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Keeping the Faith: America and the UN after Iraq

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ABSTRACT

America's foreign policy appears to be in a shambles. Whatever Washington's reactions to the shock of Iraq will be in the upcoming years, the fate of the US will be connected to the fate of the international system and its institutionalised face, the UN. Through its eminence in the world, the US stands at the gravitational centre of transformation. Through its universal membership and wide-ranging competences, the UN is the natural forum for any such transformation to unfold – be it a move towards the rule of law in world affairs or a return to the geopolitics of the Cold War era. Looking at the various stages of the UN's history, I argue in this essay that the often heralded demise of the UN and its law, particularly the law governing the use of military force, is a product of misunderstanding of both the organisation's proper function and its ability to adapt to new circumstances. On the other hand, the UN is not yet its own master. The notion that it will outgrow the self-focused politics of its member states and prove itself as a true custodian of global public interests for now still remains beyond reach.

KEY WORDS

United Nations; United States of America; International Law; Constitutionalisation.

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America's foreign policy appears to be in a shambles. With civil war raging in Iraq, the stalemate in Afghanistan and the stranded diplomacy in North Korea, the limits to the nation's power have become painfully obvious. In Iraq, the US is unable to suppress violence and has long since lost the propaganda war on its legitimacy. In North Korea, the Bush administration has become a helpless witness to how one of the "axis of evil" members entered the club of nuclear powers, despite recurring signs of hope. Likewise, Iran's nuclear plans cannot be properly addressed as long as neighbouring Iraq is embroiled in sectarian violence. In the process of its recent overseas undertakings, the US has alienated the majority of its allies, and its prestige abroad has waned. It turns out that America's new posture in the world was too ambitious, its failure a product of tragic self-deception.

Whatever Washington's reactions to the shock of Iraq will be in the future, the fate of the US will be connected to the fate of the international system and its institutionalised face, the UN. Through its eminence in the world, the US stands at the gravitational centre of transformation. Through its universal membership and wide-ranging competences, the UN is the natural forum for any such transformation to unfold – be it a move towards the rule of law in world affairs or a return to the geopolitics of the Cold War era.

In this essay I argue that the often heralded demise of the UN and its law, and its central edifice, the law governing the use of military force (Glennon 2003), is a product of misunderstanding of both the organisation's proper function and its ability to adapt to new circumstances. On the other hand, the UN is not yet its own master. The notion that it will outgrow the self-focused politics of its Member States and prove itself as a true custodian of global public interests for now still remains beyond reach.

The UN as an Idea

For much of the twentieth century, a series of ordering ideas governed international affairs that are mainly power-oriented: sovereignty, territory, statehood, independence, war and coercion, hegemony and balance of power. Other ideas that are more value-oriented and commonplace in national systems have been largely absent: separation of powers, democracy, individual freedoms, monopoly of military force, judicial review, legitimacy, self-determination, and so, too, the rule of law. There is little doubt that the international system has been changing towards greater inclusiveness (Crawford 1994; McGrew 2004). For example, systematic human rights violations are no longer simply tolerated; democracy is gradually seen not as a privilege but as an entitlement; sovereignty as a shield against global public scrutiny is on the wane; military force, if still greatly beyond control, is no longer acceptable under all circumstances: the age of territorial conquest is over. But the question remains: how far has transformation progressed? And will it last? The UN, in reminiscence of Wilson's Fourteen Points and the grander visions of the enlightenment (Kennedy 2006), represents that transformative enterprise like no other global institution. Its role and its reaction to a changing America after September 2001 and Iraq is essential for all prospects of further transformation; and it is best understood by looking at the various stages of its history.

San Francisco, June 1945: Beyond Westphalia

At the end of World War II, with Germany defeated and Japan soon to surrender, 51 nations agreed to offer the world a vision of a new world order. Had the League of Nations and the Concert of Europe proven to be spectacular failures, the new UN Charter was meant to implement the lessons learnt, through great sacrifice and bitter tears, between 1939 and 1945. The US were the primary architects of the new world order (Schlesinger 2003).

As the core proposition, the use of armed force would be outlawed, to be replaced by a system of collective security. The UN, through its Security Council, would exercise the monopoly on force to repress aggressions that nations so easily had resorted to at the beginning of the century. Ideally, no state would ever again attack another; if it did, it would face the overwhelming and unified response given under the authority and com-

mand of the Council (Franck 2003). If the Charter's article 2(4) outlawing force was violated, the Security Council would formally determine a "threat to the peace, breach of the peace, or act of aggression" according to article 39 and take recourse to coercive measures, listed in Chapter VII, to make the wrongdoing state comply. For these purposes article 43 provided for the establishment of a standing army at the Council's disposal.

According to article 51, unilateral force would exclusively be permissible in self-defence, in the case of an armed attack from another state, and only until the Security Council itself acted to confront the aggressor state with compelling force. In the minds of the delegates in San Francisco, there could be no further exceptions. The "war to end all wars" had been fought to exhaustion, and the gravest danger to humankind was perceived to be the terrible cost of war itself. Nothing could justify war as a means to achieve benign purposes unless the Security Council, to decide in political terms, agreed. The Charter above all was a security arrangement, its credo the preservation of order. The delegates silently agreed that for the sake of stability and the preservation of peace, other goals of the UN needed to be compromised, if necessary.

The delegates at San Francisco made other important and pragmatic concessions. First, the Security Council would not rule by a simple system of representation of the General Assembly. Rather, Washington, Moscow, London, Paris and Taipei (later Beijing) would yield the absolute right to veto Security Council action if they saw fit. The Council would not be subject to any checks by other organs of the organisation or by individual countries. Its decisions would be final and the discretion of its members de facto unlimited. Second, states still jealously protected the prerogatives of sovereignty, where the UN was not supposed to interfere. Article 2(7) provided the legal safeguard to be invoked should the UN fail to heed its original call. The UN would be based on the nation-state concept. Departing from it was not deliberated. Thus while the Security Council was given supreme authority, the UN system simultaneously deferred to sovereignty and entitled individual states to use force in self-defence. Third, international law was neither endowed with a general avenue of enforcement nor a compulsory judicial machinery. The International Court of Justice was created to continue the successful

work of the Permanent Court of Justice, but its jurisdiction would still depend on the case-by-case consent of states and would not flow from the simple membership to the UN. Again sovereignty prevailed.

For a very large portion of its mandate, the UN depended entirely on the willingness of the Security Council members to exercise wise judgment and inhale life into the core edifice of collective security. This dependency particularly on the Big Five was a necessary concession for agreement in San Francisco, but very soon doomed the UN to play a niche role in security matters.

Cold War Paralysis

The events following San Francisco soon painfully revealed limitations and inadequacies. The facts are well known. The onset of the Cold War, bearing out the ideological struggle between the two superpowers, meant that the UN could not fulfil its promise. The bright commitments made to peaceful settlement and renunciation of war soon fell prey to the bitter enmity between Washington and Moscow, where both sides pursued a policy of strength. From Washington's perspective, there could be no other Munich failure. It was held by the likes of John Foster Dulles that the Soviet Union needed to be confronted early on, and that any signs of US weakness would be exploited mercilessly.

The overriding objective to win the Cold War could only mean that the UN, which relied on cooperation to replace confrontation, was sidelined. Implementing the plan for a standing UN army became entirely illusory. The UN could only operate where Cold War interests were not directly involved, for instance, to create the state of Israel or to defuse crises in Cyprus, the Congo, or Suez. Otherwise, the Security Council found itself frozen in deadlock as the Cold War cut a rift between the Big Five. Only in one instance, and then only due to a mistake by the Soviet Union, could the Security Council in resolution 82 stamp its seal of approval on a US-led mission to undo North Korea's invasion of the South in 1950.

Yet at the same time, the UN did not die. None of the members, most importantly neither the US nor the Soviet Union, decided to leave the UN in contempt for its perceived inadequacies. In fact, flexibility had set in this early in the UN's history. Namely for

Korea, the organisation had surmounted a number of formal obstacles; such as, that the Soviet absence was taken to imply no veto, and that North and South Korea, no UN members at the time, were independent states bound by the no-force principle enshrined in article 2(4) (Hoyt 1961). The US would not abandon the UN because it had a majority of the member states on its side. The Soviet Union learned that ignoring the Security Council was inviting the US to wield it as a Cold War weapon.

As a result of paralysis in the Security Council, international law on the use of force experienced a slow start. Chapter VII was caught in a deadlock. In the Cold War practice of intervention and counter-intervention, states increasingly began to invoke self-defence (article 51) and regional enforcement (Chapter VIII) of the Charter to justify force in violation of article 2(4) (Franck 2003). The failure of the UN to condemn and remedy abusive challenges to the Charter framework signalled that UN rules could be broken with impunity. Both superpowers were leading the way: Washington would subscribe to military force in Grenada, Panama, Nicaragua, Libya, Angola, Vietnam, Cambodia to fight communism, and the Soviet Union would do the same numerous times to defeat capitalism (Keylor 2001).

Not only was the law on force unprepared for Chapter VII deadlock, but it also was not designed to address the new realities of military strategy. In the eyes of the superpower rivals, article 51 of the Charter, stipulating that the right to self-defence existed only in the face of an armed attack, asked too much while offering too little (Franck 1970). First, the new-found availability of instant nuclear destruction made it all too clear that awaiting an armed attack was not a viable policy choice for any country faced with the imminent launching of atomic missiles. Furthermore, subversion, a common technique of countering influence among the superpowers, would not fit the wording of the self-defence clause. That clause was written with World War II-style military structures in mind, yet subversion would typically involve none of them. Finally, each side of the Cold War claimed the legality of its own actions while denouncing those of the other. The US hailed a right to intervene for peoples' "liberation", the Soviet Union as forcefully claimed a right to intervene for the defence of socialism. Both proposals were not only incongruent with article 2(4) of the UN Charter; they were also mutually exclusive.

Thus the plausibility of the UN's legal framework took a blow, and international law's claim to universality was severely impaired. Its failure to control the use of force was seen as symbolic for the inability of any rule to influence the behaviour of nations. Sovereignty (which traditionally included the right to use force) better reflected the gritty realities of the world.

Adaptation and Improvisation

However, the UN did not stand still. Although it required a majority of two thirds of UN members and the consent of each of the Big Five to amend the Charter, the UN devised a number of novel procedures and institutions without the need for a complete Charter overhaul.

First, the General Assembly was led to assume a role greater than originally intended. The Korean War, while being the first case of successful Security Council functioning, also provided the basis for the first adaptations of the UN security regime. Under the leadership of Secretary of State Dean Acheson, the US successfully introduced the "Uniting for Peace" resolution in the then US-dominated General Assembly. If the Security Council was blocked by a veto, seven of its members or a majority of the General Assembly could, notwithstanding article 12 of the Charter, decide on security matters and recommend action to be carried out by member states (Acheson 1969). The International Court of Justice in the "Certain Expenses" Advisory Opinion upheld the legality of the resolution and the implied flexibility of the Charter to change (ICJ 1962). The "Uniting for Peace" mechanism would be used a number of times later on. It was first fully tested and successfully applied in the 1956 Suez crisis. Israel had invaded the Sinai, and Britain and France were bombing Suez Canal cities to prepare for an expeditionary landing. Upon inaction in the Council, due to the French and British vetoes, the General Assembly quickly adopted a resolution calling for a ceasefire and later the deployment of a UN emergency force (UNEF) to secure the ceasefire (Meisler 1995).

Second, UNEF also provided the precedent for another dimension of UN activity: peacekeeping. The practice evolved whereby either the Security Council or the General Assembly would authorise the deployment of multinational peacekeepers to manage conflicts. UNEF led to an agreement on the basic principles underlying peacekeeping

operations: no participation of troops from countries with a geopolitical interest in the conflict; consent of the host states; neutrality between the conflicting parties; use of force only in self-defence or by special authorisation. Less than four years after the Suez crisis, the difficulties that would arise if these principles were compromised became painfully clear in the Congo in 1960. There, the Security Council initially authorised ONUC to assist the government in the chaotic aftermath of Belgian independence. But, it gradually authorised the use of force beyond self-defence to prevent civil war; namely, to end the secession of the province of Katanga and to expel foreign mercenaries. The war in the Congo, involving some five armies and two superpowers, steered out of the UN's control. But despite this setback, the UN retained the "blue helmets" as part of its toolkit. Although peacekeeping did not fit under any of the Charter's headings, states did not challenge its legality. "Chapter 6 1/2" had successfully introduced itself to the UN Charter.

During the Cold War, the US was eager to provide support to UN improvisation as long as it yielded strategic advantages. For Korea and Suez, the US took a positive stance since it had supreme influence in the General Assembly. However, it was uneasy about the increasing independence that Secretary Generals would assert for themselves. Personalities like Dag Hammarskjöld defied service to Washington. Decolonisation, which resulted in a new majority of developing countries in the General Assembly, also turned the apple sour for Washington in the 1970s and early 1980s. No longer was the UN a direct asset for America's showdown with the Soviet Union. This became evident in all the principal organs of the UN. In the Security Council, the US found itself defending its interventions in Panama, Nicaragua, Grenada or Libya against a Council majority. In 1975, the General Assembly produced its infamous "Zionism is racism" declaration. In 1986, the International Court of Justice condemned the Reagan administration for its support of the "Contras" in Nicaragua. Suddenly it seemed, the UN had turned against America. A sentiment resurfaced that had arisen ever since the US had lost its majority in the General Assembly: that the UN was poised to undo US power and influence (Helms 1996).

When the end of the Cold War arrived, it conversely seemed that it now was the US that could single-handedly reshape the UN. The burden of responsibility was seen to rest on Washington's shoulders. Now that the battle against communism was won and liberal democracy stood to spread unimpeded, it was thought that the UN could finally operate as its founders, and above all America as its principle sponsor and custodian, had intended. The US, it was believed, could make the original UN dream come true if it only wanted.

After the Cold War: Back to the Future

The immediate time after the Cold War promised just that. The UN launched successful peacekeeping operations in El Salvador and Namibia. In August of 1990, Iraq invaded Kuwait in a textbook example of aggression aiming at territorial conquest. Even though reliance on the right to collective self-defence would have sufficed to justify the use of force, US President George Bush Sr. decided to seek the blessing of the Security Council. In resolution 678, the Council gave full Chapter VII authorisation for the US, the UK, France, Saudi Arabia and two dozen other countries to collectively eject Iraq from Kuwait. Allied casualties fell short of even the most optimistic expectations.

For international lawyers and UN officials, the Persian Gulf War symbolised a promising new era. The Security Council had stood up to fend off wrongful aggression. It had also provided the glue that had held the coalition together, thus setting an important incentive to return to the UN in similar cases (Scheffer 1991). Imperfections remained. The Council did not command troops of its own but was (utilised for an ad hoc mission; it wielded no influence on operations on the ground; it set no time limit to member state action. But the fact of a functioning Security Council outshined these imperfections. So much that then Secretary General Boutros Boutros-Ghali, in his 1992 "Agenda for Peace", felt that a new world order indeed had come into reach (Boutros-Ghali 1992). The wheel of time had gone full circle to renew the hopes of 1945.

Out of the Cold War shadow, the UN stepped forward. First, the use of the veto in the Security Council went into steep decline. Most importantly, in sharp contrast to previous decades, the US made it a habit to seek Security Council authorisation if it contemplated the use of armed force (Voeten 2005). Second, the Security Council began send-

ing more troops on peacekeeping missions than in the previous decades combined. These would often play a major role in the settlement of long-standing conflicts that had been fuelled by the Cold War, such as in Afghanistan, Namibia, Angola, Mozambique and Cambodia (Gray 2004). Third, it dramatically expanded its responsibilities beyond strictly global security problems. The agreement evolved that the Security Council was entitled to act under Chapter VII even when the problem it contemplated was not really international. The threat of mass starvation in Somalia in 1992, for example, was as much a reason for the Council to intervene as was the protection of democracy in Haiti in 1994 (Zambelli 2002). Resolution 687 on the disarmament of Iraq showed how thoroughly the UN could dictate a non-compliant government and impose economic sanctions to make it obey. The new UN could legally do what states unilaterally could not, namely, to intervene in states' internal matters when there was consensus in the Security Council. On paper, the UN still paid tribute to the sovereign prerogatives of its members. But at the end of the 1990s, there was no question that in the event of regional suffering or injustice, the UN not only had the right but even the moral duty to interfere. Peace (and sovereignty) over justice, one of the key lessons of World War II, began to lose its persuasiveness as the security threats of the Cold War faded away (Atwood 2003-04).

However, there were also major setbacks. A chain of new and protracted conflicts demarcated the limits of what the rejuvenated UN could do. On the peacekeeping level, it experienced greatest difficulties in Bosnia, Somalia, and Rwanda to handle the operations on the ground and maintain a coherent political front. On the collective security level, it had to come to terms with the fact that the Security Council could still be divided. The UN would sharply disagree over the management of Iraq in the 1990s, and it stood as a bystander in NATO's bombing of Yugoslavia in 1999 and the US invasion of Iraq in 2003. The ideological battle between capitalism and communism was over, but a series of factors kept the UN low.

First, geopolitics still mattered. What optimistic policy makers misunderstood was that the US and the West would not invest troops and resources for humanitarian reasons as they had done for their own security. Thus when the conflict in Bosnia 1992 turned into

a war involving genocide and deserving international attention, governments around the world were reluctant to put own nationals in the line of fire (Power 2002). Then and in the years to follow, UN missions would be all too often under-funded, under-equipped, ill-coordinated, and lacking the necessary numbers to really make a difference on the ground. To make states act they first had to be convinced that establishing peace in faraway places was in their own national interest – a difficult undertaking. It could only be achieved sporadically, for instance, when NATO member states realized in 1999 that yet another mocking defiance from Belgrade would put a permanent end to NATO's credibility as a military alliance.

Second, civil wars in failed states were difficult to end. War torn countries could not be fixed over night. For example in Somalia, the UN mission to alleviate the famine was successful, but it did not address the issue of reconstructing the state once the UN was gone (Clarke & Herbst 1996). The Congo peacekeeping mission also had established how easily the UN could be drawn into conflicts (“mission creep”) and, in the eyes of warring factions, lose its image as an honest broker. The UN could not negotiate peace if it was seen as forcefully taking sides. At the same time, demonstrating impartiality was a double-edged sword. In Somalia, the failure to disarm the warlords made the UN appear to approve those who were armed best (Clarke & Herbst 1996). In Bosnia and Rwanda, the UN's policy of impartiality in effect meant that it did not stand up against the genocide of the Serbs and the Hutus. Thus while impartiality was pragmatic necessity in some cases, it was acquiescence of deep injustice in others. Striking the right balance was a haunting dilemma.

Third, the improvement of mass media coverage had its own unintended consequences. The “CNN effect” (Robinson 1999; Jakobsen 2000) at times compelled governments to act because of domestic outcries. But apart from leading to a somewhat arbitrary selection of war zones to receive attention, it also dramatically decreased the tolerance for peacekeeping casualties, a concern impressed upon US citizens already by the Vietnam war. The prospect of difficult missions thus could deter America from risking engagement. After the famous gunfight in Mogadishu in 1993, the US pulled out its troops from Somalia almost instantaneously. In Kosovo, too, the fear of a bloody ground inva-

sion made US policy makers hesitant. And in Rwanda, there would be no intervention at all, except for the evacuation of own nationals. For human rights activists, this revealed a sobering picture (Power 2002). Never before had information about the necessity of action been so accessible, yet the international community would not respond. If public pressure made inaction untenable, policy makers half-heartedly staged UN debates, shoving empty resolutions through the UN to calm the tides of domestic politics.

Fourth, on the collective security level, division within the Security Council was not over. In the early 1990s, Russia's objective was to retain its former status as a super-power as far as possible. It resented any forays of the UN in domestic affairs, fearing precedent that would expose its war in Chechnya to international pressure. China as well prioritised its concern over territorial integrity regarding Tibet and, most importantly, Taiwan. Both countries thus were uneasy with the tendency of the UN to let humanitarianism trump the right of states to be "left alone"; sovereignty as an ordering idea was on the wane, but it certainly was not dead yet. What is more, first cracks in the Gulf War consensus appeared when the US, the UK, and initially France unilaterally imposed no-fly zones in Iraq without the Council's explicit stamp of approval. When the use of force to protect Kosovo-Albanians came on the table, NATO decided to bypass the Council in anticipation of a Russian veto. The alliance claimed that it was simply enforcing UN resolutions, and that it had acted out of overriding humanitarian concerns. By invoking UN goals and principles but marching alone, the UN perhaps more than ever was implicitly accused of standing on the wrong side of the fence. That image would gain hold in America in the aftermath of 9/11.

9/11 and the US War on Terror

American foreign policy made a massive turn in response to the 9/11 attacks in New York and Washington, DC. From now on, the US would openly consider preventive war if it faced threats from abroad (USA 2002). It would bitterly fight against terrorists, and if necessary root out their influence in failed states and states in transition. It would also invigorate its stance against the proliferation of weapons of mass destruction.

As in its early history, the UN was quick to respond. It passed a resolution just after the attacks demonstrating solidarity with the US and affirming its right to react in self-

defence. The Security Council also started “legislating” by passing a Chapter VII resolution obliging countries in very specific terms how to freeze terrorist assets (Szasz 2002). A year later, the Council requested the Taliban in Afghanistan to extradite Osama Bin Laden, the presumed mastermind behind the 9/11 attacks, to the US. When American forces finally fought a war against Afghanistan, the UN took up the task of facilitating post-war reconstruction and helping to solidify the legitimacy of the newly elect Afghani president. In Iraq, too, the UN played its part. It passed resolution 1441 to make Baghdad have UN weapon inspectors resume their task, and it had previously upheld controversial sanctions to induce compliance. However, disagreement became all too visible when the inspectors seemingly brought no results and Washington publicly put regime change on its agenda. The story thereafter is well known. France and Germany spearheaded opposition in the Security Council, “compelling” the US and the UK to go to war without clear UN approval (Purdum 2003). As in Kosovo, the UN initially went along with the US but withheld final approval for the use of force.

A fundamental division surfaced that defines UN and US present-day relations. Through most of its history (the Vietnam War being the outlier), the US in its own eyes had fought wars worth fighting: the war of independence for self-determination, the civil war for the abolition of slavery, two world wars for the defeat of totalitarianism, and the war against communism. Americans could now not understand why European countries that it had liberated would block its initiative to root out Saddam Hussein’s despotic regime, a regime that time and again had proven its deceptive nature and posed a potential threat to US national security. To America’s opponents, the case of Iraq only confirmed US exceptionalism that would heed no call for restraint and obey only such rules that would bend to its supreme power. It had seemingly fought a war against Iraq for no good reason, and it had embarked on a hubris mission to export American values around the globe. The means of US foreign policy were cast into doubt, its aims met with even greater scepticism. The controversy over the International Criminal Court, but also the US shunning of a series of well-intended multilateral treaties tackling global problems, such as the Kyoto Protocol, the Biodiversity Convention or the Ottawa Mine Ban Convention, only illustrate this dialogue of the deaf. In stark contrast to the

early post-1945 years, the US appeared not as major sponsor but as major spoiler of initiatives to make the world a better place.

Elsewhere, pragmatism prevailed. In a peculiar division of labour, the US would determine the place and time for the next battle against terror, while the UN took up the stoic role of defying force but lending help for post-war reconstruction. International law on the use of force again faced new challenges. Had the fight against communism been the all-justifying aim throughout the Cold War, it was now the goal to hunt down the likes of Osama Bin Laden define America's crusade for the post-9/11 world. The inherent right to self-defence once again stood in highest esteem among US policymakers. Going to war, it seems, became increasingly acceptable and the political debate would now be waged over its justifications (Koskeniemi 2004).

Today however, US power has come under severe testing. The bitter experience of US entanglement in Iraq demonstrates, for better or for worse, that the world's greatest military force can be tied down by determined insurgents, making the monumental task of building a democratic state in Iraq – and even more ambitiously: of pacifying the Middle East – by now an impossible enterprise (Fearon 2007). What is more, America has not found any weapons of mass destruction in Iraq; vis-à-vis Iran, the US is already paying a steep price for this intelligence blunder. Not only has it flatly failed to export its liberal mission of democracy to Iraq, it has also tragically waged a war on false premises that now emboldens anti-Americanism and Islamic fundamentalism around the globe. As a result, the limits to what the US can do abroad and how it is viewed in the world have become shockingly apparent. This revelation will shape the way the UN and the US will work out their relationship in the years to come.

The Road Ahead: The Maintenance of Peace in the Year 20..

What, then, is in the cards for the UN in a post-9/11, post-Iraq world? The UN's history already gives ample reassurance that it will continue to have a role in sending peace-keeping missions to places like Haiti, help post-war reconstruction as in East Timor, and continue to promote welfare and justice through its many sub-organizations such as the WHO. The UN has demonstrated a remarkable ability to adapt to difficult circumstances. It has diversified its tasks and found a common platform for cooperation among

nations despite their obvious differences. Changes are ahead, but they will neither bring about the organisation's death nor make it outperform its previous record of compromise.

Perhaps clearly now, what defines the relationship between the UN and America is interdependence. Each can do what the other can't do and each need what the other can do. If history is any guide, the UN cannot survive without the most powerful state lending support to its chief aims. The League of Nations was bound to fail once the US decided to ignore it. Moreover, the US is not only the UN's most important financial contributor, but also, despite disagreement on means and purposes, its principal inspirer. The goals of the UN resonate as much in the US as they do elsewhere. From the American perspective, staying with the UN is of much greater value than opposing it. A UN without the US would only reconfirm American exceptionalism that is detrimental to its foreign policy aims, and throw the world back into previous stages of instability. Because it cannot effect change everywhere on its own, it too has to rely on the cooperation of other nations. These together have the ability to confer legitimacy on America's endeavours and soften antagonism. Thus already purely out of strategic reasons, the US can ill afford to pay the price of a UN withering away. The reconstruction of Iraq illustrates well just how much Washington now needs the UN and the Security Council – and will do so in the future. The UN and the US live in an odd relationship for sure, but everything else would be unusual. In Mark Twain's words, reports of the death of the UN are greatly exaggerated.

Death has also been proclaimed for international law, and UN Charter law in particular, where humanitarian intervention has seemingly chipped away the sacrosanct principle of sovereignty and the non-use of force (Glennon 2003). Indeed, non-intervention from a moral standpoint has become difficult to defend in absolute terms, its effect sometimes seen less as a guarantor for international order but as a misplaced shield against legitimate humanitarian concerns, such as in Kosovo. The right to self-defence has also drawn ever-expanding circles. Today, it is anti-terrorism that is purported as the all-encompassing moral and legal imperative. What is often forgotten, however, is that similar challenges to the law have occurred in the past, without the consequence of its

demise. The current US posture to the UN Charter law is remarkably similar to the one under Ronald Reagan in the 1990s. There, too, justifications for US interventions such as in Nicaragua or Libya were articulated in stark contrast to what UN law permitted. In the light of the past, the future does not look as dramatically gloomy as present observers sometimes suggest. The failure of the US in Iraq, perhaps more than anything, demonstrated that the UN Charter provisions on the use of force are still relevant because they are sound.

Conversely, it would also be wrong to think that progress in international law is straightforward, and that the spread of cosmopolitan ideas will simply continue. Too many differences among states exist, and it is only reasonable that the UN reflects these differences as they persist. With the US waning in relative power (Ikenberry 1996; Keohane 1984) and states such as China and India on the rise (Drezner 2007), new challenges and opportunities lie ahead in the quest for common values in the international system. Globalisation may do its part to bring the world together, but evidently the rifts among the constituent members of international society continue to matter. And reflecting those rifts, so will the UN and its law.

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