NATION-BUILDING: A LOOK AT SOMALIA

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I. INTRODUCTION

With the demise of the Cold War and the renaissance of United Nations (UN) activity, particularly within the Security Council, the United Nations has become increasingly willing to intervene in national crises of a type which, if addressed at all, were previously addressed through the unilateral actions of states.[1] In resolving such crises, the UN often attempts to assist a state that has experienced an upheaval in its governing structures to remake or rebuild those structures so as to establish an enduring internal and external peace.[2] Secretary-General Boutros Boutros-Ghali characterizes these efforts toward long-term solutions as "nation-building" or "peace-building."[3]

Although this concept of nation-building has become fashionable, its exact characteristics remain amorphous. An overly broad definition of nation-building would include certain basic functions of any government—the attempt to build better institutions and better means for serving the government's people. In some instances, a government will seek assistance from other states to achieve its goals.[4] More commonly, however, the terms nation-building or peace-building are used to refer to situations where the international community uses highly intrusive means to rescue a state from a breakdown of law and order. Such a situation typically begins with the outbreak of civil warfare among competing factions and eventually leads to widespread civilian deaths and the flight of refugees

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1. *See generally An Agenda for Peace: Preventive Diplomacy, Peacemaking and Peace-Keeping*, U.N. GAOR, 47th Sess., U.N. Doc. A/47/277 (1992), *reprinted in* 31 I.L.M. 956 (1992) [hereinafter *An Agenda for Peace* (U.N. Doc. A/47/277)] (analyzing historical events and recommending "ways of strengthening . . . the capacity of the United Nations for preventive diplomacy, for peacemaking, and for peacekeeping"); *Implementation of the Recommendations Contained in "An Agenda for Peace": Report of the Secretary-General*, U.N. GAOR, 47th Sess., U.N. Doc. A/47/965 (1993); *Supplement to an Agenda for Peace: Position Paper of the Secretary-General on the Fiftieth Anniversary of the United Nations*, U.N. GAOR, 50th Sess., U.N. Doc. A/50/60 (1995).

2. *See An Agenda for Peace* (U.N. Doc. A/47/277), *supra* note 1, at 969.

3. *See id.* at 960.

4. The needs of the states of eastern and central Europe, as well as of the states of the former Soviet Union, come to mind. *See, e.g.*, Jeffrey D. Sachs, *The Road to Market; If Yeltsin Can Stay the Course on Economic Reform, Russia Will Prosper*, WASH. POST, Mar. 28, 1993, at C2 (analyzing Russia's strategy of economic stabilization and market reform through foreign aid); John E. Yang, *Bush Meets Polish Prime Minister, Promises to Assist Private Investment*, WASH. POST, Apr. 14, 1992, at A18 (reporting the need for Western financial assistance to further Poland's political and economic stabilization).

into neighboring countries.[5] In order to save the troubled state, the international community assists it in reestablishing means for peaceful governance.[6]

Nation-building in this more dramatic sense entails important legal and policy issues that arise under international law as well as the national law of each intervening nation. This Article explores these issues by recounting the UN and U.S. experience in Somalia from 1992 to 1995. Focusing on the intervention in Somalia is particularly instructive because for the first time the UN expressly authorized the deployment of a multinational force with the mandate of forcibly stabilizing and preventing starvation within a state, and with the ultimate goal of national reconciliation.[7] The intervention in Somalia also marked the first time that the UN deployed a UN-commanded force to accept responsibility from an initial multinational force, to demilitarize local factions, and to impose a transitional government until a national election could be organized.[8] Today, the successes of "Operation Restore Hope," as it was dubbed by the Bush Administration,[9] have been overshadowed by its failure to achieve enduring peace in Somalia.[10] This disappointing result threatens to cloud future UN actions of a similar nature. Thus, an account of the intervention in Somalia serves as a cautionary tale about both how and how not to conduct such an operation in the future.

II. OPERATION RESTORE HOPE

Even in the best of times, Somalia—a country of some 6.7 million people—experienced recurring droughts, overgrazing, and

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5. Such situations have recently occurred in Bosnia, Liberia, Rwanda, and Somalia. *See, e.g.*, Karl Maler, *Air Raids on Liberia Intensify*, WASH. POST, Apr. 4, 1993, at A40; Ray Moseley, *Europe Leaving Refugees in Cold*, CHI. TRIB., Nov. 19, 1992, at 1; Keith B. Richburg, *Somali Memory Lingers as GI's Head for Rwanda*, WASH. POST, July 31, 1994, at A2.

6. *See An Agenda for Peace* (U.N. Doc. A/47/277), *supra* note 1, at 969.

7. *See Provisional Verbatim Record of the Three Thousand One Hundred and Eighty-Eighth Meeting*, U.N. SCOR, 48th Sess. at 7-8, *passim* (1993) [hereinafter *Provisional Verbatim Record* (U.N. Doc. S/PV.3188)] (containing statements of representatives to Security Council that UNISOM II was the first U.N. operation of its kind). *See also* Associated Press, *U.N. Approves Large Force for Somalia*, L.A. TIMES, Mar. 27, 1993, at A10; N.Y. Times News Service, *U. N. Agrees to Deploy Force to Help Rebuild, Run Somalia*, CHI. TRIB., Mar. 27, 1993, at 2.

8. *Id*.

9. 3 DEP'T OF STATE DISPATCH 898, Dec. 21, 1992.

10. *See, e.g.*, Rick Atkinson, *Marines Close Curtain on U.N. in Somalia*, WASH. POST, Mar. 3, 1995, at A1.

desertification, and qualified as one of the poorest and least developed countries in the world.[11] In 1988, civil war broke out in Somalia among various factions and clans and Somalia's President Siad Barre was overthrown in January of 1991.[12] In July 1991, various Somali leaders held a conference to establish an interim government.[13] However, the Somali factions and clans turned on each other, ultimately killing thousands of civilians, uprooting hundreds of thousands of other civilians from their homes, destroying Somalia's infrastructure, and crippling its economy.[14]

At first, the civil war in Somalia did not attract much global attention, due in part to the dramatic events that occurred in the Iraq-Kuwait conflict in 1991.[15] Yet, before long, global concern was aroused by relentless reports of the violence and starvation occurring in Somalia by the print and, more importantly, the television media.[16] While the states neighboring Somalia arguably had the most at stake,[17]

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11. *See generally The Situation in Somalia: Report of the Secretary-General*, U.N. SCOR, 47th Sess., at 7, 9, 11, 13, U.N. Doc. S/23829/Add. 1 (1992) [hereinafter *Report of the Secretary-General* (U.N. Doc. S/23829/Add. 1)] ("[E]ven prior to the civil war, Somalia had some of the lowest social and economic indices in the world.").

12. *See id.* at 4.

13. *Letter Dated 20 Jan. 1992 from the Chargé d'Affaires A.I. of the Permanent Mission of Somalia to the United Nations Addressed to the President of the Security Council*, U.N. SCOR, 47th Sess., U.N. Doc. S/23445 (1992) ("[Omer Arteh Ghalib] was appointed . . . as the interim Prime Minister for Somalia within the context of arrangements agreed upon by all the Somali political parties that participated in the Somali National Reconciliation Conference held in Djibouti in July 1991.").

14. *The Situation in Somalia: Report of the Secretary-General*, U.N. SCOR, 47th Sess. at 4, U.N. Doc. S/23693 (1992) [hereinafter *Report of the Secretary-General* (U.N. Doc. S/23693)] (Fighting between factions "resulted in widespread death and destruction, forced hundreds of thousands of civilians to flee the city [of Mogadishu], caused dire need for emergency humanitarian assistance, and brought about the threat of widespread famine"); *The Situation in Somalia: Report of the Secretary-General*, U.N. SCOR, 47th Sess. at 13, U.N. Doc. S/23829 (1992) [hereinafter *Report of the Secretary-General* (U.N. Doc. S/23829)] ("There is hardly any governmental infrastructure in [Somalia] that could be relied upon. Physical infrastructure, such as transport, water, electricity, telephone communications [*sic*], is also largely non-existent.").

15. *See, e.g.*, Neil Henry, *Worsening Famine Threatens 17 Million in 3 African Countries*, WASH. POST, May 24, 1991, at A34 (noting criticism of international community's undivided focus on Bangladesh and Iraq).

16. *See, e.g.*, Jim Cusak, *How Operation Restore Hope Went Seriously Wrong*, IRISH TIMES, Jan. 30, 1995, at 7 ("Guided mainly by television and print media pictorial evidence, Somalia was defined as a country riven by civil war, and depleted by famine and incapable of helping itself. . . . Attempts to secure international aid failed and the famine was allowed to worsen for almost two years before the weight of Western opinion resulted in the massive United Nations operation.").

17. *See Report of the Secretary-General* (U.N. Doc. S/23693), *supra* note 14, at 4 ("[T]he conflict has threatened instability in the Horn of Africa region and its continuation has occasioned

they did little more than make landing strips available for aircraft to conduct food drops, and otherwise simply tried to manage refugee camps to the best of their abilities.[18] Likewise, the Organization of African Unity and the League of Arab States discussed the situation, but assumed no leadership of the effort to end the fighting.[19] Although various regional and private international organizations shipped emergency food and other assistance to Somalia,[20] the lack of a central government and the continuing civil strife in Somalia prevented effective distribution of those shipments. This in turn placed significant pressure on the UN and its Members to act.[21] On January 20, 1992, the Permanent Mission of Somalia to the UN passed to the Security Council a letter from Somalia's interim Prime Minister which noted "the deteriorating situation in Somalia" and which stated the interim Prime Minister's confidence that "the United Nations Security Council will come up with a programme of effective action to end the fighting and contribute to cementing peace and stability in the country."[22] From this point onward, the international community's involvement in Somalia passed through four distinct phases; these are likely to be repeated in future interventions of this type.

A. Phase One: Non-Forcible Measures to Resolve the Crisis

Between January and November of 1992, the international community, acting through the UN, tried without using military force to induce the warring factions in Somalia to allow humanitarian relief

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threats to international peace and security in the area."); *Report of the Secretary-General* (U.N. Doc. S/23829), *supra* note 14, at 13 ("The crisis in Somalia has regional consequences, as is already evidenced by the flow of Somali refugees to neighboring countries, and there are grave concerns about the destabilizing effects it could have on the Horn of Africa.").

18. *See, e.g.*, Michael A. Hiltzik, *U.S. Effort to Help Somalia Off to a Shaky Start*, L.A. TIMES, Aug. 21, 1992, at A4 (detailing Kenyan role in U.S. emergency airlift).

19. *See Report of the Secretary-General* (U.N. Doc. S/23693), *supra* note 14, at 3, 5.

20. *See Report of the Secretary-General* (U.N. Doc. S/23829/Add. 1), *supra* note 14 (describing relief efforts of various nongovernmental and private organizations); *Report of the Secretary-General* (U.N. Doc. S/23693), *supra* note 14, at 1, 13 (expressing appreciation to the organizations that had provided assistance).

21. *See, e.g., Report of the Secretary-General* (U.N. Doc. S/23693), *supra* note 15, at 13 (reporting that poor security conditions prevented delivery of food supplies); *Report of the Secretary-General* (U.N. Doc. S/23829/Add.1), *supra* note 12, at 2-4 (acknowledging difficulties in providing humanitarian aid and recommending solutions).

22. *Letter Dated 11 Jan. 1992 from the Prime Minister of Somalia Addressed to the Chargé d'Affaires A.I. of the Permanent Mission of Somalia to the United Nations*, U.N. SCOR, 47th Sess. at 2, U.N. Doc. S/23445/Annex I (1992).

deliveries and to end their fighting. These efforts took the form of Security Council resolutions[23] and trips by UN envoys to Somalia,[24] which achieved some initial successes; representatives from the UN and various regional organizations were able to negotiate a cease-fire agreement between the major warring clans in March of 1992,[25] and the Security Council deployed an unarmed observer mission to monitor the cease-fire and to assist in the delivery of humanitarian assistance.[26] Unfortunately, the fighting continued notwithstanding the cease-fire agreement and the presence of the UN observers.[27]

By August 1992, the turmoil in Somalia disturbed relief operations and threatened relief personnel to such an extent that the Secretary-General called for additional UN action.[28] As a result, the Security Council sent five hundred armed Pakistani peace-keepers to

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23. *See, e.g.*, S.C. Res. 733, U.N. SCOR, 47th Sess., 3039th mtg. at 1-2, U.N. Doc. S/RES/733 (1992) [hereinafter S.C. Res. 733] (declaring situation in Somalia to be a threat to international peace and security, requesting Secretary-General to coordinate relief activities, and imposing a weapons embargo); S.C. Res. 746, U.N. SCOR, 47th Sess., 3060th mtg. at 2, U.N. Doc. S/RES/746 (1992) [hereinafter S.C. Res. 746] (supporting Secretary-General's decision to dispatch a technical team to Somalia in accord with Security Council recommendations); S.C. Res. 751, U.N. SCOR, 47th Sess., 3069th mtg. at 2, U.N. Doc. S/RES/751 (1992) [hereinafter S.C. Res. 751] (authorizing dispatch of observer mission); S.C. Res. 767, U.N. SCOR, 47th Sess., 3101st mtg. at 2, U.N. Doc. S/RES/767 (1992) [hereinafter S.C. Res. 767] (requesting Secretary-General to undertake airlift operation); S.C. Res. 775, U.N. SCOR, 47th Sess., 3110th mtg. at 2, U.N. Doc. S/RES/775 (1992) [hereinafter S.C. Res. 775] (authorizing deployment of armed U.N. peace-keepers).

24. *See, e.g.*, *Report of the Secretary-General* (U.N. Doc. S/23693), *supra* note 14, at 7-13 (detailing trips made to negotiate cease-fire in Mogadishu); *Report of the Secretary-General* (U.N. Doc. S/23829), *supra* note 14, at 4-6 (detailing trips of the technical team); *Report of the Secretary-General on the Situation in Somalia*, U.N. SCOR, 47th Sess. at 1-2, U.N. Doc. S/24343 (1992) (describing activities of Secretary-General's Special Representative); *The Situation in Somalia: Report of the Secretary-General*, U.N. SCOR, 47th Sess. at 1, 6, 9-11, U.N. Doc. S/24480 (1992) [hereinafter *Report of the Secretary-General* (U.N. Doc. 24480)] (listing trips of the technical team); *Letter Dated 24 Nov. 1992 from the Secretary-General Addressed to the President of the Security Council*, U.N. SCOR, 47th Sess. at 2-3, U.N. Doc. S/24859 (1992) [hereinafter *Letter Dated 24 Nov. 1992* (U.N. Doc. S/24859)] (detailing a trip of the Secretary-General's Special Representative).

25. *Report of the Secretary-General* (U.N. Doc. S/23693), *supra* note 14, at 3-10, 24; Associated Press, *Rival Somalian Factions Agree to Help Monitor Truce*, BOSTON GLOBE, Mar. 30, 1992, at 4.

26. S.C. Res. 751, *supra* note 23, at 2 (effecting proposal for unarmed mission suggested in U.N. Doc. S/23829).

27. S.C. Res. 775, *supra* note 23, at 1 (expressing alarm at the "continued sporadic outbreak of hostilities in several parts of Somalia . . . putting at risk the personnel of the United Nations, . . . as well as disrupting their operations.").

28. *Report of the Secretary-General* (U.N. Doc. S/24480) *supra* note 24, at 5.

Somalia with the consent of the local factions.[29] Dubbed the "United Nations Operation in Somalia" (UNOSOM), these forces were charged with providing security for UN personnel and equipment in Mogadishu and with escorting deliveries of humanitarian supplies.[30] This security force was not charged, however, with serving any law and order functions; its purpose instead was limited to facilitating immediate humanitarian relief operations.[31]

Thus, there were no ambitious efforts during Phase One to impose peace in Somalia, let alone to rebuild its governmental institutions. Envoys of the Secretary-General pursued efforts to help mediate peace while the United Nations maintained hope that the simple deployment of UNOSOM would stabilize the situation.[32] Yet, even these operations aimed at humanitarian assistance were problematic. By November, faction leaders in Somalia revoked their consent to the UN peace-keeping forces, and they challenged the UNOSOM troops to prevent them from becoming a significant factor in the internal struggle for control of Somalia.[33] The tension culminated on November 13, 1992, when Somali snipers forced the UNOSOM troops to barricade themselves at the Mogadishu airport and to hire local Somalis for protection.[34]

B. Phase Two: Forcible Measures by a Major Power to Address the Immediate Needs of the Crisis

During the period from December 1992 to May 1993, the international community used military forces under national (not UN) command to protect relief operations and to prevent the Somali factions from fighting each other by implementing force.[35] To this end, the

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29. S.C. Res. 775, *supra* note 23, at 2; *Report of the Secretary-General* (U.N. Doc. S/24480), *supra* note 24, at 5.

30. *Report of the Secretary-General* (U.N. Doc. S/24480), *supra* note 24, at 5.

31. *Report of the Secretary-General* (U.N. Doc. S/23829), *supra* note 14, at 7.

32. *Report of the Secretary-General* (U.N. Doc. S/24480), *supra* note 24, at 5; *Report of the Secretary-General on the Situation in Somalia*, U.N. SCOR, 47th Sess., at 4, U.N. Doc. 24343 (1992).

33. *Letter Dated 24 Nov. 1992* (U.N. Doc. S/24859), *supra* note 24, at 1-3.

34. *Id.* at 3. *See also* Keith B. Richburg, *Pakistanis Work to Charm Somalis*, WASH. POST, May 14, 1993, at A33.

35. *See, e.g., Letter Dated 29 Nov. 1992 from the Secretary-General Addressed to the President of the Security Council*, U.N. SCOR, 47th Sess. at 4-5, U.N. Doc. S/24868 (1992) [hereinafter *Letter Dated 29 Nov. 1992* (U.N. Doc. S/24868)] (recommending Security Council

United States offered to deploy, with the authorization of the UN, some twenty-eight thousand U.S. troops as part of a nationally-commanded, multinational force to help ensure distribution of food and aid in Somalia and to prevent internal violence.[36] In an outline of the options available to the Security Council, the Secretary-General proposed acceptance of the offer, rather than the dispatch of additional UN forces, and noted that the delivery of relief supplies "cannot be achieved by a UN operation based on accepted principles of peace-keeping."[37] The Secretary-General stated the purposes of the proposed operation to be (1) the creation of conditions, including the disarming of irregular forces, in which relief operations can be delivered to those in need and (2) the promotion of national reconciliation to remove the main factors that created the humanitarian emergency.[38]

On December 3, 1992, the Security Council authorized the deployment of the multinational enforcement operation.[39] Resolution 794 endorsed the Secretary-General's recommendation, welcomed the offer by the United States, and invoked Chapter VII of the UN Charter to authorize the Secretary-General's and Member States' use of "all necessary means to establish as soon as possible a secure environment for humanitarian relief operations in Somalia."[40] U.S. forces arrived in Somalia on December 9[41] and were soon thereafter joined by forces from several other states.[42] States involved in the deployment—an operation that became known as the United Task Force (UNITAF)—maintained command and control of their own forces, which at the peak of the operation totaled 38,300.[43] UNITAF constituted the largest humanitarian-military relief operation in UN history; seventy thousand

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take more forceful measures pursuant to Ch. VII of the U.N. Charter and reporting meeting in which U.S. "offered to take the lead").

36. *Id.* at 5; William Claiborne, *Joint Task force's First Task is Joining*, WASH. POST, Dec. 19, 1992, at A10, A15.

37. *Letter Dated 29 Nov. 1992* (U.N. Doc. S/24868)), *supra* note 35, at 6.

38. *Id.*

39. S.C. Res. 794, U.N. SCOR, 47th Sess., 3145th mtg. at 3, U.N. Doc. S/RES/794 (1992) [hereinafter S.C. Res. 794].

40. *Id.*

41. Keith M. Richburg and William Claiborne, *Marines, Navy Land in Somalia's Capital*, WASH. POST, Dec. 9, 1992, at A1.

42. Claiborne, *supra* note 36, at A15.

43. Richburg, *supra* note 34, at A36.

tons of food and medical supplies were delivered to Somalia between December 9, 1992 and February 19, 1993.[44]

The immediate result of this massive intervention was that Somali death rates plummeted precipitously,[45] a fact that is often overlooked in retrospectives on Somalia. Yet, this short-term success led to questions about how to proceed toward achieving a long-term solution. Although Resolution 794 had set the overall objective of the intervention, it did not address specific means for achieving that objective.[46] Discrepancies soon emerged in the attitudes of the United States and the Secretary-General about the steps necessary for UNITAF to establish an enduring peace. For instance, while the United States believed UNITAF could open humanitarian supply lines by conducting only limited disarmament of the local Somali factions,[47] the Secretary-General took the view that widespread disarmament was a necessary precondition to a long-term solution to the crisis.[48] In addition to the delivery and protection or humanitarian supplies, UNITAF provided assistance in civic reconstruction projects, cleaned up debris, fostered dialogues among Somali civic leaders and even organized a Mogadishu police force.[49]

In March 1993, the UN negotiated another cease-fire among the rival Somali clans and convened a peace conference comprised of all of the factions.[50] After two weeks of bargaining, Somali political leaders agreed to establish an interim government, consisting of a three-tiered, federal-style administration to operate for two years, after which time elections would be held.[51] Thus, by the spring of 1993 Somalia

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44. Madeleine K. Albright, Statement before the Subcomm. on Foreign Operations, Export Financing, and Related Programs of the House Appropriations Comm. (Mar. 12, 1993), *in* 4 DEP'T OF STATE DISPATCH 207, 209, Apr. 5, 1993.

45. *Provisional Verbatim Record* (U.N. Doc. S/PV.3188), *supra* note 7, at 12. *See also* Associated Press, *U.S. General Hands Over Relief Operation in Somalia to U.N.*, N.Y. TIMES, May 5, 1993.

46. *See* S.C. Res. 794, *supra* note 39.

47. Keith B. Richburg, *Broader U.S. Role Developing in Somalia*, WASH. POST, Dec. 31, 1992, at A16.

48. *Letter Dated 29 Nov. 1992* (U.N. Doc. S/24868), *supra* note 35, at 4.

49. Richburg, *supra* note 47, at A16; Keith B. Richburg, *Top Marine Calls Somalia Mission Done*, WASH. POST, Jan. 30, 1993, at A18.

50. Jennifer Parmelee, *Somalis Reach Peace Accord*, WASH. POST, Mar. 28, 1993, at A22.

51. *See Further Report of the Secretary-General Submitted in Pursuance of Para. 18 of Resolution 814*, U.N. SCOR, 48th Sess. at 7-11, U.N. Doc. S/26317 (1993) [hereinafter *Further Report of the Secretary-General* (U.N. Doc. S/26317)].

remained to be a troubled country, but the UNITAF intervention had achieved certain critical successes in the delivery of humanitarian supplies, the limited disarmament of militants, and the initiation of a political dialog among Somali leaders.

C. Phase Three: The UN's Assumption of Responsibility for Nation-Building

Once the immediate needs of the crisis in Somalia had been addressed, the United States sought to transfer UN responsibility for the operation in Somalia and to extract most of the U.S. military forces.[52] In March 1993, the Security Council authorized the Secretary-General to organize a UN-commanded force of up to twenty-eight thousand to take over from UNITAF in May 1993 and to remain in Somalia until October 1993.[53] This new deployment of UN forces, inauspiciously named UNOSOM II, marked the first time the "blue helmets" were expressly given power to enforce their mandate, as opposed to simply keeping the peace by their presence.[54]

Although many commentators and observers referred to the UN operation in Somalia as a "peacekeeping operation," the Members of the Security Council understood that the mandate of UNOSOM II was unlike that of any previous UN peacekeeping operation.[55] The Security Council gave UNOSOM II extensive authority to control the heavy weapons of the Somali factions, to seize small arms, to remove mines from various areas, to protect relief workers, and to aid in the return and resettlement of displaced persons.[56] Moreover, as noted by the Secretary-General, UNOSOM II was expected to bring about national reconciliation under democratic institutions in a state where such institutions had never existed.[57] Whereas UNITAF had only operated

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52. *See*, S.C. Res. 814, U.N. SCOR, 48th Sess., 3188th mtg. at 5, U.N. Doc. S/RES/814 (1993) [hereinafter S.C. Res. 814] (requesting that Secretary-General assume responsibility from UNITAF).

53. S.C. Res. 814, *supra* note 52, at 4. *See also Further Report of the Secretary-General Submitted in Pursuance of Paragraphs 18 and 19 of Resolution 794* (1992), U.N. SCOR 48th Sess. at 15, 20, U.N. Doc. S/25354 (1993) [hereinafter *Further Report of the Secretary-General* (U.N. Doc. S/25354)].

54. *See Provisional Verbatim Record* (U.N. Doc. S/PV.3188), *supra* note 7, at 7, 17-19, 26.

55. *Id.*

56. S.C. Res. 814, *supra* note 52, at 4.

57. *See Further Report of the Secretary-General* (U.N. Doc. S/26317), *supra* note 51, at 7-10. *See also* Jennifer Parmelee, *Africa: Bloodied, Torn At Its Ethnic Seams*, WASH. POST, July 14,

in approximately forty percent of Somalia, UNOSOM II would operate throughout Somalia.[58] The total cost of the operation was estimated at $1.5 billion per year, an amount representing one-half of UN expenditures on all of its world-wide peacekeeping operations at that time.[59]

UNOSOM II faced serious problems from its outset. With the command and control infrastructure of the major UNITAF countries now gone, the UN simply was not equipped administratively or logistically to handle such a large number of troops from so many states in the short time-frame available to organize UNOSOM II.[60] Many of the states contributing troops were unable to deploy the troops within the UN's scheduled time frames.[61] Moreover, some of the states that contributed troops found it difficult to provide their forces with adequate weapons and equipment, necessitating time-consuming arrangements with third states to obtain much-needed supplies.[62] Sensing these weaknesses, perhaps, certain Somali clan leaders began waging attacks to gain control of certain cities just two days after UNOSOM II took over from UNITAF.[63] On June 5, 1993, violence broke out in Mogadishu.[64] When the fighting had ceased, twenty-four Pakistani UN troops were dead and fifty-six had been wounded—the highest casualty toll suffered by UN forces since 1961 in the Congo.[65] In response, UNOSOM II commenced air and ground military actions designed to disable or destroy caches of weapons which were located in southern Mogadishu.[66] Since these weapons were located in civilian

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1994, at A1 (describing history of government in Africa and referring to fact that although post-independence Somalia implemented a multiparty system, the small political parties that sprang up, "wound up under military rule, often seen as an antidote to chaos").

58. *See Further Report of the Secretary-General* (U.N. Doc. S/26317), *supra* note 51, at 7-10.

59. Paul Lewis, *U.N. Will Increase Troops in Somalia*, N.Y. TIMES, Mar. 27, 1993, at A3.

60. *See Further Report of the Secretary-General* (U.N. Doc. S/26317), *supra* note 51, at 6-9.

61. *Id.*

62. *Id.*

63. *Id.* at 4-5.

64. *Report Pursuant to Para. 5 of Security Council Resolution 837 (1993) on the Investigation into the 5 June 1993 Attack on United Nations Forces in Somalia Conducted on Behalf of the Secretary-General*, U.N. SCOR, 48th Sess., Annex at 2, U.N. Doc. S/26351 (1993).

65. *Id. See also* Dele Olojede, *Where Did U.S. Err?*, NEWSDAY, Oct. 10, 1993, at 5.

66. *Report of the Secretary-General on the Implementation of Security Council Resolution 837*, U.N. SCOR, 48th Sess. at 5, U.N. Doc. 26022 (1993) [hereinafter *Report of the Secretary-General* (U.N. Doc. 26022)].

areas, the UN attacks caused civilian casualties and also led to increased street-fighting.[67] Fighting broke out between UN and Somali gunmen on June 13, 1993, and when the dust cleared more than a dozen Somali civilians (including children) were dead; reports of the incident conflicted as to which side had killed them.[68]

Many of the attacks on the UN forces were waged by Somali gunmen loyal to General Mohammed Farah Aidid.[69] Aidid, a powerful Mogadishu clan leader, represented a more general problem which may confront future international humanitarian relief efforts. That is, although many Somalis gained from the relief brought by the intervention, General Aidid and others perceived the foreign intervention as a threat to their leadership. Consequently, Aidid utilized his power to frustrate foreign efforts and to sustain the civil conflict. In future situations such as the one in Somalia, intervening forces must be prepared to handle those local leaders who believe that they would fare better if no intervention were to occur and the civil conflict were to run its course.

As a response to General Aidid's attacks, the UN undertook extensive efforts to capture him, going so far as to offer a $25,000 bounty for information leading to his arrest.[70] Further, the United States deployed special operations forces to capture General Aidid.[71] Despite these efforts, General Aidid remained at large and capable of organizing resistance to UN activities in Mogadishu.[72] Repeated clashes between UN forces and Somali gunmen in Mogadishu ultimately culminated in a sixteen hour-long battle on October 3, 1993, leaving twelve U.S. soldiers killed, eighty wounded, and one captured.[73] Photographs of the captive U.S. soldier and reports that the body of one of the dead U.S. soldiers had been dragged through the streets of Mogadishu did much to turn U.S. public sentiment against any

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67. *Id.* at 6.

68. Keith B. Richburg, *U.N. Unit Kills 14 Somali Civilians*, WASH. POST, June 14, 1993, at A1.

69. *Report of the Secretary-General* (U.N. Doc. 26022), *supra* note 66, at 8.

70. Donatella Lorch, *U.N. Troops Begin an Effort to Take Over Somali Streets*, N.Y. TIMES, July 11, 1993, at A14.

71. *See id.*; *see also* Keith B. Richburg, *Somali Faction Frees U.S. Pilot*, WASH. POST, Oct. 15, 1993, at A1 (referring to "massive U.S. manhunt" for Aidid).

72. Lorch, *supra* note 70, at A14.

73. *See, e.g.*, Rick Atkinson, *Deliverance from Warlord's Fury*, WASH. POST, Oct. 7, 1993, at A1.

further U.S. involvement in Somalia.[74] Within days, the U.S. special forces had left Somalia with their mission incomplete.[75]

Thus, two defining features emerged from Phase Three of the Somalian intervention. First, UNOSOM II committed itself to the use of intensive, directly confrontational military operations in their efforts to stabilize Somalia. As a result, the operation in Somalia suddenly took on the characteristics of a low-level military campaign against urban guerrillas, rather than a mission that was humanitarian in nature. Second, rather than emphasize a process of national reconciliation that sought to draw in the leaders of all relevant Somali factions, the UN and several Member States placed intense focus on efforts to capture General Aidid. Both of these shifts of the operation's direction had important, lagely negative effects on how Somali citizens viewed the presence of foreign forces and how the domestic constituencies of the foreign forces viewed the appropriateness of the intervention. Although by fall of 1993 starvation in Somalia had largely been eradicated, immunization and nutrition programs had stemmed the deaths of children, schools were reopening and prospects for the Somali harvest were good,[76] the willingness of Somalis and citizens of Member States to maintain the intervention until Somalia had been stabilized had diminished greatly.[77]

D. Phase Four: UN Retraction from Nation-Building

In the final phase of the intervention in Somalia, spanning from October 1993 to March 1995, the UN retreated from its aggressive posture toward nation-building in Somalia. In November 1993, the Security Council suspended its order authorizing the arrest of Aidid and

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74. Richburg, *supra* note 71, at A1. Although diplomatic efforts ultimately led to the release of the captured U.S. soldier, reportedly without conditions, the United States adopted a more conciliatory attitude toward Mr. Aidid soon thereafter. *See* John Lancaster, *Mission Incomplete, Rangers Pack Up*, WASH. POST, Oct. 21, 1993, at A1.

75. Lancaster, *supra* note 74, at A1.

76. *See Further Report of the Secretary-General* (U.N. Doc. S/26317), *supra* note 51, at 12.

77. *See* Associated Press, *Somali Factions Urge U.N. Troops to Remain*, WASH. POST, Dec. 1, 1993, at A20 (indicating the intention of U.S., French, German, and Belgian troops to withdraw earlier than U.N. peacekeepers' scheduled departure); Alan Ferguson, *Somalia: A Crucial Test of U.N.'s Credibility*, TORONTO STAR, July 19, 1993, at F1 (describing American domestic disillusionment with the U.S. involvement in Somalia); Richard Dowden, *Good Intentions on the Way to Hell*, THE INDEPENDENT, Oct. 10, 1993, at 24 ("Even sworn enemies of General Aidid are angered by what they see as American massacres of women and children.").

instead established an independent commission to investigate the June 24 ambush of the UN forces.[78] In addition, the Security Council passed a resolution reducing the level of UNOSOM II forces and altering UNOSOM II's mandate to cover just the protection of humanitarian aid deliveries, which were mostly destined for locations outside of Mogadishu.[79] Aware that efforts to round up heavy weapons had led to the conflict with General Aidid, the Security Council decided that UNOSOM II troops would no longer seek to disarm the Somali factions and that the troops would fight only if they came under attack.[80] Further, UNOSOM II would only "assist" in the ongoing process of national reconciliation, which "should culminate" in a democratically-elected government.[81] In essence, the resolution transferred the primary responsibility for nation-building to the Somali factions themselves.[82]

By March 1994, the United States and other major powers withdrew their forces, equipment, and materials from Somalia, leaving a UN force composed of forces from other states.[83] Thereafter, UNOSOM II forces maintained a tenuous control on their operations in Somalia. After considering reports from the Secretary-General about the condition of Somalia,[84] the Security Council decided on November 4, 1994 to proceed with an orderly withdrawal of all UNOSOM II military forces and assets from Somalia.[85] In late February 1995, fourteen thousand troops from seven nations were deployed to Mogadishu to form a protective cordon around the 2,400 UNOSOM troops as they withdrew from Somalia.[86] On March 3, 1995—after two years of elaborate attempts at nation-building, including annual UN expenditures of $1

78. Rick Atkinson, *Wide Look at Somalia Violence Vowed*, WASH. POST, Dec. 1, 1993, at A20.

79. S.C. Res. 897, U.N. SCOR, 49th Sess., 3334th mtg. at 2-3, U.N. Doc. S/RES/897 (1994) [hereinafter S.C. Res. 897]; Julia Preston, *U.N. Moves Toward New Role in Somalia*, WASH. POST, Feb. 5, 1994, at A14.

80. Preston, *supra* note 79, at A14.

81. S.C. Res. 897, *supra* note 79, at 3.

82. *Id.* at 1, 3; Preston, *supra* note 79, at A14.

83. Associated Press, *Last Marines Leave Chaos of Somalia; Force Kept Thousands Alive*, ST. LOUIS POST-DISPATCH, Mar. 26, 1994, at 1A.

84. *Report by Secretary-General Concerning the Situation in Somalia*, U.N. SCOR, 49th Sess., U.N. Doc. S/1994/1068 (1994); *Report of the Secretary-General Concerning the Situation in Somalia*, U.N. SCOR, 49th Sess., U.N. Doc. s/1994/1166 (1994).

85. S.C. Res. 954, U.N. SCOR, 49th Sess., 3451st mtg., U.N. Doc. S/RES/954.

86. Rick Atkinson, *Marines Launch Final Phase of Somalia Pullout*, WASH. POST, Feb. 28, 1995, at A12. The extraction operation was dubbed "Operation United Shield."

billion and the presence of eighteen thousand UN soldiers—the last foreign forces were withdrawn from Somalia.[87]

III. LEGAL ISSUES

The United Nations' extensive and unprecedented nation-building effort in Somalia raises a wide range of issues under both international and U.S. law. The following are some of the more important questions.

A. Is the Security Council Exercising Its Powers Legitimately?

The Security Council derives its powers to maintain international peace and security from Chapter VII of the UN Charter.[88] The first article of Chapter VII, Article 39, requires the Security Council to "determine the existence of any threat to the peace, breach of the peace, or act of aggression" and to "make recommendations, or decide what measures shall be taken . . . to maintain or restore international peace and security."[89] Accordingly, in the case of Somalia and in the cases of other interventions addressing essentially internal, humanitarian crises in Iraq, Bosnia, Liberia, and Haiti, the Security Council consistently found a threat to the peace before undertaking forcible remedial actions, in the form of sanctions or more intrusive measures.[90] A review of the negotiating history of the Charter reveals that the drafters knew they were granting significant powers to the Security Council to address threats to the peace, but were unwilling to define the phrase *threat to the peace* out of a concern that a definition might restrict the Security Council's ability to react to a wide variety of

87. Atkinson, *supra* note 10, at A1.

88. U.N. CHARTER ch. VII. *See also* LELAND M. GOODRICH ET AL., CHARTER OF THE UNITED NATIONS: COMMENTARY AND DOCUMENTS 293 (1969) ("If any single provision of the Charter has more substance than the others, . . . it is this one sentence.").

89. *Id.* art. 39. It should be noted that Chapter VII does not refer to *international* peace, which might suggest that internal conflict is within the scope of Chapter VII. By contrast, articles 33 and 34 of Chapter VI refer to the maintenance of "international peace and security." *Id.* arts. 33-34. The absence of the word *international* in article 39 of Chapter VII, however, has not been accorded much significance, although in the early years of the Charter it led to some confusion. *See* GOODRICH, *supra* note 88, at 293-97.

90. *See* S.C. Res. 733, *supra* note 23 (Somal.); S.C. Res. 688, U.N. SCOR, 48th Sess., 2982nd mtg. at 2-3, U.N. Doc. S/Res/688 (1993) (Iraq); S.C. Res. 757, U.N. SCOR, 47th Sess., 3082nd mtg. at 3-5, U.N. Doc. S/RES/757 (1992) (Bosnia); S.C. Res. 813, U.N. SCOR, 48th Sess., 3187th mtg. at 2-3, U.N. Doc. S/RES/813 (1993) (Liber.); S.C. Res. 841, U.N. SCOR, 48th Sess., 3238th mtg. at 2-4, U.N. Doc. S/RES/841 (1993) (Haiti).

situations.[91] Further, the drafters decided that each of the organs of the UN should interpret those parts of the UN Charter that applied to its particular functions.[92]

Despite the Security Council's wide discretion to determine the existence of a threat to the peace, a question arises as to the legitimacy of exercising the authority to maintain international peace and security in cases where neither a transboundary armed conflict nor a threat of such a conflict has arisen.[93] Although events in Somalia caused refugees to cross into neighboring countries, these movements did not precipitate transboundary military conflicts. Furthermore, even if regional destabilizing effects existed, the Security Council did not purport to base its actions on such external effects. In its first resolution on Somalia, the Security Council found that "the continuation of this situation," by which it meant the civil violence and starvation, "constitutes . . . a threat to international peace and security."[94] In its resolution authorizing the deployment of UNITAF, the Security Council found that "the magnitude of the human tragedy caused by the continuing conflict in Somalia, further exacerbated by the obstacles being created to the distribution of humanitarian assistance, constitutes a threat to international peace and security."[95]

The Security Council's willingness to find threats to the peace in matters which are for the most part internal to a state is not unprecedented; such an attitude existed when the Security Council

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91. *See, e.g.*, Doc. 881, III/3/46, 12 U.N.C.I.O. Docs. 505 (1945).

92. *See* Doc. 993, IV/2/43, 13 U.N.C.I.O. Docs. 709-10 (1945). A statement issued at the San Francisco Conference on this point asserted:

> [T]wo organs may conceivably hold and may express or even act upon different views. Under unitary forms of national government the final determination of such a question may be vested in the highest court or in some other national authority. However, the nature of the Organization and of its operation would not seem to be such as to invite the inclusion in the Charter of any provision of this nature. If two Member States are at variance concerning the correct interpretation of the Charter, they are of course free to submit the dispute to the International Court of Justice as in the case of any other treaty. Similarly, it would always be open to the General Assembly or the Security Council, in appropriate circumstances, to ask the Court of Justice for an advisory opinion concerning the meaning of a provision of the Charter.

Id. This position was subsequently upheld by the International Court of Justice in Certain Expenses of the United Nations, 1962 I.C.J. 151 (Advisory Opinion of July 20).

93. *See* GOODRICH, *supra* note 88, at 204-07.

94. S.C. Res. 733, *supra* note 23, at 1.

95. S.C. Res. 794, *supra* note 39, at 1.

pursued measures in southern Africa during the 1960s and 1970s.[96] With Somalia, however, the Security Council charted a new course by expanding the scope of its power to implement forcible actions to include the protection of basic human rights. Although this may be a logical outgrowth of decades of developing protections for human rights, the Security Council may face repercussions by stretching its original mandate under Chapter VII.

One such repercussion may be a heightening of the debate as to whether the Security Council as currently composed is a properly-constituted institution in the post-Cold War world. Critics argue that the dominance of Western powers on the Security Council, the anachronistic presence of France and Britain as permanent members, and the veto power of the permanent members undercuts the legitimacy of the Security Council.[97] One response to these criticisms is that the Permanent Members of the Security Council are still the most militarily-powerful nations in the world, at least in terms of combined nuclear and conventional force capabilities.[98] Therefore, the current composition is appropriate so long as the purpose of the Security Council is to maintain international peace and security in the traditional sense; these powerful states are the ones most able to work together to "save succeeding generations from the scourge of war."[99] If, however, the Security Council assumes the additional responsibilities of passing judgment upon and acting to influence situations which involve human rights issues, the justification for allocating greater authority to the major military powers and their views is less evident. Rather, decisions on whether human rights violations or deprivations within a particular state have risen to a level meriting international intervention arguably would be made best with the broadest representation of the international community. Admittedly, the use of the military forces of the most powerful states may be highly important for some interventions (as was the case in Somalia), but they may not be highly necessary or important

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96. *See* S.C. Res. 253, U.N. SCOR, 23rd Sess., 1428th mtg., U.N. Doc. S/RES/253 (1968) (imposing mandatory comprehensive economic sanctions on Southern Rhodesia); S.C. Res. 418, U.N. SCOR, 32nd Sess., 1046th mtg., U.N. Doc. S/RES/418 (1977) (imposing a mandatory arms embargo on South Africa).

97. *See* David D. Caron, *The Legitimacy of the Collective Authority of the Security Council*, 87 AM. J. INT'L L., 552, 562-65 (1993).

98. *See id.* at 564 (acknowledging stronger capabilities of the Permanent Members of the Security Council).

99. U.N. CHARTER pmbl.

in every intervention. Indeed, the post-Cold War era is seeing a demonstrable reluctance on the part of the major powers to become entangled in crises that do not directly threaten their national interests, as well as a preference for multilateralizing and transferring to the UN the responsibility for interventions such as the one in Somalia. Therefore, criticisms of the Security Council's legitimacy as an institution oriented to the diplomacy of major powers may grow stronger as the Security Council pursues action beyond its commonly perceived original mandate of preventing transnational war.

The second repercussion of stretching the Security Council's original mandate concerns the precedent set when widespread internal violence and starvation is characterized as a threat to international peace and security. Regional organizations or even individual countries may argue that they are threatened when such situations arise in adjacent states, and they may claim the right to respond to those threats even without authorization from the Security Council. The articles of the UN Charter governing the use of force by states and by regional organizations[100] are different than those governing the Security Council in Chapter VII.[101] However, in loosening the definition of threat to the peace, the Security Council may bring about a concomitant effect on the Charter's other standards and requirements.[102] Advocates of humanitarian intervention by regional organizations or states acting without UN authorization may approve of this result, but the prospect exists that states and regional organizations may exploit such a loophole in the Charter's prohibitions on the use of force.[103]

100. *Id.* art 52.

101. *Id.* art. 24, ¶¶ 1-2.

102. *See, e.g.*, *id.* arts. 2(4) (restricting unilateral uses of force), 51 (permitting self-defense), 53 (permitting enforcement action by regional organizations).

103. *Compare* Ian Brownlie, *Humanitarian Intervention*, *in* LAW AND CIVIL WAR IN THE MODERN WORLD 217 (J.N. Moore ed., 1974) *with* Richard B. Lillich, *Humanitarian Intervention: A Reply to Ian Brownlie and a Plea for Constructive Alternatives*, *in* LAW AND CIVIL WAR IN THE MODERN WORLD, *supra*, at 229.

B. Is It Appropriate for the Security Council to Authorize States to Deploy Forces Operating Under Their Own Command and Control, as Opposed to Forces Under the Command and Control of the UN?

One reason that the Security Council authorizes actions by states acting under their own command and control is to eliminate the difficulties presented when the UN must administer a military operation.[104] In addition, UN-authorized action by states accords with the strong preferences of some states, including the United States.[105] The problem, however, is that the UN Charter contains no explicit basis on which the Security Council may delegate its authority to take forceful action to a state or group of states. The Charter's structure envisions the volunteering of forces to the UN by the states, pursuant to agreements made in advance of the conflict.[106] However, no states have ever concluded such agreements with the Security Council.[107] Thus, when situations such as the one in Somalia arise, the Security Council is faced with the choice of either authorizing states to act on its behalf, as was done for UNITAF, or of cobbling together a UN force on an ad hoc basis, as was done for UNOSOM II.

A liberal interpretation of the Security Council's ability under the Charter to delegate its Chapter VII powers provides flexibility to the Security Council when the deployment of forces is necessary. Yet, the more the Security Council delegates the power to deploy military forces, the more Member States are likely to be dissatisfied. Those states favoring a strong United Nations are likely to express concerns that the Security Council is abdicating its role to a few powerful states and that these states are not limited as to how they achieve the Security Council's objectives. Those states favoring a weak United Nations are likely to argue that the inability to establish a well-coordinated force is proof that the Security Council is not competent to conduct military deployments.

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104. *See, e.g.*, pp. 11-12.

105. *See, e.g.*, Stanley Meisler, *Keeping the Peace: U.N. Gets Mixed Reaction to Goal*, L.A. TIMES, May 3, 1994 at World Rpt. 1 (reporting U.S. Secretary of Defense's 1994 preference that U.S. forces in peacekeeping operations always be subject to U.S. command because "there is often confusion over who is really in charge").

106. U.N. CHARTER art. 43.

107. *See* GOODRICH, *supra* note 88, at 317-24 (recounting the failed attempt to conclude Article 43 agreements at the Dumbarton Oaks Conference).

C. What Is the Proper Role of the U.S. Congress in Deciding Whether the United States Should Deploy Forces to Engage in Nation-Building?

The U.S. Constitution grants Congress the power to declare war[108] and provides that the President shall be commander-in-chief of the armed forces.[109] Under Section 1543 of the War Powers Resolution,[110] the President must notify Congress whenever, in the absence of a declaration of war, he introduces U.S. forces into "hostilities or into situations where imminent involvement of hostilities is clearly indicated by the circumstances."[111] If Congress does not pass a declaration of war or its functional equivalent within sixty days after such a notification, the forces must be withdrawn.[112] The President must also notify the Congress whenever he introduces U.S. forces equipped for combat into a foreign country's territory, airspace, or waters,[113] or introduces U.S. forces in numbers which substantially enlarge an existing presence. Such activity is not required to cease within sixty days, even in the absence of a declaration of war.[114]

There was no congressional authorization for the deployment of the more than twenty thousand U.S. forces to Somalia in December 1992. Pursuant to section 1543 of the War Powers Resolution, President Bush notified Congress that U.S. forces had been sent to Somalia, but explained that "[w]e do not intend that U.S. Armed Forces deployed to Somalia become involved in hostilities. Nonetheless, these forces are equipped and ready to take such measures as may be needed to accomplish their humanitarian mission and defend themselves, if necessary."[115] The Executive Branch did not regard the circumstances in Somalia as triggering the sixty-day withdrawal provision, largely because the U.S. troops' mission was humanitarian, rather than

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108. U.S. CONST. art. I, § 8, cl. 11.

109. *Id.* art. II, § 2, cl. 2.

110. 50 U.S.C. §§ 1541-48 (1982).

111. *Id.* § 1543(a)(1).

112. *See id.* § 1544(b). Congress may also, within its discretion, extend the period of deployment to ninety days. § 1544(b).

113. *Id.* § 1543(a)(2).

114. *Id.* § 1544(b).

115. Letter to Congressional Leaders on the Situation in Somalia, PUB. PAPERS, 2179, 2180 (Dec. 10, 1992).

belligerent, in nature.[116] U.S. forces, of course, became engaged in violent firefights within the first few weeks of the intervention.[117] When Congress convened in January 1993, several congressmen asserted that congressional authorization must be granted for such deployments.[118] Senate Majority Leader Mitchell stated that while the conditions to be faced by U.S. forces in Somalia were unclear, "murkiness does not obviate the clear political necessity of obtaining congressional consent for military operations overseas—even those conducted for humanitarian or peaceful purposes, even those conducted under the auspices of an international body."[119] Senator Mitchell introduced, and the Senate approved, a joint resolution authorizing the use of U.S. armed forces in Somalia.[120] The Senate then referred the joint resolution to the House Foreign Affairs Committee,[121] but by May 1993, when U.S. forces transferred their responsibilities to UNOSOM II and the majority of them returned home, the House had neither signed nor rejected the authorization.[122]

The lack of congressional authorization prior to the U.S. troops' deployment in Somalia reflects the fact that the decision to intervene occurred at a time when Congress was not in session, as well as an Executive Branch preference to act independently. Congress essentially played along with this approach, just as it has in a number of other deployments of U.S. forces. A situation such as the one in Somalia causes the war powers debate to take on a new gloss. On the one hand, the compelling humanitarian purposes of the Somalian intervention, combined with the fact that engagement of foreign forces was not a purpose per se of the intervention, undoubtedly ameliorated congressional concern that the President was committing the United States to a foreign war. On the other hand, the deployment of U.S. military forces for such reasons seems to strengthen arguments in favor of Congress's constitutional role in the exercise of the war powers.

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116. *See id.* (containing statement by President Bush that he was acting consistently with the War Powers Resolution given that the deployment was for humanitarian purposes).

117. *See, e.g.*, Kenneth B. Noble, *400 U.S. Marines Attack Compound of Somali Gunmen*, N.Y. TIMES, Jan. 8, 1993, at A1.

118. 139 CONG. REC. S1364-65 (daily ed. Feb. 4, 1993).

119. *Id.*

120. *Id.* at S1368.

121. 139 CONG. REC. H637 (daily ed. Feb. 16, 1993).

122. *See* CONG. REC. H27AA-65 (daily ed. May 25, 1993); 139 CONG. REC. S11274 (daily ed. Sept. 9, 1993) (statement of Senate Majority Leader Mitchell).

Unlike a situation where U.S. territory, U.S. military forces, U.S. nationals, or even broadly-defined U.S. national security is threatened, the action in Somalia served no immediate U.S. national security interest. The typical arguments favoring presidential power to act independently of Congress, such as the existence of a general and serious threat to U.S. national security requiring immediate presidential action,[123] were not germane. Further, congressional support for the Somalian intervention might have helped to define U.S. interests and objectives and to develop popular support for the intervention. In turn, this support may have improved the duration and effectiveness of the U.S. contribution to efforts to build an enduring Somali nation.

D. Is the Cold War Framework of U.S. Laws Adequate for Addressing U.S. Action in Places Like Somalia?

The current structure of the foreign authorization and appropriation laws of the United States was largely developed during the Cold War era.[124] While these laws have been amended many times to take account of changing situations,[125] a number of impediments to U.S. activities aimed at stabilizing and rebuilding nations remain. One notable example is section 660 of the Foreign Assistance Act of 1961 (FAA),[126] which prohibits the use of certain appropriated funds to provide training, advice, or financial support of the police or law enforcement forces of any foreign government.[127] The prohibition grew out of a Cold War era distaste for U.S. support for foreign police forces which were used to oppress their own people.[128] Obviously, this remains a concern today, but the benefits that may be gained by training police forces in places like Somalia warrant consideration of the

123. *See* JOHN HART ELY, WAR AND RESPONSIBILITY: CONSTITUTIONAL LESSONS OF VIETNAM AND ITS AFTERMATH 6-7 (1993).

124. *See* Michael J. Matheson, *Arms Sales and Economic Assistance, in* NATIONAL SECURITY LAW 1111 (John Norton Moore et al. eds., 1990); Stephen B. Cohen, *Conditioning U.S. Security Assistance on Human Rights Practices*, 76 AM. J. INT'L L. 246, 247-48 (1982).

125. *Id.* at 249-56.

126. Pub. L. No. 87-195, 75 Stat. 424 (codified as amended in scattered sections of 22 U.S.C.).

127. 22 U.S.C. § 2420(a).

128. *See* 22 U.S.C. § 2420(c) (providing an exception to the prohibition exists for any country "which has a long-standing democratic tradition, does not have standing armed forces, and does not engage in a consistent pattern of gross violations of internationally recognized human rights").

adjustment of such laws if the United States is serious about nation-building.

IV. POLICY ISSUES

In addition to raising legal questions, the kind of nation-building effort that took place in Somalia also raises a number of important policy issues. First, as seen in Phase One of the Somalia operation, the international community tends not to forcibly intervene in a crisis until the circumstances become so dire that the intervention faces almost insurmountable hurdles to success. Although principles favoring the independence and sovereignty of states may weigh against interventions at an earlier stage, those principles must be questioned in situations where the internal governing structure of a state is in the process of collapsing. The international community must strive to engage in such crises at earlier stages. This goal could be met, perhaps, through an aggressive use of a UN early-warning system or through the creation of a more symbiotic relationships between the Security Council and regional organizations, which in turn could take early steps to thwart impending crises.

A related issue is how the UN may best be used in accomplishing nation-building tasks. Involvement of the Security Council in decisions to intervene for this purpose adds greater legitimacy to the intervention and, consequently, is a welcome development in international conflict management. Yet, the UN is not presently equipped to command and control the military forces necessary to conduct such intervention. In asking the UN to do so, Member States run the risk of overburdening the organization in ways which will simply paralyze it or undermine its credibility. Member States must ask themselves whether they are prepared to carry through to the end interventions designed to address humanitarian crises or whether they expect the UN to accept responsibility when problems with the operation arise. If the latter is the case, further resources should be committed to the UN, commensurate with the responsibilities the Member States wish the UN to assume.

Finally, states (including the United States) must clarify the interests that they have in helping stumbling or failed states, in protecting the human rights of foreign people, and in promoting democracy abroad. Does such intervention enhance international peace

and security generally? Is there some moral or philosophical imperative for assisting such states even when the security interests of others are not at stake? In either case, states must also decide which goals and objectives are worth incurring casualties, for those casualties could later test the will of the intervening state. Furthermore, major operations must be planned with both the best- and worst-case scenarios in mind. States should clearly understand how an operation might begin and how it can be brought to a conclusion within a reasonable period of time at an acceptable cost.

IV. CONCLUSION

The UN's efforts during most of 1992 proved ineffective in ending the widespread starvation and violence in Somalia. Only after the intervention of a massive number of forces in December 1992 did the situation in Somalia stabilize. Such forcible intervention in situations where the internal governance of a state has collapsed is perhaps the easy part of nation-building. The hard part is achieving a long-term resolution to the crisis through a process of national reconciliation. In Somalia, the initial intervention allowed some steps toward that end, but after the transfer of responsibilities from the U.S.-led UNITAF to the UN-led UNOSOM II the process of national reconciliation fell victim to resistance by certain local Somali factions who saw the process as a threat to their power. The UN had two choices in responding to that resistance. It could have tried to appease and draw the Somali factions into the process, perhaps by guaranteeing power-sharing arrangements that were not wholly democratic in nature. Alternatively, it could have challenged the power of the local Somali factions, in the hope that it could wrest control from them. The leaders of UNOSOM II chose the latter course and ultimately failed because they were incapable of organizing and deploying a credible military force to accomplish their objective. That incapacity was directly related to the unwillingness of Member States to engage in the kinds of military, logistical, and financial arrangements with the UN that are necessary to establish UN military capability.

Regardless of the problems encountered in Somalia, the overall humanitarian success of the intervention should not be forgotten. Due to the efforts of the UN and many of its Member States, hundreds of thousands of Somali citizens are alive today, crops are being planted,

and despite setbacks, prospects for national reconciliation are better than they were in November 1992. While Somalia does not represent a successful peace-building effort, it does represent the successful creation of a foundation upon which the Somali people may themselves build a nation, should they now choose to do so.