “1. In order to bring lasting peace to Sierra Leone, the Government of Sierra Leone shall take appropriate legal steps to grant Corporal Foday Sankoh [head of the RUF] absolute and free pardon. 2. After the signing of the present Agreement, the

Government of Sierra Leone shall also grant absolute and free pardon and reprieve to all combatants and collaborators in respect of anything done by them in pursuit of their objective, up to the time of the signing of the present Agreement. 3. To consolidate the peace and promote the cause of national reconciliation, the Government of Sierra Leone shall ensure that no official or judicial action is taken against any member of the RUF/SL, ex-AFRC, ex-SLA or CDF in respect of anything done by them in pursuit of their objectives as members of those organizations, since March 1991, up to the time of the signing of the present Agreement.”

203 Resolution 1422 of 12 July 2002.

204 This resolution was extended without change for 12 months in June 2003 (resolution 1487 of 12 June 2003) but three Council members (France, Germany, and Syria) abstained.

205 With a range exceeding 150km.

206 United Nations Security Council document S/1999/356 of 30 March 1999.

207 In the meantime UNSCOM had been replaced in 2000 by UNMOVIC.

208 S/1999/356, paragraph 33.

209 According to Article XII of the Statute of the IAEA (on safeguards), in case of non-compliance by a state, “the board of governors shall report the non-compliance to all members and to the Security Council and the General-Assembly of the United Nations.”

210 Resolution 825 (1993) of 11 May 1993.

211 Democratic People’s Republic of Korea.

212 Presidential Statement of 31 March 1994 (S/PRST/1994/13).

213 In this draft the Council would have expressed concerns at the North Korean declared intention to restart its nuclear reactor and reprocessing plant, condemned North Korea’s breach of its international obligations under the NPT and the IAEA/DPRK Safeguards Agreement, which poses a serious risk to international security and regional stability, and urged North Korea to dismantle its nuclear weapons programme in a verifiable and irreversible manner and to cooperate with the IAEA.

214 As was recognized in the Presidential Statement of 11 February 1992 (S/23500).

215 For example, the Libyan Arab Jamahiriya in the case of the Pan-Am and UTA aircraft.

- ²¹⁶ For example, Sudan in the attempted assassination of President Mubarak in Addis Ababa or the Afghan Taliban accused of harbouring and protecting Osama Bin Laden and his Al-Qaeda network.
- ²¹⁷ Air embargo against the Libyan Arab Jamahiriya, the Taliban and Sudan although in the latter case the measures never entered into force: restrictive diplomatic measures were imposed against Sudan and the Taliban, and the assets of the Taliban were frozen.
- ²¹⁸ By letter to the President of the Security Council dated 7 October 2001, the permanent representative of the United States said: "Since September 11, my Government has obtained clear and compelling information that the Al-Qaeda organization, which is supported by the Taliban regime in Afghanistan, had a central role in the attacks.(...) In response to these attacks, and in accordance with the inherent right of individual and collective self-defence, United States armed forces have initiated actions designed to prevent and deter further attacks on the United States. These actions include measures against Al-Qaeda terrorist training camps and military installations of the Taliban regime in Afghanistan. In carrying out these actions, the United States is committed to minimizing civilian casualties and damage to civilian property." In a press statement issued on 8 October that recalled the purpose of resolution 1368, "the members of the Security Council took note of the letter that the representatives of the US and the UK sent yesterday to the president of the Security Council, in accordance with Article 51 of the Charter. (...) The permanent representatives made clear that the military action that commenced on 7 October was taken in self-defence and directed at terrorists and those who harboured them. (...) The members of the Council were appreciative of the presentation made by the US and the UK."
- ²¹⁹ "We may find that our self-defence requires further actions with respect to other organizations and other States."
- ²²⁰ "The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter."
- ²²¹ Article 42.
- ²²² Multinational force led by the United States (Operation Desert Storm) and instructed to "use all necessary means to uphold and implement resolution 660 (1990)", which demanded that "Iraq withdraw immediately and unconditionally all its forces" from Kuwait (resolution 678 (1990)).

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- ²²³ Multinational force led by the United States and sent to Haiti to “facilitate the departure from Haiti of the military leadership, the prompt return of the legitimately elected President and the restoration of the legitimate authorities of the Government of Haiti, and to establish and maintain a secure and stable environment that will permit implementation of the Governors Island Agreement” (resolution 940 (1994)).
- ²²⁴ Multinational force known as INTERFET, led by Australia and instructed to “restore peace and security in East Timor, to protect and support [the United Nations Mission in East Timor (UNAMET)] in carrying out its tasks and, within force capabilities, to facilitate humanitarian assistance operations” (resolution 1264 (1999)).
- ²²⁵ United Nations Protection Force deployed in Croatia and Bosnia from 1991 to 1995.
- ²²⁶ The preamble of resolution 815 of 30 March 1993 contains a paragraph that states: “Determined to ensure the security of the Force and its freedom of movement for all its missions and to these ends acting under Chapter VII of the Charter.” There is no specific reference in the operative part. This solution was abundantly used in the context of UNPROFOR operations in Croatia and in Bosnia until 1995.
- ²²⁷ As in resolution 1101 (1997) on the multinational force in Albania, resolution 1125 (1997) on MISAB in the Central African Republic, resolution 1159 (1998) on MINURCA, resolution 1216 on ECOMOG in Guinea-Bissau.
- ²²⁸ As in resolution 1270 and 1289 on UNAMSIL: “Acting under Chapter VII of the Charter, decides that, in the discharge of its mandate, UNAMSIL may take the necessary steps/action to ensure the security and freedom of movement of its personnel and, within its capabilities and areas of deployment, to afford protection to civilians under imminent threat of physical violence.”
- ²²⁹ As in resolution 929 (1994) on the multinational force in Rwanda: “Acting under Chapter VII of the Charter authorizes member states co-operating with the Secretary-General to conduct the operation(...) using all necessary means to achieve the humanitarian objectives”, in resolution 1289 on UNAMSIL: “Acting under Chapter VII of the Charter, authorizes UNAMSIL to take the necessary action to fulfil the additional tasks set out (above)”, in resolution 1031 on the SFOR in Bosnia: “Authorises member states (...) to take all necessary measures to effect the implementation of and ensure compliance with (...) the Peace Agreement”, or resolution 1244 on the KFOR in Kosovo.

²³⁰ See for example the report of the International Commission co-chaired by Mohamed Sahnoun and Gareth Evans on “The Responsibility to Protect”.

²³¹ “Decides (...) to take such further steps as maybe required for the implementation of the present resolution and to secure peace and security in the area.”

²³² Except the operation in Somalia.