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Evolution or Expediency: The United Nations Response to the Disruption of Democracy

Douglas Lee Donoho*

Introduction

In recent years, democratic governance has gained significant political salience in international law and relations. Western academics have used democracy as a talismanic test of state legitimacy while dozens of countries have enjoyed transitions toward more democratic forms of government. Similarly, the United Nations has become increasingly involved in promoting democracy, primarily by providing various forms of electoral assistance to member states. Consequently, U.N.-sponsored competitive elections now appear to be the compromise of choice for states torn by civil war or regional conflict.

* Professor of Law, Nova Southeastern University, Shepard Broad Law Center, Ft. Lauderdale, Florida. B.A., Kalamazoo College; J.D., Rutgers University Law School-Camden; L.L.M., Harvard University Law School.


3. See infra notes 23-55 and accompanying text.


On September 30, 1991, only nine months after the U.N. helped organize and monitor the first free and fair democratic election in Haiti's history, a bloody military coup posed a dramatic challenge to the U.N.'s new-found commitment to democracy. For nearly two years the U.N.'s response to this challenge followed a familiar pattern: the General Assembly passed powerless, non-binding resolutions endorsing the efforts of the Organization of American States (OAS) to return President Jean-Bertrand Aristide to power while the Security Council remained inactive and nearly silent. On June 16, 1993, however, the United Nations arguably entered a brave new world in support of democracy. Citing Chapter VII of the U.N. Charter, the Security Council issued a potentially revolutionary order creating mandatory economic sanctions aimed at restoring Aristide to power. Following another year of continued intransigence by the military, the Council authorized member states to utilize "all necessary means" to restore democracy in Haiti. This authorization ultimately proved effective and, pursuant to an eleventh-hour agreement brokered by former President Carter, Aristide was welcomed back to Haiti on October 15, 1994, by over 17,000 U.S. troops.

6. See infra notes 23-55 and accompanying text.
7. See infra notes 61-66 and accompanying text.
8. U.N. Charter arts. 52-54. Chapter VII of the Charter provides the only source of mandatory orders within the U.N. system. See infra notes 108-18 and accompanying text.
13. See Ann Devroy, Carter Swayed Clinton Into Bending in Talks: Ex-President Viewed Cedras More Benignly, Wash. Post, Sept. 20, 1994, at A1; William Drozdiak, Allies Hall Haiti Pact, Pledge Aid, Wash. Post, Sept. 20, 1994, at A14; President Carter, Colin Powell and Senator Sam Nunn reportedly reached an agreement with Haitian military leaders only minutes before a U.S. invasion was to begin. Id.
Utilizing the crisis in Haiti as a case study, this Article analyzes the depth of the U.N.'s current commitment to democracy by focusing on its potential role as an active force in preserving or restoring democracy in member states through mandatory collective action. It also attempts to place this potential role in the larger context of a new world order in which a relatively united and reinvigorated Security Council has begun to play an increasingly activist role in humanitarian crises and internal conflicts.15

As set forth below, the disruption of democracy in Haiti presented the new world order with an old dilemma: reconciling the demands of rapidly evolving principles of substantive international law, such as self-determination, democratic governance and the promotion of human rights, with states' almost instinctual and atavistic impulses to preserve their sovereign prerogatives. On the surface, the U.N.'s response to the coup in Haiti appears to have been a strong endorsement of democracy and a potentially powerful means for its protection. On closer examination, however, the Council's actions created a legally and politically ambiguous precedent for future U.N. efforts to preserve or restore democratic governance.

On one hand, the Security Council's imposition of economic sanctions and authorization of force against the coup ostensibly reflects the recognition that, at least under certain conditions, disruption of democracy may constitute a threat to international peace justifying collective enforcement action.16 On the other hand, the circumstances surrounding Haiti, particularly the role of U.S. political interests and practical considerations, may ultimately render the U.N.'s actions in Haiti sui generis.17 The


16. See infra notes 182-213 and accompanying text.

17. See infra notes 215-79 and accompanying text. The Council itself took pains to characterize the situation in Haiti as "unique and exceptional," requiring "extraordinary measures" and "an exceptional response." S.C. Res. 841, supra note 9; S.C. Res. 940, supra note 11. Similarly, the Council President also asserted after the vote on Resolution 841 that "[m]embers of the Council have asked me to say that the adoption of this
U.N.'s failure to act in similar on-going situations reinforces this outlook. Moreover, many states have strongly resisted the idea of a Security Council self-empowered to intervene in support of democracy, human rights or internal civil order. This resistance appears to demonstrate continuing ambivalence among many states to any significant retrenchment from traditional conceptions of state sovereignty and non-interference in the "essentially...domestic" affairs of states. Such ambivalence reflects both the self-interested motivations of tyrants and the non-Western world's legitimate misgivings about the institutional decision-making structure of the U.N. Absent unlikely institutional reforms designed to safeguard the interests of such states, the potential for strong Security Council action to preserve and protect democracy will probably remain weak in spite of the Haitian example, at least when the situation does not implicate the political interests of the United States. Part I of this Article briefly describes the U.N.'s efforts to promote democracy prior to the Council's actions in Haiti and outlines the basic allocation of institutional authority justifying such activity. Part II describes the U.N.'s response to the 1991 coup's disruption of the U.N. sponsored democratic transition in Haiti. Part III sets forth the legal background shaping the U.N.'s response to the crisis in Haiti and defines the parameters of debate over the propriety of that action, and any future U.N. action, to preserve or restore a democratic government. Part IV evaluates the justifications for Security Council action to restore democratic rule in Haiti. Part V considers a series of factors likely to inhibit future decisive, meaningful U.N. action in this area. In conclusion, this analysis indicates that the prospects for future aggressive U.N. action to preserve or restore democracy rest on making significant institutional reforms to the U.N. decision-making processes.

resolution is warranted by the unique and exceptional situation in Haiti and should not be regarded as constituting a precedent." United Nations, Security Council; Provisional Verbatim Record of the Three Thousand Two Hundred and Thirty-Eighth Meeting, at 9, U.N. Doc. S/PV.3238 (1993). This statement apparently was promoted by Pakistan, Brazil and China. See id. at 15, 17, 20.

21. See infra notes 215-79 and accompanying text.
22. An important distinction may be drawn between preserving or restoring existing democracy and promoting the emergence of democracy where none previously existed.
I. United Nations Efforts to Promote Democracy Prior to the Coup in Haiti

Prior to Security Council Resolutions 841 and 940, U.N. efforts to promote democracy were essentially limited to assisting voluntary transitions to democratic governance with the consent of a member state or the parties to a conflict. These efforts to promote democratic governance through voluntary means arguably began at the organization's inception under Chapters XI, XII and XIII of the Charter. Pursuant to these provisions, the U.N. Trusteeship Council has organized over thirty plebiscites since 1945, bringing self-rule and independence (although rarely a lasting democracy).
to former colonies and other non-self-governing territories. Since the late 1980s, however, the U.N. has become increasingly involved in the active promotion of democratic governance among its membership. The most important and visible forms of this activity have been the Security Council’s sponsorship of elections relating to international peace-keeping and the General Assembly’s authorization of civilian election assistance requested by a member state.


27. See infra notes 29-38 and accompanying text.

The Security Council’s and General Assembly’s activities in this regard find different justifications under the Charter. The Charter justification for Security Council actions promoting democracy derives from the Council’s mandate to preserve international peace and security. Until Haiti, however, such actions were strictly limited to missions authorized with the subject state’s consent, rather than imposed pursuant to Chapter VII of the Charter. Pursuant to this authority, the Security Council has authorized extensive involvement of U.N. peace-keepers to assist in democratic transitions in Namibia, Cambodia, Angola, Mozambique and El Salva-


30. See infra notes 114-18, 129-32, 136 and accompanying text. Even in the context of Cambodia, which involved a clear breach of international peace (in the form of Vietnam’s invasion and occupation of that country and an active cross-border civil war), the Security Council was unwilling to impose U.N. operations under Chapter VII, insisting instead on first securing the consent of all warring factions. See Steven R. Ratner, The Cambodian Settlement Agreements, 87 Am. J. Int’l L. 1, 9 (1993).


As a result of internationally brokered peace plans. It has similarly authorized election monitoring in the Western Sahara, Liberia and South Africa. Such "transitional operations" can become quite extensive. For

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example, transitional operations in Cambodia involved over 20,000 U.N. personnel in 1992-93. These personnel not only organized and conducted successful elections, but also assisted in reformulating Cambodia's war-torn governmental infrastructure in an effort to complete a peaceful transition to democratic rule.\(^\text{38}\)

The General Assembly has also recently taken unprecedented steps to promote democracy. The most important and controversial of these efforts have been the Assembly's authorization of election verification and monitoring assistance to member states,\(^\text{39}\) beginning with Nicaragua in 1989\(^\text{40}\) and Haiti in 1990.\(^\text{41}\) The General Assembly also recently authorized the successful U.N. verification of the referendum on Eritrea's independence from Ethiopia.\(^\text{42}\)

There are two potential Charter-based rationales for the Assembly's authority to conduct such activities in support of democracy. The first rests on the Assembly's residual role in preserving international peace and security.\(^\text{43}\) The second rests on the Assembly's broad mandate to promote
peace, human development and human rights—all of which seem to justify its activities in support of democracy in member states. In the case of Nicaragua, the General Assembly's involvement was at least partially justified as the end product of a comprehensive international plan to bring peace to the region. In contrast, Haiti was not involved in any regional conflict and the existence of an "international dimension" to its election monitoring request was questionable. Although manifestly benign, these Assembly activities have nevertheless been controversial because they have occurred in independent member states not involved in either decolonization or ongoing armed conflict.

Because the General Assembly has no power to order U.N. supervision of an election, the provision of electoral assistance depends upon the invi-


44. See, e.g., U.N. Charter arts. 10, 13, 61, 62.


47. See 1992 Report on Elections, supra note 28, at 15. Because election verification in Haiti required a security function, a debate over jurisdiction between the Security Council and the General Assembly also developed. See Stoelting, supra note 26, at 381-83. Some countries argued that sending military personnel to monitor the election was beyond the Council's authority under the Charter since the circumstances in Haiti did not clearly pose any threat to international peace as required for Security Council actions under Chapter VII. See, e.g., Haiti Says U.N. Election Aid Critical For Future Government, Reuters, July 13, 1990, available in LEXIS, Nexis Library, Reuters File. Unable to resolve these issues, the Council agreed to send the matter to the General Assembly to consider Haiti's request. Id.; Paul Lewis, Haiti Wants U.N. to Monitor Vote, N.Y. Times, July 22, 1990, at A10. The General Assembly then voted to send civilian election observers to Haiti under the direction of the Secretary-General. G.A. Res. 45/2, supra note 41, at 12. The United Nations Observer Group for the Verification of Elections in Haiti (ONUVEH) included deployment of 62 "security observers" despite the continuing debate over whether such deployment required Security Council approval under the Charter. See 1991 Report on Elections, supra note 25, at 15.

48. See Lewis, supra note 47; Stoelting, supra note 26, at 381-82. Before its involvement in the international effort to supervise elections in Nicaragua in 1990, the U.N. had never monitored an election in an independent sovereign state despite many requests to do so. Id. at 372, 377-78.
Nevertheless, a number of states have rejected such U.N. assistance, alleging potential *ultra vires* interference in the domestic affairs of member states. These states argue that electoral processes are quintessentially domestic and therefore assistance in this area is outside U.N. authority and competence under Article 2(7) of the Charter.

General Assembly resolutions regarding electoral assistance directly reflect accommodations to such sentiments and ambivalence regarding even “invited” collective action to support democracy within member states. In seemingly contradictory resolutions passed each year since 1988, for example, the Assembly has alternatively given strong endorsement to electoral assistance and popular sovereignty, and admonished that such

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**recogniz[es] that there is no single political system or electoral method . . . and that . . . [international efforts] should not call into question each State’s sovereign right, in accordance with the will of its people, freely to choose and develop its political, social, economic and cultural systems, whether or not they conform to the preferences of other States.**

Id. The resolution also affirms that “electoral verification by the United Nations should remain an exceptional activity to be undertaken in well-defined circumstances, primar-
assistance should only be given “in special circumstances . . . in strict conformity with the principles of sovereignty and non-interference in the internal affairs of states.” More recent guidelines on electoral assistance, while silent on the need for an “international dimension,” focus on state consent and limit intrusive forms of U.N. involvement to cases authorized by the Security Council or General Assembly.

The U.N. policy of providing electoral assistance demonstrates a significant commitment to democracy. At the same time, however, its activities are also premised on and limited by an overriding deference to state sovereignty. Most significantly, the U.N.’s efforts to promote democracy prior to the coup in Haiti were strictly limited in scope to instances in which consent was given by the government in power or by the parties to an ongoing conflict. Thus, in deference to the principle of non-interference, receipt of such assistance has been strictly voluntary. The U.N.’s response to the coup in Haiti, however, is an important departure from this consent-based model.

II. Restoring Democracy: The United Nations Response to the 1991 Coup in Haiti

U.N. election observers, with the General Assembly’s endorsement, were


53. See 1994 REPORT ON ELECTIONS, supra note 26, at 27-31. The Secretary-General’s 1991 report on election assistance emphasizes an apparent consensus that such activity would only be justified in exceptional cases involving a “clear international dimension.” 1991 REPORT ON ELECTIONS, supra note 25, at 15; G.A. Res. 46/137, supra note 28, at 209. Although the guidelines and Assembly resolutions are now silent on the issue, it would appear that the “international dimension” criterion is largely subsumed in the requirements for authorization from the Security Council or General Assembly for verification, organization and supervision of elections. See 1994 REPORT ON ELECTIONS, supra note 26, at 27-31.

54. See supra note 49; infra notes 116, 125-33. The latter activities are likely to involve mandatory measures taken pursuant to limiting Charter criteria and do not require the State’s consent. See infra notes 108-18 and accompanying text.

55. There is, therefore, a critical distinction between activities which promote democracy through electoral assistance and potential U.N. actions to preserve or restore democratic rule. The former are undertaken solely upon the request of the member state or parties to a conflict. See supra note 49; infra notes 116, 125-33. The latter activities are likely to involve mandatory measures taken pursuant to limiting Charter criteria and do not require the State's consent. See infra notes 108-18 and accompanying text.
instrumental in achieving the first free and fair election in Haiti's history.\textsuperscript{56} In December 1990, Jean-Bertrand Aristide was elected President by sixty-seven percent of the popular vote in an election widely endorsed as free and fair.\textsuperscript{57} Sadly, circumstances soon proved that free elections alone cannot create a genuine, lasting democracy. Both the military and those with entrenched economic power interests in Haiti perceived Aristide as a direct threat to their continued dominance.\textsuperscript{58} On September 30, 1991, only nine months after Aristide's taking office, military officers forced Aristide at gunpoint to board a plane for the United States and declared an interim military government.\textsuperscript{59} As many as 3,000 unconfirmed deaths were reported during the coup and its aftermath.\textsuperscript{60}

Within two days of the coup, the Haitian representative to the United Nations and the Council President brought the situation before the Security Council which met informally in small groups.\textsuperscript{61} A number of countries, including Romania, China and India, argued against convening a formal meeting of the Council because, in their view, the usurpation of power in Haiti was a domestic matter beyond Security Council competence.\textsuperscript{62} On October 3, 1991, however, President Aristide formally addressed the Security Council and requested its assistance in restoring a democratic government in Haiti.\textsuperscript{63} Despite Aristide's plea, a majority of Security Council members continued to oppose any action in response to
In their view, the coup was strictly a domestic affair posing no threat to international peace and, thus, any action would be beyond the Security Council's authority under the Charter. The Council therefore declined to take action other than to issue a statement condemning the coup and expressing approval for the activities of the Organization of American States (OAS) pursuant to Article 54 of the U.N. Charter.

President Aristide subsequently addressed the General Assembly, which voted by consensus on October 11, 1991, to condemn the coup and to demand Aristide's immediate return to power. Using tepid language tempered by concerns over interference in Haiti's domestic affairs, the General Assembly also appealed to all states to consider voluntarily supporting the economic sanctions imposed by the OAS. Few states, if any,

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69. G.A. Res. 46/7, supra note 67. On September 30, the OAS Permanent Council convened an Ad Hoc Meeting of the Ministers of Foreign Affairs, which voted to condemn the coup and to recommend hemisphere-wide economic sanctions. OAS, Ad Hoc
actually followed this recommendation. 70 Soon thereafter, the Assembly requested that an independent expert prepare a report to the U.N. Commission on Human Rights on human rights conditions in Haiti after the coup. 71

On July 15, 1992, the Secretary-General informed the Security Council that, upon the invitation of President Aristide and the OAS, and pursuant to General Assembly Resolution 46/7, U.N. personnel would participate in a negotiating mission to Haiti. 72 On November 10, 1992, some thirteen months after the coup, the OAS Permanent Council formally requested additional U.N. involvement supporting its efforts to restore democracy in

Meeting of Ministers of Foreign Affairs, Support for Democracy in Haiti, OEA/Ser.F/V.1/MRE/RES.2/91 (1991); OAS, Ad Hoc Meeting of Ministers of Foreign Affairs, Support to the Democratic Government of Haiti, OEA/Ser.F/V.1/MRE/RES.1/91 (1991). See OAS, Ad Hoc Meeting of Ministers of Foreign Affairs, Restoration of Democracy in Haiti, OEN/Ser.F/V.1/MRE/RES.3/92 (1992) (reinforcing the trade sanctions and requesting that OAS states deny port access to violating ships). These actions were taken pursuant to the Organization's recently adopted Resolution on Representative Democracy. OAS, General Assembly, 5th Plen. Sess., Representative Democracy, AG/Res.1080 (XXI-0/91) (1991) [hereinafter Santiago Declaration]. This important resolution reaffirmed that "the Preamble of the Charter of the OAS establishes that representative democracy is an indispensable condition for... peace" and committed the OAS membership to its defense. Id. The OAS has no power to issue binding resolutions. See, e.g., Acevedo, supra note 58, at 135-36.


Haiti.73 The U.N. General Assembly responded two weeks later by request-
ing that the Secretary-General take measures in cooperation with the OAS
to resolve the crisis in Haiti.74 The Secretary-General responded by
appointing former Argentine Ambassador Dante Caputo as the U.N. Special
Envoy for Haiti on December 11, 1992.75 Soon thereafter the Secretary-
General of the OAS also appointed Mr. Caputo as the OAS Special Envoy
for Haiti.76 Mr. Caputo was given the mandate to negotiate a peaceful reso-
lution of the crisis, including the potential deployment of human rights
observers throughout the country.77 After many false starts, Mr. Caputo
finally secured an invitation from the de facto Haitian government78 to
allow a group of human rights observers into Haiti.79 As a result, a civilian
force of 200 to 500 human rights observers from both the U.N. and the
OAS were to be stationed throughout Haiti with no significant restrictions
on their freedom of movement.80 Although approximately 180 observers
were eventually deployed,81 the military government refused to fulfill its
promises regarding the observers and repeatedly scuttled plans to restore

73. See OAS, Permanent Council, Reestablishment of Democracy in Haiti, OEA/Ser/
G/CP/RES/594 (923/92) (1992). See also OAS, Ad Hoc Meeting of Ministers of Foreign
Affairs (Haiti), Reinstatement of Democracy in Haiti, OEA/Ser.F/V.1/MRE/RES/4/92,
(1992). See United Nations, General Assembly; The Situation of Democracy and
76. Id. at 4-7.
77. President Aristide, after consultations with Special Envoy Caputo, specifically
requested that the U.N. and OAS mobilize a "multinational presence" to monitor human
rights in Haiti as a precursor to the gradual elimination of OAS sanctions. See 1993
78. By June 1992, the military authorities had installed Marc Bazin as prime minis-
ter. See Tony Pugh & Don Bohning, U.N. Embargo of Haiti Urged, Miami Herald, June
10, 1993, at A1. In January 1993, the military also sponsored Senate elections widely
condemned as illegitimate by the international community. 1993 Sec.-Gen. Report on
Haiti, supra note 74, Annex II, at 5. See Mike McQueen & Harold Maass, Troops Rally as
General Returns to Haiti, Miami Herald, July 4, 1993, at 18A. Nevertheless, because Gen.
Raoul Cedras and the military government continued to wield real power in Haiti, negoti-
tiations all but ignored Bazin's puppet civilian government. On June 8, 1993, Bazin
resigned, leaving the army to negotiate without a civilian front. See Paul Lewis, U.N.
79. 1993 Sec.-Gen. Report on Haiti, supra note 74, at 6-7. See Julia Preston, Haiti
Assembly endorsed this plan in April, creating the joint OAS/U.N. International Civilian
Mission in Haiti (MICIVIH). G.A. Res. 47/20B, supra note 43. The OAS initially was
allowed to send a small number of observers into Haiti in September 1992, but the mili-
tary government severely restricted their access to the population. See S.C. Res. 940,
supra note 11; J.P. Slavin, Good Pay, Tough Job: U.N. Recruiting Rights Monitors For Haiti,
Miami Herald, Feb. 14, 1993, at 24A.
81. Deployment of these observers was very slow. By June, 1993, only between 130
and 180 observers were in place and their operations were extremely limited. See Doug-
las Farah, Haiti Opens, a Bit, to Aristide, Wash. Post, June 15, 1993, at A25; Harold
Maass, Hait in Talks Has Brought Rise in Beatings, Arrests in Haiti, Miami Herald, June 3,
President Aristide to power.82

In May, frustrated with the military’s intransigence, the United States, France and Venezuela, as well as Mr. Caputo, pushed the U.N. Security Council to consider imposing a worldwide mandatory economic embargo against Haiti.83 In early June, Haiti’s Permanent Representative to the U.N.84 requested that the Council make the OAS embargo mandatory on a worldwide basis.85 On June 16, 1993, over twenty months after the coup, the Security Council invoked mandatory economic sanctions against Haiti under Chapter VII of the Charter.86 The Council declined, however, to authorize enforcement of this embargo by force.87 The Haitian military almost immediately agreed to direct negotiations with President Aristide and, less than two weeks after sanctions took effect, agreed to a plan to restore Aristide to power.88 Upon the Haitian Parliament’s approval of

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82. See, e.g., Get The Blockade Ready, MIAMI HERALD, Feb. 22, 1993, at 12A; Haiti: Patience Wearing Thin, MIAMI HERALD, Feb. 8, 1993, at 10A. A key reversal during these negotiations was the military’s decision to reject an agreement which would have placed 500 to 1000 U.N. police personnel in Haiti. See Douglas Farah, Haiti Rejects Proposal to End Crisis: Rulers’ Move Risks Tougher Sanctions, WASH. POST, May 25, 1993, at A15.


84. After the coup, the Aristide government retained its credentials as Haiti’s representative in the United Nations. The continued recognition of the Aristide government was consistent with the international community’s insistence throughout the crisis that the de facto government of Haiti was illegitimate because it had taken power illegally through unconstitutional means. See, e.g., G.A. Res. 47/20, supra note 74, at 21; U.N. Doc. S/PV.3011, supra note 63. Traditional international law practices would, however, have supported giving Haiti’s U.N. seat to a coup representative. See infra notes 187-89.


87. Lead by Brazil, Latin American countries successfully lobbied against authorizing direct enforcement measures because of fears that a blockade would set a precedent for using force against a state not posing a threat to its neighbors. See Susan Benesch, U.N. Votes For Embargo Against Haiti, ST. PETERSBURG TIMES, June 17, 1993, at A1; Christopher Marquis, U.S. Might Enforce Haiti Oil Embargo, MIAMI HERALD, June 19, 1993, at 1A. Despite the Council’s refusal to authorize enforcement through force, the U.S. announced that its Coast Guard might enforce the embargo by boarding ships after securing the consent of the vessel’s flag state. Id.

Robert Malval as Prime Minister in August, the Council briefly suspended sanctions. However, on October 13, 1993, the Council voted to reimpose sanctions on October 18 in response to escalating political violence in Haiti and the obvious failure of the Governor's Island Agreement.

During the ensuing months, the Security Council reaffirmed its resolve to restore democracy in Haiti by ordering a forcible naval block-
ade\(^91\) and full trade embargo.\(^92\) The United States also increased pressure on the military government by imposing travel restrictions, freezing assets,\(^93\) and raising the specter of military action.\(^94\) None of these measures, which had devastating effects on the Haitian population,\(^95\) appeared to move the military toward compromise.\(^96\)

On July 29, 1994, the Aristide government requested "prompt and decisive action" by the U.N.\(^97\) At least some members of the Council viewed this request as an implicit authorization for forcible U.N. assistance.\(^98\) On July 31, thirty-four months after the coup, the Security Council passed Resolution 940 which, for the first time in U.N. history,\(^99\) authorized member states to utilize force to restore democracy in an independent member state.\(^100\) Accepting the invitation obviously intended for it, the

\(^93\) See, e.g., U.S. Blocks Assets of Those Obstructing Return of Aristide, MIAMI HERALD, Oct. 23, 1993, at 24A.
\(^95\) See Schnably, supra note 70, at 489-95.
\(^100\) S.C. Res. 940, supra note 11. See Richard D. Lyons, U.N. Authorizes Invasion of Haiti to be Led by U.S., N.Y. TIMES, Aug. 1, 1994, at A1; Security Council Authorizes Multinational Force "To Use All Necessary Means" to Facilitate Departure of Military From Haiti,
United States eventually announced plans for an "international" invasion force, primarily consisting of U.S. military units, to restore Aristide to power.\(^1\) With the invasion apparently only minutes away, former President Jimmy Carter reached an eleventh-hour agreement with the Haitian military to restore Aristide to power.\(^2\) By the end of September over 17,000 U.S. soldiers were peacefully deployed in Haiti, preparing the way for Aristide's eventual return.\(^3\) On October 15, the U.N.'s first attempt to restore democracy in a member state reached a climax as President Aristide triumphantly returned to Port-au-Prince.\(^4\)

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\(^1\) Return of President Aristide, Fed. News Service, Aug. 1, 1994, available in LEXIS, Nexis Library, News File (with summary of Council debate). The resolution, citing Chapter VII and "determining that the situation in Haiti continues to constitute a threat to peace," specifically authorized "member states to form a multi-national force . . . to use all necessary means" to remove the "military leadership" and restore Aristide to power. Council members Brazil and China abstained, arguing that the use of force in Haiti did not conform to the Charter or customary practice. U.N. Doc. S/PV.3413, supra note 12, at 12. Mexico, Cuba, Uruguay and Venezuela addressed the Council as interested states under Council Provisional Rule of Procedure 37 and argued against the resolution on similar grounds. They also cited the principle of non-interference in Haiti's "internal affairs." Id. at 4-8. Resistance to the use of force on such grounds by China, Brazil, and Venezuela appears technically inconsistent with their prior support for Resolution 841. Both economic sanctions under Article 41 and force under Article 42 require the existence of a threat to international peace as a prerequisite. Presumably, these states would endorse the creation of legally meaningful distinctions between sanctions and force based upon the degree to which a situation threatens international peace. The same result is possible by emphasizing the requirement that force must be necessary due to the failure of Article 41 sanctions. See id. at 8-10 (comments of Brazil and China).

\(^2\) After six weeks of international and domestic maneuvering regarding a potential invasion, see e.g., James Brooke, Latins Join in New Effort to Get Haitian Leaders to Step Down, N.Y. Times, Aug. 15, 1994, at A2, President Clinton announced in a televised address to the nation that the Haitian military's "time was up." See Douglas Jehl, Clinton Addresses Nation on Threat to Invade Haiti; Tells Dictators to Get Out, N.Y. Times, Sept. 16, 1994, at A1.


III. Future United Nations Efforts to Restore Democracy: Defining the Debate

The 1990 coup in Haiti raised the stakes significantly in the U.N.'s newfound commitment to democracy. The coup expanded the focus of debate from the U.N.'s authority to promote democracy through consensual electoral assistance to its potential role in restoring democracy disrupted by internal domestic upheaval. It also raised issues regarding the organization's potential role, if any, in preserving threatened democracies or in promoting democracy in undemocratic states through non-consensual measures. Perhaps most importantly, in raising such issues during a period of expanding Security Council authority, the U.N.'s response to the coup heightened scrutiny of the institution's decision-making and prompted an important process of self-examination.

In order to evaluate the implications of the U.N.'s response to the coup, it is important to briefly review the basic legal doctrines which shape the debate surrounding such actions. Under the U.N. Charter, the Security Council is the only institution with mandatory enforcement powers. Pursuant to Articles 25, 48 and 49, U.N. members have agreed to undertake such measures as the Council may order within its defined authority. The General Assembly has no legislative or enforcement power and its resolutions, standing on their own, are strictly non-binding recommendations. In essence, the Charter limits meaningful responses to an international crisis, at least in the form of mandatory enforcement actions, to the Security Council. In the context of restoring democracy after action

105. Although such activity has been resisted by some states as unauthorized interference in the internal affairs of the state, see supra notes 48-54 and accompanying text, increased U.N. involvement in electoral matters seems destined to grow, firmly establishing a significant U.N. role in the promotion of democratic government through consensual means.

106. See infra notes 115-18, 250-56 and accompanying text.

107. See infra notes 262-66 and accompanying text.


110. See Certain Expenses of the United Nations, supra note 43 at 156. The Assembly does have binding authority over certain issues such as budget authorizations, management of "non-strategic" trust territories and, upon the Security Council's recommendation, expulsion of members, admission of new members, and election of certain officials (including members of the United Nations Economic and Social Committee (ECOSOC), the Secretary-General, and non-permanent members of the Security Council). See U.N. CHARTER arts. 4(2), 5, 16, 17, 23, 61, 85, 97. Some commentators have also argued that Assembly resolutions can be convincing evidence of customary law. See generally RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW §§ 102 notes (1986); OSCAR SCHACHTER, INTERNATIONAL LAW IN THEORY AND PRACTICE: GENERAL COURSE IN PUBLIC INTERNATIONAL LAW 111-21 (1982-V Recueil des Cours d'Academie de Droit International, vol. 178).

111. Although the General Assembly may "discuss any questions" relating to international peace, including any situation "likely to impair the general welfare or friendly relations among nations," it may only make recommendations regarding such questions. U.N. CHARTER arts. 11, 12, 14. Moreover, once the Security Council begins exercising its peace-keeping functions, the General Assembly may only make recommendations if so instructed. Id. arts. 12, 14. Thus, although the Assembly has
by a recalcitrant usurper, the Security Council inevitably plays the determinative role, as it did in Haiti.  

The Council's primary, and perhaps exclusive, authority in this regard, however, is limited to maintaining international peace and security.  

The international community has never recognized a general Security Council authority in the area of peace and security, see Reisman, supra note 15, at 84; supra note 43 and accompanying text, its powers are limited. See, e.g., Harry H. Almond Jr., The Military Activities Case: New Perspectives on the International Court of Justice and Global Order, 21 Int'l. L. Am. Soc'y Int'l. L. Proc. 303, 305-06 (describing U.N. as system designed to preserve freedom of action for World War II victors via the Security Council).

112. Despite its limitations, the General Assembly could nevertheless play a significant role in restoring democracy, particularly in the absence of Security Council action. For example, the Assembly may, as it did in Haiti, recommend collective actions such as voluntary economic boycotts or diplomatic sanctions against the target government. See G.A. Res. 47/20, supra note 74; G.A. Res. 46/7, supra note 67; G.A. Res. 46/138, supra note 71. See also G.A. Res. 34/93, U.N. GAOR, 34th Sess., Supp. No. 46, at 32, U.N. Doc. A/34/46 (1979) (requesting oil embargo against South Africa). The Assembly might also authorize the deployment of human rights observers and, although not without controversy, even peace-keepers, assuming that the target government agrees. See Certain Expenses of the United Nations, supra note 43, at 151-52, 162-63. For example, the Assembly has authorized deployment of civilian election observers to Nicaragua, Haiti and Eritrea. See supra notes 39-42. It also sent human rights observers to Haiti in 1993. G.A. Res. 47/208, supra note 43.

113. Since the U.N. is solely the creation of its sovereign state members, the powers and authority of its constituent bodies are limited to those granted to them in the Charter as interpreted through custom and practice. All the Security Council's specific powers are limited to the Charter, with the possible exception of some Article 83 powers relating to "strategic" trusteeship territories, see U.N. Charter arts. 24, 33-34, 36-42, 52-53, 83. Indeed, the U.N. itself, its structure and its originally conceived purposes, were principally (although not exclusively) focused on eliminating the "scourge of war" and maintaining international peace. U.N. Charter pmbl., art. 1. See Benjamin B. Ferencz, Enforcing International Law 423-38 (1983); Goodrich & Hambro, supra note 24, at 93-98; The International Bill of Rights, supra note 50, at 884-87, 962-63. In this regard, there seems little doubt that maintenance of international peace originally, and at least through the end of the cold war, meant efforts to end cross-border conflicts. See Tom J. Farer, An Inquiry Into the Legitimacy of Humanitarian Intervention, in Law and Force, supra note 15, at 185, 190-91; Jeane Kirkpatrick, When Should the Tanks Roll?, Wash. Post, Oct. 17, 1994, at A19. Recent Council activities reveal, however, that this narrow view of the Council's authority is giving way to more flexible approaches grounded in practical politics and expediency. See supra note 15; infra note 117; Frederic L. Kirgis, Jr., Eroding the U.N. Charter, 88 Am. J. Int'l. L. 552 (1994) (book review). Many, including most Western powers, would argue that the Charter is "constitutional" in character and requires sufficient interpretive flexibility to allow effective reaction to political realities. See Goodrich & Hambro, supra note 24, at 204-07. E.g., W. Michael Reisman, Allocating Competence to Use Coercion in the Post-Cold War World: Practices, Conditions, and Prospects, in Law and Force, supra note 15, at 26, 42-47. The recent concluding statement of the meeting of Council members' heads of state, reflects this sentiment by declaring that "the absence of war . . . does not itself insure . . . peace . . . . Instability in the economic, social, humanitarian and ecological fields have become threats . . . ." United Nations, Security Council, Provisional Verbatim Record of the Three Thousand and Forty-Sixth Meeting, U.N. Doc. S/PV.3046 (1992). Accepting this view, the critical question then becomes, at what point does interpretive flexibility exercised by powerful states through non-democratic decision-making processes unfairly subvert the will of those being governed? See infra notes 246-66 and accompanying text.
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ity Council power to enforce international law or to police its violation in the absence of a threat to, or a breach of, international peace.\footnote{114} Nor does the Security Council, or any other U.N. institution, have an express power to address human rights violations, such as the denial of democratic rights in Haiti, through economic sanctions or other compulsory measures.\footnote{115} Similarly, U.N. institutions have no express Charter-based authority to order measures necessary to alleviate humanitarian crises such as those witnessed in Somalia, Rwanda, and Haiti. Absent either an express invitation of the government involved\footnote{116} or a threat to international peace,\footnote{117} the Charter does not authorize the Security Council to enforce international law generally. The Council's only mandatory powers are exclusively associated with issues of international peace. See U.N. Charter arts. 24, 25, 39-42, 48-49; supra note 107. See generally Goodrich & Hambro, supra note 24, at 204-13, 237-308.

\footnote{114}{The Charter does not authorize the Security Council to enforce international law generally. The Council's only mandatory powers are exclusively associated with issues of international peace.} See infra notes 131, 162, 166, 169, 178, 252-61 and accompanying text. They appear collectively to reflect an evolution or expedience.\footnote{115}{Nor does the Security Council, or any other U.N. institution, have an express power to address human rights violations, such as the denial of democratic rights in Haiti, through economic sanctions or other compulsory measures.} Similarly, U.N. institutions have no express Charter-based authority to order measures necessary to alleviate humanitarian crises such as those witnessed in Somalia, Rwanda, and Haiti. Absent either an express invitation of the government involved\footnote{116}{The concept of "invited intervention," which also arises in the context of collective self-defense, has been regularly abused. For example, the United States, the Soviet Union and Iraq each attempted to justify their invasions of Grenada (U.S.), the Dominican Republic (U.S.), Panama (U.S.), Hungary (U.S.R), Czechoslovakia (U.S.R), Afghanistan (U.S.R), and Kuwait (Iraq) based upon some form of "invitation."} or a threat to international peace,\footnote{117}{The concept of "invited intervention," which also arises in the context of collective self-defense, has been regularly abused. For example, the United States, the Soviet Union and Iraq each attempted to justify their invasions of Grenada (U.S.), the Dominican Republic (U.S.), Panama (U.S.), Hungary (U.S.R), Czechoslovakia (U.S.R), Afghanistan (U.S.R), and Kuwait (Iraq) based upon some form of "invitation." See John L. Hargrove, _Intervention by Invitation and the Politics of the New World Order_, in _Law and Force_, supra note 15, at 113, 116-19; Mullerson, _supra_, at 128-31; Doswald-Beck, _supra_, at 222-39. See also Mary Ellen O'Connell, _Continuing Limits on U.N. Intervention in Civil Wars_, 67 Ind. L.J. 903 (1992) (arguing against U.N. intervention in civil wars). Moreover, many commentators now seriously question whether intervention by invitation is permissible to support a government faced with civil insurrection. See, e.g., _Dowswald-Beck, supra_, at 242-43, 251. See generally _The International Bill of Rights_, supra note 50, at 945-54. Invited intervention becomes even more problematic when the government requesting assistance is not in control of the state, a condition endemic to most coups. See infra note 234 and accompanying text. Thus, with regard to restoring democracy, the concept of "invited intervention" raises a number of difficult issues left largely unresolved by the U.N.'s action in Haiti. See infra note 234 and accompanying text.}
such multilateral interventions could arguably be *ultra vires.*

However, the Charter and historical practice provide the Security Council with considerable latitude and a wide range of options for maintaining peace. These conflict management options generally fall within four types of responses, which historically have been pursued in the following order: first, efforts under Chapter VI of the Charter to promote peaceful, negotiated resolution of disputes; second, peace-keeping, humanitarian relief and transitional operations authorized by an invitation (i.e., consent) of the parties to a conflict; third, non-forcible sanctions including economic boycotts under Chapter VII, Article 41 of the Charter; and finally, forcible sanctions, including military action, under Chapter VII, Article 42 of the Charter. Each category of response has its own criteria for invocation and can only be ordered if nine of the fifteen Council members, including all five permanent representatives, agree. Each option is potentially available to redress the disruption of democracy, but presumably only if the Council finds that circumstances warrant such action under the criteria provided in the Charter.

The first set of options, authorized under Chapter VI of the Charter, focuses on non-forcible steps which the Security Council may take in order to encourage the peaceful resolution of international disputes. Per
Chapter VI, in order to take action, the Council must find that the situation is "likely to endanger" international peace and security.\(^{122}\) Once the Security Council finds that this threshold condition "in fact" exists, it may take a variety of actions designed to peacefully resolve the dispute including the recommendation of settlement procedures or specific terms for settlement.\(^{123}\) In this regard, the Security Council works closely with the Secretary-General who often facilitates negotiations and may serve a mediating or conciliatory role.\(^{124}\)

The second set of U.N. options for dealing with an international crisis falls under the general category of consensual, non-forcible intervention by U.N. personnel.\(^{125}\) These options, which currently include traditional peace-keeping forces,\(^{126}\) humanitarian relief,\(^{127}\) and transitional opera-

122. U.N. CHARTER arts. 34, 37.


125. See supra notes 29-44 and accompanying text.

tions, are neither directly authorized nor strictly contemplated by the Charter. Rather, this type of U.N. conflict management activity evolved in response to the Security Council paralysis created by the dueling cold war vetoes of the United States and the former Soviet Union. Because these options are neither expressly authorized by the Charter nor imposed in practice by the Security Council, they depend upon the negotiated consent of the parties involved in the crisis.

127. S.C. Res. 918, supra note 117 (Rwanda); S.C. Res. 794, supra note 117 (Somalia); S.C. Res. 688, supra note 117 (Iraqi Kurds).

128. See supra notes 31-38.


131. Such U.N. operations could be imposed by the Council under Chapter VII if the Council so chooses. Somalia may be a lonely example of such action, although the Secretary-General noted that there was no central government to give consent at the time and the Council eventually negotiated the terms of the mission with the warring factions prior to deployment. See S.C. Res. 794, supra note 117; United Nations, SECURITY COUNCIL; LETTER DATED 29 NOVEMBER 1992 FROM THE SECRETARY-GENERAL ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL, U.N. Doc. S/24868 (1992). As noted below, however, Chapter VII-based operations require a finding that international peace has been threatened or breached, whereas peace-keeping procedures do not strictly so require. Moreover, as reflected by events in Somalia and Bosnia, the effectiveness of such operations depends upon the cooperation of the target states. Thus, being premised on the consent of the parties, such peace-keeping activities are simply authorized by the Security Council rather than imposed pursuant to Chapter VII. Circumstances in Bosnia and Rwanda, however, have resulted in the authorization of forcible measures by the peacekeepers, who are originally consensually deployed under Chapter VII, arguably transforming those forces into “peacemakers.” See S.C. Res. 998, supra note 126 (rapid reaction force in Bosnia); S.C. Res. 929, supra note 117 (creation of safe zones in Rwanda); S.C. Res. 770, U.N. SCOR, 47th Year, Res. & Dec. at 24-25, U.N. Doc. S/INF/48 (1992) ("all necessary means" to deliver aid in Bosnia); S.C. Res. 713, supra note 124 (no-fly zone over Bosnia). See also S.C. Res. 814, U.N. SCOR, 48th Year, Res. & Dec. at 80-83, U.N. Doc. S/INF/49 (1993); S.C. Res. 837, U.N. SCOR, 48th Year, Res. & Dec. at 83-84, U.N. Doc. S/INF/49 (1993) (force in Somalia); Craig R. Whitney, NATO Air Strikes in Bosnia: A Catch-22, N.Y. TIMES, July 17, 1993, at A5.

132. N.B. Krylov, International Peacekeeping and Enforcement Actions After the Cold War, in LAW AND FORCE, supra note 15, at 96; Schachter, supra note 129, at 67, 84-85. See also Certain Expenses of the United Nations, supra note 43, at 163-67. These operations, which, as of July 1995, involve approximately 70,000 U.N. personnel deployed in about 16 different locations around the world, see Richard Bernstein, Sniping Is Growing at the U.N. Over Weakness in Peacekeeping, N.Y. Times, June 21, 1993, at A6; Christopher S. Wren, U.N. Chief Says Finances Hurt Its Role, N.Y. TIMES, Sept. 12, 1995, at A13, have traditionally consisted of lightly-armed U.N. military personnel whose mandate is limited to that of an observer force serving as a buffer between warring factions. See, e.g., Schachter, supra note 129, at 94; Weiss, supra note 129, at 52-54. In 1992, the new Secretary-General Boutros Boutros-Ghali advocated more aggressive use of U.N. troops
As noted earlier, these consent-based options have become the principal mechanism in the U.N.'s recent efforts to promote democracy. However, because the availability and effectiveness of these options depend upon the consent of the de facto government and the requisite political will to reach a solution, they are of limited utility when democracy is usurped. In this context, such pre-conditions require negotiating with coup leaders, tyrants and political elites regarding the deployment of U.N. personnel and the terms of any resumption of democratic rule. As events in Haiti demonstrate, the incentives for those who seize power through unconstitutional means to submit to a process by which they will relinquish that power are limited.

Consequently, creating transitional operations leading to democratic rule is not so much an enforcement tool for restoring democracy as it is a method for achieving that goal once other actions have made that resolution possible. Exactly what options the U.N. may pursue to create such incentives remains the unresolved and critical question.

The third and fourth sets of Security Council options are those authorized under Chapter VII of the Charter. Chapter VII provides the only source of international sanctions binding on all U.N. members. Under Chapter VII, the Security Council may only order mandatory sanctions against offending parties if it finds that the situation poses "any threat to the peace," or if a "breach of the peace" or an "act of aggression" has occurred.

The Council's first option under Chapter VII provides a variety of non-forcible sanctions authorized by Article 41. Available sanctions include economic embargoes, disruption of travel or communication links, or other measures which deprive the offending state of benefits associated with membership in the international community. These non-forcible sanctions may be combined with a limited use of force for enforcement purposes. During the cold war, the Council sometimes recommended such measures under the rubric of "peacemaking."
measures to the member states but rarely invoked them as mandatory sanctions. \footnote{139} Since the collapse of the Soviet Union, however, the Security Council has begun to impose Article 41 sanctions, particularly arms embargoes, with increasing regularity. \footnote{140} Resolution 841, imposing the economic embargo against Haiti, is one of the Council’s most recent applications of Chapter VII sanctions. \footnote{141} With the arguable exceptions of South Africa and Southern Rhodesia, \footnote{142} the economic sanctions imposed against Haiti are also the only instance of such sanctions having been invoked directly to counter a disruption of democratic rule. \footnote{143}

The Charter provides a fourth set of options, in the form of mandatory, forcible measures, under Article 42. \footnote{144} However, these options may only be exercised if the Council finds that non-forcible measures are or would be “inadequate.” \footnote{145} Article 42 empowers the Council to order a


\footnote{141} S.C. Res. 841, supra note 9.

\footnote{142} See infra notes 187-88.

\footnote{143} See infra notes 182-96 and accompanying text.

\footnote{144} See U.N. \textit{CHARTER} art. 42.

\footnote{145} Id.
variety of forcible measures, including the introduction of land, sea and air forces, so long as such measures are necessary to maintain or restore international peace.\textsuperscript{146}

Historically, there are relatively few examples of Security Council actions under Chapter VII. Of these, arguably none clearly follows the conditions set out by the Charter\textsuperscript{147} or provides any guidance in the context of disruptions of democracy.\textsuperscript{148} In any case, it is clear that the specific powers of the Security Council depend, at least formally, on the existence of a threat to international peace. Indeed, the Security Council has never purported to act otherwise, although its recent pronouncements regarding the existence of such threats are questionable.\textsuperscript{149} Consequently, as explained in Part IV, the U.N.'s future role in preserving or restoring democracy depends, in large part, on the Security Council's political interpretation of what constitutes a threat to international peace and security. The Council's response to the coup in Haiti provides an important, though ambiguous, precedent in that regard.


\textsuperscript{147} Some have argued, for example, that the U.N. military response to Iraq's invasion of Kuwait was not authorized either under Resolution 678 or Chapter VII. See, e.g., Childers, supra note 20, at 132; John J. Quigley, The United States and the United Nations in the Persian Gulf War: New Order or Disorder? 25 CORNELL INT'L L.J. 1 (1992); Burns H. Weston, Security Council Resolution 678 and Persian Gulf Decision Making, 85 AM. J. INT'L L. 516 (1991). But see Oscar Schachter, United Nations in the Gulf Conflict, 85 AM. J. INT'L L. 452 (1991). These commentators suggest that the coalition forces, led by the United States, exceeded the terms of Resolution 678, which did not authorize the coalition's all-out bombing campaign but rather only the "necessary means" to return Kuwait's sovereignty. E.g., Quigley, supra, at 5-10, 12, 19. Some have also suggested that the action was ultra vires because the Council did not direct the military action but rather abdicated authority and control to the United States. Id. at 23-28. U.S. manipulation and control of the Council has also been suggested. See Roger Normand & Chris af Jochnick, The Legitimation of Violence: A Critical Analysis of the Gulf War, 35 HARV. INT'L L.J. 387, 393 n.24 (1994); Weston, supra, at 525, 535. It is also arguable that the Security Council failed to find that the Charter precondition for invoking Article 42, failure of diplomatic efforts and economic sanctions, had occurred. E.g., Quigley, supra, at 20-23. Similar critiques and ambiguities also cloud the precedential value of the Council's only prior clear authorization of force, Korea. S.C. Res. 83, U.N. SCOR, 5th Year, Res. & Dec. at 5, U.N. Doc. S/INF/4/Rev.1 (1950). See Oscar Schachter, Authorized Uses of Force by the U.N. and Regional Organizations, in LAW AND FORCE, supra note 15, at 66-75. Arguably, the Security Council has consistently abdicated its role to the United States and its allies. The Security Council is, however, the final arbiter of whether Chapter VII's preconditions have been satisfied. See Case Concerning the Question of Interpretation and Application of the 1971 Montreal Convention Arising from the Aerial Incident at Lockerbie (Libya v. U.S.), 1992 I.C.J. 114 [hereinafter Lockerbie]; infra notes 250-51, 255 and accompanying text.

\textsuperscript{148} See infra notes 162, 166-72, 178, 187-88, 244-49, and accompanying text.

\textsuperscript{149} See infra notes 160-213, 253-54 and accompanying text.
IV. Evaluating the Implications of the United Nations Response to Haiti—The Disruption of Democracy as a Threat to Peace

Until June, 1993, the U.N.'s response to the disruption of democracy in Haiti centered tentatively on the first two Security Council options described above: dispute resolution under Chapter VI of the Charter and consensual peace-keeping efforts. However, on June 16, 1993, after nearly two years of false starts, delay and obstinance by the military regime in Haiti, the Security Council passed Resolution 841, imposing a partial economic embargo. After another thirteen months of intransigence and continued political oppression in Haiti, the Security Council took the unprecedented step of authorizing member states to utilize force to restore democracy in Haiti via Resolution 940.

This response to the coup in Haiti raises many important questions about the organization's future role in promoting, preserving and restoring democracy and that role's relationship to international peace and security. For example, is the Council's decision to invoke mandatory economic sanctions, and ultimately to authorize the use of force to restore democratic government in Haiti sui generis or does it portend growing U.N. authority to promote, preserve and restore democratic governance within member states? If disruption of democracy by military coup justifies Security Council enforcement orders, does the general denial of democratic rights by existing authoritarian regimes similarly justify collective sanctions? Do less overt denials of democratic rights, such as have occurred in Africa's one-party states, or other subversions of democracy also justify a collective U.N. response?

The answers to such complex questions depend on myriad factors, both political and legal. The debate over such questions focuses mainly on

150. This effort at "pacific" dispute settlement was primarily confined to providing limited (mostly moral) support for the OAS. See supra notes 61-83 and accompanying text. Although the General Assembly passed several resolutions urging voluntary compliance with the OAS boycott, see, e.g., G.A. Res. 47/20, supra note 74; G.A. Res. 46/138, supra note 71; G.A. Res. 46/7, supra note 67, the Security Council took no action during the first 15 months of the crisis other than to issue a non-binding statement through the Council President condemning the coup and voicing support for the OAS. See supra notes 61-66, 83-86 and accompanying text.

151. S.C. Res. 841, supra note 9.

152. See supra notes 86-100.

153. S.C. Res. 940, supra note 11.

154. The Security Council, Secretary-General and General Assembly have all recently supported the general view that democracy, economic development and human rights are all integral to maintaining international peace. See infra note 198. This recognition does not, of course, answer the more critical and complex question: what action does this relationship between peace and human rights justify given the current institutional and normative development of the human rights system? See infra notes 176-211 and accompanying text. See generally Donoho, supra note 22.

155. See infra notes 215-78 and accompanying text. Some Council members took pains to limit the potentially precedential implications of their actions. See supra note 17; infra notes 230-31, 279. Professor Farer has perceptively noted that nearly all international law precedents can be "minced into their singular facts so that they end up standing for nothing but themselves." Farer, supra note 113, at 185, 194.
the potential justifications for the Security Council's actions and its interpretation of the critical concept of "threat to peace" in a context which implicates the still-evolving concepts of self-determination, democratic governance and state sovereignty. Significantly, this debate comes at a time of Security Council willingness to involve itself in humanitarian crises and internal conflicts generally. As a result, the answers to such questions also depend on growing doubts among many member states about the institutional credibility of U.N. decision-making and fears of Western domination.

In accordance with the Charter, the Security Council justified imposing mandatory sanctions against Haiti according to the vague proposition that the "situation" posed a threat to international and regional "peace and security." Evaluating the Council's actions first requires an examination of both its stated and its unstated reasons supporting this critical finding. Whether the crisis in Haiti posed a threat to international peace sufficient to justify mandatory sanctions under Articles 41 and 42 is at best questionable. In the first place, Haiti, a small island country with a small, undisciplined military, had neither exhibited acts of external aggression nor otherwise threatened its neighbors. The coup itself resulted in massive oppression but virtually no armed resistance which might have spilled beyond Haiti's borders. Further, while exiled, President Aristide

156. See supra notes 44-55 and accompanying text; infra notes 182-211, 237-61 and accompanying text.
157. See supra notes 15, 117, 131; infra notes 166, 169-71, 178, 237.
158. See infra notes 262-66 and accompanying text.
161. The Haitian military consists of about 7,000 minimally equipped, regular and irregular personnel—a force sufficient to terrorize the populace, but hardly a direct threat to Haiti's neighbors or regional stability. See Howard W. French, U.S. Move Angers Diplomats In Haiti, N.Y. TIMES, Oct. 14, 1993, at A8.
162. The existence of significant internal armed struggle with cross-border implications has been present in each civil conflict resulting in Security Council action in recent years. Somalia may present an exception in that the internecine fighting which plagued that country did not generally involve cross-border incursions at the time of U.N. intervention. However, although it did, however, have a recent history of such incursions and, although not cited by the Security Council, clan fighting had imposed a significant refugee population on Somalia's neighbors. See generally Jeffrey Clark, Debacle in Somalia:
commanded no troops and had no immediate means to regain power through the use of force. Finally, at least until the United States began rattling its sabers in 1994, neither Aristide's foreign allies nor his supporters contemplated unilateral use of force which might have erupted into international conflict.\textsuperscript{163}

Since the coup posed a threat of neither international nor domestic military conflict, the only remaining rationales for finding a threat to peace which would arguably justify mandatory sanctions were the humanitarian and economic effects of the coup, and the putative relationship between democracy and regional stability.\textsuperscript{164} Both the Security Council and the General Assembly cited these factors with concern in their resolutions regarding the Haitian coup.\textsuperscript{165}

In terms of humanitarian and related economic factors, one could argue that the economic disruption and flow of refugees caused by the coup adversely affected Haiti's neighbors, thereby destabilizing the region.\textsuperscript{166} However, the economic disruption argument lacks factual sup-


\textsuperscript{164} An alternative, if questionable, justification for sanctions could be the military government's failure to meet its obligations under the Governor's Island Agreement. See supra notes 88-90. Although the Council cites this breach with disapproval, there is nothing else in the Resolutions, Council debate or prior U.N. practice to suggest that such a breach is itself grounds for Chapter VII measures. See supra notes 114, 136-49.

\textsuperscript{165} See G.A. Res. 47/20, supra note 74; G.A. Res. 46/138, supra note 71; S.C. Res. 940, supra note 11; S.C. Res. 841, supra note 9.

\textsuperscript{166} The "external" effects of internal conflicts, in the form of refugee flows and displaced populations, characterized all of the Council's recent ventures into humanitarian intervention (except, perhaps, Somalia). \textit{E.g.}, S.C. Res. 929, supra note 117 (safe havens
port. For example, no evidence suggests that the coup itself, rather than U.N.-imposed sanctions, resulted in economic conditions which might have threatened regional peace.167

The destabilizing impact of refugees has more credibility as a potential threat to peace. The U.N. has recognized that massive flows of refugees are a serious worldwide problem with potentially deleterious effects on international peace.168 Indeed, the Security Council premised, at least in part, the rationale for protection of Iraqi Kurds169 and the creation of safe zones in the Balkans170 and Rwanda171 on the regional consequences of massive

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167. There would be, in any case, an ironic inconsistency in relying upon economic disruption as a justification for imposing economic sanctions under Chapter VII. The coup leaders and some commentators may have recognized this point, arguing that U.N. economic sanctions were the real cause of hardship suffered by the Haitian people. Howard W. French, Plight of Haiti's Poor Brings Calls to Loosen the Embargo, N.Y. TIMES, Aug. 5, 1992, at A23; Howard W. French, Study Says Haiti Sanctions Kill Up to 1,000 Children a Month, N.Y. TIMES, Nov. 9, 1993, at A1. See Carothers, Empirical Perspectives on the Emerging Norm of Democracy in International Law, supra note 2, at 266; Monroe Leigh, The Political Consequences of Economic Embargoes, 89 AM. J. INT'L L. 74 (1995); Schnably, supra note 70, at 489-95.


169. S.C. Res. 688, supra note 117. In fact, the Council itself neither authorized forcible action to protect the Kurds nor created Kurdish "safe zones." Rather, Resolution 688 merely demanded that Iraq cease its repression of the Kurds and allow international humanitarian assistance. Id. Nevertheless, Britain, France, and the United States interpreted Resolution 688 "liberally" to justify their joint creation of safe havens for Kurds in Iraq as a part of the Gulf War aftermath. See Malanzuk, supra note 15, at 17-19; Schachter, supra note 147, at 468; Jane E. Stromseth, Self-Determination, Succession and Humanitarian Intervention by the United Nations, 86 AM. SOC'Y INT'L L. PROC. 369, 373 (1992). Some have suggested that the safe zones were in fact unauthorized, unilateral actions by these states constituting a fundamental breach of Iraq's sovereignty. See Malanzuk, supra note 15, at 19 (citing an article by Eric Suy, the Secretary-General's Personal Representative, who ultimately negotiated Iraq's consent to U.N. protection of the Kurds).

refugee flows. Similarly, in the case of Haiti, Security Council resolutions cite concern over refugees and their “negative repercussions” on the region.\textsuperscript{172}

However, even the most sanguine supporters of aggressive U.N. action should find the refugee argument regarding Haiti less than compelling. The United States, for example, actively reduced the flow of refugees at sea to pre-coup levels by pursuing its aggressive (and probably illegal)\textsuperscript{173} interdiction program.\textsuperscript{174} The Haitian refugee population resulting from the coup, although tragic, is minor compared with other refugee populations around the world.\textsuperscript{175} Although massive refugee flows alone have

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\item S.C. Res. 929, supra note 117, and S.C. Res. 918, supra note 117 (use of force to create and protect safe zones in Rwanda). See S.C. Res. 978, U.N. SCOR, 50th Year, Res. & Dec. at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\
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resulted in significant humanitarian relief efforts by the U.N., they have not historically been viewed by the international community as a sufficient threat to peace to justify mandatory collective security measures. Recent Security Council Resolutions in Iraq, Bosnia and Rwanda do cite concern over refugees, however, other factors figure more prominently in eliciting international concern. In any case, each situation also involved massive numbers of refugees which dwarf the Haitian flow. Moreover, if

are also numerous recent examples of massive refugee flows to which the Council has had little or no reaction. For example, over 400,000 refugees from Burundi remain in neighboring states. UNHCR Report, supra note 168, at 19. Some 250,000 Burmese ethnic minorities have fled government oppression in Myanmar, which has also experienced a recent disruption of democracy much like the coup in Haiti. United Nations, Economic and Social Council, Commission on Human Rights, Report on the Situation of Human Rights in Myanmar, Prepared by the Special Rapporteur, Mr. Yozo Yokota, in Accordance with Commission Resolution 1994/85, at 5, U.N. Doc. E/CN.4/1995/65 (1995); Massive Emergencies, Large-Scale Repatriations Confront UNHCR, U.N. Chron., Mar. 1995, at 88. Approximately 250,000 Armenian refugees and 658,000 displaced persons have resulted from the civil war over Nagorno-Karabakh. Id. at 88. The continuing conflict in Afghanistan has forced as many as 4 million people back and forth across the border into Pakistan and Iran. See UNHCR Report, supra note 168, at 33; U.N. Doc. S/PV.2982, supra note 166, at 10. Civil war in Sudan has caused 1.7 million displaced persons and at least 100,000 refugees. Sudan: Envoy Appointed, U.N. Chron., Sept. 1993, at 24. None of these enormous refugee flows has resulted in the imposition of Chapter VII sanctions even though they dwarf the refugee flow created by the coup in Haiti. Finally, civil war in Liberia has resulted in the displacement of over half the population and up to 700,000 international refugees. See David Wippman, Enforcing the Peace: ECOWAS and the Liberian Civil War, in Enforcing Restraint, supra note 15, at 156, 163. It has also involved regional confrontations and the intervention of foreign troops under the auspices of a West African regional organization. Id. Nevertheless, the Security Council has declined the request of African states to impose a mandatory economic embargo in favor of a more limited arms embargo. S.C. Res. 788, supra note 140.


177. See supra note 175.

178. In justification of mandatory collective measures taken in Iraq, Bosnia and Rwanda, the Security Council has cited refugee flows as one justification for finding the prerequisite threat to international peace. See supra notes 169-71. The Council's references to refugee flows and displaced populations in these resolutions suggest a new prominence for this phenomenon in Security Council efforts to preserve international peace. However, this argument is implausible in the context of Haiti. First, in each of the above situations factors other than refugee flows played prominent roles in the Council's decision-making. For example, Iraqi treatment of the Kurds must be viewed in light of the overall Gulf conflict. Moreover, Resolution 688 merely demanded that Iraq cease its repression; it did not in fact authorize a collective response. See supra note 169. Bosnia involves a significant international military confrontation which clearly threatens regional peace. It also has displaced over 2 million civilians and has involved gross human rights violations. Rwanda has involved both civil war and genocide.

179. In each situation, the number of refugees involved (1.5 million Kurds, 1.25 million Rwandans and 4 million displaced or besieged former Yugoslavians, see Massive Emergencies, Large-Scale Repatriations Confront UNHCR, supra note 175; UNHCR Report, supra note 168, at 29-30) dwarfs the Haitian refugee flow. See supra notes 166, 173-75. The Haitian refugee crisis, however, had a disproportionately large political impact as it directly affected the interests of the United States, a factor which translated into the political will to act at the Security Council. See infra notes 256-66 and accompanying text.
mandatory collective security measures were justified against Haiti merely by virtue of the coup's creation of refugees, then consistency would require Chapter VII sanctions in dozens of other situations posing far more massive and destabilizing refugee crises.¹⁸⁰ Indeed, refugee flows and displaced populations are a ubiquitous feature of virtually all significant civil conflicts.

Nor can Haiti's situation be distinguished from other civil conflicts because of the severity of the military's human rights record. Although terrible, the human rights abuses experienced by Haitians fail to distinguish Haiti from dozens of other troubled states that have not been considered as targets for Security Council intervention.¹⁸¹ Under these circumstances, justification for Chapter VII action in Haiti is questionable.

The remaining rationale to justify the Council's imposition of mandatory sanctions is that the disruption of democracy in Haiti, at least when combined with the flow of refugees, itself constituted the prerequisite threat to international peace and security.¹⁸² Although not articulated by the Council, the central premise of this argument is that democratic governance is directly and causally linked to international peace.¹⁸³ The argument proceeds from the premise that the existence of democratic

¹⁸⁰ See supra note 175. Potential despots beware: close the borders before seizing control of the state.


¹⁸² Although Resolution 841 makes no explicit reference to democracy, its text contains many indirect references and the Council debate focused on the disruption of democracy as an important, if not central, justification for its action. See U.N. Doc. S/PV.3238, supra note 17. Resolution 940 states that the "goal of the international community remains the restoration of democracy in Haiti." S.C. Res. 940, supra note 11. Council debate similarly focused on the restoration of democratic rule. See U.N. Doc. S/PV.3413, supra note 12.

governments directly contributes to peaceful international relations and global stability.\textsuperscript{184} Thus, the disruption of an established democracy constitutes a threat to international stability.\textsuperscript{185} Similarly, such disruptions, if left unanswered, threaten the global trend toward democratization, which in turn inhibits the prospects for international peace. Hence, the U.N.'s failure to aggressively respond to the coup in Haiti would have emboldened potential putschists, thereby increasing the threat to weak governments particularly, and the international order generally.\textsuperscript{186}

Historically, U.N. practice offers little support for the proposition that the disruption of democracy creates a threat to peace justifying U.N. action. With the possible exception of the ambiguous precedents set in Southern Rhodesia\textsuperscript{187} and South Africa,\textsuperscript{188} the U.N. and the international

\textsuperscript{184} See infra notes 197-202 and accompanying text.
\textsuperscript{185} See infra notes 197-202. See generally Donoho, supra note 22.
\textsuperscript{188} In that apartheid in South Africa involved a denial of basic democratic rights for black South Africans, there are clear parallels between Security Council actions in Haiti and South Africa. The Council imposed an arms embargo on South Africa in 1977 for, among other things, its violent repression of the "African people in Soweto and other areas of South Africa" and its continued imposition of Apartheid in defiance of Security Council resolutions. S.C. Res. 418, supra note 23. See Bailey, supra note 187, at 312-13. The imposition of sanctions against South Africa, however, represents an ambiguous


exceptions of South Africa and South Rhodesia) was eventually accepted by the U.N. as the legitimate representative of its state.Indeed, neither legal pedigree nor democratic governance is a prerequisite to U.N. membership. Nearly half of the governments in the organization remain decidedly undemocratic. More importantly for present purposes, the Council has simply not responded to coups under Chapter VII. This reluctance to intervene has been manifested regardless of whether the seizure of power usurped an established democratic order, resulted in economic disruption and political oppression or caused significant refugee flows.

One could argue that the U.N.'s failure to respond to prior disruptions of democratic rule should be dismissed as a historical relic. Democracy, political participation rights and the concept of internal self-determina-
tion197 have gained increased stature in international law during recent years. International organizations, bureaucrats and states now commonly link the maintenance of peaceful international relations to the existence of democratic regimes and to the protection of human rights.198 Commentators also show considerable support for this proposition.199 Although the empirical evidence supporting the putative relationship between peace and democracy is hazy at best,200 its intuitive appeal to liberal democracies is powerful.201 Furthermore, the U.N. has increasingly allocated resources and energy to the pursuit of democratization.202

Nevertheless, there is widespread dissent from the idea that threats to

197. Many states would confine the principle of self-determination to the right of "peoples" (as embodied by the state) to be free from outside interference, traditionally in the form of colonization. E.g., Declaration on Friendly Relations, supra note 189, at 124; Declaration on the Granting of Independence to Colonial Countries and Peoples, G.A. Res. 1514(XV), U.N. GAOR, 15th Sess., Supp. No. 16, at 66, U.N. Doc. A/46/464 (1960). See generally HURST HANNUM, AUTONOMY, SOVEREIGNTY AND SELF-DETERMINATION 30-49, 113-17, 467 (1990); HENKIN ET AL., supra note 189, at 302-08. There is some evidence, however, that the concept of "internal" self-determination, in the form of rights associated with popular sovereignty, is gaining acceptance. See Gregory H. Fox, Self-Determination in the Post-Cold War Era: A New Internal Focus?, 16 Mich. J. Int'l L. 733, 734, 752-56 (1995). The notion that people or groups within the state have a right to "internal" self-determination continues to meet strong resistance because it tends to support secessionist movements. See id. at 733, 737-40. See also Lea Brilmayer, Secession and Self-Determination: A Territorial Interpretation, 16 Yale J. Int'l L. 177, 181-85 (1991).


199. See, e.g., Farer, supra note 1, at 725; Francik, supra note 1; Gassama, supra note 1, at 307, 330; Grossman, supra note 186, at 259; Halberstam, supra note 1, at 168; Reisman, supra note 1; Shelton, supra note 186.


201. See Farer, supra note 1, at 724-25 (noting strong "deductive proof").

democracy alone can justify collective action under the Charter. \(^{203}\) Many states insist that change in government is a domestic matter beyond the authority of international law. \(^{204}\) Some states still cling to the proposition that enforcement of democratic rights is outside U.N. authority. \(^{205}\) These states have insisted that even relatively innocuous U.N. activities, such as promoting the emerging right to democratic governance through electoral assistance, \(^{206}\) should be limited and must be undertaken strictly pursuant to the consent of the parties involved. \(^{207}\) Even when consensual, such activities have nevertheless caused renewed debate over state sovereignty and the principle of non-interference in domestic affairs. \(^{208}\) Furthermore, while the U.N. and the international community have lent some credibility and substance to internationally protected democratic rights, \(^{209}\) there is no consensus regarding the definition of, or minimum criteria for, "genuine" democracy. \(^{210}\) Indeed, the General Assembly has continually emphasized its tolerance of wide diversity in states' choices of political systems. \(^{211}\) In essence, until the coup in Haiti, the international community had not agreed that the disruption of democracy constituted a threat to international peace.

Did the imposition of Chapter VII sanctions against Haiti signify a change in this attitude? One potential implication of the Security Council's action is that it did, at least when the denial of democracy was coupled

\(^{203}\) See, e.g., U.N. Doc. A/46/616, supra note 50, at 5, 9 (statements supporting right to choose own political system); U.N. Doc. S/PV.3413, supra note 12, at 5 (China), 10 (Cuba), 4 (Mexico), 6 (Uruguay), 8 (Venezuela and Brazil); U.N. Doc. S/PV.3238, supra note 17, at 15 (Comments of Pakistani representative), 20 (China); Letter from Cuban Representative, supra note 160; Richard D. Lyons, Latin Nations At U.N. Delay Resolution On Haiti Invasion, N.Y. Times, July 31, 1994, at 10; supra notes 50-54, 64-65; infra notes 237, 249. See also Hoffmann, supra note 15, at 32-34 (citing hostility to Council's apparent broadening of the definition of threats to peace); Caron, supra note 15, at 552-53 (citing hostility to Council's apparent broadening of the definition of threats to peace); Farer, supra note 1, at 721-22; Stromseth, supra note 169, at 372.

\(^{204}\) See supra notes 48-54, 64-65, 189; infra notes 237-38.

\(^{205}\) See U.N. Doc. S/PV.3238, supra note 17, at 20 (China); Letter from Cuban Representative, supra note 160 (Cuba); supra notes 49-54 and accompanying text. See also Hannum, supra note 197, at 113-17, 467; Stromseth, supra note 169, at 372.

\(^{206}\) See supra notes 26-54 and accompanying text.


\(^{208}\) See supra notes 50-54 and accompanying text. But see Fox, supra note 197, at 775-76, 779 (arguing that sovereignty objections to election monitoring are "waning").

\(^{209}\) Franck, supra note 1, at 74-77; Reisman, supra note 26, at 7. In particular, rules regarding "free and fair" elections have undergone significant development. See id. at 4-9, 22-24; Gregory H. Fox, The Right to Political Participation in International Law, 86 Am. Soc'y Int'l. L. Proc. 249, 251-52 (1992).

\(^{210}\) See Donoho, supra note 22, at 840-43; Carothers, Democracy Promotion Under Clinton, supra note 2, at 13-17; Oscar Schachter, In Defense of International Rules on the Use of Force, 53 U. Chi. L. Rev. 113, 144 (1986); Schmably, supra note 70, at 516-26, 531-44.

\(^{211}\) See supra notes 50-54 and accompanying text. At the same time, the General Assembly has affirmed that the "will of the people" expressed in periodic genuine elections is the basis for a government's "authority." See G.A. Res. 46/137, supra note 28.
with other "internationalizing" factors. The intersection between human rights, democracy and international peace, while still in the early stages of evolution, was clearly brought to the forefront by the disruption of democracy in Haiti. This is particularly true in that the international community actively sponsored Haiti’s initial transition to democracy. Moreover, apart from the factually weak justification regarding refugees, the potential threat to peace caused by the disruption of democracy in Haiti appears to be the central justification for the Security Council’s sanctions against the coup. Thus, the Council’s decision to impose Chapter VII sanctions arguably may have established a revolutionary and, undoubtedly to some, dangerous precedent in this regard.

As set forth in Part V, however, a number of important political and institutional realities raise serious doubts as to the depth of the Security Council’s commitment to democracy. These realities and other Security Council decision-making issues will probably render Haiti a case of limited precedential value.

V. Future United Nations Actions to Restore Democracy After Haiti—Institutional and Political Impediments to Collective Action

There are, among other reasons, four related factors which probably will limit the Haitian precedent and inhibit U.N. actions to restore democracy. These factors, while sobering, should not lead to dire pessimism, however. They also highlight institutional reforms which might increase the international community’s willingness to use sanctions or other collective actions to restore, promote or preserve democracy in the future.

The first factor is that even the exceptional use of collective measures to counter disruptions of democracy is politically untenable given the current makeup of the U.N. membership. Although the current wave of democratization has wrought important changes in the existing world order, the U.N.’s membership remains decidedly undemocratic. Of the current 185 U.N. members, less than half can credibly claim a genuine democratic pedigree, including full political freedoms for its citizenry. Thus, for the majority of states, the implications of a Western-dominated Security Council empowered to restore democracy through mandatory collective measures are unpalatable.

If the Security Council’s authorization of force against Haiti establishes that disruptions of democracy constitute threats to international peace justifying Chapter VII action, even absent an overt military threat, what of similar recent disruptions of democracy such as those occurring in

212. The fact that the Council’s actions regarding Haiti occurred during a period of expanding Security Council authority in areas traditionally outside its jurisdiction, see supra notes 15, 117, 131, 166-71, lends credence to this view.
213. See supra notes 56-57 and accompanying text.
214. See supra notes 172-79 and accompanying text.
216. See supra note 194.
Sudan (1989),217 Myanmar (1990),218 Suriname (1990),219 Peru (1992),220 Algeria (1992),221 Sierra Leone (1992),222 Guatemala (1993),223 Nigeria (1993),224 and Gambia (1994)?225 If the disruption of democracy in Haiti posed a threat to peace, why doesn't the continuing denial of democratic rights in China, Saudi Arabia, Cuba, Zaire, Kenya and numerous other U.N. member states similarly pose threats to peace which justify collective action?226 In other words, if the Security Council is authorized to use mandatory sanctions to restore democracy because its disruption threatens peace, isn't it equally authorized to use sanctions to promote democracy where none exists, or to preserve it where it is threatened?227 That the fair and logically consistent answers to these questions are politically untenable228 demonstrates the problematic nature of a Haitian precedent. However, consistent application of such a precedent is an important element in legitimizing an institution's decision-making.229

All these sentiments were reflected in the debate over Resolutions 841 and 940.230 For example, to gain necessary support, the text of both resolutions emphasized the "unique" and "exceptional" nature of the Haitian crisis.231 Although factual support for asserting this uniqueness is ques-

217. See Alan Cowell, Military Coup In Sudan Ousts Civilian Regime, N.Y. TIMES, July 1, 1989, at 1.
221. See Democracy Denied In Algeria, N.Y. TIMES, July 24, 1992, at A24 (describing silence of Western democracies to the Algerian military's cancellation of elections).
222. See President of Sierra Leone Ousted; Troops Rule West African Nation, N.Y. TIMES, May 1, 1992, at A10.
223. See Golden, supra note 220.
225. One distinguishing factor is that only some of the coups just mentioned (Myanmar, Sierra Leone, Sudan) resulted in significant refugee flows across international borders. See supra notes 166, 175-80 and accompanying text. The use of refugee flows as a trigger for collective action, however, itself presents similar issues of consistency. See supra note 189.
226. But see supra note 22. Some such authoritarian regimes are even more guilty of creating refugees, displaced populations, grave human rights abuses and other "internationalizing factors" than was the Haitian military. Iran, Myanmar, Nigeria, Cuba and China are among the more obvious examples. See supra note 181.
227. See supra note 22.
228. Actions to create, preserve or restore democracy in large powerful states would also be difficult, if not impossible, as a practical matter. See infra note 278 and accompanying text.
230. See U.N. Doc. S/PV.3413, supra note 12, at 8 (Brazil), 10 (Nigeria), 19 (Spain), 25 (Oman), 25 (Pakistan); U.N. Doc. S/PV.3238, supra note 17, at 9 (Council President's statement), 12 (Venezuela), 15 (Pakistan), 17 (Brazil), 20 (China).
231. S.C. Res. 940, supra note 11, at 2; S.C. Res. 841, supra note 9, at 2.
tionable,\textsuperscript{232} the motivations for doing so are clear: acquiescence to the sanctions was acceptable only if no precedent for similar future action would be created. Similarly, several Council members cited requests for assistance from the OAS and Aristide as justifications for sanctions.\textsuperscript{233} This rationale tends to undermine the argument that the loss of democracy itself in Haiti created a threat to peace and raises implications probably never contemplated by the Security Council.\textsuperscript{234} These political implications were reflected in the Council's slow response to the crisis and will ultimately limit its value as a test case for the U.N.'s resolve to restore or preserve democracy in the future.

A second factor which will likely inhibit the use of collective measures to promote, preserve or restore democracy is the fear of Western domination revealed in the continuing influence of Article 2(7)'s prohibition of interference in matters "essentially within the domestic jurisdiction of any state."\textsuperscript{235} Although, by its terms, Article 2(7) "shall not prejudice" Chapter VII enforcement measures,\textsuperscript{236} the concept of non-interference was invoked repeatedly throughout U.N. debates regarding the crises in Iraq, Haiti, Somalia and Rwanda, and was the primary rhetorical foil utilized by those states opposing Security Council action in those countries.\textsuperscript{237} Similarly,

\begin{itemize}
    \item \textsuperscript{232} See supra notes 175-81, 217-27 and accompanying text.
    \item \textsuperscript{233} U.N. Doc. S/PV.3413, supra note 12, at 7 (Canada), 14 (Argentina), 23 (Russian Federation), 25 (Pakistan); U.N. Doc. S/PV.3238, supra note 17, at 12 (Venezuela), 17 (Brazil), 20 (China). Professor Franck has argued that collective action to support democracy could be justified by such an invitation. See Franck, supra note 1, at 85. Other authors have suggested that even unilateral action in this context is justified to support a "legitimate" democratically elected government. See Reisman, supra note 163; W. Michael Reisman, Humanitarian Intervention and Fledgling Democracies, 18 FORD. INT'L L.J. 794 (1995). But see Schachter, supra note 163, at 645 (arguing that Reisman fails to adequately support his thesis).
    \item \textsuperscript{234} With regard to restoring democracy, for example, the usurper is the de facto government—in full control of the state and its territory. Besides the potential for abuse, see infra notes 246-66 and accompanying text, a decision to support a government in exile with force based solely upon "invited intervention," clearly requires choosing sides. This presents troubling implications for the right of self-determination when the usurper has popular support (e.g., the Sandinista ouster of Somosa in Nicaragua). In situations such as Haiti, in which the replaced government took power with overwhelming popular support expressed in a free and fair election, this potential is negligible. Another important issue is what constitutes the legal justifications for collective action by invitation. If, for example, the deposed "legitimate" government requests U.N. intervention, is it necessary for the Council to find a threat to peace in order to invoke collective measures? Unlike consent in peace-keeping, the invitation in this case comes from only one party to the dispute—the party who is not in control of the subject territory. It is likely that this factor and other realities would require use of Chapter VII. Moreover, the Security Council is presumably limited to the authority granted to it by member states through the Charter. This would indicate that a threat to peace, which is the Charter prerequisite for mandatory actions, must be met even if the deposed government requests forcible intervention. See supra notes 113-18, 136-49 and accompanying text. Since the Council explicitly relied on Chapter VII despite the Aristide government's "invitation," it appears that the Council agrees.
    \item \textsuperscript{235} U.N. CHARTER art. 2(7).
    \item \textsuperscript{236} Id.
    \item \textsuperscript{237} Regarding Haiti, for example, see United Nations, General Assembly; Provisional Verbatim Record of the 71st Meeting, at 41-42, U.N. Doc. A/47/PV.71 (1992)
the U.N. has generally treated extra-constitutional changes in government as an exclusively domestic political concern within the confines of Article 2(7). The historical success of this proposition is hardly surprising given the self-interests of a very undemocratic U.N. membership, whose survival demands a broad interpretation of non-interference.

Like many Charter provisions, the principle of non-interference embodied in Article 2(7) is an extraordinarily vague, elastic concept with a long history of manipulation. There is ample evidence to support the cynical view that the concept of non-interference primarily serves as a convenient excuse for inaction and is, at its worst, a self-serving device for tyrants to preserve power through oppression. The principle of non-interference, however, is not solely a device to avoid international scrutiny. Nor is it simply an atavistic, instinctual expression of nationalism or an obsolete concept of absolute sovereignty. Rather, for the vast majority of U.N. member States, the principle of non-interference is an important counterweight to a Western-dominated new world order. Indeed, the U.N.'s historical failure to act aggressively to restore disrupted democracy and its controversial response to the situation in Haiti demonstrate that less developed countries, non-aligned nations and surviving socialist states cling tightly to the concept of non-interference.


239. See supra note 194.

240. It is an unlikely coincidence that the world's worst abusers of human rights, such as the Peoples Republic of China, North Korea, Myanmar, Iran and Indonesia, are also the most vociferous champions of the principle of non-interference. See, e.g., Alan Riding, China Wins Fight On Rights Groups, N.Y. Times, June 17, 1993, at A15; A.M. Rosenthal, Do Gods Get Angry?, N.Y. Times, June 18, 1993, at A27.

241. General Assembly resolutions and debates clearly reflect a fear of domination (real or imagined) and emphasize the paramount importance of sovereignty and non-interference. See supra notes 50-54, 197, 203-11, 237-38 and accompanying text. For example, a recent resolution regarding the U.N.'s involvement in election monitoring "recognized that no single political system or electoral process is "equally suited to all nations" and that monitoring "should not call into question each state's sovereign right, in accordance with the will of its people, freely to choose and develop its political, social, economic and cultural systems whether or not they conform to the preferences of other States." G.A. Res. 46/137, supra note 28. See supra notes 51-54. Similarly, General Assembly resolutions on self-determination continue to focus on decolonization, external threats to sovereignty and non-intervention. See, e.g., G.A. Res. 46/87, U.N. GAOR, 46th Sess., Supp. No. 49, at 155, U.N. Doc. A/46/49 (1991); G.A. Res. 46/88, U.N. GAOR, 46th Sess., Supp. No. 49, at 157, U.N. Doc. A/46/49 (1991). Even recently
manipulate the politics of a bipolar world to gain advantage, avoid scrutiny, or secure protection, these member states favor an expansive view of domestic jurisdiction which preserves sovereign prerogatives. This world view similarly implies a narrow interpretation of threats to peace, thereby limiting Security Council action under the Western-dominated new world order.

Significantly, the U.N. has had relatively little experience with Chapter VII enforcement actions. Thus, although the "threat to peace" criterion is almost fifty years old, its contours are still underdeveloped. Moreover, this key Charter requirement is highly elastic, if not entirely indeterminate. As a result, the Security Council has a great deal of flexibility to interpret which factual circumstances pose threats to international peace. Indeed, the Council’s interpretation of this critical phrase is in


243. This reluctance to concede inroads on state sovereignty and the mixed motives behind it should not be surprising. Individual states remain the creative centers of international law and international decision-making. See Martti Koskenneimi, The Future of Statehood, 32 Harv. Int’l L.J. 397 (1991). Strident nationalism and non-democratic rule are still the predominant characteristics of the international order. Thus, most governments’ interests remain, as before, centered on jealous preservation of state sovereignty—and thereby their own prerogatives, whether legitimate or corrupt.

244. Despite hundreds of armed conflicts since 1945, the Security Council has only authorized force or broad economic sanctions in about a dozen situations (Korea, the Congo, Southern Rhodesia, South Africa, Iraq, Yugoslavia, Somalia, Libya, Liberia, Rwanda and Haiti). See supra notes 146-56. In some of these cases the Security Council did not expressly cite Chapter VII nor clearly identify the threat to peace. All but four of these cases (Korea, the Congo, Southern Rhodesia, South Africa) occurred after 1990. See supra notes 187-88.


practice, if not by design, much more an expression of political will than a discourse about the intended meaning of legal terms. Many states, believing the Security Council to be both Western-dominated and largely unprincipled, are understandably chary about the Council's recent expansive view of this key Charter term.

The Security Council's recent actions in Haiti appear to give credence to fears that a Western-dominated Security Council is willing to stretch its definition of threats to peace to include any situation in which a Western power's interests are implicated. The Council's mandatory Chapter VII sanctions against Libya are a prime example. At the behest of the United States, France, and the United Kingdom, the Council ordered mandatory restrictions on international travel and communications with Libya. The purpose of these sanctions was to force Libya to surrender two of its citizens to British or American authorities to stand trial for suspected involvement in terrorist attacks on Pan Am flight 103 over Lockerbie, Scotland, in December 1988 and UTA flight 722 in Niger in September 1989.

247. See Goodrich & Hammond, supra note 24, at 207, 263-66; Thomas H. Franck, The "Powers of Appreciation:" Who Is the Ultimate Guardian of U.N. Legality?, 86 Am. J. INT'L L. 519, 520 (noting that a proposal for the I.C.J. to make a "preliminary determination" of each U.N. organization's competence to the I.C.J. was rejected during Charter negotiations); Reisman, supra note 246, at 93-95; Smith, supra note 111, at 305; Watson, supra note 246, at 8-14 (describing the rejection of proposals to give the I.C.J. judicial review powers). The creation of detailed criteria defining "aggression" was also rejected by the major powers at Dumbarton Oaks. See Hoffmann, supra note 15, at 6-7.

248. By its nature, the term "threat to peace" is probably neither suitable for nor susceptible to precise definition, depending as it does on an infinite variety of factual circumstances. Therefore, the fact-finding and decision-making processes for identifying threats to peace are critical. See Caron, supra note 15, at 555-62; infra notes 262-66 and accompanying text.


The connection between Libya's failure to turn over the two suspects in these seven-year-old bombings and the maintenance of international peace is not overwhelmingly apparent. Ostensibly, Libya's intransigence constituted a threat to peace because it lent support to international terrorism, which in turn posed a threat to international peace and security. Although support of international terrorism may clearly threaten international stability, it is much less clear why Libya's refusal to allow extradition of its citizens accused of terrorism to the United States also did so.  

The threat to peace posed by the coup in Haiti is similarly indirect, premised solely on the destabilizing effects that the disruption of democracy and an accompanying refugee flow might have on regional stability.  

Despite its noble intentions, the Security Council's factual basis for finding a threat to international peace in Somalia is also subject to question. These examples of recent, unprecedented Council activity appear to be based more on expediency than on principled decision-making. The Council's actions also reflect a selectivity which may be best explained by the influence of the United States and a Western agenda.

All these examples, including Haiti, share significant characteristics which tend to exacerbate fears of an activist, Western-dominated Security Council. First, a threat to international peace justifying Chapter VII sanctions may involve a crisis which is essentially localized within a state's borders and need not involve an overt, immediate or clearly tangible use of military force. Second, recent International Court of Justice decisions suggest that the Security Council may enjoy largely unreviewable discretion to determine whether events pose the prerequisite threat to peace. Third, 


252. See supra notes 160-213 and accompanying text.

253. See Glennon, supra note 160, at 72; Gordon, supra note 15 at 572; supra notes 162, 166. The best argument that Somalia presented a threat to peace rests on the potential effect that disintegration of the Somalia government might have on neighboring states. 

254. The potential for ad hoc decision-making by the Council is, to a degree, built into the U.N. system. See, e.g., Reisman, supra note 15, at 93-95. Nor is it necessarily a recent phenomenon. For example, the threats to international peace posed in the cases of South Africa, see supra note 188, and Southern Rhodesia, see supra note 187, were unclear and were certainly less threatening than numerous other contemporaneous situations. In light of new-found Security Council unity, decision-making founded primarily on expediency and a Western political agenda is a threatening prospect for the less powerful states. See supra notes 255-66 and accompanying text.

255. The ICJ's decision on provisional remedies in the Lockerbie case, supra note 147, has spawned considerable debate among academics regarding the limited potential for judicial review of Council decisions under Chapter VII. See generally Jose E. Alvarez,
the Council's decisions reflect a great deal of selectivity and inconsistency.\footnote{256}

Most importantly, these examples seem to demonstrate that the Security Council will find a threat to peace justifying mandatory collective action only where the permanent five members' interests are affected. In numerous other cases of political upheaval, internal conflict and humanitarian crises apparently indistinguishable from Haiti, the Council has failed to act decisively, if at all. Some of the more obvious examples include the Council's failure to order sanctions against Israel for its defiance of Council resolutions,\footnote{257} its tepid (or non-existent) response to numerous violent coups,\footnote{258} its veto-based inability to even censure the permanent five for egregious violations of the peace in Panama, Grenada, Afghanistan, Tibet and elsewhere, and its aggressive protection of Iraqi Kurds and Shiites, in contrast to its inaction with respect to other oppressed minorities around the world.

This lack of consistency arguably reflects decision-making based upon the political interests of powerful states rather than upon principled fact-finding and adherence to standards.\footnote{259} Although otherwise laudable, the Council's justifications for acting in Haiti are difficult to distinguish from other even more egregious denials of democracy and human rights violations.\footnote{260} Cynics suspect that the only actual distinction is the desire of the United States and France to resolve a crisis which implicated their own national interests. The fact that the Council also appears incapable of effectively carrying out its orders without U.S. military support heightens

\footnote{Judging the Security Council, 90 Am. J. Int'l. L. 1 (1996). Challenging U.S. demands to extradite its nationals, Libya argued that the Council's actions in support of those demands were ultra vires because Libya's failure to turn over the suspects did not constitute a threat to international peace and security and was allowable under the 1971 Montreal Convention. \textit{Lockerbie}, supra note 147, at 125-26, 203-04. The ICJ rejected Libya's arguments for provisional relief, ruling that the Security Council's Resolution regarding Libya took precedence over the Montreal Convention and was binding on the ICJ, at least with regard to the provisional relief requested. \textit{Id.} at 126-27. One clear implication of the Court's decision is that the ICJ lacks the power of judicial review. This view is consistent with the Charter and its \textit{travaux préparatoires}. See \textit{Certain Expenses of the United Nations}, supra note 43, at 168. See also Watson, supra note 246, at 8-14. Some commentators, however, have found room in the Court's \textit{Lockerbie} opinion for potential judicial review of future Council decisions. See Franck, supra note 247, at 52-23; Reisman, supra note 15, at 92-93; Watson, supra note 246, at 22-28. However, given the circumstances of the Court's decision, prior case law and the Charter's \textit{travaux préparatoires}, it is doubtful that the Security Council's future decisions to impose mandatory sanctions will be subjected to any form of meaningful institutional review.

\footnote{256} See supra notes 178-81, 189-96, 217-28 and accompanying text.


\footnote{258} See, e.g., supra notes 190-92, 217-25.

\footnote{259} See generally Caron, supra note 15, at 558-60, 563-72 (discussing the legal and practical "means" for dominance); Reisman, supra note 15, at 95-96; Roberts, supra note 15, at 616-17.

\footnote{260} See supra notes 178-81, 217-28.
this growing atmosphere of suspicion and insecurity. Practical dependence on U.S. political will arguably reduces Security Council authority to a mere institutional cover for the U.N.'s most powerful member, thereby giving U.S.-initiated actions the patina of multilateralism.

The third factor which may prove an impediment to U.N. actions to restore democracy is the widespread perception that Security Council decision-making lacks institutional legitimacy. With the demise of cold war politics, many non-western countries are reasserting old misgivings about the decision-making process of the U.N. and the ability of the major powers to dominate the Security Council. Distrust among third world states regarding Security Council activism in the new world order is based, at least in part, on perceived flaws in the U.N.'s institutional structure. For example, Nugroho Wisnumurti of Indonesia, a spokesperson for the non-aligned movement, recently declared that the Security Council's unrepresentative nature, lack of transparent decision-making and history of selectivity were significant obstacles to any enhancement of U.N. peace-keeping or peacemaking operations in the near future. Among other things, non-aligned states want to expand Security Council membership (including increasing the number of permanent representatives), to make decision-making more open and visible, to eliminate the veto, to improve the credibility of U.N. fact-finding, and to provide the General Assembly with greater power, including a true legislative role.

261. Virtually all Council-ordered activities, including peace-keeping, are dependant on U.S. financial and military support. See Richard Bernstein, Sniping Is Growing At The U.N. Over Weakness In Peacekeeping, N.Y. TIMES, June 21, 1993, at A6; Michael R. Gordon, New Strength For U.N. Peacekeepers: U.S. Might, N.Y. TIMES, June 13, 1993, at A16. See also Caron, supra note 15, at 554 n.8; Weston, supra note 147, at 525 (describing how, in Professor Weston's view, the Gulf War demonstrated "how complete" U.S. domination over the U.N. "policing mechanisms" has become).


263. See supra note 262.


265. See supra notes 249-62. This recent reform movement and accompanying arguments about the credibility and fairness of U.N. decision-making has generated substantial recent literature by Western commentators regarding the Council's institutional legitimacy and democracy within the U.N. system. See, e.g., HOFFMANN, supra note 15, at 37-47; Caron, supra note 15, at 555-62, 565, 572; Richard L. Gaines, On the Road to a
1996 Evolution or Expediency

The motivations for these proposed institutional reforms may, of course, be self-serving. Some states, for example, may desire to reform U.N. decision-making precisely in order to forestall U.N. actions aimed at promoting democracy, rather than to increase the institution's legitimacy. Nevertheless, reforms which improve the perceived fairness, consistency and credibility of the decision-making process are essential to gain widespread support for any mandatory actions to restore democracy. In the absence of institutional safeguards to protect non-Western interests, the U.N. majority will undoubtedly continue to resist expansive use of Chapter VII, even at the cost of goals such as representative democracy and human rights.266

A final factor which will, at least in the short term, work to inhibit the Haitian precedent could be termed institutional fatigue and impracticability. The U.N. currently deploys about 70,000 personnel in sixteen peace-keeping operations around the world, at a cost of approximately four billion dollars per year.267 During a 1993 meeting of the Security Council, the Secretary-General briefed Council members on twenty-two “trouble spots” requiring attention and reportedly had trouble distinguishing among the numerous operative Security Council resolutions.268 A high-ranking U.N. official noted that Jane’s Defense listed seventy-five on-going crises around the world in 1993.269 More significantly, the U.N. continues to experience mixed success in its peace-keeping and humanitarian operations as the demands on such operations grow.270 Among the many


266. See supra notes 237, 241, 249 and accompanying text. The Council is not, of course, expressly empowered under the Charter to seek such goals, except to the extent that they may implicate international peace and security. See supra notes 113-18, 136, 149 and accompanying text. The definitional flexibility of the Charter’s threat to peace requirement, however, leaves significant room for such action, as witnessed by the Council’s recent interventions in Somalia, Rwanda and Haiti. See supra notes 117, 131, 166, 171, 178.


269. Rowe, supra note 267.

270. Operations in Cambodia, Angola, Western Sahara, Somalia and the Balkans have all encountered significant setbacks and mixed results under difficult conditions. See A 'Major Tragic Setback': UNAVEM II Mandate Extended, supra note 4; Bernstein, supra note 267; Cambodia: Deep Concern Expressed Over Implementation Of Paris Agreements
problems facing U.N. efforts is a significant shortfall in financial resources. The current financial and institutional strain on the U.N. is enormous and appears at times to have virtually overwhelmed its organizational capacity.

Serious questions also remain about the efficacy of any U.N. action to restore democracy in Haiti and elsewhere without extensive involvement in the political and economic structure of the country. Simply holding elections and returning President Aristide to office, for example, may be insufficient to create a viable democracy in Haiti absent a political culture and institutions which safeguard it. Thus, if the U.N.'s goal is to nurture a long-term, genuine democracy and to affirm the emerging right to democratic governance in a meaningful way, then building an infrastructure which protects democracy will be necessary. At minimum, the creation of safeguards for an independent judiciary, reorganization and professionalization of the police and military forces and general economic revitalization are necessary.

Increasingly, U.N. bureaucrats have leveled legitimate complaints that member states have dumped complex, problematic situations onto the organization without providing the resources or support necessary to

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272. See, e.g., Lewis, supra note 267; Bernstein, supra note 267.


275. See generally Texier Report, supra note 71; Huntington, supra note 194, at 208-79; Schnably, supra note 70.
resolve them.\textsuperscript{276} The resulting strain has caused some states and U.N. officials to become increasingly reluctant to intervene in internal political or ethnic conflicts which are not likely seriously to threaten international peace.\textsuperscript{277} The complexity and expense of restoring democracy (as well as the number of potential candidates) are likely to similarly inhibit collective measures against future disruptions of democracy.

The sobering effect of this sentiment can be illustrated by comparing the U.N. response in Haiti with larger, more popular candidates for U.N. actions to restore democracy. Haiti is a very small island country with a tiny and ineffectual military. Nevertheless, it took nearly three years, severe and costly economic sanctions and almost 20,000 U.S. soldiers to secure the country for President Aristide's return.\textsuperscript{278} Committing the U.N. to such an undertaking in larger, more powerful countries such as Nigeria, Algeria and Myanmar would be a daunting proposition for a U.N. already greatly overextended due to world circumstances.

Conclusion

The Security Council's actions in Haiti, taken at face value, reflect a timely evolution in the U.N.'s commitment to democracy. Most significantly, the Council's actions seem to indicate that the disruption of democratic rights, at least when coupled with refugee flows, may constitute a threat to international peace even in the absence of overt military conflict. There are significant reasons, however, to doubt the depth of this new commitment to democratic rule. First, the factual predicates for the Council's finding a threat to peace were tenuous and at odds with its failure to act in similar or worse situations elsewhere. Such inconsistent decision-making raises cynical concerns that future efforts to restore democracy will be limited to small island states which cast off refugees toward U.S. shores. Although its actions in Haiti suggest that the disruption of democracy can be an appropriate justification for Chapter VII enforcement actions, the Security Council will probably resume its tepid response to disruptions of democracy except in those cases where a major Western power's interests are implicated.

Second, the U.N. majority is likely to resist any future Chapter VII sanctions to restore democratic rule elsewhere. This resistance is based upon both the self-serving desire of states to preserve their sovereign prerogatives and the legitimate distrust of a new world order dominated by the

\textsuperscript{276} See Bernstein, supra note 267; Rowe, supra note 267. See also Ruth Marcus, Clinton Seeks Limits On Peace Keeping; U.N. "Must Learn When To Say No", Wash. Post, Sept. 28, 1993, at A1 (President Clinton urging limits on new peace-keeping).

\textsuperscript{277} See supra note 276.

\textsuperscript{278} See supra notes 65-104 and accompanying text. The U.N. could, of course, choose to employ less intrusive means of restoring democracy, such as limited economic sanctions or consensual deployment of peace-keepers. However, the experience of Haiti itself demonstrates the ineffectiveness of such measures in actually restoring democracy. See supra notes 65-104 and accompanying text. Nevertheless, such actions may have important deterrence value as well as promoting symbolic and normative goals.
United States and its allies. Institutional issues regarding Security Council decision-making will likely work to limit the precedential impact of Haiti. Adverse to international scrutiny and opposed to Western hegemony, the U.N. majority will undoubtedly resist intervention in future coups, suggesting that Haiti was, as described by the Council President, a "unique and exceptional situation [which] should not be regarded as constituting a precedent." These factors suggest that significant institutional changes at the U.N., particularly in its decision-making processes, will be necessary before the international community can be persuaded to take meaningful steps to promote, protect and preserve emerging rights to democratic government.

279. U.N. Doc. S/PV.3238, supra note 17 (Council President stating that members of the Council had asked him to say so).