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ALWD 7th ed.

John Norton Moore, *Toward a New Paradigm: Enhanced Effectiveness in United Nations Peacekeeping, Collective Security, and War Avoidance*, 37 Va. J. Int'l L. 811 (1997).

APA 7th ed.

Moore, John Norton. (1997). *Toward new paradigm: enhanced effectiveness in united nations peacekeeping, collective security, and war avoidance*. *Virginia Journal of International Law*, 37(4), 811-890.

Chicago 17th ed.

John Norton Moore, "Toward a New Paradigm: Enhanced Effectiveness in United Nations Peacekeeping, Collective Security, and War Avoidance," *Virginia Journal of International Law* 37, no. 4 (Summer 1997): 811-890

McGill Guide 9th ed.

John Norton Moore, "Toward a New Paradigm: Enhanced Effectiveness in United Nations Peacekeeping, Collective Security, and War Avoidance" (1997) 37:4 Va J Int'l L 811.

AGLC 4th ed.

John Norton Moore, 'Toward a New Paradigm: Enhanced Effectiveness in United Nations Peacekeeping, Collective Security, and War Avoidance' (1997) 37(4) *Virginia Journal of International Law* 811

MLA 9th ed.

Moore, John Norton. "Toward a New Paradigm: Enhanced Effectiveness in United Nations Peacekeeping, Collective Security, and War Avoidance." *Virginia Journal of International Law*, vol. 37, no. 4, Summer 1997, pp. 811-890. HeinOnline.

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# Toward a New Paradigm: Enhanced Effectiveness in United Nations Peacekeeping, Collective Security, and War Avoidance

JOHN NORTON MOORE\*

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This Article was prepared for a joint project entitled “Strengthening the U.N. and Enhancing War Prevention,” undertaken with the Lester B. Pearson Canadian International Peacekeeping Training Centre. The author would like to thank the William H. Donner Foundation, Inc., for their support of this project, and Professor Inis L. Claude, Jr., Professor Emeritus, Department of Government and Foreign Affairs, University of Virginia; Alex Morrison, President, Lester B. Pearson Canadian International Peacekeeping Training Centre; and Philippe Kirsch, Q.C., Legal Adviser, Department of Foreign Affairs and International Trade, Canada, for their comments on an earlier draft.

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Many forms of government have been tried,  
and will be tried in this world of sin and woe.

No one pretends that democracy is perfect or all-wise.  
Indeed, it has been said that Democracy is the worst form of  
Government except all those other forms that have been  
tried . . . .

*Winston Churchill*  
*Statement in the House of Commons*  
*November 11, 1947*

\* \* \* \* \*

## I. INTRODUCTION AND CONTEXT

In an age in which peacekeeping has almost become a synonym for U.N. operations, it is easy to forget that an original central purpose of the organization was collective security against aggression in order to end war. In the words of the Preamble of the Charter, the United Nations was intended:

[T]o save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind . . . and for these ends . . . to unite our strength to maintain international peace and security . . .<sup>1</sup>

As with the League of Nations before it, there was a belief that aggression could be ended if all the nations of the world, and particularly the major powers, would unite against any aggressor. This concept of collective security, which has an appealing and powerful logic, was to be the principal answer to war.

For a variety of reasons, including the cold war division reflected in the Security Council, this seemingly powerful new structure was applied in paradigmatic fashion only once in the first four decades of the organization's existence. That instance, the Korean War, was possible only because the then Soviet Union was absent from the Council under the mistaken impression that its absence was the equivalent of a veto under article 27 (3) of the Charter.<sup>2</sup> The only other instance of classic U.N. collective security occurred a quarter century after the founding of the United Nations—and after the cold war—in the collective U.N.-authorized coalition action to undo the aggression of Saddam Hussein against the State of Kuwait.<sup>3</sup>

If the United Nations was only episodically able to directly confront aggression, it was able to develop a variety of important roles in fact finding, mediation, truce supervision, peacekeeping, and (usually, but not always constructively) the development of international law and the promotion of human rights. And following

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1. U.N. Charter pmb.

2. On this voting dispute and its legal issues, see the classic by Myres S. McDougal & Richard N. Gardner, *The Veto and the Charter: An Interpretation for Survival*, Stud. World. Pub. Ord. 718 (1960).

3. See, e.g., John Norton Moore, *Crisis in the Gulf* (1992).

the end of the cold war, and the successful action against Iraq's aggression, there was a short period of enthusiasm for an enhanced U.N. role in maintaining world order. This euphoria, however, quickly died in the chaos of Somalia, the genocidal "ethnic cleansing" of Bosnia, and the killing fields of Rwanda. It seems to have been succeeded by a pervasive skepticism, perhaps even deeper than that at the height of the cold war, as reflected, for example, in the statements and actions of both political parties during the recent U.S. Presidential campaign. Today, when the United Nations is considered at all, the focus seems to be on avoiding "mission creep" through careful differentiation of peacekeeping and peace enforcing missions, and on the need for organizational reform that conventional wisdom sees as the root of the U.N. malaise. Paradoxically, even in the aftermath of the cold war, with the removal of many of the barriers to effective action, the future of the United Nations is challenged as never before.

What are the roles, and comparative advantages, of the United Nations today? How can we enhance its effectiveness in peacekeeping? More broadly, how can we enhance its central original purpose of collective security and war avoidance? Should we even try? These are among the issues scholars and governments alike are addressing as the future of the United Nations is literally on the line, at least as the kind of vital institution envisaged by its framers.

Certainly, U.N. missions should be undertaken only carefully in settings where they will be important and where they will decisively prevail. And certainly such missions should be implemented with careful attention to the precise role the United Nations is undertaking and with realistic resources and rules of engagement. Beyond these important reforms, however, I believe the root of the problem is "old thinking" in the basic paradigm with which we are approaching the United Nations, and other institutions and approaches for war avoidance. What is most needed in enhancing U.N. effectiveness is a more realistic paradigm in our thinking about the role of the United Nations, and war avoidance more generally. Perhaps, of course, there is no newer paradigm that will point the way to a more effective United Nations. If so, while we can improve certain obvious deficiencies, such as the repeated mismatch between resources and missions, we will still likely be doomed to further incrementalism and muddling through.

Despite its successes, and they have been more numerous and significant than its critics admit, the United Nations, and the

League of Nations before it, have not met the high hopes that their framers had for them, nor have they been up to the challenge of a world of all-too-frequent aggression and massive democide. Approximately thirty-three million combatants have died in wars of the twentieth century.<sup>4</sup> Even more shockingly, the figure for non-combatants killed during and outside of war—that is, “democide”—may be as high as 169 million, or even higher.<sup>5</sup> One scholar estimates that since World War II, that is during the era of the United Nations, there have been 149 wars (including civil wars) and that these wars have produced an estimated 23 million combatant and civilian casualties, with approximately 1,000 deaths per year in armed conflicts involving one or more governments and with total deaths during the period approximating the population of Canada.<sup>6</sup> No one has really good figures on these tragic numbers, but even if off by major magnitude, no one disputes that the human cost is large and continuing.

To the direct human costs of casualties and death, we can add the staggering costs of war in direct economic costs borne by participants and, with the miracle of compound interest working in reverse, by *all* future generations. World War I multiplied the national debt of France by a factor of seven and the national debt of Britain by a factor of more than ten. The resulting famine in Germany may have killed as many as 750,000 and led to widespread economic chaos, in turn setting the stage for takeover by the Nazis and World War II. World War II may have cost \$1.6 trillion, again with all future generations deprived of the compound rate of growth that would have forever created increasing wealth on this global asset base.<sup>7</sup> Certainly much of this tragic cost cannot be laid at the door of any failures of the United Nations, or even the League, which, after all, were created in the immediate *aftermath* of World Wars I and II. In a period of relative calm following the cold war, it is easy to forget the tragic costs of war. The widespread starvation and killing in Ethiopia and Somalia, the

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4. See Rudolph J. Rummel, *The Miracle That is Freedom, the Solution to War, Violence, Genocide and Poverty* 3 (1995).

5. See Rudolph J. Rummel, *Death by Government* 4 (1994). Professor Rummel gives a “partial world total” of twentieth century democide as 169,202,000. This book, only recently published, is one of the most important books of this century in calling attention to the magnitude of killing by governments and its overwhelming linkage to non-democratic regimes.

6. See Ruth Sivard, *World Military and Social Expenditures* 21 (1993).

7. See John Keegan, *The Second World War* 592 (1990); George Wright, *The Ordeal of Total War* 264 (1968).

half million or more Tutsis slaughtered in Rwanda, the widespread destruction of society in Lebanon and Liberia and the systematic genocide in Bosnia, however, are unmistakably contemporary. Effective implementation of the goals for which the United Nations was founded, remains a compelling need for human kind.

These tragic realities of our century are the best evidence that our prevailing paradigms about controlling these events are, at best, only partially effective. That is the bad news. The good news is that over the past decade, and even more powerfully over the last half decade, information has become available that points the way to a new and more accurate paradigm about war, peace and democide. Some of the work that led to this newer information has been underway for many years. Importantly, however, a significant part of it was funded by the United States Institute of Peace, itself a new Government entity founded in 1985, and has only recently become more widely known. This Article will discuss this newer information, will place it in the context of a broader theory that I have been developing at Mr. Jefferson's University, and will then discuss its implications for enhanced U.N. effectiveness, if the theory is even a partial advance over our past paradigms.

## II. A NEW PARADIGM: DEMOCRACY AND DETERRENCE

### A. *The Importance of Paradigms*

Our basic frameworks, or modes of thinking, exert a powerful influence on our behavior. If we believe that the earth is flat, we will be concerned about falling off the edge as we undertake voyages of discovery. If we believe that night air causes the Black Death, we will shut our windows at night but will take no action to stop the movement of the rat population, the real vector for Bubonic Plague. While we will not have immediately cured infectious diseases when we learn of bacteria and viruses, we will now direct our attention in the right direction and will, from time to time, discover a penicillin or a Salk vaccine for polio. Louis Pasteur's work in the nineteenth century showing that many diseases were caused by microorganisms did not immediately cure those diseases, but it was a new paradigm that enabled a quantum jump in mankind's ability to deal with disease. Indeed, the new para-



digm led Pasteur himself to vaccines for chicken cholera and rabies.

Thomas S. Kuhn wrote a seminal monograph on the importance of paradigms in scientific revolution.<sup>8</sup> His work was a milestone in the philosophy of thought, and alerted us to the great importance of paradigms in human thought. Ways of thinking about a problem become dominant as they seem to offer the best explanation at any point in time for understanding or dealing with the problem. As newer information becomes available, a new paradigm that proves more successful, even if still only partly successful, becomes dominant. As Kuhn said:

Paradigms gain their status because they are more successful than their competitors in solving a few problems that the group of practitioners has come to recognize as acute. To be more successful is not, however, to be either completely successful with a problem or notably successful with any large number.<sup>9</sup>

International relations, international law, international organizations and national security, like all other fields of human endeavor, are heavily influenced by dominant paradigms. At the highest level of abstraction there has long been a debate between the Realists (with a capital "R") and the Idealists (who also see themselves as realists with a small "r"), as illustrated by the contrasting views of Thomas Hobbes and Woodrow Wilson. Since World War II, while many paradigms have vied for dominance in international relations, balance of power theory, in its different permutations, has probably been more influential than any other. It has achieved that status because it does offer powerful explanations explaining much state behavior and because it reflects important underlying realities (I would suggest principally deterrence) influencing state behavior. Whatever our paradigms to date, however, it is abundantly evident that, while they probably have been helpful and may even have led us to actions so important as to have avoided World War III, they have not yet offered a sufficiently powerful basis for action as to enable us to have resolved adequately the problems of war or democide, or even to develop a workable system of collective security.

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8. Thomas Kuhn, *The Structure of Scientific Revolutions* (2nd ed. 1970).

9. *Id.* at 23.

If there is now newer information pointing to a more powerful paradigm (that might also explain and incorporate the strongest features of the balance of power paradigm—and the insights of both Realists and Idealists), then such a newer paradigm may offer a greater possibility of adjusting our actions to deal more effectively with war and democide than even heroic diplomatic achievements operating within a less powerful paradigm. I believe that there is now adequate information to at least speculate about the parameters of such a new paradigm and how its application might enable more effective peacekeeping, collective security and war avoidance. This Article is dedicated to that proposition and to the great insight of Louis Pasteur that “[I]n . . . science it is always a mistake not to doubt when facts do not compel you to affirm.”

### B. *The “Democratic Peace”*

There have been many theories about the causes of war and—its related concept—the means for controlling war. A partial list of popularly assumed “causes” would include the following:

- specific disputes among nations,
- absence of dispute settlement mechanisms,
- ideological disputes,
- ethnic and religious differences (a current emphasis),
- communication failures,
- proliferation of weapons and arms races,
- social/economic injustice,
- imbalance of power (or paradoxically balance of power),<sup>10</sup>
- competition for resources or other values,
- incidents, accidents and miscalculations,
- violence in the nature of man,
- aggressive national leaders, and
- economic determinism (particularly Marxist theories).

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10. One paradox in balance of power theory is that many adherents view an *imbalance* as causing war while some important adherents have viewed a *balance* as causing war; that is, that equilibrium is the most dangerous condition. This latter group includes Winston Churchill and Walter Lippmann.

A list of traditional approaches to war avoidance would include the following:

- diplomacy,
- balance of power,
- third-party dispute settlement,
- collective security,
- arms control,
- functionalism,
- increasing commercial interactions (associated, for example, with the thought of Joseph Priestly and Thomas Paine in 1792, Richard Cobden in 1843, and John Stuart Mill in 1848),
- advances in military technology, making war more deadly (associated, for example, with the thought of Ivan Bloch in the later part of the nineteenth century),
- world federalism,
- “rationalism” (a name I have given to arguments that war will end because it is irrational, particularly as associated with the thought of Norman Angell in the popular book, written on the eve of World War I, *The Great Illusion* (1910)),
- pacifism and non-violent sanctions,
- “second track” diplomacy, and
- resolving underlying “causes” (poverty, racism, ethnic differences, etc.).

While most of these traditional theories about the “causes” of war and modes of war avoidance contain truth, and some more than others, none seems to powerfully correlate with the occurrence or non-occurrence of war. Yet collectively they represent most of the traditional theories which consciously or unconsciously influence our actions. Indeed, several on the list have generated cult followings or have become a centerpiece of foreign policy efforts at war avoidance. Norman Angell’s *The Great Illusion*, urging that a future war between England and Germany could not occur—and fear of such a war was thus a great illusion—because no one would benefit from it given the substantial interactions then

existing among nations, provides an example of a cult movement.<sup>11</sup> Barbara Tuchman writes of this book and its following in her brilliant historical study of the Western Front in World War I:

Already translated into eleven languages . . . it has become a cult. At the universities, in Manchester, Glasgow and other industrial cities, more than forty study groups of true believers had formed, devoted to propagating its dogma. Angell's most earnest disciple was a man of great influence on military policy, the King's friend and advisor, chairman of the war committee.<sup>12</sup>

Ironically, at virtually the same time this book was popular in England, another book with a very different message had a following in Germany. General Friedrich Von Bernhardi, a member of the German General Staff, published *Germany and the Next War*, whose Hegelian messages included the following:

The efforts directed towards the abolition of war must not only be termed foolish, but absolutely immoral, and must be stigmatized as unworthy of the human race.<sup>13</sup>

War is a biological necessity of the first importance, a regulative element in the life of mankind which cannot be dispensed with, since without it, an unhealthy development will follow, which excludes every advancement of the race, and therefore all real civilization.<sup>14</sup>

A victorious war, on the other hand, brings countless advantages to the conqueror, and, as our last great wars showed, forms a new departure in economic progress.<sup>15</sup>

During this century, efforts at war avoidance in U.S. foreign policy have focused in turn on creating mechanisms for delay, fact finding and third party arbitration and adjudication, implicitly assuming that war was similar to civil disputes among claimants that would occur in the absence of such mechanisms (roughly 1900-1914); collective security through first the creation of the League of Nations (even though the United States did not join) and then,

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11. Norman Angell, *The Great Illusion* (4th ed. 1913).

12. Barbara Tuchman, *The Guns of August* 10 (1962).

13. Friedrich von Bernhardi, *Germany and the Next War* 27 (1912).

14. *Id.* at 10.

15. *Id.* at 115-16.

after World War II, the United Nations, implicitly assuming that the mechanisms created would effectively work in collective security (1915-1965); arms control, particularly nuclear arms control at what was for the United States the central strategic front, that is, the U.S.-Soviet strategic balance, implicitly assuming that arms races were a central cause of war and, of course, reflecting the special power and horror of nuclear weapons (1965-1991); and a brief return to the United Nations following the Gulf War and with a new American President who initially emphasized multilateralism (1991-1994).

There is, of course, truth in many of these efforts, and there is a need for all of the mechanisms that might encourage peaceful resolution of disputes. They have not, however, even collectively, yet dealt with the full dimensions of the problem.

In stark contrast with the lack of strong correlation of most traditional "causes" and "cures," it has recently become evident that one factor has a startlingly strong real-world correlation with war. Thus, Michael Doyle in 1983, Professor Rudy Rummel of the University of Hawaii in 1991, Professor Bruce Russett, the Chairman of the International Relations Department at Yale, in 1993, and James Lee Ray and Spencer Weart, working independently in 1994, have all concluded that democracies rarely, if ever, wage war against one another.<sup>16</sup>

According to Rummel, in the period from 1816 to 1991, when conflicts below a threshold of 1,000 combat deaths are screened out, there have been no wars between democracies, in contrast with 198 wars between non-democracies and 155 wars between democracies and non-democracies.<sup>17</sup>

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16. See, e.g., Bruce Russett, *Grasping the Democratic Peace: Principles for a Post-Cold War World* (1993); Spencer Weart, *Peace Among Democratic and Oligarchic Republics* (1994); Michael Doyle, *Kant, Liberal Legacies and Foreign Affairs*, *Phil. Pub. Aff.* (1983); James Lee Ray, *Democracy and International Conflict: An Evaluation of the Democratic Peace Proposition* (1994) (unpublished manuscript on file with author); Rudolph J. Rummel, *Power Kills, Absolute Power Kills Absolutely* (1991) (unpublished manuscript on file with author); Spencer Weart, *Never at War: Why Democracies Will not Fight One Another* (1994) (unpublished manuscript on file with author). Interestingly, with the exception of the pieces by Michael Doyle and James Lee Ray, the work of all of these scholars was partly supported by the U.S. Institute of Peace.

17. See Rummel, *supra* note 16, at 2.

In a powerful recent book focused on the “democratic peace” phenomenon, Professor Russett writes:

[A] striking fact about the world comes to bear on any discussion of the future of international relations: in the modern international system, democracies have almost never fought each other . . . . By this reasoning, the more democracies there are in the world, the fewer potential adversaries we and other democracies will have and the wider the zone of peace.<sup>18</sup>

Spencer Weart, a physicist and historian, writes:

[N]ot only modern democracies, but all democracies, have kept peace with one another . . . . Some studies have set a cutoff of 1,000 battle deaths for an international confrontation to be called a war. Even if a stricter cutoff at 200 deaths is adopted, there is nothing left on the list that can be called a war between unambiguous, well-established democracies.<sup>19</sup>

And James Lee Ray writes:

The main strength of the democratic peace proposition stems from its simplicity. It is a relatively straightforward proposition, and the most important supporting evidence (the absence of war between democratic states) requires no complex technique to unearth. Yet, the proposition is also able to withstand complex, powerful and sophisticated theoretical as well as empirical scrutiny. The proposition is deserving of the attention it has received up to this point, and promises to become a standard feature of the academic field of international politics, influential ultimately among policymakers as well as the general public.<sup>20</sup>

It is possible to quarrel with particular scholars as to whether there were *no* wars between democracies, a debate concerning the classification of particular wars, such as the War of 1812. But even

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18. Russett, *supra* note 16, at 4. There is not space in this paper to review the arguments against the democratic peace. In his book, however, Professor Russett addresses, and I believe effectively answers, many of the most obvious, such as are there too few democracies to make the “democratic peace” proposition valid.

19. Spencer Weart, *Why They Don't Fight*, U.S. Inst. Peace in Brief 1-2 (Nov. 1993).

20. Ray, *supra* note 16, at 18.

if *all* of the disputed wars are given to the critics, the democratic peace proposition is still off-the-chart robust compared with other factors that have been investigated. And the proposition does have its critics, such as those urging that while the proposition may be true there may be a heightened risk of war during a transition period to democracy. Professor Russett, among other proponents of the democratic peace, does seem to have given a persuasive refutation to the earlier expressed objections that distance between democracies or a low number of democracies is the real explanation of the phenomenon.

Interestingly, some of the most powerful early writing about the causes of war focused on the proposition that democracies, or republics, as they were then called, in contrast with monarchies, would not fight wars with one another, because the people, who would bear the real costs of the war, would be reluctant to do so. This was the theme of one of the most brilliant of all philosophers, Immanuel Kant, who wrote *Eternal Peace* in 1795. It was echoed in the thinking of many of the framers of the U.S. Constitution.

The principal reasons that this proposition has been ignored for so long seem to be the earlier failure to separate serious wars from minor coercion or threat settings in the noise level compared with major war and, most importantly, that democracies were still engaged in a large number of wars with non-democracies. The first factor obscured the reality and the second caused it to be deemed unimportant. However, any factor demonstrating such a robust connection with the most important categories of violent conflict between nations must be regarded as extremely important, even if, alone, it does not offer an adequate theory of war or war avoidance. We should also keep in mind the possibility, if not probability, that in minor coercion settings democracies may be quite adventurous. Similarly, the existing literature does not offer an agreed upon, as yet satisfactory explanation of the democratic peace in its area of applicability in major wars, or what might be thought of as high risk settings. Shortly, in this paper I will seek to fill the reader in to what I now believe to be the "rest of the story" from work that I have been doing at Virginia. First, however, it will be useful to briefly review what we are finding in seeking to correlate government structures, or the democratic peace proposition, with other major foreign policy goals. For if the correlation in war/peace settings with government structures and major wars also holds for our principal additional foreign policy (and indeed U.N.) goals of human rights, economic development, famine

avoidance and even environmental protection, we can be strengthened in our conviction of the reality and importance of the phenomenon. In addition, we might receive further clues as to the nature of the mechanism responsible.

It should also be noted that the democratic peace proposition has moved beyond the academic literature and into government policy. In the United States, "democracy enlargement" seems to have become the central intellectual theme of Clinton Administration foreign policy. In an address to the Johns Hopkins School of Advanced International Studies, in September 1993, Anthony Lake, the Special Assistant to the President for National Security Affairs, said:

The addition of new democracies makes us more secure because democracies tend not to wage war on each other and they tend not to sponsor terrorism. They are more trustworthy in diplomacy and they do a better job of respecting the human rights of their people . . . .

Throughout the Cold War, we contained a global threat to market democracies; now we should seek to enlarge their reach, particularly in places of special significance to us. The successor to a doctrine of containment must be a strategy of enlargement—enlargement of the world's free community of market democracies . . . .

During the Cold War, even children understood America's security mission; as they looked at those maps on their schoolroom walls, they knew we were trying to contain the creeping expansion of that big red blob. Today, at great risk of oversimplification, we might visualize our security mission as promoting the enlargement of the blue areas of market democracies. The difference, of course, is that we do not seek to expand the reach of our institutions by force, subversion or repression.<sup>21</sup>

Other governments also, have begun to enhance their efforts at democracy enlargement. For example, the National Endowment for Democracy in the United States has a counterpart in the Westminster Foundation of the United Kingdom, the European

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21. Anthony Lake, Special Assistant to the President for National Security Affairs, Address to the School of Advanced International Studies ( Sept. 21, 1993). See also Strobe Talbott, *Democracy and the National Interest*, *Foreign Aff.*, Nov.-Dec. 1996, at 47.



Community has an active effort in democracy assistance, and nations such as Spain and Portugal are also getting into the act.

C. *Other Important Foreign Policy Goals Related to Government Structures: Human Rights, Economic Development, Famine Avoidance, and Environmental Protection*

1. *Human Rights*

Governments, largely non-democratic governments, may have killed two to four times the total number of combatant casualties in all wars of the twentieth century combined, simply by slaughtering their own and other civilian populations during and outside of war. This reality is so staggering, and so overlooked, that it almost by itself gives us a new way of looking at foreign policy and government structures. Professor Rummel, in his book *Death by Government*,<sup>22</sup> believes that the best estimate we can make is that twentieth century "democide," as he calls it, has slaughtered over 169 million. He attributes over 99% of this democide to totalitarian and other non-democratic regimes compared with less than 1% for democracies. If correct, and certainly the figures he uses for democracies are, if anything, probably too high, this is yet another staggeringly clear correlation between our most important global goals and government structures. Moreover, this correlation, whatever the quarrel about specific figures, lacks altogether the ambiguities inherent in assessing the implications of the democratic peace proposition in the war/peace area. Something is going on in totalitarian regimes that produces megamurderers killing in the millions, and in some authoritarian regimes that produces kilokillers killing in the thousands. Yet democracies hardly register on the scale outside of wartime settings where the general populace may not be aware of such practices as the U.S. fire bombing of Tokyo or the British fire bombing of Hamburg and Dresden during World War II.

We are all today aware of the terrible Holocaust in which Hitler killed over 20 million Jews and others in the period from 1934 to 1945, and Pol Pot's slaughter in Cambodia of over 2 million in the period from 1975-1978. But almost no one really understood the

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22. Rummel, *supra* note 5, at 4 (1994).

magnitude of twentieth century democide until Rummel published his monumental work in 1994.<sup>23</sup>

The staggering statistics of totalitarian democide in this century produce a numbness that may almost work in reverse to conceal rather than reveal the human cost of this vast misery. The well-known *Diary* of Anne Frank, a victim of the Nazi Holocaust, and the more recent *Zlata's Diary* detailing the tragedy of the "ethnic cleansing" in Bosnia, are all that is needed as antidote. It is impossible for any parent to escape the real horror behind the figures when any of the excerpts are reviewed. Thus, Anne Frank, who died in Belsen in March 1945 at the age of sixteen, was described by her old school friend Lies when they met in the same camp at Belsen:

It was Anne, and I ran in the direction of the voice, and then I saw her beyond the barbed wire. She was in rags. I saw her emaciated, sunken face in the darkness. Her eyes were very large. We cried and cried, for now there was only the barbed wire between us, nothing more. And no longer any difference in our fates.<sup>24</sup>

And, more recently, to remind us that the killing did not end with the Holocaust, Zlata Filipovic wrote in her diary on May 7, 1992:

I was almost positive the war would stop, but today . . . . Today a shell fell on the park in front of my house, the park where I used to play and sit with my girlfriends. A lot of people were hurt . . . . NINA IS DEAD. A piece of shrapnel lodged in her brain and she died. She was such

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23. While Rummel's figures may be high in some cases and low in others, given the near impossibility of putting together these kinds of statistics, after carefully reviewing the figures I believe there is little chance that he is off by more than a factor of two on the high side of his overall figures, and he may even be low. If he is simply off by a factor of two on the high side then democide would still have killed in the twentieth century at roughly twice the rate of combatant casualties in all wars combined in the same period.

It might be noted that, to check his figures, I once got Professor Rummel together with a former Deputy Ambassador of the Soviet Union to the United States. While the Ambassador did not concede Rummel's figure for the Soviet Union of over 61 million in the period from 1917 to 1987, he did concede a number much higher than had been previously generally accepted in the West (my recollection was that it was in the 20-30 million range). Similarly a Washington Post series on deaths under Mao in China uses a figure approximately twice as high as Rummel's 35 million. See Daniel Sutherland, *Uncounted Millions: Mass Death in Mao's China: Repression's Higher Toll: New Evidence Shows Famine, Violence Spared Few*, Wash. Post, July 17, 1994, at A1.

24. Anne Frank, *The Diary of a Young Girl* 271 (Bantam 1993) (1952).

a sweet, nice little girl. We went to kindergarten together, and we used to play together in the park. Is it possible I'll never see Nina again? Nina, an innocent eleven year old little girl—the victim of a stupid war. I feel sad. I cry and wonder why? She didn't do anything. A disgusting war has destroyed a young child's life. Nina, I'll always remember you as a wonderful little girl.<sup>25</sup>

## 2. *Economic Development*

There has been a long debate in the economic literature about the relationship, if any, between government structures and economic growth and well-being. Recently, however, a series of impressive empirical studies, as well as the powerful example of the seven-decade failed experiment in the former Soviet Union, provide powerful evidence about the linkage between democracy and levels of economic freedom on the one side, and rates of economic growth and economic well-being on the other. There have now been at least three major empirical studies linking economic well-being and economic growth rates with levels of economic freedom on a world-wide basis. These include the study by Bryan Johnson and Thomas Sheehy for the Heritage Foundation,<sup>26</sup> the study by the Fraser Institute of Canada, with participation from a broad multinational group,<sup>27</sup> and, most recently, the study by Freedom House, the organization originally founded by Eleanor Roosevelt to counter Nazi propaganda which has long published the most detailed rankings of political freedom around the world.<sup>28</sup> While these studies differ in significant ways, all demonstrate a striking correlation between levels of economic freedom and economic well-being and growth, with high levels of well-being and growth associated with high levels of economic freedom. According to the Freedom House survey, for example, the countries with the highest levels of economic freedom, with only 17% of the world population, produce 81% of the world economic product. In contrast, the countries with the lowest levels of economic freedom, with

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25. Zlata Filipovic, *Zlata's Diary* 45 (1994) (entry dated May 7, 1992).

26. Bryan T. Johnson and Thomas Sheehy, *The Heritage Foundation, The Index of Economic Freedom* (1995) (the second 1996 and third 1997 editions have now also been published).

27. James Gwartney et al., *Economic Freedom of the World 1975-1995* (1996).

28. *World Survey of Economic Freedom, 1995-1996* (Richard E. Messick ed., 1996). As a trustee of Freedom House, I am particularly proud of this report.

36% of the population, produce only 5% of that combined product. The top two categories, "free" and "partly free," with a combined population of 24%, produce 86% of the world economic product in comparison with the bottom two categories, "not free" and "mostly not free," that with 66% of the population produce only 13% of the world product.<sup>29</sup>

Academic work is also increasingly demonstrating this correlation between economic well-being and government structures. Professor Gerald W. Scully, who published one book on this subject in 1992,<sup>30</sup> and is now at work on another, writes in the earlier book:

[E]conomic growth rates of per capita output and economic efficiency measures for 115 economies over the period 1960-1980 are compared to measures of freedom. It is shown that the rights structure has significant and large effects on efficiency and on the growth rate of economies. Politically open societies, subscribing to the rule of law, private property, and the market allocation of resources, grow at three times the rate and are two and one-half times as efficient economically in transforming inputs into national output as societies in which these rights largely are proscribed.<sup>31</sup>

The work of Professor Mancur Olson, a former Distinguished Fellow at the U.S. Institute of Peace, is also showing the importance of the relationship between economic growth and the rights structure.<sup>32</sup> And, at a case study level, the failed 70-year experiment in the former Soviet Union, with its absence of both political and economic freedoms, provides a dramatic example of this linkage.

The correlation shown by these studies is a correlation at a macro level through time. These studies do not stand for the proposition that totalitarian regimes cannot grow at a rapid rate during periods of relative economic liberalization, as is the case

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29. *Id.* at 9.

30. Gerald Scully, *Constitutional Environments and Economic Growth* (1992).

31. *Id.* at 12.

32. See, e.g., Christopher Clague et al., *Contract-Intensive Money: Contract Enforcement, Property Rights, and Economic Performance* (Working Paper No. 151, Feb. 1995). The World Bank has also picked up this theme. International Bank for Reconstruction and Development (World Bank), *World Development Report 1996: From Plan to Market* (1996).

today in the People's Republic of China. Nor do they argue that politically authoritarian regimes such as Singapore cannot grow at a rapid rate through time, or even that democracies committing large portions of GDP to governmental social welfare programs will not slow their own rate of growth, as is particularly the case for a number of countries in Western Europe. The point is rather that there is a direct correlation between levels of *economic* freedom and rates of economic growth, and that at least at a macro level the same relationship one sees between government structures and both war and democide also operates in relation to overall levels of economic well-being. There are, of course, important and interesting questions remaining about this linkage, particularly whether levels of enhanced economic freedom can through time contribute to levels of enhanced political freedom, as seems suggested by some ongoing transitions in South Korea, Taiwan, and elsewhere.

### 3. *Famine Avoidance*

Most recently, Professor Amartya Sen, a scholar in economics and philosophy at Harvard, has convincingly shown that widespread and severe famine is a feature of non-democratic governmental structures. He believes that there has never been a major famine in a free democratic nation with an uncensored press.<sup>33</sup> Professor Sen writes:

What causes a famine? The temptation to see it as invariably associated with a large and sudden drop in food production and availability is strong, but huge famines have occurred without such a drop—both in Asia and in Africa. Sometimes famines have coincided with years of peak food availability, as in the Bangladesh famine of 1974.<sup>34</sup>

And conversely, there have also been many cases of sharp decline in food output and availability which have not resulted in famine. This is both because food can be purchased from abroad if the economic means exist, and

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33. See, e.g., Amartya Sen, *Famine as Alienation* (1995) (unpublished paper on file with author).

34. Amartya Sen, 1990 Arturo Tanco Lecture, in *Public Action to Remedy Hunger: The Fourth Annual Arturo Tanco Memorial Lecture* 17 (1990).

because the available food supply, even if short, can be so distributed as to avoid extreme destitution (thereby preventing real starvation).<sup>35</sup>

Famines are, in fact, so easy to prevent, that it is amazing that they actually take place. The sense of distance between the ruler and the ruled—between “us” and “them”—is a crucial feature of famines. That distance is as severe today in the famines of Ethiopia, Somalia and Sudan, as it was in Ireland and India under foreign domination in the last century.<sup>36</sup>

While there is no great practical difficulty in organizing effective measures for famine prevention, provided the problems are correctly diagnosed and addressed, one reason why this does not occur adequately—or not at all—in many parts of the world is that the penalty of the famines are borne only by the suffering public and not by the ruling government. If the government were to be accountable to the public through elections, free news reporting, and uncensored public criticism, then the government too would have good reasons—to avoid condemnation and ultimately rejection—to do its best to eradicate famines.<sup>37</sup>

Writing in the *Journal of Peace Research*, Frances D'Souza also finds a link between famine and non-democratic structures. He writes in 1994:

The absence of democracy, the lack of independent media, the prevalence of draconian censorship resulting in a culture of fear—all these played a pivotal and disastrous role in the famines described here [Ethiopia and China]. In neither country were the potential victims of starvation able to alert the wider world to their plight until their government so agreed. Nor were they free to organize themselves to make demands on local, regional or central authorities for agricultural or other economic safeguards to forestall food shortages. Thus we see that

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35. Sen, *supra* note 33, at 5.

36. *Id.* at 25.

37. Sen, *supra* note 34, at 30.

the only solution to famine, whether in time of peace or war, is indeed democracy.<sup>38</sup>

#### 4. *Environmental Protection*

Although there is as yet only episodic evidence concerning the linkage between government structures and environmental protection, the evidence that we have seems to point in the same direction. Thus, the abysmal environmental performance of the former Soviet Union, now revealed for all the world, with its Chernobyl and Aral Sea disasters, among others, is a powerful case study.<sup>39</sup> A comparison of the environmental records of the former East and West Germanies shows the same striking correlation.<sup>40</sup> And one group of scholars at the Norwegian Peace Institute, aware of the striking correlation between government structures and war, has conducted at least one empirical study to test the same correlation with the environment. They have concluded that there is a correlation and that "environmental quality is affected by political organization . . ."<sup>41</sup> Since it has long been known from welfare economics that environmental problems are a classic example of market failure produced by negative externalities, it is startling to many to find such a correlation between non-democratic non-market regimes and severe environmental degradation. While the answer likely involves interaction between a number of factors, including the often overlooked positive effect of profit and property rights on the environment, the core of the phenomena is probably the same "government failure" mechanism that itself generates massive negative externalities and that may well be the core mechanism underlying all of these negative effects in common.

#### 5. *Summary*

If, in fact, the empirical evidence concerning the link with government structures and undergirding the recent findings on demo-

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38. Frances D'Souza, *Democracy as a Cure for Famine*, 31 *J. Peace Res.* 369, 373 (1994).

39. See, e.g., Murray Feshbach & Alfred Friendly, Jr., *Ecocide in the USSR: Health and Nature Under Siege* (1992).

40. See, e.g., *L.A. Times*, Sept. 3, 1994 at A2; Reuters, Aug. 31, 1994.

41. Niles Petter Gleditsch & Bjorn Otto Sverdrup, *Democracy and the Environment* 7 (1995).

cide, economic development, famine, environmental performance, and possibly even other suggested correlations,<sup>42</sup> is in fact correct, then it should serve to reinforce our confidence in the democratic peace proposition showing the same linkage. Similarly, it may also suggest an internal mechanism at work in these non-democratic regimes that is not linked to the specifics of any one of these issues alone. Furthermore, it suggests a multiplicity of reasons to support democratic structures, particularly avoidance of democide, that may have resulted in more deaths in this century than war itself.

D. *Government Failure as the Core Internal Mechanism in War, Democide, and Other Goals Correlated with Government Structures*

Scholars working on the "democratic peace" are not in agreement about the mechanism that may be responsible for that phenomenon. Some have emphasized structural or institutional constraints or greater diffusion of power within democratic governments. Others have emphasized a shared democratic culture or a normative commitment to peaceful resolution of disputes. Still others have urged that it is likely to be a combination of structural and normative elements. Interestingly, most scholars working on one of the issues that now seem to be correlated with government structures, such as peace or famine, seem not to have focused on the common correlation apparently running through a wide variety of critical issues in measuring governmental performance.

While structural and normative elements of course play a role, my work at the University of Virginia leads me to believe that the core mechanism is more adequately described with a different focus. I believe that the principal *internal* mechanism responsible for the democratic peace, democide, general economic malaise, environmental under-performance and famine, as correlated with government structures, is, in fact, the mechanism, now well under-

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42. For example, the same linkage with government structures may also operate with levels of governmental corruption. See, e.g., Mancur Olson, *Russian Reforms: Established Interests and Practical Alternatives* 12 (1995). One student in my "Rule of Law" seminar at Virginia has written an interesting paper arguing the same linkage with mistreatment of women through such practices as coercively limiting births, and, more broadly, infanticide of female babies.



stood in economics, for which the Nobel prize in economics was awarded a few years ago, that I refer to as "the theory of government failure." This theory, widely known as "public choice" theory as originally developed by Professor Buchanan,<sup>43</sup> posits that government decision makers will generally act rationally, like actors elsewhere, and that the government setting, as with markets, provides a series of mechanisms by which these elites and special interest groups may be able to externalize costs on others.

While this theory was developed primarily as it operates to explain significant government failure in democracies, the same underlying basis operates off-the-scale within totalitarian and non-democratic regimes to produce what might be characterized as massive government failure in those systems. Thus, a Saddam Hussein, deciding on action against the State of Kuwait, is in a setting where he will personally reap the benefits of a successful takeover of Kuwaiti oil, while he is able to externalize the risks of the conflict onto draftees, many of whom are from groups in Iraq, such as the Shias and Kurds, who oppose him. He will stay in power win or lose, and the benefits of a win would inure to him directly, while the costs would be significant but largely borne by others. Notice that in totalitarian systems the incentive structures for high risk endeavors such as war operate on *both* the cost and benefit sides of the equation. That is, Saddam will personally reap the tangible rewards of success<sup>44</sup> *and* he will be able to largely ex-

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43. See, e.g., James M. Buchanan, *Politics Without Romance: A Sketch of Positive Public Choice Theory and its Normative Implications in the Theory of Public Choice II* 11-22 (James M. Buchanan & Robert D. Tollison eds. 1984). Today there is a rich literature on public choice theory. For a broad selection see William Baxter, *People or Penguins: The Case for Optimal Pollution* 1-110 (1974); Steven Kelman, *Public Choice and Public Spirit*, 87 *In Pub. Interest* 80-94 (1987); Alice M. Rivlin, *Reviving the American Dream: The Economy, the States, and the Federal Government* 1-19, 82-125, 177-82 (1992); Charles Wolf, Jr., *Conclusions: The Choice Between Markets and Governments, Markets or Governments* 151-79 (1988).

44. Note that the argument of Norman Angell in his 1910 book *The Great Illusion* was centrally that since people could not profit from modern war therefore they would not rationally undertake war. See Angell, *supra* note 11. This theory, in fact, has cogency as it operates in democracies, where, not incidentally his theory received broad acceptance (particularly the United Kingdom and the United States). But Angell failed to notice that his theory does not operate in totalitarian or other non-democratic settings where a regime elite may well be able to directly benefit from a successful war. Moreover, the risk side of the equation is of equal, and perhaps even greater, importance and it may operate even more powerfully in a differential fashion between democratic and non-democratic settings. If this is so, one might expect democracies to engage in substantial high-confidence, low risk activities viewed as significant, even involving the use of force, such as the recent U.S. actions in Grenada and Panama, but not to initiate high risk activities likely to lead to major war. That is, democratic involvement in major war, as in World

ternalize the costs of failure on others, even his enemies. By analogy to government failure theory as understood in democracies, with its focus on costs of information about government actions, differential impact of such actions, differential costs in organization to lobby government, and the impact of special interests groups in the electoral process, the regime elite in a totalitarian society might be thought of as a special interest in charge. That is, in totalitarian states special interests *are* the government. Their behavior in risking war is likely to be quite different in their setting of "heads I win big time, tails you lose," than in the democratic setting of "heads I might win marginally, tails I lose big time." Nor is it surprising in a government run by special interests that such elites are prepared to slaughter the population to stay in power, as did Pol Pot in Cambodia. Similarly, they can be expected to micro-manage and control economic resources for their own benefit (Marcos in the Philippines, among countless others) and to ignore severe environmental degradation foisted on their own populations (the Communist regimes in East Germany and throughout the Warsaw Pact, as well as Soviet leaders in handling Chernobyl, and countless other examples). Nor as Professor Sen has correctly said, would they be particularly concerned about widespread famine which, of course, does not affect their own high privilege (including, for example, Saddam Hussein's general lack of concern about economic sanctions that impact primarily on his own population but do not affect his own privileges or hamper his construction of more palaces).

Although few economists seem to have thought about government failure theory in relation to non-democratic regimes (which is, perhaps, not surprising in view of its general development and application within market democracies), Mancur Olson does have a brilliant analysis in relation to economic well-being that clearly applies the underlying mechanism to totalitarian systems. Thus, in speculating as to why a despot, who would own everything, might not even be a better manager, Professor Olson writes of the "grasping hand:"

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Wars I and II, is likely to be in response, rather than as an aggressor, if this theory is correct.

The autocrat . . . has an incentive to charge a *monopoly* rent and to levy this monopoly charge on *everything*.

. . . .

The consumption of an autocratic ruler is, moreover, not limited by his personal capacities to use food, shelter, or clothing. Though the pyramids, the palace of Versailles, the Taj Mahal, and even Imelda Marcos' three thousand pairs of shoes were expensive, the social costs of autocratic leaders arise mostly out of their appetites for military power, international prestige, and larger domains. It took a large proportion of the total output of the Soviet Union, for example, to satisfy the preferences of its dictators.

. . . .

The majority's interest in its market earnings induces it to redistribute less to itself than an autocrat redistributes to himself.<sup>45</sup>

And, while I believe (or at least have a strong hunch) that the mechanism of externalization, underlying the theory of government failure as we understand it today (as well as serving as the central mechanism also underlying market failure), is probably the core *internal* mechanism responsible for the "democratic peace phenomenon," as well as the other areas of dramatic failure of totalitarian and non-democratic regimes,<sup>46</sup> I would suggest that the full phenomenon is probably a synergy between a number of factors. These other factors include differential belief systems about statist versus democratic government with very differing consequences, as well as a variety of mechanisms associated with forms of interaction with other nations (the effect of the international system) that relate to levels of external deterrence on extreme behavior. With respect to the effect of differential belief systems it might be summarized by saying that one major strand in thinking about government leads from Plato through Hegel to glorification

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45. Mancur Olson, *Dictatorship, Democracy, and Development*, 87 *Am. Pol. Sci. Rev.* 567, 569-70 (1993).

46. I believe that mine may be the first suggestion of this mechanism of "government failure" as the core mechanism in understanding the democratic peace and the massive government failure of democide, as well as differential failure in environmental protection, and other apparent failure correlations with government structures.

of statist solutions, glorification of totalitarian leaders, glorification of victorious war, and a disdain for the individual. Another major strand leads through Magna Carta, Locke, Montesquieu, Madison, and the French Declaration of the Rights of Man, among other sources, to democracy, the rule of law (instead of rule by law) and empowerment of the individual.<sup>47</sup> The widespread acceptance of one or the other belief systems is likely to have a major impact on behavior of state leaders. Related to these contrasting models, in the first or statist system frequently the leaders that take power are specialists in violence who may even take power by killing off the opposition (Saddam Hussein in Iraq is a good example). In contrast, in the second or democratic models state leaders are likely to excel at rhetoric and popular appeal (as with recent leaders in Canada, France, Germany, the United Kingdom, and the United States, among many other democracies). Might leaders taking power who are more likely to be specialized to violence and radical coercive ideology also be prepared to more quickly extend their violent ways internationally, i.e., extending beyond national borders what they already do at home, or, indeed, might such regime elites even be psychologically predisposed to high risk behavior leading to major war? More broadly, in the non-democratic regimes it is accepted that the ends justify the means, there is no meaningful check of the rule of law on government itself, and human freedom is subordinated to the collective. Should we be surprised by the massive government failure in these regimes, or that they have a greater propensity to risk major war or to commit genocide? Similarly, democracies, with their higher levels of economic freedom, may also have higher levels of interconnections abroad, through trade, investment, human contacts, etc., that serve to create what might be thought of as a higher level of "affirmative" deterrence. That is, democracies may have more to lose by war and thus be less willing to undertake it.

Note that if I am correct that the core mechanism predisposing non-democratic regimes to major war is externalization of costs by a special interest in charge, then the consequences for deterrence of such regimes is profound. For to control the problem, deterrence must be focused on the regime elites who are the source of the externalization rather than on the country or the peoples of

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47. I develop these concepts in a seminar that I teach at the University of Virginia, which I believe is the first in the world devoted to the problem of government failure and its control by law, and that I call "The Rule of Law: Controlling Government."

that country as a whole. Similarly, if this theory is correct, it would suggest, and perhaps also largely account for, the consistent disappointing experience with economic sanctions, that such sanctions directed to a population as a whole may have only limited effectiveness (as, again, we see in Iraq following the Gulf War).

It might also be noted that if “government failure” is even an important internal (that is, operating within the nation state) mechanism leading to war, democide, and other important disasters, then the new paradigm offers a sharper focus than much of traditional “Realist” or “balance of power approaches” to our theoretical understanding of the role of individual national leaders. For the importance of individual national leaders may vary greatly depending on government structures. A classical “Realist” perspective of nations colliding like billiard balls may miss the point that in non-democratic states at least, it is regime elites that may principally move the balls. Even more interestingly, the new paradigm points out an obvious fallacy in some balance of power approaches which assume a magical identity between the national interest and the goals of totalitarian national leaders. It has always been a paradox within some (not all) balance of power approaches which, while seemingly rooted in Realism, seem to adopt almost an extreme idealism in apparently accepting an identity between national and elite interests, however oppressive and totalitarian the regime elites may be.<sup>48</sup> Surely the concept of “the national interest” is of lessened explanatory power when it may reflect alternately the will of the people or only the narrow interests of regime elites.

#### E. *The Missing Link: The Importance of Deterrence*

The “democratic peace,” even if we were to fully understand whatever *internal* mechanism seems to be at work, does not, by itself, adequately explain war. It is an obvious truism that democracies also have engaged in many wars, including, among others, World Wars I and II in this century. In part for this reason, the important relationship between government structures and war has been generally ignored. Conventional wisdom, including scholarly opinion, has long held that democracies are no less war-like than non-democracies.

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48. I am indebted to Professor Inis L. Claude, Jr., for calling this consequence of the new paradigm to my attention.

Since the “democratic peace” is the most powerful correlation found to date with respect to war and peace, it would seem a mistake for any theory of war to ignore it. Rather, it would seem more reasonable that *only* a theory integrating, but obviously going beyond, the “democratic peace” phenomenon can most effectively take account of current human knowledge about war and peace.

For some years since leaving the United States Institute of Peace, I have been working at the University of Virginia trying to complete the puzzle and put together a more comprehensive theory that more adequately explains *both* the democratic peace and the obvious and important reality of democracies at war.<sup>49</sup> While one should always fear the hubris of premature, and erroneous, shouts of “Eureka!,” unless theory is advanced with conviction when it is felt, there will be little opportunity for either confirmation or the learning that comes from corrected error. I will thus risk the slings and arrows attendant on so bold a claim as a framework for understanding, predicting, and hopefully avoiding war, since I do indeed believe that the theory, and evidence for that theory, is at least strongly suggestive. Moreover, the theory turns out to fit the theorem of Occam’s razor to a “T,” since it is extremely simple—indeed, almost obvious. And it seems to put together disparate, but persuasive, bits and pieces of war/peace theory in an effective manner, with no obvious bits of the puzzle left lying on the table.

First, however, a caveat. The theory is aimed at major war, which I am somewhat artificially defining in relation to the most

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49. I am currently at work on a book that will present the theory in detail. The discussion in this Article is the first preliminary overview of the recommended new paradigm and its consequences, although much abridged and without the war/peace case studies or detailed discussion of, among other components of the new theory, the strengths and weaknesses of existing theory. I have, however, over a period of years, presented the full theory in a detailed slide presentation that can be adjusted from 25 to 250 slides depending on the detail desired and the time available. Briefings have been made to numerous academic audiences, international law and national security law classes at two law schools, professors and law and senior government officials from a number of countries in the National Security Workshops of the Center for National Security Law, to the annual meeting of the Canadian Society of International Law, an American Bar Association-sponsored conference, and to the National Ground Intelligence Center of the Defense Intelligence Agency. I have also developed a detailed seminar exploring approaches to war avoidance, including the recommended newer paradigm, focused on government structures and deterrence (that is, “democracy and deterrence”) that I teach at the University of Virginia School of Law with my colleague Robert F. Turner under the title “War and Peace: New Thinking About the Causes of War and War Avoidance.”

important democratic peace database as exceeding 1,000 casualties. Similarly, because civil, as opposed to clear international, wars may involve different and special elements, the theory is not, at least initially, aimed at civil wars. Indeed, the starting point of scientific understanding of any field is development of a reasonably clear taxonomy for study. It is likely that the failure of many theorists and databases to differentiate minor coercion and threat settings from major war is a factor contributing to the present level of confusion in the field. Having expressed the caveat, let me also say that I believe we are going to find many of the same elements (but with some differences, such as a possible greater willingness of democratic adventurousness in minor coercion settings) in low intensity and even civil war settings and in settings where the non-democratic regime is not representing a state but rather is engaged in a struggle for power or is a guerrilla or terrorist group. The actions of the Aideed Group in Somalia, the Hutu militia in Rwanda and Zaire, and of the Serb groups engaged in "ethnic cleansing" in Bosnia provide examples.

Quite simply, I believe that the missing link that, in synergy with the democratic peace, largely explains major war, is deterrence, or more accurately, the system-wide absence of effective deterrence, in settings of major aggressive attack by non-democratic regimes. That is, major war is a synergy between aggressive attack (typically by a non-democratic regime prepared to undertake high risk aggression—but which does not expect to lose), and an absence of effective system-wide deterrence that would have deterred a rational actor from the adventure.

Major wars occur as a synergy between a regime initiating an aggressive attack (typically non-democratic), and an absence of effective system-wide deterrence. If the theory is correct, one would not expect a major war if *either* factor is absent. Thus, France and Switzerland or the United States and Canada do not even worry about border defenses since they are democratic nations in a post U.N. Charter setting which would not for a moment consider aggressive attack upon one another. Notice that this reality is accepted in these and many other similarly situated democratic nations, despite an obvious power imbalance with their neighbors. If the core issue were power, then one might expect a different reality on such borders between democracies, but that is not the case anywhere in the world. If the core issue were the existence of arms one might expect major nervousness in Canada and the United States about the U.K. nuclear deterrent or the French

“force de frappe.” That, however, is not the case. And, similarly, even across a central cold-war boundary of the old NATO/ Warsaw Pact division, effective deterrence, as in this case was provided by NATO, avoided a war that may have occurred as World War III in the absence of NATO.

By deterrence, I mean deterrence in its broadest sense both negative and positive, and including military and non-military incentives. That is, deterrence here refers to the totality of positive and negative actions influencing expectations and incentives of a potential aggressor, including: potential military responses and security arrangements, relative power, level and importance of economic relations, effectiveness of diplomatic relations, effective international organizations (or lack thereof), effective international law (or lack thereof), alliances, collective security, effects on allies, and the state of the political or military alliance structure, if any, of the potential aggressor and target state, etc. Most importantly, of course, there is a critical perception and communication component to deterrence since ultimately, it is the perception of the regime elite contemplating aggression that is most critical.

Effective military deterrence, at present perhaps the most important single feature of the deterrent context, includes the following classic elements, among other nuanced features:

- The ability to respond,
- The will to respond,
- Effective communication of ability and will to the aggressive regime, and
- Perception by the aggressive regime of deterrence ability and will.

While the United States and its democratic allies have been in wars in the twentieth century based on an absence of deterrence resulting from each of these elements, I believe that the most dangerous problem in the current setting is in the last two. The Gulf War is a paradigm example of an absence of deterrence, with responsibility shared by many nations, and caused primarily by the communication and perception factors. Obviously, Saddam Hussein could not defeat France, the United Kingdom and the United States, much less the broader Gulf War coalition, but the parties never communicated to Saddam the likelihood of their in-



volvement and he not unreasonably believed that such external involvement was unlikely in response to his aggression.

The importance of deterrence is hardly new. For example, perhaps the most important theorist of all time on war, Karl Von Clausewitz, wrote in his classic work:

Since war is not an act of senseless passion but is controlled by its political object, the value of this object must determine the sacrifices to be made for it in magnitude and also in duration. Once the expenditure of effort exceeds the value of the political object, the object must be renounced and peace must follow.<sup>50</sup>

The potential effect of deterrence, then, one would think would be a logical starting point for analysis as to the missing link in the democratic peace theorem. That is, if democracies engage in major war primarily because they are responding to an aggressive attack by a non-democratic actor that they perhaps should have and could have deterred, but did not, then the circle would be largely squared. Sadly, however, we have no comparable databases to that used in the democratic peace asking the obviously important questions of the role of democracies *as either aggressors or defenders in major war* (as opposed to minor coercion settings), and whether each major war was preceded by a system-wide absence of deterrence sufficient to cause the potential aggressor to believe they would prevail at reasonable cost. Perhaps contributing reasons to the absence of appropriate databases on these important questions are that for the most part the social scientists engaged in this work are not trained as international lawyers and are understandably skeptical in the inevitable setting of charge and counter charge about the ability to have even reasonably objective determination as to "aggression," and that many working in the area of peace studies either are not fond of, or even seek centrally to rebut the role of deterrence.<sup>51</sup> In the absence of such a data base, my work at Virginia on these issues has been based largely on detailed case studies, initially of all twentieth century wars, examining particularly the question of aggression and relative absence of deterrence before the attack.

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50. Carl Von Clausewitz, *On War* 95 (Michael Howard & Peter Paret trans. and eds., 1976).

51. For a negative or "minimalist" view of deterrence in war avoidance, see e.g., Robert Jervis et al., *Psychology and Deterrence* (1985); Richard N. Lebow, *Between Peace and War: the Nature of International Crisis* 273 (1981).

There are at least three ways to test the democracy/deterrence war hypothesis. First, examining the consistency of the theory with major wars. Second, examining the consistency of the theory with non-war settings or, what Sherlock Holmes referred to in *Silver Blaze*<sup>52</sup> as the “dog that did not bark.” And finally, seeking to test the hypothesis by examining the effects of major system changes in relation both to government structures and deterrence.

It is impossible in this brief paper to fully present the results of this analysis for each major war of the twentieth century, but to summarize, I found not only that there was an aggressor in each, and that the aggressor was not fully democratic in terms of the decision elites deciding on war, but also that there was a striking absence of effective deterrence (emphatically *not* a deterrent failure) in each case. World War II, with Hitler’s aggression and both Stalin’s and Chamberlain’s appeasement (in the West we focus on the “umbrella appeasement” of Chamberlain but I would argue that Stalin’s Molotov/Ribbentrop pact allowing the movement of much of the German army to the Western Front was even more serious) is a paradigm case. In the case of World War I, which is perhaps the war most at the opposite extreme in terms of widespread acceptance in the United States and Britain of what I believe is a revisionist view of the war, the hypothesis is also met squarely. The War really began on the Eastern Front, not the Western Front, in response to clear Austrian aggression against Serbia, egged on energetically by her ally Germany, and using the assassination of the Archduke as an excuse. The widespread notion of the war being caused by tight alliances is simply laughable in view of the reality of the deep military and political reluctance of the British to commit in advance to the French.<sup>53</sup> And further, in relation to deterrence, the German High Command believed that the Schlieffen plan would prevail on the Western Front within a maximum of 60 days.<sup>54</sup> And at least the Kaiser believed that the British would not enter the war and the Belgians would simply line up along the highways to watch the German troops march through. Of course, after an initially bitter debate among historians in Germany, Fritz Fischer’s work,<sup>55</sup> concluding, consistent with the view of the allies

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52. Sir Arthur Conan Doyle, *The Memoirs of Sherlock Holmes* 23 (Christopher Roden ed., 1993).

53. Supporting my own conclusion on this point, see also Joachim Remak, *The Origins of World War I 1871-1914* 89 (1967).

54. See Tuchman, *supra* note 12, at 238-239.

55. See e.g., Fritz Fischer, *Germany’s Aims in the First World War* 89 (1967).

at the time, including the views of Woodrow Wilson immediately after the war, that the war was principally the responsibility of German aggression, is now broadly accepted in Germany.

Not only did my review persuade me that an absence of effective deterrence was present before every major war of this century, but I also believe that it was, in each case, a *double* deterrence absence. That is, on the political front the potential aggressors had good reason to believe, and did so believe (even if ultimately wrong), that the nations capable of altering the power equation in the war would not enter the war and, on the military front the potential aggressors concluded, again with good reason, that they had military power sufficient to win the war in a short period of time (the longest such period being the 60 days on the Western Front of the Schlieffen plan in World War I with the exception of the long war apparently expected by Ho Chi Minh and the North Vietnamese under a struggle initially undertaken as a covert low-intensity attack).

Examining the “dogs that did not bark” settings, again the hypothesis seems to strongly fit the obvious examples, including NATO deterrence and the absence of a war at the central strategic front between East and West. This hypothesis would also suggest, counter to some current popular perceptions, that following the demise of the former Soviet Union it is not inevitable, or even at all likely, that the next great struggles would be with a resurgent Germany or Japan. For today, Germany and Japan are fully democratic. Indeed, this would seem to be a case where “old thinking” would be erroneous and, indeed, could even contribute to inappropriate tensions between important democratic allies and trading partners.

Interestingly, examining system changes affecting the two sides of the equation, government structures and deterrence, also seems to support the hypothesis. One obvious example was the enormous change brought about in every facet of the relationship between East and West, including downsizing of military forces, that resulted, and is still occurring, from the ongoing change toward democratization of the former Soviet Union. A change in government structures had a greater effect than all previous arms control or diplomatic initiatives. Indeed, the principal effect on arms control was a dramatic spill-over effect on arms control itself enabling progress that would have been regarded as fantasy prior to the ongoing Soviet double revolution. Some of the changes brought about by the effects of the move of the former Soviet

Union from totalitarianism toward democracy (and decentralization) include elimination of an entire class of intermediate range strategic delivery vehicles in the INF Treaty, a major reduction through the CFE Treaty of Soviet conventional forces in Europe that had been resisted by the Soviets since World War II, extraordinary breakthroughs in SALT/START enabling an actual reduction of deliverable nuclear warheads on both sides, a move by the former Warsaw Pact satellite states toward NATO, a retargeting by both Russia and the United States of nuclear weapons previously aimed at each other, a sale by Russia to the United States of fissionable material recycled from Soviet nuclear weapons, massive force reductions on both sides of the former cold war and, at least in many cases, a removal of the former Soviet "automatic veto" in the U.N. Security Council. Does anyone really believe that these kinds of fundamental changes could have taken place solely as a result of arms control negotiations or pursuit of any traditional approach to war avoidance? And it is worth noting in passing that the collapse of deterrence along with the Iranian revolution may well have been a central factor in encouraging Saddam Hussein's earlier misadventure there. We might also note that in World War I, the only clearly democratic ally initially in an alliance with Germany and Austria, which was Italy, refused to join them in their attack on Austria, saying the alliance was defensive only and did not extend to aggressive attack. Italy then joined the Allies against Germany and Austria.

While I have relied primarily for my conclusion that deterrence is the missing link on my own analyses of these three modes of testing the hypothesis, I have also been strengthened in this belief by at least two other important sources. The first is a superb recent book by Professor Donald Kagan at Yale, one of the preeminent historians in the United States, studying four wars, including World Wars I and II in depth.<sup>56</sup> His analysis of World Wars I and II agrees strongly with my own analysis and, of even greater significance, his analysis of the four case studies, including The Peloponnesian War and Hannibal's War: The Second Punic War, 218-201 B.C., clearly suggests that a central element in producing each war was an absence of effective deterrence.<sup>57</sup> The second, at

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56. Donald Kagan, *On the Origins of War* (1995). Kagan is Bass Professor of History, Classics, and Western Civilization at Yale. He is considered to be one of the preeminent historians in the United States and has taught a seminar at Yale for many years examining war and case studies of war.

57. *Id.* at 46-47, 232-74.

a more theoretical level, is the work of Robert Axelrod reporting that in repeated competitive challenges in game theory competition, "tit for tat," a core deterrent strategy, was the most effective approach to resolving the Prisoner's Dilemma Setting, itself a proxy for many choices in international relations including settings concerning aggressive war.<sup>58</sup> That is, the best strategy for encouraging cooperative behavior was to lead with cooperation but to then respond to any non-cooperation in kind.

The bottom line is that when *internal* checks fail, as a result of government structures not controlling high-risk aggressive behavior, effective deterrence in place from the international system can prevent war. As one example, the data we now have from the Soviet archives shows that the Korean War should never have occurred and that Stalin would almost certainly not have given the green light to Kim Il Sung if he believed the United States would fight for South Korea. Why should Stalin or Kim Il Sung have believed this, however, when both Secretary of State Dean Acheson and General Douglas MacArthur, Supreme Commander Allied Powers, had made statements that did not include South Korea in the American defense perimeter, when we had told the South Korean Government it was on its own in dealing with either external or *internal* attack, and when we had been dramatically downsizing military assistance to that nation?

In contrast to the importance of deterrence in war avoidance, I can find virtually no evidence supporting the likelihood of accidental or unintended war, or supporting the belief that war is really just a dispute among nations similar to civil disputes within the domestic legal system, as is an apparent paradigm belief of many of those who oppose or take a minimalist view of deterrence. Each major aggression, at least in this century, was indeed intended by its perpetrator, who acted in a reasonable but erroneous belief that the powers necessary to block quick success would not respond, or would not respond effectively.

Before leaving the importance of deterrence, or more precisely the *absence* of effective deterrence, as a major factor leading to war, let me turn to a relationship between democracy and deterrence that may suggest to some an inconsistency between these emphasized factors of democracy and deterrence in war avoidance. It is, I believe, an at least strong hypothesis that democracies

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58. Robert Axelrod, *The Evolution of Cooperation* 27-54 (1984).

have entered major war, at least in this century, principally as a result of failing to effectively deter aggressive attack. Does not that suggest then that democracies themselves are prone to war, even if not with other democracies, because of a propensity to only poorly deter? Initially, I suspected that democracies, with their checks and balances, free debate, and pluralist societies, may be poor at deterrence.<sup>59</sup> Perhaps that will turn out to be the case. At present, however, I doubt that democracies will prove to be uniquely weak at deterrence. For non-democracies seem to fight each other at a rate that is as high, if not higher, than democracies fighting non-democracies. Yet in the exclusively non-democracy war, deterrence also should prevent it. That is, although we do not at present have any good data directly answering this issue, the data we do have gives us *no reason* to believe that *democracies are poorer at deterrence than non-democracies*. Non-democracies, too, may have factors predisposing them to weakness in deterrence. For example, there may be a tendency for totalitarian leaders to seek to preserve their peace through short term “deals” with other totalitarians. One would think that East and West together could have prevented World War II and deterred Nazi Germany, but Stalin’s “Molotov-Ribbentrop” pact with Hitler undercut deterrence, and led to the devastation suffered by the Soviets in WWII, even more than the actions of Chamberlain before the War. Moreover, counter-examples abound for the democracies. Certainly NATO was a classic and deliberate strategy of deterrence that may well have avoided World War III. And successive United States Presidents of both parties have maintained deterrence in Korea and more recently the Gulf, after the wars in those regions. Moreover, we do have data suggesting that democracies *win* their wars almost invariably. That record alone could enhance their deterrent posture. In any event, even if democracies have difficulty in deterring, it would not invalidate the suggested synergy that major war results as a synergy between aggressive attack (typically highly correlated with non-democratic forms of govern-

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59. For a discussion of some of the factors suggesting democracies may have a difficult time in deterring, see Inis L. Claude Jr., *States and the Global System* 192-94 (1988). Professor Claude emphasizes the commitment problem in effective deterrence. *Id.* He points out that “[a] state that commits itself in advance to a line of action always risks the possibility that the keeping of its promise will require it to act in a way that it will judge detrimental to some important national interest.” *Id.* at 192. He further suggests that, “[t]he awkwardness of being committed is compounded for a democratic society by the potential conflict between the principles that the state should keep its promises and that it should be controlled by the majority will.” *Id.* at 192-93.

ment) and an absence of effective deterrence. It would simply suggest, as does the past record of democracies in this century, that they need to do a better job of deterring potential aggressor nations.

F. *Three Levels of Analysis: A Simplified Model for War Avoidance and Enhanced Security*

One of the classic works of international relations, and of war/peace theory, is the splendid little book by Professor Kenneth Waltz, *Man, the State and War*.<sup>60</sup> In this book, Waltz reports that war has been attributed in the past to one or more variables occurring at three levels of analysis: the individual, the state, and the international system.<sup>61</sup> This tripartite division has become a mainstay of international relations analysis in general. I have found that it offers a good framework for a simple model of my hypothesis on major war and, more broadly, on a new international relations paradigm focused centrally on government structures. This is so despite the fact that the book itself, like many other theoretical advances in war/peace thinking, did not get it right if the newer paradigm is correct. For Professor Waltz at least implicitly rejected the importance of government structures in the book<sup>62</sup> and has only recently begun to accept the democratic peace proposition.

Major war is a relationship between the nature of man, the nature of government, and the nature of the international system. Man, at least those men or women likely to take power as government leaders, is highly likely to be sane and rational and, in general terms at least, to calculate the costs and benefits of their actions, whether narrowly self-serving or more broadly embracing some social goal or ideology incorporated in their ego or super-ego development.

It is more likely within democracies that leaders with a commitment to voluntary agreement and an aversion to extreme violence will take power. In any event, the nature of the democracy, with its electoral process and checks and balances, imposes critical *internal* governmental checks on their actions. Although a democratic populace may support minor coercive adventures they are

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60. Kenneth Waltz, *Man, the State, and War* (1959).

61. *Id.* at 1-15.

62. *Id.* at 80-158.

less likely to support high risk aggression in settings where they will not as readily benefit even from success and where they may directly pay the cost of failure. Thus, whatever the nature of the democratic leader, there are powerful *internal* checks operating on the initiation of major war from the *internal* governmental level itself.

In contrast, totalitarian and non-democratic systems are more likely to see specialists in violence and ruthless leaders take charge. This follows both from the mode of acquiring power in such systems and from the Hegelian statist philosophical and political theory that tends to accompany such governments. Most importantly, however, whatever the nature of the totalitarian leader, their system enables them, and a small elite surrounding them, to capture the benefits of major adventures abroad and to externalize the costs on their own population. Rather than serving to check potential high risk behavior of national leaders, totalitarian and non-democratic structures tend to provide extraordinary national level resources to carry out narrow individual goals. Thus, the mechanism of government failure works powerfully to even multiply the foibles of national leaders. This is, of course, not to suggest that all leaders coming to power in non-democratic or even totalitarian nations will be prone to war or democide. There will be a few like Marcus Aurelius, the generally benign and in some ways remarkable Emperor of Rome from 161 to 180 A.D., in structures of absolute power such as the Roman Empire, but there will also be those like Caligula (37 to 41 A.D.) whose excesses, rather than being checked, will be amplified by the resources of the state.

Note that if the presence or absence of *internal* checks from government structures has this effect in either checking or amplifying potential high risk aggressive behavior rooted at an individual level, then a focus on removing specific motivating factors, such as specific disputes, as the way to prevent war may be particularly misleading. While some motivating factors may have greater potency in motivating war than others, mankind may have a potentially infinite list of old and new desires and motivating factors. This is not to argue that it would not be helpful to seek to cure recurrent problems such as ethnic or religious hatred, poverty or specific disputes, but rather to suggest that our focus on these individual motivating factors as a central "cause" of war may considerably mislead in the effort to more effectively control war.



Finally, at the level of the international system, there is a last opportunity for a check on high risk aggressive behavior. If, of course, nations are democratic at the governmental level, they may be in less need of checks from the international system—though human rights and non-aggression provisions applicable to all would seem a further useful Madisonian check on any and all governments. Or, if they happen to be governed by a Marcus Aurelius, no external check may be necessary. But when they are governed by a Hitler, a Kim Il Sung, a Pol Pot, a Saddam Hussein, a General Aideed in Somalia, or the Hutu rulers in Rwanda before the recent directed slaughter, then the only remaining opportunity to avoid war or democide, or some other unpleasant consequence such as an attack on U.N. forces, may be effective deterrence from the international system level including, of course, deterrence from an effective United Nations itself. Where deterrence is present there may be no war or democide or attack on U.N. forces. Where it is absent the behavior goes unchecked.

In reviewing this simplified model, we should also remind ourselves that if deterrence is the missing link at the international system level, then it is far more cost effective, in lives and treasure, to achieve deterrence than to be forced to fight a war or bury the victims of democide. In considering this point we might also ponder that the economic costs of war, like those of foregone economic growth, are costs imposed not only on ourselves but also on *all* future generations as a result of the direct loss of wealth in the war, and even more importantly for future generations, of the wealth that will never be from the absence of otherwise endless compounding on that wealth.

Another way of thinking about this range of issues at an even higher level of generalization, is to note that *incentives matter* in structures affecting foreign policy as well as other aspects of life. Governmental structures, and the presence or absence of deterrence (broadly conceived) in the international system, are the key factors affecting such incentives. Given that the reaction to incentives is a core element in the evolution of life itself, it should not be surprising that incentives matter in foreign policy.

### G. *General Consequences for Democratic Foreign Policy*

If the democratic peace proposition, the democracy/deterrence hypothesis about war and democide, and more broadly, a new

paradigm based on government or incentive structures, are correct, or even more correct or useful than older paradigms, then the consequences for foreign policy would seem to suggest:

- pursuit of a long-term strategy to promote democracy (including economic freedom);
- a focus on deterrence, as needed to prevent major war and/or democide from dangerous regimes; and
- within deterrence, a focus of deterrence on regime elites, thus redressing the imbalance produced by the underlying mechanisms of “government failure,” rather than more generally focusing deterrence on a nation or its peoples.

Let us briefly review each of these in turn.

### *1. Democracy Building and Rule of Law Engagement*

If democracy is powerfully linked to war avoidance, human rights, economic growth, environmental protection, famine avoidance and perhaps other major foreign policy and humanitarian goals, then an appropriate long-run strategy would seem to be to seek to educate about the advantages of democracy and to peacefully assist in transitions to democracy. This is *not* to proclaim some coercive crusade threatening world order, but rather a sharing of information and “technology” about democracy and its advantages. It *does* mean that we should end the seemingly neutral “even handed cop-out” that portrays all government structures as equally advantageous or appropriate. Quite apart from the democratic peace, the newer democide data powerfully demonstrates the linkage between government structures and the real-world realization of human rights. Thus the next step in human rights engagement, if we are serious about human rights, is a focus on government structures and democracy building.

Not surprisingly, many nations around the world are now recognizing this reality and are setting up programs to peacefully promote democracy and democratic institutions. These include the National Endowment for Democracy in the United States and the Westminster Foundation in the United Kingdom, but they also include a substantial effort by the European Community, and newer efforts by other nations. Even the World Bank and the Organiza-

tion of American States, formerly bastions of non-intervention, now have endorsed, at least in part, the effort to build democracy and to enhance economic freedom.

Programmatically, however, efforts to assist with democracy building are in their infancy. In this connection, I recently recommended creation of a "Partnership for Democracy" among democratic nations from every regional group to promote democracy in peaceful ways.<sup>63</sup> Whatever the programmatic specifics, much remains to be done at every level in developing appropriate means of encouraging democratic transitions.

It should be remembered in seeking to promote democracy around the world that such a strategy is a *long-term* strategy. We should not be under any illusions that all of the nations of the world will instantly, or even quickly, become democratic. The key will be constancy of purpose and well-thought out programmatic efforts at education and assistance.

## 2. *Deterrence Against Aggression and Democide*

Sadly, the real world exhibits all too many Saddam Husseins and General Aidedes. If the newer model is correct, then the most effective way to constrain such non-democratic elites is through effective deterrence at the level of the international system. To be most effective this renewed and sharper focus on enhancing deterrence where needed should be pursued at every level with promise of success, including national, regional and international. And rather than simply a generalized focus on collective security or balance of power we should focus explicitly on the adequacy of levels of deterrence against threatened war, democide or other internationally outlawed behavior as the issue arises in specific settings. This means, as I will develop shortly, a new focus for strengthening the effectiveness of U.N. actions for enhanced peacekeeping, collective security and war avoidance focused on enhancing deterrence and *avoiding war* rather than having to fight it.

Given the magnitude of democide apparently taking place in this century, perhaps exceeding combatant casualties in all wars of the twentieth century by a factor of two to four, it is also incum-

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63. See John Norton Moore & Mark Palmer, *Partnership for Democracy: Let's Finish the Job* 4 (1996) (unpublished paper on file with author).

bent upon us to develop more effective deterrence against democide at the international system level. Since World War II there has been a powerful movement for human rights that has succeeded in establishing minimum normative guarantees owed by governments to all inhabitants of planet earth, guarantees that may not be offset by claims of national sovereignty. Sadly, however, the international system has a poor record in enforcement of these standards, as the slaughter in Cambodia under Pol Pot so vividly demonstrates. Perhaps we can be encouraged, however, that some efforts are being made in response to the "ethnic cleansing" in Bosnia, the slaughter of 500,000 or more Tutsis in Rwanda, and, most recently, the plight of the Hutu refugees in Zaire who apparently have been held against their will for several years in miserable refugee camps by the same democidal Hutu militia. What is needed is far greater energy and creativity in developing effective modes of *deterrence* to prevent such atrocities in the first place. Deterring democide must be a critical goal of the international system in the future just as that system has traditionally, but not overly successfully, been concerned with war avoidance.

As we pursue a renewed focus on deterrence we should also particularly focus on the range of problems for democracies in clearly identifying in advance where we are prepared to stand, and in clearly signaling such intentions to potential aggressors. Clarity in communication may emerge as one of the centrally important ways to enhance deterrence for war or democide avoidance. This, in turn, depends on an advance determination within democracies, or the United Nations or other international organizations. That reality may be theoretically correct, but it presents new and daunting challenges for domestic and international politics and diplomacy.

### 3. *Focusing Deterrence on Regime Elites*

If the new paradigm is correct, particularly in its identification of the mechanism from theoretical economics of "government failure" as the core mechanism underlying aggressive high risk actions leading to war, as well as democide, then it seems likely that an important part of enhancing the effectiveness of deterrence will be a new focus on regime elites. If these events occur in non-democratic settings because of externalization of costs generally,

then an at least partial antidote is to reimpose balance through sanctions focused on these regime elites and their acolytes. This suggests a need for genuine new thinking and a quest for new approaches in deterrence, to be added to the necessary military effectiveness and readiness, and clarity of decision and communication, that will likely continue to be required for war avoidance.

The need for enhanced deterrence focused on regime elites, operating at an individual level, also suggests an enhanced role for new and more effective international legal mechanisms concerning civil and criminal responsibility of such leaders. We have long had the concept of individual criminal responsibility for waging aggressive war, grave breaches of the laws of war, and genocide (subsumed in part under the Nuremberg Principles), but it is clear that we need to consider broadening civil liability in such settings (largely by removing immunities and more effectively tracing assets), to continue to strengthen criminal mechanisms (such as an effective new International Criminal Court), and, above all, to enhance mechanisms for effective enforcement—and thus deterrence.

### III. SOME MORE SPECIFIC CONSEQUENCES FOR ENHANCED EFFECTIVENESS OF U.N. COLLECTIVE SECURITY, PEACEKEEPING, AND WAR AVOIDANCE

#### A. *Traditional Analysis of Collective Security and U.N. Capabilities*

Collective security has a powerful logic. If the community of nations is prepared to stand against an aggressor, then a would-be aggressor should be deterred. Why then, has collective security worked only intermittently under the U.N. Charter?

Idealists and realists agree that one problem with U.N. collective security, during most of its history, has been the cold war division with its frequent use of the cross-bloc veto in the Security Council. Realists would add to this the problems in community agreement on “aggression” and the so-called “free rider” problem in economic theory, in which nations say “yes, but not me,” to requests to authorize and participate in serious war-fighting against an aggressor.

Perhaps also a pervasive skepticism about the workability of collective security has discouraged nations from working centrally

through collective security machinery. A good example is the British and French effort before World War II to seek détente with Italy, within a balance of power approach, to balance the rise of Nazi power, rather than to cast their lot seriously with the collective security system of the League. After all, Italy had broken with Germany in World War I and the Americans had refused to join the League. The result was a failure of the League to deal with Italian aggression in Ethiopia, Japanese aggression in Manchuria, and subsequently Nazi aggression throughout Europe.

Recently, Professor Inis Claude has added a brilliant insight about yet another difficulty with collective security in the real world—a problem now more evident after the at least partial removal of the cold-war veto in the Security Council. That difficulty relates to the need for a major power to take the lead when a war-fighting challenge is substantial.<sup>64</sup> He points out that in both Korea and the Gulf, U.S. leadership (and also U.K. leadership in the Gulf) were essential to the successful U.N. collective security operations.<sup>65</sup> While after the Gulf War popular expectations were raised of U.N. empowerment once the cold-war impasse had ended, he notes that removing the parking brake (*i.e.*, the veto) does not make a car climb the hill. In his usual well-turned language Professor Claude points out:

An automobile does not climb the hill just because its brake has been released, but requires a battery, fuel, and a driver intent on driving up the hill. So it is with collective security, which requires a motive force supplied by states convinced of the wisdom of, and willing to pay the price of participation in, the universal enforcement of the anti-aggression rule.

The notion that the removal of Cold War obstacles will initiate the implementation of the long-deferred Charter plan for the United Nations is fanciful enough to be dubbed the “Rip Van Winkle Theory” of the United Nations.<sup>66</sup>

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64. Inis L. Claude, Jr., *Collective Security After the Cold War II*, *Collective Security in Europe and Asia* 7-28 (Gary L. Guertner ed., 1992).

65. *Id.* at 24.

66. *Id.* at 5.

Professor Claude is pessimistic about the possibility of real collective security. He writes: I reached the conclusion some 30 years ago that the idea of creating a working collective security system had been definitively rejected, and that at most the

This need for affirmative motive force and intent is, of course, relative, and presumably, as is implicit in Professor Claude's use of the plural "states," lesser powers or coalitions can quite capably take the lead in genuine peacekeeping, or perhaps even selective peace-enforcement, as opposed to war-fighting against a serious adversary. Peace enforcement will be somewhere in between and will depend on all the circumstances, particularly the seriousness of the military threat.

While all of these real-world constraints on collective security, as sought within a U.N. framework, have cogency, I believe one of the most important problems with U.N. efforts at collective security has largely been overlooked and yet stands starkly revealed in the light of the new paradigm. The new paradigm focuses clearly on the importance of *deterrence* in controlling aggression and genocide. While collective security is theoretically a powerful form of deterrence, as it was implemented within the League, and only to a slightly lesser extent within the United Nations, it fails to provide much deterrence. Thus, as we have seen, effective deterrence must be before the fact, must have effective sanction or war fighting ability in place or credibly deliverable to the threatened theater, and must be politically credible—if not certain.

An instructive comparison may be to compare deterrence from NATO, which was effective and may have prevented World War III, with the deterrence, or lack thereof, offered by the United Nations since World War II. At a political level, NATO offered an absolutely certain response, and it included within it major powers with the ability to maintain a realistic balance. In contrast, the United Nations offered a remote possibility of a community response. Certainly neither Kim Il Sung in Korea nor Saddam Hussein considered there to be any realistic possibility of effective U.N. action in collective defense against their aggression. In this they were wrong, and the result was a war. But the point is, the United Nations did not offer a realistic deterrent in these settings, in sharp contrast with NATO toward the Soviet Union and the Warsaw Pact. And at a military level, NATO had forces in place, trained together, with a well-thought-out and serious war-fighting

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idea might occasionally receive lip service. I have taken the view that the implementation of collective security theory is not a possibility to be taken seriously, and that the United Nations should be turned to other, more promising because more acceptable, methods of contributing to world order.

Id. at 9. This excellent paper by Professor Claude has now been published in *The Search for Strategy: Politics and Strategic Vision* 255-271 (Gary L. Guertner ed.) (1993).

response in place, against any potential aggressor. The effective deterrent structure of NATO was not paralyzed by uncertainty of response, whatever the cause, and had a credible war-fighting force and plan in place. Again, in sharp contrast, the United Nations had no *in situ* war-fighting capability in place in terms of forces, funding, party participants, joint training, etc.

The principal exceptions to these sharp deficiencies in U.N. collective security as we have known it, as *deterrence*, are in Korea today, after the War, when I believe that counter to much public misinformation and hand wringing, it is highly likely that trip-wire forces in place, if maintained, will deter any future North Korean attack, and, at a political level at least, the Security Council guarantee of the demarcated and now mutually accepted boundary between Iraq and Kuwait, again put in place after a war, will deter any future Iraqi attack.

More legalistically, some have seen the root cause of the problem of lack of U.N. effectiveness in the absence of an article 43 agreement earmarking adequate forces for the Security Council. It has become trendy among these theorists to focus on obtaining an article 43 agreement as the answer to revitalizing the Security Council. The absence of such an agreement, however, is more a reflection of the underlying problems in U.N. collective security, than an independent limitation. Indeed, both in Korea and in the Gulf, where other factors were neutralized, there was no difficulty in assembling adequate forces. Focus on the absence of an article 43 agreement, then, would not seem the most useful approach. There may, however, be new structures, forces and agreements that can help. The error is simply to legalistically think of this possibility as required to be in the less flexible article 43 framework as opposed to newer modalities.

Because of the problems of collective security, as Professor Claude and others have pointed out, the United Nations has evolved a variety of other important roles, from serving as a forum for development of international law, as with the 1982 Convention on the Law of the Sea, to fact finding, peacekeeping and peace-enforcing, among other roles. While some highly visible operations have had mixed success, such as Somalia<sup>67</sup> and operations in

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67. The first phase of the Somalia operation was certainly a great success. As many as a million lives may have been saved in this humanitarian operation, and both Secretary-General Boutros Boutros-Ghali of the United Nations and then-President George Bush,



the former Yugoslavia, others, such as observing the elections and supervising a transition to democracy in Namibia, and demarcating the boundary between Iraq and Kuwait following the Gulf War, have been considerable successes. If we did not have the United Nations to carry out such functions we would have to invent it. We are also fortunate in that some countries, Canada particularly, have developed specialized capabilities in operations such as peace-keeping that continue to make a major contribution to these capabilities of the United Nations and to world order.

The issue I am addressing in this Article, however, is not the variety of U.N. roles carried out importantly and effectively, rather it is to focus more on the difficulties in major peace-enforcement operations as in Somalia, Rwanda, and the former Yugoslavia, and to go beyond peace-enforcement to consider modes of strengthening the U.N. role in at least some settings of collective security and the control of democide. Central to that enhanced effectiveness in the core role of the United Nations is, I believe, a more realistic paradigm of war and peace that can point the way toward overcoming some of the very real obstacles.

The democracy/deterrence (government structures) paradigm offers a new focus for this core role that should be vigorously explored. First, it suggests that the norm-creating and assistance roles of the United Nations should be focused on consistent long-run efforts at democracy building, in addition to the important, and I believe included, goal of human rights. By promoting a peaceful transition to democracy it is likely from current evidence that we will be reducing the incidence of major wars, reducing democide and famine, and even enhancing economic and environmental well-being. Second, it suggests that collective security should be refocused in a realistic deterrence framework. Collective security can only be effective in war and democide avoidance if it acts *in advance* in a certain and effective deterrence mode, rather than remaining a vague but unlikely possibility of after-the-fact action. Moreover, if the new hypothesis is right, then effective deterrence at the international system level *is* the key to less of the things, such as war and democide, we abhor, and more of the things we cherish and value, that is, enhanced world order and prosperity. And as a third major emphasis, a new paradigm that focuses on government structures suggests the importance of con-

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as well as the many dedicated service personnel who participated, deserve high marks for their role in it.

sidering such structures in operations such as Somalia, rather than drawing artificial lines that may be counter productive in the real world. That is, a government structures paradigm suggests to us the importance of focus *on* government structures in U.N. operations, rather than abjuring any such focus in a cloud of non-intervention political correctness. The next three divisions of this paper will explore each of these points.

## B. *New Emphases from the New Paradigm*

### 1. *The U.N. Role in Democracy Building*

#### a. Democracy Building as Long-Run Strategy: Some Programmatic Suggestions

The correlation between democracy and war, democide, famine, economic malaise, and environmental protection suggests that the most effective long-run strategy to promote these goals is to promote democracy. Just as U.N. fora have been important in promoting human rights, the United Nations can also play an important role in promoting democracy. And just as the struggle for human rights within the United Nations has not always pleased all the members, so too the struggle for democracy is likely to be controversial and turbulent. At the height of the cold war it would have seemed fanciful that the United Nations might play a role in promoting the growth of genuine democracy, as opposed to invocation of the term for any form of government. Today, six years after agreement on the Copenhagen Document,<sup>68</sup> in which all members of NATO, the neutral and non-aligned, and all members of the CIS and former Soviet satellite states in Eastern Europe, agreed to the specifics of real democracy, it no longer seems so fanciful. Will an effort within the United Nations be greeted with universal enthusiasm? Of course not. China (the PRC), North Korea, Cuba, Iraq, Iran, Libya, and many other nations can be expected to vigorously oppose. Even Singapore has become a

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68. See Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (Copenhagen, June 29, 1990). See also The Charter of Paris for a New Europe (Nov. 21, 1991) 30 ILM 193 (1991) (agreed to by the heads of state of all European Countries except Albania, as well as Canada and the United States); Within the OAS System, OAS G.A. Res. 1080 (June 5, 1991).

champion of cultural relativism. The same opposition, however, was present with respect to the struggle for human rights.

Democracy building is not a crusade to be promoted by the use of force. Such an approach would be counter to the Charter and counter-productive as well. Rather, it is a goal to be assisted through norm creation, education, electoral observation, and other modes of peaceful engagement. Nor is it a charter for an intolerant one-size-fits-all dogma. Room must always be left for the many paths to the same bottom line which honor local conditions and wishes.

The democracies should seek consistently and through time to press for opportunities in the peaceful promotion of democracy on a worldwide basis. This effort should not be one directed at any nation but rather it should be one of assisting peoples to understand the benefits of democracy and of providing assistance in implementation of its fundamentals. This goal should be pursued both within and without the United Nations.

The United Nations already plays some role in democracy building, for example, its electoral observation missions and its assistance with constitution building in Namibia. As a starting point, it might be useful to seek to promote a democracy charter, similar to the Copenhagen Document, aimed at creation of a democracy norm, just as work within the United Nations aimed at creation of a human rights norm. Through time, this effort at creation of a human rights norm led to the Universal Declaration of Human Rights, the Civil and Political Covenant (with its optional protocol), the Economic and Social Covenant, and many other widely adopted human rights agreements.

Modest programmatic suggestions for more specific democracy building assistance might include creation of a U.N. library (and associated web page information) on democracy, creation of a U.N. election observation corps, and creation of a U.N. "Democracy Fellows" program for students from all over the world to study democratic institutions and the rule of law. I suggest subsequently in this paper that an appropriate first step would be to organize a new democracy caucusing group within the United Nations, similar to present regional and functional groups such as WEO or the Group of 77. Such a "Group of Democratic States" would cross all geographic and functional lines and would be an appropriate mechanism for coordinating useful first steps for a long-run program of democracy engagement.

One should not expect universal popularity or immediate payoff from a long-run effort at democracy building pursued through the United Nations. The United Nations, as the principal global organization, however, is too important not to be engaged in the struggle for democracy and the rule of law.

b. Some Speculation about Stable Democratic Institutions:  
Locke, Montesquieu, and Madison had Foresight

Moving from controversy to controversy, I would also like to suggest that as we learn more about government failure from basic economic and political theory, we know not only that democracy<sup>69</sup> is far preferable to non-democratic modes of organization, but also that extreme forms of democracy permitting unchecked rule by a majority without protecting individual liberty (including economic freedom) are less desirable than democratic institutions with appropriate checks to protect such liberty. Examples of extreme forms of majoritarian democracy include the Athenian assembly that put Socrates to death (and that sadly stimulated Plato's distrust of democracy fueling a powerful statist theory still doing massive damage), and the early days of the French Revolution with its government by guillotine. As a speculative hypothesis, I suspect that appropriately checked democracies, fully honoring human freedom and creativity in all sectors of life, are far more stable than more majoritarian democracies. While I would cast my lot with Locke, Montesquieu, and Madison in favoring such democratic institutions more fully protecting individual liberty, because of their intrinsic merit for human freedom and progress, if they are also more stable, and thus suffer fewer coups or revolutions, then

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69. For a discussion of what is meant by democracy, see the paper I delivered in the first U.S.-Soviet talks on the rule of law in Moscow in 1990. John Norton Moore, *The Rule of Law: An Overview*, Paper Presented to the Seminar on the Rule of Law, Moscow and Leningrad, USSR ( March 19-23, 1990). The paper urged that the principal elements of democracy included:

- government of the people, by the people, and for the people (e.g., periodic free elections as the method for selecting government leaders);
- some form of effective separation of powers or checks and balances;
- representative democracy and procedural and substantive limits on governmental action against the individual (the protection of human freedom and dignity);
- limited government and possibly federalism; and
- preferably review by an independent judiciary as a central mechanism for constitutional enforcement.

Id. at 2-3.

there may be a further international interest in fostering such institutions. Certainly we should resist the all too prevalent instinct to equate democracy with nothing more than free elections. Perhaps that is really the bottom line of this brief speculation.<sup>70</sup>

## 2. *The U.N. Role in Deterrence*

### a. Focus on Pre-Crises Deterrence Rather than After-the-Fact War Fighting: A Need for New Thinking and New Modalities of Action

Perhaps the most important consequence of the new paradigm for enhanced effectiveness of U.N. peacekeeping, collective security, and war avoidance, is the importance of approaching such actions in a deterrent rather than an after-the-fact mode and in focusing centrally and clearly on the deterrent effect of such actions. In the real world, the United Nations must, for any realistically foreseeable future, pick and choose the settings in which it will be able to act. This is certainly the case if it must engage in war-fighting, or even lower-intensity war-fighting in peace-enforcement settings. It can extend its effectiveness greatly, however, if it increasingly finds action unnecessary because it achieves its goals through a more effective and lower-cost deterrent strategy. Deterrence should become the central theme in structuring U.N. actions.

How can the United Nations become more effective in deterrence? I believe that the answer lies in focusing on more effective *advance* actions against threatened war, ensuring that when U.N. forces become engaged they do so with sufficient force to *prevail promptly and decisively, extending their deterrence umbrella to threatened democide* through a variety of realistic modes of action,

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70. Obviously the brief reference here is the subject of a vast literature in philosophy, political theory, and law. I believe that newer data about government failure suggests that it should also become an important subject for foreign policy.

For some of the classic discussions, in addition to the single best source, *The Federalist* No. 51 (James Madison), see Carl Friedrich, *Constitutional Government and Democracy* (4th ed. 1968); and Carl Friedrich, *Limited Government: A Comparison* (1974). For a classic discussion within the context of the American political experience that I believe has it exactly wrong in opposing the insights of Madison and Jefferson about the importance of checks and balances, see Edward Elliott, *American Government and Majority Rule* (1916).

and *focusing deterrence on regime elites* in both war and democide avoidance.

Earlier in this Article I discussed a comparison between effective deterrence by NATO and the far less effective U.N. collective security. NATO, unlike the United Nations, has provided a clear deterrent commitment in advance, both at a political level and at a military level. No one could have assumed that NATO would not resist, or that it had low levels of military preparation and presence. Moreover, political and military arrangements were in place for a viable political and military structure through time and for the necessary financing of that deterrent. I believe that one of the ways for the United Nations perhaps to begin to play a more effective role in war avoidance (classic collective security) is to emulate these common sense elements of effective deterrence.<sup>71</sup> This is *not* to suggest some kind of U.N. standing army or advance article 43 agreement as the answer, as is, I believe, an all too common assumption. Rather, it is to suggest a range of new modalities of *advance* commitment and readiness in specific settings.

For example, it might be possible to identify in advance areas of the world that would likely produce a major war in the event of aggression and to work out with the government or governments involved some form of advance Security Council guarantee and presence. This could amount to Security Council support for collective security guarantees worked out with provision for specific forces to be supplied from an identified country or countries, advance pre-positioning, training and integration of combat forces with local forces, arrangements that the host state or perhaps others would supply the financing, and a clear advance commitment to Security Council defense against external aggression. Such arrangements might be worked out between individual governments and the Security Council on an ad hoc basis in settings where the Security Council might be prepared to sanction such advance agreements. At a political level, the Security Council already has at least one such guarantee, that of the boundary between Iraq

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71. In her paper, *The Applicability of the "Nato Model" to United Nations Peace Support Operations Under the Security Council*, A Paper of the UNA/USA International Dialogue in the Enforcement of Security Council Resolutions, Nov 2, 1996, Gwyn Prins points out that what the NATO model offers "is 40 years' experience in the design and delivery of one segment in the arc of political signaling to manage crisis, namely the issuing of implicit military threat. That is important, because this is something which the U.N. has mainly only ever done badly." Id. at 28.

and Kuwait. As a practical matter the defense of South Korea is another.

Similarly, it might be desirable and possible for the Security Council simply to make an advance statement indicating that aggression in some setting will be met with concerted Security Council action, perhaps with the Council resolution itself authorizing any needed actions, thus avoiding any problem of uncertainty of action or subsequent veto. Moreover, in some settings it might even be easier to get agreement on a resolution that external aggression would be met with concerted action before, rather than after, such action. One wonders whether such a resolution might not have been feasible before Saddam Hussein's invasion of Kuwait, and, if so, as to its effect in possibly deterring that aggression.

Another modality for advance deterrence might be a modest, but highly trained and well equipped, war-fighting force available for deterrence presence missions that could be deployed at the request of a threatened government, and on Security Council approval, within a matter of hours. A modest such force, perhaps designated a Security Council "presence force," of even 5,000-10,000 deployed to the Kuwait/Iraq border following the Iraq build-up almost certainly would have prevented the invasion, primarily because it would have completely changed the deterrent equation at a political level for Iraq. Indeed, a small rapidly deployed British force of about 2,000 that was deployed to the Iraq/Kuwait boundary seems to have deterred an earlier threatened Iraqi invasion in the early 1960s. Current proposals for a Rapid Reaction Force,<sup>72</sup> Standby Forces High Readiness Brigade (SHIRBRIG),<sup>73</sup> or Rapid Reaction Capability,<sup>74</sup> provided ear-

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72. Nicholas Biegman, the Permanent Representative of the Netherlands to the United Nations, has proposed the creation of a rapid deployment brigade at the service of the Security Council for the purpose of peacekeeping during the interval between a Security Council decision and the arrival of an international peacekeeping force, as well as for humanitarian emergency situations. The cost of this proposal is estimated at \$250-300 million (U.S.) per year. Letter from Nicholas H. Biegman to the Secretary General of the UN (Apr. 7, 1995) 49th Sess., Agenda Item 79, U.N. Doc. A/49/886, S/1995/276 (1995).

73. A Danish-led group of 7 countries has signed an agreement to create a 4,000 man "Standby Forces High-Readiness Brigade" (SHIRBRIG) designed to be deployed on a month's notice. The force is to be dispatched by the Security Council; however, participating countries are also to be given the power to opt out of missions in which they do not wish to participate. See SHIRBRIG Accord Steps Up UN Ability to Deploy Peacekeepers to Crisis Areas, *Jane's Defence Wkly.*, Jan. 8, 1997, at 20.

74. "The Friends of Rapid Reaction," a group of 24 U.N. members led by Canada and the Netherlands, have proposed the formation of a mobile military headquarters with a staff of 21, which would plan crisis operations and rapidly put together troop packages for

marked from national forces and deployed only on Security Council authorization, should be explored in this connection.

At one time there was considerable support in the United States for the creation and deployment of a rapid reaction force under the above mentioned guidelines.<sup>75</sup> Following the involvement of U.S. forces in the ill-fated raid in support of the U.N. peacekeeping operation in Somalia in 1993, that support rapidly dissipated.<sup>76</sup> The United States, however, has indicated support for the formation of a mobile military headquarters.<sup>77</sup>

These are but some of the newer modalities that might be created if we begin to focus on *advance* action to deter rather than to do nothing or engage in costly and difficult war-fighting. These suggestions may or may not be practical in specific settings. I would suggest, however, that if the newer paradigm is correct, *a more effective role for the United Nations will centrally depend on beginning to think of such actions in deterrent terms.*

The recent plight of the Hutu refugees in Zaire may illustrate both the power of deterrence and, that as deterrence operates in settings of small scale threat, even a modicum of deterrence may be adequate. Over a period of recent weeks press reports increasingly featured the plight of Hutu civilian refugees encamped in Zaire. As a limited peacekeeping operation to be led by Canada, including its new Disaster Assistance Response Team (DART) and possibly with significant U.S. ground troops and support personnel, was contemplated and then approved by the Security Council, the refugees began streaming back to Rwanda. At least one National Public Radio report indicated that the refugees said, as they filled the road to Rwanda, that they had been held hostage in the camps for two years by armed Hutu militia,<sup>78</sup> apparently including many of the same militia that had earlier committed democide in Rwanda. Suddenly, however, at virtually the precise time the Security Council was considering a peacekeeping force, and as advance U.S. and Canadian personnel

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deployment. This plan, however, does not involve the creation of a standing force. Barbara Crossette, U.N. Team Would Speed Aid During Crises, *The Orange County Register*, July 21, 1996, at AO3.

75. See, e.g., John Omicinski, *Christopher Testimony Sends Messages Around the Globe*, Gannett News Service, Jan. 14, 1993.

76. Thalif Deen, *United Nations: U.N. Denies Plans for Creation of Standing Army*, *Inter Press Service*, Dec. 27, 1996.

77. Crossette, *supra* note 74, at AO3.

78. *All Things Considered* (National Public Radio broadcast, Nov. 15, 1996).



arrived for an in situ assessment, it was said the Hutu militia faded into the jungle (after hacking to death more women and children). Apparently at least 400,000-600,000 refugees then felt free to return to Rwanda. It is no doubt too early to know the full facts in this incident, and certainly that Zairian Tutsi rebel forces had also taken on the Hutu militia was a factor adding deterrence, but it will be worth exploring whether even a *potential* U.N. action led to major improvement in the plight of many of the refugees.<sup>79</sup>

At least one Canadian official, in commenting on the timing of the force creation and the release of the refugees also seems to have concluded that the mere creation of the force was a positive factor in developments affecting the refugees. The *Washington Post* of November 17, 1996 reports:

To the Canadian officials behind the effort, the fact that the refugees have begun returning is a sign of their success.

In a press conference Friday night, Foreign Minister Lloyd Axworthy said he felt the commitment of U.N. authorized troops to the region pushed the armed militants to leave the refugee camps, freeing the refugees to return to Rwanda.

"The initiative taken by the Prime Minister is already paying dividends," Axworthy said. "It's a direct result of the creation of the multinational force."<sup>80</sup>

Another U.N. success in deterrence may be the deployment of the United Nations Preventative Deployment Force (UNPREDEP) in the former Yugoslav Republic of Macedonia.<sup>81</sup>

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79. For an early account of this developing incident, seemingly consistent with the National Public Radio account above, see Stephen Buckley, *Exile Ends As Refugees Stream into Rwandan Villages*, Wash. Post, Nov. 17, 1996, at A1. This Washington Post account describes the plight of the refugees: "After two years as de facto hostages of armed Hutu militants who controlled Mugunga, hundreds of thousands of refugees abandoned the camp and began their long walk to Rwanda." *Id.* at A22.

80. *Canadians Eager to Begin African Peace Mission*, Wash. Post, Nov. 17, 1996, at A22.

81. This force was created in December of 1992 by Security Council Resolution 795, and then called the United Nations Protective Force (UNPROFOR). S.C. Res. 795, U.N. SCOR, 47th Sess., 3147th mtg., U.N. Doc. S/RES/795 (1992). Originally composed of approximately 700 troops, it was later increased by Security Council Resolution 795 to its present level of approximately 1150 troops. The force was redesignated the United Nations Preventive Deployment Force (UNPREDEP) on 31 March 1995. S.C. Res. 983, U.N. SCOR, 50th Sess., 3512th mtg., U.N. Doc. S/RES/983 (1995). The mission of the force, as

UNPREDEP, the United Nations first preventative peace-keeping operation, has been given credit for stabilizing the political situation in Macedonia and preventing a widening of the Bosnian conflict.<sup>82</sup>

b. The Importance of Prompt and Effective U.N. Achievement of Goals When Committed: Intra-Conflict Deterrence and Its Immediate and Long-Term Effects

One of the most important lessons in enhancing the effectiveness of the United Nations in peacekeeping and collective security is the need for *prompt and effective achievement of goals once committed*. The new paradigm tells us that deterrence is crucial for real-world effectiveness. The United Nations to date has had only a weak record in deterrence. One reason for that lack of effectiveness in deterrence, as already discussed, is the failure to communicate clear and credible advance politico/military deterrent messages in relation to risk settings. A second reason, that has been particularly evident in so-called peace-enforcement settings in the post Gulf War period, has been a general failure to take prompt and effective measures once committed.

Certainly the United Nations, like national governments, must make realistic assessments as to where it can take a stand and make a difference. In the present real world, even the United Nations will not be able to effectively serve as a policeman of the world. Political, financial, and military force availability constraints will force it to pick and choose, although perhaps one might hope for a day in which the democratic peace is so widespread and U.N. and nation-state effectiveness so enhanced that a U.N. effort can be more generally effective in deterring war and democide.

In deciding settings in which to engage U.N. forces, factors such as the nature of the threat and its seriousness for world order, including economic, political, and human rights factors, must play a central role. It is essential for deterrence, however, that the United Nations only undertake military actions with threat of war-

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reiterated in Security Council Resolution 795, has stayed the same: to establish a monitoring presence on the borders with Albania and the Federal Republic of Yugoslavia (Serbia and Montenegro).

82. Security Council Extends Until 30 November Mandate of Preventive Force in Former Yugoslav Republic of Macedonia, U.N. Press Release SC/6228, May 30, 1996.

fighting in which a U.N. authorized action will have available, and will utilize, overwhelming force to promptly and effectively carry out its mandate.<sup>83</sup> A failure to field adequate forces, and to limit operations to those that will be executed based on sound military principles can, and all too frequently will, have a double effect in weakening deterrence. First, when ruthless forces see that U.N. forces are weak they may begin to target such forces to achieve their objectives, whether to force negotiations, withdrawal, or some other goal. The cost is then likely to be escalating, and unnecessary, casualties on all sides and a generalized loss of political support in theater and internationally for U.N. operations as the Organization suffers a generalized authority deflation. Of equal, or even greater, importance, the effect will also be to severely undermine the long-run deterrent effect of the United Nations (and even of the nations and organizations associated with it in the operation). That is, a failure of intra-conflict deterrence will have a feedback effect, potentially severe, on the long-run deterrent credibility of the Organization.

This point deserves emphasis. *When it chooses to act in a situation threatening the possibility of war-fighting, the United Nations must act on the basis of sound military judgement with overwhelming force in order to promptly and effectively carry out its mandate. Indeed, all U.N. peacekeeping deployments, of whatever kind, must follow this principle of adequate force and structure to protect and defend U.N. forces and effectively carry out the mission.* The United Nations must never retreat from its mission because of forceful opposition. And the United Nations must consistently arrest, seek out, and try, or otherwise deter those who seek to illegally target U.N. personnel and forces. Long-run credibility of the United Nations in effectively preventing chaos, war, and democide requires no less. U.N. operations also owe this standard to the dedicated and courageous service personnel who participate in

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83. A recent report of an independent task force sponsored by the Council on Foreign Relations, and chaired by George Soros, also highlights the importance of the United Nations only undertaking operations in which it has the capacity to prevail. Independent Task Force (George Soros, chair), Council on Foreign Relations, American National Interest and the United Nations 9 (1996). Recommendation five of this report says:

The United States should oppose giving tasks to the United Nations that it does not have the capacity to perform or that member states lack the will to implement; this applies in particular to Chapter VII peace enforcement operations that require a credible threat of combat and that must be conducted by ad hoc coalitions with the endorsement of the Security Council.

U.N. operations and the civilians whose lives depend on effective execution of its mission.

At the risk of some controversy, but in the interest of candor, I would suggest that the operation of U.N. forces in at least the pre-Dayton Accords period in the former Yugoslavia, and the later months of the Somalia operation, among other settings, severely violated these principles, and that this failing imposed major costs on U.N. personnel, civilian populations in those countries, and the long-run effectiveness of the United Nations itself.

Fighting in the former Yugoslavia presented a setting both of continuing aggression in violation of U.N. Security Council resolutions and of ethnic genocide on a massive scale. It was a setting requiring credible military war-fighting capability for deterrence to be effective. Sadly, however, the U.N. presence was structured in an unrealistic peacekeeping mode, perhaps because the major powers did not want to undertake the necessary level of credible military involvement while being pressured by CNN and other public reports of the atrocities to do something. This led to commitment of only inadequate forces, with pervasive old thinking that nothing could be done that might be perceived as "taking sides", and with great pressure on the United Nations to do something while denying it the necessary military forces to effectively carry out what the real mission should have been. For example, the United Nations adopted an enclave or "safe area" strategy despite advice from its military experts that it did not have adequate forces on the ground to protect those areas. The result, with predictable consequences, is that all in such safe areas were effectively hostages in the broader struggle. And sadly, too many in such areas paid with their lives for this decision. The ultimate disgrace, of course, was the seizure and killing of individuals under U.N. escort, and finally, the seizure and handcuffing to targets of U.N. personnel themselves. Only when a combination of factors began to alter the deterrent balance, including strengthening military capabilities of the Muslim and Croat forces, increasing shortness of supplies for the Serb forces, a political and economic drag in Serbia from the continuing economic sanctions, an impending winter season, a growing political squeeze against leaders engaging in "ethnic cleansing" from both international public opinion and the War Crimes Tribunal at the Hague, and, perhaps most importantly, a beginning of credible NATO air strikes against Serb targets, did the Serb forces consent to the negotiations that led to the Dayton Accords. With a credible presence of NATO forces now

in the region, and an at least highly professional present deployment that seems consistent with deterrent realities, there is a reasonable possibility that the Accords will survive in at least some of their provisions. It is, however, too early to see the final outcome in the area and I would submit that one important factor in that ultimate outcome is likely to be what happens to deterrence in the months and years ahead. Too drastic a downsizing of the deterrent forces in the field before peace is truly at hand could, like Somalia before it, snatch defeat from the jaws of victory.

Somalia, in its final phases, provides another sad example of failing to structure a U.N. mission commensurate with sound military principles necessary to prevail. The initial phase of the operation, characterized by a swift commitment of overwhelming U.S. forces, was a great success as a humanitarian operation and may have saved up to a million lives. In criticizing the Somalia operation I do not criticize this initial phase. Subsequently, however, after the withdrawal of the bulk of the U.S. forces (itself a factor drawing down deterrence dramatically) before full completion of the operation, General Aideed, a totalitarian leader of a local faction, began targeting U.N. forces. The correct response by the United Nations, agreed to be the Security Council, was to proceed against the General and to arrest him for trial if possible. U.S. Special Forces units were committed toward this objective, with U.S. intelligence assisting, but a request for necessary back-up military forces was denied by civilian leadership in the national command authority of the United States. Following a dramatic fire fight with Aideed's forces, in which the extraordinarily brave U.S. forces were required to withdraw, and the dead body of an American serviceman was triumphantly dragged through the streets by Aideed's forces, an American President decided on withdrawal of U.S. forces, thus handing an undeserved military victory to the General and placing a bounty on future U.N. peacekeepers.<sup>84</sup> For the lesson was 'kill a few U.N. peacekeepers, particularly U.S. forces participating in such actions, and the United Nations will leave.' The mantra, however, then became that we had erred in Somalia by undertaking an inappropriate role in seeking the arrest of General Aideed, whose forces after all had intentionally and brutally attacked the forces of the international community in Somalia on a humanitarian mission. Mission creep,

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84. It is worth noting that the U.S. Special Forces suffered 17 casualties while inflicting approximately 1,100 on General Aideed's forces.

it was said authoritatively, was the root of the problem. Does this mean that in the future the United Nations should never have a mission to protect itself against those engaged in systematic attacks on U.N. forces engaged in humanitarian missions? With due respect, I believe that the conventional wisdom about these final phases of the Somalia operation is wrong, and that the real root of the problem was the failure to provide adequate military forces, based on sound military judgment, to prevail and prevail promptly and decisively. If the mission changed, then that force needed to change for the new mission.<sup>85</sup>

In complex foreign policy settings it is impossible to definitively identify the effects of peripheral events reducing deterrence. Unless one is as dumb as a box of rocks, however, it does come to mind that one should at least inquire as to the possible effects in other settings of the U.N. authority deflation (reduction in deterrence) resulting from the easy Aideed victory. Did this message of the benefits from targeting U.N. personnel have any effect on the respect with which the ongoing U.N. effort was treated by the combatants in Bosnia? Might it have had any effect in encouraging an intransigent coup leadership in Haiti, then seeking to hold on against U.N. sanctions? Might it have encouraged the Hutu leadership then plotting organized democide against the Tutsi population of Rwanda? Certainly it would not have been a huge leap following the withdrawal of U.N. forces from Somalia as a result of the targeting of those forces, to a strategy of targeting Belgian peacekeeping forces in Rwanda to again force the United Nations out. At the least, however, the authority deflation suffered generally by the United Nations in Bosnia and Somalia contributed to a tragic delay in preventing the massive democide in Rwanda<sup>86</sup> and contributed to a skepticism about U.N. effectiveness that has pre-

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85. The United Nations Blue Book on Somalia concludes, consistent with this theme: Beyond a clear mandate, success also requires the corresponding means to carry it out. In Somalia, when UNITAF handed over operational responsibility to UNOSOM II, the mandate broadened considerably, but the power to implement it was not provided. If the resources necessary for the implementation of a mandate are not available, the Security Council should revise its objectives accordingly.

The United Nations and Somalia 1992-1996, at 8, U.N. Blue Book Series 85, U.N. Sales No. E. 96. I. 8 (1996).

86. From 500,000 to 750,000 Tutsis and moderate Hutus died in approximately 100 days in the slaughter in Rwanda, making it perhaps the most intense democide in this century. Buckley, *supra* note 79, at A22.

vented any really effective action in the ongoing tragedy of Liberia or, until last week, the continuing events surrounding Rwanda.

Effective achievement of U.N. goals in war-fighting settings, through the pursuit of sound military judgment, includes importantly a command structure with unity of command, realistic and effective rules of engagement, and forces well-trained in the importance of strict adherence to law of war and humanitarian goals. A convoluted command structure that unreasonably restricts effectiveness of military operations (always assuming, of course, strict compliance with the laws of war) in the mistaken "old thinking" that it is thereby saving lives or serving the cause of peace is almost certain to harm the very goals it seeks to serve. Even a multiple command structure with the best of motives is not appropriate. Unity of command is a prerequisite for effective military operations. Similarly, rules of engagement must fully serve mission goals, including military effectiveness. And of great importance, U.N. forces must strictly adhere to the laws of war and humanitarian objectives. The United States learned all of these lessons the hard way in Vietnam. Sadly, Canada seems to have learned the last lesson the hard way during the Somalia operation. Such tragedies, however, must be cured through careful and vigorous on-the-merits training as both countries have done, *not* through well-meaning but counter-productive restrictions on military effectiveness that in the end cost lives and reduce U.N. effectiveness. It should always be remembered that democracies can lose as effectively through political backlash to human rights violations as through loss on the battlefield. *And* that they can lose equally swiftly through perceived inability to prevail.

I believe that one feature of more effective U.N. efforts that should also be emphasized is more effective public and legal focus on the systematic and intentional law of war violations that typically accompany attacks on U.N. forces. Examples, strangely largely ignored, include the war crime of handcuffing U.N. personnel taken prisoner to potential targets, as was done by Serb forces in Bosnia, and dragging a U.S. soldier's body through the streets of Mogadishu, among many others. It will assist in the political struggle as well as the struggle to enforce important law of war norms if U.N. operations do not simply ignore such violations. Moreover, in settings other than full Korean or Gulf-style war-

fighting, all attacks on U.N. personnel should be criminalized.<sup>87</sup> Whatever the specific modality, we should pay greater attention to protecting U.N. peacekeepers.

Yet another factor strongly suggests the importance of effective deterrence, both to avoid the necessity of war-fighting and to promptly achieve any necessary war-fighting mission. For there is considerable evidence that at least political leaders<sup>88</sup> in democratic nations are increasingly sensitive to casualties, even within all volunteer armies. That, of course, is appropriate unless it becomes so extreme as to undermine the very purpose of such forces. The reaction of an American President to seventeen casualties in Somalia (in large measure caused by rejection of the operational commander's request for adequate forces) might be regarded as an example of this principle. Nevertheless, such a climate suggests that a strategy which lessens casualties, or avoids them altogether, would be helpful for necessary U.N. actions. The most effective strategy for lessening casualties on *all* sides is, in fact, effective deterrence achieved through military readiness and clarity of commitment, and, once committed to war-fighting, overwhelming military force under sound military leadership and strategy as necessary to promptly prevail.

c. Application of Deterrence to Democide as Well as to War Avoidance

The new information about "democide," the slaughter of a civilian population that may take place in both war and non-war settings, suggests that deterrence of such slaughter should also be an important role of the organized international community. If Professor Rummel is correct, then democide may have killed over 169 million people in this century.<sup>89</sup> That is a rate approximately four times the totality of combatant casualties in all wars of this century combined.

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87. On the struggle for enhanced protection of U.N. personnel, see Walter Gary Sharp, Sr., *Protecting the Avatars of International Peace and Security*, 7 *Duke J. Comp. & Int'l L.* 93 (1996).

88. It is not clear that this extreme sensitivity is shared by the population as a whole in all war-fighting settings. It is a classic myth of the Vietnam War that the public desire for peace at any price pushed President Johnson to not run again. Rather, as in Korea, the evidence seems to suggest public disaffection with a very protracted war fought without a plan for victory.

89. Rummel, *supra* note 5, at 4.



As Cambodia, and more recently Rwanda, illustrate, the organized international community has not been prepared to effectively intervene to stop such slaughter. In part this may reflect ignorance about the magnitude of the overall problem, or of the dimensions of the problem as it was occurring in those settings. It certainly also reflects, however, a reluctance to stretch the United Nations too thin, particularly in the light of the much criticized actions in Bosnia and Somalia.

If the new paradigm is correct, then it strongly suggests that we must also be more effective in stopping democide *and* that doing so requires a focus on deterrence of regimes prepared to commit such monstrous acts. We must regard deterrence of democide as of central importance, as we view deterrence of aggression as of central importance.

Our deterrence strategies against democide should encompass a range of possibilities, including conventional military action but also including more effective measures against regime elites. If U.N. forces in Rwanda had a small and effective fighting force at their disposal, it is quite possible that they could have saved a half-million people, at very low cost. On October 21, 1995, the *Economist* reported the following:

[Reacting to] last year's genocide in Rwanda, which everybody knew about and nobody stopped [a] Canadian U.N. general on the spot [said] that with 1,000 or, better, 2,000 men he could have saved unnumbered lives. But no men were available, the Security Council procrastinated and America fussed about whether it was in its national interest to pay its share.<sup>90</sup>

We should not dismiss such military interventions as an option. In most such cases, however, it may be difficult to find a major power prepared to intervene in settings such as that of the slaughter by Pol Pot of a quarter of his population over several years. More effective deterrence against democide, then, is likely to require new and creative ways to deter the regime elites without the necessity of committing large numbers of armed forces. Combinations of publicity, U.N. tribunals, and possibly modalities for seizure and trial of such leaders, or at least credible threats of such

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90. Can it Keep the Peace, *Economist*, Oct. 21, 1995, at 18, 19. See also Alex de Waal & Rakiya Omaar, *The Genocide in Rwanda and the International Response*, 1995 *Current Hist.* 157.

seizure and trial, might be some of the mechanisms that we might use in ensuring that we extend a deterrence umbrella to democide as well as to aggression. It is critical that we avoid having only options that are either doing nothing or sending in large forces when we are politically not prepared to do so.

d. The Importance of Focus on Regime Elites in Structuring Deterrence

There are at least three important reasons to begin to think in terms of the need to focus deterrence on regime elites rather than a population as a whole.

First, if I am correct that the principal internal mechanism underlying the propensity of non-democracies to commit democide at a high rate and to undertake high risk aggressive actions that have all too frequently led to war is the ability of radical regime elites to externalize costs on their own and other populations, then the most effective mode of deterrence will be to reimpose unacceptable costs on such elites. That is, at least adding an additional deterrence strand to regime elites may well make deterrence more effective. This should not be thought of as a substitute for the effective military force and clarity of commitment necessary to deter aggressive military attack. The importance of beginning to focus deterrence on regime elites would also seem consistent with the general rather pessimistic conclusions as to the effectiveness of economic sanctions alone against a country.<sup>91</sup> After six years of economic sanctions have not yet forced Saddam Hussein to fully comply with U.N. directives, it should be abundantly obvious that it would not have been a successful policy alone in forcing him out of Kuwait.

Second, again if the paradigm is correct, then internal populations under such regimes are themselves in significant part victims. Imposing further hardships on these populations will simply compound their hardship. Of course, there may be settings, as I believe is the case in Iraq today, where more comprehensive sanctions may be the only available strategy. If so, then one may from time to time have to use this strategy. But if a more effective

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91. On economic sanction, see generally Gary Clyde Hufbauer et al., *Economic Sanctions Reconsidered* 92-3 (1990); M.S. Daoudi & M.S. Dajani, *Economic Sanctions: Ideals and Experience* 179-88 (1983) (listing quotations from statesmen, professors, and journalists concerning the generally low level of effectiveness of economic sanctions).

mode of focusing costs on the regime elites can be devised, then it would seem desirable to do so to spare the civilian (and innocent military) populations.

And third, it is likely that given their reluctance even to meet the traditionally well-understood and legitimate needs of collective security against aggressive attack, most nations are likely to continue to exhibit great reluctance to send military forces into internally committed democide. We must, then, have more options than either sending in war-fighting forces or doing nothing.

Focusing deterrence on regime elites is a relatively new concept, and at present only a handful of methods have been identified. Certainly, each case should proceed from an inquiry as to what is important to those elites and what vulnerabilities they may have. A general list, as a beginning inventory of possibilities, however, would include the following:

- strengthening the use of war crimes trials;
- government replacement as a legitimate goal in a defensive response—if forced to carry through with war-fighting (as with the Allied policy of unconditional surrender which led to the replacement of Governments in Germany, Italy and Japan at the end of World War II);<sup>92</sup>
- government derecognition (including selective loss of membership in international organizations);
- measures affecting government stature (including publicity and embarrassment);
- selective civil remedies against the regime elites and their key aides (including seizure of assets abroad, international arrest orders through Interpol, permanent prohibition against foreign travel without arrest, notification of families of victims concerning the location of regime elite travels abroad or assets vulnerable to civil suit, removal of international legal immunities, removal of statutes of limitation, etc.);
- targeting of command and control leadership during

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92. Indeed, one reason for reduced deterrence in settings such as the Gulf War even after the coalition force build-up and U.N. authorization for Saddam Hussein's expulsion from Kuwait may be Saddam's confidence that there was no policy to depose him in the event he lost the war.

hostilities;<sup>93</sup> and international outlawry (with carefully thought out consequences and possibly with authorization of military or covert operations for seizure to stand trial).

### 3. *The Importance of Focus on Government Structures in U.N. Operations*

As we have seen, government structures seem to correlate better with a range of important foreign policy goals, and purposes of the United Nations, than any other factor. Moreover, peacekeeping, collective security, and humanitarian operations undertaken by the United Nations are likely to be concentrated in those totalitarian and failed government settings in which government structures may be the largest single factor in producing the problem. As such, continuation of the "traditional" sovereignty-bound concept of non-intervention with respect to government structures in these settings of U.N. action may be to powerfully contribute to the long-run irrelevance of many such actions. Again, if the paradigm is simply more correct than older paradigms now guiding our behavior, we should examine anew the circumstances in which the United Nations might want to take a more activist role concerning government structures, including replacement with a democratic government in some settings where the United Nations is forced to engage in war-fighting or intervenes to end famine or democide, as well as those settings where the traditional reluctance may be correct. If the bottom line in many settings of massive violation of community norms is government structures, then it may be necessary to have new thinking that begins to include affecting such structures in at least some extreme settings of forced intervention.

Examples where an activist policy to promote government structures should perhaps have been part of any U.N. operation include Somalia, any U.N. intervention that might have occurred to prevent genocide in Rwanda, or any action in Liberia. It is instructive to note that the Dayton Accords do in fact seek to deal with a host of questions concerning government structures. It is also relevant to note that the best outcome of any war in the 20th Century was

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93. See on this point the writings of Robert F. Turner, *Killing Saddam: Would it be a Crime?*, Wash. Post, Oct. 7, 1990, at D1. See also on the lawfulness of targeting military command leadership during hostilities, W. Hays Parks, *Memorandum of Law: Executive Order 12333 and Assassination*, *The Army Lawyer*, Dec. 1989, at 4-8.

the outcome of World War II, characterized by direct action to install democratic governments in the former Axis States. Indeed, those states have now become some of our closest allies and staunch members of the community of democratic nations committed to peace and human rights.

This is, of course, not to suggest some simplistic policy motivated by fuzzy idealism to seize every opportunity to alter non-democratic regimes, including by force. Let me reiterate again *that such a policy would be extremely counter-productive*. Taking into account government structures in undertaking U.N. operations must be done with realism, sensitivity, and full awareness of the host of limitations and constraints in doing so.

#### IV. SOME SUGGESTIONS FOR STRENGTHENING THE UNITED NATIONS TO MEET THE NEW CHALLENGES

This section will briefly discuss some old and some new considerations and approaches in seeking enhanced effectiveness in U.N. peacekeeping, collective security, and war avoidance. It will, at least in part, be somewhat more specific than the previous more theoretical discussion, while drawing on that discussion.

##### A. *The Need for Renewed Commitment to a Reformed and More Effective United Nations: The United Nations is, in Substantial Measure, Us*

There is a tendency, easily exploited during political seasons, to assume that operations undertaken by the United Nations, are undertaken by the Secretary-General or some "them," and not us. It has, however, been years since anyone sought approval for a U.N. peacekeeping operation solely through the General Assembly pursuant to some Uniting for Peace type mechanism.<sup>94</sup> The reality is that all current U.N. peacekeeping operations, much less the

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94. The Uniting for Peace Resolution was a response to the Soviet return to the Security Council during the Korean War and the need to continue effective U.N. involvement in that War. It died a slow death after the controversy surrounding subsequently established U.N. peacekeeping operations in the Congo and the Middle East. Today, given the U.N. financial problems, no one, to my knowledge, seriously seeks to bypass the Security Council in approving U.N. peacekeeping operations. See Uniting for Peace, G.A. Res. 377(V), U.N. GAOR, 5th Sess., Supp. No. 20, at 10, U.N. Doc A/1775 (1950). See also Certain Expenses of the United Nations, 1962 I.C.J. 151 (July 20, 1962) (advisory opinion).

collective security operation in the Gulf War, were approved by the Security Council. Indeed, many, if not most such operations, were either requested by or undertaken by a permanent member of the Council. Thus, specifically, my country, the United States, has had an opportunity to veto all such operations and has initiated and strongly supported most. The current operation in Haiti, in which Canadian forces now play an important role, was sought and strongly supported by the United States. The United Nations then, in terms of peacekeeping and collective security is "us," and not some amorphous "them."<sup>95</sup> If we did not have this tool for truce supervision, peacekeeping, election observation, and an occasional support for collective security, we would have to invent it.

Of course, U.N. reform should be taken seriously, and we should work for more effective world order both within and outside the United Nations. The once much too frequent outrages such as the "Zionism is Racism"<sup>96</sup> General Assembly Resolution should not be tolerated. And the efforts of non-democratic nations to grandstand against the democracies should be revealed for the shabby ruse that they are. But general and largely uninformed attacks against the structure of the United Nations, or its personnel, are unfortunate and not helpful to American or any other foreign policy.<sup>97</sup>

It is simply wrong for the United States to fail to pay the dues it currently owes the United Nations. Certainly there may arise isolated U.N. actions that are outrageous and that present strong and compelling reasons justifying withholding of dues, as both the United States and the United Kingdom, among others have

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95. This point, and this section, draw heavily on the insight of Professor Inis L. Claude, Jr., in identifying what he calls two identities of the U.N., the "First U.N." of the U.N. staff and secretariat, and the "Second U.N." collectively formed by the member states of the U.N., and particularly the permanent members of the Security Council. See Inis L. Claude, Jr., *Peace and Security: Prospective Roles for the Two United Nations*, 2 *Global Governance* 289 (1996).

96. G.A. Res. 3379, 30 U.N. GAOR, 30th Sess., Supp. No. 34, at 83-84, U.N. Doc. A/10034 (1975). For a discussion of this outrage see H.R. 855, 94th Cong., 30th Sess., (1975) (condemning the U.N. Resolution equating Zionism with racial discrimination).

97. The recent Clinton Administration attacks against Secretary-General Boutros Boutros-Ghali were puzzling. Not since Dag Hammarskjöld and the old Soviet Troika threat has the U.N. had as active a Secretary-General as Boutros Boutros-Ghali, who led the world in calling for action during the Somalia famine and the recent Zaire refugee camp outrage.

Fortunately, this crisis seems to have passed and the new United Nations Secretary General Kofi Annan is both highly regarded and, as the former U.N. Under-Secretary General for Peacekeeping Operations, is highly experienced in U.N. peacekeeping.

done.<sup>98</sup> That is not the case, however, with across-the-board withholding of American dues to the Organization. Indeed, I believe that Alexander Hamilton would turn in his grave at the harm done to the full faith and credit of the United States by this continuing incident. While we are certainly free to seek to renegotiate the United States share of certain U.N. operations, when the United States is bound it simply *must*, particularly as a major leader of the democratic nations, pay its dues.<sup>99</sup>

The reality is that United States involvement and leadership, as the strongest nation in the world, is essential for an effective United Nations. And a more effective United Nations is strongly in the interest of the United States. More active United States engagement with the Organization, not disengagement, must be the response.<sup>100</sup>

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98. In this connection, see the statement below by Ambassador Arthur Goldberg, when the United States eventually acquiesced in the French and Soviet non-payment of dues for U.N. peacekeeping operations following the *Certain Expenses Case* and the resulting non-decision session of the General Assembly:

At the same time, if any Member State could make an exception to the principle of collective financial responsibility with respect to certain United Nations activities, the United States reserved the same option to make exceptions if, in its view, there were strong and compelling reasons to do so. There could be no double standard among the Members of the Organization.

Special Committee on Peace-keeping Operations, Summary records of meetings held at Headquarters, New York, from 16 to 31 August 1965, Fifteenth meeting, 19 U.N. GAOR Annex (Annex No. 21) at 86, para. 7, U.N. Doc. A/5916/Add.1 (1965).

99. One counter-productive proposal for remedying the present United Nations financial difficulties, in part caused by the failure of the United States to pay its dues, involves the use of direct taxation such as a tax on selected international financial transactions, global fossil fuel use, or global currency transactions. See Secretary-General [Boutros Boutros-Ghali], in Lecture at Oxford, *Speaks of Globalization, Fragmentation and Consequent Responsibilities on U.N.*, U.N. Press Release SG/SM/5870/Rev.1, Jan. 12, 1996.

This direct tax "solution" would be a serious mistake for several reasons, not the least of which is that it violates the checks and balances function of the current appropriations system in the United Nations. As in the United States, the ability to cut off funding acts as a control mechanism over centralization of power. The U.S. State Department has also indicated that it believes that such a direct tax system could undermine the sovereignty of the United Nations Member States. See U.S. Rejects Plan for Global Taxes, Inter Press Service, Jan. 22, 1996, at 1.

Certainly any such plan would be politically dead on arrival in the United States and, indeed, its very proposal may have been damaging to the United Nations.

A better starting point for encouraging payment of dues owed by the United States may be to achieve agreement on the precise amount the U.S. owes.

100. For some of the factors leading the United States away from more active involvement in world affairs over the years, see the classic monograph by Felix Gilbert, *To The Farewell Address* (1961).

B. *Strengthening the Role of the Security Council: Toward Realistic Burden Sharing*

There has always been an ambivalence about some members of the United Nations possessing a veto in the Security Council. Idealists have long wondered whether an operation initiated and principally fought by a Security Council member, even after full Security Council authorization, is really a U.N. operation. Indeed, this very objection was raised by some who felt that the United States and United Kingdom full-court diplomatic press for Security Council support preceding the Gulf War authorization somehow undermined the operation.<sup>101</sup> In this view, presumably real collective security, like spontaneous combustion, just springs full blown from a hundred foreign offices at once. To the contrary, the preoccupation with the legitimacy of the veto, and a general defensiveness about the major power role in the Security Council, may be inhibiting enhanced effectiveness of the Council.

As has been previously discussed, major war-fighting settings, which are the heart of real collective security through the United Nations, are going to require the lead of a major power. Both the Gulf War, and recent events in Bosnia, where NATO (with a particularly important role for U.S. forces) supplied that power, illustrate this reality most recently. In contrast, a myriad of operations from truce supervision to limited peacekeeping roles may not only not require a major power but may benefit from not having their involvement. Canada's important and constructive role in U.N. peacekeeping is well known.

Rather than regarding the Security Council as suspect, we would more effectively serve the goals of the United Nations by focusing squarely on the responsibilities of great powers that accompany the veto and their unique Security Council role. As one example, I believe it would have been preferable to have structured the new International Criminal Court as a tool of the Security Council, initiated in specific cases at its request, rather than as yet another Court to be created by general treaty and with the usual and criti-

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101. See, e.g., the views of Burns Weston, Security Council Resolution 678 and Persian Gulf Decision Making: Precarious Legitimacy, 85 Am. J. Int'l L. 516, 525 (1991); especially the section of this article entitled "The Great-Power Pressure Diplomacy Behind Resolution 678." *Id.* at 523-25. Professor Weston states that "the process by which Security Council Resolution 678 was won . . . was part of the larger imprint of great-power exhortation and cajolery . . . that so indelibly marked what must be described as a relentless drive by the United States, together with Great Britain, to force Saddam Hussein's hand, by armed force if necessary." *Id.* at 525.



cal enforcement problems that go with such an arrangement. The anomalies that go with this latter way of proceeding are to not include aggression within the general jurisdiction of the Court (thus going backward from Nuremberg and the need to add deterrence to aggression), and to include a great hole in the Statute of the Court for settings in which the nation state decides to prosecute (a provision that will work reasonably in democratic countries and not at all in those non-democratic countries committing aggression and slaughtering their people).

One reality worth noting in this connection is that a strong and effective United States is required for an effective Security Council and United Nations. As the only remaining superpower, and a nation with a unique war-fighting and logistics capability, the United States is an indispensable actor for U.N. success through time. The United States has been actively involved not only in the classic collective security actions of Korea and the Gulf, but also in most major post-Gulf War peacekeeping actions of the United Nations, including Somalia, Bosnia, Haiti, Rwanda, and now possibly the Rwanda/Zaire border area. This reality in turn presents unique problems for the United States and the U.S. military. One fact that is central to more active and effective engagement is putting to rest the pervasive myths of Vietnam that disastrous foreign policy adventures inevitably result from small commitments, and that even appropriately configured and led military forces cannot prevail against small indigenous forces. My colleague, Robert F. Turner, and I teach a seminar at Virginia dedicated to exploding these and other myths of Vietnam. Such myths, however, have a powerful hold on popular culture and amplify a national fear of foreign entanglements that resonates as far back as the Administration of George Washington.<sup>102</sup>

While I have no other specifics to offer at this time, I would like to call for a general discussion on the importance and role of the Security Council and its members in implementing the overall missions of the United Nations. Such a discussion should also consider modes for realistic burden-sharing so that some powerful members are not required to carry what would be for them a politically unacceptable burden, and ways to recognize major partici-

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102. For a discussion of the myths of Vietnam and its lingering effect in the United States, see readings in the syllabus for the seminar taught at Virginia jointly by John Norton Moore & Robert F. Turner, "Seminar on Advanced Topics in National Security Law I: Legal and Policy Issues of the Indo-China War."

pants for the contributions which they make in kind, either in logistic support or war-fighting capability. Hopefully, as the United Nations becomes more effective in deterrence, the burden should actually be reduced. In that setting it may also be more realistic for other nations, or groupings of states, to take on more of the burdens of keeping the peace.

Perhaps also the need for more realistic burden sharing suggests that the United States should take the lead in discussions among the permanent members of the Security Council, with appropriate regional powers and with nations such as Canada possessing unique skills in U.N. peacekeeping, to examine more thoroughly the possibilities for burden sharing, unique capabilities requiring U.S. or other major power involvement in certain types of operations, and the possibilities for strengthening regional and stand-by capabilities. To some extent, of course, such efforts are already ongoing, as between Canada and the United States in certain peacekeeping operations, or efforts to strengthen regional peacekeeping capabilities in Africa. It might, however, be worth exploring more systematic talks in this regard.

C. *Strengthening Mechanisms for Ensuring that Operations Undertaken are Only Undertaken with Adequate Forces and Rules of Engagement to Prevail and Prevail Promptly*

Settings which may require serious war-fighting, as in the Gulf, and even in Somalia and in Bosnia, must generally, with perhaps some exceptions otherwise meeting the functional requirement, be undertaken with the cooperation of a major power, such as the United States, or a major collective defense organization, such as NATO, in order to ensure adequate forces to prevail and prevail promptly. In such settings these nations or organizations will supply the command structure and must approve any rules of engagement. Similarly, collective security operations such as those in Korea and the Gulf, must be undertaken under the unitary command of the lead power. I do not propose to change that reality.

There is, however, an acute problem in settings such as the early U.N. engagement in Bosnia, where major powers in the Security Council were supporting, or even insisting on, active engagement on the ground by U.N. peacekeeping forces, without themselves being prepared to be involved in war-fighting, and in which the

United Nations may be given insufficient forces to effectively carry out its mission.<sup>103</sup>

To avoid such settings in which the United Nations may intervene with insufficient forces, we should seek to encourage practices and develop mechanisms which will *require* candid and careful Security Council consideration of the element of sufficiency in all of its initial deployment decisions. One simple mechanism might be to encourage a more active role for the Secretary-General, with the advice of his military advisors, in pointing out to the Council that any role for the United Nations should be undertaken only with adequate military forces and rules of engagement. We should encourage the Secretary-General, who is ordinarily a critical U.N. figure in the implementation of peacekeeping, to candidly share any specific concerns with the Security Council when he or she is asked to carry out an operation without adequate military force to prevail and prevail promptly. Perhaps a written report from the military advisor to the Secretary-General detailing the specific concerns might be made available to the Council. We might also implement a Security Council practice requiring a separate Council report, or even decision, as to the sufficiency of implementing forces and rules of engagement *prior to* any deployment decision. There are certainly other procedural possibilities for encouraging Council decisions which will ensure that deployment decisions will be taken only when the means and the will are available to carry through successfully with the mission. *Some* such procedure which the Council finds compatible should be initiated. For the underlying issue is of great importance.

In this connection, we might also note that the theory of government failure would predict that governments of states large and small may sometimes find it attractive to respond to publicity about atrocities by *seeming* to take action while not being willing to commit adequate resources to *really* take effective action. That is, national leaders may sometimes be tempted in response to domestic crosscurrents which are simultaneously urging both "action" and that "we not get involved," to seek to take cosmetic action through the United Nations, or to externalize costs of the

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103. In her paper, The Applicability of the "Nato Model" to United Nations Peace Support Operations Under the Security Council, Gwyn Prins recognized as one of the problems of the operation of the Security Council that a "failure to appreciate the scale of resources necessary to effect [a Security Council mandate]" places the United Nations at risk. Prins, *supra* note 71, at 45.

action (for which they get political credit) on others. This tendency is exacerbated in the many real-world settings in which selecting the right course is complex and in which powerful nations are supporting different approaches. An antidote is needed to avoid these half-hearted deployment decisions that may end up undermining present and future effectiveness of both the U.N. and the national governments involved.

D. *Strengthening Measures of Deterrence and Accountability for Regime Elites*

This Article has earlier urged the importance of a new and creative focus of deterrence on regime elites engaged in aggression, democide, or grave breaches of the laws of war. As a specific suggestion for pursuing this important approach, I suggest that the Security Council be asked to undertake a careful and serious review of new approaches that might be taken by states individually and by the Council itself.

The Council is a useful forum to take up this initiative for three reasons. First, the very consideration of this agenda item by the Council with respect to regime elites ordering aggression or democide should have a positive effect on deterrence. Second, I believe, consistent with my earlier argument about revitalizing the role of the Council, that some of the most effective new measures in this regard would require Council involvement and approval. Finally, undertaking such a study would give the Council, and its member governments, some new ideas for action other than the full involvement of ground forces or nothing. That sadly is too often the current dilemma.

E. *More Sharply Differentiating Responses to Aggression and Defense*

Collective security depends heavily on the distinction between aggression and defense. Indeed, collective security assumes some behavior against which the remainder of the international community will stand. Similarly, as the new paradigm suggests, when we begin thinking of the role of international law in deterring aggression, it becomes evident that to be an effective deterrent, as opposed to a mere placebo, the law must effectively and strongly sanction aggression, and effectively and strongly support individ-

ual and collective defense against aggression. That is, the strength with which the international system differentiates between aggression and defense, sanctioning aggression, while supporting defense, becomes crucial for the very effectiveness of international law as a normative system. For if the international system responds by treating aggression and defense as equivalent, or, even worse, it largely focuses its ire on the defensive response, then the deterrent effect of law is largely lost.

In contrast with this necessity, there is at present a pervasive climate of ignoring aggression, while focusing critically on the democratic nation defensive response. Some examples from the recent Gulf War, just to cite one setting presenting this phenomenon, are:

- Arguments that the coalition forces had no right of defense once the issue had been referred to the Security Council for action,<sup>104</sup>
- Arguments that if a collective defense action does not *immediately* respond to an armed attack (for example, it delays three months for a necessary military build-up and an effort at peacemaking as did the coalition forces in the Gulf) that the right is lost,<sup>105</sup> and
- Arguments that an occupied country (for example, the State of Kuwait following the Iraqi attack) has no one that can lawfully request collective defense assistance on their behalf following a successful blitzkrieg attack.<sup>106</sup>

Sadly, all of these examples are real; they were seriously advanced by well-known international law scholars and, in one case, by the then Secretary-General of the United Nations.<sup>107</sup> At the

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104. One consequence of this awful suggestion, made initially by Professor Abram Chayes of Harvard, would be that any nation which believed it would need to participate in collective defense would simply not refer the case to the Security Council. For a general refutation of this clearly erroneous argument see generally Moore, *supra* note 3, at 145-87.

105. And see a refutation of this erroneous argument, made by then Secretary-General Javier Perez de Cuellar. *Id.*

106. See *id.* for a response to this incredible argument made by Professor Al Rubin of the Fletcher School.

107. My colleague at the Center for National Security Law, Robert F. Turner, asked the U.N. General Council's office whether it had prepared a legal opinion supporting Sec-

same time, there was relative silence as to the illegality of the blatant Iraqi attack from these sources. This unbalanced focus on efforts to restrain effective defense against aggression I refer to as a "minimalist" approach to the important right of individual and collective defense under the Charter. It parallels a similar "minimalist" approach to deterrence within the international relations and peace studies literature.

It is important in enhancing the effectiveness of international law as a deterrent against aggression, and in turn strengthening collective security that depends in large part on the normative structure, to more sharply differentiate aggression and defense, and to more effectively and consistently sanction aggression while supporting the defensive right. To treat the two sides of this synergy as equivalent is to doom law to irrelevance in deterring aggression.

This principle may also suggest the importance of U.N. operations taking sides, and not remaining neutral, in the face of aggression or democide. While it may be attractive to hope for non-involvement in the face of outrageous behavior, in such settings it is likely that only involvement can carry out the mission. If, for example, as has recently been reported, the same Hutu militia that had engaged in democide in Rwanda was holding hundreds of thousands of Hutu civilians in refugee camps in Zaire against their will, it is hard to understand how this largely escaped notice for two years, or why the solution to the problem was a "neutral" peacekeeping force.

F. *A New Democratic Caucusing Group Within the United Nations: The "Group of Democratic Nations"*

If the new paradigm is correct, with its focus on the importance of government structures, then I would propose the creation within the United Nations of a new informal caucusing group that might be called the "Group of Democratic Nations." Whether or not democratic government is the most important feature correlated with the goals of the United Nations, as is strongly suggested by the evidence today, democracy, and the democratic nations, are

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retary-General Javier Perez de Cuellar's suggestion that article 51's validity had expired three months after the Iraqi attack, and that office properly informed Dr. Turner that there was no U.N. legal opinion supporting such an argument. See Moore, *supra* note 3, at 176-77.

a critically important part of the global landscape. In a world that organizes caucusing groups within the United Nations both on a regional basis and every functional basis imaginable, it seems strange that there is no democratic nation caucusing group.

Such a "Group of Democratic Nations" could be a powerful force for democracy building and the rule of law within the United Nations. It could also usefully transcend some of the regional or functional identifications now extant in the Organization.

Importantly, such a group should be begun with participation from all regional groups and should not be aimed *at* any nation. Rather it should be a force for peace, human rights, economic development, environmental protection, and health and well-being on a world-wide basis.<sup>108</sup>

## V. CONCLUSION

There are many important changes that can be suggested in the United Nations to enhance its effectiveness within peacekeeping, collective security, and war avoidance generally. Some of these, such as the importance of involvement in settings only where it utilizes adequate military force under sound military judgment to prevail promptly and decisively, require no new paradigm in thinking about the United Nations and world order. I believe, however, that old thinking and approaches that do not serve peace or human rights are an important part of the problem.

This Article suggests that there is a substantial and growing body of information that points strongly to a new paradigm in international relations, centered on democracy and deterrence and the importance generally of government or incentive structures. I have tried to briefly review some of the data for this newer paradigm and then to suggest its consequences for a more effective United Nations. I have further added a few specific suggestions for strengthening the United Nations that would seem to flow

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108. This is emphatically not a call for a utopian union of democracies, an idea popularized by Clarence K. Streit, or for other forms of "World Government" as the only way to end war. See Clarence Streit, *Union Now* (1940). Among other problems with these utopian proposals, the newer information about government failure would seem to add yet another argument that a world of decentralized but vital pluralist democracies, for all its problems, is preferable to a more centralized model. Moreover, the democratic peace proposition itself negates the premise of many such schemes that the existence of the nation state system itself inevitably causes war.

from these consequences and our experience to date with U.N. operations.

The United Nations should become an important forum for democracy building and rule of law engagement, as a long-run strategy to promote the goals of the United Nations. In the short run, it must become more effective in deterrence, and should more systematically consider the effects of its actions on deterrence and its own credibility to carry out its missions.

There is a world of difference between theoretical collective security and effective deterrence that enables avoidance of war and democide. The latter must be the focus for future U.N. reform.



“To no man will we sell, or deny, or delay, right or justice.”

*Magna Carta, 1215*

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“Men are born and remain equal in rights... . The aim of every political association is the protection of the natural and imprescriptible rights of man. These rights are liberty, property, security, and resistance to oppression.”

*French Declaration of the Rights of Man, 1789*

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“[I]t is essential ... that human rights should be protected by the rule of law.”

“The will of the people shall be the basis of the authority of government ... .”

*Universal Declaration of Human Rights, 1948*

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“The wave of the future is not the conquest of the world by a single dogmatic creed but the liberation of the diverse energies of free nations and free men.”

*President John F. Kennedy*

*Address at the University of California, Berkeley*

*March 23, 1962*

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“[The participating states] ... recognize that pluralistic democracy and the rule of law are essential for ensuring respect for all human rights and fundamental freedoms ... .”

“They reaffirm that democracy is an inherent element of the rule of law.”

*Document of the Copenhagen Meeting of the CSCE, 1990*