

Transcending or Defending the World of States? The United Nations and its Members

The United Nations came into existence in 1945 primarily as a security organization designed to prevent wars and punish aggressors. The core of the U.N. – its Security Council – was set up in such a way that the five most formidable powers of that era, Great Britain, the United States, France, Russia and China, dominated it by dint of their military might and their veto power. Through the U.N. Charter, these five nations were expected to gain a sufficient enough number of votes from the Council to impose a mandate binding on other U.N. members to undertake enforcement actions. This fairly aggressive (and in some ways undemocratic) posture was deliberately fostered in order to make the central thrust of the »security« in the Council one of compulsion rather than voluntarism. This was because the world had just endured the bloodiest conflict in human history – the Second World War, a few decades after surviving the other most tragic war of the 20th century, the first World War. There was a determination among the countries of the planet never to permit these sorts of horrors to happen again. The U.N. Security Council, unlike its weaker predecessor, the League of Nations' Executive Council, was emphatically designed to deter or prevent such calamities.

What is often forgotten, then, about the U.N. is that it was the cauldron of war, not the warm bath of peace, that conceived and shaped this organization. This is important to remember because it suggests that only an event of staggering destruction, of truly memorable violence, mayhem and human loss, was able to overcome the historical resistance of nations to ceding any of their authority to a supranational organization and, in effect, surrendering a part of their national sovereignty. But the question this immediately raised historically was: once the circumstances have disappeared which produced such an international body and countries no longer feel threatened, do

they still need a global assembly? This is a conundrum which is not yet resolved. Indeed, the nations of the U.N. today seesaw between the desire to stamp out wars and gain safety collectively, and yet maintain their separateness and own national or regional power. This is an underlying tension which has never gone away and helps explain the ambiguous response that many nations have, fifty years or so after its inception, toward the U.N..

This salient factor could be seen from the beginning at the U.N.'s founding conference in San Francisco 1945. At the start of the Spring 1945 meeting, one of the central controversies was the issue of the veto. The veto was demanded by the main three actors responsible for the organization's birth – the United States, Great Britain, and the Soviet Union – out of their concern about how they could each maintain their freedom of action from the entangling restraints of an international organization even as they supported its creation. In order to allay these misgivings, all three nations were accorded the power to bar enforcement actions if they infringed on their sovereignty (the veto authority was also later given to France and China). But, unlike the old League of Nations, no other countries received the right of veto. By the same token, the smaller powers, desirous of protecting their authority within regional groupings, also insisted that the U.N. accommodate its Charter to recognize the rights of their regional pacts to serve as the forums of first resort for handling local crises before the U.N.'s assumption of responsibility.

Similar reservations attended the construction of other facets of the U.N. organization in 1945. For example, the Trusteeship Council was given only limited powers to oversee decolonization, because colonial powers like Great Britain, France and the Netherlands objected to the U.N.'s meddling with their possessions. The Economic and Social Coun-

cil was prevented from asking for full employment from advanced industrial nations (and for that matter in developing countries) because domestic interests, especially in the United States, did not want to be bound by what they considered unrealistic economic targets set by an international body that couldn't know or understand the realities of distinct economies. Even the juridical authority of the World Court was founded on voluntary participation by the nations of the planet, not by compulsory jurisdiction; no country was going to permit an outside legal authority to decide its fate without its prior consent.

Today the U.N. is beset by similar stresses between the ample responsibilities that are set out in the United Nations Charter and the actualities of the operational limitations that exist in the contemporary world. And sometimes a single crisis arises which encapsulates the special problems that afflict the organization at a particular moment in history. This was most evident in the recent bombing campaign against Yugoslavia that occurred in the Spring of 1999. That show-down in the small Yugoslavian nation illuminated a most troublesome landscape for U.N. authority today – one which has echoes of the 1945 San Francisco Conference's strains between nation-states/regional authorities on the one side versus collective international rule on the other. For within that Balkan venue we have glimpsed a kind of unsettled future: namely, the continuing and characteristically uncertain and often equivocal role of the United Nations; the sinuous contours of post-Cold War American-dominated politics; and the strengths and weaknesses of globalization.

As we know, the United States and the North Atlantic Treaty Organization did not seek the prior assent of the United Nations Security Council for its decision to bomb Yugoslavia in order to enforce a settlement on Belgrade along the lines of the earlier pact presented at Rambouillet. The U.S. avoided asking for a U.N. mandate for the simple reason that any such action by the Council would have been vetoed by both Russia and China, who strenuously held to their position that Kosovo was a matter for the Yugoslavs alone to resolve. So, in a recognition of the practicalities of the situation, Washington and NATO simply acted on their own authority to stop what they perceived as a humani-

tarian disaster that could eventually threaten the security interests of Europe.

As President Clinton wrote in *The New York Times* Op-Ed Page on May 23, 1999: »Had we faltered, the result would have been a moral and strategic disaster. The Kosovars would have become a people without a homeland, living in difficult conditions in some of the poorest countries in Europe, overwhelming new democracies. The Balkan conflict would have continued indefinitely, posing a risk of a wider war and of continuing tensions with Russia. NATO itself would have been discredited for failing to defend the very values that give it meaning.«

Clinton's sentiments were undoubtedly true, but it is arguable at least that the NATO action in bypassing the United Nations also reduced if not crippled that organization's influence and dominion. It should be pointed out, though, that the U.N. Security Council explicitly did not oppose NATO's assault on Yugoslavia, even if it did not directly endorse it. In early April 1999, the Security Council rejected with a twelve-to-three majority a resolution condemning NATO's air strikes as illegal on the grounds that the Council had not authorized them. Only Namibia joined China and Russia, the cosponsors of the motion, in arguing that Serbia's treatment of its Albanian minority was essentially a domestic matter. Furthermore, Article 52 of the U.N. Charter does allow regional »agencies« to deal with »the maintenance of international peace and security« and attempt a »pacific settlement« before referring a serious conflict to the Security Council. All of these points tended to diminish the argument that the U.S., in leading NATO's foray into Yugoslavia, acted simply as a rogue superpower that violated international law by not first requesting Security Council authorization in its attack – as the Security Council is the only entity which gives the imprimatur of global juridical legitimacy to such international military ventures.

The U.N. did, in addition, come into play at the end of the bombing campaign. As we know, the peace settlement concluded between the President of Finland, Martti Ahtisaari, the special emissary from Russia, Victor Chernomyrdin, and the Serbian President Slobodan Milosevic, specifically assigned the U.N. the supervising authority over the reconstruction of Kosovo (unlike the deal

reached at Rambouillet, where NATO was to play the main role). That meant that, while the U.N. would probably not have direct control over the NATO forces in the zones carved out by Italy, Germany, the USA, Great Britain and France in Kosovo, it would have authority over the civilian structures that are to arise to serve as the interim government of Kosovo. This agreement is not so different than the one which occurred in Bosnia following the Dayton pact. Hence the U.N. did take a strategic position in the Kosovo episode though it did not have initial control.

But the Kosovo affair does highlight a question that will continue to bedevil the United Nations. If a superpower like the United States does wish to sidestep the Security Council, or if a regional organization like NATO wants to evade the reach of the Security Council, either can probably do so now more freely as a result of Kosovo. This is, of course, not something new. The U.S., as we may recall, never sought the Security Council's blessings for a number of its operations in the past – including when it intervened in Iran in 1953 and Guatemala in 1954 with CIA agents, and when it sent troops to the island of Grenada in 1983 and Panama in 1989. Even today, it is acting semi-independently of the Council by conducting almost daily raids over Iraq. The Soviet Union behaved without Security Council clearance when it intervened in Hungary in 1956, Czechoslovakia in 1968 and Afghanistan in 1979. The fact that the U.N. Charter gives a country a right to act under Article 51 in self-defense, or permits regional groupings to act under Article 52, was not, at least in these cases, sufficient grounds to justify what occurred. Thus it is certainly suggestive that what NATO and the U.S. did in Kosovo went beyond the U.N. Charter and, in this sense, may have permanently damaged the U.N..

But this entire affair also casts into question the structural defects of the U.N. and its Security Council. What does happen when a recalcitrant veto-wielding country like Russia or China blocks a U.N. enforcement measure for its own political reasons? And what is the real consequence when a superpower acts unilaterally outside the scope of U.N. legal ambit? We have seen over the years what transpired in the Security Council during the Cold War when both such scenarios occurred. The Council became irrelevant. As America regularly

stopped Soviet-inspired initiatives, and the Russians banned Washington-backed plans throughout the forty-five years of the U.S.–Soviet freeze, the Security Council became an ineffectual body. And, as mentioned earlier, when both nations moved to guarantee their national interests as they perceived them without the Council's okay, the same consequences obtained. Only the fall of the Berlin Wall and the demise of the Cold War finally revived the Council.

Since then, though, with the cooperation of a newly democratic Russia, and the almost regular abstention of China, the United States and its two allies on the Security Council, France and Great Britain, have been able to make the Council central to global security once more – as originally envisioned by the U.N.'s founders. The Council has, indeed, become an activist body. Since 1991, it has mounted the U.N. operation in Kuwait to oust the Iraqi forces which were occupying that country. The Council approved the U.N. occupation of Cambodia. It authorized a U.N. role in peace settlements in El Salvador and Guatemala. It approved U.N. peacekeeping missions in Western Sahara (1991), Georgia (August 1993), Tajikistan (December 1994), Macedonia (March 1995), Bosnia (December 1995), Croatia (January 1996), Angola (July 1997), Haiti (December 1997) and the Central African Republic (April 1998). It monitored elections in Sierra Leone in February 1996. It established international war crimes tribunals for Rwanda and Yugoslavia, and in July 1998, set up a Permanent International Criminal Court to try individuals for genocide, war crimes and crimes against humanity.

But Kosovo is also proof of the fact that key players on the Security Council can quickly consign the Security Council once more to the sidelines, if they wish to do so. It is true, though, that until Kosovo, as pointed out, both China and Russia by and large tended to avoid confronting the Western powers with direct vetoes. Mostly they stood by and watched. They may have privately threatened the use of vetoes on occasion, and by dint of those warnings, forced the other Council nations to amend or alter terms of various resolutions, but they have usually backed away from a raw exercise of the veto power – until Kosovo. Yet even in this case, they took risks, for, should they force the Security Council to revert to Cold

Cold War practices, they would rapidly render the body impotent once again and both nations would actually lose their ability to affect events. And, from the larger perspective of self-interest, given their persistent economic dependence on Western trade and banking systems, it seems highly unlikely they would want to challenge the leading industrial nations of the globe too often, along the lines of the Kosovo paradigm. These factors may account for why Russia was decisive in bringing about the peace deal in Kosovo, and why China ultimately put aside its upset over the NATO bombing of its Belgrade embassy without exacting dramatic retribution.

The Kosovo affair, too, places in a new perspective the nature of the »pax Americana« . It is self-evident now that the United States, with its huge military arsenal crammed with advanced weaponry of all sorts, its vast technological resources, its immense defense budget, and its strong and self-assertive ideals, can, with the willing assent of its allies, and sometimes alone, determine the outcome of political events around the planet – with or without the U.N.. Obviously this is not always a sure thing – witness Vietnam. But given strong leadership in the White House, a politically sophisticated strategy, an obvious case of mayhem and violence somewhere in the world and a strong brief for collective action, Washington can sway the globe in its direction – even when large democratic nations like India as well as China and Russia want to resist the tide. For, as former Secretary General Boutros Boutros Ghali has observed: »Weaker states depend on diplomacy. When you're powerful, you don't need it.«

But in order to forestall future threats to its sanctity and also deal with the implicit menace raised by unilateral U.S. acts, it is clear that the United Nations is also going to itself do some rethinking about its own philosophy, especially as more and more ethnic conflicts now happen within states as opposed to between states. For Kosovo focuses a harsh light on two competing beliefs that will in the future essentially decide how the United Nations survives and how it handles the United States: Does the body have the responsibility for guaranteeing universal human rights and self-determination or does it have the obligation for upholding absolute sovereignty and the territorial integrity of states? The Secretary-General, Kofi

Annan, has already weighed on the former side. On April 7, 1999, he gave his tacit backing to the NATO operation in Kosovo (while insisting nonetheless that it should have taken place under the umbrella of the Security Council). He stated at that time that the world would no longer permit nations intent on committing genocide to »hide« behind the United Nations Charter, which has historically championed national territorial dominance. The protection of human rights, he said, must »take precedence over concerns of state sovereignty.« He added: »As long as I am Secretary General, the U.N. will always place human beings at the center of everything we do.«

Secretary-General Annan was, in fact, acknowledging an »evolving« international norm which was starting to discomfit the U.N. itself. Why? Because the U.N. Charter appears at first glance to defer to anti-interventionists who make the claim that intervention can be misused and that a nation should be allowed to do what it wishes within its own hallowed space. For example, Article 2(4) of the charter declares that states »shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state...« The only exception permitted are those involving self-defense or where the U.N. Security Council finds a »threat to the peace, a breach of the peace or act of aggression« and authorizes the use of force.

Those who stand fast against U.N. encroachment also point to another article of the U.N. Charter which forbids the U.N. and individual states from interfering in »matters which are essentially within the domestic sphere of any states«. Ironically, however, this very article has, since the end of the second World War, been used to support the contrary position – namely, allowing international incursions into domestic matters at least for humanitarian purposes. Following the Nuremberg trials, gross violations of human rights are no longer necessarily treated as solely matters for a state's internal jurisdiction but as matters of importance to the entire global society.

Indeed, Articles 55 and 56 of the U.N. Charter also affirmatively urge nations »to pledge themselves to take joint and separate action« to promote »universal respect for, and observance of, human rights and fundamental freedoms for all.« These clauses appear to suggest that the Charter

not only allows intervention on humanitarian grounds, but in some instances actually mandates it. But surely there has to be a standard, too, that can guarantee that such U.N. actions are not themselves violative of civil liberties or serve as a pretext for vigilante excursions. So any meaningful U.N. interposition must be one that does not threaten world order, but adheres to U.N. principles.

But beyond the signal issue of the U.N.'s position on humanitarian intervention, there is the larger question of whether the organization can advance the cause of international law in general given the imponderables of sweeping economic globalization which in a sense creates its own rules as was evident in the recent Asian financial collapse, or given the continuing technological revolution that crosses borders without any restraints or controls. In face of similar sorts of circumstances in recent decades, the U.N. has admirably pushed the legal envelope. It has shown the potential to grapple with such phenomena. It has ostensibly begun to build a solid foundation on which to construct further legal precepts.

The U.N.'s rollcall of law-based accomplishments since its inception have been straightforward and non-confrontational. The body has flourished in settling and defining the daily mechanisms of global interaction – creating technical treaties of all sorts and setting the common rules of behavior for nations. The U.N. helped to spell out and spread human rights law via the Universal Declaration of Human Rights in 1948; it played a pivotal role in bringing about the (often peaceful) territorial independence of some 80 countries now in the organization; it assisted in promulgating trade law via the General Agreement on Tariffs and Trade (GATT) which recently became the World Trade Organization; it negotiated international commodity agreements to secure more equitable prices for developing countries' exports; it helped to create numerous legal agreements on shipping; it regulated the delivery of international mail and set up air traffic codes for all states through the International Civil Aviation Organization (ICAO); it erected a system of weather information and universal aeronautical meteorological codes via the World Meteorological Organization (WMO); it forged the U.N. Convention on the Law of the Sea to protect the oceans; it sanctioned accords on the environment

through the U.N. Environment Programme (UNEP); it composed nuclear safety standards via the International Atomic Energy Agency (IAEA). Overall, it led to the adoption of over 300 international treaties.

And the significance of these particular accords has lain not simply in the fact that the U.N. first helped to conceive of them, subsequently convened meetings to fashion the rules for them, and later persuaded the General Assembly to approve the pacts. But the U.N. always understood from the beginning that it could not impose rules from above on countries and that nations themselves would have to ratify the agreements in their own parliaments or congresses – and that this represented the most realistic route to travel. Thus, while the U.N. could frame the terms for an accord, the states would, via their representatives at home, have the right to accept or reject the U.N. proposals. By these means, a U.N.-sponsored agreement then would gain its ultimate consent directly from member-state legislative bodies, whose legitimacy was – though not always – based on democratic elections.

Nonetheless many of the U.N.'s treaties have engendered conflicts of various sorts. Some nations have simply refused to sign them or some have agreed to them but never bothered to adhere to them. A recent example of the latter is the decision by China to sign the U.N. human rights accords and then not comply with them. Other nations have interpreted provisions of treaties narrowly or supported only those clauses which they liked. The broadening of global law via the U.N. has, in short, historically moved forward in half-steps, backward leaps and occasional collective advances.

But the United Nations has shown an adaptability that few of its Founders might have foreseen. The very fact that it is now considering supporting a »humanitarian« exception to the notion of absolute sovereignty is a testament to that flexibility and to practical interpretations of the U.N. Charter. This is part of the U.N.'s evolutionary nature. For example, the Charter originally never listed anything about U.N. »peacekeeping« or election monitoring, but both responsibilities have been rapidly assumed by the U.N. because of the urgent and immediate needs of global society. Now they have become an integral part of the U.N.'s mission. In

addition, the U.N., as is well-known, is currently experiencing a funding crisis due to »donor fatigue« – yet another obstacle it must overcome. Still it seems likely that the organization will show a suppleness of style and purpose which will enable it to surmount future Kosovo-type problems, Asian-type economic failures, technological upheavals of all sorts and monetary deficits – though the process will be a rough and ready one full of fits and starts.

The United Nations has endured now over half a century because it fills a felt need in world society. Its Charter has proven to be far more resilient and elastic than most people expected. Still the competition between the world's desire for a security organization and the individual nation's need to guarantee its own dominion will go on. This conflict is so intrinsic to the nature of mankind's behavior – undoubtedly going back to tribal and ethnic conflicts throughout human history – that it seems likely to be an undecided and undetermined one for a long time. But the march of globalization, abetted by the intertwining of the planet's economy, politics and social needs, guarantees that the U.N.'s legal and political role will not diminish in the next century, but rather will most likely enlarge, bringing along all nations willingly or unwillingly into a more cooperative future. ◀