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Stephen M. De Luca

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# THE GULF CRISIS AND COLLECTIVE SECURITY UNDER THE UNITED NATIONS CHARTER

## INTRODUCTION

The international response to Iraq's invasion of Kuwait stirred hope in many people around the world that, for the first time since it was created forty-five years ago, the United Nations can fulfill its role as the keeper of international peace and security.<sup>1</sup> For the first time since 1950, during the Korean Conflict, the Security Council adopted resolutions<sup>2</sup> condemning an act of aggression, calling for universal action to stop the aggression, and imposing sanctions to force the aggressor out of the invaded territory.<sup>3</sup> The most remarkable aspect of the adoption of these resolutions is not that the Soviet Union did not boycott the Council, as it did in the Korean Conflict,<sup>4</sup> but that no permanent member of the Security Council<sup>5</sup> used its veto power<sup>6</sup> to

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<sup>1</sup> Greenberger & Shribman, *Coming of Age: U.N., Long Stymied By Cold War, Begins to Fulfill Its Promise*, Wall St. J., Aug. 30, 1990, at A1, col. 1.

<sup>2</sup> For a full discussion of the resolutions adopted in the Gulf Crisis, see *infra* notes 55-160 and accompanying text. For a full discussion of the resolutions adopted in the Korean Conflict, see *infra* notes 161-73 and accompanying text.

<sup>3</sup> Lewis, *Security Council Votes 13 to 0 to Block Trade with Baghdad; Facing Boycott, Iraq Slows Oil*, N.Y. Times, Aug. 7, 1990, at A1, col. 6.

<sup>4</sup> Woolsey, *The "Uniting for Peace" Resolution of the United Nations*, 45 AM. J. INT'L L. 129 (1951).

<sup>5</sup> The five permanent Members of the Security Council are the Republic of China, France, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and the United States of America. U.N. CHARTER art. 23, para. 1.

<sup>6</sup> The veto power is derived from the permanent members' each having to vote concurrently with any resolution not involving procedural matters of the Security Council. U.N. CHARTER art. 27, para. 3. The article provides, in its entirety:

1. Each member of the Security Council shall have one vote.

2. Decisions of the Security Council on procedural matters shall be made by an affirmative vote of nine members.

3. Decisions of the Security Council on all other matters shall be made by an affirmative vote of nine members including the concurring votes of the permanent members; provided that, in decisions under Chapter VI, and under paragraph 3 of Article 52, a party to a dispute shall abstain from voting.

U.N. CHARTER art. 27.

prevent the Council from acting.

In view of the cooperation between the United States and the Soviet Union in the post-cold war era,<sup>7</sup> the Security Council has a better chance of fulfilling its role as the body of the United Nations charged with the primary responsibility of maintaining international peace and security.<sup>8</sup> However, it may be imprudent to assume that now all international disputes can be solved without strengthening the United Nations' hand in resolving these conflicts.<sup>9</sup>

The United Nations was created in view of the League of Nations' inability to prevent war.<sup>10</sup> The United Nations Charter was framed based on the idea of collective security.<sup>11</sup> The nations of the world gathered at the General Assembly's first meeting with the expectation that by giving up some of their sover-

<sup>7</sup> Reisman, *International Law After the Cold War*, 84 AM. J. INT'L L. 859, 861 (1990). The definition of cold war is:

[a]n international term for state of tension between the capitalistic Powers and the USSR. Introduced by the American Senator B. Baruch in a speech made in Colombia [sic] S. Carolina on Apr. 16, 1947, popularized that year in a book by the American publicist W. Lipmann entitled *Cold War*. According to the opinion of J.K. Gailbraith the cold war in 1946-66 was in close relation to the development of industry, which expressed itself in the arms race, while the next impulses were found in the space race. A new wave of a cold war after a period of detente started in the 1980s.

ENCYCLOPEDIA OF THE UNITED NATIONS AND INTERNATIONAL AGREEMENTS 158 (Taylor & Francis ed. 1985) [hereinafter ENCYCLOPEDIA].

<sup>8</sup> U.N. CHARTER art. 24, para. 1. This provides: "1. In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf." *Id.*

<sup>9</sup> Keyes, *The U.N., A Wobbly House of Cards*, Wall St. J., Aug. 30, 1990, at A8, col. 4. "It would be a mistake to believe that the U.N.'s ability to deal with the Gulf situation means that the organization itself can suddenly overcome its inherent structural and political deficiencies." *Id.* at col. 6.

<sup>10</sup> Lewis, *The Big Voice: A Debate About the Powers At the U.N.*, N.Y. Times, Aug. 12, 1990, § 4, at 3. The article explains:

Remembering the failure of the League of Nations and the horrors of the war that followed, the five major victors saw a powerful Security Council as the key-stone, alongside the deliberative General Assembly, in a system of *collective security* that would make another such conflict impossible.

*Id.* (emphasis added).

<sup>11</sup> The term collective security is defined as: "[a]n international term from the interwar period, originating from the preamble of the Covenant of the League of Nations, which obligated all nations to solidarity 'for their peace and security'." ENCYCLOPEDIA, *supra* note 6, at 158.

eign rights their security and international peace would be maintained.<sup>12</sup>

Collective security is the commitment by nations to resolve disputes, regardless of nationalistic concerns. When diplomacy has failed, nations committed to collective security can lend their armed forces to help settle a dispute. In the most prolific example of a collective security arrangement, nations send their forces to defend or liberate an invaded nation, in situations where they normally would have acted in their own national interest by either: (1) remaining neutral and not sending forces or

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<sup>12</sup> Address of Chairman of First General Assembly (January 10, 1946) in FROM COLLECTIVE SECURITY TO PREVENTIVE DIPLOMACY 217 (Larus ed. 1965) [hereinafter COLLECTIVE SECURITY]. This provides, in pertinent part:

Determined to save succeeding generations from the scourge of war which, twice in our lifetime, has brought untold sorrow to mankind, and imbued with an abiding faith in freedom and justice, we have come to this British capital, which bears upon it the deep impress of a heroic majesty, to constitute the General Assembly of the United Nations and to make a genuine and sincere beginning with the application of the San Francisco Charter. That instrument, having been freely and democratically debated, has been unreservedly accepted by all in the knowledge that the machinery set up under its provisions will prove adequate to the achievement of its historic purpose; this, in a word, is the maintenance of peace and security by *collective recourse*, when needed, to the use of land, sea and air forces and the establishment, through cooperation in the economic, social, educational and humanitarian fields, of those conditions of stability and well-being which will ensure peaceful and friendly relations, based on the principle of equal rights and self-determination among the nations of the world.

....  
In the achievement of this task, all of us, great and small, strong and weak, will give our unqualified and unhesitating support.

The five great Powers which, by virtue of Articles 24 and 27 of the Charter, and by the very nature of things, will shoulder the chief responsibility for the maintenance of peace and security, will bring not only the immense power of their military, financial and industrial resources, but something more important, without which their very power would be nothing but the prelude to an unthinkable cataclysm; I mean good will, divested of every shred of intrigue or trickery, and that spirit of co-operation which is vital in order to maintain among them of good understanding upon which our whole Organization rests.

In signing the Charter, the other Powers have already deposited as their first contribution to this great undertaking, a large part of that which they hold most dear and most precious, a large part, that is, of their sovereignty. They made this sacrifice with deep emotion, but without hesitation, in the belief that here was the beginning of a new era in which their security would be *collectively guaranteed* by adequate and effective means, and any aggression or attempt at aggression directed against them would be severely repressed.

*Id.* at 217-18 (emphases added).

(2) sending forces to aid the aggressor.<sup>13</sup>

One can conclude that the United Nations can fulfill its stated purpose of maintaining international peace and security,<sup>14</sup> by measuring its ability to establish collective security. In order to determine whether collective security was attained in the Persian Gulf Crisis, the actions taken by the Security Council and by the several military powers who responded to Iraq's invasion of Kuwait must be analyzed.

This comment will analyze whether collective security was attained in the Gulf Crisis. Section I will address the Iraqi invasion of Kuwait as a violation of international law. Section II will examine the actions taken by the Security Council and the international community in response to the Iraqi invasion of Kuwait, while Section III will compare the actions taken in the Gulf Cri-

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<sup>13</sup> Kenneth Thompson explained fundamental precepts of collective security as follows:

The rock bottom principle upon which collective security is founded provides that an attack on any one state will be regarded as an attack on all states. It finds its measure in the simple doctrine of one for all and all for one. War anywhere, in the context of Article 11 of the League of Nations, is the concern of every state.

Thompson, *Collective Security Reexamined*, in *COLLECTIVE SECURITY*, *supra* note 11, at 285, 287. Another commentator has explained collective security as follows:

It stands to reason that provisions and commitments for police action would add nothing to the protection that victims of aggression have enjoyed under the old system unless such victims could expect more military assistance than they would have received otherwise.

In order that collective security add in this way to the strength of the defense and to the chances of deterrence, it must be assumed that some nations, including one or more of the great powers, will be prepared to resort to force—that is, for all practical purposes, go to war—when, if they had not been devoted to the principle of collective security, they would have remained neutral or fought on the side of the aggressor.

Wolfers, *Collective Security and the War in Korea*, in *COLLECTIVE SECURITY*, *supra* note 11, at 225, 226.

<sup>14</sup> The purposes of the United Nations are stated in Article 1 of its Charter. This provides, in pertinent part:

The Purposes of the United Nations are:

1. To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace . . . .

U.N. CHARTER art. 1, para. 1.

sis with those taken in the Korean Conflict. Section IV will then examine the proposals that were made at the end of the Korean Conflict to create a multinational armed force under the United Nations' control. This comment will conclude that such a peacekeeping force may be the only mechanism by which the United Nations can attain collective security but that political differences will prevent its formation.

### I. IRAQ'S VIOLATIONS OF INTERNATIONAL LAW

On August 2, 1990, Iraqi troops drove across the border separating Iraq and Kuwait and attacked Kuwait City.<sup>15</sup> Iraqi President Saddam Hussein claimed that the invasion was requested by revolutionaries in order to take over the Kuwaiti Government.<sup>16</sup> However, by taking this action Iraq arguably interfered with the recognized sovereignty and independence of Kuwait, thereby violating international law.

In 1961, Kuwait was declared independent of British rule by a treaty between Kuwait and the United Kingdom.<sup>17</sup> Two years later Kuwait applied to become a Member of the United Nations,<sup>18</sup> and was admitted to membership by passage of a General Assembly Resolution.<sup>19</sup> After several months, Iraq recognized the sovereignty and independence of Kuwait according to the borders set forth in correspondence between Iraq's Prime Minister and the ruler of Kuwait in 1932.<sup>20</sup>

By its invasion of Kuwait, Iraq violated provisions of the United Nations Charter and can be characterized as an aggressor according to the United Nations General Assembly Resolu-

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<sup>15</sup> Gordon, *Iraq Army Invades Capital of Kuwait in Fierce Fighting*, N.Y. Times, Aug. 2, 1990, at A1, col. 6.

<sup>16</sup> *Id.*

<sup>17</sup> Exchange of Notes Constituting an Agreement Between the United Kingdom of Great Britain and Northern Ireland and Kuwait Regarding Relations Between the United Kingdom of Great Britain and Northern Ireland and the State of Kuwait, June 19, 1961, United Kingdom-Kuwait, 5743 U.N.T.S. 240.

<sup>18</sup> Kuwait: Declaration of Acceptance of the Obligations Contained in the Charter of the United Nations, April 20, 1963, Kuwait, 6705 U.N.T.S. 214.

<sup>19</sup> *Id.* at n. 1.

<sup>20</sup> Agreed Minutes Between the State of Kuwait and the Republic of Iraq Regarding the Restoration of Friendly Relations, Recognition and Related Matters, Oct. 4, 1963, Iraq-Kuwait, 7063 U.N.T.S. 326.

tion on the Definition of Aggression.<sup>21</sup>

A. *Iraq's Violation of the United Nations Charter*

The United Nations Charter requires Members to settle their disputes by peaceful means<sup>22</sup> and to refrain from the threat or use of force against the territorial or political independence of any State.<sup>23</sup> Article 33 requires parties to a dispute to resort to certain enumerated and other peaceful means to seek a solution, such as negotiation, enquiry and mediation.<sup>24</sup>

In this case, Iraq did seek peaceful means to resolve its dispute with Kuwait before the invasion.<sup>25</sup> The dispute itself arose out of the oil emirates' increase in their output and sales of oil.<sup>26</sup> This caused a decrease in the price of oil on the world market and a corresponding loss of revenues for Iraq.<sup>27</sup> As a result, Iraq sought to coerce Kuwait and other Arab oil producers to reduce their output of oil so that the overall supply of oil in the world market would be reduced.<sup>28</sup> The hope was that this would cause an increase in the price of oil on the world market and a corresponding gain of revenues for Iraq.<sup>29</sup>

The leading overproducers of the Oil and Petroleum Exporting Countries (OPEC) were Kuwait and the United Arab

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<sup>21</sup> G.A. Res. 3314, 29 U.N. GAOR Supp. (No. 31) at 143, U.N. Doc. A/9631 (1974).

<sup>22</sup> U.N. CHARTER art. 2, para. 1. This provides: "1. All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered." *Id.*

<sup>23</sup> U.N. CHARTER art. 2, para. 4. "4. 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, or in any other manner inconsistent with the Purposes of the United Nations." *Id.* (emphases added).

<sup>24</sup> U.N. CHARTER art. 33, para. 1.

1. The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.

*Id.*

<sup>25</sup> J. MILLER & L. MYLORIE, *SADDAM HUSSEIN AND THE CRISIS IN THE GULF* 15 (1990).

<sup>26</sup> Brooks, *Hussein Threatens Use of Force to Hold Oil-Output Quotas*, Wall St. J., July 18, 1990, at A6, col. 3.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

Emirates.<sup>30</sup> President Hussein charged those two countries with waging "economic warfare" against Iraq and other oil producing countries.<sup>31</sup> Iraq had been forced to borrow from rich Arab oil emirates such as Kuwait to fight the eight year war against Iran.<sup>32</sup> At the end of this war, Iraq sought forgiveness of its debt from Kuwait and the other emirates,<sup>33</sup> arguing that these emirates benefitted from Iraq's halt of expansionism under Iran's Ayatollah Komeini.<sup>34</sup> Instead of granting such forgiveness, Kuwait hoarded the oil that lay beneath the soil in the neutral zone between Iraq and Kuwait, making it more difficult for Iraq to recover economically from the ruins of its war with Iran.<sup>35</sup> Iraq used these events to gain political support for the invasion from Arabs less fortunate than the rich oil producing Arab states,<sup>36</sup> as a way "to bring back things to their right place."<sup>37</sup>

Although the Iraqi arguments bear some merit, Iraq failed to exhaust peaceful means to bring about a settlement of these disputes with Kuwait.<sup>38</sup> Iraq did not submit them for judicial determination by any adjudicatory or factfinding body, and did not seek a mutually agreeable forum to resolve these disputes peacefully with Kuwait. Therefore, Iraq's invasion of Kuwait violated the United Nations Charter.

#### B. *Iraq's Invasion and the Definition of Aggression Resolution*

The Definition of Aggression Resolution<sup>39</sup> describes aggression as one State's use of armed force against the "sovereignty, territorial integrity or political independence of another State

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<sup>30</sup> Tanner, *Iraq's Boldness Raises New Questions on OPEC Midyear Session, Leadership*, Wall St. J., July 20, 1990, at A1, col. 1.

<sup>31</sup> *Id.*

<sup>32</sup> *Piracy in the Gulf*, Wall St. J., July 26, 1990, at A16, col. 1.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> Ibrahim, *Saudis Make a Stand*, N.Y. Times, Aug. 8, 1990, at A1, col. 3, A10, col. 3. This states: "There are many elements in the Arab world which want to see the demise of all Arab regimes in the gulf," [a Saudi official said.] "We have to look elsewhere for support." *Id.* at A10.

<sup>37</sup> See Brooks, *supra* note 26.

<sup>38</sup> See *Iraqi Invasion, Step by Step*, N.Y. Times, Aug. 3, 1990, at A9, col. 1.

<sup>39</sup> G.A. Res. 3314, 29 U.N. GAOR Supp. (No. 31) at 143, U.N. Doc. A/9631 (1974).



... ."<sup>40</sup> Invasion, military occupation and annexation qualify as acts of aggression,<sup>41</sup> and the first use of armed force is "*prima facie* evidence of an act of aggression."<sup>42</sup>

According to this definition, Iraq's invasion of the territory of Kuwait, as the first use of armed force in the dispute between those two States, is *prima facie* evidence of an act of aggression.

To refute this evidence, Iraq asserted<sup>43</sup> that Kuwait has been a province under Iraq's control since Iraq was granted power over part of the Ottoman Empire.<sup>44</sup> Iraq claimed that the

<sup>40</sup> *Id.* at art. 1. This provides: "Aggression is the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations, as set out in this Definition." *Id.* (emphases added).

<sup>41</sup> *Id.* at art. 3. Article 3 specifically provides:

Any of the following acts, regardless of a declaration of war, shall, subject to and in accordance with the provisions of article 2, qualify as an act of aggression:

(a) The invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof . . . .

*Id.* (emphases added).

<sup>42</sup> *Id.* at art. 2.

<sup>43</sup> A statement from the ruling Revolutionary Command Council of Iraq which can be used to refute the *prima facie* evidence of aggression was given as follows:

One of the most egregious criminal acts of colonialism was its partition of the homeland, which was a single homeland the day Baghdad was the capital of all Arabs.

... .  
In all cases, while drawing up geographic and sovereignty boundaries for all states, Western colonialism sought to make all states weak and to insure that partition, with the passage of time, would prevent these states from closing ranks and demonstrating a unified stance.

... .  
What has befallen other states in the Arab lands befell Iraq when colonialism divested it of a dear part of it, namely Kuwait, and kept Iraq away from the waters to prevent it from acquiring part of its tactical and strategic abilities, and thus kept part of its people and part of its wealth away from the origin and the well spring.

*Excerpts From Iraq's Statement on Kuwait*, N.Y. Times, Aug. 9, 1990, at A18, col. 1.

<sup>44</sup> Seib, *Iraq Has Shaky Claim to Kuwait*, Wall St. J., Aug. 13, 1990, at A5, col. 2. This states, in pertinent part:

Iraq had asserted its right to control Kuwait even before the Kuwaiti state won its independence from Britain in 1961.

Above all, that claim is based on the fact that, before the British dominated the region, the Ottoman Empire had declared that Kuwait was part of a province controlled from the Iraqi city of Basra. Iraq argues that the lines of control established in that Ottoman era should still apply, not borders later worked out by the

British arbitrarily carved up the region and as a result the territory of Kuwait was no longer within Iraq's borders.<sup>45</sup>

Iraq argued that when Kuwait was granted independence in 1961 and Iraq declared its claim over the territory,<sup>46</sup> the British protected Kuwait, threatening to use force against Iraq if it did not recognize Kuwait's sovereignty. If such a threat actually coerced Iraq to agree to recognize Kuwait as a sovereign nation, Britain would have violated Article 2, paragraph 4 of the Charter,<sup>47</sup> and thus the legitimacy of Kuwait's sovereignty would be in doubt.

With Kuwait's sovereignty in doubt, Iraq would be able to rely on Article 2, paragraph 7 of the Charter, which declares that the United Nations does not have authority to "intervene in matters which are essentially within the domestic jurisdiction of any state . . . ."<sup>48</sup> Iraq could then argue that the United Nations may not interfere in Iraq's affairs concerning the territory of Kuwait, because Kuwait is part of Iraq. Iraq could further argue that the United States-led coalition forces violated international law, because they used the threat of force, in violation of article 2, paragraph 4 of the Charter, to dictate the resolution of the Iraqi-Kuwaiti dispute.

Another argument in the Iraqi arsenal is that the invasion was justified by Kuwait's exploitation<sup>49</sup> of the oil fields in the territory declared neutral between Iraq and Kuwait.<sup>50</sup> Such ex-

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British.

*Id.*

<sup>45</sup> See generally J.B. KELLY, *ARABIA, THE GULF & THE WEST* 164-289 (1980).

<sup>46</sup> Brooks, *supra* note 26. This states, in pertinent part: "Iraq's claim to sovereignty over Kuwait . . . predates the desert emirate's independence from Britain in 1961. Then, Iraq was bought off only after Kuwait paid \$84 million, and even so, territorial disputes flared in 1973 and 1976." *Id.*

<sup>47</sup> For the full text of this paragraph, see *supra* note 23.

<sup>48</sup> U.N. CHARTER art. 2, para. 7. This provides, in its entirety:

7. 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.

*Id.*

<sup>49</sup> Gordon, *supra* note 14.

<sup>50</sup> Kifner, *Arab's Summit Meeting Off; Iraqi Units in Kuwait Dig in; Europe Bars Baghdad's Oil*, N.Y. Times, Aug. 5, 1990, at A14, col. 4.

ploitation arguably threatened the economic survival of the Iraqi people.<sup>51</sup> Because of this exploitation of oil, Kuwait arguably violated international law.

These arguments may seem convincing, however, Article 5 of the Definition of Aggression declares: "[n]o consideration of whatever nature, whether political, economic, military or otherwise, may serve as a justification for aggression."<sup>52</sup> Moreover, the Arab League, of which Iraq and Kuwait are members, declared, in its pact signed March 12, 1944, that "[t]he main aim is to coordinate the political programmes of Members 'in such a way as to effect real collaboration between them, to preserve their independence and sovereignty . . . .' [Furthermore,] under Article V [of the pact] the League Members renounce recourse to force to resolve disputes between them."<sup>53</sup>

Iraq failed to exhaust diplomatic efforts and resorted to the use of armed force to resolve its dispute with Kuwait. Moreover, it attacked without provocation and not in self-defense. Pursuant to the aforementioned treaties and resolutions it appears that Iraq's invasion of Kuwait was a violation of international law.<sup>54</sup>

<sup>51</sup> See generally J. PAUST & A. BLAUSTEIN, *THE ARAB OIL WEAPON* (1977).

<sup>52</sup> Aggression Resolution, *supra* note 21.

<sup>53</sup> BOWETT, *THE LAW OF INTERNATIONAL INSTITUTIONS* 192-94 (1953).

<sup>54</sup> Reference herein has been made to treaties and other international agreements. Treaties have been referred to as "the prime source of international law." Lee, *Multilateral Treaty Making and Negotiation Techniques: An Appraisal*, in *CONTEMPORARY PROBLEMS OF INTERNATIONAL LAW: ESSAYS IN HONOR OF GEORG SCHWARZENBERGER* 157 (1988) (Dr. Lee is the Principal Legal Officer, Office of the Legal Counsel, Counsel of Legal Affairs, United Nations).

Widely accepted sources of international law are as follows:

1. The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:

(a) international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;

(b) international custom, as evidence of a general practice accepted as law;

(c) the general principles of law recognized by civilized nations;

(d) subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

STATUTE OF THE INTERNATIONAL COURT OF JUSTICE art. 38, para. 1. All members of the United Nations are *ipso facto* parties to this Statute. U.N. CHARTER art. 93.

## II. SECURITY COUNCIL RESOLUTIONS AND DEPLOYMENT OF ARMED FORCES IN THE GULF REGION

In response to Iraq's aggression against Kuwait, the United Nations Security Council condemned a Member state as an aggressor for only the fifth time in its forty-five-year history.<sup>56</sup> For the second time in its history, the Security Council authorized the deployment of armed forces to stop an aggressor nation. The first time was in response to the Communist invasion of South Korea in 1950.

The Charter of the United Nations authorizes the Security Council to investigate disputes,<sup>56</sup> make recommendations upon its own initiative<sup>57</sup> or that of the parties to a dispute,<sup>58</sup> determine the existence of any threat to the peace, breach of the peace or act of aggression,<sup>59</sup> call upon parties to comply with

<sup>56</sup> Lewis, *U.N. Condemns the Invasion with Threat to Punish Iraq*, N.Y. Times, Aug. 3, 1990, at A10, col. 1.

<sup>56</sup> U.N. CHARTER art. 34. The language of Article 34 reads as follows: "The Security Council may investigate any dispute, or any situation which might lead to international friction or give rise to a dispute, in order to determine whether the continuance of the dispute or situation is likely to endanger the maintenance of international peace and security." *Id.*

<sup>57</sup> *Id.* at art. 36. This article reads:

1. The Security Council may, at any stage of a dispute of the nature referred to in Article 33 or of a situation of like nature, recommend appropriate procedures or methods of adjustment.

2. The Security Council should take into consideration any procedures for the settlement of the dispute which have already been adopted by the parties.

3. In making recommendations under this Article the Security Council should also take into consideration that legal disputes should as a general rule be referred by the parties to the International Court of Justice in accordance with the provisions of the Statute of the Court.

*Id.*

<sup>58</sup> *Id.* at art. 37. Article 37 reads:

1. Should the parties to a dispute of the nature referred to in Article 33 fail to settle it by the means indicated in that Article, they shall refer it to the Security Council.

2. If the Security Council deems that the continuance of the dispute is in fact likely to endanger the maintenance of international peace and security, it shall decide whether to take action under Article 36 or to recommend such terms of settlement as it may consider appropriate.

*Id.*

<sup>59</sup> *Id.* at art. 39: "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 in accordance with Articles 41 and 42, to maintain or restore international peace and security." *Id.*

provisional measures,<sup>60</sup> take measures not involving or involving the use of armed force,<sup>61</sup> and call upon other Members to assist it by complying with such measures and by providing armed forces and other resources.<sup>62</sup>

The biggest stumbling block to the Security Council's effectiveness to date has been the power of the permanent members to veto actions which otherwise would have been taken. A close reading of Article 27<sup>63</sup> reveals that on procedural matters, all

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<sup>60</sup> *Id.* at art. 40:

In order to prevent an aggravation of the situation, the Security Council may, before making the recommendations or deciding upon the measures provided for in Article 39, call upon the parties concerned to comply with such provisional measures as it deems necessary or desirable. Such provisional measures shall be without prejudice to the rights, claims, or position of the parties concerned. The Security Council shall duly take account of failure to comply with such provisional measures.

*Id.*

<sup>61</sup> *Id.* at arts. 41 and 42.

#### ARTICLE 41

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

#### ARTICLE 42

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

*Id.*

<sup>62</sup> *Id.* at art. 43.

1. All Members of the United Nations, in order to contribute to the maintenance of international peace and security, undertake to make available to the Security Council, on its call and in accordance with a special agreement or agreements, armed forces, assistance, and facilities, including rights of passage, necessary for the purpose of maintaining international peace and security.

2. Such agreement or agreements shall govern the numbers and types of forces, their degree of readiness and general location, and the nature of the facilities and assistance to be provided.

3. The agreement or agreements shall be negotiated as soon as possible on the initiative of the Security Council. They shall be concluded between the Security Council and Members or between the Security Council and groups of Members and shall be subject to ratification by the signatory states in accordance with their respective constitutional processes.

*Id.*

<sup>63</sup> *Id.* at art. 27. For the full text of Article 27, see *supra* note 5.

that is needed to pass a resolution is an affirmative vote of nine members, while on matters that are not procedural the concurrence of the permanent members is required.<sup>64</sup> This means that if any one permanent member votes against a measure, that measure will not pass. Further, the General Assembly may not act with regard to a matter of international peace and security while the Security Council is exercising its functions with regard to the same matter.<sup>65</sup> Therefore, a single permanent member of the Security Council may prevent the entire United Nations from fulfilling its purpose.<sup>66</sup> Nevertheless, this apparently insurmountable hurdle was overcome during the Gulf Crisis.

#### A. *Security Council Resolutions and the International Response*

In response to Iraq's invasion of Kuwait, the Security Council<sup>67</sup> "acted with greater promptitude and cohesion than at any time since the Korean Conflict."<sup>68</sup> The Council passed its first resolution<sup>69</sup> on the heels of the invasion. Pursuant to Article 39

<sup>64</sup> *Id.*

<sup>65</sup> *Id.* at art. 12. This provides:

1. While the Security Council is exercising in respect of any dispute or situation the functions assigned to it in the present Charter, the General Assembly shall not make any recommendation with regard to that dispute or situation unless the Security Council so requests.

2. The Secretary-General, with the consent of the Security Council, shall notify the General Assembly at each session of any matters relative to the maintenance of international peace and security which are being dealt with by the Security Council and shall similarly notify the General Assembly, or the Members of the United Nations if the General Assembly is not in session, immediately [when] the Security Council ceases to deal with such matters.

*Id.*

<sup>66</sup> F. WILCOX & C. MARCY, PROPOSALS FOR CHANGES IN THE UNITED NATIONS 299-343 (1980) [hereinafter PROPOSALS]. The authors of PROPOSALS argue for reform of the veto power. This comment does not focus on this problem, because it evaluates the chances for collective security in the post-cold war environment in which the veto may not be exercised even though all permanent members are present at the Security Council.

<sup>67</sup> In addition to the five permanent members—China, France, the U.S.S.R., the U.K. and the U.S.—there are ten rotating seats, currently held by Canada, Finland, Colombia, Ethiopia, Malaysia, Ivory Coast, Zaire, Romania, Cuba and Yemen. Yemen, the only Arab state represented on the Council, was the only member of the council that did not vote in favor of the resolution, abstaining due to its not having received instructions from its Government on how to vote. Lewis, *supra* note 55.

<sup>68</sup> Keyes, *supra* note 8.

<sup>69</sup> S.C. Res. 660, 45 U.N. SCOR (2951st mtg.), U.N. Doc. S/RES/660 (1990) [herein-

of the Charter,<sup>70</sup> the Council determined that the invasion constituted a breach of international peace and security.<sup>71</sup> Then, explicitly referring to Articles 39 and 40 of the Charter,<sup>72</sup> the Council condemned the invasion, demanded Iraq's immediate and unconditional withdrawal, and called upon Iraq and Kuwait to begin intensive negotiations to resolve their disputes.<sup>73</sup>

While the Security Council was acting, the United States deployed a naval task force from the Indian Ocean to the Persian Gulf,<sup>74</sup> in response to a call from the Kuwaiti Ambassador in Washington for immediate American military intervention.<sup>75</sup> Meanwhile, the Soviet Union halted its flow of arms to Iraq and stated that "[t]he sovereignty, national independence and territorial integrity of the State of Kuwait must be fully restored and protected."<sup>76</sup> West European countries unanimously condemned the invasion and Britain and France joined the United States in freezing Kuwaiti assets to prevent Iraq from gaining control over them.<sup>77</sup> Syria called for an emergency Arab summit conference to discuss the "blatant invasion of sisterly Kuwait by Saddam

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after Resolution 660].

<sup>70</sup> U.N. CHARTER art. 39. For the full text of Article 39, see *supra* note 59.

<sup>71</sup> "Determining that there exists a breach of international peace and security as regards the Iraqi invasion of Kuwait." Resolution 660, *supra* note 69.

<sup>72</sup> For the full text of Article 40, see *supra* note 60.

<sup>73</sup> Resolution 660 provides:

Acting under Articles 39 and 40 of the Charter of the United Nations,

1. *Condemns* the Iraqi invasion of Kuwait;

2. *Demands* that Iraq withdraw immediately and unconditionally all its forces to the positions in which they were located on 1 August 1990;

3. *Calls upon* Iraq and Kuwait to begin immediately intensive negotiations for the resolution of their differences and supports all efforts in this regard, and especially those of the League of Arab States;

4. *Decides* to meet again as necessary to consider further steps to ensure compliance with the present resolution.

*Id. supra* note 69.

<sup>74</sup> Apple, *Naked Aggression: Bush Suggests Action By U.N.—Emir Flees to Saudi Arabia Exile*, N.Y. Times, Aug. 3, 1990, at A8, col. 1.

<sup>75</sup> *Id.*

<sup>76</sup> See Bohlen, *Arms Flow to Iraq Halted by Soviets*, N.Y. Times, Aug. 3, 1990, at A10, col. 1.

<sup>77</sup> Riding, *West Europeans Join U.S. in Condemning Invasion*, N.Y. Times, Aug. 3, 1990, at A10, col. 2. Further, on August 5, 1990, Belgium, Canada, Italy, Luxembourg, the Netherlands, Norway, and West Germany took measures to prevent Iraqi seizure of Kuwaiti assets. *More Europeans Act*, N.Y. Times, Aug. 4, 1990, at A6, col. 6.

Hussein's forces."<sup>78</sup>

After two days of debate, the Arab League decided to condemn the invasion<sup>79</sup> and to call on Iraq to withdraw.<sup>80</sup> American Secretary of State James A. Baker III and Soviet Foreign Minister Eduard A. Shevardnadze met in Moscow. They condemned the invasion and jointly called on the United Nations Security Council to "promptly and decisively condemn the brutal and illegal invasion of Kuwait by Iraqi military forces."<sup>81</sup> Baker and Shevardnadze further called on "regional organizations, especially the League of Arab States, all Arab governments as well as the Nonaligned Movement and the Islamic Conference to take all possible steps to insure that the U.N. Security Council resolution is carried out."<sup>82</sup>

The second Security Council Resolution<sup>83</sup> came on August 6, 1990. Through this resolution, the United States proposed that the United Nations "ban all imports from Iraq and Kuwait, and all exports to the countries, except for medicine and supplies of a humanitarian nature."<sup>84</sup> The resolution "won the support of 13 of the Council's 15 members, with only Yemen and Cuba abstaining."<sup>85</sup>

Resolution 661 specifically referred to the Security Council's responsibilities under Articles 1 and 24 of the Charter.<sup>86</sup> Article 1 states the purposes of the United Nations, including the responsibility for maintaining international peace and security.<sup>87</sup> Article 24 charges the Security Council with the primary respon-

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<sup>78</sup> See Y. Ibrahim, *A New Gulf Alignment*, N.Y. Times, Aug. 3, 1990, at A1, col. 4.

<sup>79</sup> Kifner, *Arabs to Convene on Iraqi Invasion*, N.Y. Times, Aug. 4, 1990, at A1, col. 1.

<sup>80</sup> *Id.*

<sup>81</sup> See Keller, *Moscow Joins U.S. in Criticizing Iraq*, N.Y. Times, Aug. 4, 1990, at A6, col. 1.

<sup>82</sup> See *id.* at col. 3.

<sup>83</sup> S.C. Res. 661, 45 U.N. SCOR (2951st mtg.), U.N. Doc. S/RES/661 (1990) [hereinafter Resolution 661].

<sup>84</sup> See Lewis, *Washington Calls on U.N. to Impose Boycott on Iraq*, N.Y. Times, Aug. 4, 1990, at A6, col. 5.

<sup>85</sup> Lewis, *Security Council Votes 13 to 0 to Block Trade With Baghdad; Facing Boycott, Iraq Slows Oil; Pullout Demanded*, N.Y. Times, Aug. 7, 1990, at A1, col. 6.

<sup>86</sup> Resolution 661 provides: "Mindful of its responsibilities under the Charter of the United Nations for the maintenance of international peace and security." Resolution 661, *supra* note 83.

<sup>87</sup> For the full text of Article 1, paragraph 1, see *supra* note 13.



sibility for acting pursuant to this purpose.<sup>88</sup>

Resolution 661 also specified the Council's determination to restore Kuwait's sovereignty<sup>89</sup> in order to promote the United Nations' aim of having its Members act in accordance with the principle of sovereign equality of all United Nations Members,<sup>90</sup> including that of Iraq and Kuwait. The Resolution also explicitly referred to the right of Kuwait, and of other Arab states threatened by Iraq's act of aggression, to individual or collective self-defense,<sup>91</sup> pursuant to Article 51 of the Charter.<sup>92</sup>

The Council then took measures pursuant to Article 41<sup>93</sup> of the Charter. This provision had been invoked only two other times since the United Nations was founded forty-five years ago.<sup>94</sup> The Council declared that States were to take measures not involving the use of armed force to coerce Iraq into compliance with the Council's call for Iraq's immediate and unconditional withdrawal from Kuwait.<sup>95</sup> The Council declared that States shall prevent the import of any commodities coming from Iraq or Kuwait, the sale or supply of commodities to Iraq or Ku-

<sup>88</sup> For the full text of Article 24, paragraph 1, see *supra* note 7.

<sup>89</sup> Resolution 661, *supra* note 83. The Resolution's preamble provides: "*Determined to bring the invasion and occupation of Kuwait by Iraq to an end and to restore the sovereignty, independence and territorial integrity of Kuwait . . .*" *Id.*

<sup>90</sup> U.N. CHARTER art. 2, para. 2. This provides: "The Organization and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the following Principles. . . . 1. The Organization is based on the principle of the sovereign equality of all its Members." *Id.*

<sup>91</sup> Resolution 661, *supra* note 83. This provides, in pertinent part: "*Affirming the inherent right of individual or collective self-defense, in response to the armed attack by Iraq against Kuwait, in accordance with Article 51 of the Charter . . .*" *Id.*

<sup>92</sup> U.N. CHARTER art. 51.

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. Measures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.

*Id.*

<sup>93</sup> For the full text of U.N. CHARTER art. 41, see *supra* note 61.

<sup>94</sup> The first two were in Rhodesia and South Africa. Lewis, *supra* note 85, at col. 6.

<sup>95</sup> Resolution 661, *supra* note 83: "Acting under Chapter VII of the Charter of the United Nations . . . 1. *Determines* that Iraq so far has failed to comply with paragraph 2 of resolution 660 (1990) and has usurped the authority of the legitimate government of Kuwait." *Id.* at para. 1.

wait,<sup>96</sup> and the providing of any funds or financial and economic resources to Iraq or Kuwait.<sup>97</sup> The Council also established a committee to look into the implementation of the resolution.<sup>98</sup>

In addition to addressing measures which would hamper support of Iraq, the Council also addressed measures to protect Kuwait. The Council called upon all States to protect the assets of the Kuwaiti Government and not to recognize the occupying

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<sup>96</sup> *Id.* at para. 3.

3. *Decides* that all States shall prevent:

(a) The import into their territories of all commodities and products originating in Iraq or Kuwait exported therefrom after the date of the present resolution;

(b) Any activities by their nations or in their territories which would promote or are calculated to promote the export or trans-shipment of any commodities or products from Iraq or Kuwait; and any dealings by their nationals or their flag vessels or in their territories in any commodities or products originating in Iraq or Kuwait and exported therefrom after the date of the present resolution, including in particular any transfer of funds to Iraq or Kuwait for the purposes of such activities or dealings;

(c) The sale or supply by their nations or from their territories or using their flag vessels of any commodities or products, including weapons or any other military equipment, whether or not originating in their territories but not including supplies intended strictly for medical purposes, and, in humanitarian circumstances, foodstuffs, to any person or body in Iraq or Kuwait or to any person or body for the purposes of any business carried on in or operated from Iraq or Kuwait, and any activities by their nationals or in their territories which promote or are calculated to promote such sale or supply of such commodities or products.

*Id.*

<sup>97</sup> *Id.* at para. 4. This provides:

4. *Decides* that all States shall not make available to the Government of Iraq or to any commercial, industrial or public utility undertaking in Iraq or Kuwait, any funds or any other financial or economic resources and shall prevent their nationals and any persons within their territories from removing from their territories or otherwise making available to that Government or to any such undertaking any such funds or resources and from remitting any other funds to persons or bodies within Iraq or Kuwait, except payments exclusively for strictly medical or humanitarian purposes and in humanitarian circumstances, foodstuffs.

*Id.*

<sup>98</sup> *Id.* at para. 6.

6. *Decides* to establish, in accordance with rule 28 of the provisional rules of procedure of the Security Council, a Committee of the Security Council consisting of all the members of the Council, to undertake the following tasks and to report on its work to the Council with its observations and recommendations:

(a) To examine the reports on the progress of the implementation of the present resolution which will be submitted by the Secretary-General;

(b) To seek from all States further information regarding the action taken by them concerning the effective implementation of the provisions laid down in the present resolution.

*Id.*

power Iraq established in Kuwait.<sup>99</sup>

On the day after the resolution was passed, American President George Bush entered into an agreement with Saudi Arabia providing for the stationing of American troops on Saudi territory and for the expansion of oil production to ease the shortage resulting from the embargo.<sup>100</sup> Egypt agreed to join the multinational force so that the operation would have an international Arab presence.<sup>101</sup> Turkey agreed, and Saudi Arabia was expected to agree, to cut off the flow of oil from the pipelines that deliver oil from Iraq to ports in the Mediterranean and Red Seas.<sup>102</sup>

On August 8, 1990, President Saddam Hussein announced Iraq's annexation of Kuwait.<sup>103</sup> In response, President Hosni Mubarak of Egypt alleged that Hussein lied to him about his intentions before the invasion. Mubarak said Hussein now put him in an embarrassing situation in which it would be difficult to keep outside influences, namely the United States-led forces and the United Nations, from getting involved in the crisis.<sup>104</sup> Mubarak then called for an "Arab umbrella," an emergency Arab summit meeting to avert outside intervention.<sup>105</sup>

At the same time, the Security Council<sup>106</sup> adopted its third resolution.<sup>107</sup> The Council declared that Iraq's annexation of Ku-

<sup>99</sup> *Id.* at para. 9. This provides:

9. *Decides* that, notwithstanding paragraphs 4 through 8 above, nothing in the present resolution shall prohibit assistance to the legitimate Government of Kuwait, and calls upon all States:

(a) To take appropriate measures to protect assets of the legitimate Government of Kuwait and its agencies;

(b) Not to recognize any régime set up by the occupying power.

*Id.*

<sup>100</sup> Ibrahim, *supra* note 36.

<sup>101</sup> Rosenthal, *Bush Sends U.S. force to Saudi Arabia as Kingdom Agrees to Confront Iraq; Seeks Joint Action*, N.Y. Times, Aug. 8, 1990, at A1, col. 6.

<sup>102</sup> *Id.*

<sup>103</sup> Kifner, *Merger Declared; Mubarak's Summit Call Gets Quiet Response From Arab Leaders*, N.Y. Times, Aug. 9, 1990, at A1, col. 1 [hereinafter Kifner].

<sup>104</sup> *Id.* at A18.

<sup>105</sup> *Id.*

<sup>106</sup> This time Yemen, the only Arab member of the Council, voted for the resolution. Apple, *Confrontation in the Gulf: U.S. Set to Blockade Baghdad's Shipping; Iraq Detains Foreigners, Upsets Summit; 50 Ships Assemble*, N.Y. Times, Aug. 10, 1990, at A1, col. 6.

<sup>107</sup> S.C. Res. 662, 45 U.N. SCOR (2951st mtg.), U.N. Doc. S/RES/662 (1990).

wait was null and void.<sup>108</sup> The Council went further and called on others not to recognize the annexation,<sup>109</sup> and demanded that Iraq rescind its annexation.<sup>110</sup>

During this period, more American forces, as well as forces from other nations, were being deployed to the Gulf region.<sup>111</sup> The United States declared that it might send as many as 100,000 troops to the Gulf,<sup>112</sup> and there were signs that the attitude of Arab rulers was turning against the Iraqi President.<sup>113</sup> In addition, there was talk at the United Nations of revitalizing the Military Staff Committee.<sup>114</sup> There was further talk of setting up a naval patrol to enforce the embargo against Iraq and occupied Kuwait pursuant to Article 42 of the Charter,<sup>115</sup> which empowers the Council to take such measures.<sup>116</sup> Eventually, even the Arab countries decided<sup>117</sup> to send troops into Saudi Arabia. Only Libya and the Palestine Liberation Organization backed Iraq.<sup>118</sup>

American President George Bush later ordered American maritime forces in the Gulf region to halt all shipping headed to

<sup>108</sup> *Id.* at para. 1. The Security Council: "Decides that annexation of Kuwait by Iraq under any form and whatever pretext has no legal validity, and is considered null and void . . . ." *Id.*

<sup>109</sup> *Id.* at para. 2. The Security Council: "Calls upon all States, international organizations and specialized agencies not to recognize that annexation, and to refrain from any action or dealing that might be interpreted as an indirect recognition of the annexation . . . ." *Id.*

<sup>110</sup> *Id.* at para. 3. The Security Council: "3. Further demands that Iraq rescind its actions purporting to annex Kuwait . . . ." *Id.*

<sup>111</sup> Gordon, *First American Deployment to Gulf is "Tip of Wedge" the Pentagon Says*, N.Y. Times, Aug. 9, 1990, at A1, col. 6. For a detailed breakdown of forces, see N.Y. Times, Aug. 9, 1990, at A15 and A16.

<sup>112</sup> Apple, *U.S. Says Its Troops in the Gulf Could Reach 100,000 in Months*, N.Y. Times, Aug. 11, 1990, at A1, col. 4. For more details on the deployed American forces, see N.Y. Times, Aug. 14, 1990, at A10, col. 1.

<sup>113</sup> Kifner, *supra* note 103, at A1, col. 6.

<sup>114</sup> Lewis, *U.N. Council Declares Void Iraqi Annexation of Kuwait*, N.Y. Times, Aug. 10, 1990, at A11, col. 1.

<sup>115</sup> For the full text of Article 42, see *supra* note 61.

<sup>116</sup> Lewis, *supra* note 114, at A11.

<sup>117</sup> Kifner, *Arabs Vote to Send Troops to Help Saudis; Boycott of Iraqi Oil is Reported Near*, N.Y. Times, Aug. 11, 1990, at A1, col. 6. Those who voted to send troops were Bahrain, Djibouti, Egypt, Kuwait, Lebanon, Morocco, Oman, Qatar, Saudi Arabia, Somalia, Syria and the United Arab Emirates. Iraq, Libya and the Palestine Liberation Organization voted against the Arab resolution. Mauritania, Jordan and Sudan expressed reservations. Algeria and Yemen abstained in the voting. Tunisia was absent. *Id.*

<sup>118</sup> *Id.*

or from Iraq in violation of the previous resolutions.<sup>119</sup> The United States joined Moscow's earlier call to reactivate the moribund Military Staff Committee.<sup>120</sup>

During this time, Iraqi President Saddam Hussein proposed withdrawals of all occupations and forces in the Middle East and the replacement of western forces with Arab forces.<sup>121</sup> However, this proposal received no welcome response.

Over the next several months, the Security Council passed several more resolutions with regard to the Gulf Crisis.<sup>122</sup> In gen-

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<sup>119</sup> Gordon, *Bush Orders Navy to Halt All Shipments of Iraq's Oil and Almost All its Imports*, N.Y. Times, Aug. 13, 1990, at A1, col. 6.

<sup>120</sup> Lewis, *U.S. Seeks to Revive Panel that Enforces U.N. Decrees*, N.Y. Times, Aug. 15, 1990, at A19, col. 1.

<sup>121</sup> *Proposals by Iraqi President: Excerpts From His Address*, N.Y. Times, Aug. 13, 1990, at A8, col. 5. Hussein stated:

I propose that all cases of occupation, and those cases that have been portrayed as occupation, in the region, be resolved simultaneously [sic] and on the same principles and basis that should be laid down by the Security Council, as follows:

Preparation for an immediate and unconditional Israeli withdrawal from occupied Arab lands in Palestine, Syria and Lebanon; a Syrian withdrawal from Lebanon; mutual withdrawals by Iraq and Iran and arrangement for the situation in Kuwait.

All military withdrawals and all related political arrangements should take into consideration Iraq's historical territorial rights and guarantee the Kuwaiti people's right to decide on their future.

The basis of the program should be all United Nations and Security Council resolutions, both to arrive at the earliest possible solution and to apply the same action taken by the Security Council against Iraq on any party that does not comply with these arrangements and answer to them.

In order to reveal the facts to one world public opinion, to judge them according to objective conditions away from American wishes and pressure, we call for the immediate withdrawal of American forces and all other forces that responded to this plot from Saudi Arabia, to be replaced by an Arab force, whose duties, nationality, size and area of deployment should be determined by the Security Council aided by the Secretary General of the United Nations.

In deciding the nationality of these forces, they should not include any troops from Egypt, which is being used by the United States as a cornerstone in its conspiracies against the Arabs. There should be an immediate freeze of all boycott and siege decisions, and matters should go back to normal in economic, political and scientific dealings between Iraq and the world, or these sanctions should be imposed on any party refusing to comply and respond to the conditions stated above.

*Id.*

<sup>122</sup> Only cursory reference shall be made to certain resolutions not having a direct bearing on the deployment of forces or the use of sanctions or armed force.

eral, these concerned: (1) Iraq's taking third State nationals<sup>123</sup> hostage, (2) the closing of diplomatic missions in Kuwait, and (3) the provisions for foodstuffs and medical supplies.<sup>124</sup> In several of these resolutions, the Council further dealt with enforcement of the sanctions previously mentioned.

On August 25, 1990, while noting that Iraq continued its refusal to comply with previous resolutions,<sup>125</sup> the Security Council called upon Member States to halt all maritime shipping which would support Iraq's trade.<sup>126</sup> The resolution asked Member States to use political and diplomatic measures<sup>127</sup> and to provide assistance to the maritime forces operating in the Gulf.<sup>128</sup> It also requested the States which had their maritime forces deployed in the Gulf to use appropriate mechanisms of the Military Staff Committee and to report to the Security Council.<sup>129</sup>

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<sup>123</sup> This means nationals of states other than Iraq and Kuwait.

<sup>124</sup> See S.C. Res. 664, 45 U.N. SCOR (2937th mtg.), U.N. Doc. S/RES/664 (1990), S.C. Res. 665, 45 U.N. SCOR (2938th mtg.), U.N. Doc. S/RES/665 (1990) [hereinafter Resolution 665], S.C. Res. 666, 45 U.N. SCOR (2939th mtg.), U.N. Doc. S/RES/666 (1990), S.C. Res. 667, 45 U.N. SCOR (2940th mtg.), U.N. Doc. S/RES/667 (1990), S.C. Res. 669, 45 U.N. SCOR (2942nd mtg.), U.N. Doc. S/RES/669 (1990), S.C. Res. 670, 45 U.N. SCOR (2943rd mtg.), U.N. Doc. S/RES/670 (1990) [hereinafter Resolution 670], and S.C. Res. 674, 45 U.N. SCOR (2951st mtg.), U.N. Doc. S/RES/674 (1990) [hereinafter Resolution 674].

<sup>125</sup> Resolution 665, *supra* note 124. This provides: "*Gravely alarmed* that Iraq continues to refuse to comply with resolutions 660 (1990), 661 (1990), 662 (1990) and 664 (1990) and in particular at the conduct of the Government of Iraq in using Iraqi flag vessels to export oil . . ." *Id.*

<sup>126</sup> *Id.* at para. 1. This provides:

1. *Calls upon* those Member States co-operating with the Government of Kuwait which are deploying maritime forces to the area to use such measures commensurate to the specific circumstances as may be necessary under the authority of the Security Council to halt all inward and outward maritime shipping in order to inspect and verify their cargoes and destinations and to ensure strict implementation of the provisions related to such shipping laid down in resolution 661 (1990).

*Id.*

<sup>127</sup> *Id.* at para. 2. The Security Council: "*Invites* Member States accordingly to cooperate as may be necessary to ensure compliance with the provisions of resolution 661 (1990) with maximum use of political and diplomatic measures, in accordance with paragraph 1 above . . ." *Id.*

<sup>128</sup> *Id.* at para. 3. The Security Council: "*Requests* all States to provide in accordance with the Charter such assistance as may be required by the States referred to in paragraph 1 of this resolution . . ." *Id.*

<sup>129</sup> *Id.* at para. 4. Pursuant to this paragraph the Security Council:

On September 25, 1990, the Council adopted a resolution<sup>130</sup> extending enforcement of this embargo to include the use of all means of transportation, including aircraft.<sup>131</sup> It declared that all States are to take measures to ensure that the embargo is not circumvented by the use of aircraft.<sup>132</sup> It also asked States to notify the Committee of any flights not destined to land in but destined to pass over Iraq or Kuwait.<sup>133</sup>

On October 29, 1990, the Security Council adopted yet an-

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4. *Further requests* the States concerned to co-ordinate their actions in pursuit of the above paragraphs of this resolution using as appropriate mechanisms of the Military Staff Committee and after consultation with the Secretary-General to submit reports to the Security Council and its committee established under resolution 661 (1990) to facilitate the monitoring of the implementation of this resolution . . . .

*Id.*

<sup>130</sup> Resolution 670, *supra* note 124.

<sup>131</sup> *Id.* at para. 2. The Security Council: "2. *Confirms* that resolution 661 (1990) applies to all means of transport, including aircraft . . . ." *Id.*

<sup>132</sup> *Id.* at paras. 3, 4 and 5.

3. *Decides* that all States, notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or any contract entered into or any licence or permit granted before the date of the present resolution, shall deny permission to any aircraft to take off from their territory if the aircraft would carry any cargo to or from Iraq or Kuwait other than food in humanitarian circumstances, subject to authorization by the council or the Committee established by resolution 661 (1990) and in accordance with resolution 666 (1990), or supplies intended strictly for medical purposes or solely for UNIIMOG;

4. *Decides further* that all States shall deny permission to any aircraft destined to land in Iraq or Kuwait, whatever its State of registration, to overfly its territory unless:

(a) The aircraft lands at an airfield designated by that State outside Iraq or Kuwait in order to permit its inspection to ensure that there is no cargo on board in violation of resolution 661 (1990) or the present resolution, and for this purpose the aircraft may be detained for as long as necessary; or

(b) The particular flight has been approved by the Committee established by resolution 661 (1990); or

(c) The flight is certified by the United Nations as solely for the purposes of UNIIMOG;

5. *Decides* that each State shall take all necessary measures to ensure that any aircraft registered in its territory or operated by an operator who has his principle place of business or permanent residence in its territory complies with the provisions of resolution 661 (1990) and the present resolution . . . .

*Id.*

<sup>133</sup> *Id.* at para. 6. The Security Council: "6. *Decides further* that all States shall notify in a timely fashion the Committee established by resolution 661 (1990) of any flight between its territory and Iraq or Kuwait to which the requirement to land in paragraph 4 above does not apply, and the purpose for such a flight . . . ." *Id.*

other resolution<sup>134</sup> condemning Iraq's actions with regard to State's nationals and embassies in Kuwait. This time the Council went further, reminding Iraq that it may be held liable for any loss or damage caused by its actions.

Before this resolution was adopted, representatives from both Iraq and Kuwait addressed the Security Council.<sup>135</sup> The Iraqi representative warned of the greed of foreigners for oil and water resources and urged the Council to seek a resolution in an Arab framework, as Saddam Hussein had previously proposed.<sup>136</sup>

Conversely, the Kuwaiti representative found it odd that Iraq was now proposing a peaceful resolution. For twelve years, Iraq had ignored Kuwait's efforts to reach a peaceful settlement of their disputes. Then Iraq prepared for the August assault on Kuwait.<sup>137</sup> The Kuwaiti representative also noted Iraq's appar-

<sup>134</sup> Resolution 674, *supra* note 124.

<sup>135</sup> United Nations Department of Public Information, *Security Council Demands Iraq Stop Taking Third-Country Nationals as Hostages in Iraq and Kuwait; Cuba and Yemen Abstain in Vote*, SC/5224, October 29, 1990 at 1 [hereinafter Press Release]. The reporter of the meeting described the Iraqi representative's comments as follows:

Before the Council acted, Amir Al-Anbari (Iraq), speaking for more than an hour, said the Council's approach ran counter to international law and the Charter. Warning of the greed of foreigners with respect to oil and water resources, he called for the crisis to be solved in an Arab framework. He said that by ignoring President Saddam Hussein's proposal to solve all the problems of the region in a just and equitable manner, the Council had increased the risk of war and sent a message to the "Zionist entity" and others that they could continue to act with impunity.

Commenting on the resolution, the Iraqi representative said it implied that the Secretary-General's good offices could only bear fruit if Iraq ceded its national interests and capitulated. Why should there be concern about the freedom of movement of third-country nationals, when all the people of Iraq were being held hostage by foreign forces? he asked. He said the Council was not in a judicial position to continue acting against Iraq even after the crisis was resolved [and that the Council's acting in such a way] proved that certain States were intent on looting the Iraqi patrimony.

*Id.*

<sup>136</sup> *Id.*

<sup>137</sup> *Id.* at 2. The reporter described the comments of the Kuwaiti representative as follows:

The representative of Kuwait, Mohammad A. Abulhasan, said the Iraqi representative had spoken at length about the peaceful settlement of disputes but had ignored differences of approach between Iraq and Kuwait. Kuwait had attempted to resolve its differences with Iraq over a period of 12 years, but Iraq had procrastinated in order to mislead the whole world and to prepare for the action it had



ent ignorance of the Arab League's condemnation of the invasion and its call for an Arab Summit to resolve the crisis.<sup>138</sup>

Before voting on the resolution, each member of the Security Council addressed the Council to explain the reasons for their votes and the reservations they had with the resolution. The paragraphs of the resolution receiving the most criticism were paragraphs 8 and 9. Paragraph 8 was aimed at Iraq's liability under international law for the losses of Kuwaiti or third State's nationals and their commercial enterprises as a result of the invasion.<sup>139</sup> Paragraph 9 invited States to collect information for use in bringing claims for such losses against Iraq.<sup>140</sup>

In opposition to these provisions, Ricardo Alarcon De Quesada of Cuba said that they purported to give the Security Council the power to decide liability as though it were a judicial entity.<sup>141</sup> Thomas R. Pickering of the United States said, in reply, that the Council was merely demanding Iraq cease its mistreatment of these nationals. Further, he said that every nation has a duty to protect its citizens and may bring actions for reparations from those who harm them.<sup>142</sup>

After passage of Resolution 674 and in response to the previously mentioned calls for the use of the Military Staff Committee, the United Nations issued a communique announcing that "informal consultations of the Members of the Military Staff Committee will be held, at a senior military level at the Mission of France, the current coordinator for the Five Perma-

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taken in August. The Iraqi regime behaved as though it were not aware that the Arab League had condemned its aggression within hours of the invasion, and the Arab Summit had called for its unconditional withdrawal from Kuwait. "Kuwait will be liberated[,"] he said, and it would continue to expose Iraqi actions against the Kuwaiti people and property.

*Id.* at 2.

<sup>138</sup> *Id.*

<sup>139</sup> Resolution 674, *supra* note 124, at para. 8. Here the Security Council: "8. *Reminds* Iraq that under international law it is liable for any loss, damage or injury arising in regard to Kuwait and third States, and their nationals and corporations, as a result of the invasion and illegal occupation of Kuwait by Iraq . . . ." *Id.*

<sup>140</sup> *Id.* at para. 9. In this paragraph, the Security Council: "9. *Invites* States to collect relevant information regarding their claims, and those of their nationals and corporations, for restitution or financial compensation by Iraq with a view to such arrangements as may be established in accordance with international law . . . ." *Id.*

<sup>141</sup> Press Release, *supra* note 135.

<sup>142</sup> *Id.*

nent Members of the Security Council."<sup>143</sup>

On November 30, 1990, the Security Council passed one more resolution,<sup>144</sup> this time authorizing the use of armed force. First, the resolution noted the Council's previous resolutions, adding that "despite all efforts by the United Nations, Iraq refuses to comply with its obligation to implement Resolution 660 (1990) and subsequent resolutions, in flagrant contempt of the Council."<sup>145</sup> Next, it (1) demanded Iraq comply with these resolutions,<sup>146</sup> (2) authorized member states to use "all necessary means" to implement the sanctions,<sup>147</sup> and (3) requested all States (a) to assist those who are implementing the sanctions and (b) to keep the Council informed as to the progress of these actions.<sup>148</sup>

Sitting as President of the Council for the session, American Secretary of State James A. Baker III addressed the Council, echoing the words put forth in the opening session of the General Assembly when the United Nations was first formed.<sup>149</sup> He referred to a quote from then-Ethiopian President Haile Selassie, in his appeal to the League of Nations after Italy invaded Ethiopia. The League's efforts in obtaining a peaceful solution to that invasion subsequently failed.

The United Nations, Secretary Baker said, now faces the

<sup>143</sup> This Communique was not officially released or recorded. Larry D. Johnson of the Counsel of Legal Affairs at the United Nations provided a copy of this Communique to the author.

<sup>144</sup> S.C. Res. 678, 45 U.N. SCOR (2963rd mtg.), U.N. Doc. S/RES/678 (1990).

<sup>145</sup> *Id.*

<sup>146</sup> *Id.* at para. 1. The Security Council: "1. *Demands* that Iraq comply fully with Resolution 660 (1990) and all subsequent relevant resolutions and decides, while maintaining all its decisions, to allow Iraq one final opportunity, as a pause of good will, to do so . . . ." *Id.*

<sup>147</sup> *Id.* at para. 2.

2. *Authorizes* member states cooperating with the Government of Kuwait, unless Iraq on or before January 15, 1991, fully implements, as set forth in paragraph 1 above, the foregoing resolutions, to use all necessary means to uphold and implement the Security Council Resolution 660 and all subsequent relevant Resolutions and to restore international peace and security in the area . . . .

*Id.*

<sup>148</sup> *Id.* at paras. 3 and 4: "3. *Requests* all states to provide appropriate support for the actions undertaken in pursuance of paragraph 2 of this resolution; and 4. *Requests* the states concerned to keep the Council regularly informed on the progress of actions undertaken pursuant to paragraphs 2 and 3 of this resolution . . . ." *Id.*

<sup>149</sup> See Address of Chairman of First General Assembly, *supra* note 12.

same fate as the League of Nations, if its efforts to resolve the Gulf Crisis were to fail. Therefore, in order to achieve the peaceful world envisioned in the United Nations Charter, the world body must convince Saddam Hussein, as well as others like him, that such aggression will be stopped and the aggressors turned back by force, if necessary.<sup>150</sup>

President Hussein failed to comply with the Security Council resolutions and the multinational forces subsequently carried out a military assault upon Iraqi armed forces in occupied Kuwait and Iraq. Iraq finally surrendered and terms for a permanent cease-fire were worked out by the Security Council.

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<sup>150</sup> Debate of Resolution 678, reprinted in *Excerpts From U.S., Kuwaiti, Iraqi and Chinese Remarks on the Resolution*, N.Y. Times, Nov. 30, 1990, at A10, col. 1. Secretary Baker's remarks were recorded as follows:

I would like to begin today's discussion with a quotation that I think aptly sets the context for our discussions today. The quotation is as follows:

"There is no precedent for a people being the victim of such injustice and of being at present threatened by abandonment to an aggressor. Also, there has never before been an example of any government proceeding with the systematic extermination of a nation by barbarous means in violation of the most solemn promises made to all the nations of the earth, that there should be no resort to a war of conquest and that there should not be used against innocent human beings terrible poison and harmful gases."

These words, I think, could well have come from the Emir of Kuwait, but they do not. They were spoken instead in 1936, not in 1990; they come from Haile Selassie, the leader of Ethiopia, a man who saw his country conquered and occupied much like Kuwait has been brutalized since Aug. 2.

Sadly, colleagues, that appeal to the League of Nations fell ultimately upon deaf ears. The League's efforts to redress aggression failed and international disorder and war ensued. History has now given us another chance. With the cold war behind us, we now have the chance to build a world which was envisioned by the founders of this organization, by the founders of the United Nations.

We have the chance to make this Security Council and this United Nations true instruments for peace and for justice across the globe. We must not let the United Nations go the way of the League of Nations. We must fulfill our common vision of a peaceful and just post-cold-war world.

But if we are to do so, we must meet the threat to international peace created by Saddam Hussein's aggression. And that is why the debate that we are about to begin will, I think, rank as one of the most important in the history of the United Nations. It will surely do much to determine the future of this body.

Our aim today must be to convince Saddam Hussein that the just and humane demands of this Council, and of the international community, cannot be ignored. If Iraq does not reverse its course peacefully, then other necessary measures, including the use of force, should be authorized. We must put the choice to Saddam Hussein, in unmistakeable terms.

*Id.* The resolution was then debated and adopted, with China the only permanent member abstaining. *Id.*

On April 3, 1991, the Security Council adopted a resolution<sup>151</sup> delineating the cease-fire terms President Hussein must accept on behalf of Iraq. Among the terms were: (1) that Iraq must forego its claim to Kuwait and accept the territorial boundaries between the two countries as set forth in Iraq's formal recognition of Kuwait in 1963,<sup>152</sup> and (2) that Iraq is liable under international law to pay reparations for losses to Kuwait and other States and their nationals arising from the illegal invasion.<sup>153</sup>

These terms were exactly those which the representatives from Cuba and Iraq warned that the Council would make, in their addresses to the Council before Resolution 674 was adopted.<sup>154</sup> The non-aligned Members of the Security Council who offered amendments to soften the resolution, wanted the Council to tell Iraq and Kuwait to settle their territorial dispute by negotiation, instead of ordering Iraq to accept the boundary agreed to in the 1963 treaty.<sup>155</sup>

The objections these representatives made appear to have been legitimate. The Charter provides that the judicial power of the United Nations resides in the International Court of Justice, not the Security Council.<sup>156</sup> Thus, in its resolution on the terms

<sup>151</sup> See *Excerpts From Draft U.N. Resolution on the Cease-Fire in the Gulf*, N.Y. Times, Apr. 3, 1991, at A9.

<sup>152</sup> In paragraph 2 of the Cease-Fire Resolution, the Security Council: "2. Demands that Iraq and Kuwait respect the inviolability of the international boundary and the allocation of islands set out in the 'Agreed Minutes Between the State of Kuwait and the Republic of Iraq Regarding the Restoration of Friendly Relations and Related Matters,' signed at Baghdad on 4 October 1963 . . . ." *Id.* at col. 1.

<sup>153</sup> In paragraph 16 of the Cease-Fire Resolution, the Security Council: "16. Reaffirms that Iraq . . . is liable under international law for any direct loss, damage, including environmental damage and the depletion of natural resources, or injury to foreign governments, nationals and corporations, as a result of Iraq's unlawful invasion and occupation of Kuwait . . . ." *Id.* at col. 3.

<sup>154</sup> See *supra* notes 135 and 141.

<sup>155</sup> Lewis, *U.N., Near Cease-Fire Deal, Sets Aside Rebels Plight*, N.Y. Times, Apr. 3, 1991, at A9, col. 2.

<sup>156</sup> Article 92 of the U.N. Charter and Article 36 of the Statute of the International Court of Justice determine where the judicial power of the United Nations rests. Article 92 provides: "The International Court of Justice shall be the principal judicial organ of the United Nations. It shall function in accordance with the annexed Statute, which is based upon the Statute of the Permanent Court of International Justice and forms an integral part of the present Charter." U.N. CHARTER art 92. Article 36 provides:

1. The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in

for a cease-fire in the Gulf War, the Security Council acted without authority under the United Nations Charter. These disputes must be reconciled pursuant to the terms of the Charter, under Article 33,<sup>157</sup> by peaceful means to be chosen by both Iraq and Kuwait, not the Security Council.

### B. Summary

Iraq's invasion was condemned and military forces were deployed against Iraq, not only by the United States, but by many other nations, including Arab nations. In addition, the permanent members of the Security Council cooperated to rally the world against the aggressive military regime of Saddam Hussein, using the step-by-step process required by the United Nations Charter before authorizing the use of armed force. Despite these positive events, there are some fundamental concerns about the Gulf Crisis regarding the issue as to whether collective security was truly attained.

By the time the resolution authorizing the use of force was adopted, more than 240,000 American troops had been ordered

treaties and conventions in force.

2. The states parties to the present Statute may at any time declare that they recognize as compulsory *ipso facto* and without special agreement, in relation to any other state accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning:

- (a) the interpretation of a treaty;
- (b) any question of international law;
- (c) the existence of any fact which, if established, would constitute a breach of an international obligation;
- (d) the nature or extent of the reparation to be made for the breach of an international obligation.

3. The declaration referred to above may be made unconditionally or on condition of reciprocity on the part of several or certain states, or for a certain time.

4. Such declaration shall be deposited with the Secretary-General of the United Nations, who shall transmit copies thereof to the parties to the Statute and to the Registrar of the Court.

5. Declarations made under Article 36 of the Statute of the Permanent Court of International Justice and which are still in force shall be deemed, as between the parties to the present Statute, to be acceptance of the compulsory jurisdiction of the International Court of Justice for the period which they still have to run and in accordance with their terms.

6. In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court.

STATUTE OF THE INTERNATIONAL COURT OF JUSTICE art. 36.

<sup>157</sup> For the text of Article 33, paragraph 1, see *supra* note 24.

to the Gulf region.<sup>158</sup> As a result of this troop movement and by not having these commitments agreed to ahead of time, the United States put itself in a weak negotiating position with regard to persuading other countries to commit forces.<sup>159</sup> It became clear that the United States was taking on the tremendous burden of enforcing these Security Council resolutions with relatively little military, logistical or financial assistance from its allies or other Members of the United Nations.<sup>160</sup> Therefore, at the initial stages of the Gulf Crisis American military resources and, more importantly, American lives were, for the most part, at the forefront in enforcing the United Nations' resolutions.

The question begging to be asked is whether collective security is attainable, in light of this unequal burden sharing, because the United States should not have to bear nearly all of the burden of enforcing Security Council resolutions. Furthermore, it is necessary to look at the United Nations' own capacity to implement its resolutions, because the United Nations should not be dependent on one major power to be effective.

### III. COMPARATIVE ANALYSIS OF ACTIONS TAKEN IN THE GULF CRISIS WITH THOSE TAKEN IN THE KOREAN CONFLICT

Prior to these developments in the Gulf Crisis, the only other time the Security Council was able to act in response to one sovereign State's aggression against another was in the case of the Korean Conflict. In response to North Korea's invasion of South Korea, the Council authorized the United States to lead a multinational armed force, to use armed force, and to use the United Nations flag. In response to Iraq's invasion of Kuwait, the Council called on States to lend the assistance of their armed forces and authorized the actual use of armed force. However, the United Nations did not authorize the use of the United Nations flag, nor did it grant a unified command of forces as it

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<sup>158</sup> Gordon, *U.S. is Considering Addition Forces to Confront Iraq*, N.Y. Times, Oct. 24, 1990, at A1, col. 6.

<sup>159</sup> Former American Secretary of State Henry Kissinger told this to the Senate Foreign Relations Committee on the day before the United Nations adopted its Resolution that authorized the use of force. The author observed a television broadcast of this hearing on CSPAN. The hearing has not been reported in writing at this time.

<sup>160</sup> See *The Balance of Power in the Air: Who Has What*, N.Y. Times, Jan. 17, 1991, at A15.

did in Korea.

Another difference between the Korean Conflict and the Gulf Crisis is that while there was continued fighting between opposing armed forces in the Korean Conflict, there was no fighting between the Iraqi army and any opposing forces in the Gulf region at the time the use of force resolution was adopted. This may explain the Security Council's hesitation to authorize the use of armed force in the Gulf Crisis and the absence of hesitation in the Korean Conflict. Nevertheless, there are similarities which permit comparative analysis to determine whether collective security was achieved in either case.

#### A. *Security Council Resolutions in the Korean Conflict*

The first Security Council Resolution in the Korean War came on June 25, 1950, after armed forces from the North invaded the South. First the Council invited the Republic of Korea to sit in on the deliberations<sup>161</sup> during which the Council determined that there had been a breach of peace.<sup>162</sup> Then, it

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<sup>161</sup> Complaint of Aggression Upon the Republic of Korea, 5 U.N. SCOR (473rd mtg.) at 3 (1950), reprinted in 2 UNITED NATIONS RESOLUTIONS 83 (Djonovich ed. 1988). This provides: "At its 473rd meeting, on 25 June 1950, the Council decided, under rule 39 of the provisional rules of procedure, to invite the representative of the Republic of Korea to take a place at the Council table during the consideration of the question." *Id.*

<sup>162</sup> S.C. Res. 82, 5 U.N. SCOR (473rd mtg.) at 4, U.N. doc. S/1501 (1950) [hereinafter Resolution 82]. This provides, in pertinent part:

*The Security Council,*

Recalling the finding of the General Assembly in its resolution 293 (IV) of 21 October 1949 that the Government of the Republic of Korea is a lawfully established government having effective control and jurisdiction over that part of Korea where the United Nations Temporary Commission on Korea was able to observe and consult and in which the great majority of the people of Korea reside; that this Government is based on elections which were a valid expression of the free will of the electorate of that part of Korea and which were observed by the Temporary Commission; and that this is the only such Government in Korea,

Mindful of the concern expressed by the General Assembly in its resolutions 195 (III) of 12 December 1948 and 293 (IV) of 21 October 1949 about the consequences which might follow unless Member States refrained from acts derogatory to the results sought to be achieved by the United Nations in bringing about the complete independence and unity of Korea; and the concern expressed that the situation described by the United Nations Commission on Korea in its report menaces the safety and well-being of the Republic of Korea and of the people of Korea and might lead to open military conflict there,

Noting with grave concern the armed attack on the Republic of Korea by forces from North Korea,

called for an immediate cessation of hostilities and withdrawal of armed forces.<sup>163</sup> It requested the United Nations Commission on Korea to communicate this resolution, to observe the withdrawal, and to report to the Council.<sup>164</sup> It also called upon Member States to assist the United Nations and to refrain from assisting the North Korean authorities.<sup>165</sup>

The second resolution of the Korean Conflict<sup>166</sup> came on June 27, 1950. The Council noted the Commission's report of continued hostilities and the Korean government's request for assistance, and it asked Members to render such assistance.<sup>167</sup>

Approximately two weeks later, on July 7, 1950, the Security Council passed a third resolution,<sup>168</sup> in which the Council au-

*Determines that this action constitutes a breach of the peace . . . .*

*Id.*

<sup>163</sup> This section of Resolution 82: "*Calls for the immediate cessation of hostilities; Calls upon the authorities in North Korea to withdraw forthwith their armed forces to the 38th parallel . . . .*" *Id.* at para. I.

<sup>164</sup> This part of Resolution 82 states: "*Requests the United Nations Commission on Korea: (a) To communicate its fully considered recommendations on the situation with the least possible delay; (b) To observe the withdrawal of North Korean forces to the 38th parallel; (c) To keep the Security Council informed on the execution of this resolution . . . .*" *Id.* at para. II.

<sup>165</sup> In this part of the Resolution, the United Nations: "*Calls upon all Member States to render every assistance to the United Nations in the execution of this resolution and to refrain from giving assistance to the North Korean authorities.*" *Id.* at para. III.

<sup>166</sup> S.C. Res. 83, 5 U.N. SCOR (474th mtg.) at 5, U.N. Doc. S/1511 (1950) [hereinafter Resolution 83].

<sup>167</sup> Resolution 83 provides:

*The Security Council,*

*Having determined that the armed attack upon the Republic of Korea by forces from North Korea constitutes a breach of the peace,*

*Having called for an immediate cessation of hostilities,*

*Having called upon the authorities in North Korea to withdraw forthwith their armed forces to the 38th parallel,*

*Having noted from the report of the United Nations Commission on Korea that the authorities in North Korea have neither ceased hostilities nor withdrawn their armed forces to the 38th parallel, and that urgent military measures are required to restore international peace and security,*

*Having noted the appeal from the Republic of Korea to the United Nations for immediate and effective steps to secure peace and security,*

*Recommends that the Members of the United Nations furnish such assistance to the Republic of Korea as may be necessary to repel the armed attack and to restore international peace and security in the area.*

*Id.*

<sup>168</sup> S.C. Res. 84, 5 U.N. SCOR (476th mtg.) at 6, U.N. Doc. S/1588 (1950) [hereinaf-



thorized the use of force, designated the United States as the unified commander of the United Nations forces, and authorized the use of the United Nations flag.<sup>169</sup>

The Security Council's resolutions and the deployment of forces in the Korean Conflict fall outside the definitions of collective security.<sup>170</sup> Pursuant to Article 51 of the Charter,<sup>171</sup> they cannot be considered as collective self-defense.<sup>172</sup> Rather, they

ter Resolution 84].

<sup>169</sup> Resolution 84 provides:

*The Security Council,*

*Having determined* that the armed attack upon the Republic of Korea by forces from North Korea constitutes a breach of the peace,

*Having recommended* that Members of the United Nations furnish such assistance to the Republic of Korea as may be necessary to repel the armed attack and to restore international peace and security in the area,

1. *Welcomes* the prompt and vigorous support which Governments and peoples of the United Nations have given to its resolutions 82 (1950) and 83 (1950) of 25 and 27 June 1950 to assist the Republic of Korea in defending itself against armed attack and thus to restore international peace and security in the area;

2. *Notes* that Members of the United Nations have transmitted to the United Nations offers of assistance for the Republic of Korea;

3. *Recommends* that all Members providing military forces and other assistance pursuant to the aforesaid Security Council resolutions make such forces and other assistance available to a unified command under the United States of America;

4. *Requests* the United States to designate the commander of such forces;

5. *Authorizes* the unified command at its discretion to use the United Nations flag in the course of operations against North Korean forces concurrently with the flags of the various nations participating;

6. *Requests* the United States to provide the Security Council with reports as appropriate on the course of action taken under the unified command.

*Id.*

<sup>170</sup> See Wolfers, *Collective Security and the War in Korea*, in FROM COLLECTIVE SECURITY TO PREVENTIVE DIPLOMACY 225 (Larus ed. 1965). Arnold Wolfers said:

Collective security presupposes that the aggressor be named and condemned by means of some recognized procedure; resort to violence in defense of the law against such an aggressor must be authorized by an organization which can claim to speak for the community. Yet no provisions, resolutions, commands, or recommendations of a world organization of sovereign nations can suffice to make collective security a reality. *It can become real only by the fact of military power being employed for police purposes; the decision rests with the members who possess such military power and can use it for collective security if they will.* In regard to the United Nations, the question is merely whether it did its part in inducing members of the organization to take police action *on its behalf and under its auspices.*

*Id.* at 228 (emphases added).

<sup>171</sup> For the full text of Article 51, see *supra* note 92.

<sup>172</sup> Collective defense is defined as:

have been called a simple police action under the auspices of the United Nations.<sup>173</sup>

B. *Analyses of the Attainment of Collective Security*

The analysis of whether collective security was actually achieved centers on the question of whether the United States had any vital interests at stake.<sup>174</sup> This determination is crucial because only when the United States has demonstrated that it will commit troops despite its own interests would other nations feel secure in depending on the United States for collective security. When the United States, as the leading protagonist against aggressors, is committed to the principle of collective security, nations will be encouraged to observe international law and to call upon the United Nations to enforce international law. It has been argued that if there were no vital American interests at stake in the region of conflict, the conclusion that the United States was committed to the principle of collective security would be clear.<sup>175</sup> Conversely, in the presence of such interests, the commitment of the United States would be unclear.<sup>176</sup>

In the Korean Conflict, had the South invaded the North and the United States aided the North, it would have been clear that the United States was acting pursuant to the principle of collective security. To side with North Korea "would have meant siding with this country's chief national enemy, the Soviet bloc . . ."<sup>177</sup> Conversely, the North invaded the South and the United States aided the South. There were at least three

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[a]n international term introduced by the Pact of the League of Nations of 1919 for an obligation assumed by the members of the League of Nations to co-operate and render support in the case when "one of the members resorts to war counter to the duties provided for in arts. 12, 13, or 15 . . . . This system failed in confrontation with the policy of aggression exercised by Japan . . . Italy and the Third Reich. In effect, after World War II the United Nations Charter introduced a system of collective security, providing for immediate acts of repression within the frames of the United Nations in emergency cases.

ENCYCLOPEDIA OF THE UNITED NATIONS AND INTERNATIONAL AGREEMENTS 158 (Taylor & Francis ed. 1985).

<sup>173</sup> See Franck & Patel, *UN Police Action in Lieu of War: "The Old Order Changeth"*, 85 AM. J. INT'L L. 63, 70 (1990) [hereinafter Franck & Patel].

<sup>174</sup> See Wolfers, *supra* note 170.

<sup>175</sup> *Id.*

<sup>176</sup> *Id.* at 230.

<sup>177</sup> *Id.*

discernible American interests which, "thinking along the lines of traditional power politics, governments would normally consider serious enough to justify military action or even make it imperative."<sup>178</sup> First, "any further expansion in any direction on the part of the Soviet bloc constituted a threat to American security."<sup>179</sup> Second, "the United States was vitally interested in proving to its European Allies that they could rely on American military assistance in case of a Soviet attack."<sup>180</sup> Third, "[t]he United States was engaged in a vast and strenuous effort to unite the entire free world in a common effort of defense against the Soviet and Communist menace."<sup>181</sup>

Since the United States had vital interests at stake in the Korean Conflict, it was unclear whether the United States was truly committed to collective security. The United States has heretofore not been put in a position where it would have an opportunity to aid a victim State in a situation where the United States would have to confront one of its allies or otherwise act against its own interest.

The same was true in the Gulf Crisis. As in the Korean Conflict, the United States had vital interests at stake in the Gulf. At first these interests may have appeared vague.<sup>182</sup> However, it is clear that the United States had a vital interest in the oil in the Gulf region.<sup>183</sup> John C. West, former Ambassador to Saudi Arabia, 1977-81, said:

We do have a tremendous economic stake in the Mideast. We cannot afford to have Saddam Hussein or anyone else who is unfriendly to the United States control nearly half of the world's oil supplies. The fact is that we are far more dependent on imported Mideast oil than we want to admit.<sup>184</sup>

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<sup>178</sup> *Id.* at 231.

<sup>179</sup> *Id.*

<sup>180</sup> *Id.*

<sup>181</sup> *Id.*

<sup>182</sup> Friedman, *U.S. Gulf Policy: Vague 'Vital Interests'*, N.Y. Times, Aug. 12, 1990, at A1, col. 3.

<sup>183</sup> See generally U.S. FEDERAL TRADE COMMISSION, *THE INTERNATIONAL PETROLEUM CARTEL* 129-62 (1976).

<sup>184</sup> *Many Prominent Members Say Vital Interests Are at Stake in the Gulf . . . Resistance to Blatant Aggression, Defense of Allies and, Above All, Oil*, N.Y. Times, Aug. 13, 1990, at A10, col. 3 [hereinafter *Vital Interests*].

Since the United States had vital interests at stake, there was no opportunity to prove that it would act against its own interest to defend a victim State. Based on this argument alone, the strength of the United States' commitment to the principle of collective security is still unclear.

In a world where nations are so greatly interdependent,<sup>185</sup> there may never be a situation suitable for response by the Security Council, where the United States does not have a vital interest at stake. Thus, other nations may not be able to determine whether forces are committed for collective security or merely for national interests. If so, these nations may not feel secure in their sovereignty, political independence and territorial integrity, because they may not be able to tell if they would be defended from an invasion.

American President George Bush<sup>186</sup> and others<sup>187</sup> have stated that the deployment of American forces in the Gulf region was for the protection of small, nearly defenseless countries like Kuwait from their more powerful neighbors such as Iraq.

<sup>185</sup> Reisman, *International Law After the Cold War*, 84 AM. J. INT'L L. 859 (1990).

<sup>186</sup> See *Excerpts From President's News Conference on Crisis in Gulf*, N.Y. Times, Dec. 1, 1990, at A6, col. 1. President Bush, on the day after the Security Council authorized the use of armed force against Iraq in case it did not leave Kuwait by January 15, 1991, said:

We're in the gulf because the world must not and cannot reward aggression. And we're there because our vital interests are at stake. And we're in the gulf because of the brutality of Saddam Hussein.

We're dealing with a dangerous dictator all too willing to use force, who has weapons of mass destruction and is seeking new ones and who desires to control one of the world's key resources—all at a time in history when the rules of the post-cold-war world are being written.

*Id.*

<sup>187</sup> Henry Kissinger, former American Secretary of State, 1973-77, and national security adviser to President Richard M. Nixon, 1969-75, said:

The fundamental problem, it seems to me, is that this is the most blatant case of 1930's-style aggression in the entire postwar period. In the middle of peace, without any particular provocation except the desire for more territory, Iraq has annexed Kuwait. If that is permitted to stand it will lead to a whole series of conflicts and revolutions in the region.

. . . . .  
If Saddam Hussein succeeds, in particular on the basis of the arguments he has used—that Iraq has an implicit right to supplant Arab states by military action—all the principalities in the gulf will be put at risk because virtually every country in the area, including Jordan, fits Hussein's criteria for justifying the overthrow of Kuwait, with the possible exception of Egypt.

*Vital Interests*, *supra* note 184, at A10, col. 1.

Despite this intent, it may not ever be possible to prevent an aggressor from asserting, as Hussein did, that the United States is fighting for its own national interest. Since nations are now so greatly interdependent, the United States will almost always have an interest.

Furthermore, the United States, despite having become "the 911 for the world,"<sup>188</sup> may find that committing forces would not be in its national interest.<sup>189</sup> In that case, where would the Security Council be in trying to enforce its sanctions against Iraq?<sup>190</sup>

#### IV. A PERMANENT UNITED NATIONS FORCE

The United Nations may overcome the dilemma posed in determining whether forces will be deployed for the purpose of collective security, by forming a permanent United Nations force.<sup>191</sup> Such a force was contemplated during the formation of the United Nations to compensate for the failure of the League of Nations to avert war. Unfortunately, it appears that such a force may never be put together for political reasons, in spite of the cooperation of the permanent Members of the Security Council in the aftermath of the cold war. If this is true, the United Nations, like its predecessor, remains greatly limited in fulfilling its role as an instrument to avert war.

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<sup>188</sup> Quote from Representative Patricia Schroeder, Democrat of Colorado and a member of the House Armed Services Committee. *Id.* at col. 5.

<sup>189</sup> On the day after the use of force resolution was adopted, the Congress warned President Bush it may not grant a request for authorization of the use of armed force in the Gulf. Rasky, *House Leaders Tell President Not to Call Special Iraq Session*, N.Y. Times, Nov. 30, 1990, at A1, col. 5.

<sup>190</sup> Reisman, *supra* note 185, at 862. Reisman stated:

For the short term, at least, the Security Council may simply not be strong enough to perform the role assigned to it. In the meanwhile, the question will be whether the United States, the erstwhile bulwark of international security, will lose its vision, its sense of mission and its credibility. Should that happen, there may be no international security system.

*Id.*

<sup>191</sup> Such a force is different from a peacekeeping force. Whereas a peacekeeping force is formed by a resolution of the Security Council or the General Assembly passed pursuant to Chapter VI of the Charter, dealing with peaceful settlement of disputes, to maintain peace between disputing States, UNITED NATIONS DEPARTMENT OF INFORMATION, *THE BLUE HELMETS* 7, 319 (1985), a multinational armed force would be formed pursuant to Article 43, found in Chapter VII of the Charter, dealing with the use of armed force, to end warfare.

A permanent multinational force under the control of the United Nations may even enhance the deterrent force of international law. Aggressive nations would know that even if the United States is not willing to send forces to a region to repel an aggressor, the United Nations would have forces at its disposal to do so. With this in mind, weaker nations would be more secure in their sovereignty, territorial integrity, and political independence. When weaker nations see that international law will be enforced, they may be more willing to abide by it.

The idea of maintaining a multinational armed force certainly is not a new one. "As early as the year 1000, French princes of the Church declared their willingness to make 'war against war' by the intervention of collective military forces under religious leadership."<sup>192</sup> When the United Nations was first formed, the permanent members of the Security Council were unable to agree, not on whether to have such a force, but on the size and makeup of the force and how each nation was to contribute to it.<sup>193</sup> Moreover, it was Article 43,<sup>194</sup> providing for Members to designate forces to be made available for use by the Security Council, that distinguished the Charter of the United Nations from the Covenant of the failed League of Nations.<sup>195</sup>

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<sup>192</sup> Rosner, *The International Military Force Idea: A Look at Modern History*, in *FROM COLLECTIVE SECURITY TO PREVENTIVE DIPLOMACY* 445 (Larus ed. 1965) [hereinafter *COLLECTIVE SECURITY*].

<sup>193</sup> Goodrich & Simons, *The Rise and Fall of the Military Staff Committee*, in *COLLECTIVE SECURITY*, *supra* note 192, at 219.

<sup>194</sup> For the full text of Article 43, see *supra* note 62.

<sup>195</sup> Franck & Patel, *UN Police Action in Lieu of War: "The Old Order Changeth"*, 85 *AM. J. INT'L L.* 63, 65 (1990). The authors explained as follows:

The delegates to the San Francisco Conference recognized that the enforcement provisions of chapter VI of the Charter provided "the teeth of the United Nations." [citing *SECRETARY OF STATE 79TH CONG., 1ST. SESS. REPORT TO THE PRESIDENT ON THE RESULTS OF THE SAN FRANCISCO CONFERENCE* 87 (Comm. Print 1945)]. The Committee considering its military enforcement measures adopted Article 42 unanimously. In so doing, delegates intended to give the Security Council "the power, when diplomatic, economic, or other measures are considered by the Council to be inadequate, to undertake such aerial, naval, or other operations as may be necessary to maintain or restore international peace and security." [citing *Doc. 881, III/3/46, 12 UNCIO Docs. 765-66 (1945)*.] This article was thought to remedy the principal defect of the League Covenant [citing *id.* at 769.] and the Committee's rapporteur observed that "this unanimous vote . . . renders sacred the obligation of all states to participate in the operations." [citing *id.* at 766.] Thus, "[m]ilitary assistance, in case of aggression, ceases to be a *recommendation* made to member states; it becomes for us an *obligation* which none can shirk." [citing

Further, the United States Senate, in its debate to ratify the Charter, expressed the belief that they were consenting to the creation of "a new system in which an international institution—rather than individual states—would exercise principal responsibility, through global police power, for maintaining international peace and security."<sup>196</sup> Therefore, the idea that there should be a multinational armed force under the United Nations' control was arguably the cornerstone of the new international security system envisioned by not only the original Members of the United Nations in general, but the United States in particular. Because such a force has not been formed, the United Nations still has not implemented a system that serves to promote international peace and security better than did the League of Nations.

After the Korean Conflict, numerous proposals were advanced to strengthen the United Nations and to assure that collective security would be attained.<sup>197</sup> Among these proposals was one for a multinational armed force.<sup>198</sup> The Commission to Study the Organization of Peace was concerned that the regional arrangements formed pursuant to Article 51 of the Charter may "stimulate the creation of a rival arrangement . . . [as] political competition . . . [may tend] to draw states into a bi-polarized world of great instability."<sup>199</sup> The Commission was also concerned that these regional arrangements would render the United Nations impotent.<sup>200</sup> The Commission therefore suggested:

four general methods of creating an international police force: (1) a system based on *co-ordinating* national contingents; (2) an *integrated* international force possible only in a centralized world state; (3) a *quota* international force based on national states limiting the size of their military forces in such a way as to leave the controlling force in the hands of the international organization;

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*id.*, at 769.]

*Id.*

<sup>196</sup> *Id.* at 66.

<sup>197</sup> See generally F. WILCOX & C. MARCY, PROPOSALS FOR CHANGES IN THE UNITED NATIONS (1980).

<sup>198</sup> *Id.* at 164-80.

<sup>199</sup> *Id.* at 149.

<sup>200</sup> *Id.* at 151.

and (4) a *specialized* international force based on giving certain types of effective armament to the international organization.<sup>201</sup>

Despite these recommendations, such a force was never formed. Although the Korean Conflict was over, the cold war between the United States and the Soviet Union had just begun. It continued until 1990, just before Iraq's invasion of Kuwait. Until the Gulf Crisis arose, the two superpowers were not only unable to agree upon the size and makeup of a United Nations armed force, but were also on opposing sides of a threatened nuclear weapons confrontation.<sup>202</sup>

Now that the cold war is over, there is hope that the superpowers can cooperate so that the Security Council can form a multinational force designed to be deployed under the auspices of the Security Council. In fact, both superpowers expressed their desire to reactivate the Military Staff Committee<sup>203</sup> and the Council's resolutions asked Members to make their forces available to the Committee.<sup>204</sup> Such a force should be given a chance to further the observance and enforcement of international law and to enhance the likelihood that the United Nations will be successful at maintaining international peace and security.

Unfortunately, it is very unlikely that such a force will be formed. Three of the five permanent members of the Security Council may not want the other two to have any control over the use of armed forces deployed to enforce Security Council Resolutions. Those who are not permanent members of the Security

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<sup>201</sup> *Id.* at 165, citing Commission to Study the Organization of Peace, *Fourth Report*, 396 INTERNATIONAL CONCILIATION 50-61 (1944).

<sup>202</sup> *Id.* at 139. This states:

The fact is that the conflict—the so-called cold war—between the major powers is the situation most likely to endanger the maintenance of international peace. This situation cannot be manipulated out of existence by changes in the provisions of the Charter for peaceful settlement. Indeed, excessive concentration on and discussion of ways to improve provisions and techniques for peaceful settlement might create the dangerous illusion that peace can be maintained if only the proper procedures can be worked out. The result might be that false hopes would be raised only to be dashed when states showed they had no intention of following the procedures available.

*Id.*

<sup>203</sup> See *supra* notes 114 and 120 and accompanying text.

<sup>204</sup> See *supra* note 129 and accompanying text.



Council may not want such a force, because they will not be able to exercise control over it. Furthermore, the United States may not be willing to give up its prowess as the sole military superpower left after the cold war.

In addition, such questions would arise as to (1) who would have control of these forces, (2) how each nation would make their forces available to the United Nations, (3) to whom would the troops owe their allegiance, (4) how to fund the training and operations of these forces, (5) how to convince those nations with strong military forces to give up their superiority and contribute their technology, strategies and tactics, and (6) how to convince all nations to consent to a system in which their sovereignty may slowly give way to a centralized world state.

In light of these concerns, it appears that a multinational force under the control of the United Nations may not be formed. If this is true, the United Nations' capacity to avert war may prove to be just as impotent as that of the League of Nations, and there is little reason to hope for international peace and security.

#### CONCLUSION

Iraq's invasion of Kuwait was the world's most blatant violation of international law since the end of the cold war. The international response, led by the United States, proved that the United Nations is ready to respond to aggression. The United Nations is now prepared to follow the step-by-step process proposed in its Charter to resolve disputes peacefully before resorting to the use of armed force. Nevertheless, the world body still has a fundamental weakness: it depends upon the strongest of its Members to enforce the resolutions it passes in response to illegal aggressions.

The Gulf Crisis also proved that the United States is ready to commit troops to a region, such as the Persian Gulf, to protect its national interests. It is possible that the United States is genuinely interested in protecting the sovereignty, territorial integrity and political independence of any country that is invaded by another in violation of international law, even if doing so would be against the United States' national interest. However, it is unfair to expect other nations to depend upon the United States to deploy troops to a region where the aggressor is a

United States ally or where the United States has no vital interests at stake. One can not be sure that the United States' democratic process will prevent the deployment of American forces in areas of conflict. As long as this is the case, the United Nations can never be sure that its resolutions will be enforced. The means of maintaining international peace and security and thus promoting the observance and enforcement of international law, envisioned in the formation of the United Nations, will have been for naught.

One way in which all nations of this world can depend on forces to be provided to protect them from aggression is to have a multinational armed force under the United Nations' control. Since the cold war is over, the permanent Members of the Security Council may cooperate to form such a force that can be called into action at any time. Despite this cooperation, such a proposal is politically unpopular and thus has very little chance of being implemented. The United Nations' greatest task therefore is to overcome these political problems so that such a force may be formed.

STEPHEN M. DE LUCA\*

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\* This comment is dedicated to the author's brother, Mark E. De Luca, Captain, USAF, who served as a pilot in the Gulf War.