commentary

Is U.N. Peacekeeping a Growth Industry?

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United Nations

The U.N. Security Council in session.

Several recent articles in *JFQ* and other military journals assume that the sudden increase in the number and complexity of U.N. peacekeeping operations will continue indefinitely. Straight line projections are notoriously unreliable as a basis for prediction, however. In this instance, they are particularly unreliable, because the present trend raises serious and difficult problems of law and policy, especially for the permanent members of the U.N. Security Council.

The reasons for this judgment emerge sharply from even a brief review of the evolution of U.N. peacekeeping in the perspective of the policies supposed to govern such activities. The U.N. peacekeeping efforts in which we have lately been involved in Somalia, Bosnia, and Haiti are a sub-set of a much larger class of political and military actions, all of which are in fact intended to keep (or restore) peace.

As a matter of practical politics, the notion that the major powers of the state system at any given period have a special responsibility for keeping the peace was first proclaimed in the Treaty of Vienna which brought the Napoleonic Wars to an end in 1815. The conception of peacekeeping adopted by the Congress of Vienna was simple and clear cut. It remains the essence of the idea of peacekeeping today.

The Treaty of Vienna called upon the leading powers to take three kinds of action: first, to hold regular meetings of the sovereigns or their ministers; second, to consult at those meetings about their common interests; and third, to agree "on measures most salutary for the repose and prosperity of the nations and for the maintenance of the peace of Europe." This program recognized the special importance of the Great Powers because they have military strength but was meticulously based on the political fact that each state was deemed to be sovereign.

Until 1914 the main European powers, sustained in their resolve by the fear of a new Napoleon, followed these prescriptions with remarkable success: they met in Congress from time to time, consulted about threats to the peace, and sometimes agreed on diplomatic or military measures to prevent war or to smother it in negotiations. Save in two instances—the Crimean War and the Franco-Prussian War—the new habits of the Concert of Europe prevailed, and even then concerted Great Power diplomacy helped to keep those wars brief and limited.

For most Americans the Concert of Europe is a dim and unattractive memory. The names of Castlereagh, Metternich, Talleyrand, and Czar Alexander I, the chief delegates to the Congress of Vienna, are hardly household words. At most, those men are recalled as reactionary enemies of all the causes most dear to the romantic liberalism of the early 19th century. Their effort to outlaw the slave trade is perhaps the only exception to that grim verdict.

Yet the achievement of the Congress of Vienna has turned out to be as creative and far-sighted as that of the 55 men who met in Philadelphia in 1787 to write a new constitution for the United States. Between the Congress of Vienna and 1914, the Concert of Europe gave the world a century of general peace which proved hospitable to social progress as it should be defined: the emergence of democracy, end of slavery, acceleration in vindicating the equality of women, development of trade unions and the welfare state, and the flowering of science, learning, and the arts.

The successors to the 19th century European statesmen, a group which now includes

American, Japanese, and Chinese members among others, can claim no such record. After violent exertions in two appalling wars and a prolonged Cold War, they can claim only that they barely managed to prevent the death of world civilization. It remains to be seen whether they can restore the health of the weakened polity which has survived.

In 1914, of course, the Concert of Europe failed to prevent war. One of the strongest considerations in President Wilson's decision to lead the United States into the war in 1917 was the conviction that the Concert of Europe had to be institutionalized and strengthened in order to make it an effective League to Keep the Peace. Wilson came to realize that, unless the United States joined the Western Allies in the war, it would have no voice in the peace, and could not therefore expect to help the Concert of Europe develop into an effective international body capable of keeping the peace. For Wilson, this was America's most vital stake in the outcome of the war.

The League of Nations was created in 1919 as a new Concert of Europe, this time on a world scale. It was in continuous session, had an independent secretariat, and embodied the idealism of the Peace Movement; but its only instruments for action were those of the Concert of Europe—consultation, persuasion, and recommending peacekeeping measures to member states. The United States was not a member of the League, and the Soviet Union was not admitted until 1934. And most important of all, neither the United States nor its West European allies were ready to accept the burdens of peacekeeping in the world of troubles which emerged from the wreckage of World War I.

The history of the two decades between the wars is a chronicle of almost unrelieved human folly. There was a widespread loss of confidence, nerve, and will among the governing classes of all the countries. As disaster after disaster was brought on by the ineptitude of governments, the forces of evil emerged from their caves, and Russia, Italy, Germany, and then Japan were taken over by regimes of barbarism and aggression which threatened a return to the Dark Ages. Gradually Western countries and the Soviet Union rallied and barely won World War II.

In 1919 the peacemakers had made the reform of the Concert of Europe their first order of business at Versailles; in 1945, in San Francisco, they dealt similarly with what they perceived as the structural weaknesses of the League of Nations. This time, the peacemakers were led by a Wilsonian American government, which had worked with Great Britain throughout the war to prepare the draft Charter of the United Nations. The Charter was in fact adopted even before the war against Japan was quite finished.

The U.N. Charter, going beyond the Covenant of the League of Nations, flatly prohibits the use of force against the territorial integrity or political independence of any state. The Security Council is vested with "primary responsibility" for keeping the peace and endowed with two kinds of power for achieving that goal: the peaceful methods of conciliation, mediation, adjudication, and diplomacy listed in chapter VI of the Charter, and, when diplomacy fails, the novel authority to use military and economic pressure provided for in chapter VII.

So far as the use of armed force is concerned, chapter VII provides two equally legal methods for using military force to carry out the Charter rule against aggression. The Security Council, through the Military Committee and Secretary General, can conduct *enforcement actions* which could range in severity from breaking diplomatic relations to full scale war. The Charter provides detailed procedures for serious military operations. Under article 43, member states can make special agreements with the Security Council to provide the necessary force. Those troops could be called on by the Security Council when needed and would operate under U.N. command. While the founders of the United Nations assumed that enforcement actions by the Security Council would be the normal and perhaps nearly the exclusive way to keep the peace, the elaborate procedures of chapter

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VII have never in fact been used. Despite the passionate hopes attached to the Wilsonian idea, those articles are and will almost surely remain a dead letter. They have been tried in the crucible of experience and found wanting. The great power veto, indispensable to the existence of the organization, makes it impossible for a state to rely with confidence on the United Nations as the guarantor of its security. And quite apart from the veto, the tenacious force of nationalism makes anything like consistent unanimity in the Security Council nearly inconceivable.

The Charter rule against aggression has been enforced since 1945, when enforced at all, by actions of individual or collective self-defense conducted by victims of aggression and their friends without permission of the Security Council. In Korea (1950–54) and the Gulf War (1991–) such campaigns of self-defense have been blessed by the Security Council, a move which was welcome to the victims of aggression and their friends but legally unnecessary. Nonetheless, those votes of approval by the Security Council have been of enormous emotional and political significance in invoking U.N. symbolism, however mythical. The point is of capital importance, because one frequently comes across the statement that the Security Council is the sole source of legitimacy for all peacekeeping operations.

peacekeeping forces are lightly armed troops for police actions in aid of diplomacy

Article 51 provides that nothing in the Charter "shall impair the inherent right of individual or collective self-defense . . . until the Security Council has taken measures necessary to maintain international peace and security." The reason for this provision of the Charter is obvious. The document's drafters were acutely aware that the enforcement procedures of the League of Nations had failed. The enforcement articles of chapter VII were designed to remedy the perceived weaknesses of the League Covenant. The San Francisco Conference which produced the Charter in 1945 realized, however, that its bold and innovative enforcement procedures might in turn fail. They therefore underscored the importance of what is called the *inherent* right of states both under customary international law and the Charter to defend themselves against breaches of the peace until the Security Council has acted effectively to restore the peace. Thus the states would not be powerless to resist aggression if the Security Council could not for any reason undertake to enforce the peace itself.

Neither the Security Council nor International Court of Justice has as yet clearly indicated how long a period the Security Council has under article 51 before the right of self-defense may be required to yield to a Security Council enforcement action. A few people have contended that the right of self-defense is suspended in effect when a complaint is put on the Security Council's docket. This is an absurdly narrow reading of the language and policy of article 51.[1] Certainly state practice gives no support for such a view. In the long cycle of Arab wars against Israel, for example, it has never been suggested that Israel lost its right of self-defense when the Security Council took cognizance of the conflict and put it on the docket. As the ultimate buckler of sovereignty, the right of self-defense cannot be impaired so lightly, especially if the Security Council is relying on inadequate or ineffectual measures to restore the peace.

The only way the state's inherent right of self-defense can be forced to yield to a Security Council enforcement action is by a Security Council resolution "deciding" that the action of self-defense has itself become a breach of the peace. Such a resolution would of course be subject to a great power veto.

There is a third category of uses of force considered legal under the Charter, *peacekeeping* actions recommended by the Security Council or indeed by the General Assembly. In the U.N. vocabulary, peacekeeping forces are lightly armed troops for demonstrations or police actions in aid of diplomacy—the deployment of U.N. forces between belligerents to help monitor a cease-fire agreement or demilitarized zone, for example. One U.N. official calls it a "non-coercive instrument of conflict control,"[2] a definition which accurately characterizes the policy Secretary General Dag Hammerskjold and the Security Council of his day thought they were applying when they invented it shortly after the Suez Crisis of 1956, and then tried to use it again in the Congo crisis of the early 1960s. Hammerskjold called

these operations *chapter six-and-a-half* procedures, a way of moving from the entirely peaceful methods of chapter VI to the far different measures of chapter VII.

In Hammerskjold's view, U.N. peacekeeping operations could be conducted only with the consent of states where they were to take place. The force was to be scrupulously neutral between the parties and use deadly force only to defend itself or perhaps its U.N. mandate.

The Charter makes no express provision for U.N. peacekeeping activities of this kind. But the International Court of Justice has decided that the General Assembly or the Security Council have broad implied authority to organize and use such forces as they may deem "necessary and proper" in order to carry out diplomatic efforts to promote the peaceful settlement of disputes. The International Court of Justice has said with emphasis that such uses of force are not *enforcement actions*, but are legitimate activities of the organization, part of its armory of diplomatic methods for resolving disputes under chapter VI by peaceful means.[3]

The first two large-scale U.N. peacekeeping exercises took place in the Middle East after the Suez Crisis and in the Congo during the 1960s. Both ended in recrimination and controversy.

The Secretary General at the time, Dag Hammarskjold, instructed peacekeepers to take no sides in the Congo civil war, save to make sure that Belgian or other non-Congolese forces did not participate. Not unnaturally, it proved difficult to reconcile these goals, and in the end some U.N. peacekeepers used a considerable amount of force to defeat white mercenaries and others who were helping the secessionist government of Katanga province. The Congolese government prevailed, and the civil war ended. But it took an opinion of the International Court of Justice to persuade the French and Soviets to pay their assessed share of the costs for the operation. They had refused to pay because they thought the peacekeeping effort was illegal under the Charter. There is still an active controversy about who ordered the final attack but no controversy about the outcome.

The final days before the Six-Day War of June 1967 reveal how dangerous and unrealistic Hammarskjold's second rule can be. The U.N. Emergency Force (UNEF) had been established after the Suez War of 1956 to patrol an area between Israeli and Egyptian forces along the Eastern border of the Sinai Desert. As worldwide anxiety focused on the Arab forces being deployed in Sinai positions to attack Israel, Egyptian President Nasser asked U.N. Secretary General U Thant to remove the UNEF troops from parts of the *de facto* Israeli-Egyptian border. In all probability, Nasser expected to be restrained by the strong pressure of the Western powers not to start a war. The Secretary General took the position that if Nasser wanted part of the UNEF forces removed, he would have to remove them all. This was done over the furious protest of President Johnson, and the Six-Day War became inevitable.

The recent crop of peacekeeping operations has blurred the distinction between chapter VI and VII in U.N. practice. If peacekeepers are authorized by the Security Council to use force on a considerable scale, it is no longer possible to pretend that they are present in host states only with their permission and only as neutrals. The Congo episode of 1960–64 dramatizes this dilemma.

Immediately after Belgium liberated the Belgian Congo in 1960 to become the Republic of the Congo, the rich province of Katanga formally seceded with the help of some Belgian officers and European mercenaries claiming recognition as an independent republic. The Security Council, taking jurisdiction at the request of the Secretary General, undertook to help maintain the territorial integrity and political independence of the Republic of the Congo within its original boundaries, assist in maintaining order, secure the withdrawal of foreign troops and mercenaries, and prevent civil war. Clearly Security Council policy in the Congo, Somalia, Haiti, and Bosnia went beyond the neutral posture for peacekeeping forces which had been deemed mandatory at an earlier point. It is hardly self-evident that U.N. forces should be or can be neutral between aggressor and victim. Will the legal advisors of foreign offices acquiesce in so radical a change in the legal distinction between chapter VI and VII? Can the Security Council authorize peace enforcement actions not through the

special procedures foreseen by article 43, but through procedures which have emerged in recent peacekeeping episodes? Is the procedure prescribed by article 43 mandatory? Does it embody a fundamental principle of policy? As a matter of usage, will *peacekeeping* operations of this kind become the equivalent of what have always been regarded as enforcement actions?

The issue will arise shortly if the Security Council utilizes the precedent of its practice in dealing with the crises in Somalia and what once was Yugoslavia as a way of dealing with the urgent problem of *failing states*, that is, states which the Council finds are incapable of meeting their international responsibilities. This is the most striking procedural development and potentially most important substantive development in the recent peacekeeping practice of the United Nations.

The loose and flexible procedures which the Security Council has pursued in establishing and managing peacekeeping operations since the Congo incident thirty years ago raise the question with which we began: the equal legality and legitimacy under the Charter of enforcement actions and actions of collective self-defense in carrying out the Charter rule against aggression. The point is underscored by the willingness of the Council to *delegate* to NATO the military responsibility for carrying out a peace agreement for Bosnia, if one is made.

why should NATO go through the process required for a Security Council resolution

Under the Charter, members of NATO have the right to use force in the former territories of Yugoslavia to defeat and reverse the consequences there of aggressive acts and other violations of the laws of war committed during the last two years by Serbia and Croatia. The consent of the Security Council would not be required for such an action on the part of NATO.

The permanent members of the Security Council would have to resist any attempt by the Secretary General to establish a rule requiring Security Council authority before NATO undertakes an action of collective self-defense which raises a fundamental question. Such a rule would violate the basic principle of article 51 of the Charter. As Secretary of Defense William Perry has recently made clear, NATO forces in Bosnia would be directed by NATO arrangements for command and control, not those of the United Nations. That being the case, why should NATO go through the slow, difficult, and uncertain process required for a Security Council resolution of prior approval?

What bearing does the U.N. experience with peacekeeping operations of this kind have on the universal aspiration for an effective system of collective security against aggression? For large-scale military operations like those in Korea, Cuba, Vietnam, or the Persian Gulf, arrangements of collective self-defense offer the only practicable way toward effectiveness in enforcing the Charter rule against aggression. Since the procedures of article 43 are not available for reasons mentioned earlier it behooves the states to give up the quest for a new mechanism, a new bureaucracy, which might prevail where the League of Nations, Security Council, and other institutional devices have failed. In this realm, wisdom comes with the realization that while Woodrow Wilson's insight was correct in viewing the failure of the Concert of Europe to find a diplomatic solution for the crisis which followed the archduke's murder in 1914 as the proximate cause of World War I, his remedy for reforming the Concert was misconceived. Neither the shortcomings of the Concert of Europe nor the United Nations can be cured by a new institution and a new bureaucracy, or by reinforcing the Security Council's power to pass legally binding *decisions*. In its nature, the state system is still a congeries of sovereign states, which can be led only by the achievement of consensus among its leaders. Its basic procedures are still the meetings, consultations, and recommendations of the Concert of Europe, not the commands of a non-existent sovereign. For peacekeeping, the model of the Concert of Europe is far more realistic and relevant than all the well intentioned experiments in building the international machinery of a superstate. **JFQ**

NOTES

[1] Eugene V. Rostow, "Until What? Enforcement Action or Collective Self Defense?," *American Journal of International Law*, vol. 85 (1991), p. 505.

[2] Shashi Tharoor, "Peace-Keeping Principles, Problems, Prospect," *Naval War College Review*, vol. 47, no. 2 (Spring 1994), pp. 9, 10.

[3] "Certain Expenses of the United Nations," International Court of Justice, July 20, 1962, pp. 151, 165–66.