

American Morality over International Law: Origins in UN Military Interventions, 1991–1995

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I. Introduction: The Significance of Kosovo

Whether they support the intervention or not, commentators are nearly unanimous in characterizing the 1999 US/NATO bombing campaign of Serbia, known as Operation Allied Force, as a break from past practice in the arena of military intervention.¹ Its novelty resided in the fact that the US and NATO did not receive explicit Security Council authorization for their use of military force against another state. For the past decade, the US had regularly gone to the Security Council for authorization of its military interventions, namely Gulf War I, Somalia, Haiti, and Bosnia.² This time, however, the US did not even attempt to gain Council authorization, so the operation was illegal under the UN Charter.³

For the Kosovo intervention's celebrants, it was the beginning of a new era of benign hegemony led by the US.⁴ For its detractors, it was America's definitive rejection of the UN and the international rule of law.⁵ For the more cautious, it signaled the possibility of a world order where human rights take precedence over state sovereignty and over the narrow self-interest of Security Council member-states, but also made clear the political dilemmas that would be involved in the realization of that cosmopolis.⁶ Whatever their ultimate judgment, however, few disagreed that Kosovo represented a fundamental rupture in the history of the relation between law, military force, and international institutions, and it was this that made Kosovo the catalyst for, in Louis Henkin's words, "much searching of soul by students of international law."⁷ Furthermore, many have seen Kosovo as not just representing a break, but as setting the course that we have been on since, leading to the unauthorized US invasions and occupations of Afghanistan and Iraq.⁸ The Kosovo operation and its conditions of possibility have implications far beyond the bombing campaign's 78-day duration and provide a key to understanding the post-Cold War history of world order.

In addition to the lack of explicit Security Council authorization, there are two other aspects of the Kosovo intervention that contribute to its novelty in the history of the relation between international law, the use of military force, and the UN. First, in justifying the bombing, the US invoked an ad hoc assemblage of moral-humanitarian claims without appealing to international law. In fact, the US consistently avoided the language of international law, opting instead to claim legitimacy for the air strikes as being for the sake of the Kosovar population.

Second, the UN was excluded from any role in the execution of the operation; that is, it was undertaken by US and NATO forces under their own command and control. The bombing campaign was simply a US and NATO military operation, without even the pretense of being part of a UN-authorized or -directed multinational coalition.

While the lack of explicit Council authorization represented a definitive break, these other two aspects of the Kosovo intervention – the use of a deformed moral-humanitarian language and the exclusion of the UN from the execution of the intervention – were not sudden ruptures. Rather, these were the culminations of trends towards the deformalization of justification for the use of force and the marginalization of the UN from executing military interventions, trends that had been in existence since the 1991 Gulf War and had become entrenched by 1995. Ironically, these trends had become entrenched through the very modes by which Security Council-authorized interventions had been justified and carried out. By considering the novelty of the Kosovo intervention in this way, it becomes apparent that the break represented by the lack of Council authorization was superficial, simply the re-alignment of one (albeit very visible and important) aspect of the international institutional order with trends that had been developing elsewhere, less obviously, since 1991.

This article will examine how these two trends emerged and became entrenched. Equally importantly, it will also address how these trends gave rise to the discourses within which the US could claim legitimacy for its Kosovo intervention without any appeal to international law or the Security Council, that is, how they created the discursive conditions of possibility for Kosovo. First, the development of a deformed, non-legal, moral-humanitarian mode of argumentation by the Council in its resolutions authorizing interventions led to the marginalization of formal legal language, argumentation, and procedures in authorizing military interventions and to the ascension of a broad discourse among policy makers, NGOs, and the public in which the legitimacy of military intervention was divorced from questions of law and instead inscribed in morality. In the end, Security Council authorization itself was bypassed as mere legalism, and moral claims were privileged instead. Second, the progressive delegation of military enforcement duties by the Security Council to other bodies, especially to the US and NATO, and the refusal to allow a UN military capacity to develop, which took place in large part under pressure from the US, were mutually-reinforcing and gradually produced a discourse of the dangerous incompetence of the UN and a belief in the need for military action to be the exclusive preserve of major Western powers. Thus, the total exclusion of the UN from Kosovo was just another step in this progression.

My argument has a normative dimension as well. I will argue that these two trends not only set the stage for the Kosovo intervention, but also undercut the possibility for the rule of law to govern the use of force in the post-Cold War era.

As I discuss below, the first requirement for the preservation of the rule of law is for the use of force to be restricted to those instances authorized by the Security Council.⁹ But in the 1990s, the legality provided by Council authorization proved to be too “thin” – necessary, but not sufficient – to support the rule of law. With the end of the Cold War standoff, there arose instances both of the instrumental use of Council authorization by the United States to provide cover for its illegitimate use of military force, most prominently in Haiti, and instances where the Council remained inactive even in the face of humanitarian crises where consistency in Council practice would have required intervention, as in Rwanda. So, to compensate for the ease of political instrumentalization and the temptation of inaction, that is, to try to regulate Council decisions and the use of force by a rule of law, a “thicker” legality is required.

This thicker legality can be established by supplementing Security Council authorization with two additional desiderata: first, there must be a legal formalization of the arguments and procedures used by the Security Council in making its decisions so as to promote transparency, accountability, and legalization; and second, there must be developed a UN military capacity that will promote the efficacy and regularity of UN interventions – in other words, that will help ensure that the UN does what the Security Council says it will do. My point is that the two trends noted above – towards delegalization in Council authorizations and exclusion of the UN from enforcement – led away from what would be required for the establishment of the rule of law. Indeed, the refusal to seek Council authorization for the Kosovo intervention represented not just a break from past practice but also the rejection by the US of the *sine qua non* for the rule of law in the use of military force.

II. The Cold War to the Gulf War

The United Nations Charter, which went into effect on October 24, 1945, established a comprehensive legal ban on the use of force;¹⁰ as Article 2(4) declares, “All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state.” The Charter leaves open only two situations in which force can be used legally.¹¹ First, Article 51 establishes that force can be used by states in self-defense against aggression by other states, but only as a stopgap between an “armed attack” and action taken by the Security Council.¹² Second, Article 24(1) establishes that the use of force is legal if it is conducted by, or explicitly authorized by, the Security Council.¹³ Thus, any use or threat of force that is neither in self-defense under Article 51 nor is explicitly authorized by a Council resolution is illegal under the Charter regime of *jus ad bellum*.

While states have had their legal authority to use force without Security Council authorization eliminated except in narrowly-defined cases of self-defense, the Council is given wide authority to decide when to use force. Article

39 declares: "The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken...to maintain or restore international peace and security." In executing its duties, the Council is exempt from the general prohibition against the violation of sovereignty: Article 2(7) declares, "Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; *but this principle shall not prejudice the application of enforcement measures under Chapter VII*" (emphasis added). The Security Council had no formal limit placed upon its authority to decide that a situation comprised a breach of or threat to peace and security and to use force in response.¹⁴

The Charter thereby constituted the Council as a universal collective security mechanism.¹⁵ A threat against, or attack upon, any state is equivalent to an attack upon all states since the threat or attack is in violation of the fundamental rule of world order—that is, respect for state sovereignty and territorial integrity. The Security Council, acting "on the behalf" of all member states, would eliminate the threat or remedy the breach, thus re-establishing world order. This sovereign state paradigm of world order, guaranteed by the Security Council, held sway conceptually and in practice until the end of the Cold War: until 1991, with the marginal exception of Rhodesia, the use of military force was exclusively authorized by the Council in response to threats to the sovereign state paradigm.¹⁶ In fact, the general "paralysis" of the Council induced by the Cold War almost entirely prevented it from exercising its authority to use force, and the Gulf War was a watershed event simply because the Security Council took any action at all.¹⁷

When Iraq invaded Kuwait on August 2, 1990, it was only a matter of hours before the Security Council convened and acted.¹⁸ Faced with a clear violation of state sovereignty, the Council unanimously passed Resolution 660 (1990), "determining that there exists a breach of international peace and security as regards the Iraqi invasion of Kuwait." After an increasingly harsh sanctions regime against Iraq did not have any effect, the Security Council passed Resolution 678 on November 29, 1990, giving Iraq until January 15, 1991, to leave Kuwait. If Iraq still did not comply, Resolution 678 authorized "Member States cooperating with the Government of Kuwait...to use all necessary means to uphold and implement resolution 660 (1990) and all subsequent relevant resolutions and to restore international peace and security in the area."¹⁹

The authorization of force by the Council was facilitated by American interest in driving Iraq from Kuwait; the US had massed its forces in the Gulf and wanted Council authorization to establish the anticipated invasion's legality. But the Americans also wanted to retain command and control over the operation.²⁰ Thus, the price the Security Council had to pay for establishing its efficacy as a collective security body at this key moment was to cede command and control to

the US.²¹ Indeed, Resolution 678 faced opposition on precisely this count from Cuba,²² which protested that the UN had authorized member states to use military force against another state at their own discretion. That is, once the war was launched, the Security Council had no control over it until the goal of driving Iraq from Kuwait had been achieved to the satisfaction of the American coalition commanders.²³

But only Cuba and Yemen voted against Resolution 678, and the war was authorized and carried out as planned. On January 16, with the deadline for Iraqi compliance expired, President George Bush took up the Security Council invitation and informed the Secretary-General that the US would commence air strikes against Iraqi targets in Iraq and Kuwait.²⁴ On February 24 the ground campaign was launched, by February 27 coalition troops succeeded in driving Iraqi forces out of Kuwait, and on April 3 a comprehensive ceasefire was agreed to by the parties, authorized by Security Council Resolution 687.²⁵

Among the many sanguine statements made about Resolution 687, that of the American Representative on the Security Council was indicative of the mood. "This resolution is unique and historic," he declared; "it fulfills the hope of mankind of making the United Nations an instrument of peace and stability. . . . This is a time of testing for the United Nations and a time of destiny as well. The international community acted through the United Nations to bring an end to aggression and lawlessness."²⁶ The US statement rang true for those who saw the Gulf War as the first step towards the construction of an international rule of law and, in Madeleine Albright's words, a new joint UN-US policy of "assertive multilateralism."²⁷ There were dissenters, who argued that the US had simply draped a mantle of thin legality over its imperialist violence.²⁸ Nevertheless, the general mood among the Western international policy and law establishments was one of euphoria over the possibilities that had been opened for the collective use of force under UN aegis.²⁹ Human rights activists, humanitarian agencies, international lawyers, academics, and government officials began calling for the use of force by the Security Council in response to a multitude of situations around the world, many of which did not represent breaches of or threats to the peace under the sovereign state paradigm.³⁰ It was in this milieu that the matter of an expanded Security Council role went from being an academic question to an issue that had to be addressed.³¹

III. An Agenda for Peace and a New International Rule of Law

In early 1992, the Security Council asked the incoming Secretary General, Boutros Boutros-Ghali, to prepare a report on the future of UN peacekeeping in light of the Gulf War experience.³² Boutros-Ghali did this and submitted his *Agenda for Peace* to the Security Council that summer.³³

Boutros-Ghali's *Agenda for Peace* evoked a model of world order that did not concern itself solely with maintaining inter-state borders and guaranteeing state

sovereignty, but rather would be focused as much on intra-state affairs as on inter-state affairs. In his words:

In these past months a conviction has grown, among nations large and small, that an opportunity has been regained to achieve the great objectives of the Charter – a United Nations capable of maintaining international peace and security, of securing justice and human rights and of promoting, in the words of the Charter, ‘social progress and better standards of life in larger freedom.’ This opportunity must not be squandered. The Organization must never again be crippled as it was in the era that has now passed.³⁴

To anchor this new order, Boutros-Ghali offered new conceptions of peace and security. He asserted that “peace” could be threatened by terrorism or by “brutal ethnic, religious, social, cultural or linguistic strife,”³⁵ and described a “new dimension of insecurity,” for which “efforts of the [UN] Organization to build peace, stability and security must encompass matters beyond military threats in order to break the fetters of strife and warfare that have characterized the past.”³⁶ The *Agenda* used this new conception of “peace and security” to effect an expansive reading of Articles 2, 24(1), and 42 of the UN Charter, interpreting the Charter as establishing that even situations entirely internal to states could be conceived of as threats to peace and security and be addressed by the Security Council with force.³⁷ He read the Charter as formalizing the possibility of a cosmopolitan world order, based upon a universal application of universal standards – the guarantee of human rights, justice, and social progress for “nations large and small.” It would amount to a new international rule of law, using force to counter a new set of threats to peace and security, including violations of human rights, genocide, civil war, humanitarian disasters, and other crises internal to states. In the sovereign state paradigm of world order, the Council could only breach the sovereignty of states that had violated or threatened the sovereignty of others; now, however, sovereignty could be breached by the Council if a state violated a different set of fundamental rules, rules the subject of which was humanity itself.

Boutros-Ghali realized that depending upon the Security Council in its present state to uphold this cosmopolitan paradigm universally and without prejudice would be unwise. In the Gulf War, even in response to an obvious breach of the sovereign state paradigm, it was only the fortuitous concurrence of US national interests and UN interests that had allowed the UN to authorize such a use of military force, a concurrence that most certainly would not always be present, especially considering the multitude of cases that would be included under the new definition of “threats.” That is, the Gulf War signified the opportunity to fulfill the UN Charter’s objectives as long as the US and the UN were in agreement upon those objectives and, more importantly, upon how to achieve them – but the Gulf War had nothing to say about what would happen when US and UN interests diverged, as they were sure to if the Secretary General were to push for the consistent enforcement of a universal law.

The dilemma for Boutros-Ghali was clear. An international rule of law would require a consistent application of rules concerning intervention – that is, when certain conditions, whether human rights violations or humanitarian crises or crimes against humanity, reach a certain level, no matter where, force will be used to intervene and remedy the situation. However, the UN Charter requires no consistency, no regularity, and no explicit justification for the use of force by the Council. Thus, if the development of an international rule of law were to have any meaning, Boutros-Ghali believed, then the use of military force would have to be made independent of the immediate political calculations of the permanent five members (P5).³⁸ His was a quest for a more activist Council, to bring its efforts to bear on Africa in particular, and he feared that if left up to the Council, the P5 would neglect situations in places of little global strategic importance. Boutros-Ghali wanted to introduce reforms that would promote the use of force by the Council to deal with new threats globally.

Boutros-Ghali saw the best way of promoting Council activism as removing some of the institutional and logistical hurdles that prevented intervention. As he explained in *Agenda for Peace*:

It is the essence of the concept of collective security as contained in the Charter that if peaceful means fail, the measures provided in Chapter VII should be used, on the decision of the Security Council, to maintain or restore international peace and security in the face of a “threat to the peace, breach of the peace, or act of aggression.” The Security Council has not so far made use of the most coercive of these measures – the action by military force foreseen in Article 42. In the situation between Iraq and Kuwait, the Council chose to authorize Member States to take measures on its behalf.

This will require bringing into being, through negotiations, the special agreements foreseen in Article 43 of the Charter, whereby Member States undertake to make armed forces, assistance and facilities available to the Security Council for the purposes stated in Article 42, not only on an ad hoc basis but on a permanent basis. Under the political circumstances that now exist for the first time since the Charter was adopted, the long-standing obstacles to the conclusion of such special agreements should no longer prevail.³⁹

Where Cuba and other critics saw an unacceptable and dangerous delegation of the legitimate use of military force to individual states by the Security Council, Boutros-Ghali optimistically saw the Gulf War as the first step on the path to a UN with armed forces permanently ready to conduct Security Council-authorized interventions. He believed that such permanent forces would lubricate the process of Council authorization, lessening the friction produced by the political calculations, self-interest, and general apathy of the P5. An important step towards establishing such forces would be to undertake peace-enforcement operations (as opposed to peacekeeping) under expansive rules of engagement by forces under UN command and control. As Secretary General, he indeed pushed consistently for peace enforcement under UN command and control.⁴⁰

The development of a UN military capacity is indeed one necessary element in the construction of a new thick legality, as Boutros-Ghali recognized. He failed to recognize the second necessary element: legal formalization is the second, as was mentioned above. The Council must make and justify its decisions by drawing upon the accepted body of international law – namely, treaty-based *jus ad bellum*, *jus cogens* norms, and customary law where these are insufficient – and in doing so contribute to the creation of new international law. It must also adhere to standards of legal rationality and argumentation, creating and conforming to precedents. The Council must offer clear definitions of what situations it deems to constitute threats to peace and security and offer clear criteria as to when those threats are sufficient to justify the use of force in response. This is of the utmost importance as the Council moves into the terrain of using force to address a new set of “threats to peace and security”; it is essential that the Council define the limits of its new powers and practice a degree of self-binding because under the Charter’s thin legality there is simply no limit upon what it may do. Boutros-Ghali’s expansive reading of the Charter granted the Council discretion in using force that far exceeded that allowed by the rule of law, and so military force had to be brought back inside.

Only in this way could a formal regime of rules emerge, staking out the Council’s domain of action in the post-Cold War world and providing consistency and regularity, a new international rule of law, in the Council’s use of force.⁴¹ Then, it would be a matter of deliberately deciding what that law was – Boutros-Ghali, for example, would give the Council much more of an interventionist role, while others would want the law to restrictively define the Council’s scope of action. But the key would be that the Council would make the legitimacy of its decisions subject to legal deliberation outside of its chambers and thus would establish its permeability to legal arguments coming from other institutions of international law, international and multinational institutions, and from civil society, the deliberations taking place in a formalized language of international law.⁴² A degree of Security Council accountability could be established through these means, and definitive precedents could be constructed and rules formalized to be used in calling for Security Council action in future cases. That is, a degree of regulation and consistency could be established over the use of force by the Council in addressing an expanded set of situations it considered to be “threats to peace and security,” while the Council’s monopoly on the legitimate use of force would not be put into question. This, therefore, would be the only possible mode by which the use of force could be incorporated in a new international rule of law, by both leaving the monopoly on the legitimate use of force in the hands of the Security Council and working for the accountability of Council decisions to a wider public.

But the development of a rule of law governing the use of force in the post-Cold War world was to be halted immediately, as neither legal formalization nor the development of UN military capacity was allowed to occur. In this context, it is little surprise that Cuba’s concerns turned out to be prescient, or that Boutros-Ghali

would lose his position over his continued efforts to take the UN down the path he saw as leading from the Gulf War.⁴³ In the following sections, I will examine the authorization and execution of interventions into Somalia, Rwanda, Haiti, and Bosnia and demonstrate the entrenchment of the trends, mentioned above, towards deformalization in Council resolutions and the progressive sidelining of the UN in enforcement, and the concomitant decline of the rule of law.

IV. Exceptions as Norm

Somalia

Under pressure from relief agencies, the media, and Congress, the Bush administration decided to undertake a humanitarian intervention into Somalia in 1992.⁴⁴ The administration's plan was to launch a massive military intervention to facilitate the distribution of relief supplies, using overwhelming force under generous rules of engagement. This initial "peace enforcement," named Operation Restore Hope, would be followed by a UN peacekeeping operation. On the day before Thanksgiving, President Bush informed Boutros-Ghali of his decision to intervene militarily in Somalia, and Boutros-Ghali, who had wanted a more significant UN effort in Somalia for some time, accepted the US offer.⁴⁵ On December 3, the Security Council passed Resolution 794 (drafted by the Pentagon) which gave unified command and control over the peace enforcement operation, named UNITAF, to the United States.

To justify its authorization of force, the Resolution declared the "human tragedy" in Somalia a "threat to international peace and security":

Determining that the magnitude of the human tragedy caused by the conflict in Somalia, further exacerbated by the obstacles being created to the distribution of humanitarian assistance, constitutes a threat to international peace and security. . . . [The Council] authorizes the Secretary-General and Member States cooperating to implement the offer referred to in paragraph 8 above to use all necessary means to establish as soon as possible a secure environment for humanitarian relief operations in Somalia.⁴⁶

With this, the Council took a step into a new world, authorizing the use of force to address a new kind of "threat to peace and security" in accordance with the expanded category of "threats" articulated in *Agenda for Peace*.

But the expansion of the Council's domain of intervention took on highly ambiguous dimensions. The resolution did not acknowledge that it had made an unprecedented authorization. Nor did it present the criteria by which it had decided that the "magnitude" of the "human tragedy" in Somalia was great enough to constitute a "threat to international peace and security" or why Somalia was deemed to require military intervention while other serious humanitarian crises did not. It did not do this, of course, because it was not a set of rules, but

rather the political discretion of the United States that had determined that intervention should take place into Somalia to the exclusion of other possible targets.⁴⁷ By not explaining its reasoning or presenting any formal criteria, the Council did not allow rules to emerge that could regulate the use of force by the Security Council. The lack of criteria foreclosed any consistent application of them in the future. Even the possibility of using the case of Somalia alone as a precedent was avoided in Resolution 794 by framing the authorization as “exceptional,” outside the norm: the resolution recognized “the *unique* character of the present situation in Somalia and [was] mindful of its deteriorating, *complex* and *extraordinary* nature, requiring an immediate and *exceptional* response” (emphases added).⁴⁸

The intervention into Somalia was legal only in the thinnest sense that it had received Security Council approval. The radical uncertainty introduced into the resolution effectively glossed over the questions that could be posed concerning the relation of the intervention to the broader regime of international law and to the requirements of the rule of law generally. If the Security Council had provided a clear, unambiguous account of the dimensions of the threat, it could have been subject to immediate or future formal legal challenge or could have provided the basis for future legal invocation. In sum, legal formalization, one of the two requirements for the thickening of legality into a rule of law, was precluded.

But the use of ambiguity, informality, and invocations of exceptionality to prevent the emergence of a legal regime governing the use of force should not obscure the Somalia intervention’s seminal contribution to the formation of a discourse of the moral legitimacy of military humanitarian intervention among Western publics and the legal and policy communities. The Security Council, by giving its imprimatur to the American operation, established the broad moral legitimacy of the use of force to deal with humanitarian crises internal to states – but without contributing to the development of a thick legality or rule of law.

Concomitantly, the way the intervention was executed spelled disaster for the second requirement for thick legality: peace enforcement under UN command and control. After completing its mission to the American commanders’ satisfaction, on May 4, 1993, UNITAF handed over command to a UN peacekeeping force, UNOSOM II. Under Resolution 814, UNOSOM II was given a broad mandate, with the responsibility not only to secure relief aid, but also to disarm the warring Somali factions.⁴⁹ The mandate assumed that the UNITAF-imposed peace would be sustained; but what was thought to be a sustainable pacification turned out to simply be a military stasis dependent upon the military power of the US.

By trying to disarm the factions, UNOSOM II undertook a much greater task than UNITAF had attempted, but with much less firepower. Disarmament led to military clashes with faction leaders, especially faction leader Aideed; on June 5, 24 Pakistani peacekeepers were killed by Aideed’s supporters. The following day, the Security Council passed Resolution 837 and “reaffirmed” that “the Secretary-General is authorized under resolution 814 (1993) to take all necessary measures

against all those responsible for the armed attacks...[and] to establish the effective authority of UNOSOM II throughout Somalia."⁵⁰ Translated into the increasingly hostile Somali context, this effectively authorized UNOSOM II to militarily occupy Somalia and launch a war against Aideed. UNOSOM II began a massive peace enforcement operation, but this dramatic escalation failed to be matched by a corresponding escalation in manpower or firepower.

What followed was a four-month war pitting uncoordinated UNOSOM II and US forces against Aideed and his suspected supporters. The US avoided major casualties until the disastrous October 3 raid on the Olympic Hotel, which left 18 Americans and 312 Somalis dead. In response, Clinton announced on October 7 that US troops would begin their withdrawal on March 3, 1994. Other states soon ended their involvements and the withdrawal of UNOSOM II was ordered by the Security Council in November 1994.

Why the UN would attempt the occupation of an enemy country with pathetically inadequate forces owes much to the single-minded determination of the Secretary General to demonstrate the efficacy of his vision for UN-commanded and controlled forces undertaking peace enforcement operations.⁵¹ In this sense, the degeneration of the security situation in Somalia and Resolution 837 had provided Boutros-Ghali with an unexpected opportunity to prove his model in practice. But Boutros-Ghali was too eager to demonstrate the efficacy of his model of peace enforcement and ended up giving the UN troops a job they were not prepared for and that the US and others were not willing to make work.⁵²

The failure of UNOSOM II sounded the death-knell for Boutros-Ghali's vision of UN-commanded peace enforcement. Boutros-Ghali's model was unable to get past its first significant military test and foundered on his single-minded determination to deal with the crisis by capturing Aideed. Somalia thus entrenched a US-favored pattern for military interventions and was used by the US as an example to demonstrate the disastrous results of deviating from the pattern.⁵³ From then on, the US would insist that pacification, or peace enforcement, take place with overwhelming force under the command and control of a major Western power with explicit Security Council authorization. The UN could not be trusted with combat operations, argued the US, even though it had been American refusal to assist in building a UN military capacity that had much to do with the failure of UNOSOM II. Peace enforcement would be followed by UN peace-keeping to "re"-construct the pacified territory. The Security Council thus had two tasks: to authorize and thus grant thin legality to the war by providing a *jus belli*, and then to reconstruct *post bellum*. The US had found an easy way to legitimate its use of force in pursuit of its own policy goals, while also avoiding what would be known as "nation-building." Thus, the UNOSOM II debacle did not lead to US disengagement from the UN; rather the US would still engage, but only on its own terms.⁵⁴ This new stance was expressed in Presidential Decision Directive 25.

Presidential Decision Directive 25, which President Clinton signed on May 3, 1994, provided a clear statement of US policy towards the UN on the use of force, a policy that would underlie both American intransigence over the Rwanda intervention and the American pursuit of Council authorization for its intervention into Haiti.⁵⁵ Three germane points may be derived from the unclassified summary of PDD 25 released by the State Department's Bureau of International Organizational Affairs.⁵⁶ First, it defined UN peacekeeping and peace enforcement operations as "one useful tool to advance American national interests and pursue our national security objectives"⁵⁷ because the US can benefit "by being able to invoke the voice of the community of nations on behalf of a cause we support" while "having to bear only a share of the burden."⁵⁸ Thus, while "the US will continue to emphasize the UN as the primary international body with the authority to conduct peacekeeping operations,"⁵⁹ the UN does not have the exclusive or final authority to authorize the use of force and is just one tool with which to build international consent to US military operations. Correspondingly, Clinton's Directive stated several times that the US would only vote for or participate in UN operations when "participation advances US interests."⁶⁰

Second, the Directive rejected Boutros-Ghali's vision of a permanent UN military capacity. "The US does not support a standing UN army, nor will we earmark specific US military units for participation in UN operations," it read.⁶¹ To further hamstring any effort to create such a force, the Directive denounced the incompetence of UN peacekeeping operations and stated that the US would reduce from one third to one quarter the portion of the UN peacekeeping budget it funded.⁶² In response to this effort to scale down financial commitments, Boutros-Ghali denounced the "dishonesty" of those "who made the UN ineffective by depriving it of essential funds while refusing to pay the funds due to it on the pretext that it was ineffective."⁶³

Third, in place of Boutros-Ghali's vision for UN peace enforcement, the Directive endorsed the pattern that had taken shape in Iraq and Somalia. The Directive stated: "The greater the US military role, the less likely it will be that the US will agree to have a UN commander exercise overall operational control over US forces. Any large scale participation of US forces in a major peace enforcement mission that is likely to involve combat should ordinarily be conducted under US command and operational control or through competent regional organizations such as NATO or ad hoc coalitions."⁶⁴ The US turned the emerging pattern into its explicit policy.⁶⁵ PDD 25 made clear that the immediate legacy of Somalia was the consolidation of one specific relationship between US military power and the Security Council to the exclusion of alternative relationships and of the world orders that those alternatives would have implied.⁶⁶

Rwanda

Rwanda was the first fallout of the new US policy.⁶⁷ There was already a UN peacekeeping force, UNAMIR, on the ground in Rwanda when the situation

began to degenerate.⁶⁸ In February, 1994, UNAMIR commanders called for increased troop strength under an expanded Security Council mandate, but the Council refused principally due to US and British opposition. The genocide began in April and went on unhindered; when its dimensions began to be known in late April, Boutros-Ghali proposed to the Council on May 13 to send 5500 additional troops to Rwanda. The US refused, arguing that an expanded UN-led peacekeeping operation would need, but did not have, the consent of the Rwandan parties, and that a peace-enforcement operation without Rwandan consent would need, but did not have, a major power to undertake it.⁶⁹ The possibility that the UN could itself lead a peace enforcement mission through UNAMIR, what Boutros-Ghali was calling for, was categorically dismissed; the US refused to create the precedent of UN peace enforcement, even if it meant allowing genocide to take place.

Under extreme pressure the US finally relented, and on June 8 the Council passed Resolution 925 authorizing the deployment of 5500 UN troops with an expanded mandate as the Secretary General had requested. Still, the US continued to resist outside of the Council, impeding the forces' deployment by not providing transport equipment and other logistical support essential to the expansion of UNAMIR. The delay became so severe that in mid-June France volunteered to lead an intervention in Rwanda itself, thus foreclosing the possibility of a UN-led peace enforcement mission to Rwanda. This proposal fit with the preferred American structure for the international use of force, and the US voted for Resolution 929 authorizing the use of "all necessary means" by the French, operating under their own command, to achieve the objectives that had originally been assigned to UNAMIR under the expanded mandate of Resolution 925. The US had, through its intransigence, forced France to undertake the duties that the Secretary General had wanted the UN to do itself.

The Rwanda case made clear that the US would not participate in UN interventions where its national interests were not at stake, nor would it permit the UN to undertake peace enforcement missions on its own. It had proved what it had promised in PDD 25, and the development of a permanent UN military capacity, one of the two essential elements needed for the thickening of legality into a rule of law, was prevented.

US intransigence also had ramifications for the form the Council authorization took, as is apparent when considering the subtle, but fundamental, differences between Resolution 929 and Resolution 925. Resolution 929 introduced its decision to authorize the use of force with the determination that "the magnitude of the humanitarian crisis in Rwanda constitutes a threat to peace and security in the region."⁷⁰ In order to respond to this "crisis," the Resolution authorized the French forces to "use all necessary means" to "contribute to the security and protection of displaced persons, refugees and civilians at risk in Rwanda, including through the establishment and maintenance, where feasible, of secure humanitarian areas."⁷¹ Armed intervention was authorized in order to, *inter alia*, put an

end to “the continuation of systematic and widespread killings of the civilian population.”⁷² Thus, “humanitarian crises” and “systematic and widespread killings” were added to the list of situations considered to be “threats” that could evoke military intervention in response.

In doing so, Resolution 929 replicated the ambiguity and informality of the Somalia resolution. Resolution 929 gave no criteria as to how it had determined the presence of a threat requiring the use of force, and employed vague, informal language to describe the situation to which the use of force was to respond. It was telling that whereas Resolution 925 had specifically invoked the existence of “genocide,” a word with a definitive legal codification in the Genocide Convention and subject to extensive legal deliberation, Resolution 929 excised the word and replaced it with the non-codified, informal phrase “systematic and widespread killings.”⁷³

While Resolution 925 had not once cited the “exceptional” or “unique” nature of the Rwandan situation in authorizing peace enforcement by an expanded UNAMIR, Resolution 929, although authorizing the same deployment of military force, stated that “the current situation in Rwanda constitutes a unique case which demands an urgent response by the international community.”⁷⁴ Resolution 929 justified the use of force by basing it upon the exceptionality of the situation and so, like Somalia’s Resolution 794, rejected the formulation of any precedent that could lead to the development of a formal regime of law. The opportunity to establish a formalized principle that the Security Council would use military force in order to stop genocide was lost.

At the same time, the extensive deliberations and resolutions contributed to the construction of a discourse establishing the moral legitimacy of military intervention in the service of ending mass killings, as had occurred in Somalia with the intervention to end a humanitarian crisis. But even more important for the future of humanitarian intervention was the use to which the US put the failure to intervene in time: the ironic legacy of the Rwandan genocide was that the US used it to create a mandate for unilateral humanitarian intervention. Once the West began its self-flagellation over not having stopped the genocide, the US translated this collective remorse into the dictum: “We can’t let it happen again.” After undermining the UN’s institutional capacity to deal with crises like that in Rwanda, and thus letting the genocide proceed unhindered, the US then turned this lack of intervention, which it blamed on the inefficiency and inflexibility of the UN, into a moral imperative for it to intervene globally regardless of the legal or procedural obstacles that might be presented to such interventions. The US turned Rwanda into the precedent it could invoke in the future to legitimate unilateral humanitarian intervention undertaken at its own discretion. At the same time, the US destroyed the possibility of developing a UN-based institution able to engage in consistent humanitarian interventions on a multilateral basis under a formal legal regime, or developing a formalized standard to be invoked consistently in confronting genocide.

Haiti

US strategy towards Haiti represented the corollary of its strategy towards Rwanda: where Rwanda demonstrated that the US would not intervene where its interests were not at stake, Haiti demonstrated that the US would still pursue Security Council authorization for its own military operations. The US wanted to re-affirm its relationship with the UN despite its non-cooperation over Rwanda and make clear the rules of that relationship.

The coup that had replaced President Aristide by a junta of military officers in September 1991, only nine months after his election, had given rise to a dramatic (by American standards) influx of refugees into south Florida.⁷⁵ Clinton inherited the problem from President Bush, and by 1994 Clinton was under significant domestic and international pressure for his policy of turning boats of refugees back to Haiti. In May, Clinton began to suggest that military intervention to bring Aristide back was a possibility; the administration, ignoring its duties under international law to accept the refugees, had decided that the best “solution” to the domestic political problem of too many Haitians in Florida was to invade and overthrow the government of a sovereign state. Without obvious political, moral, or legal legitimacy, the best available justification for the US-planned invasion was Security Council authorization. So, at almost the same time that Clinton was refusing to approve an intervention into Rwanda, he was setting the stage for Council authorization of the intervention into Haiti.

The US-led military operation would require a resolution authorizing the use of force to overthrow the government of a sovereign state. Major problems would arise if this were to set a precedent for future action; the US simply wanted the mantle of legitimacy that the thin legality of Council authorization offered to its discretionary use of force. Consequently, Security Council Resolution 940 authorizing the invasion was distinguished by an unprecedented deformatization of its argumentation.

This was the first time the use of force had been authorized to overthrow an undemocratic government – for this reason, many have seen the authorization of Operation Uphold Democracy as the “high-water mark of Council activism in the 1990s.”⁷⁶ But to attribute this activism to the Council elides the US as the catalyst of the Council’s agency; indeed, this “high point” of Council activism required a very actively flexible Council to fit its resolutions around American military force and to simultaneously avoid any precision or formalization of its reasoning. Moreover, this “activism” simultaneously was complemented by dramatic inaction in the case of Rwanda – inaction equally at the behest of the US.

Resolution 940 was unambiguous as to what it authorized, namely, for “Member States to form a multinational force under unified command and control and, in this framework, to use all necessary means to facilitate the departure from Haiti of the military leadership, . . . the prompt return of the legitimately elected president, and the restoration of the legitimate authorities of the Government of Haiti.”⁷⁷

But this unambiguous authorization of an invasion and occupation was matched by extreme ambiguity as to the justification of the intervention. The Resolution began by listing various aspects of the situation in Haiti in a number of different paragraphs: the de facto regime's "continuing disregard" of international agreements; the "further deterioration of the humanitarian situation"; "violations of civil liberties"; and the "desperate plight of Haitian refugees."⁷⁸ The resolution subsequently determined, in a different paragraph, "that the situation in Haiti continues to constitute a threat to peace and security in the region,"⁷⁹ thus requiring military intervention – but without explaining which of the previously listed factors had given rise to that determination. In the resolutions concerning Iraq, Somalia, and Rwanda, one factor had been singled out as giving rise to the threat and requiring remedy through military force. But in the Haiti case, the resolution would not specify what had caused the threat to peace and security nor which factor had legitimated the use of force. This ad hoc style of justification – the assemblage of a number of unrelated, individually inadequate, claims that in aggregate presumably justify military intervention – made the establishment of any kind of definitive precedent impossible, because the reasoning offered no guidance regarding what factors were necessary to create a threat to peace and security that would legitimate armed intervention.

To establish the unquestionable exceptionality of the military action, Resolution 940 cited "the *unique* character of the present situation in Haiti and its deteriorating, *complex* and *extraordinary* nature, requiring an *exceptional* response" (emphases added).⁸⁰ The danger of establishing a precedent for military interventions to eliminate undemocratic regimes meant that both the US and the other P5 were interested in making the resolution as vague and non-precedent setting as possible. For this reason, the resolution refused to present the lack of democracy alone as causing a threat to peace and security, but combined it with a variety of other factors and presented the use of force in this case as an exception to meet an unique, complex, and extraordinary situation. Once again, the legal formalization of the regulation of the use of military force in response to humanitarian imperatives was prevented. But, again, a discourse of the moral legitimacy of armed intervention for humanitarian purposes was further entrenched.

The military operation would take America's preferred pattern: the US would lead an initial invasion, and once the government was overthrown and peace and security had been established, the Americans would hand off to a UN peacekeeping force. In practice, however, the US invasion was rendered unnecessary by the last-minute flight of the coup regime; without the initial use of overwhelming American firepower, the possibility for a resurgence of violence against the occupying forces was too significant for the US to allow the UN to take control even over the peacekeeping operation. So the US took command over peacekeeping as well, and US domination of the operation led to the resignation of the UN special envoy to Haiti, Dante Caputo, who explained: "In effect the total absence of consultation and information from the United States Government makes me believe

this country has in fact taken the unilateral decision of acting on its own in the Haitian process.”⁸¹

Bosnia

Security Council involvement with the former Yugoslavia spanned years and gave rise to dozens of resolutions. None of these resolutions, however, was characterized by any legal formalization. For example, in the first important resolution, 713 (1991), the Council stated that it was “deeply concerned by the fighting in Yugoslavia which is causing a heavy loss of human life and material damage, and by the consequences for the countries of the region, in particular in the border areas of neighbouring countries,” and, avoiding even a “determination,” stated that it was “concerned that the continuation of this situation constitutes a threat to international peace and security.”⁸² The first resolution to authorize the use of military force, Resolution 770 (1992), only “recognized” that “the situation in Bosnia and Herzegovina constitutes a threat to international peace and security and that the provision of humanitarian assistance in Bosnia and Herzegovina is an important element in the Council’s effort to restore international peace and security in the area.”⁸³ By 1993, the resolutions had adopted a formula: “Determining that the grave situation in the Republic of Bosnia and Herzegovina continues to be a threat to international peace and security.”⁸⁴

The new element that was introduced by the resolutions as contributing to the “grave situation” was “ethnic cleansing.” As Resolution 836 stated: “Reaffirming once again that any taking of territory by force or any practice of ‘ethnic cleansing’ is unlawful and totally unacceptable.” Thus, ethnic cleansing entered the discourse of moral justification for military intervention – a category devoid of legal specificity, it became a dominant theme in the Clinton administration’s justification for Kosovo.

The history of the intervention into the former Yugoslavia was characterized by the fall of UN commanded and controlled forces and the rise of NATO airpower. As noted, a UN peacekeeping force, UNPROFOR, was given by Resolution 770 the duty of facilitating the delivery of humanitarian aid. In June of 1993 the Security Council, under Resolution 836, extended the UNPROFOR mandate to allow it to “deter attacks” against UN-declared “safe areas” by Bosnian Serb forces.⁸⁵ NATO was authorized by the same resolution to “take, under the authority of the Security Council and subject to close coordination with the Secretary General and UNPROFOR, all necessary measures, through the use of air power, in and around the safe areas in the Republic of Bosnia and Herzegovina, to support UNPROFOR in the performance of its mandate.”⁸⁶

When Bosnian Serb forces shelled Sarajevo in February 1994, Boutros-Ghali gave NATO permission to carry out air strikes in response, and NATO began several months of sporadic air strikes in defense of the safe havens.⁸⁷ A second phase of NATO bombing began in April 1995 in response to a series of offensives by

Bosnian Serbs against the safe havens; while the US was increasingly eager to launch a full-scale air war against the Bosnian Serbs, it faced resistance from European states and from the lengthy UN chain of authority that controlled the use of air power. On July 11, the safe haven of Srebrenica was captured and its inhabitants massacred by Bosnian Serb forces apparently due to the UN's hesitation in calling in NATO air strikes. By the end of July, with other UN safe havens in danger, the US plan to end Bosnian Serb aggression through "disproportionate" air strikes against a wide range of Bosnian Serb positions was approved by NATO.⁸⁸ Boutros-Ghali also considerably shortened the UN chain of authority, giving wide discretion to the US, and on August 30, the American plan of "disproportionate" bombing, named Operation Deliberate Force, was put into action. Faced with the NATO bombing, a Croatian ground offensive, and threats of a re-armed Bosnian Federation government, the Bosnian Serbs capitulated by mid-September.

After the end of the conflict, the Security Council passed Resolution 1031, which simply rubberstamped the peacekeeping force established by NATO. The resolution first authorized "the Member States acting through or in cooperation with the organization referred to in Annex 1-A of the Peace Agreement to establish a multinational implementation force (IFOR) under unified command and control."⁸⁹ It subsequently authorized, "Member States to take all necessary measures, at the request of IFOR, either in defence of IFOR or to assist the force in carrying out its mission, and recognizes the right of the force to take all necessary measures to defend itself from attack or threat of attack."⁹⁰ NATO was given permission to use military force at its discretion.

The principle consequence of the Bosnia interventions was the humiliation of UN peacekeeping, as Srebrenica was blamed on its institutionalized vacillation. As after Rwanda, the US appropriated the massacres and "ethnic cleansing" by Bosnian Serbs to argue for the moral necessity of circumventing the legal and institutional regulation of the use of force in humanitarian intervention. Simultaneously, NATO emerged as the definitive arbiter of the military affairs of the greater Europe.⁹¹ After Bosnia it was US airpower that was to hang over any conflict, ready to strike at a moment's notice. Precision US airpower was contrasted with UN military incompetence; each disproportionate US military operation had a necessary symbolic role in the investiture of American power globally and the divestiture of the Security Council as the body responsible for the collective security of the post-Cold War world, entailing the concurrent devaluation of its Charter-based role as the exclusive source for the legitimacy of the international use of force.

V. Conclusion

During the 1990s, the mode by which the Security Council authorized its own interventions constructed the conditions for the one global superpower to legitimate its use of force against other states without Council authorization. As

vague, moral-humanitarian justifications for military interventions authorized by the Council preempted the possibility of legal formalization of the regulation of the use of force, a discourse establishing the sufficiency of such moral-humanitarian claims, to the exclusion of legal claims, was entrenched. In Kosovo, the US took advantage of this and abandoned the Security Council, the legality it provided, and, in fact, the language of law altogether in favor of generalized moral-humanitarian claims to justify its bombing campaign. At the same time, the UN was prevented from enforcing its own resolutions, and then, with its capacity having been greatly depleted, UN military operations were condemned as inefficient, ineffective, and even dangerous. Thus, for the US to undertake the Kosovo intervention without any UN military role was also firmly within a decade-long trend.

This is not to say that if the Security Council had refused to undertake this ill-conceived expansion of its responsibilities, the US would have been prevented from launching the unilateral military operations and occupations that have characterized its foreign policy since 1999, and especially since 9/11. As long as the US retains extremely asymmetrical military, political, and especially economic power relative to the rest of the world, any limitation upon its use of force internationally will be tenuous and subject to rupture. This is exactly why it is so important for the Security Council to maintain its role as the only body with the legitimate authority to use force in international affairs. Although the motivations of the other P5 may be less than noble in obstructing military interventions, the Council is the only broadly recognized and historically established international institution that can serve as a legal brake upon the US military. For the Security Council to alienate its authority through bad faith resolutions or willingly to drop its role of regulating the use of military force and to relegate itself to a reconstruction role is irresponsible and dangerous, and effectively hands over the job of regulating the use of force to the only global superpower when it is precisely that superpower that needs regulation. The Security Council must retain its role of regulating the use of force, and, in this respect, it is important to insist upon the sacrosanct character of the Charter regime of *jus ad bellum*.

But this thin legality, I have argued, is not enough – it is insufficient to guarantee the international rule of law given the wide range of interventions now possible through expansive readings of the Charter and interpretations of “threats to peace and security.” While the Council must maintain its monopoly on the legitimate use of force in international affairs, its decisions, too, must conform to a rule of law, especially in addressing these new threats. Humanitarian interventions without this thick legality are too easily instrumentalized by the sole superpower, and instead of building a world order based upon the rule of law, these unregulated interventions destroy its very possibility. In its expansion of the definition of “peace and security” so as to justify humanitarian military interventions, the Council must articulate consistent, precise, and formal standards and arguments. These standards and arguments could become matters for rational debate, applied by international courts and domestic courts, and used by states to

legitimate arguments for or against certain interventions. In short, the Council could catalyze the construction of a new rule of law regime governing the use of force with itself at the center of interpretation and enforcement. While this possibility was excluded in the early post-Cold War years, the present crisis of the Council in the face of the Iraq War may provide the conditions for the realization of new projects and alternatives.

While insisting upon the Council's monopoly over the legitimate use of force and upon the consistent employment of legal argumentation by the Council, an additional, more short-term strategy for the preservation of the rule of law could be to demand the respect for and enforcement of the "hard law" we already have at our disposal for regulating the use of military force, that is, the law of *jus in bello*, principally codified in the Geneva Conventions. This will not prevent the use of force without Council authorization, but may serve as a limitation upon the instrumental use of the thin legality granted by the Council. We can demand that any operation authorized by the Council must be held to strict standards of *jus in bello*; thus, international pressure could push the Security Council to consider carefully decisions to issue the US *carte blanche* for its military adventures, since the Council and its member states could be held legally responsible for violations of *jus in bello* occurring under a Security Council-authorized operation. This would be one way of bringing the Council, and the use of force, back within the law in the short run – a solution much to be desired since US military operations are increasingly characterized by their disproportionality, and proportionality itself is a fundamental legal requirement for any military operation under *jus in bello*.

NOTES

1. For the first debate among American legal scholars, see Editorial Comments on "NATO's Kosovo Intervention" in *American Journal of International Law* 93, no. 4 (October 1999): 824–62. For a comprehensive range of views, see William Joseph Buckley, *Kosovo: Contending Voices on Balkan Interventions* (Grand Rapids: William B. Eerdmans, 2000). For positions by European philosophers and political theorists, see the special issue of *European Journal of Social Theory* 4, no. 1 (February 2001).

2. There were other cases where the US had used force without Security Council authorization, such as in Operation Just Cause in Panama (1989), some of the early missile and aircraft strikes used to enforce the no-fly zones over Iraq (1991–2), and Operation Infinite Reach in Sudan and Afghanistan (1998); but in these cases, the US had justified the use of force as being in self-defense under Article 51 of the UN Charter. In Kosovo the US made no claim under Article 51 and so entirely abandoned Charter legality.

3. Jules Lobel and Ruth Wedgwood, from opposite ends of the political spectrum, agree on this point; see Jules Lobel, "American Hegemony and International Law: Benign Hegemony? Kosovo and Article 2(4) of the U.N. Charter," *Chicago Journal of International Law* 1 (Spring 2000): 19–36; and Ruth Wedgwood, "NATO's Campaign in Yugoslavia," *American Journal of International Law* 93, no. 4 (October 1999): 828–34.

4. See W. Michael Reisman, "Kosovo's Antinomies," *American Journal of International Law* 93, no. 4 (October 1999): 860–62; Wedgwood agrees in "NATO's Campaign in Yugoslavia."

5. See Lobel, "American Hegemony and International Law"; and Danilo Zolo, *Invoking Humanity: War, Law, and Global Order* (New York: Continuum, 2002). See also Simon Chesterman, "Legality Versus Legitimacy: Humanitarian Intervention, the Security Council, and the Rule of Law," *Security Dialogue* 33, no. 3 (September 2002): 293–307.

6. This position is widely expressed; see Independent International Commission on Kosovo, *The Kosovo Report: Conflict, International Response, Lessons Learned* (Oxford: Oxford University Press, 2000); Tzvetan Todorov, "Duty to Intervene or Duty to Assist?" in Nicholas Owen, ed., *Human Rights, Human Wrongs*, Oxford Amnesty Lectures 2001 (Oxford: Oxford University Press, 2003); Martti Koskenniemi, "'The Lady Doth Protest Too Much': Kosovo and the Turn to Ethics in International Law," *Modern Law Review* 65, no. 2 (March 2002): 159–75; and Jonathan Charney, "Anticipatory Humanitarian Intervention in Kosovo," *American Journal of International Law* 93, no. 4 (October 1999): 834–41.

7. Louis Henkin, "Kosovo and the Law of 'Humanitarian Intervention,'" *American Journal of International Law* 93, no. 4 (October 1999): 824. The principal expression of this "soul searching" has been in a rapidly expanding literature on humanitarian intervention; see generally *Humanitarian Intervention: Ethical, Legal, and Political Dilemmas*, ed. J.L. Holzgrefe and Robert O. Keohane (Cambridge: Cambridge University Press, 2003); David Chandler, *From Kosovo to Kabul: Human Rights and International Intervention* (London: Pluto, 2002); Simon Chesterman, *Just War or Just Peace? Humanitarian Intervention and International Law* (Oxford: Oxford University Press, 2001); Albrecht Schnabel and Ramesh Chandra Thakur, *Kosovo and the Challenge of Humanitarian Intervention: Selective Indignation, Collective Action, and International Citizenship* (Tokyo & New York: United Nations University Press, 2000); Jennifer M. Welsh, *Humanitarian Intervention and International Relations* (Oxford: Oxford University Press, 2004); Nicholas J. Wheeler, *Saving Strangers: Humanitarian Intervention in International Society* (New York: Oxford University Press, 2000).

8. See Chandler, *From Kosovo to Kabul: Human Rights and International Intervention*; and Tom J. Farer, "Humanitarian Intervention before and after 9/11: Legality and Legitimacy," in Holzgrefe and Keohane, eds., *Humanitarian Intervention*, 53.

9. On this point, see Jules Lobel and Michael Ratner, "Bypassing the Security Council: Ambiguous Authorizations to Use Force, Cease-Fires, and the Iraqi Inspection Regime," *American Journal of International Law* 93, no. 1 (January 1999): 124–154; and Chesterman, "Legality versus Legitimacy."

10. See United Nations Institute for Training and Research, *The United Nations and the Maintenance of International Peace and Security* (Boston: Kluwer, 1987); see esp. Asbjorn Eide, "Outlawing the Use of Force: The Efforts by the United Nations," *ibid.*, 99–145, who frames the UN charter as propelling a shift "from *Jus ad Bellum* to *Jus contra Bellum*" (100).

11. For a discussion of this position and rival interpretations, see *ibid.*, 106. An important articulation of this position is found in Ian Brownlie, *International Law and the Use of Force by States* (Oxford: Clarendon, 1981).

12. Article 51 states: "Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security."

13. Article 24(1) states: "Members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf." Article 42 states that the Security Council "may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations." For the debate over the extent of Council powers and their origin, see Sydney Dawson Bailey and Sam Daws, *The Procedure of the UN Security Council* (Oxford: Clarendon, 1998); Richard Hiscocks, *The Security Council: A Study in Adolescence* (New York: Free Press, 1974).

14. This issue, and the extent to which The Security Council has the authority to intervene in states' internal affairs has been a topic of controversy since the framing of the Charter; for a

discussion, see Abdelazim Elganzoury, *Evolution of the Peace Keeping Powers of the General Assembly of the United Nations* (Cairo: General Egyptian Book Organization, 1978), 26.

15. See the discussion in Martti Koskenniemi, "The Place of Law in Collective Security," *Michigan Journal of International Law* 17 (Winter 1996): 455–90.

16. *Ibid.*, 458.

17. See Ramesh Thakur, "UN Peacekeeping in the New World Disorder," in Ramesh Chandra Thakur and Carlyle A. Thayer, eds., *A Crisis of Expectations: UN Peacekeeping in the 1990s* (Boulder: Westview, 1995), 4.

18. Boutros Boutros-Ghali, "Introduction," in United Nations, *The United Nations and the Iraq-Kuwait Conflict, 1990–1996* (New York: Dept. of Public Information United Nations, 1996), 3.

19. S/RES/678, 29 November 1990.

20. For a discussion of the concepts of command and control in the context of UN peace keeping and the US and NATO roles, see Andrei Raevsky, "Peacekeeping Operations: Problems of Command and Control," in Thakur and Thayer, eds., *A Crisis of Expectations*, 193–206.

21. Resolution 678 (1990), Article 2.

22. As Boutros-Ghali explained, Cuba "objected to the Council's authorization of military action that would not be subject to the command or control of the United Nations." Boutros-Ghali, "Introduction," in United Nations, *The United Nations and the Iraq-Kuwait Conflict*, 23.

23. *Ibid.*, 25.

24. *Ibid.*, 26.

25. See the chronology in *ibid.*, 120–122.

26. Cited in Boutros-Ghali, "Introduction," *ibid.*, 33.

27. Quoted in Michael G. MacKinnon, *The Evolution of US Peacekeeping Policy under Clinton: A Fairweather Friend?* (London & Portland, OR: F. Cass, 2000), xv.

28. See Stephen Lewis, Clovis Maksoud, and Robert C. Johansen, "The United Nations after the Gulf War," *World Policy Journal* 8, no. 3 (Summer 1991): 539–74.

29. See Koskenniemi, "The Place of Law in Collective Security," 477; MacKinnon, *The Evolution of US Peacekeeping Policy under Clinton*, xiv; and Edward C. Luck, "The United Nations, Multilateralism, and U.S. Interests," in C. William Maynes and Richard S. Williamson, eds., *U.S. Foreign Policy and the United Nations System* (New York: W.W. Norton, 1996), 40.

30. Kenneth Christie, "Peacekeeping or Peace-Enforcement?" in Thakur and Thayer, *A Crisis of Expectations*, 252. Thakur characterizes this as a "crisis of expectations" in which "the zeal to intervene everywhere" has led to overreach and disappointment; Thakur, "UN Peacekeeping in the New World Disorder," in *ibid.*, 22.

31. See, generally, Karen A. Mingst and Margaret P. Karns, *The United Nations in the Post-Cold War Era* (Boulder: Westview, 1995); Jennifer Sterling-Folker, "Between a Rock and a Hard Place: Assertive Multilateralism and Post-Cold War U.S. Foreign Policy Making," in James M. Scott, ed., *After the End: Making U.S. Foreign Policy in the Post-Cold War World* (Durham, NC: Duke University Press, 1998), 277; David Malone, "The Security Council in the post-Cold War Era," in Muthiah Alagappa and Takashi Inoguchi, eds., *International Security Management and the United Nations* (Tokyo & New York: United Nations University Press, 1999), 394; Thomas G. Weiss, David P. Forsythe, and Roger A. Coate, eds., *The United Nations and Changing World Politics* (Boulder: Westview, 2001), 74; and Joseph Leggold and Thomas G. Weiss, *Collective Conflict Management and Changing World Politics* (Albany: SUNY Press, 1998).

32. UN Doc. S/23500 (1992).

33. For discussions of the political relevance of *Agenda for Peace*, see generally Stephen Franklin Burgess, *The United Nations under Boutros Boutros-Ghali, 1992–1997* (Lanham, MD: Scarecrow, 2001), 8; and David Cox, "Exploring An Agenda for Peace: Issues Arising from the Report of the Secretary-General," Canadian Centre for Global Security, Ottawa, 1993.

34. Boutros Boutros-Ghali, *An Agenda for Peace, 1995: With the New Supplement and Related UN Documents* (New York: United Nations, 1995); UN Doc. A/47/277–S/24111, 17 June 1992, para. 3.

35. *Ibid.*, para. 11.

36. *Ibid.*, para. 13.

37. Michael Doyle calls this a “strikingly intrusive interpretation of Chapter VII provisions concerning international peace and security,” endorsing “a radical expansion in the scope of collective intervention”; Doyle, “Managing Global Security: The United Nations Not a War Maker, a Peace Maker” in Maynes and Williamson, eds., *U.S. Foreign Policy and the United Nations System*, 54. Others see it as a less radical break; see Weiss, Forsythe, and Coate, *The United Nations and Changing World Politics*, 35.

38. Burgess, *The United Nations under Boutros Boutros-Ghali*, 10.

39. Boutros-Ghali, *An Agenda for Peace*, para. 42–43.

40. Boutros-Ghali recognized that PDD 25 had marked the end of the possibility of a UN peace enforcement capacity in his letter of 18 September 1995; quoted in MacKinnon, *The Evolution of US Peacekeeping Policy under Clinton*, 115.

41. I here draw upon Lon Fuller’s concept of the rule of law; see Lon Fuller, *The Morality of Law* (New Haven: Yale University Press, 1969). There are other suggestions on how to re-align the Security Council’s use of force with the rule of law; see Jose E. Alvarez, “Judging the Security Council,” *American Journal of International Law* 90, no. 1 (January 1996): 1–39. W. Michael Reisman argues for the introduction of a consultation process between the Council and the General Assembly in “The Constitutional Crisis in the United Nations,” *American Journal of International Law* 87, no. 1 (January 1993): 83–100. Oscar Schachter in “United Nations Law,” *American Journal of International Law* 88, no. 1 (January 1994): 1–23, argues that “determinacy, consistency, coherence” are “problematical standards for UN political bodies such as the Security Council” (9), criticizing Thomas Franck’s *The Power of Legitimacy among Nations* (New York: Oxford University Press, 1990).

42. Koskeniemi, “The Place of Law in Collective Security” (480), describes law as providing a language for a new international community.

43. Burgess, *The United Nations under Boutros Boutros-Ghali*, 185.

44. See John L. Hirsch and Robert B. Oakley, *Somalia and Operation Restore Hope: Reflections on Peacemaking and Peacekeeping* (Washington, DC: United States Institute of Peace Press, 1995), 35–47. My account draws upon that volume and also: Alexander De Waal, *Famine Crimes: Politics & the Disaster Relief Industry in Africa* (Oxford: James Currey, 1997), 159–204; Boutros Boutros-Ghali, “Introduction,” in United Nations, *The United Nations and Somalia, 1992–1996* (New York: United Nations Dept. of Public Information, 1996), 3–87; Walter S. Clarke and Jeffrey Ira Herbst, eds., *Learning from Somalia: The Lessons of Armed Humanitarian Intervention* (Boulder: Westview, 1997); and Robert G. Patman, “The UN Operation in Somalia,” in Thakur and Thayer, *A Crisis of Expectations*, 85–104. For a brief account of the history of US-Somali relations in the context of the intervention, see Peter J. Schraeder, “From Ally to Orphan: Understanding U.S. Policy toward Somalia after the Cold War” in Scott, *After the End*, 331–332.

45. Earlier in 1992, Boutros-Ghali had accused the Security Council of being concerned with a “rich man’s war” in the former Yugoslavia, while Somalia fell further into crisis without notice; cited in Patman, “The UN Operation in Somalia,” in Thakur and Thayer, *A Crisis of Expectations*, 92.

46. Preambular para. 3; para. 12.

47. De Waal questions whether there even was a humanitarian crisis at the time of the intervention; see de Waal, *Famine Crimes*, 179.

48. Preambular para. 2.

49. Para. 4 (a-g).

50. Para. 5.

51. Thakur in Thakur and Thayer, *A Crisis of Expectations*, 11.

52. See Burgess, *The United Nations under Boutros Boutros-Ghali*, 75–77; and MacKinnon, *The Evolution of US Peacekeeping Policy under Clinton*, 21.

53. Michael Doyle writes in response, “current evidence suggests that the United Nations has proven to be a very ineffective war maker”; “Managing Global Security” in Maynes and Williamson, eds., *U.S. Foreign Policy and the United Nations System*, 55.

54. See Jennifer Sterling-Folker, “Between a Rock and a Hard Place,” in Scott, *After the End*, 290. For a general history of the US administration’s attitude towards UN peacekeeping and peace enforcement, see MacKinnon, *The Evolution of US Peacekeeping Policy under Clinton*.

55. For general discussions of PDD 25, see MacKinnon, *The Evolution of US Peacekeeping Policy under Clinton*, 26–30; Ivo H. Daadler, “Knowing When to Say No: The Development of US Policy for Peacekeeping,” in William J. Durch, ed., *UN Peacekeeping, American Politics, and the Uncivil Wars of the 1990s* (New York: St. Martin’s, 1996), 35–67.

56. “Administration Policy on Reforming Multilateral Peace Operations,” Publication 10161, Washington DC: Department of State, Bureau of International Organizational Affairs, May 1994. Reprinted in *International Legal Materials* 33 (May 1994): 795–813.

57. *Ibid.*, 813.

58. *Ibid.*, 801.

59. *Ibid.*, 804.

60. *Ibid.*, 803.

61. *Ibid.*, 802.

62. *Ibid.*, 805.

63. Eric Rouleau, “Why Washington Wants Rid of Mr. Boutros-Ghali,” *Le Monde Diplomatique*, November 1996.

64. “Administration Policy on Reforming Multilateral Peace Operations,” *International Legal Materials*, 808.

65. For the contextualization of PDD 25 in US policy on command and control, see Raevsky, “Peacekeeping Operations: Problems of Command and Control,” in Thakur and Thayer, *A Crisis of Expectations*, 196.

66. Of course, the policy articulated in PDD 25 was not unanimous within the US policy establishment; see Luck, “The United Nations, Multilateralism, and U.S. Interests,” in Maynes and Williamson, eds., *U.S. Foreign Policy and the United Nations System*, 47–49.

67. For the connection between PDD 25 and US refusal to permit intervention in Rwanda, see MacKinnon, *The Evolution of Us Peacekeeping Policy under Clinton*, 107.

68. My account of the history of the Rwanda intervention draws upon Boutros Boutros-Ghali, “Introduction,” in United Nations, *The United Nations and Rwanda, 1993–1996* (New York: Dept. of Public Information United Nations, 1996), 3–111; and Michael N. Barnett, *Eyewitness to a Genocide: The United Nations and Rwanda* (Ithaca: Cornell University Press, 2002); Arthur Jay Klinghoffer, *The International Dimension of Genocide in Rwanda* (New York: NYU Press, 1998); Alan J. Kuperman, *The Limits of Humanitarian Intervention: Genocide in Rwanda* (Washington, DC: Brookings Institution, 2001), 1–37; Gérard Prunier, *The Rwanda Crisis: History of a Genocide* (New York: Columbia University Press, 1995), 192–311.

69. Sean Murphy, *Humanitarian Intervention: The United Nations in an Evolving World Order* (Philadelphia: University of Pennsylvania Press, 1996), 245.

70. Preambular para. 10.

71. Resolution 929, para. 3, refers to Resolution 925, para. 4 (a), which is where this formulation comes from.

72. Resolution 929, preambular para. 8.

73. Resolution 925, preambular para. 6.

74. Resolution 929, preambular para. 9.

75. My account of the Haitian intervention draws upon David Malone, *Decision-Making in the UN Security Council: The Case of Haiti, 1990–1997* (Oxford: Clarendon, 1998); John R. Ballard, *Upholding Democracy: The United States Military Campaign in Haiti, 1994–1997* (Westport, CN: Praeger, 1998); Morris Morely and Chris McGillion, “‘Disobedient’ Generals and the Politics of Redemocratization: The Clinton Administration and Haiti,” in Demetrios James Caraley, ed., *The New American Interventionism: Lessons from Successes and Failures* (New York: Columbia University Press, 1999), 113–34.

76. Chesterman, *Just War or Just Peace?*, 151.

77. Para. 4.

78. Preambular para. 3–8.

79. Preambular para. 10.

80. Para. 2.

81. Murphy, *Humanitarian Intervention*, 279–280.

82. Preambular para. 3–4.

83. Preambular para. 5.

84. Resolution 816 (1993), preambular para. 7.

85. Para. 5, 9.

86. Para. 10.

87. My account draws generally on William J. Durch and James A. Shear, “Fault Lines: UN Operations in the Former Yugoslavia,” in William J. Durch, ed., *UN Peacekeeping, American Politics, and the Uncivil Wars of the 1990s* (New York: St. Martin’s, 1996), 193–274; Spyros Economides and Paul Taylor, “Former Yugoslavia,” in James Mayall, ed., *The New Interventionism 1991–1994: United Nations Experience in Cambodia, Former Yugoslavia, and Somalia* (Cambridge: Cambridge University Press, 1996), 59–93; Susan L. Woodward, “International Aspects of the Wars in Former Yugoslavia,” in Jasminka Udovicki and James Ridgeway, eds., *Burn This House: The Making and Unmaking of Yugoslavia* (Durham: Duke University Press, 1997), 215–44; Tom Gallagher, *The Balkans After the Cold War: From Tyranny to Tragedy* (London & New York: Routledge, 2003), 89–192.

88. See “Russia Holds Key to Action by Allies: France Back American Plan for Air Strikes against Bosnian Serbs,” *The Guardian*, London, July 21, 1995.

89. Para. 14.

90. Para. 17.

91. See Joseph Lepgold, “NATO’s Post-Cold War Conflict Management Role,” in Lepgold and Weiss, eds., *Collective Conflict Management and Changing World Politics*, 57.

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