

# The Iraq War, the United Nations Security Council, and the Legitimacy of the Use of Force

YAMASHITA, Hikaru

## Introduction

The Iraq War, which began early on the morning of March 20, 2003 with the aerial bombing of Baghdad, brought into the open many issues related to the United Nations (UN). These included the effectiveness of UN inspections and economic sanctions,<sup>1</sup> the sclerotic nature of decision-making in the UN system,<sup>2</sup> and the UN's role in the reconstruction of Iraq.<sup>3</sup>

This criticism has probably been most concentrated on the UN Security Council. The core function of the Security Council is to determine the existence of threats to international peace, and to determine what measures to be taken in response. Naturally, the debate on the Iraq War and the UN centers on criticism of the Security Council's failure to fulfill this function in the run-up to the war; and concern is often expressed that this failure has destroyed or at the very least severely diminished its *raison d'être*. For example, Michael Glennon has argued that this war starkly laid bare the fact that the UN regime regarding collective military action had long been undermined by the large number of countries using military force in contravention to the UN Charter.<sup>4</sup>

The criticism that the Security Council has failed to fulfill its designated function can also be extended to that of the UN as a whole. The UN is an international institution originally created in response to the failure of the League of Nations to avoid repeating the tragedy of World War II,<sup>5</sup> and its essential purpose is the maintenance of international security. As such, the above criticism of the Security Council can at the same time be construed to mean that the UN system as a whole has failed to fulfill its expected role. This is the intent of such comments from conservative U.S. commentators as "what will die [as a result of the war] is

---

<sup>1</sup> See, e.g., "Hans Blix vs. the US," *Independent*, April 23, 2003.

<sup>2</sup> Alvin and Heidi Toffler, "Why the UN Is Cracking as the Future Approaches," *Daily Yomiuri*, May 4, 2003.

<sup>3</sup> See, e.g., Terence Corcoran, "The UN in Iraq? Remember Cambodia," *National Post*, April 10, 2003; Joseph Nye, "No, the UN is Right for the Job Rebuilding Iraq II," *International Herald Tribune*, April 14, 2003; "Now the War is Over, the World Must Put Aside Its Differences and Work Together to Help Iraq," *Independent*, April 12, 2003.

<sup>4</sup> Michael J. Glennon, "Why the Security Council Failed," *Foreign Affairs*, Vol. 82, No. 3 (May/June 2003), pp. 23-24.

<sup>5</sup> A.J.R. Groom, "The Question of Peace and Security," in Paul Taylor and A.J.R. Groom eds., *International Institutions at Work* (London: Pinter Publishers, 1988), p. 79.

the fantasy of the UN as the foundation of a new world order” (Richard Perle, former chairman of the US Defense Policy Board Advisory Committee),<sup>6</sup> and “now serious people, who are not unilateralists, are much more open to alternatives to the UN”<sup>7</sup> (William Kristol, editor of the *Weekly Standard*).<sup>8</sup>

Judging from the provisions of the UN Charter, the Security Council has been dysfunctional from the very start of the UN. The Military Staff Committee (Article 47) that would have been established for contemplated military action by the UN very quickly became a dead letter, ensuring that Security Council activities stagnated during the Cold War in the standoff between the United States and the Soviet Union. While expectations for the Security Council rose again as the Cold War ended, it proved unable to act as expected in such crises as in Bosnia<sup>9</sup> and Rwanda.<sup>10</sup> Moreover, it should be pointed out that the use of force was decided upon and conducted outside the UN as recently as in the Kosovo conflict, where the North Atlantic Treaty Organization (NATO) carried out an extensive bombing campaign against Serbia.<sup>11</sup>

However, debates at and around the Security Council on Iraq were nevertheless closely watched and reported around the world. Even the Bush Administration, which had made it clear that it was determined to launch a war without a new resolution, attempted to have a new resolution adopted in support of a U.S.-led military action, resulting in a series of heated debates in the Security Council.

What this means is that the Security Council continues to play a certain role in guaranteeing international security.<sup>12</sup> While it is certainly true that the Security Council was unable to take unified action in regard to the Iraq War, it appears to be still maintaining its significant role as a body for nurturing an international consensus on the legitimacy for the use of force, and for debating individual cases on that basis. In this sense, it is even possible to argue that the UN “has never mattered more” (Anne-Marie Slaughter).<sup>13</sup> It is important to note, therefore, that the very concept of “threat,” and ideas regarding the legitimacy of the use

---

<sup>6</sup> “Richard Perle—Thank God for the Death of the UN,” *Guardian*, March 21, 2003.

<sup>7</sup> “Iraq Crisis Casts Doubts on Future Power of UN,” *New York Times*, March 9, 2003.

<sup>8</sup> Assertions that the UN should be reformed to conform to America’s national interests have been found among American intellectuals since the UN’s founding. Michael Dunne, “The United States, the United Nations and Iraq: ‘Multilateralism of a Kind,’” *International Affairs*, Vol. 79, No. 2 (March 2003), pp. 272-273.

<sup>9</sup> See, e.g., Report of the Secretary-General Pursuant to General Assembly Resolution (GAR) 53/35: The Fall of Srebrenica (A/54/549, November 15, 1999).

<sup>10</sup> See Report of Independent Inquiry into the Actions of the UN during the 1994 Genocide in Rwanda (S/1999/1257, December 15, 1999, Annex).

<sup>11</sup> Walter B. Slocombe, “Force, Pre-emption and Legitimacy,” *Survival*, Vol. 45, No. 1 (Spring 2003), pp. 122-123.

<sup>12</sup> Mats Berdal, “The UN Security Council: Ineffective but Indispensable,” *Survival*, Vol. 45, No. 2 (Summer 2003), pp. 10-11 and 21-23.

<sup>13</sup> “Accused of Irrelevance and Deeply Divided over Iraq, the United Nations Has Never Mattered More,” *Washington Post*, March 2, 2003.

of force, have changed over time. As the Security Council has involved itself in many crises (regardless of the success or failure of those involvements) in the post-Cold War period in particular, one can expect this change to be more conspicuous. If so, it is worth analyzing how much of an impact the Security Council debates in the run-up to the Iraq War had on the views regarding the threat concept and the legitimacy of the use of force. Given the weight of the event, analysis might provide an important clue in considering the future architecture of international security.<sup>14</sup>

This article intends to clarify the impact of the Iraq War on the Security Council's concept of "threats to international peace," and on the legitimacy of the use of force. First, I will map out changes in the concept of the threat and the legitimacy of the use of force with a focus on the post-Cold War period. This will be followed by an investigation into the history of the debate concerning the Iraq War, both within and outside the Security Council, in order to analyze how this debate influenced the previous Security Council views about the threat-to-peace concept and the legitimate use of force. Note that this article centers its analysis on the Security Council debates and their backgrounds, and therefore leaves out most of the domestic and regional explanatory factors. The period covered focuses on the period when discussion of this issue was most active, from November 2002 to the end of March 2003. The conclusion consists of a summary of key findings and a brief exploration of their implications for international security, followed by some observations about how Japan should relate to the Security Council in the future.

## I. Changes in the Threat Concept and the Legitimacy of the Use of Force

### A. Provisions in the UN Charter

As is well known, the Security Council's role in regard to the UN-authorized use of force is stipulated in Chapter VII of the UN Charter. The Security Council has the authority to determine "the existence of any threat to peace, breach of the peace, or act of aggression," and to decide what measures to be taken in response (Article 39). When such determination has been made, the Security Council can request the parties in the conflict to take "such provisional measures as it deems necessary or desirable" (Article 40); if peace is not thereby restored, it can initiate "complete or partial interruption of economic relations and of rail, sea,

---

<sup>14</sup> As is well known, the debate over the justification for the Iraq War continues in both the United States and Britain even after the war's end. For criticisms in the two countries, see, for example, "So, Mr. Straw, Why Did We Go to War?," *Independent*, May 15, 2003; and "Weapons Failure," *Baltimore Sun*, May 22, 2003. In response to criticism at home and abroad, the UK House of Commons Foreign Affairs Committee initiated an inquiry concerning this issue on June 3, 2003, that commenced deliberations on June 17. House of Commons Foreign Affairs Committee, *The Decision to Go to War in Iraq* (Ninth Report of Session 2002-03), July 7, 2003.

air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations” (Article 41); and finally, if those measures are found to be insufficient, the Security Council may take “such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security” (Article 42).

Of course, these enforcement measures are not all of the possible options that the UN may take under the Charter. Chapter VI encourages the parties in the conflict to resolve it peacefully, and the Security Council should use investigations and make recommendations for that purpose. Moreover, Article 51 at the very end of Chapter VII recognizes the existence of the inherent right to individual and collective self-defense until the Security Council takes the necessary action.<sup>15</sup>

Despite these provisions, however, the powers held by the Security Council for the determination of threats and countermeasures formed the core of the UN’s collective security function. This was founded on several factors, including: (1) this power effectively embodied the concept of collective security; (2) veto powers were given to the five permanent members of the Security Council so that any items decided by the Security Council reflected the shared understanding of the great powers; (3) decisions of the Security Council were binding on all UN Member States (Article 25); and (4) the principle of non-intervention in internal affairs did not prejudice the application of enforcement measures under Chapter VII (Article 2 (7)).

## B. Practice during the Cold War

In this way, the authorization to use force against a specific threat was located at the far end of the enforcement measures available to the Security Council. Here, the basic assumption is that, since such a threat is one to international peace and security, the use of force as a final countervailing enforcement measure is justified.

With the bitter experience of the League of Nations in mind, the UN’s security functions were formulated completely anew. As a result, it was unclear how they would actually work in practice.<sup>16</sup> The Security Council’s core functions were no exception. In other words, the questions of what the term “threat to international peace and security” exactly referred to, and what sort of situations merited the application of military enforcement measures in response, could only be answered through actual practice at the Council. As the end of World War II was quickly followed by the Cold War, the activities of the Security Council were perforce limited. The parties to many conflicts that occurred during that period received support from either the United States or the Soviet Union, so that even if the Security Council wanted to take action, the chances were likely that either the United States or the Soviet Union, or both, would

---

<sup>15</sup> Other relevant sections include Chapter VIII, which stipulates the roles that can be played by regional organizations for the maintenance of international security and peace (Article 52), and that the Security Council can utilize these organizations to take enforcement measures under its authority (Article 53).

<sup>16</sup> Yozo Yokota, ed., *Kokusai Kikou Ron* (Theory and Practice of International Organization) (Tokyo: Kokusai Shoin, 2001), p. 248.

exercise their veto power. Yet even in this restricted environment, the concepts of threat and of the legitimacy of the use of force showed a certain amount of development through the Council's responses to various situations.

In examining the cases that were determined to be threats in the years between the UN's founding and the end of the Cold War,<sup>17</sup> the term "threat"<sup>18</sup> appears to refer to two types of situation. The first is that one state invades another, violating the latter's sovereignty and territorial integrity. The second is a state's military intervention into another country's civil war, resulting in its intensification to the detriment of regional peace and security. Examples of the first type are the 1948 Arab-Israeli War,<sup>19</sup> the Korean War,<sup>20</sup> the South African attack on Zambia,<sup>21</sup> the Falklands War,<sup>22</sup> the Iran-Iraq War,<sup>23</sup> the Southern Rhodesian invasion of Zambia, Botswana, and Mozambique,<sup>24</sup> the South African invasion of Angola, Lesotho, and Botswana,<sup>25</sup> the invasion of Benin by foreign mercenaries,<sup>26</sup> and the Israeli attack on

---

<sup>17</sup> The following sources were useful in identifying Security Council resolutions before 2000: *Ibid.*, pp. 443-445; Teruyuki Nobuyuki, "Kokuren Anzen Hosyo Rijikai ni Okeru Heiwa ni Taisuru Kyoui, Heiwa no Hakai, Sinryaku Kouji no Nintei" (The Determination of the Existence of Threats to the Peace, Breaches of Peace, and Acts of Aggression by the United Nations Security Council), *Gaiko Jiho (Revue Diplomatique)*, No. 1285/1286 (February-March 1992), and "Kokuren Anzen Hosyo Rijikai ni Okeru Heiwa ni Taisuru Kyoui, Heiwa no Hakai, Sinryaku Kouji no Nintei" (The Determination of the Existence of Threats to the Peace, Breaches of Peace, and Acts of Aggression by the United Nations Security Council: 1945-1995), *Teikyo Hogaku (Teikyo Law Review)*, Vol. 19, No. 2 (January 1996).

<sup>18</sup> Article 39 mentions "threat to the peace," "breach of the peace," and "act of aggression," and it is apparent that these concepts are intended to be in rising order of severity. In practice, however, there does not appear to be much difference in meaning. In the Falklands War and the Iran-Iraq War, for example, no enforcement actions were taken even though a "breach" of the peace was found to have occurred. On the other hand, Southern Rhodesia and South Africa were slapped with economic sanctions even though their actions were recognized as no more than a "threat." For this reason, the three concepts are treated in this article as being equivalent in range.

<sup>19</sup> Security Council Resolution (SCR) 54 (July 15, 1948).

<sup>20</sup> SCRs 82 (June 25, 1950), 83 (June 27, 1950), 84 (July 7, 1950).

<sup>21</sup> SCR 393 (July 30, 1976).

<sup>22</sup> SCR 502 (April 3, 1982).

<sup>23</sup> SCR 598 (July 20, 1987).

<sup>24</sup> SCRs 326 (February 2, 1973), 328 (March 10, 1973), 386 (March 17, 1976), 411 (June 30, 1977), 424 (March 17, 1978). These resolutions used the terms "aggressive acts" (SCRs 326, 328, 386) or "acts of aggression" (SCRs 411, 424) to condemn the invasions.

<sup>25</sup> SCRs 387 (March 31, 1976), 428 (May 6, 1978), 447 (March 28, 1979), 454 (November 2, 1979), 475 (June 27, 1980), 527 (December 15, 1982), 545 (December 20, 1983), 546 (January 6, 1984), 567 (June 20, 1985), 568 (June 21, 1985), 571 (September 20, 1985), 572 (September 30, 1985), 574 (October 7, 1985), 577 (December 6, 1985), 580 (December 30, 1985), 602 (November 25, 1987). These resolutions used the terms "aggressive act(s)" (SCRs 387, 527), "(acts of) aggression" (SCRs 387, 428, 447, 454, 475, 546, 567, 568, 571, 572, 574, 577, 580, 602), "(acts of) armed invasion" (SCRs 428, 447, 454, 475, 571, 574, 577), "acts of violence" (SCR 580), "armed incursions" (SCRs 475, 571), "military occupation" (SCRs 545, 546), and "(armed/military) attacks" (SCRs 545, 546, 568, 572, 580) to condemn the invasions. Relatedly, the invasion of the Seychelles by South African mercenaries was condemned using the term "mercenary aggression" (SCRs 496 [December 15, 1981], 507 [May 28, 1982]).

Tunisia.<sup>27</sup> The second would include cases like the civil wars in the Congo<sup>28</sup> and Cyprus,<sup>29</sup> and the Portuguese invasion of Senegal and Guinea,<sup>30</sup> each of which involved military intervention by Belgium (into the Congo), Turkey (into Cyprus), and Portugal (into Senegal and Guinea), respectively.

Within this list, the cases related to apartheid are somewhat different in character from the others. The Security Council resolutions here clearly attribute the threat to the racial discrimination policies of the South African government. Addressing the same problem back in 1960, the Security Council issued a warning that the domestic situation in South Africa arising from that government's policies "might endanger" international peace and security,<sup>31</sup> followed three years later by determination of the same situation as "seriously disturbing" international peace.<sup>32</sup> The issue of apartheid and that of self-determination by the indigenous population (see below) were two sides of the same coin; South Africa was also internationally criticized for its invasions of neighboring countries. But even leaving out these features, it is clear that South Africa's policies were themselves being criticized as inhumane,<sup>33</sup> and in this sense those actions can be viewed as a precursor to the attempt to link infringements of human rights with the concept of the threat.<sup>34</sup>

It may be noted at this juncture that the existence of a threat has been put in a variety of

---

<sup>26</sup> SCRs 405 (April 14, 1977), 419 (November 24, 1977). The invasion of the Beninese capital city of Cotonou by foreign mercenaries (connected to forces from France, Morocco, Togo, Gabon, Ivory Coast, and Senegal, as claimed by the Benin government) was condemned as an "act of (armed) aggression."

<sup>27</sup> SCRs 573 (October 4, 1985), 611 (April 25, 1988). These two resolutions condemned the Israeli attack on the Palestine Liberation Organization (PLO) base inside Tunisian territory as an "(act of) (armed) aggression" that threatened the security of the region.

<sup>28</sup> SCR 161 (February 21, 1961).

<sup>29</sup> SCR 353 (July 20, 1974).

<sup>30</sup> SCRs 290 (December 8, 1970), 302 (November 24, 1971).

<sup>31</sup> SCR 134 (April 1, 1960), para. 1.

<sup>32</sup> SCR 181 (August 7, 1963).

<sup>33</sup> For example, Resolution 392 (June 19, 1976) found that apartheid policies were "a crime against the conscience and dignity of mankind, and seriously disturb international peace and security" (para. 3).

<sup>34</sup> The Security Council response to the Third Indo-Pakistan War may also be put into this category. The war occurred when the West Pakistan (now Pakistan) government reacted to a popular Bengali separatist movement in East Pakistan (now Bangladesh) with widespread suppression, instigating a military intervention by India. This intervention could be viewed as a "humanitarian intervention." Resolution 307 (December 21, 1971) noted "the grave situation in the subcontinent, which remains a threat to international peace and security." If the "situation" here is understood to include the refugee problem, then a link can be found between the threat concept and humanitarian issues. In actuality, however, the Security Council debate during the war never accepted the claim by India that the huge inflow of Bengali refugees into India constituted "refugee aggression" by Pakistan, with Security Council members advocating non-interference in domestic affairs. Moreover, the resolution itself was adopted after the war had come to an end and Bangladeshi independence had become a certainty, so that any debate regarding the war's justification was already a moot point. Overall, it would not be wise to read too much into the "threat" concept found in Resolution 307. See N.J. Wheeler, *Saving Strangers: Humanitarian Intervention in International Society* (Oxford and New York, NY: Oxford University Press, 2000), Ch. 2.

ways. A staple expression is the one in which the situation in a country or region “constitutes” a threat to the peace.<sup>35</sup> But this is not the only expression. For the Portuguese invasion of Guinea<sup>36</sup> or the situation in Southern Rhodesia,<sup>37</sup> the Security Council resolutions used expressions formulated in conjunction with the self-determination and decolonization trends of the late 1960s and early 1970s. Another case in point is the resolution on the crisis in the Congo (Resolution 161). It merely noted that the Security Council was “*deeply concerned* at the grave repercussions of these crimes and the danger of widespread civil war and bloodshed in the Congo, and the threat to international peace and security,” an expression that does not evince any particular link between the former (widespread civil war and its effects) and the latter (threat) parts of the text. Such indirect linkage may also be found in the resolution in regard to the Portuguese invasion of Senegal.<sup>38</sup>

While threat recognition has thus been made in various cases using a variety of expressions, there are not so many examples in which the Council actually proceeded to authorize the use of force. The only real examples found during the Cold War are resolutions related to the Korean War, the Congo, and Southern Rhodesia. In the Korean War, North Korea’s invasion of South Korea was determined to be a “breach of the peace” (Resolution 82), and UN Member States were called upon to “furnish such assistance...as may be necessary to repel armed attack and to restore international peace and security in the area,”<sup>39</sup> and asked to provide military forces and other assistance to a unified command under the United States.<sup>40</sup> Resolution 161 (the Congo) called for the use of “all appropriate measures,” including military force, by ONUC (Opération des Nations Unis au Congo) to prevent the spread of the civil war.<sup>41</sup> For Southern Rhodesia, the Security Council called on Britain to prevent the offloading of tankers shipping oil to Southern Rhodesia in defiance of the existing economic sanctions (Resolution 217, see below) “by the use of force if necessary.”<sup>42</sup> Aside

---

<sup>35</sup> For example, SCRs 54 (1948 Arab-Israeli War), 82 (Korean War), 217 (November 20, 1965), 221 (April 9, 1966), 232 (December 16, 1966), 253 (May 29, 1968), 277 (March 18, 1970), 326, 328, 411, 424 (Southern Rhodesia), 393 (South African attack on Zambia), 418 (November 4, 1977, apartheid), 447, 577 (South African invasion of Angola), 611 (Israeli attack on Tunisia). Resolution 82 was a resolution recognizing “breach,” while all the others were resolutions concerning “threat.” On the other hand, no resolutions determined that a situation constituted an “aggression.”

<sup>36</sup> The resolution viewed the attack as “a serious threat to the peace and security of independent African States” (SCR 290, preambular para. 4 and para. 5).

<sup>37</sup> The resolution criticized the white administration of Southern Rhodesia, which declared independence from Britain for the purpose of maintaining white rule, and determined that “its continuance in time constitutes a threat to international peace and security” (SCR 217, para.1). Subsequent resolutions recognized the right of the people in that country to self-determination, and called on UN Member States to support their liberation movement (SCRs 232, 253, 277, 326, 328, 386, 411).

<sup>38</sup> SCR 302. This resolution expressed concern, viewing the invasion as being “fraught with a threat to peace and security in the region” (preambular para. 4).

<sup>39</sup> SCR 83, para. 11.

<sup>40</sup> SCR 84, para. 4.

<sup>41</sup> A, para. 1.

<sup>42</sup> SCR 221, para. 5.

from these three examples, however, enforcement measures taken by the Security Council during the Cold War period were limited to economic sanctions<sup>43</sup> or arms embargoes.<sup>44</sup> Furthermore, there are a number of cases in which no enforcement measures were imposed even when the situation was determined a threat in one way or another. In Resolution 54 (1948 Arab-Israeli War), the Security Council recognized that “the situation in Palestine constitutes a threat to the peace within the meaning of Article 39 of the Charter of the United Nations,”<sup>45</sup> and warned that failure of the parties to heed Security Council calls for a ceasefire would demonstrate “the existence of a breach of the peace within the meaning of Article 39 of the Charter requiring immediate consideration by the Security Council with a view to such further action under Chapter VII of the Charter as may be decided upon by the Council.”<sup>46</sup> Despite this, no Chapter VII action was ever taken. Moreover, no enforcement measures were taken during the civil war in Cyprus,<sup>47</sup> the Argentine invasion of the Falklands,<sup>48</sup> the South African attack on Zambia,<sup>49</sup> the Portuguese invasion of Guinea,<sup>50</sup> or the Israeli attack on Tunisia.<sup>51</sup> If these latter examples are compared to the case of the Congo, where even use of force was authorized despite the lack of a clear determination of the threat, there is a gap between the degree of clarity in recognition of a threat and the degree of enforcement in Security Council decisions.

---

<sup>43</sup> Against Southern Rhodesia (recommended: SCR 217, mandatory: SCRs 232, 253, 277), and against South Africa (SCR 569 [July 26, 1985]).

<sup>44</sup> Against Portugal (recommended: SCR 290) and against South Africa (recommended: SCR 181, mandatory: SCR 418).

<sup>45</sup> Para. 1.

<sup>46</sup> Para. 3.

<sup>47</sup> SCR 353. As a result of Turkish military intervention into the civil war, the Security Council resolution warned that “the situation has led to a serious threat to international peace and security” (preamble para. 5), but in addition to the standard call for a return to peace, it took no action other than to ask “the Secretary-General to report as appropriate with a view to adopting further measures in order to ensure that peaceful conditions are restored as soon as possible” (para. 7).

<sup>48</sup> SCR 502. This resolution, while recognizing that the invasion constituted a breach of the peace, went no further than calling for an immediate ceasefire and immediate withdrawal of the Argentine army. The Security Council did not indicate the will to take any specific action.

<sup>49</sup> SCR 393. The resolution declared that, if the South African attack intensified despite a series of calls for a ceasefire, the Security Council would “consider the adoption of effective measures, in accordance with the appropriate provisions of the Charter of the United Nations” (para. 6).

<sup>50</sup> SCRs 290, 302. As stated above, Resolution 290 recognized the threat to “the peace and security of independent African countries,” but Resolution 302 only noted that, if the Security Council’s non-coercive measures based on this resolution proved to be inadequate, “the Security Council will meet to consider the initiatives and steps that the situation requires” (SCR 302, para. 9). Lacking reference to the UN Charter, this resolution appeared to be weaker than Resolution 393 and other similar resolutions that had such references.

<sup>51</sup> SCRs 573, 611. Even though the action was recognized as an act of aggression in both resolutions (see Note 27), the language went no further than a call on Israel to exercise self-restraint, and on the Secretary-General and UN Member States to use persuasion.

### C. Changes in the Post-Cold War Period

The concept of threat displayed a consistent tendency during the Cold War period. This was, in other words, a tendency to think of threats as either conflicts between states or civil wars that threaten to seriously affect regional security and stability. But since there were few cases in which force was actually authorized by the Security Council, no clear pattern emerged over the use of UN-authorized force in this period.

The Gulf War, which occurred from January 17 to February 28, 1991, was an event that raised the curtain on the post-Cold War period, signaling the development of a number of new post-Cold War debates regarding the threat concept and the use of force.

The Gulf War was originally a response to the Iraqi invasion of Kuwait on August 2, 1990, i.e., a classic case of interstate conflict. In that sense, the cause of the war could clearly be recognized as a threat in its conventional sense.<sup>52</sup> In fact, on the same day as the invasion of Kuwait, the Security Council declared it “a breach of international peace and security.”<sup>53</sup> This was quickly followed by economic sanctions,<sup>54</sup> calls for cooperation with Kuwaiti authorities in inspecting maritime cargoes,<sup>55</sup> and air and sea embargoes.<sup>56</sup> Resolution 678 (November 29, 1990) warned that if Iraq did not adhere to all of these resolutions by January 15, 1991, the “Member States cooperating with the Government of Kuwait” would take “all necessary means...to restore international peace and security in the area.”<sup>57</sup>

In this way, the Council’s response to the crisis followed the model process stipulated in Chapter VII of the UN Charter, starting with the recognition of a threat, and then steadily escalating the severity of enforcement measures. As was seen above, the Security Council had never really been able to follow such a sequence during the Cold War period. It is reasonable to argue in retrospect that the Gulf War provided a standard template for Security Council action in the post-Cold War period. One point that bears particular emphasis in this context is that the war led to a broader consensus than ever before on the use of “all necessary means” as

---

<sup>52</sup> The Ethiopia-Eritrea conflict was another example of a post-Cold War conflict between states that resulted in the recognition of a threat. The confrontation over demarcation of their national borders led to an armed clash in May 1998. In response, the Security Council adopted resolutions recognizing a threat (SCRs 1227 [February 10, 1999], 1297 [May 12, 2000], 1298 [May 17, 2000]), and banning arms sales (SCR 1298, para. 6). Through mediation by the Organization of African Unity (OAU), a comprehensive peace agreement was reached on December 12, 2000, and the two sides have assented to accept the April 13, 2002 decision by the Boundary Commission on border demarcation.

<sup>53</sup> SCR 660 (August 2, 1990). This resolution condemned the invading Iraqi army’s occupation of foreign embassies in Kuwait and the taking of embassy personnel as hostages as “aggressive acts” (SCR 667 [September 16, 1990]), while Resolution 674 (October 29, 1990) stated that the existing situation “directly threatens international peace and security.”

<sup>54</sup> SCR 661 (August 6, 1990).

<sup>55</sup> SCR 665 (August 25, 1990).

<sup>56</sup> SCR 670 (September 25, 1990).

<sup>57</sup> Para. 2.

the staple expression authorizing the use of force.<sup>58</sup> During the Cold War, the Security Council rarely agreed to the use of force, and even when it did it never settled on a uniform terminology. The Gulf War marked the first time when all five permanent members of the Security Council were clearly in agreement on the use of force. As already mentioned, the Gulf War was launched as a military response to the most classic type of threat, that of armed invasion by one state into another. In retrospect, two resolutions adopted after the end of the war bear significance for the post-Cold War expansion of the threat concept. First, Resolution 687 (April 3, 1991) officially demanded Iraq to accept a number of obligations as conditions for ending the war. Importantly, they included reference to Iraq's weapons of mass destruction (WMD) and terrorist activities. Regarding WMD, the resolution noted in its preambular paragraphs that "grave consequences" would result should Iraq use biological or chemical weapons in the future<sup>59</sup> and that the Council was "*conscious* of the threat that all weapons of mass destruction pose to peace and security in the area." It then decided that Iraq shall unconditionally accept the destruction, removal, or rendering harmless, under international supervision, of: (1) all chemical and biological weapons and all stocks of agents and all related subsystems and components and all research, development, support and manufacturing facilities; and (2) all ballistic missiles with a range greater than 150 kilometers and related major parts, and repair and production facilities.<sup>60</sup> In regards to terrorism, the resolution required "Iraq to inform the Security Council that it will not commit or support any act of international terrorism or allow any organization directed towards commission of such acts to operate within its territory and to condemn unequivocally and renounce all acts, methods and practices of terrorism."<sup>61</sup> Whereas Resolution 660 determined Iraq's invasion of Kuwait as a breach of international peace and opened the path for military enforcement action by the UN, Resolution 687 included WMD and terrorism in the conditions for ending that war. These references were apparently made in view of the fact that the Saddam Hussein regime continued to hold power in Iraq even after the war and the recognition that the regime could again threaten neighboring countries and the international community as a whole through the use of WMD and terrorist organizations. However, from a broader, historical perspective, the Gulf War thus facilitated the incorporation of new elements into the threat concept, if only in potential form. In this sense, the Security Council response to the Gulf War can be seen as a

---

<sup>58</sup> The first time that the phrase "all necessary means" appeared in relation to the Gulf War was in Resolution 670, which stated that the Security Council was "determined to ensure by all necessary means the strict and complete application of the measures laid down in resolution 661 (1990)" (preambular para. 6), while UN Member States "shall take all necessary measures to ensure that any aircraft registered in its territory or operated by an operator who has his principal place of business or permanent residence in its territory complies with the provisions of resolution 661 (1990) and the present resolution"(para. 5).

<sup>59</sup> Preambular paras. 8 and 17.

<sup>60</sup> Paras. 8-14. Iraq's failure to abolish its WMDs in contravention of this resolution was also described in Resolution 707 (August 15, 1991) as constituting a threat to the restoration of peace and security in the region.

<sup>61</sup> Para. 32.

precursor toward expanded conception of the threat in the post-Cold War period.

This point also applies to another important resolution, Resolution 688 (April 5, 1991). Immediately after the war, the Republican Guard put down anti-government uprisings in the South (mainly by Shiite residents) and in the North (mainly by Kurds), causing more than two million refugees trying to escape repression to move into the northern border areas, triggering a massive humanitarian crisis. This resolution stated that the movement of large numbers of refugees across national borders constituted a threat to regional peace and security,<sup>62</sup> and called on the Iraqi government to immediately cease the repression “as a contribution to removing the threat to international peace and security in the region.”<sup>63</sup> Here, the situation constituting a threat was the humanitarian crisis *resulting* from the Iraqi government’s repression, while the *source* of the problem, i.e., the repression itself, was not directly identified as a threat, seemingly out of concern for the principle of non-intervention in internal affairs. Still, the resolution remains highly significant because humanitarian crisis situations became potentially incorporated into the threat concept.

The Security Council response to the Gulf War offered a glimpse into the formulation of the standard expression approving the use of force, and the expansion of the threat concept in three new directions (WMD, terrorism, and human rights). Indeed, Security Council actions would follow this precedent as the post-Cold War period progressed. In what follows I will briefly discuss the Security Council’s increased interest in human rights and humanitarian issues and its more active involvement in civil wars that emerged in parallel with this development. This will be followed by an examination of the Council’s response to the issue of terrorism.

### *Humanitarian and Human Rights Issues*

One major characteristic of the post-Cold War period was the inclusion in the threat concept of large-scale infringements on human rights, even when it was an internal affair occurring within a single country.

In Haiti, a military government engaged in large-scale suppression of human rights after a 1991 coup d’état, making large numbers of people displaced both within and outside the country. Resolution 841 (June 16, 1993) argued that this situation was “becoming or aggravating threat(s) to international peace and security,” and that the number of people fleeing into neighboring countries to avoid persecution or economic chaos was rising.<sup>64</sup> Based on concerns about this humanitarian crisis,<sup>65</sup> and on recognition of the need for democracy

---

<sup>62</sup> Preambular para. 3.

<sup>63</sup> The resolution also “appeals to all Member States and to all humanitarian organizations to contribute to these humanitarian relief efforts” (para. 6), and in response to this the allied forces, primarily the United States and Britain, set up a safe haven in northern Iraq that played a major (if unforeseen) role in the establishment of an autonomous Kurdish zone in that area.

<sup>64</sup> Preambular paras. 9 and 11.

<sup>65</sup> Resolution 917 (May 6, 1994) also mentioned murder, arbitrary arrest, rape, kidnapping, suppression of

and the return of the democratically elected president, Jean-Bertrand Aristide, the Security Council implemented bans on the import of arms and oil,<sup>66</sup> imposed economic sanctions and other non-military measures,<sup>67</sup> and authorized a multinational force to use “all necessary means” to end the military government and transfer authority back to a civil administration.<sup>68</sup> Many of these resolutions used expressions to the effect that the situation in Haiti required the taking of “unique” and “exceptional” measures,<sup>69</sup> revealing the drafters’ caution in ensuring that these actions would not set a precedent for other operations in the future. Still, Resolution 841, moving a step beyond Resolution 688, not only directly linked the deteriorating human rights situation to the threat concept but also argued that the very existence of the military government causing the human rights violations constituted a threat, and authorized the use of force.

While the Security Council response to the Rwandan genocide of 1994 was late and limited, it was possible to find a connection between large-scale human rights violations and the threat concept. In Rwanda, the majority Hutu had been holding governmental authority since independence in 1962. In August 1993, the government and the Rwanda Patriotic Front (RPF), which consisted mainly of exiled Tutsis, signed the Arusha Peace Agreement toward the creation of a multi-ethnic, multi-party administration. Hutu extremist forces, opposed to the implementation of this agreement, used the assassination of the Hutu President Juvénal Habyarimana in an airplane crash on April 6, 1994, as an excuse to begin massacring Tutsis and moderate Hutus. The estimated number of people killed exceeded 800,000 by the time that the RPF was able to drive out the extremist forces and establish a new government in mid-July. The Security Council had already been involved in the Rwanda situation since before the signing of the Arusha Peace Agreement. Yet Resolution 912, adopted on April 21, did not include determination of the situation as a threat, and instead decided a major reduction in the UN Assistance Mission for Rwanda (UNAMIR), which had been established to support the implementation of the peace agreement. Only in late May, more than a month after the genocide commenced, did the Security Council express concern about “a humanitarian crisis of enormous proportions,” recognize the situation as a threat, and introduce an arms embargo.<sup>70</sup> Furthermore, the resolution expanded UNAMIR’s mandate to include protection of civilians and support for humanitarian activities, and reconfirmed in that context that “UNAMIR may be required to take action in self-defense against persons or

---

freedom of expression, and other acts as violations of human rights.

<sup>66</sup> Implemented under Resolution 841, and then suspended (SCR 861 [August 27, 1993]) after a peace agreement was signed on July 3, 1993 by President Aristide and Colonel Raoul Cédras, the coup ringleader. The sanctions were reinstated (SCR 873 [October 13, 1993]), however, when the agreement was not adequately implemented. The Security Council also recommended inspections of all incoming vessels to strengthen the import sanctions (SCR 875 [October 15, 1993]).

<sup>67</sup> SCR 917.

<sup>68</sup> SCR 940 (July 31, 1994), para. 4.

<sup>69</sup> This expression can be seen, for example, in Resolutions 841, 875, 917, and 940.

<sup>70</sup> SCR 918 (May 17, 1994), para. 13.

groups who threaten protected sites and populations, United Nations and other humanitarian personnel, or the means of delivery and distribution of humanitarian relief.”<sup>71</sup> When it became clear that this expansion could not be implemented due mainly to a shortage of personnel, the Security Council in late June stated that “the magnitude of the humanitarian crisis in Rwanda constitutes a threat to peace and security in the region”<sup>72</sup> and called on UN Member States to use “all necessary means” to help UNAMIR fulfill its additional mandates.<sup>73</sup> It is necessary to note that the resolution started with a caveat saying that the situation was “a unique case” requiring “an urgent response” from international community.<sup>74</sup> Just as in the case of Haiti, Security Council members were cautious about letting humanitarian issues become a recognized basis for threat recognition and authorization of the use of force.

The link between human rights or humanitarian issues and the threat concept can also be seen in the establishment of tribunals under the authority of the Security Council to persecute perpetrators of genocide, war crimes, and other crimes against humanity. Resolutions adopted for the establishment of the first such court, the International Criminal Tribunal for the Former Yugoslavia (ICTY), recognized that mass murders, ethnic cleansing, and other violations of international humanitarian law constituted a threat to international peace and security and argued “that in the particular circumstances of the former Yugoslavia the establishment as an ad hoc measure by the Council of an international tribunal and the prosecution of persons responsible for serious violations of international humanitarian law would enable this aim to be achieved and would contribute to the restoration and maintenance of peace.”<sup>75</sup> The subsequent tribunals, the International Criminal Tribunal for Rwanda (ICTR)<sup>76</sup> and the Special Court for Sierra Leone,<sup>77</sup> basically went along with this argument, recognizing that

---

<sup>71</sup> SCR 918, paras. 3-4.

<sup>72</sup> SCR 929 (June 22, 1994), preambular para. 10.

<sup>73</sup> SCR 929, para. 3. Similar recognitions were made in the resolution related to the humanitarian crisis that erupted in eastern Zaire after the genocide. When the RPF drove out the mainly Hutu government forces (in mid-July 1994), more than one million Hutu refugees fled into eastern Zaire. The beaten government forces re-established themselves in the massive refugee camps established in eastern Zaire, and used the camps as bases from which to launch attacks against the new government and local Tutsi communities in eastern Zaire. When this recurring violence ensnared surrounding countries into a regional war starting in the summer of 1996, the Security Council (SCR 1078 [November 9, 1996]) recognized that “the magnitude of the present humanitarian crisis in eastern Zaire” (preambular para. 18) constituted a threat to peace in the region. The Council also authorized a multinational force established for the purpose of humanitarian assistance to achieve its mandate “by using all necessary means” (SCR 1080 [November 15, 1996], para.5).

<sup>74</sup> SCR 929, preambular para. 9.

<sup>75</sup> SCRs 808 (February 22, 1993), 827 (May 25, 1993). Quotes from SCR 827. For information about this tribunal, see <<http://www.un.org/icty/index.htm>>.

<sup>76</sup> SCRs 955 (November 8, 1994), 978 (February 27, 1995). These resolutions argue that the genocide and other organized, wide-ranging, and serious violations of international humanitarian law in Rwanda are a threat to international peace and security, prosecuting the persons responsible under the law contributes to the maintenance of peace and to national reconciliation. For information about this tribunal, see <<http://www.ictt.org/>>.

<sup>77</sup> As the civil war in Sierra Leone intensified, “very serious crimes” against civilians and against members

massive violations of humanitarian law constitute a threat to international peace.

### *Civil War*

In the 1990s, the Security Council began actively becoming involved in civil wars. As has been seen, the Security Council had already been involved in a number of civil wars during the Cold War period. These civil wars, however, were internal conflicts that became internationalized due to an military intervention by a third country; and the Security Council had never involved itself in internal conflicts without a clear case of outside military intervention, because such involvement would have constituted a violation of the principle of non-interference in domestic affairs. Of course, there are cases in the post-Cold War period in which the Security Council moved to exercise enforcement measures in internationalized internal conflicts—examples include Liberian military support for anti-government forces in Sierra Leone and Ivory Coast<sup>78</sup> and the intervention by neighboring countries in the Democratic Republic of the Congo.<sup>79</sup>

---

of peacekeeping units were reported. In response, the Security Council determined that the situation in the country continued to constitute a threat to peace and recognized that “in the particular circumstances of Sierra Leone, a credible system of justice and accountability for the very serious crimes committed there would end impunity and would contribute to the process of national reconciliation and to the restoration and maintenance of peace.” On this basis, the Council adopted a resolution establishing a special court for war crimes and other serious violations of international humanitarian law. SCR 1315 (August 14, 2000). For information about this court, see <<http://www.sc-sl.org/>>.

<sup>78</sup> The Liberian government led by Charles Taylor provided support for anti-government forces in Sierra Leone (including the Revolutionary United Front [RUF] and former members of the military government) by acting as an intermediary for the diamond smuggling trade that served as a funding source for their operations. The Security Council recognized this activity as a threat to regional peace, and took steps to ban imports of arms and impose sanctions against the diamond trade. At the same time, the Council lifted the arms embargo with Liberia imposed earlier in response to the Liberian civil war (discussed below) (SCRs 1306, [July 5, 2000], 1343 [March 7, 2001], 1385 [December 19, 2001], 1446 [December 4, 2002]). Resolution 1408 (May 6, 2002) also recognized the threat in similar terms. Later, when it became clear that the Liberian government was extending support for anti-government forces in Ivory Coast including the Mouvement Patriotique de Côte d’Ivoire (MPCI), the Security Council recognized the threat with the imposition of additional trade sanctions (SCR 1478 [May 6, 2003]). Meanwhile, the Security Council recognized the civil war in Ivory Coast itself as posing a threat (SCRs 1464 [February 4, 2003], 1479 [May 13, 2003]), and called on a multinational force (consisting of France and members of the Economic Community of West African States [ECOWAS] and mandated mainly to help implement the peace agreement signed on January 24, 2003) to take all “necessary steps” to protect personnel and civilians in danger (SCR 1464, para. 9).

<sup>79</sup> This conflict took place from about August 1998 mainly in the eastern part of the Congo. Angola, Zimbabwe, Namibia, Chad, Libya, and Sudan supported President Laurent-Désiré Kabila, while Rwanda, Burundi, and Uganda supported the anti-government forces. The Security Council determined that the conflict in the Congo constituted a threat to the region’s peace and security (SCR 1234 [April 9, 1999], preambular para. 10), called upon all states in the region “to create the conditions necessary for the speedy and peaceful resolution of the crisis and to desist from any act that may further exacerbate the situation.” After the Lusaka Ceasefire Agreement was signed (July 1999), the Mission de l’Organisation des Nations Unies en la République Démocratique du Congo (MONUC) was established for the purpose of monitoring

In this period, however, cases of conflict that were predominantly internal in character and yet considered to be adversely affecting regional stability in terms of their intensity, geographical coverage, and extent of human suffering tended to attract intervention from the Security Council. A good example was the Security Council response to the recurrence of the Angolan civil war. While that civil war between the government and the União Nacional para a Independência Total de Angola (UNITA) had continued unabated since Angolan independence in 1975, the Security Council had been largely powerless during the Cold War period, in which the government received military assistance from the Soviet Union and Cuba, and UNITA from the United States. A peace agreement was signed in May 1991, however, followed by a presidential election in September 1992, the results of which so dissatisfied UNITA that it resumed the civil war. Faced with this, the Security Council argued that the situation “as a result of UNITA’s military actions” constituted a threat to international peace and security and imposed a series of sanctions on UNITA, including an embargo on trade in oil and arms<sup>80</sup> and travel to other countries,<sup>81</sup> as well as a freeze on assets held overseas, a ban on the diamond trade, and all contact with the group’s leaders.<sup>82</sup> Another example concerns Liberia. The Liberian civil war began in December 1989 with attacks by the National Patriotic Front of Liberia (NPFL). As it intensified, the Security Council determined that “the deterioration of the situation in Liberia constitutes a threat to international peace and security, particularly in West Africa,”<sup>83</sup> and imposed an arms embargo.<sup>84</sup> After a peace agreement was signed on June 17, 2003, a multinational force was organized with the capability of taking “all necessary measures” to assist the implementation of the agreement.<sup>85</sup> In the Central African

---

the ceasefire. When local security deteriorated due to repeated violations of the ceasefire agreement by the various armed groups, the Security Council again determined the situation as a threat, and authorized MONUC units to take “necessary action, in the areas of deployment of its infantry battalions and as it deems it within its capabilities” to pursue their mandate (SCR 1291 [February 24, 2000], para. 8). As the situation continued to be unstable, the Security Council recognized the threat and called for the cooperation of neighboring governments and internal armed groups in observing the ceasefire agreement (SCRs 1304 [June 16, 2000], 1341 [February 22, 2001], 1355 [June 15, 2001], 1376 [November 9, 2001], 1399 [March 19, 2002], 1417 [June 14, 2002], 1445 [December 4, 2002], 1457 [January 24, 2003], 1468 [March 20, 2003]). Moreover, faced with the outbreak in early May 2003 of armed clashes in the northeastern Ituri province between the Hema tribe and the Lendu tribe (the clashes were reportedly backed by Rwanda, Uganda, as well as the government in Kinshasa), the Security Council authorized the Interim Emergency Multinational Force (IEMF), a multinational force organized by the European Union (EU), and MONUC to take “all necessary measures” to protect displaced persons and UN and humanitarian personnel and stabilize the situation in Bunia (SCR 1484 [May 30, 2003], paras. 1-4; SCR 1493 [July 28, 2003], paras. 25-26), and imposed an arms embargo on all of the armed forces (SCR 1493, para. 20).

<sup>80</sup> SCR 864 (September 15, 2003), B, preambular para. 4, and para. 19.

<sup>81</sup> SCR 1127 (August 28, 1997), para. 4; SCR 1135 (October 29, 1997), para. 6.

<sup>82</sup> SCR 1173 (June 12, 1998), paras. 11-12.

<sup>83</sup> SCR 788 (November 19, 1992), preambular para. 5. The same terminology was used in Resolutions 813 (March 26, 1993) and 1497 (August 1, 2003).

<sup>84</sup> SCR 788, para. 8.

<sup>85</sup> SCR 1497, paras. 1 and 5.

Republic, civil war broke out between supporters and opponents of President Ange-Félix Patassé following riots by soldiers over the non-payment of their wages. The Security Council recognized that failure to observe the ceasefire agreement (January 25, 1997) constituted a threat to the peace and security of the region,<sup>86</sup> and authorized under the Chapter VII the UN Member States participating in the Inter-African Mission to Monitor the Implementation of the Bangui Agreements (MISAB) “to ensure security and freedom of movement of their personnel.”<sup>87</sup> The Security Council’s response to the East Timor conflict also followed this pattern. The Security Council recognized the unstable situation after the ceasefire in East Timor as a threat,<sup>88</sup> and called on the international presence established or authorized by the Security Council — the International Force in East Timor (INTERFET),<sup>89</sup> the UN Transitional Authority in East Timor (UNTAET),<sup>90</sup> and the UN Mission of Support in East Timor (UNMISSET)<sup>91</sup> — to take “all necessary measures”<sup>92</sup> to fulfill their mandates.

This trend toward more active Security Council intervention in civil wars work hand-in-hand with another, in which issues previously considered to be internal affairs, such as human rights, were being treated as threats to international peace and security. In fact, many of the Security Council interventions into internal conflicts are related to not only concern for the effects of the conflict on regional security, but also concern for the humanitarian situation that arose due to the conflict, and for repression of human rights by parties to the conflict.

Regarding the civil war between the separatist independence forces in Abkhazia and the Georgian army, the Security Council determined that its continuation “threatens peace and stability in the region,”<sup>93</sup> and called for strict observance of the ceasefire agreement, restraint

---

<sup>86</sup> SCR 1125 (August 6, 1997), preambular para. 6; SCR 1136 (November 6, 1997), preambular para. 9; SCR 1152 (February 5, 1998), preambular para. 9; SCR 1155 (March 16, 1998), preambular para. 10; SCR 1159 (March 27, 1998), preambular para. 10.

<sup>87</sup> SCR 1125, para.3; SCR 1136, para. 4; SCR 1152, para. 5; SCR 1155, para. 4; SCR 1159, para. 6.

<sup>88</sup> SCR 1264 (September 15, 1999), preambular para. 14; SCR 1272 (October 25, 1999), preambular para. 16. While the resolution for the establishment of UNMISSET (SCR 1410 [May 17, 2002]) did not include a clear recognition of a threat, its preambular paragraph 15 stated that “ensuring the security of the boundaries of East Timor and preserving its internal and external stability is necessary for the maintenance of peace and security in the region.”

<sup>89</sup> INTERFET was established for the purpose of restoring peace and security to East Timor and to support the UN Mission in East Timor (UNAMET), which in turn was mandated mainly to support the popular referendum, and to assist with humanitarian activities. SCR 1264, para.3.

<sup>90</sup> UNTAET was established after the August 30, 1999 referendum made clear that the people had opted for independence and was assigned various responsibilities for judiciary, administrative, and legislative functions and maintenance of security during the transitional period to independence. See SCR 1272.

<sup>91</sup> Established as a follow-on mission to UNTAET to provide support for the new government after independence on May 20, 2002. See SCR 1410.

<sup>92</sup> SCR 1264, para. 3; SCR 1272, para. 4. For UNMISSET, the expression “the necessary actions...to fulfill its mandate” was used (SCR 1410, para. 6).

<sup>93</sup> SCR 858 (August 24, 1993), preambular para. 6; SCR 876 (October 19, 1993), preambular para. 6; SCR 881 (November 4, 1993), preambular para. 5.

in the use of force, and establishment of the United Nations Observer Mission in Georgia (UNOMIG). The Security Council also touched on reports of human abuses due to the conflict, and of ethnic cleansing and other violations of international humanitarian law, and called for cooperation in the safe return of refugees and for humanitarian relief.<sup>94</sup> In Albania, where a chaotic situation erupted after fraudulent pyramid schemes on a massive scale were uncovered, the Security Council first determined the situation as a threat to regional peace and security, and then authorized the multinational force, established mainly for emergency humanitarian assistance, “to ensure the security and freedom of movement” of its personnel.<sup>95</sup> The measures taken in response to the Sierra Leone civil war were even broader. When the democratic government of Sierra Leone was overthrown in a military coup d’état on May 25, 1997, the Security Council determined that the emergence of a military government constituted a threat to regional peace and security,<sup>96</sup> imposed trade embargoes on arms and oil, and called on the Economic Community of West African States (ECOWAS) to enforce a sea blockade.<sup>97</sup> The Security Council subsequently gave the UN Mission in Sierra Leone (UNAMSIL) a number of tasks including facilitation of the movement of aid supplies,<sup>98</sup> and determined that “in the discharge of its mandate, UNAMSIL may take the necessary action to ensure the security and freedom of movement of its personnel and, within its capabilities and areas of deployment, to afford protection to civilians under imminent threat of physical violence, taking into account the responsibilities of the Government of Sierra Leone.”<sup>99</sup>

In the Somalia civil war, the Security Council expressed its alarm at “the rapid deterioration of the situation in Somalia and the heavy loss of human life and widespread material damage resulting from the conflict in the country” and awareness of “its consequences on peace and stability in the region,” recognized that continuation of the situation constituted a threat,<sup>100</sup> and imposed an arms embargo.<sup>101</sup> Despite these measures,

---

<sup>94</sup> SCR 876, preambular para. 5 and paras. 5-7.

<sup>95</sup> SCR 1101 (March 28, 1997), preambular para. 9 and para. 4; SCR 1114 (June 19, 1997), preambular para. 12 and para. 4.

<sup>96</sup> SCR 1132 (October 8, 1997), preambular para. 9; SCR 1270 (October 22, 1999), preambular para. 5; SCR 1289 (February 7, 2000), preambular para. 7; SCR 1306 (July 5, 2000), preambular para. 4.

<sup>97</sup> SCR 1132, paras. 6-8. As noted above (see Note 78), however, this civil war was considered to have become an international affair when Liberia intervened, and the trade embargo on oil and arms was later restricted to the anti-government forces in Sierra Leone that were receiving aid from Liberia. SCR 1171 (June 5, 1998), para. 2.

<sup>98</sup> For the mandate, see SCR 1270, para. 8 and SCR 1289, para. 10.

<sup>99</sup> SCR 1270, para. 14; SCR 1289, para. 10. Later resolutions mandated the maintenance of security on the Lungi and Freetown peninsulas and on important traffic corridors, and directed UNAMSIL “to deter and, where necessary, decisively counter the threat of RUF attack by responding robustly to any hostile actions or threat of imminent and direct use of force” (SCR 1313 [August 4, 2000], para. 3(b)).

<sup>100</sup> SCR 733 (January 23, 1992), preambular paras. 3-4; SCR 746 (March 17, 1992), preambular para. 6; SCR 751 (April 24, 1992), preambular para. 6; SCR 767 (July 24, 1992), preambular para. 7; SCR 775 (August 28, 1992), preambular para. 6; SCR 794 (December 3, 1992), preambular para. 3; SCR 814 (March 26, 1993), preambular para. 26; SCR 837 (June 6, 1993), preambular para. 13; SCR 886 (November 18, 1993), preambular para. 11; SCR 897 (February 4, 1994), preambular para. 15; SCR 923 (May 31, 1994),

many armed groups remained active, and when they began interfering with humanitarian support operations by the UN and others, the Security Council reaffirmed that “the provision of humanitarian assistance in Somalia is an important element in the effort of the Council to restore international peace and security in the area,”<sup>102</sup> and called on the Secretary-General and UN Member States to take “all necessary means to establish as soon as possible a secure environment for humanitarian relief operations in Somalia.”<sup>103</sup> Furthermore, when the UN force on the ground (Unified Task Force: UNITAF, later converted into United Nations Operations in Somalia II: UNOSOM II) came under attack from Somali armed forces, the Security Council confirmed that it was possible to use “all necessary measures against all those responsible for the armed attacks...including those responsible for publicly inciting such attacks,”<sup>104</sup> in order for UNOSOM II to establish its authority throughout Somalia.

In the former Yugoslavia, the conflict lasted from 1991 to 1995 at several stages. Here again, the measures taken by the Security Council can be considered as based on a combination of concerns about the effects of civil war on the region and about humanitarian situations. The conflict erupted on June 25, 1991, when Slovenia and Croatia declared independence from rump Yugoslavia. While Slovenia moved quickly toward independence through the conclusion of the Brioni Accord on July 7, in Croatia battle intensified between Croatian forces and units from the Yugoslav People’s Army. The Security Council determined the latter situation as a threat, and imposed an arms embargo.<sup>105</sup> A ceasefire agreement in Croatia was reached on January 2 of the following year,<sup>106</sup> and on the 15<sup>th</sup>, Slovenia and

---

preambular para. 15; SCR 954 (November 4, 1994), preambular para. 21. Quotes are from Resolution 733.

<sup>101</sup> SCR 733, para. 5.

<sup>102</sup> SCR 767, preambular para. 9; SCR 775, preambular para. 8; SCR 794, para. 10. However, with the actual use of force inviting heavy responses from local armed groups, UNISOM II eventually withdrew in March 1995 after incurring 147 deaths among its personnel (SCR 954).

<sup>103</sup> SCR 794, para. 10.

<sup>104</sup> SCR 837, para. 5.

<sup>105</sup> SCR 713 (September 25, 1991).

<sup>106</sup> Later, UN Protected Areas (UNPAs) were established in Serbian-majority areas in the western part of Croatia to protect Serbian populations that had become minorities after Croatian independence, and the UN Protection Force (UNPROFOR) was established to monitor demilitarization of those areas (SCR 743 [February 21, 1992]). As the Bosnian civil war intensified (see below), and battles erupted between the Croatian government army and Serb armed groups, harassment of Serbian residents by government forces intensified despite the ceasefire agreement and UN peacekeeping efforts. The Security Council, recognizing this situation as a threat to peace (SCRs 807 [February 19, 1993], 815 [March 30, 1993]), called on UNPROFOR, “acting in self-defence, to take the necessary measures, including the use of force...” (SCR 871 [October 4, 1993], para. 9), and later called on UN Member States to take “all necessary measures to extend close air support to the territory of the Republic of Croatia, in defence of UNPROFOR personnel in the performance of UNPROFOR’s mandate” (SCR 908 [March 31, 1994], para. 8; see also SCR 958 [November 19, 1994]). The call for close air support was also applied to the UN Croatia Confidence Restoration Operation (UNCRO) which later replaced UNPROFOR (“all necessary measures to extend close air support to the territory of the Republic of Croatia in defence of UNCRO personnel in the performance of UNCRO’s mandate,” SCR 981 [March 31, 1995], para. 6) and to the UN Transitional Administration for Eastern Slavonia, Baranja and Western Sirmium (UNTAES) (“all necessary measures, including close air support, in

Croatia were officially admitted to the European Community (EC). The situation up until that moment could be characterized as a civil war erupting due to separatist independence movements from a country, and the Security Council action as an example of its post-Cold War active involvement into a civil war.

The conflict that then broke out in Bosnia-Herzegovina (hereinafter called Bosnia) was different in character. Bosnia held an election in late February 1992, declared independence on March 6, and won recognition of sovereignty from the United States and the EC on April 7.<sup>107</sup> Meanwhile, on April 27, Serbia and Montenegro declared the formation of the new Federal Republic of Yugoslavia (FRY). In other words, the outbreak of the Bosnian conflict occurred virtually simultaneously with the establishment of Bosnia as an independent sovereign state. As such, attacks by Serbian armed groups and the Yugoslav People's Army, which both intended to assimilate the Serb-majority districts in Bosnia into the FRY to achieve a "Greater Serbia," could be described in terms of the conventional concept of threat as an outside military interference that has instigated and intensified a civil war, threatening peace and security in the region. In fact, while Resolution 749 (April 7, 1992), adopted soon after the outbreak of the Bosnian conflict, merely used the expression of "all parties and others concerned,"<sup>108</sup> the next resolution adopted by the Security Council on the Bosnian situation, Resolution 752 (May 15, 1992), specifically blamed units of the federal Yugoslav and Croatian forces by demanding "that all forms of interference from outside Bosnia and Herzegovina, including by units of the Yugoslav People's Army as well as elements of the Croatian Army, cease immediately."<sup>109</sup>

Meanwhile, concern about human rights violations occurring on a large scale within Bosnia also induced the Security Council to take action; and the result was the establishment by the Security Council of the first international criminal court. Concern about the humanitarian situation in Bosnia existed from the very start of the civil war. By May 1992, the Security Council was already calling for an end to "forcible expulsions of persons from the areas where they live and any attempts to change the ethnic composition of the population," and for emergency relief efforts in response to the massive refugee problem.<sup>110</sup> After that time, nearly all resolutions related to Bosnia contained criticisms of (para) militaries in Bosnia for forced expulsions and inhumane acts against civilians, and called for protection against such actions as well as assurance of humanitarian assistance. In a recognition that the humanitarian crisis in Bosnia was included in the concept of threat, Resolution 770 (August 13, 1992)

---

defence of UNTAES and, as appropriate, to assist in the withdrawal of UNTAES," SCR 1037 [January 15, 1996], para. 14). These Security Council responses here can be understood as attempts to curtail potential linkage between a conflict within Croatia and another in neighboring Bosnia.

<sup>107</sup> Bosnia became a member of the UN on May 22 along with Croatia and Slovenia.

<sup>108</sup> Para. 3.

<sup>109</sup> Para. 3. Soon after the start of the Bosnian conflict, Croatia and Bosnia formed an alliance to resist the Serb forces, with Croatia sending military support to Bosnia. This relationship deteriorated in the autumn of 1992, and the two engaged in a full-scale war by the spring of 1993. Later, however, relations were restored, resulting in the formation of the Bosnia-Croatia Federation in February 1994.

<sup>110</sup> SCR 752, paras. 6-7 (quotes from para. 6).

reconfirmed that the Bosnian situation constituted a threat to international peace and security, and that humanitarian assistance in Bosnia was an important element in the Security Council's efforts for the restoration of international peace and security in the region.<sup>111</sup> Another resolution adopted on the same day (Resolution 771) called on all parties to the conflict to strictly observe international humanitarian law, and if they failed to do so, "the Council would need to take further measures under the Charter,"<sup>112</sup> implying the intention of taking enforcement measures under Chapter VII for humanitarian purposes (this was also the first Security Council resolution in which the term 'ethnic cleansing' appeared).

Thus, in recognition of the threat of the Bosnian conflict due to its internationalized and inhumane nature, the Security Council imposed a series of sanctions binding on all UN Member States: reduction of diplomatic missions in the FRY, prevention of FRY participation in international sporting events, suspension of scientific and technical cooperation and cultural exchanges,<sup>113</sup> and halting of maritime shipping and on-board inspections in the Adriatic and the Danube.<sup>114</sup> When the conflict intensified despite these measures, the Security Council took further steps, including a ban on military flights<sup>115</sup> to ensure security for humanitarian assistance supplies (later buttressed by a call on Member States to take "all measures necessary to provide assistance to the United Nations Protection Force");<sup>116</sup> establishment of safe areas for the protection of Bosnian Muslims besieged by Serb forces;<sup>117</sup> use of force by UNPROFOR to protect these safe areas; and the authorization for Member States to use air strikes against these protective actions.<sup>118</sup> After the Dayton Peace Agreement was signed on

---

<sup>111</sup> Preambular para. 5.

<sup>112</sup> Para. 7.

<sup>113</sup> SCR 757 (May 30, 1992). For later measures related to economic sanctions, see SCRs 760 (June 18, 1992), 820 (April 17, 1993), 838 (June 10, 1993), 943 (September 23, 1994), 970 (January 12, 1995), 988 (April 21, 1995), 992 (May 11, 1995), 1003 (July 5, 1995), 1015 (September 15, 1995), 1021 (November 22, 1995), 1022 (November 22, 1995), and 1031 (December 15, 1995).

<sup>114</sup> SCR 787 (November 16, 1992). Moreover, the Security Council also decided on economic sanctions on the Bosnian Serb forces that were continuing the civil war with the support of Serbia. This decision was taken when they resisted signing a peace proposal in the summer of 1994 (the so-called "Contact Group Map" proposed by the United States, Russia, and the EU). See SCR 942 (September 23, 1994).

<sup>115</sup> SCR 781 (October 9, 1992).

<sup>116</sup> SCR 816 (March 31, 1993), para. 4. Here, the expression "all necessary measures" was used.

<sup>117</sup> SCR 819 (April 16, 1993), 824 (May 6, 1993). Six safe areas were established, including Srebrenica, Tuzla, Sarajevo, Zepa, Gorazde, and Bihac.

<sup>118</sup> SCR 836 (June 4, 1993). This resolution extended the UNPROFOR's mandate to deterrence of attacks on the safe areas, cease-fire monitoring, promotion of the withdrawal of (para) military units other than those under the Bosnian government, and occupation of some key points on the ground (para. 5). At the same time it called for UNPROFOR to take in self-defense the "necessary measures, including the use of force, in reply to bombardments against the safe areas by any of the parties or to armed incursion into them or in the event of any deliberate obstruction in or around those areas to the freedom of movement of UNPROFOR or of protected humanitarian convoys," (para. 9) and for UN Member States to take "all necessary measures, through the use of air power" to support UNPROFOR in carrying out its mandate (para. 10). Here, the resolution's use of the word "through" may be worth noting. To argue that taking (all) necessary means/measures is ensured 'through' the use of air power is to assume that "[all] necessary means/measures"

December 14, 1995, the Security Council authorized UN Member States to establish the UN Implementation Force (IFOR) and to use force through IFOR for the implementation of the peace agreement and for the protection of IFOR personnel.<sup>119</sup>

### *Terrorism*

Even prior to the simultaneous terrorist attacks on the United States on September 11, 2001, the problem of international terrorism was an issue at the Security Council. In the bombing by Libyan terrorists of PanAm Flight No.103 over Lockerbie on December 21, 1988 (killing 243 passengers, 16 crew members, and 11 local residents),<sup>120</sup> Britain and the United States fixed the blame on Libya after a three-year investigation, and demanded that the Libyan government hand over the suspects for trial, and pay compensation. When Libya took an uncooperative stance to these demands, the three countries of Britain, the United States, and France in the following year requested the Security Council to intervene. The Security Council, arguing that the suppression of acts of international terrorism is “essential for the maintenance of international peace and security” and determining “in this context that the failure by the Libyan Government to demonstrate, by concrete actions its renunciation of terrorism...constitute a threat to international peace and security,”<sup>121</sup> imposed sanctions on Libya, including an arms embargo, a ban on flights from and to Libya, reduction of diplomatic relations,<sup>122</sup> a freeze on its overseas assets, and bans on trade in oil refinery and transport equipment.<sup>123</sup>

The Kosovo conflict showcased all of the three new elements of the post-Cold War threat concept — human rights, civil war, and terrorism. In this region, where the majority of the population is Albanian, an independence movement had been active since the early 1990s, and had repeatedly clashed with Serbian authorities. In 1998, when armed clashes with the Kosovo Liberation Army (KLA) and other Albanian armed groups heated up, the Security Council recognized that the deteriorating Kosovo situation constituted a threat,<sup>124</sup> imposed an

---

has now become an established expression meaning mainly, if not exclusively, the use of military force.

<sup>119</sup> SCR 1031, paras. 15-17. Here, the expression “all necessary measures” was used. These stipulations were also applied to the Stabilization Force (SFOR) that was established as a follow-on mission to IFOR. SCR 1088 (December 12, 1996), paras. 18-21; SCR 1174 (June 15, 1998), paras. 10-13; SCR 1247 (June 18, 1999), paras. 10-13; SCR 1305 (June 21, 2000), paras. 10-13; SCR 1357 (June 21, 2001), paras. 10-13; SCR 1423 (July 12, 2002), paras. 10-13; SCR 1491 (July 11, 2003), paras. 10-13.

<sup>120</sup> For a background to this incident, see, for example, Michael Plachta, “The Lockerbie Affair: When Extradition Fails Are the United Nations Sanctions a Solution?,” <[http://www.acpf.org/Activities/public%20lecture2000/lecturePlachta\(E\).html](http://www.acpf.org/Activities/public%20lecture2000/lecturePlachta(E).html)>, accessed 10 July 2003.

<sup>121</sup> SCR 748 (March 31, 1992), preambular paras. 4 and 7; SCR 883 (November 11, 1993), preambular paras. 5-6.

<sup>122</sup> SCR 748.

<sup>123</sup> SCR 883.

<sup>124</sup> SCR 1199 (September 23, 1998), preambular para. 14; SCR 1203 (October 24, 1998), preambular para. 15; SCR 1244 (June 10, 1999), preambular para. 12.

arms embargo on Yugoslavia,<sup>125</sup> and established “an international security presence” (in the form of the Kosovo Force: KFOR) that would be mandated to deter renewed hostilities to maintain and “where necessary” enforce a ceasefire, and to demilitarize the KLA and other armed Kosovo Albanian groups.<sup>126</sup> This decision was based on such factors as: (1) concern over the humanitarian catastrophe arising from repression by the Serbian authorities;<sup>127</sup> (2) concern over the large numbers of refugees fleeing from repression and civil war, and the threat this situation poses to regional security;<sup>128</sup> and (3) criticism of terrorism by the KLA and other groups.<sup>129</sup>

Still, the terrorist incident that left the most serious impact on the relationship between terrorism and the threat concept at the Security Council was the September 11, 2001 terrorist attacks on the United States. The incident that provided the discursive context for the Security Council’s response to 9/11 was the terrorist bombing of the U.S. embassies in Kenya and Tanzania three years earlier (August 7, 1998). The Security Council at that time stated “such acts...have a damaging effect on international relations and jeopardize the security of States” and recognized that “the suppression of acts of international terrorism is essential for the maintenance of international peace and security.”<sup>130</sup> While avoiding explicit reference to terrorism as a threat to international peace, these statements can be viewed as reflecting a Security Council consensus on the serious effect that terrorist acts have on the maintenance of international security. In the meantime, as it became clear that Al Qaeda was the group responsible for these terrorist acts, and that their main base of operations was in Afghanistan, the Security Council’s attention turned to the situation in Afghanistan. Up until then, following the withdrawal of the Soviet Union, Afghanistan had entered a long period of civil war, but, while the Security Council recognized this as constituting a threat to the maintenance of regional and international security,<sup>131</sup> no enforcement measures had been authorized. The terrorist attacks served to link terrorism with the threat concept, and prompted the Security Council to respond to the situation in Afghanistan because of that country’s role as a sponsor of terrorism. The Security Council, on the one hand, demanded “that the Taliban stop providing sanctuary and training for international terrorists and their organizations, and that all Afghan factions cooperate with efforts to bring indicted terrorists to justice;”<sup>132</sup> and “that the Taliban turn over Usama bin Laden without further delay to appropriate authorities in a country where he has been indicted.”<sup>133</sup> Next, the Security Council, stating that failure of

---

<sup>125</sup> SCR 1160 (March 31, 1998), para. 8.

<sup>126</sup> SCR 1244, paras. 5-9 (quotes from para. 7).

<sup>127</sup> SCR 1239 (May 14, 1999), preambular para. 3.

<sup>128</sup> For example, see SCR 1199, preambular paras. 6-7.

<sup>129</sup> For example, see SCR 1160, para. 3.

<sup>130</sup> SCR 1189 (August 13, 1998, quotes from preambular para. 2). See also SCR 1269 (October 19, 1999).

<sup>131</sup> For example, see SCR 1193 (August 28, 1998), preambular para. 4.

<sup>132</sup> SCR 1214 (December 8, 1998), para. 13.

<sup>133</sup> SCR 1267 (October 15, 1999), para. 2.

the Taliban to respond to these demands constituted a threat to peace,<sup>134</sup> froze its overseas assets, banned all flights to and from its territory,<sup>135</sup> imposed an arms embargo, and placed restrictions on diplomatic relations. The Council also imposed a freeze on Al Qaeda's overseas assets.<sup>136</sup>

The simultaneous terrorist attacks in 2001 forcefully reminded the international community of the threat posed by terrorism. On the next day following the attacks, the Security Council quickly issued a resolution stating its determination to “combat by all means threats to international peace and security caused by terrorist acts,”<sup>137</sup> and reaffirming that “such acts, like any act of international terrorism, constitute a threat to international peace and security.”<sup>138</sup> Based on this, the Council determined to criminalize and freeze terrorist funding and to forbid Member States from providing any form of support to terrorists.<sup>139</sup> After the U.S. and UK-led operation against the Taliban that started on October 7, 2001, the Security Council authorized the International Security Assistance Force (ISAF), which was mandated mainly to assist the Afghan Interim Authority in the maintenance of security in Kabul and its surrounding areas, to take “all necessary measures” for the implementation of the mandate,<sup>140</sup> and imposed sanctions on the still-active Al Qaeda and the remnants of the Taliban, including bans on arms trade and on overseas travel.<sup>141</sup>

The resolutions adopted after the 9/11 terrorist attacks are different from earlier ones in that they imply, and indeed assume, widespread recognition that the threat that terrorism poses to peace is not a local problem limited to Afghanistan or elsewhere, but is actually universal. In fact, the Security Council held two Foreign Minister level meetings in regard to terrorism (November 12, 2001 and January 20, 2003), during which the Security Council emphasized “that acts of international terrorism constitute a challenge to all States and to all of humanity.”<sup>142</sup>

In sum, it is possible to trace the changes over time in the Security Council's concept of threat and of the legitimacy of the use of force in the following terms.

First, the concept of threat gradually expanded to include new situations and issues. In other words, to the long-standing categories of conflict between sovereign states and

---

<sup>134</sup> SCR 1267, preambular para. 8; SCR 1333 (December 19, 2000), preambular para. 14.

<sup>135</sup> SCR 1267, para. 4.

<sup>136</sup> SCR 1333, paras. 5-11.

<sup>137</sup> SCR 1368 (September 12, 2001), preambular para. 2. Similar expressions were included in resolutions on other terrorist incidents, including Bali (October 12, 2002, SCR 1438 [October 14, 2002]), Moscow (October 23, 2002, SCR 1440 [October 24, 2002]), Kenya (November 28, 2002, SCR 1450 [December 13, 2002]), Bogota (February 7, 2003, SCR 1465 [February 13, 2003]), Istanbul (November 15 and 20, 2003, SCR 1516 [November 20, 2003]), and Madrid (March 11, 2004, SCR 1530 [March 11, 2004]).

<sup>138</sup> SCR 1373 (September 28, 2001), preambular para. 3.

<sup>139</sup> SCR 1373.

<sup>140</sup> SCR 1386 (December 20, 2001), para. 3. The area was later expanded to beyond Kabul and its surroundings. SCR 1510 (October 13, 2003), para. 1.

<sup>141</sup> SCR 1390 (January 28, 2002), para. 2.

<sup>142</sup> SCR 1377 (November 12, 2001), Annex; SCR 1456 (January 20, 2003), Annex.

internationalized civil wars were added three more categories in the 1990s: large-scale humanitarian crises and repression of human rights; civil wars that threaten regional security in terms of intensity, geographical coverage, and human suffering; and terrorism. For a connection between WMD and the threat concept, however, the resolution after the Gulf War (Resolution 687) merely hinted, in retrospect as it were, that Iraq's possession of WMD constituted a potential threat to international peace and security. A clear tie-in to the threat concept would have to wait until the debate about the Iraq War.

These five categories are not the same in terms of the extent to which they are perceived as threats. There is a broad consensus regarding the threat to peace posed by the two conventional situations, and also by terrorism (especially after the 9/11 terrorist attacks). In addition, it seems that an understanding at the Security Council has been established that the internal conflicts that are judged to have an effect on regional security constitute a threat, because in many of these cases the Security Council has become involved through multinational forces or UN peacekeeping operations established under its authority.

On the other hand, the Security Council response to repression of human rights or to humanitarian crises has been more nuanced. Resolutions on northern Iraq, Haiti and Rwanda contain caveats that the repression of human rights or the humanitarian crisis occurring there is "unique", and therefore require "exceptional" measures. These wordings suggest that there is not yet an established consensus on the recognition of humanitarian or human rights issues as threats, and on the need for taking sanctions against them under Chapter VII of the UN Charter. It may also be noted that the Security Council has rarely acted out of concern for humanitarian or human rights issues *alone*. In northern Iraq, Haiti, and Rwanda, the Security Council felt compelled to respond to the human rights and humanitarian situations in those regions only because large numbers of refugees fled across national borders, potentially destabilizing the security of neighboring countries and of the region. In other words, while the Security Council has recognized that human rights and humanitarian issues can constitute a threat in the post-Cold War period, and has even on occasion authorized the use of force, this sort of recognition and authorization has been rather restricted vis-à-vis the other elements of the threat.

Expressions authorizing the use of force have become more formulaic through the many cases that arose in the post-Cold War period. In many resolutions following those at the time of the Gulf War, the Security Council has used the expression "all necessary means/measures" to provide legitimacy for the use of force by peacekeeping or multinational forces.<sup>143</sup> Authorization to peacekeepers, however, is often more limited. More precisely, peacekeeping missions are authorized to engage in self-defense or take other necessary action in order to protect UN personnel and/or ensure their freedom of movement (in the cases of the Central African Republic and Albania); or somewhat more broadly, to protect UN/ humanitarian personnel and their means of movement, civilians under imminent threat of physical violence, and means of transportation for humanitarian relief supplies (Rwanda, Sierra Leone, and Ivory

---

<sup>143</sup> For example, see Note 118.

Coast).<sup>144</sup> What is interesting here is that all resolutions authorizing the use of force utilize the adjective “necessary,” with the sole exception of Rwanda (UNAMIR).<sup>145</sup> It follows from this that incorporation into the resolutions of the expression authorizing the taking of “necessary” action (means, measures, steps) is the threshold for UN-authorized use of force.

Be that as it may, why has the threat concept expanded, and why has the number of cases of authorizing the use of force increased?<sup>146</sup> First, the end of the Cold War appears to have been a major factor. For one thing, it opened up the Security Council to more united decision-making. For another, however, it released the United States and the Soviet Union from the need to maintain their “spheres of influence” around the world, reducing the incentive to utilize regional conflicts as opportunities for maintaining or expanding their influence. As a result, the UN Security Council has been pushed to the forefront to lead the international response in many regional conflicts. While the United States and Soviet Union intervened either directly or indirectly during the Cold War period, a wide range of activities including use of force have now been entrusted to UN-authorized multinational forces or peacekeeping missions.<sup>147</sup> Moreover, in regards to the threat concept, it can be said that the scope of problems to be taken up by the international community is significantly wider in the post-Cold War period. In the Cold War confrontation between the two camps competing for geopolitical and ideological triumph, Security Council discussion and criticism of problems arising within a single country would likely be taken as damaging to one camp. As a result, the chances were high that that particular group would wield its veto (in this sense, the Council’s response to apartheid in South Africa was an exception). But as the Cold War period ended and this structure collapsed, resistance among Security Council members to discussion of internal issues such as civil wars and humanitarian crises declined. In this sense, the end of the Cold War created an environment that made it easier for the Council to take up various issues previously avoided because of their “domestic” character. Second, there has been a historical trend since World War II in which the number of standards that can be commonly accepted and respected by actors in international society has been increasing. It was under the principle of ethnic self-determination instituted after the end of World War II that a large number of independent states were established. The concepts of human rights and genocide proposed after the experiences of the world war also steadily gained currency in international society. It is possible to see how the end of the Cold War reinforced this foundation of shared norms to expand the scope of the threat concept. These points will be revisited in the

---

<sup>144</sup> There are however cases, as in Bosnia (UNPROFOR) and Somalia (UNOSOM), where peacekeepers were given use-of-force authorization that went well beyond these limits.

<sup>145</sup> In the case of UNAMIR, the expression “self-defense” was used to emphasize that the use of force for that purpose was permitted to peacekeepers.

<sup>146</sup> But, as has already been mentioned, there have been cases in which military force was exercised without any decision being made by the Security Council, like the NATO bombing of Serbia during the Kosovo conflict. At that time, Russia, with its close affinity to Serbia, was reportedly opposed to some Council members’ move to draft a resolution authorizing the campaign.

<sup>147</sup> Marrack Goulding, “The Evolution of United Nations Peacekeeping,” *International Affairs*, Vol. 69, No. 3 (July 1993), pp. 451-464.

conclusion.

In general, the relationship between the concept of threat and the legitimate use of force in the post-Cold War period can be summarized as follows. Conflicts between states, civil wars, terrorism, and (albeit in a limited fashion) cases of large-scale repression of human rights and humanitarian crises should be dealt with by the imposition of multilateral enforcement measures including the use of force under the authority of the Security Council, because these situations might endanger the security of the region or of international society and threaten the core values of the international community (ethnic self-determination, national sovereignty, respect for human rights). In other words, the concept of collective security, as expressed here, is the foundation for the legitimate use of force.

In practice during the 1990s, however, application of this logic faced a major challenge. The problem can be seen in the preambular paragraphs of the two resolutions adopted following the simultaneous terrorist attacks of 9/11. While recognizing the threat posed to peace by terrorist acts, Resolutions 1368 and 1373 also recognized “the inherent right of individual or collective self-defense in accordance with the Charter.”<sup>148</sup> Thinking behind the UN collective security functions assumes that a threat is *international* or at least *regional* in character, and that this international or regional nature effectively functions to confer legitimacy on the UN-authorized use of force. Self-defense as recognized in Article 51 of the UN Charter, meanwhile, is viewed as an interim measure until the Security Council’s collective security mechanism can take effect, and is *not* positioned as an alternative to it. In this sense, the U.S.-led operation against the Taliban and Al Qaeda based on these resolutions marks a departure from the assumption that the *international* nature of a threat justifies the *multilateral* use of force against it. Here two possibilities might be offered: If a terrorist threat is recognized, collective or individual acts of self-defense can be justified as an *alternative* to the UN-authorized, multilateral use of force. And a test case over which of these two possibilities might prevail in the future was the war in Iraq.

## II. Implications of the Iraq War

### A. Weapons of Mass Destruction and Terrorism: Dual Nature of the Case for Action against Iraq

When, two months after its start, the war in Afghanistan began moving toward a conclusion in December 2001 with the collapse of the Taliban and the establishment of an interim government and the ISAF (although clean-up operations against the remnants of the Taliban and Al Qaeda continued), the stage for the war on terrorism shifted from Afghanistan to Iraq. It was expected to some degree that the Bush Administration would turn its attention to the Hussein regime after the collapse of the Taliban. Immediately after the simultaneous terrorist attacks of 9/11, there were already assertions within and outside the U.S. government that

---

<sup>148</sup> SCR 1368, preambular para. 3; SCR 1373, preambular para. 4.

since the Iraqi government of Saddam Hussein was giving support to terrorist organizations, completing the war on terrorism would require dealing with that government.<sup>149</sup> In fact, in his State of the Union Address on January 29, 2002,<sup>150</sup> President George W. Bush named Iran, North Korea, and Iraq as the “axis of evil” constituting the greatest threat to the world, and linked them to terrorism and WMD. He emphasized that these states harbor terrorists within their borders, and could give them WMD to use for attacks on the United States and its allies. “I will not wait on events,” he said, “while dangers gather.” A few days later, on February 6, U.S. Secretary of State Colin Powell stated in a testimony before the U.S. House of Representative International Relations Committee that President Bush was considering “the most serious set of options one might imagine” up to and including war, adding that “regime-change [in Iraq] is something the United States might have to do alone.”<sup>151</sup> These moves were based on the theory of preemptive/preventive attack based on self-defense, and not on the use of force based on the shared understanding of the need for action against a threat to international peace.

However, coming hard on the heels of the U.S. abrogation of the Kyoto Protocol and withdrawal from the Anti-Ballistic Missile Treaty, there were strong international concerns that the U.S. government would forego international cooperation in instigating a war. The Bush Administration therefore commenced diplomatic efforts to secure international support for their proposed action against Iraq. To repeated questioning at a March 13 press conference over whether the United States would move ahead with an attack on Iraq even if no international support could be obtained, President Bush emphasized that the United States was currently in consultations with other countries.<sup>152</sup> Around the same time, Vice President Richard Cheney visited countries in the Middle East (mid-March)<sup>153</sup> while President Bush went to Europe (late-May), seeking support for their plan. The only thing that became clear from these state visits and telephone calls, however, was that criticism of the U.S. hard-line stance against Iraq was rising. Such criticism was already increasing among traditional U.S. allies such as France and Germany at the time of President Bush’s visit,<sup>154</sup> and even within the United States, people like former National Security Advisor Henry Kissinger and former Secretary of State Lawrence Eagleburger were either increasingly opposed or skeptical

---

<sup>149</sup> For example, Defense Secretary Donald Rumsfeld and Assistant Defense Secretary Paul Wolfowitz argued for the possibility of action against Iraq immediately after the simultaneous terrorist attacks of 9/11. See Bob Woodward, *Bush at War: Inside the Bush White House* (New York, NY: Simon & Schuster, 2002), pp. 49 and 60, and *Plan of Attack* (New York, NY: Simon & Schuster, 2004), pp. 24-27.

<sup>150</sup> For the text, see <<http://www.whitehouse.gov/news/releases/2002/01/20020129-11.html>>, accessed May 19, 2003.

<sup>151</sup> “Iraq: Diplomatic Prelude to War?,” *BBC News*, December 20, 2002, <[http://news.bbc.co.uk/2/hi/middle\\_east/2566841.stm](http://news.bbc.co.uk/2/hi/middle_east/2566841.stm)>, accessed July 24, 2003.

<sup>152</sup> Office of the Press Secretary, President Holds Press Conference, March 13, 2002, <<http://whitehouse.gov/news.releases/2002/03/iraq/20020313-8.html>>, accessed May 19, 2003.

<sup>153</sup> “Road to Baghdad Leads through Jerusalem,” *BBC News*, March 21, 2002, <[http://news.bbc.co.uk/2/hi/middle\\_east/1884846.stm](http://news.bbc.co.uk/2/hi/middle_east/1884846.stm)>, accessed July 24, 2003.

<sup>154</sup> “Protests, and Friends Too, Await Bush in Europe,” *New York Times*, May 22, 2002.

regarding an attack on Iraq.<sup>155</sup> The only leader who showed some degree of understanding from the beginning was British Prime Minister Tony Blair.<sup>156</sup>

The turning point is said to have been at a meeting on August 5 between Bush, Secretary of State Powell and Presidential Security Advisor Condoleezza Rice. At this meeting, Powell pointed out the military and economic costs of a war with Iraq and the postwar reconstruction and the degree of international criticism, and persuaded Bush of the importance of securing international support through the UN and elsewhere.<sup>157</sup> At about the same time, Prime Minister Blair also persuaded Bush of the importance of securing a Security Council resolution.<sup>158</sup>

To garner international support for the action against Iraq, the Security Council loomed large in two ways. First, the framework of international interventions in Iraq since the Gulf War of 1991 (economic sanctions, humanitarian assistance, weapons inspections, etc.) was almost entirely formulated through Security Council resolutions, and the Gulf War itself was justified through a Security Council resolution (Resolution 678). Therefore, in order to take a new military action against the Hussein regime, following a procedure to secure justification from the Security Council would put it in the same course as previous international interventions. Second, the universal consensus on terrorism as a threat to peace and on the need for robust responses against it emerged through the Security Council. The attack on the Taliban and Al Qaeda in Afghanistan also secured international support via this path (even though this entailed, as mentioned above, potential problems in relation to the right to self-defense). As a result, if the Bush Administration were to position the new war in Iraq as a

---

<sup>155</sup> “Kissinger Joins Protests at Bush Plan to Attack Iraq - Unease over Bush’s Plans to Attack Saddam,” *Independent*, August 17, 2002.

<sup>156</sup> In an interview with NBC immediately before a visit to the United States in April, Prime Minister Blair argued that Iraq was a threat, citing the character of the Hussein government, the suspicion regarding its WMD programs, and violations of Security Council resolutions. However, Blair did not express support for military action at that time (“We are not proposing military action at this point in time”), stating only that the future course of action would be “up for discussion.” He took the same position at a joint press conference while visiting the United States. As with the Bush Administration, there was a split in the Blair Cabinet between a group pressing for action against Iraq (Foreign Secretary Jack Straw and Defence Secretary Geoffrey Hoon, etc.) and a more cautious group (International Development Secretary Clare Short, Environment, Food and Rural Affairs Secretary Margaret Beckett, etc.). The opposition Conservative Party became increasingly critical over the lack of clarity regarding the basis for war, although this party similarly split on the issue of war. Transcript of Interview For NBC Given by the Prime Minister Tony Blair in London on Wednesday, April 3, 2002, <<http://www.number-10.gov.uk/output/Page1709.asp>>, accessed July 24, 2003; Press Conference: Prime Minister Tony Blair and President George Bush, April 6, 2002, <<http://www.number-10.gov.uk/output/Page1711.asp>>, accessed May 15, 2003; “Cabinet Is Divided on Attacking Iraq, Prescott Admits,” *Independent*, August 17, 2002; “U.S. in Disarray over Iraq as Powell Backs Call for Weapons Inspectors,” *Independent*, September 2, 2002.

<sup>157</sup> Woodward, *Bush at War*, pp. 332-333.

<sup>158</sup> *Ibid*, 347. Prime Minister Blair made a similar statement in his speech at the annual meeting of the Trade Union Congress in Blackpool, Britain (September 10, 2002). Prime Minister’s Speech to TUC Conference, September 10, 2002, <<http://www.number-10.gov.uk/output/Page1725.asp>>, accessed May 16, 2002.

war on terrorism and to obtain multilateral support as such, the Security Council would be a likely location for that effort.

Bush officially acknowledged this change in course for the first time at a press conference on September 4, where he reportedly stated that he would not act without congressional approval, and the UN would also be on board.<sup>159</sup> Later, the Bush Administration began actively striving to win support, primarily at the U.S. Congress and the UN.

On October 10-11, 2002, both houses of the U.S. Congress adopted a joint resolution granting the use of force against Iraq.<sup>160</sup> The resolution started by listing Iraq's "demonstrated capability and willingness to use weapons of mass destruction" in contravention of UN resolutions; the risk that "the current Iraqi regime will either employ those weapons to launch a surprise attack against the United States or its Armed Forces or provide them to international terrorists who would do so"; and its history of "brutal repression of its civilian population." Since Iraq thus "poses a continuing threat to the national security of the United States and international peace and security" in the region, it is "in the national security interests of the United States and in furtherance of the war on terrorism that all relevant United Nations Security Council resolutions be enforced, including through the use of force if necessary." As a result, the Congress authorized the President to "use the Armed Forces of the United States as he determines to be necessary and appropriate in order to: (1) defend the national security of the United States against the continuing threat posed by Iraq; and (2) enforce all relevant United Nations Security Council resolutions regarding Iraq."<sup>161</sup>

The basic assumption in this resolution is the idea that threats to U.S. security overlap threats to international and regional peace in Security Council resolutions. In fact, the several elements (terrorism, WMD, and infringement of human rights) of the threat concept that the Security Council mentioned during the post-Cold War period and referred to specifically in Resolutions 687 and 688 were here stated as being threats to regional and international peace, *and also* to the United States. The intent of the Congressional resolution can be read as that the U.S. use of force against Iraq is intended to eliminate the common threat to international peace, and therefore an attack on Iraq is internationally justified. To quote President Bush's statement when he signed the resolution, the goal of the United States was "to fully and finally remove a real threat to world peace and to America."<sup>162</sup>

Since, as these developments showed, the U.S. intended to claim the legitimacy of the U.S. use of force against Iraq backed by the Security Council authority as the final guarantee, it inevitably became of decisive importance to see how the current Security Council would accept their argument. In other words, even should the U.S. and Britain assert that the new use

---

<sup>159</sup> "With Resolve Stiffened, Blair Will Meet Bush for Council of War," *Independent*, September 5, 2002.

<sup>160</sup> Authorization for Use of Military Force Against Iraq Resolution of 2002 (H.J.Res.114, October 16, 2002). The resolution passed the House with 296 in favor (133 opposed), and the Senate with 77 in favor (23 opposed).

<sup>161</sup> H.J.Res.114, Sect.3 (a).

<sup>162</sup> Office of the Press Secretary, President Signs Iraq Resolution, October 16, 2002, <<http://www.whitehouse.gov/news/releases/2002/10/iraq/20021016-1.html>>, accessed May 27, 2003.

of force has already been justified through *previously* adopted Security Council resolutions on Iraq, this statement itself would not be persuasive if the *current* Security Council was skeptical or critical of their actions. As has already been seen, several of the permanent members of the Security Council had officially taken critical stances. This was why the U.S. and British needed a Security Council resolution authorizing the use of force anew.

If a new resolution were to be drafted, it was necessary to keep all the previous Iraq-related resolutions in sight. While it was found that Resolutions 687 and 688 both included statements that might be used to justify new use of force, the Bush Administration fastened its attention on the issue of WMD that was referred to Resolution 687. As already mentioned, Resolution 688 recognized that the results of human rights repression in northern Iraq constituted a threat to peace, and based on this resolution the United States, Britain, and others established a no-fly zone. This resolution, however, had not been adopted under Chapter VII of the UN Charter. Even in the post-Cold War period, there was no military intervention based solely on humanitarian concerns; the tendency was rather to permit the exercise of military force only when the results or effects of repression might seriously damage regional security. At this time, however, Iraq was not experiencing the large-scale outflow of refugees that had been seen immediately after the end of the Gulf War, and there was greater concern that the use of force would instead cause deterioration in regional security and prevent progress on Palestinian issues.

On the other hand, the two threats of WMD and terrorism referred to in Resolution 687 were elements that could lead more easily to legitimacy of the use of force, because if it could be proven that Iraq was in violation of the resolution's requirements mandating the abolition of WMD and banning support for terrorism, this would set the stage for the use of "all necessary means" to enforce the resolution. Of these two issues, the WMD issue featured more prominently in drafting a new resolution. As the greatest concern for the United States was the possibility of Iraq producing WMD and then providing them to terrorists, the most important priority was to destroy this weapons manufacturing capability. It had been well known for many years that Iraq had been uncooperative with UN inspectors. Proving this non-compliance on the part of Iraq was therefore expected to be easier than proving a connection between Al Qaeda and the Hussein regime.

In fact, the core of the draft resolution submitted at the September 4 meeting consisted of: (1) urging Iraq to unconditionally accept UN inspections on weapons-related facilities by November 5; but (2) only to hint (to avoid vetoes by China and Russia) at the use of force if Iraq did not comply.<sup>163</sup> Based on this draft, Bush made telephone calls on September 6 to the leaders of Russia, France and China in an attempt to win their support,<sup>164</sup> and the next day

---

<sup>163</sup> "With Resolve Stiffened, Blair Will Meet Bush for Council of War," *Independent*, September 5, 2002; "Bush Consults World Leaders on Iraq," *BBC News*, September 5, 2002, <[http://news.bbc.co.uk/2/hi/middle\\_east/2235852.stm](http://news.bbc.co.uk/2/hi/middle_east/2235852.stm)>, accessed July 25, 2003; "Bush Turns to UN on Iraq," *BBC News*, September 5, 2002, <<http://news.bbc.co.uk/2/hi/americas/2237533.stm>>, accessed July 25, 2003.

<sup>164</sup> "Bush Phones around for Support in War on Iraq," *Independent*, September 7, 2002.

discussed the issue with Blair at Camp David.<sup>165</sup> Furthermore, in a speech to the UN General Assembly on September 12, Bush said “our greatest fear” was that terrorists would be able to find a short-cut toward achieving their “mad ambitions” by obtaining WMD from a rogue state, and strongly criticized Iraq as posing just such a danger. Bush pointed out that it would be a critical test for the UN as to how it handled the Hussein regime; called Iraq, with its history of ignoring a number of Security Council resolutions, “a grave and gathering danger”; and declared that the United States “will work with the UN Security Council for the necessary resolutions” to meet the common challenge, while emphasizing that “action will be unavoidable” if Iraq again defies the world.<sup>166</sup> In the background paper for this speech (*A Decade of Deception and Defiance*),<sup>167</sup> about half of the text was devoted to Iraq’s WMD programs. Twelve days later, on September 24, the British government also published a document summarizing the suspicions about Iraq’s WMD programs (*Iraq’s Weapons of Mass Destruction: The Assessment of the British Government*).

Resolution 1441, unanimously adopted on November 8, imposed severe conditions on Iraq, primarily focusing on its WMD programs. The resolution starts with the recognition of “the threat Iraq’s non-compliance with Council resolutions and proliferation of weapons of mass destruction and long-range missiles poses to international peace and security,” the first ever explicit recognition by the Council of WMD as a threat.<sup>168</sup> The succeeding paragraphs criticized Iraq for its uncooperative stance with the UN inspectors, in which context the Council recalled its declaration in Resolution 687 that a ceasefire would be “based on acceptance by Iraq of the provisions of that resolution, including the obligations on Iraq contained therein.”<sup>169</sup> Based on this, the resolution decided that “Iraq has been and remains in material breach of its obligations under relevant resolutions,”<sup>170</sup> offered Iraq “a final opportunity” to meet its obligations by giving unconditional cooperation to the inspection activities while granting the International Atomic Energy Agency (IAEA) and the United Nations Monitoring, Verification and Inspection Commission (UNMOVIC) “revised or additional authorities...to facilitate their work in Iraq,”<sup>171</sup> and decided to convene upon receipt of a report by inspectors and, “in that context,” recalled that “the Council has repeatedly warned Iraq that it will face serious consequences as a result of its continued violations of its obligations.”<sup>172</sup> In terms of the overall timetable, it was decided that the Iraqi government would first provide a declaration report on its WMD programs “not later than 30

---

<sup>165</sup> “PM Makes 21-hour Return Journey across the Atlantic in Search of a Solution to Saddam,” *Independent*, September 9, 2002.

<sup>166</sup> For the text, see <<http://www.whitehouse.gov/news/releases/2002/09/20020912-1.htm>>, accessed May 19, 2003.

<sup>167</sup> *A Decade of Deception and Defiance* (White House Background Paper on Iraq), <<http://www.state.gov/p/nea/rls/13456.htm>>, accessed May 22, 2003.

<sup>168</sup> Preambular para.3.

<sup>169</sup> Preambular para.11.

<sup>170</sup> Para.1.

<sup>171</sup> Paras. 2-8.

<sup>172</sup> Paras. 12-13.

days from the date of this resolution” (December 8);<sup>173</sup> the UN would resume inspections “no later than 45 days following adoption of this resolution;” and finally inspectors would update the Council 60 days thereafter.<sup>174</sup>

In this way, this resolution built on the U.S. policy on Iraq formulated in early September—to demand a response from Iraq within a specific deadline regarding its WMD programs, and to hint at the use of force if Iraq does not comply in a satisfactory manner. Three comments may be in order here with regard to the significance of this resolution for the subsequent developments.

First, the resolution set Iraq’s response to the issue of WMD as a “threshold” for potential use of force, while leaving to another decision by the Security Council to authorize what actual action to be taken. This two-stage scenario was asserted, mainly by France, at a public session on October 16-17 attended by the 15 Security Council members as well as representatives of 55 other UN members in a non-voting capacity.<sup>175</sup> On the other hand, the United States and Britain insisted on incorporating the two points — the demand for Iraq’s unconditional cooperation with the inspections, and the possibility of the use of force if Iraq was uncooperative — into a single resolution. Most participants in the discussions took a wary stance toward the latter one-stage scenario, although their positions showed some differences in nuance.<sup>176</sup> The finally adopted version said that the situation should be examined based on the IAEA/UNMOVIC inspection report, followed by a warning that there would be serious consequences “in this context” if Iraq continued to violate its obligations. This meant that a new Security Council decision regarding verification of the results of its suspicions should precede any later Security Council actions. As the U.S. and British ambassadors to the UN stated, and as was repeatedly confirmed by representatives of the other members, “this resolution contain[ed] no ‘hidden triggers’ and no ‘automaticity’ with respect to the use of force” (John Negroponte, U.S. ambassador to the UN).<sup>177</sup> Therefore, the suspicions should be verified clearly, and only the verification results would determine whether or not to justify the use of force against Iraq.

Second, judging from the standards set by Security Council resolutions in the past, this resolution by itself was no more than a hint at the possibility of authorizing the use of force.

---

<sup>173</sup> Para. 3.

<sup>174</sup> Para. 5.

<sup>175</sup> Security Council Official Record (SCOR), 4625th meeting (S/PV.4625, October 16-17, 2002). The non-permanent members in 2002 included Bulgaria, Cameroon, Colombia, Guinea, Ireland, Mauritania, Mexico, Norway, Singapore, and Syria.

<sup>176</sup> Their statements showed a variety of positions on the Iraq issue, with some directly opposing use of force (Arab states including Kuwait, South Africa, Russia, etc.), others emphasizing that the use of force should only be a last resort (Bulgaria, Brazil, etc.), and still others emphasizing the importance of continuing the inspections (Guinea, Mauritania, Cameroon, etc.).

<sup>177</sup> SCOR, 4644th meeting (S/PV.4644, November 8, 2002). British Prime Minister Blair also emphasized this point in a declaration regarding the resolution. PM Statement on Iraq following UN Security Council Resolution, November 8, 2002, <<http://www.number-10.gov.uk/output/Page3206.asp>>, accessed May 27, 2003.

The text of the U.S.-British draft resolution reported in early October used one of the formulaic expressions used in post-Cold War Security Council resolutions: “authorizes member states to use *all necessary means* to restore international peace and security in the area” in response to Iraqi violations of the Security Council resolutions.<sup>178</sup> The draft resolution presented by the United States and Britain on October 25,<sup>179</sup> however, was toned down to the “serious consequences.” What this meant was that the drafters, *well aware* of what expressions would be required for approving the use of force, sought a compromise by removing these more direct expressions from the text. The requirement to resume consultations based on the verification results<sup>180</sup> would accordingly mean that one more resolution would then be required for the actual use of force. And this resolution would at the very least contain two elements: to confirm through the verification results that Iraq had violated its obligations, and to include an expression such as “all necessary measures/ means.”

Third, terrorism was referred to only once, alongside the human rights issue, in a preambular paragraph. Resolution 1441 did not impose new obligations related to terrorism on Iraq in the main text. This is significant in two contexts. First is the relationship of this resolution to Security Council resolutions against states supporting terrorism. The basic thinking behind the resolutions on Libya or Afghanistan was that since terrorism is a threat to peace, states that support terrorists have an obligation to withdraw that support, and that their failure in meeting that obligation justifies UN sanctions. But Resolution 1441 neither referred to such an obligation on Iraq, nor confirmed that Iraq would be subject to sanctions in the case of their failure to implement it. Secondly, Resolution 1441 was also unlike the Afghanistan-related resolutions (1368, 1373), because it did not mention the right to self-defense against the terrorist threat. The resolution does not envisage any scenario for using force against Iraq based on the Iraq government’s support of terrorism.

However, the *National Security Strategy of the United States of America*<sup>181</sup> released by

---

<sup>178</sup> “Excerpts from the U.S.-British Draft Resolution on Iraq for the UN,” *International Herald Tribune*, October 3, 2002. Emphasis added.

<sup>179</sup> United Kingdom of Great Britain and Northern Ireland and United States of America: Draft Resolution (S/2002/1198, October 25, 2002).

<sup>180</sup> In the October 25 draft, however, the paragraph containing the term “serious consequences” did not directly follow the part referring to UN inspections, but was instead connected directly to the first paragraph. The text read: “1. Decides that Iraq is still, and has been for a number of years, in material breach of its obligations under relevant resolutions, including resolution 687 (1991), in particular through Iraq’s failure to cooperate with United Nations inspectors and the IAEA, and to complete the actions required under paragraphs 8 to 13 of resolution 687 (1991); 2. Recalls that the Council has repeatedly warned Iraq that it will face serious consequences as a result of its continued violations of its obligations.” This change in the location was important, because it would imply that Iraq already deserved to receive these “serious consequences,” at least potentially. At the final stage (specifically, on November 6 when the revised draft was presented), this paragraph was moved to the rear and connected to UN inspection results, making the link between the expression “serious consequences” and the use of force somewhat indirect. For the November 6 revised draft, see “Where the Draft Resolution Stands: ‘A Final Opportunity to Comply,’” *New York Times*, November 7, 2002.

<sup>181</sup> See the Office of the President, *The National Security Strategy of the United States of America*,

the Bush Administration on September 17, 2002 was clearly based on this scenario. In this doctrine, Bush stated: “We must be prepared to stop rogue states and their terrorist clients before they are able to threaten or use weapons of mass destruction against the United States and our allies and friends.”<sup>182</sup> With this doctrine, the United States claimed the right to make preemptive/preventive attacks in self-defense against states like Iraq. Moreover, it is noteworthy that this doctrine was presented in mid-September, about the same time when Bush was actively working on the UN (five days after the UN General Assembly speech). In other words, the Bush Administration was taking a two-tier strategy of pursuing on the one hand gathering Security Council support on the grounds of the threat of WMD to international peace, while on the other hand insisting on launching preemptive/preventative attacks in self-defense on the basis of the threat of terrorist organizations and their state sponsors.

#### B. Contention over “Automaticity”

At the time of the adoption of Resolution 1441 in early November, there were two strategic courses to pursue in order to justify the use of force against Iraq. One, asserted by the United States and Britain since September, was a use of force against a threat posed by Iraqi violations of Security Council resolutions regarding WMD, and this would be triggered by a Security Council decision on the basis of the results of inspections. The other course, emphasized in the *National Security Strategy*, was a use of force in self-defense against a threat to the security of the United States posed by terrorist organizations and their state sponsors. The United States used these two ideas depending on whether an occasion was within or outside the Security Council, while Britain and other supporters mainly pushed the former strategy to seek legitimacy for the attack.

This U.S.-led two-tier approach ended up producing two points of contention: the significance of the UN inspection reports, and the relationship between the Security Council and terrorism.

Immediately after adoption of Resolution 1441, President Bush hinted at the possibility of taking action not stipulated in the resolution. In his statement of November 8, Bush agreed that the United States would consult with the Security Council concerning any physical violation by Iraq “but without jeopardizing our freedom of action to defend our country.”<sup>183</sup> In

---

September 17, 2002, Chapter V. This document also included chapters on human rights, strengthening alliances, cooperation with other countries in regional conflicts, world economic growth, development, and democratization, which taken together suggests the administration’s interest in the promotion of international cooperation. But despite these aspects, and the fact that there was fundamentally nothing new about the idea of preemption itself, Chapter V that (re)introduced it attracted much attention because of the degree to which it was presented as an integral part of the U.S. security doctrine and of the fact that the U.S. proposition went beyond simple preemption to include prevention.

<sup>182</sup> Ibid., p.14.

<sup>183</sup> Office of the Press Secretary, President Pleased with U.N. Vote, November 8, 2002, <<http://www.whitehouse.gov/news/releases/2002/11/iraq/20021108-1.html>>, accessed May 27, 2003.

a radio address on the following day, he also said: “any act of delay or defiance will be an additional breach of Iraq’s international obligations, and a clear signal that the Iraqi regime has once again abandoned the path of voluntary compliance. If Iraq fails to fully comply with the U.N. resolution, the United States, in coalition with other nations, will disarm Saddam Hussein.”<sup>184</sup> In other words, the Bush Administration now took the view that Resolution 1441 gave an authority for an automatic use of force if Iraq failed to cooperate with the inspections, and that the basis for that interpretation was the “freedom of action to defend our country,” or the principle of self-defense, rather than the resolution itself. By the time Bush had traveled to Europe for the NATO Prague Summit (November 21)<sup>185</sup> and a summit meeting with Russian President Vladimir Putin (November 22), the Bush Administration had already sent requests to 50 countries for military and other cooperation in the event of action against Iraq.<sup>186</sup> Negotiations had reportedly begun with Turkey, Jordan, Kuwait, Qatar, Saudi Arabia, and other countries surrounding Iraq for the use of military bases and overflight permission.<sup>187</sup>

These moves show that, first, for the Bush Administration, the very act of passing Resolution 1441 already granted the authorization for the use of force: to use the expression frequently heard in the Security Council at that time, it became “automatic.” But as has already been seen, the inspection activities were intended as a crucial part of the process where their results would provide the basis for or against the legitimacy of the use of force. From that point of view, the use of force was not yet a foregone conclusion. Reaching that decision would require proof that Iraq was in possession of or developing WMD or, at the very least, that there was a suspicion of that possession or development on the grounds that it was continuing to obstruct the UN inspection or taking a non-cooperative stance. Then, the Security Council would be able to agree on adopting a resolution giving UN Member States the right to use “all necessary measures” to disarm Iraq of its WMD because Iraq had missed its “last opportunity.” Although the problem of “automaticity” regarding the use of force in Resolution 1441 had seemed to leave no room for dissent at the Security Council, it was already becoming increasingly ambiguous outside the Security Council.

Second, one has to consider the fact that the logic of self-defense offered in support of the “automaticity” thesis was presented with a war on terrorism in mind. As seen above, since the simultaneous terrorist attacks of September 11, 2001, the Security Council had developed the idea of terrorism being a threat to international peace, and justified the use of enforcement measures against terrorists and their state sponsors. In the case of Afghanistan, the right to

---

<sup>184</sup> Office of the Press Secretary, President Bush Recaps Important Week in Weekly Radio Address, November 9, 2002, <<http://www.whitehouse.gov/news/releases/2002/11/iraq/20021109.html>>, accessed May 27, 2002.

<sup>185</sup> NATO, Prague Summit Statement on Iraq (Press Release [2002] 133, November 21, 2002).

<sup>186</sup> On November 18, the State Department sent cables to more than 50 U.S. embassies asking them to open formal discussions with their host governments about joining a coalition against Iraq. “Several Nations Weigh Role in Iraq,” *International Herald Tribune*, November 22, 2003.

<sup>187</sup> “Bush to Press for Military Backing in Event of War,” *Los Angeles Times*, November 20, 2002; “NATO: Iraq Must Disarm Fully,” *Chicago Tribune*, November 22, 2002.

self-defense was mentioned in the resolution, and operations against the Taliban and Al Qaeda proceeded on that basis. It was already pointed out that this had the effect of undermining the need for countering the international threat of terrorism with multilateral measures. For the Iraq problem, however, Resolution 1441 went no further than to concentrate on weapons inspections; and there was not even any mention in the resolution of the right to self-defense against terrorism. Despite this, the idea that a state had the right to self-defense against terrorist organizations and their state sponsors—an idea not found in the resolution—was asserted here as justification for the use of force. This theory thus had the potential of rejecting of the idea, carefully nurtured up to that time, that terrorism should be recognized as an international threat, and requires a multilateral response. Instead, it would suggest that a war on terrorism should be viewed as a self-defense issue, having little to do with the Security Council.

Criticism of this approach exploded during a meeting on January 20, 2003. This meeting (called at the request of French Foreign Minister Dominique de Villepin) was originally held for intensive discussions on the international effort against terrorism, with the participation of the foreign ministers of all major countries.<sup>188</sup> However, as Russia, Germany, and France developed arguments against an attack on Iraq from their standpoint of international counter-terrorist cooperation fostered around the Security Council since the 9/11, “the antiterrorism agenda was almost eclipsed by the discussions behind closed doors about Iraq.”<sup>189</sup> For example, Russian Foreign Minister Igor Ivanov said:

The multidimensional strategy to combat international terrorism, developed under United Nations auspices and defined in Security Council resolutions, has already proved its effectiveness. That took place when an extremely dangerous hotbed of terrorism in Afghanistan was virtually eliminated through a joint effort. That development should be further strengthened. A successful outcome will depend largely on preserving the unity of a broad anti-terrorist coalition, which must continue to be based on the solid foundation of the Charter of the United Nations and on international law. *We must be careful not to take unilateral steps that might threaten the unity of the anti-terrorist coalition.* In that context, we favor a political settlement of the situation concerning Iraq, in strict conformity with relevant Security Council resolutions, including resolution 1441 (2002), which the Council adopted unanimously.<sup>190</sup>

Secretary of State Powell, who had not expected such criticism at the meeting, responded by saying that “we must not shrink from our duties and our responsibilities when the material comes before us next week and as we consider Iraq’s response to resolution 1441 (2002).” To drive home the point, however, French Foreign Minister De Villepin stated, in a press

---

<sup>188</sup> SCOR, 4688th meeting (S/PV. 4688, January 20, 2003).

<sup>189</sup> “An Attack on Iraq Not Yet Justified, France Warns U.S.,” *New York Times*, January 21, 2003.

<sup>190</sup> S/PV. 4688. Emphasis added. See also the statements by the foreign ministers of France and Germany.

conference immediately after the meeting: “At this point today, we do not envision any situation that would justify military action” (“*Nous pensons qu’aujourd’hui, rien ne justifie d’envisager l’action militaire*”).<sup>191</sup> Multilateral anti-terrorism measures had been developed primarily through the Security Council since the simultaneous terrorist attacks of 9/11. If an Iraq War were to be fought based on the right to self-defense against the threat of terrorist groups and their state sponsors, that international cooperation against terrorism would be fundamentally damaged. As had been hinted at in the Afghanistan-related resolutions (1368, 1373), contention already existed over whether a greater weight should be placed on the threat to international peace (and therefore based on Security Council resolutions) or on the right to self-defense in order to justify the use of force against terrorist groups and their state sponsors. The Iraq debate served to widen this crack still more.

Meanwhile, Iraq accepted the resolution on November 13,<sup>192</sup> and an advance team that included Hans Blix, head of UNMOVIC, and Mohamed ElBaradei, head of the IAEA, went to Baghdad on November 18 to hold discussions with Iraqi officials, and preparation for resuming the inspections went forward for the first time since December 15, 1998. On November 25, a team of 17 inspectors entered Baghdad,<sup>193</sup> and restarted inspections two days later with visits to three locations on the outskirts of the capital.<sup>194</sup> On December 7, as demanded in Resolution 1441, Iraq presented a declaration of its weapons programs. Since this resolution had stipulated that any errors or omissions discovered in the declaration would place the country in further violation of its obligations with the potential of being judged as having missed its “last opportunity,” the Council’s judgment on the declaration attracted much attention.

On December 19, Blix and ElBaradei briefed the Security Council on the Iraqi declaration. The two intimated that the declaration did not provide an adequate explanation of Iraq’s weapons programs. While the United States and Britain supported the continuation of inspections at this stage, they also insisted that the descriptions in the declaration were full of holes, and that “this declaration is just one more act of deception in a history of lies from a defiant dictator” (U.S. Ambassador Negroponte). France, too, pointed out that the declaration

---

<sup>191</sup> Conférence de Presse du Ministre des Affaires Etrangères, M. Dominique de Villepin, January 20, 2003, <[http://www.un.int/france/frame\\_francais/l\\_actualite/new\\_york/frame\\_fr\\_irak.htm](http://www.un.int/france/frame_francais/l_actualite/new_york/frame_fr_irak.htm)>, accessed August 14, 2003. Note that this particular part of the statement was removed from the English version of this press release (Press conference Given by Mr Dominique de Villepin, Minister of Foreign Affairs, January 20, 2003, <[http://www.un.int/france/documents\\_anglais/030120\\_mae\\_villepin\\_terrorisme.htm](http://www.un.int/france/documents_anglais/030120_mae_villepin_terrorisme.htm)>, accessed August 14, 2003).

<sup>192</sup> Letter Dated 13 November 2002 from the Minister for Foreign Affairs of Iraq Addressed to the Secretary-General (S/2002/1242, November 13, 2002, Annex).

<sup>193</sup> “UN Inspectors Land in Iraq; Blix Tells Security Council They Will ‘Go Anywhere, Any Time,’” *UN News Service*, November 25, 2002, <<http://www.un.org/apps/news/storyAr.asp?NewsID=5466&Cr=iraq&Cr1=inspect>>, accessed May 16, 2003.

<sup>194</sup> “Resuming Weapons Inspection in Iraq, UN Teams Visit 3 Sites outside Baghdad,” *UN News Service*, November 27, 2002, <<http://www.un.org/apps/news/storyAr.asp?NewsID=5488&Cr=iraq&Cr1=inspect>>, accessed May 16, 2003.

was inconsistent in some parts and did not provide sufficient information. But French Ambassador Jean-Marc de la Sablière also argued that it was “precisely with a view to address and lift these uncertainties that the inspection mechanism has been established” and called the need for continued inspections more important than ever.<sup>195</sup> At any rate, this briefing was seen as “a very preliminary assessment” (Russian Ambassador Sergei Lavrov); moreover, the 10 non-permanent members of the Security Council complained that they had been deprived of an opportunity to study the declaration before the briefing.<sup>196</sup> As a result, another meeting for consultation on the Iraq problem was planned for January upon receipt of further reports from the inspection team.<sup>197</sup>

On January 9th<sup>198</sup> and 27th<sup>199</sup>, Blix and ElBaradei gave briefings to the Security Council on the state of the inspections. Their reports stated to the effect that Iraq had generally been cooperative regarding access to facilities targeted for inspection: that information (including the declaration) provided by Iraq since the resumption of inspections contained virtually nothing new, however, and Iraq had been grudging and limited in providing new information sources like documents or interviews; that while no clear evidence had been found to date regarding the development and possession of WMD, this did not mean that Iraq had been cleared of suspicion; and that reconstruction of the inspection system was proceeding steadily,

---

<sup>195</sup> “Security Council Decides to Hold Further Talks on Iraq Arms Dossier in Early January,” *UN News Service*, December 19, 2002, <<http://www.un.org/apps/news/storyAr.asp?NewsID=5710&Cr=iraq&Cr1=inspect>>, accessed May 16, 2003.

<sup>196</sup> For example, at a meeting at the end of December, Cameroon Ambassador Chungong Ayafor expressed concern about the situation, saying: “the Security Council would benefit from returning to its initial composition. It is composed of 15 members, but little by little, it is becoming a body of five plus 10 members. That dichotomy can only affect the transparency and the legitimacy to which we all aspire...The most tangible example is resolution 1441 (2002). It was adopted by the 15 members unanimously and responsibly. However, as soon as it was voted on, we returned, in the implementation, to our reflexes as a club of five, of 10, of 2, and so forth.” SCOR, the 4677th meeting (S/PV. 4677, December 20, 2002).

<sup>197</sup> Press Release (SC/7614-IK/325, December 19, 2002).

<sup>198</sup> Notes for Briefing the Security Council, January 9, 2003, <<http://www.un.org/apps/news/infocusnewsiraq.asp?NewsID=328&sID=6>>, accessed May 19, 2003; Status of the Agency’s Verification Activities in Iraq as of 8 January 2003 (Informal Briefing of the United Nations Security Council), January 9, 2003, <<http://www.iaea.org/worldatom/Press/Statements/2003/ebsp2003n002.shtml>>, accessed August 11, 2003; Press Encounter with Hans Blix, Executive Chairman of UNMOVIC and Mohamed ElBaradei, Director General of IAEA (unofficial transcript), January 9, 2003, <<http://www.un.org/apps/news/infocusnewsiraq.asp?NewsID=327&sID=6>>, accessed May 19, 2003; “Many Holes in Iraqi Arms Declaration but No ‘Smoking Gun,’ UN Inspectors Say,” *UN News Service*, January 9, 2003 <<http://www.un.org/apps/news/newsAr.asp?nid=5834>>, accessed May 19, 2003.

<sup>199</sup> SCOR, the 4692nd meeting (S/PV.4692, January 27, 2003); The Security Council, January 27, 2003: An Update on Inspection, January 27, 2003, <<http://www.un.org/apps/news/infocusnewsiraq.asp?NewsID=354&sID=6>>, accessed May 19, 2003; IAEA Update Report for The Security Council Pursuant to Resolution 1441 (2002), January 27, 2003, <[http://www.iaea.org/worldatom/Press/Focus/iaeaIraq/unscreport\\_290103.html](http://www.iaea.org/worldatom/Press/Focus/iaeaIraq/unscreport_290103.html)>, accessed May 19, 2003; The Status of Nuclear Inspections in Iraq: Statement to the United Nations Security Council, January 27, 2003, <<http://www.un.org/News/dh/iraq/elbaradei27jan03.htm>>, accessed May 19, 2003.

and activities should continue to establish the true facts. In response to these reports, France, China, Russia, Germany, and other members of the Security Council<sup>200</sup> concluded that inspections should continue as long as they were showing some progress, and that no clear reason for launching a war existed at present.<sup>201</sup> UN Secretary-General Kofi Annan agreed on this, saying: "I'm not saying forever but they [the inspectors] do need time to get their work done." Even British Ambassador Jeremy Greenstock, considered to be sympathetic to the U.S. view, said that "most members of the Security Council, if not all members, regard this as a part of an ongoing process," thus showing some understanding regarding continuation of inspections.<sup>202</sup>

The Bush Administration countered that continuation of the Iraq inspections would not be effective. In a comment carried in the *New York Times* on January 23, Security Advisor Condoleezza Rice, referring to experiences in South Africa, Ukraine, and Kazakhstan, argued that "the critical common elements of these efforts include a high-level political commitment to disarm, national initiatives to dismantle weapons programs, and full cooperation and transparency." In Iraq's case, however, she said that "Iraq has a high-level political commitment to maintain and conceal its weapons," adding that "Iraq is still treating inspections as a game."<sup>203</sup> In his State of the Union Address on January 28,<sup>204</sup> Bush himself indicated that Iraq had not shown sufficient proof that could sweep away the long-indicated suspicions, and that it was actively seeking to deceive the world.

While Rice's comment (also carried in the *International Herald Tribune* and other papers around the world) was probably aimed at an international readership, and therefore discussed the Iraq problem only in terms of WMD, the State of the Union Address, targeted mainly at the U.S. Congress and the Americans, brought up the threat of Iraq in terms that went beyond the weapons issue. First of all was the relationship between Iraq and Al Qaeda. Bush asserted that "evidence from intelligence sources, secret communications, and statements by people now in custody reveal that Saddam Hussein aids and protects terrorists, including members of al Qaeda," and that "secretly, and without fingerprints, he could provide one of his hidden

---

<sup>200</sup> The composition of the non-permanent membership for 2003 included Angola (new), Bulgaria, Cameroon, Chile (new), Germany (new), Guinea, Mexico, Pakistan (new), Spain (new), and Syria. While Spain and Bulgaria were supporters of the U.S. position, the inclusion of Germany and Pakistan probably made the prospects for a new resolution more difficult than the previous year's composition (which included Colombia, Ireland, Mauritania, Norway, and Singapore). "Verdict Unclear: U.N. Divide Is Not: Diplomats Find Justifications for and against Iraq Invasion," *Washington Post*, January 28, 2003.

<sup>201</sup> "Verdict Unclear: U.N. Divide Is Not: Diplomats Find Justifications for and against Iraq Invasion," *Washington Post*, January 28, 2003; "Principal Leaders Are Still Divided," *Boston Globe*, January 28, 2003; "European Nations Fall Short Of Consensus on Iraq Report," *New York Times*, January 28, 2003.

<sup>202</sup> "Inspectors Expose Iraq's Invasion, but Leave the World Unsure Which Way to Turn," *Independent*, January 28, 2003.

<sup>203</sup> "Why We Know Iraq is Lying," *New York Times*, January 23, 2003. The comment ended by stating that Iraq "should know that time is running out."

<sup>204</sup> Office of the Press Secretary, President Delivers "State of the Union," January 28, 2003, <<http://www.whitehouse.gov/news/releases/2003/01/iraq/20030128-19.html>>, accessed May 30, 2003.

weapons to terrorists, or help them develop their own.” Secondly, the reference to the issue of liberating the people of Iraq from the Hussein regime had been made frequently from about late January onward. For example, in a speech given on January 22, Bush said that an Iraq War would bring important results to the Iraqi people, including “freedom from oppression, freedom from torture, freedom from murder, freedom to realize your God-given talents.”<sup>205</sup> In the State of the Union Address as well (January 28), Bush reiterated the history of human rights repression by the Hussein regime, told Iraqis that “your enemy is not surrounding your country—your enemy is ruling your country,” and asserted that changing the regime was a requirement for the liberation of the Iraqi people.

### C. Fractured Response to the Iraqi ‘Threat’

As of early February 2003, discussion within and outside the Security Council revolved around three different assessments regarding the nature of the threat posed by the Hussein regime and the sort of measures to be taken. One was the assertion of the right to preemptive or preventive self-defense against terrorist organizations and their state sponsors. Another was the newly proposed argument, that the Hussein regime was a threat to the Iraqi people themselves, based on the regime’s past history of repression and genocide, and therefore that it was just to bring down such a regime and liberate the people of Iraq from the repression. One should note that, as the first argument had the right to self-defense in its core, the second assertion was also derived from an “intrinsic” attribute of the American people. To use the words of President Bush’s speech on January 29, the American people are “motivated not by power for power’s sake, but because of our values.” And with those values, “if everybody matters, if every life counts, then we should hope everybody has the great God’s gift of freedom.” The reason for going to Iraq is not only for disarmament or even for humanitarian assistance, but “most of all, we will uphold our values.”<sup>206</sup> Liberation of Iraq, achievement of freedom for the Iraqi people, and overthrow of the current Iraqi regime, were not so much due to recognition via Security Council resolutions of an internationally shared threat as they were founded on the country’s “intrinsic values.” Clearly, these two assertions, based on the U.S. right to self-defense and on its “intrinsic values,” did not complement the third assertion, the threat to international peace posed by WMD, which prevailed Security Council discussions.

After the January inspection reports were received, the U.S. strategy in securing support for an attack on Iraq took two stages. The first was to emphasize statements that neither relied on the inspection results nor were stipulated in Resolution 1441 (right to self-defense, “intrinsic values”), on which basis the U.S. would assert the need for the use of force to achieve disarmament of Iraq as Resolution 1441 demanded. For the Bush Administration,

---

<sup>205</sup> Office of the Press Secretary, Excerpt from President’s Remarks in St. Louis 1/22/03, January 22, 2003, <<http://www.whitehouse.gov/news/releases/2003/01/iraq/20030122-9.html>>, accessed May 30, 2003.

<sup>206</sup> Office of the Press Secretary, Excerpts on Iraq from Grand Rapids Speech, January 29, 2003, <<http://www.whitehouse.gov/news/releases/2003/01/iraq/20030129-2.html>>, accessed May 30, 2003.

Resolution 1441 already conferred an “automatic” right to use force from the date of its adoption, and “gives us the authority to move without any second resolution” (Bush statement at a joint meeting with Prime Minister Blair on January 31).<sup>207</sup> On the other hand, however, he said in view of continued inspections: “should the United Nations decide to pass a second resolution, it would be welcomed if it is yet another signal that we are intent upon disarming Saddam Hussein,”<sup>208</sup> an acknowledgement that efforts to secure support for this course should continue. This subtle but important change occurred in the course of November and December 2002. Such a change represented the beginning of a reduction of the importance of a second resolution, which would now be seen as nothing more than an “additional” source of legitimacy for the proposed use of force against Iraq.

Aware that the January report of inspection results had not been sufficient for the Security Council to decide on a response, the Bush Administration proposed convening a meeting of the Security Council to discuss Iraq. At this meeting, held on February 5,<sup>209</sup> Secretary of State Powell repeatedly quoted from intercepted telephone conversations between members of the Iraqi military, photos taken by satellites, eyewitnesses, and information obtained from confidential sources, to show how seriously the Hussein regime was hiding WMD and obstructing the inspection activities. Moreover, he warned, the continued intransigence of Iraq in resisting its obligations agreed upon under Resolution 1441 to offer unconditional cooperation to the UN inspectors constituted a violation of the resolution. This “body places itself in danger of irrelevance,” he emphasized, “if it allows Iraq to continue to defy its will without responding effectively and immediately.” Powell also pointed out that Iraq offered Al Qaeda bases for its activities, provided technology for the manufacture of biological and chemical weapons, and had repressed its population in its own country for many years.

The Security Council response was split. British Foreign Minister Jack Straw said that, based on the results of the February 14 inspection report, “If non-cooperation continues, the Council must meet its responsibilities.” Bulgaria took a similar position. The Spanish Foreign Minister asserted that “time does not mean time for the inspectors. On the contrary, it means an ultimatum to Saddam Hussein’s regime that it must disarm voluntarily,” and warned of “serious consequences” if Iraq did not comply. By contrast, the foreign ministers of the other Security Council members (China, Russia, Cameroon, France, Mexico, Pakistan, Chile, Angola, Syria, Guinea, and Germany)<sup>210</sup> asserted that the inspections should not be terminated as long as the inspection team believes that its activities should continue, and that the inspection system should, in fact, be strengthened.

The inspection report of February 14 was presented in an atmosphere of a deepening rift within the Security Council over action against Iraq.<sup>211</sup> The future course of action depended

---

<sup>207</sup> Press Conference: Prime Minister Tony Blair and President Bush at the White House, January 31, 2003, <<http://www.number-10.gov.uk/page1767.asp>>, accessed May 23, 2003.

<sup>208</sup> Ibid.

<sup>209</sup> SCOR, the 4701st meeting (S/PV. 4701, February 5, 2003).

<sup>210</sup> Because Syria’s foreign minister was unable to attend, his statement was read by the Syrian Ambassador.

<sup>211</sup> SCOR, the 4707th meeting (S/PV. 4707, February 14, 2003).

heavily on what kind of assessments would be made in that report and how the Security Council could react to them. To quote the words used by President Bush on February 6, this could well be “a defining moment”<sup>212</sup> for the UN Security Council. However, the inspection report of February 14 merely served to harden the rift within the Council. As with the two reports made in January, this report again concluded that, while no illegal weapons had been found, there was not sufficient information to determine that Iraq did not possess WMD, that more active cooperation from the Iraqi authorities was needed, and that the inspections should continue.<sup>213</sup> The reactions of Security Council members after hearing the report were also unchanged from their positions of January 27. The United States and Britain argued that allowing inspection activities to continue without end despite the fact that Iraq had shown virtually no cooperation would make achievement of international peace and security extremely difficult. Spain backed up this argument, saying that “the Council will be obliged to assume its responsibilities in the interest of the peace and security of the world” if the Iraqi regime did not change its attitudes towards UN inspections. Bulgaria also warned that the Iraqi authorities would be held responsible for the “serious consequences” should they be carried out. Against this, France argued that racing down the road to war would have “heavy consequences for the people, the region and international stability” and, with the inspections now beginning to show results, said that “France...proposes another meeting at ministerial level, on 14 March, to assess the situation. Thus we would be able to judge the progress made and what remains to be accomplished.” The representatives of the other 10 Council members also called for continuing inspections. Four days after this meeting, 15 Council members and representatives of 63 non-voting UN members met for two days (February 18 and 19) to publicly discuss the issue. In this public discussion, more than three-fourths expressed support for the continuation of the inspections.<sup>214</sup>

<sup>212</sup> Office of the Press Secretary, President Bush: “This Is a Defining Moment for the U.N. Security Council,” February 7, 2003, <<http://www.whitehouse.gov/news/releases/2003/02/iraq/20030207-3.html>>, accessed August 14, 2003.

<sup>213</sup> The Status of Nuclear Inspections in Iraq: 14 February 2003 Update, February 14, 2003, <<http://www.iaea.org/worldatom/Press/Statements/2003/ebsp2003n005.shtml>>, accessed May 21, 2003; Briefing of the Security Council, February 14, 2003, <<http://www.un.org/apps/news/infocusnewsiraq.asp?NewsID=382&sID=6>>, accessed May 21, 2003.

<sup>214</sup> SCOR, the 4709th meeting (S/PV. 4709, February 18-19, 2003). Only 14 nations took a hard-line stance on Iraq. Their statements are shown below (in order of appearance):

Australia	Since Iraq fails to observe Resolution 1441, the Security Council should act quickly to adopt “a further resolution that deals decisively.”
Peru	For a peaceful resolution, Iraq should undertake “immediate, unilateral and total disarmament” in accordance with Resolution 1441.
Japan	In view of Iraq’s non-cooperative attitude toward inspections, a new resolution showing “the determined attitude of the international community” is desirable.
Argentina	If Iraq does not engage in complete and verifiable disarmament, “the serious consequences anticipated in the resolution will take place.”
South Korea	If Iraq does not engage in complete and verifiable disarmament, “it should be responsible for the consequences of such a failure.”

#### D. Toward Proposal of a Second Resolution

The first draft of a new resolution was proposed by the United States, Britain, and Spain on February 24<sup>215</sup> in the midst of this serious stand-off. The text consisted essentially of a single substantive paragraph, in which the Council concluded that Iraq had failed to take “the final opportunity” afforded under Resolution 1441 to respond to Security Council decisions on WMD and other requirements.<sup>216</sup> Here, it is worth exploring how this description fits with the “serious consequences” expressed in Resolution 1441. As was clear from the statement made by Ambassador Negroponte immediately after that resolution was adopted, the policy toward Iraq as confirmed in Resolution 1441 did not generate “automaticity” in moving from UN inspections to an authorization to use force against Iraq. The resolution read as follows:

...*Decides* to convene immediately upon receipt of a report in accordance with paragraphs 4 or 11 above, in order to consider the situation and the need for full compliance with all of the relevant Council resolutions in order to secure international

Macedonia	Demanded the Council to take “necessary and appropriate action” in response to the threat posed by Iraq to international peace.
Singapore	If Iraq does not engage in complete and verifiable disarmament, “it will in all likelihood lead to an outcome that we would all prefer to avoid.”
Nicaragua	In response to the threat posed by Iraq to international peace, “the time has come for this organization to give proof of its ability to respond immediately in the face of Iraq’s non-compliance with Council resolutions.”
Albania	In response to the threat posed by Iraq to international peace, “the international community must be determined to act without wasting time and to send the necessary message of responsibility and determination for the preservation of the international order.”
Uzbekistan	In response to the threat posed by Iraq to international peace, “the Security Council must shoulder its responsibilities and take effective action to compel Iraq to implement resolution 1441.”
Marshall Islands	While confirming “unity” with the United States, we express the “strong belief” that the path toward peace is for Iraq to show sufficient cooperation with inspections.
Georgia	In response to the threat posed by Iraq to international peace, “we cannot afford inaction as Iraq continues to possess weapons of mass destruction that represent a threat to international peace and security.”
Serbia and Montenegro	If Iraq does not engage in complete and verifiable disarmament, “the Iraqi regime will bear all the consequences.”
Latvia	If Iraq does not engage in complete and verifiable disarmament, “only Iraq will be responsible for the serious consequences that may follow.”

<sup>215</sup> Spain, United Kingdom of Great Britain and Northern Ireland and United States of America: Draft Resolution (S2003/215, February 24, 2003).

<sup>216</sup> Original text (para. 1) states, “Decides that Iraq has failed to take the final opportunity afforded to it by resolution 1441 (2002).”

peace and security;

*Recalls*, in that context, that the Council has repeatedly warned Iraq that it will face serious consequences as a result of its continued violations of its obligations...

In other words, the Security Council would discuss the Iraq situation based on the inspection report, and “in that context” Iraq was warned that it would face “serious consequences” if it failed to comply with its obligations under the resolution. It follows that a new resolution would at the very least need to include a new decision regarding the use of force, based on the Security Council’s negative evaluation of the UN inspection results. However, in the first draft of the new resolution, the description was changed as follows:

*...Recalling* that in its resolution 1441 (2002) the Council decided that false statements or omissions in the declaration submitted by Iraq pursuant to that resolution and failure by Iraq at anytime to comply with, and cooperate fully in the implementation of, that resolution, would constitute a further material breach,

*Noting*, in that context, that in its resolution 1441 (2002), the Council recalled that it has repeatedly warned Iraq that it will face serious consequences as a result of its continued violations of its obligations, ...

Here, this resolution first quoted paragraph 4 of Resolution 1441 where Iraq’s false statements or omissions in its declaration on the weapons programs would constitute a further breach of obligations placed by the Security Council, and then warned “in that context” of “serious consequences” if Iraq continues to violate its obligations. In this theory, if Iraq fails to meet some obligation, that would automatically lead to “serious consequences.” The U.S. and British ambassadors denied the automaticity of the use of force when Resolution 1441 was adopted, but it was tacitly revived in the first draft of the new resolution: it was, in other words, no more than a “reconfirmation” of the established authorization. This argument conformed to the U.S. view already shown above, that adoption of a new resolution would do no more than provide an additional or optional source of legitimacy for the use of force.

In response to this move by Britain, the United States, and Spain, the three countries of France, Russia, and Germany sent a joint memorandum on the same day to the Security Council.<sup>217</sup> It was based on the joint declaration issued by the same three countries on February 10,<sup>218</sup> and the French non-paper released the following day.<sup>219</sup> The memorandum first noted that “full and effective disarmament in accordance with the relevant Security Council resolutions remains the imperative objective of the international community,” and

---

<sup>217</sup> Letter from the Permanent Representatives of France, Germany and the Russian Federation to the United Nations Addressed to the President of the Security Council (S/2003/214, February 24, 2003).

<sup>218</sup> Joint Declaration by Russia, Germany and France (2/10/2003), February 10, 2003, <[http://www.un.int/france/documents\\_anglais/030210\\_mae\\_chirac\\_irak.htm](http://www.un.int/france/documents_anglais/030210_mae_chirac_irak.htm)>, accessed May 21, 2003.

<sup>219</sup> Non-Paper on French Propositions Regarding the Reinforcement of the Inspections Regime, February 11, 2003, <[http://www.un.int/france/documents\\_anglais/030211\\_cs\\_france\\_irak.htm](http://www.un.int/france/documents_anglais/030211_cs_france_irak.htm)>, accessed May 21, 2003.

then asserts that: “while suspicions remain, no evidence has been given that Iraq still possesses weapons of mass destruction or capabilities in this field;” “inspections have just reached their full pace; they are functioning without hindrance; they have already produced results;” and “while not yet fully satisfactory, Iraqi cooperation is improving, as mentioned by the Chief Inspectors in their last report.” As a result, the conditions for military action have not yet been met. In this regard, the memorandum called for the Security Council to reunite and exert increased pressure on Iraq to strive for a peaceful resolution to the current crisis, and proposed a “clear program of action for the inspections,” “reinforced inspections,” and “the implementation of the program of work...according to a realistic and rigorous timeline.” The memorandum concluded that the combination of these measures and preparation for the ultimate use of force as “a realistic means to reunite the Security Council and to exert maximum pressure on Iraq.” This memorandum can be considered a summation of the arguments that had repeatedly been put forward mainly by these three countries. This memorandum, from the collective security point of view that puts WMD as a threat to international peace, regarded military force as a last resort, applying pressure on Iraq for the purpose of improving the efficacy of inspections. This position is clearly incompatible with the U.S.-British-Spanish view that positions military force as a practical step for the defense of one’s own country or for the realization of the “intrinsic values” of the American people.

The Blair government, which shared the same line of thinking on Iraq with the United States but had persuaded Bush of the importance of going through the UN to obtain international legitimacy,<sup>220</sup> now moved to prepare a compromise draft. The third paragraph in this draft, officially presented on March 7 as the second draft,<sup>221</sup> put its core part as follows:

*Decides* that Iraq will have failed to take the final opportunity afforded to it by resolution 1441 (2002) unless, on or before 17 March 2003, the Council concludes that Iraq has demonstrated full, unconditional, immediate and active cooperation in accordance with its disarmament obligations under resolution 1441 (2002) and previous relevant resolutions, and is yielding possession to UNMOVIC and the IAEA of all weapons, weapon delivery and support systems and structures, prohibited by resolution 687 (1991) and all subsequent relevant resolutions, and all information regarding prior destruction of such items...

This draft said that unless the Security Council can conclude that Iraq has demonstrated “full, unconditional, immediate and active” cooperation by March 17, Iraq would be regarded to have failed to take the “final opportunity.” Where the first draft went no further than to reconfirm “automaticity,” the second draft set conditions for Iraq to clear before a Security Council decision on the use of force, in which sense it could be viewed as demonstrating some

---

<sup>220</sup> For a detailed account of the actions within the Blair government immediately before the start of the war, see Peter Stothard, *30 Days: A Month at the Heart of Blair’s War* (London: Harper Collins Publishers, 2003).

<sup>221</sup> Spain, United Kingdom of Great Britain and Northern Ireland and United States of America: Draft Resolution (S2003/215, March 7, 2003).

consideration for the viewpoint of France, Germany, and Russia. The problem here, however, was that the evaluation by the Security Council was not considered as an absolute condition. This draft stipulated the condition “*as long as* the Security Council does *not* find by March 17 that Iraq is in *cooperation*,” instead of stating “*if* the Council concluded by March 17 that Iraq has been *non-cooperative*.” The major difference between these two versions was that, in the former, there was the possibility of automatically arriving at a final determination that Iraq was in violation of Security Council obligations *even if the Security Council has not made any determinations or recognitions by the deadline*. Since the Iraq situation was already clearly the subject of a serious rift between Security Council members, attaching these conditions would work to the advantage of Britain and the United States.

Criticism of the revised draft came into sharp focus at a March 7 meeting held to debate a new inspection report.<sup>222</sup> This was a ministerial level meeting with foreign ministers from 11 countries participating.<sup>223</sup> German Foreign Minister Joschka Fischer said that the reports by ElBaradei and Blix clearly showed that Iraq’s “peaceful disarmament is possible,” adding that “we see no need for a second resolution.” Russian Foreign Minister Ivanov also expressed his opinion that “a real disarmament process” was in progress, arguing that “what we need now is not new Security Council resolutions; we have enough of these.” France and China then went further to announce they would oppose any new resolution approving the use of force.<sup>224</sup> Mexico, Chile, Angola, Cameroon, Pakistan, and Guinea, expressing concern about “polarization” of the Security Council (Mexican Foreign Minister Luis Ernesto Derbez), urged the importance of the Security Council making unified decisions. In the end, the only countries to express support for a new resolution were the three co-drafters of the resolution (the United States, Britain, and Spain) plus Bulgaria.<sup>225</sup>

Clearly, the second draft had no chance of being adopted by the Security Council. Three days after the above meeting, in an interview carried on state TV on the evening of March 10, French President Jacques Chirac stated for the first time that “no matter what the circumstances, France will vote ‘no.’”<sup>226</sup> On the same day, Russian Foreign Minister Ivanov

---

<sup>222</sup> The Status of Nuclear Inspections in Iraq: An Update, March 7, 2003, <<http://www.iaea.org/worldatom/Press/Statements/2003/ebsp2003n006.shtml>>, accessed May 23, 2003; Briefing of the Security Council, March 7, 2003, <<http://www.un.org/apps/news/infocusnewsiraq.asp?NewsID=414&SID=6>>, accessed May 23, 2003.

<sup>223</sup> SCOR, the 4714th meeting (S/PV. 4714, March 7, 2003).

<sup>224</sup> French Foreign Minister De Villepin said, “France will not allow a resolution to be adopted that authorizes the automatic use of force,” while Chinese Foreign Minister Tang Jiaxuan said “we are not in favour of a new resolution, particularly one authorizing the use of force.”

<sup>225</sup> On the same day, Saudi Arabia unofficially offered, via Pakistan, a compromise proposal to Security Council members that included free pardon for Iraqi authorities who cooperated with the inspections, with plans to convert it into an official proposal if permanent members of the Security Council showed interest. This proposal, however, did not make any progress. “U.N. Split Widens as Allies Dismiss Deadline on Iraq,” *New York Times*, March 8, 2003; “Britain Sees Support for Proposal but Fears Veto,” *Los Angeles Times*, March 9, 2003; “Blix’s Iraq Report Deepens U.N. Rift,” *Washington Post*, March 8, 2003.

<sup>226</sup> “Chirac Vows to Veto War Resolution,” *Independent*, March 11, 2003.

announced that Russia would exercise its veto rights if the new resolution were put to vote.<sup>227</sup> And in a two-day meeting that began on March 11 consisting of representatives of 15 Council members plus 53 members in a non-voting capacity, there was an overwhelming support for the continuation of inspections.<sup>228</sup> Meanwhile, Secretary-General Annan asked that the United States and Britain try to operate within the bounds of the Security Council, saying that “if the U.S. and others were to go outside the Council and take military action it would not be in conformity with the Charter.”<sup>229</sup> For the U.S. and British side, however, the certainty of a veto being exercised was making it increasingly difficult to secure support for a resolution among the non-permanent members of the Security Council, who were aware that their affirmative votes would be rendered meaningless by a veto cast by any of the permanent members.<sup>230</sup> For Blair, it was important to continue trying until the end to secure passage of a resolution, in order to maintain support in the British Parliament, or at least within his own Labour Party.<sup>231</sup>

On March 12, Britain presented the draft of a side statement to supplement the second draft resolution. Setting a deadline, it demanded Iraq to make “a public statement” by President Hussein expressing the decision “not to produce or retain WMD or other proscribed items or related documentation and data” and to cooperate with UN inspections; to accept interviews outside Iraq of at least 30 Iraqi scientists selected by UNMOVIC/IAEA; to surrender and explain anthrax and related production capability; to destruct all al-Samoud 2 and other missiles in contravention of previous UN resolutions; to account for unmanned aerial vehicles and remotely piloted vehicles; and to surrender and explain mobile chemical and biological production facilities. If all this was done, then Britain would accept that Iraq has begun meeting its obligations to disarm under Resolution 1441.<sup>232</sup> While the draft second resolution had an essentially narrow role in the presentation of conditions preliminary to the use of force, saying “as long as the Security Council does not find by March 17 that Iraq is in cooperation,” this draft side statement listed specific actions as conditions for Iraq, a step that could be viewed as slightly weakening the implication of “automaticity.” The advantage of this wording was that, if Iraq was found to have not implemented these actions after the

---

<sup>227</sup> “U.S. Support Lags; Vote Put Off; Vetoes Vowed; Compromise on Iraq Eyed,” *Boston Globe*, March 11, 2003.

<sup>228</sup> SCOR, the 4717th meeting (S/PV. 4717, March 11-12, 2003). In this meeting, representatives from Australia, Singapore, Albania, Japan, Argentina, El Salvador, Georgia, Nicaragua, Macedonia, Peru, and Colombia either expressed support for a resolution or for the use of force.

<sup>229</sup> Office of the Spokesman for the Secretary-General, The Hague, Netherlands—Secretary General’s Press Conference (unofficial transcript), March 10, 2003, <<http://www.un.org/apps/sg/offthecuff.asp?nid=394>>, accessed May 9, 2003.

<sup>230</sup> Stothard, *30 Days*, p. 14.

<sup>231</sup> *Ibid.*, p. 23.

<sup>232</sup> “British Draft ‘Side Statement’ on Iraqi Tasks,” *Reuters News*, March 13, 2003 (09:52); “Revised Text of Britain’s Draft Side Statement on Iraq,” *Xinhua News Agency*, March 13, 2003. The original text starts with: “The United Kingdom would be ready to accept that Iraq has begun to demonstrate full, unconditional, immediate, and active cooperation in accordance with its disarmament obligations under Resolution 1441 (2002) if, by (date left blank) Iraq has satisfactorily completed the following...”

deadline had passed, then it would be clear that Iraq had no intention of disarming, and it would be easier for Britain and the United States to persuade the other members of the Security Council.

This side statement had, however, a number of limitations. First of all, in the draft that was initially reported,<sup>233</sup> the authors of the statement text were the three co-sponsors of the new resolution, i.e. Britain, the United States, and Spain. This meant that, at first, the countries that were supposed to determine Iraqi compliance with its obligations in the side statement and, by implication, Resolution 1441, included Spain and the United States as well as Britain. In the revised draft presented later on that same day, however, the author of the statement text had been changed to Britain alone. As was repeatedly asserted by U.S. State Department spokesman Richard Boucher at a press conference on the 12<sup>th</sup>, the statement text consisted of “British ideas” or “British proposals.”<sup>234</sup> Even if the statement text had reached the Security Council chamber for debate, it was not at all certain that the United States would have gone along this initiative. In fact, immediately before the text of the draft statement was made public, on March 11, U.S. Defense Secretary Donald Rumsfeld had hinted at the possibility of attacking Iraq without Britain’s participation.<sup>235</sup> Secondly, the side statement was not sufficient to repair the rupture within the Security Council. According to sources in the U.S. State Department, support for the U.S. position from Security Council members was beginning to build around this time, extending beyond Bulgaria to also include Pakistan, Cameroon, Guinea, and Angola. But even if the United States had been able to avoid a veto, these five votes plus the three votes of the resolution co-sponsors was still not enough to reach the minimum requirement of nine votes.<sup>236</sup> Germany and the two permanent Security Council members, Russia and France, quickly criticized the British proposal for its (still) implied automaticity in the use of force.<sup>237</sup>

On March 16, the leaders of Britain, the United States, and Spain held a summit in the Azores. In the post-summit press conference, Prime Minister Blair recognized that diplomatic negotiations had reached an “impasse.”<sup>238</sup> President Bush said: “We concluded that tomorrow

---

<sup>233</sup> “British Draft Side Statement on Iraqi Tasks,” *Reuters News*, March 13, 2003 (06:11); “Text of Britain’s Draft Side Statement on Iraq,” *Xinhua News Agency*, March 12, 2003. The original text begins with: “The cosponsors declare that they would support a conclusion by the council, for the purposes of operative paragraph 3 of the draft resolution, that Iraq has demonstrated full, unconditional, immediate, and active cooperation in accordance with its disarmament obligations under resolution 1441 (2002) if, by 17 March, 2003, Iraq has satisfactorily completed the following...” In the Reuters version, an explanation was attached to the phrase “by 17 March, 2003 (date is subject to negotiation).”

<sup>234</sup> “U.S. Says It Gains Votes for Iraq Deal,” *Washington Post*, March 13, 2003.

<sup>235</sup> “Rumsfeld—U.S. May Have to Launch War without Britain,” *Independent*, March 12, 2003.

<sup>236</sup> “U.S. Says It Gains Votes for Iraq Deal,” *Washington Post*, March 13, 2003.

<sup>237</sup> “Britain Details Criteria for Iraq,” *Los Angeles Times*, March 13, 2003; “France Refuses to Bow to Pressure to Lift Veto Threat,” *Independent*, March 18, 2003.

<sup>238</sup> PM Statement following the Azores Summit, March 16, 2003, <<http://www.number-10.gov.uk/output/Page3282.asp>>, accessed June 4, 2003.

is a moment of truth for the world.”<sup>239</sup> On the following day, on March 17, the UN ambassadors for the three countries announced that given this situation “the co-sponsors have agreed that we will not pursue a vote on the draft UK-U.S.-Spanish in blue...The co-sponsors reserve their right to take their own steps to secure the disarmament of Iraq.”<sup>240</sup> On the same day, President Bush issued a warning that “Saddam Hussein and his (two) sons must leave Iraq within 48 hours. Their refusal to do so will result in military conflict, commenced at the time of our choosing.”<sup>241</sup> UN Secretary-General Annan responded by ordering the withdrawal of all UN staff from Iraq (excluding about 3,000 Iraqi staffers).<sup>242</sup> On March 18, Prime Minister Blair proposed a government motion that passed the Lower House of Parliament, announcing that “this House...supports the decision that the UK should use all means to disarm Iraq.”<sup>243</sup>

On the night of March 19<sup>244</sup> (in Baghdad, early on the morning of the 20<sup>th</sup>), President Bush announced in a short address to the American people that “American and coalition forces have begun a concerted campaign against the regime of Saddam Hussein.”<sup>245</sup> In that address, he did not refer at all to the UN or to Security Council resolutions. Instead, the goal of the American and coalition forces was emphasized as “helping Iraqis achieve a united, stable and free country.” The reference to “weapons of mass destruction” that had been the main topic of discussion at the Security Council was subtly changed to “weapons of mass murder” in the context of liberation of the “oppressed people” of Iraq.<sup>246</sup> The address concluded with the words: “We will defend our freedom. We will bring freedom to others and we will prevail.” This comprehensive shift in emphasis toward “liberation of the Iraqi people

---

<sup>239</sup> Office of the Press Secretary, President Bush: Monday “Moment of Truth” for World on Iraq, March 16, 2003, <<http://www.whitehouse.gov/news/releases/2003/03/iraq/20030316-3.html>>, accessed June 4, 2003.

<sup>240</sup> “UK, U.S. and Spain Won’t Seek Vote on Draft Resolution, May Take ‘Own Steps’ to Disarm Iraq,” *UN News Service*, March 17, 2003, <<http://www.un.org/apps/news/storyAr.asp?NewsID=6472&Cr=iraq&Cr1=inspect>>, accessed May 14, 2003.

<sup>241</sup> Office of the Press Secretary, President Says Saddam Hussein Must Leave Iraq within 48 Hours, March 17, 2003, <<http://www.whitehouse.gov/news/releases/2003/03/iraq/20030317-17.html>>, accessed June 4, 2003.

<sup>242</sup> Press Releases (SG/SM/8640, and DSG/SM/ 191, March 17 and 28, 2003).

<sup>243</sup> “This House notes ...,” *Guardian*, March 19, 2003. The vote on the government motion was 412 in favour and 149 against. A motion opposing the war, proposed on the same day, was voted down with 396 against and 217 in favour (of which 139 were Labour Party members). “Blair Wins War Backing amid Revolt,” *BBC News*, March 19, 2003, <[http://news.bbc.co.uk/1/hi/uk\\_politics/2862325.stm](http://news.bbc.co.uk/1/hi/uk_politics/2862325.stm)>, accessed June 12, 2003.

<sup>244</sup> Ironically, the Security Council had scheduled a meeting on the morning of this day (March 19, 10:30-13:15 EST) to debate the UNMOVIC and IAEA inspection plans. While representatives of Germany, France, and Russia, and other countries, totaling 11 in all, used the meeting to express opposition or regret for the war, many were aware that the start of the war was now only a matter of time, and therefore devoted their statements to the importance of humanitarian assistance during the war and of the postwar reconstruction. SCOR, the 4721st meeting (S/PV. 4721, March 19, 2003).

<sup>245</sup> Office of the Press Secretary, President Bush Addresses the Nation, March 19, 2003, <<http://www.whitehouse.gov/news/releases/2003/03/iraq/20030319-17.html>>, accessed June 4, 2003.

<sup>246</sup> The text read as follows: “...we will not live at the mercy of an outlaw regime that threatens the peace with weapons of mass murder.”

from oppression” was also plainly seen in Bush’s speech of May 1 announcing the end of major combat operations in Iraq.<sup>247</sup> In this speech, Bush referred back to World War II to assert that the fight in Iraq was part of the country’s traditional commitment to liberty. Furthermore, arguing that the war had prevented the spread of WMD from the Hussein regime to terrorist organizations, Bush lauded the war for liberation of Iraq as “a crucial advance in the campaign against terror.” Since “the advance of freedom is the surest strategy to undermine the appeal of terror in the world,” he said that liberation of oppressed peoples was closely connected to the war on terror. In this speech, too, Bush said nothing about the UN, the Security Council, or any of the Security Council resolutions related to Iraq.

## Conclusion

Let me start with a brief review of the argument so far. The first half of this article conducted an overview of Security Council resolutions in the years since the founding of the UN up to just prior to the Iraq War, with an analysis of what constituted a “threat to peace” and the legitimacy of the use of force. The link between the two concepts of threat to peace and legitimate use of force was found in the concept of collective security. The point of this concept is that the Security Council determination of a situation as a threat would elevate that threat to something shared by the international community as a whole, and accordingly that the use of force to remove it should be considered legitimate. In the Cold War period, these threats, with the notable exception of apartheid, consisted of: (1) conflicts between states; and (2) intensification of civil wars due to outside intervention to the extent that might threaten regional stability. However, the number of actual cases of enforcement based on this recognition of threat was fairly limited, with most cases limited to no more than economic sanctions and arms embargoes.

As seen at the outset of this article, this situation changed greatly in the post-Cold War period. First, the concept of threat came to include three new actions or situations, including: (1) terrorism; (2) large-scale violations of human rights or serious humanitarian crises; and (3) civil wars that, even if outside intervention has not occurred on a large scale, are threatening because of their regional impact, scale, or humanitarian effect. Of these three, we have already seen that human rights violations and humanitarian crises have been recognized as threats in a more limited manner than in the case of the other elements of the threat. The number of cases in which the Security Council authorized the right to use force increased sharply in the post-Cold War period. It was during the Gulf War when the practice of using “all necessary means” or similar expressions to refer to such authorization. It became also established that the approved forms of force differ from a multilateral force (no explicit restrictions) and a peacekeeping mission (the protection of UN staff and of peacekeeping personnel, and in some

---

<sup>247</sup> Office of the Press Secretary, President Bush Announces Major Combat Operations in Iraq Have Ended, May 1, 2003, <<http://www.whitehouse.gov/news/releases/2003/05/iraq/20030501-15.html>>, accessed June 5, 2003.

cases including protection of NGO and humanitarian personnel).

As much of the relationship between Iraq and the international community had been regulated through Security Council resolutions since the Gulf War, the debate surrounding legitimacy of the use of force against Iraq took place within the context of various resolutions adopted by the Security Council over the years. In fact, the central issue surrounding Resolution 1441 was Iraq's WMD, which had been referred to as being a potential threat in Resolution 687, the Gulf War ceasefire resolution. Adoption of the expression "serious consequences" as a warning to Iraq meant the judgment of the Security Council that the timing was premature for the Security Council to approve an use of force, and that a new resolution based on the results of the resumed inspections will determine whether or not force should be used. However, after Iraq's declaration and five UN inspection reports, the Security Council members began to fracture into two groups. One group, centered on Germany, France, and Russia, wanted to continue and strengthen the inspections, and for them, the current problem was the threat posed to international peace by Iraq's development and possession of WMD. The United States, on the other hand, became increasingly exasperated with the process heavily dependent on the inspections and their evaluations, and begin pushing to the fore the right to self-defense against Iraq as a state sponsor of terrorism and its foundational mission as a democratic state to bring liberty to the repressed people of Iraq. For the United States, the current problem was a matter of defending their own country, and a fight for the realization of their "intrinsic values;" and from this standpoint, securing a Security Council resolution took on an increasingly secondary or additional character. Despite the attempts by Britain and others to find a compromise between these two sides, the rift only became more serious, and the war eventually started without a second resolution ever being adopted.

This article purports to consider the issue of what kind of impact the Security Council debate on legitimacy of military action against Iraq had on the Security Council's concept of threat and on the view of the legitimate use of force. Two broad points can be made here.

The first revolves around the relationship between the problem of WMD and the concept of threat. Resolution 1441 was the first resolution that explicitly recognized that the proliferation of WMD constituted a threat to international peace.<sup>248</sup> While the threat of WMD was only hinted at in Resolution 687, it was clearly recognized in this resolution. However, Resolution 1441 provided only partial answer to the question of what kind of measures should be taken against this threat. This resolution referred only to the inspection regime as such measures. But it was not clear whether this alone would have sufficient effect. This was even more so in the case of the Hussein regime, whose intentions were to systematically hide the possession and development of WMD. To answer this question, one would have to wait until a comprehensive analysis is made of the results of the search for WMD in Iraq after the war.

We may be able to trace the source of the difficulty here to the basic difference between WMD and the other elements of the threat. Put simply, the difference is that whereas civil wars, conflicts between sovereign states, and human rights or humanitarian crises, are all

---

<sup>248</sup> Cf. SCR 1540 (April 28, 2004).

described as already occurring situations, WMD are essentially about the capabilities of an actor. The former is basically something that has *already* happened, and therefore the measures center on elimination or mitigation of the causes that produce the situation. However, when WMD is said to constitute the threat, the problem lies in the *risk* that such weapons *may* create a situation deemed undesirable in international society; and the measures to be taken will therefore be necessarily preventive in nature. The difficulty here lies in the potential divergence of judgment regarding how one should understand an actor's "intent" to possess or develop such weapons and to what extent coercive measures should be allowed for use against such an actor. This difference was clearly seen in the Security Council rift regarding the UN inspections.

The second general point is concerned about the relationship between terrorism and the threat concept. Recognition of terrorism as a threat began with the terrorist bombing of the PanAm jet over Lockerbie and came to the fore with the simultaneous terrorist attacks of 9/11. This recognition, however, came to be encumbered with some negative factors due to the Iraq War. First, the United States never characterized the Iraq War as being a part of the war on terrorism either in the Security Council debates, in Resolution 1441, or in the second resolution that was never adopted. Nevertheless, it has constantly been characterizing this war in these terms outside the Security Council, especially to the American people. Although the right to self-defense against terrorist groups was hinted at in the resolutions related to Afghanistan, it was not reconfirmed as a resolution for the Iraq War, and then actually moved outside the Security Council framework. As was pointed out by the representatives of a number of countries at the Security Council meeting on January 20, the discursive process leading up to the war may have moved counter-terrorism away from the idea of collective security.

Another point needs clarification here. This is the character of the terrorist threat. As with WMD, terrorism also has an aspect that mainly requires a preventive response, because counter-terrorism requires the creation of conditions that would prevent a terrorist attack from ever actually happening, and also challenges the objectives and philosophies of terrorist organizations. If the Iraq War has moved counter-terrorism from collective security toward national security, then the preventive measures to be taken might also be undertaken in the name of self-defense of a (group of) state(s).

The most significant meaning to be derived from the Iraq War is the recognition that WMD now constitute a threat to international peace, while on the other hand the argument regarding terrorism has shifted away from collective security to national security. The common background to this change of thinking is the logic of prevention that postulates that capabilities and movements (ideologies) can also constitute a threat. What meaning will these points have for international security in the future? Let me make two points with regard to the role of norms that constitute the framework of international security.

The first point concerns the significance of the way in which the threat concept and the legitimate use of force have been changing. As was stated at the outset of this article, the important role of the Security Council is to serve as a forum for nurturing an international

consensus on what constitutes a threat to international peace and a legitimate use of force. From this standpoint, the first half of this article attempted to identify what specifically is recognized to constitute a threat in Security Council resolutions. Of course, this is not to assume that the factors constituting a threat to peace as expressed in Security Council resolutions accurately reflect the various factors that the international community as a whole recognizes as threatening its security. Nevertheless, more than 1,600 Security Council resolutions have been debated and adopted in regards to specific issues since the establishment of the UN by the permanent and non-permanent members of the Security Council. These resolutions should provide some hints at a probable guide for understanding what is recognized as a threat to international peace.<sup>249</sup>

The pattern of situations constituting threats changed with the times, and the number of situations rose sharply after the end of the Cold War. It has already been noted that these changes have been related to the end of the Cold War and to a historical increase in norms commonly shared in international society in the post-World War II period. Still, specifically how and why changes have occurred in the “threat to international peace” concept will require analyses of each situation that triggered such change. The analysis of the Iraq War in the second half of this article, however, offers a hint at the mechanisms for this change. First of all, the Iraq problem had long been in existence, with a series of resolutions dating back to the Gulf War that repeatedly referred to the problem of Iraqi development and possession of WMD. The United States and others found in this a way to obtain international legitimacy for the use of force against Iraq by arguing that the policy of the Hussein regime constitutes a threat. They thus secured passage of Resolution 1441 clearly recognizing the threat of WMD, an issue that had only been obliquely identified in Resolution 678. Put more generally, this is a process in which a situation is identified with the threat first in a potential or limited way, and then this tentative linkage gradually achieves an established status through responses to new situations. As has already been seen, large-scale humanitarian crises and violations of human rights were recognized as constituting threats frequently after the end of the Cold War, but in many cases such recognition was qualified as exceptional or unique. At the point where limitations and qualifications such as these disappear from the texts of the resolutions, that situation is broadly recognized as a threat to international peace.

Second, the Iraq War presented two serious challenges to the normative order of international security. As has already been repeatedly pointed out, it appears that the consensus fostered since the 1990s to recognize terrorism as a threat to international peace and therefore to deal with it within the framework of collective security has shifted toward the idea of dealing with it based on the right to self-defense. Moreover, by bringing the issues of

---

<sup>249</sup> Regarding the role of the Security Council in identifying threats, there are two views: a positive view that recognizes the creative role of the Council in identifying threats to the peace; and a passive view that states that resolutions merely acknowledge what has already become consensual among major powers. Though there is no room to explore these views here, it might be interesting to re-examine past Security Council resolutions to consider whether such a distinction might be of useful significance and, if so, which view seems more reasonable.

WMD and terrorism to the center of debate both within and outside the Security Council, the Iraq War indicated how prevalent the logic of prevention can be in the current thinking on international security. This is a problem because: (1) recognition of threat and implementation of military and other measures based on the theory of prevention can easily lead to political contestation; (2) it is difficult to determine whether the resulting situation is commensurate with the measures taken; and (3) since the need for prevention should be found and necessary actions should be taken basically by states, the theory of prevention tends to be linked more closely to national security than to collective security. As far as can be examined from the Iraq War, it appears that the normative framework of international security now harbors the potential for a fundamental change.

Finally, let me conclude with a brief examination of what these changes may mean for the security of Japan.

First, in the area of WMD, there appear to be two demands that require a careful balance. On the one hand, it will be important for ensuring Japan's security to establish the issue of proliferation of WMD as an agenda item at the Security Council and call for a unified response on the part of the Security Council to each region or country of proliferation concern. In this case, it will also be required to re-examine the experience gained from more than 10 years of UN inspections in Iraq with a focus on the problems raised above (practical effectiveness, judgment of intent, proportionality of sanctions), and to encourage the refinement of the system and knowledge of such inspections. On the other hand, however, recognition of these problems under Chapter VII may open the possibility in the future of the use of force against countries that are suspected of development or proliferation of WMD. Therefore, it is necessary to exercise caution to avoid turning such new threats too easily into opportunities for the use of force (while there is no room in this article to discuss the issue, an important test case in this regard might be the case of North Korea). In this sense too, a re-examination of the inspection system is needed.

In regards to counter-terrorism, there is probably room for Japan to make a contribution in order to restore the efforts for building the international framework that may have been lost due to the Iraq War. This contribution will mainly consist of two areas. First, because of the international and transnational character of terrorism, there are definite limitations to what efforts can be done at the national level based on the right to self-defense. Moreover, terrorism does not affect only one country, as seen in the terrorist attack of August 19, 2003 against the headquarters of the UN Assistance Mission in Iraq (UNAMI). In this sense, it will bring greater security benefits for Japan by working through the Security Council so as to organize the international efforts against terrorism. Therefore, as in the case of the proliferation of WMD, Japan should strive to maintain and strengthen the measures against terrorism (such as freezing of terrorist funding) that have been decided through Security Council resolutions to date. Second, it is necessary to locate the concept of self-defense against terrorist groups within the framework of collective security. Whereas in Afghanistan the Security Council had mentioned the right to self-defense, there was no such reference in the Security Council resolutions on Iraq. Furthermore, with interpretation divided regarding the threat of Iraq's

WMD while the United States increasingly emphatic about the right to self-defense, the United States marched alone in asserting the right to self-defense against terrorism. In this sense, the Iraq War took place in a “legitimacy vacuum.”<sup>250</sup> If this trend were to continue in the future, it would diminish the importance of international counter-terrorist cooperation efforts, including many steps other than the use of force. To avoid this situation, we need to ensure that the right to self-defense against terrorism is located adjacent to collective security measures — specifically, as Article 51 of the Charter stipulates, as a provisional measure up until the collective security system operates to authorize the use of collective force against a threat to peace.

---

<sup>250</sup> Since before the Iraq War started, Secretary General Annan pointed out the problematic nature of the war. For example, see the statement released on March 17 at the time that UN personnel withdrew from Iraq (UN News Centre, Press Encounter with the Secretary-General at the Security Council Stakeout, March 17, 2003, <<http://www.un.org/apps/news/infocusnewsiraq.asp?NewsID=433&sID=7>>, accessed May 9, 2003), and the speech given September 23 to the UN General Assembly (The Secretary-General Address to the General Assembly, September 23, 2003, <<http://www.un.org/webcast/ga/58/statements/sg2eng030923.htm>>, accessed September 23, 2003).