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From: Na'ama Nagar <nnagar@fsu.edu>
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Thank you for letting me know, is there a chance you can scan two chapters from the 2018 edition?

I actually need scanned copies of chapters 3 and 4 for an online class. If not I will come and borrow it myself.

Many thanks,
Na'ama

3 The United Nations I

Law and Administration

key facts

Headquarters: New York

Members: 193 countries

Mandate: to end international war, and to promote social and economic development.

Key structure: six principal “organs” are the General Assembly (all UN members, to make recommendations to states), the Security Council (fifteen members, to take enforcement action on international security), the International Court of Justice (to decide legal disputes between states), the Secretariat (the Secretary-General and staff), the Economic and Social Council (fifty-four members, to make recommendations on economic and social questions), and the Trusteeship Council (defunct).

Key obligations: member states must give up the use of force except for self-defense, must carry out Security Council decisions, and can conclude no treaty that contradicts the Charter.

Enforcement: the Security Council can take any action it deems necessary, including the use of force, to respond to threats to international peace and security.

Key legal clauses of the UN Charter:

Article 2(1) The Organization is based on the . . . sovereign equality of all its Members.

Article 2(4) All Members shall refrain in their international relations from the threat or use of force. . .

key facts

Article 2(7) Nothing . . . in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state . . .

Article 4(2) Membership in the United Nations is open to all . . . peace-loving states.

Article 10 The General Assembly may discuss any questions . . . within the scope of the present Charter . . . [and] make recommendations to the Members of the United Nations or to the Security Council.

Article 24(1) [T]he United Nations . . . confer on the Security Council primary responsibility for the maintenance of international peace and security.

Article 25 The Members of the United Nations agree to accept and carry out the decisions of the Security Council.

Article 42 [The Security Council] may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security.

Article 51 Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations.

Article 103 In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreements, their obligations under the present Charter shall prevail.

The UN Charter, signed in 1945, created two distinct things: a set of basic rules of conduct for governments and a formal organization with its own powers. Both the organization and the rules are legally binding and are therefore a kind of constraint on the sovereignty of member states, and they also make possible new kinds of international politics that can be very useful to states. They are therefore empowering as well as constraining. The formal organization of the United Nations is composed of separate organs including the Security Council, the General Assembly, and the Secretariat. Each has a specific area of competence and they vary in how much authority they exercise over member states. The basic rules include commitments to refrain from the use of force to solve international disputes, to respect the decisions of the International Court of Justice, and to pay the required dues to the United Nations itself. The two

aspects of the UN Charter amount to something like a constitution for the international system.¹

The United Nations Charter defines the UN as a formal institution of limited powers as well as a generalized system of constitutional principles to govern all of inter-state politics. The institutional parts of the UN, such as the General Assembly and the Security Council, are required to operate within these principles, but the principles themselves are refined and brought to life through the daily practices and actions of the states and others who make use of them. The principles and the practices need to be understood together, as neither is really dominant. When, for instance, the Charter says that the Security Council has “primary responsibility for the maintenance of international peace and security” (Art. 24(1)), the only way to know what is meant by the key terms “primary” and “international peace and security” is to look at how the Council and others have used these terms through the years in debates, justifications, and argument. This chapter therefore looks at the UN with one eye on the legal language of the Charter and the other eye on the artful applications of that language in the practical diplomacy and manipulations of states.

As a formal organization, the United Nations is a system of many constituent sub-organizations of varying degrees of independence and authority. The Charter describes the six principal organs of the United Nations that make up the central core of the system. They are the General Assembly, the Security Council, the Trusteeship Council, the International Court of Justice, the Economic and Social Council, and the Secretariat. Each has a distinct sphere of operation and a set of powers that is delimited by the Charter, and each has the power to act as an independent player in world politics in some limited domain of competence. Beyond these six, lies a vast universe of “specialized” agencies and “related” organizations and funds. These include many of the largest stand-alone organizations discussed in this book (such as the WTO, the IMF, and the ILO) that agree to report their activities to the United Nations but are not formally subordinate to it in any way. It also includes subsidiary bodies of the UN itself, such as the UN Population Fund and the UN Development Program.

¹ Whether it really qualifies as a constitution is debated in Bardo Fassbender, “The United Nations Charter as Constitution of the International Community,” *Columbia Journal of Transnational Law*, 1998, 36: 529–723, and Michael W. Doyle, “The UN Charter – A Global Constitution?” in Jeffrey L. Dunoff and Joel P. Trachtman (eds.), *Ruling the World? Constitutionalism, International Law, and Global Governance*. Cambridge University Press, 2009, pp. 113–132.

This chapter is concerned with the six primary organs of the UN and the obligations, compliance, and enforcement that they generate relative to UN member states. The Security Council (SC) is responsible for responding to threats to international peace and security and has the authority to force states to change their policies through military enforcement if necessary. The General Assembly (GA) has a broader scope than the SC in that it can discuss any matter within the jurisdiction of the UN, including and beyond “international peace and security,” but its enforcement authority extends only to making recommendations to states and to other parts of the UN. It cannot take “decisions” in a formal sense of acts that create binding obligations for member governments. The Secretariat is the bureaucratic staff of the UN, headed by the Secretary-General. The staff is drawn from member states but they are formal employees of the international organization and so owe their loyalty to the UN rather than to their home governments. The Trusteeship Council (TC) is responsible for supervising any people and territories that have been placed under “trusteeship” with the UN, and is now moribund as there are no more such territories. The TC is interesting today mainly as evidence of how hard it is to amend the text of the Charter to remove outdated provisions, though some have suggested that the Trusteeship Council could be cleansed of its colonialist overtones and become a device for dealing with the administration of “failed states.”² The International Court of Justice (ICJ) is a judicial body where states bring complaints when other states have failed to live up to their obligations under international law. Its jurisdiction and powers are subtle and interesting, and are the subject of Chapter 8. Finally, the Economic and Social Council (ECOSOC) contains a subset of GA members and has the power to undertake studies and make recommendations on a range of non-security topics.

It is an open question whether the activities of the United Nations actually enhance human or global welfare. This is certainly the aspiration of the organization, committed as it is to reducing war and conflict and to improving the living conditions of people around the world. But it is naive to assume that it necessarily succeeds in doing this. This is true both in the sense that sometimes UN operations go wrong, and people suffer as a result, and also in that the political issues treated by the UN necessarily involve choosing winners and losers.

² For a discussion of moving “trusteeship” functions around in the UN system, see James D. Fearon and David D. Laitin, “Neotrusteeship and the Problem of Weak States,” *International Security*, 2004, 28(4): 5–43.

It is never self-evident what the UN should do; it is always a matter of some contestation. Some people will be put out and others will be privileged. To the winning side, the UN might look like a paragon of international consensualism and common-sense, but to the losers it will look very different. The UN does not erase political disagreements over what should be done and who should decide. It is instead an actor, forum, and resource in the context of those disagreements.

These differences are explored in a case study of Richard Goldstone's inquiry into the 2009 Gaza War. Goldstone, a South African lawyer, was asked by the General Assembly to investigate whether war crimes were committed in that conflict. The powers, limits, and politics of the investigation show in practice how the UN is both empowered and constrained by its position in international politics.

This chapter concludes with a case study of a 2010 cholera outbreak in Haiti to explore what happens when a UN operation goes wrong. In that case, peacekeepers accidentally sparked an epidemic which led to the death of thousands of people. The organization's response is a lesson in how powerful actors like the UN can use their positions to avoid accountability for their own actions. It is a reminder too that UN operations must be judged on their practical effects and not on their best-case assumptions or ideal designs.

Obligations

Under the Charter

Members of the United Nations take on general obligations under the UN Charter as well as specific obligations to particular organs of the UN. This section considers the main obligations of states to the Charter itself and the next section looks at the obligations of states relative to the authority and powers of specific UN organs. It highlights also the legal limits on the UN's authority.

The Charter spells out the general obligations of UN members and the general powers and limits of the UN as an organization. These define the parameters within which the UN exists and within which inter-state relations are supposed to take place. The organs of the UN take their place within this framework and are governed by it. This makes the Charter *the* fundamental international treaty. Its status is explicitly affirmed in Articles 102 and 103, which require that every other inter-state treaty be subordinate to the UN Charter. Article 103 says that "in the event of a conflict between the ... present Charter and [states']

obligations under any other international agreement, their obligations under the present Charter shall prevail” and Article 102(2) says that states cannot invoke their obligations under any other treaty if that treaty has not been registered with the UN Secretariat in advance.

In other words, no treaty that contradicts the UN Charter or that is not put on deposit with the Secretary-General is considered legally binding. The singular importance of the UN Charter is evident in the way the document was physically handled in 1945: at the end of the San Francisco conference, the copy of the Charter that had been signed by the founding states was flown to Washington, DC by an American official, Alger Hiss. The box containing the Charter was equipped with its own parachute, but none was provided for Hiss himself.³

Article 2 of the Charter contains several clauses crucial to modern international politics. Article 2(4), in particular, stands ahead of almost anything else in the Charter. It says that “all members shall refrain in their international relations from the threat or use of force against . . . any state.” In the eyes of the framers of the Charter at San Francisco in 1945, this was perhaps the single most important component of the new international system they were designing. It means that all UN members (which today includes all 193 of the world’s states) are forbidden from using or threatening war against other states. The implications of this are profound, and are explored below and in the following chapter.

For the UN organization itself, Articles 2(1) and 2(7) are extremely important. They have a kind of constitutional status because of the breadth and severity of the limits they place on the organization vis-à-vis state sovereignty. These clauses say that “the Organization is based on the principle of the sovereign equality of all its Members” (Art. 2(1)) and that the UN cannot “intervene in matters which are essentially within the domestic jurisdiction of any state” (Art. 2(7)). These rules address themselves to the United Nations as an institution rather than to its member states, and they therefore define fundamental rules for the operation of all UN business. To understand the impact of these two clauses, it is worth looking at the “chapeau” to Article 2, ahead of the numbered paragraphs, where it says that “the Organization and its Members . . . shall act in accordance with the following Principles: . . .” In other words, everything that the UN does must conform to the principles of legal equality among states and domestic non-interference by the UN. By the standards of public international law these are very strongly stated and clearly marked obligations; to say “the

³ Alger Hiss interview, Yale-UN Oral History Project, October 11, 1990, p. 48. UN Library, New York.

Organization shall act . . ." is an absolute prohibition on acting otherwise. Every peace mission, every development program, and every speech by the Secretary-General must abide by these limits. The rule on sovereign equality ensures, for instance, that each country's representative gets to speak at the annual meeting of the General Assembly for the same amount of time, at least in theory.⁴ It is also behind the practice of treating all gifts to the UN art collection with equal dignity and respect, regardless of their artistic merits – since to do otherwise might be interpreted as treating nations as other than fully equal.⁵ However, "equality" in this context does not mean that anyone believes that all countries are equal in wealth or power or influence; it only means that they are absolutely equal in their legal rights and obligations as sovereign states and in their relations with the UN. This kind of juridical or legal equality is central to modern international law and to the law and practice of the United Nations.⁶

The rule on non-intervention is equally fundamental. Article 2(7) preserves the domestic sovereignty of governments over anything that is "essentially within" the domestic jurisdiction of the state. The United Nations cannot take any action that interferes with that domestic jurisdiction; as a consequence, the UN's authority extends only to international matters and these are understood as being mutually exclusive with everything that is domestic. For anything that is "domestic," therefore, the UN can only operate with the consent of the local government. It can only intervene in the domestic affairs of states without their consent when these affairs have crossed the threshold and become "international" matters, at which point (by definition) they cease to be within the domain of domestic for the purposes of Article 2(7).

This is perhaps most visible in the area of UN military operations, where forceful "intervention" is an entirely different legal act than a consensual "peacekeeping" operation. Peacekeeping missions are generally negotiated between the UN and the state in question, and thus blue-helmet peacekeeping

⁴ In practice, leaders often go on for far longer than their allotted time and the UN has few means to limit them. Libya's Colonel Qaddafi produced a memorably long speech in 2009. "Libyan Leader Delivers a Scolding in UN Debut," Neil MacFarquhar, *New York Times*, September 23, 2009.

⁵ "Space is Tight at the UN, but Art Gifts Keep Coming," Daniel B. Schneider, *New York Times*, March 31, 2004. Also, "UN Art Collection, Like the UN, Keeps Growing," William G. Blair, *New York Times*, March 13, 1983.

⁶ Gerry Simpson provides a very interesting corrective to this doctrine. His book *Great Powers and Outlaw States: Unequal Sovereigns in the International Legal Order* (Cambridge University Press, 2004) shows the many ways that international law over history has treated "great powers" as having more rights and "outlaw states" as having fewer.

troops are sent to a country only with the permission of the government. Aid programs, elections monitoring, and refugee assistance, among other kinds of activities, must equally be premised on the consent of the government to avoid violating Article 2(7). A powerful corollary of this rule is that if a government withdraws its consent to a program in progress, the UN must cease its work and remove its people. It cannot keep personnel or programs in a country that has not consented to them. The clarity of the legal principle had decisive consequences when in 1967 Egypt withdrew its consent to the UNEF peacekeeping mission stationed in Sinai.⁷ U Thant, the Secretary-General at the time, ordered the peacekeepers to leave immediately, despite fully expecting that this was a prelude to war with Israel. Israel refused to allow the peacekeepers to move to its side of the border, and as they evacuated from the Sinai, war between Egypt and Israel erupted around them. Fifteen UN soldiers were killed in the process. Thant understood that without an explicit legal mandate from the host country, UN troops would be violating Article 2(7) if they stayed in place. Non-consensual “peace enforcement” missions are different. They are legally defined in Chapter VII of the UN Charter and their legal and political features are the subject of the following chapter in this book.

For Article 2(7) to be meaningful, it can only be in relation to the key phrase “essentially within the jurisdiction of any state.” It presumes a bright line between domestic affairs and international matters, and while it is entirely conventional to distinguish between the two, the importance of the distinction in the law and practice of the UN makes for some interesting problems. The basic idea of domestic sovereignty is clear enough but its details, limits, and implications are all highly contested. One might wonder, for instance, what the modifier “essentially” is doing in the sentence. Does this imply that some issues are only partly domestic, and if so can the UN legally take action with respect to them?

From a practical perspective, the line between international issues and matters within the domestic jurisdiction of the state is never self-evident. The line is both unclear and moveable.

Much of the controversy in foreign policy arises over competing arguments about where the legitimate legal boundaries of domestic sovereignty are drawn. The UN system presumes that such boundaries exist but does not give much help on how to determine them. As Sands and Klein point out, there has been great

⁷ UNEF is “United Nations Emergency Force,” and its history is well described in the UN’s own archives: www.un.org/en/peacekeeping/missions/past/unef1backgr2.html. Accessed February 9, 2010.

controversy over the years over whether (for instance) apartheid in South Africa, genocide in Rwanda, and colonialism are essentially domestic matters or are of legitimate international concern.⁸ In 1999 the Security Council said that the easy availability of small arms and light weapons might constitute a threat to international peace and security and therefore the trade in small arms might not be entirely within the domain of domestic jurisdiction.⁹ The tendency has been for the Council to find more and more matters to be within its jurisdiction as threats to international peace and security, with the effect that the areas covered by Article 2(7) protection are shrinking. While there is no formal provision in the Charter for treating past decisions as precedents, the gradual accumulation of Security Council resolutions expanding the “international” sphere results in reducing the “domestic” sphere.¹⁰

To the UN Organs

It is within the context of these rules that the organs of the United Nations go about their business. Member states are committed to the obligations described in the Charter and therefore also to any new obligations created by UN organs as they carry out their mandates. The principal obligations of UN members involve the General Assembly (GA) and the Security Council (SC), and this section focuses on these. The ICJ is treated separately in Chapter 8. The other main organs (the Secretariat, the Trusteeship Council, and ECOSOC) create minor obligations for UN members, and are best understood in contrast to the GA and the SC.

The General Assembly’s powers are clearly set out in Articles 10 through 13 of the Charter. As a general matter, the Assembly “may discuss any questions or any matters within the scope of the present Charter” (Art. 10). There is no limit to the substantive topics that it may address, as long as it abides by rules discussed above for the UN as a whole, notably Article 2(1) and 2(7). The Assembly is the plenary body of the UN, meaning that it includes as members all of the nation-states in the UN. Each state gets one vote in the Assembly and resolutions

⁸ Philippe Sands and Pierre Klein, *Bowett’s Law of International Institutions*, 5th edn. Sweet and Maxwell, 2001, pp. 39–55.

⁹ S/PRST/1999/28. Each UN document has a unique reference code, where the first letter represents the body that produced the document (“S” for Security Council, “A” for General Assembly, etc.), and subsequent characters further specify. In this case, this is the 28th Presidential Statement from the Security Council in 1999.

¹⁰ See Bruce Cronin and Ian Hurd (eds.), *The UN Security Council and the Politics of International Authority*. Routledge, 2008.

generally pass if they are supported by two-thirds of the members present and voting. While Article 10 authorizes the Assembly to discuss “any questions or any matters” of concern to the UN, the Assembly’s power on any of these topics is limited to making “recommendations” to states or to the Secretary-General, issuing reports, and launching studies.

General Assembly resolutions are therefore (at most) statements of recommendation. They are never legally binding directives. States’ obligations to these recommendations are very limited; the Charter implies that states have a duty to take these recommendations seriously, but it does not create any formal legal obligation to implement or even consider them, let alone to take any action. The General Assembly’s power is therefore broad but shallow. It can consider and make recommendations on many topics but its outputs have no coercive or binding authority.

The one exception to this pattern is that the Assembly has decisive power over the UN expenditure budget and the allocation of costs among member states. This authority is established by Article 17 and it is noteworthy because it means that the sensitive matters of revenue and spending are decided by the Assembly by a two-thirds majority vote without any special influence reserved for the highest-contributing states. The UN’s critics, particularly among conservatives in the US, have taken this as ammunition for the complaint that UN spending is disconnected from or unaccountable to the rich states who contribute the largest shares of the UN’s income.¹¹ That the UN is organized this way reflects the fact that in 1945 there was a dominant view that the spending decisions of the organization were of interest to the general membership and not just the Great Powers. In this case, the democratic impulse trumped the usual tendency for the strong states to keep close control over important decisions.

However, the power of the big contributors is accommodated in more subtle ways, using the procedural rules of the Assembly: the draft budget of the organization only reaches the Assembly as whole after it has passed through a committee on which the major contributors are represented and which takes decisions by consensus. This committee (the Advisory Committee on Administrative and Budgetary Questions (ACABQ)) has sixteen members, elected from the General Assembly, and it receives the draft budget from the Secretary-General before sending it on to the Assembly. By customary agreement, the US always has a member on the

¹¹ For instance Brett D. Schaefer, “A Progress Report on the UN,” Backgrounder 1937, Heritage Foundation: www.heritage.org/Research/InternationalOrganizations/bg1937.cfm. Accessed December 3, 2009.

committee.¹² In practice, therefore, the US can veto the budget in this committee stage before it ever reaches the Assembly and thus no budget reaches the Assembly without US approval. In a second accommodation to the influence of political power, the budget for peacekeeping missions is organized separately from the “regular” budget described in Article 17, in an effort to insulate the regular budget from the disagreements that arose when the GA, rather than the SC, launched peace operations in the 1950s and 1960s. (This is discussed in Chapter 5.)

To the extent that GA resolutions have a significant effect in world politics it is due to their political influence rather than to the legal obligations that they carry. General Assembly resolutions can be politically useful tools in the rhetorical struggles between states and for that reason a good deal of attention is devoted to fighting over the language in them. These resolutions can sometimes be successfully presented as reflecting the view of the “international community” of states. Since the GA is the closest thing to a global legislature that currently exists, its products might be seen as statements on behalf of the collective community. They fall far short of “legislation,” but GA statements and resolutions are useful in legitimating positions, policies, and ideas.

Several of the most famous GA resolutions illustrate the fact that their political impact sometimes far outweighs their very limited legal status. For instance, the Universal Declaration of Human Rights began its life as a statement issued by the General Assembly in 1948 (it was not a formal “resolution” of the Assembly). This declaration is an excellent example of how the Assembly can be used to create or reinforce international norms or rules of customary international law. Similarly, the GA resolution known colloquially as “Uniting for Peace” (GA 377) is influential, though far more legally uncertain. It includes the claim that the Assembly can use its recommendatory power to create new peace operations in cases when the Security Council fails to execute its “primary” responsibility for peace and security under Article 24. In 1975, the Assembly passed a resolution declaring that “Zionism is a form of racism” because it privileges one religious or ethnic group over all others.¹³ This was later revoked (in 1991, with Resolution 46/86), but the controversy it attracted shows the political power of GA instruments. These instances show that, given the right arrangement of circumstances

¹² Chesterman, Franck, and Malone detail the political failures that led, in 1996, to the US being denied a seat on ACABQ for the first and only time: Simon Chesterman, Thomas M. Franck, and David M. Malone, *Law and Practice of the United Nations: Documents and Commentary*. Oxford University Press, 2008, pp. 228–229.

¹³ A/3379.

and content, GA resolutions can have an impact that is much greater than one might expect from reading the legal terms of the Charter.

States owe few obligations to either ECOSOC or the Trusteeship Council. The Economic and Social Council is a subsidiary body of the General Assembly, though it is formally set out in the Charter as a permanent fixture of the UN. It has the power to “initiate studies and reports with respect to international economic, social, cultural, educational, health, and related matters and may make recommendations with respect to any such matters to the General Assembly, to the members of the United Nations, and to the specialized agencies concerned” (Art. 61(1)). The scope of these powers is broad, and includes the authority to discuss human rights, health, and development, among other topics, but they are also very limited in the sense that they do not include the ability to take decisions or forcefully intervene in any issue. ECOSOC has no power to tell governments what to do. As a result, ECOSOC functions mainly as a coordinating body for the varied agencies and programs that are at work on these topics. It can be politically influential when it uses its administrative capacity to launch high-profile conferences or to publicize a topic that its members believe is important. These have recently included initiatives on sustainable development and the special problems of development in post-conflict societies. ECOSOC’s fifty-four members are elected from the General Assembly membership for three-year terms with a system of regional representation similar to that of the Security Council (which is discussed below).

The Trusteeship Council operated until 1994 to oversee what the Charter called “non-self-governing territories.” These included both territories that were governed directly by the UN as protectorates (such as Eritrea until 1952) and territories that were held by UN members (such as Somalia by Italy until 1960, and Palau by the US until 1994). It created obligations only on those UN members that controlled these territories, and so when the last such territory (Palau) became an independent state in 1994, these obligations ceased to exist in practice. The Charter still lists the obligations of the trust-governing states in Chapters XI and XII, which center on the hopeful-sounding yet vague responsibility to treat “the interests of the inhabitants of these territories [as] paramount, and accept as a sacred trust the obligation to promote to the utmost . . . the well-being of the inhabitants” (Art. 73).¹⁴ The only substantive obligation of Trust-

¹⁴ The relationship between the early United Nations and European colonialism is the subject of Mark Mazower, *No Enchanted Palace: The End of Empire and the Ideological Origins of the United Nations*. Princeton University Press, 2009.

holding states at the Trusteeship Council was “to assist in the progressive development of their free political institutions” and to work toward self-government (Art. 73(b)), and this produced the controversy over the South West Africa trust territory. The trust-governing state (South Africa) refused to allow the Trusteeship Council to oversee its governance of South-West Africa because it did not accept the idea that it should be obligated to contribute toward the self-governance of the polity. This generated a series of crises between South Africa and the rest of the world, including important GA resolutions (especially Res. 2145) and ICJ opinions (the South-West Africa cases and advisory opinions), as well as a protracted civil war and exhausting postwar transition. The area is now Namibia.

○ The powers of the Security Council are dramatically different than those of any other UN organ. They begin with Articles 25 and 49, which say “The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter” and “The Members of the United Nations shall join in affording mutual assistance in carrying out the measures decided upon by the Security Council.” These two rules mean that states are legally committed to obeying decisions of the Council whether they agree with them or not, and whether they are themselves members of the Council or not. The scope of Council decision-making authority is defined by Articles 39, 41, and 42: Article 39 empowers it to determine what behavior by states constitutes a “threat to or breach of international peace and security,” while Articles 41 and 42 allow it to respond with any measures it deems necessary, including military interventions and programs of economic sanctions. Together with Articles 25 and 49, these rules constitute the Council as a body with historically unmatched powers of collective political and military enforcement. It has, by a wide margin, the most authoritative and complete grant of enforcement power ever made in the history of the system of state sovereignty. No other international organization has anything like this power to centralize and dominate policy-making on any topic, let alone a topic as important as the decision to use military force. As we shall see in Chapter 4, how this power is used in practice is interesting and complicated, and at times it may exceed what is described in the Charter while at others it thoroughly fails to live up to what the Charter envisions.

Upon joining the United Nations, states automatically commit themselves to carry out the Council’s decisions, and to allow that the Council takes on “primary responsibility for the maintenance of international peace and security” (Art. 24). At the same time, they also gain some rights toward the

Council, including the right to bring their concerns about international security to the Council (Art. 35(1)) and to participate in Council deliberations that might affect their interests (Art. 31). They also have the right to run for election to the non-permanent seats in the Council (Art. 23(1)). The existence of these rights, however, points to the fact that the Council has a very small membership relative to the size of the UN, and that most of the work of the Council is done with the large majority of states on the outside looking in. The Council has fifteen members, five of which are the permanent members who are listed by name in Article 23(1). These five are the Republic of China, France, the Soviet Union, the UK, and the US, and they have special voting powers. Two of these states no longer exist, but by informal agreement the Council operates as if Russia and the People's Republic of China were listed in Article 23. The remaining ten members of the Council are elected from the General Assembly for two-year terms. When the Council takes decisions it follows the voting formula described in Article 27(3): "Decisions of the Security Council on all other matters [i.e. on non-procedural questions] shall be made by an affirmative vote of nine members including the concurring votes of the permanent members."¹⁵ This is the origin of the Great Power veto in the Council. Decisions in the Council require the agreement of all five permanent members as well as at least four non-permanent members to reach the required nine votes.

The veto, with its obvious hierarchy and inequality, has always been controversial and is a frequent target for complaint by states and activists. It clearly violates the spirit of Article 2(1), but because it is written into the Charter, and is therefore legally equal to Article 2(1), it cannot violate the letter of that rule. In the negotiation of the Charter in 1944 and 1945 the veto was an absolute requirement to secure the consent of the US, the UK, and the Soviet Union. The Big Three fought every attempt by the small and medium states at San Francisco to dilute or qualify the veto, and openly threatened to abandon the effort to create the UN if any changes to it were approved by the majority of San Francisco delegations.¹⁶

The legal effect of the veto is that the permanent members have an absolute ability to defeat any substantive decision of the Council with which they

¹⁵ Before the enlargement of the Council in 1965 from eleven to fifteen members, this Article said "an affirmative vote of seven members including the concurring votes of the permanent members."

¹⁶ Ian Hurd, *After Anarchy: Legitimacy and Power in the UN Security Council*. Princeton University Press, 2007, ch. 4.

disagree for any reason. And since the Council is the only part of the UN that can create new legal obligations on states, this means the permanent members have absolute control over the extent of their commitments to the UN. This broad and ultimate authority over peace and security actions was the *sine qua non* for the Great Powers at San Francisco.

The existence of the veto is decisive proof against the frequently repeated claim that the Charter presumed that a concord among the Great Powers would continue after World War II – quite the opposite: the Americans, British, and Soviets clearly understood that they would likely have major disagreements about how international stability should be organized, and they demanded a veto over Council decisions precisely to protect their interests in those disagreements. The veto was included so that each of the Great Powers could individually kill collective measures that threatened their interests. Far from being naive or unrealistic about power politics, as Michael Glennon and others have suggested, the framers of the Charter saw the Council as a forum for continuing their struggles over power.¹⁷ The veto ensures that the UN cannot take any collective measures on international security without the consent of the five permanent members. It is absolute and without exception.¹⁸

The Security Council is a select body of limited membership and strong powers. This naturally turns it into a place where great controversy arises over the distribution of those limited seats. The non-permanent seats are allocated to countries from the General Assembly under a formula described in Articles 23(1) and (2) and in the procedural rules of the Assembly.¹⁹ States are elected to the Council by their regional caucuses so that five states come from the African and Asian group, one from Eastern Europe, two from Latin America and the Caribbean, and two from “Western Europe and Other.” These regional groups are the invention of the General Assembly, and they put into effect the Charter provision in Article 23(1) that “due regard . . . [be paid] to equitable geographical distribution” of non-permanent seats.

The “Western Europe and Other” group (WEOG) is a remarkable construction. It reflects the effort to contain Western Europe, Canada, Australia, and New

¹⁷ Michael Glennon, “Why the Security Council Failed,” *Foreign Affairs*, May/June 2003, 82(3): 16–35. See also the responses by Anne-Marie Slaughter, Edward Luck, and Ian Hurd, *Foreign Affairs*, July/August 2003, 82(4): 201–205.

¹⁸ Notice, for instance, that the qualification in Article 27(3) about a party to a dispute refraining from voting only applies to some kinds of pacific dispute settlement by the Council. It does not apply to the legally binding enforcement actions that are at the core of the Council’s powers.

¹⁹ The Procedures of the General Assembly are available at: www.un.org/ga/ropga.shtml.

Zealand in one group, and as such it is more of a conceptual than a regional group. It assumes an affinity of interests among these states whose foundation is historical or cultural or perhaps racial. Until 2000, when it was allowed to join WEOG, Israel did not belong to any regional group because none would accept it, and so it was structurally unable to run for or vote in Security Council elections. The US is not formally a member of any group but it participates in the WEOG as an observer. Each regional group is free to decide its own method for choosing its candidates and these vary greatly.²⁰ The Western Europe and Other group allows any member to contest an open seat, thus generating interesting open contests with plenty of intrigue, lobbying, and side payments. The African and Asian group splits itself roughly in half and allocates three of its seats for Africa and two for Asia. Within this subset, the African contingent (like the Latin American group) decides in advance on its candidate and so avoids competitive elections in the GA. The Asian group does not decide in advance.

A very different kind of controversy surrounds the permanent seats and their voting rights. A permanent seat is a valuable thing, both because of the veto and because it guarantees a voice and influence in every Council deliberation. There was not much controversy in 1945 over which countries should be the permanent members, though the Soviets made efforts to impede China's participation, and at one point the US favored including Brazil as a sixth member.²¹ Because they are explicitly named in the Charter, the permanent members cannot be removed, changed, or added to without going through the formal process of Charter amendment, which is described in Article 108 (and which requires approval of the five permanent members). A lively diplomatic melee has been going on since the early 1990s as the General Assembly has tried to find a formula for revising the membership combination in the Council. This has taken place in part within a GA subcommittee called the "Open-Ended Working Group on Security Council Reform,"²² and in part directly among capitals.

²⁰ These are described in research by Security Council Report. See "UN Security Council Elections 2008," Research Report #2, 2008 at: www.securitycouncilreport.org/site/c.gIKWLeMTIsG/b.4464545/k.3006/Special_Research_Report_No_2brUN_Security_Council_Elections_2008br29_August_2008.htm.

²¹ Townsend Hoopes and Douglas Brinkley, *FDR and the Creation of the UN*. Yale University Press, 1997, Ch. 9; Stephen C. Schlesinger, *Act of Creation: The Founding of the United Nations*. Westview Press, 2003, p. 49.

²² Its full name deserves quoting. It is the "Open-Ended Working Group on the Question of Equitable Representation on and Increase in the Membership of the Security Council and other Matters Related to the Security Council."

It is not surprising that no solution is in sight to the problem of Council expansion. It is stuck on at least two dilemmas: first, the apparently irreconcilable tensions among the desires to keep the Council relatively small and relatively diverse by region and wealth; and second, the regional jealousies that surface as potential new members are named. Because changes require near-consensus among UN members, every new formula that has been proposed to or by the Open-Ended Working Group has produced enough unhappy states to prevent it from going forward. And yet many governments say that they find the status quo to be unacceptable as well. In the absence of either consensus or a hegemon to force the issue, the entire project seems mired.

When the Security Council issues a decision, it is binding on all states. The Council therefore has the power to create new legal obligations for states without requiring their consent. Decisions are contained in resolutions, and stand out because of their declaratory and active language. For instance, the SC resolution on removing Iraq from Kuwait in 1990 says that the Council “demands that Iraq comply fully with Resolution 660” (on withdrawing from Kuwait) and “authorizes Member States . . . to use all necessary means to uphold and implement Resolution 660” (SC Res. 678). These specific obligations are not contained in the Charter. They are “merely” the operational products of the Council and yet they are as binding on UN members as the Charter itself.

The contrast between the Assembly and the Security Council neatly illustrates a trade-off in the UN between democracy and authority. The Assembly is the much more democratic body, with its one-state one-vote procedure and majority rule, but as a consequence it was allowed only much weaker authority at San Francisco. The Security Council is highly undemocratic but has dispositive authority to impose obligations on all member states. This inverse relationship between democracy and power is no accident: at San Francisco, none of the Big Three who dominated the negotiations over the Charter were willing to give real authority over important matters to any body that worked according to majority rule. The limited membership of the Council, and more importantly its veto and permanent seats, were essential for the Big Three to accept its broad authority on collective peace and security.

This discussion of the obligations that states accept under the Charter reveals that there is a relatively short list of formal legal obligations. These include paying one's dues to the organization, carrying out the decisions of the Security Council, and refraining from the threat or use of force in foreign policy. Beyond these, we can identify a wide range of aspirations in the UN that are not backed

by formal legal obligations (such as to promote economic development, respect human rights, and respectfully consider the recommendations of the General Assembly and ECOSOC). As we consider the ways that states choose to comply or not comply with their obligations under the Charter, and the mechanisms in the UN that are designed to induce compliance, the conversation about compliance comes to focus on the smaller set of very specifically legal obligations rather than the broader goals and aspirations of the Charter.

Compliance

What devices does the UN use to encourage states to fulfill these legal obligations of the Charter? The Security Council has special powers of enforcement, which are discussed in Chapter 4, and aside from these there are few coercive instruments available within the UN to induce compliance. In the absence of coercion, the Charter is largely designed around taking advantage of the interests of states in either preserving their good international reputations or in maintaining an organization that is broadly useful to them. These two incentives, each tuned to states' own interests, are evident throughout the law and practice of the United Nations.

The way that compliance has unfolded with respect to the financial obligations of members to the organization helps to show the complicated and symbiotic legal and political relationship that exists between states and the Charter. The clause that obligates states to pay their dues to the UN is contained in Article 17(2), which says "the expenses of the Organization shall be borne by the Members as apportioned by the General Assembly." This article is the foundation of the budget process of the UN, in which the General Assembly sets both a revenue and an expenditure budget. The expenditure budget is a two-year budget that travels through the ACABQ process discussed above. The revenue side is controlled by a schedule of "assessments" in which states are asked by the General Assembly to contribute specific amounts of money based on their ability to pay. By a special agreement (i.e. negotiated among powerful players outside the framework of the UN Charter), the US is asked to pay 22 percent of the UN's regular budget. This makes it the largest single contributor to the UN but is less than the US would contribute if the normal assessments formula were followed. The smallest assessment category is just 0.001 percent of the budget.

There have been significant controversies over state compliance and non-compliance with the financial terms of the Charter, and many states have put themselves into deep debt with the UN. This has included superpowers and very poor states as well as many in between.

When a member fails to pay its dues, the Charter specifies a formal penalty in Article 19, which says in part "A Member of the United Nations which is in arrears in the payment of its financial contributions to the Organization shall have no vote in the General Assembly if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two years." There have been many instances in which states have been barred from voting in the Assembly as a result, normally through the device of simply not calling on the country during a roll-call vote. At any given time, there might be several dozen members of the Assembly in this situation. For some special cases, however, the suspension of voting rights has become an inflammatory legal and political matter: France, China, and the Soviet Union have all at times been more than two years behind in their payments; the US has teetered at the edge many times, but has always paid just enough in time to remain under the debt limit.²³

The politics of Great-Power arrearages are entirely different than those of the smaller states. The US has used its withholding as an instrument to force the UN to change policies that the US opposes, and to reduce the American share of the overall budget. An agreement in 1999, for instance, led the US to promise to repay large parts of its debt in exchange for the American share of the overall budget falling to its current level of 22 percent. Some of this has been accomplished, though the US still owes over \$1 billion today (if one includes debt to the peacekeeping fund). The Soviet Union and France accumulated large arrears in the 1960s as a form of protest against the General Assembly's assertion of authority to launch peace operations in the Middle East and Congo. These governments maintained that the Assembly had overstepped its legal authority in authorizing these missions and so their costs could not be considered the legitimate expenses of the organization under Article 17. The US and many Western states disagreed, and the ICJ affirmed their view in its advisory opinion in *Certain Expenses of the United*

²³ Calculating the amount owed is controversial since it involves estimating the worth of US "in-kind" contributions to peace operations and other reimbursements. See Frederic L. Kirgis, "US Dues Arrearages in the United Nations and Possible Loss of Vote in the GA," ASIL Insight, July 1998, www.asil.org/insigh21.cfm. Accessed December 4, 2009.

Nations.²⁴ Despite the ICJ opinion resolving the legal question, the issue produced something of a stalemate in that the Soviets and others insisted that they were complying with Articles 17(1) and 17(2) and defending the UN against unconstitutional misuses of GA power, while others insisted they were in flagrant non-compliance with the Charter.

Many in the Assembly both wanted to defend the principle of paying dues as required and feared the political consequences should two of the five permanent members be denied their right to vote in the Assembly. As the two-year window in Article 19 closed, the parties decided to prolong rather than resolve the stalemate by agreeing that the Assembly would operate by consensus rather than formal votes, and so the non-paying states would not in practice lose their votes and yet Article 19 would not be obviously violated. The Soviets eventually paid their debts in the 1980s.²⁵ The controversy has accentuated two unresolved questions: Is the ban on voting in Article 19 automatic, or does it only come into effect when the General Assembly explicitly decides to invoke it against a state? And, what is to be done if an organ of the UN is acting outside its legal powers? The withholding of dues has raised both questions and on both the arguments continue.

The politics over UN finance show the complexities that are attached to questions of compliance and non-compliance in the UN. Problems of non-compliance are always situated in a broader political context where it matters very much who the non-compliant state is and what are the political objectives it is pursuing through its non-compliance. China, for instance, was not prevented from voting in the Council in the 1970s when its arrears were very large, but the Dominican Republic and the Central African Empire were.²⁶ The financing cases provide concrete instances where the Charter has clear rules for defining non-compliance and a clear sanction for those who violate it, and even in these cases non-compliant behavior does not automatically lead to the sanctions envisioned in the Charter.

This leads to a broader point: most of the controversy in and around the United Nations has very little to do with formal compliance and non-compliance with the Charter. What should count as compliance is heavily debated; states provide highly self-serving interpretations of their own

²⁴ Certain Expenses, ICJ Reports (1962).

²⁵ "Article 19," *The Charter of the United Nations: A Commentary*, edited by Bruno Simma. Oxford University Press, 1994, p. 330.

²⁶ *Ibid.*, p. 334.

behavior; and they often claim to be complying with one set of obligations as an explanation for why they are apparently violating another. The US invasion of Grenada in 1983 was called by the General Assembly “a flagrant violation of international law” (UN GA 38/7) but was defended by the US as a rightful exercise of the principle of protecting one’s citizens. The Cuban missile crisis of 1963 centered on what the Cubans saw as lawful arming for self-defense and the Americans said was illegal provocation. These competing interpretations are the standard practices of international politics, and in the context of the United Nations they are compounded by the fact that most goals of the UN Charter are written in aspirational language rather than as firm commitments. For instance, the Charter combines sweeping and vague language on human rights in the preamble with specific but weak legal obligations to cooperate in Article 56. The Preamble says “We the peoples of the United Nations determined . . . to reaffirm faith in fundamental human rights, in the dignity and worth of the human person . . . have resolved to combine our efforts to accomplish these aims.” But the implementation of this aspiration is limited, in Article 56, to “All members pledge themselves to take joint and separate action” toward these goals. The result is that it is essentially impossible to make an uncontested finding of violation with these weakly written obligations, and that the cases of clear violation of the Charter are relatively few compared with the much larger set of cases where states are hard at work arguing for why their behavior should be counted as compliant.

Enforcement

In this environment, what are we to make of enforcement? What powers are there in the Charter for organs of the UN to enforce against states who insist on breaking these obligations? Setting aside the powers of military enforcement held by the Security Council (for which, see Chapter 4), the UN has few tools for enforcing its decisions. However, there are some interesting channels in the Charter for enforcement which fall short of military action and which mostly travel through pathways separate from the Security Council. These are conceptually at least as interesting as the Council’s military powers since they illustrate ways in which international organizations strive for influence and impact in the absence of military coercion.

The General Assembly has tried in various ways to interpret its power under the Charter so that it might have some capability to take action beyond the "recommendations" described in Article 10. The issues for which it has been most mobilized include anti-apartheid in South Africa and the Israel-Palestine problem. As mentioned above, it has also claimed the authority to send UN peace operations to conflict zones: to Korea in 1950, to the Middle East in 1956 (UNEF), and to Congo in 1960 (ONUC). These are important enforcement actions for which it claimed legal authority after it decided that the Security Council was failing in its "primary responsibility for the maintenance of international peace and security" in Article 24. It was these operations that sparked the Soviet and French withholding of their UN dues. The GA's approach was to read the Council's "primary" authority as implying logically that some other organ, presumably the Assembly on behalf of the UN as a whole, must therefore have a "secondary" or "subsidiary" or "residual" authority. It therefore essentially wrote itself this power in the resolution known as "Uniting for Peace" in 1950 (Res. 377). It was used to develop the UN's operations in the Korean War, and later for UNEF and ONUC. This is a dramatic extension of the Assembly's powers and a close reading of the Charter provides little support for it. Its use has been highly contentious in international politics and highly questionable in international law.

Much more conventional are the many instruments the Assembly has deployed with respect to South Africa and Israel-Palestine, as these have generated state policies which the Assembly has interpreted as being non-compliant with Charter obligations. On these topics, the Assembly has been relatively united over the years, and has therefore had the chance to become frustrated by its lack of coercive tools under the Charter. It has been motivated to think creatively about how to leverage what influence and authority it does possess for maximum effect. On South Africa, for instance, the Assembly passed many resolutions condemning apartheid and calling for the South African government to reform itself. These were of course "recommendations" in the legal language of the Charter and did not create any legal obligations for the government. The Security Council in 1963 decided that apartheid "is seriously disturbing international peace and security" and called for apartheid to be abandoned (SC Res. 181), but the Assembly continued to strive for more powerful enforcement action than the Council was willing to provide. The Assembly variously called for economic sanctions, arms embargoes, cultural isolation, and an end to cooperation over sports, all with the force of

recommendations. In 1974 it used its internal procedures to suspend South Africa from participating in the Assembly, a condition that continued into the 1990s. This power is nowhere set out in the Charter, but rests instead on the authority of the Assembly's credentials committee to decide on the qualifications for occupying a seat. It also took what action it could to interfere with South African control over the territory of Namibia, then known as South-West Africa, which South Africa claimed to manage under an old League of Nations mandate but which the General Assembly believed it was occupying illegally.²⁷ The Assembly argued that it and the Trusteeship Council had legal authority over the territory because the League's trust territories transferred to the UN in 1945, and it therefore issued what it believed were legally binding instructions to South Africa to remove itself from the territory. It also formally changed the name of the territory to Namibia in 1968, against the wishes of South Africa, and recognized an anti-South African militia as the legitimate government in 1973. The Assembly's actions spurred the Security Council and the ICJ into action, and these bodies issued their own decisions, in 1970 and 1971 respectively, and legally binding, that South Africa was not legally entitled to rule Namibia. The matter remained contested by South Africa until the combination of armed struggle, changing international politics, and changing South African domestic politics led to Namibian independence in 1990.

These devices show ways that bodies in the UN strive to enforce their recommendations and decisions in world politics, quite separate from any power of direct military or legal enforcement. The tools of enforcement held by the General Assembly are all indirect, resting on its capacity to mobilize other political resources in the international system including ICJ decisions, public contempt and shaming, Security Council actions, and coalitions for economic sanctions. The Assembly does indeed have some paths by which it can try to enforce its collective will, but they lie almost entirely in the political register rather than the more explicit military category. As we look at the Security Council in the next chapter, we can see how the Council's enforcement capacity is equally political but is backed up with the possibility of military force, and as a result the Council's politics are very different than those of the rest of the United Nations.

²⁷ See Cedric Thornberry, "Namibia," in David M. Malone (ed.), *The UN Security Council: From the Cold War to the 21st Century*. Lynne Rienner, 2004, pp. 407-422.

CASE I: The Goldstone Report

The legal and political aspects of the United Nations are well illustrated by the 2009 report on possible war crimes in Israel's invasion of Gaza. This was the product of the Human Rights Council, a subsidiary body of the General Assembly and itself a recent invention that is worth some attention. It is also one small piece of a long UN history on Palestine and Israel that began in 1947 with a resolution calling for the British "mandate" territory of Palestine to be divided between an "Arab" state and a "Jewish" state and the city of Jerusalem (UN GA Res. 181).

The Human Rights Council came into existence in 2006, and replaced the former Commission on Human Rights. It was created by the Assembly and has powers that are delegated to it from the Assembly. Its membership is a subset of the Assembly's members. It therefore operates within the terms of the Assembly's own powers and does not expand the UN's authority in any way.

The mandate of the Human Rights Council is to address human rights violations in UN member states. It is composed of forty-seven members, elected by secret ballot for three-year terms by the General Assembly. Following Article 2(1) of the Charter, all states are eligible for membership in the new body. This offended the US administration at the time for it neither guaranteed the US a permanent seat nor guaranteed that states with lousy human rights practices would be excluded; the Council's composition therefore reflects the inclusive view of the UN as a place where all states gather rather than the view that this should be a kind of body of experts on human rights who monitor poorly behaved others. The body has set out for itself a mission to periodically review the human rights situation in every UN member state, as well as to make inquiries or recommendations on specific issues or situations, such as on ways to further protect the rights of children. As a subsidiary construct of the Assembly, its authority is limited to making recommendations about human rights, and these recommendations are not legally binding on states or on the UN. They are nonetheless influential in the practical politics of international relations, as evidenced by the aftermath of the Goldstone Report.

Richard Goldstone, a prominent international lawyer from South Africa, was asked by the Human Rights Council "to investigate all violations of international human rights law and international humanitarian law that might have been

committed at any time in the context of the military operations that were conducted in Gaza” from December 2008 to January 2009.²⁸ This meant two things: a “fact-finding” mission to the region in order to assess the behaviors of Israel, Hamas, the Palestinian Authority, and assorted militias, and a set of legal interpretations on what constitutes lawful conduct in war. He found significant evidence of violations of the laws of war by all parties in the conflict, and much of the report is devoted to documenting specific cases of war crimes. The report is strongly shaped by the difficulties inherent in gathering evidence in such cases, and as a result the report focuses on a few illustrative instances where evidence was relatively available. The difficulties were many, including the basic problem of determining responsibility for destruction after the fact, as well as the facts that many civilians were reluctant to discuss what they had seen and that Israel refused all cooperation with Goldstone’s team. Backed by only the General Assembly’s powers of “recommendation,” a mission of the Human Rights Council has no authority to compel states or others to cooperate with its investigations.

The report’s conclusions are therefore also limited to the status of “recommendations.” In this case, it recommended that the parties in the conflict begin to respect the humanitarian laws that apply to their conduct, that Israel cease interfering in the politics of the Occupied Territories and pay reparations to the UN and others for damaged property, and that all sides release political prisoners and begin to respect human rights and the freedoms of civil society. It also made recommendations to other international organizations, notably to the UN Security Council, that it use its enforcement authority to force Israel to follow international humanitarian law in war and more generally in its occupation of the region, and to the International Criminal Court that it investigate the possibility of prosecutions of those responsible for war crimes on all sides. It also called on the states of the Geneva Conventions to take action to enforce their rules.

The report’s legal context emphasizes the obligations of states and non-state actors in military conflicts. It is concerned mainly with the obligations that armies and militias owe to civilians, rather than with the more general obligations that states owe to other states under public international law. Goldstone says that his effort is devoted to “the protection of all victims in accordance with international law.” These obligations arise from the existing framework of international humanitarian law, including the rules on belligerent occupation, on the use of chemical weapons, on the protection of civilians in war, and on

²⁸ UN Human Rights Council, Fact Finding Mission on the Gaza Conflict UN A/HRC/12/48, p. 39.

self-determination. The report therefore has much in common with the legal framework of the International Criminal Court discussed in Chapter 9.

In finding that there were significant war crimes committed in the conduct of the war, and indeed that the war itself was initiated by Israel in violation of the laws on war, the Goldstone Report added the language of international law to the politics of the conflict. Despite being limited by the General Assembly's constrained authority (i.e. only "recommendations"), it nonetheless had a significant effect in the broader regional and international politics that encompass the situation. The Report motivated many states and international organizations to take it seriously, and in doing so these states and IOs added their weight either against or behind its recommendations. Israel rejected the report as unfair and insisted that "military necessity" was sufficient legal rationale for both the war and its conduct in the war.²⁹ Human Rights Watch and other advocacy groups endorsed the report and used it to push further for judicial accountability for those who commit war crimes, no matter their home government's position.³⁰ The US has used the report as evidence that all sides in the conflict need to strengthen their internal mechanisms for investigating the possibility that their own personnel may have violated international humanitarian law.³¹

The politics surrounding the report demonstrate the practical effect that the United Nations can have in world politics even without any stronger legal instrument than the relatively weak "recommendation" power of the General Assembly. With its capacity to investigate and recommend, the Assembly can package information into new international instruments of great political consequence. Reports such as this one become tools in the hands of states and others who wish to use them as resources in their political fights. The capacity to create such resources is an important power for the United Nations. This power can be significant, and it is in a fundamental way separate from the legal authority of the Human Rights Council and of the General Assembly.

²⁹ "UN Human Rights Chief Endorses Goldstone Gaza Report," Haaretz, November 2, 2009, www.haaretz.com/hasen/spages/1121045.html. Accessed December 3, 2009.

³⁰ www.hrw.org/en/news/2009/11/03/un-endorse-goldstone-report. Accessed December 3, 2009.

³¹ See for instance David Kaye, "The Goldstone Report," *American Society of International Law Insight*, October 1, 2009, 13(16).

CASE II: Cholera in Haiti – Who Pays?

When things go wrong with a UN operation, who pays the costs? The UN has had a presence in Haiti on and off since the early 1990s, including peacekeepers, police officers, election monitors, aid workers, and more. It added more logistical resources after the 2010 earthquake including soldiers from Nepal who, it turned out, unwittingly brought with them the cholera bacteria. Endemic in Nepal, cholera was non-existent in Haiti. The peacekeepers built a camp along the Artibonite River with substandard latrines and thus allowed the bacteria into the public water supply. Cholera is an infection of the small intestine that causes watery diarrhea and, if untreated, leads to death by dehydration. The epidemic launched by the UN in Haiti killed almost 10,000 people and made a million people sick. It added immense suffering and loss in what was already a major natural disaster in one of the poorest countries in the world.

It took only a few weeks for local people to realize that the UN base was the source of cholera. The Nepalese soldiers began to arrive on October 9, 2010; the first hospitalization for cholera was on October 17; on October 22 it was officially declared an epidemic; and by mid-November there were widespread protests against the United Nations for its carelessness. The peacekeepers responded with violence, and killed at least one person in these protests.

But it took almost six years for the United Nations to admit that the disease came from its peacekeepers. Only in the summer of 2016 did it begin talking about its responsibility and consider the possibility of compensating victims and their families.

In the intervening years, the UN used its political and legal powers described in this chapter to insulate itself in what Scott Veitch has called a “zone of irresponsibility” where the harms it caused were, legally speaking, not its responsibility. In the face of both private claims and public lawsuits the UN successfully deployed legal arguments to avoid accountability. In 2011, a group of activists organized 5,000 families in Haiti affected by cholera and presented a set of claims to the United Nations. They requested compensation, new investment in water treatment, and an apology.³² The UN refused to respond to their claims, saying only that they amounted to an illegitimate demand to

³² The petition for relief can be read here: www.ijdh.org/2011/11/topics/law-justice/chief-claims-unit-minustah-log-base-room-no-25a-boule-toussaint-louverture-clercine-18-tabarre-haiti-ijdh-bai.

second-guess “political and policy matters” within the organization.³³ The petitions for relief ended there. A second attempt was made using more formal legal channels, with a series of lawsuits against the UN and its officials in US federal courts. By 2016, these cases were all rejected by the courts on the grounds that the United Nations enjoys immunity from all domestic legal actions. This comes from the UN Charter and from a subsequent treaty in 1946 that defines the “privileges and immunities” of the organization relative to national governments.

The UN’s immunity from domestic courts is typical for international organizations. It is usually seen as essential to facilitating the kind of work the organization is meant to do: it is protected from interference by local officials who might entangle it in local regulations. But it has a broader political effect too in that it takes away from local people an important tool for holding powerful institutions accountable. It shifts power away from the people and decisively to the organization. In Haiti, as in other places governed by similar Status of Force Agreements, the UN operates in its own legal environment – it is subject to local law in a nominal sense but cannot be taken to court if it violates the law. The latrines of the peacekeepers did not meet local (or international) building codes and the result was the cholera epidemic – if a regular person had done this they might be charged with criminal negligence or sued in civil court for the damage that followed, but the UN cannot face those possibilities. It exists in a privileged legal bubble, accountable only to its member states and not to any courts.

Legal immunity empowers the UN over the people in the places where it operates. It shifts the terrain of globalization even further against regular people and in favor of the global institution. It shifts the costs of negligence and bad behavior from the organization to the people it is supposed to serve. This is amply clear in the many cases of sexual assault by peacekeepers: when on a mission, peacekeepers are exempt from local law and are subject to the law of their home country. The local police cannot arrest or prosecute them; they can only request that the UN send them back home.

In the end, the Haiti episode shows how the UN’s legal status protects it from accountability in local courts. The harms that it might cause cannot be pursued through the usual channels of criminal cases or lawsuits. In many cases, they cannot be pursued at all. When things go wrong with UN operations it is often the local people who pay the costs, not the organization itself.

³³ Patricia O’Brien, UN Legal Counsel, letter to Brian Concannon, February 21, 2013.

Conclusion

The United Nations presents states with a set of authoritative rules for international politics and with a set of institutions of varying power and scope. The rules define the basic parameters of legal international conduct, including a ban on the use of force to settle disputes among states, the essential equality of countries as sovereign states, and an obligation to assist the United Nations in various ways when it takes collective action against threats to international peace and security. The organizations that make up the six principal organs of the UN can also create obligations for UN members, as when the General Assembly decides on the budget and assessments for UN financing and when the Trusteeship Council would in the past supervise the administration of trust territories. These organs have powers that are explicitly delimited by the UN Charter and they can be seen as possessing authority that states have delegated to them from their own stock of sovereign prerogatives. The Security Council is an exceptional creature, however, in that to it states have delegated powers of enforcement and collective action that are broad, open-ended, and binding. The Council is the only part of the UN with the authority to create new obligations for member states on the key issues of war, peace, and sanctions, and so it possesses the potential to upend the traditional hierarchy in which states are always legally superior to their international organizations. This power is unprecedented both conceptually and in practice, and is treated more fully in the following chapter.

The complexities of the organization make it an excellent location in which to observe all three of the roles of IOs described in Chapter 2. There are elements of actor, forum, and resource evident throughout the political life of the United Nations. The annual meetings of the General Assembly provide a classic example of an international forum, where states take advantage of the existing institutional body to give their statements greater political impact. It also operates as an actor when it issues statements and resolutions that may represent something like the sentiment of the international community. The collective nature of its outputs may give them a special weight in world politics and may therefore make the Assembly appear to be a unified actor. These resolutions are highly coveted by states as symbolic resources with which they can influence the global perception of the issues that interest them, and in this way the Assembly may also perform as a resource in the hands of other actors.

The UN's high level of political salience in international relations is remarkable given that most of its organs do not have the legal authority to make decisions that are binding on states. Most, including the General Assembly, ECOSOC, and the Secretariat, have very limited legal powers relative to the UN member states, and in most cases they can do no more than make recommendations to governments. The few exceptions to this rule are all the more interesting and contested because they stand out so clearly from the larger set of recommendatory powers. These binding powers include the GA's power over the UN budget and the Security Council's authority to enact military interventions. The UN has political power in many dimensions in world politics which come about incidentally from the much more limited legal powers described in the Charter.

Further Reading

The UN Charter is essential reading and it is best read in print rather than online. The famous little blue book is available at: <https://unp.un.org/details.aspx?pid=4769>. The best reference work that explains each article line by line is *The Charter of the United Nations: A Commentary*, edited by Bruno Simma (Oxford University Press, 1994). For the history of negotiations at San Francisco and before, see Stephen C. Schlesinger, *Act of Creation: The Founding of the United Nations* (Westview Press, 2003), Robert C. Hilderbrand, *Dumbarton Oaks: The Origins of the United Nations and the Search for Postwar Security* (University of North Carolina Press, 1990), and Townsend Hoopes and Douglas Brinkley, *FDR and the Creation of the UN* (Yale University Press, 1997).

On the practical side of the UN's history, many excellent books exist. These are indispensable: *The Oxford Handbook on the United Nations*, edited by Thomas G. Weiss and Sam Daws (Oxford University Press, 2009), *The Procedure of the UN Security Council*, edited by Loraine Sievers and Sam Daws (Oxford University Press, 4th edn., 2014), and *Law and Practice of the United Nations: Documents and Commentary*, edited by Simon Chesterman, Thomas M. Franck, and David M. Malone (Oxford University Press, 2008). The Secretary-General's role is well described in Simon Chesterman (ed.), *Secretary or General? The UN Secretary-General in World Politics* (Cambridge University Press, 2007).

For daily developments at the UN, subscribe to the "UN Wire" email briefing memo from the United Nations Foundation, an independent advocacy and monitoring group that covers the broad spectrum of UN issues at www.unfoundation.org/what-we-do/campaigns-and-initiatives/un-wire.

On the early UN's role in Palestine and the partition, see Elad Ben-Dror, *Ralph Bunche and the Arab-Israeli Conflict* (Routledge, 2015) and the UN's own history in "The Question of Palestine & the United Nations," DPI/2276 2003.

The Haiti claims and lawsuits were instigated by the Institute for Justice and Development in Haiti. An excellent account of the UN in Haiti after the earthquake is in Jonathan M. Katz, *The Big Truck that Went By: How the World Came to Save Haiti and Left Behind a Disaster* (St. Martin's, 2014). On the law and politics of UN immunity in Haiti and elsewhere, see Mara Pillinger, Ian Hurd, and Michael N. Barnett, "How to Get Away with Cholera: The UN, Haiti, and International Law," *Perspectives on Politics*, March 2016, 14(1). On how the UN might cause human rights problems, and then how it responds, see Guglielmo Verdirame, *The UN and Human Rights: Who Guards the Guardians?* (Cambridge University Press, 2011).

APPENDIX 3

Charter of the United Nations (excerpts)

Article 1

The Purposes of the United Nations are

1. To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;
2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;
3. To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and
4. To be a centre for harmonizing the actions of nations in the attainment of these common ends.

Article 2

The Organization and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the following Principles.

1. The Organization is based on the principle of the sovereign equality of all its Members.
2. ...

3. All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.
4. All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.
5. All Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter, and shall refrain from giving assistance to any state against which the United Nations is taking preventive or enforcement action.
6. The Organization shall ensure that states which are not Members of the United Nations act in accordance with these Principles so far as may be necessary for the maintenance of international peace and security.
7. Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.

Chapter II: Membership

Article 3

The original Members of the United Nations shall be the states which, having participated in the United Nations Conference on International Organization at San Francisco, or having previously signed the Declaration by United Nations of 1 January 1942, sign the present Charter and ratify it in accordance with Article 110.

Article 4

1. Membership in the United Nations is open to all other peace-loving states which accept the obligations contained in the present Charter and, in the judgment of the Organization, are able and willing to carry out these obligations.
2. The admission of any such state to membership in the United Nations will be effected by a decision of the General Assembly upon the recommendation of the Security Council.

Article 5

A Member of the United Nations against which preventive or enforcement action has been taken by the Security Council may be suspended from the exercise of the rights and privileges of membership by the General Assembly upon the recommendation of the Security Council. The exercise of these rights and privileges may be restored by the Security Council.

Article 6

A Member of the United Nations which has persistently violated the Principles contained in the present Charter may be expelled from the Organization by the General Assembly upon the recommendation of the Security Council.

...

Chapter III: Organs

...

Article 8

The United Nations shall place no restrictions on the eligibility of men and women to participate in any capacity and under conditions of equality in its principal and subsidiary organs.

Chapter IV: The General Assembly

COMPOSITION

Article 9

1. The General Assembly shall consist of all the Members of the United Nations.

...

FUNCTIONS AND POWERS

Article 10

The General Assembly may discuss any questions or any matters within the scope of the present Charter or relating to the powers and functions of any organs provided for in the present Charter, and, except as provided in Article 12, may make recommendations to the Members of the United Nations or to the Security Council or to both on any such questions or matters.

...

VOTING

Article 18

1. Each member of the General Assembly shall have one vote.
2. Decisions of the General Assembly on important questions shall be made by a two-thirds majority of the members present and voting ...

3. Decisions on other questions, including the determination of additional categories of questions to be decided by a two-thirds majority, shall be made by a majority of the members present and voting.

Article 19

A Member of the United Nations which is in arrears in the payment of its financial contributions to the Organization shall have no vote in the General Assembly if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. The General Assembly may, nevertheless, permit such a Member to vote if it is satisfied that the failure to pay is due to conditions beyond the control of the Member.

Chapter V: The Security Council

COMPOSITION

Article 23

1. The Security Council shall consist of fifteen Members of the United Nations. The Republic of China, France, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and the United States of America shall be permanent members of the Security Council. The General Assembly shall elect ten other Members of the United Nations to be non-permanent members of the Security Council, due regard being specially paid, in the first instance to the contribution of Members of the United Nations to the maintenance of international peace and security and to the other purposes of the Organization, and also to equitable geographical distribution.
2. The non-permanent members of the Security Council shall be elected for a term of two years. In the first election of the non-permanent members after the increase of the membership of the Security Council from eleven to fifteen, two of the four additional members shall be chosen for a term of one year. A retiring member shall not be eligible for immediate re-election . . .

FUNCTIONS AND POWERS

Article 24

1. In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf . . .

Article 25

The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter.

...

VOTING**Article 27**

1. Each member of the Security Council shall have one vote.
2. Decisions of the Security Council on procedural matters shall be made by an affirmative vote of nine members.
3. Decisions of the Security Council on all other matters shall be made by an affirmative vote of nine members including the concurring votes of the permanent members; provided that, in decisions under Chapter VI, and under paragraph 3 of Article 52, a party to a dispute shall abstain from voting.

...

Chapter VII: Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression**Article 39**

The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.

...

Article 41

The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.

Article 42

Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.

Article 43

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.

...

Article 49

The Members of the United Nations shall join in affording mutual assistance in carrying out the measures decided upon by the Security Council.

...

Article 51

Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.

...

Chapter XII: International Trusteeship System**Article 75**

The United Nations shall establish under its authority an international trusteeship system for the administration and supervision of such territories as may be placed thereunder by subsequent individual agreements. These territories are hereinafter referred to as trust territories.

Article 76

The basic objectives of the trusteeship system, in accordance with the Purposes of the United Nations laid down in Article 1 of the present Charter, shall be:

1. to further international peace and security;
2. to promote the political, economic, social, and educational advancement of the inhabitants of the trust territories, and their progressive development towards self-government or independence as may be appropriate to the particular circumstances

- of each territory and its peoples and the freely expressed wishes of the peoples concerned, and as may be provided by the terms of each trusteeship agreement;
3. to encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion, and to encourage recognition of the interdependence of the peoples of the world; and
 4. to ensure equal treatment in social, economic, and commercial matters for all Members of the United Nations and their nationals, and also equal treatment for the latter in the administration of justice, without prejudice to the attainment of the foregoing objectives and subject to the provisions of Article 80.

Chapter XIV: The International Court of Justice

Article 92

The International Court of Justice shall be the principal judicial organ of the United Nations. It shall function in accordance with the annexed Statute, which is based upon the Statute of the Permanent Court of International Justice and forms an integral part of the present Charter.

Article 93

1. All Members of the United Nations are ipso facto parties to the Statute of the International Court of Justice.

Article 94

1. Each Member of the United Nations undertakes to comply with the decision of the International Court of Justice in any case to which it is a party.
2. If any party to a case fails to perform the obligations incumbent upon it under a judgment rendered by the Court, the other party may have recourse to the Security Council, which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment.

Chapter XVI: Miscellaneous Provisions

Article 102

1. Every treaty and every international agreement entered into by any Member of the United Nations after the present Charter comes into force shall as soon as possible be registered with the Secretariat and published by it.

2. No party to any such treaty or international agreement which has not been registered in accordance with the provisions of paragraph 1 of this Article may invoke that treaty or agreement before any organ of the United Nations.

Article 103

In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.

Article 104

The Organization shall enjoy in the territory of each of its Members such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes.

...

Chapter XVIII: Amendments

Article 108

Amendments to the present Charter shall come into force for all Members of the United Nations when they have been adopted by a vote of two thirds of the members of the General Assembly and ratified in accordance with their respective constitutional processes by two-thirds of the Members of the United Nations, including all the permanent members of the Security Council.