ABHANDLUNGEN

Reforming the United Nations

by

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The international crisis of early 1998 caused by Saddam Hussein's denial to allow UN weapons inspectors access to places where possibly atomic, biological and chemical weapons were hidden was also a crisis for the United Nations. The Security Council, as the UN's principal executive organ, was unable to agree on an unequivocal interpretation of its own resolutions, and thus left open to doubt whether the United States was entitled to use military force in order to make Iraq comply with its obligations. While the U.S. Government believed that it could rely on resolution 678 (1990), adopted by the Security Council on 29 November 1990 at the height of the Iraqi aggression against Kuwait and authorizing 'Member States co-operating with the Government of Kuwait . . . to use all necessary means' to liberate Kuwait, other permanent members of the Council, namely China, France and Russia, held that any military action would require a new express authorization by the Council. This dispute about a question vital to the UN, the legitimate use of force in international relations, could not be resolved in the Council because of the veto power held by each permanent member. Resolution 1154 (1998), by which the Council on 2 March 1998 endorsed the diplomatic solution achieved by the UN Secretary-General at the very last minute, only postponed the controversy by speaking of 'severest consequences for Iraq' in case of a violation of its obligations, without making clear whether or not such consequences may include the use of military force.

In the summer and fall of 1998, governments and parliaments of the Western world were confronted with the question whether, in the absence of an authorization by the Security Council, Western states were allowed to use force against Yugoslavia (Serbia and Montenegro) to make it stop its violent suppression of the ethnic Albanian majority population in the

Serbian province of Kosovo. In this case too, there was a split in the Council, the Western permanent members favoring a use of the military and Russia and China opposing it. In view of the humanitarian situation of the Kosovo people and the fruitless negotiations with the Belgrad Government over many months, voices grew strong in the United States and Europe calling for action without waiting any longer for the Security Council. Once more, the disagreement of the Council's permanent members called into question the workability and credibility of the comprehensive scheme introduced by the UN Charter to deal with breaches of and threats to the peace.

The two incidents will hopefully revitalize the discussion of a structural reform of the world organization which has kept diplomats, politicians and academics occupied since the fall of the Soviet Union and the end of the 'Cold War' but lost momentum about a year ago. Even so, most governments, interested non-governmental organizations and academic observers agree that in the last decades the international state system and, more generally, conditions of international relations have experienced a change so profound that the set-up of 1945 cannot be maintained without running the risk of relegating the UN to the backseats of international life. As former UN Secretary-General Boutros Boutros-Ghali said, 'as a result of the sudden acceleration in the pace of change, a certain number of principles which, in the past, were the foundation for international society have become outdated or obsolete'. Different from earlier efforts, which were largely concerned with a possible reorganization of the Secretariat and UN bodies in the economic and social field, the current debate focuses on the Security Council, its composition, decision-making process and competences, and its relationship with the General Assembly and the International Court of Justice. In view of the Council's significant involvement in international peacemaking and peacekeeping since the second Gulf War, all these aspects are regarded as component parts of the general 'legitimacy' of the Security Council. The current discussion therefore deals with the very core of the UN Charter, an instrument which, today, is widely considered to be the 'constitution of the universal community of states'.


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The Right of Veto in the Security Council as a Dominant Feature of the UN Constitution

In this context, the right of veto of the permanent members of the Security Council, as embodied in Article 27, paragraph 3 of the UN Charter, is addressed by virtually all reform proposals. According to that provision, decisions of the Security Council on all but procedural matters require an affirmative vote of nine members of the Council including the concurring votes of the permanent members. The membership of the Council is defined by Article 23, paragraph 1 of the Charter: 'The Security Council shall consist of fifteen Members of the United Nations. The Republic of China [today the People's Republic], France, the Union of Soviet Socialist Republics [today the Russian Federation], the United Kingdom of Great Britain and Northern Ireland, and the United States of America shall be permanent members of the Security Council. The General Assembly shall elect ten other Members of the United Nations to be non-permanent members of the Security Council ...' The original number of non-permanent members was six; it was raised to ten by General Assembly Resolution 1991 (XVII), which entered into force in 1965.

The veto is seen, and rightfully so, as a dominant structural feature of the constitution of the United Nations. By giving each of the five permanent members the power unilaterally to prevent a decision from being taken, it establishes a hierarchy among the members of the organization – and, as it is, the nations of the world –, and counterbalances the equalizing effect of the 'one state, one vote' principle generally prevailing in the organs of the UN. In addition, the veto practically exempts the permanent members from measures of enforcement under the UN Charter. 'To that extent the Charter departs from the principle of equality before the law', Sir Hersch Lauterpacht wrote in 1955.6

The right of veto in the Security Council, as well as similar provisions of the Covenant of the League of Nations, is a child of the age of legal positivism and constitutionalism. During the entire time of existence of an international legal community, there has been actual inequality between its members. But the more the principle of legal equality of states was acknowledged as a fundamental rule of international law in the development of modern international law, the more problems were raised by these actual differences. In general, the abstract recognition of the rule did

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5 See Art. 18, para. 1 (General Assembly), Art. 27, para. 1 (Security Council), Art. 67, para. 1 (Economic and Social Council), Art. 89, para. 1 (Trusteeship Council).

not prevent the more powerful states from claiming that their opinions should carry more weight than those of the others. In the nineteenth century, after the turmoil of the French Revolution and the Napoleonic Age, the leading European powers imposed their will on the smaller states in the name of peace and order in Europe.7 'Holy Alliance', 'Concert of Europe', 'European Pentarchy', the terms which represent this form of great power-cooperation, are sometimes used even today to describe the privileged position of the permanent members of the UN Security Council.\textsuperscript{8}

It was only in 1919 that an inequality was codified which had always been a fact of life. The Covenant of the League of Nations made the 'Principal Allied and Associated Powers', who had won the war, permanent members of the League Council and gave them a decisive position in the organization. Thus the political hegemony of the Great Powers was, for the first time, given a legal basis and expression\textsuperscript{9}. The League adhered, nevertheless, to the principle of unanimity as the regular mode of voting, thus granting all member states what amounted to a 'right of veto'.

When, at the end of the Second World War, a new attempt was made to restore and maintain world peace through a collective security system, it was widely held that the mechanism provided for in the League Covenant had proved insufficient and that a more effective decision-making process had to be established – i.e., a process allowing for majority decisions on the most crucial questions of war and peace. At the same time, however, the major Allied powers – the United States, the Soviet Union, and the United Kingdom – felt that their unity and strong leadership was indispensable for the prevention of a new disastrous conflict. The enormous differences in political, military and economic power between those three states and the rest of the world, which the war had revealed and intensified, supported their claim to a privileged status in the postwar international order. The result is well known – a concentration of far-reaching powers for the maintenance of international peace and security in the Security Council and the introduction of majority voting therein, on the one hand, and the dominant position which the United States, the Soviet Union and the United Kingdom reserved for themselves (and extended to China and France), on the other hand. This mixture of the desirable and the undesirable made Paul

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\textsuperscript{8} See, e.g., Alain Pellet, The Road to Hell is Paved with Good Intentions, in: The United Nations at Age Fifty: A Legal Perspective, at 114, 132 (Christian Tomuschat ed., 1995).

\textsuperscript{9} Oppenheim-Lauterpacht, supra note 6, at 276.
Guggenheim describe the UN as one of those organizations which tend
towards a collective hegemony of the Great Powers but pursue, on the other
hand, a goal which lies in the common interest of all states.\(^\text{10}\)
The system introduced in 1945 was a breakthrough in the history of
international law. At the end of the First World War, Walther Schücking
still had regretfully observed that states, in questions of so-called 'vital
importance' or 'national honour', were not yet ready to submit to the uncer-
tain decision of an international authority, and therefore insisted on their \textit{jus ad bellum}, their right to wage war against another state.\(^\text{11}\) Only almost thirty
years later governments could be convinced that it was in their best interest
to enter a system the core of which was an institution with the power to
decide upon the legality of the use of force in international relations.
Obviously, it was the experience of the disastrous second global war, and
the realization of how limited the choices of smaller powers had been in this
conflict, that made governments change their minds — in other words, a
combination of \textit{Realpolitik} and wisdom. It was also the pressure exerted by
the major powers, in particular the United States and the Soviet Union.
Confronted with Washington's and Moscow's firm will to rule out another
war of the scale of that just witnessed, the smaller states had to choose
between a world directed by four or five 'policemen'\(^\text{12}\) without any insti-
tutionalized control, and a world organization the decisions of which they
could at least influence to some degree. Some governments accepted more
readily than others what they were not able to prevent — \textit{fata volentem
ducunt, nolentem trahunt}, fate leads the willing but drags along the
reluctant.

On the occasion of the fiftieth anniversary of the world organization,
Professor Edith Brown Weiss remarked that '[w]e could not create the UN
now; the situation in 1945 was unique\(^\text{13}\). This is certainly true. But was the
establishment of an authority like the Security Council a sort of accident in
the history of international law — only made possible by unique events, and
so little in accordance with centuries-old principles like sovereignty and
equality that later developments necessarily had to tend towards the old

\(^{10}\) See Guggenheim, Les principes de droit international public, 80 Recueil des
Cours 1, 98 (1952 I).

\(^{11}\) See Walther Schücking, Internationale Rechtsgarantien: Ausbau und Sicherung
der zwischenstaatlichen Beziehungen 11-12 (1918).

\(^{12}\) For President Roosevelt's idea of a postwar security machinery in the form of the
'four policemen' (United States, United Kingdom, Soviet Union and China), see
Ruth B. Russell, A History of The United Nations Charter: The Role of the

order? Or is what happened at the founding conference of the UN in San Francisco rather 'unfinished business', one step in the progressive evolution of international law? In the latter perspective, the abolition or restriction of the right of veto would appear as the next logical step on a way to a world increasingly ruled by law.

Compared to the Covenant, the UN Charter entailed a significantly stronger formal recognition of inequality among states. Although this implied greater certainty and reliability of the law, it did not meet with a lasting approval of the disadvantaged. To the contrary, the more the idea of equality of states was emphasized as a leading principle of the international legal order – in particular in the period of decolonization, when many states with a small population or territory, or little economic resources, joined the UN –, the louder the voices grew calling for a reform or even annulment of Article 27, paragraph 3 of the Charter.

Current Demands and Expectations

The end of the antagonism between East and West and the collapse of the Soviet Union have now revived this struggle which has been part of the history of the UN since its foundation. After the stalemate of the Cold War, today many governments and non-governmental actors around the world perceive a first and possibly unique opportunity for fundamentally reforming the decision-making processes in the UN.

Several sides are challenging the veto for reasons of principle, and their arguments are not very different from those advanced in 1945. Others acknowledge that the veto was necessary back then, or that it served a commendable purpose in the past, but contend that it is superfluous or even dangerous in the present world. The developing countries reiterate their longstanding demands for an enhanced role of the General Assembly and a limitation of the prerogatives of the states which so far have dominated the organization. In part, these claims are supported by industrialized nations which have been dissatisfied with their position in the UN for a long time but regarded it unwise to express their sentiments because of their attachment to, or need for the protection of, one of the superpowers. However, much as they would like to see a reduction of the influence of the present permanent members of the Security Council, they are concerned that a 'democratization' of the UN could lead to an even more elevated position of the developing states of Africa, the Caribbean and the Pacific which numerically dominate the General Assembly and its subsidiary organs, and thus jointly exert an influence exceeding by far their individual political and economic weight.
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Other efforts are also more the outcome of a longer historical development than of the changes which have taken place in the last few years. They aim at an improvement of the position of certain states in their regional environment, or at the recognition of the leading role of a state within its region. The former 'enemy states' Japan and Germany\textsuperscript{14} want to have the international community recognize their newly acquired importance in international relations.\textsuperscript{15} Of all the different aspirations, these are the clearest responses to the collapse of the Soviet Union.

At the same time, the role of the Security Council is being reassessed. In the past, the distribution of powers between the General Assembly and the Council and the right of veto in the Council were mainly criticized for rendering the organization ineffective. The 'Uniting for Peace' Resolution of 1950, adopted at a time when the West still had a clear majority in the General Assembly, sought to shift powers and responsibilities with respect to the maintenance of international peace and security from a paralyzed Council to the Assembly.

In the years following the liberation of Kuwait, the concern about the Council's ineffectiveness largely receded. What many governments now worried about was the (selective) activism practiced by the Council. UN Secretary-General Boutros-Ghali summarized this uneasiness as follows: '\textit{[W]ith the permanent members now largely unanimous, does the Security Council have unlimited powers? How far can it extend the scope of its activities? Is it up to the Council alone to interpret what its powers are? Are its actions essentially unchecked?}\textsuperscript{16}'

These were the legal concerns. The practical consequences of what seemed to be a position of unchallenged leadership of the United States in the Council were critically described by Professor Richard A. Falk: 'There is a lack of consistency in practice, a failure to articulate principled lines of distinction when a UN response [to threats to international peace and security] is appropriate, and a reliance on unrestricted mandates to coali-

\textsuperscript{14} See Arts. 53 and 107 of the UN Charter.

\textsuperscript{15} For a recent study of Germany's aspirations to become a permanent member of the Security Council, and the country's options, see Volker Rittberger & Martin Mogler, Reform des Sicherheitsrats der Vereinten Nationen und ständige Mitgliedschaft Deutschlands, in: Die Reform des UN-Sicherheitsrates 18-40 (Deutsche Gesellschaft für die Vereinten Nationen ed., 1997). See also Manfred Knapp, Die gewachsene Rolle Deutschlands und Japans in den Vereinten Nationen, infra, at 465-82.

\textsuperscript{16} See supra note 2, at 3.
tions of States led by the United States. The Security Council is perceived as a geopolitical instrument, one that is currently dominated by the United States.\(^7\)

A rift developed in the old, and fairly broad, alliance against the veto. Some states discovered its value in the new situation – a Council, hardly confined by legal rules, now being dominated by one power alone. To them, the veto appeared to be the only effective means of controlling the otherwise uncontrolled, the central part of a (quite imperfect) system of checks and balances. It seemed possible to imagine a future in which the Council simply would have become a tool of the United States, so that the appeal of the 'Uniting for Peace' resolution 'to exercise restraint in the use of the veto', repeated a hundred times in the days of the Cold War, would be replaced by a call for an increased use of the veto. The positive connotation of the expression 'collective veto', which shall describe the collective capacity of the developing (and former non-aligned) states of Latin America, Africa and Asia to defeat a Council decision,\(^8\) also reflected this changed attitude towards the veto.

It is hard to say whether the Iraq and the Kosovo stalemates outlined at the beginning of this article indicate that Russia and China have begun to play this role of a guardian of UN legality who sees to it that the Council is not improperly used to act in the interest of one member state only, or whether the two incidents rather stand for a return to the old policy of obstruction, where the vetoing state is led by what it perceives as its own national interest. However, even if we acknowledged a new rationale of the veto in a new time, there would remain the questions of its scope and the composition of the group of states entitled to it.

We find ourselves challenged by a web of intertwined questions about the fundamental structure of the UN and, with it, the organs of the international legal community. It is obvious that none of them can be adequately addressed in an isolated way. They include the following:


\(^8\) Since at present nine or more affirmative votes are required for a non-procedural Council decision (Art. 27, para. 3 of the UN Charter), seven non-permanent members possess a 'hidden veto'; by voting against, abstaining from, or not participating in a decision, they can defeat it. According to General Assembly resolution 1991 (XVIII) of 1963, the Latin American and Caribbean states are entitled to two non-permanent seats, and the African and Asian states to five. For the 'collective veto', see, e.g., Anthony Aust, The Procedure and Practice of the Security Council Today, in: The Development of the Role of the Security Council, at 365, 370 (Réné-Jean Dupuy ed., 1993).
Should the General Assembly be assigned a more important role in the field of international peace and security? If the answer is affirmative, would this, and not only for practical reasons, require a new structure of the Assembly? How could then the 'principle of the sovereign equality of all [UN] members' (Article 2, paragraph 2 of the Charter) be preserved? Should the internal structure of the Council, that is to say, its division into permanent and non-permanent members, remain the same? If so, should the ratio of permanent to non-permanent seats be changed? What about an increase in both categories of Council membership? Which states should be permanent members? Should there be new rules for the election of non-permanent members? Would it make sense to introduce a 'third category' of Council members, and if so, how should it be defined? These crucial issues only confirm an observation once made by Professor Myres S. McDougal: 'With regard to internal arenas [of intergovernmental organizations], the most general question is who gets admitted to participation in the decision-making processes of the organization.'

As regards the veto, the question is posed whether it should be retained as it is, limited in scope, or abolished altogether, and whether its beneficiaries should be confined to the present 'P5'. The respective views of governments differ sharply, the opposed mottos being 'equality' and 'effectiveness'. Lately, another catchword, 'transparency', has appeared. The concept is a response to the increasing secretiveness of the Security Council and, in particular, its permanent members. Meanwhile, the 'P5' seem to have turned it into an offer along the lines 'transparency for stability', i.e., the Council's work shall become more open and transparent while its basic structure remains unchanged.

The relatively few years of fundamentally transformed international relations and the uncertainty as to whether the conditions of this short period will prevail in the future make it difficult to come up with a grand design which will hold for the next fifty years of the United Nations. Even today, the general attitude towards the UN is considerably different from that of only a few years ago. The cheerful optimism and enthusiasm which followed the successful war against Iraq did not last. It disappeared when the events in Somalia, Rwanda and Yugoslavia filled TV prime time, country names which for many symbolize the United Nations' failure to safeguard peace and basic human rights in the post-Cold War world. In


spite of its eventual satisfactory outcome, the Haiti crisis also contributed to the UN's loss of standing.

Constitution-building without a Hegemon

One should think that this evidence for the inadequacy of the present structure of the UN would have spurred on the reform debate. Instead, it has in many quarters turned optimism into fatalism, and one reason for this resigned mood is the UN policy which the Clinton Administration adopted. Far from taking the lead in promoting a UN reform which would enable the organization effectively to secure world peace and human rights, President Clinton, pressed by a Republican majority in Congress openly hostile to the UN, limited U.S. support for the organization to narrowly defined measures directly serving American national interests.21

In 1945, it was the United States, the Soviet Union and Great Britain who undertook responsibility for the framing of a new international system. Their victory over Germany and Japan had put them in an overwhelmingly strong position. It was obvious that any new global order depended on their support and participation, and generally the hope that they would shoulder their joint task was stronger than the concern that the 'Big Three' could abuse their power. Everywhere, fundamental unity among these three powers was regarded as an indispensable prerequisite for a lasting world peace and renewed respect for international law. Accordingly, the UN Charter could basically be drafted by the three governments.

At the end of World War II, the United States was the strongest of the three major allies. Fully aware that the failure of the U.S. to take part in the League of Nations had been a crucial factor in the long crisis that led to the war, the Roosevelt Administration was determined to have America play a decisive role in the postwar state system. Both, the Soviet Union and Great Britain, depended on American military and economic support, and particularly the Soviet Union was suffering from tremendous war damages which it could hope to repair only with the help of the United States. The British Government, for its part, realized that the United Kingdom could maintain its position as a first-rate power only in a close alliance with the United States. These circumstances, together with the unparalleled human resources the U.S. Government allocated to the task of designing the future world organization, enabled the United States to determine the main

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features of the UN. It largely succeeded in implementing ideas developed on the basis of American constitutionalism and liberalism.

Today, there is no such group of states which could lay claim to the authority of redrafting the Charter. For the first time in its history, the international community must renew its constitution without a hegemon. No detailed evaluation of the present status of the United States, often referred to as the 'only remaining superpower', is needed to say that the U.S. is not in a position unilaterally to decide on the future structure of the UN – apart from the fact that it is not even willing to do so.

On the other hand, any successful UN reform depends on the United States taking the lead. Who else could even try to cut the Gordian knot? Given the lack of a common foreign policy of the members of the European Union, the reluctance of Japan to assume a more active role in international security affairs, Russia's instability, and the cautious, inward-looking policy of China, it appears that only the United States could advance a substantial proposal for a UN reform. If the political weight and the intellectual resources of the U.S. Government are not put behind efforts to amend the UN Charter, such efforts are doomed to fail. However, the Clinton Administration has not been eager to promote constitutional UN reform. It only advocates permanent Council membership for Germany and Japan which it expects to share in the political, financial and military burden of maintaining international peace. The American hesitancy to confront the major issues of UN reform has strengthened the position of those states which want to preserve the status quo in the organization.

In 1945, strong U.S. support for the United Nations was not only a result of idealistic sentiment for a new global framework that would organize a shattered world in the American spirit. The UN also was meant directly to serve U.S. foreign policy goals. The organization provided a forum for a continued institutionalized cooperation with the Soviet Union and Great Britain as well as the other allies of the World War. The Charter authorized the unlimited control of the defeated enemy states; the arrangements in its Chapters VI and VII had the potential of effectively safeguarding U.S. military security; the economic and social cooperation envisaged by the Charter would gradually create a world of free-trade and promising markets for the U.S. industry; and the International Court of Justice would satisfy the American interest in a judicial settlement of international disputes.

We know how little of these high hopes has come true. The Cold War led the U.S. to rely on NATO rather than the UN for its military security. Global economic issues have largely been negotiated in fora outside the UN, in particular in the framework of GATT, the OECD and the 'Group of Seven'. The more the ICJ slipped from the Western European-American
grasp, the less cordial became its relationship with the United States, the Nicaragua case leading to a complete estrangement.\textsuperscript{22}

Today, the American political establishment is not quite sure how much the UN can offer in terms of fostering U.S. national interests. After the collapse of the Soviet Union, the organization has lost its value as a place for discrete discussions with the ideological foe. With regard to U.S. military and economic interests, the UN is apparently regarded as being of no particular use. Although a new survey of American public opinion finds that Americans are overwhelmingly supportive of the UN and the job it is doing\textsuperscript{23} Congress is dominated by conservative voices which depict the UN as at best irrelevant, and in many cases downright inimical to U.S. interests. It is this attitude which has made the U.S. Government rely on unilateral action in spite of an environment so much more favorable to its interests than that of the Cold War years, and kept it from earnestly trying to seek the support of a majority in the Security Council for its international goals. It seems that even when a multilateral policy or operation concurrent with U.S. views could be achieved, unilateralism is the mode preferred.\textsuperscript{24}

\textsuperscript{22} See \textit{Military and Paramilitary Activitles in and against Nicaragua} (Nicar. v. U.S.), 1984 ICJ Rep. 392 (admissibility), 1986 ICJ Rep. 14 (merits). After the Court had decided – in spite of various objections by the United States – that it had jurisdiction over Nicaragua’s claims, the U.S. announced in January 1985 that it was withdrawing from further proceedings in the case. Its statement included the following: ‘The conflict will be solved only by political and diplomatic means – not through a judicial tribunal. The [ICJ] was never intended to resolve issues of collective security and self-defense and is patently unsuited for such a role . . . We have seen in the United Nations, in the last decade or more, how international organizations have become more and more politicized against the interests of the Western democracies. It would be a tragedy if these trends were to infect the [ICJ] . . . ’ See 24 Int’l Legal Materials 246, 248 (1985). On Oct. 7, 1985, the U.S. completely terminated its acceptance of the Court’s compulsory jurisdiction under Art. 36, para. 2, of the ICJ Statute. The Court’s 1986 decision on the merits was largely adverse to the U.S.

\textsuperscript{23} See 1998 Wirthlin Worldwide Survey on the UN, conducted for the United Nations Association of the USA; World Wide Web URL: http://www.unausa.org/programs. 72 percent of respondents declared that it is ‘very important for the U.S. to be an active member’ in the UN – up from 54 percent three years ago. By contrast, ratings for NATO and the World Bank have not changed.

\textsuperscript{24} However, it is not only the United States that has been criticized in this respect. See, e.g., Raimo Väyrynen, Enforcement and humanitarian intervention: Two faces of collective action by the United Nations, in: The Future of the United Nations System: Potential for the Twenty-first Century 54, 81 (Chadwick F. Alger ed., 1998): ‘[A]ll permanent members of the Council, except perhaps for the United Kingdom, are opting for unilateral policies within the multilateral
A concomitant symptom is the fading from the American mind of the idea that international relations can and should be governed by international law.\textsuperscript{25} I have already mentioned the little confidence in the World Court. Only recently, the President of the American Society of International Law, Professor Thomas M. Franck, deplored in strong terms America's current role in the international legal order.\textsuperscript{26} In particular, he criticized the Administration's publicly proclaimed readiness to use, when necessary or convenient, military force in violation of Chapter VII of the UN Charter, the lasting violation of the Charter obligation to pay membership dues to the UN (Article 17, paragraph 2), and two recent decisions of the U.S. Supreme Court.\textsuperscript{27}

From such actual or potential violations of international law one must distinguish a rejection of initiatives aiming at a progressive development of international law, which are supported by a broad majority of members of the community of nations. An outstandingly important initiative of this kind is the convention on the ban on anti-personnel landmines negotiated in Oslo in 1997.\textsuperscript{28} Having been pushed through by an unprecedented coalition of governments and non-governmental organizations, the treaty was signed by 130 states and ratified by forty since December 1997. It will enter into force in March 1999. The 130 signatories include all of the Western hemisphere except the United States and Cuba.\textsuperscript{29} The U.S. did also not accept the Rome Statute of the International Criminal Court,\textsuperscript{30} adopted by a diplomatic conference on July 17, 1998. A majority of 120 states voted in favor of the framework or even outside it. This unilaterism has gone so far that new speculation has started on the establishment of spheres of influence in the Balkans, Caucasia, and Central Asia...'

\textsuperscript{25} For a good analysis, see Daniel P. Moynihan, On the Law of Nations (1990).
\textsuperscript{26} See Notes from the President, Newsletter of the American Society of Int'l L., May-June 1998, at 1, 8.
\textsuperscript{27} In United States v. Alvarez-Machain, 504 U.S. 655 (1992), the Supreme Court approved governmental abduction of a suspect from Mexico, with which the U.S. had an extradition treaty. In Breard v. Greene (Apr. 14, 1998), the Court, in defiance of a provisional measure issued by the International Court of Justice on April 9, 1998, allowed the State of Virginia to execute a Paraguayan national. See also Christian Tomuschat, Unüberlegte Hast vor Rücksichtnahme, in Der Tagesspiegel (Berlin), Apr. 16, 1998, at 7.
\textsuperscript{29} Other non-signatories include China, India, Iraq, Libya, North and South Korea, Pakistan, Russia and Turkey.
statute, seven states against it, and twenty-one states abstained from voting. The United States thus belonged to a very small group of dissenters, together with China, India, Israel, Qatar and Vietnam.\footnote{The seventh state which voted against the statute is not generally known. See Christian Tomuschat, Das Statut von Rom für den Internationalen Strafgerichtshof, 73 Die Friedens-Warte 335, 336 n. 5 (1998).}

If, in addition to the American reluctance to take up a comprehensive UN reform, we also consider the sharply differing goals pursued by other member states, and, furthermore, what Professor Falk described as the unwillingness of leading states to compromise their predominance in relation to violent conflict by building up the autonomous capabilities of the United Nations to provide peace and security to the peoples of the world,\footnote{See Falk, supra note 17, at 328.} it becomes apparent that today a reform which would deserve the name is almost out of reach.\footnote{This pessimism is shared by almost all academic observers. See, e.g., the recent conclusions of the participants in a UN study at Yale University: Bruce Russett, Barry O'Neil & James S. Sutterlin, Breaking the Restructuring Logjam, in: The Once and Future Security Council 153, 163-169 (Bruce Russett ed., 1997).} According to Articles 108 and 109 of the Charter, any formal amendment requires the ratification by two-thirds of the member states, including all the permanent members of the Security Council. For the time being, no such majority can be mustered. Regarding the veto – the fundamental rule of UN decision-making and, at the same time, the most direct expression of the inequality of states in contemporary international law –, the states entitled to it are not inclined to agree to substantial limitations; the strongest candidates for permanent membership in the Security Council will not accept a second-class affiliation which would not include the right of veto; and the developing countries, who have jointly fought the veto for decades, are split into those who now aspire to permanent membership and the veto (in particular Nigeria, Egypt, South Africa, India, Indonesia and Brazil), and those who maintain a negative stance.\footnote{Inis L. Claude, Jr., Swords into Plowshares: The Problems and Progress of International Organization 121 (4th ed. 1971).} If the United States put pressure on the other permanent members of the Council, and the general membership of the UN, a modest increase in the number of permanent as well as non-permanent members could take place in the foreseeable future, but it is unlikely that this would entail a change of the right of veto of the present 'P5'. 'The process of international organization', Professor Inis L. Claude once remarked, 'has involved the steady lifting of the dead hand of the unanimity rule.'\footnote{Inis L. Claude, Jr., Swords into Plowshares: The Problems and Progress of International Organization 121 (4th ed. 1971).} It appears that the dead hand is still unexpectedly strong.
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Conclusion

The task of adapting the UN Charter (the first document in universal history to which, at least in theory, all humankind adheres) to the needs of the twenty-first century remains. Looking at the world at large, the ravaging wars and environmental catastrophes, it is all too clear that the existing mechanisms of international governance are inadequate. As regards the Security Council, the unresolved question of the use of military force against Iraq has illustrated two related obstacles to a more efficient and consistent performance – the right of veto of the permanent members which all too often thwarts necessary decisions, and the high-handedness of one permanent member which makes the others all the more determined to retain their veto. The Kosovo crisis stands for the temptation of states to return to a unilateral enforcement of international law by use of force. The situation induced an appropriate warning: The powers of the Security Council are a precious, but at the same time precarious trust of the international community, certainly the greatest achievement of the new world order that emerged after the catastrophe of the Second World War. Each and every state should be aware of the enormity of the progress that Chapter VII of the Charter embodies compared with the earlier system of unbridled coexistence of national sovereignties.35

And yet, even the most modest proposals put forward with a view to improving these structures meet with resistance. At the same time, not only the American Government is tempted to relieve the pressure which current crises and a roused world public opinion exert on the UN security system by resorting to unilateral action. Consequences of this attitude could be fatal because it puts at risk what has already been achieved. An increasing number of countries could turn their back on the UN and deprive the organization of the political support and the financial, military and intellectual resources it needs for the fulfillment of its tasks. The number and scope of peacekeeping operations would then fall far below the actual demand. Inevitably, the UN would disappoint the hopes of many peoples around the world, among them the most disadvantaged. From what we know about a vicious circle, we would have to expect the UN's idleness to invite new criticism, reinforce the processes of disassociation from the organization and unilateralization of crisis management, and marginalize the UN in international relations. After the League of Nations had been unable to protect its member state Ethiopia against the Italian invasion and annexation, it still existed and even moved into its splendid new Palace on the hills above the lake. But nobody was looking anymore to Geneva – there was nothing to be hoped for, and nothing to be afraid of.

35 Tomuschat, Using Force against Iraq (supra note 1), at 81.

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The problem of a proper allocation of rights and responsibilities in an association of unequally powerful states, which lies at the heart of the difficulties of Charter reform, is not new. In 1688, the German jurist Samuel von Pufendorf drew his readers' attention to the fact 'that it would often involve great injustice in a system of confederates for the vote of a majority to bind the rest when there is a great difference in resources, and so one contributes more to the common safety than another. For despite the fact that those who contribute in proportion to their wealth appear to bear equal burdens, it may frequently happen that one man is readier to expose his own modest fortune to risk than another his, a large one... But yet for the votes of each state to weigh in proportion to its contribution to the society would grant such a powerful state sovereignty over the rest'.

In the United Nations of our time, we recognize the same conflict between the interests of a great majority of states whose contribution to an advancement of the goals of the Charter is very limited (but nevertheless indispensable), and those of a minority which gives more 'than all the others together', and therefore claims a privileged status.

To balance the contradictory views and interests in the complicated and uncertain world of ours is a formidable challenge. But the challenge also constitutes a unique chance. For the first time in human history, a universal order could be built upon global consensus rather than the will of a victorious power or an alliance of victors, as it was the case in 1919 and 1945. Necessarily, such a consensus has to be a compromise which will not fully satisfy any party to the present constitutional struggle, and least of all international lawyers looking for dogmatic consistency. But such a compromise could provide the foundation of global cooperation in the next century which would better serve the goals of the United Nations and thus ultimately foster human dignity, understood as 'a social process in which values are widely and not narrowly shared, and in which private choice, rather than coercion, is emphasized as the predominant modality of power' (Myres McDougal and Harold Lasswell). In spite of all its shortcomings, the United Nations Charter has marked a new epoch of constitutionalism in the history of humankind. May we hope that at the turn of the millennium the peoples of the world will again unite their strength for the sake of their common future, and give new life and vigor to their constitution?

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