Humanitarian Intervention: Could the Security Council Kill the United Nations?

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Abstract

Will 1999 be an annus horribilis (‘horrible year’) for the United Nations? Some tend to believe the answer is yes. U.N. Secretary General Kofi Annan’s important yet controversial speech awhile ago is a timely warning. Criticism of U.N. inaction, inefficiency, and indolence in the case of Kosovo, and, to a certain extent, and even more surprisingly, in East Timor is widespread. The fact that the organization may only act, however, when the U.N. Member States agree is often overlooked. This Essay explores the U.S. attitude toward the U.N., institutional imbalances within the U.N., and possible solutions to problems that arise from the one member veto.
ESSAYS

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INTRODUCTION

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tion, inefficiency, and indolence in the case of Kosovo,¹ and, to a
certain extent, and even more surprisingly, in East Timor is
widespread. The fact that the organization may only act, how-
ever, when the U.N. Member States agree is often overlooked.

The Secretary General opened a Pandora’s Box by address-
ing the issue of humanitarian intervention, an issue that caused
gridlock in the United Nations last year and infuriated a large
segment of the world’s public opinion. In his speech, Mr. An-
nan focused the spotlight on the conflict between the principles
of sovereignty and humanitarian intervention; a disturbing and
yet unavoidable dilemma. Mr. Annan’s remarks created turmoil
in the U.N. General Assembly, forcing numerous Heads of State
and Foreign Ministers to change—in haste—their prepared
statements in order to show their support or, more often, their
disapproval or mistrust of what was perceived as an all-out attack
on the sacred right of sovereignty.

The piercing dilemma presented by Mr. Annan was hatched

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1. The United Nations was lambasted from different angles. Many complained
that the organization failed to stop the tragedy in Kosovo, while others, speaking from a
different political position, were unhappy that the United Nations let the North Atlan-
tic Treaty Organization ("NATO") act unilaterally. Among the latter was Spain’s best
selling novelist Manuel Vásquez Montalbán, who sarcastically noted that after Yugosla-
via was knocked out in the bombing campaign, "the U.N. came out of its hiding place
and gave its OK to everything, absolutely everything that happened. It even approved its
own non-performance in this mess." La Onu M. Vázquez Montalbán, El País, June 14,
1999, at 88.
in the spring of last year. The ides of spring were not auspicious for the United Nations or the objectives for which it was created. The crisis in Kosovo dangerously undermined the organization, which was founded in 1945 to preserve world peace and security.

The statements by the Secretary General during April\(^2\) and May\(^3\) of last year clearly demonstrated the tortured and painful ambivalence of the defenders of the U.N. system and philosophy. On the one hand, they criticized the ethnic cleansing in Kosovo, and denounced the excesses of the Serbian President Slobodan Milosevic as morally repugnant. They came to the conclusion, explicitly stated or not, that some kind of military action was all but unavoidable. On the other hand, they were noticeably uncomfortable—from a legal standpoint—with the North Atlantic Treaty Organization (“NATO”) intervention, which was engineered outside the realm of the United Nations, and thus in violation of the rules of the U.N. Charter.\(^4\) Angered and overwhelmed by the relentless violations of human rights in Kosovo, Mr. Annan showed his understanding and, without much fanfare, straightforwardly accepted and implicitly justified the operation against Milosevic. At a later stage and in a diplomatic fashion, he, however, pointed out the dangers of using force without the express authorization of the one body in the U.N. system that has a monopoly in this area, the U.N. Security Council.

The best example of the Secretary General’s first state of mind, as described above, can be found in his statement in Geneva, Switzerland, in April 1999.\(^5\) The speech was a milestone for the proponents of humanitarian intervention as a facet of international law; his remarks were symptomatic and emphatic enough. Rarely would a figure as important as the Secretary General of the United Nations so candidly state that the sover-

\(^2\) See U.N. Secretary General Kofi Annan, Address Before the Commission on Human Rights in Geneva, Switzerland (Apr. 8, 1999), available in 1999 WL 15758163, at *1 [hereinafter Geneva Address].


\(^5\) Geneva Address, supra note 2.
eighty of a state is not absolute.\(^6\)

He began with what is for him an article of faith. "[T]he promotion and defense of human rights is at the heart of every aspect of our work and every article of our Charter,"\(^7\) adding that when civilians are attacked and massacred because of their ethnicity, as in Kosovo, the world looks to the United Nations to speak up for them . . . . If, in the face of such abuses, we do not speak up and speak out, if we do not act in defense of human rights and advocate their lasting universality, how can we answer to that global constituency? . . . We will not, and we cannot accept a situation where people are brutalized within national boundaries . . . a United Nations that will not stand up for human rights is a United Nations that cannot stand up for itself.\(^8\)

Noting that a failure to act in Kosovo would result in a humanitarian disaster throughout the entire region, Mr. Annan closed by defending the right to intervene. "Emerging slowly, but I believe surely, is an international norm against the violent repression of minorities that will and must take precedence over concerns of State sovereignty."\(^9\) The conclusion was devastating. "No government has the right to hide behind national sovereignty in order to violate the human rights or fundamental freedoms of its people."\(^10\)

Mr. Annan followed a somewhat different line of thought, or at least one with a different emphasis, one month later in The Hague.\(^11\) It is not that Mr. Annan criticized the intervention in Kosovo, but the tone and the spirit of his words were more true to classic doctrine. The effectiveness and relevance of the Security Council, according to Mr. Annan, must be the cornerstone for the promotion of international peace and security in the next century. More explicitly, the Secretary General stated that "unless the Security Council is restored to its preeminent position as the sole source of the legitimacy on the use of force, we

\(^6\) Id. at *2.
\(^7\) Id. at *1.
\(^8\) Id. at *1-2.
\(^9\) Id. at *4-5.
\(^10\) Id. at *5.
\(^11\) Hague Address, supra note 3.
are on a dangerous path to anarchy."\(^\text{12}\)

The change in emphasis by the Secretary General did not go unnoticed in the United States,\(^\text{13}\) and one of Mr. Annan's aides felt compelled to declare that his boss was not attacking anyone. The aide stated that Mr. Annan was merely expressing "concern about a growing trend—the bypassing of the Security Council—which he wants member states to think about."\(^\text{14}\)

Is Kofi Annan an opportunist who, depending on the audience or the occasion, preaches the revolutionary doctrine of holy intervention when human rights are trampled, then sticks to the dogma of classic international law by upholding the intangible sovereignty of States? Certainly not. The Secretary General worries about the ethical imperative of preventing an enormous outrage from going unpunished out of respect for the sovereignty of a state, and the legal imperative of upholding the U.N. Charter granted to the international community over half a century ago to oversee relations among states. Mr. Annan's supporters acknowledge that both statements complement each other. The intervention in Kosovo was unavoidable, but it should have been conducted through the U.N. system.

The crisis in East Timor led to another landslide of criticism leveled at the United Nations and its perceived indolence. The "militia" committed countless human rights violations, and again the United Nations was thrashed. Eventually the Security Council reached an agreement with Indonesia, but this was the second striking and visible instance of human rights violations last year. The world had seen enough, and so had the Secretary General.\(^\text{15}\)

Mr. Annan reverted once again to the principle of humanitarian intervention at the opening of the General Assembly in September.\(^\text{16}\) He defended this principle, somewhat less forcefully than in his speech in Geneva, but the forum and the occa-

\(^{12}\) Id.


\(^{14}\) Id.

\(^{15}\) Timor was, from a legal standpoint, different from Kosovo. The United Nations never recognized Timor as a part of Indonesia. Consequently, the expected decision of the United Nations would not be seen as an intervention in internal affairs.

sion—a unique and special platform—prompted many avid supporters of state sovereignty to react adversely. Mr. Annan entered dangerous territory simply by underlining the importance of the principle of humanitarian intervention.

The existence of borders, said Annan, cannot possibly guarantee to any government the freedom to torture or massacre its population.17 "This developing international norm in favor of intervention to protect civilians from wholesale slaughter,"18 concluded Annan, "will no doubt continue to pose profound challenges to the international community."19

It did right away. As the French newspaper Le Monde wrote, "la doctrine Annan ... n'a laissé personne indifferent."20 Mr. Annan received polite applause from Western states, and a clear refusal from China, Russia, and several significant third world players. Algeria, China, India, Mexico, and Russia rose—in one way or another—to oppose his remarks.

Those who unequivocally stood against the "humanitarian intervention" came from different regions and cultures. I have selected excerpts from the speeches of four dignitaries—from Algeria, China, Malaysia, and Mexico—as examples. H.E. Mr. Tang Jiaxuan, the Chinese Minister of Foreign Affairs stated that

[t]he so-called "humanitarian intervention" in a sovereign state with neither a mandate from the U.N. Security Council nor prior consent of the country concerned will cause a greater humanitarian catastrophe instead of resolving the problem.21

Rosario Green, the Mexican Secretary of Foreign Affairs, stated that

[t]he Mexican Government ... firmly rejects the existence of an alleged right to intervene, particularly when it is proclaimed outside the framework of international law.22

17. Id.
18. Id.
19. Id.
22. Rosario Green, Secretary of Foreign Relations for Mexico, Statement at the 54th Session of the U.N. General Assembly (Sept. 23, 1999) (visited on Nov. 23, 1999)
Abdelaziz Bouteflika, the President of the Republic of Algeria, stated that

[w]e remain extremely sensitive to any undermining of our sovereignty not only because sovereignty is our final defense against the rules of an unequal world, but because we are not taking part in the decision-making process by the Security Council nor in the monitoring of their implementation.\textsuperscript{23}

And lastly, Mahathir bin Mohamad, Prime Minister of Malaysia, stated that

[t]he principle that prevailed in the third quarter of the 20th century was that no one should interfere in the internal affairs of a nation. That was the essence of independence. But then, a President decided that his country had a right and duty to oversee that human rights are not abused anywhere in the world irrespective of borders and the independence of nations. No one conferred this right on this crusading President.\textsuperscript{24}

Considering the views of these dignitaries, and of other Member States,\textsuperscript{25} we should conclude that when the two principles—sovereignty and humanitarian intervention—collide, the action taken should receive legal support. In other words, the right to intervene should be authorized or supported by the Security Council. Such a rule ensures that any action taken is in harmony with the U.N. Charter, which is protected by the Constitution of the International Community. Nations who supported the intervention in Kosovo argued that the action was quite exceptional, but noted that they would have been much


\textsuperscript{24} Dato' Seri Dr. Mahathir bin Mohamad, Prime Minister of Malaysia, Statement at the 54th Session of the U.N. General Assembly (Sept. 29, 1999) (visited on Nov. 23, 1999) <http://www.smpke.jpm.my/pm/speeches.html> (on file with the Fordham International Law Journal).

\textsuperscript{25} The recent South Summit in Havana, Cuba on April 14, rejected "the so called right to humanitarian intervention" in very clear terms.
more at ease if the Security Council had provided legal cover for the military operation. On the other hand, those outraged by the military action in Kosovo, who oppose the right of intervention, might have seen their position weakened if the Security Council approved the operation.

Let me again look to Mr. Annan's speech, in which he states that the Security Council must rise to the challenge. "The choice must not be between Council unity and inaction in the face of genocide—as in the case of Rwanda, on the one hand; or Council division, and regional action, as in the case of Kosovo, on the other." Consequently, the Security Council is necessary. We must be wary, however, for as Mr. Annan said, the intervention in Kosovo took place outside the United Nations because of divisions on the matter between the Permanent Members of the Security Council. Many felt that the Secretary General had broken the sacred taboo of sovereignty. On this historical occasion, however, Mr. Annan was, in fact, courageously exhorting the international community to open its eyes and face its responsibilities. And, truthfully speaking, when such matters relate to the use of force, the international community means the Security Council.

This fact raises serious questions. For example, a split in the Security Council—and the resulting gridlock created by the veto power of the Permanent Members—places any international intervention, no matter how apocalyptic the outrage being committed, in legal quicksand. Let us not forget that the prohibition

26. Abel Matutes, Spanish Minister of Foreign Affairs, Statement at the 54th Session of the U.N. General Assembly (Sept. 21, 1999) (visited Nov. 24, 1999) <http://www.spainun.org/eng/statements/54E.htm> (on file with the Fordham International Law Journal). Abel Matutes, the Spanish Minister of Foreign Affairs, stated that Kosovo was an exceptional case where action was necessary to prevent the worse of two evils. Id. Generally, such action should require the authorization of the Security Council. Id.

27. See Jiaxuan Statement, supra note 21; see also Green Statement, supra note 22. The Chinese Minister of Foreign Affairs noted that NATO's Kosovo operation was an intervention "with neither a mandate from the U.N. Security Council nor prior consent of the country concerned." Jiaxuan Statement, supra. In addition, the Mexican Secretary of Foreign Affairs stated that her government "rejects the... right to intervene, particularly when it is proclaimed outside the framework of international law." Green Statement, supra.


29. Id.

against intervention is not absolute; the Security Council may authorize it in certain situations. The exceptions to the prohibition against intervention are set out, in coercive form, in Article 42 of the U.N. Charter, which allows military intervention when it is necessary "to maintain or restore international peace and security." The Security Council has exercised this option during upheavals in certain geographical regions, or when refugees threaten to flow into neighboring countries.

Mr. Annan’s tribulations stem from instances when Permanent Members in the Security Council split. This occurred during the Kosovo crisis, where the threat of a Russian veto loomed over any U.N. mandate to act. Despite the obvious seriousness of the matter in Kosovo, the split between Permanent Members in the Security Council kept the United Nations from acting, which in turn, led to NATO’s intervention without the blessing of the Security Council.

When the Security Council fails to act, due either to the threat or the actual exercise of the veto power, the United Nations appears to be wavering or passive. Consequently, the reputation of the United Nations is damaged. Expanding the use of the veto power in the foreseeable future tortures U.N. defenders. A future of recurring vetoes by the "Great Ones"—China, France, Russia, United Kingdom, and United States—which would represent a return to Cold War-like patterns, might not be tolerated by long-term international public opinion. The erosion of the foremost duty of the United Nations, or as Mr. Mayor Zaragoza puts it, restricting the United Nations to the role of a "humanitarian organization, completely bereft of funds," could be the coup de grace for the United Nations.

At the end of 1999, the United Nations was indeed going through a sensitive patch. The "gilded age," those years of splendor following the Cold War, when the Great Ones in the Security Council unanimously and harmoniously acted to oppose Iraq during the Gulf War, are over. The Gulf War was a "textbook case" for the United Nations for obvious reasons. It was a flagrant violation of international law in that it was an invasion of a

32. These days many things can be said about the possibility of Russia exercising its veto power, and the real intentions of the different players in the Security Council. In any case, throughout the corridors of the United Nations, the impression was that the Russians would veto any resolution mandating U.N. military operations in Kosovo.
nation for the express purpose of wiping it off the map. Also, there was an easily identifiable aggressor and victim. Cynics will add that Saddam Hussein's little adventure threatened the economic interests of some of the Permanent Members, which may have been true, but thanks to the post-Cold War honeymoon, the Security Council brought the aggressor to his senses and redressed the injustice in an unusually prompt manner. Such promptness and self-reliance would have delighted many of those who first conceived the United Nations in the 1940s. At the beginning of the 1990s, once the two superpowers overcame their animosity and suspicions, the United Nations acted in line with the purpose for which it was created. The Permanent Members overcame their grudges and cast aside their loyalty to former "clients." International legality seemed to reign supreme, and the world anticipated a happy ending.

This cooperative mood amongst the Great Ones may now have vanished. In this first year of the twenty-first century, the United Nations suffers from a loss of credibility and prestige and a crisis of legitimacy that restrains its ability to solve conflicts and, sometimes, implement its resolutions. The responsibility for this crisis does not fall on the United Nations or Mr. Annan, who is a realistic diplomat convinced of U.N. potential. This crisis is fundamentally and primarily on the Member States, especially the five Permanent Members of the Security Council, who are capable of blocking the U.N. mechanism.

If a poll were conducted, among the Ambassadors who represent the 188 Member States of the United Nations, on the root

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34. See Bill Keller, Moscow joins U.S. in Criticizing Iraq, N.Y. TIMES, Aug. 4, 1990, at A6. U.S. Secretary of State James Baker was in the Soviet Union on an official visit on the day of the Iraqi invasion of Kuwait. Id. In a joint statement with his counterpart, Soviet Foreign Minister Eduard A. Shevardnadze, one could read that "the governments that set out on flagrant aggression must be aware that the international community will not accept aggression." Id. It was a historic change.
causes of the crisis and the decline in the prestige of the United Nations, many then would point to two issues. The first is the detached attitude of the United States. The second is the constitutional imbalance in the United Nations, demonstrated primarily by the excessive power of the Security Council and its five Permanent Members.

I. THE ATTITUDE OF THE UNITED STATES

For well-known reasons, the United Nations—let us use a diplomatic term—"is not in fashion" among large segments of the U.S. establishment, especially with those who make up the circles of power in Washington. The attitude displayed by this group of personalities goes from outright hostility to impartiality or indifference verging on open mistrust. Such detachment can be perceived, *inter alia*, in what follows.

A. The Arrears

The United States, by far the worst financial delinquent in the United Nations, does not pay its assessed contributions in a timely manner. This is not a trivial matter given that the U.S. debt amounts to US$1.675 billion as of October 1999, and the

35. U.N. "bashing" is a popular sport in U.S. political circles. Lewis Dolinsky, *Wide-Ranging Interview with Kofi Annan on S.F. Visit*, S.F. CHRON., Apr. 20, 1998, at A8; Senator Jesse Helms, *Saving the U.N.: A Challenge to the Next Secretary General*, FOREIGN AFF., Sept./Oct. 1996, at 2; *Holbrooke's Headache*, FOREIGN REP., Nov. 11, 1999, available in 1999 WL 8943501. "Kofi Annan should be horse-whipped," remarked New York Congressman Gerald Solomon after the Secretary General’s returned from his much-praised trip to Iraq. Dolinsky, *supra*. On the other hand, all-powerful Senator Jesse Helms, in his demand for U.N. reform, wrote, "I was asked by a reporter whether the United States should withdraw from the United Nations. It was a valid question, to which I responded, 'not yet.'" Helms, *supra*. Pat Buchanan started his most recent presidential campaign by lambasting the United Nations with quite a surprising statement. After falsely accusing the Secretary General of threatening to withdraw U.S. voting rights in General Assembly, Buchanan stated, "I would give Mr. Kofi this word of advice ... [i]f our vote in the U.N. is in jeopardy, your lease on Turtle Bay is in jeopardy." *Holbrooke's Headache*, *supra*. This statement was both amazing and amusing. See U.N. Charter, *supra* note 4, art. 19, 59 Stat. at 1040. Firstly, Kofi Annan cannot suspend the right to vote of any country. U.N. Charter, *supra* note 4. Article 19 of the U.N. Charter declares that Member States automatically lose their right to vote in the General Assembly when they fall two years behind in their contributions to the U.N. budget. *Id*. Secondly, the site of the U.N. Headquarters is leased, the United Nations owns the land. *Holbrooke's Headache*, *supra*.

annual budget of the United Nations is US$1.26 billion. These figures are tantamount to stating that the U.S. arrears placed the United Nations on the verge of outright bankruptcy.

The financial non-compliance of the United States defies all comprehension. Assessments for contributions to the U.N. budgets are made according to each Member State’s capacity to pay, which is calculated according to its share in world Gross National Product ("GNP"). Consequently, the United States is supposed to contribute 25% of the regular budget, Japan 19.65%, Germany 9.85%, Italy 5.4%, Spain 2.6%, and so on, each nation according to its capacity to pay. With their refusal, the United States is violating a principle honored by most of the Member States, namely that payments should be made “in full, on time and without conditions.”

I should hasten to say, adding insult to injury, that the United Nations has already fulfilled quite a few conditions in hopes of convincing the United States to pay its arrears.

We have indeed done our homework, brushed our teeth, and said our prayers. The United States disliked the former Secretary General, Boutros Boutros-Ghali. The United Nations,

37. Id.
38. Christopher S. Wren, *International Symbol of Neglect; U.N. Building, Unimproved in 50 Years, Shows Its Age*, N.Y. TIMES, Oct. 24, 1999, at A35. Even the decay of the building itself is quite alarming: “[i]f the United Nations had to abide by city building regulations... it might well be shuttered.” Id.
40. The principle of the capacity to pay seems laughable to some U.S. politicians. See Calvin Woodward, *Exaggerations Explode at Republican Debate*, GRAND RAPIDS PRESS, Oct. 29, 1999, at A6. Former U.S. envoy to the United Nations, Alan Keyes, stated in late October that the United Nations “takes our money, tosses it down the rat hole of United Nations waste, reaches into the pockets of the working people of this country in order to put our money into the pockets of the rich in developing countries.” Id. Apart from the poor idea that Mr. Keyes seems to have about the way the United Nations manages its resources, his latter assertion is quite arrogant and egocentric. The United States is the main single contributor to the United Nations, but it is not the only one. *See also* Borst, *supra* note 36 (discussing dues of U.N. Member States). What about the money of the working people of the European Union, who contribute 36.58% of the U.N. budget? Borst, *supra*. What about tiny San Marino, whose inhabitants contribute US$4.26 per citizen to the United Nations, in comparison to the United States, which contributes only US$1.11 per citizen? In addition, the United States actually enjoys a reduction in its assessments due to the 25% assessment ceiling. Id. Consequently, the United States does not contribute its real percentage of world Gross National Product ("GNP"), which would total close to 29% of the U.N. budget. Id.
therefore, chopped his head off. In addition, a new U.N. Under-Secretary General for Management, Joseph E. Connor, a U.S. national, was appointed. That is it, we thought, now they will pay. This did not occur.

The United Nations was streamlined by cutting 1000 jobs, and we have more or less openly embraced the principle of a zero growth budget. In addition, the United Nations "politely" requested New Zealand, which, by the way, is one of the best pupils in the United Nations, to step down and withdraw its candidacy for membership in the Advisory Committee On Administrative and Budgetary Questions ("ACABQ") in order to make room for the biggest delinquent, the United States.

The whole situation is baffling—even humiliating—for most Member States. Why should France, the fourth largest contributor, be barred from imposing such requirements on the United Nations prior to paying its dues? Why should Canada pay its assessed contributions fully and promptly? Is it not distressing to see men of the stature and intelligence of Bill Richardson and Richard Holbrooke stating something like "my biggest job is to get the United States to pay our bills and our arrears," or the fact that they have to go twice a week to Washington D.C. to try and extract overdue payments. According to the President of the International Court of Justice, Justice Stephen M. Schwabel, a U.S. national, there is no question that the United States is obliged to pay.

The failure of the United States to pay its arrears is having the gravest consequences, not only in the work of the United Nations, but also in other nations as well. Since the United Nations is owed well over US$1.758 billion—sixty-six percent of it


44. See id. (noting that United States requires seat on U.N. Advisory Committee On Administrative and Budgetary Question ("ACABQ") before paying arrears).


by the United States—and has to keep functioning, it borrows money from the peacekeeping operations budget. This means, according to Mr. Annan, "that we cannot meet our obligations to member states that volunteer personnel and equipment for peacekeeping operations." In other words, Bolivia, Morocco, and Pakistan are not getting reimbursed for expenses because the United States—federal budget surplus notwithstanding—is in arrears.

B. The International Criminal Court and the Anti-Personnel Mines Convention

The United States has not yet signed two paramount and long awaited agreements, much cherished by world public opinion. They are the Rome Statute of the International Criminal Court and the U.N. Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on Their Destruction.

C. The Comprehensive Test Ban Treaty

The vital Comprehensive Test Ban Treaty ("CTBT") was sacrificed as a consequence of the tussle between the Clinton Administration and the U.S. Congress. This immolation might be due to either the new surge of isolationist feeling, or be-

47. Secretary General Kofi Annan, Address to the Fifth Committee (Oct. 5, 1999), reprinted in U.N. Press Release SG/SM/7160 GA/AB/3311.
51. See R. C. Longworth, Now That’s Clout: How Chicago Is Shaping Foreign Policy, C.H.I. TRIB., Nov. 21, 1999, at 1 (noting that rejection of Comprehensive Test Ban Treaty ("CTBT") by U.S. Congress was based more on Republican majority’s opposition to President Clinton than on merits of CTBT).

Without harkening back to the non-participation of the United States in the League of Nations, during the drafting of the U.N. Charter in 1945, U.S. President Franklin D. Roosevelt knew congressional misgivings—concerning the power of the Security Council to send U.S. troops to fight in the name of world peace—could only be overcome by providing the United States with the veto power in the Security Council. Id. at 47. According to Brian Urquhart, it is well known that Roosevelt almost lost the endorsement of the New York Times during the 1944 Presidential campaign because of his
cause of a sort of unilateralism that leads some U.S. politicians to believe that U.S. economic wealth and military muscle render international agreements futile and that the United States can go it alone. In any case, the fact that no agreement was possible between President Clinton and the U.S. Congress enraged many overseas. The United States lost all influence as an advocate for the CTBT, and the ratification process will most likely slow down. According to Mr. Clinton, the world is now, undoubtedly, a more dangerous place.

The reasons for the U.S. detachment are numerous, and although some—though not the utterly shameful delinquency on assessed contributions—may be justifiable, the bottom line is that the United States is, by its actions, setting a devastating example. The wealthiest nation in the world has chosen not to honor its dues to the organization that it helped create, and of which it is the most important member, and said dues have become a bone of contention between the Clinton Administration and the U.S. Congress. The leader of the free world went over a year without appointing an ambassador to the body entrusted with the task of securing and upholding international peace. In addition, many efforts by the Secretary General to mediate conflicts have been greeted with reservations and even suspicion. The United States does not even sign or ratify treaties whose propriety is acknowledged unanimously by the international community. There is also the aforementioned contradiction in U.S. behavior. Washington votes in favor of U.N. Missions in East Timor, Kosovo, and Sierra Leone, then withholds payment of the funds that make them possible. All these actions harm the United Nations beyond description, not only because the United States is one of the world’s foremost democratic states, but also because of the U.S. standing as the sole superpower. The immediate effect thereof is both contagious and harmful. Foreign affairs is not the main concern of today’s average U.S. citizen, and certainly not of much concern to many in the political class in this nation. We can only hope that this surge in U.S. unilateralism will only be temporary.\textsuperscript{53}

\textsuperscript{53} The trip to New York by Senator Jesse Helms, with his highly debatable inter-
II. INSTITUTIONAL IMBALANCES

The institutional imbalance that exists in the United Nations is a structural matter and, as such, is very serious. The division of power in the United Nations is quite odd and immediately astonishes anyone who comes in contact with it for the first time. The imbalance between the two most important bodies, the General Assembly and the Security Council, is weighted heavily in favor of the latter. The distribution of responsibilities laid down in the U.N. Charter clearly creates a democratic deficit that turns the United Nations into an international government of the Great Ones. As Morgenthau puts it, "its distribution of responsibilities is a constitutional monstrosity."

While the General Assembly—where all Member States are represented equally—can pass resolutions that are mere recommendations, the Security Council, under Article 25 of the U.N. Charter, makes binding decisions for Member States.\(^5\) The Security Council decides when force will be used in the event of an international crisis,\(^5\) yet the democratic credentials of the Security Council remain dubious considering that the five Permanent Members with veto powers do not stand for election.

Therefore, it is not surprising that from the outset of the United Nations, the Security Council has been subject to attack and criticism as anachronistic and undemocratic. Is it understandable or acceptable that the five Permanent Members continue to enjoy exorbitant prerogatives for having won a war that ended more than half a century ago? Should this fact make them "Permanent?" As Robert Fowler, Canadian Ambassador at the United Nations, sarcastically states, "permanence is a very long, long time."

The five Permanent Members make up the Board of Directors. The difference in power between those five and the other 183 Member States of the United Nations is a democratic anomaly. It is this anomaly that made the experienced Spanish Ambassador Jaime de Piniés, former President of the General As-


\(^5\) According to George Schwarzenberger, "The Security Council is the main custodian of world peace. Its discretionary faculty to determine what constitutes a threat to peace or an aggression is unlimited."
sembly, state that the United Nations has "violated its own texts from start" by creating a split among Permanent and non-permanent Members which, in itself, violated the "principle of sovereign equality [for] all . . . Members."\textsuperscript{56}

The often criticized inequality that irritates numerous critics of the current Security Council does not originate from the permanent status of the five aristocrats alone, but from another quality that makes them untouchable, almost divine, their possession of the veto power,\textsuperscript{57} which is the \textit{mother of all powers of the United Nations}. Although nations like the United States, who "pulled the strings" at the end of World War II, took into account their own internal political motivations when framing the veto power, the ultimate reasons for introducing it was to consolidate the post-war balance of power in order to avoid a possible clash between the victors of World War II. "The first and foremost goal of the United Nations was to spare the world the fear of another great war. Any other objectives were conceived as mere accessories to the former."\textsuperscript{58}

Let us pause for a moment and examine the origins of this fascinating tool of power in international politics. The veto question was cooked up long before San Francisco, namely in the October 1944 Dumbarton Oaks and January 1945 Yalta Conferences. The first three Great Ones, the Union of Soviet Socialist Republics ("Soviet Union" or "U.S.S.R."), United Kingdom, and United States, were the master chefs.\textsuperscript{59} Chiang-Kai-shek's China was kept waiting in the chambers next door during deliberations at Dumbarton Oaks because the Soviet Union did not want China at the negotiating table. In addition, France was not yet a participating member.

The deal was not closed at Dumbarton Oaks. The three powers agreed that the veto power was of capital importance, but for Soviet representative Andrei Gromyko, the veto power had to be absolute. It was to be used not only to stop passage of any

\textsuperscript{56} U.N. Charter, \textit{supra} note 4, art. 2(1), 59 Stat. at 1037.

\textsuperscript{57} \textit{Id.} art. 27(3), 59 Stat. at 1041.

\textsuperscript{58} This was said by George Schwarzenberger.

\textsuperscript{59} The Philippine Carlos P. Romulo, signer of the U.N. Charter in San Francisco and one of the longest serving Ministers of Foreign Affairs in the last 50 years, wrote in his memoirs: "none of the members of the Assembly had the slightest idea that the goose was cooked at Yalta and there was no other recourse than to accept it." \textit{Carlos P. Romulo, Forty Years: A Third World Soldier at the U.N.} 15 (1986).
resolution, but also to prevent the mere discussion of any issue as well. The United States and Great Britain, a tad more democratic, were ready to accept a plan in which the Great Ones could not go so far as to veto discussions completely. At Yalta, the Soviet Union yielded, accepting President Roosevelt’s proposal that the Great Ones could hold veto power on all substantive—but not procedural—issues. Any Permanent Member of the Security Council, who was a party to a conflict, would be expected to abstain from voting, but that nation could still veto any resolution on the matter. President Roosevelt paid a price for the Soviet Union’s acceptance of this nuance as Byelorus, Russia, and the Ukraine were all given votes in the General Assembly.

The Soviet Union’s obsession with an all-encompassing veto is dealt with by Winston Churchill in his Memoires of World War II. He states that Joseph Stalin appeared deeply affected by events during the Russo-Finnish war of December 1939. Stalin argued that “the British and the French used the League of Nations against us and succeeded in isolating and expelling the Soviet Union from the League, and when they later mobilized against us and talked of a crusade against Russia. Cannot we have some guarantees that this sort of thing will not happen again?” The great Churchill thus concludes his reflections on Yalta, stating that

after much striving and explanation, we persuaded him to accept an American scheme whereby the Security Council would be virtually powerless unless the ‘Big Four’ were unanimous. If the U.S., the U.S.S.R., Great Britain or China disagreed on any major topic, then anyone of them could refuse their assent and stop the Council doing anything. Here was the Veto. Posterity may judge the results.

The paragraph speaks volumes about the power vested in the highly-privileged five Great Ones, and, to a certain extent, about the origin of the recurring gridlock in the United Nations.

The veto dish, prepared and seasoned by the first three Great Ones before the obliging gaze of China, was not graciously accepted by all those attending the San Francisco Conference,

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61. Churchill, supra note 60, at 916.
62. Id.
which, fifty-four years ago, gave birth to the United Nations. Several of the fifty nations attending the San Francisco Conference anxiously pawed the ground, noticing that the veto—as it was molded by the first three Great Ones—instituted a privileged aristocracy, a five-country committee permanently directing the organization. Several nations tried to make the veto feasible by scaling it back slightly. Australia suggested that it should be limited to actions contemplated in Chapter VII of the U.N. Charter on "Action[s] with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression." Even France, before anointing herself upon the Great Ones' mantle, proposed something similar in March 1945. The Australian proposal was ultimately rejected.

Throughout June and July 1945, nations participating in the San Francisco Convention gradually came to the conclusion that the veto issue was simply a take it or leave it matter. As Carlos P. Romulo states, "Stettinius told Evatt—the Australian Foreign Minister—and me that without the veto the United States would not be a Member of the United Nations." The present Mexican Ambassador to the United Nations, Manuel Tello, has also written on the subject. "We were told, plainly and without doubt, that either the veto was granted or there would be no United Nations. The participants' desire to rely on an Organization that would save succeeding generations from the scourge of war, as stated in the Charter, prevailed." In the words of another author,

Senator Connally, member of the United States delegation, told the other delegates: 'You may go home from San Francisco, if you wish, and report that you have defeated the veto.' ... But you can also say, 'We tore up the Charter.' Whereupon the senator picked up his copy of a draft of the charter, tore it into shreds, and flung the scraps upon the negotiating table. The histrionic threat that the choice lay between a strong veto and no U.N. at all carried the day.

63. Due to Churchill's insistence, France eventually gained Permanent Member status in the Security Council.
65. Once canonized with Permanent Member status in the Security Council, France, either joyfully or resignedly, accepted the Great One's veto formula.
66. ROMULO, supra note 59, at 16.
On June 13, 1945 the veto issue, the dictat of the Great Ones, was approved by the Conference.\textsuperscript{68} The famous dictum of Cervantes, “there are but two families in the world . . . the Haves and the Havenots”\textsuperscript{69} was reenacted and coined for eternity. We can see that at the birth of the United Nations, the Great Ones were awarded a total veto on relevant matters.

The possession of the veto power is not a trifling issue. The affirmative vote, or at least the absence of a negative vote, by the five Permanent Members, carries weight in various aspects of U.N. functions. The consent of the Great Ones is essential for the admission of new Members,\textsuperscript{70} the suspension or expulsion of Members,\textsuperscript{71} the appointment of the Secretary General,\textsuperscript{72} and decisions on all other substantial matters.\textsuperscript{73}

Several of these prerogatives seem ludicrous. The fact that the United States can, against the wishes of all the other Member States of the United Nations, block the reelection of former Secretary General Boutros Boutros-Ghali is surprising. The fact that the Soviet Union exercised the veto on fifty occasions to hinder the admission of several states like Austria, Italy, Portugal, and Spain is absurd.\textsuperscript{74} Both, however, are realities, stamped in the U.N. Charter and totally in force today.\textsuperscript{75}

\textsuperscript{68.} The voting record of the paragraph containing the veto idea was as follows.

\textit{In favor 30:} Brazil, Byelorus, Canada, China, Czech and Slovak Republic, Costa Rica, Denmark, Dominican Republic, Ethiopia, France, Greece, Honduras, India, Iraq, Lebanon, Liberia, Luxembourg, Nicaragua, Norway, Philippines, South Africa, Syria, Turkey, Russia, Ukraine, United Kingdom, United States, Uruguay, Venezuela, and Yugoslavia.

\textit{Against 2:} Colombia and Cuba (pre-Castro).

\textit{Abstentions 15:} Argentina, Australia, Belgium, Bolivia, Chile, Egypt, El Salvador, Guatemala, Iran, Mexico, Netherlands, New Zealand, Panama, Paraguay, and Peru.

\textit{Absent 3:} Ecuador, Haiti, and Saudi Arabia.


\textsuperscript{70.} U.N. Charter, supra note 4, art. 4(2), 59 Stat. at 1038.

\textsuperscript{71.} Id. arts. 5, 6, 59 Stat. at 1058.

\textsuperscript{72.} Id. art. 97, 59 Stat. at 1052.

\textsuperscript{73.} Id. art. 27, 59 Stat. at 1044 (emphasis added).

\textsuperscript{74.} The United States used the veto in this manner on 20 occasions.

\textsuperscript{75.} Overall, the Soviet Union or Russia has used the veto on 126 occasions, 124 times by the Soviet Union, and twice by Russia. The United States has exercised the veto 84 times, the United Kingdom 93 times, China 24 times, and France 18 times. The French vetoes were mostly related to its colonial past in Indochina, the Suez, and Bizerta.
III. THE PENDING UPDATING

A. Examples of the Situation

The abusive exercise of the veto power certainly erodes the legitimacy of the United Nations, especially when the mere threat of a veto effectively brings the United Nations to a standstill. Let us examine two recent examples. Earlier this year, the Republic of Macedonia severed diplomatic ties with the People's Republic of China and established ties with Taiwan. Beijing's anger was understandable, but its reaction, casting a veto on the extension of the deployment of the U.N. Preventative Deployment Force ("UNPREDEP") in Macedonia was incorrigible. Was a great power serving the cause of world peace in this case? Was not China attempting to get even with Macedonia at the expense of the United Nations and the stability in the Balkans?

The case in Kosovo has a potentially larger legal and political impact. In late March 1999, when Milosevic walked away from the Rambouillet Agreement, which was completed with the participation of Russia, the international community felt compelled to take action to avoid a new shameful episode of ethnic cleansing as seen in Bosnia. The Security Council should have provided legal cover for the intervention, but the threat of a Russian veto loomed large in the halls of U.N. Headquarters. Most believed at the time that Russia, or even China, would cast a veto vote. To avoid that foreseeable impasse, NATO had to step in unilaterally. The prevailing desire among the majority of Member States at that time was not to let Milosevic's behavior go unpunished. The crushing defeat of the Russian-sponsored resolution is a telling example of said attitude.

The issue is that one government, the Russian or Chinese in the case of Kosovo, or the United States in other instances, can bring to a crashing halt the elaborate machinery designed to uphold and defend world peace and punish aggressors. The will of


one Member State, against that of the remaining 187, may result in an international operation occurring outside the legal framework of the U.N. Charter. All this is based on the outcome of a war that ended fifty-four years ago.

An update of the United Nations, which substantially mitigates its institutional imbalance and redresses the not-always-enlightened despotism, is, unfortunately, not plausible today. The United Nations, however, does need to revitalize the General Assembly and make the Security Council a more representative body. This can be accomplished by enlarging the Security Council, and by limiting, if not eliminating, the use of veto by the Permanent Members.

Proposals to "democratize" the veto, i.e., curtail its omnipotent nature, are countless. The most revolutionary would be to eliminate it. One could apply the principles of copyright legislation to the veto. The victors of World War II concocted the veto, and they patented it at the San Francisco Conference in 1945. What is the time limit that international law grants to the authors of any literary creation before it enters the realm of public property, sixty-five years, seventy-five years? According to this estimate, even if we began counting after the death of the veto's last creator, Winston Churchill, the exclusive right of the Permanent Members to the veto should disappear in 2010 or 2030. At that time we could consider the issue again. What nations, due to their level of influence, will have the right to control the power structure of the United Nations in the second decade of the twenty-first century? What will the balance of power in the international arena look like in 2010 or 2030? In this respect, I was just kidding. Before the current veto masters blow me up, I

78. The issue of poor representation is another complaint aimed at the Security Council. In 1945, 11 states made up the Security Council, out of a total of 50 U.N. Member States. In 1999, the Security Council has 15 members, out of a total of 188 U.N. Member States, and of these 15, five are Permanent Members with a veto, and 10 are elected without veto. The Security Council should be enlarged so that many more nations have a seat at the heavenly table. So far, almost everybody agrees. A Pandora's Box opens, however, when one intimates the possibility of creating new permanent seats. Obviously, people will kill for them. Who would be entitled to sit with the aristocracy? The wealthiest? Why? The nuclear nations? Why? Those with the heaviest populations? Why? The most industrious members of the United Nations? By which standards? And above all, the million-dollar question, who wants to create a new privilege? Who wants to grant a new member the power to paralyze the international community, and the United Nations, in order to defend their strict national interest, or that of their friends or clients, or just because of a tantrum?
will consider other possibilities to alleviate their all-powerful status.

B. Possible Solutions

The first solution has already been devised. It is the U.N. "Uniting For Peace" Resolution,\textsuperscript{79} adopted at the outset of the Korean peninsula conflict in 1950. Under this plan, if the Security Council is faced with a serious situation, but is paralyzed because of the position of one Permanent Member, then the question of whether to take action can be rerouted to the General Assembly, which may adopt a resolution by a highly qualified majority.\textsuperscript{80}

Another possible solution is to allow the Security Council itself to override the veto of one member. A 4/5 majority of Security Council Permanent Members can declare void the blocking veto of one Permanent Member. Several personalities are advancing this possibility, including Mr. Annan. A variant of this idea is to have the Security Council take the issue at hand for "second consideration," if it was once paralyzed by a Permanent Member's veto. During this second round, the Security Council will desist only if two Permanent Members exercise their veto power.

A third solution is for the Permanent Members to declare a moratorium on the use of the veto. It is a provisional solution in that it puts off—but does not definitively solve—the problem. The advantage is that it does not imply a reformation of the U.N. Charter. Honestly though, could we expect the Permanent Members to agree to that? Lastly, the most conservative solution, which has been proposed by the German Minister of Foreign Affairs, is to compel the vetoing delegation to explain their decision.\textsuperscript{81}

These alternatives, which are geared toward making the aristocratic veto more palatable, are within the reach of anyone's imagination. Nonetheless, the chances for substantial reform are literally nil. The mere thought that the Permanent Members


\textsuperscript{80} Id.

could seriously debate the above-mentioned formulae is utterly naive. "Lasciata fora ogni speranza," to those who come on U.N. property. Paraphrasing U.S. President Abraham Lincoln, we could say that the Permanent Members disagree all the time on many things; disagree sometimes on some things; but agree all the time on a single thing, the veto. Do not touch it.\footnote{Needless to say, the Permanent Members can stop anything. See U.N. Charter, supra note 4, art. 108, 59 Stat. at 1053 (predicating amendments to U.N. Charter on approval of all Permanent Members of Security Council). They have the veto over the veto. I am not making this up.}

A revealing study by the Ford Foundation and Yale University highlights the heart of the matter. Upon expressing dissatisfaction with the United Nations, most overlook that the United Nations "can only be as effective as governments allow it to be."\footnote{THE INDEPENDENT WORKING GROUP OF THE FUTURE OF THE UNITED NATIONS, THE UNITED NATIONS IN ITS SECOND HALF-CENTURY 5 (1995).} Uncommonly true. In his previously noted speech in The Hague, the Secretary General acknowledged—more or less—the same notion.\footnote{Hague Address, supra note 3.} When addressing the five Permanent Members of the Security Council, Mr. Annan pointed out that "the Security Council [must] unite around the aim of confronting massive human rights violations and crimes against humanity on the scale of Kosovo."\footnote{Id.} In both Rwanda and Kosovo, the Security Council must "find unity in defense of our common humanity."\footnote{Id.} This diplomatic criticism of the rift between the Great Ones by the Secretary General, and the evil effects of the veto power, carries the weight of a premonition.

Will the lack of unity in the Security Council and the blessed veto make the United Nations, "ce machin-là" in De Gaulle's words, a humanitarian ornament? Will the Security Council end up, out of sheer "veto heartburn," passing its trappings out to any given G-8 and killing the United Nations? The United Nations or the world at large must urgently reassess the concept of humanitarian intervention. Should the international community resign itself to remaining passive when confronted with a blatant atrocity in the twenty-first century because of the scrupulous respect for the principle of sovereignty or the use of veto by one nation? It is a terrible dilemma. "So attention must be paid."