

OF PINPRICKS AND CANNON SHOTS: UN ARMS EMBARGOES AND  
PEACEKEEPING AS COERCIVE DISARMAMENT MEASURES

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ABSTRACT

*This Article challenges the traditional view of disarmament law that States must directly consent to disarmament measures. In particular, this Article focuses on the ways the Security Council can impose disarmament obligations through its Chapter VII arms embargoes that require all States to restrict target States' access to weapons and through its Chapter VII authorizations of robust peacekeeping activities that involve the forcible removal of arms from hostile elements within a State. Peacekeeping activities in Somalia, the DRC, and Sierra Leone are prime examples. Such coercive measures call for a reassessment of the foundation of this branch of international law.*

*Key words: International Law, Disarmament, Peacekeeping, Arms Embargoes.*

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## INTRODUCTION

The field of disarmament and arms control typically is seen as being governed by the direct consent of States. As the International Court of Justice declared in its 1986 Nicaragua decision:

[I]n international law there are no rules, other than such rules as may be accepted by the State concerned, by treaty or otherwise, whereby the level of armaments of a sovereign State can be limited, and this principle is valid for all States *without exception*.<sup>1</sup>

Many experts in this field take this notion a step further by giving the field a distinctly narrow scope involving *strictly* consensual agreements.<sup>2</sup> This Article explores some of the ways that disarmament and arms control obligations apply in a less consensual manner – with UN arms embargoes and with peacekeeping operations, both of which involve the Security Council using its binding and sanctioning powers to impose obligations on States and other actors in this area.

This Article is the second in a series of pieces on what has been referred to as “coercive disarmament,” or rather the imposition (with the threat of sanctions) of limits on arms where the target State or non-State actor has not expressly consented to those particular limitations.<sup>3</sup> The first piece focused on coercive disarmament of weapons of mass destruction by the UN Security Council. This piece focuses on coercive disarmament of conventional weapons more generally, although still with an emphasis on Security Council measures. Admittedly, UN member States can be seen as having consented to all Security Council actions through their original consent to the UN Charter when they became a member of the United Nations, which provides the Security Council open-ended authorization to adopt measures to maintain international peace and security, within certain limitations. However, consent to Security Council measures is not so clear

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<sup>1</sup> Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. US), Merits, Judgment, 1986 I.C.J. 14, ¶ 269 (June 27) [emphasis added].

<sup>2</sup> See, e.g., Guido den Dekker, *The Effectiveness of International Supervision in Arms Control Law*, 9 J. CONFLICT & SECURITY L. 315, 317 (2004); Erwin Dahinden, *The Future of Arms Control Law: Towards a New Regulatory Approach and New Regulatory Techniques*, 10 J. CONFLICT & SECURITY L. 263, 272 (2005); Göran Lysén, *The Adequacy of the Law of Treaties Regarding Arms Control Agreements*, in AVOIDANCE AND SETTLEMENT OF ARMS CONTROL DISPUTES 123, 123 (Julie Dahlitz, ed., 1994); GUIDO DEN DEKKER, *THE LAW OF ARMS CONTROL* 87, 100 (2001).

<sup>3</sup> See generally James D. Fry, *Dionysian Disarmament: Security Council WMD Coercive Disarmament Measures and Their Legal Implications*, 29 MICH. J. INT’L L. 197 (2009) (first establishing this general theme). Please refer to that article for an explanation of the notions of coercion and “coercive disarmament,” as well as related concepts.

when the target is not a UN member State. Moreover, where the target State or non-State actor has not expressly consented to the exact measures being imposed, the Security Council and the international community run the risk that those measures will not be wholeheartedly implemented, largely due to a perceived lack in legitimacy, thus frustrating the realization of the goals behind those measures. If target States and non-State actors are to wholeheartedly implement these measures, as opposed to becoming recalcitrant towards the Security Council's efforts, the Security Council ought to consider taking greater steps to secure the target's direct consent to the particular measures that limit their conventional arms. Indeed, coercion ought to be kept to a minimum with such sensitive matters in order to preserve States' trust in the international legal system and the United Nations. As Napoleon Bonaparte once said, "If they want peace, nations should avoid the pin-pricks that precede cannon shots." The same arguably applies to the Security Council when it comes to the way it interacts with States, with its perceived denigration of State sovereignty through coercive measures acting as the pin-pricks and the potential for rebellion from these target States as the potential cannot shots.

This Article is divided into four parts, with this brief introduction and an equally brief conclusion comprising Parts I and IV, respectively. Part II explores how UN arms embargoes under UN Charter Chapter VII involve a type of coercive disarmament. Part III explores how UN peacekeeping operations under UN Charter Chapter VII also involve a type of coercive disarmament. It must be recognized that coercion occasionally is used when limiting armaments, something that international adjudicative bodies and previous commentators have refused to recognize. In this regard, these two parts help fill a significant gap in the literature that the earlier piece in this series began to fill, thereby justifying this Article's existence.

## I. UN CHAPTER VII ARMS EMBARGOES

### *A. Arms Embargoes as Coercive Disarmament Measures*

To begin, there appears to be considerable disagreement among commentators regarding whether arms embargoes can be considered *coercive* measures. On one hand, some commentators occasionally see arms embargoes as coercive against the target State.<sup>4</sup> Indeed, on their face, arms embargoes form a part of the coercive measures available to the Security Council under its Chapter VII powers in trying to maintain international

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<sup>4</sup> See, e.g., Stephanie Bellier, *Unilateral and Multilateral Preventive Self-Defense*, 58 ME. L. REV. 507, 535 (2006) (coming to that conclusion with regard to the arms embargo against Yugoslavia in Resolution 1160).

peace and security.<sup>5</sup> Kirgis and other commentators, however, somewhat half-heartedly opine that an arms embargo might not be coercive of the target State because such measures are intended “simply to dampen the conflict.”<sup>6</sup> However, such embargoes do not necessarily dampen the conflict because existing weapons remain in the theatre, and the embargo merely prevents either side from *increasing* its arms from import, so such measures may simply maintain the status quo between the combatants. Therefore, such an embargo is unlikely to bring the warring parties to the negotiating table, at least without other forms of intervention.<sup>7</sup> In this sense, it is coercive not in the enforcement sense of the term, but rather in terms of creating obligations on all the other States to restrict their trade in arms. That said, States use a range of measures to enforce these embargoes, including naval quarantines (as seen with economic sanctions in intercepting items before they enter or leave the target), no fly zones (as seen in Iraq and Bosnia with regard to civilian and military planes), and the introduction of actual ground troops into or around the target State to ensure compliance,<sup>8</sup> all of which can individually or cumulatively rise to the level of coercion, depending on their level of effectiveness.

To be clear, this Article takes the position that it is the act of imposing obligations on States without their direct consent that gives these measures their coercive nature. With these preliminary matters in mind, the next section examines how the Security Council has imposed disarmament measures on all States in the form of arms embargoes.

### *B. Examples of Arms Embargoes as Coercive Disarmament Measures*

Arms embargoes are quite common in situations where the Security Council has imposed sanctions. In fact, whenever the Security Council has imposed sanctions on a State (some 17 times to date), it always has included

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<sup>5</sup> See Luis Mesa Delmonte, *Economic Sanctions, Iraq, and U.S. Foreign Policy*, 11 *TRANSNAT'L L. & CONTEMP. PROBS.* 345, 347 (2001).

<sup>6</sup> See, e.g., Frederic L. Kirgis, Book Review, *Exclusion from Participation in International Organisations: The Law and Practice Behind Member States' Expulsion and Suspension of Membership*, by Konstantinos D. Magliveras, 95 *AM. J. INT'L L.* 734, 735 (2001).

<sup>7</sup> See, e.g., Michael R. Fowler & Jessica Fryrear, *Collective Security and the Fighting in the Balkans*, 30 *N. KY. L. REV.* 299, 333 (2003) (discussing how the arms embargo in the Balkans in 1992 only prolonged the fighting); Harold Hongju Koh, *Democracy and Human Rights in the United States Foreign Policy?: Lessons from the Haitian Crisis*, 48 *SMU L. REV.* 189, 200 (1994) (same for Haiti).

<sup>8</sup> See Sean Murphy, *The Role of the United Nations with Respect to the Means for Accomplishing the Maintenance and Restoration of Peace*, 26 *GA. J. INT'L & COMP. L.* 115, 116-17 (1996) (discussing the range of peace enforcement activities, including the U.S. and UN efforts to disarm combatants in Somalia).

an arms embargo on the target State.<sup>9</sup> This Section reviews some of the more coercive arms embargoes and sanctions regimes that the Security Council has imposed, in terms of creating obligations on “all States” regardless of their UN membership.

The sanctions against Afghanistan and Sudan are unique in that their arms embargoes followed other, more general embargoes, whereas all of the others led with arms embargoes. With Afghanistan, the first sanctions on the Taliban dealt with travel and the freezing of assets, not the arms embargo that usually comes first in a sanctions regime.<sup>10</sup> The arms embargo came over a year later with Resolution 1333 providing “that all States shall: (a) Prevent the direct or indirect supply, sale and transfer to the territory of Afghanistan under Taliban control as designated by the Committee established pursuant to resolution 1267 (1999), hereinafter known as the Committee, by their nationals or from their territories, or using their flag vessels or aircraft, of arms and related materiel of all types including weapons and ammunition, military vehicles and equipment, paramilitary equipment, and spare parts for the aforementioned[,]” and the prohibition of nationals and advisers from assisting the Taliban.<sup>11</sup> Resolution 1390 expanded paragraph 5 of Resolution 1333 to cover “Usama bin Laden, members of the Al-Qaida organization and the Taliban and other individuals, groups, undertakings and entities associated with them . . . .”<sup>12</sup> In particular, paragraph 10 of Resolution 1333 required all States to prevent trade in the chemical acetic anhydride – an ingredient in certain military-grade explosives – “to any person in the territory of Afghanistan under Taliban control . . . .”

With Sudan, the sanctions began with a requirement that “all states limit the number of staff at Sudanese diplomatic missions and consular posts[,]” among other restrictions dealing with diplomacy.<sup>13</sup> The sanctions then moved to flight restrictions into and out of Sudan.<sup>14</sup> However, Resolution 1372 lifted these sanctions.<sup>15</sup> Eventually, Resolution 1556 created an arms embargo there, with the Security Council requiring “all states” to “take the necessary measures to prevent the sale or supply, to all non-governmental entities and individuals, including the Janjaweed, operating in the states of North Darfur, South Darfur and West Darfur, by their nationals or from their

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<sup>9</sup> The UN website dealing with the use of sanctions under Chapter VII was particularly helpful in preparing these last two points. See Use of Sanctions under Chapter VII of the UN Charter, Jan. 2006, at <http://www.un.org/sc/committees/> (last visited July 15, 2011).

<sup>10</sup> S.C. Res. 1267, ¶ 4, U.N. SCOR, U.N. Doc. S/RES/1267 (Oct. 15, 1999).

<sup>11</sup> S.C. Res. 1333, ¶ 5, U.N. SCOR, U.N. Doc. S/RES/1333 (Dec. 19, 2000).

<sup>12</sup> S.C. Res. 1390, ¶ 2, U.N. SCOR, U.N. Doc. S/RES/1390 (Jan. 16, 2002).

<sup>13</sup> S.C. Res. 1054, ¶ 3, U.N. Doc. S/RES/1054 (Apr. 26, 1996).

<sup>14</sup> S.C. Res. 1070, ¶ 3, U.N. Doc. S/RES/1070 (Aug. 16, 1996).

<sup>15</sup> S.C. Res. 1372, ¶ 1, U.N. Doc. S/RES/1372 (Sept. 28, 2001).

territories or using their flag vessels or aircraft, of arms and related materiel of all types, including weapons and ammunition, military vehicles and equipment, paramilitary equipment, and spare parts for the aforementioned, whether or not originating in their territories.”<sup>16</sup> The only other arms embargo to be imposed just on a portion of a country is with the Democratic Republic of the Congo (“DRC”), where Resolution 1493 created a partial embargo of the eastern portion of the DRC “to all foreign and Congolese armed groups and militias operating in the territory of North and South Kivu and of Ituri, and to groups not party to the Global and All-inclusive agreement, in the Democratic Republic of the Congo[.]”<sup>17</sup> Resolution 1596 extended the embargo to all of the DRC, and broadened the scope of the embargo to cover other items and services, so this embargo is different from the one with Sudan.<sup>18</sup>

The first resolution to provide for an arms embargo was against South Africa in Resolution 181 of 1963, which “[s]olemnly call[ed] upon all States to cease forthwith the sale and shipment of arms, ammunition of all types and military vehicles to South Africa[.]”<sup>19</sup> That is, it is a coercive arms embargo to the extent that the phrase “calls upon” creates an obligation on States.<sup>20</sup> In any case, however, Resolution 418 unambiguously reaffirmed the obligatory nature of the embargo, “[d]ecid[ing] that all States shall cease forthwith any provision to South Africa of arms and related *matériel* of all types, including the sale or transfer of weapons and ammunition, military vehicles and equipment, paramilitary police equipment, and spare parts for the aforementioned[.]”<sup>21</sup> This language essentially has become the standard format for establishing arms embargoes, with the arms embargoes for Sierra Leone,<sup>22</sup> Rwanda,<sup>23</sup> Côte d’Ivoire,<sup>24</sup> Ethiopia and Eritrea,<sup>25</sup> Libya,<sup>26</sup> Iraq,<sup>27</sup>

<sup>16</sup> S.C. Res. 1556, ¶ 7, U.N. Doc. S/RES/1556 (July 30, 2004).

<sup>17</sup> S.C. Res. 1493, ¶ 20, U.N. Doc. S/RES/1493 (July 28, 2003).

<sup>18</sup> S.C. Res. 1596, ¶ 1, U.N. Doc. S/RES/1596 (2005).

<sup>19</sup> S.C. Res. 181, ¶ 3, U.N. Doc. S/RES/181 (1963).

<sup>20</sup> See Fry, *supra* note 3, at 229-32 (discussing how “calls upon” creates obligations on States).

<sup>21</sup> S.C. Res. 418, ¶¶ 2-4, U.N. Doc. S/RES/418 (Nov. 4, 1977),.

<sup>22</sup> See S.C. Res. 1132, ¶ 6, U.N. Doc. S/RES/1132 (Oct. 8, 1997), (deciding “That all States shall prevent the sale or supply to Sierra Leone, by their nationals or from their territories, or using their flag vessels or aircraft, of petroleum and petroleum products and arms and related *matériel* of all types, including weapons and ammunition, military vehicles and equipment, paramilitary equipment and spare parts for the aforementioned, whether or not originating in their territory[.]”).

<sup>23</sup> See S.C. Res. 918, ¶ 13, U.N. Doc. S/RES/918 (May 17, 1994), (deciding “That all States shall prevent the sale or supply to Rwanda by their nationals or from their territories or using their flag vessels or aircraft of arms and related *matériel* of all types, including weapons and ammunition, military vehicles and equipment, paramilitary police equipment and spare parts[.]”).

Angola,<sup>28</sup> and Haiti<sup>29</sup> sharing similar language. The arms embargo on Iran started in 2006 with a focus on “Iran’s enrichment-related, reprocessing or heavy water-related activities, or to the development of nuclear weapon delivery systems . . . .”<sup>30</sup> Later resolutions focused on these same nuclear-related activities,<sup>31</sup> although the embargoed items were listed in a separate document from the resolution itself, suggesting a more elaborate sanctions regime than the ones in the past.<sup>32</sup>

Other language looks like that of the arms embargo against Yugoslavia that talks more of a “general and complete embargo on all deliveries of weapons and military equipment.” Resolution 713 decides “. . . under Chapter VII of the Charter of the United Nations, that all States shall, for the purposes of establishing peace and stability in Yugoslavia, immediately implement a general and complete embargo on all deliveries of weapons and military equipment to Yugoslavia . . . .”<sup>33</sup> Somewhat harsher situations during 1991 and 1992 seem to share this somewhat demanding language, such as with Somalia<sup>34</sup> and Liberia,<sup>35</sup> though the end effect would appear to

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<sup>24</sup> See S.C. Res. 1572, ¶ 7, U.N. Doc. S/RES/1572 (Nov. 15, 2004), (deciding “That all States shall, for a period of thirteen months from the date of adoption of this resolution, take the necessary measures to prevent the direct or indirect supply, sale or transfer to Côte d’Ivoire, from their territories or by their nationals, or using their flag vessels or aircraft, of arms or any related materiel, in particular military aircraft and equipment, whether or not originating in their territories, as well as the provision of any assistance, advice or training related to military activities[.]”).

<sup>25</sup> See S.C. Res. 1298, ¶ 6(a), U.N. Doc. S/RES/1298 (May 17, 2000), (deciding “That all States shall prevent: the sale or supply to Eritrea and Ethiopia, by their nationals or from their territories, or using their flag vessels or aircraft, of arms and related *matériel* of all types, including weapons and ammunition, military vehicles and equipment, paramilitary equipment and spare parts for the aforementioned, whether or not originating in their territory[.]”).

<sup>26</sup> See S.C. Res. 748, ¶ 5, U.N. Doc. S/RES/748 (Mar. 31, 1992), (deciding “That all States shall: (a) Prohibit any provision to Libya by their nationals or from their territory of arms and related materiel of all types, including the sale or transfer of weapons and ammunition, military vehicles and equipment, paramilitary police equipment and spare parts for the aforementioned, as well as the provision of any types of equipment, supplies and grants of licensing arrangements, for the manufacture or maintenance of the aforementioned[.]” as well as prohibited their nationals from assisting Libya with these).

<sup>27</sup> See S.C. Res. 661, ¶ 3(c), U.N. Doc. S/RES/661 (Aug. 6, 1990).

<sup>28</sup> See S.C. Res. 864, ¶ 19, U.N. Doc. S/RES/864 (Sept. 15, 1993).

<sup>29</sup> See S.C. Res. 841, ¶ 5, U.N. Doc. S/RES/841 (June 16, 1993).

<sup>30</sup> See S.C. Res. 1696, ¶ 5, U.N. Doc. S/RES/1696 (July 31, 2006).

<sup>31</sup> S.C. Res. 1737, ¶ 3, U.N. Doc. S/RES/1737 (Dec. 27, 2006).

<sup>32</sup> See *id.* ¶¶ 4-5.

<sup>33</sup> S.C. Res. 713, ¶ 6, U.N. Doc. S/RES/713 (Sept. 25, 1991).

<sup>34</sup> See S.C. Res. 733, ¶ 5, U.N. Doc. S/RES/733 (Jan. 23, 1992) (deciding “Under Chapter VII of the Charter of the United Nations, that all States shall, for the purposes of establishing peace and stability in Somalia, immediately implement a general and complete embargo on all deliveries of weapons and military equipment to Somalia until the Council

be the same.

Southern Rhodesia's arms embargo was another early one, with Resolution 232 requiring all UN member States to prevent "[a]ny activities by their nationals or in their territories which promote or are calculated to promote the sale or shipment to Southern Rhodesia of arms, ammunition of all types, military aircraft, military vehicles, and equipment and materials for the manufacture and maintenance of arms and ammunition in Southern Rhodesia[.]"<sup>36</sup> Resolution 253 established an all-encompassing embargo, which seems to have subsumed the arms embargo into it.<sup>37</sup> This is the only case where the Security Council did not impose an obligation on "all States" when establishing an arms embargo. All of the other examples, however, demonstrate an element of coercion inasmuch as the Security Council has imposed obligations on States without the need for their direct consent to those measures.

This Section reviewed how Security Council resolutions have imposed certain obligations on all States in a quasi-legislative manner. It is this imposition of obligations on States, even those that are not UN members, that gives these resolutions their coercive nature. The following Section discusses specifically whether the Security Council has the power to bind non-members to the United Nations.

### *C. Binding Non-Members of the United Nations*

This Section is a slight variation on the above Section's theme, with the main focus of both being how arms embargoes ostensibly apply to all States regardless of membership in the United Nations.

Recalling how Resolution 253 mentioned that it only applied to UN members, as discussed in the previous section, this specificity continued in a later resolution affirming this arms embargo,<sup>38</sup> though by 11 years later, the Security Council had shifted to using the phrase "all States" when it reiterated "its call to all States . . . to observe strictly the mandatory sanctions against Southern Rhodesia."<sup>39</sup> However, it moved again to

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decides otherwise[.]").

<sup>35</sup> See S.C. Res. 788, ¶ 8, U.N. Doc. S/RES/788 (Nov. 19, 1992) (deciding "Under Chapter VII of the Charter of the United Nations, that all States shall, for the purposes of establishing peace and stability in Liberia, immediately implement a general and complete embargo on all deliveries of weapons and military equipment to Liberia until the Council decides otherwise[.]").

<sup>36</sup> S.C. Res. 232, ¶ 2(d), U.N. Doc. S/RES/232 (Dec. 16, 1966).

<sup>37</sup> See S.C. Res. 253, ¶ 3, U.N. Doc. S/RES/253 (May 29, 1968). See also S.C. Res. 448, ¶ 3, U.N. Doc. S/RES/448 (Apr. 30, 1979) (calling all States to "observe strictly the mandatory sanctions against Southern Rhodesia").

<sup>38</sup> See S.C. Res. 253, ¶ 3, U.N. Doc. S/RES/253 (May 29, 1968).

<sup>39</sup> S.C. Res. 448, ¶ 3, U.N. Doc. S/RES/448 (Apr. 30, 1979).

referring to “Member States” when it terminated the sanctions in Resolution 460.<sup>40</sup> The rest of the resolutions use “all States.” It is unclear whether this is just short hand for “all Member States,” or whether these resolutions literally apply to “all States” regardless of membership to the United Nations.

There is a significant debate regarding whether the Security Council actually has the power to bind non-members to the United Nations. Those who say that non-members are not bound are just as unequivocal as those who say they are bound.<sup>41</sup> Charney seems to see Article 2(6) as creating an obligation on the Security Council’s members to “encourage nonmembers also to conform to such decisions.”<sup>42</sup> Szasz somewhat confusingly asserts in one sentence that non-members are not directly bound by the Charter, and then points to the UN’s Article 2(6) obligation to “ensure” all States abide by the Principles in Article 2 “so far as may be necessary for the maintenance of international peace and security” before continuing to conclude that the “potentially binding nature [of Security Council decisions on non-members] is clearest when taken under Charter Chapter VII . . . .”<sup>43</sup>

All of these arms embargoes are expressly established by Chapter VII decisions. Moreover, although the Security Council does not always use the phrase “all States” in these resolutions, its use is sufficiently regular to conclude that it means what it says.<sup>44</sup> Obviously, non-member States will be bound to the content of Security Council resolutions inasmuch as they contain customary norms of international law,<sup>45</sup> though it actually would be the customary norm and not the resolution to which they are bound. In addition, the face of Article 2(6) would appear to create an obligation on the United Nations and not necessarily a right to act against non-members. Finally, one must not forget that the whole idea of the United Nations

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<sup>40</sup> See S.C. Res. 460, ¶ 2, U.N. Doc. S/RES/460 (Dec. 21, 1979).

<sup>41</sup> Compare Susan S. Gibson, *International Economic Sanctions: The Importance of Government Structures*, 13 EMORY INT’L L. REV. 161, 233 (1999) (“For example, because Switzerland is not a member of the United Nations, Security Council are not binding on the Swiss government.”), with Pemmaraju Sreenivasa Rao, *Multiple International Judicial Forums: A Reflection of the Growing Strength of International Law or Its Fragmentation?*, 25 MICH. J. INT’L L. 929, 949 (2004), and Sompong Sucharitkul, *Jurisdiction, Terrorism and the Rule of International Law*, 32 GOLDEN GATE U.L. REV. 311, 320 (2002).

<sup>42</sup> See Jonathan I. Charney, *Universal International Law*, 87 AM. J. INT’L L. 529, 544 n. 61 (1993).

<sup>43</sup> Paul C. Szasz, *The Security Council Starts Legislating*, 96 AM. J. INT’L L. 901, 901 (2002).

<sup>44</sup> See *Id.* (acknowledging that for decades the Security Council routinely addressed resolutions to “all States”).

<sup>45</sup> See Michael Shane French-Merrill, *The Role of the United Nations and Recognition in Sovereignty Determinations: How Australia Breached its International Obligations in Ratifying the Timor Gap Treaty*, 8 CARDOZO J. INT’L & COMP. L. 285, 311 (2000).

system was born out of a small group of States working together to put structure to the entire world without necessarily soliciting the input of the entire world. On a practical level, it would seem bizarre if the Security Council could legally take collective action against non-members, such as the actions taken against Korea in the 1950s and Southern Rhodesia in the 1960s, but not be allowed to create comparatively minor obligations on such States.

As further support for the conclusion that the Security Council can bind non-members, several arms embargo resolutions, where the initial establishment of the embargo is binding on “all States,” expressly includes non-members. For example, in Resolution 918 that established an arms embargo against Rwanda, the initial establishment of the embargo said “all States,” though two paragraphs later, the same resolution called upon all States, “including States not Members of the United Nations . . . .”<sup>46</sup> The Security Council did the same with Resolution 661 following Iraq’s invasion of Kuwait.<sup>47</sup> While it is unclear whether the absence of such language could mean that the resolution only applies to members, this interpretation would strip “all States” of its ordinary meaning, and ought to be rejected.

This Part looked at the various arms embargoes that the Security Council has imposed and the ways that the Security Council has created obligations on all States without them necessarily giving their direct consent to the measures being imposed. These examples undermine the assertion that disarmament measures can only be consensual. The following Part looks at how the Security Council often authorizes peacekeeping forces to use force to disarm combatants, which represents the second form of coercive disarmament measures discussed in this Paper.

## II. AUTHORIZING PEACEKEEPERS TO ADOPT COERCIVE DISARMAMENT MEASURES

Disarmament has been a part of peacekeeping since the beginning. In 1964, Bowett saw disarmament as one of the different functions of peacekeeping.<sup>48</sup> Nearly three decades later, disarmament still was seen as a main peacekeeping activity by Schachter.<sup>49</sup> However, it was Boutros

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<sup>46</sup> S.C. Res. 918, ¶ 15, U.N. Doc. S/RES/918 (May 17, 1994).

<sup>47</sup> S.C. Res. 661, ¶ 5, U.N. Doc. S/RES/661 (Aug. 6, 1990) (“Calls upon all States, including States non-members of the United Nations, to act strictly in accordance with the provisions of the present resolution notwithstanding any contract entered into or licence granted before the date of the present resolution[.]”).

<sup>48</sup> See D.W. BOWETT, UNITED NATIONS FORCES: A LEGAL STUDY 268-74 (1964).

<sup>49</sup> See Oscar Schachter, *Authorized Uses of Force by the United Nations and Regional Organizations*, in LAW AND FORCE IN THE NEW INTERNATIONAL ORDER 65, 80 (Lori Fisler Damrosch & David J. Scheffer eds., 1991).

Boutros-Ghali who emphasized the role of disarmament specifically in UN peacekeeping operations in his report, “An Agenda for Peace.”<sup>50</sup> When it comes to disarmament, peacekeeping operations typically have filled a non-coercive role, such as ceasefire agreements that require the collection of voluntarily surrendered weapons or the guarding of those weapons.<sup>51</sup> While the actual classification of these types of activities might be more in the realm of peace building,<sup>52</sup> this Part focuses on disarmament measures that are more of the peace-enforcement type. Ocran defines “peace enforcement” as “enforcement measures taken under Chapter VII of the UN Charter, involving the explicit use of force to pursue an agreed end, such as the Gulf War of 1990/91.”<sup>53</sup> This Part looks at whether such disarmament measures have coercive aspects to them.

For one, the UN Department of Peacekeeping Operations’ principles and guidelines for disarmament, demobilization and reintegration (DDR) of ex-combatants explains on numerous occasions the ability of peacekeepers to use coercion to disarm targets (under certain circumstances), ranging from quasi-consensual “pressure” (i.e., inferences of an ability to coerce disarmament) to the express ability to use military coercion (though still with a modicum of consent):

“The peace agreement also should authorize a third party, such as the United Nations . . . , to monitor that provisions on [DDR] are being honoured in full by all parties [which] could *enlist international support to put pressure on a party that is reluctant to disarm . . .*”<sup>54</sup>

“Every effort must be made to enforce United Nations-mandated arms embargoes.”<sup>55</sup>

“Even where the parties themselves may be committed to the peace process, experience has demonstrated that there may be situations where the entire disarmament process may be jeopardized by the non-cooperation of a

<sup>50</sup> See U.N. Secretary-General, *An Agenda for Peace: Preventative Diplomacy, Peacemaking and Peace-Keeping: Rep. of the Secretary-General*, ¶ 32, U.N. Doc. A/47/277-S/24111 (June 17, 1992).

<sup>51</sup> See Michael W. Doyle, *War Making and Peace Making: The United Nations' Post-Cold War Record*, in *TURBULENT PEACE: THE CHALLENGES OF MANAGING INTERNATIONAL CONFLICT* 529, 532-33 (Chester A. Crocker et al. eds., 2001); Colum Lynch, *Britain to Lead Peacekeeping Force*, WASH. POST, Dec. 20, 2001, at A33 (talking about how the UN forces in Afghanistan are going to supervise the disarmament of the combatants).

<sup>52</sup> See T. Modibo Ocran, *The Doctrine of Humanitarian Intervention in Light of Robust Peacekeeping*, 25 B.C. INT'L & COMP. L. REV. 1, 2 (2002) (citing Boutros Boutros-Ghali, *Building Peace and Development-1994: Annual Report on the Work of the Organization* at 246-47 (1994)).

<sup>53</sup> See Ocran, *supra* note 53, at 197.

<sup>54</sup> UNDPKO, *Disarmament, Demobilization and Reintegration of Ex/Combatants in a Peacekeeping Environment: Principles and Guidelines*, Dec. 1999, ¶ 25.

<sup>55</sup> *Id.* ¶ 57.

small number of military units operating outside the control of any of the parties. In such situations, forcible disarmament may be the only reasonable course and it is essential, therefore, that the planning process include specific procedures to this end. In short, it must be made absolutely clear to the parties in the negotiating process that a serious disarmament plan must include a coercive element, albeit to be used only in very specific circumstances.”<sup>56</sup>

Moreover, Security Council resolutions occasionally have granted coercive disarmament powers to certain UN peacekeeping forces to assist their efforts to accomplish a particular mission – for example, demilitarizing a given area – even though such coercive activities may conflict with the more traditional aspects of that same peacekeeping operation, such as humanitarian assistance.<sup>57</sup> This possibility is expressly noted in the UNDPKO’s General Guidelines for Peacekeeping Operations: “While peacekeeping is incompatible with enforcement, in exceptional circumstances a United Nations operation may be mandated by the Security Council to carry out, concurrently, aspects of both in a single mission area.”<sup>58</sup> The following sections discuss a few instances where the Security Council has provided such a mandate.

Before discussing those mandates, however, it is important to note how sometimes the media harshly criticizes certain UN peacekeeping operations (e.g., MONUA) for putting more emphasis on political aspects of a ceasefire agreement than on the disarmament aspects, with this emphasis presumably leading to a quick return of armed conflict once the political process breaks down.<sup>59</sup> This problem can be avoided if the peacekeeping force has a stronger mandate with regard to disarmament. Out of the 15 current and 48 completed UN peacekeeping operations and observer missions listed on the DPKO’s website, the Security Council seems to have expressly authorized force to disarm combatants in Somalia, the DRC, Sierra Leone. It would appear that the responsibilities of these peacekeeping forces with regard to disarmament were limited in their mandates to supervising the collection, destruction and storage of weapons given up to them voluntarily. In some of these cases, the peacekeeping forces have been allowed to use coercive measures as self-defense if combatants were to attempt to disarm UN forces.

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<sup>56</sup> *Id.* ¶ 128.

<sup>57</sup> See David M. Morriss, *From War to Peace: A Study of Cease-Fire Agreements and the Evolving Role of the United Nations*, 36 VA. J. INT’L L. 801, 907 (1996).

<sup>58</sup> UNDPKO, General Guidelines for Peacekeeping Operations, ¶ 34, available at [http://www.un.org/depts/dpko/training/tes\\_publications/books/peacekeeping\\_training/genguid\\_e\\_en.pdf](http://www.un.org/depts/dpko/training/tes_publications/books/peacekeeping_training/genguid_e_en.pdf) (last visited Oct. 1, 2010).

<sup>59</sup> See Augusta Conchiglia, *The Opposition Cannot Be Disarmed: United Nations Fails in Angola*, LE MONDE DIPLOMATIQUE, July 1999, available at <http://mondediplo.com/1999/07/11angola>.

For example, the Secretary-General authorized the use of force for the UN Peacekeeping Force in Cyprus (UNFICYP) in 1964 only in self-defense, and provided that force might be used in cases such as when the attackers make “[a]ttempts by force to disarm them[.]”<sup>60</sup> This conceivably would be the case with all the other peacekeeping operations as well. However, the following three sections look at the cases where a peacekeeping force has been authorized to use force to disarm combatants, either expressly or implicitly.

Despite clear language authorizing the use of force, the ICJ may find that a peacekeeping operation does not have any power to take military actions. Indeed, this is how the ICJ ruled in the *Certain Expenses* advisory opinion with regard to the United Nations Mission in the Congo (ONUC) despite the clear language of Resolution 161 that authorized ONUC to use “all appropriate measures to prevent the occurrence of civil war in the Congo,” which would also include “the use of force, as a last resort, if necessary.”<sup>61</sup> Admittedly, the Security Council used the word “urges” as a prepositional indicator, thus making it possible to argue that this was not a binding Security Council decision under UN Charter Article 25. Still, it is hard to imagine that the Court would repeat such an arbitrary approach to interpretation that runs contrary to the letter of the Security Council resolution, especially in light of the predominant weight Security Council resolutions have been given over conflicting treaty obligations with the ICJ’s *Lockerbie* case.<sup>62</sup>

#### *A. Somalia and UNOSOM*

Of the three missions with quasi-coercive aspects, the clearest example is with UNOSOM in Somalia. In 1992, three months after establishing the arms embargo in Somalia, the Security Council established the first United Nations Operation in Somalia (UNOSOM) with Resolution 751, along with a sanctions committee.<sup>63</sup> Resolution 775 increased the size of UNOSOM by 3,500.<sup>64</sup> While this force started as a traditional peacekeeping operation of the neutral variety, it eventually shifted to a peace enforcement operation

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<sup>60</sup> U.N. Secretary-General, Note by the Secretary-General, ¶ 18(b), U.N. SCOR, U.N. Doc. S/5653 (1964).

<sup>61</sup> *Certain Expenses of the United Nations*, Advisory Opinion, 1962 I.C.J. Rep. 177 (July 20); S.C. Res. 161, ¶ 1, U.N. Doc. S/RES/161 (Feb. 21, 1961). See also Alexander Orakhelashvili, *The Legal Basis of the United Nations Peace-Keeping Operations*, 43 VA. J. INT’L L. 485, 521-22 (2003) (making this same point).

<sup>62</sup> See *Questions of Interpretation and Application of 1971 Montreal Convention Arising from Aerial Incident at Lockerbie (Libya v. U.S.)* 1992 ICJ REP. 114, 124 (Apr. 14).

<sup>63</sup> See S.C. Res. 751, ¶¶ 2, 11, U.N. Doc. S/RES/751 (Apr. 24, 1992).

<sup>64</sup> See S.C. Res. 775, ¶¶ 3, 5, U.N. Doc. S/RES/775 (Aug. 28, 1992).

that could use force in fulfilling its mandate.<sup>65</sup> Interestingly, in Resolution 794, the Security Council decided that UNOSOM would “proceed at the discretion of the Secretary-General in the light of his assessment of conditions on the ground[,]”<sup>66</sup> thus essentially giving the Secretary-General *carte blanche* in modifying the mandate of UNOSOM. Moreover, Resolution 794 authorized the “Secretary-General and Member States cooperating to implement [a plan of a certain Member State] to use all necessary means to establish as soon as possible a secure environment for humanitarian relief operations in Somalia[.]”<sup>67</sup> Such language conceivably would include forcible disarmament of combatants.

Ultimately, this operation expressly involved the forcible disarmament of combatants. Shortly after Resolution 794’s adoption, the Secretary-General stated in a report that UNOSOM and the Unified Task Force (UNITAF ) in Somalia would be allowed to use force to disarm combatants. From the beginning of his discussion of UNOSOM’s “new mandate,” the Secretary-General expressed his “firm view . . . [that] the mandate of UNOSOM II must cover the whole territory of Somalia and include disarmament.”<sup>68</sup> The Secretary-General not only gave UNOSOM the mandate to “seize the small arms of all unauthorized armed elements and to assist in the registration and security of such arms[,]”<sup>69</sup> but also later stated in his 1993 report:

To be effective the disarmament process should be enforceable. Those factions or personnel who fail to comply with timetables or other modalities of the process would have their weapons and equipment confiscated and/or destroyed.<sup>70</sup>

The Security Council expressly incorporated this report of the Secretary-General into UNOSOM II’s mandate with Resolution 814 in deciding “to expand the size of the UNOSOM force and its mandate in accordance with the recommendations contained in paragraphs 56-88 of the report of the Secretary-General of 3 March 1993, and the provisions of this resolution[.]”<sup>71</sup> Such indirect authorization to use force to disarm combatants is not the same as “*specific orders* to ‘use all force necessary to

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<sup>65</sup> See Winston A. Tubman, *The Role of the United Nations with Respect to the Means for Accomplishing the Maintenance and Restoration of Peace*, 26 GA. J. INT’L & COMP. L. 101, 104 (1996).

<sup>66</sup> S.C. Res. 794, U.N. Doc. S/RES/794 (Dec. 3, 1992), ¶ 6.

<sup>67</sup> *Id.* ¶¶ 8, 10.

<sup>68</sup> U.N. Secretary-General, *Further Report of the Secretary-General Submitted in Pursuance of Paragraphs 18 and 19 of Resolution 794*, ¶ 57, U.N. Doc. S/25354 (Mar. 3, 1993).

<sup>69</sup> *Id.* ¶ 57(d).

<sup>70</sup> *Id.* ¶ 63.

<sup>71</sup> S.C. Res. 814, ¶ 5, U.N. Doc. S/RES/814 (Mar. 26, 1993).

accomplish its mission' (of disarming the people and feeding the starving)," as one commentator has asserted.<sup>72</sup> Still, it was an authorization, although indirect, for UNOSOM II to use force to disarm combatants.<sup>73</sup> This is confirmed in Resolution 837, where paragraph 5 "[r]eaffirms that the Secretary-General is authorized under resolution 814 (1993) to take all necessary measures against all those responsible for the armed attacks [on UNOSOM II on 5 June 1993], including against those responsible for publicly inciting such attacks, to establish the effective authority of UNOSOM II throughout Somalia, including to secure the investigation of their actions and their arrest and detention for prosecution, trial and punishment[.]"<sup>74</sup> In particular, it is this authorization to "take all necessary measures," which conceivably includes the use of force in disarmament these combatants, that gives these measures their coercive nature in relation to disarmament. Such forceful disarmament continued – even though conflicts arose between UNOSOM II and combatants as a direct result of these measures – until February 1994, when the Security Council changed the mandate through Resolution 897 so that only non-coercive measures could be used.<sup>75</sup>

#### *B. DRC and MONUC*

With regard to the DRC, the United Nations Mission in the Democratic Republic of Congo (MONUC, by its French acronym) was established by Resolution 1279 in 1999 to help with peacekeeping after the Second Congo War.<sup>76</sup> Initially, MONUC primarily had a soft mandate including liaising and providing information.<sup>77</sup> However, it did not take much time for its mandate to become more coercive. Resolution 1291 of 2000 provided that MONUC could "take the necessary action to protect UN and other personnel, facilities, ensure security and freedom of movement of its personnel and protect civilians under imminent threat of physical violence."<sup>78</sup> This conceivably could include coercive disarmament. Resolution 1493 of 2003 expanded MONUC's mandate to include helping the Government of National Unity and Transition to disarm the Congolese

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<sup>72</sup> Christina M. Cerna, Book Review, 87 AM. J. INT'L L. 471, 472 (1993) (reviewing BRUNO SIMMA, CHARTA DER VEREINTEN NATIONEN: KOMMENTAR (1991)).

<sup>73</sup> UNOSOM II used force in trying to disarm Somalia factions, and was attacked in return. See HILAIRE MCCOUBREY & NIGEL D. WHITE, BLUE HELMETS: LEGAL REGULATION OF UNITED NATIONS MILITARY OPERATIONS 102 (1996).

<sup>74</sup> S.C. Res. 837, ¶ 5, U.N. Doc. S/RES/837 (June 6, 1993).

<sup>75</sup> See MCCOUBREY & WHITE, *supra* note 73, at 101-02 (citing Resolution 897).

<sup>76</sup> See S.C. Res. 1279, ¶ 4, U.N. Doc. S/RES/1279 (Nov. 30, 1999).

<sup>77</sup> *Id.*

<sup>78</sup> S.C. Res. 1291, ¶ 8, U.N. Doc. S/RES/1291 (Feb. 24, 2000).

combatants who may “voluntarily decide to enter” the Disarmament, Demobilization and Reintegration (DDR) program; to “contribute to the improvement of the security conditions in which humanitarian assistance is provided”; and to “use all necessary means to fulfil its mandate in the Ituri district and, as it deems it within its capabilities, in North and South Kivu[.]”<sup>79</sup> Although the first portion of Resolution 1493 states that MONUC could not take coercive measures with regard to disarmament, the rest could be read in such a way so as to provide it with the authority to use coercive measures to disarm people if such were needed to improve the security conditions there, on account of the language “use all necessary means . . . .”

Just over a year and a half later, the Security Council extended, through Resolution 1565 of 2004, MONUC’s mandate to “use all necessary means” to “support operations to disarm foreign combatants lead by the Armed Forces of the [DRC]” and to “contribute to the disarmament portion of the national programme of [DDR] of Congolese combatants and their dependants . . . .”<sup>80</sup> In the end, MONUC peacekeepers in the DRC forcibly disarmed the militia groups,<sup>81</sup> though it is unclear whether they acted in protecting themselves, in protecting civilians, or in disarming the militia groups to “ensure security.”

### C. Sierra Leone and UNAMSIL

With regard to Sierra Leone, Resolution 1270 of 1999 established the United Nations Mission in Sierra Leone (UNAMSIL).<sup>82</sup> Its initial functions were to assist the Government of Sierra Leone with implementing the DDR plan, and to ensure the security and freedom of movement of UN personnel.<sup>83</sup> In addition, Resolution 1270 further authorized UNAMSIL to “take the necessary action to ensure the security and freedom of movement of its personnel and, within its capabilities and areas of deployment, to afford protection to civilians under imminent threat of physical violence . . . .”<sup>84</sup> Just over three months later with Resolution 1289, the Security Council extended UNAMSIL’s authorization to “take necessary action” in providing security at certain points, facilitating the free flow of people, providing security around sites of the DDR program, coordinating with local law enforcement, and guarding weapons from the DDR program,

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<sup>79</sup> S.C. Res. 1493, ¶¶ 25-26, U.N. Doc. S/RES/1493 (July 28, 2003).

<sup>80</sup> S.C. Res. 1565, ¶¶ 5-6, U.N. Doc. S/RES/1565 (Oct. 1, 2004).

<sup>81</sup> See Marc Lacey, *Militia Fighters Kill 9 U.N. Peacekeepers in Congo as Instability Continues*, N.Y. TIMES, Feb. 26, 2005, at A6.

<sup>82</sup> See S.C. Res. 1270, ¶ 8, U.N. Doc. S/RES/1270 (Oct. 22, 1999).

<sup>83</sup> See *id.*

<sup>84</sup> *Id.* ¶ 14.

along with the earlier authorization.<sup>85</sup> In one confrontation, UNAMSIL tried to forcibly disarm combatants in the diamond-mining areas, though they were unsuccessful.<sup>86</sup> Such forcible efforts at disarmament, regardless of their success, are prime examples of the type of *coercive* disarmament that this Article discusses.

#### *D. Cease-fire Agreements and Consent to Forcible Disarmament*

An interesting question arises as to whether the ceasefire agreements that preceded many of these peacekeeping operations authorized the peacekeeping operation to engage in coercive disarmament measures, thus making such measures consensual from the standpoint of the State. In two of these cases, the ceasefire agreement did not appear to authorize coercive disarmament measures. For Somalia, the Addis Ababa Agreements of March 27, 1993, directs UNOSOM/UNITAF to “assist [the parties’] efforts to achieve a substantial completion of the disarmament within 90 days[.]”<sup>87</sup> though this falls short of an authorization to use force in disarming recalcitrant combatants. For Sierra Leone, the Lomé Accord stated that a “neutral peace keeping force comprising UNOMSIL and [the Economic Community of West African States Monitoring Group] shall disarm all combatants . . .,”<sup>88</sup> though UNOMSIL’s real role actually seems to have been limited in that very agreement to “monitor[ing] the process and provid[ing] security guarantees to all ex-combatants[.]”<sup>89</sup> The phrase “shall disarm” in the earlier paragraph does not appear to authorize the peacekeeping operations to “take all necessary means” or similar language enabling the use of force.

The Lusaka Ceasefire Agreement in the DRC, however, is considerably different from the provisions just discussed, with paragraph 8(2)(2)(a) of Annex A to the Agreement expressly providing the UN force with the role of “tracking down and disarming Armed Groups[.]” with portion (e) of that same paragraph stating that its role was also “[w]orking out such measures (persuasive or *coercive*) as are appropriate for the attainment of the

<sup>85</sup> S.C. Res. 1289, ¶ 10, U.N. Doc. S/RES/1289 (Feb. 7, 2000).

<sup>86</sup> See Amanda Bryant Banat, *Solving the Problem of Conflict Diamonds in Sierra Leone: Proposed Market Theories and International Legal Requirements for Certification of Origin*, 19 ARIZ. J. INT’L & COMP. L. 939, 941 (2002).

<sup>87</sup> Addis Ababa Agreement concluded at the First Session of the Conference on National Reconciliation in Somalia, art. I, ¶ 3, Mar. 27, 1993, [http://www.usip.org/files/file/resources/collections/peace\\_agreements/somalia\\_03271993.pdf](http://www.usip.org/files/file/resources/collections/peace_agreements/somalia_03271993.pdf) (last visited July 16, 2011).

<sup>88</sup> Peace Agreement Between the Government of Sierra Leone and the Rebel United Front of Sierra Leone (Lomé Accord), art. XVI, ¶ 1, July 7, 1999, <http://www.sierra-leone.org/lomeaccord.html> (last visited July 16, 2011).

<sup>89</sup> *Id.* at art. XVI(3).

objectives of disarming, assembling, repatriation and reintegration into society of members of the Armed Groups.”<sup>90</sup> However, the measures the UN force ultimately took were coercive in nature, even though the Lusaka Ceasefire Agreement can be read as authorizing such measures, because of the military force that the UN force actually used. Therefore, critics are unable to claim in at least two of the three examples provided in this Section that the State had consented to these forcible measures through ceasefire agreements.

#### CONCLUSION

This Article has looked at two ways that the Security Council imposes disarmament obligations on States. Both represent situations where there are defects in the consent of the target or affected States, which gives these activities their coercive nature. Granted, in certain cases, an indirect version of consent might be found in the State’s original consent to the UN Charter, which provides the Security Council with open-ended authorization to take whatever measures it deems appropriate in maintaining international peace and security, within the limits provided in UN Charter Article 24(2). Assuming *arguendo* that this point were to apply, indirect consent still cannot apply with non-members of the United Nations, which have not provided their express consent to the UN Charter and thus cannot be bound by Security Council authorizations. Therefore, the imposition of certain disarmament obligations are problematic at least in theory, if not in practice.

Admittedly, the Reparations ICJ case established the doctrine of implied powers in enabling international organizations and their organs to evolve in the name of functional necessity.<sup>91</sup> The concept of functional necessity has lent the United Nations invaluable flexibility to evolve to meet new challenges.<sup>92</sup> The ICJ has developed this doctrine over the years in subsequent cases,<sup>93</sup> and the Security Council has taken full advantage of this flexibility when expanding its reach and the definition of “international peace and security.” Indeed, in arguing that the Security Council has

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<sup>90</sup> Lusaka Ceasefire Agreement, [http://www.usip.org/library/pa/drc/drc\\_07101999.html#ch9](http://www.usip.org/library/pa/drc/drc_07101999.html#ch9) (last visited July 16, 2011) (emphasis added).

<sup>91</sup> See Reparations for Injuries Suffered in the Service of the United Nations, Advisory Opinion, 1949 I.C.J. REP. 174, 178-79 (April 11).

<sup>92</sup> See Karsten Nowrot, *Legal Consequences of Globalization: The Status of Non-Governmental Organizations Under International Law*, 6 IND. J. GLOBAL LEG. STUD. 579, 613 (1999).

<sup>93</sup> See, e.g., Competence of the General Assembly for the Admission of a state to the United Nations, 1950 I.C.J. REP. 4 (July 11); Certain Expenses of the U.N., 1962 I.C.J. REP. 151 (July 20).

creatively, if not inappropriately, stretched its Chapter VII powers beyond what originally was intended, commentators have pointed to the Security Council's finding of a threat to international peace and security in *internal* human rights violations,<sup>94</sup> the monitoring of elections,<sup>95</sup> the creating of ad hoc tribunals that moves too far from the economic and politic nature of the measures alluded to in Article 41,<sup>96</sup> and relying on NATO for enforcement actions.<sup>97</sup> While States might not have foreseen these acts as falling under the UN Charter's provisions at the time of signature and ratification, this does not change the fact that UN members consented to such open-ended provisions and provisions indicating that Security Council decisions are superior to conflicting treaty obligations.<sup>98</sup>

Nevertheless, consent to such open-ended provisions does not mean that the Security Council ought to act however it wants without any regard to the consequences to the international legal system as a whole. Indeed, one is left wondering whether the notion of consent has become irrelevant in the context of certain aspects of UN law and disarmament. The further away from direct consent the Security Council ventures when trying to maintain international peace and security, the greater the risk that States (especially target States) will see its actions as illegitimate, thereby frustrating the Security Council's attempts at maintaining international peace and security in the future through higher transaction costs with these States. Moreover, without disarmament keeping its foundation in consent, as alluded to in the 1986 Nicaragua case, a weakened disarmament regime may increase the incentives on States to defect from these important regimes, thereby weakening the entire international order. The Security Council might want to think twice before infringing on the sovereignty of States with such sensitive matters as those involving their national security. Otherwise, it might see itself marginalized with such matters over time.

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<sup>94</sup> See SEAN MURPHY, *HUMANITARIAN INTERVENTION: THE UNITED NATIONS IN THE EVOLVING WORLD* (1996); William C. Bradford, *International Legal Regimes and the Incidence of Interstate War in the Twentieth Century: A Cursory Quantitative Assessment of the Associative Relationship*, 16 AM. U. INT'L L. REV. 647, 713-14 (2001) (criticizing generally the Security Council's practice of "promiscuously referring to threats to international peace and security in a host of Chapter VII resolutions, and addressing circumstances not genuinely rising to the level of legitimate threats to international peace and security").

<sup>95</sup> See Douglas Lee Donoho, *Evolution or Expediency: The United Nations Response to the Disruption of Democracy*, 29 CORNELL INT'L L.J. 329, 338 n.47 (1996) (discussing the UN's struggle to send military personnel to monitor elections in Haiti in 1990).

<sup>96</sup> See Tara Sapru, *Into the Heart of Darkness: The Case Against the Foray of the Security Council Tribunal into the Rwandan Crisis*, 32 TEX. INT'L L.J. 329, 336, 340 (1997).

<sup>97</sup> See YORAM DINSTEIN, *WAR, AGGRESSION AND SELF-DEFENCE* 284 (3d ed. 2001).

<sup>98</sup> See, e.g., UN Charter, arts. 25, 39, 41-42, 103.