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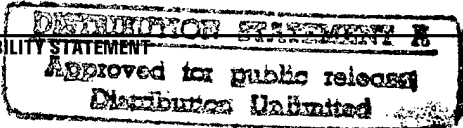
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It Takes a Region: A Proposal for An Alternative Regional Approach to UN Collective Force Humanitarian Interventions

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Submitted to Professor Marie-Anne Slaughter in partial fulfillment of the requirements for the LL.M. degree, Spring Term 1997

It Takes a Region: A Proposal for An Alternative Regional Approach to UN Collective Force Humanitarian Interventions

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I. Introduction

The demise of the Soviet Union, the recent kaleidoscope of human apocalypses in Iraq, Somalia, Bosnia-Herzegovina, and Rwanda, and the corresponding upsurge in United Nations (UN) peacekeeping missions all have once again lead to a myriad of governmental and academic proposals seeking to improve the UN's collective enforcement capabilities.[1] Against the backdrop of intrastate humanitarian pressures, these proposals center on either revitalizing the stillborn UN collective enforcement security apparatus, urging the creation of a UN rapid deployment force, or a establishing a standing blue helmeted army. If history is any guide, these new proposals are destined to suffer the same fate as all previous UN blue-helmeted collective enforcement proposals, outright rejection or death through neglect. This paper attempts to discern the doctrinal reasons for their cold reception and to suggest an alternative approach to collective enforcement of humanitarian norms. The approach suggested in this paper uses liberal international law assumptions to construct a regional approach (one not necessarily defined in terms of geographical contiguity), and to argue that such an approach is one way in which effective collective enforcement can became reality instead of remaining mired in the realm of aspiration.

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[1] Although their are many variations on the definition of collective enforcement, with a purely technical one being, "a guarantee of united reaction against whoever might transgress . . . a universal treaty obligation to enforce peace whether doing so happens to be in the state's immediate interest or not." *see* Richard K. Betts, *Systems for Peace or Causes of War?* International Security, Vol. 17, No.1, Summer 1992 at 5, 9, this paper uses the term collective enforcement to refer to UN or regional arrangements of "any sort which involve the probability of joint military activity in a crisis by two or more states." Inis L. Claude, *Swords Into Plowshares* 225 (3rd. ed., revised, 1964).

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Specifically, after identifying two understandings regarding the norm of nonintervention, and how these relate to current collective force proposals, the paper surveys the UN's collective enforcement capabilities as originally conceived when the UN was founded. Past and present UN - centered collective force proposals are then reviewed in order to discern how they reflect their proponents' conceptions of sovereignty and the international community. These conceptions are then compared to current global characteristics to determine if they congruent with the inter- and intra- national dynamics currently affecting the world community. Finally, using the assumptions found in a liberal approach to international law, this paper argues that collective force proposals centered around regional organizations are more consistent with global changes and challenges facing sovereign states, and are thus more likely to find a platable reception in the world community. In short, this paper finds that the political and academic capital directed at enhancing UN collective action through UN-controlled military institutions is better spent at refocusing collective-security proposals towards improving and integrating regional organizations. Supporting regional organizations, and fostering their cooperation with the UN, this paper concludes, is more likely to result in a lasting peace, is better suited to the post-cold war era of superpower retrenchment and increased regional activity, can better promote and protect humanitarian norms, and will better aid in securing the major objective of humanitarian intrastate intervention -- saving human lives.

II. Collective Enforcement and Nonintervention

All UN blue-helmeted collective enforcement proposals have one objective - to

provide the UN with the capacity to intervene in a sovereign state, with or without the targeted state's consent.[2] Although intervention can be thought of empirically as action by a state along any point along a continuum with military coercion or force on one end and attempts to isolate and influence another country on the other,[3] this paper utilizes the term "intervention" to refer to the "physical crossing of borders with a clear cut purpose taken under the aegis of the UN or one the regional associations incorporated with the UN framework."[4] The humanitarian tragedies in Rwanda, the former Yugoslavia, and Iraq have highlighted the reality of one subspecies of military intervention, intrastate humanitarian

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[2] Indeed, past UN collective force proposals have been rejected precisely because of the fear states had that the UN force would develop an independent capacity to intervene in states. *See e.g.* Ralph P. Goldman, Is It Time To Revive the UN Staff Committee 9-10 (Occasional Paper Series No. 19, 1990)(the rejection of Trygve Lie's UN Guard force was based on fear it would be an armed force subject to the control of the Secretary General and set a precedent for a independent UN armed force). Current UN centered collective force proposals continue to plan for interventions. One, for example, noted that since 1988, 62% of authorized peace operations have related to intrastate conflicts, as have 82% of the 11 operations established since January 1992. 1995 Canadian Proposal: Department of Foreign Affairs and International Trade, Towards a Rapid Reaction Capability for the United Nations (September 1995) at <http://www.dfait-maeci.gc.ca/english/news/newsletr/un/rap1.htm>1995. Although the proposal states that a "rapid reaction capability" does not "necessarily lead the UN towards interventionism," the authors of the Canadian proposal admit that the "Security Council has become willing to contemplate action in a more diverse range of situations than prior to 1988," *id.*, a fact not lost on states.
[3] Richard Little, *Recent Literature on Intervention*, *in* Political Theory, International Relations, and the Ethics of Intervention 13, 15 (Ion Forbes & Mark Hoffman, eds., 1993)("intervention can be equated with the whole of international relations")
[4] Ian Forbes & Mark Hoffman "Introduction: Intervention and State Sovereignty in the International System," *in* Political Theory, International Relations, and the Ethics of Intervention, 1, 10 (Ion Forbes & Mark Hoffman, eds., 1993)("physical crossing of the borders with a clear cut purpose"); Anne-Marie Slaughter Burley & Carl Kaysen, *Introductory Note: Emerging Norms of Justified Intervention*, *in* Emerging Norms of Justified Intervention 7 (Laura W. Reed & Karl Kaysen, eds., 1993)("taken under the aegis of the UN or one the regional associations incorporated with the UN framework.").

interventions, or "forcible action without the prior invitation or consent of the target state for the specific purpose of protecting fundamental human rights,"[5] Collective force proposals thus directly address what many have observed as the increased "willingness on the part of the UN to breach rigid interpretations of the right of states to non-interference in their internal affairs."[6]

In determining the basis behind 50 plus years of rejection of collective force proposals, the paper proceeds on the assumption that the manner in which interventions in a sovereign state are conceived, justified, and ultimately accomplished reflects a particular understanding of the international community. In contrast to the interventionary purpose of UN collective force proposals, and although internationalists such as Hedley Bull have concluded that, empirically, intervention is "endemic,"[7] and a "built in feature of international system,"[8] a norm of non-intervention has generally been asserted by international legal scholars and international courts since Emmerick de Vattle broadly defined intervention in the 18th century as a "breach of the sovereignty of the target state."[9]

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[5]Thomas G. Otte, *Military Intervention: Conclusions and Reflections, in* Military Intervention -From Gunboat Diplomacy to Humanitarian Intervention 197-98 (Andrew M. Dorman & Thomas G. Otte, eds., 1995). *See also* Comfort Ero and Suzanne Long, *Humanitarian Intervention: A New Role for the United Nations?* International Peacekeeping, Vol. 2, No. 2 140, 141 (Summer 1995) (defining humanitarian intervention as "the use of armed force for humanitarian reasons").

[6]Trevor Findlay, *The New Peacekeepers and the New Peacekeeping, in* Challenges for the New Peacekeepers 1, 12-13 (Trevor Findlay, ed., 1996).

[7]Forbes & Hoffman, *supra*, note 4 at 1.

[8]Thomas G. Otte, *On Intervention: Some Introductory Remarks, in* Military Intervention - From Gunboat Diplomacy to Humanitarian Intervention 3 (Andrew M. Dorman & Thomas G. Otte, eds., 1995).

[9]Otte, *supra* note 8 at 3-4. *See also* Peter Malanczuk, Humanitarian Intervention and the Legitimacy of the Use of Force 8 (1993)(stating that the principle of non-intervention was

Although subject to exceptions,[10] the norm of nonintervention was firmly established prior

to World War II.[11] After the United Nations was established, the norm of non-intervention

became even more crystallized, many scholars argue, in Article 2(4) of the UN Charter which

prohibits the use "force or threats of force" against the "territorial integrity or political

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formulated by Wolff and Vattel): Lori F. Damrosh, *Changing Conceptions of Intervention in International Law, in* Emerging Norms of Justified Intervention 91 (Laura W. Reed & Karl Kaysen, eds., 1993)(stating the norm against intervention originated in unwritten custom and that Emerich de Vattel first used that term in 1758). According to some scholars, one of the most recent International Court of Justice cases defining sovereignty in terms of the supreme, unquestioned authority of a state over persons and objects in its territory is *Military and Paramilitary Activities (Nicar. v. U.S.)* 1986 ICJ 14 (1986) where the Court ruled that the principle of nonintervention permitted each state to decide its political, economic, social and cultural system and the formulation of its foreign policy freely for itself. According to the Court, this principle of nonintervention is so great that even should a government violate a pledge to an international organization to hold free elections and respect human rights, (such as what the Sandinistas in Nicaraqua committed to the OAS that it was willing to do), and instead, set up a totalitarian regime, the norm still holds. *Id. See* discussion of the case in Anthony Carty, *Intervention and the Limits of International Law, in* Political Theory, International Relations, and the Ethics of Intervention 32, 41 (Ion Forbes & Mark Hoffman, eds., 1993).

[10]Some theorists asserted that a state could intervene "to protect the lives and property and material interests of its nationals abroad," and second, "a state could intervene in situations where another State mistreated its own citizens in a way falling so far below the general standards recognized by civilized peoples as to shock the conscience of mankind." Ero and Long, *supra* note 5 at 142-3. Additionally, others postulated basic principles of humanitarian intervention which involved severe human rights violations, exhaustion of all other remedies, disinterestedness, proportionality, and co-operation with relevant international organizations." *Id.*

[11]As noted in one article regarding this period:

> The League of Nations did not provide for a right to intervene. Among the conventions during the interwar period (1918-39), the 1928 Convention on the Duties and Rights in the Event of Civil Strife prohibited intervention even by nations of one state in the affairs of another. Similarly, the 1933 Montevideo Convention on the Rights and Duties of States maintained that no state had the right to intervene in the internal or external affairs of any other.

Ero and Long, *supra* note 5 at 143.

independence of any state inconsistent with the purposes of the United Nations."[12]

Recently, however, and especially with the international upheavals occurring since the end of the cold war, the norm of non-intervention based on state "sovereignty" has been increasingly challenged by scholars who would interpret this norm on the basis of human rights and self determination. Instead of following eighteenth century thinkers such as Vattle and Woolf, who equated intervention with a violation of state sovereignty by establishing an analogy between individuals and states, "[thus arguing] that because all individuals have a right to their independence, so by analogy, all states have a similar right,"[13] many scholars have rethought the foundations of non-intervention utilizing positions enunciated by founders of modern international law such as Grotius and Pufenddorf. Grotius, for example, "conceived of individuals, not states, as the subjects of international law," and argued "that intervention to assist individuals in conflict with the state is perfectly legitimate provided the cause is just."[14] Moreover, many scholars have recently cast a critical eye towards the proposition that Article 2(4) of the UN Charter erects "a colossal dividing wall between domestic human rights suffering and external humanitarian relief efforts," especially in

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[12]Malanczuk, *supra* note 9 at 13-14.

[13]Little, *supra* note 3 at 22.

[14]*Id.* at 23. Hersh Lauterpact has noted that the writings of Grotius contained "the first authoritative statement of the principle of humanitarian intervention - the principle that exclusiveness of domestic jurisdiction stops when outrage on humanity begins." Malanczuk, *supra* note 9 at 7. Those somewhat critical of citing Grotius in this matter point out that Grotius really meant "religious intervention" when he used the term "humanitarian intervention," *Id.* at 8, and that his position presupposed it was possible to appeal to the Church to override the authority of secular rulers on what constituted a just cause. Little, *supra* note 3 at 25.

intrastate conflicts.[15] These commentators point out: one, that Article 2(7) does not "prejudice the application of enforcement measures under Chapter VII;" two, that Article 2(7) "does not refer to sovereignty as much as to domestic jurisdiction . . the 1933 Montevideo Convention . . . stipulations speak to the internal capacity of the state entity, not to the relationships between states;" three, "domestic jurisdiction never included the right of a state to violate human rights at will, or allow such violations by standing idly by;" four, UN member states, by signing onto the UN Charter, commit themselves to a collaborative effort of promoting universal enjoyment of human rights by indicating their "willingness to relinquish . . . in part, the idea that state somehow have the exclusive sovereign rights to treat their citizens in an arbitrary manner;" and finally, "the broad mandate given the UN" relating to human rights have developed a "new constitutional principle" that "domestic jurisdiction cannot prevent the United Nations from concerning itself" in cases threatening world peace and the realization of the basic purposes enshrined in the Charter."[16]

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[15] W. Andy Knight, *The Changing Human Rights Regime, State Sovereignty, and Article 2(7) in the Post Cold War Era, in* Article 2(7) Revisited 37, 59 (Acuns Reports and Papers No. 5 1994).

[16] *Id.* at 61-62. Criticism of the ICJ case in *Military and Paramilitary Activities,* 1986 ICJ 14, a case described *supra* at note 9, reflects some of this sentiment, with one critic observing:

> The Court supposes that States are somehow moral agents just as individuals. The notion of autonomy is a human quality which cannot be applied to the concept of the state. . . . Thus the assertions of a fundamental right of the state to choose its political system is not more than a defense of the legitimacy of any use of political power. The transmutation of words has now become the rationalization of oppression. The 'freedom," "independence," "sovereignty," "equality," "liberty" of the state means *carte blanche* for tyrants to exercise arbitrary power and deny individual freedom, that is freedom in its original sense.

Carty, *supra* note 9 at 41 *quoting* Fernand Teson, *Le People, C'est Moi! The World Court and Human Rights*, 81 Am.J.Int'l.L. 173-183 (1987).

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The debate regarding whether sovereignty's focus has, or is becoming, shifted from being territorially stat- centered to being centered on individuals continues unabated, spurred on by dynamic changes in the international community, human rights concerns, and UN actions in Iraq, Somalia, and Bosnia-Herzegovina.[17] The former UN Secretary General, Javier Perez de Cuellar stated, for example, that ". . . [i]t is now increasingly felt that the principle of non-interference with the essential domestic jurisdiction of States cannot be regarded as a protective barrier behind which human rights can be massively or systematically violated with impunity,"[18] while his successor Boutros Boutros-Ghali, noted

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[17]One scholar, Thomas G. Weiss, observes, for example, that since UN action in Northern Iraq, Somalia, and Bosnia-Herzegovina, there are "a growing number of individuals as well as institutional members of the international community who argue that there is a right to international intervention for humanitarian purposes." Thomas G. Weiss, *On the Brink of a New Era? Humanitarian Interventions, 1991-94, in* Beyond Traditional Peacekeeping 3, 5 (Donald C.F. Daniel & Bradd C. Hayes, eds., 1995). With new conceptions of intervention Contrasting "starkly" with "the conventional wisdom of the past," Weiss quotes the words of Adam Roberts, "[h]umanitarian war is an oxymoron which may yet become a reality." *Id.* Nevertheless, even proponents of a state-centered concept of sovereignty admit that there are certain human rights no longer the *domain reserve* of states, which are regarded as *jus cogins* from which no derogation is permitted and which are *erga omnis,* over which any state may exercise jurisdiction such are piracy, genocide, war crimes and aircraft hijacking. *See e.g.,* George Joffe, *Sovereignty and Intervention, the Perspective of the Developing World, in* Subduing Sovereignty, 63 (1994); Martin Griffiths, *Sovereignty and Suffering, in* The Politics of Humanitarian Intervention 36, 37 (1995). However, there is considerable disagreement over how other values are determined and whether there exists a hierarchy of human rights. On the latter issue the 1993 World Conference on Human Rights Vienna Declaration stated that:
> All human rights are universal, indivisible and inter-dependent and inter-
> related. The international community must treat human rights globally in a
> fair and equal manner, on the same footing, and with the same emphasis.

Ero and Long, *supra* note 5 at 147 *citing* the World Conference on Human Rights, *The Vienna Declaration and Programme of Action*, June1993, UN Pamphlet DPI/1394-39399, New York: UN Department of Public Information, 1993, para.5.

[18]Ero and Long, *supra* note 5 at 147.

that "the time of absolute sovereignty, however, has passed; its theory was never matched by its reality."[19] In contrast, others argue *inter-alia* that, "[i]ndividuals are not the stuff of international politics in the present system, states are. The world is divided into territorial states, which, under international law, are sovereign . . . externally there is a formal sovereign equality between all states; internationally the state holds the highest decision making authority within the land."[20] Trying to empirically determine which side of this debate had the advantage, one book dedicated entirely to exploring whether the international system was moving beyond Westphalia, that is, shifting from being state-centered towards a more international community set of relations, concluded that, although "critical case" evidence did not establish that major powers have yielded to international community, even "for major powers, sovereignty has never been absolute, and that the challenges to sovereignty have

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[19]Shahin Malik and Andrew Dorman, *United Nations and Military Intervention: A Study in the Politics of Contradiction*, Military Intervention--From Gunboat Diplomacy to Humanitarian Intervention 164 (Andrew M. Dorman & Thomas G. Otte, eds., 1995).

[20]Caroline Thomas, *The Pragmatic Case Against Intervention*, *in* Political Theory, International Relations, and the Ethics of Intervention 91 (Ion Forbes & Mark Hoffman, eds., 1993). In so arguing, she relies on the classical definition of the" Westphalian system," one characterized by another author as an "interstate system constituted by sovereign states and the particular logic that characterizes each single state . . . each motivated in its international behavior by a consistent national interest, the interstate system regulated by a balance of power beyond the principle players." Bjorn Hettne, *The United Nations and Conflict Management: the Role of the "New Regionalism," in* Preferred Futures for the United Nations 333, 333-34 (Scott H. Mendlovitz & Burns H. Weston, eds., 1995). Proponents of this view denigrate any appeal to UN actions in Northern Iraq, Somalia and Bosnia-Herzegovina as precedents for an emerging right of humanitarian intervention: "[t]he Permanent Five states, as well as other large and small regional states of the UN, are attached to the principle of state sovereignty and the doctrine of non-intervention. As yet, the concept of humanitarian intervention remains embryonic." Thomas G. Weiss, *Humanitarian Intervention: A New Role for the United Nations?* International Peacekeeping Vol. 2 No. 2, 140, 145 (Summer 1995).

multiplied in an interdependent world.[21] Collective force proposals, especially those which

attempt to address the increasing number of intrastate humanitarian problems, because they

propose organizational constructs in which states give up control over sovereign

responsibilities or territory, will necessarily reflect at least one of these conceptions regarding

the norm of intervention.   Moreover, collective force proposals will either be in

synchronization with shifting changes in the world community or fail to acknowledge them.

As noted by one author during a review of the last half century of interventionary diplomacy,

"[t]he most significant new element impinging on interventionary diplomacy is the role

played by the United Nations and regional entities especially in Europe."[22] Accordingly, by

analyzing both UN-centered and regionally-based collective force proposals with regard to

their underlying interventionary premise and their coherence with the changing nature of

state sovereignty, one could begin to infer the reason for their rejection or potential

acceptance by the world community. The approach to collective force enforcement which

best accounts for, and works with, both the conception of intervention embraced by various

members of the world community, as well as with the changing nature of state sovereignty,

is the approach which is likely to be adopted. The UN's collective enforcement and

intervention history must therefore be reviewed, in order to discern the viability of collective

force proposals in this regard.

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[21]Gene Lyons and Michael Mastanduno, *State Sovereignty and International Intervention;
Reflections on the Present and Prospects for the Future, in* Beyond Westphalia 250-51 (Gene
Lyons & and Michael Mastanduno, eds., 1995).
[22]Richard Falk, *The Complexities of Humanitarian Intervention: A New World Order
Challenge,* 17 Mich.J.Int'l Law 491, 492 (1996).

III. Harbinger of Future UN Collective Force Proposals? The Defunct UN Military Staff Committee.

"The Thing is most practicable, for its success all that is lacking is the consent of Europe and a few similar trifles."

---Fredrick the Great's comments on Saint-Pierre's 17th Century peace proposal for an omnipotent and all inclusive "European Society" collective security system.[23]

Although the UN, since its inception in 1945, has been the focus of aspirations for collective security, these aspirations, as originally conceived, have not been fulfilled. In fact, the UN's Charter was drafted to contain, especially in its Preamble and in Article 43 (1), references to the formation of a UN - lead collective security force. Specifically, the Charter Preamble reads in part:

> WE THE PEOPLES OF THE UNITED NATIONS DETERMINED
> to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind . . . .
>
> . . . .
> AND FOR THESE ENDS
> to unite our strength to maintain international peace and security, and . . . .[24]

Article 43 of the UN Charter requests that:

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

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[23]Larry L. Fabian, Soldiers Without Enemies 42 (1971).
[24]U.N. Charter - Preamble

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

3. The agreement or agreements shall be negotiated as soon as possible on the initiative if the Security Council. They shall be concluded between the Security Council and Members or between the Security Council and groups of Members and shall be subject to ratification by the signatory states in accordance with their respective constitutional processes.[25]

The UN Charter also provided an organizational framework of sorts for a UN collective force. Under Article 46 of the UN Charter, "[p]lans for the application of armed force shall be made by the Security Council with the assistance of the [UN's] Military Staff Committee,"[26] which under Article 47, is responsible for advising and assisting the Security Council on "all questions relating to the Security Council's military requirements for the maintenance of international peace and security, the employment and command of forces placed at its disposal, the regulation of armaments, and possible disarmament."[27] With membership mainly restricted to the "Chiefs of Staff of the permanent members of the Security Council or their representatives,"[28] the Military Staff Committee (MSC) was responsible for the "strategic direction" of the Security Council's armed forces,[29] however, "[q]uestions relating to the command of such forces" were left by the drafters of the UN charter to be "worked out subsequently."[30]

According to one view, the "Military Staff Committee was originally expected to be

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[25]*Id.* at art. 43.
[26]*Id.* at art 46.
[27]*Id.* at art. 47.
[28]U.N. Charter art. 47 para.2
[29]U.N. Charter art. 47 para.3
[30]*Id.*

the cornerstone of a global 'Department of Defense' through which the security of *all* nations

could be assured. . . . MSC was to be a supranational military bureaucracy responsible, on

the one hand for enforcement planning and operations, and on the other hand, for arms

control."[31] The MSC never function as expected. The MSC held its first meeting on

February 4, 1946, and they held their last substantive meeting on July 2, 1948, when the

MSC announced that no further progress on the implementation of the MSC responsibilities

seems possible.[32]

During the period the MSC met, it agreed to reject "the idea of an autonomous

international military force, not controlled by the veto."[33] The MSC also agreed that the

Permanent Members should "contribute the bulk of the peacekeeping forces . . .however

mutual mistrust between the superpowers very quickly eliminated the U.S. and the USSR as

direct contributors."[34] The MSC failed to agree as to the size of the armed forces needed by

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[31]Goldman, *supra* note 2 at 6. This view, however, which includes the permanent members
of the security council, is a misreading of the UN charter. The UN is more accurately
described as "collective security system enforced by the Great Powers [Security Council
members] for the world at large, and no organized security system among the Great Powers
themselves. They presumably had to rely on the classic Realist balance of power." Anne-
Marie Slaughter, *The Liberal Agenda for Peace: International Relations Theory and the
Future of the United Nations, in* Preferred Futures for the United Nations 69, 75-76 (Scott
H. Mendlovitz & Burns H. Weston, eds., 1995)

[32]Goldman, *supra* note 2 at 7.

[33]*Id.*

[34]*Id.* Instead, the "General Assembly and the Secretary gradually instituted the practice of
drawing peacekeeping forces from relatively neutral, middle-sized powers." *Id.* For an
excellent overview of the UN's history of recruitment of national contingents for
peacekeeping missions, *see* Robert C.R. Siekmann, National Contingents in United Nations
Peacekeeping Forces (1991). *See also* Fabian, *supra* note 23; Department of Public
Information, United Nations, The Blue Helmets (1985) for a descriptive narratives of the
UN's use of national contingents in UN peacekeeping missions.

the UN,[35] the contribution formula for contributions,[36] and issues related to the establishment

of international military bases,[37] the stationing of UN troops,[38] and the withdrawal of UN

troops.[39]

Since the impasse on the MSC, there have been several proposals for breaking the

stalemate in the Security Council and effectively utilizing the MSC, but none have

succeeded.[40] Similarly, The Security Council, which has primary responsibility for the

maintenance of international peace and security under Article 24 of the UN Charter, very

rarely found itself, during the cold-war, agreeing as to what constituted a "threat or breach

of the peace" the prerequisite for enforcement (military) action under Chapter VII, and as

such only used its Chapter VII enforcement powers twice during the cold war, once for the

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[35]The Soviets wanted a small force that could not be a threat to national forces, "125,000 men, 600 bombers, 300 fighters, five or six cruisers, and 24 destroyers" while the U.S. wanted a large mobile force, "300,000 men, 1,250 bombers, 2,250 fighters, three battleships, six carriers, 15 cruisers, 84 destroyers, and 990 submarines. Goldman, *supra* note 2 at 8.

[36]The Soviet Union wanted equal contributions from each of the five Permanent members, "both in overall strength and in proportions of land, sea, and air contingents," while the U.S. suggested "comparable contributions," with each of the five powers contributing the type and amount of forces it was best able to provide." *Id.* at 8.

[37]The United States wanted all members of the UN "to make military bases available to the Security Council wherever they might be required," while the Soviets viewed this position as constituting a breach of national sovereignty, as would any "general guarantee of rights of passage for United States troops." *Id.* at 8-9.

[38]The United States wanted UN troops stationed in territories or waters "to which they [the contributed forces] have the legal right of access," while the Soviets "insisted that they be stationed only within the borders of the contributing nation." *Id.* at 9.

[39]After completion of their assigned tasks, the Soviets wanted the troops to withdraw within a "limit of thirty to ninety days," while the United States wanted the withdrawal to "be as soon as possible." *Id.*

[40]Secretary General Trygve Lie unsuccessfully tried to revive the Article 43 force during negotiations about enforcement of the UN partition plan in Palestine, as well as in 1950 when he tried to pitch an idea of a small force sufficient "to prevent or stop localized outbreaks," to the Soviets and Americans. Fabian, *supra*, note 23 at 61-61.

imposition of sanctions against Rhodesia (now Zimbabwe), in 1966, and once when declaring an arms embargo against South Africa in 1977.[41]

Instead, the United States sponsored an "Uniting for Peace" plan as a collective Chapter VII substitute, which introduced a new method by which collective security measures could be recommended by the General Assembly without interference by the Soviet veto.[42] Under this plan, all members were to maintain within their military "armed forces elements so trained, organized, and equipped that they could be promptly be made available to the U.N" and in so doing created a close association with regional pacts. Indeed, many communications to the UN simply stated that "national units already on NATO duty might be available for UN collective action, implying that no special units were needed."[43] Moreover, in the cases of Denmark and Norway, any newly formed UN units were also to be on call for NATO or would be used only after[44] consultation with the alliance. Accordingly, concluding that the "Uniting for Peace" resolution was converting the "United Nations into a larger edition of the Atlantic Pact," many nonaligned countries would have nothing to do with the pact.[45]

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[41]Karen Mingst & Margaret Karns, The United Nations in the Post-Cold World 66 (1995). The Korean war enforcement action was, instead of a mandatory measure, a "call for military assistance" recommended by Resolution 84 where members requested to furnish armed assistance to South Korea under the unified command of the United States of America. N.D. White, The United Nations and the Maintenance of International Peace and Security 86 (1990). *See also* McCouby & White, International Organizations and Civil Wars 240 (1995).

[42]Fabian, *supra* note 23 at 62.

[43]*Id.* at 64.

[44]*Id.*

[45]*Id.*

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In light of the cold war Security Council impasse, and the lack of a UN standing force, peacekeeping operations rather than enforcement actions became the UN modus operendi.[46] Characterized "in many respects a reversal of the use of military personnel foreseen in the Charter . . .[i]ts practitioners have no enemies, are not there to win and can use force only in self-defense,"[47] the lack of a U.N.-lead military force resulted in the use of ad hoc personnel for peacekeeping, drawn almost exclusively from the armed forces of nonpermanent members of the Security Council.[48] The size of peacekeeping operations has varied widely, and the operations can be grouped into five categories, observation, separation of forces, law and order, use of limited force, and enforcement.[49] Humanitarian intervention, designed to ensure the safely and well -being of civilian populations, has emerged in the last decade as a combination of several of these activities.[50]

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[46]Jaret Chopra & Thomas G. Weiss, *The United Nations and the Former Second World: Coping with Conflict, in* Preventing Conflict in the Post-Communist World: Mobilizing international and Regional Organizations 507, 508 (Abram Chayes & Antonia Handler Chayes, eds. 1996)

[47]Findlay, *supra* note 6 at 1.

[48]Mingst and Karns, *supra* note 41 at 68.

[49]*Id.*

[50]*Id.*

UN Peacekeeping Operations 1948-93[51] -- CHART 1

Number	Operation	Date	Location
1	UNTSO	1948-	Arab-Israeli cease fire, 572 observers
2	UNMOGIP	1948-	Kashmir Cease fire, 102 observers
3	UNEF I	1956-67	Egypt-Israel border, 6,073 troops
4	UNOGIL	1958	Lebanon, 591 troops
5	ONUC	1960-64	Congo, 19, 828 troops
6	UNSF	1962-3	Western Iran, 1576 troops
7	UNYOM	1963-4	Yemen, 189 observers
8	UNFICYP	1964-	Cyprus, 6,411 troops
9	DOMREP	1965-6	Dominican Republic, 2 factfinders
10	UNIPOM	1965-6	India-Pakistan border, 96 observers
11	UNEF II	1973-9	Egypt-Israeli border, 6,973
12	UNDOF	1974-	Syrian-Israel border, 1450 troops and observers
13	UNIFIL	1978-	Lebanon, Israeli withdrawal, 7,000 troops
14	UNGOMAP	1988-90	Afghanistan, Soviet withdrawal, 50 observers
15	UNIIMOG	1988-91	Iran-Iraq cease-fire withdrawal, 399 observers
16	ONUVEN	1989-90	Nicaraguan elections, 120 observers
17	UNAVEM I	1989-91	Angola, Cuban withdrawal, 70 observers
18	UNTAG	1989-90	Namibia, 4, 493 troops and observers
19	ONUCA	1989-92	Central America, 1,098 observers
20	ONUVEH	1990-1	Haiti elections, 2, 609 observers
21	ONUSAL	1991	EL Salvador cease fire, 669 observers
22	UNIKOM	1991-	Kuwait-Iraq demilitarized zone, 1440 observers
23	MINURSO	1991-	Western Saharan referendum, 375 observers
24	UNAVEM II	1991	Angola peace accord, 476 observers
25	UNAMIC	1991-2	Cambodia cease fire, 380 observers
26	UNTAC	1991-3	Cambodian election, transition, 19,500 observers and troops
27	UNPROFOR	1991-	Croatia, Bosnia, Macedonia, 24,000 troops
28	UNOSOM I	1992	Somalia Cease fire, 550 observers and troops
29	ONUMUZ	1993-	Mozambique elections, 7,500 observers and troops
30	UNOSOM II	1993-	Somalia, 18,700 troops
31	UNOMUR	1993-	Uganda, Rwanda

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[51]Bo Huldt, *Working Multilaterally: The Old Peacekeepers' Viewpoint*, Beyond Traditional
Peacekeeping 101, 102 at Table 6.1 (Donald C.F. Daniel & Bradd C. Hayes, eds., 1995). Not
included this chart are the UN operations in Georgia (UNOMIG), Liberia (UNOMIL), Haiti
(UNMIH) and Rwanda (UNAMIR), and Guatemala.

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Three of the UN's humanitarian operations fueled the debate on the nature of sovereignty and intervention. During the Gulf War, Iraq's invasion and annexation of Kuwait lead to the imposition by a almost united Security Council (China abstained) of economic sanctions and ultimately Resolution 678 (November, 1990) requesting member states to use "all necessary means" to restore the status quo ante, thereby legitimizing the type of subcontracted military action that began on January 16, 1991 that ultimately ousted Iraqi forces form Kuwait.[52] As noted in the above chart, the UN than sent in a peacekeeping force (UNIKOM) to monitor the demilitarized zone between Iraqi and Kuwait. More interesting in terms of the changing conception of intervention and sovereignty was the condemnation of Iraq's repression of the Kurds as "a threat to international peace and security, and authorizing humanitarian nongovernmental organizations (NGOs) to offer assistance," an action characterized by some as "an unprecedented intervention in the domestic affairs of a sovereign member state."[53] On December 3rd, 1992, Security Council Resolution 794 authorized a large US -led military-humanitarian intervention to secure ports and airfields, protect relief shipments and workers and assist humanitarian relief efforts in

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[52]Mingst and Karns, *supra* note 41 at 85. Unlike the UN's Korean action, no UN flags and symbols were used in the Iraqi military action, "nor was the US responsible to the authority of the UN through regular reporting and participation by UN personnel in the decisionmaking." *Id.*

[53]Mingst and Karns, *supra* note 41 at 85. Specifically, Resolution 688 condemned the repression of Iraqi civilians, called the consequences a threat to international peace and security in the region, demanded the Iraq cease the repression immediately, and insisting on immediate access for international humanitarian organizations "to all those in need of assistance in all parts of Iraq." Lawrence Freedman and David Boren, *'Safe havens' for Kurds in post-war Iraq, in* To Loose the Bands of Wickedness - International Intervention in Defense of Human Rights 43, 50 (Nigel S. Rodley, ed., 1992).

Somalia, a failed state where the concept of sovereignty was virtually meaningless.[54] Although the resolution referred to humanitarian relief operations, as one observer noted "There could be no thing as a purely humanitarian intervention for Somalia. Even a narrowly conceived humanitarian mission was political in Somalia's context because it denied the clans the ability to manipulate food as a tool of political control."[55] In Yugoslavia, UNPROFOR's restrictive mandate, to reopen the Sarajevo airport, secure a truce, and facilitate humanitarian relief efforts, precluded the UN forces from intervening to halt the ethnic cleansing by Serbian regulars and irregular forces that force thousands of people from their homes in a campaign consisting of gross human rights violations reminiscent of World War II atrocities.[56] During this entire period in the early 1980s the UN struggled to ensure that it would be provided the resources to mount these operations.

In 1990, the then-Secretary General Boutros Boutros-Gali requested that member states declare what military personnel they were in principle prepared to make available for UN-peacekeeping duty.[57] After a dismal response, the Secretary General reiterated his request in his Agenda For Peace document, asking for an exchange of letters between governments and the UN concerning the "kind and number of skilled personnel they will be prepared to offer the UN as the needs of new operations arise."[58] In 1994, the Secretary

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[54]Mingst and Karns, *supra* note 41 at 95.
[55]*Id.* at 94.
[56]*Id.* at 96 -97.
[57]Dick A. Leurdijk, *Rapid Deployment, the Capability Gap, in* A UN Rapid Deployment Brigade 9, 10 (Dick Leurdijk, ed., 1995).
[58]Dick A. Leurdijk, *Proposals for Increasing Rapid Deployment Capacity: A Survey*, International Peacekeeping Vol. 2, No.1, 1, 4. (Spring 1995).

General's first report since his second request for stand-by information revealed that "21 member states had confirmed their willingness to provide standby forces, totaling some 30,00 personnel - with 27 other member states considering similar commitments, totaling about 70,000 personnel."[59] This relative willingness notwithstanding, the Standby arrangements continued to fit the mold of traditional peacekeeping, whereby individual states contribute troops for UN use on a voluntary ad hoc and time consuming basis, and states continue to "have no obligation to provide troops - which the UN simply lacks."[60]

In sum, the UN military force imagined under the Charter was never constituted. The lack of agreement regarding a myriad of issues, and in particular, the divergent norms between Western and Soviet Bloc counties, doomed the MSC at inception. Peacekeeping emerged as a alternative collective force of sorts when permitted by the global powers. Even under the UN stand-by system, the reticence of members to give the UN *carte blanceh* control over their troops by reserving national control over the decision making hinders the ability of the UN to exercise its collective force capabilities. Many of the UN collective force proposals reviewed below occurred in the context of this inability of the world community to agree on the proper composition, command, and mission of a UN collective force mechanism, and the corresponding implications they raise with regard to sovereignty.

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[59]*Id.*

[60]*Id.* The unwillingness of member states to provide troops for UNAMIR (Rwanda) despite stand-by arrangements starkly illustrates the continuing control of individual states over the collective enforcement capabilities of the UN. *Id.* at 4.

IV. UN Collective Force Proposals.

Introduction

Ever since the inception of the UN there have been many plans to improve its

collective force ability. A summary of these proposals can be found in found in Charts 2 and

3.[61] **(UN Collective Force Proposals 1948-1996 - CHART 2 following page)**

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[61]The proposals constituting these charts were obtained from the following sources: 1948 Trygue Lie Proposal: Fabian, *supra*, note 23 at 61-61; Goldman, *supra* note 2 at 9, Lukas Haynes & Timothy Stanley, *To Create a Fire Brigade,* 14 Comparative Strategy 7, 13 (1995); Carl Conetta & Charles Knight, Vital Force: A Proposal for the Overhaul of the UN Peace Operations System and for the Creation of a UN Legion 67 (Project on Defense Alternatives Research Monograph No. 4, 1995); 1957 United World Federalist Oganization Proposal: Thomas C. Breitner, *et. al.,* United Nations Security Force 3 (1957); 1958 Eisenhower Proposal: John G. Heidenrich, Why US Conservatives Should Support a UN Legion 3, 4 (Project on Defense Alternatives Research Monograph No. 3, 1995); 1966 Sohn and Clark Proposal: Louis Sohn & Granville Clark, World Peace Through World Law (3rd ed., revised, 1966); 1992 French President Mitterand Proposal; William J. Durch, The United Nations and Collective Security in the 21st Century 30 (1993); John M. Lee, *et al.,* To Unite Our Strength 28 (1992); Letter dated 7 April 1995 from the Permanent Representative of the Netherlands to the United Nations addressed to the Secretary General, A/49/886; S/1995/276 at para I.8.1; 1992 Sir Brian Urquhart Proposal: Conetta and Knight, *supra* at 67; Brian Urquhart, *For a UN Volunteer Military Force,* New York Times Book Review, 3 (June 10, 1993); 1992 Unite Our Strength Proposal: Lee, *supra*; 1992 Boutros Boutros-Gali's Agenda for Peace Proposal: Boutros Boutros-Ghali, An Agenda for Peace, UN Doc. A/47/277, S/24111 (June 1992); 1994 Dutch Proposal: Letter dated 7 April 1995 from the Permanent Representative of the Netherlands, *supra*: Boutros Boutros- Gali's Supplement to Agenda for Peace Proposal; Supplement to an Agenda for Peace: Position Paper of the Secretary-General, UN GAOR, 50th Sess., UN Doc. A/50/60, S/1995/1 11 (1995); 1995 Canadian Proposal: Department of Foreign Affairs and International Trade, *supra* note 2: Haynes and Stanley Proposal: Haynes and Stanley, *supra*; 1995 Vital Force Proposal: Conetta and Knight, *supra*; 1995 Heidenrich Proposal: Heidenrich, *supra*; Director of Harvard Center for International Affairs Proposal: Heidenrich, *supra* at 18, n.32; Harvard Univ. National Security Fellows Program Proposal: Conetta and Knight, *supra* at 21; Heidenrich, *supra* at 18, n.32; 1992 Stanley II Proposal: Robert S. Stanley II, The Wave of the Future: The United Nations and Naval Peacekeeping (Occasional Paper Series 1992); Johnson Proposal: Robert C. Johnson, *Reforming the United Nations to Eliminate War, in* Preferred Futures for the United Nations 147 (Scott H. Mendlovitz & Burns H. Weston, eds, 1995).

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Sponsor	Type	Format	Size	Disposition	Significant Details	Needs "Vision" for Adoption?
1948 Trygue Lie	Gov. (UN)	Standing UN Force	1,000-5,000 troops	Rejected	UN Commanded Force, Used for, inter-alia, Guard Duty	Yes
1957 United Wld. Federalist Org..	Acad.	Standing UN Military & Police Force	750,000 troops	Not Pursued	UN Commanded Force, Total Disarmament, Compulsory International Settlements, UN Military Volunteers (with Nationality limits), Diverse UN Base Locations, UN Charter Revisions.	Yes
1958 Eisenhower Proposal	Gov	Standing UN "Peace" Force	N/A	Not Pursued	None Provided	Yes
1966 Sohn and Clark Proposal	Acad.	Standing UN Police Force	200,000 - 600,000 troops	Not Pursued	UN Commanded Force, Total Disarmament, Compulsory International Settlements, UN Military Volunteers (with Nationality limits), Diverse UN Base Locations, UN Charter Revisions.	Yes
1992 French President Mitterand	Gov.	Standing UN Legion	1,000 troops	Not Pursued	On-call force, force to be doubled within a week of deployment	Yes
1988 Soviet Proposal	Gov.	UN Deployment Force	N/A	Not Pursued	N/A	Yes
1992 Sir Brian Urquhart Proposal	Acad.	UN Rapid Deployment Brigade	5,000 troops	Not Pursued	Precursor to Standing Army, UN Military Volunteers (with Nationality limits)	Yes
1992 Unite Our Strength Proposal	Acad.	Tri-part System, UN Legion	5,000 - 15,000 troops	Not Pursued	UN Military Volunteers (with Nationality limits), Diverse UN Base Locations, UN Charter Revisions.	Yes
1992 Boutros-Boutros Gali's Agenda For Peace	UN	Standing UN Force	N/A	Not Pursued	Provisional Standby Arrangements until Standing Force under Articles 42, 43 Created.	Yes
1994 Dutch Proposal	Gov.	UN Rapid Deployment Brigade	5,000 troops	Not Pursued	Complementary to UN Standby Arrangements and Peacekeeping Forces, Direct UN Military Volunteers (with Nationality limits), One UN Base, with Diverse UN Base Locations an Option, Regional Role.	Yes
1995 Boutros-Boutros Gali's Supplement to Agenda For Peace	UN	UN Rapid Deploy-ment Brigade	N/A	Some Standby Arrangements Being Negotiated	Common Training Standards, Stationed in Home Countries, Under National Control.	N/A

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Proposals 1948-1996 (Con.)

Sponsor	Type	Format	Size	Disposition	Significant Details	Needs "Vision" for Adoption?
1995 Canadian Proposal	Gov.	"Vanguard Concept" Rapid Deployment Capability	5,000 troops	Under Consideration	Enhanced Standby Arrangements, 21 Recommendations, Including Proposing New Institutions, New UN Institutions, and Administrative and Procedural Reforms	Yes
1995 Haynes and Stanley Proposal	Acad.	UN "Fire Brigade"	5,000 - 10,000 troops	Not Pursued	Evolutionary Function, from Humanitarian to Greater Utility and Efficiency, Direct UN Military Volunteers (with Nationality limits), One UN Base, with Diverse UN Base Locations an Option, Regional Role.	Yes
1995 Vital Force Proposal	Acad.	Standing UN Legion	43,750 troops	Not Pursued	Reactivate the MSC, UN Reform and Development Program	Yes
1995 Heidenrich Proposal	Acad.	Standing UN Legion	5,000+ - 35,000 troops	Not Pursued	Direct UN Non-national Military Volunteers, Spearhead for National Coalitions, used for Humanitarian Purposes, commanded by Security Council appointed Legion Commander.	Yes

Selected   Other   Recent   Academic/Military   Proposals   Chart   3

Institution	Proposal	Size	Features	
Director of Harvard Center for International Affairs	U.N. Rapid Deployment Force	5000 troops in professional core, 60,000 troops from earmarked troops	Joint exercises for professional UN soldiers, common command prand operational procedures, UN involvement limited to logistical and air support, and right to control activities through Security Council and Military Staff Committee	
Harvard Univ. National Security Fellows Program	U.N. Multilateral Standby Force	55,000 troops	Use of Memorandums of Understanding (MOUs) for Standby Forces, New UN Structure for Political Direction, C3I capabilities, Lead Role to Permanent Members of Security Council	
1992 Stanley II Proposal	UN Maritime Agency	Standing agreements by which member nations provide most of UN's trained crews and ships	Creation of an United Nations Maritime command structure, and a parallel land command structure., professional UN training regarding peacekeeping and enforcement and naval theory, and operational training	
Johnson Proposal	UN Police Force	Minimum 20,000 troops	UN Military Volunteers, UN Charter revisions, Alternative on- call earmarked national forces,	

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As Charts 2 and 3 illustrate, none of the UN -commanded force proposals have been adopted by UN member states, and only a minority of states have entered into discussions or agreements with the UN regarding the stand-by arrangements proposed by former Secretary General Boutros Boutros-Gali.[62] One reason for this unanimous rejection by the world community could be found in the identical nomenclature and visions of many of these proposals. These proposals generally advocate either the concept of a UN-commanded standing military force or one entailin -national forces being on-call for UN duties. Although subject to individual variations, these proposals have some common characteristics, which, if examined, can lead to some tentative conclusions regarding their proponents' underlying conceptions of the international community. Specifically, although differing nomenologically, many of these proposals contain three assumptions which can be roughly related to what has been identified as the realist/legalistic approach to international law, an approach which contains the following characteristics:

- States are the primary actors in the international system. They are the units of the international system and international society, the members of international organizations and the subjects of international law
- States are unitary actors, closed spheres within which governments enjoy exclusive jurisdiction at home and sole representation abroad.
- States are opaque and functionally identical. They are indistinguishable

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[62]Forty four Member States have indicated their willingness to participate in Standby Arrangements, with 30 of these providing the requisite volumetric information and technical data that would enable of the system to work. Jordan and Denmark are the only members which have signed a Memorandum of Understanding with the UN, formalizing the legal details of their contribution to the Standby Arrangements System. David J. Scheffer, *United Nations Peace Operations and Prospects for a Standby Force,* 28 Cornell Int'l L.J. 649, 654 at n.18 (1995). *See also supra* notes 58, 59 and accompanying text.

> from one another on the basis of domestic political difference
> - Preferences attributed to States do not vary as a function of domestic regime-type or any other internal differences.
> - The constraints on State behavior in the international system are external constraints, imposed by some properties of the system itself. The constraints of power and the constraints of law are equally external.[63]

The first characteristic many of these proposals share is that they are formulated and debated with the underlying assumption that the viability of each proposal depends on the approval of each country's leadership. This characteristic reflects in part the realist/legalistic assumption that states are the primary actors in the international system, and effectively downplays, if not outright eliminates, the role of the international organization (IO), NGO, and other intrastate and transnational actor from any meaningful role in developing an approach to collective security. Second, UN-centered collective force proposals envision that threats to global peace will be manifested in a traditional military manner, e.g. through invasion. This characteristic reflects to some degree the realist/legalistic paradigm's assumption that the constraints on State behavior in the international system are external constraints, imposed by some properties of the international system itself. Thus, a myriad of other nontraditional threats to a state's security are not acknowledged as primary threats to a state that need to be addressed by UN collective security forces, including any internal threats. Lastly, many of the proposals assume that each state's governing ideology is pervasive throughout its society, capturing the loyalty of every individual citizen, regardless of content, and that all states explicitly or implicitly, seek to export this ideology, leading to

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[63]This description of the realist/legalist paradigm is found at Slaughter, *supra* note 31 at 83-84.

conflict. This assumption equates to two realist/legalistic tenants; first, that states are opaque and functionally identical and second, that states are indistinguishable from one another on the basis of domestic political differences.

The Prerequisite of Leadership Acceptance

One of the most striking characteristics of these UN-centered proposals is the assumption that the viability of each collective force proposal depends solely on its "salability" to each state's leadership. Invariably accompanying this assumption is the often admitted realization that such approval will likely not be forthcoming absent vision on the part of the relevant decision makers in each country. For example, Trygve Lie noted that the acceptance of his UN Legion proposal:

> would have required a degree of attention and imagination on the part of men in charge of the foreign policies of the principle Member nations that they seemed to be unable to give . . . to projects for strengthening directly the authority and prestige of the United Nations as an institution.[64]

The authors of the United World Federalists (UWF) study assume that their proposals for a security force and UN charter revisions will meet with reluctance by most countries, "one or more" of which are needed to present them to the UN for approval if they ever are to become viable.[65] Nonetheless, the authors state in almost quixotic fashion that "the question of what is desirable must be considered apart from what is thought to be possible. . . . What is desirable can be formulated objectively, but no man can read the future . . . if the

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[64]Urquhart, *supra* note 61 at 4 *quoting* Trygve Lie, In the Cause of Peace 99 (1948).
[65]Breitner, *supra* note 61 at 80.

goal is desirable enough the way will be found to achieve it. . . .."[66] "An honest proposal," the authors conclude, "whether or not adopted -- will be another light along the way of men's travel, that will shine as long as men have records and to which men can return for light and guidance"[67]

When formulating their proposals, Sohn and Clark recognized a number of adverse factors mitigating against their implementation, but believed the "steadily increasing risk of world catastrophe resulting from a continuance of the arms race and the continuing lack of effective world machinery to settle international disputes by peaceful means," the "increasing impatience with the vast economic waste and burden of the arms race," the "clearer realization from year to year that it is impossible to arrive at any important political settlements in the absence of an agreement for comprehensive disarmament," the eventually inclusion of mainline China (needed for a comprehensive plan for peace), and the "increasing knowledge of the ways and means whereby genuine peace can be achieved," could secure its acceptance by states.[68] Writing an author's note in 1966, Clark admitted that "peoples have been more apathetic, the governments more timid, and fortune less kind than I had hoped: and the combination has prevented the progress toward world order which in 1960 seemed to me likely, or at least possible."[69] He nevertheless retained "a reasonably optimistic view" and predicted that by 1985 a disarmament/world police force plan would

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[66]*Id.*
[67]*Id.*
[68]Sohn & Clark, *supra* note 61 at xlvi-l.
[69]*Id.* at liv.

"have been ratified by all or nearly all the nations, including all the major Powers."[70]

The Unite Our Strength (UOS) authors note that "if experience can overcome the lack of confidence many governments now profess in the United Nations, then in the new century there may evolve a UN system capable of maintaining peace or restoring security largely on its own," permitting governments to reallocate resources to other human and environmental needs."[71] However, the availability and use of such resources, the authors caution, "requires a 'vision' and a 'framework of international order and security.'"[72] The Commonwealth Institute's 1995 Vital Force proposal, subtitled, "A proposal for the Overhaul of the UN Peace Operations System and for the Creation of a UN Legion," specifically split the "political" issue of whether the "UN member states could forge the collective will necessary for clear and decisive action" from questions about "the facilities the United Nations would need to overcome a more effective instrument."[73] The authors of Vital Force contrast the failure by countries to "appreciate their stake in multinational peace operations and other cooperative security efforts" with "the alternative scenario," namely "a world of increased uncertainty, *in*security, and possibly, the reemergence of hostile power blocks . . ."[74] Sir Brian Urquart's proposal calls for its adoption by reiterating Trygve Lie's lament and requesting that nations summon up the "attention and imagination" that they failed to do when Lie's proposal was initially rejected.[75]

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[70]*Id.*

[71]Lee, *supra* note 61 at 10.

[72]*Id.*

[73]Conetta and Knight, *supra* note 61 at v.

[74]*Id.*

[75]Urquhart, *supra* note 61 *quoting* Trygve Lie, In the Cause of Peace 99 (1948).

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Defending Against the Traditional Military Threat

In addition to the assumption that the success or failure of these UN-centered proposals will depend on the receptivity of state leaders, these proposals assume, in various degrees, that threats to global peace will be manifested in a traditional military manner, e.g., through invasion by one aggressor across the territorial boundaries of another state. Accordingly, the solution proposed by many of these proposals is a conventional military one, focusing on the ability of the UN-centered forces being positioned militarily to suppressed these threats to global peace and thereby maintain world order. Thus, the 1957 UWF proposal states that UN Forces will be based on six dozen base locations around the world with about 2,000 and 10,000 per base. The locations are to be selected to correspond roughly to population density, known records of past violence, strategic location, and size of the geographical areas involved, with some locations being coastal sites, waterways and canals, inland sites, mountain sites, and island sites. Each base will have a regional headquarters (roughly one on each continent).[76]

Sohn and Granville proposed that UN forces "be stationed at military bases of the United Nations so distributed around the world as to facilitate its availability in case prompt action to prevent or suppress international violence is directed by the General Assembly."[77] Moreover, this plan makes the proviso that "no such base shall be situated within the territory of any nation entitled to fifteen or more representatives in the [reconstituted] General Assembly," to ensure that no United Nations military base would be located in any of the

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[76]Breitner, *supra* note 61 at 9-16.
[77]Sohn and Clark, *supra* note 61 at xxx.

twelve largest nations.[78] Instead, "all the territory of the world outside that of the twelve

largest nations shall be divided by the General Assembly into eleven to twenty regions for

the special purpose of distributing elements of standing components between such regions,

. . . not less than five per cent or more than ten per cent of the total strength of the standing

component shall be stationed in bases in any one of those regions, save only when the police

force has been duly called upon to take action.[79]

The UOS proposal openly admits that any concept of security beyond that

"traditionally defined" is "beyond the focus of [its] analysis," and proceeds along that basis.[80]

It therefore states that "ideally, under the UOS plan, the legion will be geographically

dispersed, with a brigade task force with limited air and naval support, stationed at three

strategically located bases, such as Cyprus, Canada, Panama, or the Philippines, with one

base selected for UN training and exercises."[81] Under the Dutch proposal, the primary option

for basing the UN brigade would be to base the brigade in one single location, with

"dispersing parts of the brigade (e.g. task forces) over several peacetime locations is a second

option."[82] However, the Dutch proposal notes that regional dispersal over several continents

could perhaps enhance the rapid-reaction capability of parts of the Brigade, but would

"diminish the training experience and cohesion of the brigade as a whole."[83]

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[78]*Id.*

[79]*Id*

[80]Lee, *supra* note 51 at 1.

[81]*Id.* at 48

[82]Letter dated 7 April 1995 from the Permanent Representative of the Netherlands, *supra* note 61 at sec. II.4.

[83]*Id.*

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Undifferentiated Ideological Threat

Finally, many of these proposals generally assume that each state, whatever its particular ideological bent, maintains a pervasive hold over its constituent internal societies. This state governmental control over internal society is so great that even individual citizens are presumed to be infected with their nation's governing ideology, and thus potential one way transnational carriers of ideological infection. Accordingly, great care is given in these proposals to prevent the transmission ideological infection to the centralized UN force through inoculating mechanisms such as an all volunteer UN force. For example, the 1957 UWF proposal states that "[b]y allowing men everywhere to volunteer for duty," a UN force would also preclude "any extremely nationalistic ideology from winning the hearts and minds of the world's people."[84] The UWF proposal also states that leadership positions in the UN force will have "no more than two members from the same continent, and no more than one from the same country," so that the "military staff will not become dangerously regional."[85] Sohn and Clark's proposed force would consist of two components, a standing component and a peace force reserve, "both of which would, save in the most extreme emergency, be composed solely of volunteers."[86] A nationality limit in their plan includes the prohibition of the number of nationals of any nation from exceeding three percent of the standing force's, or any of its land, sea, or air branch components, then existing, total strength.[87]

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[84]Breitner, *supra* note 61 at 3
[85]*Id.* at 5
[86]Sohn and Clark, *supra* note 61 at xxix
[87]*Id* at xxx

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Sir Brian Urquhart's proposal envisions establishing a "highly trained international volunteer force, willing, if necessary, to fight hard to break the cycle of violence at an early stage in low level but dangerous conflicts.[88] The UOS proposal calls for a standing legion "made up of volunteers who would be required to neither "seek or receive instructions from any government or from any other authority external to the organization," and to "refrain from any action which might reflect on their position as international officials responsible to the organization."[89] In addition, no single country or geographic region, under the plan, "would be allowed more than a small percentage of the total manning, with NCO's [noncommissioned officers] and officers allocated proportionately."[90] Moreover, the UN legion under the UFP plan, is to "be free of regional, national, or ethnic bias," with "such impartiality [being] an essential element of their effectiveness."[91] The Dutch recruitment proposal is intended to preserve the "supranational character of the UN system, with a sufficiently representative geographical distribution [being applied] as a criterion when recruiting for the brigade," although, for practical reasons, "it will not be feasible to have all nations proportionally represented in it."[92] The Dutch plan is geared to "produce a geographical distribution which is equitable as well as practical," and there would be a "direct contractual relationship between the UN as employer and the soldier as employee."[93]

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[88]Urquhart, *supra* note 61 at 4.
[89]Lee, *supra* note 61 at 37.
[90]*Id.* at 47
[91]*Id.* at 38
[92]Letter dated 7 April 1995 from the permanent Representative of the Netherlands, *supra* note 61 at sec. II.3.1.
[93]*Id.*

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The Haynes and Stanley "Fire Brigade" plan utilizes volunteers recruited worldwide, with no more than "5% of the total from one country and no more than 20-25% from a single region."[94] These soldiers would become "international military servants analogous to civil servants who join the UN Secretariat for a tour."[95] Johnson's proposed force is made up of an "individually recruited [and loyal to the UN] UN police or constabulary force," in order to overcome "problems" *inter-alia,* that "UN forces will not be impartial or effective."[96]

There are several ramnifications which arise from these proposals which evidently assume that all states are opaque and functionally identical, thus posing an equal ideological threat against which a UN force must be innoculated. First, aside from failing in the first instance to identify what generic ideological characteristic automatically renders a citizen biased or ineffective as a UN collective force member, such a paradigm pretends that there exists a higher sanitized ideology behind a UN collective force and its utilization. In fact, the UN charter, which promotes, inter-alia, the universal enjoyment of human rights, is squarely based on ideological sentiments shared by many citizens, IOs, NGOs, and member states.[97] These proposals, by failing to thereby differentiate between individual, groups, and

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[94]Haynes and Timothy, *supra* note 61 at 13
[95]*Id.*
[96]Johnson, *supra* note 61 at 170.
[97]In fact, a basic ideological compatibility was assumed to exist among the states which founded the UN in the first place. *See* Michael Howard, *The Historical Development of the UN's Role in International Security, in* United Nations, Divided World 63, 64 (1993). Moreover, these proposals' nondifferentiating approaches to ideology results in the paradoxical situation wherein, for example, democracies such as Canada and the northern European states, which by any yardstick have been identified "in and outside the UN with active, independent, internationalism," and who have "regularly giv[en] their firm political support to UN peacekeeping," Fabian, *supra* note 23 at 26, (including drafting current proposals for UN-centered collective forces, *see supra* note 61 and accompanying text and

state ideologies that oppose the aspirations of the UN Charter, and those that support them, unduly cabins the UN's ability to seek acceptance of its norms in the international community, while subjecting the proposals to rejection and criticism for maintaining such an elite and demonstratively incorrect assumption. It also provides, ironically, an ideological weapon for those states who deny humanitarian rights. These states can point to the UN's undifferentiating approach to ideology as proof that their repressive ideology is normatively equal to those states who support the UN Charter on the universality of human rights.

Second, failing to differentiate between ideologies which may be held, not only between the majorities in various states, but also between the majority and minority ideologies in a particular state, the proposals ignore the reality that in many states influence is a two way street; governments interact directly with a myriad of citizens, popular groups, NGOs and IOs, which, rather than become ideologically captured by the government, sometimes instead change the ideological positions of their government. Moreover, these same actors act transnationally, and may hold beliefs that are different from that held by their governments at any particular time. Ignoring this reality, and operating under the unrebuttable presumption that citizens are the ideological creatures of the state, creates cognizant dissonance among states and transnational actors and makes the proposals suspect in the eyes of those states and citizens who share the UN's goals of universal respect of humanitarian rights, but who are nonetheless officially held in equal suspicion with those

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Chart 2), are nonetheless categorized as just as ideologically suspect as countries such as North Korea or Cuba.

states who don't share the sentiments expressed in the UN charter.

In summary, many of the UN-centered proposals start from the assumption that the proposals' success or failure depend soley on their acceptance by state leadership, thereby accounting for their implicit or explicit appeal to a supranational vision to urge its adoption by government leaders in an attempt to overcome what are identified as parochial and myopic state concerns. Many retain a traditional view of security threats, resulting in proposals scattering UN collective military force among the world in numerous UN bases, effectively operating as UN police stations (enforcing the law) in different regions of the world (where, the assumption is, lawlessness can break out at any moment). In addition, many proposals also do not differentiate between states according to domestic regime-type, leading to the an attempt to inoculate the UN force from dangerous (but never differentiated nor specified) national ideology through a volunteer UN force with nationality or regional limitations. This creates a transparently inaccurate and unnecessary division between the UN and states which support universal humanitarian rights and respect for the rule of law, but whose ideology is categorized along with hostile ideologies as threats to peace.[98]

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[98]Indeed, the general attempt in these proposals to inoculate a UN collective force from any ideology seems to be driven by sentiments recently expressed by one University of South Florida philosopher:

> I have been told, though I have not researched it, that if you ask children to complete the sentence "I am a -----", the most common responses are gender based ("I am a girl"). I suspect, though I have not counted, that if you ask adult Americans the same question, the most common responses are employment-related ("I am a banker"). The great danger to world peace is that there are regions and contexts where many answers will be religious or nationalistic ("I am a Shiite", I am a German"). Self-concepts of this sort are intrinsically divisive and establish ready-made hostilities to those who are "other." It cannot be in our collective interest to magnify self-concepts of this

These characteristics of UN-centered collective force proposals, because they rely on these realist/legalist assumptions, are ultimately incongruent with the changing nature of the world community. They therefore contain within themselves the seeds of their own rejection by lamentably failing to provide states with any alternative other than opting between forgoing territoriality-based sovereignty or rejecting the concept of collective enforcement. Faced with such a choice within the parameters of the realistic/legalistic paradigm, the former option will always be preferred by states over the latter.[99]

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sort. They are recurrent sources of conflict and aggression and retard our evolution toward the human family.

RoyWeatherford, World Peace and the Human Family 50-51 (1993). Weatherford's quote resonates with the sentiments of Aldous Huxley's world controller character in his novel, Brave New World; "God is not compatible with machinery, and scientific medicine and universal happiness. . . The greatest care is taken to prevent you from loving any one too much. There's no such thing as divided allegiance, you're so conditioned that you can't help doing what you ought to do." Aldous Huxley, Brave New World 159, 161 (Perennial Library 1969)(1932).

[99]As one collective security study concluded:

> [A]ll proposals that suggest that the UN should go further and either develop its own military forces or actively command forces seconded to it from member states will sooner or later run up against the basic resistance of national sovereignty, even eroded as it has been over past decades. The nation-state has been the highest political unit with a monopoly of legitimate military power for the better part of five centuries. The acquisition of military power traditionally has been the first step toward establishing governance over a territory, and states are wary of taking any step that appears to begin a process that could result in the ceding of such power to the UN. To invest the organization with the power to recruit, command, and pay for military forces of its own, however minimal to begin with, would be seen to start a process of establishing a higher, global power above the nation state, which invokes deep-seated government opposition in virtually all parts of the globe.

Durch, *supra* note 61 at 33.

V. An Alternate Collective Security Paradigm.

An alternate paradigm to the realist/legalist one apparently embedded in these prior

UN centered collective force proposals is offered by a liberal approach to international law.

This approach provides assumptions which could be utilized to forge an alternative path for

states which heretofore had been faced between the Scylla of overtly conceding territorially-

based sovereignty to a UN collective force and the Charybdis of forgoing participation in a

collective enforcement force for humanitarian intervention. A liberal approach presents a

different ontology of the international system, a positive, rather than a normative theory,

characterized by the following assumptions:

- The primary actors in the international system are individuals and groups acting in domestic and transnational civil society.
- The "state" is a set of relationships between political institutions and social actors. Governments are assumed to represent some subset of these individual and groups actors. The nature of this representation, whether broad or narrow, direct or indirect, stable or unstable, is "the decisive link between societal demands and State policy.
- States cannot be generalized about as a unitary category of functionally identical actors. Their preferences and behavior will differ widely as a function of their domestic political arrangements.
- The principle source of State preferences and constraints is internal rather than external. The strength and intensity of State preferences, determined as the aggregation of the preferences of individual and group actors represented in a particular State, will determine the outcome of State interactions.[100]

These assumptions are "generated entirely independently of" the "what is

international law" and "what is the distinction between law and politics" debates, and are a

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[100]Slaughter, *supra* note 31 at 91.

"systematization"[101] of "a set of assumptions about the ontology of the international system prior to any conception of law - how we think about State conditions how we think about law."[102] They are also more restrictive than a non-state centric conception of international law.[103]

An approach to collective force humanitarian intervention that utilizes these liberal assumptions regarding international law would thus have the following attributes. First, the impetus towards, and genesis of, collective force organizations will arise not only from

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[101]*Id.*

[102]*Id.*

[103]Professor Slaughter notes that:

> Although Liberalism identifies individuals and groups as the primary actors in the international system, it assumes that the preferences of the individuals and groups, and the resulting pressures that they will exert, will be transmitted through the process of inter-state interaction. The Liberal model does not assign individuals and groups a role in the international system independent of the ways in which they can influence State institutions. International institutions are seen largely as aggregations of States who are in turn agents of individuals and groups in domestic and transnational society

Id. at 91-92. Applying these assumptions to the UN would mandate:

> a range of reforms, reinterpretations, and revised expectations. It would be neither a great power alliance nor a nascent world government, but a forum for a multiplicity of efforts aimed at "global governance." Given the heterogeneity of the organization, these efforts would range from power politics through social and economic transformation. Expectations of the organization would be lower, informed by an analysis that locates prospects for world peace and security in domestic forces often largely beyond international control. On the other hand, a wider range of potentially successful interventions would be directly legitimated by legal norms grounded in positive political analysis

Id. at 71. Accordingly, international institutions such as the UN can contribute to "state preferences formation" in three ways: by influencing preferences formation at the level of individuals and groups in domestic and transnational society; by working to change or strengthen a particular domestic political structure, and by providing a forum for inter-state interaction. *Id.* at 92-93.

governments, but also from NGOs, IOs, and other actors on the world stage. Spurred on by

dynamic world trends, these various actors on the world scene, recognizing their

interdependence and the increasingly multicentric, regional nature of the world, will

eventually pressure or lead states towards a regional approach to collective intervention, one

incorporating a broader conception of national security. Second, since the liberal approach

to international law assumes states are not unitary, functionally identical actors, regional

collective security proponents will recognize that regional security organizations founded by

disparate states will likewise not be functionally identical across the globe. In fact, a liberal

approach to collective security will recognize that, due to dissimilarities in state preferences

and behavior resulting from differing internal structures, the development of regional

organizations, and security organizations within regional organizations, will take place at

disparate times. Thus, as these regional organizations are instituted and adopted piecemeal

around the globe by states as a result of prodding by actors acting transnationally and

domestically, effective collective intervention forces which seek to ensure lasting peace and

security will also arise at different times. Once adopted in a region, however, collective

security forces would be more effective than a UN-centered approach. Finally, adopting the

assumptions of the liberal approach to international law which postulates that the UN would

not be a "great power alliance nor a nascent world government," and that a "wider range of

interventions would be directly legitimated by legal norms grounded in positive political

analysis," a regional approach to collective enforcement would recognize international legal

norms and the role of the UN as a supranational organization where a multiplicity of efforts

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are involved in global governance.[104]

Utilizing liberal assumptions regarding international law provides regional proponents of collective security with a rationale for encouraging the emergence of collective enforcement proposals centered around a "region," and explains why regional organizations may be promoted by actors seeking to adapt to the rapid, far reaching, and dynamic decentralizing tendencies in a growing multi-centric globe. Using a liberal paradigm could also explain the unavoidable fact that world powers, responding to internal political pressures and priorities, are increasingly reticent towards becoming involved in humanitarian interventions. Moreover, by focusing the locus of the collective enforcement force at a regional level, a regional approach to collective enforcement will be able to assert that individuals and groups in states will be better able to aggregate decisions regarding their concept of regional security. By linking humanitarian intervention to regional collective force proposals, human rights norms will have a better chance of being formulated and adopted along with criteria for humanitarian intervention in wayward states than they would in any UN-centered forum. Finally, as a happy consequence of being generated at a domestic and regional level, a regional approach to intervention is more likely to contain the characteristics of openness, flexibility and cooperation that would improve the likelihood of success any potential intervention. Using the assumptions found in a liberal paradigm, regional proponents of collective security can thus postulate these aforementioned characteristics of a regional approach to collective intervention, explored below in more

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[104]Slaughter, *supra* note 31 at 71, 92-93. *See also* note 103 for a excerpt containing these liberal assumptions.

detail, and argue that a regional approach constitutes the optimal path to collective enforcement, one which overcomes past rhetorical and substantive limitations found in earlier UN-centered proposals which were evidently based in a realist/legalistic world paradigm.

VI. World Dynamics and the Coming Trend Towards Regional Security Organizations

A Shared Sovereignty?

As noted above, a regional approach to collective security can be based on the assumption found in a liberal paradigm which postulates that the primary actors in the international system are individuals and groups acting in domestic and transnational society. Upon reflection, this assumption is consistent with the current nature of the world community. Multiple challenges to the traditional state-centered approach to sovereignty have emerged in an increasingly interdependent world, leading to the emergence of actors such as NGOs acting domestically and transnationally with regard to political, social and security issues constituting the core of state sovereignty.[105] These constraints in recent decades on state sovereignty have not only accordingly "increasingly involved the internal affairs of states, or how governments relate to their own citizens, economies, and territories,"[106] but have also involved how governments seek solutions to security threats not resolvable through unilateral state action.

Moreover, three primary global patterns (or "parameters that normally bind and sustain the continuities of international life") have so increased in complexity and dynamism

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[105]*See e.g.*, Jessica Mathews, *Power Shift*, Foreign Affairs 50 (January/February 1997)
[106]Lyons and Mastanduno, *supra* note 21 at 251-59.

that they have lead to the "first period of turbulence" since the the Treaty of Westphalia and

the birth of the state system, the three patterns being:

> the distribution of power in world politics through which states, IOs and other
> key actors respond to each other (a macroparameter); the authority
> relationships through which governments, multinational corporations, ethnic
> groups, and other large collectivities are linked to individual citizens (a
> macro-micro parameter); and the analytical and emotional skills of citizens
> through which they respond to the course of events (a micro parameter).[107]

These changes, resulting in the "progressive diffusion of power and technological

capacity away from both Moscow and Washington," and the birth of "multiple centers of

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[107]James N. Rosenau, The United Nations in a Turbulent World 13 (Occasional Paper Series 1992). In particular, according to one study, the microparameter has changed because individuals have undergone a "skill revolution." *Id.* at 14. "People have become," this study concluded, "increasingly more competent in assessing where they fit in international affairs and how their behaviors can be aggregated into significant collective outcomes" due to, *inter-alia,* "the advance of communications technology to the greater intricacies of life in an ever more interdependent world." *Id.* at 14-15. Likewise, the macro-micro parameter has changed, with the sources of authority shifting from traditional to performance criteria of legitimacy, with some instances involving "downward" relocation toward subnational groups (ethnic minorities, local governments, single-issue organizations, religious and linguistic groupings, political factions, trade unions, etc.), while others involve "upward" relocation of authority to supranational, intergovernmental, multinational, and inchoate social movements (the European Community, International Committee of the Red Cross, Greenpeace, Medicins sans Frontieres, etc). *Id.* at 18. Finally, the macroparameter has changed with the bifurcation of global structures, leading to the emergence of a complex multi-centric world of diverse, relatively autonomous actors, which, while not yet "push[ing] states to the edge of the global stage," states are no longer the only key actor they once where. *Id.* at 20. Empirical study seems to have verified the bifurcation of global structures, particularly in regional organizations, "regionalism in IGOs membership appears to have increased [during the period ending in 1991]," one study concluded, noting that "although global interconnectedness has increased and virtually all states in the world are institutionally linked to each other, the basic pattern of regional organizations constituting the majority of links has become even more obvious." Tom Nierop, Systems and Regions in Global Politics: An Empirical Study of Diplomacy and International Trade 1950-1991 98 (1994).

competence and initiative,"[108] have resulted in supranational and intergovernmental organizations, along with inchoate social movements, becoming entities with which states must interact, and in some cases, contend with, on the world stage. Increasingly skilled citizens have been able to interact with other sources of authority and thus have had a constraining impact on state behavior,[109] while a state's internal affairs are no longer the exclusive concern of each individual state. Economically, commentators point to the diminishing of land as a determinant of production and power in favor of human capital, resulting in even more pressure for states to internationalize as their economies become increasingly reliant on mobile factors of production.[110] Regionalization is one method states have utilized, and will continue to utilize, to harness mobile factors of production.[111]

Although the state's "central task in assuring security is the least affected" by

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[108]Walt W. Rostow, *Regionalism in a Global System, in* From Globalism to Regionalism: New Perspectives on U.S. Foreign and Defense Policies, 127, 128 (Patrick M. Cronin, ed. 1993).

[109]One striking example of this is the criminal investigation recently instituted in Spanish courts on behalf of 320 Spanish citizens who formerly lived in Argentina whose family members had been kidnapped and presumed killed by the Argentine military. The Madrid judge, Baltasar Garzon, has invoked international law to argue that "'the crimes against humanity,' like the ones he is pursuing in this case can be tried anywhere and are not subject to any time limit." *Unforgiving Spain Pursues Argentine Killers,* The New York Times, October 24, 1996, at Section A, p.3. At some stage the judge envisions issuing arrest warrants, which will then "'become international arrest warrants.' Under these warrants, the accuseds would risk arrest if they traveled outside Argentina," a state which is not likely to extradite any of its citizens. *Id.*

[110]Richard Rosecrance, *The Virtual State*, Foreign Affairs 45, 47 (July/ August 1996).

[111]The European Union's move towards full economic and monetary union for participants by the year 2000, and the North American Free Trade Agreement (NAFTA), which Chili has recently expressed an interest in joining, are two, albeit advanced, examples of regions establishing organizations for the free movement for capital, and agreements that deal with economic issues not dealt with by the World Trade Organization (WTO). *See generally* Robert Z. Lawrence, Regionalism, Multilateralism, and Deeper Integration (1996).

pressures exerted by NGOs and IOs, it is not exempt.[112]   The growing realization by

individuals and other intrastate social and political groups that their "security" may no longer

be assured by a nation's military might,[113] combined with the removal of external obstacles

to effective regional organization resulting from "the lifting of superpower strategic regional

struggles," have generating a trend towards the regionalization of security politics.[114] The

realization that "security" is not achievable at a solely domestic level, and that cooperation

on a regional basis would therefore be a favorable alternative to ineffective national attempts

at security, is not surprising, Rather, it reflects the fact that the "political machinery of

cooperation, based as it is on the nation-state, has to take account of these wider dimensions

of global change . . ."[115]

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[112]Mathews, *supra,* note 105 at

[113]One author observes that "[a] competing notion of human security" is creeping around the
edges of official thinking, suggesting that security be viewed as emerging from the
conditions of daily life-food, shelter, employment, health, public safety-rather than flowing
downward from a country's foreign relations and military strength." Mathews, *supra* note
105 at 51.

[114]Charles Van der Donckt, Looking Forward by Looking Back: A Pragmatic Look at Conflict
and the Regional Option Introduction (Policy Staff Paper No. 95/411,Canadian Department
of Foreign Affairs and International Trade, September 1995) at <http://www.dfait-
maeci.gc.ca/english/foreignp/dfait/policy~1/1995/01_01.htm>.

[115]Rosemary Righter, Utopia Lost 371 (1995).   Indeed, the turn towards regional
organizations better confronts "the forces that led the Soviet leadership to bring the Cold War
to an end and to contemplate radical change in the Soviet System and its relation to the
world," which are precisely the forces the world community must deal with if we are to
achieve and maintain a reasonably stable world order. Rostow, *supra* note 108 at 127

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The Dawn of Regional Security Organizations

Admittedly, there are few regional organizations which currently have the
organizational, financial, or economic resources to immediately set up a regional or
collective force organization, as critics of regional enforcement proposals never fail to point
out.[116] As referenced above, however, as IOs, NGOs, informed citizens, and other groups
become increasingly cognizant of nontraditional threats to their security such as drug
trafficking, ethnic conflict, or terrorism, their governments will respond by seeking a regional
solution to these problems, simply because states can not address these problems single-
handedly. Some organizations, like the North Atlantic Treaty Organization (NATO), can be
easily adapted to fulfill this role,[117] while other regional organizations, such as the Western

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[116]*See infra* notes 177-83 and accompanying text for objections regarding regional approaches
to collective security.

[117]According to one author, NATO is presently the only "significant organization that the UN
can count on to lend substance to its [peace enforcement] claims." Gordon Wilson, *Arm in
Arm After the Cold War? The Uneasy NATO-UN Relationship*, International Peacekeeping
Vol. 2, No. 1, 74, 91 (Spring 1995). NATO's qualities as a regional security organization
were recounted by the UN Under-Secretary General for Peacekeeping:

> The sheer size and complexity of peacekeeping operations makes it
> imperative to explore new avenues of cooperation with regional organizations
> such as NATO. With its existing military structure, resources and political
> weight, NATO has a lot to contribute to the concept of peacekeeping,
> particularly in its more muscular form. The larger and more pro-active
> operation will require more sophisticated command and control structures
> and equipment. As the Security Council makes increasing use of its
> enforcement powers under the Charter, United Nations operations have to be
> equipped with military and protective means that go far beyond the traditional
> white-painted, soft-skinned vehicles and small arms. In this context,
> NATO's willingness to participate in United Nations operations . . . holds
> promise of a vast qualitative as well as quantitative expansion of the means
> for collective action that are at the disposal of the United Nations.

Id. at 76.

European Union (WEU)[118] or the Organization on Security and Cooperation in Europe

(OSCE),[119] can be considered in their embryonic stage with regard to their ability to organize

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[118]In fact, the WEU, a military organization created as a collective self-defense alliance during the cold war, carried out enforcement measures under a UN mandate in the former Yugoslavia pursuant to Article VIII, Para. 3 of the Brussels Treaty, which permits the contracting parties to the WEU treaty to consult with each other with regard to "any situation which may constitute a threat to peace, in whatever area this threat should arise, or a danger to economic stability." Luisa Vierucci, *The Role of the Western European Union (WEA) in the Maintenance of International Peace and Security*, International Peacekeeping, Vol. 2, No.3, 309, 311 (Autumn 1995). Accordingly, it was the first organization to exercise air and maritime surveillance of sanctions in the Adriatic Sea pursuant to relevant Security Council Resolutions, launching Operation *Sharp Vigilance* on 16 July 1992, to ensure the implementation of the embargo on deliveries of weapons and military equipment to the former Yugoslavia and to monitor the execution of sanctions on Serbia and Montenegro. *Id.* at 313. Later, this even included stop and search actions. *Id.* at 314. Previously, in August 1988, during the Iran-Iraq war, the WEA launched a mine-clearance operation *Cleansweep* to guarantee free navigation in the Persian Gulf, *Id.* at 311, while during the Gulf War, the WEU was limited to ensuring the continuing supply of munitions, spare parts and equipment to United Kingdom and French forces in Saudi Arabia, "perhaps the quick evolution and solution of the crisis prevented the WEU from putting into practice an institutionalized mechanism for multinational operations . . ." *Id.* at 312. Unless the WEU develops a military structure outside NATO and overcomes the reluctance of some European states to be part of a common defense policy, a WEU intervention force will remain in the embryonic stage. *See* David S. Huntington, *A Peacekeeping Role for the Western European Union, in* Preventing Conflict in the Post-Communist World: Mobilizing International and Regional Organizations 429, 460-61 (Abram Chayes and Antonia Handler Chayes, eds. 1996). For another approach to a regional collective force for Europe, *see* Douglas Bland, Security Under Europe's Flag: Finding a Military Structure for a United Europe (1994).

[119]The OSCE's efforts in seeking a solution to the Armenian-supported secession of Nagorno-Karabakh, by "groping to find an appropriate mechanism for balancing the regional power's interest [Russia] with international accountability," are indicative of regional approaches to collective security, as with negotiations between the OSCE and Russia . . . over the manning of a three thousand -strong multinational peacekeeping force." Jaret Chopra & Thomas G. Weiss, *The United Nations and the Former Second World: Coping with Conflict,* Preventing Conflict in the Post-Communist World: Mobilizing International and Regional Organizations 507, 520-21 (Abram Chayes and Antonia Handler Chayes, eds. 1996). Although the Helsinki Decision of 1992 has currently excluded peace enforcement from OSCE tasks, this restriction "might be circumvented through bilateral cooperation between the UN and the OSCE" and future decisions. Jerzy M. Nowak, *The Organization for Security and Co-operation in Europe, in* Challenges for the New Peacekeepers 119,130 (Trevor Findlay, ed.,

a regional collective force. Indeed, the constitutions of regional organizations such as the WEU "leave room for development by later agreements and practice by member states," with actual organizational development occurring in "accordance with the agreements among the member states based upon consultations."[120] Thus far, according to one report, recent developments in the OSCE, OAU and the ASEAN Regional Forum "illustrate the importance presently bestowed by states and institutions on organizing for better regional understanding and cooperation in security matters, particularly through the institutionalization of conflict management functions within bodies which were not very well organized for this purpose."[121] A regional security organization, it should be stressed, is not necessarily limited to states encompassed by a specific geographical area. Although conceptually a "region" may be defined as "a geographical identity, the components of which share attributes or interactions distinguishing them from entities beyond the boundaries of the region," the UN Charter was "deliberately drafted to avoid a precise definition, thus allowing a flexibility for governments fashioning instruments to foster international peace and security.[122] Accordingly, "while the commonsense notion of region

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1996). It is thus possible that the OSCE may become one of the first non-UN centered regional collective forces. Indeed, the change in the OSCE's name to "Organization" from "Conference" was specifically aimed at enhancing the OSCE's stature and establishing it as a mechanism for responding to ethnic and regional conflicts in Europe. Chopra and Weiss, *supra* note 46 at 521.

[120]Tetsuo Sato, Evolving Constitutions of International Organizations: A Critical Analysis of the Interpretative Framework of the Constituent Instruments of International Organizations 211 (1996).

[121]Charles Van der Donckt, *supra* note 114 at Introduction.

[122]S. Neil MacFarlane and Thomas G. Weiss, *The United Nations, Regional Organizations, and Human Security, in* Regional Responsibilities and the United Nations System 15, 19-20 (Acuns Reports and Papers no. 1994-2 1994).

is related to geography, the ambiguity of the Charter means that it can also be conceived geopolitically, culturally, ideologically, and economically."[123]   Thus, like NATO, organizational membership in a "regional" collective security organization could spread over noncontiguous geographical locations.

There are signs that the world is awakening to the possibility of regional security organizations.   A 1994 workshop on global governance and human security entitled "Regional Responsibilities and the United Nations" raised the "possibility of allowing enforcement actions by the OAS and other regional organizations along with the Security Council."[124] An earlier informal meeting convened under the auspices of the United States Institute for Peace and the OAS raised the possibility of "developing a new regional security system based on mutual trust and common interests."[125]   In fact, an expanded concept of security is evident in the OAS, despite its current stress on nonintervention. One participant at a the 1995 Conference of American Armies, a meeting of commanders of all armies in North and South America held every two years, testified:

> I will tell you, without exaggeration, that the single most striking conclusion from that conference was the degree of consensus among that group as to the new definition of security and security issues. In other words, whereas traditionally the Latin American military have been very inward looking, and have maintained this very conventional concept of defense that began and ended at the national frontier, there was within this group unanimous acceptance of this new, more broadly defined security that included terrorism, narco-trafficking, mass migration, the environment, poverty, the role of the

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[123]*Id.*

[124]MacFarlane and Weiss, *supra* note 122 at 19-20.

[125]Francisco Villagran de Leon, The OAS and Regional Security, 1 (The United States Institute for Peace 1992).

armed forces in support of development, a general acceptance of democracy
and human rights as fundamental to any construct for security.[126]

Additionally, government and IO hearings have focused on the ability of other
regions of the world to form OSCE-like organizations,[127] while the United States has recently
proposed a 5,000 to 10,000 OAU Pan-African peacekeeping force,[128] arguably the first step
towards an OAS regional collective enforcement force, (for which at least one "African
Rapid-Deployment Force" plan has already been advanced).[129] Because of the current
disparity in world-wide regional organizations, the implementation of regional collective
security organizations within them will necessarily take place at disparate times.[130]

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[126]Statement of General John C. Ellerson, Chairman , Inter-American Defense Board, and
Director, Inter-American Defense College, 98 (Nov. 14, 1995), *in* The OSCE at Twenty: Its
Relevance to Other Regions, at 9, 10-11 (Transcripts of a Seminar Presented by the
Commission on Security and Cooperation in Europe Washington, D.C.).

[127]The OSCE at Twenty: Its Relevance to Other Regions (Transcripts of a Seminar Presented
by the Commission on Security and Cooperation in Europe Washington, D.C.); *CSCE:
Prospects for Collective Security in the Middle East Before the Commission on Security and
Cooperation in Europe,* 103 Cong. (1993).

[128]U.S. Hopes for a Pan-African Peacekeeping Force, National Public Radio, Weekend
Edition Saturday, 10/12/96, WL 7992999

[129]Colonel McGill Alexander, An African Rapid-deployment Force For Peace Operations on
the African Continent, (Foreign Military Studies Office-Fort Leavenworth Kansas 1995)
<http://leav-www.army.mil/fmso/opart/pubs/alexpape.htm>.

[130]One survey of the disparity in regional organizations notes:

> Europe is a paradigm of regional integration in the advanced sense where
> security, political, and economic motives interact in a comprehensive manner.
> . . . Among the former Soviet Republics there are emerging successor-states
> and nations that, to avoid fragmentation and political tensions, will have to
> sort out their relations within some kind of regional framework . . . [In Latin
> America] the possibilities for a . . . regional peace order are comparatively
> good, and the peacefulness of the continent may become its major relative
> advantage. . . . The Contadora process continued over a number of years, and,
> although lacking in concrete results, demonstrated a new regional spirit.. . .
> . East Asia is economically dynamic but rather weak in terms of transnational

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Permitting each region to develop its own variation of a regional security organization would ensure that the structure, once developed, will be maintained by regional members who would be much more likely to view interventionary action by such a regional security force as legally permissible, a dubious proposition if an organization or UN-centered force was

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political structure and regional identity. Most initiatives towards regionalism, such as the East Asian Economic Caucus (EAEC), come from Southeast Asia, which is increasingly economically integrated with East Asia. . . . There are two regionalist organizations in the area: the [EAEC} and the Asia Pacific Economic Cooperation (APEC) which includes the United States, Canada, Chile, Mexico, New Zealand and Australia. Only the EAEC has a chance to develop a culture-based identity. . . . In Southeast Asia, the Association of Southeast Asian Nations (ASEAN) has a high stake in interdependence because of the strong export-orientation of the member countries. But the new situation in the world economy will make it necessary to develop complementary regional organizations, to expand the organization to cover the whole subregion, and ultimately involve the whole region of East and Southeast Asia. . . . Southern Asia is still an inward-looking world region. The regional great power, India, has traditionally emphasized self-reliance, while the small countries encourage external links for the same security reasons. . . ,. Recent summits of the South Asian Association for Regional Cooperation (SAARC) indicate an emerging consciousness about regionalism as the most appropriate way to respond to current changes in world order, while at the same time nationalist suspicions linger, often for domestic political reasons. . . . [T]he regional organization coincides with the regional security complex and can therefore be seen as an embryo to a security community . . . In spite of numerous subnational identities, the Middle East has a certain regional identity, although it is too much a part of the world community to be left to itself. More economic differentiation within the region and less Western dependence on oil are necessary prerequisites for Middle East regionalism. In the Maghreb subregion, which also forms part of the Arab world, harsh realities [have led to] new attempts at stimulating regional integration. In February 1989, the five countries'' Arab Maghreb (or Mahgribi) Union (UMA) was created to tackle both peace . . and development . . . issues. . . . [I]n Africa, a Division of Conflict has been opened by the Organization of African Unity (OAU) to deal with tensions between and within member states. Remarkably, the principle of non-interference is being reconsidered.

Hettne, supra note 20 at 344-53.

imposed on a region from above.[131]

Ultimately, as regional collective forces are instituted in regions throughout the globe,

human and institutional violence should gradually decrease. This point was made by a

distinguished former Ambassador and Diplomat, Jonathan Dean, when commenting on the

potential of the OSCE, and similar regional organizations, to become security organizations:

> [A broad range of measures developed to prevent conflict, to reduce the
> effects of conflict when it occurs, and to end it more rapidly] should be
> applied more systematically . . . [and] widely to prevent specific disputes
> from erupting into war or to shorten wars when they do occur.
>
> Consequently, the incidence of organized armed violence throughout
> the world can be gradually reduced, and existing zones of no-conflict can be
> expanded. like those in North America and Western Europe. This should be
> our aim. In their own areas, regional security organizations can be major
> agents of this process. Regional security organizations are closer to the
> problem, they get better early warning, and they can often act more rapidly
> than the United Nations.
>
> An effective network of regional security organizations, coordinated

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[131]As noted earlier, even George Joffe, a strong proponent of the traditional concept of state
sovereignty, agrees that a diminution sovereign immunity is acceptable "if states voluntarily
. . . derogate . . . a degree of their sovereign immunity to other institutions " Joffe, *supra* note
17 at 81. Similarly, this type of regional approach to collective enforcement, by recognizing
that the collective enforcement of humanitarian rights need neither be imposed by Security
Council fiat, nor dependent on the predilections of the United States, could begin to assuage
the fears expressed by both Marti Koskenniemi and Jesse Helms. Koskenniemi warns of the
danger of equating "law" with the collective actions of the UN Security Council by inquiring
"was [the Security Council's declaration that an intrastate crisis poised a threat to
international peace and security] in fact making a *carte blanche* declaration of limitlessness
of its powers?" Marti Koskenniemi, *The Police in the Temple, Order, Justice and the UN:
A Dialectical View*, 6 Eur.J.Int'l.L. No.3 at 325, 326 (1995). UN-critic Jesse Helms recently
signaled that his displeasure with the UN would be assuaged if the UN system somehow
provided a way "to let [UN peacekeeping missions, including nation-building] go forward
without U.S. funding or participation. "If others in the world want to undertake nation-
building operations," Helms wrote, "there is no reason the United States should discourage
them-so long as American taxpayers do not have to pay for a third of it." Jesse Helms,
Saving the UN, Foreign Affairs 2, 6-7 (September/October 1996).

by a United Nations whose own peacekeeping capabilities have been improved, a network of regional organizations equipped with good communication, early warning measures, and experience in applying the devices of peacekeeping [such as confidence building and transparency measures, restrictions on the deployment and activities of aimed forces, negotiated force reductions and conflict prevention, mediation and resolution] could greatly contribute towards lowering the level of organized armed violence in the world and to expanding the zones of no conflict.[132]

VII. A Continuing Role for the UN

As noted above, a regional approach to collective enforcement using assumptions found in the liberal paradigm would recognized international legal norms and the role of the UN as a supranational organization involved in global governance. Thus, a collective force proposal built around a regional organization but which retains a link to the UN for ultimate legitimacy purposes should assuage the fears of those who would reject a regionally-based collective force concept based on the fear it would signify a return to hegemonic power contests of the past.[133] Unlike the numerous proposals for a UN centered collective security

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[132]Statement of Jonathan Dean, Arms Control Advisor, Union of Concern Scientists, (Nov. 13, 1995), *in* The OSCE at Twenty: Its Relevance to Other Regions, at 9, 10-11 (Transcripts of a Seminar Presented by the Commission on Security and Cooperation in Europe Washington, DC).

[133]The sentiment conveyed here is similar to that expressed by one advocate of subcontracting humanitarian intervention to permanent members of the security council or other regional powers with the proviso that it be linked to the UN by *inter-alia* observers throughout the regional command structure:

> We wish to make clear in the beginning that this is not a neoimperialist or neocolonialist essay seeking to justify and facilitate great power manipulation, but rather an attempt to offer a realistic mechanism to mitigate subnational violence that plagues the post-cold war era. The old order is crumbling, but the international community does not yet have the means to stave off violence that plagues the post-cold war era. With conflicts proliferating around the globe, and with the unabashed return to national-interest calculations-not as a balance of power but as a survival of the fittest-

force noted in tables 2 and 3, there have been very few which are based on a regional

conception of collective human rights enforcement. This scarcity since 1992 is especially

surprising, since the UN Charter, as well as the former Secretary General Boutros Boutros-

Gali in his *1992 Agenda for Peace*, specifically recognize the role regions could play in

maintaining peace and security. Specifically, Chapter VIII of the UN Charter, "Regional

Arrangements" envisions a role for such organizations, especially Articles 52 and 53, which

read in part:

Article 52

1. Nothing in the present Charter precludes the existence of regional
arrangements or agencies for dealing with such matters relating to the
maintenance of international peace and security as are appropriate for
regional action, provided that such arrangements or agencies and their
activities are consistent with the Purposes and Principles of the United
Nations.

Article 53

1. The Security Council shall, where appropriate, utilize such regional
arrangements or agencies for enforcement action under its authority. But no
enforcement action shall be taken under regional arrangements or by regional
agencies without the authorization of the Security Council, with the exception
of measures against any enemy state, as defined in paragraph 2 of this Article
. . .[134]

Former Secretary General Boutros Boutros-Gali's 1992 *Agenda for Peace* notes that:

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minimal assurances of an internationalist agenda need to be guaranteed.
Chopra and Weiss, *supra* note 46 at 513.
[134]U.N. Charter articles 51 and 52.

> [R]egional arrangements or agencies in many cases possess a potential that
> should be utilized in serving the functions covered in this report: preventive
> diplomacy, peace-keeping, peacemaking and post-conflict peace-building.
> Under the Charter, the security Council has and will continue to have primary
> responsibility for maintaining international peace and security, but regional
> action as a matter of decentralization, delegation, and cooperation with
> United Nation as efforts could not only lighten the burden of the Council, but
> also contribute to a deeper sense of participation, consensus, and
> democratization international affairs.[135]

Using the UN Charter's regional provisions and the sentiments found in Boutros

Boutros- Gali's *Agenda For Peace,* regional associations are eligible to be declared Article

VII organizations under the UN Charter. With regard to this UN link, parties setting up a

RSC or RSA will be in the position to consider should the following characteristics:

> -It should be clear that the state or group of states are agents of, and acting on
> behalf of the UN, and that the link between the two is direct and continuing.
> -Although the command of the operation is not functionally part of the UN's
> administration, instructions from the organization to its agent must be clear,
> specific, and incontestable.
> -The agents must be responsible to the authority of the UN and held
> accountable on an ongoing basis for their actions taken in the name of the
> international community.[136]

It might be the case that although this criteria is acceptable for some regions where

there exists less suspicion towards the UN, for others these regional-UN links could be

refashioned to stress a more horizontal, partnership type relationship. These different types

of arrangements would be consistent with the assumption found in a liberal approach to

international law that the UN provides a forum for global governance through a "multiplicity

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[135]Boutros-Boutros Ghali, *supra* note 61 at para 64.
[136]Chopra and Weiss, *supra* note 46 at 528.

of efforts."[137] Thus, although the region acts on behalf of international norms as interpreted

through UN resolutions, the "instructions" from the UN may not need to rise the level of

micromanaging a particular intervention.[138] Similarly, regions should focus in their

discussions with the UN on the criteria for military humanitarian intervention by their

regional association, so that if they are followed, they can be reasonably assured that the UN

would legitimize any regional intervention, either prior to or following an intervention.[139]

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[137]Slaughter, *supra* note 31 at 71.

[138]The rough outlines of one starting point for a restructured relationship between a regional organization can be discerned in the comments of former UN Secretary General Boutros-Boutros Gali, who noted that the difficulties of multilateral mobilization and management of military force for combat could "herald a new division of labor between the United Nations and regional organizations, under which the regional organization carries the main burden but a small United Nations operation supports it and verifies that it is functioning in a manner consistent with positions adopted by the Security Council." Thomas E. Weiss, *Military-Civilian Humanitarianism: The 'Age of Innocence' is Over,* International Peacekeeping, Vol. 2, No. 2 157, 162 (Summer 1995).

[139]One author offers the following summary of criteria for judging the legitimacy and effectiveness of an intervention:

> *The severity of the rights violation* should be of the highest order to meet the necessity criterion. To serve as an exception to the principle on nonintervention, the violation should reach the level of genocide, the gross and systematic betrayal of basic human rights, or present an imminent threat of the highest order.
>
> *To satisfy the proportionality criterion,* the intervention itself should be in proportion to the triggering event. Evaluation turns on factors such as the duration of the intervention as well as whether excessive force was used.
>
> *Humanitarian concern,* not some hidden agenda or mixed motive, should characterize the purpose of the intervention. . . . in multilateral intervention, mixed motives of participating states may not be as decisive in evaluating the overall scheme.
>
> *Prior exhaustion of nonintervention remedies* is listed by many as a preferable, but not mandatory, criterion. That is, exhaustion may not be required if the attendant delay would exacerbate the severity of the situation.
>
> *Consent of the target state* is another preferential criterion, but many view it as only of second order. They see that the inability or unwillingness of a target state to cope with the situation may vitiate entirely the need for

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In short, a regional collective force centered on regional organizations based on assumptions found in a liberal paradigm is better able to "the fundamental objectives of the UN charter"[140] because regional organizations, "at their best, can compensate for the inherent weaknesses of a centralized global organization."[141]

VIII. Academic Regional Collective Force Proposals

Despite the trend in world dynamics which could eventually lead to the establishment of regional organizations and component security forces, many academics, as noted above, have continued to direct their efforts towards a UN-centered collective force. Swimming against the tide, Sabina Lautensach and Leonard Sullivan have sketched two academic proposals which give regional security forces primary responsibility for collective

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consent. In the absence of state consent, some writers would give juridical significance to the reception the interveners receive. Termed 'the Liberation of Paris Principle,' the approval given by victims of the abuse acts as a substitute for state consent and assures that the solution is not simply an exercise in paternalism.

The long term political independence and territorial integrity of the target state should not be imperiled by the intervention. This criterion is viewed as mandatory by some and preferable by others, especially those who proposed a widened scope for intervention.

On balance, intervention should be maximize the best outcome when weighed against the alternatives.

Dorinda G. Dallmeyer, *National Perspectives on International Intervention: From the Outside Looking In, in* Beyond Traditional Peacekeeping, 20, 24-25 (Donald C.F. Daniel & Brad C. Hayes, eds., 1995). *See also* Ero and Long, *supra* note 5 at 152 for a similar list of criteria designed to reduce the selective and political nature of humanitarian interventionary actions.

[140]Rostow, *supra* note 108 at 131.

[141]*Id.* at 127. Although the UN has supported fundamental human rights and political freedom, " its constituency is so large and diverse, and its commitment to respect national sovereignty so deeply embedded, that its contribution has been, on the whole, weak and dilute." *Id.*

enforcement capabilities, with the former author admittedly structuring her regional argument

as an alternative to a UN standing police force.[142] Although neither author specifically

highlights assumptions found in the liberal approach to international law as their proposals'

organizing theoretical structure, liberal assumptions such as the nonidentical character of

states and their preferences, the UN as a forum for a multiplicity of efforts at global

governance, and the existence of groups and individuals in domestic and transnational civil

society nonetheless form an integral part of their proposals. These aspects of their proposals,

some which are noted on the following table, are discussed below.[143]

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[142]Lautensach's first, albeit hopeless, preference is a UN standing army, a preference which may be explained by her adherence to at least some of the realist/legalist paradigm noted above. One clue to her adherence to this paradigm is her view of the UN is an embryonic world government, and thus the merits or demerits of every change in international organizations is determined by whether it adds or detracts from this goal. For example, Lautensach laments that despite the changes such as the world's attitude towards peacekeeping operations, and the definition of what constitutes a threat to peace:

> [T]hese changes have done little to eliminate the strong sense of sovereignty that many countries still hold. The UN still acknowledges the right of states for national armaments and continues to confirm the principle of use of force in self-defense. Much more will have to be done to change these persisting attitudes before the UN can become truly effective as an evolving world government.

Sabina Lautensach, UN and Peacekeeping - An Evolving Concept 54 (Peace Research Reviews, Vol 13, No. 2 1994).

[143]The proposals constituting these charts were obtained from the following sources: Lautensach: Lautensach, *supra* note 142; Sullivan: Leonard Sullivan, Jr., Meeting the Challenges of Regional Security (1994).

Recent Regional Collective Force Proposals Table 4

Proposal	Significant Details
Lautensach	Regional Security Commissions (RSCs); UN Link, Expanded Definition of Security, Regulated Responses to Conflict.
Sullivan	Regional Security Apparatuses (RSAs); UN Link, Expanded Definition of Security, Regulated Responses to Conflict.

Diverse State Preferences

Lautensach's proposed RSCs and Sullivan's RSAs are similar concepts. The RSCs

in Lautensach's proposal are regional organizations that encompass "a blanket of common

security interests covering economic, as well as environmental issues," including " human

rights and the arms trade," with the RSCs "incorporated into the existing five regional

Economic Commissions."[144] The RSCs would have carefully regulated responses to conflict

due to the diverse political systems of the various regional organizations, with such regulated

responses having the effect of "preempting the 'ability of Western governments . . . to tailor

the decisions of the Security Council to suit their own perceived interests' which had

steadily whittl[ed] away the legitimacy of the UN in the South.[145]" Sullivan's RSAs are

regional institutions which evolved to enforce "broadly (if not globally) accepted laws and

standards, while respecting the mores and peculiarities of the region(s) involved."[146] RSAs

would be charged with "the collective enforcement of international laws and standards within

the community."[147] Unlike the recent military alliances for collective security formed to

deter or wage intercommunity wars with the goals of "destroy or be destroyed," RSA actions

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[144]Lautensach, *supra* note 142 at 21.
[145]*Id.* at 21-22.
[146]Sullivan, *supra* note 143 at 9.
[147]*Id.* at 7.

would "draw more from civil police work (or CIA/DEA 'special operations') than from military missions . . ..[I]n essence, RSA[s] would reflect growing notions of 'regional sovereignty' over common, inseparable intraregional infractions and disorders, and provide the mechanisms required to assure reasonable, albeit certainly not total, compliance."[148] Although the RSAs will be very different from NATO/Pact scenarios according to Mr. Sullivan, they "might well evolve from the increasingly anachronistic regional unified command structure of the U.S. military."[149] RSAs would be "extensions of domestic peacetime law enforcement agencies," and their use would not be a "last resort option" as with military forces," as "many of their functions would be continuously exercised to maintain intraregional 'law and order.'"[150]

Regions, the UN and a Multiplicity of Efforts.

Both Lautensach and Sullivan would retain a legitimizing link to the UN, one assumption found in a a liberal approach to the UN. Lautensach proposes formalizing the relationship between the Security Council and existing regional organizations, with the applications for such a close relationship "ranging from peace-making, preventive diplomacy to peacekeeping and the maintenance of security in a particular region."[151] The RSCs would

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[148]*Id.* at 9.
[149]*Id.*
[150]*Id.* Military functions under Sullivan's vision of a RSA world would be extremely flexible, with roles depending on the nature of the scenario. Combat units would range from "infantry or military police for peace-and trucekeeping activities, to elite helicopter units to recapture an airfield, neutralize a port, interdict smugglers, free prisoners, or shut down a central telephone [switchboard]." *Id.* at 14. "Larger 'enabling forces' might sometimes be needed to 'kick in the door,'" while 'de-equipping' the offender's air and air-defense forces, . . . would be a relatively simple . . . . operation." *Id.*
[151]Lautensach, *supra* note 142 at 20.

"act as a bridge between a restructured Security Council and existing regional organizations

. . ."[152] A Council of Ministers would head each RSC, and the chair would be a

representative of one of the leading regional organizations, with the connecting link to the

UN being the UN Deputy-Secretary General, who reports back to the New York

Secretariat.[153] "With the RSC based in the region," Lautensach notes, "the NGOs can

directly establish communication from the field and would be granted representation in the

RSC."[154] Sullivan is less explicit regarding the form of the RSA-UN link. He notes RSA

actions would:

> probably be authorized (like warrants) by some fully legitimate international
> body (or court), based on some 'finding' (declaration of emergency) or
> 'indictment' (voz, UN resolution) derived from some regional 'prosecutor,'
> (Security Council?)," with the "initial alert" coming through a "crises control
> center (a la CESE), and confirmed by some sort of fact-finding procedure;
> either a cooperative inspection mission (like Red Cross in Azerbaijan or
> IAEA in Iraq), or a noncooperative intelligence gathering program (such as
> 'regional technical means' or on-site 'witnesses').[155]

Other Actors on the World Stage

Both proposals address the changing nature of the world community. Lautensach,

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[152]*Id.* at 21 *quoting* Jon Lunn, *The Need for Regional Security Commissions within the UN,*
Security Dialogue Vol. 24 (4) December 1993 at 371. (Citations omitted.) Formalizing the
UN-regional organization relationship will, notes Lautensach, lead to several consequences:
the UN's need for long-range mission will be "curbed by the regional organizations' close
proximity to areas of conflict;" and the "division of responsibility would ease the financial
burden of the UN, not to speak of the prohibitively high administrative costs." Lautensach,
supra note 142 at 20-21.
[153]*Id.*
[154]*Id.*
[155]Sullivan, *supra* note 143 at 10-11.

in arguing for RSCs, asserts that "not only has the number of organizations grown, but their existence reveals the new framework of our multilateral world . . ."[156] Regional organizations are a true alternative to the UN, according the Lautensach, because: "perhaps a regional organization can cope better with cultural aspects of a dispute because of its close proximity to the issue."[157] Some countries, moreover, "do not desire general treatment from the UN, an institution many thousands of kilometers away."[158] Finally, the UN's capacity to be in charge of global security is "limited by resources which are highly in demand."[159] Sullivan addresses the changing nature of internationalism by taking aim at UN-centered collective force proposals, asserting that in this era of internationalism and interdependence "of our shrinking planet . . . [t]he notion of one (or two) superpowers with catholic interests and concerns is no longer credible. There will be no Great White Policeman of the World; no Global Bobby."[160] Nonetheless, RSAs are needed, Sullivan observes, since "there is a growing and inescapable demand to enforce globally-adopted codes of individual and group conduct," and, "[t]he new world must pursue universal human interests guided by universal human values."[161]

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[156]Lautensach, *supra* note 142 at 22.

[157]*Id.* at 35.

[158]*Id.*

[159]*Id..*

[160]Sullivan, *supra* note 143 at 6-7.

[161]*Id.* at 7. In this regard, Mr. Sullivan discerns the changing micro-macro parameter discussed *supra* at note 107 and accompanying text:

> Clearly nations will have to learn to act together to preserve their agreed common values. The egocentric cold war concept of committing national resources/treasures only to support "vital national (self-)interests is being supplanted by a concept of "obligatory community service to support global values and enhance assurance of regional stability and prosperity.' In fact,

IX. A Formative Typology for Regional Force Proposals

Drawing in part on Lautensach and Sullivan approaches noted above, and cognizant of the liberal assumption that states and regions are not functionally identical actors, a necessarily nonspecific typology for a regional collective force can be roughly sketched out. First, states, with the participation of a region's NGOs and IOs, building on common economic and security interests and experiences, meet, discuss and identify those elements considered essential to their definition of security.[162] Thus it is possible that each region's conception of security would encompass a different perspective, or have a different focus, depending on the particular issue or issues which threaten each particular region.[163] The Organization for Security and Cooperation in Europe (OSCE), by exemplifying how states could incorporate a comprehensive concept of security into a regional security proposal, and how states, as a prelude to collective security, could engage in cooperative security, offers

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> such global values may flow from both supra-and subnational organizations as well as from classic national governments. International business conglomerates and relief agencies have special demands at one end of the spectrum. Various exploited minorities and the several national tribes (Kurds, Palestinians, Montagnards, etc.) require protection at the other.

Id.

[162]For those regions in which there exists a regional intergovernmental organization which has adopted international conventions that aim to promote the observance of human rights in their respective areas, namely the Council of Europe, the OAU, and the OAS, *see* Thomas J. Watson, A Guide to Peace Support Operations 135 (John Mackinlay, ed., Institute for International Studies, Brown University, 1995), protection of these human rights should be recognized specifically as an elements constituting an integral part of the region's security.

[163]For example, an Europe RSA under the OSCE "might be designated to focus on ethnic strife and forced migrations whereas a Latin American RSA (under an invigorated OAS?) might focus on financial chicanery and drug trafficking. Clear 'connectivity' to all regional governments, law enforcement agencies, and military would be needed." Sullivan, *supra* note 143 at 13.

a conceptual and practical starting point in this regard. Three characteristics found in the

OSCE organizational structure whose use can be considered by future regional organizations

are:

> First the OSCE has adopted a comprehensive concept of security that
> included not only military and interstate political relations, but also economic
> cooperation and human rights within states as well . . . Second, the OSCE
> was established as a political agreement, not a legal treaty, and as a process
> rather than an organization. It is essentially a regime for cooperative, not
> collective, security, designed to promote security through ongoing dialogue
> and persuasion, not coercion. . . . Finally, from the outset, the Helsinki Final
> Act established a decision-making process based on consensus, defined as the
> absence of any objection that would constitute an obstacle to taking the
> decision in question . . . .[giving] the OSCE the flexibility to change its
> structures and procedures dramatically when circumstances changed after
> 1990 . . . [and giving] great legitimacy and weight to OSCE norms, especially
> those concerning human rights.[164]

Fortunately, the OSCE model is not limited to homogeneous regions, since, "it was

not the sameness of the 35 original members of the [OSCE] which produced the remarkable

results of the organization, it was their very differences that were perhaps the most important

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[164]*See* Diana Chigas, *et al, Preventive Diplomacy and the Organization for Security and Cooperation in Europe: Creating Incentives for Dialogue and Cooperation, in* Preventing Conflict in the Post Communist World 25, 34-35 (Abram Chayes and Antonia Handler Chayes, eds. 1996). Obviously, with regard to the second characteristic promoting consensus, the danger exists that a single member would prevent action "in cases of clear, gross and uncorrected violations of relevant [OSCE] commitments." Steven L. Burg, *The International Community and the Yugoslav Crises, in* International Organizations and Ethnic Conflict, 235, 270 (1995). Thus, the OSCE in January 1982 adopted a "consensus-minus-one" principle of decision making which would prevent any single member from preventing action in these types of situations, and "appropriate peaceful action to protect human rights, democracy, and the rule of law may be taken in the absence of the consent [and outside the territory] of the State concerned." *Id.* Any viable regional collective security force should incorporate a similar provision without the territorial limitation.

... the dynamic tension at the heart of the [OSCE] ... [which] propelled and sustained the process."[165] Indeed, the "combining of human rights, the rule of law, security aspects, and trade created a momentum" in which allowing a counterpart's priority issues onto the negociating table meant getting one's own respective issues on the agenda in exchange.[166] Organizations were thus able to press a human rights agenda with member states, states who were able to document and criticize their opponents' violations. The result was to "elevate the status of human rights monitors and NGOs by giving them a ready audience."[167]

As the next step in this typology, these regional informal working groups, using the UN Charter's regional provisions and the sentiments found in Boutros Boutros-Gali's *Agenda For Peace,* should then invite the participation of the UN into these discussions, with the aim of smoothing the path for eventual identification of a formally agreed on regional association being declared a Article VII organization under the UN Charter, as will be noted below. Recognition of regional organizations under Article VII will occur at different times, because, as noted earlier, the current disparity in world-wide regional organizations will create a disparity in the eventual implementation of regional collective security organizations throughout the globe. Nonetheless, progress towards their implementation could be assured with the help of developed countries, especially for regional organizations in areas lacking human or financial capital.

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[165]Statement of Neil J. Kritz, Director, The Rule of Law Initiative, US Institute of Peace, (Nov. 13, 1995), *in* The OSCE at Twenty: Its Relevance to Other Regions, at 16, 17 (Transcripts of a Seminar Presented by the Commission on Security and Cooperation in Europe, Washington, D.C.).
[166]*Id.*
[167]*Id.*

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One manner that developed countries could assist fledgling regional organizations become viable candidates for their own regional security force would be to provide, through their military and security institutions (MSIs), MSI assistance in a variety of imaginative ways, especially in democratization and development efforts.[168] For example, MSIs could assist regional organizations by providing development aid, thereby addressing many of the roots of civil conflict; by educating third world MSIs on how to operate in a democratic society; by providing logistical support and transport for development of NGOs; and by providing other resources and talents found in an MSI compatible with democratization and development.[169] Channeling the aid multilaterally through the UN could be one way of involving the UN in state preference creation and regional development efforts while simultaneously preventing any tendency of a developed power's MSI assistance from advancing untowed national interests in the region.[170]

Because the regional collective enforcement concept will arise in a variety disparate regions and will deal with many region-specific issues, it is difficult to predict a definitive future shape for regional collective forces. In such a future, however, there is no need, nor room for, the type of UN-centered collective force proposals reviewed above which were so prevalent in the past. Indeed, ultimately and invariably, these new regional organizations, whatever their ultimate shape, will themselves change the manner in which the UN is

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[168]*See* e.g., Robert Hay, Military and Security Institutions: Challenges in Development and Democratization 32-40 (9 Martello Papers 1994).
[169]*c.f. Id. at* 33, 45
[170]*Id.* at 35-36

perceived and how it will operate in the world,[171] a result consistent with the liberal assumptions regarding the role of the UN as neither a great power alliance nor a nascent world government, but rather the locus of a multiplicity of efforts aimed at global governance with efforts ranging from power politics through social and economic transformation.[172]

X. An Antidote for the New Isolationism?

Not only is it possible to utilize the assumptions found in a liberal paradigm to construct a regional approach to collective security consistent with the current global changes, liberal assumptions regarding international law can also provide an account for the difficulties encountered by UN collective force proposals. Indeed, not only have no UN-collective proposals not been pursued, the UN has increasingly had "difficulties in defining a consensus for intervening militarily in disputes, developing agreements [which] provide mandates that link military operations closely to the satisfactory fulfillment of established goals, and finding the financial, material, and manpower resources needed to mount appropriate military operations," dependent as they are on the active support of major state

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[171]As noted by one author,

> The study of interregional relations is immensely complex, since it will not be sufficient to deal with intergovernmental contact only. The multi-layered nature of policy-making makes it hard to foresee the direction in which relations ultimately will develop. Regionalism is an emerging phenomenon, and we cannot predict much about its final shape and its ultimate role in the formation of a new world order. What is obvious is that this will be a completely new context for the UN system to operate in, and in order to operate, the UN itself will have to fundamentally change.

Hettne, *supra* note 20 at 357-58.

[172]*See* Slaughter, *supra* note 31 at 71.

actors.[173] The liberal paradigm would not find this surprising, as it postulates that states will respond to individuals and groups acting in domestic and transnational civil society which pressure states to place foreign affairs and expenditures at the bottom of their priorities. Thus states, especially major powers outside their immediate stategic areas, are increasingly 'unwilling to do more than the minimum necessary to prevent conflicts from impinging on their interests or assuage public demands for action . . . calling forth limited, possibly largely symbolic rather than effective, responses. Instead of NIMBY ('Not In My Back Yard'). their attitude may tend to be MIMBY ('Mainly in My Back Yard').''[174] In short, "a definitive psychological shift to 'multilaterism' has never occurred among peoples and their governments: as with realist and neorealist scholars, western constituencies have not accepted the human and financial costs of international action as investments in their own self-interests . . .[a]s states and governments collapse, outrage at famine in Somalia or

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[173]Terry Terriff & James F. Keeley, The United Nations, Conflict Management and Spheres of Interest, International Peacekeeping Vol. 2, No. 4, 510 (Winter 1995).

[174]*Id.* at 516. The United States' Presidential Decision Directive (PDD) 25, laying out President Clinton's "Administration Policy on Reforming Multilateral Peace Operations" exemplifies the reticence of major powers to commit to UN interventions. Aimed at ensuring that US use of peacekeeping "is selective and effective," PDD's three level criteria for determining whether or not to support the establishment of a UN or regionally sponsored operation; whether US personnel should participate in an approved operation; and whether they ought to participate significantly in enforcement missions where combat is likely is "highly cautious and deliberate," reflects the administration's minimist foreign policy. Donald C.F. Daniel, *The United States, in* Challenges for the New Peacekeepers 85, 98 (Trevor Findlay, ed., 1996). The US Congress has also passed legislation limiting the "dangerous and deadly policy of placing US troops under the command and control of the United nations for Peacekeeping operation without adequate accountability," as characterized by the sponsor of the US Armed Forces Protection Act of 1996, Representative James B. Longley. Longley UN Bill Passes House, Government Press Release 9/5/96, 1996 WL 11124710.

slaughter in Rwanda leads to the demand to 'do something!'" But as casualties and costs

mount, many of the same individuals ask, 'why are we there?'"[175]

Regional organizations, forged after developing a consensus among actors in a

region, will find it easier to "stay the course" of a humanitarian intervention since regional

neighbors would have thoroughly aired and resolved issues to reach a common approach to

matters relating to collective security and intervention, as well as instituted a consulting

procedure in which all parties are committed to using should an issue present itself for which

no approach had been determined. Additionally, by building into a regional organization's

collective force organization a myriad of conflict prevention and resolution methods

appropriate to each region, by taking into account the sensitivities of states and the

increasingly transnational and interdependent world described above, a regional organization

could help reduce the direct link of dependency between the UN and the resolve of major

powers with regard to reacting to humanitarian crises. A regionalist approach to collective

security, based on a liberal paradigm derived from newly emerging world dynamics, thus

differs from that older regionalism that prevailed during the cold war which was

characterized by global ideological divisions:

> [T]he new [regionalism] is taking shape in a multipolar world order
> in which the former superpowers, in spite of their military superiority, are
> being degraded to regional powers, competing with other regional powers. .
> . The new [regionalism] is a more spontaneous process emerging from within
> the region, "from below (in the sense that the constituent States themselves
> are main actors), and from the increasingly important role of other actors such

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[175]Chopra and Weiss, *supra* note 46 at 510.

as firms, labor unions, and different kinds of social movements . . . [It] is "open" and thus compatible with an interdependent world economy . . . The new regionalism is a more comprehensive, multidimensional process that includes not only trade, and economic integration, but also environment, social policy, security, and democracy . . . the new regionalism forms part of a global structural transformation in which non-State actors are active and, therefore, included in a world order concept . . .[176]

XI. The Objections To A Regional Approach to Collective Security

Some authors have criticized a regional approach to collective security, with many pointing out the there are few regional organizations which currently have the organizational, financial, or economic resources to immediately set up a collective security force.[177] Other misgivings regarding the feasibility of regional security organizations include: dominant states which make the presence of legitimate intervention problematic,[178] and the assertion that the broad mandates of regional organization could cause collective action problems.[179] Although superficially appealing, these objections are not persuasive. First, because UN collective force proposals suffer from the identical financial and mobilization shortcomings for which regional organizations are indicted, these alleged weakness are not a valid basis upon which to prefer a UN centered approach over a regional approach to humanitarian intervention.[180] Second, as noted in this article, regional forces, using assumptions found in

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[176]Hettne, *supra* note 20 at 342-43.

[177]*See e.g.,* Weiss, *supra* note 17 at 12; Dan Lindley, *Collective Security Organizations and Internal Conflict, in* The International Dimensions of Internal Conflict 537, 541 (Michael E. Brown, ed. 1996).

[178]Weiss, *supra* note 17 at 12.

[179]Lindley, *supra* note 177 at 541. *See also* Durch, *supra* note 61 at 4-5.

[180]*See e.g.,* Adam Roberts, *Proposals for UN Standing Forces: History Tasks and Obstacles, in* A UN Rapid Deployment Brigade 33, 41-43 (Dick Leurdijk, ed., 1995)(Listing among 13 problems with a UN standing force, "practical tasks for the force being numerous and

the liberal paradigm, would retain a link with the UN for legitimacy purposes. Third, these critiques may not, in fact, be valid when applied to the regional forces envisioned here, which are developed in the context of a RSA or RSC encompassing a wider conception of security than the traditional military intervention crossing state territorial boundaries.[181] Fourth, even critics of a regional approach concede there is likely no alternative to use of non UN-controlled forces given the failure of UN approaches to gain international currency and support.[182] Finally, for those who might dismiss an alternative regional approach to UN collective force for humanitarian intervention as too long term, it should be pointed out that it will not necessarily take an inordinate amount of time given the fact it builds on dynamics currently at play in the world, e.g. witness the rapid dissolution of the Soviet Empire once these forces played out, and furthermore, even UN-centered collective force approaches frame their proposals in the long term.[183]

XII. Regional Humanitarian Intervention and the Development of Human Rights

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variable," "doubts about the suitability of the Security Council as the military decision making body," and difficulty of "financing a standing UN force.").

[181] *See* discussion *supra* at notes 116-125 and accompanying text.

[182] *See* Durch, *supra* note 61 at 33, who after identifying the shortfalls of regional approaches to collective security, concedes ". . . although the UN can play military roles in helping to promote more stable and peaceful international relations, it will most likely do so using national armed forces and not forces of its own." These unsupported attempts to preference UN-centered collective force proposals over regional ones despite similar problems faced by UN proposals contrasts with Lautensach's proposal for a regional collective security force despite her support for a world government and her initial preference for a standing UN army. *See* Lautensach, *supra* note 142 at 54 and discussion *supra* note 142.

[183] *See, e.g.,* Canadian Department of Foreign Affairs and International Trade, *supra* note 2 at Chapter 6 *Balancing Pragmatism and Vision* (The authors stating that they "sought to strike a balance between pragmatism and vision, placing emphasis on what is feasible under current and foreseeable conditions, while seeking to engage the debate on what may be desireable in the long term.)

Norms

By linking humanitarian intervention to regional collective force proposals built on
assumptions found in a liberal approach to international law, human rights norms will have
a better chance of being formulated and adopted along with criteria for humanitarian
intervention in wayward states than they would in any UN-centered forum. Constructing a
regional security force could foster the further development of human rights at regional levels
by creating an additional incentive for states to respect human rights politically and legally
enshrined in regional organizational constitutions, charters, or agreements. Indeed, even
strong proponents of the traditional concept of state sovereignty which would render
intervention against nondemocratic and abusive governments legally impermissible, agree
that a diminution sovereign immunity is acceptable "if states voluntarily accept that they
should derogate some degree of their sovereign immunity to other institutions."[184] "Indeed,"
one proponent of traditional sovereignty observes, "this could be construed as a characteristic
of regional organizations," such as the European Community, the Gulf Cooperation Council
and the Maghreb Arab Union (UMA), all of which "hamper the freedom of action of
individual member states- which have derogated a degree of their sovereign power."[185] This
ability to generate approval for human rights enforcement capability against states through
the development of regional organizations is critical, because the UN Commission on Human
Rights, "which has been the principle forum for development of international human rights

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[184]Joffe, *supra* note 17 at 66.
[185]*Id.*

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norms," has no coercive powers."[186] Such an approach to human rights in international law

can also be described as based on an "internationalist model" with liberal underpinnings, one

midway between a conception of human rights seen as a matter of sovereignty based on

national jurisdiction (and thus a matter of peripheral concern for international relations) and

a highly cosmopolitan approach assumed in many UN collective force proposals reviewed

above, in which states are "the problem" and the individual is seen as a member of a single

global community rather than as a citizen of a state.[187] In short, like the liberal assumption

regarding the role of individual and groups in domestic and transnational civil society:

> Internationalists accept the centrality of states and of sovereignty in international relations, but stress international social practices that regulate interstate relations. . . .the society of states [is] supplemented by nonstate actors that participate in international politics. Intervention on behalf of human rights is permissible to the extent it is authorized by the society of states.[188]

A regional approach based on an internationalist model thus recognizes and accounts

for the fact that, by its very nature, because of its multiple internal ramifications, the issue

of human rights is a sensitive one for many states.[189] By utilizing the increasingly

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[186]Jack Donnelly, *The Past, the Present, and the Future Prospects, in* International Organizations and Ethnic Conflict, 48, 55 (1995).

[187]The internationalist model used and its defining terminology are borrowed from Thomas G. Weiss & Janet Chopra, *Sovereignty Under Siege: From Intervention to Humanitarian Space, in* Beyond Westphalia 87, 121 (Gene Lyons & and Michael Mastanduno, eds. 1995).

[188]*Id.*

[189]As one commentator noted: "[t]he issue of human rights, by definition, breeds confrontation. Raising the issue touches on the very foundations of a regime, on its sources and exercise of power, on its links to its citizens or subjects. It is a dangerous issue. Tom J. Farer & Felice Gaer, *The UN and Human Rights: At the End of the Beginning, in* United Nations Divided World, 240, 293 (Adam Roberts & Benedict Kingsbury, eds., 1993).

interdependence dynamics at work in the world community, NGOs, IOs, groups and individuals, interacting domestically and transnationally, should be able, by conscientiously combining human rights, security questions, and trade issues into legitimate concerns for regional organizations, pressure states to support both regional collective enforcement proposals and the advance of the rule of law and human rights.[190] Aside from rejecting the invalid paradigm found in UN collective force proposals, this approach would hold a distinct advantage over utilizing the United Nations for further norm creation in the area of human rights and intervention for two reasons:

> First, any attempt to secure the formal adoption of [criteria for humanitarian intervention] at the UN is likely to result in their dilution during the negotiation process. Secondly, it is probable that the criteria will, in any case, continue to evolve; it would be inappropriate at this stage to freeze the debate with a single statement. Meanwhile, voluntary treaty agreements between individual states or associations of states in specific cases of humanitarian action, could, in due course, through the evolution of customary law, become binding upon others.[191]

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[190] An illustrative example of NGOs constraining a state regarding human rights is the role human activists played in preventing an increase in violence during the Mexican Chiapas revolt.

> Within hours of the first gunshots of the Chiapas rebellion in southern Mexico in January 1994, . . . the Internet swarmed with messages from human rights activists. The worldwide media attention they and their groups focused on Chiapas, along with the influx of rights activists to the area, sharply limited the Mexican government's response. What in other times would have been a bloody insurgency turned out to be a largely nonviolent conflict. "The shots lasted ten days," Jose Angel Gurria, Mexico's foreign minister, later remarked, "and ever since, the war has been . . . a war on the Internet."

Mathews, *supra* note 105 at 54.

[191] Martin Griffiths, *et. al.*, *Sovereignty and Suffering*, *in* The Politics of Humanitarian Intervention 33, 81 (John Harriss, ed., 1995).

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Care must be taken, however, when implementing a regional security proposal, to prevent any regional backsliding with regard to diluting universal human rights under the rubric of a relativist, regional, cultural diversity, argument.[192] Some regions of the world have more advanced human rights regimes which they can use to incorporate human rights into a regional security proposa, a headstart others lack.[193] Nevertheless, the "idea of human rights today - in fact, a not always comfortable coalition of liberal and socialist values-may have been born in the West, but it has made its venue global."[194] Even regional human rights regimes that are traditionally ineffective or nonexistent are slowly taking the first steps towards becoming more protective of human rights or are being established.[195]

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[192]*See* warning in Statement of Neil J. Kritz, *supra* note 165 at 16,18.

[193]One survey of human rights regimes found:

> Regional human rights regimes are both substantially stronger and weaker. The council of Europe has established an effective system of regional human rights enforcement, which includes binding judicial decisions by he European Court of Human Rights. Furthermore, Greece and Turkey have been suspended from membership in the Council of Europe for systematic human rights violations. But no other regional system even approximates this European transfer of authority to regional institutions. The Inter-American Court of Human Rights has decided only three contentious cases and issued a handful of advisory opinions, and the Inter-American Court of Human Rights has been far less effective than its European counterpart. The African Commission on Human and Peoples' Rights has had no discernible effect on state practice, and there is no regional human rights court. And in Asia and the Middle East, not even weak regional regimes have been established.

Donnelly, *supra* note 186 at 55.

[194]Farer, *supra* note 189 at 295.

[195]*E.g.*, Under the OAS system, the Inter-American Commission on Human Rights has, since the 1960s, "been able to take up cases and situations of human rights violations even at the motion of the Commission," while more recently "the human rights performance of a majority of members of the Organization of African Unity (OAU), namely those that are a party to the African Charter of Human and Peoples' Rights, is potentially subject to (confidential) scrutiny by the Commission set up under that charter." Nigel S. Rodley, *Collective Intervention to Protect Human Rights and Civilian Populations: The Legal*

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As regional organizations and accompanying collective security forces incorporate human rights norms into the fabric of their interaction with one another, the world will experience a shift from the sovereignty's traditional focus centered on state territorially, to one centered on individuals. Most likely accompanying this shift will be the gradual acceptance of legal arguments similar to those noted above urging interpretations of the UN charter which would no longer provide domestic tyrants *carte blanche* to violate human rights behind the sanctuary of territorial borders, *e.g.,* Article 2(7) does not prejudice regional enforcement measures under Chapter VII; Article 2(7) does not refer to sovereignty as much as to domestic jurisdiction; domestic jurisdiction excludes the right of a state to violate human rights at will or allow the passive acceptance of such violations; UN member states, by signing onto regional organizations under the auspices of the UN Charter, commit themselves to a collaborative effort of promoting universal human rights; and, finally, the mandate given regional organization relating to human rights establishes that domestic jurisdiction cannot prevent the regional organizations and United Nations from intervening in cases threatening the basic purposes enshrined in the Charter.[196] Accordingly, by pursuing to a regional approach to humanitarian interventions, international law will thus have a better possibility of progressing to the point of supporting the sentiments found in a 1939 American Journal of International Law article which, noting "recent barbarities perpetrated against the Jews in several European states," argued that when the conduct of a state constitutes "a deliberate violation of that minimum of security and justice to which every individual in a

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Framework, in To Loose the Bands of Wickedness 14, 23-24 (Nigel S. Rodley, ed., 1992).
[196]*See, c.f.* Knight, *supra* note 15 at 37, 59.

civilized community is entitled, it becomes the right and duty of other states to intervene in so far as it is practical to prevent or lessen such severities."[197] In view of the ultimate fate of those to which this author referred, and the countless victims of humanitarian atrocities that have suffered since World War II, a regional approach to humanitarian intervention is worth pursuing on this score as well.

XIII. Decentralization and Regional Force Proposals - An Additional Benefit

As a consequence of being generated at a domestic and regional level, regional approaches to collective intervention, as an additional benefit, are more likely to contain the characteristics of openness, flexibility and cooperation that would improve the likelihood of success any potential intervention. Highly structured, rigid, UN centered-collective force proposals, many based as they are on a model of "a force of professional military volunteers [under the direct control of a Security Council's legion commander] recruited directly by the Council instead of contributed by member-states . . . thoroughly integrated . . . a truly [non-national] heterogeneous force,"[198] would necessarily be, as one author described intergovernmental organizations, a "textbook case of hierarchical bureaucracy," and would "tend to view crisis responses in a very narrow band, not as a system of interrelated actions."[199] Although the possibility exists that a regional collective force proposal could create a centralized, rigid, collective force structure which would prevent a rapid response to humanitarian emergencies and neglect of a crises' underlying causes, regional forces,

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[197]Ellery C. Stowell, *Humanitarian Intervention*, 33 Am.J.Int'l.L. 733, 734 (1939).
[198]Heidenrich, *supra* note 61 at 23.
[199]Antonia Handler Chayes, *et. al.*, Beyond Reform: Restructuring for More Effective Conflict Intervention, 19-20 (Working Paper Series, Conflict Management Group 1996).

being one dimension closer to the conflict, as well as being made up of forces drawn from concerned states in or bordering the region, would have a better chance of decentralizing operations and nurturing flexibility and innovation in collective force organizations responding to humanitarian crises.[200]

In addition, a regional force will be more likely to obtain and utilize intelligence from constituent member states that UN forces have never been able to properly obtain from member states.[201] Because regional forces will be constructed from the bottom up, and thus perceived as acting for the human rights and security interests of the region's participating states, essential intelligence information will be less subject to a delays or denials as a result of inquiries as to whether a security force should be given access to a state's classified information.[202]

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[200]With regard to the higher interest level by states in the region of conflict, one author observed:

> In most instances, it is neighboring states that are most affected by ethnic conflict. Members of the Organization of American States are more alarmed than others by events in Haiti; Europeans are more alarmed by events in Yugoslavia; OAU states are more concerned about the bloodbath in Rwanda. These priorities have fostered a recent trend in which the UN empowers regional organizations (OAU in the case of Rwanda) and other multilateral groups (NATO in Bosnia; "a multilateral force under the unified command and control " in Haiti) to intervene in problem areas the trend in likely to continue.

Shebley Telhami, *Changing Roles, in* International Organizations and Ethnic Conflict 291, 303 (Milton J. Esman and Shibley Telhami, eds., 1995).

[201]*See e.g.* Robert E. Rehbein, Informing the Blue Helmets: The United States, UN Peacekeeping Operations, and the Role of Intelligence (1995).

[202]One author notes that it was not simply secrecy that limits or prevents intelligence from being provided to UN forces, "secrecy is only a minor factor." The key question which [is asked] is not could or would the United States provide intelligence, it is whether it should." *Id.* at 3.

XIV. Conclusion

Considering the failure of the prior UN-centered collective enforcement proposals
to gain currency in the world community, a new approach to collective security is long
overdue. By utilizing assumptions found in a liberal approach to international law,
proponents of humanitarian collective force measures can construct a viable, regional
approach to collective security. Using liberal assumptions that both recognize the role of
IOs, NGOs. individuals, and other groups in domestic and transnational civil society, as well
as account for the increasingly dynamic and fragmenting trends apparent in the international
community; a regional approach to collective security would not only assuage the suspicions
of peripheral states regarding humanitarian interventions, but will also be better situated to
tackle the underlying causes of regional and interstate conflict. Exploring the possibility of
using regional collective forces, as opposed to continuing the decades-old effort to promote
the use of UN centered collective force proposals, would return the UN's emphasis back onto
peace, rather than on the use of force, and better situate the UN as a forum for a multiplicity
of efforts at global governance. As observed by one author, "[T]he UN's use of force must
be kept in proportion. It may grab the headlines but it is a small part of the Organization's
activities overall. The UN stands for the abolition of war. . . the use of force is a necessary,
but very small part, of the whole."[203]

Although a state's williness to become involved in regional collective security efforts
depends in part on whether major powers are prepared to support and invest in these

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[203]Marrack Goulding, *The Use of Force by The United Nations*, Vol. 3, No. 1, 1, 18 (Spring
1996).

proposals, some support by major states should be forthcoming. Given that many major states, due to internal pressures and constraints, are increasingly hesitant to invest manpower and blood in many regions, even for humanitarian causes, supporting regional security is a rational choice, as the United States, as noted above, is beginning to realize by its recent support of a regional Pan African peacekeeping force. Recognizing the dynamic changes engulfing the world, a regional approach to collective security built on liberal assumptions, unlike many UN collective force proposals, does not depend on the premature death of traditional state sovereignty (an assumption which doomed UN centered plans). Instead, assumptions found in a liberal approach to collective security can be used to construct a myriad of regional approaches to collective humanitarian intervention which take advantage of sovereignty's slow erosion and the rise of other actors on the world stage. Although adopting a regional approach to collective security will hasten respect for, and implement, human rights faster than any other approach to collective security, as well as further reorient international law towards accepting the permissibility of intervention to prevent their violation, rejecting a regional approach to collective security will not reverse the world community's increasing interdependency, the continuing emergence of universally-recognized human rights, and the continuing fragmentation of Wesphalian sovereignty. This being the case, it is only a matter of time before regional collective security organizations emerge to the forefront as the main, and most effective, guardian of international humanitarian norms.

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