

THE UNITED NATIONS ON TRIAL: IS IT A MISSION IMPOSSIBLE?

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INTRODUCTION

Almost everyone knows something about the United Nations (UN). Many will know it is involved in Peacekeeping and Humanitarian Aid. Some will be aware there is a UN General Assembly, consisting, since South Sudan became the latest country to join in 2011, of 193 Member Nations.¹ Many will know that there is a UN Security Council – 10 rotating members² and five permanent members (P5) who have the power of veto over proposed resolutions.³ And even those who know little about the UN may have heard the names of some of the UN Secretaries-General – Dag Hammarskjöld, U Thant, Boutros Boutros Ghali, Kofi Annan, Ban Ki Moon, and, currently, Antonio Guterres.⁴ They will certainly have heard the names of many of the prominent personalities from the worlds of art, music, films, sport, and literature who are UN ‘Ambassadors,’ enlisted by the UN to highlight issues and draw attention to the UN’s activities,⁵ although they may be surprised to learn of their UN roles.

So, people know quite a lot about the UN and, not surprisingly, there

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¹ *U.N. Welcomes South Sudan as 193rd Member State*, UNITED NATIONS NEWS CENTRE (July 14, 2011), http://www.un.org/apps/news/story.asp?NewsID=39034#_V_BWhfkrKCi.

² U.N. Charter art. 23. “Each year the General Assembly elects five non-permanent members (out of ten in total) for a two-year term. . . . [T]he 10 non-permanent seats are distributed on a regional basis as follows: five for African and Asian States; one for Eastern European States; two for Latin American and Caribbean States; and two for Western European and other States.” *Frequently Asked Questions*, UNITED NATIONS SECURITY COUNCIL, <http://www.un.org/en/sc/about/faq.shtml#missions> (last visited Aug. 27, 2016).

³ *Voting System and Records*, UNITED NATIONS SECURITY COUNCIL, <http://www.un.org/en/sc/meetings/voting.shtml> (last visited Aug. 27, 2016); *see also* U.N. Charter art. 27, ¶ 3 (requiring the Security Council to pass substantive matters by a nine member majority and the “concurring votes of the permanent members”).

⁴ *Former Secretaries-General*, UNITED NATIONS SECRETARY-GENERAL, <https://www.un.org/sg/en/content/sg/former-secretaries-general> (last visited Aug. 27 2016).

⁵ *Goodwill Ambassadors & Advocates: International*, UNICEF, http://www.unicef.org/people/people_ambassadors_international.html (last visited Aug. 27, 2016) (noting that ambassadors include Serena Williams, Novak Djokovic, Harry Belafonte, David Beckham, Mia Farrow, Jackie Chan, Leo Messi, Whoopi Goldberg, and Liam Neeson).

are strongly-held opinions, both for and against.⁶ But how many people know that peacekeeping and humanitarian aid were not the reasons the UN was created?⁷ They were not the original mission⁸ and they are definitely not the only mission today.⁹ For example, how many people know that within the UN system is the world's most authoritative, independent, voice on the State of the Planet? The UN's Specialist Agency, the World Meteorological Organization,¹⁰ through its Intergovernmental Panel on Climate Change (IPCC)¹¹ has reported, no fewer than five times, on global warming.¹² In its Fifth, and most recent, Assessment Report, which had 152 lead authors, over 500 contributing

⁶ In the U.S. for example, "one of the first campaigns of The John Birch Society [in 1959] was to get the U.S. out of the United Nations," fearing that "global power elites view the UN as their main vehicle for establishing . . . a socialistic global government controlled by themselves." *United Nations*, THE JOHN BIRCH SOC'Y, <http://www.jbs.org/issues-pages/united-nations> (last visited Oct. 4, 2016). By contrast, in 1998, the U.N. Foundation was founded with a \$1 billion gift from Ted Turner to support U.N. causes. *Turner Enterprises' President and CEO S. Taylor Glover Statement on Status of Ted Turner's Historic \$1 Billion Gift to the United Nations*, UNITED NATIONS FOUND. (June 21, 2010), <http://www.unfoundation.org/news-and-media/press-releases/2010/turner-enterprises-president-statement-status-ted-turner-1b-gift-un.html>. The Better World Campaign, launched in 1999, following the Turner gift, aims to strengthen relations between the U.S. and the U.N. *About the Better World Campaign*, BETTER WORLD CAMPAIGN, <https://betterworldcampaign.org/about-bwc/> (last visited Oct. 8, 2016).

⁷ Somini Sengupta, *The United Nations Explained: Its Purpose, Power and Problems*, N.Y. TIMES (Sept. 18, 2016), http://www.nytimes.com/2016/09/19/world/what-is-united-nations-un-explained.html?_r=0 (highlighting the ubiquity of questions surrounding the purposes and functions of the United Nations).

⁸ DANESH SAROOSHI, THE UNITED NATIONS AND THE DEVELOPMENT OF COLLECTIVE SECURITY: THE DELEGATION BY THE UN SECURITY COUNCIL OF ITS CHAPTER VII POWERS 1, 5 (1999).

⁹ *What We Do*, THE UNITED NATIONS, <http://www.un.org/en/sections/what-we-do/index.html> (last visited Oct. 8, 2016).

¹⁰ The World Meteorological Organization (WMO) was established in 1950 and originated from the International Meteorological Organization, founded in 1873. *Who We Are*, WORLD METEOROLOGICAL ORG., <http://public.wmo.int/en/about-us/who-we-are> (last visited Aug. 27, 2016). The WMO has 191 Member States and is the U.N.'s "authoritative voice on the state and behavior of the Earth's atmosphere, its interaction with the land and oceans, the weather and climate it produces and the resulting distribution of water resources." *Id.*

¹¹ The Intergovernmental Panel on Climate Change was established "[i]n 1988 [by the United Nations Environmental Programme] through a United Nations General Assembly resolution entitled 'Protection of global climate for present and future generations of mankind.'" *Intergovernmental Panel on Climate Change*, WORLD METEOROLOGICAL ORG., https://www.wmo.int/pages/themes/climate/international_ipcc.php (last visited Aug. 30, 2016); see also G.A. Res. 43/53 (Dec. 6, 1988). The IPCC's goals are to "assess available scientific information on climate change, assess the environmental and socio-economic impacts of climate change, and to formulate response strategies." *Id.*

¹² See *Reports*, INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, https://www.ipcc.ch/publications_and_data/publications_and_data_reports.shtml#1 (last visited Oct. 8, 2016).

authors, over 600 reviewers, and over 30,000 comments, the IPCC found that it is more than 95% likely that Man-Made emissions have caused most of the global warming observed over the last 60 years.¹³ The report is the closest the world will ever get to a scientific consensus.¹⁴

How many people are aware that every time they fly in an aeroplane, their safety and security are managed through another UN Agency, the International Civil Aviation Organization (ICAO)?¹⁵ The ICAO sets standards regarding air navigation as well as safety.¹⁶ It is the ICAO that defines the protocols for air accident investigation which authorities in the 191 member countries follow.¹⁷ Hopefully, it is the ICAO that makes it safer for everyone to fly.¹⁸

When people take a cruise, how many passengers know who regulates their safety and makes them attend a muster before they set off? 90% of global trade today is carried by ships¹⁹ but who regulates it? There have been international treaties on safety and pollution since the 19th century, but the establishment of a permanent international body to promote maritime safety, the International Maritime Organization (IMO), had to

¹³ CLIMATE CHANGE 2013: THE PHYSICAL SCIENCE BASIS, FIFTH ASSESSMENT REPORT OF THE INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE (2013).

¹⁴ The findings are based on data records which go back to 1750, before the Industrial Revolution. See INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, CLIMATE CHANGE 2013: THE PHYSICAL SCIENCE BASIS 12 (2013), https://www.ipcc.ch/pdf/assessment-report/ar5/wg1/WGIAR5_SPM_brochure_en.pdf. Since 1750, there has been a 250% increase in methane (due to agriculture and cattle-raising), a 40% increase in carbon dioxide (due to the use of fossil fuels and deforestation), and a 20% increase in noxious oxide, adding to the 'greenhouse effect'. *Id.* at 11. Oceans are getting warmer; glaciers are melting; and sea levels are rising. *Id.* at 50, 68–69. In 2002, the UN also pledged to produce regular assessments of the state of the oceans. GROUP OF EXPERTS OF THE REGULAR PROCESS, THE FIRST GLOBAL INTEGRATED MARINE ASSESSMENT: WORLD OCEAN ASSESSMENT I, 2 (2016), http://www.un.org/Depts/los/global_reporting/WOA_RPROC/WOACompilation.pdf. The result, in 2016, was publication of the World Ocean Assessment I. *Id.* Over 400 experts worked on the project; over 5,000 comments were received; as yet, no one has challenged the main findings: that the ocean is at a critical point and there is a need for sustainable management. *Id.*

¹⁵ About ICAO, INT'L CIV. AVIATION ORG., <http://www.icao.int/about-icao/Pages/default.aspx> (last visited Nov. 15, 2016).

¹⁶ Int'l Civil Aviation Org. [ICAO], *Electronic Bulletin: ICAO Strategic Objectives 2011-2012-2013*, ICAO Doc. EB 2010/54 (Dec. 10, 2010), http://www.icao.int/Documents/strategic-objectives/strategic_objectives_2011_2013_en.pdf.

¹⁷ Int'l Civil Aviation Org. [ICAO], *Convention on Int'l Civil Aviation*, at 12, ICAO Doc. 7300/9 (9th ed. 2006), http://www.icao.int/publications/Documents/7300_cons.pdf; see also *Member States*, INT'L CIVIL AVIATION ORG. (Oct. 31, 2013), <http://www.icao.int/MemberStates/Member%20States.English.pdf>.

¹⁸ ICAO, *supra* note 16.

¹⁹ Pablo Kaluza et al., *The Complex Network of Global Cargo Ship Movements*, 7 J. ROYAL SOC'Y INTERFACE 1093, 1093 (2010).

wait until the UN was created.²⁰ The mission of the IMO “is to promote safe, secure, environmentally sound, efficient and sustainable shipping through cooperation.”²¹ The IMO has raised training standards for seafarers and required inspections of ships.²² In 1970, the IMO launched a global search and rescue system which it has refined over the years, adding security checks regulations in the 2000s.²³

Even organisations pre-dating the UN, such as the International Telecommunications Union (ITU), founded in 1865,²⁴ and the Universal Postal Union (UPU), established in 1874,²⁵ are now UN Agencies.²⁶ The ITU is “committed to connecting the world” through management of information and communication technologies.²⁷ The ITU and UPU were founded to make international telephone calls and mail possible.²⁸ “It helps to ensure a truly universal network of up-to-date products and services.”²⁹

So, before tackling this question about the UN – “Is It a Mission Impossible?” – another question must be addressed – “What Mission?”

²⁰ *Brief History of IMO*, INT’L MAR. ORG., <http://www.imo.org/en/About/HistoryOfIMO/Pages/Default.aspx> (last visited Oct. 1, 2016) (noting that “a convention formally establishing IMO,” originally named the Inter-Governmental Maritime Consultative Organization but later changed to IMO, was adopted in 1948 and “entered into force in 1958”).

²¹ *Id.*

²² *See* International Convention for the Safety of Life at Sea, Nov. 1, 1974, 32 U.S.T. 47, 1184 U.N.T.S. 278. When the U.S. Coast Guard preforms random inspections of cruise ships, they are enforcing the IMO’s Safety of Life Regulations introduced in 1960 and followed up by successive treaties. *See id.*

²³ UNITED NATIONS, BASIC FACTS ABOUT THE UNITED NATIONS 150 (2000); *Passenger Ships*, INT’L MAR. ORG., <http://www.imo.org/en/OurWork/Safety/Regulations/Pages/PassengerShips.aspx> (last visited Nov. 18, 2016).

²⁴ *Overview of ITU’s History*, INT’L TELECOMM. UNION, http://www.itu.int/dms_pu/b/itu-s/oth/02/0b/s020b0000094e27pdf.pdf (last visited Oct. 5, 2016). The International Telecommunications Union organizes and sets standards for international telephone communications. *Id.*

²⁵ UNIVERSAL POSTAL UNION [UPU], ANNUAL REPORT 2013, at 2, http://news.upu.int/fileadmin/user_upload/PDF/Reports/annual_report_2013.pdf.

²⁶ *Funds, Programmes, Specialized Agencies, and Others*, UNITED NATIONS <http://www.un.org/en/sections/about-un/funds-programmes-specialized-agencies-and-others/index.html> (last visited Sept. 2, 2016).

²⁷ *About ITU*, INT’L TELECOMM. UNION, <http://www.itu.int/en/about/Pages/default.aspx> (last visited Oct. 1, 2016); *Overview of ITU’s History*, INT’L TELECOMM. UNION, <http://www.itu.int/en/history/Pages/ITUHistory.aspx> (last visited Sept. 2, 2016) (noting that the agency began as the International Telegraph Union, and, since 1865, it has been at the “centre of advances in communications—from telegraphy through to the modern world of satellites, mobile phones and the Internet.”).

²⁸ *See About History*, UNIVERSAL POSTAL UNION, [http://www.upu.int/nc/en/the-upu/history/about-history.html?sword_list\[0\]=history](http://www.upu.int/nc/en/the-upu/history/about-history.html?sword_list[0]=history) (last visited Sept. 2, 2016).

²⁹ *The UPU*, UNIVERSAL POSTAL UNION <http://www.upu.int/en/the-upu/the-upu.html> (last visited Sept. 2, 2016).

After all, these missions seem far removed from the peacekeeping and humanitarian missions of the UN. There are so many other UN Agencies and UN programmes, with such a wide variety of missions, that opinions about the UN as a whole may, inevitably, be ill-informed or incomplete.

The purpose of this paper is neither to present a balance sheet of the pros and cons of the UN and its agencies nor to evaluate their overall performance. Instead, it will ask three fundamental questions about the UN: first, what exactly was the original, core, mission of the UN, and why was it a “Mission Impossible” from the very start? Secondly, how has the UN mission changed over time? Thirdly, what is the UN mission in the 21st Century? The answers to these three questions provide a much more realistic basis for evaluating the UN and for asking the fundamental question: is it a “Mission Possible or Impossible?”

I. ORIGINAL MISSION – MISSION IMPOSSIBLE

Most people probably know why the UN, and indeed why its predecessor the League of Nations, was created – war and conflict.³⁰ The person pushing hardest for the creation of the UN was American President Franklin Delano Roosevelt.³¹ Roosevelt had been Secretary of the Navy in World War I and he witnessed the creation of the League of Nations at the Versailles Peace Conference in 1919, but he had also seen it fail less than twenty years later.³² From Roosevelt's perspective, as the Second World War was raging, one reason for the failure of the League of Nations might have been the fact that it had been set up after the end of the First World War. In 1919, when the League of Nations was created, the war was over.³³ Despite the scale of death and destruction that had taken place, Roosevelt recalled how there was no sense of urgency and no clear vision of what was needed,³⁴ and therefore no commitment to the new organization.³⁵ This is illustrated by the fact that it was another U.S. President, Woodrow

³⁰ See U.N. Charter pmb. See generally UNITED NATIONS INFO ORG., THE UNITED NATIONS TO-DAY AND TO-MORROW (1945), http://www.cisd.soas.ac.uk/Editor/assets/the_united_nationstodayandtomorrow1945.pdf (detailing an interesting contemporary account of the history of the founding of the UN).

³¹ *U.N. Created Through FDR's Determination*, Schlesinger Says, University of Virginia School of Law (Oct. 14, 2004), http://www.law.virginia.edu/html/news/2004_fall/un.htm.

³² TOWNSEND HOOPES & DOUGLAS BRINKLEY, *FDR AND THE CREATION OF THE U.N.*, 9–11, 17 (1997) (ebook); *U.N. Created Through FDR's Determination*, Schlesinger Says, *supra* note 31; *The Paris Peace Conference and the Treaty of Versailles*, OFF. OF THE HISTORIAN, <https://history.state.gov/milestones/1914-1920/paris-peace> (last visited Nov. 19, 2016).

³³ RUTH B. HENIG, *THE LEAGUE OF NATIONS* 1, 51 (2010) (ebook).

³⁴ CONRAD BLACK, *FRANKLIN DELANO ROOSEVELT: CHAMPION OF FREEDOM* 221 (2005).

³⁵ See *The League of Nations, 1920*, DEP'T OF ST.: OFF. OF THE HISTORIAN, <https://history.state.gov/milestones/1914-1920/league> (last visited Sept. 9, 2016).

Wilson, who had proposed the framework of the League of Nations.³⁶ But, after it was set up, the U.S. Senate rejected the Treaty due to the broadly-held conviction that it would limit the sovereignty of the American government in determining its own affairs.³⁷ So, the League of Nations was put in place and began work, but it did so without the assistance or input of the United States.³⁸

When Roosevelt took up, once again, the idea of creating an effective international organization, he made sure that its Charter was drafted during the Second World War,³⁹ as the war raged and everyone was focused on the disaster that had unfolded,⁴⁰ once again, in Europe and beyond.⁴¹ As a result, the determination and commitment to act was universally shared, and that is why the original name, United Nations, was created not in 1945 when the UN organisation was set up, but in the aftermath of the attack on Pearl Harbor in December 1941.⁴² In January 1942, Roosevelt invited 26 nations to Washington, D.C.⁴³ to sign what he called a “United Nations Declaration.”⁴⁴ These were the ‘Nations United in War’.⁴⁵ Thus, when General Dwight D. Eisenhower addressed the troops in World War II, landing in France, he told them that it was the United Nations defeating the Germans.⁴⁶ Indeed, when Germany and

³⁶ *See id.*

³⁷ William G. Ross, *Constitutional Issues Involving the Controversy Over American Membership in the League of Nations, 1918-1920*, 53 AM. J. LEGAL HIST. 1, 1–3 (2013).

³⁸ Byard Q. Clemmons & Gary D. Brown, *Rethinking International Self-Defense: The United Nations’ Emerging Role*, 45 NAVAL L. REV. 217, 230 (1998).

³⁹ HOOPES & BRINKLEY, *supra* note 32, at 110.

⁴⁰ At a speech at Chautauqua, New York in August 1936, Roosevelt said: “I have seen war. I have seen war on land and sea. I have seen blood running from the wounded. I have seen men coughing out their gassed lungs. I have seen the dead in the mud. I have seen cities destroyed. I have seen two hundred limping, exhausted men come out of line – the survivors of a regiment of one thousand that went forward forty-eight hours before. I have seen children starving. I have seen the agony of mothers and wives. I hate war.” *Address at Chautauqua, N.Y. August 14, 1936*, 5 THE PUBLIC PAPERS AND ADDRESSES OF FRANKLIN D. ROOSEVELT 283, 289 (1938).

⁴¹ Margaret M. Mastroberardino, Comment, *The Last Prisoners of World War II*, 9 PACE INT’L L. REV. 315, 329 (1997).

⁴² HOOPES & BRINKLEY, *supra* note 32, at 110.

⁴³ *See id.*

⁴⁴ *1942: Declaration of the United Nations*, UNITED NATIONS, <http://www.un.org/en/sections/history-united-nations-charter/1942-declaration-united-nations/> (last visited Nov. 19, 2016); *see also* PHILIP BOBBITT, *THE SHIELD OF ACHILLES: WAR, PEACE, AND THE COURSE OF HISTORY* 43, n * (First Anchor Books 2003) (2002) (the term ‘United Nations’ was suggested to Roosevelt by British Prime Minister Winston Churchill).

⁴⁵ *See* OFFICE OF WAR INFO., *THE UNITED NATIONS FIGHT FOR THE FOUR FREEDOMS: THE RIGHTS OF ALL MEN—EVERYWHERE* 9 (c. 1941).

⁴⁶ *See* Dwight D. Eisenhower, *D-Day Statement to Soliders, Sailor, and Airmen of the Allied Expeditionary Force* (June 1944) (on file at <http://www.ourdocuments.gov/doc.php?flash=true&doc=75&page=pdf>) (last visited Sept. 9, 2016).

Japan eventually surrendered, they did so not to the Allies as such, but to the United Nations.⁴⁷

As Plesch points out: “[u]nderstanding the UN’s wartime origins provides a powerful and much-needed reminder that the UN is not some liberal accessory but was created out of hard, realistic political necessity.”⁴⁸ The United Nations was created to win the war and afterwards, the vision of leaders like Roosevelt, Winston Churchill and Joseph Stalin was clear: the United Nations would win the peace.⁴⁹ They set out this vision at the Yalta Conference in Crimea in February 1945: a new world organisation which, in the words of Winston Churchill, “armed with ample power, will guard the rights of all states, great or small, from aggression.”⁵⁰ Even Joseph Stalin agreed in a 1944 speech when he commended the UN to the world as “a special organization made up of representatives of the peace-loving nations to uphold peace and safeguard security It will be a new, special, fully authorized world organization having at its command everything necessary to uphold peace and avert new aggression.”⁵¹

This was the great innovation of the UN Charter, in June 1945, and encompassed by Chapter VII, “Actions with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression.”⁵² The UN – an international order – would replace the old, discredited and ultimately disastrous and devastating consequences of a world without such an international order.⁵³ The original mission of the UN was, therefore, to

⁴⁷ The document that formalized the defeat of Germany stated: “This act of military surrender is without prejudice to, and will be superseded by any general instrument of surrender imposed by, or on behalf of the United Nations and applicable to Germany and the German armed forces as a whole.” *Military Surrender by Germany: Act of Military Surrender*, May 7, 1945, 18 Stat. 1857. President Truman sent a broadcast on May 8th saying, “General Eisenhower informs me that the forces of Germany have surrendered to the United Nations.” *Broadcast to the American People Announcing the Surrender of Germany*, HARRY S. TRUMAN LIBRARY & MUSEUM, <https://www.trumanlibrary.org/w2/veday.htm> (last visited Sept. 9, 2016).

⁴⁸ Dan Plesch, *The Hidden History of the United Nations*, OPEN DEMOCRACY: FREE THINKING FOR THE WORLD (May 18, 2005), https://www.opendemocracy.net/globalization-UN/article_2519.jsp.

⁴⁹ Roosevelt was due to give an address on April 13, 1945, but died on April 12. He was due to say: “The work, my friend, is peace. More than an end of this war—an end to the beginning of all wars.” President Franklin D. Roosevelt, Undelivered Address Prepared for Jefferson Day (April 13, 1945) in 1944–45 THE PUBLIC PAPERS AND ADDRESSES OF FRANKLIN D. ROOSEVELT: 1944-1945 VOLUME, 615 (Samuel I. Rosenman ed., 1950).

⁵⁰ 408 Parl Deb HC (5th ser.) col. 1268 (UK) (Prime Minister Churchill describing the agreement made at the Crimea Conference to the House of Commons).

⁵¹ Joseph Stalin, *The Twenty-Seventh Anniversary of the October Revolution* (Nov. 6, 1944) in THE GREAT PATRIOTIC WAR OF THE SOVIET UNION 127, 142 (1945).

⁵² U.N. Charter ch. VII.

⁵³ See Louis B. Sohn, *The New International Law: Protection of the Rights of Individuals Rather than States*, 32 AM. U. L. REV. 1, 5–6 (1982).

do everything necessary to stop aggression.⁵⁴ In other words, the original mission of the UN was “collective security”⁵⁵: to guard and protect; “to maintain international peace and security”; and to provide a system of mutual confidence that would allow disarmament and arms control.⁵⁶ Nation states could disarm, confident that their security from aggression would be guaranteed by the Great Powers, under the auspices of the Security Council.⁵⁷

So, the UN should not be criticised for being the world’s ‘police force,’ because that is what it was originally meant to be. The UN was set up to be a military organization; defeating aggression was its main *raison d’être*.⁵⁸ That is why the Security Council was given power to take “prompt and effective action,” to meet threats;⁵⁹ power to make decisions which Member States must carry out.⁶⁰ That is why they are called Security Council ‘mandates.’⁶¹ All members of the UN “agree to accept and carry out the decisions of the Security Council in accordance with the present Charter.”⁶² Indeed, the Security Council was expected to be the true seat of power, with the “primary responsibility” and the power to keep the “international peace.”⁶³ When the leaders asked whether or not the mission would succeed, one of them, Joseph Stalin, said it “will be effective if the great powers . . . continue to act in a spirit of unanimity and accord.”⁶⁴

So, when the UN was created there was a consensus and a commitment to the mission of collective security.⁶⁵ The leaders all shared the experience of the disaster of the Second World War.⁶⁶ They agreed universally to a new world order in which they would guard and protect

⁵⁴ See SAROOSHI, *supra* note 8, at 5.

⁵⁵ *Id.*

⁵⁶ U.N. DEPT OF POLITICAL & SEC. COUNCIL AFFAIRS, DISARMAMENT AFFAIRS DIV., THE UNITED NATIONS AND DISARMAMENT: 1945–1970, at 1, U.N. Sales No. 70.IX.1 (1970) (quoting U.N. Charter art. 1).

⁵⁷ See *id.* at 25–27.

⁵⁸ See THOMAS G. WEISS ET AL., THE UNITED NATIONS AND CHANGING WORLD POLITICS xlv–xlvi (6th ed. 2010).

⁵⁹ U.N. Charter art. 24, ¶ 1.

⁶⁰ *Id.* art. 25.

⁶¹ In comparison, other UN bodies only make recommendations. See, e.g., U.N. Charter arts. 10–18, 62–64 (providing the powers to the General Assembly and Economic and Social Council to make recommendations).

⁶² *Id.* art. 25.

⁶³ *Id.* art. 24, ¶¶ 1–2.

⁶⁴ Joseph Stalin, The Twenty-Seventh Anniversary of the October Revolution (Nov. 6, 1944), in THE GREAT PATRIOTIC WAR, 127, 142 (1945); see also C. Dale Fuller, Soviet Policy in the United Nations, 263 ANNALS AM. ACAD. POL. & SOC. SCI 141, 142 (1949).

⁶⁵ See WEISS, *supra* note 58, at 4.

⁶⁶ See *id.* at 3.

Member States.⁶⁷ With hindsight, everyone can see that the vision of the leaders has not been achieved.⁶⁸ However, what many may not take into account is the fact that the original mission of collective security was a ‘Mission Impossible’ from the very start – for two main reasons. First, the mission was already out of date, even in 1945; and secondly, the assumptions were wrong.

A. *Out of Date*

When the UN Charter was approved in June 1945 by 51 Member States,⁶⁹ very few of them knew about the Manhattan Project.⁷⁰ This was the secret American, British and Canadian project, begun in 1942, to develop nuclear weapons.⁷¹ They had no idea that the very next month, after they signed the Charter, in July 1945, the first-ever nuclear test was due to take place.⁷² After news of the successful test had been communicated to the new American President, Harry Truman, Churchill and Stalin, at the Potsdam Conference later in July, they immediately issued Japan with an ultimatum to surrender or “suffer prompt and utter destruction.”⁷³ They did not mention the bomb, and Japan did not surrender.⁷⁴ So, the first the world knew about any of this was when the atomic bombs were dropped on Hiroshima and Nagasaki in Japan in August 1945.⁷⁵ The development and use of nuclear weapons has proved, arguably, to be one of the most significant events in human history.⁷⁶ That the UN Charter did not take this development into account meant that the security part, with no mention of nuclear weapons,⁷⁷ was already out of date and old-fashioned.

B. *Assumptions Wrong*

There is no doubt that one of the key assumptions underlying the UN

⁶⁷ *Id.* at 4–5.

⁶⁸ *Id.* at 4.

⁶⁹ Fifty countries signed at first and Poland signed shortly after making a total of 51. *History of the United Nations*, UNITED NATIONS, <http://www.un.org/en/sections/history/history-united-nations/index.html> (last visited Sept. 10, 2016).

⁷⁰ Daniel S. Cheever, *The UN and Disarmament*, 19 INT’L ORG. 463, 466 (1965).

⁷¹ See LESLIE R. GROVES, NOW IT CAN BE TOLD: THE STORY OF THE MANHATTAN PROJECT 2 chart (Da Capo Press, 1983) (1962); BRUCE CAMERON REED, THE HISTORY AND SCIENCE OF THE MANHATTAN PROJECT ix (2014).

⁷² REED, *supra* note 71, at 451 (explaining and defining the so-called “Trinity” test).

⁷³ Terms for Japanese Surrender ¶ 13, July 26, 1945, 1951 U.S.T. Lexis 516 [hereinafter Potsdam Proclamation]; see also ED CRAY, GENERAL OF THE ARMY: GEORGE C. MARSHALL, SOLDIER AND STATESMAN 547 (Cooper Square Press, 2000) (1990).

⁷⁴ CRAY, *supra* note 73.

⁷⁵ Hugh M. Gloster, *Hiroshima in Retrospect*, 17 PHYLON 271, 271 (1956).

⁷⁶ REED, *supra* note 71, at 438.

⁷⁷ See U.N. Charter chs. V–VIII.

Charter was almost certainly correct when the Charter was signed, and remains so today: seeking national security through armaments creates international insecurity.⁷⁸ But several assumptions were either over-optimistic or simply wrong. For example, how realistic was it of Roosevelt to believe that the founding of the UN would “spell the end of the system of unilateral action, the exclusive alliances, the spheres of influence, the balances of power, and all the other expedients that have been tried for centuries—and have always failed”?⁷⁹

What turned out to be wholly wrong was the assumption that the war-time alliance would survive into the future.⁸⁰ The security part of the UN Charter was entirely premised on that assumption.⁸¹ That was the reason – and the justification – for five “great powers” – the U.S., the U.K., France, China and Russia – being made permanent members of the Security Council.⁸² They alone had the power to monitor the peace and, if necessary, to enforce it.⁸³

But, within two years of signing the Charter, the “Cold War” had started.⁸⁴ As Winston Churchill put it in 1946, “an Iron Curtain has descended across the Continent.”⁸⁵ The struggle between communism and capitalism and between the East and the West had begun.⁸⁶ As a consequence, the great powers were no longer neutral and impartial peacemakers.⁸⁷ They were now the major warmongers and threats to world peace, as they pushed the world to the brink of nuclear war, all

⁷⁸ EDWARD H. LAWSON, *ENCYCLOPEDIA OF HUMAN RIGHTS* 355 (2nd ed. 1996) (“However, the pursuit of national security regardless of its impact on the security of others can create overall international insecurity, thereby undermining the very security it aims at promoting. This is even more so in the context of the catastrophic consequences of a nuclear war.”).

⁷⁹ ARTHUR M. SCHLESINGER, JR., *THE CYCLES OF AMERICAN HISTORY* 169 (Mariner Books 1999) (1986).

⁸⁰ B.G. RAMCHARAN, *KEEPING FAITH WITH THE UNITED NATIONS* 333 (1987).

⁸¹ *Id.*

⁸² Kishore Mahbubani, *The Permanent and Elected Council Members*, in *THE UN SECURITY COUNCIL: FROM THE COLD WAR TO THE 21ST CENTURY* 253, 254–55 (David M. Malone ed., 2004); U.N. Charter art. 23, ¶ 1.

⁸³ Mahbubani, *supra* note 82, at 254–55.

⁸⁴ See Geir Lundestad, *The Cold War According to John Gladdis*, 6 *COLD WAR HIST.* 535 (2006).

⁸⁵ FRASER J. HARBUTT, *THE IRON CURTAIN: CHURCHILL, AMERICA, AND THE ORIGINS OF THE COLD WAR* 186 (Oxford University Press 1986). The speech was on March 5, 1946 at Westminster College, Fulton, Missouri. Extracts are available on C-SPAN. Sir Winston Churchill, Prime Minister of the UK, *The Sinews of Peace* (Mar. 5, 1946), <http://www.c-span.org/video/?191439-6/iron-curtain-speech>.

⁸⁶ See HARBUTT, *supra* note 85, at 209–12.

⁸⁷ See Peter Wallensteen & Patrik Johansson, *Security Council Decisions in Perspective*, in *THE UN SECURITY COUNCIL: FROM THE COLD WAR TO THE 21ST CENTURY* 17–20, 23 (David M. Malone ed., 2004).

because of the nuclear arms race.⁸⁸

These developments meant that, for forty or more years, the original core mission of the UN was impossible. It is true that some parts of the UN Charter were utilised with some effect. Sanctions, for example, are authorised under Article 41 of the Charter, and since 1966, the Security Council has established 25 sanctions regimes.⁸⁹ These regimes can encompass broad trade and economic sanctions or they can be more targeted measures such as arms embargoes, travel bans, and financial and commodity restrictions.⁹⁰ Sanctions are used to “deter non-constitutional changes, constrain terrorism, promote non-proliferation, defend human rights and support peaceful transitions.”⁹¹ In the past, sanctions may have helped to end apartheid in South Africa.⁹² More recently, six Security Council Resolutions since 2006 requiring Iran to stop enriching uranium – backed by sanctions – may have played a key role in reaching the recent International Agreement in July 2015.⁹³ There are currently a range of ongoing sanction regimes in place against both individuals and entities.⁹⁴

However, the fact remains that for over forty years, while sanctions were occasionally employed, the “security” part of the Charter which involved armed force and the maintenance of international peace, set out in Chapter VII, was used only once, in Korea,⁹⁵ and only because the Soviet Union was not present at the meeting to veto the resolution.⁹⁶ The Security Council was moribund and instead of collective security, the UN’s main security mission became to prevent a nuclear war between the great

⁸⁸ See Cary Fraser, *A Requiem for the Cold War: Reviewing the History of International Relations Since 1945*, in *RETHINKING THE COLD WAR* 93–94 (Allen Hunter ed., 1998)

⁸⁹ High Level Review of U.N. Sanctions, Compendium: High Level Review of United Nations Sanctions 5, app. at 89–90 (2015), http://www.hlr-unsanctions.org/HLR_Compendium_2015.pdf.

⁹⁰ See *id.* at 5.

⁹¹ *Id.*

⁹² See Audie Klotz, *Norms and Sanctions: Lessons from the Socialization of South Africa*, 22 *REV. INT’L STUD.* 173, 173 (1996).

⁹³ Kristina Daugirdas & Julian Davis Mortenson, *Contemporary Practice of the United States Relating to International Law*, 109 *Am. J. Int’l Law* 643, 649 (2015).

⁹⁴ High Level Review of U.N. Sanctions, *supra* note 89, app. at 89–91.

⁹⁵ S.C. Res. 84 (July 7, 1950)

⁹⁶ *Id.* The Soviet Union was not present due to a boycott of the Security Council. After that, the Soviet Union’s representatives were ordered never to leave the Council, just in case! Brian Urquhart, *Character Sketches: Andrei Gromyko*, UN NEWS CENTRE, <http://www.un.org/apps/news/infocus/andreigromyko.asp> (last visited Sept. 16, 2016). The first Secretary General, Trygve Halvdan Lie, resigned because the Soviet Union would not deal with him after he supported intervention in Korea. Rupert Emerson & Inis L. Claude, Jr., *The Soviet Union and the United Nations: An Essay in Interpretation*, *INT’L ORGS.*, Feb. 1952, at 1, 14 n.16.

powers in the East and the West.⁹⁷ This was the “MAD” world, the world of Mutual Assured Destruction, the UN operated in for nearly 40 years.⁹⁸

It was, however, a world in which the UN, the Security Council and the Secretary-General several times played a key role in preventing nuclear war. There were sixteen known nuclear crises during this period.⁹⁹ In 1955, Dag Hammarskjöld helped secure the release of US airmen in China at a time when demands were being made for nuclear strikes on the Chinese mainland.¹⁰⁰ In 1962, the UN helped to prevent a Soviet strike on America during the Cuban missile crisis, arguably the greatest nuclear crisis during the Cold War.¹⁰¹ Secretary-General U Thant played a “crucial mediatory role and received secret urgings from [President John F.] Kennedy to do so.”¹⁰² U Thant’s mediation was “vital” and according to Kennedy, “U Thant has put the world deeply in his debt.”¹⁰³

The UN may not have been able to perform its original mission when the war-time alliance of the great powers broke down, but it was not powerless even when the conflict was between those powers, or during the

⁹⁷ See Clark M. Eichelberger, *The Role of the United Nations in the East-West Dispute*, 336 ANNALS AM. ACAD. POL. & SOC. SCI. 106, 107, 109–10 (1961).

⁹⁸ Keir A. Lieber & Daryl G. Press, *The End of MAD? The Nuclear Dimension of U.S. Primacy*, INT’L SECURITY, Spring 2006, at 7, 7–8.

⁹⁹ David R. Morgan, *The Sixteen Known Nuclear Crises of the Cold War, 1946–1985* U. COLO. (Mar. 6, 1996), <http://www.colorado.edu/AmStudies/lewis/1025/16nuclear.pdf>.

¹⁰⁰ Indarjit Rikhye, *Critical Elements in Determining the Suitability of Conflict Settlement Efforts by the United Nations Secretary General*, in TIMING THE DE-ESCALATION OF INTERNATIONAL CONFLICTS 58, 64–65 (Louis Kriesberg & Stuart J. Thorson eds., 1991); Bruce Cumings, *On the Strategy and Morality of American Nuclear Policy in Korea, 1950 to the Present*, 1 SOC. SCI. JAPAN J. 57, 57–61 (1998).

¹⁰¹ See A. Walter Dorn & Robert Pauk, *50 Years Ago: The Cuban Missile Crisis and Its Underappreciated Hero*, BULL. OF THE ATOMIC SCIENTISTS (Oct. 11, 2012), <http://thebulletin.org/50-years-ago-cuban-missile-crisis-and-its-underappreciated-hero>.

¹⁰² *Id.*

¹⁰³ See A. Walter Dorn & Robert Pauk, *The Closest Brush: How a UN Secretary-General Averted Doomsday*, BULL. ATOMIC SCIENTISTS, Nov. 2012, at 79, 80–82 (quoting Gertrude Samuels, *The Meditation of U Thant*, N.Y. TIMES, Dec. 13, 1964, at SM32). There may have been a nuclear holocaust despite his efforts as a result of an ‘accident’. A Soviet submarine nearly fired a nuclear warhead at United States vessels when it was being forced to the surface by depth charges. The submarine captain was unable to communicate and did not know whether or not a nuclear war had started. The decision to fire required the unanimous agreement by three of the senior submarine officers. The captain wanted to fire the nuclear torpedo but the second in command, Vasili Arkhipov, vehemently refused to endorse the launch and persuaded them to surface to see what the situation was. Had they fired, it might have triggered a nuclear retaliation and possibly a nuclear war. Priscilla M. Roberts, *Arkhipov, Vasili Alexandrovich (1926–1999)*, in CUBAN MISSILE CRISIS: THE ESSENTIAL REFERENCE GUIDE 13–14 (Priscilla M. Roberts ed., 2012).

many “proxy wars” between the East and the West.¹⁰⁴ Indeed, the UN helped when, arguably, there was no one or no other organisation that could do so.¹⁰⁵ UN intervention provided ways for the combatants to compromise and wind down, to save face and to avoid escalation into full-scale war.¹⁰⁶ The UN is entitled to some credit therefore for ensuring that the “Cold” War did not become a “Hot” War.

II. NEW MISSIONS

The fact remains, however, that the original mission of the UN was impossible and, if the UN was to have any role in the second half of the 20th Century, it had to change its mission.¹⁰⁷ In this paper I will address three new missions: peacekeeping, decolonisation and globalisation.

A. *Peacekeeping*

Although the original mission of the UN of collective security meant that the UN had the power to keep the international peace, the concept of “peacekeeping” itself was not mentioned in the original charter.¹⁰⁸ Instead, the UN itself invented the concept when it “pioneered peacekeeping” in 1948.¹⁰⁹ The concept of peacekeeping is a broad one, and the UN describes peacekeeping as one of its “most effective tools . . . to assist host countries navigate the difficult path from conflict to peace.”¹¹⁰ In essence, UN peacekeeping tries to separate forces and to maintain ceasefires.¹¹¹ It also seeks to “facilitate the political process . . . protect

¹⁰⁴ See FREDERIK GRÜNFELD & ANKE HUIJBOOM, *THE FAILURE TO PREVENT GENOCIDE IN RWANDA: THE ROLE OF BYSTANDERS 2* (2007) (noting that proxy wars occurred, among other places, in Angola, the Middle East, and Vietnam).

¹⁰⁵ See WEISS, *supra* note 58, at 29–30; David Owen, Opinion, *Annan is Right for Syria. But He Needs Time*, *TIMES* (London), Apr. 16, 2012, at 20, Newspaper Source Plus, Accession Number 7EH58901405.

¹⁰⁶ According to former Foreign Secretary David Owen, “it is only the UN that can provide the mechanisms of compromise for winding down a war.” Owen, *supra* note 105, at 20.

¹⁰⁷ See Eichelberger, *supra* note 97, at 107–08.

¹⁰⁸ United Nations Reg'l Info. Ctr., UNRIC Library Backgrounder: Peacekeeping (Sept., 2015), <http://www.unric.org/en/unric-library/29033> [hereinafter UNRIC]. See generally U.N. Charter (stating the maintenance of peace as the first purpose of the United Nations, but not “peacekeeping” in the current sense).

¹⁰⁹ Ben F. Klappe, *The Law of International Peace Operations*, in *THE HANDBOOK OF INTERNATIONAL HUMANITARIAN LAW* 611 (Dieter Fleck ed., 3rd ed. 2013); UNRIC, *supra* note 108.

¹¹⁰ Under-Sec'y Gen. for Peacekeeping Operations, Statement to the Fourth Committee—Comprehensive Review of the Whole Question of Peacekeeping Operations in All Their Aspects (Oct. 22, 2010), http://www.un.org/en/peacekeeping/articles/4thc_dpkgousg_22102010.pdf; see also *What is Peacekeeping?*, UNITED NATIONS, <http://www.un.org/en/peacekeeping/operations/peacekeeping.shtml> (last visited Sept. 9, 2016).

¹¹¹ BRUCE RUSSET ET AL., *WORLD POLITICS* 295 (9th ed. 2010).

civilians, assist in the disarmament, demobilization and reintegration of combatants, support the organization of elections, protect and promote human rights, and assist in restoring the rule of law.”¹¹²

It can involve, at one end of the spectrum, the use of diplomacy to prevent and resolve conflicts.¹¹³ At the other end, and as a last resort, peacekeeping can involve the use of force, either as self-defence or in furtherance of a Security Council mandate.¹¹⁴ However, the UN emphasises that the use of force in peacekeeping operations is not to be “confused with peace enforcement,” the collective security mission envisaged under Chapter VII of the Charter.¹¹⁵ Peacekeeping, unlike peace enforcement, requires the consent of the main parties involved in the conflict.¹¹⁶ Since 1948, there have been 69 peacekeeping operations worldwide.¹¹⁷ Currently, there are 113,000 peacekeepers from 128 countries deployed in 16 operations on four continents.¹¹⁸ In its peacekeeping role, the UN can claim many largely successful actions,¹¹⁹ at least three out of every four according to the Rand Corporation.¹²⁰ As a corollary to peacekeeping, the General Assembly in 1991 also authorised UN fact-finding missions in order to enhance international peace and

¹¹² Under-Sec’y Gen. for Peacekeeping Operations, *foreword* to U.N. Dep’t of Peacekeeping Operations, Dep’t of Field Support, *United Nations Peacekeeping Operations: Principles and Guidelines* 6 (2008), http://www.un.org/en/peacekeeping/documents/capstone_eng.pdf [hereinafter U.N. Dep’t of Peacekeeping Operations].

¹¹³ PEACE & SECURITY SEC. OF THE U.N. DEP’T OF PUB. INFO., UNITED NATIONS PEACE OPERATIONS: YEAR IN REVIEW 2007, at 5, U.N. Doc. DPI/2500 (Mar., 2008).

¹¹⁴ U.N. Charter art. 42.

¹¹⁵ U.N. Dep’t of Peacekeeping Operations, *supra* note 112, at 34.

¹¹⁶ *Id.* at 31–32.

¹¹⁷ *List of Peacekeeping Operations 1948–2013*, UNITED NATIONS, <http://www.un.org/en/peacekeeping/documents/operationslist.pdf> (last visited Sept. 9, 2016); *see also What is Peacekeeping?*, UNITED NATIONS, <http://www.un.org/en/peacekeeping/operations/peacekeeping.shtml> (last visited Sept. 9, 2016).

¹¹⁸ *See* SARA E. DAVIES & SIMON RUSHTON, HEALING OR HARMING? UNITED NATIONS PEACEKEEPING AND HEALTH, PROVIDING FOR PEACEKEEPING no. 9, at 1 (2015), http://www.ipinst.org/wp-content/uploads/2015/03/IPI_Rpt_Health_and_Peacekeeping.pdf; *see also Current Peacekeeping Operations*, UNITED NATIONS, <http://www.un.org/en/peacekeeping/operations/current.shtml> (last visited Sept. 9, 2016). In January 2016, a Colombian government and FARC rebels request for a UN “political mission” was approved by the Security Council: an unarmed mission will be dispatched to Colombia to oversee a ceasefire, if the government and the FARC rebels sign a peace agreement. It is unusual for a country to refer itself to the Security Council. *New Mission in Colombia ‘Unprecedented’ in History of UN Ceasefire Observation—Ban*, UN NEWS CTR. (Mar. 13, 2016), <http://www.un.org/apps/news/story.asp?NewsID=53479#.WHFzJhsrLIW>.

¹¹⁹ *See* WEISS, *supra* note 58, at 29–39 (providing examples of successful U.N. intervention with respect to: Arab-Israeli Wars (1948 and 1973), Suez (1956), Lebanon (1958), Congo (1960), India and Pakistan (1965), Golan Heights (1974)).

¹²⁰ Seth G. Jones & James Dobbins, *The UN’s Record in Nation Building*, 6 CHI. J. INT’L L. 703, 716–18 (2006).

security.¹²¹ Since then, there have been more than 50 such missions.¹²²

The peacekeeping mission of the UN has radically changed the role of the UN Secretary-General. When the UN was created, the intention was that the Secretary General would be the senior administrator – but more of a “secretary” than a “general.”¹²³ Today, because of the peacekeeping mission, the Secretary-General is the world’s Peacemaker-General.¹²⁴ Some Secretaries-General have embraced that role while others may have struggled with the “Art of Peace.”¹²⁵

B. Decolonisation

The second new mission concerned decolonisation. At the creation of the UN in 1945, “some 750 million people, nearly a third of the world’s population,” lived in colonies.¹²⁶ The UN Charter did contain a “Declaration Regarding Non-Self-Governing Territories.”¹²⁷ This requested Member States to promote “self-government,” but no one predicted just how fast decolonisation would take place.¹²⁸ It happened mainly in the 1950s and 1960s, over a period of 20 years or so, not the 100 years that many thought it would need to happen.¹²⁹ Today, fewer than two million live in “Non-Self-Governing Territories.”¹³⁰

Decolonisation threatened to be extremely bloody and difficult, taking large colonial Empires away from mainly European countries.¹³¹

¹²¹ G.A. Res. 46/59, annex, Declaration on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security, ¶¶ 1–8 (Dec. 9, 1991).

¹²² See, e.g., Zeid Ra’ad Al Hussein, *Foreword* to Office of the UN High Comm’r of Human Rights, Commissions of Inquiry and Fact-Finding Missions on International Human Rights and Humanitarian Law: Guidance and Practice, at v, HR/PUB/14/7 (2015), http://www.ohchr.org/Documents/Publications/CoI_Guidance_and_Practice.pdf (noting that the OHCHR alone has performed almost 50 such missions).

¹²³ See U.N. Charter arts. 97–101.

¹²⁴ See Marrack Goulding, *The Evolution of United Nations Peacekeeping*, 69 INT’L AFF. 451 (1993).

¹²⁵ See Kofi A. Annan, *Foreword* to THE BRILLIANT ART OF PEACE, at xi-xii (Abiodun Williams ed., 2013); THE BRILLIANT ART OF PEACE, *supra*, at 1.

¹²⁶ NORMAN E. THOMAS, MISSIONS AND UNITY: LESSONS FROM HISTORY, 1792-2010, at 74 (2010); see also *The United Nations and Decolonization*, UNITED NATIONS, <http://www.un.org/en/decolonization> (last visited Sept. 18, 2016).

¹²⁷ U.N. Charter ch. XI.

¹²⁸ *Id.* art. 73; see THOMAS, *supra* note 126.

¹²⁹ Brian Urquhart, *Character Sketches: Ralph Bunche*, UN NEWS CTR., <http://www.un.org/apps/news/infocus/ralph-bunche.asp#.V-NIUfkrIdU> (last visited Sept. 21, 2016).

¹³⁰ THOMAS, *supra* note 126, at 74; Meetings Coverage, General Assembly, Remaining 16 Non-Self-Governing Territories on United Nations List Are ‘16 Too Many’, Fourth Committee Told, As It Takes Up Cluster of Decolonization Issues, U.N. Meetings Coverage GA/SPD/422 (Oct. 5, 2009).

¹³¹ See DANE KENNEDY, DECOLONIZATION 1 (2016).

In fact, decolonisation was achieved with extraordinarily little violence.¹³² Hoping to speed up the process of decolonization, the UN General Assembly in 1960 adopted a “Declaration on the granting of independence to colonial countries and peoples.”¹³³ In that Declaration, the General Assembly condemned colonialism and “proclaim[ed] the necessity of bringing to a speedy and unconditional end colonialism in all its forms and manifestations.”¹³⁴ In 1961, the General Assembly established the Special Committee on Decolonization to monitor implementation of the Declaration.¹³⁵ Over 80 former colonies became independent – 80 new countries in just 20 years.¹³⁶ Arguably, this was one of the great achievements of the UN.¹³⁷ The UN’s Universal Declaration of Human Rights also played a role in influencing the drafting of new constitutions and constitutional standards in new countries.¹³⁸

In short, the UN was a catalyst for change. Those changes also changed the UN. Decolonisation more than doubled the number of UN Member States¹³⁹ and, not surprisingly, the concerns of these new countries led the UN to develop new missions, such as tackling development and poverty issues.¹⁴⁰ The UN’s mission became

¹³² Donald J. Puchala, *American Interests and the United Nations*, 4 POL. SCI. Q. 571, 579 (1982). This is not to claim that the colonization process has not, after decolonization, been a critical contributory factor in the violence that has occurred in several newly independent territories; see KENNEDY, *supra* note 131, at 59–60 (2016).

¹³³ G.A. Res. 1514 (XV) (Dec. 14, 1960).

¹³⁴ *Id.* at 67.

¹³⁵ JAMES H. MITTELMAN, *CONTESTING GLOBAL ORDER* 81 (2011). See also *The United Nations and Decolonization: History*, UNITED NATIONS, <http://www.un.org/en/decolonization/history.shtml> (last visited Sept. 18, 2016).

¹³⁶ *Trust and Non-Self-Governing Territories (1945–1999)*, UNITED NATIONS, http://www.un.org/Depts/dpi/decolonization/special_committee_main.htm (last visited Sept. 18, 2016); see also Statement by the Representative of the Russian Federation, delivered at the 2015 Caribbean Seminar of C-24 Managua, U.N. Doc. CRS/2015/CRP.6 (May 19, 2015).

¹³⁷ Colonialism has not been totally eradicated, and the UN General Assembly has continued its efforts to bring it to an end. In 1990, the General Assembly adopted a Plan of Action in a quest to achieve it by the end of the Century. It proclaimed 1990–2000 as the ‘International Decade for the Eradication of Colonialism’. It has made second and third proclamations in 2001 and 2011. *The United Nations and Decolonization: History*, UNITED NATIONS, <http://www.un.org/en/decolonization/history.shtml> (last visited Sept. 18, 2016); see also Caribbean Reg’l Seminar on the Implementation of the Third Int’l Decade for the Eradication of Colonialism, *Draft Rep. of the Caribbean Regional Seminar*, U.N. Doc. A/AC.109/2013/CRP.17 (May 30, 2013).

¹³⁸ JOHN F. SEARS, *ELEANOR ROOSEVELT AND THE UNIVERSAL DECLARATION OF HUMAN RIGHTS* 11 (2008), <http://www.fdrlibrary.marist.edu/library/pdfs/sears.pdf>.

¹³⁹ Thilo Rensmann, *Reform*, in 1 THE CHARTER OF THE UNITED NATIONS: A COMMENTARY 25, 43 (Bruno Simma et al. eds., 3rd ed. 2012) (“By 1963 the membership had more than doubled.”).

¹⁴⁰ DAVID HULME, *GLOBAL POVERTY: HOW GLOBAL GOVERNANCE IS FAILING THE POOR* 23–25 (2010).

increasingly to support social and economic development, social justice and respect for human rights.¹⁴¹

C. Globalization

The third new mission of the UN has been meeting the emerging challenges of globalization. It may be its most important of all. The UN Charter did recognise the need for relationships to be concluded with specialized agencies that deal with “economic, social, cultural, educational, health, and related fields.”¹⁴² However, so many human activities have become global since the UN was created.¹⁴³ As former Secretary General Kurt Waldheim put it in 1972: “One issue after another – development, population, the seas and oceans, outer-space, even the monetary issue – reveal to us in close succession the interdependence on our planet.”¹⁴⁴ In his Millennium Report in 2000, former Secretary-General Kofi Annan set out some of the challenges for globalization and governance that had emerged since the UN was founded.¹⁴⁵

No wonder so many specialized agencies have been created in accordance with the terms of the Charter.¹⁴⁶ But, there are many more agreements have been created that go beyond the Charter’s terms. Though these agreements may not be formally part of the UN system, they have a close, often symbiotic, relationship with the UN, and some have very important missions. Examples include the International Atomic Energy Agency¹⁴⁷ and the Organization for the Prohibition of Chemical Weapons.¹⁴⁸

Globalization has been “conceptualized as . . . a process that erodes

¹⁴¹ See WEISS, *supra* note 58, at 157–72 (charting the history of the UN’s views on human rights and development).

¹⁴² U.N. Charter arts. 57, 63.

¹⁴³ WEISS, *supra* note 58, at 324–25.

¹⁴⁴ STANLEY JOHNSON, *THE FIRST 40 YEARS: A NARRATIVE* 8 (2012).

¹⁴⁵ See U.N. SECRETARY-GENERAL, *WE THE PEOPLES: THE ROLE OF THE UNITED NATIONS IN THE 21ST CENTURY*, at 5–8, U.N. Sales No. E.00.I.16 (2000) [hereinafter *WE THE PEOPLES*].

¹⁴⁶ See *Directory of United Nations System Organizations*, UNITED NATIONS SYS. CHIEF EXECUTIVES BOARD FOR COORDINATION, <http://www.unsceb.org/alpha> (last visited Sept. 18, 2016) (listing specialized agencies created under the Charter).

¹⁴⁷ The IAEA, which as of March 2015 has 164 Member countries, was set up in 1957 as an autonomous organization to engage in scientific and technical cooperation in the field of nuclear energy. See 2015 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, *IAEA Fact Sheet* at 1, <http://www.un.org/en/conf/npt/2015/pdf/IAEA%20factsheet.pdf>. It reports annually to the UN General Assembly and, on occasion, to the Security Council. Statute of the International Atomic Energy Agency art. III.B.4, Oct. 26, 1956, 8 U.S.T. 1093, 276 U.N.T.S. 3 (entered into force July 29, 1957).

¹⁴⁸ See Org. for the Prohibition of Chem. Weapons, *Fact Sheet 3: The Structure of the OPCW* (Mar., 2016), https://www.opcw.org/fileadmin/OPCW/Fact_Sheets/English/Fact_Sheet_3_-_OPCW_Structure.pdf.

national boundaries, integrates national economies, cultures, technologies, governance and produces complex relations of mutual interdependence.”¹⁴⁹ Increased interaction and interdependence across borders and between peoples have raised crucial questions about rules and governance in several spheres: economic, social and political.¹⁵⁰ There is a need for global coordination strategies and therefore an obvious mission for the UN.¹⁵¹

Within the UN, the Economic and Social Council is responsible for coordinating the economic, social and related work of the specialized UN agencies which have been created since the UN itself was set up and are part of the United Nations system.¹⁵² In addition to the agencies already mentioned in the introduction, UN agencies are concerned with food and agriculture,¹⁵³ labour,¹⁵⁴ educational, scientific and cultural

¹⁴⁹ AXEL DREHER ET AL., MEASURING GLOBALISATION 43 (2008).

¹⁵⁰ See Nisha Mukharjee & Jonathan Kriekhaus, *Globalization and Human Well-Being*, 33 INT'L POL. SCI. REV. 150 (2012).

¹⁵¹ See Carolyn Reynolds et al., Interview with Boutros Boutros-Ghali, *Setting a New Agenda for the United Nations*, 46 J. INT'L AFF. 289, 296 (1993).

¹⁵² See United Nations Econ. & Soc. Council [ESCOR], What is ECOSOC (Feb., 2009), http://www.un.org/en/ecosoc/docs/pdfs/ecosoc_brochure_en.pdf [hereinafter What is ECOSOC]. The Council has 54 UN Member States, elected by the General Assembly for overlapping three-year terms. Like the Security Council, seats on the Council are distributed on a regional basis.

¹⁵³ These agencies include the Food and Agriculture Organization, the International Fund for Agriculture Development, and World Food Programme; their aims include “bettering the working, health, and living conditions of rural populations, increasing food production, securing improvements in the efficiency of production and distribution of all food and agricultural products, and raising levels of nutrition and standards of living of peoples in all countries.” Frank Shefrin, *The Agricultural Agencies*, 35 INT'L J. 263, 267, 271 (1980).

¹⁵⁴ For instance, The International Labour Organization, which was established in 1919 as one of the agencies of the League of Nations, deals with labour issues. GERRY RODGERS ET AL., THE INTERNATIONAL LABOUR ORGANIZATION AND THE QUEST FOR SOCIAL JUSTICE, 1919–2009, app. II at 249–50 (2009).

organization,¹⁵⁵ industrial development,¹⁵⁶ health,¹⁵⁷ intellectual property,¹⁵⁸ and tourism.¹⁵⁹ In addition, there is the International

¹⁵⁵ The United Nations Educational, Scientific and Cultural Organization (UNESCO), founded in 1945, aims “to contribute to peace and security by promoting collaboration among the nations through education, science and culture.” UNITED NATIONS EDUC., SCI. & CULTURAL ORG. [UNESCO], BASIC TEXTS 6 (2016 ed.). Interestingly, UNESCO, like the UN, had to change its mission due to East-West rivalry and conflict. See Patrick Petitjean, *The Joint Establishment of the World Federation of Scientific Workers and of UNESCO After World War II*, 46 MINERVA 247, 248–49, 268–69 (2008). It was originally hoped to create an international organization of scientists. See *id.* at 247–49, 256. UNESCO is probably best known for its designation of World Heritage Sites, a process it began in 1978 with the Galapagos Islands. There are real benefits from World Heritage Status and not just for the sites themselves. The Status not only brings in vast numbers of tourists, but the tourist themselves benefit from Management Plans which ensure the site is both worthy of the status and that it will be managed properly for posterity. Carolyn Sayre, *The Oscars of the Environment*, TIME (June 22, 2007), <http://content.time.com/time/world/article/0,8599,1636166,00.html>. If it is not, the site can lose World Heritage Status. United Nations Educ., Sci. & Cultural Org. [UNESCO], *Operational Guidelines for the Implementation of the World Heritage Convention* ¶¶ 190–93, UNESCO Doc. WHC.15/01 (July 8, 2015), <http://whc.unesco.org/document/137843>.

¹⁵⁶ The United Nations Industrial Development Organization aims to promote industrial development in developing countries as well as international development cooperation. United Nations Indus. Dev. Org. [UNIDO], General Conference Res. 1, *Lima Declaration: Towards Inclusive and Sustainable Industrial Development*, at 2, Resolution GC.15/Res.1 (Dec. 2, 2013).

¹⁵⁷ The World Health Organization was established in 1948, originally based upon the League of Nations health agency, the Health Organization. *Archives of the League of Nations, Health Section Files*, WORLD HEALTH ORG., http://www.who.int/archives/fonds_collections/bytitle/fonds_3/en/ (last visited Sept. 19, 2016). Its mission is to direct and coordinate authority on international health. WORLD HEALTH ORG. [WHO], GLOBAL GUARDIAN OF PUBLIC HEALTH 1–2 (2016), <http://www.who.int/about/what-we-do/global-guardian-of-public-health.pdf>. The WHO played a significant role in the eradication of smallpox. *Id.* at 7.

¹⁵⁸ The World Intellectual Property Organization was established in 1967 to manage and encourage ‘creativity’: inventions, literary and artistic works, trade names, images and designs, copyright. Its aim is to promote innovation and creativity and to protect intellectual property rights. There are 189 Member States. *Inside WIPO*, WORLD INTELL. PROP. ORG. [WIPO], <http://www.wipo.int/about-wipo/en/> (last visited Sept. 19, 2016).

¹⁵⁹ The World Tourism Organization was established in 1975, replacing the International Union of Official Tourist Propaganda Organizations, which was founded in 1934. *History: World Tourism Organization*, WORLD TOURISM ORG., <http://www2.unwto.org/content/history-0> (last visited Sept. 19, 2016). The WTO has 157 member states, 6 Associate and 500 Affiliate Members “representing the private sector, educational institutions, tourism associations and local tourism authorities.” *Who We Are*, WORLD TOURISM ORG., <http://www2.unwto.org/content/who-we-are-0> (last visited Sept. 19, 2016). Its mission is “the promotion of responsible, sustainable and universally accessible tourism.” *Id.* As a forum for tourism policies it is “a driver of economic growth, inclusive development and environmental sustainability.” *Id.*

Monetary Fund¹⁶⁰ and the World Bank Group,¹⁶¹ both of which are regarded as specialized agencies within the UN system but which, in fact, retain independence as international organizations.¹⁶² Similarly, the International Atomic Energy Agency is autonomous, but has a special agreement with the UN whereby it reports regularly to the General Assembly and, on occasion, to the Security Council.¹⁶³ In addition, there are many other intergovernmental organizations, such as the International Mobile Satellite Organization,¹⁶⁴ which have cooperation agreements with the UN.¹⁶⁵

Participation in the Economic and Social Council extends to a large number of inter-governmental autonomous organizations some of which

¹⁶⁰ The International Monetary Fund tracks “the economic health of its [189] member countries.” *About the IMF: Overview*, INT’L MONETARY FUND, <https://www.imf.org/external/about/overview.htm> (last visited Sept. 19, 2016). It offers loans to countries in difficulty, and offers advice and technical assistance. *Id.* Its stated aim is to “foster global monetary cooperation, secure financial stability, facilitate international trade, promote high employment and sustainable economic growth, and reduce poverty.” *International Monetary Fund*, UNITED NATIONS SYS. CHIEF EXECUTIVES BOARD FOR COORDINATION, <https://www.unsceb.org/content/imf> (last visited Sept. 19, 2016).

¹⁶¹ The World Bank Group comprises five legally separate but affiliated institutions. Two form the World Bank itself: the International Bank for Reconstruction and Development, which was created in 1944 as the original World Bank institution, and The International Development Association. They provide loans and financial assistance to middle-income and the poorest nations, respectively. *International Bank for Reconstruction and Development*, WORLD BANK (Sept. 30, 2014), <http://www.worldbank.org/en/about/what-we-do/brief/ibrd>; *About the World Bank*, WORLD BANK, <http://www.worldbank.org/en/about> (last visited Sept. 19, 2016). The other institutions in the World Bank Group are the International Finance Corporation, a “global development institution” that serves on the private sector and provides finance for investment and advice for businesses and governments; the Multilateral Investment Guarantee Agency, which provides “political risk insurance” to “promote foreign direct investment in developing countries”; and the International Centre for Settlement of Investment Disputes, which “provides international facilities for conciliation and arbitration of investment disputes”. *Id.*

¹⁶² The relationship between the World Bank, the IMF and the UN is regulated by agreements between the UN and the two organizations. *See About the IMF: Overview*, INT’L MONETARY FUND, <https://www.imf.org/external/about/overview.htm> (last visited Sept. 19, 2016); *The World Bank Group and the United Nations: Working Together for Development 3* (2015), <http://www.un.org/esa/ffd/ffd3/wp-content/uploads/sites/2/WBG-UN-Brochure.pdf>. The World Bank “has its own mandate, governance structure, and operational independence,” and works together with the UN at three levels: intergovernmental, interagency, and country. *Id.* at 3–4.

¹⁶³ *See* Statute of the International Atomic Energy Agency art. III.B.4, Oct. 26, 1956, 8 U.S.T. 1093, 276 U.N.T.S. 3 (entered into force July 29, 1957).

¹⁶⁴ The IMSO provides “oversight of certain public satellite safety and security communication services.” *Home*, INT’L MOBILE SATELLITE ORG., <http://www.imso.org/Pub lic> (last visited Sept. 20, 2016).

¹⁶⁵ *See* IMSO Director General, *Relationships with Other International Organizations*, IMSO Doc. ASSEMBLY/18/13, at 2 (Aug. 1, 2006), <http://2001-2009.state.gov/documents/organization/70006.pdf>.

participate on a continuing basis; others on an ad hoc basis.¹⁶⁶ Other organizations have consultative status to the Council.¹⁶⁷ As a result, the Council is the main “forum for the discussion of international economic, [and] social . . . issues, and for formulating policy recommendations.”¹⁶⁸ In addition, Kofi Annan launched a Global Compact project, which originated in the 1999 World Economic Forum in Davos, Switzerland.¹⁶⁹ This is an initiative to encourage corporations to embrace a set of core values in the area of human rights, labor standards and environmental protection through partnerships with UN agencies.¹⁷⁰

Finally, over time, the UN has developed many other very important ‘missions’ in other ways. One example is the United Nations Environmental Programme (UNEP), established by a General Assembly Resolution in 1972.¹⁷¹ It is the “environmental voice of the UN” and its mission is to provide international environmental governance through leadership and partnership.¹⁷² It does this by providing a bridge between the science on the environment and policy on sustainable development.¹⁷³ Another is the United Nations Conference on Trade and Development (UNCTAD), established by another General Assembly Resolution in 1964.¹⁷⁴ Its role is to analyse and promote the practice and effect of international trade.¹⁷⁵ A third example is the United Nations High Commissioner for Refugees (UNHCR), established in 1950.¹⁷⁶ This “Office” of the United Nations replaced an earlier agency, the International Refugee Organization, which had been created in 1946.¹⁷⁷ A fourth example is UNICEF, the UN’s Children’s Fund, created by the UN General Assembly in 1947 to deal with the aftermath of the Second World

¹⁶⁶ Peter Willetts, *From "Consultative Arrangements" to "Partnership": The Changing Status of NGOs in Diplomacy at the UN*, 6 GLOBAL GOVERNANCE 191, 191 (2000).

¹⁶⁷ *Id.*

¹⁶⁸ What is ECOSOC, *supra* note 152.

¹⁶⁹ Georg Kell, *The Global Compact: Origins, Operations, Progress, Challenges*, J. CORP. CITIZENSHIP, Sept. 2003, at 35, 36.

¹⁷⁰ *Id.*

¹⁷¹ G.A. Res. 2997 (XXVII) (Dec. 15, 1972).

¹⁷² United Nations Env’t Programme [UNEP], UNEP 2013 Annual Report at 1–2 (2013).

¹⁷³ Ban Ki-Moon, *Message from the United Nations Secretary-General*, in UNEP 2013 Annual Report, *supra* note 172, at 1.

¹⁷⁴ G.A. Res. 1995 (XIX) (Dec. 30, 1964).

¹⁷⁵ *Id.* ¶ 3; *see also Trade in Goods*, UNITED NATIONS CONF. ON TRADE & DEV., <http://unctad.org/en/Pages/DITC/Trade-Analysis.aspx>.

¹⁷⁶ G.A. Res. 428 (V) (Dec. 14, 1950).

¹⁷⁷ LUISE DRUKE, MOBILIZING FOR REFUGEE PROTECTION: REFLECTIONS ON THE 60TH ANNIVERSARY OF UNHCR AND THE 1951 REFUGEE CONVENTION 4 (Dec. 1, 2011), <http://www.unhcr.org/4ec0eb7a9.pdf>.

War.¹⁷⁸ Its mission is to work for children's rights, survival, development and protection.¹⁷⁹ There are several other UN Programmes and Funds as well.¹⁸⁰

This brief survey reveals just how important it is, when asking whether the 'Mission' of the UN is "Possible or Impossible?" to also ask: "what mission?" Each of the many UN agencies engaged in vitally important activities affecting everyday lives throughout the globalised world, on their own, merit in-depth analysis and evaluation. Like the UN itself, there are both critics and supporters of specific agencies, some of which are particularly controversial, politically and otherwise.¹⁸¹ However, many would agree that this part of the UN is very much a Mission Possible.¹⁸² So, if the UN did not exist, it would probably have to be invented.

III. NEW SECURITY AND PEACE MISSION FOR THE 21ST CENTURY?

For most observers of the UN, however, it is the original mission of security and peace that is regarded as the critical measure in evaluating the success or otherwise of the UN's performance.¹⁸³ After all, the UN Charter itself states that its primary purpose is "[t]o maintain international peace and security," and to undertake any actions that are necessary to maintaining this peace and security.¹⁸⁴ As we have seen, that particular mission was doomed for nearly forty years due to the Cold War. But much has happened since the fall of the Berlin wall and the break-up of the Soviet Union triggered its end. Might the Chapter VII mission be

¹⁷⁸ UNICEF provides humanitarian and developmental assistance to children and mothers in developing countries. See UNITED NATIONS INT'L CHILDREN'S EMERGENCY FUND [UNICEF], 1946–2006: SIXTY YEARS FOR CHILDREN 4–6, 13–14, U.N. Sales No. E.06.XX.14 (Nov., 2006), http://www.unicef.org/publications/files/1946-2006_Sixty_Years_for_Children.pdf.

¹⁷⁹ *Id.* at 4; see also UNICEF, <http://www.unicef.org/> (last visited Sept. 9, 2016).

¹⁸⁰ See, e.g., *Funds, Programmes, Specialized Agencies and Others*, UNITED NATIONS, <http://www.un.org/en/sections/about-un/funds-programmes-specialized-agencies-and-others/index.html> (last visited Sept. 20, 2016) (listing UN programmes and funds, including the United Nations Development Programme, the United Nations Population Fund, and the United Nations Relief and Works Agency for Palestinian Refugees); *The Institute*, United Nations Institute for Training & Res., <http://www.unitar.org/the-institute> (last visited Sept. 20, 2016) (describing the United Nations Institute for Training and Research); U.N. Res. Institute for Soc. Dev., Research for Social Change 1 (Nov. 1, 2012) (describing the United Nations Research Institute for Social Development).

¹⁸¹ The International Monetary Fund (IMF) is an example of such an agency. See Ed Conway, Editorial, *Love It or Loathe It, The World Needs The IMF*, TIMES (London) (Dec. 22, 2015), <http://www.thetimes.co.uk/tto/opinion/columnists/article4647042.ece>.

¹⁸² See, e.g., WE THE PEOPLES, *supra* note 145, at 5–6 (reaffirming the potential of the United Nations outside the realm of international security).

¹⁸³ See WEISS, *supra* note 58, at xlvii.

¹⁸⁴ U.N. Charter art. 1.

possible in the 21st century?

At first, the end of the Cold War did appear to be the ‘champagne moment’ for the UN.¹⁸⁵ At last, it could do what it was set up to do – and it did, straight away. In 1990, the Security Council passed twelve resolutions relating to the Iraqi invasion of Kuwait, culminating in Resolution 678 which authorised the use of “all necessary means” to achieve a withdrawal of Iraqi troops.¹⁸⁶ Since then, Chapter VII, which had been used only infrequently in the previous forty years,¹⁸⁷ has been used many times and in a variety of ways, such as setting-up International Criminal Tribunals for the former Yugoslavia¹⁸⁸ and for Rwanda.¹⁸⁹ Chapter VII has even been used several times since 2008 to deal with the piracy threat off the coast of Somalia and the Horn of Africa.¹⁹⁰

So, if the original mission of the UN has been revived, why is the overall impression that the “champagne has gone flat?”¹⁹¹ The answer is that there was nothing to celebrate about the role the UN played in the 1990s in the events that took place in Rwanda and Yugoslavia.¹⁹² The atrocities which took place during those conflicts shocked the world, but so did the failure of the UN to do much about them.¹⁹³

D. Rwanda

Rwanda was one of the first of many horrific atrocities in the 1990s and beyond.¹⁹⁴ Everyone who was aware of the history of Rwanda,

¹⁸⁵ Reynolds et al., *supra* note 151 (“With the end of the Cold War, the United Nations has overcome the barriers that were imposed by the ideological struggle between East and West, and this context offers the possibility of a new beginning for the United Nations.”).

¹⁸⁶ S.C. Res. 678 at 27, ¶ 2 (Nov. 29, 1990).

¹⁸⁷ Patrik Johansson & Ramses Amer, *From Condemnation to Legitimization of Outcome*, in THE DEMOCRATIZATION PROJECT 44 (Ashok Swain et al. eds., 2011) (“Until 1989, the Council had never adopted more than three Chapter VII resolutions in a single year, while from 1991 on there have never been fewer than ten per year.”).

¹⁸⁸ S.C. Res. 827 (May 25, 1993).

¹⁸⁹ S.C. Res. 955 (Nov. 8, 1994). The UN has also backed other international criminal tribunals, such as those in Sierra Leone, S.C. Res. 1315 (Aug. 14, 2000), and Cambodia, G.A. Res. 57/228B (May 22, 2003).

¹⁹⁰ The most recent Chapter VII Security Council Resolution dealing with piracy is S.C. Res. 2246 (Nov. 10, 2015).

¹⁹¹ See JEAN-MARIE GUÉHENNO, *THE FOG OF PEACE: A MEMOIR OF INTERNATIONAL PEACEKEEPING IN THE 21ST CENTURY* 290 (2015) (discussing worsening international opinion of UN peacekeeping).

¹⁹² *Id.*

¹⁹³ See Kjetil Mujezinović Larsen, *United Nations Peace Operations and International Law*, in PROMOTING PEACE THROUGH INTERNATIONAL LAW 299, 316 (Cecilia M. Bailliet & Kjetil M. Larsen eds. 2015).

¹⁹⁴ See Barbara Harff, *No Lessons Learned from the Holocaust? Assessing Risks of Genocide and Political Mass Murder since 1955*, 97 AM. POL. SCI. REV. 57, 60, tbl. 1 (Feb., 2003).

including experts at the UN, knew about the conflicts between the Tutsis and the Hutus which had lasted for decades.¹⁹⁵ A civil war broke out in 1990 and by 1993, the UN was being warned by its own experts of a serious risk of genocide.¹⁹⁶ Their report recommended a series of preventative steps but it was largely ignored.¹⁹⁷ For years before the report was presented, the Hutu-led government had been setting up militias.¹⁹⁸ They attacked Tutsis and committed atrocities. Meanwhile, the radio stations spread anti-Tutsi propaganda and incited violence.¹⁹⁹

The UN sent an Assistance Mission to Rwanda (UNAMIR), with troops deployed to monitor the implementation of the “Arusha Accords,” a peace and power-sharing agreement signed by the Tutsi-led Rwandan Front and the Hutu-led Rwandan government.²⁰⁰ When the Canadian Lieutenant-General, Roméo Dallaire arrived, he requested a new rules of engagement that would allow him to stop “ethnically or politically motivated criminal acts.”²⁰¹ He received no formal response.²⁰² When Dallaire received reliable information concerning a future slaughter – indeed, a list of those who were to be killed was being compiled – UNAMIR was publicly warned to refrain from interfering.²⁰³

Instead, Secretary-General Boutros Boutros-Ghali warned President Juvenal Habyarimana that the UN knew of the plans and would not tolerate it.²⁰⁴ However, Dallaire could see just how dangerous the situation was.²⁰⁵ The Hutus had the capacity to kill 1000 Tutsis

¹⁹⁵ See LINDA MELVERN, *CONSPIRACY TO MURDER: THE RWANDAN GENOCIDE* 6–19 (2006) (summarizing past conflicts and the UN’s knowledge of them).

¹⁹⁶ Gregory Stanton, *Early Warning*, in *ENCYCLOPEDIA OF GENOCIDE AND CRIMES AGAINST HUMANITY* 271, 271–72 (Dinah L. Shelton et al., eds. 2005) (“General Roméo Dallaire, Commander of the UN Assistance Mission in Rwanda, in a cable sent on January 11, 1994, warned the UN Department of Peacekeeping Operations, headed by Kofi Annan, of the plan of extremist Hutu to exterminate Tutsis.”).

¹⁹⁷ *Id.* at 272.

¹⁹⁸ See Helen M. Hintjens, *Explaining the 1994 Genocide in Rwanda*, 37 *J. MOD. AFRICAN STUD.* 241, 261, 267 (1999).

¹⁹⁹ See ROMÉO DALLAIRE WITH BRENT BEARDSLEY, *SHAKE HANDS WITH THE DEVIL: THE FAILURE OF HUMANITY IN RWANDA* 142, 330 (2003); WILLIAM A. SCHABAS, *GENOCIDE IN INTERNATIONAL LAW* 329 (2d ed. 2009).

²⁰⁰ See DALLAIRE, *supra* note 199, at 53–55, 92.

²⁰¹ See DORE GOLD, *TOWER OF BABBLE: HOW THE UNITED NATIONS HAS FUELED GLOBAL CHAOS* 151–52 (Three Rivers Press 2005) (2004).

²⁰² *Id.* at 152.

²⁰³ DALLAIRE, *supra* note 199, at 142, 146.

²⁰⁴ Report of the Independent Inquiry into the Actions of the United Nations during the 1994 Genocide in Rwanda, in letter dated Dec. 15, 1999 from the Secretary-General addressed to the President of the Security Council, at 9, U.N. Doc. S/1999/1257 (Dec. 15, 1999) [hereinafter *Rwanda Inquiry*].

²⁰⁵ See DALLAIRE, *supra* note 199, at 164.

every 20 minutes.²⁰⁶ Eager to prevent a mass genocide, in January 1994, Dallaire sent to the UN Peacekeeping Operations Department, led then by Kofi Annan, a future Secretary-General, the notorious “Genocide Fax.”²⁰⁷ This fax informed the UN of a planned, even announced, mass slaughter.²⁰⁸ The fax also asked for formal approval to confiscate weapons, an operation which UNAMIR had already begun to employ.²⁰⁹ But, instead of obtaining authorization for immediate action, Dallaire received a reply ordering that “[n]o reconnaissance or other action, including response to request for protection, should be taken by UNAMIR until clear guidance is received from Headquarters.”²¹⁰

According to headquarters, Dallaire’s plan violated UNAMIR’s mandate under Resolution 872.²¹¹ Dallaire was told that “the overriding consideration is the need to avoid entering into a course of action that might lead to the use of force and unanticipated repercussions.”²¹² In other words, Kofi Annan ordered him to cease and desist, and to avoid the use of force.²¹³

In earlier conflicts around 20,000 Tutsis had been killed, but the genocide was on a totally different scale.²¹⁴ It was triggered on April 6, 1994, when the Rwandan President’s plane was shot down.²¹⁵ President Habyarimana was killed as was President Ntaryamira of Burundi, both Hutus.²¹⁶ In 100 days, around 800,000 were slaughtered – about 20% of Rwanda’s total population – not by bombs or guns but one-by-one, by weapons like machetes and knives.²¹⁷

²⁰⁶ *Id.* at 142.

²⁰⁷ *Id.* at 144–46; Jeremy Sarkin & Carly Fowler, *The Responsibility to Protect and the Duty to Prevent Genocide: Lessons to be Learned from the Role of the International Community and the Media During the Rwandan Genocide and the Conflict in the Former Yugoslavia*, 33 SUFFOLK TRANSNAT’L L. REV. 35, 53–54 (2010).

²⁰⁸ See Walter Dorn & Jonathan Matloff, *Preventing the Bloodbath: Could the UN have Predicted and Prevented the Rwandan Genocide?*, 20 J. CONFLICT STUD., no. 1, (2000), file:///C:/Users/jhigg008/Downloads/4333-7599-1-PB%20(2).pdf. (“Within the ‘genocide’ fax, as it has come to be called, Dallaire outlined his plan to raid arms caches promptly to prevent the contents from being used in the plots. ‘It is our intention to take action within the next 36 hours,’ Dallaire wrote.”); Roméo Dallaire, *Cable to UN from Dallaire*, ¶ 9 (Jan. 11, 1994).

²⁰⁹ See DALLAIRE, *supra* note 199, at 146; Dorn & Matloff, *supra* note 208.

²¹⁰ Rwanda Inquiry, *supra* note 204, at 11; see also DALLAIRE, *supra* note 199, at 146.

²¹¹ Rwanda Inquiry, *supra* note 204, at 11. See generally S.C. Res. 872 (Oct. 5, 1993).

²¹² Rwanda Inquiry, *supra* note 204, at 11

²¹³ See DALLAIRE, *supra* note 199, at 146.

²¹⁴ ROBERT F. GORMAN, GREAT DEBATES AT THE UNITED NATIONS 359 (2001).

²¹⁵ See DALLAIRE, *supra* note 199, at 221, 262.

²¹⁶ *Id.* at 223–24.

²¹⁷ See *id.* at vii, 117, 395; see also *Most Horrific Genocides in Human History*, WORLD ATLAS, <http://www.worldatlas.com/articles/most-horrific-genocides-in-human-history.html> (last visited September 12, 2016).

It was open and explicit genocide against Tutsis.²¹⁸ Some Tutsis tried to shelter with UN forces.²¹⁹ A small contingent of Belgian troops were protecting Europeans and Rwandan at a technical school in the Rwandan capital Kigali.²²⁰ The school was surrounded by Hutu militiamen.²²¹ But, as soon as the Europeans were evacuated, the UN troops abandoned the school.²²² About two thousand Tutsis were left behind and virtually every single one was massacred within a few hours.²²³

General Dallaire later claimed that he could have stopped the genocide and prevented it spreading with just 5,000 troops.²²⁴ Instead of being reinforced, however, UNAMIR was downsized from 2,500 to 270 troops during the height of the Tutsi massacre.²²⁵ The list of UN failures might include: protecting hospitals, schools and other places where the Tutsis were desperately seeking refuge; recognising the Tutsi Rwandan Patriotic Front as the legitimate government; cutting off relations with the government that initiated the genocide. Instead, the UN protected its neutrality in a civil war.²²⁶

In 1998, an International Panel of Eminent Personalities was formed to investigate the 1994 genocide.²²⁷ It reported in 2000 and concluded that the genocide could have been prevented had the UN Security Council acted.²²⁸ It found that the UN troops were neither sufficiently equipped nor given a strong enough mandate to avert the crisis.²²⁹

It is an irony that in 1994, Rwanda was on the Security Council.²³⁰ It therefore had the right to vote and take part in procedural decisions about the UN response to slaughter, even while its troops were carrying

²¹⁸ See Sarkin & Fowler, *supra* note 207, at 49–51.

²¹⁹ See DALLAIRE, *supra* note 199, at 270.

²²⁰ *Id.* at 57, 289, 528.

²²¹ *Id.* at 129, 289–90; Ambassador Samantha Power, U.S. Permanent Representative to the United Nations, Remarks at the American Enterprise Institute on UN Peacekeeping Reform (Nov. 7, 2014) (transcript available at <http://usun.state.gov/remarks/6283>).

²²² See DALLAIRE, *supra* note 199, at 289–90.

²²³ See *id.*; Power, *supra* note 221.

²²⁴ See DALLAIRE, *supra* note 199, at 356; Dorn & Matloff, *supra* note 208.

²²⁵ Rwanda Inquiry, *supra* note 204, at 22.

²²⁶ See Anthony F. Lang, *Global Governance and Genocide in Rwanda*, 16 ETHICS & INT'L AFF. 143, 150 (2002); INT'L PANEL OF EMINENT PERSONALITIES (IPEP), REPORT ON THE 1994 GENOCIDE IN RWANDA AND SURROUNDING EVENTS (2000), reprinted in 40 INT'L. LEGAL MATERIALS 141, 147 (2001).

²²⁷ Rachel Murray, *Recent Developments: The Report of the OAU's International Panel of Eminent Personalities to Investigate the 1994 Genocide in Rwanda and the Surrounding Events*, 45 J. AFR. L. 123, 123–24 (2001).

²²⁸ *Id.* at 123, 128.

²²⁹ See *id.* at 128.

²³⁰ SHAHARYAR M. KHAN, THE SHALLOW GRAVES OF RWANDA 199 (2000); *Rwanda to the UNSC*, PERMANENT MISSION OF RWANDA TO THE UNITED NATIONS, <http://rwandaun.org/site/rwanda-to-the-unsc/> (last visited September 14, 2016).

it out.²³¹ Rwanda was also able to present significant obstacles to Security Council action during the crisis, including giving inaccurate information in the days after the slaughter began.²³²

The UN was not alone however in failing to act. Other countries, including NATO countries, refused to intervene.²³³ Some not only saw it as not in their interests to prevent genocide, but others, such as President Clinton even refused at first to call the massacre a genocide.²³⁴ Doing so would have led to a louder public outcry, requiring the Security Council to act.²³⁵

E. Yugoslavia

While all this was happening in Rwanda, Yugoslavia was breaking apart – another consequence of the end of the Cold War.²³⁶ The history of the Balkans, like Rwanda, had been a long one of violence and conflict.²³⁷ Stability at the end of World War II was, however, provided by communism, though not within the USSR.²³⁸ General Tito, who was of mixed Slovenian and Croatian descent, took power in 1945 under a banner of “brotherhood and unity.”²³⁹ He created the Federal Republic of Yugoslavia with six republics.²⁴⁰

²³¹ Colin Keating, *Rwanda: An Insider's Account*, in THE UN SECURITY COUNCIL: FROM THE COLD WAR TO THE 21ST CENTURY 500, 503 (David M. Malone ed., 2004).

²³² See Khan, *supra* note 230, at 199.

²³³ ALISON DES FORGES, LEAVE NONE TO TELL THE STORY 899 (1999), <https://www.hrw.org/reports/pdfs/r/rwanda/rwanda993.pdf>.

²³⁴ Douglas Jehl, *Officials Told to Avoid Calling Rwanda Killings 'Genocide'*, N.Y. TIMES (June 10, 1994), <http://www.nytimes.com/1994/06/10/world/officials-told-to-avoid-calling-rwanda-killings-genocide.html>. There was a reluctance by other political leaders to use the word ‘genocide’ as well. See Anup Shah, *Media, Propaganda and Rwanda*, GLOBAL ISSUES, <http://www.globalissues.org/print/article/405> (last updated Oct. 25, 2006). Genocide is defined by the 1948 Convention on the Prevention and Punishment of Genocide. Once the UN accepts that genocide is being perpetrated, it suggests to those committing it that they will be held accountable; it also encourages the (currently 127) nations signed up to the Convention to take the necessary action to “prevent and punish” the perpetrators. See U.N. Convention on the Prevention and Punishment of the Crime of Genocide, arts. II, VIII, Dec. 9, 1948, 1021 U.N.T.S. 277 [hereinafter Convention on Genocide].

²³⁵ See Jehl, *supra* note 234.

²³⁶ See VERONICA M. KITCHEN, THE GLOBALIZATION OF NATO 61, 63 (2010).

²³⁷ Jaap de Hoop Scheffer, *Triumph of Principle, Patience and Persistence*, NATO REV., Dec. 2004, at 6, 6, <http://www.nato.int/docu/review/pdf/0404-eng.pdf>.

²³⁸ See HILDE KATRINE HAUG, CREATING A SOCIALIST YUGOSLAVIA : TITO, COMMUNIST LEADERSHIP AND THE NATIONAL QUESTION 71, 76, 79 (2012) (ebook).

²³⁹ Yxta Maya Murray, *Inflammatory Statehood*, 30 HARV. J. RACIAL & ETHNIC JUST. 227, 239, 241 (2014) (quoting DANIELLE S. SREMAC, WAR OF WORDS 39 (1999)); Marcus Tanner, *Slovenia Pays the Price of Economic Renaissance*, THE INDEP., July 4, 1991, at 8.

²⁴⁰ Prosecutor v. Krstic, Case No. IT-98-33-T, Majority Opinion of Judge Rodrigues, ¶ 7 (Int'l Crim. Trib. for the Former Yugoslavia Aug. 2, 2001).

When Tito died in 1980, Yugoslavia began its decline.²⁴¹ This accelerated after the collapse of the Yugoslav Communist Party in 1990.²⁴² After the fall of the Berlin Wall, many nation-states re-emerged from the Soviet empire.²⁴³ Yugoslavia had been a conglomeration of ethnically different nations.²⁴⁴ They included Serbia, Montenegro, Macedonia, Croatia, Slovenia, Kosovo, and Bosnia but many of these now had arbitrary borders which had been constructed by Soviet loyalists.²⁴⁵ These unresolved rivalries and conflicts re-emerged as Yugoslavia began to break up.²⁴⁶ Croatia and Slovenia declared independence from Serb-dominated Yugoslavia.²⁴⁷ Civil war erupted as the Serbs mounted an offensive against the seceding nations.²⁴⁸ Bosnia also declared independence and the Serbs again responded.²⁴⁹

After Civil War erupted and in the years that followed, the UN Security Council passed 40 Resolutions.²⁵⁰ Diplomatic and economic sanctions were imposed, but there was a failure to implement.²⁵¹ “Serbia’s foreign assets were not frozen nor was the country expelled from international financial institutions such as the IMF.”²⁵² In 1992, the UN established a UN Protection Force – UNPROFOR.²⁵³ Its mandate began to monitor a ceasefire between Croatia and Serbia.²⁵⁴ Later, its mandate was expanded to deliver humanitarian relief and to protect convoys of civilian detainees in Bosnia.²⁵⁵ By March 1995, near the end of the UN

²⁴¹ See HAUG, *supra* note 238, at 305.

²⁴² Svetozar Stojanovic, *The Destruction of Yugoslavia*, 19 FORDHAM INT’L L.J. 337, 342–43 (1995).

²⁴³ Alexandros P. Mallias, *From the Fall of the Berlin Wall to Tahrir Square: The Case for Freedom, Democracy, and Peace*, HUFFINGTON POST (Nov. 12, 2013), http://www.huffingtonpost.com/amb-alexandros-p-mallias/from-the-fall-of-the-berlin-wall_b_3916348.html.

²⁴⁴ See Murray, *supra* note 239, at 239.

²⁴⁵ *Id.* (quoting Stuart J. Kaufman, *Ethnic Conflict*, in SECURITY STUDIES 264, 273 (Paul D. Williams ed., 2d ed. 2013)).

²⁴⁶ See KITCHEN, *supra* note 236, at 63.

²⁴⁷ NIELS VAN WILLIGEN, PEACEBUILDING AND INTERNATIONAL ADMINISTRATION: THE CASES OF BOSNIA AND KOSOVO 35 (2013).

²⁴⁸ KITCHEN, *supra* note 236, at 63–64.

²⁴⁹ Andrew A. Rosen, *D’Amato’s Equilibrium: Game Theory and a Re-evaluation of the Duty to Prosecute Under International Law*, 37 N.Y.U. J. INT’L L. & POL. 79, 93 (2004).

²⁵⁰ POLITICAL HANDBOOK OF THE WORLD 2013, at 1763 (Tom Lansford ed., 2013).

²⁵¹ *Id.*

²⁵² Alain Destexhe, *The Shortcomings of the ‘New Humanitarianism’*, in BETWEEN SOVEREIGNTY AND GLOBAL GOVERNANCE 85, 88–89 (Albert J. Paolini et al. eds., 1998).

²⁵³ S.C. Res. 743, ¶ 2 (Feb. 21, 1992).

²⁵⁴ *Id.* ¶ 8.

²⁵⁵ S.C. Res. 776 (Sept. 14, 1992).

mandate, there were around 39,000 UN troops deployed.²⁵⁶

However, the UN failed to prevent what has been called “the worst atrocities in Europe since those of the Third Reich.”²⁵⁷ In July 1995, the Serbs attacked Srebrenica, home to 23,000 Bosnian Muslims.²⁵⁸ Many were refugees from towns ‘cleansed’ by the Serbs.²⁵⁹ The town was defended by just 429 Dutch soldiers, as part of UNPROFOR.²⁶⁰ They were lightly armed as primarily a medical and support force.²⁶¹ The UN had declared Srebrenica to be a safe zone.²⁶²

When the Serb forces attacked, the Dutch commander, Karremans, was unsure of the strength of the mandate.²⁶³ The Dutch soldiers were authorised to use force but only in self-defence.²⁶⁴ The Serbs, of course, were not attacking the UN troops but the Bosnians, so fighting the Serbs would not have been self-defence.²⁶⁵ Furthermore, if they did fight alongside the Bosnians, they risked losing their status as independent peacekeepers.²⁶⁶ And so the UN did nothing to prevent a massacre. About 8000 Bosnian males were killed.²⁶⁷ Overall, the ethnic cleansing campaign aimed at Bosnian Muslims and Croats claimed the lives of around 200,000.²⁶⁸ It also made around two million homeless.²⁶⁹

There seems to be a paradox. On the one hand, the Security Council

²⁵⁶ U.N. Secretary-General, *Report of the Secretary-General Pursuant to Security Council Resolution 947*, ¶ 2, U.N. Doc. S/1995/222 (Mar. 22, 1995).

²⁵⁷ See DAVID HALBERSTAM, *WAR IN A TIME OF PEACE: BUSH, CLINTON AND THE GENERALS* 93 (2002).

²⁵⁸ DAVID HALBERSTAM, *WAR IN A TIME OF PEACE* 293–94 (2001).

²⁵⁹ *Id.* at 294.

²⁶⁰ *See id.*

²⁶¹ *Id.*

²⁶² S.C. Res. 819, ¶ 1 (Apr. 16, 1993).

²⁶³ See HALBERSTAM, *supra* note 258, at 294–95.

²⁶⁴ *See id.* at 294.

²⁶⁵ *See id.*

²⁶⁶ Ivo H. Daalder, *Decision to Intervene: How the War in Bosnia Ended*, BROOKINGS INST. (Dec. 1, 1998), <https://www.brookings.edu/articles/decision-to-intervene-how-the-war-in-bosnia-ended/>. In September 2003, the Dutch Supreme Court held the Netherlands liable for the deaths of three Bosnian Muslims who, the court said, should have been protected. Their families were therefore entitled to compensation. See *Dutch State Liable for Three Srebrenica Deaths – Court*, BBC NEWS (Sept. 6, 2013), <http://www.bbc.com/news/world-europe-23986063>.

²⁶⁷ See Jones, *supra* note 257, at 155.

²⁶⁸ David M. Kresock, “Ethnic Cleansing” in the Balkans: The Legal Foundations of Foreign Intervention, 27 CORNELL INT’L L.J. 203, 222–23 (1994).

²⁶⁹ JAMES MINAHAN, *MINIATURE EMPIRES: A HISTORICAL DICTIONARY OF THE NEWLY INDEPENDENT STATES* 52 (1998).

is prepared to use force, for example, to rid Kuwait of Saddam Hussein.²⁷⁰ On the other hand, it is not using force to prevent genocide or other atrocities in Rwanda or Yugoslavia, even those announced in advance.²⁷¹

IV. PARADOX IN THE UN SYSTEM

To explain this paradox, one needs to understand two fundamental principles which have been the basis of International Law for hundreds of years, since the Peace of Westphalia in 1648.²⁷² The first, established by the Treaty, is the principle of national sovereignty.²⁷³ Under this principle, each Nation State determines its own internal affairs, without external interference.²⁷⁴ The idea is that the sovereign is in control. “The Westphalian conception includes the idea that national governments are the basic sources of order in international society.”²⁷⁵

This idea was reinforced in the 18th century by the second principle: the principle of sovereign equality.²⁷⁶ Under this principle, no one State has priority over another, no matter how big or small; no matter how rich or poor; no matter how strong or weak.²⁷⁷ The Treaty of Utrecht in 1713 facilitated the development of this sovereign state system in Europe.²⁷⁸ This system was important because it “recognized the right of states with defined geographical boundaries, including more or less settled populations (territoriality), to have their own forms of government (non-intervention) and to conduct relations with one another on an equal legal

²⁷⁰ S.C. Res. 678, ¶¶ 1–2 (Nov. 29, 1990); Ruth Wedgwood, *The Fall of Saddam Hussein: Security Council Mandates and Preemptive Self-Defense*, 97 AM. J. INT’L L. 576, 578–79 (2003).

²⁷¹ Christine Longo, Note, *R2P: An Efficient Means for Intervention in Humanitarian Crises—A Case Study of ISIL in Iraq and Syria*, 489 GEO. WASH. INT’L L. REV. 893, 897 (2016).

²⁷² Michael J. Kelly, *Pulling at the Threads of Westphalia: “Involuntary Sovereignty Waiver” – Revolutionary International Legal Theory or Return to Rule by the Great Powers?*, 10 UCLA J. INT’L & FOREIGN AFF. 361, 366, 375–77 (2005).

²⁷³ *Id.*

²⁷⁴ *Id.*

²⁷⁵ Richard A. Falk, *The Interplay of Westphalia and Charter Conceptions of the International Legal Order*, in 1 THE FUTURE OF THE INTERNATIONAL LEGAL ORDER 32, 68 (Richard A. Faulk & Cyril E. Black eds., 1969).

²⁷⁶ Thomas Lee, *International Law, International Relations Theory, and Preemptive War: The Vitality of Sovereign Equality Today Case Studies in Conservative and Progressive Legal Orders*, 67 L. & CONTEMP. PROBS. 147, 150 (2004).

²⁷⁷ See generally G.A. Res. 2625 (XXV), annex, Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations (Oct. 24, 1970) (incorporating the “Westphalian Conception” and extending it to all States as “equal members of the international community, notwithstanding differences of an economic, social, political or other nature”).

²⁷⁸ See Christian Reus-Smit, *International Law*, in THE GLOBALIZATION OF WORLD POLITICS 277 (JOHN BAYLIS et al. eds., 6th ed. 2014).

basis (sovereign equality).”²⁷⁹

By the 19th and 20th centuries, these twin principles had become firmly established within the international community.²⁸⁰ National governments are the basic source of order internationally and this sovereign state system includes the notion of sovereign equality.²⁸¹ These principles have been “fiercely defended.”²⁸² Many governments view them as a “defense[] against threats and pressures from wealthier and more powerful international actors seeking to promote their own economic and political interests.”²⁸³ No wonder the UN has had to respect – or even defer – to them. Indeed, it is hard to imagine how else the UN could have got Member States to sign up to the Charter in the first place. No wonder the Charter itself declares: “The Organization is based on the principle of sovereign equality of all its Members.”²⁸⁴

But these principles undermine severely the role that the UN has been asked to play.²⁸⁵ For there is a paradox that lies at the heart of the UN as well. Because while the UN is an international organisation, it is built on the idea of the nation state, national sovereignty and national

²⁷⁹ CLIVE ARCHER, *INTERNATIONAL ORGANIZATIONS* 4 (3d ed. 2001).

²⁸⁰ *See id.* at 33 (4th ed. 2015).

²⁸¹ *See id.*

²⁸² Michael Clough, *Darfur: Whose Responsibility to Protect?*, in *WORLD REPORT: 2005*, at 25, 32 (Human Rights Watch ed., 2005), <http://pantheon.hrw.org/legacy/wr2k5/wr2005.pdf>.

²⁸³ *Id.*

²⁸⁴ U.N. Charter art. 2, ¶ 1.

²⁸⁵ *See* ARCHER, *supra* note 279, at 34–35 (4th ed. 2015).

sovereign equality.²⁸⁶ It is nation states that make up the membership of the UN. The role of the UN as an international organization is to influence national policy and many hoped that the dominance of the nation state would “wither[] away.”²⁸⁷ But, the fundamental premise of international law is a recognition of state sovereignty and territorial integrity – in other words, the freedom to resist UN influence.²⁸⁸ That is why the UN’s overriding desire in the Rwandan and Yugoslav civil wars was to keep neutrality and independence.²⁸⁹ Indeed, in its Peacekeeping role, the UN still maintains three principles: that the parties consent to the Peacekeeping mission; that the UN retains impartial; and that there

²⁸⁶ See *id.* The UN has the responsibility of determining whether a state can be admitted as a member. Israel was admitted shortly after it became independent in 1948. See GAOR P. 136. By contrast, Taiwan – the Republic of China – had the membership it was given in 1949, following the overthrow of the Chinese government and their exile to Taiwan, withdrawn in 1971 when China – the People’s Republic of China – was admitted. See *UN Rejects Taiwan Application for Entry*, N.Y. TIMES (July 24, 2007), http://www.nytimes.com/2007/07/24/world/asia/24iht-taiwan.1.6799766.html?_r=0. As a result, Taiwan is no longer recognised by the international community as a sovereign nation. Membership gives a country like Israel, or more recently, Kosovo, a kind of collective legitimization by the UN, a recognition that they are independent and that their sovereignty should be respected. See David I. Efevwerhan, *Kosovo’s Chances of UN Membership: A Prognosis*, 4 GOETTINGEN J. INT’L L. 93, 95–96 (2012). Member status also meant that the Khmer Rouge retained their UN seat for several years after they had been banished from Cambodia by Vietnam. See Ben Kiernan, *Cambodia’s Twisted Path to Justice*, THE HISTORY OF PLACE (1999), <http://www.historyplace.com/pointsofview/kiernan.htm> (last visited Sept. 18, 2016). This was because of the anti-Vietnam coalition led by China and the United States which blocked their replacement despite reports of the atrocities they committed in the ‘Killing Fields’. See *id.*; Adam Taylor, *Why the World Should Not Forget Khmer Rouge and the Killing Fields of Cambodia*, WASH. POST (Aug. 7, 2014), <https://www.washingtonpost.com/news/worldviews/wp/2014/08/07/why-the-world-should-not-forget-khmer-rouge-and-the-killing-fields-of-cambodia/>. In recent years, Palestine has sought member status and in 2015, the Palestinian flag was raised for the first time at the UN. See U.N. G.A. Meetings Coverage, *State of Palestine Flag to Fly at United Nations Headquarters, Offices as General Assembly Adopts Resolution on Non-Member Observer States*, U.N. Doc. GA/11676 (Sept. 10, 2015).

²⁸⁷ José E. Alvarez, *State Sovereignty is Not Withering Away: A Few Lessons for the Future*, in REALIZING UTOPIA: THE FUTURE OF INTERNATIONAL LAW 26, 29 (Antonio Cassese ed., 2012); see also Robert E. Riggs, *The United Nations as an Influence on United States Policy*, 11 INT’L STUD. Q. 91, 91–92 (1967)

²⁸⁸ See ARCHER, *supra* note 279, at 34 (4th ed. 2015) (“[S]overeign states are institutionally self-contained and international law cannot interfere with the domestic jurisdiction of their governments.”).

²⁸⁹ See Barbara Crossette, *U.N. Details its Failure to Stop ‘95 Bosnia Massacre*, N.Y. TIMES (Nov. 16, 1999), http://www.nytimes.com/1999/11/16/world/un-details-its-failure-to-stop-95-bosnia-massacre.html?_r=0; see also Rahmatullah Khan, *United Nations Peacekeeping in Internal Conflicts, Problems and Perspectives*, in 9 MAX PLANCK U.N.Y.B. 543, 551–52 (2005).

is no use of force except in self-defence and defence of the mandate.²⁹⁰

In practice, therefore, state sovereignty has severely undermined the role the UN can play. For example, in Rwanda, as Lieutenant-General Dallaire explained, and in Yugoslavia, arguably what was needed was force.²⁹¹ As many have noted, the UN cannot be a peacekeeper when there is no peace to keep.²⁹² If peace is to be achieved, or at least, an attempt to avoid further death, what is needed is the use of force: a peacemaker.²⁹³ This appears to be the lesson learned in Yugoslavia.²⁹⁴ When NATO launched airstrikes in 1995, the effect was immediate.²⁹⁵ Peace agreements had been drafted in 1992, but were ignored.²⁹⁶ After the airstrikes, the Dayton Accords were rapidly accepted by the Serbs.²⁹⁷

There was a similar story in Kosovo. In 1998, the majority Albanian community in Kosovo, backed by the Kosovan Liberation Army, rebelled.²⁹⁸ The Serb leader Milosevic responded not only by attacking the KLA, but also targeted civilians.²⁹⁹ When peace talks failed, NATO, in 1999, launched airstrikes (despite the lack of Security Council authorisation).³⁰⁰ It led rapidly to Milosevic ordering troop

²⁹⁰ See U.N. GAOR, 52d Sess., Special Political & Decolonization Comm., 17th mtg. at 5, ¶ 29, U.N. Doc. A/C.4/52/SR.17 (Feb. 25, 1998) (statement of Representative Mounkhou of Mongolia); *Principles of UN Peacekeeping*, UNITED NATIONS, <http://www.un.org/en/peacekeeping/operations/principles.shtml> (last visited Sept. 11, 2016).

²⁹¹ See DALLAIRE, *supra* note 199, at 354–55, 514 (regarding Rwanda); A. Walter Dorn, *Canadian Peacekeeping: Proud Tradition, Strong Future?* 12 CANADIAN FOREIGN POL'Y, Fall 2005, at 7, 14 (2005) (regarding Yugoslavia).

²⁹² See, e.g., U.N. Secretary-General, *Report of the Secretary General Pursuant to General Assembly Resolution 53/35: The Fall of Srebrenica*, ¶¶ 488, 492, U.N. Doc A/54/549 (Nov. 15, 1999).

²⁹³ U.N. Secretary-General, *An Agenda for Peace: Preventive Diplomacy, Peacemaking and Peace-Peacekeeping*, ¶¶ 42–45, U.N. Doc. A/47/277-S/2411 (June 17, 1992).

²⁹⁴ See MICHAEL O. BEALE, *BOMBS OVER BOSNIA* 2, 46–47 (1997).

²⁹⁵ See *id.* at v.

²⁹⁶ *Balkans Special Report: Croatia*, WASH. POST (1997), <http://www.washingtonpost.com/wp-srv/inatl/longterm/balkans/overview/croatia.htm>.

²⁹⁷ See BEALE, *supra* note 294, at 2, 46–47.

²⁹⁸ Paul G. Pierpaoli, Jr., *Kosovo Liberation Army*, in *BOSNIAN GENOCIDE* 120, 120–21 (Paul R. Bartrop ed., 2016).

²⁹⁹ See *id.* at 121.

³⁰⁰ Besfort Rrecaj, *A Contemporary Interpretation of the Principles of Sovereignty, Territorial Integrity and Self-Determination, and the Kosovo Conundrum*, in *KOSOVO: A PRECEDENT?* 109, 124 (James Summers ed., 2011).

withdrawals.³⁰¹ About 750,000 refugees returned to Kosovo.³⁰²

What the 1990s taught the international community was that nation state sovereignty prevented the use of force by the UN unless the state itself accepted intervention.³⁰³ The problem with sovereignty was, as Urquhart put it: “dictators do not invite the UN in.”³⁰⁴

V. RESPONSIBILITY TO PROTECT

These lessons taught the UN that, at the start of the 21st Century, it needed a new mission.³⁰⁵ Kofi Annan, who had been so intimately implicated in the failure in Rwanda, became Secretary-General and set out his vision in 1999: “Of all my aims as Secretary-General, there is none to which I feel more deeply committed than that of enabling the United Nations never again to fail in protecting a civilian population from genocide or mass slaughter.”³⁰⁶ No wonder in his Millennium Report in 2000, Annan asked the international community: “if humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica—to gross and systematic violations of human rights that offend every precept of our common humanity?”³⁰⁷ In other words, what kind of mission would the UN need in order to have an international order or system of governance when the nation state is sovereign?³⁰⁸

An International Commission on Intervention and State Sovereignty was created and it reported in 2001.³⁰⁹ Subsequently, the UN commissioned a second report, “A More Secure World: Our Shared

³⁰¹ See Pierpaoli, *supra* note 298, at 121.

³⁰² *Kosovo Crisis Update*, UNHCR (Aug. 6, 1999), <http://www.unhcr.org/3ae6b80f30.html>. The UN created an interim administration, UNMIK. A few years later, in 2008, Kosovo declared independence. Serbia has challenged this, but not through military might but in the International Court of Justice (the judicial branch of the UN). The Court issued an advisory opinion holding Kosovo’s declaration of independence did not violate international law. See *UNMIK Background*, UNITED Nations, <http://www.un.org/en/peacekeeping/missions/unmik/background.shtml> (last visited Sept. 28, 2016).

³⁰³ See EDWARD C. LUCK, *THE UNITED NATIONS AND THE RESPONSIBILITY TO PROTECT* 2 (Aug. 2008), http://www.stanleyfoundation.org/publications/pab/LuckPAB80_8.pdf.

³⁰⁴ BRIAN URQUHART, *A LIFE IN PEACE AND WAR* 212–13 (W. W. Norton & Company ed. 1991).

³⁰⁵ See LUCK, *supra* note 303, at 2.

³⁰⁶ See KHAN, *supra* note 289, at 554.

³⁰⁷ *WE THE PEOPLES*, *supra* note 145, at 48.

³⁰⁸ See *id.*

³⁰⁹ INT’L COMM’N ON INTERVENTION & STATE SOVEREIGNTY, *THE RESPONSIBILITY TO PROTECT* vii–viii, 2 (2001), <http://responsibilitytoprotect.org/ICISS%20Report.pdf> [hereinafter ICISS: RESPONSIBILITY TO PROTECT].

Responsibility,” published in 2004.³¹⁰ And then, in 2005, after a World Summit Outcome,³¹¹ when a new resolution was agreed to by “the largest ever gathering of world leaders,”³¹² the UN was given a new mission,³¹³ while confirming its existing missions.³¹⁴

Thus, the new resolution retained the Peacekeeping Mission,³¹⁵ but sought to enhance and reinforce it with what it calls peacebuilding.³¹⁶ An intergovernmental Peacebuilding Commission was set up in 2005 to advise the general Assembly and the Security Council, and to support peace efforts in war-torn areas, including reconstructing states that have endured and are emerging from conflict.³¹⁷ Even those who generally criticise the UN regard this mission as a success.³¹⁸ The resolution also retained its globalization missions, acknowledging that, more than ever, the world is global and interdependent.³¹⁹ Clearly, peacekeeping and globalization remain as important missions of the UN.³²⁰

However, the resolution also acknowledged that “peace and security, development and human rights are the pillars of the United Nations.”³²¹ It confirmed that States have rights – to sovereignty, territorial integrity, and political independence.³²² The principle of sovereign equality was also “rededicate[d].”³²³ But, for the first time in the history of International Law, the UN declared that States also have responsibilities.³²⁴

Each State, the resolution states, has a “Responsibility to Protect” (known now as R2P) its civilian populations from atrocities, such as genocide and war crimes, crimes against humanity, and ethnic cleansing.³²⁵ If States will not protect their people, then the UN may do

³¹⁰ U.N. DEPT OF PUB. INFO, REP. OF THE HIGH-LEVEL PANEL ON THREATS, CHALLENGES AND CHANGE: A MORE SECURE WORLD, U.N. Sales No. E.05.I.5 (2004).

³¹¹ G.A. Res. 60/1, 2005 World Summit Outcome (Sept. 16, 2005).

³¹² Nick Grono, *Briefing – Darfur*, 105 AFR. AFF. 621, 621, 623–24 (2006).

³¹³ G.A. Res. 60/1, *supra* note 311, ¶¶ 16, 138–39.

³¹⁴ *Id.* ¶¶ 9, 139.

³¹⁵ *Id.* ¶ 92.

³¹⁶ *Id.* ¶ 97–98.

³¹⁷ INT’L SERV. FOR HUMAN RIGHTS, ISHR GUIDE TO THE PEACEBUILDING COMMISSION 1 (2007), http://www.ishr.ch/sites/default/files/article/files/guide_pbc_englis_h.pdf.

³¹⁸ See MICHAEL W. DOYLE & RICHARD SAMBANIS, MAKING WAR AND BUILDING PEACE: UNITED NATIONS PEACE OPERATIONS 197 (2006).

³¹⁹ G.A. Res. 60/1, *supra* note 311, ¶ 7.

³²⁰ *See id.* ¶¶ 7, 92.

³²¹ *Id.* ¶ 9.

³²² *Id.* ¶ 5.

³²³ *Id.*

³²⁴ *See id.* ¶ 138.

³²⁵ *Id.*; U.N. Dep’t of Pub. Info, Outreach Programme on the Rwanda Genocide and the United Nations (March 2014), <http://www.un.org/en/preventgenocide/rwanda/pdf/Backgrounder%20R2P%202014.pdf>

so.³²⁶ If necessary, because diplomacy and other peaceful measures fail, the UN may also use force, under Chapter VII.³²⁷ In 2006, this new mission was confirmed when a Security Council Resolution committed it to protect civilians during armed conflicts.³²⁸

What it means, essentially, is that sovereignty has been re-defined in International Law. It is not an inherent right, but is endowed upon the state by the people.³²⁹ In other words, sovereignty resides with the people, and not with the Monarchs or Dictators.³³⁰ Sovereignty is bestowed upon them in return for the state ensuring the safety and well-being of its citizens.³³¹ Sovereignty is not a right to control but a Responsibility to Protect.³³² If State authorities do not protect their people, they lose the right of Non-Interference and the UN gains the basis it needs to protect civilians from violence perpetrated upon them by their own government.³³³

The principle of R2P represents a revolution both in International Law and in the mission of the UN.³³⁴ The rationale for R2P is that atrocities within borders threaten international security beyond the borders.³³⁵ So, R2P empowers international law – and the UN – to address crises without regard to international borders.³³⁶ Indeed, “[t]he R2P doctrine critically contributes to the legitimacy of the UN in addressing widespread and systematic human rights abuses.”³³⁷

VI. R2P: MISSION POSSIBLE OR IMPOSSIBLE?

The introduction of R2P held out the promise of a new role for the UN and its approach to atrocities within countries. But, the critical question

³²⁶ See G.A. Res. 60/1, *supra* note 311, ¶ 138.

³²⁷ *Id.* ¶ 139.

³²⁸ See S.C. Res. 1674, ¶¶ 16, 18 (Apr. 28, 2006).

³²⁹ See ICISS RESPONSIBILITY TO PROTECT, *supra* note 309, ¶1.35–36.

³³⁰ See *id.* ¶¶ 1.35, 2.13.

³³¹ See *id.* ¶¶ 1.32, 2.15, 2.21.

³³² *Id.* ¶¶ 1.36, 2.14.

³³³ *Id.* ¶¶ 4.11, 4.13.

³³⁴ *Protect the People*, WASH. TIMES, Sept. 26, 2005, <http://www.washingtontimes.com/news/2005/sep/26/20050926-092835-2083r/>.

³³⁵ See Rachel VanLandingham, *Politics or Law? The Dual Nature of the Responsibility to Protect*, 41 DENV. J. INT’L L. & POL’Y 63, 67 (2012); ICISS RESPONSIBILITY TO PROTECT, *supra* note 309, ¶ 6.31.

³³⁶ See VanLandingham, *supra* note 335, at 67.

³³⁷ Anonymous, *Ensuring a Responsibility to Protect*, HUM. RTS. BRIEF, Winter 2007, at 26, 29 [hereinafter *Ensuring a Responsibility to Protect*].

was whether R2P could be turned from principle into practice?³³⁸ Has it passed or failed the test in the ten years or so since it was created? The first two R2P resolutions, relating to Darfur and Libya, provide contrasting answers and suggest that “it all depends” whether or not challenges can be met.³³⁹ The lack of an R2P resolution in relation to Syria suggests there may be more fundamental challenges to be overcome.³⁴⁰

A. Darfur

R2P was first put to the test in Darfur, the westernmost province of Sudan, in a conflict that both pre- and post-dated R2P.³⁴¹ Like Rwanda and the Balkans, Sudan has seen conflict for decades.³⁴² After a coup led by Omar al-Bashir in 1989, a new regime was formed and Sudan was divided into three separate regions, including Darfur.³⁴³ In 2003, a new civil war broke out in Darfur and the UN Humanitarian Coordinator for Sudan, Mukesh Kapila, warned of the similarities between the situation in Darfur and that of Rwanda.³⁴⁴ The fact that it remains unresolved to this very day, despite the estimated 300,000 deaths in what some have called a genocide, not to mention other atrocities and crimes against humanity, suggests that R2P has failed at least in this context.³⁴⁵

Prior to the adoption by the Security Council of the R2P principle in 2006,³⁴⁶ there had been nine Security Council Resolutions relating to

³³⁸ See Francesco Francioni & Christine Bakker, *Responsibility to Protect, Humanitarian Intervention and Human Rights: Lessons from Libya to Mali* 6 (TRANSWORLD, Working Paper No. 15, 2013), http://www.transworld-fp7.eu/wp-content/uploads/2013/04/TW_WP_15.pdf.

³³⁹ See S.C. Res. 1706, ¶¶ 1, 8–9, 12 (Aug. 31, 2006); S.C. Res. 1973, ¶¶ 4–5 (Mar. 17, 2011).

³⁴⁰ See *infra* text accompanying notes 419–436.

³⁴¹ See Jess Gifkins, *R2P in the UN Security Council: Darfur, Libya and Beyond*, 51 COOPERATION & CONFLICT J. 148, 149 (2016).

³⁴² *The Crisis in Darfur*, INT’L COALITION FOR RESP. TO PROTECT, <http://www.responsibilitytoprotect.org/index.php/crises.crisis-in-darfur> (last visited Sep. 28, 2016); see also Carl Bildt, *A Second Chance in the Balkans*, 80 FOREIGN AFF. 148, 148 (2001); *The Heart of the Hutu-Tutsi Conflict* (Oct. 8, 1999, 5:52 PM), http://www.pbs.org/newshour/updates/africa-july-dec99-rwanda_10-08/.

³⁴³ See FED. RES. DIV., LIBR. CONG., SUDAN: A COUNTRY STUDY xxii, xxxiv (LaVerle Berry ed. 2006).

³⁴⁴ See INTERNATIONAL DEVELOPMENT COMMITTEE, DARFUR, SUDAN: THE RESPONSIBILITY TO PROTECT, 2004–5, HC 67–I, ¶¶ 17, 39 (UK) (describing reports of “ethnic cleansing” in Darfur).

³⁴⁵ *Id.* at 3.

³⁴⁶ See S.C. Res. 1674 (Apr. 28, 2006).

Darfur.³⁴⁷ One of them, in March 2005, created a UN peacekeeping force, the United Nations Mission in Sudan (UNMIS),³⁴⁸ with a mandate to enforce peace agreements between the government of Sudan and various “rebel groups.”³⁴⁹ One year earlier, in 2004, an African Union peacekeeping force in Sudan (AMIS), had been welcomed into Sudan by the government.³⁵⁰ Under another UN Security Council Resolution, AMIS was to “liaise and coordinate” with UNMIS.³⁵¹

It was this UNMIS peacekeeping mission that was expanded, in August 2006, into a R2P mission.³⁵² UNMIS was authorised to use “all necessary means” under the authority of Chapter VII to protect civilians and to seize weapons.³⁵³ The Resolution invited but did not require the consent of the Sudanese government for that deployment.³⁵⁴ For this reason, three members of the Security Council, China, Russia and Qatar, abstained, although all members of the Security Council expressed support for the aims of the mandate.³⁵⁵

At first, the Sudanese government rejected the UNMIS.³⁵⁶ This was unsurprising, given the comment of President Omar Hassan al-Bashir just a couple of months prior to the adoption of the Resolution: “I swear that there will not be any international military intervention in Darfur as long as I am in power. Sudan, which was the first country south of the Sahara to gain independence, cannot now be the first country to be recolonized.”³⁵⁷ However, after “[i]ntensive diplomacy by Secretary-General Ban Ki-moon and several actors in the international community,”³⁵⁸ the Sudanese government accepted this force in June 2007, and one month later, the Security Council formally established the

³⁴⁷ See S.C. Res. 1679 (May 16, 2006); S.C. Res. 1665 (Mar. 29, 2006); S.C. Res. 1663 (Mar. 24, 2006); S.C. Res. 1593 (Mar. 31, 2005); S.C. Res. 1591 (Mar. 29, 2005); S.C. Res. 1590 (Mar. 24, 2005); S.C. Res. 1574 (Nov. 19, 2004); S.C. Res. 1564 (Sept. 18, 2004); S.C. Res. 1556 (July 30, 2004).

³⁴⁸ S.C. Res. 1590, ¶ 1 (Mar. 24, 2005).

³⁴⁹ See *id.* ¶¶ 7, 15–16.

³⁵⁰ See ARVID EKENGARD, THE AFRICAN UNION MISSION IN SUDAN (AMIS) 17 (2008).

³⁵¹ See S.C. Res. 1590, ¶ 2 (Mar. 24, 2005).

³⁵² S.C. Res. 1706, ¶¶ 1, 8–9, 12 (Aug. 31, 2006).

³⁵³ *Id.* ¶ 12.

³⁵⁴ *Id.* ¶ 1.

³⁵⁵ U.N. SCOR, 61st Sess., 5519th mtg. at 2–4, 6–9, U.N. Doc. S/PV.5519 (Aug. 31, 2006).

³⁵⁶ *United Nations Mission in the Sudan*, UNMIS BACKGROUND, <http://www.un.org/en/peacekeeping/missions/past/unmis/background.shtml> (last visited Oct. 20, 2016).

³⁵⁷ TERESIA LUNDSGÅRD, THE INTERNATIONAL SOCIETY ON GENOCIDE, 36–37 (2013), <http://hh.diva-portal.org/smash/get/diva2:677507/FULLTEXT01.pdf> (quoting *No Western Troops in Darfur*, IOL NEWS (June 21, 2006, 9:53 AM), <http://www.iol.co.za/news/africa/no-western-troops-in-darfur--president-282451#.UZo0x7VYNGk>).

³⁵⁸ *About UNAMID*, AFRICAN UNION – UNITED NATIONS MISSION IN DARFUR, <https://unamid.unmissions.org/about-unamid-1> (last visited Aug. 24, 2016).

operation by unanimously adopted Resolution 1769 (2007).³⁵⁹ This established a hybrid African Union and UN force, UNAMID, comprising 19,555 military personnel, 3,772 international police and others.³⁶⁰ The mandate was again to implement the peace agreement as well as to protect civilians in accordance with the R2P principle.³⁶¹ It has been renewed annually since 2007 via new Security Council Resolutions.³⁶² In 2012, the Security Council decreased the strength of the military and police component.³⁶³

Despite all the efforts made over the years, however, the conflict continues.³⁶⁴ The Sudanese government “has consistently denied external pressure to halt mass atrocity crimes.”³⁶⁵ UNAMID reports that it is “confronted with numerous logistical and security constraints”; it operates in “unforgiving terrain,” and “in a complex and often hostile political environment.”³⁶⁶ Additionally, Sudanese authorities have “blocked UNAMID’s access to certain areas.”³⁶⁷

In principle, whether or not the government is directly responsible for these atrocities, R2P would provide authority for the use of all necessary means, including the use of force, to protect civilians.³⁶⁸ This has not been achieved, although UN intervention has probably saved some civilian lives.³⁶⁹ UNAMID reports that it is “doing all in its power and with limited resources to provide protection to civilians in Darfur, facilitate the humanitarian aid operation, and help provide an environment in which peace can take root.”³⁷⁰ “The mission carries out

³⁵⁹ S.C. Res. 1769, at 1–2 (July 31, 2007).

³⁶⁰ LUNDSGÅRD, *supra* note 357, at 37.

³⁶¹ S.C. Res. 2173, ¶ 9 (Aug. 27, 2014).

³⁶² *See, e.g., id.* ¶ 1; S.C. Res. 2228, ¶ 1 (June 29, 2015).

³⁶³ Meetings Coverage, Security Council, By Vote of 14 in Favour with 1 Abstention, Security Council Extends Darfur Operation for One Year, Downsizing It, Shifting Focus to High-Risk Areas, U.N. Meetings Coverage SC/10735 (July 31, 2012).

³⁶⁴ U.N. Secretary-General, *Report of the Secretary-General on the African Union-United Nations Hybrid Operations in Darfur*, ¶2, U.N. Doc. S/2016/268 (Mar. 22, 2016).

³⁶⁵ R2P MONITOR (Glob. Ctr. for the Responsibility to Protect, New York, N.Y.), Jan. 20, 2016, at 7, http://www.globalr2p.org/media/files/r2p_monitor_jan2016_final.pdf.

³⁶⁶ *About UNAMID*, *supra* note 358.

³⁶⁷ *The Crisis in Darfur*, *supra* note 342.

³⁶⁸ G.A. Res. 60/1, 2005 World Summit Outcome (Sept. 16, 2005). According to the Global Centre for the Responsibility to Protect, “[n]ot only is the government of Sudan manifestly failing to uphold its Responsibility to Protect, it is directly responsible for perpetrating mass atrocity crimes in South Kordofan, Blue Nile and Darfur.” Global Ctr. for the Responsibility to Protect, *Sudan, POPULATIONS AT RISK*, <http://www.globalr2p.org/regions/sudan> (last updated Sept. 15, 2016).

³⁶⁹ John Holmes, *Does the UN’s Responsibility to Protect Necessitate an Intervention in Syria?*, GUARDIAN (Aug. 28, 2013), <https://www.theguardian.com/commentisfree/2013/aug/28/syria-intervention-un-responsibility-to-protect>.

³⁷⁰ *About UNAMID*, *supra* note 358.

more than 100 patrols daily. UNAMID also works to address some of the critical roots of the conflict.”³⁷¹

So far, there have been 60 Security Council Resolutions on Sudan since 2004. It seems that R2P has added little or nothing to the UN “armoury.”³⁷² What Darfur suggests is that the centuries-old international law interpretation of state sovereignty remains a powerful constraint on international intervention.³⁷³ Three members of the Security Council refused to vote in favour of a Resolution until the Sudanese government itself consented to intervention.³⁷⁴ The Resolutions themselves also refer to state sovereignty in a highly deferential way. Resolution 1706, for example, reaffirmed the Security Council’s “strong commitment to the sovereignty, unity, independence and territorial integrity of the Sudan,” and stated that the sovereignty of Sudan would be “unaffected by transition to a UN operation in Darfur.”³⁷⁵ Resolution 1769 expressed the Security Council’s “determination to work with the Government of Sudan, in full respect of its sovereignty, to assist in tackling the various problems in Darfur, Sudan.”³⁷⁶ The rhetoric continues to support state sovereignty.³⁷⁷ Whether that is a practical and pragmatic response to reality, or a dilution of the principle of the responsibility to protect, it does suggest that in Darfur the priority was still being given to state sovereignty despite R2P.³⁷⁸

B. Libya

That was not, however, the case with the second and third R2P Resolutions in 2011, in relation to the “gross and systematic violation of

³⁷¹ *Id.*

³⁷² R2P MONITOR, *supra* note 365, at 8. A similar criticism has been made, at least with respect to Sudan, regarding the effect of the International Criminal Court. Although this Court is not part of the UN system, the Security Council has a significant role to play in the ICC system. The ICC indicted President al-Bashir (the first time the ICC had indicted a sitting head of state) and other government members in 2007 for war crimes and crimes against humanity committed in Darfur. Bashir was indicted again in 2010 for perpetrating genocide. However, in December 2014, the ICC investigation in Darfur was suspended “due to the failure of the UNSC to meaningfully assist in the arrest of indicted suspects.” *Id.* In 2009, in response to the indictment of al-Bashir, the government expelled 13 non-governmental organizations from Sudan; “[t]hese NGO’s accounted for almost half the humanitarian aid in Darfur.” *The Crisis in Darfur*, *supra* note 342.

³⁷³ See Hannah Woolaver, *Sate Failure, Sovereign Equality and Non-Intervention: Assessing Claimed Rights to Intervene in Failed States*, 32 WIS. INT’L L.J. 595, 597 (2014) (discussing the right of sovereign states to territorial integrity against outside force or intervention).

³⁷⁴ U.N. SCOR, *supra* note 355, at 5–9.

³⁷⁵ S.C. Res. 1706, at 1 (Aug. 31, 2006).

³⁷⁶ S.C. Res. 1769 (July 31, 2007).

³⁷⁷ *See id.*

³⁷⁸ *See id.*

human rights,” the threats to civilians, and possible “crimes against humanity” in Libya.³⁷⁹ The violence began when political protestors called for an end to the 41-year reign of Colonel Muammar Gaddafi.³⁸⁰ The protestors were then attacked by overwhelming government forces.³⁸¹ The opposition stronghold was in the eastern city of Benghazi.³⁸² In a speech broadcast to the nation, Gaddafi told his forces to attack and show “no mercy,” to attack the “cockroaches”³⁸³ and to “cleanse Libya house by house.”³⁸⁴

In response to these threats, the Security Council, four days after Gaddafi’s speech, unanimously adopted Resolution 1970.³⁸⁵ This affirmed Libya’s responsibility to protect and imposed an arms embargo as well as a series of international sanctions.³⁸⁶ It also referred the situation to the International Criminal Court for investigation into crimes against humanity.³⁸⁷ These non-military measures failed to stop Gaddafi continuing to threaten the people in Benghazi and so in March 2011 Resolution 1973 was adopted, this time with China and Russia (as well as India, Brazil and Germany) abstaining.³⁸⁸ The Resolution demanded an immediate ceasefire and authorized Member States to take all necessary action to protect civilians and civilian populated areas under threat of attack.³⁸⁹ A few days later, acting on the resolution, French and, later, NATO planes began to attack Colonel Gaddafi’s forces and to enforce a no-fly zone.³⁹⁰ As in the NATO strikes in the Balkans, the effect was immediate, and shortly after, Colonel Gaddafi himself not only lost power

³⁷⁹ Press Release, Security Council, In Swift, Decisive Action, Security Council Imposes Tough Measures on Libyan Regime, Adopting Resolution 1970 in Wake of Crackdown on Protesters, U.N. Press Release SC/10187/REV.1 (Feb. 26, 2011) [hereinafter Decisive Action on Libya].

³⁸⁰ *The Crisis in Libya*, INT’L COAL. FOR RESP. TO PROTECT, <http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-libya> (last visited Sept. 17, 2016).

³⁸¹ *Id.*

³⁸² *Id.*

³⁸³ *Id.* Cockroaches was a term used in radio broadcast to describe Tutsis in Rwanda during the genocide. Michael Montgomery & Stephen Smith, *The Few Who Stayed*, AM. RADIOWORKS, <http://americanradioworks.publicradio.org/features/rwanda/segc2.html> (last visited Sept. 27, 2016).

³⁸⁴ *The Crisis in Libya*, *supra* note 380.

³⁸⁵ Decisive Action on Libya, *supra* note 379.

³⁸⁶ S.C. Res. 1970 ¶ 9 (Feb. 26, 2011).

³⁸⁷ *See id.*

³⁸⁸ *See* Press Release, Security Council, Security Council Approves ‘No-Fly Zone’ over Libya, Authorizing ‘All Necessary Measures’ to Protect Civilians, by Vote of 10 in Favour with 5 Abstentions, U.N. Press Release SC/10200 (March 17, 2011).

³⁸⁹ S.C. Res. 1973, ¶¶ 1, 4 (Mar. 17, 2011).

³⁹⁰ *Libya: US, UK and France Attack Gaddafi Forces*, BBC NEWS (Mar. 20, 2011), <http://www.bbc.com/news/world-africa-12796972>.

but was later killed.³⁹¹ A few days later, the Security Council voted unanimously to end the no-fly zone.³⁹²

Defining this intervention, using R2P, as a success assumes that the reasons justifying intervention in the first place were accurate.³⁹³ Some have claimed that the threat to civilians was exaggerated for political and other purposes.³⁹⁴ It also assumes that the mandate was followed.³⁹⁵ Some have argued that the NATO intervention went beyond the protection of civilians to support the goal of regime change.³⁹⁶ Since the fall of Gaddafi, Libya has continued to encounter sectarian violence and instability, leading many commentators to claim that the intervention had the effect of destabilizing Libya.³⁹⁷ On the other hand, others claim that the crisis in Libya “has been labelled a clear case for when timely and decisive response to uphold RtoP in the face of an imminent threat of mass atrocities should occur.”³⁹⁸ The UN has continued to be involved in the ongoing Libyan crisis, attempting to facilitate a political process,³⁹⁹

³⁹¹ Mark Thompson, *How Gaddafi Lost His Grip on Libya*, TIME (Aug. 22, 2011), <http://nation.time.com/2011/08/22/how-gaddafi-lost-his-grip-on-libya>; David Williams, *How a NATO Air Strike Finished Off Gaddafi*, Daily Mail (Oct. 21, 2011 7:30 AM), <http://www.dailymail.co.uk/news/article-2051782/Gaddafi-dead-picture-How-NATO-air-strike-finished-Libyas-dictator.html>.

³⁹² U.N. Security Council Ends Libya’s No-fly Zone and NATO’s Military Operations There, AL ARABIYA (Oct. 27, 2011), <https://www.alarabiya.net/articles/2011/10/27/173945.html>.

³⁹³ Nick Robins-Early, *Was the 2011 Libya Intervention a Mistake?*, HUFFINGTON POST (Mar. 7, 2015), http://www.huffingtonpost.com/2015/03/07/libya-intervention-daalder_n_6809756.html.

³⁹⁴ *Compare id.* (noting objections that UN and NATO missions were improperly motivated by political motivations for regime change, not protection of civilians), and AMNESTY INT’L, THE BATTLE FOR LIBYA: KILLINGS, DISAPPEARANCES, AND TORTURE 17 (2011) (discussing the Gaddafi government’s claim that reports of abuse and casualties were exaggerated and motivated by foreign political ambitions), with Human Rights Council, Report of the International Commission of Inquiry on Libya, U.N. Doc. A/HRC/19/68 (Mar. 2, 2012) (reporting the urgency with which the UN must act to put a stop to killings, attacks, and arbitrary arrests).

³⁹⁵ Robins-Early, *supra* note 393.

³⁹⁶ See Angela Dewan, *Britain’s Libya Intervention Led to Growth of ISIS, Inquiry Finds*, CNN (Sept. 14, 2016), <http://www.cnn.com/2016/09/13/europe/libya-uk-intervention/index.html>.

³⁹⁷ See Christopher A. Preble, *Don’t Intervene in Libya Again*, CATO INST. (Mar. 16, 2016), <http://www.cato.org/publications/commentary/dont-intervene-libya-again>. (“The result of the bombing campaign wasn’t a democratic, stable Libya. Instead, an estimated 30,000 people died and many thousands were displaced.”)

³⁹⁸ *The Crisis in Libya*, *supra* note 380.

³⁹⁹ S.C. Res. 2259 at 1–2 (Dec. 23, 2015) (welcoming the signing of a peace agreement and calling on Member States to assist in the establishment of a Government of National Accord).

despite massive obstacles.⁴⁰⁰ However, the pervasive insecurity inside Libya has led to few UN personnel being deployed on the ground.⁴⁰¹

Since the Libyan crisis, R2P has been invoked in at least 25 Resolutions.⁴⁰² Most recently, in 2014, the Security Council unanimously supported intervention in the Central African Republic to protect civilians.⁴⁰³ However, there have been many other crises when R2P has not been invoked, despite the abuses and atrocities civilians in various countries suffer.⁴⁰⁴ Examples could include Burma/Myanmar, where the “pervasive use of forced labor, the forced recruitment of tens of thousands of child soldiers, rampant sexual violence, extrajudicial killings, torture, and the displacement of over one million Burmese people.”⁴⁰⁵ Some members of the UK Parliament called upon the Security Council to use its R2P mandate to intervene but no resolution has been passed.⁴⁰⁶ Another example is the Democratic Republic of Congo (DRC). Like Darfur, the conflict in the DRC pre-dated the creation of R2P; the UN also became involved in peacekeeping efforts for several years.⁴⁰⁷ The situation in DRC was described by some UN officials in 2008 as “frighteningly similar

⁴⁰⁰ Andre Colling, *As Unification Hopes Shrink, ISIS Grows in Libya*, IPI GLOBAL OBSERVATORY (Feb. 9, 2016), <https://theglobalobservatory.org/2016/02/unification-as-isis-grows-in-libya/>.

⁴⁰¹ See R2P MONITOR, *supra* note 365, at 17 (explaining that UNSMIL has begun reducing personnel in the country due to pervasive insecurity).

⁴⁰² *UN Security Council Resolutions Referencing R2P*, GLOBAL CTR. FOR THE RESPONSIBILITY TO PROTECT (Jan. 7, 2016), <http://www.globalr2p.org/resources/335>; see, e.g., S.C. Res. 2252 (Dec. 15, 2015) (recognizing the responsibility for South Sudan to protect its civilian population); S.C. Res. 2206 (Mar. 3, 2015) (condemning the ongoing violations in South Sudan); S.C. Res. 2132 (Dec. 24, 2013) (reaffirming the United Nations’ commitment to protecting the citizens of South Sudan); S.C. Res. 2121 (Oct. 10, 2013) (underscoring the responsibility of the Central African Republic’s government to protect its people); S.C. Res. 2014 (Oct. 21, 2011) (condemning human rights violations in Yemen and recognizing the government’s responsibility to protect its population); S.C. Res. 1996 (July 8, 2011) (authorizing the use of force in South Sudan in July 2011 to protect the civilian population); S.C. Res. 1975, ¶ 4 (Mar. 30, 2011) (authorizing the use of force in March 2011 in the Ivory Coast which resulted in the arrest of ex-President Laurent Gbagbo who later faced charges against humanity before the ICC).

⁴⁰³ S.C. Res. 2121, at 1 (Oct. 10, 2013); *Resolution 2121 (Central African Republic) S/RES/2121*, GLOBAL CTR. FOR THE RESPONSIBILITY TO PROTECT (Oct. 10, 2013) <http://www.globalr2p.org/resources/564>.

⁴⁰⁴ Clifford May, *The Demise of ‘Responsibility to Protect’ at the U.N.*, WASH. TIMES (Oct. 14, 2014), <http://www.washingtontimes.com/news/2014/oct/14/may-the-demise-of-r2p-at-the-united-nations/>.

⁴⁰⁵ *The Crisis in Burma*, INT’L COAL. FOR RESP. TO PROTECT, <http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-burma> (last visited Sep. 23, 2016).

⁴⁰⁶ See *id.*

⁴⁰⁷ See Zahara Moloo, *UN Peacekeepers in the DRC No Longer Trusted to Protect*, AL JAZEERA (Jan. 18, 2016), <http://www.aljazeera.com/indepth/features/2016/01/peacekeepers-drc-longer-trusted-protect-160112081436110.html>.

to the conditions in Rwanda before the genocide.”⁴⁰⁸ The DRC therefore would appear to be the precise scenario envisaged by R2P. Unlike Darfur, however, no R2P resolution has been adopted despite the ongoing violence and further UN action which, as with Darfur, could have expanded the mandate to include R2P.⁴⁰⁹ Other current conflicts affecting civilians are in Iraq, with the “Islamic State in Iraq and Levant” (ISIL),⁴¹⁰ and Yemen, with the violence between pro-government forces and Houthi rebels, not to mention Saudi air strikes.⁴¹¹ However, by far the biggest failure of R2P must be the current crisis in Syria.

C. Syria

Secretary-General Ban Ki-Moon has stated that “The conflict in Syria” is “a test of everything this organization stands for.”⁴¹² Violence broke out in March 2011.⁴¹³ Since then, it is estimated that at least 250,000 civilians have been killed.⁴¹⁴ By the end of 2014, at least 6.5 million civilians have been displaced within Syria, and another 4.4 million are living as refugees outside Syria.⁴¹⁵ The UN Human Rights Council-mandated Commission of Inquiry stated that Syrians of all backgrounds “have been the subject of crimes against humanity and war crimes.”⁴¹⁶ The crisis has spilled-over to Iraq, Turkey and Afghanistan, not to mention the migration crisis in the European Union, Jordan and

⁴⁰⁸ See Emma Alberici, *Genocide Warning on Congo*, INT’L COAL. FOR RESP. TO PROTECT (Nov. 24, 2008), <http://www.responsibilitytoprotect.org/index.php/crises/151-the-crisis-in-drc/1974-genocide-warning-on-congo>.

⁴⁰⁹ See Carrie Crawford, *The ‘Responsibility to Protect’ and the Democratic Republic of the Congo*, GLOBAL RES. (Nov. 24, 2010), <http://www.globalresearch.ca/the-responsibility-to-protect-and-the-democratic-republic-of-the-congo/27840>.

⁴¹⁰ See David Hudson, *President Obama: “We Will Degrade and Ultimately Destroy ISIL,”* WHITE HOUSE: BLOG (Sept. 10, 2014, 10:15 PM), <https://www.whitehouse.gov/blog/2014/09/10/president-obama-we-will-degrade-and-ultimately-destroy-isil>.

⁴¹¹ *Yemen Crisis: Who is Fighting Whom?*, BBC NEWS (Mar. 26, 2015), <http://www.bbc.com/news/world-middle-east-29319423>; Mohammed Ghobari, *Attack on Mourners in Yemen Kills More than 140, Say Local Health Officials*, REUTERS (Oct. 6 2016), <http://www.reuters.com/article/us-yemen-security-airstrike-idUSKCN12800R?feedType=RSS&virtualBrandChannel=11563>. These humanitarian crises also resulted in violations of UN Security Council Resolutions, such as 2014, 2201, 2216, and a UN-brokered peace process. See S.C. Res. 2216 (Apr. 14, 2015).

⁴¹² *General Assembly, in Resolution, Demands All in Syria ‘Immediately and Visibly’ Commit to Ending Violence that Secretary-General Says Is Ripping Country Apart*, UNITED NATIONS (Aug. 3, 2012), <http://www.un.org/press/en/2012/ga11266Rev1.doc.htm>.

⁴¹³ See Anthony Shadid, *Syria’s Protesters, Long Mostly Peaceful, Starting to Resort to Violence*, N.Y. TIMES (Sept. 16, 2011), <http://www.nytimes.com/2011/09/17/world/middleeast/at-least-six-protesters-killed-in-syria.html?>

⁴¹⁴ See R2P MONITOR, *supra* note 365, at 2.

⁴¹⁵ *Id.*

⁴¹⁶ Human Rights Council, Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, U.N. Doc. A/HRC/30/48 (Aug. 13, 2015).

elsewhere.⁴¹⁷ It has spawned the rise of so-called Islamic State as well.⁴¹⁸ If ever there was a need for intervention – assuming that intervention could have a positive effect – Syria is it.

Attempts to intervene have been made, but have been met, for the most part, with resistance from some of the permanent members of the Security Council.⁴¹⁹ In other words, once again, the ‘dreaded’ veto power of the Permanent five in the Security Council has defeated attempts to protect civilians during civil or other internal conflicts.⁴²⁰ Since 2011, four draft Security Council Resolutions have been vetoed by Russia and China.⁴²¹ During 2014, three Resolutions were passed, aiming to end the use of indiscriminate weapons and increase humanitarian access.⁴²² None has been fully implemented.⁴²³ Furthermore, the Syrian government has even defied a Security Council Resolution in 2014⁴²⁴ which demanded that all parties cease attacks on civilians and the use of indiscriminate weapons.⁴²⁵ During 2015, it was reported that 17,318 barrel bombs had

⁴¹⁷ Karen Kaya, *The Syrian Crisis from a Neighbor’s Perspective: View from Turkey*, MIL. REV., Mar.–Apr. 2014, at 42, 42, <http://fmso.leavenworth.army.mil/documents/Syrian-Crisis-View-from-Turkey.pdf> (last visited Sept. 17, 2016).

⁴¹⁸ *Syria: The story of the Conflict*, BBC NEWS (Mar. 11, 2016), <http://www.bbc.com/news/world-middle-east-26116868>.

⁴¹⁹ Simon Adams, *Failure to Protect: Syria and the UN Security Council*, OCCASIONAL PAPER SERIES (Glob. Ctr. for the Responsibility to Protect, New York, N.Y.), Mar. 2015, at 10–11.

⁴²⁰ Fergal Keane, “*International System Has Failed Syria*”, BBC NEWS (Dec. 21, 2015), <http://www.bbc.com/news/world-35150037>. There is a procedure called ‘Uniting for Peace’ that does empower the General Assembly to override a Security Council veto and to authorize the use of armed forces. G.A. Res. 377 (V), Uniting for Peace (Nov. 3, 1950). If a majority of General Assembly members, in an emergency session, so vote, the Security Council veto is circumvented. Just how binding and, more importantly, enforceable ‘Uniting for Peace’ Resolutions are is a matter of some doubt. See JOHN F. MURPHY, *THE UNITED NATIONS AND THE CONTROL OF INTERNATIONAL VIOLENCE: A LEGAL AND POLITICAL ANALYSIS* (1983). The General Assembly could commit troops, but achieving the necessary consensus is not likely to be easy. *Id.* However, this procedure was used to override a Russian veto of continued UN action in Korea in 1950, and the British and French vetoes in the Security Council in the Suez crisis in 1956, and UN troops replaced British and French troops. See DAVID A. NICHOLS, *EISENHOWER 1956: THE PRESIDENT’S YEAR OF CRISIS -- SUEZ AND THE BRINK OF WAR* 208 (2011) ([T]he British and the French vetoed the American-sponsored Security Council resolution calling for a cease-fire between Israel and Egypt. Ironically, the Soviet Union supported the measure.”).

⁴²¹ See Ian Black, *Russia and China Veto UN Move to Refer Syria to International Criminal Court*, GUARDIAN (May 22, 2014), <https://www.theguardian.com/world/2014/may/22/russia-china-veto-un-draft-resolution-refer-syria-international-criminal-court>.

⁴²² See S.C. Res. 2191 (Dec. 17, 2014); S.C. Res. 2165 (Jul. 14, 2014); S.C. Res. 2139 (Feb. 22, 2014).

⁴²³ S.C. Res. 2191 (Dec. 17, 2014).

⁴²⁴ U.N. President of the S.C., Letter dated Dec. 21, 2015 from the President of the Security Council to Members of the Security Council, U.N. Doc. S/2015/1002 (Dec. 21, 2015).

⁴²⁵ S.C. Res. 2139, ¶ 3 (Feb. 22, 2014).

been dropped.⁴²⁶

In December 2015, the Security Council at last unanimously adopted Resolution 2254 which sets out a timetable for a peace process.⁴²⁷ It calls for a ceasefire and for “credible, inclusive and non-sectarian governance” within six months, and for elections within 18 months.⁴²⁸ It calls on the UN Secretary General to convene representatives from the Syrian government and members of the opposition groups for political talks, starting in January 2016.⁴²⁹ Those talks commenced in Geneva as envisaged by the Security Council.⁴³⁰ The resolution also calls for the UN to monitor the ceasefire.⁴³¹ Subsequently, the Security Council unanimously passed Resolution 2258 which seeks to facilitate the delivery of humanitarian aid.⁴³²

While these resolutions refer to the primary responsibility of the Syrian government to protect civilians, neither refers to R2P.⁴³³ The Security Council also passed a resolution to eradicate the safe haven established by ISIS in Iraq and Syria.⁴³⁴ It remains to be seen what effect, if any, these resolutions have on the conflict.⁴³⁵ For many, it is too little, too late.⁴³⁶ So what is the problem? Why, even after the introduction of R2P have attempts to protect civilians during civil or other internal conflicts failed once again?⁴³⁷

⁴²⁶ SYRIAN NETWORK FOR HUMAN RIGHTS, MORE THAN 17,318 BARREL BOMBS KILLED 2,032 INDIVIDUALS INCLUDING 499 CHILDREN AND 338 WOMEN IN 2015 (Jan. 10, 2015), https://sn4hr.org/wp-content/pdf/english/At_least_17318_explosive_barrels_in_2015_en.pdf.

⁴²⁷ See Meetings Coverage, Security Council, Security Council Unanimously Adopts Resolution 2254 (2015), Endorsing Road Map for Peace Process in Syria, Setting Timetable for Talks, U.N. Meetings Coverage SC/12171 (Dec. 18, 2015) [hereinafter Resolution 2254 Meetings Coverage].

⁴²⁸ S.C. Res. 2254, ¶ 4 (Dec. 18, 2015).

⁴²⁹ *Id.* ¶ 2.

⁴³⁰ However, just two days after the talks began, the UN suspended them. *Syria Conflict: UN Suspends Peace Talks in Geneva*, BBC NEWS (Feb. 3, 2016), <http://www.bbc.com/news/world-middle-east-35488073>.

⁴³¹ See S.C. Res. 2254, ¶ 5 (Dec. 18, 2015).

⁴³² Meetings Coverage, Security Council, Unanimously Adopting Resolution 2258 (2015), Security Council Renews Authorization for Passage of Humanitarian Aid into Syria, U.N. Meetings Coverage SC/12179 (Dec. 22, 2016).

⁴³³ S.C. Res. 2258 (Dec. 22, 2015); S.C. Res. 2254 (Dec. 18, 2015).

⁴³⁴ S.C. Res. 2249, at 1 (Nov. 20, 2015).

⁴³⁵ Cf. MARTIN HARTBERG ET AL., FAILING SYRIA: ASSESSING THE IMPACT OF UN SECURITY COUNCIL RESOLUTIONS IN PROTECTING AND ASSISTING CIVILIANS IN SYRIA 3 (2015), http://reliefweb.int/sites/reliefweb.int/files/resources/FAILINGSYRIA_REPORT_MARCH2015.PDF.

⁴³⁶ See *id.*

⁴³⁷ See *id.*

VII. POLITICAL WILL AND SECURITY COUNCIL VETO

It appears that the UN still faces the same challenge it has always faced: how to create a responsibility not to veto?⁴³⁸ In 2013, there was a proposal to require permanent members to abstain from using the veto in cases involving “mass atrocity crimes.”⁴³⁹ Similarly, the International Commission on Intervention and State Sovereignty had encouraged the Permanent 5 to “agree not to apply their veto power, in matters where their vital interests are not involved.”⁴⁴⁰ But this requires finding a way to make governments balance the importance of national sovereignty with the importance of international responsibility.⁴⁴¹ There is no easy answer because the UN is still an association of sovereign states and “for the majority of U.N. members, when there is a conflict, the principle of state sovereignty still trumps all other principles and norms.”⁴⁴²

Thus, while some in Britain and the United States have criticised Russia and China for using the veto four times on Syria, they have not acknowledged that either the UK or the US would give up their veto power.⁴⁴³ The veto is actually an exercise of national sovereignty, and it gives all 5 States “a unique power to protect and promote their national interests at the expense of global interests.”⁴⁴⁴ It undermines the capacity of the Security Council to respond quickly and decisively as well.⁴⁴⁵ It may also undermine the Security Council’s ‘legitimacy’.⁴⁴⁶

⁴³⁸ *Responsibility Not to Veto: Creating the Security Council We Need*, CITIZENS FOR GLOBAL SOLUTIONS (Oct. 1, 2013), <http://globalsolutions.org/blog/2013/10/Responsibility-Not-Veto-Creating-Security-Council-We-Need#.V94GgbHD-M9>.

⁴³⁹ Meetings Coverage, Security Council, Speakers Call for Voluntary Suspension of Veto Rights in Cases of Mass Atrocity Crimes, as Security Council Debates Working Methods, U.N. Meetings Coverage SC/11164 (Oct. 29, 2013).

⁴⁴⁰ ICISS: RESPONSIBILITY TO PROTECT, *supra* note 309, at xiii.

⁴⁴¹ Nico Smit, *Evolution of the Responsibility to Protect*, E-INT’L REL. STUDENTS (Jan. 7, 2013), <http://www.e-ir.info/2013/01/07/evolution-of-the-responsibility-to-protect/>.

⁴⁴² CLOUGH, *supra* note 282, at 6.

⁴⁴³ Adam Gabbatt, *Russia and China Veto of Syria Sanctions Condemned as ‘Indefensible’*, GUARDIAN (July 19, 2012), <https://www.theguardian.com/world/2012/jul/19/russia-china-syria-sanction-veto>. Since the UN was founded, the veto ‘league table’ is as follows: USSR/Russia: 102 (the first 57 vetoes were all done by the USSR); USA: 79; UK: 29; France: 16; China: 9. Since 1971, Russia has vetoed 19, and the US has vetoed 78 resolutions. *Security Council – Veto List*, DAG HAMMARSKJÖLD LIBR., <http://research.un.org/en/docs/sc/quick/veto> (last visited Aug. 1, 2016).

⁴⁴⁴ CLOUGH, *supra* note 282, at 6. In October 2015, Russia vetoed plans for an international tribunal to investigate the shooting down of Malaysian Airlines MH17. Meetings Coverage, Security Council, Security Council Fails to Adopt Resolution on Tribunal for Malaysia Airlines Crash in Ukraine, Amid Calls for Accountability, Justice for Victims, U.N. Meetings Coverage SC/11990 (Jul. 29, 2015).

⁴⁴⁵ See David Caron, *The Legitimacy of the Collective Authority of the Security Council*, 7 AM. J. INT’L L. 552, 565–66 (1993).

⁴⁴⁶ *Id.*

The fact is, it remains impossible to stop both ‘International Politics’ and ‘Domestic Politics’ playing out within the UN.⁴⁴⁷ The UN and its agencies are used by many Member States as a vehicle for opportunism and to express their own political biases.⁴⁴⁸ One example is the UN’s Human Rights Council which was created, after the World Summit, in 2006.⁴⁴⁹ This is widely regarded as the UN’s premier human rights body, where “[a]ll victims of human rights abuses should be able to look . . . as a forum and a springboard for action.”⁴⁵⁰ It was created to replace the UN Commission on Human Rights that had been condemned, even by Secretary-General Kofi Annan, for its selectivity and politicisation.⁴⁵¹ However, many have questioned the legitimacy and the human rights credentials of many of the States that make up the Council membership, which include China, Cuba, Qatar, Kazakhstan and Russia.⁴⁵² There was bemusement on January 1st 2015 when Burundi became a member, despite concerns about serious human rights abuses being perpetrated by

⁴⁴⁷ Zaara Zain Hussain, *The Effect of Domestic Politics on Foreign Policy Decision Making*, E-INT’L REL. STUDENTS (Feb. 7, 2011), <http://www.e-ir.info/2011/02/07/the-effect-of-domestic-politics-on-foreign-policy-decision-making/>.

⁴⁴⁸ See, e.g., Adams, *supra* note 419, at 10–11. Member states may withdraw from UN agencies, such as UNESCO, for political reasons, as South Africa did between 1957 and 1994, the US between 1985 and 2003, the UK between 1986 and 1997, and Singapore between 1986 and 2007. *The Organization’s History*, UNESCO, <http://www.unesco.org/new/en/unesco/about-us/who-we-are/history/> (last visited Oct. 1, 2016). Japan in October 2015 threatened to withdraw from UNESCO following the agency’s decision to award international heritage status to documents describing rape and murder by Japanese soldiers during World War II. Richard Lloyd Parry & Calum MacLeod, *Japanese Fury as Rape of Nanjing Accepted as Fact*, TIMES (London) (Oct. 14, 2015, 12:01 AM), <http://www.thetimes.co.uk/tto/news/world/asia/article4584764.ece>. Meanwhile, China was “jubilant” about UNESCO’s decision. *Id.* Japan contributes about 10% of UNESCO’s annual budget. *Id.* Discontent about the allocation of voting rights in the World Bank, for example, has prompted China to set up the Asian Investment Bank to rival it. Alternatives to the IMF are currently being considered for similar reasons. Enda Curran, *China’s World Bank*, BLOOMBERG (Aug. 31, 2016, 7:32 AM), <https://www.bloomberg.com/quicktake/chinas-world-bank>.

⁴⁴⁹ G.A. Res. 60/251, Human Rights Council (Apr. 3, 2006).

⁴⁵⁰ *As Human Rights Council Opens Session, Ban Ki-moon Says ‘World is Watching,’* UN NEWS CTR. (Mar. 12, 2007), <http://www.un.org/apps/news/story.asp?NewsID=21834#.WG11CIMrKUK>.

⁴⁵¹ U.N. Secretary-General, *In Larger Freedom: Towards Development, Security and Human Rights for All*, ¶ 182, U.N. Doc A/59/2005 (Mar. 21, 2005).

⁴⁵² *In 9 Years’ Existence, UNHRC Condemned Israel More Times Than Rest of the World Combined*, UN WATCH (June 25, 2015, 3:46 PM), <http://www.unwatch.org/issue-539-report-9-years-existence-unhrc-condemned-israel-times-rest-world-combined/> [hereinafter UN WATCH].

the government, and the country being on the edge of civil war.⁴⁵³ Countries such as these may be reluctant to accuse some nations of human rights abuses, but not others.⁴⁵⁴ Thus, while the Council went so far as to praise the Sri Lankan government for winning its war with the Tamil Tigers, while ignoring alleged human rights abuses.⁴⁵⁵ Similarly, Israel has been condemned 62 times by the Council, more than all other nations combined.⁴⁵⁶

In 2015, there was further outcry when a Saudi UN Ambassador in Geneva was elected Chair of the Council's key panel that appoints independent experts.⁴⁵⁷ Concerns about the appointment were reinforced when, around the same time, the Saudi view on how it would uphold the UN Charter on Human Rights was set out by the Saudi UN Ambassador in New York: "The application of Sharia law as far as human rights is concerned is the highest form of human rights . . . we are holding ourselves

⁴⁵³ *Despite Killings, Burundi to Win Seat on UN Human Rights Council*, UN WATCH (Oct. 27, 2015), <http://www.unwatch.org/despite-killings-burundi-to-win-seat-on-un-human-rights-council/>. A 12-year civil war, in which 300,000 died, ended in 2005, but renewed violence and fears of ethnic conflict (between the majority Hutus and minority Tutsis), began after the President, Pierre Nkurunziza sought a third term in office. *Id.* At least 240 have died and 240,000 have fled abroad since April 2015. *Id.*

⁴⁵⁴ *See Amnesty Accuses U.S. of Human Rights Violations*, CBS NEWS (May 27, 2010, 7:16 AM), <http://www.cbsnews.com/news/amnesty-accuses-us-of-human-rights-violations/>.

⁴⁵⁵ *The Crisis in Sri Lanka*, INT'L COALITION FOR RESP. TO PROTECT, <http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-sri-lanka>, (last visited Sept. 17, 2016). The circumstances of the end of that war, including allegations that thousands were slaughtered, are currently being investigated by the International Criminal Court. Jason Burke & Amantha Perera, *UN Calls for Sri Lanka War Crimes Court to Investigate Atrocities*, GUARDIAN (Sept. 16, 2015), <https://www.theguardian.com/world/2015/sep/16/un-seeks-special-court-to-investigate-sri-lanka-war-atrocities>.

⁴⁵⁶ *See* UN WATCH, *supra* note 452. In 2014, the Council adopted a resolution condemning "widespread, systematic and gross violations of international human rights and fundamental freedoms arising from Israeli military operations" carried out in Gaza. G.A. Res. 21/2, ¶ 2 (Sept. 9, 2014). It dispatched an independent commission of inquiry to investigate violations. *Id.* ¶ 13. So, in effect, the Council condemned Israel prior to the commission report; it also failed to mention possible violations by, for example, Hamas, the ruling authority in Gaza. The Commission chairman, the Canadian law professor William Schabas, had earlier made several statements critical of the Jewish state and of Israeli prime ministers, thus raising questions about his independence. Itamar Eichner, *US Judge McGowan Davis to Replace Schabas as Head of UN Gaza Inquiry*, YNET NEWS (Mar. 2, 2015, 9:43 PM), <http://www.ynetnews.com/articles/0,7340,L-4622664,00.html>. He resigned in 2015, prior to the publication of the report. *Id.* In 1975, the General Assembly passed Resolution 3379 stating that Zionism was racism. G.A. Res. 3379 (XXX), Elimination of All Forms of Racial Discrimination (Dec. 10, 1975). The Resolution was revoked in 1991. G.A. Res. 46/86 (Dec. 16, 1991).

⁴⁵⁷ Tom Brooks-Pollock, *Anger After Saudi Arabia 'Chosen to Head Key UN Human Rights Panel'*, INDEPENDENT. (Sept. 20, 2015), <http://www.independent.co.uk/news/world/anger-after-saudi-arabia-chosen-to-head-key-un-human-rights-panel-10509716.html>. The Saudi Ambassador at the UN in Geneva is Faisal bin Hassan Trad. *Id.*

to the highest standards.”⁴⁵⁸ However, these concerns were not reflected in the US State Department’s views.⁴⁵⁹ A spokesman said that the administration “welcomed” the Saudi appointment;⁴⁶⁰ the US and Saudi Arabia are “close allies.”⁴⁶¹ Subsequently, in October 2015, Saudi Arabia blocked an international inquiry by the Human Rights Council into the conflict in Yemen, where Saudi air strikes have been blamed for killing civilians.⁴⁶² The US initially had supported the inquiry, but the US representative on the Council refused to criticize the Saudi move, stating that “he preferred a consensus outcome, meaning one that had the backing of Saudi Arabia.”⁴⁶³

Similarly, while the UK condemned the sentence of beheading, given in Sunni-majority Saudi Arabia to Ali al-Nimr, who in 2012 was aged 17 when he allegedly took part in an unlawful demonstration calling for equal rights for Shias, the UK at the same time was negotiating a 5.9 million pound contract to help train the Saudi Arabian prison service.⁴⁶⁴ It was only after a public outcry, when critics asked: why is the UK helping the Saudis to flog, stone or amputate, that the bid was withdrawn in October 2015.⁴⁶⁵

The international response to conflict may also be affected by

⁴⁵⁸ Shiv Malik & Mona Mahmood, *Mother of Saudi Man Sentenced to Crucifixion Begg Obama to Intervene*, GUARDIAN (Oct. 14, 2015), <http://www.theguardian.com/world/2015/oct/14/mother-of-saudi-man-sentenced-to-crucifixion-begs-obama-to-intervene>.

⁴⁵⁹ Melanie Phillips, *The Outrageous Wrongs of UN Human Rights*, TIMES (London), Sept. 28, 2015, LEXIS.

⁴⁶⁰ *Id.*

⁴⁶¹ Patrick Goodenough, *State Dep’t: ‘We Would Welcome’ Saudi Leadership Role at UN Rights Council*, CNS NEWS (Sept. 23, 2015), <http://www.cnsnews.com/news/article/patrick-goodenough/state-dept-we-would-welcome-saudi-leadership-role-un-rights-council>.

⁴⁶² Nick Cumming-Bruce, *Saudi Objections Halt U.N. Inquiry of Yemen War*, N.Y. TIMES (Sept. 30, 2015), http://www.nytimes.com/2015/10/01/world/middleeast/western-nations-drop-push-for-un-inquiry-into-yemen-conflict.html?_r=2.

⁴⁶³ Jessica Schulberg, *U.S. Dodges Responsibility for Saudi Airstrikes That Kill Yemeni Civilians*, HUFFINGTON POST (Oct. 6, 2015), http://www.huffingtonpost.com/entry/yemen-civilian-deaths-saudi-airstrikes_us_5610566be4b0dd85030c53a9.

⁴⁶⁴ See Dan Bilefsky, *Britain Urges Saudis to Free Grandfather Facing 350 Lashes*, N.Y. TIMES (Oct. 13, 2015), <http://www.nytimes.com/2015/10/14/world/middleeast/karl-andree-lashes-saudi-arabia-britain.html>.

⁴⁶⁵ See Nicholas Watt & Alan Travis, *UK Ditches Plan to Bid for £5.9m Saudi Arabia Prisons Contract*, GUARDIAN (Oct. 13, 2015), <https://www.theguardian.com/world/2015/oct/13/uk-ditches-plan-to-bid-for-saudi-arabia-prisons-contract>.

domestic politics.⁴⁶⁶ There is a “stifling sense of parochialism in international affairs” which is reinforced by “the overriding role of domestic opinion and pressures in international affairs.”⁴⁶⁷ The condemnation of the conflict in Darfur by the Security Council was “muted,” not only in the hope that the 2005 peace agreement would be successfully negotiated, but also, it is claimed, to ensure “cooperation with the US ‘War on Terror,’” and “a peaceful secession of South Sudan in 2011.”⁴⁶⁸ One of the ironies of the end of the Cold War, during which the fundamental original mission of UN was ‘doomed,’ is that after its end, the major powers – the US, Russia and China – may no longer feel any need to defer to the ‘international community’. They have reverted to antipathy towards the UN, or perhaps even apathy, with no desire, for example, by some to sign up to the International Criminal Court,⁴⁶⁹ or the Law of the Sea Treaty,⁴⁷⁰ let alone Security Council Resolutions which target their favoured states.⁴⁷¹

⁴⁶⁶ Hussain, *supra* note 447. Domestic politics play a role with UN agencies as well. UNESCO, for example, deals with governments, so political factors play a role. Malaysia, for example, has proposed Malacca as a World Heritage Site, but it has failed to satisfy the criteria. However, the government refused to nominate Penang, possibly because it is a centre of opposition. See Soon-Tzu Speechley, *Dire Straits for Malaysia’s World Heritage*, NEW MANDALA (Sept. 29, 2016), <http://www.newmandala.org/dire-straits-malaysias-world-heritage/>.

⁴⁶⁷ Brian Urquhart, Former United Nations Under-Sec’y Gen. for Special Political Affairs, *The Role of the United Nations in Maintaining and Improving International Security*, Address at 1986 Alastair Buchan Memorial Lecture (Mar. 20, 1986), in 28 SURVIVAL: GLOBAL POL. & STRATEGY 387, 394, 397 (1986).

⁴⁶⁸ *The Crisis in Darfur*, *supra* note 342.

⁴⁶⁹ *US Opposition to the International Criminal Court*, GLOBAL POL’Y F., <https://www.globalpolicy.org/us-un-and-international-law-8-24/us-opposition-to-the-icc-8-29.html> (last visited Sept. 18, 2016); Joel Jaeger, *U.S., Russia, China Hamper ICC’s Reach*, INTER PRESS SERV. (Jul. 22, 2014), <http://www.ipsnews.net/2014/07/u-s-russia-china-hamper-iccs-reach/>.

⁴⁷⁰ Mark Landler, *Law of the Sea Treaty Is Found on Capitol Hill, Again*, N.Y. TIMES (May 23, 2012), http://www.nytimes.com/2012/05/24/world/americas/law-of-the-sea-treaty-is-found-on-capitol-hill-again.html?_r=0. The U.S. Senate Foreign Relations Committee unanimously recommended US accession to the Treaty in 2004, but a vote has never been taken. David A. Ridenour, *Ratification of the Law of the Sea Treaty: A Not-So-Innocent Passage*, 542 Nat’l Pol’y Analysis (2006), <http://www.nationalcenter.org/NPA542LawoftheSeaTreaty.html>. Ratification has been supported by “Republican and Democratic presidents, the Pentagon, environmental advocates, the oil and gas industry,” Secretary of State Hilary Clinton, Defense Secretary Leon Panetta, General Martin E Dempsey, Chair of the Joint Chiefs of Staff, and many other individuals, including Senator Richard Lugar. Landler, *supra*. It has been opposed by some who view the Treaty as an infringement on American sovereignty – or maybe by the simple fact that the Treaty was negotiated under the auspices of the UN. See *id.*

⁴⁷¹ DIRECTORATE-GENERAL FOR EXTERNAL POLICIES, POLICY DEP’T, THE POSITIONS OF RUSSIA AND CHINA AT THE UN SECURITY COUNCIL IN THE LIGHT OF RECENT CRISES 7 (Mar. 2013), [http://www.europarl.europa.eu/RegData/etudes/note/join/2013/433800/EXPOSEDE_NT\(2013\)433800_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/note/join/2013/433800/EXPOSEDE_NT(2013)433800_EN.pdf).

CONCLUSION

The UN is not a simple organization with a single mission, but a complex one with many missions which have changed and are continuing to change over time. Simplistic opinions about its effectiveness and role, whether unconditionally for the UN or totally against should therefore be treated with suspicion and probably should be disregarded.⁴⁷² One of the UN's most prominent American critics is former American Ambassador to the UN, John Bolton. He argues that "Almost from their creation . . . the UN's political decision-making entities – the Security Council, the General Assembly, and the various 'human-rights' organizations – have largely been failures."⁴⁷³ However, Bolton at the same time acknowledges that "many UN specialized agencies do important work."⁴⁷⁴ He himself strongly supported several Security Council Resolutions during his time at the UN.⁴⁷⁵ There's also no doubt about the "key role" the UN has played

⁴⁷² It is interesting to see how some opinions are strongly held, but in complete contradiction to each other. For example, some believe the UN is a kind of fifth column for global socialism and that is a good reason for denying the scientific consensus on climate change: it is a conspiracy, and not 'real' science. See Matt Ridley, *Global Warming Need Not Be Catastrophic*, TIMES (London) (Oct. 01, 2013), <http://www.thetimes.co.uk/tto/opinion/columnists/article3881481.ece>. Meanwhile, others believe that the UN is merely a "fig leaf for imperialism." *United Nations: A Fig-Leaf for Imperialism*, SOCIALIST ALTERNATIVE, <http://www.socialistalternative.org/no-to-bushs-war-on-iraq/united-nations-a-fig-leaf-for-imperialism/> (last visited Sept. 10, 2016). Still others argue that it is one of a number of devices "by which the US would dominate the world." Duncan Blackie, *The United Nations and the Politics of Imperialism*, INT'L SOCIALISM, Summer 1994, <https://www.marxists.org/history/etol/newspape/isj2/1994/isj2-063/blackie.htm>. Both opinions are in contrast to the claim by former Secretary General Kofi Annan: "the U.N. is the right body to lead, because it is in no one's pocket. It belongs to the world." Kofi Annan, *Our Mission Remains Vital*, WALL STREET J. (Feb. 22, 2005, 12:01 AM), <http://www.wsj.com/articles/SB110903523113160474>. Overall, the UN appears to be more popular than not around the world. *UN Retains Strong Global Image*, PEW RES. CTR. (Sept. 17, 2013), <http://www.pewglobal.org/2013/09/17/united-nations-retains-strong-global-image/>.

⁴⁷³ John Bolton, *The UN Doesn't Work. Here's a Fix*, BOSTON GLOBE (Oct. 15, 2015), <https://www.bostonglobe.com/opinion/2015/10/15/ambassador-john-bolton-the-doesn-work-here-fix/jreUXUauMvZxuVv4Pygx6H/story.html>.

⁴⁷⁴ *Id.* Interestingly, Mr. Bolton exposes the paradox at the heart of the UN, mentioned earlier in this paper. On the one hand, he states that the US is "basically guaranteed to be permanently irritated" due to the UN Charter's "one nation, one vote" principle." *Id.* On the other he regards a General Assembly vote as "effectively meaningless"; the US's "Security Council vote – and veto – can never be taken away except by amending the UN Charter, which we would, of course, veto." *Id.*

⁴⁷⁵ Janice A. Smith, *In Their Own Words: Ambassador Bolton's Record of Effectiveness at the U.N.*, HERITAGE FOUND. (Dec. 4, 2006), <http://www.heritage.org/research/reports/2006/12/in-their-own-words-ambassador-boltons-record-of-effectiveness-at-the-un>; see also Eric Rosand, *Why Trump Will Need the UN: What the Organization Gets Right About Counterterrorism*, FOREIGN AFF. (Jan. 10, 2017), <https://www.foreignaffairs.com/articles/2017-01-10/why-trump-will-need-un>.

since 9/11 in "globalizing the fight against terrorism."⁴⁷⁶ The US Government called the UN Sanctions Committee "one of the most potent bodies in the world in combating terrorist financing."⁴⁷⁷ In short, some of the missions of the UN have had positive effects and John Bolton and others have acknowledged that some of the missions have been worthwhile and successful.⁴⁷⁸

This Article has not sought to determine the rights or wrongs of these opinions. In any case, that assessment crucially depends upon the criteria used to measure the UN's performance.⁴⁷⁹ However, former Under Secretary-General Sir Brian Urquhart is surely right when he points out that, while the UN is regularly criticised, "[w]hen that temperature rises to fever pitch . . . when people were staring into the abyss, the world organization ceases briefly to be a scapegoat and a repository of patronising comment, contempt or abuse, and is taken perfectly seriously until the crisis passes."⁴⁸⁰ In relation to that comment, it is important to consider Secretary-General Dag Hammarskjöld's vision of why the UN was created: "the United Nations was not created in order to bring us to heaven, but in order to save us from hell."⁴⁸¹ On that basis, it might be argued that the UN has been vital, time and time again. Maybe that is why the UN, its agencies and its staff, have won the Nobel Peace Prize, no fewer than 10 times over the years.⁴⁸² For example, in 1988, it was for Peacekeeping; in 2001, for work on human rights and conflict; and in 2007, as stated in the introduction, for disseminating the science on Climate Change.⁴⁸³

Alongside the UN failures therefore – in Rwanda, Yugoslavia, and now in Syria – should be weighed the successes, like the ground-breaking

⁴⁷⁶ Eric Rosand, *supra* note 475.

⁴⁷⁷ U.S. Department of the Treasury, Statement by Assistant Secretary Juan Zarate Before the United Nations Security Council 1267 Sanctions Committee, 1/10/2005, <http://www.treasury.gov/press-center/press-release/Pages/js2189.aspx> (last visited Jan. 28, 2017).

⁴⁷⁸ Bolton, *supra* note 473.

⁴⁷⁹ Not to mention the resources at the UN's disposal. This is another contentious issue, especially in the United States, which is by far the single largest contributor to the UN budget. While critics of the UN describe its budget as "eye-popping," supporters decry the UN's relative lack of resources, pointing to the fact that its budget is usually less than half that of, for example, the annual budget of the State of Virginia. *U.N. Budget: Would You Believe \$13.9 Billion?*, FOX NEWS (Sept. 17, 2009), <http://www.foxnews.com/world/2009/09/17/budget-believe-billion.html>.

⁴⁸⁰ Urquhart, *supra* note 467, at 397.

⁴⁸¹ Press Release, Address by Secretary General Dag Hammarskjöld at University of California Convocation, U.N. Press Release SG/382 (May 13, 1954).

⁴⁸² *United Nations and the Nobel Peace Prize*, UNITED NATIONS, <http://www.un.org/en/sections/nobel-peace-prize/united-nations-and-nobel-peace-prize/index.html> (last visited Sept. 18, 2016).

⁴⁸³ *Id.*

resolution in September 2013, to destroy Syria's stockpile of chemical weapons.⁴⁸⁴ This was the first time an international mission had been sent into a country amid active conflict to oversee the removal of weapons of mass destruction.⁴⁸⁵ The work has been completed by the Organisation for the Prohibition of Chemical Weapons, an autonomous organization but with a close working relationship with the UN.⁴⁸⁶ The Organization won the Nobel Peace Prize in 2013.⁴⁸⁷ In December 2015, after four Security Council Resolutions on Syria had been vetoed, one was passed setting out a "road map" for a process of peace.⁴⁸⁸ It was a rare agreement and it is too early to predict its impact, if any, on the Syrian crisis.⁴⁸⁹ But, for once, the gridlock was removed and a hugely ambitious resolution had been passed, suggesting there remains at least a residual role for the UN.⁴⁹⁰ No wonder The Times of London called the resolution a "major milestone".⁴⁹¹ It may have taken five years to adopt a resolution, but is 'better late than never' a 'mission possible' for the UN?

Finally, to those who say the UN has failed, they have to consider not just what the UN is not doing but also what it is doing, albeit falling short of its original mission, and even falling short of its new Responsibility to Protect Mission. In the 21st century, it is hard to imagine the world viewed

⁴⁸⁴ Lewis Gropp, *UN Peacekeeping Missions Show Mixed Record*, DW (Feb. 15, 2012), <http://www.dw.com/en/un-peacekeeping-missions-show-mixed-record/a-15741385>; Meetings Coverage, General Assembly, Mission to 'Remove and Destroy' Chemical Weapons in Syria Unprecedented, But Reports of Chlorine Gas Use Troubling, First Committee Hears, U.N. Meetings Coverage GA/DIS/3510 (Oct. 24, 2014).

⁴⁸⁵ See Toby Sterling, *Chemical Weapons Inspectors Outline Syria Plan*, NORTHJERSEY (Sept. 29, 2013), <http://www.northjersey.com/news/chemical-weapons-inspectors-outline-syria-plan-1.651866>.

⁴⁸⁶ Naftali Bendavid, *Last Batch of Syria's Chemical Weapons is Removed*, WALL STREET J. (June 24, 2014), <http://www.wsj.com/articles/removal-of-chemical-weapons-from-syria-is-completed-1403529356>. However, reports of violations in July 2015 continue to challenge the 'finality' of removal. Adam Entous & Naftali Bendavid, *Mission to Purge Syria of Chemical Weapons Comes Up Short*, WALL STREET J. (July 23, 2015), <http://www.wsj.com/articles/mission-to-purge-syria-of-chemical-weapons-comes-up-short-1437687744>.

⁴⁸⁷ Press Release, The Nobel Peace Prize for 2013 (Oct. 11, 2013), http://www.nobelprize.org/nobel_prizes/peace/laureates/2013/press.html. Similarly, the IAEA, was itself awarded the Nobel Peace prize, along with the IAEA Director, Mohammed ElBaradei, in 2005. The Nobel Peace Prize 2005, NOBELPRIZE.ORG, http://www.nobelprize.org/nobel_prizes/peace/laureates/2005/.

⁴⁸⁸ Resolution 2254 Meetings Coverage, *supra* note 427.

⁴⁸⁹ Lina Sinjab, *Syria Conflict: Who's to Blame for Talks Suspension?*, BBC NEWS (Feb. 4, 2016), <http://www.bbc.com/news/world-middle-east-35490273>. Especially as the talks were suspended after two days! *Id.*

⁴⁹⁰ See Resolution 2254 Meetings Coverage, *supra* note 427.

⁴⁹¹ Will Pavia et al., *Russia Approves US Proposal to Begin Syria Peace Process* TIMES (London) (Dec. 19, 2015), <http://www.thetimes.co.uk/tto/news/world/middleeast/article4645065.ece?shareToken=df58f49fd8a906cf6d0b04a752bc4b99>.

through the lens only of the nation state – although some clearly continue to seek to do so. Yet the developments that “cast doubt” on the model of State Sovereignty and “transcend state borders” continue unabated.⁴⁹² They include universal human rights, weapons of mass destruction, damage to the environment, migration, population expansion, disease, famine, international capital flows, and global communications networks.⁴⁹³

The reality is that concerted action in some form or another – multilateralism – has become the norm and individual action the exception.⁴⁹⁴ There has to be a medium of exchange, whether it is the institution of the UN or some other institution. But, these missions of the UN are not simple, nor are the challenges the UN confronts – it is difficult for the UN to be strong.⁴⁹⁵ There are “huge practical challenges posed by a sovereign-centred world, a landscape in which legitimacy and control are largely in the hands of states.”⁴⁹⁶ That is why critics and supporters alike need to consider seriously the challenges the UN confronts.

Those who say the UN has failed should also ask themselves this fundamental question: do the twin rationales for creating the UN in the first place, the rationales that guided Roosevelt,⁴⁹⁷ Churchill and the

⁴⁹² BOBBIT, *supra* note 44, at xxii.

⁴⁹³ *Id.*

⁴⁹⁴ Cameron Munter, *The Changing Nature of Multilateralism*, HORIZONS, Spring 2016, at 66, 66–67.

⁴⁹⁵ The UN often has difficulty finding the forces it needs to fulfil security and humanitarian missions. James Dobbins, *A History of UN Peacekeeping*, in CHARTER OF THE UNITED NATIONS 195, 200 (Ian Shapiro & Joseph Lambert eds., 2014). This is why there have been frequent calls and attempts to set up a UN rapid reaction force. *See, e.g.*, *UN Standing Force*, GLOBAL POL’Y F., <https://www.globalpolicy.org/un-reform/un-reform-topics/un-standing-force.html> (last visited Sept. 18, 2016) (collecting articles and information on the movement towards a standing UN armed force). In December 1992, in an address to the Oxford Union Society, former President Ronald Reagan called on nations to “work toward a standing U.N. force – an army of conscience – that is fully equipped and prepared to carve out human sanctuaries if necessary.” Saul Friedman, *Gray Matters – Ronald Reagan*, HUFFINGTON POST (Mar. 18, 2010). More reforms may be needed, but certainly, without the sufficient forces, the aspiration of the UN living up to a responsibility to protect cannot be fulfilled. *See* Alex De Waal, *Darfur and the Failure of the Responsibility to Protect*, 83 INT’L AFF. 1039, 1054 (2007).

⁴⁹⁶ Chris Jenks & Guido Acquaviva, Debate, *The Role of International Criminal Justice in Fostering Compliance with International Humanitarian Law*, 96 INT’L REV. RED CROSS 775, 794 (2014).

⁴⁹⁷ Franklin D. Roosevelt, *Address to Congress on the Yalta Conference* (Mar. 1, 1945), THE AM. PRESIDENCY PROJECT, <http://www.presidency.ucsb.edu/ws/?pid=16591>. Roosevelt stated, at the Yalta conference, that “the system of unilateral action, the exclusive alliances, the spheres of influence, the balances of power, and all the other expedients that have been tried for centuries—and have always failed” would end with the founding of the UN. *Id.* He was wrong about the UN, of course, but what about his rationale?

others,⁴⁹⁸ do they still remain relevant? In other words, should there be a forum to pool resources, to co-ordinate and co-operate, and to resolve disputes through dialogue rather than conflict? The exercise of “soft” power by the UN, as the representative of the collective power of nations, can be used to police dissident states who, in the end, may prefer to rejoin the international community rather than remain forever as a pariah state.⁴⁹⁹

And if there is conflict, should there be international peacekeeping or even peacemaking and the exercise of “hard” power when force is required? If the answer is in the affirmative, then for over 70 years it has existed in the form of the UN. And for the moment, there is no alternative in place.⁵⁰⁰ Maybe it is partly because we do have the UN that war is on the wane and fewer people have died in conflict in the 1st decade of the 21st Century than in any decade of the 20th.⁵⁰¹ “There has been a dramatic decline in the number of armed conflicts since the early 1990s . . .” and “war between states has almost completely disappeared.”⁵⁰² Further, “[t]here has been a dramatic increase in the number of conflicts resolved by active peacemaking, involving diplomatic negotiations, international mediation and the like⁵⁰³ The only unequivocally bad news is the dramatic increase in high-casualty terrorist attacks.”⁵⁰⁴

The existence of the UN is not, of course, the only reason for this welcome decline. Other reasons cited include “the end of the era of colonialism” and the Cold War (both of which led to war or proxy war) and “the demise of a number of authoritarian governments” (which had “generat[ed] internal resentment and resistance”).⁵⁰⁵ However, it has been claimed that the “best explanation . . . is the huge increase in the level of international preventive diplomacy, diplomatic peacemaking,

⁴⁹⁸ *The U.S. and the Founding of the U.N., August 1941-October 1945*, U.S. DEP’T OF STATE, <https://2001-2009.state.gov/r/pa/ho/pubs/fs/55407.htm> (last visited Oct. 31, 2016).

⁴⁹⁹ Joseph S. Nye, *The Impressive—But Ltd.—Soft Power of the U.N.*, BELFER CTR. FOR SCI. & INT’L AFF. (Nov. 14, 2007), http://belfercenter.ksg.harvard.edu/publication/17673/impressivebut_limitedsoft_power_of_the_united_nations.html.

⁵⁰⁰ *Russian Lawmaker Sees No Alternative to UN in Modern World*, TASS (June 16, 2016), <http://tass.com/politics/882567>.

⁵⁰¹ STEVEN PINKER, *THE BETTER ANGELS OF OUR NATURE: WHY VIOLENCE HAS DECLINED* 300–304 (2011).

⁵⁰² Gareth Evans, President of the Int’l Crisis Grp., *The United Nations and Conflict Prevention*, Address to the Dag Hammarskjold Centenary Seminar (Oct. 17, 2005) (transcript available at <http://gevens.org/speeches/speech216.html>).

⁵⁰³ *Id.* The Human Security Report notes that “[a]pproximately half of all the peace settlements negotiated between 1946 and 2003 have been signed since the end of the Cold War.” HUMAN SEC. CTR., *HUMAN SECURITY REPORT 2005* (pt. v), at 153 (2005). The report claimed that “international activism,” mainly spearheaded by the UN, “ha[d] been the main cause of the . . . decline in armed conflict” since the end of the Cold War. *Id.* at 155.

⁵⁰⁴ Evans, *supra* note 502; *see also* HUMAN SEC. CTR., *supra* note 503.

⁵⁰⁵ Evans, *supra* note 502.

peacekeeping and peacebuilding operations, for the most part authorised by and mounted by the United Nations, that has occurred since the end of the Cold War.”⁵⁰⁶ The UN was “revitaliz[ed]” after the end of the Cold War, and it is “the only international organization that with a global security mandate;” it has been “the central player.”⁵⁰⁷

In short, the UN may not be popular with everybody, it may be unrepresentative but, paraphrasing Winston Churchill’s vision of democracy, the UN may be better than any of the alternatives.⁵⁰⁸ In the 21st century, as the relative power of nations states continues to decline, and the challenges states face become more global, the need for international institutions will continue to grow.⁵⁰⁹ Some of these will be regional in focus – the European Union, the African union, ASEAN and so on. Only the UN, however, can claim to represent the ‘international community’ we hear so much about today. If and when nation states do agree there is a need for international action to address global problems, then the UN mission may become more possible.

In the meantime, the fact remains that the world is a ‘stormy place.’ Indeed, General Martin Dempsey, Chairman of the US Joint Chiefs of Staff, claimed in 2012 that today’s world is “more dangerous than it has ever been.”⁵¹⁰ It faces repeated emergencies, both human and natural disasters, there are failing States, civil wars, terrorism, humanitarian crises – like the 60 million displaced people who have been forced to leave their homes, both within their own countries and abroad, because of war and persecution.⁵¹¹ But, whose fault is the storm? As Dag Hammarskjöld said in defence of the UN: it would be silly to “blam[e] the storm on the ship.”⁵¹² It is not the UN’s fault that the world is a stormy place, but, it is stormy. Maybe that is why the world needs a UN, but also why it is often a “Mission Impossible.”

⁵⁰⁶ *Id.* (citing HUMAN SEC. CTR., *supra* note 503, at 153).

⁵⁰⁷ *Id.*

⁵⁰⁸ 444 Parl Deb HC (6th ser.) (1947) col. 206–207 (UK) (“No one pretends that democracy is perfect or all-wise. Indeed, it has been said that democracy is the worst form of Government except all those other forms that have been tried from time to time.”).

⁵⁰⁹ Robert O. Keohane, *International Institutions: Can Interdependence Work?*, 110 FOREIGN POL’Y 82–83 (Spring 1998).

⁵¹⁰ Christopher A. Preble, *The Most Dangerous World Ever?* 36 CATO POL’Y REP. (CATO Inst., Wash., D.C.), Sept.–Oct. 2014, at 1.

⁵¹¹ UNHCR, UNHCR MID-YEAR TRENDS 2015, at 3, https://s3.amazonaws.com/unhcr-sharedmedia/2015/2015-midyear-trends-report/2015-12-18_MYT_web.pdf (last visited Oct. 31, 2016).

⁵¹² Brian Urquhart, Former Under-Sec’y Gen. for Special Political Affairs, The Seventeenth Corbishly Memorial Lecture: The United Nations—Forward or Back (1993) (transcript available at <http://www.wpct.org/1993.htm>).