Of Foxes and Chickens

Oligarchy and Global Power in the UN Security Council

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Foreword

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When the United Nations was founded over seventy years ago, the victorious Allies saw it as the capstone of the postwar order. This new organization would work to keep the peace that had been achieved at such tremendous cost. At its head would be the Security Council, dominated by its five permanent members, united in a "trusteeship of the strong." These powerful nations would serve as the world's policemen, taking on the burden of keeping the peace and ensuring that the devastating World Wars of the first half of the twentieth century would never return.

Even in this idealized—not to say mythologized—retelling, the realities of great power politics are apparent, but from its founding, the history of the Security Council has not been one of idealism tempered by pragmatism. Rather, it has been a history of pragmatism and power overcoming idealism and democracy.

Even among the permanent members, equality has not been an operative principle. At the time of the founding, the United States stood alone on the international stage. Britain and France were exhausted by war and already in the process of losing their empires. The Soviet Union was undoubtedly a victor, but it had suffered immense losses in the war. After decades of war and famine, China was weak and riven by civil war. Even today, when all five permanent members—the "P5"—are powerful and relatively prosperous, decision-making on the Council is dominated by the United States, usually but not always with the active involvement of the "P3," which brings Britain and France into the fold. US influence is so pervasive that it is sometimes referred to as the "P1."

The non-permanent members struggle to make any impact on the Council despite their legitimacy as the elected representatives of every member state. With the advantages of permanency and the threat of the veto, the P5 are able to continuously dominate Council proceedings. The ten elected members have at times made

their mark on the Security Council, but this has been the exception rather than the rule.

Despite this democratic deficit, the Council has had real achievements along with failures both of commission and omission. In this critical analysis of the Security Council, James A. Paul, former executive director of Global Policy Forum, examines its history of successes and failures, idealism and arrogance. Long a major figure in the NGO community at the UN, Paul founded the NGO Working Group on the Security Council, convening frequent meetings with Council ambassadors. He has written many articles, reviews, policy papers, and books on international relations and global politics, including the RLS–NYC study *"We the Peoples?" The United Nations on Its Seventieth Anniversary* (October 2015).

Security Council reform is long overdue, and calls for this reform have been on the table for decades. Most commonly, these calls have taken the form of large and powerful nations seeking a permanent seat on the council. Paul argues that such proposals, which have proven unachievable, have stood in the way of more creative and fundamental reforms. A democratic transition is needed to bring about the Security Council we need: One that can work for genuine peace.

Introduction

At United Nations headquarters in New York, diplomats stream into the Security Council chamber with its well-known horseshoe table. As the fifteen ambassadors enter, they exchange greetings, whisper comments to their aides, and wave cordially to circulating personalities. In glass-enclosed booths above, interpreters sit at the ready, while around the table's perimeter the actors in the drama finally take their seats. The gavel sounds. The Security Council sets out on another day's journey, taking up its "primary responsibility" for international peace and security.

Often in these meetings, great matters are at stake. The ambassadors may put aside cordiality as they shift into steamy debates and controversial actions. They could be launching UN military operations, setting in motion punitive sanctions, or taking other steps that can affect many lives and shape the world's conflict landscape. The media eagerly report on such dramatic events. Yet for all the deadline stories and public fireworks, the Council remains a mysterious body, hidden most of the time behind a strict security perimeter and often meeting privately in "consultations of the whole."

There can be no doubt that the Council is a unique and quite remarkable institution. In a world divided among nearly two hundred nation states, it acts with global authority. When conflicts arise, they often are referred to the Council for adjudication and action. The Council has had many real achievements to its credit over the past seventy-plus years. Within its restricted structure and mandate, it has sometimes innovated and used its powers constructively. It has addressed not only warfare between nations but also complex civil wars, and it has brought human rights and humanitarian considerations into its debates. It has introduced peace observers to dampen conflicts and brought parties together in peace deals. Over the years, while the Council's shortcomings have become increasingly evident, the world has continued to invest it with considerable positive expectation.

The Council's actions attract heated controversy, stoked, as always, by geo-political rivalries. Nationalists and conservatives in powerful states dislike the Council and accuse it of ineffectiveness, while liberal internationalists praise it as essential to global order. Those on the left point to its failure to keep peace with justice, while those on the right insist it is only useful if it suits their national purpose. Few acknowledge its extraordinary power, its unique status, its considerable potential, and its peculiar partialities.

Most commentary about the Council pays scant attention to the institution itself and its secretive inner workings. To understand the Council, it is necessary to penetrate a thicket of myth and apologia and to examine the web of ideology, fear, and ambition that motivates its members. Within the wider UN, diplomats complain that this very public institution is deceptively hidden behind closed doors. As one respected ambassador recently commented, the Council remains "inaccessible to those it should work with and irresponsive to requests from the outside."[1]

The Council works at an intense pace. In 2015 it met 396 times, passed 64 resolutions, approved 128 press statements, and convened 139 meetings of committees and other "subsidiary bodies."[2] The Council also went on international missions and participated in dozens of special briefings as well as countless other official and semi-official activities. At midday the diplomats attend policy luncheons and private negotiations, in the evening they head off to receptions and dinners, with business always at hand. Diplomats

1 Christian Wenaweser, "Working Methods: the ugly duckling of Security Council reform," in *The UN Security Council in the Twenty-First Century*, edited by Sebastian von Einsiedel, David M. Malone, and Bruno Stagno Ugarte (Boulder: Lynne Rienner, 2016), 176.

2 "Highlights of Security Council Practice 2015" on the UN website https://unite.un.org/sites/unite.un.org/files/app-schighlights/index.html. From its inception through the end of 2015, the Council held 7817 meetings, adopted 2320 resolutions, and issued 12596 press statements.

on the Council speak of their posting as exhausting and at times overwhelming. Few have time to pause for reflection, as crisis after crisis rolls on. Later, some produce memoirs or other personal accounts of their Council experience, giving us glimpses of the institution's inner life.

The Council's fifteen ambassadors—urbane and experienced—stand at the top of their profession. Many live in elegant quarters in Manhattan's most exclusive neighborhoods. They have a heavy schedule of drafting, negotiating, consulting, reading background reports, and engaging in encrypted video-conferences with government leaders in their capitals. Surrounding them, an eager team of bright junior diplomats work long hours. While the teams prepare urgent briefs, the ambassadors attend posh official events, meet with visiting dignitaries, and give interviews to the world's media. Such trappings of power heighten the sense of daily drama. Of course, this rarefied and intense working environment puts Council members far from ordinary citizens—and even further from the millions of people suffering in distant battle zones.

Over the years, the Council has passed through different phases. During its first forty-five years, the disputes of the Cold War diminished the Council considerably. While the United States and the Soviet Union battled for global ascendancy, Britain and France sought to protect their crumbling colonial authority. Many conflicts arose around the world but few made it onto the Council's agenda. The Council was not "paralyzed" during this time, as some say, but it certainly functioned in a halting way, due to the constant arm-wrestling, veto-casting, and clandestine conflicts.

After the Cold War, beginning about 1990, the Council enjoyed an unprecedented burst of activity. From 1989 to 1993, the annual number of formal Council meetings jumped from 60 to 171, while

the number of consultations shot up from 20 to 253.[3] The Council addressed many more crises and took up sanctions, peacekeeping, and other initiatives. At the same time, governments, experts, and non-governmental organizations insisted that the Council justify its wider powers by adopting more openness, democracy, and creativity. In 1993, the UN General Assembly began a formal process of inquiry into Council reform. Within the ranks of the Council itself, some countries pressed hard for reform and renewal. Today, rancorous divisions within the Council have grown again, raising questions about the institution and its future.

As critics often point out, the Council has fallen short of today's needs. It has not stopped the pervasive violence, secret and not-so-secret wars, unprecedented waves of refugees, dangerous military standoffs, nuclear threats, and other kinds of destabilization and chaos. The Council has willfully ignored many conflicts and intensified others. It has long turned a blind eye to the tinder box in Kashmir, where nuclear-armed rivals face off across a tense Himalayan cease-fire zone. It has miserably failed to resolve the Israel-Palestine crisis and the wider Middle East wars. In Rwanda, Somalia, Haiti, Congo, and other hot spots, the Council has fallen tragically short. The Council's lack of action on disarmament is notorious. Critics tell of many other missteps and misdeeds. Some such accounts come from diplomats who have served as ambassadors on the Council and know it at very close hand.

The Council especially infuriates people in crisis zones who suffer the most from its failures. They know only too well that its Permanent Members are leading arms manufacturers, gobblers of natural resources, funders of rebel groups, and clandestine backers of proxy wars. They also criticize the Council for its impulse to use force to solve conflicts when peaceful and diplomatic means would

3 United Nations, Annual Reports of the UN Security Council, www.un.org/en/sc/documents/reports.

serve far better. Few observers accept the old apologia that the Council is the "best we can get."

The Council claims to speak for the "international community," and its decisions are binding on all governments, but from the beginning it has been dominated by just five permanent members—the United States, the United Kingdom, France, Russia, and China. In fact, just one member—the United States—calls most of the shots. The five, sitting in perpetuity, control the Council's agenda, dominate its discussions, and have veto power over all its decisions. The Council consults minimally with the UN's general membership. Even the Council's ten elected members have little voice. No institution more completely exemplifies the world's inequality or the extremely unbalanced relations that prevail in the international system.

The Council is not a place of "collective security" but at best, as one scholar has commented, a source of "selective security."[4] Nor does the Council act systematically or even-handedly. Efforts to establish doctrines or benchmarks to govern its behavior have made little headway, fueling criticism that the Council is unfair and unbalanced in its approach to the world.

The Council has no legal oversight or other formal limitation on its powers. It claims to be the supreme arbiter of international law, without any of the legal restraints that serve as a check on democratic governments. The Council creates international law, implements international law, and judges those it accuses of breaking international law. It is a legislature, executive, and judiciary together—a dangerous combination.

Many decent, intelligent, and hopeful people have worked over the decades to make the Security Council more effective, just, and responsive. From the initiatives of the smaller states in the UN's founding conference to the reforming diplomats of our own time, many have

4 Adam Roberts, "The Use of Force: a system of selective security," in von Einsiedel, *Security Council*, 349-372.

sought to advance international cooperation for peace by enhancing the Council's work. Likewise, NGOs, scholars, UN staff, and even grassroots movements have devoted serious efforts to making a Council fit to promote real peace and security. Clearly, these efforts have fallen short.

Judged historically, in terms of the European international system in the nineteenth century, the Security Council appears as an impressive innovation. It is, after all, a powerful supranational body, in virtually constant session, with a world-wide mandate and a formal framework. It is certainly a big advance over the periodic European-only congresses that brought monarchs and ministers together to settle quarrels, form diplomatic cartels, and carve up continents as colonial territories. In the twentieth century, in the after-glare of two world wars, many saw the Council with hope and expectation as a step towards strong collective security. Its power seemed innovative—a move toward supra-nationality. Again at end of the Cold War, it appeared to offer a hopeful site for increased global cooperation.

In the twenty-first century, positive expectations have ebbed. Institutionally, the Council has not evolved far enough from its great-power origins in the 1940s, nor has it widened its democratic horizons. It has not drawn enough lessons from its shortfalls nor listened to its critics. In terms of membership, it is not remotely representative. In terms of results, the Council has scarcely made progress towards a world of durable security and peace.

In what follows, we will look at the Council in detail, examining its origins, ideology, and mode of operation. We will look at the steep hierarchy of power within it, the reform efforts that have arisen, and some of the crises that it has been called to address. Finally, we will look at possible future directions for the Council. We will consider whether it will continue on the same path, or whether there may be opportunities and initiatives that might alter its course and perhaps open the way to constructive transformation.

Founding of the Security Council

During the course of the Second World War, US President Franklin Roosevelt and British Prime Minister Winston Churchill appealed for public support for the allied cause. They promised the world's people that once the wartime enemies were defeated, the allies would construct a new, peaceful, and just world. In various statements, the two leaders spoke of a peace that would be based on economic prosperity and close political cooperation. They also spoke of a new "international organization" that would ensure the peace.

The Atlantic Charter, promulgated by the two leaders in 1941, set out the initial vision and their later statements amplified on it. As the war progressed, experts in Washington—and to a lesser extent London—worked to consider the shape of the new organization and particularly how it would function under the leadership of the victorious powers. In conversations with Soviet leader Joseph Stalin, Roosevelt and Churchill mapped out these ideas, which finally took shape at the Dumbarton Oaks Conference in Washington, during August 1944. The new peace organization was baptized "United Nations," the name that had been used for the wartime military alliance.[5]

The Big Three saw the organization as the capstone of the postwar order, symbolic of international cooperation but at the same time a pragmatic and relatively traditional enterprise in great-power politics. Each one of the leaders had a different vision of the world and each wanted to maximize national interests in a framework of traditional statecraft. Roosevelt had told his advisors at an early stage that the new system would be a "trusteeship of the

5 For the founding of the UN, see inter alia Stephen C. Schlesinger, *Act of Creation: the founding of the United Nations* (Boulder: Westview, 2004) and Herbert Feis, *Churchill Roosevelt Stalin: the war they waged and the peace they sought* (Princeton: Princeton University Press, 1957). See also Francis O. Wilcox, "The Yalta Voting Formula," *American Political Science Review*, 39, No. 5 (Oct. 1945), 943-56; Ruth Russell, *A History of the United Nations Charter* (Washington: Brookings, 1958); Townsend Hoopes and Douglas Brinkley, *FDR and the Creation of the United Nations* (New Haven: Yale, 1997).

strong" to insure that war could not again arise and American interests would be safeguarded.

The US president later used the term "four policemen" to refer to the postwar order. The Big Three plus China, he said, would disarm the other nations and police the world together, with Washington in charge of the Western Hemisphere.[6] He was apparently not concerned about how the lesser nations would respond to such policing or how divergent interests within this mighty police force would be reconciled. Nor did the founders account for future changes in status and capacity among themselves. China was already weak and wracked by civil war, but Washington ignored the uncertainty. It wanted a reliable, like-minded Asian ally to bolster the image of collective leadership. Chiang Kai-shek, China's authoritarian leader, would suit the purpose.

The concept of the "four policemen" was very far from the internationalist dreams held by many intellectuals, leaders of colonial independence movements, and politicians in smaller countries. They favored a much more democratic international institution, perhaps even a federally-integrated world government, with popularly elected assemblies, extensive powers, a tax system—even a small standing army. Lesser states thought they should assume considerable responsibilities in the new order, in light of their peaceful outlook and their commitment to international law. Great intellectual and moral voices of the time spoke out in favor of a dramatic break with the past, including general disarmament, decolonization, egalitarian social arrangements, global democracy, and respect for all peoples.[7]

6 According to James Cockayne, the concept of the "four police" originated on Nov. 30, 1943 at the Teheran Conference, when Roosevelt penciled it into a note to advisor Harry Hopkins, see Cockayne, "Confronting Organized Crime and Piracy," in von Einsiedel, *Security Council*, 323, for a photo of the note.

7 See for example E.B. White, *The Wild Flag: editorials from The New Yorker on Federal World Government and other matters* (Boston: Houghton Mifflin, 1946).

Those at Dumbarton Oaks were not interested in what they saw as risky experiments with unrealizable goals. The ideas of the Big Three, given shape in Washington, were thus remarkably conservative—not only close to traditional European statecraft but also drawing upon recycled structures of the League of Nations, formed after the First World War. The League had itself been built on a hierarchy, topped by a Council with four leading powers as permanent members. So when diplomats from the Big Three met at Dumbarton Oaks, they endorsed the US proposal that the new United Nations would have as its most powerful organ a Security Council with permanent members who would together wield decisive influence. Their actions in the most urgent circumstances, if unified, would have binding effect on all nations.

The Big Three were keen to have veto power so that each one could impose its will. This was not just the conviction of three strong leaders but also the view of elites in their countries who saw the rest of the world through a lens of superiority. In Washington, policymakers deemed the US a historically unique moral force. US President Harry Truman wrote of the veto in his memoirs: "All our experts, civil and military, favored it, and without such a veto no arrangement would have passed the Senate."[8] The political classes in Britain and the Soviet Union had similar convictions.

As discussions continued, the ranks of the "police" rose to five. The British, keen to have a like-minded colonial power on the Council, insisted that France be included as a permanent member. The US and the Soviets eventually agreed. The new five, taken as a whole, were an arbitrary group, with vastly different capabilities, ideologies, interests, and leadership claims. It was, quite simply, a great-power condominium.[9] Nothing more imaginative or democratic was given

8 Harry S. Truman, *Memoirs* (Garden City: Doubleday, 1955).

9 John Foster Dulles, a leading US statesman, wrote of the Dumbarton Oaks outcome as "great power military policing of the world," in *War or Peace* (New York: Macmillan, 1950), 35.

consideration. No nations outside the magic circle were consulted in advance about these foundational matters.

The founders needed to make a gesture toward the rest of the nations. They also had to offer accommodation to internationalist opinion, to rally the necessary support for their new enterprise. So they decided that the organization would—like the League—have a General Assembly, in which all nations would be represented. For the Security Council, the founders also borrowed from the League to include six "non-permanent members," voted into office by the General Assembly. By contrast to the League, the lesser members would have little power—unable to block action and enjoying just a short two-year term.[10] The United States and Britain felt confident they could command sufficient support among these lesser countries to advance their Council business. After Dumbarton Oaks, final details were agreed at the Big Three conference in Yalta, in February 1945. China's role in the whole process was merely symbolic while France had no say at all.

Forty-eight nations convened in San Francisco in April 1945 to review and adopt the UN Charter. Many participants—including Canada, Australia, Belgium, Colombia, and New Zealand—challenged the great-power thinking of Washington and its two big partners. The mood in the smaller delegations grew increasingly critical, in public sessions and in private conversations, tracked in full by US army intelligence units. The *New York Times*, covering the events, reflected on these nations' attitude towards the Big Three's "virtual world dictatorship."[11] For a time it seemed that the conference might fall apart over the special privileged position of the permanent members and in particular the veto.

10 The League Council's Non-Permanent Members had a veto over decisions through the rule of "consensus," which the proposed UN Council's Non-Permanent Members do not. The League's Non-Permanent Members also had three-year terms.

11 Russell Porter, "Small Countries Gain Wider Role," *New York Times*, May 7, 1945, 10.

After days of debate and firm resistance by the smaller countries, the US delegation considered concessions. Washington, however, insisted on holding the line. The US and Britain convened an emergency meeting, warning that if opponents did not agree, the project for the new organization would collapse and the big powers would walk away. US Senator Tom Connally tore up a copy of the proposed Charter in front of the astonished delegates to demonstrate what might happen.[12] Faced with this threat, all the governments eventually caved in and went along. Many nations felt—and would continue to feel—bitterness and anger toward the Charter-based arrangements and the oligarchy they established. Though the Charter text had opened with the resounding phrase "We, the Peoples," there was little room for a people's voice in its leading organ.

On October 24, 1945, with the allies militarily victorious and the necessary ratifications in place, the UN Charter came into force and soon thereafter (on January 17, 1946) the UN Security Council held its first meeting in London, shortly to be followed by meetings in New York. By that time, Roosevelt had died, Churchill had been voted out of office by a landslide, and colonial empires were in rapid retreat. A different post-war world was taking shape.

12 Schlesinger, *Act of Creation*, 223.

Perpetuity and Power

Unequal Beginnings

The five permanent members—known at the UN as the "P5"—are theoretically equals among themselves, but from the beginning they have been separated by gaping differences in power and capacity on the world stage. To understand the Council, this is an essential point of departure. In 1945, only one of the five—the United States—was fully able to take on new global responsibilities when the Charter came into force. The US enjoyed a tremendous military and economic superiority over every other country, and it was ready to affirm vigorously its global pre-eminence. No wonder, then, that the new organization was to be based not in neutral Geneva but in the principal US metropolis—New York.

Among the second-tier in 1945, China was especially weak. The poorest of the five, devastated by the Japanese war, embroiled in a bitter civil conflict, China's shaky and unpopular government was scarcely a "victor" as the war came to a close. Britain was running out of steam as a global power. Many of its cities were badly damaged by wartime bombing. Its government coffers were far too empty to police a world empire. France, though it had suffered far less devastation than others, had been occupied and humiliated during the war. It was politically deeply divided and shaken by a colonial empire in rapid worldwide retreat. The Soviet Union, though described by many as the second "superpower" and undoubtedly a military victor in the conflict, was mauled in the war and facing widespread poverty and famine.

From the very beginning, then, the permanent members were not so much a club of equals as an oligarchy composed of a single global colossus and its four disparate junior partners, whose unity would soon dissolve. Down through the years, though all the P5 are now prosperous and militarily strong, their international standing has changed substantially and great disparities among them have remained.

Impermanent History

Permanent membership has an Alice-in-Wonderland history—dramatic changes have taken place while all has remained the same. In the early years, change in China produced the first severe test of permanency—the coming to power of a new government produced by the Chinese Revolution. In 1949, and several times thereafter, Washington and its Council friends rejected efforts to oust the Chinese Nationalists, who were no longer in power on the Chinese mainland. For twenty-two years (until 1971), the defeated Nationalists—who had only retained control of the offshore island of Taiwan—played the charade of great power status. This was permanency at great odds with reality. Eventually, the US changed its policy and the Chinese Communists entered the Council.[13] The UN Charter, un-amended, still says that one of the P5 is the "Republic of China," the name of the government in Taiwan.

The dissolution of the Soviet Union in late 1991 provided another act in this strange drama. A number of successor states came into being, of which the Russian Federation was the largest. It was certainly not the major power that the USSR had been, having a far reduced population and economy. The new state was clearly not the same as the old, but the permanent members did not want to open up the dreaded membership question. A quick fix was soon arranged. The new Russian President, Boris Yeltsin, wrote to Secretary General Pérez de Cuéllar on Christmas eve, informing him that the Soviet Union "is being continued" by the Russian Federation on all UN organs and that the other successor states were agreeable to that arrangement.[14]

13 For a discussion of the formalities of the switch, see Loraine Sievers and Sam Daws. *The Procedure of the UN Security Council - Fourth Edition* (Oxford: Oxford University Press, 2014), 157-159.

14 Sievers, *Procedure*, 159-60.

The Secretary General forwarded Yeltsin's letter to the Council President, who happened to be the Soviet representative, and the letter was duly circulated to Council members. With most diplomats celebrating the holidays or out of town on vacation, no delegation raised immediate objections. Without even calling a meeting to examine the matter, the Council President took silence as consent. With no change in the diplomatic team, Russia officially took the Soviet seat on the Council at its next meeting, on December 31. Crafty stage management had maintained a sense of enduring permanency. The Charter, un-amended, still says that one of the P5 is the "Union of Soviet Socialist Republics."[15]

Today, the UK and France raise further questions about membership and change. In 1945, when they still held their colonies, they ruled over hundreds of millions of people in territories around the world. "The sun never set on the British Empire," as the saying went. But today, with colonialism long past, these two countries represent less than two percent of the world's population, while occupying forty percent of the Council's permanent seats.[16] In economic and military terms, their standing has slipped considerably, though they still possess nuclear arsenals and "friends" in Africa and Asia left over from colonialism. British and French diplomats at the UN concede privately that their status among the P5 is shaky. They often say, apologetically, that they work harder than others in the Council to maintain their credibility.[17]

Historical developments of a different sort have also shaken the basis for permanency. Over the past 71 years, the international

15 Ibid.

16 According to the CIA World Factbook in 2016, the UK and France have a joint population total of 131.2 million, while the global population total as estimated for 2016 by Worldometers is greater than 7.4 billion, yielding an Anglo-French share of 1.8%.

17 See, for example, Kishore Mahbubani, "Council Reform and the Emerging Powers," in von Einsiedel, *Security Council*, 160.

system has changed considerably. A number of nations, some once colonies, have risen in influence and capacity. India, Indonesia, South Korea, Mexico, Brazil, Nigeria, and South Africa, as well as the former "enemy" states Germany and Japan, have all come into the upper ranks. For the past two decades many have clamored for a permanent seat at the Council table, challenging the perpetual five. It does seem curious that—if there are to be permanent members at all—there are none presently from Africa or Latin America or that India with one-sixth of the world's population is so seldom represented on the Council. But Washington, Moscow, and Beijing, in spite of occasional noises to the contrary, have made it clear that they much prefer the status quo and oppose any Charter amendment that would lessen their unique status. London and Paris, "desperate to avoid change,"[18] express their opposition to change in a deeper form of privacy.

Today, there are nearly four times as many member states in the UN as in 1945 and quite a few have fragile governments. Security crises often arise within, rather than between, them. Civilians in many states live on the edge of survival, with little respect for those in power. Failed states have proliferated. Even prosperous and powerful states have faced secessionist movements and other crises of governance. The P5 do not have a plan to address and stabilize this chaotic system. In the Council, they usually address each conflict separately and on a narrow basis. They especially do not want to accept responsibility for their own actions that undermine peace—their economic rivalries, arms exports, regime change interventions, and proxy wars. Clearly, these historical changes make their rule over the Council increasingly less-suited to meet the needs of peace in today's world.

18 Ibid., 164.

Myths and Theories

From the beginning, the Security Council has relied for its legitimacy on justifications, theories and specially-tailored historical accounts— discourses that emphasize the P5 role and insist on a universal consent to it.

Four closely interwoven ideas of this kind are associated with the Council's founding in San Francisco. The first holds that the P5 deserve their power because they were the "victors" in the Second World War. This is increasingly irrelevant with the passage of time. The second idea holds that the nations decided willingly at San Francisco to invest the P5 with permanency and veto rights. In fact, as we have seen, it was a decision made under duress and followed by much anger and remorse down through the years.

The third idea holds that there was an "implicit political bargain" between the world's people, keen for protection, and the great powers, ready to provide it. This notion, borrowed from the conservative English philosopher Thomas Hobbes, was used to justify absolutism in the seventeenth century, but it has little practical relevance to the UN's role in the world today. A fourth theory insists that only great-powers with mighty armies can enforce peace in an unruly world. Throughout history, great-powers have used their might to advance their own interests, not to promote the general welfare. A system of military supremacy, enforced by violent means, cannot be the basis of a cooperative and peaceable governance process.

Finally, there is the threat of great-power withdrawal from the organization, made evident at the founding conference and present ever since. It is a sword of Damocles, suspended over the UN project, perpetuating fear and worry among the nations and leading them to accept unsound arrangements and oppressive outcomes. Seventy years after the founding, in spite of great change, the threat still remains effective.

How the P5 Rule

To understand the Council, it is necessary to examine the many powers that the five permanent members have accumulated, derived from the Charter and also wrested over time from the UN membership. Many little-known institutional advantages enable the P5 to perpetuate their rule, keep their influence semi-secret, and bend the Council to their interests.

The P5 wield the power of the veto, of course. They also control the election of the Secretary General, determine many high-level appointments to the Secretariat, greatly influence the election of judges to the World Court, dominate the channels of information the Council receives, and control much of the implementation of Council decisions. The P5, through their coordinated group decisions, also have an extremely strong influence over the Council's agenda and program of work, the wording of all resolutions, the rules of procedure, and the appointments of the Council's committee chairs. Finally, and not least, they are always present. They have the immense advantage of decades-long experience, continuity, and institutional memory as a means to dominate all the rest.

Though the P5 share the same powers and privileges, they are far from equals. They form a steep hierarchy, which is reflected in the language of UN insiders. First and foremost there is the "P1"—the United States— with its unique and exceptional influence, far above the rest. Then there is the "P2"—the duo of the United States and its close ally, the United Kingdom. Between them they largely run the show, with assistance from France, with whom they constitute the "P3." Finally, and well behind in Council influence, are Russia and China, for whom a special "P" designation is not used. Senior P3 diplomats have openly stated that they—the P3—"run" the Security Council and largely control it. "When we look around the room," said one such envoy, "we know we have the nine votes to pass any

resolution."[19] This hubris reflects a slight exaggeration, as the famous Iraq dispute showed. In the overwhelming majority of cases, however, the P1 (Washington) and its two partners prevail.

The Veto

Along with permanency itself, the P5 rely on the veto as their most powerful instrument of institutional power.[20] When cast in public meetings, the veto is highly visible, but the veto is used much more often in a variety of invisible settings, little-known and infrequently commented upon.

The formal veto is used rarely these days—just eight times from 2012-2016. Sometimes it is cast alone, without the support of any of the other P5 and against the will of many if not all elected members.[21] Over the years, the United States has cast eleven such lonely vetoes on the Palestine question, blocking effective Council action on that vital issue. From 1946 through the end of 2016, P5 members have cast 277 "formal vetoes."[22] Frequency of formal veto use has varied from one period to another, but veto power has always remained a central feature of Council activity.

Uncritical scholars and diplomats defend the veto by saying that it is necessary to protect the "vital security interests" of the great-powers

19 Private comments in 2010.

20 The veto is a negative vote, blocking Council action that would otherwise have been approved by a vote of at least nine members. If a measure fails to attain the nine-vote threshold then a negative vote by a permanent member is not counted as a veto. Abstention or absence by a P5 member does not prevent a vote from carrying.

21 Throughout the paper we will use the term "elected members" to refer to the ten Council members known formally in the Charter as "Non-Permanent Members." We also speak of the "E10" meaning the ten elected members. Both terms are in standard use at the UN.

22 United Nations, Dag Hammarskjöld Library, Security Council Veto List, http://research.un.org/en/docs/sc/quick. Many commentators focus exclusively on the formal vetoes, which can be quite misleading, as we shall see.

and thus ensure their participation in the United Nations.[23] Evidence suggests, however, that the P5 use their veto for a variety of reasons, many of which appear secondary and hardly "vital." Forty-one formal vetoes were cast to block nations from UN membership, a gesture that makes a statement but never succeeds over the long term.[24] The Soviet Union vetoed the membership applications of Italy five times and Portugal three times; the United States vetoed Vietnam's application four times and Angola's application once. They all eventually became members.[25] Formal vetoes play a symbolic role, and they are said to convey "messages" and affirm national status.

The P5 have cast vetoes to keep topics off the Council's agenda, to block popular candidates for Secretary General, to reward misbehaving allies, to block enforcement of World Court decisions, and many other purposes that seriously interfere with justice and good conduct in the international system—as we will see in detail below. Again and again, reformers have tried to persuade the P5 to respect Charter limits on veto use. Reformers have also encouraged the P5 to stop using the veto in certain circumstances, like the election of the Secretary General or agenda-setting—or a security crisis involving genocide. But such efforts have been to no avail.[26]

The Charter restricts veto use but the P5 ignore these limits. The Charter clearly says that "parties to disputes" before the Council

23 Cases in which vetoes of more serious "interest" have been used are easy to cite: The UK-France veto of the Council resolution on the Suez Crisis (1956), the Soviet vetoes on the Hungary Crisis (1956) and Afghanistan (1980), and the US vetoes on Grenada (1983) and Panama (1989). See Security Council meetings of October 30, 1956, November 4, 1956, January 7 and 9, 1980.

24 UN veto list, ibid.

25 Ibid.

26 The French Foreign Ministry has said that its UN delegation began discussions in 2013 with the other permanent members about voluntary restraint of the veto in the case of genocide. This initiative was formally announced and discussed in the General Assembly, in a meeting co-sponsored with Mexico, on Sep. 25, 2014. Nothing so far has come of the idea.

"shall abstain from voting"—in situations involving pacific settlement.[27] This provision could limit P5 veto use in a number of conflicts in which they are directly involved. The Charter also prohibits use of the veto on "procedural matters," such as placing items on the agenda.[28] In practice the P5 systematically violate these rules and no one has been able to bring them into conformity.

The P5 mostly use their veto power as a threat—in off-the-record consultations and negotiations. While formal vetoes have declined in recent years, veto-threats are as common as ever and perhaps even more so. The P5 use them constantly to block or alter resolutions, defend subtle prerogatives, modify agendas, stop action, and otherwise greatly impact Council policy. This has been called the "hidden veto" or "closet veto." As author Céline Nahory comments: "By giving private veto warnings before a vote takes place, the P5 can 'convince' Council members to shift their position and still persuade the international public of their good intentions."[29] Ambassador Park Soo Gil of the Republic of Korea told the General Assembly: "We all know that the true power of the veto lies in the threat of its use."[30]

Diplomats who have served on the Council report that the hidden veto hangs over every negotiation, every statement, every act. As Ambassador Curtis Ward of Jamaica said in a Council debate: "the mere presence of the threat of the veto or its possible use [...] determines the way the Council conducts its business."[31] Former Singapore Ambassador Kishore Mahbubani writes that the hidden

27 United Nations Charter, Article 27, Paragraph 3.

28 United Nations Charter, Article 27, Paragraph 2.

29 Céline Nahory, "The Hidden Veto," Global Policy Forum: New York, 2004.

30 Statement to the Open-ended Working Group on Security Council Reform of the General Assembly, May 22, 1996.

31 Statement at the Security Council Wrap-Up Session of Aug. 31, 2001, S/PV.4363, 7.

veto is used "almost every day."[32] Many who comment on the Council theorize endlessly about the formal veto, but they seem to forget that the hidden veto is far more significant.

There are other types of vetoes, such as those cast secretly during the elections for Secretary General. There are also what experts call the "double veto" and the "reverse veto."[33] There is a "consensus veto," in which a consensus procedure enables the P5 to block action in a Council committee and in program-setting. And finally there is what we might call the "internalized veto," in which elected members, reluctant to trigger a veto threat, avoid certain subjects entirely. Such vetoes, veto-like maneuvers, and internalized vetoes are not (and cannot be) counted in the veto totals announced by the UN.

P5 members use all forms of vetoes constantly, even when important conflicts will be neglected or, still worse, when terrible consequences may be looming. During the period of increasing tension in Rwanda in the spring of 1994, some elected members of the Council pressed for action to reinforce the small UN observer force in the country. France, the United Kingdom, and the United States objected, using "hidden vetoes" to minimize the crisis and effectively block Council action. As mass killings increased, they prevented any use of the term "genocide," out of concern that the Council might trigger international treaty responsibilities under the Genocide Convention. Eventually, the Council failed to take any initiative to address the emergency. Hundreds of thousands died as the Council remained stymied by veto-paralysis.[34]

32 Kishore Mahbubani, "Council Reform," in von Einsiedel, *Security Council*, 158.

33 For the "double veto" see Sievers, Procedure, 318-327; for the "reverse veto" see Bardo Fassbender, *UN Security Council Reform and the Right of Veto* (The Hague: Kluwer, 1998), 338.

34 See Colin Keating, "Rwanda: an Insider's Account," in *The UN Security Council from the Cold War to the 21st Century* (Boulder: Lynne Rienner, 2004), edited by David M. Malone, 500-511. See also *Report of the Independent Inquiry into the actions of the United Nations during the 1994 genocide in Rwanda*, S/1999/1257 (Dec. 15, 1999).

Privacy and Secrecy

The P5 prefer to operate in a deeply private setting. The large Council-related zone at UN headquarters is strictly closed to any person not on a Council delegation or on authorized UN business. This barrier, which excludes all diplomats not sitting on the Council, creates a feeling among Council members that they belong to an exclusive club where secrets must be kept as part of the bargain to be on the inside. Many diplomats on the outside, with an important stake in Council business, feel the anguish of exclusion.

The Council does have its public face, of course. It holds many formal meetings, open to the press, member states, and assorted visitors, but the majority of these meetings offer little in the way of transparency. Though a few meetings involve a serious debate, the majority are brief and do no more than take a vote on a resolution. Because the Council holds a meeting about just one subject at a time, it often holds multiple meetings in one day. On March 24, 2016, the Council held three meetings in the space of twenty-five minutes, offering the world no evidence of its thinking except for the usual unanimous votes on two resolutions. In the first three months of the same year, there were six days in which the Council held three short meetings and one day—January 14—in which the Council held no less than four sessions.[35] One of the most important resolutions in the history of the Council took place in a meeting that lasted just three minutes from gavel to gavel.[36]

The P5 prefer to conduct most Council business behind closed doors, where no record will testify to the discussion. Diplomacy

35 United Nations, Security Council, "Meetings Records"—a list on the UN website maintained by the Department of Public Information at un.org/en/sc/meetings.

36 UN Security Council Resolution 1373 (September 28, 2001), set up the Counter-Terrorism Committee, which asserted a powerful Council influence over the legal systems of all states—a great expansion of the Council's legal powers.

requires a certain degree of confidentiality, to be sure, but the Council has always operated far more privately than is warranted for a body that is responsible to all UN members and the citizens they represent. This privacy enables the P5 to keep from public view much of their self-advantaging activities, including setting the agenda, assessing conflict situations, and crafting policy responses. It also results in the appearance of more unanimity in the Council, since the expressions of concern and dissent by elected members most often arise in private settings.

For privacy purposes, the P5 have developed a number of meeting arrangements to suit different circumstances, but the most important format is the consultation of the whole. Meeting in a room that is separate from the Council Chamber, the fifteen carry out discussions and jointly reflect on crises and resolutions. Delegates spend far more time in these off-the-record meetings than they do in the formal events. There are also private meetings, which are "closed" and without transcript, as well as off-the-record meetings of the many "subsidiary bodies." In the absence of a record, outsiders cannot study the debates and draw conclusions about Council members and their action. Even the current elected members have no minutes to consult if they want to consider precedents. P5 members can thus pass along their own version of private Council business to non-members of the Council (or media reporters) with little verification available.

There are many layers of Council secrecy. At a more informal level there are weekend retreats, lunches with the Secretary General, mission trips, and other events involving all or most members. There are also many private conversations and negotiations. Important resolutions pop to the surface with little warning. As a result, the general UN membership feels resentful and out of the loop. Even countries with large numbers of troops in

peacekeeping missions scarcely know what is going on. Occasional briefings by Council Presidents have not reduced these concerns.

Reform efforts by elected members have sought Council transparency through more full-length open meetings—in particular, meetings that provide a sense of Council thinking and policy options. There were the "orientation debates," an innovation of the 1990s, and the "wrap-up meetings" that arose in the early 2000s.[37] Each initiative tried to prod the Council into self-reflection in a public setting. The P5 were not happy with these moves. In one wrap-up debate, Ambassador Stuart Eldon of the UK chastised Council members for suggesting that "everything is dreadful."[38] In other words: critical thinking about the Council was not appreciated. Unsurprisingly, these initiatives both died and have been revived only rarely since.

Control of the Agenda and Program of Work

P5 members regularly use their veto and other leverage to control the agenda of Council meetings as well as the Council's monthly program of work. The P5 use their control of these gateways to prevent, derail, or hide inconvenient discussions or topics they would prefer to be un-noticed or forgotten. Dozens of conflicts have been hidden or neglected in this way. Such blockage is a clear violation of both the letter and the spirit of the Charter, but the P5 have paid no attention.[39]

In the Council's early decades, Britain and France were particularly keen to keep the Council away from their colonial wars.

37 For a wrap-up example see the interesting discussion on Africa conflicts in the 4766th Meeting (May 30, 2003).

38 S/PV.4363, 15. Eldon was the Deputy Permanent Representative.

39 United Nations Charter, Article 27, paragraph 2.

France succeeded in blocking Council discussion of its clashes with the independence movement in Tunisia in 1952 and similar events in Morocco in 1953—the former after three days of heated Council procedural wrangling and the latter after six days of debate.[40] France's counter-insurgency war in Algeria was likewise rejected as an item for discussion in 1956.[41] Britain, of course, did the same. The colonial powers succeeded by a mixture of open vetoes, hidden vetoes, procedural maneuvers, and support from a sufficient number of Council members to sustain a procedural vote.

Britain and France were not the only P5 members seeking to avoid awkward discussions or action. The Soviet Union minimized Council attention to political crises in its sphere of influence in Eastern Europe, including the Czech Crisis (1948), the Hungary Crisis (1956), and the Prague Spring Crisis (1968).[42] Soviet support for India led to a blockage in the Council on the Kashmir Crisis after the Soviet veto of a resolution in 1962.[43] The United States, for its part, was able to prevent or minimize Council scrutiny and involvement in many issues seen by Washington as significant to its global interests, including among many others the conflict with Cuba (esp. 1961-62) and the Vietnam War (1955-75).[44]

The Council has continued to turn a blind-eye to many serious conflicts, even those that have persisted for decades, killed tens of thousands, created large numbers of refugees, devastated towns and cities, and posed a clear threat to international peace and security. Scholars Peter Wallensteen and Patrick Johansson discuss this

40 Sievers, *Procedure*, 213, 212, see also 214-215.

41 See Security Council debate of June 26, 1956 (S/PV.730).

42 The first Czech crisis was blocked by two Soviet vetoes on May 24, 1949; the Hungary crisis was blocked by a Soviet veto on November 4, 1956; and the Czechoslovakia "Prague Spring" crisis was blocked by a Soviet veto on August 22, 1968. For the Czech debate see S/PV.268.

43 Veto of draft resolution on June 22, 1962.

44 On Cuba blockage see S/PV.991 (Jan. 30, 1962) and Vietnam debate on Feb. 1, 1966.

in detail, and they list a number of more recent "hidden" conflicts: Algeria, Chechnya, Colombia, Philippines (Mindanao), Sri Lanka, and Turkey (Kurdistan).[45] In most of these cases, and others that could be added, one or more P5 members seek to protect an ally or client state (and themselves) from embarrassing scrutiny.

Though the Charter clearly says that the P5 can only use their veto on matters of "substance" (as opposed to "procedure"),[46] the P5 have constantly blocked sensitive topics by twisting legality as they brandish their veto. The Soviets first expressed an interest in blocking agenda issues in San Francisco, and the US took what we might describe as a "free speech" position. But in practice the democracies soon abandoned an open-agenda posture. All P5 members have long claimed—at least when it suited them—that a vote on whether or not an item is "procedural" is a "substantive" matter and thus subject to the veto.

The P5 exercise their blocking power over the agenda and the program of work in a variety of other ways. They can pressure the Secretary General to avoid bringing matters to the Council (also contrary to the Charter).[47] They can jointly agree in their private P5 coordination sessions, using horse-trading methods to exclude sensitive issues. They can privately approach individual ambassadors of elected members and warn them against pressing ahead with taboo topics. And they can simply vote against adoption of the agenda in private consultations where the matter is subject to "consensus."

During the Iran-Iraq War (1980-88), Iran tried to bring the Council's attention to Iraq's use of chemical weapons.[48] At the time, the United States was supporting Iraq and providing it with

45 Peter Wallensteen and Patrick Johansson, "The U.N. Security Council: Decisions and Actions," in von Einsiedel, *Security Council*, 45.

46 Charter of the United Nations, Article 27, Paragraphs 2 and 3.

47 Charter of the United Nations, Article 100, Paragraphs 1 and 2.

48 Javed Ali, "Chemical Weapons and the Iran-Iraq War: a case study in non-compliance," *The Nonproliferation Review*, Spring 2001, 43-58.

conventional weapons, chemical weapons precursors, and military targeting expertise. Other P5 members—France, the United Kingdom, and the Soviet Union—were also supporting Iraq at the time, and a UK company was even building a factory in Iraq for production of mustard gas and nerve gas.[49] Washington and the others wanted to minimize Council attention to the matter, so the Secretary General came under heavy pressure to remain silent. Though UN inspectors confirmed the use of the chemical weapons,[50] the Council limited its action to empty gestures, including two weak Presidential Statements (March 1984 and March 1986) until finally—after seven years of conflict—a resolution in 1987 called on the exhausted combatants to respect an already-agreed ceasefire.[51]

The P5 use their control over the Council's agenda to block presentations by senior officials of the UN or UN-related bodies—or to force such presentations into closed door sessions. The post of High Commissioner for Human Rights was created in 1993, but it was not until late 1999 that the Council opened its door to a briefing from this important official.[52] P5 members were apparently concerned that the High Commissioner would raise topics that might embarrass them or set precedents that might cause them embarrassment in the future. Briefings by the High Commissioner are still held behind closed doors.

49 David Leigh and John Hooper, "Britain's Dirty Secret," *The Guardian*, March 6, 2003. Germany was also supporting Iraq in this period.

50 Ali, "Chemical Weapons," refers to two separate UN inspection missions, in 1984 and again in 1988. The first inspection team, dispatched by the Secretary General, investigated in March, 1984.

51 UN Security Council Resolution 598 (July 20, 1987). It is interesting to compare the Council's silence about Iraq's mass destruction weapons in this period with the later uproar on the same topic beginning in 1990 and culminating in early 2003. Above all, policies of the P2 had changed in the interim.

52 Joanna Weschler, "Human Rights," in *The UN Security Council: from the Cold War to the 21st Century*, (Boulder: Lynne Rienner, 2004), edited by David M. Malone, 65.

Former Singapore Ambassador Kishore Mahbubani tells about a similar blockage he faced as Council President. In May 2002, he tried to set up an open briefing with the president of the International Court of Justice, and he thought the plan would be quickly approved. When he raised the matter in closed consultations, however, the US delegate expressed opposition. The other Council members, wary of crossing the veto line, ceded the point. The briefing was eventually held behind closed doors, in a private meeting.[53] Fourteen years later this abysmal practice continues. In October 2016, the Council met once again with the World Court President and again it took place behind closed doors.[54]

Since the time of Mahbubani's term on the Council, P5 control has tightened further. Traditionally, the Council President controlled the monthly program of work, after consultations with all Council members. That meant that during ten out of fifteen months, the program of work was controlled by a non-P5 President who could insist that certain topics be addressed. Sometime after 2000, the P5 unilaterally changed the procedure, so that now the program of work must be voted on the basis of consensus by the entire Council. This gives the P5 a new form of quasi-veto that they did not have before and a tighter-than-ever grip over what the Council considers and when issues can arise.[55]

53 Mahbubani, "Council Reform" in von Einsiedel, Security Council, 158; also recounted in Mahbubani, "The Permanent and Elected Council Members," in Malone, *Security Council*, 259.

54 The meeting took place on October 26, 2016 as noted in the Program of Work. No verbatim transcript, of course, is available.

55 Colin Keating, "Power Dynamics Between Permanent and Elected Members," in von Einsiedel, *Security Council*, 146. See further discussion below.

Control of Resolutions

Resolutions are absolutely central to the work of the Security Council since they give form to most of the Council's action. Every peacekeeping mission, sanctions regime, and special initiative taken by the Council begins with a resolution and continues over time with further resolutions. Resolutions of the Council are especially important because they are "binding,"—that is, under the Charter they tend to require adherence by all member states.[56]

During the Cold War, over a period of 45 years, the Council produced a total of 799 resolutions, an average of just 15 per year.[57] After 1991, when accord among the P5 improved, the rhythm changed dramatically. Over the next 25 years, the Council produced 1700 resolutions—68 per year.[58] Though the rhythm has slowed somewhat recently, on average, the Council is turning out more than one resolution every week—a fast pace, considering the care with which resolutions are drafted and negotiated.

Resolutions go through a tightly-controlled process. An outsider might imagine that any Council member could take the lead in producing a resolution and winning support for it, but that is not what happens. A respected observer speaks of typical decisions "previously cooked" by the P5, with the elected members having "no opportunity to input effectively."[59]

Today, all but a handful of resolutions begin with a discussion among the "P3" (the US, UK, and France) or sometimes just the "P2"

56 Not every resolution is equally binding, and there are differences of opinion about what elements create or add to bindingness. Some experts say that resolutions taken under Chapter VII and that use words like "decides" are the most binding of all.

57 United Nations, Security Council, Documents, "Security Council Resolutions", www.un.org/en/sc/documents/resolutions.

58 Ibid.

59 Colin Keating, "Power Dynamics," in von Einsiedel, *Security Council*, 145.

(the US and the UK only). Russia and China do not have a voice at this stage, and the elected members have virtually none. After initial discussions, a drafting process begins—more often than not in the UK mission.[60]

Curiously, the diplomats rarely invite input from the security-related departments of the Secretariat—even though it is the Secretariat that is expected to carry them out—nor is there input requested from the UN Office of Legal Affairs, whose lawyers might be able to shed light on issues and sort out legal problems. Eventually the draft is discussed between "experts" in the three missions and between the three ambassadors. Officials in the capitals may be involved as well. When the text is complete, it moves on to the next stage. The train is now leaving the station.

At this point, the other two members of the P5—Russia and China—finally come into the picture. The P3 want to be sure that these other veto-wielders will not create "problems," that they will not drag their feet or demand major changes or (worst of all) threaten a veto. At this stage, then, the P3 accept a few changes—to maintain the "spirit of collegiality" and what is sometimes called "P5 unity." Perhaps a few trade-offs will be arranged—"we will water down this resolution if you keep quiet about the other one."[61] If Russia and China raise substantial objections, negotiations may continue for weeks, and serious political calculations and pressures come into the picture. In some cases, months may pass while the crisis burns. If

60 The UK is viewed as the Council's most skillful resolution drafter, and it drafts more resolutions than those that fall under its "penholder" assignments. A high-level member of the UK delegation stated privately in mid-2013 that the UK produces more than half of all resolutions.

61 Vreeland and Dreher speak of a deal between Russia and the United States in 1992-93 in which Russia agreed to a US-backed Council peacekeeping operation in Bosnia in exchange for US support for a major IMF bailout loan. See James R. Vreeland and Axel Dreher. *The Political Economy of the UN Security Council: money and influence.* (Cambridge: Cambridge University Press, 2014). Those close to the Council say that such horse-trading is common.

and when the P5 finally reach agreement, the resolution moves on to the next and penultimate step. Now it is finally shown to the elected members and usually at the same time tabled for a vote.

In the early post-Cold War years—the "reform decade" we might call it—elected members were able from time to time to have substantial input at this stage. They apparently even drafted an occasional resolution among themselves. New Zealand ambassador Colin Keating has written recently about occasional drafting sessions with all fifteen ambassadors around the table in the Consultation Room when he was on the Council in 1993-94.[62]

The elected members' opportunity for input in the reform years mostly disappeared in the 2000s in the wake of the Iraq war. A sign of this is to be found in a Council meeting in August 2003, when the US and the UK pushed through a resolution on Iraq. They had consulted only with the other P5 prior to tabling it for a vote. After the vote took place and the resolution was dutifully passed, five elected ambassadors took the floor to complain. Ambassador Munir Akram of Pakistan said "it is among the entire Council membership that the Council's decisions should be finally discussed and approved."[63] The statements were polite, but they were a sharp rebuke to the resolution's sponsors.

Not long afterwards—experts are not sure exactly when—the P3 introduced what is known as the "penholder" system, a restriction on how resolutions are drafted. "More efficient," the P3 claimed! Under it, responsibility for a particular topic is now assigned to a specific delegation, usually (no surprise) one of the P3. According to a 2016 list of penholders, the P3 now have roughly three-quarters of the 38 penholder assignments, while all other

62 Keating, "Power Dynamics," in von Einsiedel, Security Council, 145-147. In a speech in 1994, Keating complained that "take-it-or-leave-it" was the ordinary method of the P5.

63 UN Security Council Meeting of August 14, 2003 (S/PV.4808), 4-5.

Council members—including Russia and China—have about one quarter.[64] Multiple assignments make exact counting complex, but the big picture is obvious enough. In response to complaints from elected members, the P5 have repeatedly promised to distribute penholder assignments more widely, but progress, if any, has been painfully slow.[65]

Today, drafting sessions with the elected members are rare. Even ambassadors who serve as committee chairs on a particular topic are today usually ignored when P3 drafting goes forward.[66] The elected members commonly see a P5-approved resolution for the first time when it is tabled, a process known in the Council as "putting the text in blue." At this stage, the sponsors often do not permit any changes at all, on grounds that the text represents a delicate P5 arrangement that must not be disturbed.[67]

Even if changes were to be permitted, the time allotted is far too short for serious input. Typically, the text is scheduled for vote after just an overnight pause or at most just twenty-four hours from the time it is tabled. Within such a time-frame, elected members cannot study the text carefully, develop comments on it, consult with their friends on the Council, and consult with their capitals (the Minister may be asleep in another time zone), much less have time for negotiations. A serious Council discussion of the text is clearly impossible. As for the wider UN

64 "Chairs of Subsidiary Bodies and Penholders 2016," website of Security Council Report.

65 In a Council debate about working methods on July 19, 2016 (S/PV.7740), there was reference to an exception to the P5 resolution monopoly. Five elected members had joined together to draft and present Resolution 2286 (May 3, 2016). The fact that this was so specially mentioned and welcomed suggested its rarity eighteen months after the Council had approved a Presidential Note affirming a goal of more E10 penholders (Note of the President, Dec. 17, 2012 – Document S/2012/937).

66 Keating, "Power Dynamics," 139-155.

67 This analysis is confirmed by the text on "Penholders" published by Security Council Report in October 2016.

membership or the general public, the tight window makes their intervention unthinkable.

In the end, the President of the Council puts the resolution before the Council. The P5 can expect the elected members to do their duty with a minimum of complaint. On the motion, all hands are raised. The resolution is declared adopted. Over the past five years, ninety-two percent of all resolutions have been voted unanimously or "by consensus."[68] It is strangely like a parliament in a one-party state, though in Council circles it is welcomed as "unity of purpose" and a "strong signal."[69]

The resolutions of the Security Council are therefore not the product of a body of fifteen, as is generally thought. Instead, they are largely the product of the three Western powers, with the US politically in the lead, as always. These three have arrogated to themselves nearly all the Council's political process—which then passes for the will of the "international community" and the highest expression of international law.

Influence over the Secretary General

The Charter calls on UN member states to respect the "exclusively international character of the responsibilities of the Secretary General and staff" and says that members undertake "not to seek to influence them in the discharge of their responsibilities."[70] The P5 pay no attention to such niceties. They increase their leverage over the

68 Over the five year period 2011-2015, 92.5% of all Council resolutions were adopted by consensus. For the underlying data, see Security Council Report, "Security Council Statistics in 2015" graphs 1 and 2.

69 Some resolutions or other actions are adopted without vote, based on a pre-agreed consensus, but the famous hand-raising exercise is the most common method.

70 UN Charter, Article 100, Paragraph 2.

Security Council through exceptional influence over the Secretary General and great sway over the Executive Office.

The Secretary General—known at the UN as the "SG"—has a large role in the operation of the Council and the peace and security area more generally—preparing the provisional agenda for every meeting, referring matters of importance to the Council, making recommendations to the Council concerning action on international crises, and overseeing preparation of an endless stream of reports requested by the Council, many of which have sensitive political implications. The SG names officials, mediators, and emissaries who work on security issues, and he or she has ultimate oversight over the Council's own secretariat, the Security Council Affairs Division. The SG often attends Council meetings and speaks in Council deliberations. The SG also holds formal appointment power over senior UN officials.[71]

The Charter states simply that the Secretary General "shall be appointed by the General Assembly upon the recommendation of the Security Council," without providing any further detail. In practice, the Council utterly dominates the election process. It votes secretly and presents the General Assembly with just a single candidate.

Never has the General Assembly questioned the candidate presented by the Council or asked for more than one option, nor has it affirmed a significant role in the election process.[72] In 2015, responding to campaigns by reformers, the Assembly took a small step. It asked governments to publicly submit the names and qualifications of SG candidates and asked the candidates to make public statements at meetings.[73] After seventy years, that was as far as

71 For a good summary of the relations of the SG and the Council, see Sievers, *Procedure*, 161-180.

72 For a very thorough review of the process over the years, see ibid., 404-415.

73 UN General Assembly Resolution 69/321 (September 22, 2015), see also Resolution 68/307 (June 25, 2015), paragraphs 34-39, and the Letter by the Presidents of the General Assembly and the Security Council of Dec. 15, 2015.

the Assembly was prepared to go. The Security Council remained fully in charge of the 2016 selection, which—despite being praised as the most transparent and inclusive the UN has ever held—went forward as before.

Within the Council, the P5 control the election through their veto. The election in recent times works like this: before the end of the term of the sitting Secretary General, the Council president convenes private consultations and conducts a series of straw-polls. As the polls move into later rounds, P5 votes are noted through colored ballot papers. Because of the secretive and informal nature of these straw-polls, and the fact that the meeting is private, it yields no transcript. So the P5 members can liberally cast their vetoes and avoid the veto-stigma on the public record, if it suits their purpose.

The elected members have only a very minor role in this process. All attention is focused on the P5 and who they can agree on. When the straw-polling finally results in selection of a candidate, the Council officially "elects" the winner, still behind closed doors, in a more official private meeting. Some liken the SG election to the secretive process for the election of a Pope.[74]

The vetoes in the election process are in theory secret, but they come to be known in some cases. Washington openly announced its veto of the candidacy of Boutros Boutros-Ghali—the sitting Secretary General who was up for re-election in the fall of 1996.[75] After several rounds with vetoes, other candidates were finally brought forward. The Council eventually elected someone favored by Washington—Kofi Annan. In an earlier case, China vetoed another sitting Secretary

74 Italy's ambassador Paolo Fulci, who ran a Council election in December 1996, pointed out humorously that whatever the similarities, the Council's premises are not nearly as inspiring as the Sistine Chapel, with its frescoes by Michelangelo, where the College of Cardinals convene for the papal election.

75 Barbara Crossette, "Round One in the U.N. Fight: A U.S. Veto of Boutros-Ghali," *New York Times*, Nov. 20, 1996.

General, through thirteen polling rounds.[76] The record suggests that the vetoes were cast because the sitting Secretary Generals had acted in ways that particular P5 members found insufficiently compliant. By vetoing them, they were sending a signal to all future Secretary Generals: listen to us or suffer the consequences.

Through the process of vetting and voting for the UN leader, the P5 are affirming their sway over the person and the office. They are affirming that *they* are the countries that can make or break every initiative. Every Secretary General knows that the P5 expect close attention to their interests and concerns. In practice, the Secretary General keeps very close contact with P5 ambassadors through frequent phone calls and regular personal meetings. Nothing happens in the Security Council that has not been extensively discussed and shaped by the P5—and in particular the P1—in their relations with the UN chief.[77]

Secretary Generals do not openly challenge P5 members, but they may inadvertently step across a red line or fail to conform, so they suffer accordingly. Boutros Boutros-Ghali, elected first for a term beginning in 1992, did not sufficiently please Washington, where he was seen as too "pro-French" and not adequately committed to US-sponsored "reforms" and strategies. He criticized the US for failing to pay its annual contribution, and he gave the green light for publication of a human rights study about an Israeli massacre in Lebanon. The right wing in Washington derided him contemptuously and accused him of mismanagement. Though he had support from the other P5 and among the UN membership

76 "Javier Perez de Cuellar of Peru: U.N. Secretary General-designate", *United Press International*, Dec. 12, 1981.

77 In his account of the Council during the Rwanda genocide, Colin Keating writes of the Secretary General's "personal inclination to selectively deal in only a few permanent members for discussion of difficult issues." See his "Rwanda: an insider's account," in Malone, *Security Council*, 503

generally, he faced an implacable US veto when he came up for the traditional second term.[78]

Boutros-Ghali's successor, Kofi Annan, was seen as the US candidate, and he acted cautiously towards the superpower. One of his first actions as Secretary General was to travel to Washington and pay respects to UN critics in Congress. Annan was re-elected five years later, but two years into his second term, harsh criticism arose in Washington, where he was seen as insufficiently supportive of the US-UK war in Iraq. He had made a critical statement on the topic in a media interview and he wrote a private letter to US President George W. Bush counseling against an impending US attack on the city of Fallujah. Soon, voices in Washington called for Annan to resign, blaming him unfairly for financial irregularities.[79]

In late December 2004, a group of powerful US "friends," including former US ambassador Richard Holbrook, summoned the SG to a private meeting in New York where they rehearsed his faults for three hours, warned him of anger in Washington, and pressed him to conduct a major housecleaning of his staff.[80] They apparently advised him that he might be expelled from office if he didn't comply. His Chief of Staff, Iqbal Riza, immediately stepped down, to be replaced by a British candidate, Mark Malloch Brown, who then took control of the appointment process. Thereafter, one after another, Annan's top staff were relieved of duty. Kieren Prendergast, the

78 See for example: "US Declared Veto of Boutros-Ghali Starts Race" *InterPress Service* (Nov. 18, 1996) and Eric Rouleau, "Why Washington Wants Rid of Mr. Boutros-Ghali," *Le Monde Diplomatique*, Nov., 1996.

79 The UN was shaken by the "Oil for Food Scandal" but Annan was not found to have been involved. The real scandal was the P5 arrangement that their companies get the Iraq program contracts. For a good critical appraisal of the issue see Brian Urquhart, "The U.N. Oil-for-Food Program: Who is Guilty?" *New York Review of Books*, Feb. 9, 2006, and Joshua Holland, "Kofi and the Scandal Pimps," *AlterNet*, Oct. 4, 2005.

80 Warren Hoge, "Secret Meeting, Clear Mission, 'Rescue UN'," *The New York Times*, Jan. 2, 2005.

head of the Department of Political Affairs, blamed by Washington for the offending letter, was the next to depart. Heads rolled in the Secretariat for several months and a chastened Annan went on to complete his term.

The P5 prefer ineffective but compliant UN leaders. There is a common and apt expression at the UN that the P5 prefer a Secretary to a General. In recent years this has been clearly on view. Ban Ki-moon, who served two terms (2007–2016), was a poor communicator and a lackluster leader. His initial selection, if in error, could have been corrected when his first term came to an end. But instead, in 2011, he was elected again for a second term. After the renewal vote, someone asked British Ambassador Mark Lyall Grant why sub-par performance had been rewarded with a second five-year term and why the UK had agreed to this. The answer was classic. With only the slightest ripple of embarrassment the ambassador replied: "The P5 wanted him to stay on."[81]

Influence over High-Level Posts in the Secretariat

From the earliest days of the UN, the P5 have enjoyed overwhelming influence over the selection of high-level posts in the Secretariat. They have especially sought control of the most powerful and politically important Secretariat Departments, in particular those that work with the Security Council. In theory, the Secretary General fills these posts independently, drawing on the best candidates worldwide. The Charter, in Article 100, refers to the need for independence of UN staff from government interference. Secretary General Kofi Annan told a reporter that "the appointment of senior staff should be the responsibility of the Secretary General without

81 Comment at a private meeting in New York, June 14, 2011.

interference."[82] Secretary General Ban Ki-moon told the media, he makes high-level appointments "in a transparent and competitive manner, based on merit, while taking geographical and gender balance into account."[83] In practice, key appointments are made quite differently.

The P5 carefully scrutinize these appointments, and in certain posts it appears that they literally name their own appointees. When governments change, the appointee can be recalled and another appointed, entirely separately from the UN appointments process. Under this system, departments have become virtual fiefdoms, controlled over long periods. Individuals taking these positions have typically served in P5 government posts, most often foreign services. Their thinking, outlook, and loyalties are shaped by such prior experience as well as their close ongoing national contacts. Under Secretary General Christopher Burnham, a US national, caused a scandal when he told the *Washington Post* that he came to the UN at the behest of the Bush White House and that his ultimate loyalty was to the United States.[84] He later made an apology, but his statement had underscored an uncomfortable reality.

The Department of Political Affairs can serve as an example of a P5 fiefdom. During the UN's first forty-six years, through a total of fourteen appointees, the Under Secretary General heading the predecessor departments was always a Soviet citizen.[85] Every Secretary General "named" a Russian to the post—or to be more accurate, accepted the Russian nominee. Arcady Sobolev, the first

82 Ian Williams, "Bush Crony to Head UN's Food Program", *The Nation* (Nov. 8, 2006).

83 As quoted in Thalif Deen, "Senior Management Heads Roll at World Body," *InterPress Service*, January 25, 2012. The Secretary General was reported to have made the comment at a press conference on that day.

84 Colum Lynch, "At the UN, a Growing Republican Presence", *Washington Post* (July 21, 2005).

85 The predecessor departments were the Department of Security Council Affairs (1946-51) and the Department of Political and Security Council Affairs (1952-91).

to be appointed, went on to serve as Soviet ambassador to the UN. The US had its own fief over an equally long period in the Department of Management.

After the end of the Cold War and the end of the Soviet "superpower," Russian hegemony in Political Affairs ended abruptly. In 1992, incoming Secretary General Boutros Boutros-Ghali reorganized the department and appointed African, James Jonah, as head. Just two years later, in 1994, the United Kingdom took over, with two successive heads from its own diplomatic service, including the highly-regarded Kieren Prendergast.

The UK apparently expected the cozy, twelve-year arrangement to continue, but its plans were overturned in early 2007, possibly as part of a shuffle conceived in Washington. The Foreign Office had selected its appointee, John Holmes, but when Holmes arrived in New York, he learned that he was to be offered a different position—Under Secretary General for Humanitarian Affairs. The new position was important but not consistent with his background. When the news of the appointment got out, member states complained that the new appointee had no experience in humanitarian relief and little familiarity with developing countries. He was appointed to the post anyway, but he eventually left after three-and a-half years of service. His successors have been two other Brits.[86] Including Holmes, the total British run at the end of 2016 extended a decade, and the UK has continued to rule in this department. Nowadays, fiefdoms do not last the way they did in the Cold War era.

After decades in control of the top UN management post, the United States took over the Political Affairs position in 2008. As of 2016, Washington had held this position through two successive

86 Valerie Amos and Stephen O'Brien. Amos was forced to step down when the Conservative Party came into government in the UK under Prime Minister David Cameron. Cameron appointed his own candidate, O'Brien. This has been a typical fiefdom pattern: when governments change, the Under Secretary Generals change as well.

appointees, both of whom had served as senior State Department officials. It has been a ten-year run.

France has been *seigneur* of one of the most visible and long-lasting recent fiefdoms in the Secretariat. A French diplomat has been chief of the Department of Peacekeeping Operations for nearly twenty years, through four successive appointees and two successive Secretary Generals.[87] During the two decades, the Department's culture has come to be visibly French and many of the appointees at a senior level have been French citizens or citizens of francophone countries. DPKO is a highly-prized position since peacekeeping is the UN's most high-profile and expensive operation. France has been happy to have such a choice portfolio.

When Secretary General Gutierrez came into office in January 2017, optimists spoke of his new approach. But when the new appointments were announced, the P5 continued to get the choice posts, and the same fiefs persisted. Such fiefdoms and other P5 favors do not necessarily mean that the incumbents are less than competent or that they are always highly biased. The overall record is mixed. Some, like Jean-Marie Guéhenno in peacekeeping and Kieren Prendergast in Political Affairs have served with distinction. The system as a whole, however, greatly reinforces the control of the P5 and tends towards mediocrity in the UN's highest offices. Even the most effective, honest, and unbiased incumbents serving in these controlled posts symbolize a system of disregard for the Charter, disrespect for the opinions of other nations, contempt for the idea of neutrality of the international civil service, and—of course—another aspect of the P5 hammerlock on the Security Council.

87 The French heads of the department were/are: Barnard Miyet (1997-2000), Jean-Marie Guéhenno (2000-2008), Alain Le Roy (2008-2011), and Hervé Ladsous (2011-present).

Other Instruments of P5 Power

Permanency

The P5 have many other levers of power with which they rule the Council and the UN system. One of the most important is permanency itself. They are always present in the Council, so they have the deep knowledge of the institution and its inner workings that no other member state is able to have. They know the informal agreements, the subtle precedents, the crisis landscape, and the many policy tools. All this and more makes permanency a commanding factor of P5 power.

Information

The P5, and particularly the P3, can shape Council perceptions through their large and world-wide intelligence and diplomatic networks that give them on-the-ground information, including assessments of military situations, information about political movements, details of terror threats, and so on. Satellite and drone surveillance adds to this detailed information capacity that, needless to say, is presented to the Council in a shape designed to win desired policy outcomes. The US showed Council members satellite photos to "prove" that there was no danger in Rwanda—when the genocide was already under way. Elected members did not have commensurate means to argue to the contrary.

Espionage

The P5 also use their intelligence services to spy on the UN and to listen-in to private policy conversations in missions of elected members. In 2004, a former UK cabinet minister, Clare Short, reported that she had been regularly provided with transcripts of conversations of Secretary General Kofi Annan, gathered by the British intelligence

service MI6.[88] US intelligence is known to have tapped even the most secure offices of the elected Council members. A "surge" in US intelligence collection in the run-up to the Iraq War was later revealed in a detailed memorandum released by Wikileaks.[89] US intelligence was also later revealed to have cracked the UN's videoconference encryption code. France, Russia, and China certainly play the espionage game too, though with fewer advantages. Elected members, even the biggest, cannot hope to keep up.

Threats and Rewards

Finally there is the armory of pressures and threats, punishments and rewards that P5 members use to win Council support and assure the necessary votes for their resolutions. All the P5, most particularly the United States, have immense economic and military power that they can use to get their way in Council votes. All five delegations may offer to sweeten aid packages or threaten to reduce them, but the US has a uniquely large bankroll and a tendency to use it. Elected member governments are inclined to take into account factors such as US military assistance, intelligence cooperation, and economic ties of all kinds, as well as financial packages from the World Bank and the IMF.[90] A recent scholarly study offers many detailed examples of such threats and punishments as well as data showing that when poor countries join the Council their foreign aid grows significantly. Is it payoff for "cooperative" behavior? The scholars believe it is.[91] That's how consensus votes in the Council are assembled.

88 Patrick E. Tyler, "Ex-Aide to Blair Says the British Spied on Annan," *New York Times*, Feb. 27, 2004; see also George Wright, et al., "Short Claims UK spied on Annan," *The Guardian*, Feb. 26, 2004.

89 Martin Bright, et al., "US Dirty Tricks to win vote on Iraq war," *The Observer*, March 1, 2003.

90 Vreeland, ibid. provides details of World Bank and IMF lending as part of carrots and sticks to Council members.

91 Vreeland, ibid. ch. 3, 62-93.

The Elected Members: Passengers on the Council Train

Ten non-permanent members serve for two-year terms on the Security Council. Beginning about 1998, these members have been referred to as the "elected members" or the "E10," to emphasize their special legitimacy and strengthen their role in Council affairs.[92] The General Assembly elects five new members each year, selecting them from prescribed regional groups to ensure geographical diversity. Most of the countries elected are democratic and above-average in size and capacity.

Originally there were only six elected members, but nations amended the Charter in 1971 to reflect the post-colonial increase in UN membership. Some reformers then hoped that the larger number of elected members would create a more effective, diverse, and pluralistic Council. But the newly expanded group of elected members did not transform the institution. Business went on as before in a Council still semi-paralyzed and deeply divided, but E10 activism arose later.

Elections to E10 seats require a super-majority in the General Assembly, and the elections often involve intense campaigning. Bigger countries run multi-year campaigns with large inducements.[93] The P5 sometimes actively interfere in these elections, and they manage to block a few candidates seen as especially unfriendly. Whatever the electoral imperfections, the E10 represent an alternative voice in the Council, and at times they have put their stamp on its work in creative ways.

In the mid-1990s, during the time of enthusiasm after the Cold War, the E10 took a new stance. While the P5 were collaborating

92 The author first proposed this nomenclature. See Ellen Paine [pseud.], "What's in a Name? Proposal for a Change in Membership Terminology for the Security Council," New York: Global Policy Forum, April, 1997. In little over a year, the "elected members" idea caught on and it now is used almost universally.

93 See Sievers, *Procedure*, 142 and David M. Malone, "Eyes on the Prize: the quest for nonpermanent seats on the UN Security Council," *Global Governance* 6, 2 (2000), 3-23.

amongst themselves and rapidly expanding the Council's activities, the elected members fought hard to gain more influence and to promote more democracy and transparency. They made some encouraging progress over a decade, but the P5 pushed back aggressively. Today the E10 again have less leverage inside the Council. For all their democratic legitimacy, backed by the votes of the whole UN membership, they suffer much frustration and humiliation during their short Council term. Even sizable powers like Germany, Japan, Brazil, and India, when serving as elected Council members, cannot extract from the P5 the attention and influence they expect. Details of the E10 experience are worth considering as further evidence of how the Council works and how Washington and its P5 colleagues exert their control.

The "Tourists"

The elected members serve on the Council for two years—an extremely short period that greatly diminishes their effectiveness. In designing the Council, the "Big Three" clearly meant to keep the elected members weak. The League of Nations Executive Council had longer, three-year terms for its non-permanent members—at a time when diplomatic activity proceeded much more slowly. Now, with the enormous workload and very fast pace of the Security Council, elected members report that they barely have time to learn the Council's complex machinery before their term is up.

Many ambassadors who have served as elected members have commented about the huge advantage of P5 perpetual membership in contrast to their own short terms. Singapore ambassador Kishore Mahbubani has said that the E10 are "like short-term

commuters on a long-distance passenger train."[94] Mahbubani also reports that during a debate on Council procedures he overheard a P5 ambassador refer to the E10 as "the tourists." "This was a revealing comment," writes Mahbubani. "It showed that the P5 believe that they 'own' the Council. In their eyes, the E10 should make no claim of co-ownership, even if they happen to be elected by 191 member states of the UN."[95]

The early months of E10 members are reportedly especially stressful in spite of various training sessions offered by the UN and advice garnered from former members. Since each year brings a new crew of five, half the E10 are novices. They face a steep learning curve and are thrust into complex and unfamiliar responsibilities, such as chair of a Council committee. Most challenging of all is the Council Presidency, a post that rotates monthly on a strict alphabetical basis. From time to time, an incoming E10 ambassador must serve as President in January, just as their term is beginning, or—only slightly less daunting—in February, their second month.[96] This creates a difficult situation, since the President is supposed to oversee the work of the Council and ideally should know it well. For more than four decades, the P5 did nothing to ameliorate this absurd situation.

To correct the chaos, E10 delegations in the 1990s argued that they should be able to sit in the Council chamber as observers for a familiarization period of one month prior to taking their seat. The leader of this initiative was Fernando Petrella, ambassador of Argentina, whose gaunt good looks, lively intellect, and penchant for wearing scarves made him a stand-out in diplomatic circles. Petrella had come onto the Council in 1999, and he was an activist

94 Comments in a private meeting with NGOs.

95 Kishore Mahbubani, "Permanent and Elected," in Malone, *Security Council*, 259.

96 A January presidency for an incoming Elected Member happens on average every three years and it happened in 2017, with the newly-elected Swedes.

from the beginning. According to all accounts, the P5 were vigorously opposed to the initiative, preferring, it seems, confused elected members to well-informed ones. Eventually, Petrella's project gained such broad support among UN member states that the P5 reluctantly agreed to make the change. They remained unhappy—tampering with "their" institution was not to be forgiven or forgotten.

In late December 1999, soon after the Council endorsed the reform, and just halfway through Argentina's term, Petrella was suddenly removed from his post and recalled to Buenos Aires with less than a week of notice. Those who knew him reported that he was astounded. The usual grand farewell reception was impossible, but the mission quickly organized a small and embarrassed "goodbye." Everyone with knowledge of the situation was puzzled but not totally surprised. Though the Argentine government never offered an explanation, it was not difficult to understand what had happened—Washington had intervened. It was a warning shot across the bow of the E10 reformers.

Reform on the Inside

The E10 were at their most active and independent from the end of the Cold War to the aftermath of the Iraq War (1991-2004), a period of about thirteen years. During that time, E10 countries sent exceptional ambassadors. Everyone in the reform camp thought that conditions were ripe for change. Backed by the General Assembly, the E10 made steady progress, though they often came up against tenacious P5 opposition. At one point, UK ambassador John Weston was overheard telling one activist E10 ambassador that if he continued on his course: "you will break your teeth."[97]

97 As told to the author by a Council insider.

Such a thuggish comment, disguised as friendly advice, symbolizes the domineering P5 response, even in the supposedly "collegial" Council environment.

E10 ambassadors tried first to change the Council's secretive ways. They argued that the Council should be far more open about its work—to the public and to the UN membership. Further, they insisted that the Council open itself to information about what was happening in the world. E10 reformers sought to create new information channels—as well as new ways for the Council to communicate with the public. Diego Arria, the colorful and imaginative Venezuelan ambassador, took an early initiative in 1992. He invited Council colleagues for coffee in the Delegates Lounge to meet with a Croat priest and hear directly about the Balkan conflict. Arria followed with other such events and eventually they were held in UN meeting rooms, serviced by interpreters and taken into account in the Council's Program of Work calendar. These came to be known as Arria Formula Briefings, and they still take place.[98]

The P5 accepted this turn of events reluctantly, and they were not happy with Arria's unauthorized meeting with the press when he was Council President. After Arria departed, the P5 restricted the Arria Formula almost entirely to government officials, turning them away from their original purpose. The P5 also ruled out informal discussions by Council presidents with the press and limited presidential statements to Council-approved texts.

The battle went on, spurred by increased public attention to the Council and the newly-formed General Assembly Working Group on Council reform. In 1996, Ambassador Juan Somavia of Chile, then a Council member, gave a lecture at Oxfam headquarters in the UK at which he called on the Council to develop "a regular

98 Joanna Weschler, "Human Rights," in Malone, *Security Council*, 61-62. See also Sievers, *Procedure*, 74-92, which includes a reconstructed list of these events.

'consultative window'" to engage "outside actors."[99] In early 1997, he tried to set up an Arria-style briefing with three humanitarian NGOs to gain more information on the African Great Lakes crisis. The P5 refused.

Somavia, a big bear of a man with a broad smile and a thick white beard, was patient and ever flexible. He finally organized a meeting combining Council members with delegates from other UN bodies, a process called a "Somavia Briefing." The three NGO leaders afterwards held a press conference to criticize the Council for its "failure to abide by the Geneva Conventions and to take action to address the underlying causes of the conflict and to help find political solutions."[100] The P5 definitely did not welcome this kind of attention, and they saw such meetings as an end run around their well-guarded agenda. For the P5, innovation and flexibility were threats to their control.

Ambassador Antonio Monteiro of Portugal carried the E10 initiative forward. A genial and exceptionally talented diplomat with a strong mission team, he pressed for a real opening of the Arria Formula to non-official voices and set up an "Arria-style" briefing by Pierre Sané, the head of Amnesty International—a move that had previously been considered impossible. Monteiro also gave indispensable help to a new discussion forum bringing together Council ambassadors and NGOs,[101] and he organized a regular monthly luncheon of the E10 ambassadors as a way to develop a common reform program.

99 "The Humanitarian Responsibilities of the Security Council," Gilbert Murray Lecture, Oxfam, Oxford, June 1996.

100 "Security Council Consultation with Humanitarian NGOs," Global Policy Forum, Feb., 1997.

101 The NGO Working Group on the Security Council, founded by Global Policy Forum, continues to meet frequently with Council ambassadors. The initiatives mentioned took place in 1997, Monteiro's first year on the Council.

In 1997, the E10 decided to tackle one of the most sensitive topics, the Council's Rules of Procedure, insisting that these rules should no longer be called "provisional" and should have a settled status, which could then be adjusted, revised, reformed, and brought up to date. All the E10 were united in agreement on this initiative. But after many closed-door debates it became clear that the P5 were going to draw the line—they would admit no concession on their monopoly of the rules.[102]

Battles over communications and transparency between the Council and the rest of the UN membership continued. To break the secrecy and take advantage of the internet, one E10 member in 1999 began to distribute the Council's secret monthly calendar of work and drafts of Council resolutions. These documents then promptly appeared on the Global Policy Forum website. Suddenly, every UN member could see what the Council was meeting about and what was happening with draft resolutions. Again, the P5 were extremely unhappy. Their secrecy was coming unraveled.[103]

Ambassador Robert Fowler of Canada took the lead in one especially important and high-profile E10 initiative. A gentle former deputy defense minister, he did not seem type-cast to be a fierce Council innovator, but he certainly was just that. When he entered the Council in January 1999, he was named chair of the Angola sanctions committee—a previously sleepy effort to block diamond sales that were financing rebel arms purchases and prolonging a bloody civil war. The P5 preferred to keep the sanctions weak, but Fowler did not hesitate to move ahead.[104] He created a highly public

102 Mahbubani, "Permanent and Elected," in Malone, *Security Council*, 259.

103 In the case of the program of work, the secrecy was broken permanently and now is available on the UN website. Resolution drafts, however, are again kept secret.

104 The US, France, and China had provided clandestine support to the Angola rebels in the recent past and the UK had an interest in the world diamond trading monopoly, based in London.

worldwide campaign to enforce the sanctions and stop the clandestine diamond trade. The initiative gave the sanctions a very public profile. It shook the international diamond industry and called attention to arms traders and complicit middlemen.[105] It was a stunning move, and predictably it was not appreciated by the P5.

In late July of 2000, at the height of his success, Fowler was suddenly and unexpectedly relieved of his position in New York—reassigned to a much inferior posting in Italy.[106] The Canadian government described the move as "routine," but it was clearly unusual to pull out a senior diplomat during the final quarter of Canada's Council term. Fowler himself was so upset in his final weeks in New York that he avoided contacts, pleaded a medical condition, and wore dark glasses.[107] Just nine months after the purge of Petrella, this was a sobering development indeed.

Iraq was another focus of E10 efforts. During the 1990s, the P5 were increasingly divided on the matter of Iraq—particularly the on-going general trade sanctions. The E10 were inevitably drawn into this dispute as public opinion turned against the sanctions, seen as driven by oil interests and unfairly harmful to innocent Iraqis. Within the Council, the US and UK finally agreed to an investigation into the humanitarian issues posed by the sanctions. Brazil's ambassador, Celso Amorim, was named as chair. The investigation concluded with recommendations that the sanctions be radically reformed. This process was a big advance for E10 influence. For the P2, it was clearly objectionable—yet another sign that

105 The diamond industry, fearful that it would lose its markets, eventually established a certificate of origin regime known as the Kimberly Process.

106 Fowler's departure was unexpectedly announced in the Security Council by Canadian Foreign Minister Lloyd Axworthy on July 27, 2000—at a meeting addressing Angola sanctions, the highpoint of Fowler's achievement. For the announcement see S/PV.4129, 10.

107 The Canadian Foreign Ministry explained Fowler's abrupt departure as timed to fill a vacancy in Rome. The smokescreen was soon apparent. The incumbent in that post did not vacate it until several months later.

the E10 were appealing to public opinion, breaking the P5 media grip, and undermining their strategic interests.

A "Painful" Counter-Reformation

Washington's fury at Argentina, expressed in the abrupt departure of Ambassador Petrella in late 1999, was compounded by another very interesting Argentine reform initiative, undertaken jointly with Brazil three years later. The two countries reached an agreement in 2003 to exchange diplomats so as to strengthen their role in the Council and in particular to get a running start on their Council terms. When Brazil joined the Council in January 2004, it gave diplomatic accreditation to a diplomat from Argentina, who participated fully on the Brazilian Council team. Then Argentina came onto the Council in 2005 and, when Brazil left, a Brazilian joined the Argentine team. This novel arrangement gave a boost to both countries but especially to Argentina which benefitted from a year of advance training. The plan represented an innovative relaxation of sovereignty and a gesture of regional cooperation and solidarity. Other UN delegations were curious at the potential of this move and the implicit regionalism involved. A pair of delegations in another region copied the plan.[108]

Not long after, in 2010, an opportunity arose for a second round. Brazil was poised to come into the Council in January 2011, and an Argentine was again accredited as a Brazilian diplomat. When the Argentine diplomat arrived in New York, however, Washington denied the entry. The US was in clear violation of the UN Headquarters Treaty and the Vienna Convention on

108 The first Argentina-Brazil swap was described by Argentine diplomats in 2006. Sievers speaks of the second delegation copying the idea but without identifying who was involved in *Procedure*, 155.

Diplomatic Relations, but in spite of protests by Brasilia that it had a sovereign right to name its diplomats, Washington did not give way. The Brazilian government, keen to avoid a battle with the US, eventually folded. E10 fortunes were slipping.

The Iraq War disputes of 2002 and 2003 marked the real beginning of the counter-reformation in the Security Council. The P5 were then deeply split: France, Russia, and China sought moderation, while the US and the UK were determined to go to war. Washington and London had told the Council that Iraq had weapons of mass destruction, but there was still no proof in spite of extensive UN investigations. Many E10 were opposed to the P2 positions, though their governments had been subject to heavy pressure. From the fall of 2002 through the outbreak of the war in March 2003, a like-minded E10 group met regularly, under the leadership of Germany, Chile, and Mexico.

Since the ambassadors in New York were closely following instructions from their capitals, no one expected that they would be the targets of retaliation, but it turned out they were. Just as Petrella and Fowler had been targeted in the recent past, so the most active E10 opponents of war came under fire in the Iraq period. Colin Keating, one of the Council's closest observers, has described the general circumstances. The pressure for conformity, he writes, "was felt in an intense personal sense by several of the ambassadors of the elected members." [109] Keating goes on to speculate that these "personal" events, combined with "bi-lateral pressure" (threats aimed at governments directly) meant that "it was felt in many capitals that the political cost of standing up to the P5 in the Security Council had become too high." [110] Keating means, of course, standing up to Washington, since that is where most of the pressure was coming from.

109 Keating in von Einsiedel, *Security Council*, 146.

110 Ibid.

The first victim was the ambassador of Chile, Juan Gabriel Valdés, an experienced diplomat who had served in New York since 2000. Like Somavia, he had lived in exile during the rule of the Chilean dictator, Augusto Pinochet, and was unafraid to stand up to power. He had taken up the Security Council seat in January 2003 in the final phase of the run-up to war. His vigorous opposition to the war-resolution in the Council led to apoplexy in Washington. According to *The Washington Post*, the US ambassador in Santiago, William Brownsfield, complained to the Foreign Ministry about the "'tone' and 'tactics' used by Valdés" and his "zeal" in defending his position.[111] US Secretary of State Colin Powell reportedly phoned Chilean Foreign Minister Soledad Alvear with similar arguments, warning that a free trade agreement, scheduled to be signed between the two countries, could be at risk. In the Council, Chile held firm to its anti-war position, but after the invasion had taken place, the US campaign against Valdés intensified. Washington postponed the signing of the trade agreement. Finally, in May, bowing to US "displeasure," Chilean President Ricardo Lagos announced that Valdés had been reassigned.[112] In the same period, the Chilean ambassador to the United Nations in Geneva, Juan Enrique Vega, was also removed—evidently for the same reason.[113]

German ambassador Gunter Pleuger had worked closely with Foreign Minister Joschka Fischer, serving as State Secretary of the Ministry before being appointed as UN ambassador. He joined the Security Council in January 2003 at the most intense phase of the

111 Nora Bustany, "With Trade Pact Pending, Chile Replaces U.N. Envoy who Angered US over Iraq," *Washington Post*, May 14, 2003.

112 Ibid.

113 Jaime Gazmuri, "Juan Enrique Vega," *El Mostrador*, Sep. 22, 2012.

Iraq debate. The low-key Pleuger, with his bushy mustache and professorial air, was a strong and steady voice for his country's policy in opposition to the war resolution. He too came under heavy criticism in Washington where there were insistent demands that Berlin remove him from office. US Secretary of State Colin Powell reportedly phoned Fischer, asking for action against Pleuger in the interest of "transatlantic harmony." There were reportedly veiled threats about moving US military bases out of Germany and other punitive moves. Fischer is said to have defended his friend, affirming that Pleuger represented government policy. In the end, Germany was powerful enough to stand up to the pressure. Pleuger stayed in his post until 2006. But Germany's leadership had received a powerful cautionary warning. The country's Iraq policy soon moved closer to Washington.

The most high-profile victim of these purges was Adolfo Aguilar, the Mexican ambassador, who came onto the Council in January 2002 after serving as the National Security Advisor of President Vicente Fox. Soon after he arrived in New York, Aguilar explained privately that Mexico had not served on the Council for nineteen years because a prior term had caused "serious strains" with its "neighbor to the North." Mexico had been keen to avoid a repeat of such a painful experience, he said. But with a new political party in power, disposed to work more closely with Washington, Mexico was ready to try again. Aguilar, a friend and political ally of the Mexican president, would enjoy a direct line to the top.[114]

During the Iraq battles in the Council, Aguilar was a leader among those who questioned the rush to war. A scholar with an analytical flair, *The Guardian* described his "unruly grey hair, rimless glasses and penchant for designer ties." "He appeared," wrote the paper, "to coolly defend Mexico's anti-interventionist traditions."[115] Why not

114 Comments at a meeting with NGOs, Feb. 15, 2002.

115 Jo Tuckman, "Adolfo Aguilar Zinser," *The Guardian*, June 7, 2005.

wait, the ambassador argued, until after the weapons inspectors had completed their work? Throughout, it appears, he acted in accord with Fox and the Foreign Affairs team in his capital. After the war, Washington targeted Aguilar for removal, and a wide campaign got under way. Complaints by Secretary of State Powell eroded the ambassador's support at home. President Bush stopped taking calls from President Fox. There were insistent rumors in the Mexican business press that Mexico might suffer economic retaliation.

In November 2003, the campaign reached a high pitch in the wake of a speech by Aguilar at the Universidad Iberoamericana in which the ambassador said that Washington treated Mexico as its "back yard." Though the idea is a platitude on both sides of the border, Washington expressed a calculated fury. Secretary of State Powell called it "outrageous." Finally, Fox gave in. He wrote a private letter to Aguilar, asking for his resignation after Mexico's Council term was up at the end of December. Three days later, a furious Aguilar returned to Mexico City and wrote an open letter to the President—published in major Mexican newspapers—in which he resigned immediately and revealed the shoddy political circumstances of his removal.[116]

A few weeks afterwards, at a breakfast meeting in New York, the ambassador gave a riveting description of what had happened. He theorized that the attacks on him and the other ambassadors took the form of an intentionally false accusation—that somehow they were misrepresenting their national policy and poorly representing their country. In fact, of course, they were not departing from their instructions. The attacks, he argued, were designed to change the underlying policy and to force the targeted countries more into

116 For an English translation of the letter, published on Nov. 23, 2003, see Global Policy Forum, globalpolicy.org/component/content/article/167/35384.html. The ambassador told his story in a meeting with NGOs on Jan. 15, 2004. The events were widely covered in the media.

line with Washington. His assessment is amply confirmed by later developments. Fox and future Mexican governments did take a more cautious and less independent policy stance. As for Aguilar, he was considered by many in Mexico to be a hero. Tragically, he perished in a highway collision in June 2005.[117]

117 Elena Poniatowska, "Adolfo Aguilar Zinser," *La Jornada*, June 9, 2005; Ernesto Ekaizer, "El Último combate de Adolfo Aguilar Zínser," *El País*, June 8, 2005.

The Council as Theater

The Security Council is more than a policy-making body. It is also a theater where the drama of international rivalry unfolds before the public. Alongside the closed-door discussions, where much of the Council's work takes place, there is the public stage: the lengthier open meetings where the P5 (and occasionally others) act out their rivalries and the media "stakeout" outside the Council chamber, where ambassadors make clever or emotional statements to reporters after the meetings are over—and sometimes even before they begin. The public conduct of the ambassadors is part of the theatrics—the way in which they signal their power, their finesse, their humor, and their capacity to overwhelm. In all settings, there is an appeal to public opinion and an effort to rally support from governments, the media, intellectuals, and the public more generally.

The drama enables powerful Council members to frame the debates and to stage international conflicts as morality plays. The dramas usually involve simple plot lines and starkly-depicted characters. Like a medieval morality play with its yawning Hell-Mouth, the debates manipulate frightening ideas and images: violence, bloodshed, suffering children, burned buildings, barbaric deeds that civilized society is called upon to reject.

The Council drama has played out many times over the years. There were Cold War denunciations, revelations, carefully-constructed moments, and there were the intense Iraq controversies. More recently there have been verbal tussles over Libya, Yemen, and other hot spots. In 2016 Syria was the morality play *du jour*. The United States and Russia have traded accusations with considered stagecraft. US ambassador until January 2017 Samantha Power spoke of Russian "barbarism" and decried attacks on hospitals and civilian neighborhoods while Russian ambassador Vitaly Churkin accused the US of arming Islamic jihadists and shattering a mutually

agreed ceasefire. The "international community" and "international law" are regularly invoked. Ideological platitudes are standard fare.

The *New York Times* wrote in October 2016 about "the Russians and the Americans brawling rhetorically." Ambassador Churkin told the *Times* that, as US diplomats speak, their "eyes are burning" and they "speak at the top of their lungs." Power had told the media that Russia's call for an emergency Council meeting was "a stunt replete with moralism and grandstanding" while Churkin called her words "demagoguery of the highest order."[118]

The Council dramas always rely on the skills of the ambassadors as actors, debaters, and quick-thinkers, who can turn attention towards or away from fast-breaking news and project an image of moral certitude, peaceful intent, humanitarian concern, and honest conviction. Those who have experience with the Western media have a special advantage, since these are the media most widely followed across the globe. The media are always keen for dramatic and simple story-lines. To gain media attention, Council theatrics have even involved well-known performing arts professionals.

On September 14, 2006, US ambassador John Bolton organized an Arria Formula Briefing on the conflict in Darfur with film star George Clooney and well-known lecturer Elie Wiesel. Arria Briefings are usually private events for Council members and a handful of guests, enabling them to hear well-informed details of conflicts. In this case, the US ambassador decided to disregard the usual understandings and to maximize the show. Media attendance, including television, was arranged. The diplomatic community, NGO representatives, and many others were invited. An analyst later described it as a "media frenzy."[119] Clooney said:

118 Somini Sengupta, "A Senior Russian Envoy's Take on Relations with the United States: 'Pretty Bad'," *New York Times*, Oct. 17, 2016, A7.

119 Sievers, *Procedure*, 76-77.

"Of course it's complex, but when you see entire villages raped and killed, wells poisoned and then filled with the bodies of its villagers, then all complexities disappear and it comes down to simply right and wrong." [120] He was perfectly on script with his virtuous indignation, aimed to rally a wider public.

It is possible to see in such high-volume Council theatrics a systematic avoidance of the reality of conflicts—avoidance of the back story, avoidance of the responsibility of the powerful governments, and avoidance of the deep causes. The super-heated dramas such as Clooney and Wiesel's are planned to bring the audience to a boiling point. Careful reflection about conflict resolution is systematically obscured. After such debates, if the producers are successful, the media react with outrage, "civil society" cries out for action, the public demands intervention to protect the innocent. Council drama, in many such cases, has done more to promote war than to defuse it.

Colin Powell on Stage

The drama does not always produce the results hoped for by the dramaturges, of course, but there are moments when the stage-crafting and props transform the Council chamber into something akin to a real theater. The famous Council meeting on February 5, 2003, in the run-up to the Iraq War, was a case in point. The Council had convened a special debate at ministerial level to allow for full consideration of the issues of war and peace. Hundreds of diplomats and members of the press packed the Council's chamber that morning. Sitting around the Council's horse-shoe table were foreign ministers, ambassadors, and UN officials at the highest level.

120 Text of Clooney's remarks: americanrhetoric.com. For an account of the event, see UN News Centre website, Sep. 14, 2006.

As Secretary of State Colin Powell presented his argument—that Iraq possessed illegal weapons of mass destruction requiring UN-authorized use of force—he held up a mock vial of anthrax, played audio feeds of purported Iraqi military officers, and presented slides showing US intelligence drawings of supposed Iraqi weapons systems. He argued that the evidence was irrefutable and that the time had come to confront the dictator and go to war.[121] The P2 were gambling that their drama would carry the day.

Though the US often succeeds in these Council dramas, it failed that day. French Foreign Minister Dominique de Villepin delivered a memorable riposte. He warned that the evidence was far from definitive and insisted that UN investigations into the purported weapons of mass destruction continue. He urged that the Council exercise restraint and maintain its unity of purpose, its support for legality, and—above all—its awareness of the negative consequences of war.[122] Millions across the globe listened to that debate on radio and television or read about it in newspapers. As we know, the Council refused to give its endorsement, and world public opinion was not persuaded, but Washington and London went ahead with their war anyway. The world later learned that Powell's presentation was a sham—filled with falsehoods and fake theatrics. Later on, he expressed regret.[123] The carefully-crafted drama had not won the P2 the acclaim they had sought, but they would return often to the same stage, expecting that a credulous audience could this time be won over.

121 Text of Powell's speech: https://2001-2009.state.gov/secretary/former/powell/remarks/2003/17300.htm.

122 English text of Villepin's speech: www.nytimes.com/2003/02/14/international/middleeast/statement-by-france-to-security-council.html.

123 Weisman, "Powell called his speech a 'lasting blot on his record'", *New York Times*, Sep. 9, 2005.

Sanctions Failures

In Article 41, the UN Charter mandates the Security Council to solve threats to the peace by the use of "measures not involving the use of armed force," including "interruption of economic relations," arms embargoes, and similar measures. Over the years, the Council has established a total of 26 sanctions regimes along these lines of which 13 were still in place at the end of 2016.[124] In the early years, people welcomed sanctions as a creative, ethical, and non-violent approach to preventing or ending conflict, but sanctions are now understood to be seriously flawed.

Two sanctions regimes, imposed by the Council during the Cold War era, seemed promising. They put pressure on white-ruled governments in Africa to end oppressive and racialist practices and cede power to democratic rule. In 1966, the Council passed a resolution imposing comprehensive economic sanctions on the regime in Southern Rhodesia,[125] a step that contributed to the country's political isolation and its eventual transition to independence in 1979. In 1977, the Council passed a resolution imposing a mandatory arms embargo on South Africa,[126] expressing international rejection of the apartheid government and contributing to a process that led to South Africa's democratic transition in 1994. The General Assembly, however, played a far more important role on the issue, including the passage of its own, more comprehensive sanctions regimes. In fact, the Council was hesitant to give unconditional support to the liberation movements in Southern Africa. Though the elected members constantly advocated for it, the Western powers postponed

124 UN Security Council website, Subsidiary Organs, Sanctions Information - un.org/sc/suborg/en/sanctions/information. There is a useful Council document "Report of the Informal Working Group of the Security Council on General Issues of Sanctions," (S/2006/997) that raises issues and problems relating to sanctions.

125 UN Security Council Resolution 253 (May 29, 1968).

126 UN Security Council Resolution 418 (Nov. 4, 1977) followed a less onerous voluntary embargo: Resolution 282 (July 23, 1970), and it was tightened further by Resolution 591 (Nov. 28, 1986).

action on Council sanctions for many years, kept the brakes on sanctions enforcement, and limited the sanctions in scope. Sixteen years passed between the first purely-voluntary arms embargo on South Africa in 1970 and the final effectively-tightened embargo of 1986. Independent enforcement by longshore and maritime workers did much to bring sanctions success.

Another Council resolution on sanctions—in 1981—sought to address South African aggression in Southern Africa.[127] "We have come before the Council to present a clear, unequivocal, global consensus," said the Ugandan ambassador, Olara Otunnu.[128] The US, the UK, and France vetoed several forms of that resolution against very strong criticism from African delegations and many others, who voted for it overwhelmingly. The vetoes eased pressure on the apartheid regime, its occupation of Namibia, and its military operations against other regional countries. Eventually the General Assembly circumvented the Council and passed a resolution on a tougher sanctions measure.[129]

Sanctions were rare in that era, but in the post-Cold War period, the Council would use sanctions far more frequently but always with similar political biases, uneven and often weak enforcement, and other serious shortcomings.

Iraq: Humanitarian Issues and P2 Interests

In August 1990, the Council imposed a broad trade and arms embargo on Iraq, designed to end that government's invasion and occupation

127 A total of five draft resolutions were put before the Council on April 20, 1981, see Documents S/14459-14463 and S/PV.2277.

128 S/PV.2277, 7.

129 UN General Assembly Resolution A/RES/36/1981 (Nov. 24, 1981), adopted under the "Uniting for Peace Resolution."

of Kuwait.[130] The export embargo was fairly easy to enforce because most of Iraq's export revenues came from petroleum, shipped in highly-visible tankers and through a limited number of pipelines. Later, after a US-led coalition ousted Iraq militarily from Kuwait, sanctions surprisingly continued in force and in April 1991 were broadened by the Council with a new and far-reaching resolution.[131] Neither resolution had a sunset provision, as the US and the UK wanted to continue the sanctions indefinitely to press for new policy goals, ranging from reparations to disarmament.

As the 1990s went on, it became increasingly apparent that the sanctions were seriously harming ordinary Iraqis while having no impact on the country's leadership and little effect on policy. Further, it seemed that the US and the UK were aiming at regime change rather than Council-approved goals. The sanctions were creating a humanitarian crisis—by drastically reducing imports of food, medicines, water treatment supplies, and the like. The controversy deepened when it was discovered that US intelligence had used the UN arms inspection program for espionage.[132] Thus began a long and increasingly acrimonious dispute about sanctions among the public and within the Council itself. Critics on the Council were not able to end the sanctions or significantly change them since action to lift was subject to a US-UK veto. A P5 split developed. The post-Cold War honeymoon was nearing its end.

In 1999, UNICEF issued the results of a mortality survey in Iraq concluding that up to half a million children under five had died, in

130 UN Security Council Resolution 661 (August 6, 1990).

131 UN Security Council Resolution 687 (April 3, 1991) added many new conditions for the lifting of the sanctions, see Section F, Paragraphs 20-29.

132 See Barton Gellman, "U.S. Spied on Iraq Via U.N.," *Washington Post*, March 2, 1999.

excess of predictable levels, during the eight years of sanctions.[133] A Belgian expert, Marc Bossuyt, wrote in a 1999 UN human rights report that the sanctions on Iraq were "unequivocally illegal."[134] In April 2000, Canadian Foreign Minister Lloyd Axworthy told the Security Council that "sanctions must reflect the will of the international community, not just the interests of its more powerful members."[135] Two successive UN Humanitarian Coordinators in Iraq, Denis Halliday and Hans von Sponeck, resigned in protest.

The US and the UK were losing the battle for public opinion, even in their own countries, so they proposed minor reforms in the sanctions regime while insisting that comprehensive sanctions remain in place. France, Russia, and China had oil interests of their own in Iraq, so the P5 wrestled among themselves over sanction details, with their own commercial interests always in mind. As negotiations dragged on, Washington and London put endless "holds" on shipments of humanitarian supplies to Iraq. The secretive Iraq Sanctions Committee had to approve nearly all trade with the country.

As Iraq's humanitarian crisis worsened, Washington and London blamed the dictator, Saddam Hussein. The public was not persuaded by this political theater. Many saw UN sanctions, kept in place by the US and the UK, as hurting people rather than making peace. Still, key P2 officials held the line, hoping the regime would crumble. US Secretary of State Madeleine Albright later told a television interviewer that in spite of the toll on Iraqi children "It was worth

133 See UNICEF, Newsline, "Iraq Surveys show 'humanitarian emergency'," Aug. 12, 1999. Mohamed M. Ali and Iqbal H. Shah, "Sanctions and childhood mortality in Iraq," The Lancet 2000, 355, 1851-57. For an extensive discussion of the Iraq sanctions, see Global Policy Forum et al, *Iraq Sanctions: Humanitarian Implications and Options for the Future*, New York: Global Policy Forum, 2002.

134 *The Adverse Consequences of Economic Sanctions for the Enjoyment of Human Rights*, E/CN.4/Sub.2/2000/33.

135 Text as posted on the website of the Canadian Mission to the UN, April 17, 2000.

it."[136] Though the Council majority made efforts to lift the sanctions, vetoes prevented any change, and they remained for thirteen years. The Iraq sanctions episode completely de-legitimated general trade sanctions as a Council policy tool, and it seriously undermined the Council's post-Cold War harmony. After 1998, even France pulled temporarily away from the Western bloc.

"Targeted" Sanctions and the Fowler Initiative

While the Council's Iraq sanctions were still dragging on, various experts and member states sought to re-think the sanctions enterprise. The governments of Switzerland, Germany, and Sweden convened conferences to promote "targeted" sanctions.[137] Targeting meant moving away from a general trade embargo toward sanctions with a narrow and more specific focus—designed to put pressure on leaders and institutions accused of breaking international law—a focus that would spare innocent civilians. The new sanctions would freeze the overseas bank accounts of accused leaders and groups, put their real estate and other assets and hold, and block their international travel. The sanctions might also include embargoes on arms sales, on natural resource exports, and on strategic equipment such as spare parts for oil services and aviation.[138]

136 "60 Minutes" Interview with Madeleine Albright, CBS Television, May 12, 1996. For a lengthy analysis of the Iraq sanctions, see Global Policy Forum, *Iraq Sanctions.*

137 The three initiatives are known as the Interlaken Process, the Bonn-Berlin Process, and the Stockholm Process. They took place from 1998 through 2003. See Sue Eckert, "The Role of Sanctions," in von Einsiedel, *Security Council* and David Cortright and George A. Lopez, *Sanctions and the Search for Security: Challenges to UN Action* (Boulder, Lynne Rienner, 2002). In addition to the governments, the Watson Institute at Brown University and the Krok Institute at Notre Dame University were very active on this issue.

138 Peter Wallensteen, Carina Staibano, and Mikael Eriksson, *Making Targeted Sanctions Effective* (Uppsala: Uppsala University, 2003).

The ideas seemed promising. The Council embraced many of these ideas, but political obstacles soon arose.

The first major test came with the Canadian initiative on Angola sanctions. Ambassador Fowler announced that he would "give teeth to hitherto ineffective sanctions"[139]—originally set up to block rebel arms-for-diamonds deals. He set out to make them effective through a highly public campaign.[140] He traveled around the world, met with political leaders, negotiated with key people in the diamond trade, spoke often to the media, and worked cooperatively with NGOs. He used public Council meetings to bring pressure on the sanctions busters,[141] and he engaged in a process of "name and shame" to build public support for action. David Angell, his key colleague on sanctions at the Canadian Mission, has given a detailed account of Fowler's astoundingly vigorous, very outward-looking campaign.[142]

The Council agreed in May 1999 to set up a Panel of Experts to advise Fowler's Angola Sanctions Committee.[143] In March 2000, the ambassador issued a high-profile report, based on the experts' research, discussing arms, petroleum, diamonds, and finances and naming a number of African governments as complicit in the illicit networks.[144] In April 2000 the Council set up a Monitoring Mechanism to keep track of sanctions enforcement.[145] The UN hired

139 As quoted in Angell, "Angola Sanctions," 196.

140 The Council had first imposed sanctions on Angolan rebel group UNITA under Resolution 864 (Sep. 15, 1993). That regime was eventually strengthened, nearly five years later, by Resolution 1173 of June 12, 1998, which incorporated diamond controls.

141 See inter alia Council meetings on July 27, 2000 (S/PV.4178, 7-10) and April 18, 2000 (S/PV.4129, 1-3).

142 David J.R. Angell, "The Angola Sanctions Committee," in Malone, *Security Council*, 195-204. It is astonishing how much time and travel Fowler put into his initiative while serving as full-time ambassador in New York.

143 The Panel of Experts was set up under UN Security Council Resolution 1237 (May 7, 1999).

144 Fowler Report, UN Security Council document S/2000/203 (March 10, 2000).

145 The Monitoring Mechanism was set up under UN Security Council Resolution 1295 (April 18, 2000).

private consultants; the world diamond business was shaken with concern about consumer boycotts.[146] Researchers exposed banks for handling hot money from diamond sales. Embarrassing information of all sorts came to light about the web of illicit relations around diamonds, arms trafficking, and proxy wars that spun through Africa and had important connections in Geneva, Antwerp, Tel Aviv, Moscow, London, and New York. Books and films about "conflict diamonds" appeared.[147]

The enterprise of sanctions reform took a terrible blow when Fowler was suddenly removed from his post. At the very least, it can be said that the P5 (and Washington in particular) did not want Fowler's dynamic Angola initiative to succeed and become standard operating procedure. They opposed the potential gain in influence by elected members as sanctions committee chairs. Fowler's very public naming and shaming had come too close to home, touched too many interests, and upset too many cozy arrangements. In many P5-friendly African countries, heads of state were nervous and loudly complaining. The diamond industry was up in arms.

During 2000, elected members pressed ahead with broader sanctions reforms. They wanted to create a "focal point" in the Secretariat that would consolidate the monitoring, expertise, and work of all the Council sanctions committees. The plan was excellent. Many sanctions committees were chasing after the same information and looking for the same violators. Arms trafficker Viktor Bout, for instance, was operating in Angola, Liberia, Sierra Leone, DRC, and Sudan, so why not pool the knowledge? The idea of a unified process was promising, but it didn't fly.

146 Fowler gave a keynote speech in July 2000 at the World Diamond Congress. The industry eventually adopted a system of provenance to reassure consumers called the Kimberley Process and NGOs were invited to join.

147 See for example Greg Campbell, *Blood Diamonds: tracing the deadly path of the world's most precious stones* (New York: Basic Books, 2002).

Bigger fish than Bout might get caught in the net. The P5 were firmly opposed.[148]

The E10 took another tack: they wanted a clearly-agreed Council framework for future sanctions—a list of dos and don'ts—to avoid the failures and abuses that had become so apparent. In April 2000, the P5 agreed to an Informal Working Group of the Council to study the matter, under the able chairmanship of Anwarul Chowdhury, the energetic ambassador of Bangladesh, one of the most prominent E10 reformers. The Working Group drafted sensible rules, such as automatic sunset clauses and no general trade embargoes, but eventually P5 opposition brought the project to a standstill in early 2001. Some such principles are informally implemented today—there have been no more general trade embargoes, for example—but there is no way they can be enforced in the future if the P5 chose to do things differently. Here as elsewhere, the P5 have adhered to their core principal: no legally-binding rules that might tie their hands.[149]

Natural Resources Neglected

NGO campaigners, inspired by the Angola diamonds effort, continued to press for natural-resource sanctions of the same type.[150] In June 2000, the Council appointed a Panel of Experts on the mineral-rich Democratic Republic of Congo (DRC). The Panel issued a series of revealing reports, beginning in January 2001, calling

148 Later, the idea was implemented in a very weak form through the establishment of the "Consolidated List" which lists all persons and entities subject to any of the current regimes.

149 For details of the Chowdhury-led Sanctions Committee, see David Cortright and George A. Lopez, "Reforming Sanctions," in Malone, *Security Council*, 175-176.

150 For an overview of the Council's actions in this area see Security Council Report, "UN Sanctions: Natural Resources," New York, Nov. 2015.

attention to the massive resource plunder and the involvement of foreign governments and resource firms.[151] More than a hundred companies, fearful of embarrassment, had refused to cooperate with the investigation, acknowledging the power of public shame that Fowler had generated.

The Council went on to impose an arms embargo on the DRC in 2003 and a symbolic ban on illegal mineral extraction in 2005,[152] but unfortunately it did not follow up with commitment. Enforcement of the sanctions was weak, the borders were unprotected, and the trade was simply too lucrative. Even units of the Congolese army, theoretically allies of the UN peacekeepers, engaged in a massive illicit resource trade—of timber in particular. Officers grew wealthy while avoiding combat duty. The Rwandan army and its Congolese rebel friends were pillaging gold and ivory. To make progress, the Council would have had to provide for strong enforcement and international pressure, but the P5 made sure that the Fowler methods of public diplomacy were not put into practice again.

The Panels of Experts continued their work on the DRC, piling up a large dossier on the topic, but their reports grew shorter and less frank as the years passed. One of the world's most violent civil wars continued. Illegal mining actually increased. In November 2010, after more than seven years of war and lax sanctions, the Council passed another weak resolution, offering nothing stronger than non-binding guidelines and calling for "due diligence" on the part of foreign importers of DRC minerals.[153] Further resolutions

151 See *Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and other Forms of Wealth of the Democratic Republic of Congo*, United Nations, New York, Jan. 16, 2001, April 12, 2001, Nov. 13, 2001, and Oct. 2002.

152 UN Security Council Resolution 1493 (July 28, 2003) for arms embargo and Resolution 1596 (April 18, 2005) for travel ban for individuals or entities supporting the illegal armed groups in eastern DRC through the illicit trade of natural resources.

153 UN Security Council Resolution 1952 (Nov. 29, 2010). See in particular operating paragraphs 7-9.

have followed but with little positive result, as the Expert Panels have continued to report.[154]

UN Peacekeeping chief Jean-Marie Guéhenno admitted privately that the most intense fighting tended to emerge in the DRC's most resource-rich zones: "If you had given me a resource map in advance," he told a group of NGOs, "I would have known where to deploy my peacekeepers."[155] Surely he had such a map, but he faced a conundrum: how could the UN take advantage of such knowledge to promote peace when the resource rivalries of permanent members were driving so many of the conflicts? In his later book, Guéhenno admits that Council members' "competition for lucrative mining contracts" undercut the peacekeeping efforts.[156] To be effective, the Council would have to stop the violent effects of resource extraction—the very same issue faced by Dag Hammarskjöld in the 1960s when Union Minière organized the Katanga secession. The Council would have to impose robust sanctions, undertake vigorous investigations, and enforce the rules. The P5 are not ready to do that. Predictably, the conflict has continued.

In 2004, a high-level panel appointed by the Secretary General on global "Threats, Challenges and Change" proposed means for identifying the resource-conflict nexus and tightening enforcement measures,[157] but in spite of Annan's backing it failed to move the issue ahead. Several NGOs kept the effort alive thereafter with reports and memoranda.[158] They sought to develop a general

154 See further weak Council action on Congo sanctions in Resolution 2198 (January 29, 2015) and assessment reports of the Group of Experts S/2015/797 (Oct. 16, 2015) and S/2016/466 (May 23, 2016).

155 Comments in a private meeting, March 31, 2005.

156 Jean-Marie Guéhenno, *The Fog of Peace* (Washington: Brookings, 2015), 159.

157 *A More Secure World, Our Shared Responsibility*, Report of the High-Level Panel on Threats, Challenges and Change, New York: United Nations, 2004. UN Document A/59/565 (Dec. 2, 2004), 178-182.

158 This initiative was led by Global Policy Forum and Global Witness, with the active participation of others.

framework for UN action on illicit natural resource exploitation, working in coordination with an important African delegation. Finally, in 2008, the initiative ground to a halt. The P5 were resisting any kind of resource initiative or policy framework.

Arms Embargo Politics

Arms embargoes offered another interesting sanctions opportunity, but again they came up against P5 interests. The P5 are the world's biggest arms exporters and they prefer to keep the weapons flowing. Conflicts spur the markets. Germany's meetings on targeted sanctions, known as the "Bonn-Berlin Process," had laid special emphasis on arms embargoes, but Germany, too, was a major arms exporter with limited appetite for market restrictions.[159] In the "targeted sanctions" world, many observers wondered what would become of this potential tool of Council action. The answer was predictable: UN arms embargoes, though very frequently used, would be imposed irregularly, with many loopholes, uneven enforcement, and great partiality.[160]

An early case arose with Ethiopia and Eritrea during their war of 1998-2000. The Council was very slow to introduce an arms embargo, but it finally did so in May of 2000, two years after the conflict began.[161] In November of 2000, after fighting had ended, the United States proposed that the Council lift the embargo.

159 The world's arms trade as of 2015 was dominated by six countries in this order: United States, Russia, China, Germany, France, and the United Kingdom. While the order changes, the US remains always by far the largest arms seller.

160 According to UN data, there have been 110 decisions by the Council to impose arms embargoes. See "Graphs on currently active sanctions regimes and restrictions (as of Sep. 2016)," UN Security Council website.

161 UN Security Council Resolution 1298 (May 17, 2000).

Washington wanted to resume arms shipments to Ethiopia, a regional ally, but a number of elected members, including Netherlands ambassador Peter van Walsum, felt the move was premature. After an unusually heated debate, the US dropped the idea but only for the time being. A few months later the embargo expired and the Council did not renew it. A US veto would have stood in the way.

Though tensions between the two African countries were still running high, Washington was able to re-arm its friend. Later on, a confident Ethiopia refused to accept a border adjustment recommended by a UN commission. Subsequently, the Eritrean government ejected a UN border surveillance mission. The simmering conflict spilled into Somalia and destabilized both belligerents as well. In light of deteriorating conditions in the region, the Council finally imposed an arms embargo again—though only on Eritrea and Somalia—in 2009.[162] By that time, state failure was already far advanced and large numbers of refugees were on the move. Had the Council imposed an early, even-handed, and well-enforced embargo in 1998 and kept it in place for the sake of regional stability, much suffering might have been avoided.

Over the years of "targeting," the Council has imposed arms embargoes on numerous other occasions, including in Somalia (2002), DRC and Liberia (2003), Cote d'Ivoire and Sudan (2004), Iran and North Korea (2006), Libya (2011), the Central African Republic (2014), and Yemen (2015). These sanctions regimes targeted sales of weapons ranging from nuclear-related materials to heavy weapons and small arms. In some cases, both states and rebel groups have been included. All too often, though, the arms embargoes have been strikingly ineffective and notoriously partial. Often the embargo language in Council resolutions is vague and not aimed at enforcement. Governments buy weapons legally and then sell them on the

162 UN Security Council Resolution 1907 (Dec. 23, 2009).

black market, for the enrichment of officials and high-ranking military officers. Rebels have many channels at their disposal.[163]

In Libya, in response to a brewing civil conflict, the Council imposed a sanctions regime on the whole country in February 2011,[164] but it was only enforced by the NATO enforcers against the regime and not its rebel challengers. Provision of weapons to the rebels was allowed to continue freely, giving encouragement to the insurgency and accelerating the subsequent—and still ongoing—civil war. The arms soon flowed into neighboring African countries, as well as Syria, spreading violence and instability along the way. In this case, the Council proved that arms embargoes can worsen a conflict if they are not thoughtfully framed and broadly enforced—particularly if permanent members are planning an imminent regime-change intervention.

Syria's terrible internal conflict (2011-present) would have been a promising opportunity for the Council to impose an effective general arms embargo, but the Council failed to produce one, due in large part to the emerging great-power proxy war, with P5 rivalry in the country and P5 wrangling in the Council. While sterile theatrics have dominated Council debates, there have been massive transfers of arms to various belligerents, coming from Russia, the United States, the United Kingdom, and France—all permanent members—as well as Iran, Turkey, Qatar, Saudi Arabia, and others. Russia has been criticized for its harsh bombing campaign in Aleppo, but all those involved in the arms flow deserve censure. There was one bright moment of disarmament in Syria, however. Russia, the United States, and the Syrian government reached an agreement for elimination of Syria's store of chemical weapons, an agreement confirmed in a Council resolution of September 2013

163 See DRC Expert Group reports: S/2015/19, S/2015/797, S/2016/466. It seems that DRC army officers in the field have sold arms to the rebels they are fighting.

164 UN Security Council Resolution 1970 (Feb. 26, 2011).

and then speedily carried out.[165] It was proof that disarmament and arms limitation can work when the political forces are lined up to favor it. Since then, unfortunately, the conventional arms flows into Syria have continued and the proxy war has blazed.

In Yemen, where another very nasty civil war has been raging since 2011, the Council imposed an arms embargo long after fighting had engulfed the land and rebels had seized control of government institutions. The embargo, applied in April 2015, was too little and too late. It effectively targeted just one side of the conflict.[166] Nothing was done to restrain neighboring Saudi Arabia from a bombing campaign to support its allies in the war, a campaign that has made use of foreign weapons and military assistance. According to the Council's Panel of Experts, the Saudis have conducted "widespread and systematic" bombings of civilian targets, including schools and hospitals.[167] United Nations investigators have found that coalition airstrikes were using US- and UK-supplied weapons and technology. The US has also provided in-air refueling and targeting assistance. Billions of dollars' worth of high-performance aircraft, drones, bombs, torpedoes, rockets, and missiles have all been sold recently to the Saudis as the war grinds on in a country on the verge of mass starvation.[168]

South Sudan is another case of a Council failure to impose an urgently-needed arms embargo. External power rivalries have stoked factional conflict, bringing a civil war to this fledgling country. In 2008, a rail shipment of 33 light tanks as well as large

165 UN Security Council Resolution 2118 (Sep. 27, 2013).

166 UN Security Council Resolution 2216 (April 14, 2015); preliminary action, including a Sanctions Committee and an Expert Panel was set up earlier under Resolution 2140 (Feb. 26, 2014).

167 UN Security Council Panel of Experts on Yemen, Report (January 22, 2016), Document S/2016/73.

168 "Dealing in Double Standards: How arms sales to Saudi Arabia are causing human suffering in Yemen," *ATT Monitor*, Case Study 2, 2016.

quantities of weapons and ammunition reportedly arrived in the capital, Juba, under the nose of UN personnel—an early sign that arms-running was reaching a dangerous level.[169] Subsequently, a heavy flow of arms, including armor and even aircraft, has increased the violence. Since 2013 there have been thousands of deaths, displacement of hundreds of thousands, and near-famine conditions for millions.[170] Access to oil appears to be an important ingredient in the conflict, with China, the US, the UK, and France all active clandestine actors.

In March 2015, the Council finally set up a South Sudan sanctions framework, with a Committee and a Panel of Experts. The resolution called for collection of information on arms but no formal arms embargo.[171] As the death toll mounted, the Council continued to waffle despite calls for an embargo by the Secretary General, the peacekeeping chief, NGOs, and the Panel of Experts.[172] The Council passed a resolution in August 2016, contemplating—but not imposing—an arms embargo.[173] In September, the Panel of Experts reported that it "has found that weapons are continuing to be procured, with the civilian population bearing the brunt of the resulting harm."[174] In December the Council acted again with another side-stepping resolution that expressed "intention to consider appropriate measures."[175]

169 "Wikileaks: US 'Aware of' Kenya-Southern Sudan Arms Deal," BBC News, December 9, 2010. For more on this incident see Susanne Dershowitz and James Paul, "Fishermen, Pirates and Naval Squadrons: the Security Council and the Battle over Somalia's Coastal Seas," New York: Global Policy Forum, 2012, 8.

170 The dire condition of the country is reported in the Panel of Experts reports of August 2015 and September 2016.

171 UN Security Council Resolution 2206 (March 15, 2015). The resolution, in paragraph 5, speaks of the Council's "willingness to impose targeted sanctions."

172 Panel of Experts report S/2015/656 (Aug. 21, 2015).

173 UN Security Council Resolution 2304 (Aug. 12, 2016).

174 Panel of Experts report of September 19, 2016 (S/2016/793).

175 UN Security Council Resolution 2327 (Dec. 16, 2016), see operative paragraph 10 for the tortuous language in full.

A more serious embargo was later rejected by the Council. The arms trafficking continued.

Even when clearly imposed, sanctions have rarely been successfully enforced. A report by *Small Arms Survey* on the arms embargo in Darfur shows it has been violated frequently, with no repercussions, as "no government with significant influence over the supply of weapons to Darfur" is ready to act and "the embargo's persistent failure has made it irrelevant to all key actors, removing any residual incentives to make it work properly."[176] Arms dealer Viktor Bout, in his heyday, was reportedly able to deliver tanks and other heavy weapons by air into African jungle airstrips, ignoring UN sanctions restrictions with impunity. Today, others have stepped in. Mercenary companies, intelligence services, arms dealers, and others have been able to easily side-step most of the rules. Council embargoes cannot work in such circumstances, especially if the P5 do not choose to play by the rules.

Panels Weakened, Discourses Derailed

The Panels of Experts, tasked to monitor and investigate nearly every sanctions regime, remain a significant positive holdover from the Fowler period. Their scrutiny offers possibilities for effective enforcement only if their message is respected, listened to, and acted on. The P5, discomforted by occasional embarrassing revelations, have set about pressuring the panels—by under-funding their budgets and demanding advance copies of the reports for "comment" and editorial changes. The P5 also claim the right to name members of the panels and to veto the names proposed by the Secretary General.

176 "Broken Promises: The arms embargo on Darfur since 2012," *Small Arms Survey*, HSBA Issue Brief 24, July 2016.

Steadily, in recent years, the panels have become "politicized" and to a considerable extent P5-controlled. As a result, they have lost much of their promise and effectiveness.[177]

Within the Council, sanctions discussions have embraced more than ever a discourse that undermines the work of the panels and ignores the responsibilities they were set up to monitor. This discourse focuses almost exclusively on the misdeeds of dictators and warlords on the ground to the exclusion of responsible powers and transnational companies. The standard discourse also overlooks the financial dimension of sanctions, including money-laundering by major financial institutions. Fowler's campaign had developed a full, three-dimensional understanding of these forces. Today, Fowler has been set aside conceptually as well as in terms of implementation. Yet all along, there has been no lack of information to enable Council members to get a full view of the conflict actors and their interests. Global Witness, Human Rights Watch, Amnesty International, and other well-respected NGOs release regular and grisly reports about these questions—including the ongoing scandal of resource pillage in the DRC.[178] The Stockholm International Peace Research Institute and others have published ample evidence of arms sales and the identity of those who sell them.[179] But the P5 have studiously ignored such inputs and the Council's discourse has remained frozen and ineffective.

177 See discussion in Eckert, "Role of Sactions," in von Einsiedel, 424 as well as useful comments throughout, 413-439. See also comments in Compendium Report, 40.

178 See Human Rights Watch, *Gold's Costly Dividend* (Feb., 2011), Global Witness, *The Hill Belongs to Them: the need for international action on Congo's conflict mineral trade* (December 2010), and Peter Eichstaedt, *Consuming the Congo: war and conflict minerals in the world's deadliest place* (Chicago: Chicago Review Press, 2011).

179 See *SIPRI Yearbook* 2016 (Stockholm: SIPRI, 2016).

Lists Limited, Reforms Fall Short

The Council's actions on targeted sanctions have also run into serious legal problems due to unfair placement of persons on target lists—as we will see in more detail later. Targeted individuals have brought complaints, courts have made judgments, and sanction regimes have been nullified. The P5 have moved slowly to respond, but the system of target listings remains secretive, troubled and—after a decade of court pressure—still not adequately responsive to legal standards of due process.

Even the most uncritical experts and practitioners have long-since recognized that sanctions are in trouble. In 2000, the P5 channeled some of the reform energy of elected members into the newly-established Informal Working Group on General Issues of Sanctions. The Working Group's first project on a sanctions "framework" ran into P5 objections. Thereafter, the Working Group toiled away for several years until finally—in 2006—it issued a report that was of interest but had a limited impact. The Working Group has been inactive ever since.[180]

Nearly a decade later, in 2015, five European governments published another review of UN sanctions, known as the "Compendium Report."[181] Like the Informal Working Group, the Compendium recognized sanctions shortcomings. It noted delicately that the Secretariat had neither the resources nor the political support to implement sanctions efficiently. It did not, of course, point to the systemic political issues which are the essential barrier to sanctions effectiveness. The report said little about the Security Council's responsibilities—there was not even a section devoted to the

180 *Report of the Informal Working Group of the Security Council on General Issues of Sanctions*, UN Document S/2006/997.

181 *Compendium of the High-Level Review of United Nations Sanctions*, UN Document S/2015/432 (Nov., 2015). The sponsoring governments were: Australia, Finland, Germany, Greece, and Sweden.

Council—and the report tiptoed around the problem of partiality and politicization. It said nothing whatsoever about the Fowler experience and the merits of that approach. Clearly, the authors hoped that administrative tinkering could lead to just and effective sanctions—an extremely doubtful proposition.[182]

After twenty-five years of discussion and debate, with many technical reforms already implemented, the Council under P5 tutelage has been unable to produce a sanctions program that has a good reputation and a solid peacemaking record. A few exceptions exist, but they are far too few. On present trends, we should not expect a successful sanctions system to emerge any time soon. The P5 are more interested in the use of force.

182 The Council took up the issues raised by the report in a meeting of February 11, 2016 (S/PV.7620). During the debate—one of the better in recent times—some procedural Council shortcomings were mentioned, such as the P5-dominated process of naming sanctions committee chairs and the lack of transparency in reports to the Council by sanctions committees.

Military Operations: Peacekeeping and "Coalitions of the Willing"

The Security Council's best-known and most controversial activity involves military operations and what is called around the Council the "use of force." In 1945, the Big Three expected that they would jointly use military means to promote their version of international peace and security, but the Cold War made such a cooperative enterprise impossible. The Military Staff Committee, set up under the Charter and comprised of P5 chiefs of staff, fell into disuse. Contrary to the expectations of the founders, no military forces were placed at the long-term disposal of the organization.

Subsequently, two broad options have emerged, very much on an *ad hoc* basis and with little systemic planning. First, there is "peacekeeping," a concept not mentioned in the Charter but invented by Canadian Foreign Minister Lester Pearson and Secretary General Dag Hammarskjöld. Under the mandate of Security Council resolutions, the UN raises troops and police from member states and takes responsibility for their logistics and command in an effort to restore and protect peace. There were 71 operations of this kind between 1948 and the end of 2016, of which 16 are still underway.[183] Secondly, there are "Coalitions of the Willing" in which the Council authorizes member states to create an alliance for military action outside the UN's operational command—in cases where theoretically a heavy use of force is required.[184] There have been over twenty of these operations, some very high-profile. Both options have been seriously marred by P5 interests and over-emphasis on military approaches.

Peacekeeping operations—originally meant to maintain truces and ceasefires by peaceful means—were based on the idea of a symbolic UN presence. There are three founding principles: the

183 United Nations Peacekeeping website, "Fact Sheet," Dec. 31, 2016.

184 Sometimes also, the Council mandates regional organizations to deploy forces under its mandate, examples being the African Union and the Economic Community of West African States. Space does not allow us to address this particular phenomenon.

belligerent parties' consent to the presence of peacekeepers, the impartiality of the mission, and the non-use of force except in cases of self-defense. In 1948 the Council deployed for the first time unarmed personnel as monitors and cease-fire observers—in the wake of wars in the Middle East and South Asia.[185] Those small operations were successful in separating belligerents and reducing the danger of war flaring up soon again, though they did not resolve the underlying conflict. In spite of these limited successes, the Council did not take a similar step soon again, though many serious security crises arose in other lands. Vetoes by the P5 were the main barrier to such deployments. Britain and France were particularly keen to keep the Council at a distance from their colonial wars.

Coalition in Korea

"Coalitions of the Willing" are the most problematic type of Council-sanctioned use of force. They operate outside of UN unified command, engage in warfare, and are particularly subject to the interests of the country or countries organizing them—usually the Western P3. In some cases, they involve after-the-fact Council authorizations of military operations already under way, reflecting the extent of Council subordination to its mightiest members. In these operations, the Council has little opportunity for oversight and control and minimal capacity to bring the enterprise to an end.

The first coalition operation was the Korean War. In June 1950, the Council passed a US-proposed resolution calling on UN member states to oppose an invasion of the South by the North and join

185 The first deployment followed the Arab-Israeli war, and the second followed the India-Pakistan war in Kashmir.

a military action outside of the command of the UN.[186] US forces, who were already beginning deployment when the Council passed the resolution, entered the conflict "under the UN flag," with several other lesser allies. The operation, commanded by US General Douglas MacArthur, touched off widespread controversy, as the UN became embroiled in a Cold War conflict that drew in China and nearly resulted in nuclear war. Fighting continued for three years and more than four million combatants and civilians were killed or wounded.[187] The conflict ended in a stalemate, and the devastated peninsula remained politically divided. Having passed a vague authorization, the Council was unable to maintain control over the purpose, strategy, and scope of the operation.[188] In 1953, the two sides in Korea signed a cease-fire but neither an armistice nor a peace treaty followed. Korea has continued in a state of war ever since and peaceful re-unification has never taken place.

Congo Chaos

In 1960, the Council was drawn into another major conflict, this time in Congo, as violent unrest broke out after Belgium's sudden colonial withdrawal. The Council opted for a peacekeeping mission under UN control, but the crisis exposed deep Council divisions touched off by Cold War geo-strategic rivalries and mineral resource interests.[189] The Council deployed its peacekeeping force into a tumultuous civil war. The operation, carried out principally

186 Resolution 83 (June 27, 1950).

187 Bruce Cummings, *The Korean War: a history*, (New York: Modern Library, 2010), 29-30.

188 For a discussion of this see Berman, "Authorization," 157-58. After Soviet vetoes blocked the Council, the General Assembly took up the operation under the Uniting for Peace Resolution, on Dec. 4, 1950.

189 The initial action was UN Security Council Resolution 143 (July 17, 1960).

by the Swedish military, with units from Ireland, Malaysia, India, Morocco, Ghana, Canada, and other countries,[190] was complicated by the presence on the ground of Belgian troops, Western mercenaries, and influential intelligence services. The Council had no experience with such a conflict and how to oversee it. Permanent Members had their own agendas. The peacekeepers were eventually unable to lay the basis for a stable future for the Congo.[191]

Many Africans hold the UN partially responsible for the lasting damage to a post-colonial state, the assassination of the country's most popular political figure, Patrice Lumumba, and the rise of the notorious dictator—Mobutu Sese Seko. Secretary General Hammarskjöld and his team promoted the removal of Lumumba from the office of Prime Minister, seeing him as too radical—a step that contributed to the further destabilization of the country.[192] Hammarskjöld himself paid a steep personal price as he, in turn, faced implacable Western opposition. On his way to negotiate a cease-fire for mineral-rich secessionist Katanga Province, he died in a suspicious aircraft crash that is still under investigation.[193] After the UN peacekeepers finally departed, Mobutu ruled with an iron hand for 32 years, looting the state for his own enrichment. Later, turbulent and divided, ever a magnet of resource rivalries, Congo collapsed again into civil wars, contributing to the further destabilization of Central Africa.

The mission in the Congo was the UN's first large-scale peacekeeping operation, and it certainly was not a positive beginning. It revealed

190 Ethiopia, Tunisia, and Nigeria also sent forces.

191 For Congo background in this period, see Kevin A. Spooner, *Canada, the Congo Crisis and UN Peacekeepers 1960-64* (Vancouver, University of British Columbia Press, 2009); *Foreign Relations of the United States: 1960-68*, Vol. 24, Congo.

192 See Emmanuel Gerard and Bruce Kuklick, *Death in the Congo: murdering Patrice Lumumba* (Cambridge: Harvard University Press, 2015) for a key event in the crisis, particularly the responsibility of top UN leadership.

193 See Susan Williams, *Who Killed Hammarsköld?* (New York: Columbia University Press, 2011). The UN has undertaken new investigations in 2015 and after.

all the deficiencies of the Council as an executive body and all the problems of P5 rivalries and secret involvements. Council diplomats had neither the skills nor the inclination nor the training to supervise such a war, nor the information to follow its political complexities. Who knew, for instance, that most of the US atomic weapons arsenal had been built with Congolese uranium, mined in Katanga, produced by the vast Belgian company Union Minière? After the Congo debacle, the Soviet Union, France, and Belgium refused to pay for the operation, plunging the UN into a severe financial crisis. During the remainder of the Cold War, peacekeeping remained on ice.

Between 1991 and 1994, the Council revived peacekeeping, as the Russian-US rivalry faded and the US president declared an optimistic "new world order." Within the Council, the elected members were skeptical. Through pressure and enthusiasm, however, they were swept into voting for new missions, bringing the total personnel from 15,000 to over 78,000.[194] The cost quickly surpassed the entire core UN budget and put great strain on the whole institution.[195] Finance was to prove a big impediment as the Council cranked up the use of force.

Peacekeeping Problematics

As the new era of peacekeeping began, the P5 were unwilling to build a sensible structure or to lay out a persuasive doctrine. The P3, in fact, monopolized Council decision-making on most missions.[196] Maintaining their preferred case-by-case approach, they

194 "Size of UN Peacekeeping Forces: 1947-2011," Global Policy Forum, website, 2011.

195 Among other things, hundreds of headquarters staff were routinely seconded to peacekeeping operations, disrupting the work of all departments.

196 See inter alia Richard Gowan, "The Security Council and Peacekeeping," in von Einsiedel, *Security Council*, 758.

held onto the power that this patchwork gave them, neglecting as always the value of engagement with the E10, the troop contributors, and the UN membership generally. As a result, strange arrangements emerged that are still in use today. Each peacekeeping operation is funded separately according to a set formula and each must recruit its own mission-specific military and police contingents—from a number of different countries. The recruitment is a slow and politically complex process and it often results in a hodgepodge of different national units, diverse equipment, training gaps, and cultural differences. Governments often place restrictions on how their personnel will be used and they also withdraw their contingents suddenly—in response to disputes about the mission and its leadership.

The P5 typically provide few personnel for these missions, symbolizing their lack of responsibility for the operations they create. As of the end of August 2016, out of 86,257 peacekeeping troops, the US contributed a paltry 34, the UK 332, and the Russians only 4.[197] Only China has been relatively forthcoming. The P5 and a few other rich countries pay most of the bills, but they do not put boots on the ground. The UN must recruit the great majority of its troops from less affluent lands. South Asia has been in the lead, with top contributions from India, Pakistan, Bangladesh, and Nepal. Africa comes next: in mid-2016, Ethiopia, Rwanda, and Senegal were also major troop contributors. These arrangements have a decidedly mercenary flavor, though no one is supposed to say so.

Language is an additional problem. Often, peacekeepers do not speak the language of the country where they are operating, so they cannot communicate with those they are supposed to protect. Units from different countries may not be able to communicate

197 Data as of Aug. 31, 2016 from "Contributors to United Nations Peacekeeping Operations," UN website. France on the same date had contributed 821 troops and China 2,436.

with one another. Interpretation can be impractical in operations. No easy solution is at hand.

The P5 create "robust" mission mandates that require advanced equipment, but they are not very helpful in providing the UN with needed hardware, even though they have plenty on hand. Helicopters, mobile field hospitals, armored personnel carriers, and heavy transport aircraft are often not available from P5 reserves when the UN calls. Problems and delays arise every step of the way. First the P5 must negotiate among themselves a Council mandate—often a complex process, seriously out of touch with real-world conditions. Then, troops must be recruited, equipment procured, financing raised, commanders appointed, command teams established, and so on. Not surprisingly, the operations are painfully slow to deploy, even as conflicts are blazing. The whole apparatus is very creaky and the P3 sometimes seize on its deficiencies as an excuse for their own military intervention with rapid-reaction forces, called "bridging forces," independent of Council control.

Iraq 1990 and After

Deployment of a "coalition of the willing" returned to the Council's agenda in 1990—forty years after Korea—when Iraq invaded Kuwait. A decade earlier, the Council had largely ignored Iraq's invasion of Iran, but this time P5 alignments had changed. The ally had become the enemy. Washington deployed great diplomatic and economic pressure to persuade the Council to endorse the use of "all necessary means" to bring about Iraq's withdrawal.[198] Secretary of State James Baker travelled the world lining up votes and symbolic armed force

198 UN Security Council Resolution 678 (Nov. 29, 2000). This section draws on the GPF report Iraq Sanctions, 2002. See also James A. Paul, "Gulf War," *Oxford Companion to Politics of the World* (New York: Oxford University Press, 1993), 378-379.

contributions to the coalition. The US warned Yemen, one of the world's poorest countries, that it would lose its US aid package if it did not vote for the use-of-force resolution.[199] When Yemeni ambassador Abdullah al-Ashtal eventually voted in the negative, US ambassador Thomas Pickering told him near an open microphone in the Council chamber: "That was the most expensive vote you ever cast." The $70 million in annual US aid was immediately cancelled. Yemen was also excluded from IMF lending for the next six years.[200] Washington wanted everyone to know that it was ready to make good on its threats, even though the vote had carried.

As the US began its military campaign on January 17, 1991, US aircraft and missiles pounded targets far from the battle zone, including water treatment facilities, power plants, transport networks, and other targets in Baghdad and elsewhere, essential to the health and well-being of Iraqis.[201] Several Council members were disturbed at what was happening. India, Cuba, and Yemen, then serving terms as elected members, asked the Council president to convene an emergency meeting to consider how the Council's mandate was being used. Zaire (Mobutu's new name for the Congo) held the Presidency that month and simply ignored the plea. The dictator was still in office. Apparently Washington had offered its friend some sweeteners—debt forgiveness and military hardware—in exchange for this favor. The US didn't want its military operations open to Council inspection.[202]

After the US coalition had ousted the Iraqi military from Kuwait, they continued to enforce sanctions and carry out harassing air

199 Vreeland, *Political Economy*, see esp. ch. 3, "Examples of Punishments, Threats and Rewards," 62-93. See also Phyllis Bennis, *Calling the Shots* (Gloucestershire: Arris, 2004).

200 Bennis, 38-39.

201 See Barton Gellman, "Allied Air War Struck Broadly in Iraq; Strategy Went Beyond Purely Military Targets," *Washington Post*, June 23, 1991.

202 This incident is mentioned in Vreeland, *Political Economy*, 70.

operations. In April 1991, the wary Council approved two new resolutions, one of which imposed stringent, open-ended disarmament requirements, but neither spoke of ongoing military operations.[203] Nevertheless, the US, UK, and France claimed authority to establish long-term "no-fly" zones over the northern and southern territories of the country. Over subsequent years, the US coalition flew daily over Iraq and launched five intensive air attacks on Baghdad, including a four-day round-the-clock campaign in 1998, none of which had Council authorization.[204]

Many Council members grew increasingly critical of the operation and the unacceptably broad interpretation of the mandate by the US and the UK. France withdrew from the partnership. Behind the legal formalities of Council resolutions with their references to peace and human rights lay grand geostrategic designs of the P2 and a concerted regime change program. During the course of the 1990s, the P5 decisively split, revealing a rivalry over Iraq's oil resources.[205] The increasingly-restive Council majority could not halt the military operations in light of the US-UK veto. A non-stop conflict was nevertheless being waged with nominal Council backing.

Uneven Response to Invasions

The Iraq operation marked just the second time the Council had acted to stop an invasion with a coalition force. Over the years the

203 UN Security Council resolutions 687 (April 3, 1991) and 688 (April 5, 1991).

204 Operation Desert Fox, in December 1998, involved hundreds of carrier and land-based aircraft as well as a large number of air and ship-launched cruise missiles. The US told UN arms inspectors to leave in advance of the attacks and they were then not permitted by the Iraqi government to return until late 2002.

205 *War and Occupation in Iraq*, 18-20; James A. Paul, "Oil in Iraq: the heart of the crisis," New York: Global Policy Forum, 2002.

Council has left many other invasions undisturbed due to P5 partiality and veto-blockage. When the Soviet Union invaded Hungary in 1956 and Czechoslovakia in 1968 there were no plans for a coalition of the willing to stop the operation. When Israel invaded and occupied parts of Jordan, Syria, and Egypt during the 1967 war, there was no resort to a coalition either. Turkey invaded Cyprus in 1974, Morocco invaded Western Sahara in 1975, Iraq invaded Iran in 1980, and the US invaded Grenada and Panama (1983 and 1989). In each of these cases (and many others), the Council took no action to initiate military action to enforce international legal norms.[206] The Council's "coalition" approach has thus been extremely unbalanced and partial, despite the frequent references to "upholding international law." Coalitions have appeared when they have suited powerful Council members who took the lead—Washington, London, and Paris—and rarely otherwise. Elected members have been painfully aware of this. The Council's minimal attention to the Turkish invasion and occupation of northern Cyprus led to a bitter expression among elected members: "Cyprusization" came to mean an urgent issue painfully neglected.[207]

Successes and Failures

From time to time, the Council has authorized effective, lightly-armed peacekeeping missions which include police units, human rights observers, demobilization experts, demining teams, election experts, legal teams, and other specialized personnel. UN mediation

206 There were light observer-type missions deployed in Cyprus, Western Sahara, and the Middle East, but nothing to actually stop or roll-back the invasions, which have mostly remained undisturbed. In a few cases, the Council called pro-forma for an end to the occupations.

207 See Mahbubani, "Permanent and Elected," 260.

initiatives—and more recently Special Political Field Missions—have also been another important element in non-violent peacemaking. In Central America, three Council-approved peacekeeping missions—in Nicaragua, El Salvador, and Honduras in 1989-91—helped to end long and violent civil wars. Undertaken with strong local support, with contingents drawn from regional countries, and in a spirit of peaceful settlement, these missions show how the Council, using a "light" approach, can build a stable peace.[208]

The dominant peacekeeping doctrine insists, however, that most conflicts take the form of raging internal wars like Congo and do not lend themselves to a small observer group or inter-positional force. There is a false assumption about the connection between conflict intensity and the necessary use of force. To break free from an automatic resort to arms, the Council—and the UN Department of Peacekeeping Operations—could have explored other possibilities. They could have considered larger scale and carefully planned peaceful approaches, including the use of non-violent peace protectors on the model subsequently developed by Nonviolent Peaceforce. Instead the Council opted again and again for military responses—inserting its cobbled-together military operations into "complex emergencies," where there is "no peace to keep." Over time, it has authorized increasingly heavily-armed missions—an approach that has come to be called "robust peacekeeping" and—at a still higher level of violence—"peace enforcement." The Western powers on the Council have driven this policy, which mirrors their own strategic doctrines and preference for "hard power," but Russia and China are broadly in accord as well.

Complications inevitably arise and the Secretariat knows this. Unlike the Pentagon, the UN is not well-prepared to "command and control" significant military forces, widely deployed.

208 See, for example, Bianca Antonini, "El Salvador," in Malone, *Security Council*, 423-436. The relevant Council action was under Resolutions 644, 650, 653, 654, 656, 714, and 719.

Cobbled-together forces do not perform well. Military means, after all, do not readily solve sensitive political crises of the kind the UN is best-equipped to handle.

Somalia in 1993 was an early disaster to follow from the "robust" approach. UN forces, mandated with protecting humanitarian workers and providing humanitarian relief were also authorized to use "all necessary means" in a land torn by warlordism and localized violence with no stable government and a long history of foreign intervention.[209] Humanitarianism and force were dangerously combined. As the operation stumbled, a US military force, authorized by the Council, took over, outside UN command, abandoning any pretense of impartiality or restraint.[210] This deepened the conflict. Beleaguered US forces soon departed. UN peacekeepers withdrew a short time later, leaving a failed state behind.

In Rwanda in 1994, as is well known, a small UN observer force had been deployed to oversee peace arrangements. In spite of mounting evidence of mass killings, the Council refused to reinforce the mission after a Belgian contingent pulled out. It was not a "lack of political will," as some say, but instead a very willful decision on the part of leading Council members—the United States, the UK, and France in particular—to pursue their regional interests and rivalries.

Another peacekeeping failure took place in Bosnia in 1995, as UN forces failed to protect people in UN-organized "safe areas," leading to a notorious massacre in Srebrenica as well as other mass killings. One element complicating and deepening these and other crises was the simultaneous intervention of Western military forces, operating in the same theater as UN peacekeepers but under separate command and with different rules of engagement, giving rise

209 UN Security Council Resolution 751 (April 21, 1992).

210 UN Security Council Resolution 794 (Dec. 3, 1992).

to many confusions and contradictions.[211] A system of command and engagement that may have been appropriate for an inter-positional force was hopelessly compromised in these circumstances.

Increasingly, people on the ground in conflict zones have perceived the Security Council as lacking impartiality and actively taking sides. Council mandates for "integrated missions" worsened the problem by incorporating UN humanitarian relief into force-centered UN peacekeeping operations. In theory, the peacekeepers would protect the humanitarian effort, but they often increased the danger instead. As the UN's reputation of impartiality waned, irregular forces attacked and looted UN humanitarian operations and fired on UN peacekeeping units. The UN responded by heavily fortifying its premises and camps, further cutting its people off from those they were sent to serve. This trend would only worsen in the years ahead. In Africa, especially, there were charges of neo-colonialism.

Secretary General Kofi Annan and US President Bill Clinton later separately apologized for their culpability in Rwanda.[212] But the Security Council did not itself take responsibility or draw self-critical lessons for the future. The Secretariat published reports about its own operational failures, but silence reigned about the Council and its leading members.[213] Beset by harsh criticism, rapidly waning public support, and hesitation by many elected members, the Council finally pulled back—if only temporarily—from its use of "robust" force. Peacekeeping personnel declined to under 15,000 by 1998.

211 Tatiana Carayannis, "The Democratic Republic of the Congo," in Sebastian von Einsiedel, et al, eds., *The UN Security Council in the Twenty-First Century*, Boulder, Lynne Rienner, 2016.

212 "U.N. Chief apologizes for Rwanda—He admits failure to prevent genocide,' Associated Press, Dec. 17, 1999; "Text of Clinton's Rwanda Speech," CBS News, March 25, 1998.

213 See comments on this same topic by Mahbubani in "Permanent and Elected," 247.

Brahimi's Reassessment

To rescue the UN's faltering military enterprise, Secretary General Kofi Annan named a high-level panel, under the chairmanship of respected Algerian diplomat Lakhdar Brahimi, to come up with reform recommendations. The Brahimi Report, published in 2000, called for "robust rules of engagement" (when necessary) and substantial increases in the budgets for headquarters support.[214] The report also urged the Council to give its missions adequate forces and achievable mandates. The Report was obviously not a deep re-think of the peacekeeping enterprise, but it was a source of reassurance to the Council for a new expansion phase. The authors were, in fact, more judicious than the Council and sensibly hesitant about expanded UN use of force. Their caution was quickly put aside. The UN proceeded to enlarge its logistics base in southern Italy and it set up a new operations communications center in southern Spain. Cooperation with NATO, once unthinkable, intensified. Force-centered doctrines took center-stage, though war-fighting was reserved for the "coalitions."

Neither the Secretariat nor the Council were neglectful of negotiated settlements. In each crisis there were UN efforts to mediate agreements among conflict parties. Often these agreements collapsed because there was insufficient political effort, both in the region and internationally, to make them stick. The P5 occasionally backed different parties; they were inclined to pursue their political interests unilaterally, and their UN option was to focus on force.

The Council revived peacekeeping by authorizing several new "robust" operations. Brahimi and colleagues were hesitant. They had warned that force alone cannot create peace. UN peacekeeping chief, Jean-Marie Guéhenno, cautioned that military force was only useful if it could act briefly and decisively, as a "lever" in the

214 See Report of the Panel on *United Nations Peace Operations*, S/2000/809 (Aug. 21, 2000).

political process or to create a "window" of a few months for political solutions to be negotiated.[215] In fact, UN missions were stretching out into multi-year military occupations with no end in sight. The doctrine was more muddy than ever.

Congo II

The UN returned to the Democratic Republic of Congo in 1999. The Council had authorized a modest peacekeeping operation there—a small observer deployment to supervise a peace agreement among post-Mobutu power claimants.[216] As conflict broke out again, the Council doubled down on force, and the peacekeeping operation grew into a major military campaign.[217] The heavily-armed contingent reached 10,000, equipped with armored vehicles and helicopter gunships. The mandate included the "protection of civilians" and much more—far beyond the capability of a force that was not very mobile, indifferently led, and concentrated in the capital. The Council could not militarily pacify a territory the size of Western Europe and establish a legitimate authority. Peacekeeping chief Guéhenno later wrote ruefully: "There is a tendency to exaggerate what force can achieve in the stabilization of a country,"[218] and he asked "was it worth it?"[219]

Conflict in the DRC drew on many factors, including spillover from Rwanda, but above all it was driven by the country's incredibly

215 Comments at a private meeting, July 24, 2007.

216 UN Security Council Resolution 1279 (Nov. 30, 1999).

217 UN Security Council Resolution 1291 (Feb. 24, 2000).

218 Guéhenno, *Fog of Peace*, 147.

219 Ibid., 148-160.

rich mineral resources—the lead factor in the 1960s war.[220] There was reportedly a Francophone-Anglophone rivalry, involving France and Belgium on the one side and the US and the UK on the other. China elbowed its way to the table, too. Several neighboring African countries were eager to get their hands on the loot. Rwanda, Uganda, Burundi, and six other neighbors used their armies and sponsored rebels to scoop up gold, coltan, cobalt, tin, tungsten, timber, diamonds, and ivory. Then there were the international mining companies—among them the London-based giants AngloGold Ashanti and Rio Tinto, with vast concessions, such as the Kilo-Moto gold operation, said to be the world's largest deposit.[221] Permanent Council members have many connections to this resource war, though it is not polite to say so.[222]

Not surprisingly, peacekeepers have been unable to tame the raging DRC conflicts, and they have seriously failed to protect civilians, while massacres have taken place repeatedly. In 2003, the fourth year of UN deployment, the peacekeeping mission begged for help as the eastern mining area spun out of control. A French-led EU "coalition" arrived to pacify the city of Bunia,[223] but massacres continued in the countryside. Less than three months later the Europeans pulled out and the UN deployed more peacekeeping forces to the area, but armed

220 See Human Rights Watch, World Report 2017 (New York, 2017) "Democratic Republic of Congo—Events of 2016"; Guéhenno, *Fog of Peace*; Jason Stearns, "Can Force Be useful in the Absence of a Political Strategy? Lessons from the UN Missions to the DR Congo," Congo Research Group, Center for International Cooperation, December 2015.

221 AngloGold Ashanti, originally a subsidiary of the huge British/South African company, AngloAmerican, has mines in more than one conflict area, including (in addition to DRC) Mali, where another UN peacekeeping operation is currently under way (see below). AngloAmerican has been involved in diamonds, copper, and other minerals in DRC.

222 Guéhenno, to his credit, has this to say: "the fragile unity of purpose of the international community has been replaced by competition for lucrative mining contracts," ibid., 159. This can be interpreted to mean competition between the US, the UK, France, and China.

223 This was officially an EU force, deployed under UN Security Council Resolution 1484 (May 30, 2003) and headquartered in Bunia in the violence fraught Ituri Province in the far eastern zone of the country.

groups continued operations. The Council raised the overall size of the mission to 17,000 in 2004, but instability continued. Plunder went on. President Kabila helped himself and his family to vast riches with the companies' connivance.[224] The Council pretended not to notice.

In March 2013, after more instability in the east, the Council set up the Force Intervention Brigade, giving the new unit the heaviest military mandate ever—to undertake "targeted offensive operations" to "neutralize" armed groups.[225] In 2014, there was another crisis in Katanga Province, a mining area central to the civil war in the 1960s, rich in cobalt, copper, tin uranium, and diamonds. The UN described Katanga as a "catastrophic humanitarian emergency." In 2016, a massacre took place in Beni, in the same eastern mining area where the FIB was deployed. Congolese complained that the peacekeepers were not only ineffective but also allies of a corrupt and unpopular army and government.

In 2015-2016, the Council's own Expert Panels told of further broad DRC instability and violence, arms trafficking, resource plunder, child soldiers, and continuing intervention by the militaries of neighboring countries. Credible reports have accused peacekeepers of abuse and exploitation of women, while other UN staff have been suspected of gold and ivory smuggling and other kinds of malfeasance.[226] As many as five million people have perished from conflict, disease, and starvation in this long war while mining revenues have tripled. Today, more than sixteen years after the Council took up a Congo operation for the second time, the

224 Michael Kavanagh, Thomas Wilson, and Franz Wild, "With His Family's Fortune at Stake, Kabila Digs In," *Bloomberg News*, December 15, 2016. While the UN has been pacifying the country, the President has been growing enormously rich, as this article shows in great detail.

225 UN Security Council Resolution 2098 (March 28, 2013).

226 See UN News Centre, "UN Sexual Misconduct Investigation in DR Congo finds violations and cases of abuse," April 4, 2016. There have been regular reports of peacekeeper sexual misconduct over the years and an earlier scandal in DRC in 2004 led to an unofficial report, released March 23, 2005. There was also a scandal in CAR, leading to another report in 2015.

scandal-plagued DRC peacekeeping mission still has not succeeded in extricating Congo from its terrible crisis.

A "Vital UN Role" in Iraq?

The long-running Council dispute about Iraq took center stage in late 2002, as the Council was asked by the US and UK to approve another coalition-type intervention. Months of urgent UN inspections found little evidence of the suspected mass-destruction weapons, so the Council refused to accept a US-UK resolution for war.[227] When the P2 turned their back on the Council and went ahead with their own war, there was a brief firestorm in the Council, but shortly after the hostilities ended, the opposition bloc began edging towards accommodation with Washington. Oil contracts were part of the P5 making-up. In May, August, and October, the Council passed key resolutions legalizing the occupation in several ways, including mandating the US coalition as a UN-authorized "Multinational Force."[228] In May, the Council also authorized a civilian-led special political mission, the UN Assistance Mission for Iraq, to promote what was called a "vital UN role" in the occupied country.

The Secretary General sent one of the UN's most respected trouble-shooters, Sergio Vieira de Mello, to Baghdad to head the Mission and help Iraqis rebuild their society. The project of a "vital UN role" was tainted from the beginning in the eyes of Iraqis by its association with the occupation. The occupiers were themselves unhappy about the UN political interloper. In August 2003, Vieira

227 No resolution was ever presented to the Council because it was clear that it would not command the necessary votes and also that it would be vetoed.

228 UN Security Council Resolution 1483 (May 22, 2003), Resolution 1500 (Aug. 14, 2003), and Resolution 1511 (Oct. 16, 2003).

de Mello and twenty-one other UN staffers perished in a truck bomb explosion that destroyed the UN's Baghdad headquarters, all victims of the impossible assignment and inadequate security protection offered by coalition forces.[229] Their deaths were a heavy blow to the UN, and most remaining staff were withdrawn.

Despite these events and the coalition's many well-known illegalities, Council members continued to speak about the "vital UN role" and the UN's potential for restoring sovereignty and promoting democracy. During the years of occupation, however, the Council was completely ineffective as an independent source of oversight or influence. The US and the UK made sure that the Council placed no restrictions on the Council-endorsed Multinational Force. The Council also totally failed to examine the use of revenues from the oil sales that were gathered into and spent from the Council-established Development Fund for Iraq.[230] Nor did the Council take steps to consider and to mitigate the vast displacement of people, the torture and abusive prisons, the destruction of towns and cities, the very high mortality, and all the rest.[231]

Once every year, the Council gave re-authorization to the MNF. The Elected Members had by this time learned their "painful" lesson that opposition to Washington was simply too costly. Key Council meetings on the topic were typically mere formalities. In 2007, the year of the bloody "surge" campaign by the occupiers, a majority of the members of the Iraqi parliament sent a letter to the UN, saying that under the Iraqi Constitution a two-thirds vote in the parliament

229 For an interesting view of the debates in the UN on the Iraq War and especially on the "vital UN role," see Guéhenno, *Fog of Peace*, 35-64.

230 The Development Fund for Iraq, approved in Resolution 1483, was supposedly overseen by the International Advisory and Monitoring Board. The Board had little authority, however. Billions were corruptly misspent. See Global Policy Forum, *War and Occupation*, ch. 9.

231 Ibid.

was required prior to any re-authorization request.[232] The Council ignored the letter and refused to receive a delegation of parliamentarians. The Council meeting in December to pass the authorization lasted just 35 minutes.[233] Later efforts by the Iraqi Parliament to communicate with the Council also failed. Two years later, the Council's authorization meeting lasted just 15 minutes.[234] Iraq's new democratic institutions meant nothing in the Council context. The US finally withdrew most of its forces in 2011 after more than eight years of occupation, leaving Iraq's political system in deep disarray. A Sunni rebellion exploded with region-wide impact. The Council, under constant P2 pressure, was an accomplice in all this.

Coup in Haiti

In February 2004, just months after the Council endorsed the US-UK occupation of Iraq, it authorized another extremely dubious enterprise in Haiti—one of the world's poorest countries. Haiti's government was challenged by a well-financed and strongly-armed rebel force, led by notorious right-wing elements. Events on the island suggested that the legitimate President, Jean-Bertrand Aristide, faced a serious threat, so the regional organization, Caricom, called on the Security Council to act. The Council ignored the matter. On February 28, as rebels approached the capital, US diplomats in Port-au-Prince pressed Aristide to resign from office and hustled him off into exile. The next day, with sudden interest, the Council met on an emergency basis and passed a resolution authorizing a "coalition"

232 For several documents on this topic, see Global Policy Forum website, "Multinational Force Renewal Mandate."

233 UN Security Council Meeting, December 18, 2007 (S/PV.5808).

234 UN Security Council Meeting, December 21, 2009, (S/PV.6249).

force to stabilize a new regime.[235] There was not a word of debate in the Council meeting, which lasted just five minutes. Caricom, called for an urgent investigation. Many described the events as a coup.[236]

A day after the Council acted, Washington deployed a contingent of Marines to the Haitian capital. France and Canada also sent troops, as authorized by the Council's "Multinational Interim Force," to "support the constitutional succession and political process now under way."

The United States, France, and Canada were apparently deeply involved in preparing this "regime change."[237] A new off-the-shelf Prime Minister was brought in from the United States, as part of the "constitutional succession." Aristide supporters protested massively. In April, the Security Council tamely approved a UN peacekeeping force, in another five-minute meeting devoid of debate.[238]

The Council's peacekeeping operation in the country was designed as remarkably "robust," with a military and police total set at 8,300. Brazil took the lead in the operations. The first force commander came under heavy pressure from Washington to pacify the Cité Soleil shantytown neighborhood in Port au Prince and stamp out protests by Aristide supporters, branded as "gangs" and "criminals." The general refused, claiming that that such an aggressive operation went beyond his mandate. At the Secretariat in New York, there were many debates and misgivings about what was going on. In Port-au-Prince, protesters by the thousands took to the streets.

In late 2005, the Brazilian government named General Urano

235 UN Security Council Resolution 1529 (February 29, 2004).

236 For background on Haiti and the overthrow of Aristide, see Paul Farmer, "Who Removed Aristide?" *London Review of Books*, 26 (8), 8-15 April, 2004, 28-31.

237 A private conference, organized by the Canadian Government and titled "The Ottawa Initiative on Haiti" brought together Canadian, US, and French officials to discuss the future of Haiti's government in January–February, 2003. It is considered one of the steps that led to a consensus and plan for regime change.

238 UN Security Council Resolution 1542 (April 30, 2004).

Bacellar as the new force commander. He, too, was opposed to the heavy use of force, and he was also concerned about peacekeeper misdeeds that had alienated the population. In January 2006, he was found dead on his hotel balcony with a gunshot wound to the head. Though suicide was the official reason given, many questions remained. Some believe that the general was assassinated.[239]

In 2010, a cholera epidemic, traced to UN peacekeepers from Nepal, broke out in Haiti. The epidemic has killed over nine thousand people and infected more than 700,000 Haitians, due to negligent sanitation in a peacekeeping camp.[240] An earthquake (2010) and a hurricane (2016) have added greatly to the country's woes, of course, but the UN has much responsibility for the ongoing crisis. After twelve years, the peacekeeping mission continues its "stabilization" program with no clear end in sight. In October 2016, the Security Council blandly renewed the operation for another twelve months, with a force of 5,000, noting that the situation in Haiti is still "fragile."[241]

Coalition Catastrophe in Libya

In March 2011, the Council took up the "coalition" mode in Libya, another oil-rich country slated for intervention. Rebels in the eastern city of Benghazi challenged the regime of Muammar Qaddafi—not with the non-violent approach of the Arab Spring protests but with an armed uprising, reportedly with considerable foreign support. When government forces deployed against the rebels, Western commentators insisted that a "bloodbath" was imminent. There were

239 Kim Ives. "WikiLeaks Points to US Meddling in Haiti." *The Guardian*, Jan. 21, 2011.

240 Jonathan M. Katz, "U.N. Admits Role in Cholera Epidemic in Haiti," *The New York Times*, Aug. 17, 2016. For six years, the UN denied responsibility saying only that it would help anti-cholera health efforts.

241 UN Security Council Resolution 2313 (Oct. 13, 2016).

soon calls for regime change. On February 25, France's president Nicolas Sarkozy openly told the press: "Qaddafi must leave," and on March 3, US President Barak Obama also said that Qaddafi "must leave."[242] Since early in the year, NATO had been making advance plans for a military operation and had moved "assets" into place in the Mediterranean.[243]

On grounds that civilians might die, the Security Council passed two resolutions in quick succession. The first was an arms embargo that had little time to take effect before a second resolution came onto the agenda.[244] Despite intervention pressure from the UK and France, most Council members favored a measured approach without recourse to arms. Many in the Council were interested in the potential of an African Union mediation effort, scheduled to arrive in Tripoli on March 17. The war party, though in the minority, eventually prevailed in the Council, with support from media campaigns, bi-lateral arm-twisting, and much talk about urgency. The day that the mediation team arrived in Tripoli, the Council voted the second resolution. There were last-minute adjustments of language, but everyone knew that NATO was poised to strike. The resolution spoke of the AU mediators "facilitating dialogue," but it called for a coalition, to enforce a "no-fly zone" to "protect civilians"

242 Massimo Calabresi, "Obama Refines Talk of Libya Intervention," *Time Magazine*, March 4, 2011; "France's Sarkozy says Qaddafi Must Go," Reuters, Feb. 25, 2011.

243 Ambassador Herman Shaper of the Netherlands writes about the NATO planning and membership consultations in early 2011. It seems that the UN Secretariat and the NATO Secretariat were in close contact. By March 10, a week before the Council resolution invoking force, the NATO ministers had approved a "military action" plan. See Schaper, "The Security Council and NATO," in von Einsiedel, *Security Council*, 406-407.

244 UN Security Council Resolution 1970 (Feb. 26, 2011).

by "all necessary means."[245]

The Western military coalition moved immediately, ruling out any slim chance of a peaceful, mediated settlement. The coalition governments had weeks earlier taken a decision on regime change. Some units of their special operations forces were already on the ground. On March 19, the US, France, the UK, and Italy began joint air operations. A massive bombing and cruise missile campaign went far beyond "no fly," aiming at a wide range of regime installations and infrastructure. There were more than thirty-thousand sorties over the course of several weeks, involving hundreds of fighter aircraft and dozens of naval ships.[246]

Internal dissidents, imported and local jihadis, and Western special operations forces fought on the ground to oppose and destroy the state apparatus. In short order, the governing system in Libya disappeared, and the former leaders were eventually killed. Since then, for more than five years, Libya has been ungovernable, with several warring claimants to authority and large casualties. A variety of militias and terrorist groups are now operating in the country. Neighboring lands have been seriously destabilized. UN mediators have sought to put the pieces back together, but to no avail. The Council clearly did not "protect" civilians or lay the basis for a peaceful future in Libya.[247]

245 Resolution 1973 (March 17, 2011). The reference to the mediators is in operative paragraph 2, which also notes the role of the Special Envoy of the Secretary General. The mediators were mandated by the AU Peace and Security Council and were referred to as the "High Level Committee to Libya." To soothe the qualms of some Council members, the resolution excluded "a foreign occupation force of any form on any part of Libyan territory" (OP4).

246 Many sources, including a *Guardian blog*, identify military assets used by the coalition. A discussion of the operation is to be found, inter alia, in US Congressional Research Service, "Operation Odyssey Dawn (Libya)," March 30, 2011.

247 For an interesting insider account of the Council's Libya debates by the Indian ambassador, see Hardeep Puri, *Perilous Interventions: the Security Council and the Politics of Chaos* (New York: Harper Collins, 2016), 59-103.

Africa Operations

The Council has authorized other recent robust peacekeeping operations in Africa—in South Sudan (2011), Mali (2013), and Central African Republic (2014).[248] In all three cases the peacekeeping force is large, the situation on the ground is chaotic, and the progress towards stability and security minimal. Military failure and serious scandal have tarnished the operations. In CAR during 2016, reports of sexual abuse by peacekeepers have led to urgent investigations.[249] In South Sudan in August of 2016 the peacekeeping force failed to protect the UN House in Juba and "Protection-of-Civilian Sites," leading to the murder of many civilians and a major uproar in New York.[250] In Mali, peacekeeping forces have suffered many casualties as the state unravels further and the political chaos spreads from the north to the center of the country.

Oil, uranium, gold, diamonds, and other key resources have driven these conflicts. French and Chinese oil companies hold most of the rich oil concessions in South Sudan, but US and UK companies are seeking to get a foot in the door. In Mali, AngloGold Ashanti is the prime operator with a major stake in the vast Sadiola concession, but international rivals await new opportunities.[251] CAR has its own lode of mineral riches. All three shaky kleptocratic regimes, dependent on outside support, want to keep a tight grip on power and

248 For the authorizing action: South Sudan—UNSC Resolution 1996 (July 8, 2011); Mali—UNSC Resolution 2100 (April 25, 2013); Central African Republic—UNSC Resolution 2149 (April 10, 2014).

249 Margaux Benn, "U.N. Sex Abuse Scandal in Central African Republic Hits Rock Bottom," *FT*, April 8, 2016.

250 United Nations, "Independent Special Investigation into the violence which occurred in Juba in 2016 and UNMISS response," Nov. 1, 2016, UN website.

251 AngloGold is notorious for its bad labor and environmental practices. This large and very profitable gold enterprise contributes little in taxes to the Malian state. In CAR, Canadian and British companies are active in gold and diamond exploration. South Sudan has large petroleum reserves, with the largest stakes being held by major Chinese and French companies.

seek to crush all other aspirants to power. Peacekeeping missions are propping them up. These missions, buffeted by P5 interests, severe drought, arms from Libya, and state collapse, demonstrate that the current peacekeeping model is seriously dysfunctional.

Reform Again

Over the last decade or more, some elected members of the Council and UN officials have been deeply unhappy about the trend towards use of force by the organization and the lack of creative alternatives. They have made efforts to follow a different path. The UN has upgraded its mediation and "good offices" staff in the Department of Political Affairs. The UN has further developed its capacity for "disarmament, demobilization, rehabilitation, and reintegration" (DDRR) of rebel fighters so that this can be done more effectively in war-torn lands. Peacekeeping missions have also incorporated thinking on women's role in peacemaking and on the protection of children. Attention to environmental protection has also finally emerged. Conceptually, these have been promising. Mostly, however, these efforts have failed to make a sufficiently serious impact to change the fundamentals. They have been overwhelmed by the focus on military campaigns and the huge effort involved with military operations. In doctrinal discussions, the trend appears to be headed towards more force rather than less. Militarily-inclined reformers are calling for closer UN cooperation with NATO, more focus on military effectiveness, and, as one expert writes, "international military public good."[252]

Somalia demonstrates the problem. In June 2008, the Council passed the first in a series of bellicose resolutions against the threat of piracy off the Somali coast, calling for an open-ended naval

252 See Schaper, "NATO," in von Einsiedel, esp. 409-410.

coalition, taking "all means necessary."[253] NATO, the European Union, and a dozen countries acting individually sent large and heavily armed naval vessels to patrol the coast and strike, if necessary, at targets on land. In 2011, an influential UN humanitarian policy group urged a more peaceful and innovative approach to piracy threats after years of ineffective armed interventions.[254] In 2012, Global Policy Forum called on the Security Council to create a lightly-armed (and relatively inexpensive) coast guard that could respond to Somali concerns about illegal foreign fishing and toxic waste dumping and at the same time halt piracy.[255] Somalia's beleaguered government repeatedly called attention to the fishing and dumping scandal, but the Council paid no attention, even though the naval action was totally disproportionate to a threat from a few Somalis, lightly armed and in small craft.[256] The African Union tried to push for a different approach but to no avail. Elected Council members were well-aware of the negative consequences of the naval armada but admitted in private they could do nothing.

As the litany of failures by "coalitions" and peacekeeping missions has grown, the entire UN military enterprise has increasingly been called into question, both inside and outside the organization. In 2014, with the fifteenth anniversary of the Brahimi Report approaching, the Secretary General named a High Level Independent Panel on Peace Operations (HIPPO), seen as a major reform

253 UN Security Council Resolution 1816 (June 2, 2008), Resolution 1838 (October 7, 2008), Resolution 1846 (December 2, 2008), Resolution 1851 (December 16, 2008), Resolution 1918 (April 25, 2010), Resolution 1950 (November 23, 2010), and Resolution 1976 (April 11, 2011).

254 "Military Intervention in Support of Humanitarian Action in Somalia," HCT Position Paper, Drafted: OCHA Somalia, Dec. 2, 2011.

255 See Suzanne Dershowitz and James Paul, "Fishermen, Pirates and Naval Squadrons: The Security Council and the battle over Somalia's coastal seas," New York: Global Policy Forum, February 2012.

256 Ibid, 9-11.

initiative. As the title suggests, UN language has been changing. The UN is no longer describing its work as peace-*keeping* but as peace-*operations*—language that includes a range of options from mediation to peace enforcement. This implies a new interest in peaceful settlement, an option the Secretariat has always favored. But it remains to be seen how the P5 will respond. Under their direction, as the report notes, the UN has "moved far beyond a clear peace to keep" and is now undertaking "enforcement tasks" using "offensive force" against its opponents.[257]

To head off critics, the report expressed concern about the use of force and commented that "political solutions, not military force … are essential to the overall peace effort."[258] The authors spoke of the need for "prevention,"[259] but the bulk of the analysis leaned in the other direction: more robust force, more rapid deployment. Not a word, of course, was written about the role of the P5 in igniting proxy wars, resource rivalries, and all the rest. It was a report written (necessarily) with a blindfold on. There were 166 recommendations in 111 pages—micro-management when a macro perspective is needed. Shortly afterwards, the Secretary General responded with his own list of priorities.[260] Recently, more than a year after publication of the reports, the International Peace Institute wrote

257 *Report of the High-Level Independent Panel on Peace Operations—Uniting our strengths for peace: politics, partnerships and people*, United Nations Document S/2015/446 (June 17, 2015), 43, 49. This report is often referred to by its acronym as HIPPO. For an interesting and influential review somewhat earlier see: Bruce Jones, Richard Gowan, and Jake Sherman, *Building on Brahimi: Peacekeeping in an era of strategic uncertainty*, (New York: Center for International Cooperation, 2009) and *Robust Peacekeeping: the politics of force* (New York: Center for International Cooperation, not dated).

258 Ibid, 42.

259 Ibid., 30-35.

260 Three months after the HIPPO report came the Secretary General's response: *The Future of United Nations Peace Operations: implementation of the recommendations of the High-Level Independent Panel on Peace Operations*, (S/2015/682), Sept. 2, 2015.

that reforms are "not yet in evidence."[261] Might there be a fresh start under the new Secretary General, António Guterres? Perhaps, but the odds are not favorable.

Little to Cheer About

A variety of doctrinal and institutional reforms for peacekeeping have been proposed over the years, but few have been implemented to good effect.[262] The Council has not seized any opportunity for large-scale systemic or political reform. The same old jury-rigged arrangements are still in place and the doctrine is deteriorating. The same readiness to rely on coalitions-of-the-willing remains a central feature of Council practice and P3 preference. The whole shaky enterprise is sliding towards counter-insurgency and increased force, and it is sinking into the globally repressive "war on terror" and its intervention-oriented twin, the "responsibility to protect."

The Council would be far more successful if it were to concentrate on innovation and experimentation—exploring the possibilities of lightly-armed (or unarmed) operations, mediation, political field missions, non-violent citizen protection, human rights promotion, and other peaceable alternatives.[263] Serious progress towards disarmament and responsible resource management would also have to be part of the process, as would coordination with other UN bodies on social and

261 Arthur Boutellis and Lesley Connolly, *The State of UN Peace Operations Reform: an implementation scorecard*, (New York: International Peace Institute, 2016), 3.

262 HIPPO, 22-23.

263 In recent years, a promising NGO movement for nonviolent protection in conflict zones has arisen. Organizations working in this field have already deployed trained civilian protectors into long-standing arenas of violence with promising results. Such a pathway would offer the Security Council a low-cost and effective means to act while minimizing the use of force.

“A Law Unto Itself”

economic development in crisis zones.[264] But the P5 have repeatedly shown opposition to such a peace program. It is likely, therefore, that more violence lies ahead. A quarter century after the end of the Cold War, Security Council peacekeeping offers little to cheer about.

The P5 have always sought to keep the Council outside any system of law and beyond any limitation that might tie their hands or pre-determine their action. The United States government, which frequently makes reference to the "rule of law" and the importance of respect for international law, has been especially firm in insisting that the Council sets law but is not bound by law. John Foster Dulles, an influential US lawyer and statesmen, wrote in 1950 that "The Security Council is not a body that merely enforces agreed law. It is a law unto itself."[265] Dulles went on to say, "No principles of law are laid down to guide it; it can decide in accordance with what it thinks is expedient."[266] Dulles served shortly after as US Secretary of State.

Council practice bears out Dulles' judgment, though superficially it might seem otherwise. The Council constantly speaks with the voice of law. It regularly makes law, interprets law, and enforces law.[267] Council debates and resolutions occasionally refer to international legal norms, the importance of international law, and the need for respect for international law. The Council also has periodic debates on the "rule of law." Beginning in 2003, there

264 Adam Day in an early-2017 paper, argues for a completely different approach to developing a mandate, see his "To Build Consent in Peace Operations, Turn Mandates Upside Down," Centre for Policy Research, United Nations University, January, 2017. Would the P5 give up control over mandate-shaping? Not likely, but a provocative idea.

265 John Foster Dulles, *War or Peace*, New York, Macmillan, 1950, 194-95.

266 Ibid.

267 One perspective on the three-fold legal powers of the Council can be found in Ian Johnstone, "The Security Council and International Law," in von Einsiedel, *Security Council*, 774-782. For further issues about the Council and international law, see José Alvarez, *International Organizations as Law Makers* (New York: Oxford University Press, 2005), 184-217.

have been seven such general debates that have been organized by interested delegations.[268]

The Council has also created a number of international legal institutions such as the ad hoc criminal tribunals, institutions that anticipated in some measure the International Criminal Court but were targeted to particular conflicts like Rwanda and Sierra Leone.[269] More recently, under a variety of pressures, the Council has deepened its relationships with the International Court of Justice and the International Criminal Court through meetings and discussions, including a Council visit to the seat of the ICJ in August 2014.

For all the talk about law, however, the language of the Council's resolutions do not follow the practice of formal legality. All its resolutions have lengthy preambles filled with rationales for action and references to prior Council action on the same subject, giving them the superficial appearance of a court opinion. In fact there are virtually no references to precedents in law or precedents in Council action outside the particular case at issue. Council members sometimes talk about such precedents when they meet together in their private policy-making. In the formality of their resolutions and open debates, however, they do not acknowledge the force of precedent, much less any external legal authority. According to one senior jurist writing on the subject, the Council "has virtually never found it necessary to specify a precise 'legal base' for its decisions," choosing instead a "broader

268 See, for example, June 22, 2006 (S/PV.5474), June 29, 2010 (S/PV.6847), Feb. 19, 2014 (S/PV.7113).

269 International Criminal Tribunal for the Former Yugoslavia (1993), the International Criminal Tribunal for Rwanda (1994), Special Panels of the Dili District Court in East Timor (2000), the Special Court for Sierra Leone (2002), the Extraordinary Chambers in the Courts of Cambodia (2003), the and the Special Tribunal for Lebanon (2007). Year notes the founding.

brush approach to its legal powers."[270] Some argue that this casual approach is a sign of creativity, but, in fact, it creates the danger of limitless extra-legal action.

The Council does not act as if it were bound by law—even the law of its own creation. The P5 make every effort to avoid legal constraints on their actions, and they have been almost entirely successful in doing so. As such, the Council undermines the system of customary international law and creates among the nations and the public a discredit for the law. The Council's legal trappings and its demands that nations come into conformity with law are strikingly at odds with its own consistently extra-legal posture.

World Court Subordination

An inquiry into legal aspects of the Council must first look at the International Court of Justice (also known as the World Court), the principal judicial organ of the UN. The Court adjudicates international controversies, brought to it by states, so its jurisdiction overlaps considerably with the Council. In fact, the Charter suggests that parties to disputes should consider resolving them by legal means, and it further suggests that appropriate cases should be referred by the parties to the Court, prior to turning to the Council.[271] The Charter also proposes that the Council encourage parties to take their disputes to the Court.[272] Finally, the Charter provides for the Council to request an advisory opinion from

270 Frank Berman, "The Authorization Model: Resolution 678 and Its Effects," in Malone, *Security Council*, 156.

271 UN Charter, Article 33, Paragraphs 1 and 2.

272 UN Charter, Article 36, Paragraph 3.

the Court about legal questions arising in the Council's work.[273] Ideally, then, the two institutions should function together as peers, complementing and strengthening each other. In fact, the relationship is quite different. The Council, under the leadership of the P5, has been so jealous of its prerogatives that it has minimized the importance of the Court, maintaining always supremacy for the Council in the shaping of international law. The Council has refused to use the Court as a partner for peace-making and sought to pressure it and influence it in a variety of ways. Exacerbating the difficult relationship, the P5 have held the budget of the Court to a level below its needs.[274]

Only once in seventy-plus years has the Council referred a matter to the Court for adjudication, and only once has it asked for an advisory opinion.[275] The Court has itself urged the Council to take this Charter responsibility seriously. In June 2006, at a Council meeting on the "Rule of Law," Court President Rosalyn Higgins brought it up firmly but politely: "I am obliged to say that the Security Council has failed to make use of this provision [Article 36] for many years. This tool needs to be brought to life and made a central policy of the Security Council."[276] Ten years have now passed without any Council action in response.

Judge Higgins made another point in her statement that was of considerable interest. She pointed out that the Court has a very high rate of compliance—that is, the overwhelming number of parties to judgments comply voluntarily with the Court's rulings.

273 UN Charter, Article 96, Paragraph 1.

274 As of 2006, the Court had only six regular clerks for its fifteen judges, far short of the norm for major courts and the cause of bottlenecks. Roslyn Higgins, President of the Court, complained about this shortfall that year and the number was finally increased to nine in 2009.

275 Adjudication: Corfu Channel Case (1947) and Advisory Opinion: Namibia (1970).

276 UN Security Council, S/PV.5474, 6.

She didn't say more, but she left it to Council members to reflect on the fact that the Council has a rather spotty record of compliance. Rather than business as usual, she seemed to be saying, the Council could avail itself of this peaceful and quite successful method of conflict resolution.

The Court's fifteen judges sit for nine-year terms, and they are elected by the General Assembly and the Security Council together—as the Charter says, "independently of one another." The P5 do not have the right of veto in these elections, but inevitably they have an outsize influence over the election process. The court "by tradition" always has a judge from each of the P5 countries—that is, one third of its judges are P5 judges, many of whom had been in government service, most commonly as legal advisors in ministries of foreign affairs. Many of the non-P5 judges are inclined towards "judicial restraint." For these and other reasons, the Court is not an environment where challenges to the Council have flourished, though a few activist judges have taken independent positions at times, arguing that the Court should serve as a check on unlimited Council authority.

The Court and the Security Council are connected in another important way, also tending toward subordination of the Court. Under its Statute, the Court depends on the Security Council for enforcing compliance with Court decisions.[277] Though in practice compliance has been high, strong enforcement could be a significant way of affirming the Court's authority and encouraging it to take on more challenging cases. The Court is thus significantly dependent on the good will of the Council and especially on the good will of the enforcers—the P5 and especially the P3. Any application by a party for enforcement inevitably faces the possibility of a veto, especially if a P5 member—or a P5 ally or client—is affected by the decision. In the lengthy Corfu Channel Case (1947), the Soviet

277 UN Charter, Article 96, Paragraph 1.

Union vetoed enforcement against Albania—a client state.[278] More recently, in the high-profile Nicaragua Case (1986), the US used its veto to block enforcement—against itself.[279]

The government of Nicaragua had charged the United States with breaking international law by supporting a violent rebellion and mining Nicaraguan harbors during the 1980s Contra War. The Court found in its verdict of June 1986 that the United States was "in breach of its obligations under customary international law not to use force against another State," "not to intervene in its affairs," "not to violate its sovereignty," and "not to interrupt peaceful maritime commerce."[280] Even though Washington had long ago agreed to compulsory jurisdiction by the Court, the US refused to participate in most of the proceedings, refused to recognize the decision, and refused to pay the ordered compensation. The government of Nicaragua then referred the ruling to the Security Council, asking for relief.

In July and then in October 1986, the Council had two debates on the Nicaragua matter and considered two resolutions enforcing the Court's decision. The resolutions were both supported by eleven votes—a solid majority. There were three abstentions, including the UK and France, who evidently did not want to vote against their ally-in-chief. The United States cast the sole negative vote—a veto.[281] The veto served as a reminder to the Court that it has subsidiary status under the Council's veto-regime and especially that it is subject to the will of the Council's most powerful member. A more cooperative approach to the Court by the Council could create a much more

278 Veto was cast on March 25, 1947. See Sievers, *Procedure*, 343.

279 Mohammed Bedjaoui, *The New World Order and the Security Council: testing the legality of its acts* (Dordrecht: Martinus Nijhoff, 1994). US vetoes were cast on July 31, 1986, and Oct. 28, 1986.

280 International Court of Justice, Case concerning the military and paramilitary activities in and against Nicaragua (Nicaragua vs. United States of America). Judgment of 27 June 1986.

281 For the second veto, see S/PV.2718.

effective legal regime for dispute settlement and take some of the heavy load off the Council's dossier, but such a cooperative, law-promoting Council would not be the one we have today.

The Dream of Legal Review

In spite of the many obvious hurdles, some jurists and legal scholars have felt that the Court could (and should) challenge the Council and turn the tables on it, through a process of judicial review. By taking small steps and moving stealthily, they believe that the Court could slowly introduce legal limits to the Council's actions. One of the Court's most high-profile cases involved a challenge by the government of Libya to Security Council sanctions in the Lockerbie airliner bombing case. In 1992, the Court majority deferred to Security Council supremacy, but there were five dissenting opinions (versus eleven in the majority). Two of the dissenting opinions—by judges Christopher Weeramantry of Sri Lanka and Mohammed Bedjaoui of Algeria, favored a potential role for the Court in Security Council review.[282] Weeramantry, who ran for a second term shortly afterwards, was not reelected but his jurisprudence is well-remembered.

Bedjaoui, who sat on the Court for two terms (1982-2001), wrote an important book on judicial review of the Council, published in 1994 while he was serving as Court president.[283] By the time of his book's publication, he had fortunately already been reelected to a second term. In the book, Bedjaoui argued that the Council

282 International Court of Justice, *Libyan Arab Jamahiriya vs. United Kingdom*, Order of 14 April 1992.

283 Mohammed Bedjaoui, *The New World Order and the Security Council: testing the legality of its acts* (Dordrecht, Martinus Nijhoff, 1994).

should be held to conformity with the UN Charter and customary international law. He referred to many other jurists who shared the same views, including delegates at the San Francisco Conference and leading international legal scholars. In his eighteen years on the court, however, Bedjaoui was not able to persuade a majority of his fellow judges to embark on such an enterprise, even in cases where the arguments were reasonably strong. With one-third of the judges from P5 countries, some others with thoughts of re-election, and still others preferring cautious constructions of the law, the majority continued to avoid a clash with the Council.

After Bedjaoui's book appeared, the Council produced some 1700 resolutions and expanded its powers considerably. It was inevitable that, if the World Court did not act, some political or judicial body, somewhere, would put on the brakes. This happened in two ways. In the Lockerbie Case, when the Court backed away, a strong backlash arose, especially in Africa and the Middle East. Eventually, in 1998, the Organization of African Unity and the Arab League acted to reject the sanctions and not enforce them. This nullification was a severe challenge to Council legitimacy and legal supremacy. The US and the UK were forced to backtrack. In short order they reached a settlement with the government of Libya involving a trial of suspects in the Netherlands. The outcome showed that a reasonable, legally-respectful result had always been available and that there were, after all, political limits to the Council's claims to supremacy. The case might possibly have led to institutional changes, but it did not. The World Court did not alter its posture, regional groups did not unite again for a challenge, and institutionalized review did not otherwise emerge.

Judicial Limits to Sanctions: Kadi et al.

In the absence of further political challenges, the initiative to restrain the Council then passed to the courts. A series of important cases in different jurisdictions forced the P5 to step back several paces. The contest arose around Council sanctions targeting persons associated with terrorism under the Taliban and al-Qaida Resolution of 1999.[284] The Council implemented the sanctions by putting people's names on a list, so that, among other things, their assets would be frozen and their travel banned. The resolution created a legal nightmare. It allowed no opportunity for the named individuals to challenge their listing: no process, no hearing, no reasons provided. There was not even a place to which complaints could be addressed. Names had been placed on the list for obscure reasons that were not understood by most Council members sitting in the sanctions committee. Common names, shared by thousands of individuals, had led to confusion and serious enforcement errors. In many cases, basic information, such as full name and date of birth were missing. It turned out later that the list even included the names of dead people, due to errors never acknowledged.[285]

As Russel Zinn, a senior Canadian judge, later commented, it was a "Kafkaesque situation."[286] To complicate matters further, the United States put most of the names on the list, acting on secret information from its intelligence services. British intelligence made its secret contributions too. The Sanctions Committee felt obliged to accept the names without challenge, based on the usual deference. Several affected individuals proclaimed their innocence and eventually brought cases of complaint in various jurisdictions. The most

284 UN Security Council Resolution 1267 (Oct. 15, 1999).

285 Source: un.org/apps/news/story.asp?NewsID=35512#.WDJS-fP9OU4.

286 For the text of the judgment, with many stern comments by Mr. Justice Zinn, see v1.theglobeandmail.com/v5/content/features/PDFs/sudan.pdf.

important of these cases was brought by Yassin Kadi, a wealthy Saudi businessman, in December 2001 before the first instance of the European Court of Justice. He had been first listed in 1999.[287]

At the appeal level in 2008, seven years later, the Court eventually arrived at a creative ruling. While deferring to the Security Council at the international level, it ruled that European regulations putting the sanctions into effect did not provide due process and violated "the principles that form part of the very community legal order."[288] The ruling in effect struck down the Security Council's sanctions throughout the European Union. This was a sharp rebuke to the Council and a challenge to its absolute authority, coming from a powerful place. An earlier report, commissioned by the UN's Office of Legal Affairs, also concluded that the sanctions violated international standards of due process.[289] At last, there was a powerful legal challenge to the Council, rooted in a recognition that the Council was acting—and could be judged to be acting—abusively and beyond the law.

A number of other high-profile cases on the same topic in other jurisdictions strengthened the critique. One of the most important was the Abdelrazik Case in the Canadian Federal Court (2006) in which Mr. Justice Zinn chastised the Council's arrangements as a

287 In 2006, as Kadi and other cases were in the courts, the Secretary General proposed a strong set of principles to the Security Council which were acted on very slowly and very partially when the pressure of the cases began to register.

288 See Juliane Kolkott and Christoph Sobotta, "The Kadi Case—Constitutional Core Values and International Law—Finding the Balance," *European Journal of International Law*, (2012), 23 (4), 1015-1024. See also Antonios Tzanakopoulos, "Kadi Showndown: Substantive Review of (UN) Sanctions by ECJ," *EJIL Talk!* July 19, 2013.

289 Bardo Fassbender, "Targeted Sanctions and Due Process," Berlin: Humboldt University, March, 2006. The study was commissioned by the UN Office of Legal Affairs.

"denial of basic legal remedies."[290] There was also the Nada Case in the Swiss Federal Tribunal (2007) and the Ahmed Case (2010) in the United Kingdom Supreme Court. These multiple cases made for a significant legal challenge and effectively nullified the sanctions regime by striking down its effect in these various important jurisdictions. As a result, the Council (or should we say the P3) changed course, making progressively more adjustments to the sanctions with several successive resolutions.[291]

The changes improved the opportunities for persons on the sanctions lists to appeal their listing and to have themselves "de-listed." The Council first created a "Focal Point" to which affected persons could apply for relief and then later it created the office of "Ombudsperson," to which—after a one-year delay—the Secretary General named a distinguished Canadian judge, Kimberly Prost, in 2010. The Ombudsperson was charged with receiving complaints, investigating them, and making recommendations to the Sanctions Committee. A further improvement gave more weight to the judgment of the Ombudsperson, making her recommendation take effect unless it is rejected by the Committee by consensus within sixty days. [292]

For the first time, then, limits had been set judicially to the

290 Antonios Tzanakopoulos, "An Effective Remedy for Joseph K: Canadian Judge 'Defies' Security Council Through Interpretation," *EJIL Talk!*—Blog of the European Journal of International Law, June 19, 2009. Almost certainly, the strength of the Canadian judgment was influenced by the notorious Arar case in which an innocent Canadian was falsely identified as a terrorist by the Royal Canadian Mounted Police, arrested by US Federal authorities while changing planes in New York, and "renditioned" secretly to Syria where he was tortured for many months and then finally released. After a Royal Commission investigated, the Canadian government apologized, admitted that Arar was "completely innocent," and paid him a large settlement. Though the Security Council was not involved in the Arar case, the case dramatically highlighted the danger of accusations not tested through due process.

291 Among others, Resolution 1904 (Dec. 17, 2009).

292 See UN Security Council Resolution 1822 (June 30, 2008), Resolution 1904 (Dec. 17, 2009), and Resolution 1989 (June 17, 2011).

Council's soaring claims to authority. But Prost did not have an easy time. She regularly noted in lectures and conversations that her office was given minimal financial support, did not have the staff it needed to carry out its investigative work, and did not have sufficient institutional independence.[293] The victory of Kadi and the other cases were significant but not nearly the breakthrough that would be required to establish solid judicial limits to Council action.

In the wake of Kadi, it is worth reflecting on how legal doctrine functioned in this case, even though many challenges to the Council had failed before. Ironically, the protection of an individual proved stronger than efforts to protect the very large number of people affected by the Council's harsh sanctions on Iraq (1990-2003). UNICEF had determined that those sanctions resulted in the deaths of as many as a half million children up to 1998, and the total number of people of all ages affected by the sanctions over fourteen years was far higher. Legal challenges to those violent arrangements were not possible, even though the sanctions were kept in place largely by just two Council members—the US and the UK. In the absence of a regular form of review, there is still no legal protection afforded to civilians affected by Council-authorized military operations, such as the war in Afghanistan, the war in Iraq, and the war in Libya.

Peacekeeping and the Law

Another source of legal pressure on the Council arose around the

293 Private meetings on different occasions, including May 27, 2011; see also her letter to the Secretary General upon the end of her mandate, reports issued by the Office of the Ombudsperson, and the Proposal of the Like-Minded States of November 12, 2015. The recent Compendium Report on sanctions notes that the Ombudsperson arrangements "are not adequate to the institutional importance and need for independence" of this office (p. 44).

issue of misconduct by peacekeeping personnel. Might individuals serving in peacekeeping operations be held accountable in this context? A number of serious misdeeds were well-known, and liability under command responsibility could also arise. But the Security Council has sheltered peacekeeping from these embarrassments and restricted action to UN statements of regret. Officially, peacekeeping personnel remain under their own national chain of command, and it is up to the national authorities to investigate and to prosecute—something that almost never happens. So peacekeepers are effectively outside the law and beyond the reach of international humanitarian law—a nightmare for those seeking accountability.

The United States, well-aware of this shielding of its possible jeopardy and perfectly cognizant of the very small number of its personnel in deployment, decided to throw up another barrier to the legal accountability of its peacekeepers. When the International Criminal Court came into being in 2002, the US demanded that the Council give blanket immunity from ICC prosecution to peacekeeping personnel who come from countries not Court parties (the US is not such a party and neither is Russia or China). The US complained that the new court would subject US nationals to "politically-motivated" international justice. Eventually, Washington threatened to use its veto to block all UN peacekeeping missions if the Security Council did not vote to protect it from possible Court judgment. The Council reluctantly acceded to this blackmailing demand and adopted a resolution in July 2002, granting a twelve-month blanket immunity.[294] Many Council members were offended by the US threat, but the resolution passed unanimously.

The US again used its veto threat and successfully renewed its immunity arrangement a year later, though opposition was gathering

294 UN Security Council Resolution 1422 (July 12, 2002).

force.[295] The US had just illegally invaded Iraq, making its posture less popular. Most member states strongly resented the repeated threat to UN peacekeeping. When the issue arose for the third time in July of 2004, the international opposition proved overwhelming. US torture of detainees in Iraq and Guantanamo Bay, secret US rendition of prisoners, and other offenses by the US to norms of international justice undercut Washington's position. So the US backed down, and it dropped the matter entirely in 2007. The US move was a small concession to legality. In fact, however, its extreme pressure on the Court's jurisdiction had already issued a stern warning to the court to stay away from prosecuting the powerful.

In sum, the Council presents us with an alarming array of its own very partial law-giving, law avoidance, and law-breaking. The Council could not function at all if it did not persuade the world that it is acting substantially within a framework of law and legal consistency. Yet in practice, under P5 rule, it rejects the process of consistent lawfulness that is essential to all legitimate governance. With its enormous range of activity today and its expansive claim to authority, the Council appears ever more anomalous and despotic as a "law unto itself."

295 UN Security Council Resolution 1487 (June 12, 2003).

Council Reform: A Tortuous Process

Debate has raged over the reform of the Security Council since the end of the Cold War. As the Council dramatically increased its activity in the early 1990s, many governments, NGOs, and scholars weighed in, pressing for democratic change. As legal scholar Thomas Franck wrote in 1992: "The more the Council uses these very wide powers, especially in the absence of broad consensus, the more urgent will be the calls for institutional reform."[296]

On December 11, 1992, the UN General Assembly called for member states to make written comments on Council reform.[297] In the spring and summer, eighty governments made submissions, many sharply critical. The following year, the General Assembly set up a Working Group to consider Council reform—with a focus on Council membership and working methods.[298] In May 1994, an unprecedented NGO conference on Council reform took place in New York with the General Assembly President as a lead speaker.[299] New Zealand ambassador Colin Keating told conference participants that the Council's practices were "nothing short of primitive."[300] In September, Ambassador Victor Flores Olea of Mexico, told the General Assembly that permanent membership was "obsolete."[301]

From that time to the present, the General Assembly has continued to press for Council reform, devoting a tremendous amount of time and energy to the effort. Some proposals, including reform in

296 Thomas M. Franck, "The 'Powers of Appreciation': Who is the Ultimate Guardian of UN Legality?" *American Journal of International Law*, 86 (2), 524.

297 UN General Assembly, Document A/R47/62.

298 The official title is: Open-Ended Working Group on the Question of Equitable Representation on and Increase in the Membership of the Security Council and other matters Related to the Security Council.

299 For an account of the NGO conference, see James A. Paul, *Security Council Reform: arguments about the future of the UN system* (New York: Global Policy Forum, 1994).

300 Comments at the NGO Conference on Security Council Reform, as quoted from the video recording in Paul, *Security Council Reform*, 12.

301 Speech to the UN General Assembly, Sep. 13, 1994.

Council membership, involve a change in the UN Charter, requiring a two-thirds vote in the General Assembly, followed by a two-thirds endorsement by all national parliaments—subject, of course, to P5 veto.[302] Assembly members are well aware of this high hurdle, but they have examined hundreds of specific proposals and engaged in spirited annual debates on the issues.

The Assembly has been inspired by elected members inside the Council who, as we have seen, have campaigned to create a more democratic and effective institution. Ambassadors Somavia, Monteiro, Keating, and many others mentioned above have fought to develop more effective methods of Council work and to roll back the most egregious P5 behavior. At the same time, courts, judges, and legal scholars have challenged the idea that the Council is above the law, and they have affirmed limits to the Council's unlawful excesses. Judges Bedjaoui, Zinn, Prost, and many others have sought to defend and broaden the rule of law. Within the UN Secretariat, over the years, many independent-minded international civil servants have labored for more institutional democracy and less Council-dominated hegemony. Erskine Childers, Mary Robinson, and Hans von Sponeck come immediately to mind. Among military officers in peacekeeping missions, there are also those who have courageously stood up for those they have been sent to serve: Generals Dallaire and Bacellar are examples.

A number of NGOs and their UN representatives have sought to pursue Council reform and change, sometimes working in very close contact with the E10 and members of the General Assembly. Global Policy Forum founded the NGO Working Group on the Security Council and benefitted from partnerships with the Quaker UN Office, Médecins sans Frontières, the World Council of Churches, and the Dag Hammarskjöld Foundation, among

302 United Nations Charter, Article 108.

many others. Think tanks, such as Security Council Report and the International Peace Institute, have also contributed much to a wider understanding of the Council's work. Engaged scholars and writers have developed a strong critical analysis of the Council's activities and entered the debates about what the Council should be like and how it could function better and more fairly. Insightful journalists like the indefatigable Thalif Deen have also contributed much to this process.

The reform movement has included much original thinking. There have been many proposals to widen the Council's perspective about conflict, including the initiatives on "Children in Armed Conflict," "Conflict Prevention," "Peace-building," "Protection of Civilians," and "Non-Violent Protection." Ambassador Anwarul Chowdhury took the lead on "Women and Peace and Security," persuading the Council to pass its famous Resolution 1325 and affirm the centrality of women in peacemaking. Chowdhury also did his best to make Council sanctions into a rule-based process. There were also the intensive efforts on sanctions reform, led by progressive scholars and jurists.

One of the most interesting reform efforts has sought to improve the Council's despotic working methods. Led by a five-member group of smaller states, called the S5, this initiative helped put a spotlight on the worst abuses of P5 control over the Council's operations, using detailed analysis and a low-key process of "shaming" to loosen some of the rules.[303] The S5, which functioned from 2005 to 2011, eventually disbanded, but others have taken up the challenge in the "Accountability, Coherence and Transparency Group" or ACT Group of 27 states, founded in 2015. They have

303 The S5 group was composed of Costa Rica, Jordan, Liechtenstein, Singapore, and Switzerland. For a discussion of their initiatives and frustrations, see Wenaweser, "Working Methods," in von Einsiedel, *Security Council*, 175-194.

already proposed a Council "Code of Conduct."[304] Japan has added its weight to this effort, having campaigned consistently within the Council, in the same direction.[305]

Regional organizations have also challenged the Council to be mindful of its cooperative responsibilities beyond New York. In particular, the African Union has developed a regular process of dialogue with the Council over the many conflicts on the African continent and engaged in occasional partnerships with Council peacekeeping initiatives.

Meanwhile, the General Assembly has been discussing a broad range of concerns. It has pressed the Council to improve communication and consultation between the Council and the rest of the UN membership. The Assembly has called on the Council to upgrade its annual reports, to strengthen consultations with troop contributing countries, and to increase transparency by holding more open Council meetings. Speakers in Assembly debates have repeatedly referred to the excessive powers of the P5 and the abuse of the veto. Above all, there have been discussions about how the Council's membership could be reformed.

In light of the difficulty of Charter change, the Assembly has not adopted any big reform proposals, but it has taken some interesting smaller initiatives, and it has at its disposal little-used but interesting powers. Several times over the years, it has invoked the "Uniting for Peace Resolution," a method by which the Assembly takes on a subject in the Council's jurisdiction if the Council is blocked by vetoes,[306] and

304 Jessica Kroenert, "ACT Group Formally Launches Security Council Code of Conduct," Center for UN Reform Education, New York, Oct. 26, 2015.

305 As earlier noted, Japan has made use of its frequent Council membership to consolidate and update a text on the Council's Working Methods, published as UN documents S/2006/507 and S/2010/507.

306 See Sievers, *Security Council*, 574-584 and Security Council Report, "Security Council Deadlocks and Uniting for Peace" (October 2013).

it has otherwise engaged with important peace and security issues, invoking legal interpretations holding that while the Council has "primary" responsibility its role is not "exclusive."[307]

The Assembly regularly considers a range of peace-related issues including human rights, development, international law, and disarmament—issues that often intersect with the Council's concerns and often are much richer in content. The General Assembly's steady and occasionally quite productive work on disarmament—including nuclear disarmament—contrasts sharply with the Council's shamefully deficient record in this key peace-related area.

The Assembly is now considering its own "revitalization." As part of that process it has affirmed its role in international peace and security.[308] It took a step forward in 2015–2016 by modestly improving the election process for the Secretary General. It has also moved to empower the elected members of the Council by scheduling its annual membership vote six months ahead of the beginning of the Council term rather than two months ahead, as before—enabling the newly-elected to get a running start on their time in the Council and to better take up their pre-term observer role in Council meetings. Of course, the Assembly has always provided a platform for governments to express their special concerns about global peace and security, unhindered by a Council agenda under tight P5 control.

Presidents of the General Assembly have sought to rally consensus and to promote specific reform projects. In 1997, Assembly President Razali Ismail of Malaysia offered a major proposal with many elements, but in retrospect its most interesting element was its strong language about the veto. It said unambiguously that "an overwhelming number of Member States consider the use of the veto in the Security Council anachronistic and undemocratic and have

307 Sievers, ibid.

308 GA Resolution 68/307, paragraph 6.

called for its elimination."[309] Assembly Presidents have continued in this tradition and they have been an important part of the Council reform process on both membership and working methods.

In the shadows have always lurked the P5 with their quiet but firm opposition and their conviction that the General Assembly had no right to interfere in the Council and tell them how to run their shop. The P5 blockage of the Assembly draws upon all the special powers and privileges that the Five have accumulated, including their Charter-given power to veto constitutional change and their Charter-based supremacy in the Council. These powers, backed by P5 economic and military power, create very serious reform obstacles.

Divisive Aspirations for Permanency

Within the UN, there is another source of blockage—the inability of the other 188 member states to stand together and challenge the P5. This has been largely due to an intense controversy over adding new Council members. The so-called "rising powers" want to become permanent members themselves—to join the Council oligarchy. These countries, who have the potential clout to push through significant reforms, have hijacked the reform debate to promote their own ascension into the rank of permanency. The aspirants include Germany and Japan, India and Brazil, South Africa and Nigeria. They have insisted self-servingly that they themselves are the key to a diverse and fair Council, working to promote the peace.

The aspirants have put forward various virtues that they claim entitles them to permanency—large UN dues payments, substantial populations, democratic governance, and regional diversity. Such arguments do not apply to all the candidates—a seat for Germany

309 Paper dated March 20, 1997, taking the form of a resolution.

would not increase regional diversity, for instance. But taken as a whole, these virtues make the group strong candidates for elected member seats, though they certainly do not legitimate them for the discredited role of permanency. The aspirants have insisted that their permanency would be a "realistic" approach to reform, but in fact their approach has proven to be far from realistic. The P5 remain unwilling to accept them into the inner circle. Nor do the aspirants command the two-thirds majority needed to advance their cause in a Charter amending process. A bloc of regional rivals oppose new permanencies. Italy works against a German seat; South Korea and China are against Japanese permanency; and Argentina is unhappy about the elevation of Brazil. Egypt, Nigeria, and South Africa vie for the hoped-for two African permanent seats. This complex political geometry makes success for the aspirants virtually impossible.

Adding a proposed six new permanent members, each with a veto, would create an impossible blockage on the Council. With more than twice as many veto-wielders, each one protecting their particular interests and manipulating the Council's machinery to suit their purposes, the Council could accomplish very little. The P5's multiple advantages in the UN system raise another set of issues. Would the new permanent members expect to have their own judge on the World Court or lay claim to their own Secretariat fiefdoms?

As the hopeful aspirants reach for the laurels, they say nothing negative about the institution of permanency and they mute their comments about the existing system. They curry favor with the P5 so as to avoid a future veto—if and when their candidacy reaches the ultimate stage. This favor-currying has been going on for more than twenty years and it has created a political narrowing rather than the much-needed broad policy debate. In recent years, when the aspirants have joined the Council as elected members, they have generally played a quiet and uninspiring role. This is

definitely not a pathway towards constructive Council renovation.

For years, the campaign for new permanent members has overshadowed all other reform discussions. It has diverted energy from serious institutional alternatives. Real reform progress has suffered from the absence of the support of the aspirant countries and their close allies. Smaller states alone cannot take on P5 domination without such hefty assistance. In the early reform years, some observers thought that the aspirants would soon recognize the impossibility of their goal and that they would join with the majority and push for transformation. That shift has been slow in coming but it remains a possibility.

Meanwhile, reform progress depends on optional pathways, combining the commitments of non-aspirant states like Italy, Spain, the Netherlands, Sweden, Korea, Indonesia, Egypt, Mexico, and Argentina with the rest of the democratically-inclined UN membership. Germany, where elite opinion about a permanent seat has long been divided, could renounce its aspirations and lead the march away from permanency. Reform initiatives over the past twenty-five years have shown the way forward while revealing the extent of P5-imposed limits. Now is the time to seek a new pathway for progress and to energize a world-wide political movement for Council transformation and UN renewal.

Change at Last? Towards a Democratic Transformation

For over seventy years, the world's nations have worked grudgingly with this uniquely powerful institution whose arrangements most did not willingly approve. The Security Council's decisions have always been "binding" upon them, requiring legal compliance. Yet the Council has not been responsive to their needs, and it has operated beyond their political influence or formal assent. Today, a violence-prone world, challenged by accelerating climate change, needs a far more effective and legitimate body to ensure the peace. In light of P5 resistance, what kind of reform is possible and how will it be achieved?

Seventy years from its founding, the Council works in a radically different global setting—one that requires far more than traditional inter-state diplomacy and power-calculus of the sort practiced by the P5. So it is important to ask what kind of an institution we really need for this purpose and how can we make the changes to get there.

Institutional transformation usually occurs when radically changed circumstances generate overwhelming pressures for change. Then the old structures prove less tenacious than they once appeared. What seems today "permanent" can quickly appear impermanent, as new challenges prove unstoppable and unexpected opportunities arise.

To promote a Council fit for the future, we must affirm and strengthen all the small reforming steps taken in recent years, but we need also to be far more ambitious, with a goal of thoroughgoing transformation. Cautious pragmatism will not do. For success, we need not only government support but also—particularly—international citizen action and political solidarity. Many intellectuals, political leaders, and citizen movements must come together for this great task. It will require an upsurge of radical transnational politics—to challenge and overcome the trends of narrow nationalism and subservience to the mightiest of states.

In the near-term, steps can be taken that do not require major upheaval and Charter change. The General Assembly will play an important role in this process by affirming its powers and its special universal legitimacy. The Assembly can take significant steps, such as demanding from the Council more than one candidate for election to the post of Secretary General and insisting that vetoes be abandoned in the SG election process. The Assembly could also take up more often its options under "Uniting for Peace," and it could refuse to automatically endorse the "tradition" of P5 candidates for the World Court. The Assembly might also encourage states to take cases to the World Court that would test the possibilities of legal limits. The Assembly could also use its budgetary powers more aggressively—refusing to authorize budgets as a means to wrest from the P5 the most egregious Council methods and procedures. Such accomplishments are quite possible, but they will require dedication, imagination, and coordination.

At the same time, short of Charter change, the E10 can renew their reforming zeal within the Council and take initiatives of the kind that were so common in 1990-2005. They must speak out and denounce despotic P5 acts and find ways to communicate with global audiences far beyond UN headquarters. Powerful "rising" states as well as long-established "middle powers" must come forward to offer them protection and public support. The E10 could even refuse to provide their voting support in the Council unless certain reforms are undertaken. Political courage and initiative will be required but such steps are by no means impossible. Inventiveness and persuasion are of essence here.

Far-Reaching Goals

The reform effort must adopt far-reaching goals, of the sort that can be transformative, the kind of change that requires vision and Charter amendment. Such promising goals can better attract the enthusiasm and spirit of the international public and bring the people back into their United Nations. Such goals would include the elimination of the veto and the system of permanency with its unacceptable and outmoded privileges. In place of permanency for individual nations, there might be longer-term elected members and possibly even a system of permanent representation of regional organizations. There could additionally be a Charter-redefined system of legal review of the Council by the World Court, while bringing the Council more generally under the rule of law. There should also be a means to bring people's voices into the Council in an organized way, possibly through a special consultative chamber. And there must be a radically improved process of cooperation between the Council and the General Assembly, engaging also the Economic and Social Council, to bring all the nations into the peace and security process.

We need to construct a Council that will avoid violence-prone, repressive approaches to peace-making and that will promote Council-Assembly cooperation for economic development in pursuit of peace. The transformed Council should also proceed with serious initiatives for disarmament to make up for its terrible failure in this area in the past.

To make such ambitious progress there must be a political bloc, consciously organized, to include the majority of UN member states, some of the aspirant members, and a movement of global citizenry that demands change and intervenes actively in the UN. There must be solid support for the project among citizens of the P5

countries themselves, to soften their official opposition and even eventually bring them into support for the process. Throughout, there must be a spirit of optimism, global creativity, and solidarity. There must also be daring, resolve, good will, and internationalism, joined to a firm conviction for change. It will be vital to transition the UN with unity of purpose and broadly-shared enthusiasm about the future. Such a movement would be a powerful antidote to nationalism and narrowly particularist thinking that threatens our global unity, peace, and even survival.

The reform and transformation process can make use of many instruments, such as large international conferences, public campaigns, rallies, court cases, NGO initiatives, coordinated speeches at the opening of the General Assembly, E10 public statements, and more. A new sense of possibility must arise among the peoples. Politically savvy leaders can invent many other methods to move towards an entirely new Council and a new way of envisaging peace and security at the global level.

With this we can revise the shortcomings of the past and finally create a world in which genuine peace and progress can at last be possible.

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RLS–NYC and the United Nations

One of RLS–NYC's major tasks is to work on issues of concern to the United Nations, particularly as they relate to the Global South. We seek to strengthen progressive actors to engage with and more effectively challenge unequal power relations in order to build a more just, democratic, and peaceful world. We want to develop and advance understanding of global power shifts so that social movements, unions, political actors, NGOs, intellectuals, and grassroots communities can more effectively advocate for new and better approaches to global governance institutions and more effectively work for conflict prevention and resolution. In doing so, we seek to contribute to and strengthen movements for a sustainable and just socio-ecological transition. RLS–NYC engages both with the UN's formal structures and with those who challenge these structures when they fail to live up to the values of the UN Charter.

In order to advance understanding, RLS–NYC publishes studies and organizes events that present research and analysis on topics such as the UN's use of private military and security companies, the rise of the BRICS (Brazil, Russia, India, China, and South Africa), and the struggle of the Global South to assert itself politically on the world stage.

As part of our work to strengthen and consolidate movements, we have co-convened Trade Unions for Energy Democracy, a global, multi-sector community of labor leaders working to address issues of climate change and energy poverty through public, democratic control of energy. We have helped bring indigenous women leaders to New York to participate in events around the United Nations Permanent Forum on Indigenous Issues (UNPFII) and the United Nations Commission on the Status of Women (CSW), and worked on projects with the United Nations Research Institute

for Social Development (UNRISD). We have also initiated Urban Convergences, which brings together housing justice advocates from India, Brazil, and South Africa to share their experiences and visions of a socially just city in the twenty-first century.

Of Foxes and Chickens

Oligarchy and Global Power in the UN Security Council

The UN Security Council remains a mysterious body, hidden most of the time behind a strict security perimeter. To understand the Council, it is necessary to penetrate a thicket of myth and to examine the web of ideology, fear, and ambition that motivates its members. To promote a Council fit for the future, we must be ambitious, with a goal of thoroughgoing transformation. For one thing is clear: Cautious pragmatism will not do.

James A. Paul was long a major figure in the UN NGO community who served on numerous boards and committees and has written many articles, reviews, policy papers, and books on international relations and global politics. He is the founder of the NGO Working Group on the Security Council.

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