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**THE UNITED NATIONS SECRETARIAT
AND THE
USE OF FORCE IN A UNIPOLAR WORLD**

by

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**THIRD LECTURE:
The Iraq War and Conclusions**
(delivered on 24th January 2008)

THE IRAQ WAR

1. By late 1998 serious rifts had developed in the Security Council regarding the independence and integrity of the activities of the United Nations Special Commission (UNSCOM) in Iraq and the effectiveness of the sanctions regime which appeared only to deepen the suffering of the Iraqi people without weakening the Government. Against this backdrop, the United States and the United Kingdom undertook Operation Desert Fox; a major military operation intended once again to compel compliance with the disarmament goals of 687. The two coalition members acted unilaterally and without seeking or securing the Security Council's approval for the action. Operation Desert Fox which

* *The statements contained in these lectures reflect the personal views of Mr Zacklin and do not necessarily reflect the views of the United Nations. An expanded version of these lectures will be published in due course by Cambridge University Press as a book within the Hersch Lauterpacht Memorial Lectures series.*

coincided with the beginning of the Ramadan holiday caused widespread civilian casualties and there was a strong sense that it was motivated more by President Clinton's personal difficulties than by any significant new evidence of Iraqi non-compliance.

2. The taint of opportunism seemed to be confirmed by the facts. Iraq had become convinced that UNSCOM would never certify progress in disarmament and had ceased all cooperation with that body while allowing IAEA to continue its activities provided that it was independent of UNSCOM. This had led to the withdrawal of both UNSCOM and IAEA from Iraq on 11 November 1998 but Iraq rescinded its decision three days later and the Security Council agreed to undertake a comprehensive review of the disarmament process to determine what issue remained to be resolved once the Secretary-General had confirmed through reports by IAEA and UNSCOM that Iraq had returned to full cooperation.

3. The IAEA report confirmed the cooperation but UNSCOM did not. Richard Butler the Chairman ordered the removal of UNSCOM personnel on 16 December 1998 the very same day that Desert Fox was launched. Because IAEA relied on UNSCOM logistical support it also withdrew. The proximity of Butler's withdrawal order and the start of the bombing campaign fuelled speculation of collusion between UNSCOM and Washington/London, speculation that was not helped by assertions from among his own senior staff that Butler had inserted passages in his report that had been dictated by the White House. More egregiously, from the stand point of the credibility of the Security Council, the operation had been launched before the Council had had an opportunity to examine and discuss the IAEA and UNSCOM reports requested by the Council only days earlier. Far from resolving any issues of Iraqi compliance with 687, Operation Desert Fox exacerbated the divisions within the Security Council and ushered in a prolonged period of stalemate which did not end until the final frantic months of late 2002 and early 2003.

The attacks on 9/11 and the new international security environment

4. The attacks on the World Trade Center in New York and other targets in the United States transformed the international security environment. For a very brief period after 9/11 some United Nations officials believed that the geo-political ramifications of the attacks could only strengthen the United Nations as the central multilateral organization for the maintenance of international peace and security. Even the United States, it was argued, could not conduct a so-called war on terror without the cooperation of the international community and through a multilateral approach.

5. The more experienced officials on the political side of the Secretariat, however, feared that the Security Council in adopting resolution 1368 on 121 September 2001 had acted in the emotion of the moment rather than with calm deliberation and that instead of assuming a responsible position of leadership had in effect provided the United States with a green light to take any action it deemed appropriate. In this view, there had been virtually no consultation on the text of the resolution and in practice the Security Council had abdicated its authority, a process that had been well underway since the invasion of Kuwait by Iraq. Article 51 was being distorted and the Council was substituting sub-contracted coalitions of the willing for its own Charter-mandated responsibility for international peace and security. For some in the Secretariat there were clear parallels with the “new international anarchy” which had been signaled by Secretary-General Perez de Cuellar in 1982.

6. Over the next several months the statements and actions of the United States and its closest allies seemed to confirm this shift away from multilateralism and the predominant sentiment that formed among senior United Nations officials was that the international architecture that had been established at San Francisco was at risk and that the Secretary-General should and would be expected to take the lead in publicly defending the Organization.

The case for multilateralism

7. The Secretary-General's presentation of the case for multilateralism was made at the opening of the 57th session of the General Assembly on 12 September 2002, a year and a day after 9/11. The speech had been drafted with great care and had been subject to an unusually intensive process of consultation within the Secretariat. It was a difficult exercise given the political context and the events unfolding in Afghanistan and in Iraq. On the one hand it was intended to be an affirmation of the basic principles underpinning the United Nations and the indispensability of multilateralism but at the same time it was necessary to avoid the appearance of an open conflict between the Secretariat and the Bush administration, a notion which had already gained some currency in the political and media circles in the United States. The fact that protocol and custom dictated that the Secretary-General's speech and the address by President Bush virtually succeeded each other lent a heightened expectation to the occasion.

8. The Secretary-General underlined both the individual and institutional nature of the message by declaring at the outset that "I stand before you today as a multilateralist - by precedent, by principle, by Charter and by duty". All states, he said, had a clear interest, as well as a clear responsibility to uphold international law and maintain international order. Choosing to follow or reject multilateralism must not be a simple matter of political convenience since it had consequences far beyond the immediate context. He then addressed the core issue that had by now come so close to undermining the United Nations, the use of force and the authority of the Security Council. Among multilateral institutions, he said, the United Nations had a special place: "Any state, if attacked, retains the inherent right of self-defence under Article 51 of the Charter. But beyond that, when States decide to use force to deal with broader threats to international peace and security, there is no substitute for the unique legitimacy provided by the United Nations". There was nothing new about the content of the speech. Indeed it echoed the speeches of Mr. Perez de Cuellar made a decade earlier and represented an almost

unbroken line of Charter defence going back at least to the Secretary-Generalship of Dag Hammarskjöld. The distinguishing feature of this speech was its timing and the fact that it would inevitably be perceived as a distancing of the Secretary-General and therefore the Secretariat from the United States.

9. President Bush had not come to the United Nations to praise it or the multilateral approach at least as represented by the United Nations. His speech was essentially an indictment of Saddam Hussein whose regime he described rather melodramatically as “a grave and gathering danger”. He asserted that it continued to develop weapons of mass destruction and that its use of nuclear weapons could not be ruled out. The United Nations, he said, faced “a difficult and defining moment” and he posed the rhetorical questions “ Are Security Council resolutions to be honoured and enforced or cast aside without consequence ? Will the United Nations serve the purpose of its founding, or will it be irrelevant?”. He concluded by stating that the United States would work with the Security Council for the necessary resolutions but left no doubt as to the ultimate intention: The Security Council resolutions will be enforced...or actions will be unavoidable...”

10. The juxtaposition of the Secretary-General’s appeal to multilateralism and President Bush’s warning of unilateral action could not have been starker. The message was clear: either the Security Council would actively authorize the enforcement of its resolutions on Iraq or the United States would take action unilaterally, if necessary, to enforce them on its behalf.

11. The Secretary-General’s speech almost certainly changed no opinions in Washington but it had the merit of interjecting into the debate on Iraq a sober reminder of the dangers inherent in abandoning the path of multilateral cooperation and adherence to principles. It gave renewed impetus to the search for negotiated and agreed solutions to the problems raised by the Iraq dossier.

Resolution 1441

12. On 8 November 2002, after lengthy and intensive negotiations the Security Council, to widespread relief, adopted resolution 1441. The fact that the Council had been able to reach unanimous agreement on this text after President Bush's challenging statement on 12 September 2002 was seen by some observers as a validation of the role of the United Nations and the Security Council. This optimism was not widely shared within the Secretariat.

13. There could be no doubt that the major players in the Security Council had invested a good deal of time and effort in achieving a negotiated consensus text much of which was familiar from previous resolutions and statements. But a close reading of 1441 appeared to reveal that it had basically left intact the ambiguities of previous resolutions. Given the context in which it had been negotiated, the international community scrutinized the language of 1441 to attempt to determine whether it contained some hidden formula or combination which might deliver more than it appeared to do.

The question of "material breach"

14. The Secretary-General's attention had been drawn in particular to the use of the concept of "material breach" in two of the operative paragraphs of 1441 and the possible interrelationship of these paragraphs with a reference to the serious consequences that Iraq would face as a result of its continued violations of its obligations. In requesting legal advice on the scope, implication and legal consequences of the reference to material breach in 1441, the Secretary-General sought to understand whether it could be interpreted as an automatic trigger for the re-opening or revival of the use of force as originally authorized by 678.

15. Part of the mystique attaching to the use of material breach in relation to Security Council resolutions was undoubtedly the fact although it is a well-known concept in

treaty law as a ground for terminating or suspending a treaty, it had rarely if ever been invoked in the Security Council. It was true that it had been used twelve years earlier in 707 of 15 August 1991 but in that case it had not been linked to any consequences. The important point technically was that while a material breach might give the affected parties in this case the Security Council a right to invoke the breach as a ground for termination or suspension of a resolution (assuming that you could apply the Vienna Convention *mutatis mutandis*), it did not *ipso facto* rescind the resolution. Thus, by itself it created no automatic trigger.

16. But what of the resolution as a whole? The references to material breach were contained in two separate operative paragraphs each of which was linked to other provisions that were highly relevant to their interpretation. Operative paragraph 1 had decided that Iraq “has been and remains in material breach of its obligations under relevant resolutions, including resolution 687...” the resolution establishing the terms of the cease-fire. But in operative paragraph 2, the Council while “acknowledging” the existence of this situation nevertheless decided to afford Iraq a final opportunity to comply with its obligations and accordingly decided to set up what was termed an enhanced inspection regime with the aim of bringing to full and verified completion the 687 disarmament process.

17. Taking these two paragraphs together the Legal Counsel concluded that although paragraph 1 had confirmed that Iraq has been and remained in material breach of its obligations under 687 that paragraph could not be interpreted as providing an automatic trigger for the use of force since it would obviously be for the Council as a whole to decide whether Iraq had discharged its obligations under the new enhanced regime of inspections. This conclusion was consistent with the position taken in 1992 by his predecessor to the effect that only the Security Council could determine whether a particular violation by Iraq was sufficiently serious as to destroy the basis of the cease-fire.

18. Operative paragraph 4 of 1441 had decided that false statements or omissions in the declarations submitted by Iraq under the enhanced regime and failure to comply and cooperate in its implementation shall constitute a further material breach of Iraq's obligations and would be reported to the Council "for assessment". This paragraph was specifically linked to operative paragraphs 11 and 12 which directed the executive heads of UNMOVIC and IAEA to report such matters to the Council which would convene immediately "in order to consider the situation and the need for full compliance..." Consequently in the Legal Counsel's view any reported "material breach" of Iraq's obligations required the convening of the Council for assessment of the situation and did not therefore create automaticity with respect to the use of force.

19. The conclusion that neither operative paragraph 1 nor operative paragraph 4 could be interpreted as creating an automatic trigger appeared to be supported by the statements made by the representatives of the P5 at the time of the adoption of 1441. Ambassador Negroponte had said that "...this resolution contains no 'hidden triggers' and no 'automaticity' with respect to the use of force". Jeremy Greenstock echoed this. Ambassador Levitte said that France welcomed the fact that 'all ambiguity on this point and all elements of automaticity have disappeared from the resolution'. Ambassador Lavrov emphasized in his statement that operative paragraphs 4, 11 and 12 had established a clear sequence of actions that made it clear that it was for the Council to convene and consider the situation in the event of a reported material breach.

20. But none of these statements referred to operative paragraph 13 and the Legal Counsel noted in his advice to the Secretary-General that paragraphs 4 and 12 were linked to that paragraph which recalled that in the context of the Council convening immediately to consider the situation arising from a reported material breach, the Council had repeatedly warned Iraq of serious consequences as a result of continued violations. He noted that both the United States and to some extent the United Kingdom appeared to

interpret this as confirmation of their right to use force against Iraq if the Council, in their view, failed to act accordingly in the light of further violations by Iraq of its obligations. Ambassador Negroponte had stated at the time of the adoption of 1441 that “if the Security Council fails to act decisively in the event of further Iraqi violations, this resolution does not constrain any Member State from acting to defend itself against the threat posed by Iraq or to enforce relevant United Nations resolutions and protect peace and security”. For his part Jeremy Greenstock, the United Kingdom Permanent Representative used slightly more circumspect language. He said that when a further material breach of Iraq’s obligations would be reported to the Council it is expected that the Security Council would then meet its responsibilities.

21. No one had suggested that the right of self-defence had been constrained by 1441 nor could it since this inherent right was enshrined in the Charter. The assertion that the United States had the right to unilaterally enforce United Nations resolutions was without any legal foundation. In concluding his advice the Legal Counsel pointed out that since under the Charter the use of force is permissible in only two circumstances, an enforcement action under Chapter VII or acting pursuant to Article 51, the United States appeared to have left open for itself the possibility of the use of force against Iraq in the future based on the right of self-defence.

22. 1441 in principle provided a window of final opportunity for Iraq. UNMOVIC, the successor to the infamous UNSCOM was placed under the new management of Hans Blix a highly respected international lawyer and former Director-General of the IAEA. The enhanced inspection of regime established through 1441 was therefore acting under the guidance of both the past and present executive heads of IAEA. The integrity and probity of the process of bringing to full and verified completion the disarmament dossier of 687 seemed to be in safe hands. What was needed was time for the inspectors to fulfill their mandate.

23. Unfortunately, the passage of 1441 notwithstanding, it had become perfectly clear to the Secretariat that as far as the United States was concerned, aided and abetted by the United Kingdom, war had become inevitable. For the war's architects in Washington, as one American academic commentator has put it, Iraq was not a danger to avoid but a strategic opportunity. The threat posed by the alleged existence of weapons of mass destruction (after several years of intrusive inspections) was a convenient pretext as was the inability of UNSCOM and now UNMOVIC to provide incontrovertible proof of their destruction. The aims of this war were as confused as the legal reasoning underpinning the use of force.

24. A decade earlier, Secretary-General Perez de Cuellar had used speeches at the European Parliament and at the University of Bordeaux to warn of the dangers of unilateral actions without multilateral support and without the legitimacy that only the United Nations could confer. On that occasion he had been speaking after the fact. Now, with the outcome of the implementation of 1441 in doubt and preparations for war underway the Secretary-General decided that he should use the occasion of a speech at the College of William and Mary in Virginia to speak against a unilateral resort to use of force before the fact. It was an opportunity to make one last appeal to a broader audience and to attempt to influence public opinion.

25. In an address delivered on 8 February 2003, the Secretary-General spoke of the great anxiety concerning the prospect of war in Iraq. The world had a duty to prevent it. It was true that Iraq had not complied with all the obligations it had accepted in 687, particularly with regard to weapons of mass destruction but this was an issue "not for any State alone, but for the international community as a whole". The United Nations had the duty to exhaust all possibilities of peaceful settlement, before resorting to the use of force. In an echo of Mr. Perez de Cuellar's 1991 speech, he added that "When States decide to use force, not in self-defence but to deal with broader threats to international peace and security, there is no substitute for the unique legitimacy provided by the United Nations

Security Council. States and peoples around the world attach fundamental importance to such legitimacy, and to the international rule of law". Referring to the fact that 1441 had been approved unanimously he pointed out that when the Security Council acts in a unified and concerted way it is at its most effective.

26. The speech was a very public appeal to the United States to draw back from a unilateral use of force which he made clear could not be justified as self-defence and which without Security Council authorization would lack legitimacy. He did not go so far as to pronounce such an action as illegal preferring instead to side-step the legality issue in favour of a more nuanced concept of legitimacy which contained a moral as well as a legal connotation.

27. However, questions concerning the legality of a possible unilateral action against Iraq, whether more or less disguised as an enforcement of 687, were mounting. The Charter of the United Nations, international law and the legality of the use of force in Iraq were the subjects of almost daily commentaries in the media and the Secretary-General naturally was under intense pressure to pronounce publicly on this question. Generally speaking it is never a good idea for a Secretary-General to openly and publicly disagree with a member of the P5 on a matter involving international peace and security and especially not one which had determined to wage war and threatened the Organization with irrelevancy. The Secretary-General was in an unenviable position straddling a fine line between his duty to uphold the Charter and the multilateral system while at the same time retaining the confidence of the United States as the head of the United Nations. It had been possible for some time to avoid commenting directly on this question as mere speculation but by 2003 it was no longer speculation and the run-up to the war was being conducted in a very public way both inside and outside the United Nations.

28. Part of the reluctance of the Secretary-General to pronounce on this issue in terms of legality may well have been colored by his belief that the states concerned which had

historically been the strongest supporters of the United Nations and of the rule of law in international relations would not readily engage in an unlawful use of force, particularly since they claimed to be acting on the authority of or on behalf of the Security Council. For this reason he had preferred until this point to deal with this issue in terms of process, that is the need to act through the Security Council, or in terms of legitimacy. But as the end-game played out in the Security Council and on the ground in February 2003, the question of legality could no longer be avoided and legal advice was provided to the Secretary-General in which the possible justifications were analyzed.

29. Various legal justifications had been put forward by the United States over the preceding months, some more credible than others. The fact that these justifications multiplied served to diminish their credibility and some clearly were brought forward more in hope than conviction. This was particularly the case of the supposed right of “pro-democratic intervention” and the supposed right of “humanitarian intervention”. As far as the first of these was concerned the Secretary-General was advised that international law did not contain any rule which would make it lawful for a State unilaterally and without authorization from the Security Council to use armed force to overthrow the government of another State which had not been democratically elected for the purpose of installing a democratically elected one. The same was true of the supposed right of humanitarian intervention which despite the events in Kosovo and the debate that had followed had not yet crystallized into a rule.

30. The United States, however, had consistently made two arguments which could not be so easily dismissed. The first of these was that an authorization to use force by the Security Council once given could be revived and implemented unilaterally without a further Security Council decision to that effect. The second was the exercise of the inherent right of self-defence under Article 51 which had most recently been alluded to by Ambassador Negroponte in his statement following the adoption of 1441.

31. The strongest of these arguments was certainly the revival theory and it was one concerning which the Office of Legal Affairs had differed as consistently as it had been promoted by the United States. The argument simply put was that there already existed an authorization by the Security Council to use force in order to restore peace and security in the area, in particular through disarmament, and that no further authorization was required since Iraq's lack of compliance and material breach of numerous Security Council resolutions over a lengthy period had ended the cease-fire agreed in 1991 and automatically revived the authorization to use force.

32. Addressing this issue in 1998 Michael Matheson of the State Department Office of the Legal Adviser had provided the following explanation of the United States position: "There remains ...the question of whether the Security Council would have to authorize the use of force, or whether the member States of the coalition could act on their own. The United States position is the latter proposition, that is, that Member States can act on their own, and that has been the United States position throughout the events, from the initial action taken by the Council to the most recent resolution. The United States has maintained that it is within its authority to take the necessary proportionate force to ensure that Iraq comply with and not violate any of the resolutions of the Security Council, but that it would be acceptable and useful to have the Security Council reiterate such authority. However, the United States did not consider that reiteration a precondition to its authority".

33. This was not the view of the Secretariat. Based on the legal advice provided over many years beginning with the 1992 legal opinion, the Secretariat's view could be summarized as follows:

- i) Acting under Chapter VII the Security Council in 678 had authorized a coalition of states to use armed force against Iraq in order to bring about that

country's withdrawal from Kuwait, the implementation of all its subsequent resolutions and the restoration of international peace and security in the area;

ii) In 687 the Council had imposed additional obligations on Iraq and thereby laid down the conditions that would have to be fulfilled for international peace and security in the area to be restored including disarmament under international supervision. The preamble of that resolution had noted the threat that weapons of mass destruction posed to peace and security in the area;

iii) 687 had not terminated the authorization to use force contained in 678 nor had any subsequent resolution;

iv) The combined effect of 687 and its acceptance by Iraq had been that a formal cease-fire had become effective on 6 April 1992 thereby suspending the authorization to use force;

v) For that authorization to revive two steps would be necessary. The Council must determine that Iraq had violated the cease-fire in a manner that was sufficiently serious as to negate its basis, and the Council would have to make clear its view as an organ that Member States were justified in using all necessary means, up to and including armed force, to bring Iraq into compliance with 687;

vi) The Council had not adopted any resolution or presidential statement which clearly and unequivocally fulfilled these two conditions. Decisions concerning material breach of obligations might be a ground for a decision to terminate the cease-fire but were not the same thing as saying that Iraq's conduct negated the cease-fire and that Member States would be justified in using all necessary means to bring Iraq into compliance. Indeed, in statements made after the adoption of 1441, the P5 in varying ways had confirmed that it contained no hidden triggers or

automaticity with respect to the use of force and that it was for the Council to consider and assess any reported failure by Iraq to comply with its obligations.

34. By this stage, however, the legal debate had become largely irrelevant. As the representative of Iraq stated in an open meeting of the Council on 7 March 2003 “ a possible war of aggression against Iraq had become imminent, regardless of any decision by the Council”. Security Council members were essentially talking past each other. On 7 March the Non-Aligned Group requested briefings from Hans Blix and Mohamed El-Baradei. Each reported some progress in implementing their mandates. Iraq’s cooperation was improving but more time was needed particularly by UNMOVIC. For his part Mr El-Baradei reported that allegations that Iraq had attempted to buy uranium from Niger were unfounded, that there was no indication of resumed nuclear activities or any indication of nuclear-related prohibited activities at any inspected sites.

35. The United States, the United Kingdom and Spain persisted in their attempt to have the Security Council approve a resolution that would authorize the use of force (the so-called second resolution) but three permanent members had publicly stated that they would either veto or not favour such a resolution. The co-sponsors of the “second resolution” could not obtain the required number of votes and did not put their draft resolution to a vote. Since the United States did not consider such a resolution a precondition to its use of force the fact that the organ responsible for the maintenance of international peace and security under the Charter had declined to act in support of the course of action it was about to undertake together with its coalition allies was not seen as an obstacle to its determination to wage war.

36. In the Security Council on 19 March 2003 the Secretary-General pronounced it a sad day for the Organization and the international community; millions around the world shared that sense of disappointment and were deeply alarmed by the prospect of imminent war, he said. It was a typically under-stated reaction to what by any measure was a serious

blow to the effectiveness and credibility of the Security Council in maintaining international peace and security. It was only on 16 September 2004, almost 18 months later, that he was finally coaxed into declaring that the invasion of Iraq was illegal. By that time despair, frustration and disillusionment in equal measure had overtaken a Secretariat that had seen its colleagues in Baghdad killed and injured and the United Nations itself integrated into the post-conflict framework established by the Security Council at the behest of the coalition governments. To many in the Secretariat it did indeed seem as one staff member of the Office of Legal Affairs said at the time in a screen saver posted on her computer that the Charter had indeed departed the building.

CONCLUSIONS

1. When the British and French Governments launched the Suez invasion in 1956 Secretary-General Dag Hammarskjöld was so shocked that these two permanent members of the Security Council could engage in such a shoddy deception and blatant violation of the Charter that he publicly rebuked them in an open meeting of the Security Council. “The principles of the Charter...”, he said, “...are by far greater than the Organization in which they are embodied, and the aims which they are to safeguard are holier than the policies of any single nation or people”. In his view, the Secretary-General must be a servant of the principles of the Charter and he made it clear that if member states did not agree with that interpretation of his role he would step down.

2. In 2003 Kofi Annan engaged in no such public rebuke of the United States-led invasion of Iraq nor did he publicly offer to step down. Of course, it could be argued that the two situations were completely different. Suez had been conducted in complete secrecy and the scheme concocted by the British, French and Israeli governments had been pieced together in a clandestine fashion. Iraq on the other hand had been conducted in the full glare of open meetings of the Security Council and unilateral pronouncements

by the United States. The distaste of the Secretary-General for this American misadventure had been made known through the oft-repeated comment that in the absence of Security Council authorization the use of force would not be in conformity with the Charter. Nevertheless, there is no doubt he could have done more but the dramatic principled gesture was not his style.

3. Suez and Iraq are separated by almost 50 years but for the Secretariat there were striking parallels. They each represented a monumental act of folly and hubris by permanent members of the Security Council who betrayed their trusteeship of the Charter. Each was shameful in the use of deception and false information in order to attempt to justify their actions. And in each the executive branch of government driven by a pathological disorder chose to ignore the advice of its experts.

4. There is a common thread which runs through the Secretariat's understanding of its role in regard to the use of force throughout the history of the Organization. The Secretariat is by vocation and by tradition a culture of peace. It prefers multilateralism to unilateralism, diplomacy to force. Force is essentially abhorrent and its use is to be avoided unless legitimized by the Charter and then only in the last resort. These various strands of the Secretariat's ideology are very much on display in the three conflicts that have been examined in these lectures and what stands out is the consistency with which they have been used.

5. First and foremost, not surprisingly, is the attachment to the Charter and the principles it embodies. For the Secretariat, the Charter is more than the constitutive instrument of the Organization. It is the bedrock of the collective security system. And while like all such instruments it may and indeed it has evolved through practice, its principles, particularly those with regard to the use of force are viewed as fundamentally sound. In this sense the Secretariat's views coincided with those expressed by the 2004 High Level Panel report that Chapter VII fully empowers the Security Council to deal

with every kind of threat that States may confront and that the challenge is not to find alternatives to the Council as a source of authority but to make it work better.

6. As important as principles are, however, it is equally important that they should be applied consistently. As Secretary-General Perez de Cuellar observed in relation to the authorized collective action against Iraq in 1991 a principle invoked in a particular situation but disregarded in a similar one is as good as no principle at all. The lack of a consistent application of principles leads to a credibility deficit which over time undermines the foundation of the Organization and the very legitimacy of its actions.

7. For the Secretariat whose primary function is to implement the decisions mandated by the principal organs, the question of legitimacy is of paramount importance. The question is particularly pertinent in relation to the use of force given the consequences in a world of high-tech weapons systems for the civilian population. There is something almost obscene in the use of air power and missile strikes launched from great altitudes and distances against targets which, however well identified, invariably cause what is euphemistically referred to as collateral damage. One of the constant themes running through the Secretariat's views on use of force even where it is authorized or mandated is the question of proportionality. In the Secretariat's view the means are not unlimited. They should always be proportional to the objective. To its credit the High Level Panel did attempt to come to grips with the difficult question of legality and legitimacy in the use of force under the Charter, even proposing five basic criteria of legitimacy to be used by the Security Council: seriousness of threat; proper purpose; last resort; proportional means; and balance of consequences. These are criteria which the Secretariat itself has exercised or drawn attention to on many occasions most notably in the actions undertaken in Bosnia.

8. The United Nations Secretariat was in shock if not in awe by the end of 2003. A period which had started with so much promise in 1991 had within a short span of time

divided the Organization as never before. Within the Secretariat divisions had emerged between what came to be known as the traditionalists and the self-proclaimed modernizers. The modernizers, a group that was made up almost entirely of American or Americanized officials who had been parachuted into the Secretariat during the run up to the Iraq war believed that there were no good processes only good outcomes. Expediency not principle was the order of the day and if the United Nations was to survive as an institution it simply had to accommodate itself to United States power. This group lacked any historical perspective of the Organization and tended to regard the Secretariat as a corporate arm of the United States Government. There was no such thing as the international civil service. The traditionalists on the other hand believed that the legitimacy and the credibility of the Organization derived from the Charter-established principles and their consistent application under international law. The Secretariat had a duty and a responsibility to uphold those principles. As they saw it, the problem lay not so much in the deficiencies of the Charter but in the lack of political will and direction by those member states whose positions in the system gave them a particular role. The Charter was an instrument that had proved its worth over the decades and was infinitely supple.

9. The High Level Panel report's recommendations on the use of force essentially endorsed the traditionalist view. With the advantage of hindsight one can now see that at the very moment when many commentators believed that the United Nations and the Security Council in particular had underlined their incapacity by failing to avert war in Iraq, the refusal of the Security Council to authorize the use of force through a second resolution demonstrated paradoxically that the Charter principles on use of force retained their validity.

10. Following the Iraq war many both inside and outside the Secretariat feared for the future of the Charter principles on use of force, the collective security system and the United Nations as a viable and effective organization. The Secretariat engaged in a good

deal of introspection and internal examination. Had the Charter reached the end of its useful shelf-life? Were its principles outdated? Could the Security Council ever be reformed? Should the United Nations be replaced by a new organization based on different principles and values and if so what should they be? These questions assumed that the unipolar world that had been ushered in by the end of the Cold War would continue to characterize the state of international relations. What had not been foreseen was the rapidity with which the hegemonic New American Century would collapse. The combination of an illegal war and of an occupation blighted by gross violations and abuses of humanitarian law and human rights destroyed any pretence of moral superiority and completely undermined the values of law and justice in the name of which the war had been carried out. A new multilateralism is taking shape and is replacing the short-lived *Pax Americana*. New powers are emerging and old powers are reasserting themselves which suggests that the classic response to any hegemonic project is underway. The United Nations as an expression of this new balance of power will continue to evolve through practice. Reconciling the use of force with the rule of law will remain its biggest challenge.

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