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## Security Council Fact-Finding: A Prerequisite to Effective Prevention of War

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## SECURITY COUNCIL FACT-FINDING: A PREREQUISITE TO EFFECTIVE PREVENTION OF WAR

*John Quigley\**

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## I. INTRODUCTION

With increasing frequency, the Security Council is being called upon to cope with breaches of the international peace. This develop-

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ment has brought new importance to the capacity of the United Nations Security Council to carry out fact-finding, because in order to deal with a breach of peace allegation, the Council must know what has occurred. In 1992, the Security Council's handling of a complaint that Libya planted a bomb on a commercial airliner raised sharply the question of the adequacy of Security Council fact-finding.<sup>1</sup> Without undertaking its own investigation, the Council imposed sanctions on Libya on the strength of information supplied by the United States and Britain.<sup>2</sup>

Under the United Nations Charter, the Security Council bears primary responsibility for handling breaches of the international peace.<sup>3</sup> The parties to an incident, however, typically give widely diverging versions of the facts, each state portraying events in a light favorable to itself. Truth, it is well said, is the first casualty of war.<sup>4</sup> Often the events are not observed by impartial parties, and the Council is hard pressed to assess the competing accounts.

The Security Council is explicitly given a power of investigation only in Chapter 6 of the U.N. Charter, where Article 34 reads: "The Security Council may investigate any dispute, or any situation which might lead to international friction or give rise to a dispute, in order to determine whether the continuance of the dispute or situation is likely to endanger the maintenance of international peace and security."<sup>5</sup> This language is aimed at a situation in which a dispute has arisen, and the issue becomes whether the situation is sufficiently serious that it may endanger the peace.

This is different from a situation in which one state alleges that another has committed aggression. Threats to the peace, breaches of the peace, and aggression are covered in the Charter in Chapter 7, which has no article on investigation comparable to Article 34.<sup>6</sup> It is, however, generally agreed that the Council does possess a power to investigate regarding any matter within its competence.<sup>7</sup> The Council has established committees to carry out various kinds of investigations, and its power to do so has not been challenged.<sup>8</sup>

1. See *infra* notes 408-49 and accompanying text.

2. See *infra* note 423 and accompanying text.

3. U.N. CHARTER art. 2, ¶ 4, ch. 7.

4. "The first casualty when war comes is truth." Senator Hiram Johnson, Speech in the U.S. Senate (1917).

5. U.N. CHARTER art. 34.

6. U.N. CHARTER ch. 7.

7. LELAND GOODRICH ET AL., CHARTER OF THE UNITED NATIONS: COMMENTARY AND DOCUMENTS 267 (1969).

8. *Id.* at 267-68.

This article examines a number of incidents in which the Security Council has been asked to act on a breach of the peace allegation. In some, the Council took no action because it decided, without investigating, that the allegations were baseless. In others, as in the 1992 situation involving Libya, it took action based on facts presented by the complainant. In still others, the Council ordered an investigation before deciding whether to act. The incidents examined involve events in Greece, Albania, Palestine, Korea, Egypt, Lebanon, Vietnam, the Dominican Republic, Grenada, Nicaragua, Libya, Panama, and Iraq.

In many of these cases, the article argues, the Security Council either took or refrained from action without having gained information about the true state of affairs. The Security Council has no established mechanism for fact-finding. The article argues that the Security Council's fact-finding capability is inadequate, and that more active fact-finding is needed so that the Council can make rational decisions about breach of the peace complaints.

## II. GREECE

The Security Council's first major fact-finding effort involved the Balkans, where Greece experienced civil unrest following World War II.<sup>9</sup> While Germany occupied Greece (1941-44), a military resistance movement developed, prominent in which was the National Liberation Front (E.A.M.), which represented leftist and centrist factions; the Communist Party of Greece additionally played a major role in this movement.<sup>10</sup> Independently of the E.A.M., a small rightist force loyal to King George of Greece also operated against German occupation troops.<sup>11</sup> Britain supported all the resistance groups but promoted primarily the rightist force.<sup>12</sup> As Germany withdrew in 1944, the E.A.M. controlled most of Greece.<sup>13</sup> The British army, with E.A.M. consent, occupied Greece and brought to power right-of-center politicians who had functioned under British aegis as a government in exile in Cairo during the war.<sup>14</sup>

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9. John O. Iatrides, *Introduction*, in *GREECE IN THE 1940S: A NATION IN CRISIS* 145-55 (John O. Iatrides ed., 1981) [hereinafter *A NATION IN CRISIS*].

10. John L. Hondros, *The Greek Resistance, 1941-1944*, in *A NATION IN CRISIS*, *supra* note 9, at 37, 39-42.

11. Nicolas Svoronos, *Greek History 1940-1950: The Main Problems*, in *A NATION IN CRISIS*, *supra* note 9, at 1, 9.

12. Christopher M. Woodhouse, *The National Liberation Front and the British Connection*, in *A NATION IN CRISIS*, *supra* note 9, at 81.

13. George M. Alexander, *The Demobilization Crisis of November 1944*, in *A NATION IN CRISIS*, *supra* note 9, at 156-57.

14. Iatrides, *supra* note 9, at 145.

Britain began supporting that government with economic and military assistance.<sup>15</sup> The Communist Party agreed to the rightist government, even though Britain's motive for occupying Greece and for bringing in the Cairo-based group was to keep the Communist Party from assuming control of Greece.<sup>16</sup> Although the rightist Greek government was inclined to compromise with the Greek left, Britain forced it to order the dissolution of the E.A.M.<sup>17</sup> In protest, the communists scheduled a street demonstration in Athens and asked permission from the prime minister, who consented but then changed his mind.<sup>18</sup> The demonstration proceeded, and government troops opened fire, causing death and injuries.<sup>19</sup>

Embarrassed by his role, the prime minister asked the leader of another party to form a new government, but British officials convinced the other leader to decline, prevailing upon the prime minister to remain.<sup>20</sup> Civil fighting broke out, pitting the E.A.M. against the smaller royalist forces backed by the British army.<sup>21</sup> The United States flew in British troops, which took control of Athens. The E.A.M. agreed to disarm.<sup>22</sup> Under British, and increasingly U.S., tutelage, the Greek government repressed the left and center, leading the left to initiate civil war in late 1946; the leftist forces came to control large areas of Greece.<sup>23</sup>

Turning to the United Nations, Greece charged that Yugoslavia, Bulgaria, and Albania supported the insurgents through military training and the supply of arms and ammunition.<sup>24</sup> Yugoslavia, Bulgaria,

15. LEFTEN S. STAVRIANOS, GREECE: AMERICAN DILEMMA AND OPPORTUNITY 64-119 (1952); Svoronos, *supra* note 11, at 12.

16. Svoronos, *supra* note 11, at 11; Lars Baerentzen, *The Liberation of the Peloponnese, September 1944*, in A NATION IN CRISIS, *supra* note 9, at 131.

17. Baerentzen, *supra* note 16, at 126-27.

18. Alexander, *supra* note 13, at 165-66.

19. Iatrides, *supra* note 9, at 146.

20. *Id.* at 133; 406 PARL. DEB., H.C. (5th ser.) 946 (1944).

21. Alexander, *supra* note 13, at 166.

22. STAVRIANOS, *supra* note 15, at 141-45.

23. *Id.* at 179.

24. Letter from the Acting Chairman of the Delegation of Greece to the Secretary-General, and Enclosed Memorandum, U.N. SCOR, 1st Sess., 2d series, Supp. 10, at 169, Annex 16, U.N. Doc. S/203 (1946) (stating that the three states "are lending their support to the violent guerrilla warfare now being waged in northern Greece against public order and the territorial integrity of my country").

and Albania asked to be heard before the Security Council;<sup>25</sup> the Council invited all three to participate and they accepted.<sup>26</sup> Under the U.N. Charter, it should be noted that a state which is a party to a dispute is to be invited to participate without vote in Council meetings.<sup>27</sup>

To determine whether Greece's three neighbors were helping the Greek rebels, the United States proposed to the Security Council that it appoint an investigating commission.<sup>28</sup> The Council established a commission composed of a representative of each of the Council's eleven member states.<sup>29</sup> While the commission was in Greece, President Harry Truman launched a major U.S. military and economic aid program for Greece.<sup>30</sup> Truman justified the aid on the ground that "[t]he very existence of the Greek state is today threatened by the terrorist activities of several thousand armed men, led by Communists. . . ."<sup>31</sup> Under the rubric of the Truman Doctrine, the policy led to the United States taking over Britain's shadow role behind the Greek government.<sup>32</sup> The Soviet Union criticized the U.S. aid program in Greece as unilateral interference in Greek internal affairs, because the United States initiated the aid, by its own acknowledgement, in response to the unstable political situation in Greece.<sup>33</sup>

25. Letter from Mr. Hysni Kapo, Minister Plenipotentiary and Representative of the Government of the People's Republic of Albania, to the Secretary-General, U.N. SCOR, 1st Sess., 2d series, Supp. 10, at 191, Annex 17, U.N. Doc. S/207 (1946); Letter from Lieutenant-General Wladimir Stoytcheff, Bulgarian Political Representative to the United States of America, to the Secretary-General, U.N. SCOR, 1st Sess., 2d series, Supp. 10, at 191, Annex 18, U.N. Doc. S/208 (1946); Letter from Mr. Simic, Minister for Foreign Affairs of the Federal People's Republic of Yugoslavia to the Secretary-General, U.N. SCOR, 1st Sess., 2d series, Supp. 10, at 192, Annex 19, U.N. Doc. S/209 (1946).

26. U.N. SCOR, 1st Sess., 2d series, 84th mtg. at 588, 613 (1946).

27. U.N. CHARTER art. 32.

28. U.N. SCOR, 1st Sess., 2d series, 85th mtg. at 629 (1946) (statement of Mr. Johnson, U.S., proposing "a commission of investigation to ascertain the facts relating to the border violations along the frontier between Greece on the one hand, and Albania, Yugoslavia and Bulgaria on the other," since present information did not permit to "pre-judge the issues").

29. S.C. Res. 15, U.N. SCOR, 1st Sess., at 6, U.N. Doc. S/INF.2/Rev.1 (1946).

30. *Recommendations on Greece and Turkey: Message of the President to the Congress*, 16 DEPT ST. BULL. 534 (1947).

31. *Id.*

32. Memorandum by the Under Secretary of State (Acheson) to the Secretary of State: Crisis and Imminent Possibility of Collapse in Greece (Feb. 21, 1947), in 5 FOREIGN REL. U.S., 1947, at 30-31 (1971).

33. U.N. SCOR, 2d Sess., 126th mtg. at 698-99 (1947) (statement of Mr. Gromyko, U.S.S.R.).

The United States was the prime mover behind the establishment of the commission, concerned, like Britain, about stopping the Greek left.<sup>34</sup> Its officials acknowledged privately that the essential issue in Greece was domestic, rather than one of outside fomentation,<sup>35</sup> however in the Security Council, U.S. delegates focused attention on the border issue.<sup>36</sup>

After several months of gathering data, the commission reported in June 1947.<sup>37</sup> It concluded that Yugoslavia had provided training for Greek rebels at a camp in Yugoslavia and had given them arms and ammunition.<sup>38</sup> In 1945, Albania, the commission said, had trained Greek rebels over a six-month period and provided arms and ammunition more recently.<sup>39</sup> The commission could not confirm that Bulgaria provided arms or ammunition but said that it allowed Greek rebels to use Bulgarian territory to go to and from Yugoslavia.<sup>40</sup>

Following the commission's report, the United States proposed a draft resolution to ask Yugoslavia, Bulgaria, and Albania not to aid the Greek rebels.<sup>41</sup> The draft resolution also suggested that camps in those countries housing refugees from Greece be placed under international supervision<sup>42</sup> and a new commission be established to monitor the northern Greek frontier.<sup>43</sup> Nine Council members voted for the

34. See Secretary of State (George Marshall) to the Embassy in Greece, (Jan. 21, 1947), in 5 FOREIGN REL. U.S., 1947, at 9-11 (1971).

35. The Ambassador in Greece (MacVeagh) to the Secretary of State, (Feb. 11, 1947), in 5 FOREIGN REL. U.S., 1947, at 17 (1971) (stating "even should the UN succeed in establishing border security its success can mean nothing as regards objectives of principal interest to the US unless the internal problem is also solved"); Chief of the American Economic Mission to Greece (Porter) to the Under Secretary of State for Economic Affairs (Clayton) (Feb. 17, 1947) in 5 FOREIGN REL. U.S., 1947, at 21 (1971) (stating "[t]he situation in Greece . . . is very discouraging, but not hopeless"); Chief of the American Economic Mission to Greece (Porter) to the Secretary of State, (Feb. 19, 1947) in 5 FOREIGN REL. U.S., 1947, at 26 (1971) (stating that "complete disintegration . . . is already far along," and that the "next few months should determine whether Greece will collapse"); Memorandum by the Under Secretary of State (Acheson) to the Secretary of State: Crisis and Imminent Possibility of Collapse in Greece, (Feb. 21, 1947), in 5 FOREIGN REL. U.S., 1947, at 29 (1971) (referring to a "probability that Greece will be unable to maintain her independence").

36. U.N. SCOR, 2d Sess., 123d mtg. at 618 (1947) (statement of Mr. Austin, U.S.).

37. Report to the Security Council by the Commission of Investigation Concerning Greek Frontier Incidents, U.N. SCOR, 2d Sess., Spec. Supp. 2, Vol. I U.N. Doc. S/360/Rev.1 (1947).

38. *Id.* at 106-07.

39. *Id.* at 107-08.

40. *Id.* at 108.

41. U.N. SCOR, 2d Sess., 170th mtg. at 1602 (1947).

42. *Id.* at 1606.

43. *Id.* at 1610.

draft resolution, with Poland and the Soviet Union, a permanent member, voting against it; thus, the draft resolution failed.<sup>44</sup> As a consequence, the Security Council was unable to take any action on the Greek situation.<sup>45</sup>

The commission was criticized by the Soviet Union, which viewed it as a tool of Britain and the United States for pursuit of their own aims in Greece.<sup>46</sup> The Soviet Union tried unsuccessfully to get the Council to focus on the civil fighting throughout Greece, not just the border issue, and to examine the role of Britain and the United States in Greece.<sup>47</sup> Those two states, however, were successful in keeping the Council's focus on the border issue.

Greece was experiencing a serious internal conflict, and one in which Britain and the United States played a major role by supporting the rightist government.<sup>48</sup> Yugoslavia, and to a lesser extent Bulgaria and Albania, as the commission found, supported the leftists.<sup>49</sup> Under international law, outside support for one party in a civil conflict is prohibited; but it is permitted in response to outside support given to another party in the civil conflict.<sup>50</sup> Thus, to determine an appropriate posture for the Security Council, an investigation should have included not only the border issue but the U.S.-British role in support of Greece's government.

The United States tried to portray the outside assistance from Greece's northern neighbors as the primary cause of ferment in Greece,

44. *Id.* at 1612.

45. After the Security Council stalemated on the Greek question, the United States took the issue to the General Assembly, which established an investigating committee, G.A. Res. 109, U.N. GAOR, 2d Sess., at 13, U.N. Doc. A/519 (1947). Like the Security Council's commission, it reported assistance to the Greek rebels by the governments of Yugoslavia, Albania, and Bulgaria. *Report of the Special Committee on the Balkans*, U.N. GAOR, 3d Sess., U.N. Doc. A/574 (1948); *Supplementary Report of the United Nations Special Committee on the Balkans*, U.N. GAOR, 3d Sess., U.N. Doc. A/644 (1948). On the basis of these reports, the Assembly resolved that the outside aid "endangers peace in the Balkans, and is inconsistent with the purposes and principles of the Charter of the United Nations," and called on Yugoslavia, Albania, and Bulgaria to cease support to the Greek rebels; G.A. Res. 193, U.N. GAOR, 3d Sess., at 18, U.N. Doc. A/810 (1948).

46. *Cf.* U.N. SCOR, 2d Sess., 153d mtg. at 1251-54 (1947) (statement of Mr. Gromyko, U.S.S.R.).

47. *Id.* at 1247-53.

48. Lawrence S. Wittner, *American Policy Toward Greece, 1944-1949*, in *A NATION IN CRISIS*, *supra* note 9, at 229-38.

49. *Cf.* Iatrides, *supra* note 9, at 203-04.

50. Oscar M. Schachter, *The Right of States to Use Armed Force*, 82 MICH. L. REV. 1642 (1984).



whereas the Soviet Union argued that outside assistance was peripheral to the internal conflict. Therefore, proving the extent of outside assistance was critical to the U.S. analysis. The Security Council ignored the role of Britain and the United States. By focusing solely on the Yugoslav-Albania-Bulgaria role, the Council promoted the U.S.-British view. The commission's fact-finding on that issue was reasonably objective and yielded useful information; yet the commission, by addressing only the border issue, played a partisan role.

In 1949, after nearly three years of fighting, the leftists were defeated, following a concerted push by government forces, supervised by the head of the U.S. military mission in Greece, who supplied equipment and weaponry for the operation.<sup>51</sup>

### III. CORFU CHANNEL

In October 1946, with Britain still actively engaged in Greece, two British naval vessels struck undersea mines while traversing the narrow stretch of water that separates Albania from the Greek island of Corfu, known as the Corfu Channel.<sup>52</sup> Forty-four British sailors were killed, and forty-two others injured.<sup>53</sup> Relations between Albania and Britain had been tense since the previous spring, when Albania shore batteries fired on British vessels.<sup>54</sup> The fatal October passage through the channel was undertaken to test Albania's response.<sup>55</sup>

Following the explosions, Britain informed Albania that it intended to sweep the channel for mines,<sup>56</sup> but Albania replied that it objected to any mine-sweeping within its territorial waters.<sup>57</sup> The channel was partially within Albanian territorial waters, and Albania believed that a regional commission, in which it would have a role, should organize the sweeping.<sup>58</sup> British vessels nonetheless swept the channel, including those portions in Albania's territorial waters.<sup>59</sup>

51. STAVRIANOS, *supra* note 15, at 203; THOMAS M. FRANCK, NATION AGAINST NATION: WHAT HAPPENED TO THE U.N. DREAM AND WHAT THE U.S. CAN DO ABOUT IT 211 (1985) (attributing the victory of the Greek government over the rebels "primarily to increased U.S. military and economic aid to Athens").

52. U.N. SCOR, 2d Sess., 107th mtg. at 294-95 (1947) (statement of Sir Alexander Cadogan, U.K.).

53. *Id.* at 295.

54. *Id.* at 300.

55. *Cf.* U.N. SCOR, 2d Sess., 109th mtg. at 328-29 (1947) (statement of Mr. Kapo, Albania).

56. Corfu Channel Case, 1949 I.C.J. 72 (1 Pleadings).

57. *Id.* at 73.

58. *Supra* note 55, at 332 (statement of Mr. Kapo, Albania).

59. *Corfu Channel*, 1949 I.C.J. at 75; ERIC LEGGETT, THE CORFU INCIDENT 99-100 (1974).

Britain complained to the Security Council, alleging that Albania had set the mines, and asking the Council to take appropriate action against Albania if it did not make appropriate amends.<sup>60</sup> Albania denied having set the mines or knowing who did.<sup>61</sup> It counter-charged that Britain had violated its territorial waters by undertaking the mine-sweeping.<sup>62</sup>

The Security Council invited Albania to attend its sessions on the issue, and Albania participated.<sup>63</sup> The Council appointed a three-state sub-committee, made up of Colombia, Australia, and Poland, to "examine all the available evidence" concerning the incidents and to "make a report . . . on the facts of the case . . . ."<sup>64</sup> The sub-committee did no fact-finding in the field but held ten meetings, in which it interrogated Britain and Albania and examined evidence they submitted.<sup>65</sup> It reported back to the Security Council but did not hazard an answer to the question of whether Albania had set the mines.<sup>66</sup>

Reporting orally to the Council on behalf of the sub-committee, however, the Colombian member said there was no evidence that Albania set the mines, but they could not have been laid without its knowledge.<sup>67</sup> The Australian member said there was "no direct evidence as to who laid the mines," but since they were laid recently, "the mines must have been laid with the knowledge of Albania, while there is a strong probability that they were also laid with the connivance of Albania."<sup>68</sup> The Polish member told the Council that he could not draw such an inference, because it was possible the mines could have been set without the knowledge of Albania.<sup>69</sup>

60. *Supra* note 52, at 306 (statement of Sir Alexander Cadogan, U.K.); *see also* IL YUNG CHUNG, LEGAL PROBLEMS INVOLVED IN THE CORFU CHANNEL INCIDENT 30 (1959).

61. *Supra* note 55, at 334 (statement of Mr. Kapo, Albania).

62. *Id.* at 332-33.

63. *Id.* at 325.

64. S.C. Res. 19, U.N. SCOR, 2d Sess., at 2-3, U.N. Doc. S/INF/2/Rev.1 (II) (1947).

65. *Report of the Sub-Committee of the Security Council on Incidents in the Corfu Channel*, U.N. SCOR, 2d Sess., Supp. 10, at 82, U.N. Doc. S/300 (1947); *see also* TAE JIN KAHNG, LAW, POLITICS, AND THE SECURITY COUNCIL 157-60 (1969).

66. *Report of the Sub-Committee of the Security Council on Incidents in the Corfu Channel*, *supra* note 65, at 83.

67. U.N. SCOR, 2d Sess., 120th mtg. at 549 (1947) (statement of Mr. Zuleta Angel, Colombia); *see also id.* at 562-64 (statement of Mr. Lange, Poland).

68. *Id.* at 551.

69. *Id.* at 553-54 (stating, "all kinds of conjectures can be made, all kinds of theories and hypotheses can be constructed on the basis of the facts which are before us; but, in our view, none of the facts before us warrants drawing the conclusion that the mines were laid either by Albania or with Albania's connivance.").

As part of the written report, the Polish member, chastised the other two members for failing to probe deeper. He said that the sub-committee did not present a report "on the facts of the case" as requested by the Security Council.<sup>70</sup> The Council, however, did not ask the sub-committee to inquire further.

Following the sub-committee's report, a British-proposed draft resolution condemning Albania and stating that the mines "could not have been laid without the knowledge of the Albanian authorities" received seven affirmative votes but was vetoed by the Soviet Union.<sup>71</sup> Then the Council asked Britain and Albania to submit the matter to the International Court of Justice, which they did.<sup>72</sup> The Court ruled that Britain had no right to sweep the channel over Albania's objections, but that Albania was responsible for the mines and the explosions; the latter part of the ruling was based on Albania's control over the waters as its territorial sea, even if it had not itself set the mines.<sup>73</sup> Like the sub-committee, the Court did not determine who set the mines.

Considerable evidence was available on that issue, however, including data about mines laid in the channel during World War II by the German navy, and about the character of the mines struck by the British ships.<sup>74</sup> The German navy had mined the channel to keep it from being used by the Allies, but the German mines had been swept and the waters once again were deemed safe for transit.<sup>75</sup> The British produced evidence from an inspection of several mines that it retrieved during its mine-sweeping was that the mines were German;<sup>76</sup> the mines were not rusted but recently painted and freshly greased. This suggested that the mines were retrieved from German supplies at the end of the war and recently laid.<sup>77</sup> Albania had no mine laying equip-

70. *Additional Report Submitted by the Representative of Poland to the Report of the Sub-Committee on Incidents in the Corfu Channel*, *supra* note 65, at 83-84 [hereinafter *Poland Report*].

71. U.N. SCOR, 2d Sess., 122d mtg. at 608-09 (1947).

72. S.C. Res. 22, U.N. SCOR, 2d Sess., at 3, U.N. Doc. S/INF.2/Rev.1 (II) (1947).

73. Corfu Channel Case, 1949 I.C.J. 1.

74. *Poland Report*, *supra* note 65, at 89-107.

75. *Post-War Mine Clearance in European Waters: International Central Board*, Corfu Channel Case, 1949 I.C.J. 101 (1 Pleadings), Annex 15 to U.K. Memorial; HÉCTOR PEREZAMADOR BARRÓN, CORFU, DERECHO INTERNACIONAL PÚBLICO 19-20 (1951) (translated by author); LEGGETT, *supra* note 59, at 1-2.

76. LEGGETT, *supra* note 59, at 128-29.

77. *Id.* at 111-15.

ment; the British theory was that Yugoslavia, an ally of Albania, had laid the mines in collusion with Albania.<sup>78</sup>

Nonetheless, one possibility was that the British vessels had struck unswept German-laid mines. If the sub-committee had examined the evidence more precisely, it might have shed more light on whether Albania was responsible.

#### IV. PALESTINE

After the U.N. General Assembly's November 1947 resolution recommending the partition of Palestine,<sup>79</sup> fighting broke out in Palestine between its Jewish and Arab communities. The Jewish Agency charged aggression from the Arab side, citing the entry into Palestine of outside Arab elements in January 1947.<sup>80</sup> The Arab Higher Committee responded by enumerating acts of violence by the Jewish Agency and its allied military units against Arab civilians.<sup>81</sup> Egypt placed the onus for the violence on the Jewish community, which it said was acquiring arms from Europe. Outside Arab involvement, Egypt said, was minimal.<sup>82</sup> The U.N. Palestine Commission, created by the General Assembly, received from Great Britain information that "the Jewish story

78. *Id.* at 129-33.

79. G.A. Res. 181, U.N. GAOR, 2d Sess., U.N. Doc. A/519 (1947).

80. *Memorandum Dated 2 February 1948 From the Jewish Agency for Palestine Concerning Acts of Arab Aggression to Alter by Force the Settlement of the Future Government of Palestine Approved by the General Assembly of the United Nations (Transmitted, Together with a Supplementary Memorandum Dated 13 March 1948, by a Letter Dated 29 March 1948 from the Jewish Agency to the Secretary-General)*, U.N. SCOR, 3d Sess., Supp. for May 1948, at 1, U.N. Doc. S/Supplements, U.N. Doc. S/710 (1948); *see also* U.N. SCOR, 3d Sess., 258th mtg. at 346 (1948) (statement of Mr. Shertok, Jewish Agency for Palestine) ("The Arab Governments have jointly proceeded to the formation of what is called an 'Arab Army of Liberation.' They have appointed its high command. In most Arab countries recruiting offices for volunteers have been opened with official sanction of the Governments."); *id.* at 350 ("It was the Arabs who launched the attack. The Jews acted in self-defence.").

81. *Memorandum Dated 12 March 1948 from the Arab Higher Committee Delegation for Palestine Entitled 'The Black Paper on the Jewish Agency and Zionist Terrorism' (Transmitted by a Letter Dated 3 May 1948 from the Arab Higher Committee Delegation for Palestine to the Secretary-General)*, U.N. SCOR, 3d Sess., Supp. for May 1948, at 54, 76-83, U.N. Doc. S/Supplements, U.N. Doc. S/740(1948).

82. U.N. SCOR, 3d Sess., 255th mtg. at 299 (1948) (statement of Mr. Fawzi-Bey, Egypt) ("The well-armed Zionists [Jewish Agency forces] get practically all the arms they want. . . . Until now the Arabs, in and outside Palestine, have exercised the greatest possible restraint under the most extreme provocation. The number of volunteers who have found their way to join their brethren in Palestine from Arab lands is, so far, small.").

that the Arabs are the attackers and the Jews the attacked is not tenable.”<sup>83</sup>

The versions of events presented by the contending parties could not have been more divergent. The Security Council adopted a resolution asking its five permanent members—Britain, France, China, the U.S.S.R., and the United States—to make recommendations on how Palestine might be partitioned between the Arab and Jewish communities, in keeping with the recommendation of the General Assembly.<sup>84</sup> But a few days later, the United States asked the Council to re-think that approach,<sup>85</sup> and the Council asked the General Assembly to “consider further the question of the future government of Palestine,” indicating that a solution other than partition should be sought.<sup>86</sup> The Council’s hope was that a trusteeship might be established over Palestine until a political settlement could be negotiated.<sup>87</sup>

In March-April 1948, the fighting escalated, as the Jewish Agency forces launched an offensive in which they conquered several major cities and forced several hundred thousand Arabs from the country.<sup>88</sup> The exodus of Palestinians created the Arab refugee situation that has frustrated efforts at Middle East peace ever since.

The Security Council adopted a resolution calling for the cessation of violence in Palestine, a ban on outside military personnel (a reference to Arab groups), and an end to the import of weapons (a reference to Jewish groups).<sup>89</sup> Then it established a truce commission, composed of representatives of member states having consulates in Jerusalem, to keep the Council informed.<sup>90</sup> The commission, however, was able

83. *Id.*

84. S.C. Res. 42, U.N. SCOR, 3d Sess., at 14, U.N. Doc. S/INF/2/Rev.1 (III) (1948).

85. U.N. SCOR, 3d Sess., 271st mtg. at 31 (1948); The Acting Secretary of State to Certain Diplomatic and Consular Offices, (Apr. 6, 1948), in 5 FOREIGN REL. U.S., 1948, at 801 (1976); *Declaration by Austin on Palestine Situation in the Security Council*, N.Y. TIMES, Mar. 20, 1948, at A2.

86. S.C. Res. 44, U.N. SCOR, 3d Sess., at 15, U.N. Doc. S/INF/2/Rev.1 (III) (1948).

87. *Id.*

88. HARRY LEVIN, JERUSALEM EMBATTLED: A DIARY OF THE CITY UNDER SIEGE 104 (1950); BENNY MORRIS, THE BIRTH OF THE PALESTINIAN REFUGEE PROBLEM, 1947-1949, at 96-97 (1987); MICHAEL PALUMBO, THE PALESTINIAN CATASTROPHE 89-90 (1987); URI AVNERY, MY FRIEND, THE ENEMY 264 (1986); *Jerusalem “Cease Fire” Exacted By British From Foreign Arab Chieftains*, PALESTINE POST, May 9, 1948, at 1 (reporting main Arab town fallen to Jewish forces, with the town’s “peaceful Arab populations in panic flight”).

89. S.C. Res. 46, U.N. SCOR, 3d Sess., at 15, U.N. Doc. S/INF/2/Rev.1 (III) (1948).

90. S.C. Res. 48, U.N. SCOR, 3d Sess., at 17, U.N. Doc. S/INF/2/Rev.1 (III) (1948).

to operate only in Jerusalem, which at the time was cut off from the rest of Palestine.<sup>91</sup> It advised the Council, that

we do not think it will be possible for us under present circumstances to keep the council supplied with the most reliable information possible concerning the changes in the situation in the rest of the country; it would seem that it will be for the Council to find the best means of obtaining such information.<sup>92</sup>

The Jewish Agency forces continued to take territory, and on May 14, 1948, declared statehood as Israel,<sup>93</sup> leading to a military confrontation with the neighboring Arab states. If the Council had access to information in the weeks preceding May 14, 1948, it would have learned that the Arab population was being forced out of Palestine and might have been able to take action to stem the exodus.

## V. KOREA

The first military situation in which the Security Council took action involved Korea. As Japan was driven out of Korea at the end of World War II, the Soviet Union occupied the area of Korea north of the 38th parallel, and the United States occupied the area to the south.<sup>94</sup> When the occupiers withdrew, the two zones remained separate, the northern zone with its capital at Pyongyang, and the southern with its capital at Seoul.<sup>95</sup> Both Korean administrations, however, viewed Korea as a single state and sought reunification.<sup>96</sup> The General Assem-

91. Telegram Dated 22 May 1948 from the Representative of the United States of America to the President of the Security Council, U.N. SCOR, 3d Sess., Supp. for May 1948, at 94, U.N. Doc. S/Supplements, U.N. Doc. S/771 (1948) (stating that in Jerusalem, the U.S. representative on the truce commission was shot and wounded on the street by an unknown sniper following a meeting of the commission at the French consulate).

92. Telegram Dated 23 May 1948 from the Chairman of the Security Council Truce Commission to the President of the Security Council, U.N. SCOR, 3d Sess., Supp. for May 1948, at 97, U.N. Doc. S/Supplements, U.N. Doc. S/778 (1948).

93. DECLARATION OF THE ESTABLISHMENT OF THE STATE OF ISRAEL, 1 LAWS OF THE STATE OF ISRAEL 3 (1948).

94. *U.S. Policy in Korea, Statement by Secretary Acheson*, 15 DEP'T ST. BULL. 670 (1946).

95. *United States Recognizes Republic of Korea*, 20 DEP'T ST. BULL. 59 (1949).

96. *Cablegram Dated 26 June 1950 to the Secretary-General from the United Nations Commission on Korea, Transmitting a Summary Report on Background Events Preceding the Outbreak of Hostilities on 25 June 1950*, U.N. SCOR, 5th Sess., Supp. for June-Aug. 1950, at 23, U.N. Doc. S/Supplements, U.N. Doc. S/1515/Rev.1 (1950) [hereinafter *Background Cablegram on Korea*] (referring to proposals in early 1950 by both administrations for reunification).

bly of the United Nations appointed a seven-state commission on Korea, also aiming at reunification.<sup>97</sup>

Nonetheless, hostilities broke out between the armies of the southern and northern zones, which in June 1950 became an all-out civil war.<sup>98</sup> The southern administration said it had been attacked by the northern army.<sup>99</sup> The northern administration, to the contrary, announced that the southern army had launched "a surprise invasion."<sup>100</sup> The U.S. ambassador reported continuous probing by both parties for some time along the 38th parallel; however, when hostilities began "it [was] so difficult to determine what was going on."<sup>101</sup> Two hours after getting the first cable on the Korean hostilities, the U.S. State Department approached the Security Council for an emergency meeting, stating that the north in a radio announcement had declared war on the south; thus, the north had committed "an act of aggression."<sup>102</sup>

When U.S. Security Council delegate Charles Noyes showed a U.S. draft resolution charging the north with aggression to Great Britain, France, India, Egypt, Norway, and Indonesia, however, these Security Council members showed "considerable hesitancy to take a position on which party was responsible for the invasion."<sup>103</sup> They said there was insufficient information to condemn the north.<sup>104</sup> The Security Council had only sketchy information. A brief cablegram from the U.N. Commission on Korea reported the alleged declaration of war announced by the northern radio was only a rumor that could not be confirmed "from any source."<sup>105</sup> The commission reported, "South Ko-

97. G.A. Res. 195, U.N. GAOR, 3d Sess., at 18, U.N. Doc. A/810 (1948).

98. *Active Agression in Korea-Renew of U.N. & U.S. Action to Restore Peace*, 23 DEP'T ST. BULL. 43 (1950).

99. Telegram: The Ambassador in Korea (Muccio) to the Secretary of State (June 25, 1950), in 7 FOREIGN REL. U.S., 1950, at 125 (1976).

100. Telegram: The Ambassador in Korea (Muccio) to the Secretary of State (June 25, 1950), in 7 FOREIGN REL. U.S., 1950, at 132 (1976).

101. 2 BRUCE CUMINGS, *THE ORIGINS OF THE KOREAN WAR: THE ROARING OF THE CATARACT, 1945-1950*, at 580 (1990).

102. Letter Dated 25 June 1950 from the Representative of the United States of America Addressed to the Secretary-General Transmitting a Communication to the President of the Security Council Concerning an Act of Aggression Upon the Republic of Korea, U.N. SCOR, 5th Sess., 473d mtg. at 1 n.1, U.N. Doc. S/1495 (1950).

103. Memorandum of Conversations, by Mr. Charles P. Noyes, Adviser on Security Council Affairs, United States Mission at the United Nations (June 25, 1950), in 7 FOREIGN REL. U.S., 1950, at 144-45 (1976).

104. *Id.*

105. Cablegram Dated 25 June 1950 from the United Nations Commission on Korea Addressed to the Secretary-General Concerning Aggression upon the Republic of Korea, U.N. SCOR, 5th Sess., 473d mtg. at 2 n.2, U.N. Doc S/1496 (1950) [hereinafter Korea Cablegram].

rean troops apparently withdrawing to prearranged main line of resistance which runs along Imjin River 27 miles northwest of Seoul where crossing by northern forces has been reported at one point. Attack completely unexpected to both Korean Army and KMAG (the U.S. Korea Military Assistance Group)."<sup>106</sup> This latter language, which suggested that the north was responsible, was deemed too sensitive to be published in U.N. documents, but it was read orally to Security Council members.<sup>107</sup>

The next day the commission sent a second cablegram, stating that it discounted the northern administration's version of the hostilities and that "[a]ll the evidence continues to point to a calculated co-ordinated attack [by the north] prepared and launched with secrecy."<sup>108</sup> The U.N. commission, however, in these cablegrams gave no detailed explanation for its conclusion that the north was responsible. It did not report any direct observation of hostilities. None of its members were in the field.<sup>109</sup> The commission merely reported and confirmed information it received from southern sources.<sup>110</sup> It had no direct contact with northern sources, because the commission operated only in the south.<sup>111</sup> The northern administration viewed the mission as partial to the south and did not cooperate with it.<sup>112</sup>

Yugoslavia told the Security Council,

we do not feel that the picture we have been able to obtain so far from the various dispatches that have come in, some of which are contradictory, and from the statements we have heard here, is sufficiently complete and balanced, nor one which would enable us to pass judgment on the merits of the case or assess the final and definite responsibility and guilt of either of the parties involved.<sup>113</sup>

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106. *The United States Representative at the United Nations (Austin) to the Secretary of State* (June 26, 1950), 7 FOREIGN REL. U.S., 1950, at 171, 172 (1976).

107. Korea Cablegram, *supra* note 105.

108. *Background Cablegram on Korea*, U.N. SCOR, 5th Sess., Supp. for June-Aug. 1950, at 26, U.N. Doc. S/Supplements, U.N. Doc. S/1505/Rev.1 (1950).

109. *Id.*

110. *Id.*

111. *Id.*

112. *Id.* (stating that the northern administration denied the legality of the commission, referred to it as futile, and subjected commission members to abuse); *see also* CUMINGS, *supra* note 101, at 548, 635.

113. U.N. SCOR, 5th Sess., 473d mtg. at 14 (1950) (statement of Mr. Brilej, Yugoslavia).



It said the Council should "acquire all the factual knowledge which would make that final judgment and the action taken in pursuance of it incontrovertible."<sup>114</sup>

The Council invited the southern administration to give its views, and a representative of that administration spoke to the Council.<sup>115</sup> The Council did not invite the north.<sup>116</sup> Yugoslavia objected, "[w]e have heard the representative of South Korea and I feel that we should grant an opportunity for a representative of the Government of North Korea, which has now been accused of aggression, to receive a hearing."<sup>117</sup> But the Council did not discuss the Yugoslav proposal and adopted a resolution condemning the north without inviting it or asking for its views.<sup>118</sup>

During an adjournment in the Council deliberations, the Secretariat staff told Council members that tanks just captured by the south were operated by Russians.<sup>119</sup> This information was not included in any official record, but Australia's delegate cabled his government that France and Egypt voted for the U.S. resolution due to the information.<sup>120</sup> The information, as it turned out, was erroneous.<sup>121</sup>

The U.S. draft resolution was put to a vote and carried unanimously,<sup>122</sup> except for an abstention by Yugoslavia.<sup>123</sup> Then the Council called on states to help the south,<sup>124</sup> and to contribute troops to a U.N. command.<sup>125</sup> This latter resolution led to a three-year military action in which over two million lives were lost.<sup>126</sup>

Several analysts said there was no open-and-shut case for aggression by the north,<sup>127</sup> but most analysts accepted the thesis that the

114. *Id.*

115. U.N. SCOR, 5th Sess., 473d mtg. at 4, 8 (1950).

116. *Id.*

117. *Id.* at 15.

118. *Id.*

119. GAVAN MCCORMACK, COLD WAR HOT WAR: AN AUSTRALIAN PERSPECTIVE ON THE KOREAN WAR 75 (1983).

120. *Id.*

121. *Id.*

122. S.C. Res. 82, U.N. SCOR, 5th Sess., at 4, U.N. Doc. S/INF/5 & Rev.1 (1950).

123. *Supra* note 113, at 16.

124. S.C. Res. 83, U.N. SCOR, 5th Sess., at 5, U.N. Doc. S/INF/5 & Rev.1 (1950).

125. S.C. Res. 84, U.N. SCOR, 5th Sess., at 5, U.N. Doc. S/INF/5 & Rev.1 (1950).

126. JOYCE KOLKO & GABRIEL KOLKO, THE LIMITS OF POWER: THE WORLD AND UNITED STATES FOREIGN POLICY, 1945-1954, at 615 (1972).

127. See generally CUMINGS, *supra* note 101; I.F. STONE, THE HIDDEN HISTORY OF THE KOREAN WAR (1952).

north was responsible.<sup>128</sup> Following its initial resolution on Korea, the Security Council never reconsidered the question of accountability for the hostilities.

The initial fighting was on the Ongjin peninsula, on Korea's west coast.<sup>129</sup> If the north were assaulting the south, this would be an inappropriate location: there is no access to the rest of the southern part of Korea from the Ongjin peninsula.<sup>130</sup> For an assault by the south, however, the Ongjin peninsula would be a logical location; this peninsula gives ready access to Pyongyang.<sup>131</sup>

Both sides announced on June 25 the capture by the southern army of the city of Haeju, which is five miles north of the 38th parallel on the Ongjin peninsula.<sup>132</sup> U.S. military advisors with the southern army confirmed the capture.<sup>133</sup> U.S. military intelligence identified the southern army unit responsible as its 17th regiment, a crack unit.<sup>134</sup> The north reported that the southern assault on Haeju began June 23, a claim later confirmed by southern Admiral Young Woon Lee, who said he led a maritime assault on Haeju on June 23.<sup>135</sup> Admiral Lee further asserted that on June 23 the southern chief of staff ordered

128. FRANCK, *supra* note 51, at 34 (stating that the U.N. observer mission was "positioned to report authoritatively on the events of June 25, 1950, when the North Korean army rolled into the South, and so the U.N. system was not bogged down — as so often before and after — by a dispute about the facts."); ROSALYN HIGGINS, *THE DEVELOPMENT OF INTERNATIONAL LAW THROUGH THE POLITICAL ORGANS OF THE UNITED NATIONS* 223 (1963) (stating that North Korea carried out an "unequivocal" armed attack); Edwin C. Hoyt, *The United States Reaction to the Korean Attack: A Study of the Principles of the United Nations Charter as a Factor in American Policy-Making*, 55 AM. J. INT'L L. 45, 49 (1961) (calling it "a very clear case of international aggression"); Myres S. McDougal & Richard N. Gardner, *The Veto and the Charter: An Interpretation for Survival*, 60 YALE L.J. 258 (1951) (stating "[r]arely has an act of aggression been so clear-cut.").

129. The Ambassador in Korea (Muccio) to the Secretary of State (June 25, 1950), in 7 FOREIGN REL. U.S., 1950, at 125 (1976).

130. OXFORD ATLAS OF THE WORLD 67 (1992).

131. CUMINGS, *supra* note 101, at 568-72, 584-85.

132. *Background Cablegram on Korea*, *supra* note 108, (reporting that Kim il-Sung, head of northern administration, in radio broadcast said that the southern army initiated the fighting by attacking Haeju and that the northern army counter-attacked); *U.N. Calls for Ceasefire in Korea*, N.Y. TIMES, June 26, 1950, at A1 (South Korean announcement); *North Korean Communiqués*, N.Y. TIMES, June 26, 1950, at A3.

133. GLENN D. PAIGE, *THE KOREAN DECISION JUNE 24-30, 1950*, at 130 (1968); *Defenders Launch Counterattack, Regain 5 Miles North of Capital*, CHI. TRIB., June 26, 1950, at A1; *Threifold Advance Towards Seoul*, GUARDIAN (Manchester), June 26, 1950, at 7.

134. CUMINGS, *supra* note 101, at 572-73, 578-79.

135. COMMITTEE FOR A NEW DIRECTION FOR U.S. KOREA POLICY, *CONFERENCE FOR A NEW DIRECTION IN U.S. KOREA POLICY* 100 (1977).

commanders to "go into action at 5, June 25" (meaning 5:00 a.m.).<sup>136</sup> He said that, to divert attention from a planned "full-force invasion of the North," the southern army started probing attacks at 10 p.m. on June 23.<sup>137</sup> Consistent with the view that the southern army was on the offensive, the U.S. ambassador reported June 26 that "North Korean armor and artillery are withdrawing all along the line."<sup>138</sup>

Given the uncertainty over the outbreak of the Korean hostilities, the Security Council should have appointed an investigating committee, or at least attempted to get more information from the U.N. commission in Korea. The Security Council launched the United Nations' first military action without a solid factual basis.

## VI. EGYPT

In October 1956, Israel invaded Egypt through the Gaza Strip and the Sinai Peninsula.<sup>139</sup> Israel premised its action as a response to Palestinian guerrilla attacks against it from Egyptian territory.<sup>140</sup> The Security Council was approached by the United States, which asked the Council to secure an immediate Israeli withdrawal.<sup>141</sup>

At that juncture Great Britain and France expressed concern over shipping in the Suez Canal, which, they said, was being endangered by the fighting.<sup>142</sup> They announced that if Egypt and Israel did not cease fire within twelve hours, and withdraw their forces to a distance of ten miles from the Suez Canal, they would intervene to protect the canal.<sup>143</sup> The United States proposed a draft resolution calling for an Israeli withdrawal from Egypt and for other states to refrain from force, a phrase aimed at Britain and France.<sup>144</sup> This draft resolution, however, was vetoed by Britain and France,<sup>145</sup> which then bombed

136. *Id.*

137. *Id.*

138. *The Ambassador in Korea (Muccio) to the Secretary of State*, (June 26, 1950), in 7 FOREIGN REL. U.S., 1950, at 165 (1976).

139. *See United Nations Consideration of Developments in the Middle East: Letter Dated October 29, 1956 from Ambassador Lodge to President of Security Council*, 35 DEP'T ST. BULL. 747 (1956).

140. U.N. SCOR, 11th Sess., 749th mtg. at 8-18, U.N. Doc. S/PV.749 (1956) (statement of Mr. Eban, Israel).

141. U.N. SCOR, 11th Sess., 748th mtg. at 1, U.N. Doc. S/PV.748 (1956) (statement of Mr. Lodge, U.S.).

142. *Supra* note 140, at 2-3 (statement of Sir Pierson Dixon, U.K.).

143. *Id.*

144. U.N. SCOR, 11th Sess., Supp. for Oct.-Dec. 1956, at 110, U.N. Doc. S/Supplements, U.N. Doc. S/3710 (1956).

145. *Supra* note 140, at 31.

Egypt from the air and sent in ground troops.<sup>146</sup> Because Security Council members realized that the Council could play no useful role in light of the opposition of Britain and France, the Council voted to call a special session of the General Assembly.<sup>147</sup> From that point, the Security Council played no further role.

France explained its intervention by saying,

We were confronted with an attack by the forces of Israel in the Suez zone heading towards the Canal. We had every reason to believe that the military developments arising out of this action might reach the point where free passage through the Canal would be impeded. The latest news received from Egypt, which reports the position of the Israel troops, shows how well our fears were justified.<sup>148</sup>

In fact, however, Britain and France had, independently of Israel, been planning military action to depose Egyptian President Nasser and occupy the Canal.<sup>149</sup> They agreed in advance with Israel that it should invade Egypt, and then they would follow, pretending to play the role of peacemakers between Israel and Egypt.<sup>150</sup> Britain and France were concerned over Egypt's nationalization of the Suez Canal a few months earlier, the Canal being largely French- and British-owned; by intervening, they had hoped to force Egypt to return the Canal to its owners.<sup>151</sup>

The Security Council did have the advantage of information from the United Nations Truce Supervision Organization (U.N.T.S.O.), which had been in place since 1949 to monitor the armistice agreements between Israel and her neighbors.<sup>152</sup> As soon as Israel attacked Egypt, U.N.T.S.O. informed the Secretary-General of the details of the attack;<sup>153</sup> however, U.N.T.S.O. officials had no knowledge of the British-French role.

146. U.N. SCOR, 11th Sess., 751st mtg. at 4-5, U.N. Doc. S/PV.751 (1956) (statement of Mr. Loufti, Egypt).

147. S.C. Res. 119, U.N. SCOR, 11th Sess., at 9, U.N. Doc. S/INF/11/& Rev.1 (1956).

148. *Supra* note 146, at 10 (statement of Mr. de Guiringaud, France).

149. JOHN G. STOESSINGER, *THE UNITED NATIONS AND THE SUPERPOWERS: CHINA, RUSSIA, AND AMERICA* 84 (1977).

150. DONALD NEFF, *WARRIORS AT SUEZ* 336, 342-48 (1981); RITCHIE OVENDALE, *THE ORIGINS OF THE ARAB-ISRAELI WARS* 149-63 (1984).

151. STOESSINGER, *supra* note 149, at 84.

152. *Everyman's United Nations* 94 (1968).

153. *Cf. supra* note 141, at 3 (statement of the Secretary General).

France and Britain withdrew from Egypt in December.<sup>154</sup> Israel withdrew from the Sinai in December but held the Gaza Strip until the following spring.<sup>155</sup> If the Security Council had uncovered the British-French-Israeli collaboration, it might have been able to secure a speedier Israeli withdrawal.

## VII. HUNGARY

Simultaneously with the Egyptian situation, the Security Council dealt with unrest in Hungary in which the Soviet Union played a central role.<sup>156</sup> Opposition elements in Hungary took over the government and installed Imre Nagy as Prime Minister.<sup>157</sup> Soviet military forces, stationed in Hungary under the Warsaw Pact, moved against Nagy, who repudiated the Warsaw Pact and asked for a withdrawal of Soviet troops.<sup>158</sup> The Nagy government also reported that additional Soviet troops had entered Hungary to suppress it.<sup>159</sup>

The Soviet Union told the Security Council that the military action to suppress the Nagy government was that of Hungarian troops loyal to the former Hungarian government, which had requested the assistance of Soviet troops.<sup>160</sup> Although it acknowledged that Soviet troops were active in Hungary, the Soviet Union asserted that the events in Hungary were domestic in character and did not require Security Council action.<sup>161</sup> In reply, Nagy telegraphed the United Nations to confirm that his government desired the withdrawal of Soviet troops.<sup>162</sup>

154. *Withdrawal of British and French forces from Egypt: Department Announcement*, 35 DEP'T ST. BULL. 951 (1956).

155. *Department Announcement: Text of an Aide Memoire Handed to Israel Ambassador Abba Eban on Feb. 11, 1957, by Secretary Dulles*, 36 DEP'T ST. BULL. 392 (1957).

156. *U.S. Concern For Hungarian People: Statement by the President*, 35 DEP'T ST. BULL. 700 (1956).

157. *The Hungarian Question Before the General Assembly: Statement by Ambassador Lodge Jr., November 4, 1956*, 35 DEP'T ST. BULL. 800 (1956).

158. Cablegram Dated 1 November 1956 from Mr. Imre Nagy, President of the Council of Ministers of the Hungarian People's Republic, Addressed to the Secretary-General, U.N. GAOR (2d emerg. spec. sess.), Agenda Item 5, Annex, U.N. Doc. A/3251 (1956).

159. Letter Dated 2 November 1956, to the Secretary-General from the President of the Council of Ministers and Acting Foreign Minister of the Hungarian People's Republic, U.N. SCOR, 11th Sess., Supp. for Oct.-Dec. 1956, at 119, U.N. Doc. S/Supplements, U.N. Doc. S/3726 (1956).

160. U.N. SCOR, 11th Sess., 752d mtg. at 24, U.N. Doc. S/PV.752 (1956) (statement of Mr. Sobolev, U.S.S.R.); U.N. SCOR, 11th Sess., 754th mtg. at 9, U.N. Doc. S/PV.754 (1956) (statement of Mr. Sobolev, U.S.S.R.).

161. *Id.*

162. Telegram Dated 3 November 1956 from the President of the Council of Ministers of the Hungarian People's Republic to the Secretary-General, U.N. SCOR, 11th Sess., Supp. for Oct.-Dec. 1956, at 126, U.N. Doc. S/Supplements, U.N. Doc. S/3731 (1956).

The Belgian representative noted the sharp difference in facts as related by the Nagy government and the Soviet government.<sup>163</sup> He stated that it was "important that we should know more."<sup>164</sup> The Australian representative called for an investigation.<sup>165</sup>

The Soviet government and the Nagy government entered negotiations aimed at the withdrawal of the Soviet forces; however, the Soviet troops attacked the pro-Nagy forces and brought down his government, which was replaced by one headed by Janos Kadar.<sup>166</sup> A U.S.-proposed draft resolution in the Security Council, which requested the Soviet Union to refrain from introducing additional troops into Hungary and to remove its existing troops, was vetoed by the Soviet Union.<sup>167</sup> Then, on a U.S. motion, the Security Council voted to ask the General Assembly to deal with the issue.<sup>168</sup>

The Security Council did have a representative of the Nagy government at its sessions on the Hungarian question.<sup>169</sup> It did not, however, attempt independent fact-finding. Council members relied on press reports, and on communications from their Budapest embassies.<sup>170</sup> In the fast-moving situation that prevailed in Hungary, fact-finding was difficult.<sup>171</sup> Nonetheless, had the Council been able to ascertain the facts independently, it might have been better positioned to deal with the situation. The lack of impartial information made it possible for the Soviet delegate, on the crucial date when Soviet troops were moving against the Nagy government, to propose a postponement "until reliable information [was] available."<sup>172</sup> It is not likely that the Soviet Union would have foregone vetoing the U.S. draft resolution in any event; but had the Council established a fact-finding body at the onset of the Hungarian episode, and had that body reported back quickly, the facts of the situation would have been clearer during the Council's deliberations.

163. U.N. SCOR, 11th Sess., 753d mtg. at 8, U.N. Doc. S/PV.753 (1956) (statement of Mr. Van Langenhove, Belgium).

164. *Id.*

165. *Id.* at 10 (statement of Mr. Walker, Australia).

166. *U.S. Views on Problems of Hungary and the Middle East by Deputy Under Secretary Murphy: Soviet Repression in Hungary*, 35 DEPT ST. BULL. 908 (1956) [hereinafter *Problems of Hungary*].

167. U.N. SCOR, 11th Sess., 754th mtg. at 12, U.N. Doc. S/PV.754 (1956).

168. S.C. Res. 120, U.N. SCOR, 11th Sess., at 8, U.N. Doc. S/INF/11/& Rev.1 (1956).

169. U.N. SCOR, 11th Sess., 752d mtg. at 2-3, U.N. Doc. S/PV.752 (1956).

170. *Supra* note 167, at 2 (statement of Mr. Lodge, U.S.).

171. *Problems of Hungary*, *supra* note 166.

172. *Supra* note 167, at 8 (statement of Mr. Sobolev, U.S.S.R.).

## VIII. LEBANON

In 1958 a pro-Western government in Lebanon, headed by President Camille Chamoun, was under military challenge by Arab nationalists.<sup>173</sup> Chamoun angered the nationalists by acquiescing in a U.S. policy called the Eisenhower Doctrine, which said that the United States would use armed force to assist any Middle Eastern state "requesting assistance against armed aggression from any country controlled by international communism."<sup>174</sup> Because of Chamoun's acquiescence, the Central Intelligence Agency funded candidates favorable to him in 1957 parliamentary elections, and this resulted in a pro-Chamoun parliament.<sup>175</sup> That parliament was to select a president in July 1958, and Chamoun sought re-election.<sup>176</sup>

To prevent a Chamoun victory, the nationalists revolted against Chamoun in May 1958 and gained control of most of Lebanon.<sup>177</sup> Chamoun complained to the Security Council that Syria and Egypt, which were then confederated as the United Arab Republic, supplied and trained the nationalists.<sup>178</sup> The U.A.R. denied the charge.<sup>179</sup> The Security Council, noting Lebanon's charge against its neighbors, set up an observer mission "to ensure that there [was] no illegal infiltration of personnel or supply or arms or other *matériel* across the Lebanese borders."<sup>180</sup>

The Council left it to the Secretary-General to select the members of the observer mission.<sup>181</sup> The Secretary-General chose three individuals, who then hired observers to staff border posts.<sup>182</sup> Thus, unlike earlier U.N. inquiry missions, the Lebanon mission was not composed of representatives of states. This procedure decreased the possibility

173. HELENA COBBAN, *THE MAKING OF MODERN LEBANON* 84-85, 87-88 (1985).

174. *Joint Resolution to Promote Peace and Stability in the Middle East*, H.J. Res. 117, 71 Stat. 5 (1957), reprinted in 36 DEP'T ST. BULL. 481 (1957).

175. See WILBUR C. EVELAND, *ROPES OF SAND: AMERICA'S FAILURE IN THE MIDDLE EAST* 248-53 (1980); JONATHAN KWITNY, *ENDLESS ENEMIES: THE MAKING OF AN UN-FRIENDLY WORLD* 316 (1984).

176. EVELAND, *supra* note 175, at 266 (Eveland was C.I.A. station chief in Beirut at the time).

177. COBBAN, *supra* note 173, at 88.

178. U.N. SCOR, 13th Sess., 823d mtg. at 7-30, U.N. Doc. S/PV.823 (1958) (statement of Mr. Malik, Lebanon).

179. U.N. SCOR, 13th Sess., 824th mtg. at 3-13, U.N. Doc. S/PV.824 (1958) (statement of Mr. Loufti, U.A.R.).

180. S.C. Res. 128, U.N. SCOR, 13th Sess., at 5, U.N. Doc. S/INF/13 & Rev.1 (1958).

181. *Id.*

182. *First Report of the United Nations Observation Group in Lebanon*, U.N. SCOR, 13th Sess., Supp. for July-Sept. 1958, at 4, U.N. Doc. S/Supplements, U.N. Doc. S/4040 (1958).

that views would be adopted for political reasons. Although the Council resolution establishing the mission did not expressly ask for a report on the extent of the infiltration, the mission did report on that topic, relating that it found "substantial movements of armed men" in Lebanon;<sup>183</sup> however, it could not determine whether they "had infiltrated from outside,"<sup>184</sup> or where they had acquired their arms.<sup>185</sup> It said that "the vast majority were in any case Lebanese."<sup>186</sup>

On July 14, the pro-Western government of Iraq was overthrown by Arab nationalists.<sup>187</sup> This heightened Western concern that the Lebanese nationalists would overthrow Chamoun.<sup>188</sup> At Chamoun's request, President Eisenhower on July 15 sent a 10,000 man force into Lebanon.<sup>189</sup> U.S. Ambassador Henry Cabot Lodge told the Security Council that the aim was "to stabilize the situation brought on by the threats from outside."<sup>190</sup>

President Eisenhower said that the Lebanese rebellion was "supported by sizable amounts of arms, ammunition, and money and by personnel infiltrated from Syria."<sup>191</sup> Lodge asserted that the U.N. observer mission had "helped to reduce interference from across the border" from Syria into Lebanon,<sup>192</sup> but "that with the outbreak of the revolt in Iraq, the infiltration of arms and personnel into Lebanon from the United Arab Republic in an effort to subvert the legally constituted Government has suddenly become much more alarming."<sup>193</sup> Although some arms were likely smuggled to the nationalists from Syria,<sup>194</sup> no convincing evidence was presented to substantially aid the Council.<sup>195</sup> By July 15 the U.N. observer mission had border watch

183. *Id.* at 8.

184. *Id.* at 9.

185. *Id.*

186. *Id.*

187. U.N. SCOR, 13th Sess., 827th mtg. at 21-31, U.N. Doc S/PV.827 (1958) (statement of Mr. Lodge U.S.).

188. *Id.*

189. EVELAND, *supra* note 175, at 281, 294; *United States Dispatches Troops to Lebanon: Radio-TV Statement*, 39 DEPT ST. BULL. 183 (1958).

190. *Supra* note 187, at 22 (statement of Mr. Lodge, U.S.).

191. *United States Dispatches Troops to Lebanon: Message to the Congress*, 39 DEPT ST. BULL. 182 (1958).

192. *Supra* note 187, at 23-25 (statement of Mr. Lodge, U.S.).

193. *Id.* at 26.

194. EVELAND, *supra* note 175, at 275, 279.

195. Quincy Wright, *Editorial Comment: United States Intervention in the Lebanon*, 53 AM. J. INT'L L. 112, 114 (1959).



points.<sup>196</sup> On July 30, the mission reported that infiltration of arms into Lebanon "cannot be on anything more than a limited scale, and is largely confined to small arms and ammunition."<sup>197</sup> Regarding trans-border movement of personnel, it remarked, "in no case have United Nations observers, who have been vigilantly patrolling the opposition-held areas and have frequently observed the armed bands there, been able to detect the presence of persons who have indubitably entered from across the border for the purpose of fighting."<sup>198</sup> The United States kept its troops in Lebanon several months, but they did not assume an active combat role.<sup>199</sup>

The Security Council's observer mission performed a valuable function in Lebanon. It inserted itself into appropriate locations and made first-hand observations.<sup>200</sup> The mission's report cast doubt on Lebanon's claim of substantial U.A.R. intervention,<sup>201</sup> and thus put pressure on the United States to limit its intervention. In a situation in which the two sides were giving conflicting versions of the facts, the observer mission provided a conclusion that commanded respect.

## IX. VIETNAM

In Vietnam, on the other hand, the Security Council failed to investigate when disputed facts led to military action. In 1964, the United States claimed that North Vietnam had attacked the destroyer *U.S.S. Maddox* in the Gulf of Tonkin, off the northern Vietnamese coast.<sup>202</sup> On July 30, 1964, the *U.S.S. Maddox*, outfitted for electronic spying, steamed into the Gulf of Tonkin to gather intelligence informa-

196. See *Interim Report of the United Nations Observation Group in Lebanon*, U.N. SCOR, 13th Sess., Supp. for July-Sept. 1958, at 33-34, U.N. Doc. S/Supplements, U.N. Doc. S/4051 (1958); *Second Interim Report of the United Nations Observation Group in Lebanon*, U.N. SCOR, 13th Sess., Supp. for July-Sept. 1958, at 34-35, 37, U.N. Doc. S/Supplements, U.N. Doc. S/4052 (1958).

197. *Second Interim Report of the United Nations Observation Group in Lebanon*, U.N. SCOR, 13th Sess., Supp. for July-Sept. 1958, at 93, U.N. Doc. S/Supplements, U.N. Doc. S/4069 (1958).

198. *Id.* The Report explained that the group had gathered information by air and on the ground both during the day and at night and had followed carefully any information received from the Lebanese government or other sources. *Id.*

199. Cf. *The Need For Balance in U.S. Foreign Policy by Deputy Under Secretary Murphy: Middle East*, 39 DEP'T ST. BULL. 879 (1958).

200. LEON GORDENKER, *THE UN SECRETARY-GENERAL AND THE MAINTENANCE OF PEACE* 214-15 (1967).

201. *Id.* at 218; HIGGINS, *supra* note 128, at 194.

202. See *infra* note 217 and accompanying text.

tion to use in bombing North Vietnam.<sup>203</sup> On the same day, South Vietnamese naval forces under U.S. direction raided two North Vietnamese islands in the Gulf of Tonkin.<sup>204</sup> On August 2, North Vietnamese torpedo boats approached the *U.S.S. Maddox* at high speed.<sup>205</sup> The North Vietnamese commanders evidently believed that the *U.S.S. Maddox* was connected with the South Vietnamese raid. The *U.S.S. Maddox* sunk one of the North Vietnamese ships, while U.S. planes damaged two others;<sup>206</sup> and President Lyndon Johnson then ordered another destroyer, the *U.S.S. C. Turner Joy*, to protect the *U.S.S. Maddox*.<sup>207</sup> That night South Vietnamese PT boats attacked the North Vietnamese shore.<sup>208</sup> North Vietnam protested the attacks to the United Nations.<sup>209</sup>

On August 4, the *U.S.S. Maddox* reported, based on sonar readings, that it had been fired upon by North Vietnamese torpedo boats.<sup>210</sup> The *U.S.S. C. Turner Joy*, which had more sophisticated sonar, detected no firings.<sup>211</sup> Neither destroyer was hit, and their crews saw no visual evidence of torpedoes.<sup>212</sup> The commander of the two destroyers quickly informed Washington that the initial report from the *U.S.S. Maddox* was in error.<sup>213</sup> He concluded that the *U.S.S. Maddox* crew had mistaken sonar reflections of the *U.S.S. Maddox*'s own rudder for enemy torpedoes.<sup>214</sup> Nonetheless, the U.S. Defense Department

203. NEIL SHEEHAN ET. AL., THE NEW YORK TIMES, THE PENTAGON PAPERS AS PUBLISHED BY THE NEW YORK TIMES 259 (Gerald Gold et. al. eds., 1971) [hereinafter Pentagon Papers]; Cf. Robert Scheer, *Tonkin — Dubious Premise for a War*, L.A. TIMES, Apr. 29, 1985, Part I, at 1.

204. But see SHEEHAN, *supra* note 203.

205. *Id.* at 260; see Scheer, *supra* note 203, at 1.

206. SHEEHAN, *supra* note 203, at 260; see Scheer, *supra* note 199, at 1; *The Tonkin Chronology*, L.A. TIMES, Apr. 29, 1985, Part I, at 6.

207. SHEEHAN, *supra* note 203.

208. *Id.* at 260.

209. See *Complaint By United States Concerning the Democratic Republic of Vietnam*, 1964 U.N.Y.B. 148.

210. See Scheer, *supra* note 203, at 6; see also SHEEHAN, *supra* note 203, at 269.

211. Alan E. Goodman & Seth E. Tillman, *Debris from the Tonkin Resolution*, N.Y. TIMES, Aug. 5, 1984, at E21.

212. Scheer, *supra* note 203, at 7; see also Goodman & Tillman, *supra* note 211. (Retired Vice Admiral James B. Stockdale, who flew over the *U.S.S. Maddox* and *U.S.S. C. Turner Joy* looking for North Vietnamese boats, reported in a book written twenty years later that he had seen no boats, no gunfire, and no torpedo wakes).

213. JOSEPH C. GOULDEN, TRUTH IS THE FIRST CASUALTY: THE GULF OF TONKIN AFFAIR — ILLUSION AND REALITY 152 (1969).

214. Scheer, *supra* note 203, at 7.

announced a "deliberate attack."<sup>215</sup> President Johnson promised reprisal strikes against North Vietnam.<sup>216</sup>

The United States asked the Security Council "to consider the serious situation created by deliberate attacks of the Hanoi regime on United States naval vessels in international waters."<sup>217</sup> The Soviet Union asked the Council to invite North Vietnam to the Council to respond to the U.S. charge.<sup>218</sup> However, the Council did not vote on that proposal but instead decided informally to invite both Vietnamese governments to submit responses in writing.<sup>219</sup>

Czechoslovakia told the Council that, according to its information, the U.S. vessels had entered Vietnamese territorial waters and had fired on two Vietnamese islands.<sup>220</sup> It called the U.S. version of events in the Gulf of Tonkin "rather doubtful,"<sup>221</sup> and relying on a North Vietnamese statement, called the U.S. claim of an attack "a sheer fabrication."<sup>222</sup> The United States replied that both the *U.S.S. Maddox* and the *U.S.S. C. Turner Joy* had been attacked in international waters, and that the two destroyers did not engage in any belligerent action that might warrant an attack.<sup>223</sup>

North Vietnam sent the Council a telegram declaring that (1) from July 30 to August 2, U.S. vessels shelled two Vietnamese islands, in addition to bombing and strafing points in North Vietnam,<sup>224</sup> (2) on August 2, the *U.S.S. Maddox* entered Vietnamese territorial waters and fired on North Vietnamese patrol boats, (3) on August 3, U.S. vessels bombarded points on the coast,<sup>225</sup> and (4) on August 4, the United States "concocted the myth" of an attack on the *U.S.S. Maddox* and *U.S.S. C. Turner Joy*.<sup>226</sup> The South Vietnamese government also

215. Arnold H. Lubasch, *Two Torpedo Vessels Believed Sunk in Gulf of Tonkin*, N.Y. TIMES, Aug. 5, 1964, at A1.

216. Tom Wicker, *U.S. Planes Attack North Vietnam Bases: President Orders "Limited" Retaliation After Communists' PT Boats Renew Raids*, N.Y. TIMES, Aug. 5, 1964, at A1.

217. Letter Dated 4 August 1964 from the Representative of the United States of America to the President of the Security Council, U.N. SCOR, 19th Sess., Supp. for July-Sept. 1964, at 135, U.N. Doc. S/Supplements, U.N. Doc. S/5849 (1964).

218. U.N. SCOR, 19th Sess., 1140th mtg. at 42-45, U.N. Doc. S/PV.1140 (1964) (statement of Mr. Morozov, U.S.S.R.).

219. U.N. SCOR, 19th Sess., 1141th mtg. at 18-20, U.N. Doc. S/PV.1141 (1964).

220. *Id.* at 5 (statement of Mr. Hajek, Czechoslovakia).

221. *Id.*

222. *Id.*

223. *Id.* at 9-11 (statement of Mr. Stevenson, U.S.).

224. Telegram Dated 19 August 1964 from the Minister for Foreign Affairs of the Democratic Republic of Vietnam to the President of the Security Council, *supra* note 217, at 198, 199.

225. *Id.*

226. *Id.*

sent a communication to the Council but did not address the specifics of the events in the Gulf of Tonkin.<sup>227</sup>

On the basis of the alleged attack on the *U.S.S. Maddox* and *U.S.S. C. Turner Joy*, President Lyndon Johnson secured from the U.S. Congress a resolution authorizing increased military action in Vietnam,<sup>228</sup> which began a decade-long military involvement. The Security Council took no further action on the incident. If the Council had undertaken fact-finding, it might have established that no attack occurred. Such a finding would have undercut the United States' rationale for its military role in Vietnam.

## X. DOMINICAN REPUBLIC

The Security Council again avoided fact-finding when the United States intervened in the Dominican Republic. Juan Bosch, elected president in the Dominican Republic in 1963, was overthrown later that year by the military, which ruled by a junta.<sup>229</sup> In April 1965, military and civilian elements loyal to Bosch overthrew the junta and invited Bosch to resume office.<sup>230</sup>

On April 26, the U.S. embassy in the Dominican Republic sent the State Department a cable proposing military intervention to defeat the Bosch forces: "[a]ll members of the country team feel Bosch's return and resumption of control of the government is against U.S. interest in view of extremists in the coup and Communist advocacy of Bosch return."<sup>231</sup> On April 28, the United States sent Marines.<sup>232</sup> President Johnson announced he was "informed by military authorities in the Dominican Republic that American lives are in danger. These authorities are no longer able to guarantee their safety and they have reported that the assistance of military personnel is now needed for

227. Letter Dated 15 August 1964 from the Minister for Foreign Affairs of the Republic of Vietnam to the President of the Security Council, U.N. SCOR, 19th Sess., Supp. for July-Sept. 1964, at 196, U.N. Doc. S/Supplements, U.N. Doc. S/5906 (1964).

228. *Joint Resolution to Promote the Maintenance of International Peace and Security in Southeast Asia*, Aug. 10, 1964, 78 Stat. 384 (1964).

229. 2 ABRAM CHAYES ET AL., *INTERNATIONAL LEGAL PROCESS* 1153 (1969); *U.S. Stops Aid to Dominican Republic and Honduras*, 49 DEPT ST. BULL. 624 (1963).

230. *Dominican Coup Deposes Regime; Rebels Are Split*, N.Y. TIMES, Apr. 26, 1965, at A1 (Bosch forces reported on verge of establishing a government).

231. THEODORE DRAPER, *THE DOMINICAN REVOLT: A CASE STUDY IN AMERICAN POLICY* 60-61 (1968).

232. ABRAHAM F. LOWENTHAL, *THE DOMINICAN INTERVENTION* 112 (1972); TAD SZULC, *DOMINICAN DIARY* 149 (1965); *U.S. Acts to Meet Threat in Dominican Republic*, 52 DEPT ST. BULL. 738 (1965); *Johnson Charges Red Plotters Took Over Dominican Uprising: Increases U.S. Forces to 14,000*, N.Y. TIMES, May 3, 1965, at A1.  
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that purpose.”<sup>233</sup> But Senator J. William Fulbright, who conducted hearings on the matter, said that “the danger to American lives was more a pretext than a reason.”<sup>234</sup> The “military authorities,” to whom President Johnson referred, were air force officers who, at U.S. prompting, had just declared themselves a ruling junta but who exercised no political authority.<sup>235</sup>

The United States informed the Security Council of its intervention, stating the reason as one of protecting U.S. nationals.<sup>236</sup> Calling that reason pretextual, Cuba called the intervention an act of aggression and asked for Security Council action.<sup>237</sup> The Soviet Union asked the Security Council to convene to discuss “the armed interference by the United States in the internal affairs of the Dominican Republic.”<sup>238</sup>

There were upwards of 2000 U.S. nationals in the Dominican Republic prior to the conflict, half in Santo Domingo, which was the only scene of substantial fighting.<sup>239</sup> On April 27, the day before the intervention, 1172 of these were evacuated by ship and helicopter by the U.S. Navy in an operation that did not require the landing of troops.<sup>240</sup>

233. *U.S. Acts to Meet Threat in Dominican Republic*, 52 DEP'T ST. BULL. 738 (1965).

234. 111 CONG. REC. S23857 (daily ed. Sept. 15, 1965) (statement of Sen. J. William Fulbright); see also 111 CONG. REC. S24242 (daily ed. Sept. 17, 1965) (statement of Sen. Joseph Clark, that “the real reason that the marines went in there was to prevent a Communist takeover”).

235. See DRAPER, *supra* note 231, at 117-18; JOHN BARTLOW MARTIN, *OVERTAKEN BY EVENTS: THE DOMINICAN CRISIS FROM THE FALL OF TRUJILLO TO THE CIVIL WAR* 655 (1966); SZULC, *supra* note 232, at 15, 85; see also 111 CONG. REC. S24242 (daily ed. Sept. 17, 1965) (statement of Sen. Joseph Clark, that the junta was formed “[a]t the instance of the CIA” and that “it was pretty well confined to the San Isidro airbase.”).

236. Letter Dated 29 April 1965 from the Representative of the United States of America to the President of the Security Council, U.N. SCOR, 20th Sess., Supp. for April-June 1965, at 65, U.N. Doc. S/Supplements, U.N. Doc. S/6310 (1965) (stating “[t]he President acted after he had been informed by the military authorities in the Dominican Republic that American lives were in danger, that their safety could no longer be guaranteed, and that the assistance of United States military personnel was required.”).

237. Letter Dated 30 April 1965 from the Representative of Cuba to the Secretary-General, U.N. SCOR, 20th Sess., Supp. for Apr.-June 1965, at 62, U.N. Doc. S/Supplements, U.N. Doc. S/6314 (1965).

238. Letter Dated 1 May 1965 from the Representative of the Union of Soviet Socialist Republics to the President of the Security Council, U.N. SCOR, 20th Sess., Supp. for Apr.-June 1965, at 70, U.N. Doc. S/Supplements, U.N. Doc. S/6316 (1965).

239. See Charles Mohr, *President Sends Marines to Rescue Citizens of U.S. from Dominican Fighting*, N.Y. TIMES, Apr. 29, 1965, at A1.

240. MARTIN, *supra* note 173, at 652; Tad Szulc, *Dominican Revolt Fails After a Day of Savage Battle*, N.Y. TIMES, Apr. 28, 1965, at A1 (says Navy evacuated 1172); Tad Szulc, *U.S. to Evacuate Nationals Today in Dominican Crisis*, N.Y. TIMES, Apr. 27, 1965, at A1 (gives total of 2500 U.S. nationals in Dominican Republic prior to evacuation).

On April 28, but still prior to the intervention that evening, the U.S. Navy evacuated several hundred more.<sup>241</sup> Thus, only a few hundred were evacuated after the Marines intervened. Yet on May 2, President Johnson claimed that 1500 U.S. nationals still awaited evacuation.<sup>242</sup>

President Johnson announced on May 2 that he was sending more Marines to the Dominican Republic, because communists were participating on the pro-Bosch side.<sup>243</sup> "Our goal," he said, "is to help prevent another Communist state in this hemisphere."<sup>244</sup> The U.S. forces helped put down the pro-Bosch forces and kept Bosch from re-taking his office.<sup>245</sup> Johnson claimed that while the revolt had initially been led by non-leftists, during the week preceding the intervention communists came to control it.<sup>246</sup> He contended that he had the names of "some 58" communists.<sup>247</sup> The list contained so many factual errors that reporters discredited it.<sup>248</sup> Senator Fulbright, who took evidence on this issue, said, "There is little basis in the evidence offered the committee for the assertion that the rebels were Communist-dominated or certain to become so."<sup>249</sup>

Before the Security Council, the Soviet Union charged the United States with "an act of open aggression," saying that it was "dealing barbarously with the people of a sovereign country who have risen against a bloody dictatorship."<sup>250</sup> It said that the rationale of protecting Americans was a "pretext,"<sup>251</sup> and that the true motive was to secure "a régime acceptable to the United States."<sup>252</sup> It called on the Council to act to secure an immediate withdrawal of U.S. forces from the Dominican Republic.<sup>253</sup> The United States responded that the purpose

241. LOWENTHAL, *supra* note 232, at 103; SZULC, *supra* note 232, at 43.

242. *Statement by President Johnson*, 52 DEP'T ST. BULL. 744, 746 (1965); *repeated in Remarks by President Johnson*, May 4, 1965, *id.* at 816, 820-21.

243. *See Statement by President Johnson*, 52 DEP'T ST. BULL. 744 (1965).

244. *See id.* at 747 (Johnson also used the protection of American lives as a pretext for U.S. actions).

245. LOWENTHAL, *supra* note 232, at 114-18, 131, 139.

246. *Statement by President Johnson*, 52 DEP'T ST. BULL. 744, 745 (1965).

247. *Remarks by President Johnson*, 52 DEP'T ST. BULL. 816, 821 (1965).

248. FRANK CORMIER, LBJ: THE WAY HE WAS 188 (1977); *see* PHILIP GEYELIN, LYNDON B. JOHNSON and the World 253 (1966).

249. 111 CONG. REC. S23859 (daily ed. Sept. 15, 1965) (statement of Sen. J. William Fulbright).

250. U.N. SCOR, 20th Sess., 1196th mtg. at 3, U.N. Doc. S/PV. 1196 (1965) (statement of Mr. Fedorenko, U.S.S.R.).

251. *Id.*

252. *Id.* at 5.

253. *Id.* at 11.

was in fact one of rescue.<sup>254</sup> It asserted that "communist leaders, many trained in Cuba, have taken increasing control of what was initially a democratic movement."<sup>255</sup> The U.S. also expressed that the Council should leave the Dominican situation to the Organization of American States (O.A.S.), which had begun to deal with it.<sup>256</sup>

The U.S. action was condemned as unlawful intervention before the Council by Uruguay,<sup>257</sup> France,<sup>258</sup> and Jordan.<sup>259</sup> China on the other hand, saying it was satisfied with the facts as provided by the United States, viewed the U.S. action as lawful intervention, on the grounds of protecting nationals and of opposing communism.<sup>260</sup>

The O.A.S. set up a five-state committee to investigate "all aspects of the situation" and to try to achieve a ceasefire and a resolution of the civil conflict.<sup>261</sup> The O.A.S. also sent a military force to the Dominican Republic.<sup>262</sup> The Security Council asked the Secretary-General to send a representative to the Dominican Republic to report on the situation.<sup>263</sup> The Secretary-General complied, but his representative did not undertake detailed fact-finding, particularly on the United States' proffered reasons for intervening.<sup>264</sup> The representative's reports, said one analyst, were "limited to rather colorless compilations."<sup>265</sup> If the Security Council had inquired into the Dominican situation, it might have learned that the United States' claimed reasons for intervening were not based on fact. A quick and strong factual report by the Security Council would have made it embarrassing for the United States to use its military forces in the Dominican Republic to gain the political outcome it desired there.

## XI. ARAB-ISRAELI WAR, 1967

In 1967, the Security Council expended considerable effort on hostilities in the Middle East. In June 1967, Israel fought Egypt and

254. *Id.* at 15 (statement of Mr. Stevenson, U.S.).

255. *Id.* at 16.

256. *Id.* at 17-18.

257. U.N. SCOR, 20th Sess., 1198th mtg. at 4 U.N. Doc. S/PV. 1198 (1965) (statement of Mr. Velazquez, Uruguay).

258. *Cf. id.* at 24 (statement of Mr. Seydoux, France).

259. U.N. SCOR, 20th Sess., 1200th mtg. at 2-3, U.N. Doc. S/PV.1200 (1965) (statement of Mr. Rifa'i, Jordan).

260. U.N. SCOR, 20th Sess., 1202d mtg. at 4-5, U.N. Doc. S/PV.1202 (1965) (statement of Mr. Liu, China).

261. Letter Dated 12 May 1965 from the Assistant Secretary General of the Organization of American States to the Secretary-General of the United Nations, U.N. SCOR, 20th Sess., Supp. for Apr.-June 1965, at 130, U.N. Doc. S/Supplements, U.N. Doc. S/6364 (1965).

262. U.N. SCOR, 20th Sess., 1202d mtg. at 7, U.N. Doc. S/PV.1202 (1965).

263. S.C. Res. 203, U.N. SCOR, 20th Sess., at 10, U.N. Doc. S/INF/20 & Rev.1 (1965).

264. 1965 U.N.Y.B. 145.

265. GORDENKER, *supra* note 200, at 231.

Jordan.<sup>266</sup> After those hostilities quickly ended, Israel fought Syria.<sup>267</sup> During both sets of hostilities, the Council called for ceasefires,<sup>268</sup> which were put into effect within a few days.<sup>269</sup> Israel, however, took and kept territory from all three opponents.<sup>270</sup> Later in the year the Council adopted a resolution calling for Israeli withdrawal and for overall peace negotiations between Israel and the Arab states.<sup>271</sup> The Council adopted no resolution suggesting which of the states was responsible for the hostilities. Israel claimed that Egypt was responsible, while Egypt, Jordan, and Syria claimed that Israel was the culprit.<sup>272</sup>

The hostilities stemmed from tension between Israel and Syria,<sup>273</sup> which convinced Egypt that Israel would invade Syria.<sup>274</sup> Egypt asked the United Nations to remove a peacekeeping force from certain of the positions it had held on the Israel-Egypt border since the 1956

266. See *infra* notes 283-86 and accompanying text.

267. S.C. Res. 235, U.N. SCOR, 22d Sess., at 3, U.N. Doc. S/INF/22/Rev.2 (1967).

268. S.C. Res. 233, U.N. SCOR, 22d Sess., Res. & Decs. at 2, U.N. Doc. S/INF/22 Rev.2 (1967) (resolution of June 6, relating to fighting between Israel, Egypt, and Jordan); *id.* at S.C. Res. 234, Res. & Decs. at 3 (resolution of June 7, relating to fighting between same parties); *id.* at S.C. Res. 235 (resolution of June 9, relating to fighting between Israel and Syria); *id.* at S.C. Res. 236, Res. & Decs. at 4 (resolution of June 11, relating to fighting between Israel and Syria).

269. Letter Dated 7 June 1967 from the Foreign Minister of Israel to the President of the Security Council, U.N. SCOR, 22d Sess., Supp. for Apr.-June 1967, at 166, U.N. Doc. S/Supplements, U.N. Doc. S/7945 (1967); Letter Dated 8 June 1967 from the Minister of Foreign Affairs of Jordan to the Secretary-General, *id.* at U.N. Doc. S/7947. (Both letters indicate acceptance and implementation of ceasefire between Israel and Jordan.)

270. JOHN QUIGLEY, *PALESTINE AND ISRAEL: A CHALLENGE TO JUSTICE* 163 (1990).

271. S.C. Res. 242, U.N. SCOR, 22d Sess., at 8, U.N. Doc. S/INF/22; Rev.2 (1967).

272. See *infra* notes 287-89 and accompanying text.

273. Letter Dated 15 May 1967 from the Representative of Syria to the President of the Security Council, U.N. SCOR, 22d Sess., Supp. for Apr.-June 1967, at 90, U.N. Doc. S/7885 (1967) (complaining of threats by Israel to invade Syria); Letter Dated 22 May 1967 from the Representative of Israel to the President of the Security Council, U.N. SCOR, 22d Sess., Supp. for Apr.-June 1967, at 116, U.N. Doc. S/7901 (1967) (charging Syria with allowing its territory to be used for terrorist attacks into Israel); *Report of the Secretary-General on the Situation in the Near East*, *id.* at 109 (noting conflict between Israel and Syria over the demilitarized zone between them). On the charges and counter-charges between Syria and Israel, see also Charles Yost, *How the Arab-Israeli War Began*, 46 FOREIGN AFF. 304, 307 (1967); Weekly News Bulletin (Government of Israel), May 9-15, 1967, at 20, in Amos Shapira, *The Six-Day War and the Right of Self-Defence*, 6 ISRAEL L. REV. 65, 66 (1971).

274. DAVID KIMCHE & DAN BAWLY, *THE SANDSTORM: THE ARAB-ISRAELI WAR OF JUNE 1967: PRELUDE AND AFTERMATH* 91 (1968); ARTHUR LALL, *THE UN AND THE MIDDLE EAST CRISIS*, 1967, at 7-8 (1970); see Letter Dated 27 May 1967 from the Representative of the United Arab Republic to the President of the Security Council, U.N. SCOR, 22d Sess., Supp. for Apr.-June 1967, at 124, U.N. Doc. S/Supplements, U.N. Doc. S/7907 (1967) (complaining of Israeli threats against Syria and stating that Israel was mobilizing forces "in preparation for the invasion of Syria").



war.<sup>275</sup> In explaining the reason for this request, Egypt announced it wanted to be able to move against Israel "the moment it might carry out any aggressive action against any Arab country."<sup>276</sup> U.N. Secretary General U Thant pulled the U.N. force out of Egypt and asked Israel to accept it on its side of the border as a guard against a possible attack by Egypt; Israel declined.<sup>277</sup>

One of the positions held by the U.N. forces was a post overlooking the Straits of Tiran.<sup>278</sup> Although Egypt had not asked the U.N. to remove its forces from that location, the U.N. did so; this act led Egypt to occupy the location and to announce that it would close the Straits of Tiran to Israeli-flag vessels and to any vessels carrying strategic goods to Israel.<sup>279</sup> Again Egypt declared that it acted to prevent Israel from preparing for an attack on Syria.<sup>280</sup> Egypt also moved troops to the Israel-Egypt border, again for the stated purpose of deterring an Israeli invasion of Syria.<sup>281</sup> At this juncture, the Israeli government understood that Egypt intended to intervene only if Israel attacked Syria.<sup>282</sup>

On June 4, Israel's cabinet authorized an invasion of Egypt.<sup>283</sup> The next day, Israel's air force bombed Egyptian aircraft on the ground

275. *Report of the Secretary-General on the Situation in the Near East*, *supra* note 273, at 111-12 (noting Egyptian request for removal of U.N. troops). On the 1956 hostilities, see *supra* notes 139-55 and accompanying text.

276. IAR JIT RIKHYE, *THE SINAI BLUNDER: WITHDRAWAL OF THE UNITED NATIONS EMERGENCY FORCE LEADING TO THE SIX-DAY WAR OF JUNE 1967*, at 16 (1980) (Rikhye was the U.N. commander and received this communication from Egypt).

277. *Report of the Secretary-General on the Withdrawal of the United Nations Emergency Force*, U.N. GAOR, 5th Emerg. Spec. Sess., at 6-7, ¶ 21, U.N. Doc. A/6730 & Add. 1-3 & Add. 3/ Corr.1/ (1967).

278. Kenneth M. Lewan, *Justifications for the Opening of Hostilities in the Middle East*, 26 *REVUE ÉGYPTIENNE DE DROIT INT'L* 88 (1970).

279. *Id.*

280. 16 *KEESING'S CONTEMPORARY ARCHIVES* 22065 (1967).

281. Michael Akehurst, *The Arab-Israeli Conflict in International Law*, 5 *NEW ZEALAND U.L. REV.* 231, 240 (1973).

282. NADAV SAFRAN, *FROM WAR TO WAR: THE ARAB-ISRAELI CONFRONTATION, 1948-1967*, at 307 (1969); see also LYNDON JOHNSON, *THE VANTAGE POINT: PERSPECTIVES OF THE PRESIDENCY 1963-1969*, at 293 (1971); Alfred J. Hotz, *Legal Dilemmas: The Arab-Israeli Conflict*, 19 *S.D. L. REV.* 242, 264 (1974) (noting that the United States did not expect Egypt to invade Israel, absent an Israeli invasion of Syria, and that it so informed Israel).

283. KIMCHE & BAWLY, *supra* note 274, at 134-56; EDGAR O'BALLANCE, *THE THIRD ARAB-ISRAELI WAR* 35 (1972); JANICE STEIN & RAYMOND TANTER, *RATIONAL DECISION-MAKING: ISRAEL'S SECURITY CHOICES, 1967*, at 241 (1980); Asher Wallfish, *Meir Reveals Text of War Decision*, *JERUSALEM POST*, June 5, 1972, at 1, col. 2; Howard Koch, *June 1967: The Question of Aggression*, 15 *ARAB WORLD* 10-13 (June 1969); .

at their bases and attacked Egypt by land in the Sinai Peninsula.<sup>284</sup> Jordan retaliated against the Israeli attack on Egypt by shelling into Israel around Jerusalem.<sup>285</sup> The Israeli air force also attacked the air forces of Jordan and Syria while the aircraft remained on the ground, virtually eliminating the air war potential of both states.<sup>286</sup>

Egypt filed a complaint with the Security Council, stating that Israel had initiated the hostilities without provocation.<sup>287</sup> Israel, however, claimed that Egypt had struck first.<sup>288</sup> Israel told the Council, "Egyptian forces engaged us by air and land, bombarding the villages of Kissufim, Nahal-Oz and Ein Hasheloshah," and an "approaching Egyptian aircraft appeared on our radar screens."<sup>289</sup>

On July 7, Israeli Prime Minister Levi Eshkol implicitly admitted that Israel's story of a June 5 Egyptian attack was false; he maintained that Israel had struck first but did so in "legitimate defense" because of an anticipated imminent attack from Egypt.<sup>290</sup> As proof of Egypt's intent, Israeli officials cited Egypt's request for the departure of the U.N. forces, its closure of the Straits of Tiran, its positioning of troops near Israel, its alliance with Jordan, and verbal threats by Egyptian President Gamal Abdul Nasser.<sup>291</sup>

Israeli officials said later, however, that Israel had not expected an attack.<sup>292</sup> Chief of Staff Itzhak Rabin said that the troops Egypt sent to the border "would not have been enough to unleash an offensive

284. PIERRE-MARIE MARTIN, *LE CONFLIT ISRAËLO-ARABE: RECHERCHES SUR L'EMPLOI DE LA FORCE EN DROIT INTERNATIONAL PUBLIC POSITIF* 153-54 (1973); Tom J. Farer, *Law and War*, in 3 *THE FUTURE OF THE INTERNATIONAL LEGAL ORDER: CONFLICT MANAGEMENT* 15, 41 (Charles Black & Richard Falk eds., 1971).

285. O'BALLANCE, *supra* note 283, at 181.

286. SAFRAN, *supra* note 282, at 328.

287. U.N. SCOR, 22d Sess., 1347th mtg. at 1-2, U.N. Doc. S/PV.1347 (1967) (communication of permanent representative of U.A.R. to president of Security Council).

288. *Id.* at 1, 4 (communication of permanent representative of Israel to president of Security Council).

289. U.N. SCOR, 22d Sess., 1348th mtg. at 15, U.N. Doc. S/PV.1348 (1967) (statement of Mr. Eban, Israel).

290. *Admission on Attack*, LONDON TIMES, July 8, 1967, at A3 (stating that Eshkol "buried the often-repeated statement that Egyptian [air] and land forces attacked Israel before she launched her devastating lightning offensive on June 5").

291. Cf. ALLAN GERSON, *ISRAEL, THE WEST BANK AND INTERNATIONAL LAW* 71 (1978); 1967 U.N.Y.B. 195-96; Stephen Schwebel, *What Weight to Conquest?*, 64 AM. J. INT'L L. 344, 346 (1970); Shapira, *supra* note 273, at 76.

292. HEINZ WAGNER, *DER ARABISCH-ISRAELISCHE KONFLIKT IM VÖLKERRECHT* 434 (1971); Joseph L. Ryan, *The Myth of Annihilation and the Six-Day War*, WORLDVIEW, Sept. 1973, at 38-42.

against Israel. He knew it and we knew it."<sup>293</sup> Menachem Begin, then a cabinet member, said that "the Egyptian Army concentrations in the Sinai approaches do not prove that Nasser was really about to attack us. We must be honest with ourselves. We decided to attack him."<sup>294</sup>

Despite the serious divergence of the versions of the events, the Security Council did not address the question of responsibility. Apart from the U.S.S.R., China, and Bulgaria, the members of the Council accepted Israel's version,<sup>295</sup> taking no serious steps in the summer of 1967 to achieve Israel's withdrawal. When the Council adopted a resolution on the hostilities in November of that year, it took only a soft stand on withdrawal, linking it to an overall Arab-Israeli peace settlement.<sup>296</sup> The Council did not investigate the facts behind the June 1967 hostilities, beyond receiving the statements of the states involved.<sup>297</sup> If the Council had understood the facts, it might have taken more decisive measures to secure Israel's withdrawal.<sup>298</sup>

The General Assembly met in special session to consider the hostilities, but its work came to naught. A number of resolutions were proposed to condemn Israel for aggression,<sup>299</sup> or called for Israel's unconditional withdrawal;<sup>300</sup> however, since the facts had not been clarified, these resolutions gained little support. If the Security Council had investigated and determined the facts, the General Assembly might have acted more productively.

293. *Le Général Rabin ne Pense pas que Nasser Voulait la Guerre*, LE MONDE, Feb. 29, 1968, at 1 (Rabin said that Nasser did not think Israel would attack Syria, but that Nasser put troops on the border to give the appearance of being the "savior of Syria") (translated by author).

294. *Excerpts from Begin Speech at National Defense College*, N.Y. TIMES, Aug. 21, 1982, at A6.

295. There were no Arab states as members of the Security Council in 1967.

296. *Supra* note 271.

297. *See supra* notes 287-89 and accompanying text.

298. John Quigley, *The United Nations Action Against Iraq: A Precedent for Israel's Arab Territories?*, 2 DUKE J. COMP. & INT'L L. 195 (1992).

299. *Union of Soviet Socialist Republic: Draft Resolution*, U.N. Doc. A/L.519, 5 (Emerg. Spec. Sess.) U.N. GAOR, 5th Emerg. Spec. Sess. at 39 (condemning Israel for aggression and demanding immediate withdrawal); *Albania: Draft Resolution Israel Imperialist Aggression Against the Arab Countries*, U.N. Doc. A/L.521, at 40 (to the same effect).

300. *Afg., Burundi, Cambodia, Ceylon, Congo (Brazzaville), Cyprus, Guinea, India, Indon., Kenya, Malay., Mali, Pak., Senegal, Somalia, United Republic of Tanzania, Yugo., and Zambia: draft Resolution Immediate Withdrawal of Armed Forces of Israel from Territories Belonging to Jordan, Syria and The United Arab Republic*, U.N. Doc. A/L.522 (calling for immediate Israeli withdrawal).

## XII. CZECHOSLOVAKIA

When Warsaw Pact forces entered Czechoslovakia in August 1968, Western states asked the Security Council to act.<sup>301</sup> The United States contended that these forces had detained the leadership of the Czechoslovak government in order to impose a repressive political system in Czechoslovakia.<sup>302</sup> The Soviet Union responded that the Warsaw Pact forces had entered at the invitation of the Czechoslovak government, which was concerned over the efforts of Western states to undermine socialism in Czechoslovakia; it therefore opposed Security Council consideration of the issue.<sup>303</sup> The Soviet government suggested that the Western states were bringing the issue to the Security Council to protect their own interference in Czechoslovakia.<sup>304</sup> "Party and Government leaders of the Czechoslovak Socialist Republic" invited it into Czechoslovakia, said the Soviet Union.<sup>305</sup> The Soviet Communist Party newspaper *Pravda* published a letter, purportedly from a "group of members of the Central Committee of the Communist Party of Czechoslovakia, of the government and National Assembly who asked for the assistance of the governments and communist parties of the fraternal countries[,]" explaining the reasons for the request.<sup>306</sup>

In the Security Council, the United States replied that the military intervention constituted aggression and demanded the withdrawal of

301. Letter Dated 21 August 1968 from the Representatives of Canada, Denmark, France, Paraguay, the United Kingdom of Great Britain and Northern Ireland, and the United States of America Addressed to the President of the Security Council, U.N. SCOR, 23d Sess., Supp. for July-Sept. 1968, at 136, U.N. Doc. S/Supplements, U.N. Doc. S/8758 (1968).

302. U.N. SCOR, 23d Sess., 1441th mtg. at 3, U.N. Doc. S/PV.1441 (1968) (statement of Mr. Ball, U.S.).

303. Letter Dated 21 August 1968 from the Representative of the Union of Soviet Socialist Republics to the President of the Security Council, U.N. SCOR, 23d Sess., Supp. for July-Sept. 1968, at 136, U.N. Doc. S/Supplements, U.N. Doc. S/8759 (1968); *see id.* at 137 (stating "military units of the socialist countries have entered the territory of the Czechoslovak Socialist Republic pursuant to a request by the Government of that State, which appealed to allied Governments for assistance, including assistance in the form of armed forces, in view of the threat created by foreign and domestic reaction to the socialist social order and the constitutional State system of Czechoslovakia").

304. *Id.*

305. *Statement by T.A.S.S., PRAVDA*, Aug. 21, 1968, at 1; Raymond H. Anderson, *Soviet Explains: Says Its Troops Moved at the Request of Czechoslovaks*, N.Y. TIMES, Aug. 21, 1968, at A1.

306. Letter of the Group of Members of the Central Committee of the Communist Party of Czechoslovakia, of the Government and National Assembly of the C.S.S.R., *PRAVDA*, Aug. 22, 1968, at 1 (translated by author).

Warsaw Pact forces from Czechoslovakia.<sup>307</sup> It denied involvement in internal Czechoslovak politics.<sup>308</sup> It cited a broadcast statement by the Czechoslovak government that the intervention occurred without the knowledge of top officials.<sup>309</sup> Canada quoted a statement issued by the presidium of the Czechoslovak National Assembly demanding the departure of the Warsaw Pact forces.<sup>310</sup>

The Czechoslovak government participated in Security Council deliberations, denying it had requested intervention and calling for a withdrawal of the Warsaw Pact troops.<sup>311</sup> The Czechoslovak Communist Party also denied that Czechoslovakia had asked for intervention.<sup>312</sup> This denial effectively countered the Soviet assertion of an invitation to the Warsaw Pact forces. The Soviet Union shifted to a different justification, namely, that socialism in Czechoslovakia was being undermined by outside forces, and that it must protect Czechoslovakia from a possible invasion by Western countries.<sup>313</sup> The Soviet Union did not adduce persuasive evidence of external actions against Czechoslovakia. Nonetheless, this rationale, which came to be called the Brezhnev doctrine, became a sore point in East-West relations for the next two decades.

The Security Council undertook no factual investigation of the Warsaw Pact intervention in Czechoslovakia. The Soviet claim of Western involvement, while never proven, was not disproved. If the Security Council had investigated that issue, it might have made it more difficult for the Soviet Union to espouse the Brezhnev doctrine as a rationale for intervention.

### XIII. GRENADA

In 1983, the United States landed troops in Grenada. Grenada immediately asked the Security Council to convene "on the invasion

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307. *Supra* note 302, at 2 (statement of Mr. Ball, U.S.).

308. *Id.* at 4.

309. *Id.* at 3.

310. *Id.* at 5 (statement of Mr. Ignatieff, Canada).

311. U.N. SCOR, 23d Sess., 1445th mtg. at 17-20, U.N. Doc. S/PV.1445 (1968).

312. *Declaration of the Presidium of the Central Committee of the Czechoslovakian Communist Party*, Aug. 21, 1968, in 7 I.L.M. 1285 (1968).

313. See S. Kovalev, *Sovereignty and the International Obligations of Socialist Countries*, PRAVDA, Sept. 26, 1968, at 4; *Translated by Novosti Soviet Press Agency as Text of Pravda Article Justifying Invasion of Czechoslovakia*, N.Y. TIMES, Sept. 27, 1968, at A3. (N.Y. Times gave the date of the Pravda article incorrectly as Sept. 25).

of Grenada.”<sup>314</sup> Nicaragua also asked the Security Council to act on the U.S. intervention,<sup>315</sup> calling it an act of aggression.<sup>316</sup> The United States informed the Council of its landing by explaining that it acted on a request from the Organization of Eastern Caribbean States, and to protect U.S. citizens in Grenada.<sup>317</sup>

In the Security Council, a draft resolution, characterizing the intervention as “a flagrant violation of international law” and calling for the immediate withdrawal of outside troops,<sup>318</sup> gained eleven out of fifteen votes but was vetoed by the United States.<sup>319</sup> No proposal was made to investigate the facts. The General Assembly adopted a resolution condemning the “armed intervention in Grenada” as “a flagrant violation of international law.”<sup>320</sup>

The United States claimed that U.S. nationals in Grenada were in danger of being taken hostage by the government;<sup>321</sup> the U.S. also contended that it had been invited to intervene, both by Grenada’s Governor-General,<sup>322</sup> and by the Organization of Eastern Caribbean States (O.E.C.S.), a regional organization of which Grenada was a member.<sup>323</sup> The United States did not make public any information to substantiate its claim of a need to rescue U.S. nationals, most of whom were students at a U.S.-run medical college in Grenada.<sup>324</sup> The United States claimed it was unable to remove U.S. nationals by any other

314. Letter Dated 25 October 1983 from the Representative of Grenada to the President of the Security Council, Supp. for Oct.-Dec. 1983, at 37, U.N. Doc. S/Supplements, U.N. Doc. S/16075 (1985).

315. Letter Dated 25 October 1983 from the Deputy Minister for External Relations of Nicaragua to the President of the Security Council, Supp. for Oct.-Dec. 1983, at 34, U.N. Doc. S/Supplements, U.N. Doc. S/16067.

316. Letter Dated 25 October 1983 from the Deputy Minister for External Relations of Nicaragua to the President of the Security Council, *id.* at 34-35, U.N. Doc. S/16069.

317. Letter Dated 25 October 1983 from the Representative of the United States of America to the President of the Security Council, *id.* at 37, U.N. Doc. S/16076.

318. *Guyana, Nicaragua and Zimbabwe: Revised Draft Resolution*, *id.* at 39, U.N. Doc. S/16077/Rev.1.

319. U.N. SCOR, 38th Sess., 2491st mtg. at 197, U.N. Doc. S/PV.2491 (1983).

320. G.A. Res. 38/7, U.N. GAOR, 38th Sess., Supp. 47, at 19, U.N. Doc. A/38/L.8-9 (1983); 1983 U.N.Y.B. 214 Vote: 108-9-27.

321. Letter from Davis R. Robinson, Legal Adviser, U.S. Dept. of State, to Prof. Edward Gordon, Chairman, Committee on Grenada, Section on International Law and Practice, American Bar Assn., (Feb. 10, 1984), *reprinted in* 18 INT’L LAW. 381, 385 (1984).

322. *Id.* at 382-83.

323. *Id.* at 383.

324. John Quigley, *The United States Invasion of Grenada: Stranger than Fiction*, 18 U. MIAMI INTER-AM. L. REV. 271, 281 (1986-87).

means but invasion; yet, it made no serious effort to remove them by other means.<sup>325</sup> U.S. diplomats proposed taking U.S. nationals out of Grenada on a cruise liner and Grenada agreed, but the United States did not follow up on the plan.<sup>326</sup> The United States later acknowledged that its forces had not been informed prior to the invasion of the location of the students they were supposedly invading to rescue.<sup>327</sup> As a result, most of the students remained several days in areas of hostilities before being reached by the U.S. forces.<sup>328</sup>

Regarding the purported request by the Governor-General, the United States produced a request letter signed by the Governor-General, but a representative of the prime minister of Barbados, one of the states that nominally participated in the invasion, said that this letter was drafted by the U.S. State Department and hand-carried to the Governor-General for signature by U.S. troops when they arrived in Grenada.<sup>329</sup> In addition, the Governor-General and other principals contradicted each other as to the timing and manner of the alleged request.<sup>330</sup> While the O.E.C.S. did vote to intervene and asked the United States to do so, it acted only on prompting from the United States. It was obvious to the members of the Security Council that it would have been meaningless for the O.E.C.S., whose member states had no armies, to decide on military intervention in Grenada without a prior assurance that the United States would carry it out.<sup>331</sup>

Although most Security Council members, as reflected in the Council vote, did not find the U.S. claims convincing, they did not possess sufficient factual information to refute them effectively. The Council made no effort to investigate the facts underlying the U.S. justifications. As a result, the United States was able to maintain its version of the events and to complete its removal of the government of Grenada.

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325. EDWIN C. HOYT, *LAW AND FORCE IN AMERICAN FOREIGN POLICY* 144 (1985) ("[t]here was no evidence that the Americans could not have been evacuated without military action").

326. Quigley, *supra* note 324, at 292-93.

327. *Situation in Lebanon and Grenada: Hearing Before a Subcommittee of the House Committee on Appropriations*, 98th Cong., 1st Sess. 56 (1983) (statement of Casper Weinberger, Secretary of Defense).

328. *Situation in Lebanon and Grenada: Hearing Before a Subcomm. of the House Comm. on Appropriations*, 98th Cong., 1st Sess. 58 (1983) (statement of Caspar Weinberger, Secretary of Defense).

329. Quigley, *supra* note 324, at 335.

330. *Id.* at 330-37.

331. *Id.* at 310-19; see BOB WOODWARD, *THE VEIL: THE SECRET WARS OF THE CIA 1981-1987*, at 290 (1987).

## XIV. NICARAGUA

Nicaragua complained to the Security Council in 1984 that the United States had organized an army of Nicaraguans, popularly known as "contras," to overthrow it.<sup>332</sup> The United States initially denied organizing and funding the Nicaragua "contra" army.<sup>333</sup> Later it acknowledged the aid but said the aim was solely to stop arms shipments from Nicaragua to Salvadoran insurgents.<sup>334</sup>

Nicaragua also charged that the United States raided installations on the Nicaraguan coast, using speedboats, and mined the waters of Nicaragua's ports to disrupt its commerce. The U.S. Central Intelligence Agency, after public denials,<sup>335</sup> acknowledged responsibility for the mining.<sup>336</sup> Nicaragua submitted a draft resolution condemning the mining of its ports.<sup>337</sup> Thirteen of the Council's fifteen members voted in favor, but the United States vetoed it.<sup>338</sup> Nicaragua also took its complaints against the United States to the International Court of Justice, which found that the United States played a substantial role in organizing the "contras,"<sup>339</sup> and raided the coastal installations and mined the harbor waters.<sup>340</sup>

U.S. assistance to the "contras" continued, openly or covertly, until 1986.<sup>341</sup> The Nicaragua situation, which continued over an extended period, presented an ideal opportunity for investigation. However, the Security Council did not investigate the competing factual claims of Nicaragua and the United States. Had it done so, it might have been able to achieve a more expeditious resolution of the Nicaraguan situation.

332. Letter Dated 3 February 1984 from the Representative of Nicaragua to the President of the Security Council, U.N. SCOR, 39th Sess., Supp. for Jan.-Mar.1984, at 38, U.N. Doc. S/Supplements, U.N. Doc. S/16306 (1984).

333. WOODWARD, *supra* note 331, at 225, 229-30, 250, 263.

334. WOODWARD, *supra* note 331, at 206, 225-26; Philip Taubman, *Moynihan Questions C.I.A.'s Latin Role*, N.Y. TIMES, Apr. 1, 1983, at A3; Leslie H. Gelb, *State Dept. Aides Said to Question Acts in Nicaragua*, N.Y. TIMES, Apr. 7, 1983, at A1.

335. WOODWARD, *supra* note 331, at 320; John F. Burns, *Moscow Holds U.S. Responsible for Mines Off Nicaragua's Ports*, N.Y. TIMES, March 22, 1984, at A1.

336. Philip Taubman, *Americans on Ship Said to Supervise Nicaragua Mining*, N.Y. TIMES, Apr. 8, 1984, at A1.

337. *Nicaragua: Draft Resolution*, U.N. SCOR, 39th Sess., Supp. for Apr-June 1984, at 5, U.N. Doc. S/Supplements, U.N. Doc. S/16463 (1984).

338. U.N. SCOR, 39th Sess., 2925th mtg. at 111, U.N. Doc. S/PV.2529 (1984).

339. *Military and Paramilitary Activities in and Against Nicaragua* (Nica. v. U.S.), 1986 I.C.J. 14, 64-65.

340. *Id.* at 46-50.

341. Peter Kornbluh, *The Covert War*, in REAGAN VERSUS THE SANDINISTAS: THE UNDECLARED WAR IN NICARAGUA 21-35 (T.W. Walker ed., 1987).



## XV. LIBYA

In April 1986, the United States bombed Libya, including densely populated sections of Tripoli, Libya's capital city.<sup>342</sup> According to the Libyan government, 37 people were killed and 93 wounded.<sup>343</sup> The United States called the targets "terrorist facilities."<sup>344</sup> A White House statement said that the targets were command and control operations for terrorism.<sup>345</sup>

The United States' major justification for the raid was its allegation that Libya arranged an explosion a few days earlier at a West Berlin nightclub frequented by U.S. military personnel.<sup>346</sup> In that explosion, one U.S. serviceman and a Turkish woman were killed, and two hundred other patrons were wounded.<sup>347</sup> Libya denied involvement in the nightclub bombing.<sup>348</sup>

The United States acquired a report of an alleged intercepted message between Libya and the Libyan mission in East Berlin. In the message, a Libyan government role in the bombing was acknowledged.<sup>349</sup> However, the deputy chief of West Berlin's military police said the information in the intercepts was too general for any such operation.<sup>350</sup> The West German government, which had access to the U.S. information, said it could not conclude that Libya was involved.<sup>351</sup> The chief of the special anti-terrorist police force of Germany said he doubted a Libyan role.<sup>352</sup>

As additional justification for the Libya raid, the United States claimed that Libya planned to attack thirty U.S. targets in various countries.<sup>353</sup> The U.S. declared that Libyans had surveilled U.S. em-

342. See generally Michael R. Gordon, *Pentagon Details 2-Pronged Attack*, N.Y. TIMES, Apr. 15, 1986, at A13; Serge Schmemmann, *German is Seized in Disco Bombing*, N.Y. TIMES, Jan. 12, 1988, at A3.

343. *Id.*

344. *Announcement by Speakes*, N.Y. TIMES, Apr. 15, 1986, at A13.

345. *Id.*

346. See *id.*

347. *Id.*

348. WOODWARD, *supra* note 331, at 444-45.

349. *Id.*

350. Bill Schaap, *Disinforming the World on Libya*, COVERT ACTION INFO. BULL., No. 30, at 76, 71 (Summer 1988) (article begins on back cover).

351. See also Bernard Gwertzman, *Plots on Global Scale Charged*, N.Y. TIMES, Apr. 15, 1986, at A1; Seymour Hersh, *Target Quadafi*, N.Y. TIMES, Feb 22, 1987, at F17.

352. Gwertzman, *supra* note 351; Hersh, *supra* note 351.

353. Gwertzman, *supra* note 351.

bassies and commercial installations in Africa, Europe, the Middle East, and Latin America.<sup>354</sup>

In the Security Council, a draft resolution to condemn the United States for aggression received nine votes but was vetoed by France, Britain, and the United States.<sup>355</sup> The General Assembly passed a resolution condemning the raid.<sup>356</sup> The Security Council did not investigate the U.S. claims against Libya. Had it investigated the Berlin nightclub bombing and the charge of Libya's planned attack on U.S. installations, it might have lessened the tension between Libya and the Western powers.

## XVI. PANAMA

When the United States sent a military force into Panama in 1989 to displace Panama's government, its primary justification was self-defense, based on recent attacks and alleged anticipated future attacks against U.S. citizens in Panama.<sup>357</sup> A White House statement said, "Last Friday, [Gen. Manuel] Noriega [*de facto* head of Panama's government] declared a state of war with the United States. The next day, the P.D.F. [Panama Defense Force] shot to death an unarmed American serviceman, wounded another, seized and beat another serviceman and sexually threatened his wife. Under these circumstances, the President decided he must act to prevent further violence."<sup>358</sup> President Bush announced that he decided to invade, because "the lives of American citizens were in grave danger."<sup>359</sup>

Another justification on which the United States based its action was the defense of its rights under the treaties regulating the Panama

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354. *Id.*

355. U.N. SCOR, 41st Sess., 2682d mtg. at 43, UN Doc. S/PV.2682 (1986).

356. G.A. Res. 41/38, U.N. GAOR, 41st Sess., Supp. No. 53, at 34, U.N. Doc. A/41/53 (1987).

357. Secretary Baker also said that the United States had information that Gen. Noriega was preparing "an urban commando attack on American citizens in a residential neighborhood" in Panama City. Secretary Baker said, however, that he could not prove this information, and that he received it after December 17, the day on which the United States decided to invade. Andrew Rosenthal, *U.S. Forces Gain Wide Control in Panama: New Leaders Put in But Noriega Gets Away*, N.Y. TIMES, Dec. 21, 1989, at A1; *Excerpts from Statement by Baker on U.S. Policy*, N.Y. TIMES, Dec. 21, 1989, at A19. The United States also alleged violations by Panama of the treaties governing the Panama Canal. *Id.*

358. *Fighting in Panama: The White House; Text of Statement by Fitzwater*, N.Y. TIMES, Dec. 21, 1989, at A19.

359. *A Transcript of Bush's Address on the Decision to Use Force in Panama*, N.Y. TIMES, Dec. 21, 1989, at A19.

Canal.<sup>360</sup> The Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal required the United States and Panama to keep the Canal permanently open to the shipping of all states.<sup>361</sup> The United States had complained of harassment of Canal workers by the P.D.F. in 1988 and 1989, stating that the harassment violated Panama's obligation to ensure that the Canal would be open to the ships of all states.<sup>362</sup>

The United States' reference to a "state of war" declared by Panama was in a resolution adopted December 15, 1989, by Panama's national assembly.<sup>363</sup> The resolution declared "that the Republic of Panama is in a state of war while there is aggression against the people of Panama from the United States of America."<sup>364</sup> The word "aggression" referred to recent U.S. military maneuvers in Panama,<sup>365</sup> and to economic sanctions recently imposed by the United States.<sup>366</sup> In the resolution, the national assembly also named Gen. Noriega as "chief of government" and "maximum leader for national liberation" to oppose the United States.<sup>367</sup> President Bush said that the resolution was a declaration of war and an indication of Panama's intent to attack United States nationals in Panama.<sup>368</sup>

360. *Excerpts from Statement by Baker on U.S. Policy*, N.Y. TIMES, Dec. 21, 1989, at A19 (Secretary of State James Baker stating that one objective of the intervention was "to defend the integrity of United States' rights under the canal treaties").

361. *Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal*, Pan.-U.S., Sept. 7, 1977, T.I.A.S. No. 10029, 16 I.L.M. 1040 (1977).

362. Robert Pear, *U.S. Is Faulted on Military Maneuvers in Panama*, N.Y. TIMES, Aug. 24, 1989, at A3; *The OAS and the Panama Crisis*, DEP'T ST. BULL. 67, 73 (1989); *Panama, United States Again Before Council*, U.N. CHRONICLE, Dec. 1989, at 20.

363. Andrew Rosenthal, *U.S. Forces Gain Wide Control in Panama: New Leaders Put in But Noriega Gets Away*, N.Y. TIMES, Dec. 21, 1989, at A1.

364. *Id.*

365. Robert Pear, *U.S. Is Faulted on Military Maneuvers in Panama*, N.Y. TIMES, Aug. 24, 1989, at A3 (O.A.S. calling these maneuvers "inopportune"). Panama complained to the U.N. Security Council that the maneuvers created "a state of imminent war." Paul Lewis, *Panama Urges U.N. to Send Observers*, N.Y. TIMES, Aug. 12, 1989, at A3; *Panama, United States Again Before Council*, U.N. CHRONICLE 20 (Dec. 1989).

366. William Branigin, *Noriega Appointed 'Maximum Leader', Panama Says 'State of War Exists with U.S.'*, WASH. POST, Dec. 16, 1989, at A21; William Branigin, *'State of War' Seen as Quest for Support; Move by Noriega Apparently Backfires*, WASH. POST, Dec. 20, 1989, at A32.

367. Andrew Rosenthal, *President Calls Panama Slaying a Great Outrage*, N.Y. TIMES, Dec. 19, 1989, at A1.

368. *A Transcript of Bush's Address on the Decision to Use Force in Panama*, N.Y. TIMES, Dec. 21, 1989, at A19.

In the U.N. Security Council, ten states voted for a draft resolution which found the intervention to violate international law, but the draft was vetoed by the United States, Britain, and France.<sup>369</sup> The U.N. General Assembly resolved to "strongly deplore" the intervention and to demand the immediate withdrawal of U.S. forces from Panama.<sup>370</sup> The O.A.S. "deeply deplored" the invasion, called for the withdrawal of U.S. forces, and supported "the right of the Panamanian people to self-determination without outside interference."<sup>371</sup>

The states voting for these resolutions evidently did not believe that Panama had taken action giving rise to a right of self-defense by the United States, or that Panama had given the United States cause to intervene to protect the Panama Canal. The December 15 Panama national assembly resolution was a policy statement asserting that the United States had committed economic aggression against Panama by a variety of recent trade sanctions.<sup>372</sup> The resolution could be read as a statement that the United States had initiated war with Panama, rather than a statement of Panama's intent to initiate war against the United States.<sup>373</sup> The Assembly's apparent intent in adopting the resolution was to arouse nationalist sentiment in support of Gen. Noriega.

The United States said that the December 16 incidents of violence showed that Panama planned to carry through with the aggressive intent to attack U.S. nationals reflected in the December 15 resolu-

369. Paul Lewis, *Security Council Condemnation of Invasion Vetoed*, N.Y. TIMES, Dec. 24, 1989, at A8 (Canada also voted against; Finland abstained).

370. G.A. Res. 44/240, U.N. GAOR, 44th Sess., U.N. Doc. A/44/L.63 (1989); Ethan Schwartz, *U.N. Assembly Condemns Invasion, Calls for Troop Pullout of Panama*, WASH. POST, Dec. 30, 1989, at A17. The vote was 75 to 20. There were 40 abstentions, primarily European delegates who voted in the negative because, although they found the intervention illegal, they wanted the resolution to mention misdeeds by Gen. Noriega.

371. *La OEA Deplora la Invasión y Exige un Cese del Fuego*, LA PRENSA (Buenos Aires), Dec. 23, 1989, at 4; *Criticism of U.S. Action Is Supported in 20-1 Vote*, N.Y. TIMES, Dec. 23, 1989, at A15. Costa Rica, El Salvador, Honduras, Guatemala, Antigua, and Barbados abstained. John M. Goshko & Michael Isikoff, *O.A.S. Votes to Censure U.S. for Intervention; Peru Suspends Cooperation in Drug Fight*, WASH. POST, Dec. 23, 1989, at A7 (resolution adopted by a vote of 20 to one, with the U.S. casting the only negative vote).

372. See O.A.S. CHARTER OF THE ORGANIZATION OF AMERICAN STATES art. 16 (stating, "[n]o State may use . . . coercive measures of an economic . . . character in order to force the sovereign will of another State").

373. Cf. Lucia Mouat, *US Policy of Grinding Down Noriega Stalls*, CHRISTIAN SCI. MONITOR, Dec. 20, 1989, at 1.

tion.<sup>374</sup> On December 16, four off-duty United States military officers, driving in an automobile, approached a military checkpoint near the P.D.F. headquarters.<sup>375</sup> According to a U.S. Defense Department account, the four had lost their way and were unarmed.<sup>376</sup> P.D.F. soldiers pointed weapons at them and reached into the automobile menacingly.<sup>377</sup> Not knowing the soldiers' purpose, the officers drove through the checkpoint.<sup>378</sup> The soldiers fired at the automobile, killing one of the officers and wounding another.<sup>379</sup>

According to the Department of Defense, a U.S. Navy officer and his wife were near the checkpoint at the time and observed the incident. P.D.F. soldiers, reportedly intoxicated,<sup>380</sup> detained and questioned them for four hours, beating the officer, and sexually threatening his wife.<sup>381</sup> President Bush called the checkpoint incident an "outrage," and his spokesperson said that it, together with the December 15 resolution, created a "climate of aggression."<sup>382</sup>

The Panama government gave a different account of the December 16 incident.<sup>383</sup> According to a P.D.F. communique, the four U.S. officers were armed and opened fire first, wounding two Panamanian civilians and one soldier.<sup>384</sup> Despite this denial of the U.S. account, P.D.F. officials told U.S. representatives that the incident had not been intended,<sup>385</sup> a communication that represented a quasi-apology and suggested that the incident did not presage further attacks.

Regarding the Panama Canal, Secretary Baker said that the United States "anticipated that there might be problems with respect to the Canal if Noriega continued to retain power illegitimately."<sup>386</sup> He refer-

374. Walter Pincus, *Pair of Incidents Pushed Bush Toward Invasion*, WASH. POST, Dec. 24, 1989, at A16.

375. *Excerpts from U.S. Account of Officer's Death in Panama*, N.Y. TIMES, Dec. 18, 1989, at A8.

376. *Id.*

377. *Id.*

378. *See id.*

379. *Id.*

380. *Cf.* Walter Pincus, *Pair of Incidents Pushed Bush Toward Invasion*, WASH. POST, Dec. 24, 1989, at A16.

381. *Excerpts from U.S. Account of Officer's Death in Panama*, *supra* note 375.

382. *See* Andrew Rosenthal, *President Calls Panama Slaying a Great Outrage*, N.Y. TIMES, Dec. 19, at A1.

383. William Branigin, *U.S. Assails Panama in Killing of GI; Account of Shooting Denounced as False*, WASH. POST, Dec. 18, 1989, at A1.

384. *See id.*

385. Rosenthal, *supra* note 382.

386. *Fighting in Panama: The State Dept.: Excerpts from Statement by Baker on U.S. Policy*, N.Y. TIMES, Dec. 21, 1989, at A19.

red to "the continuing pattern of harassment that we've seen going on down there against Americans in the exercise of our treaty rights."<sup>387</sup> However, there had been no disruption in the Canal, which operated normally. Panama had not interfered with the transit of ships.<sup>388</sup>

Neither the O.A.S. nor the Security Council, despite the conclusion of most members that the U.S. action was unjustified, investigated the facts alleged by the United States. An objective examination regarding the December 15 national assembly resolution, the December 16 shooting incident, and the situation of the Panama Canal would have provided a basis on which the international community might assess the U.S. claims.

## XVII. IRAQ

Although the Security Council played a major role in the Persian Gulf in 1990-91, following Iraq's invasion of Kuwait, it did not investigate the factual claims made by the United States when the United States sent troops to Saudi Arabia in August 1990.<sup>389</sup> The United States strongly believed that Iraq posed an imminent threat to Saudi Arabia;<sup>390</sup> it said that intelligence information indicated that "[t]here is an imminent threat to Saudi Arabia from the way that they [Iraqi forces] are positioned and located in Kuwait."<sup>391</sup> The United States reportedly convinced Saudi Arabia to permit the stationing of United States forces in Saudi Arabia by presenting it with this information.<sup>392</sup>

But the United States never made this information public, and other indications showed Iraq was not preparing an invasion of Saudi Arabia.<sup>393</sup> U.S. administration officials not speaking for attribution expressed that while there was some Iraqi deployment near the Kuwait-Saudi border, it did not portend an Iraqi invasion of Saudi Arabia. Their concern rather was a potential threat to Saudi Arabia, namely, that Iraq might threaten Saudi Arabia to force the West and the Arab states to accept Iraq's occupation of Kuwait.<sup>394</sup>

387. *Id.*

388. *Challenge for Panamanians: A Canal in Transition*, N.Y. TIMES, Jan 29, 1990, at A3.

389. Andrew Rosenthal, *Bush Sends U.S. Force to Saudi Arabia as Kingdom Agrees to Confront Iraq; Seeks Joint Action*, N.Y. TIMES, Aug. 8, 1990, at A1, col. 6.

390. *Id.*

391. *Id.*

392. *See id.*

393. Thomas L. Friedman, *The Iraqi Invasion; Bush, Hinting Force, Declares Iraqi Assault Will Not Stand; Proxy in Kuwait Issues Threat*, N.Y. TIMES, Aug. 7, 1990, at A1.

394. *Id.*

One apparent element in the U.S. intelligence information about Iraq's intentions was a report that Iraqi troops had entered in force into the Saudi portion of the neutral zone between Kuwait and Saudi Arabia.<sup>395</sup> This report, whose origin is unclear, turned out to be false.<sup>396</sup> It may have originated from a minor incident in which a small number of Iraqi troops reportedly crossed into the zone on the night of August 3 but left when confronted by Saudi border forces.<sup>397</sup> A "senior State Department official" remarked that while Iraqi troops had entered the neutral zone, they "ha[d] made no threatening movements toward the south," no "massing of troops . . . as they did before the invasion of Kuwait."<sup>398</sup> Iraq denied an intent to invade Saudi Arabia.<sup>399</sup> Statements by Saudi officials suggested that they, like the unnamed U.S. officials, did not expect an imminent attack by Iraq, although they said Iraq might attack after the Security Council's economic sanctions took their toll.<sup>400</sup>

In an August 9 letter to Congress informing it of his dispatch of troops to Saudi Arabia, President Bush disagreed with the earlier official statement and denied that Iraq posed an imminent threat to Saudi Arabia.<sup>401</sup> He said, "I do not believe involvement in hostilities is imminent; to the contrary, it is my belief that this deployment will facilitate a peaceful resolution of the crisis."<sup>402</sup> Elaborating, he articulated, "[t]here is no evidence right now that Saddam Hussein would be foolish enough to cross that border [into Saudi Arabia]."<sup>403</sup> The War Powers Resolution requires the President to give formal notification of dispatch of forces if "imminent involvement in hostilities is clearly indicated by the circumstances."<sup>404</sup> If Bush had said, like the

395. See John Kifner, *The Iraqi Invasion; Arabs' Summit Meeting Off; Iraqi Units in Kuwait Dig in; Europe Bars Baghdad's Oil*, N.Y. TIMES, Aug. 5, 1990, at A1.

396. *Chronology of the Crisis*, MIDDLE E. INT'L L., Aug. 31, 1990, at 24.

397. Con Coughlin & Simon O'Dwyer Russell, *British Troops Feared Held by Saddam's Men*, SUNDAY TELEGRAPH, Aug. 5, 1990, at 1.

398. Fred Bruning, *Enter 'Neutral Zone'; Won't Attack Saudi Land, Top Arabs Say*, NEWSDAY, Aug. 5, 1990, at 3.

399. Youssef M. Ibrahim, *Bush Sends U.S. Force to Saudi Arabia as Kingdom Agrees to Confront Iraq; Saudi Make a Stand*, N.Y. TIMES, Aug. 8, 1990, at A1.

400. *Id.*

401. Letter to the Speaker of the House and the President Pro Tempore of the Senate on the Deployment of United States Armed Forces to Saudi Arabia and the Middle East, Aug. 9, 1990, 26 WKLY. COMP. PRES. DOC. 1225 (Aug. 9, 1990).

402. *Id.*

403. Dan Balz, *Bush Warns Iraq Against Sending Out Oil Tankers*, WASH. POST, Aug. 11, 1990, at A23.

404. 50 U.S.C. § 1543 (1993).

statement of two days earlier, that hostilities were imminent, then he would have been subject to a provision of the War Powers Resolution that requires him to withdraw the forces within sixty days unless Congress gives its sanction.<sup>405</sup>

The United States position thus was that as of August 7, there was an imminent threat of an Iraqi attack, but that by August 9 that threat had subsided.<sup>406</sup> The only change in circumstance was the U.S. announcement that it would deploy forces in Saudi Arabia.<sup>407</sup> It seems probable that the White House claimed an imminent threat by Iraq to the public to convince them of the need for the deployment in Saudi Arabia, whereas President Bush said there was no imminent threat in order to avoid a Congressional role in the deployment.

If the Security Council had investigated the facts, it might have been able to prevent the invasion of Iraq in January 1991 by devising a peaceful resolution of the situation created by Iraq's invasion of Kuwait. If the Council had established that Iraq did not pose a threat to Saudi Arabia, the United States would not have had a basis for maintaining troops through the autumn of 1990. Had that deployment not occurred, the war would not have occurred.

#### XVIII. LIBYA AND THE PAN AMERICAN AIRCRAFT BOMBING

A complaint was filed with the Security Council by the United States and Britain, alleging that two Libyan officials, acting on a Libyan government plan, planted explosive devices on a Pan American passenger plane, causing the plane to crash in Lockerbie, Scotland, in 1988. This resulted in the deaths of all the passengers and crew.<sup>408</sup> The United States and Britain each indicted two Libyan government officials, Abdel Basset Ali al-Megrahi and Lamen Khalifa Fhimah, on

405. 50 U.S.C. § 1544 (1993).

406. See *supra* notes 390-92, 401 and accompanying text.

407. See *supra* notes 390-92 and accompanying text.

408. Letter Dated 20 December 1991 from the Permanent Representative of France to the United Nations addressed to the Secretary-General, U.N. SCOR, 47th Sess., 3033d mtg. at 2, U.N. Doc. S/PV.3033 (provisional) (1992); Letter Dated 20 December 1991 from the Permanent Representative of the United Kingdom of Great Britain and Northern Ireland to the United Nations Addressed to the Secretary-General, *id.*; Letter Dated 20 December 1991 from the Permanent Representative of the United States of America to the United Nations Addressed to the Secretary-General, *id.*; Letter Dated 20 December 1991 from the Permanent Representatives of France, the United Kingdom of Great Britain and Northern Ireland and the United States of America to the United Nations Addressed to the Secretary-General, *id.*; Letter Dated 23 December 1991 from the Acting Permanent Representative of the United States of America to the United Nations Addressed to the Secretary-General, *id.*



charges that they carried out the bombing. In Britain, the two men were charged in Edinburgh for murder and conspiracy in an information filed by the chief prosecutor of Scotland.<sup>409</sup> In the United States, the U.S. attorney took the case before a grand jury of the District of Columbia, which returned a 193-count indictment against the two men for aircraft bombing.<sup>410</sup> Acting U.S. Attorney-General William Barr announced, "we charge that two Libyan officials, acting as operatives of the Libyan intelligence service, along with other co-conspirators, planted and detonated the bomb that destroyed Pan Am flight 103."<sup>411</sup>

The U.S. indictment recited that the two men, both officials of the Libyan airline, were also employed by the Libyan intelligence service; the procedure they followed in the bombing of the flight was as follows: (1) they made a bomb of plastic explosives with a sophisticated timing device, placing it in a Toshiba portable radio cassette player; (2) they placed the player into a Samsonite suitcase; (3) they took the suitcase from Tripoli, Libya, on a flight to Malta; (4) at the Malta airport they used stolen Air Malta baggage tags to place the suitcase on Air Malta flight 180 to Frankfurt as unaccompanied luggage; (5) at Frankfurt the suitcase was transferred automatically to Pan American 103-A, en route to London, where it was transferred to New York-bound Pan American 103, on which the bomb exploded 38 minutes into the flight over Scotland.<sup>412</sup> The United States, as the state of registry of the aircraft and the state of nationality of some of the passengers, and Britain, as the state of nationality of some of the passengers and the state in which the effects of the bombing took place, each asked

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409. *Id.* at 103 (statement of Sir David Hannay, U.K.); see also Letter Dated 20 December 1991 from the Representative of the United Kingdom of Great Britain and Northern Ireland to the United Nations Addressed to the Secretary General, U.N. SCOR, 47th Sess., Supp. for Oct.-Dec. 1991, U.N. Doc. S/Supplements, U.N. Doc. S/23307 Annex (1991) (detailing the charges); Ronald J. Ostrow & Douglas Jehl, U.S., *Britain Demand Libya Extradite 2 in Pan Am Case; Terrorism: They Set No Deadline or Penalty if Tripoli Fails to Turn Over Its Intelligence Agents*, L.A. TIMES, Nov. 28, 1991, at A14.

410. Press Release, U.S. Dep't of Justice, "Indictment Charges Two Libyan Officials with Bombing of Pan Am 103," FED. NEWS SERVICE, Nov. 14, 1991, available in LEXIS, Nexis Library, Current File. Charges were made under the following: 18 U.S.C. § 32(a)(2), § 34 (placing a destructive device abroad a U.S. civil aircraft resulting in death), 18 U.S.C. § 844 (destroying a vehicle used in foreign commerce), 18 U.S.C. § 2331 (murder of U.S. nationals), 18 U.S.C. § 371 (conspiracy in the foregoing).

411. Ronald J. Ostrow & Douglas Jehl, U.S., *Britain Demand Libya Extradite 2 in Pan Am Case*, L.A. TIMES, Nov. 28, 1991, at A14.

412. *Justice Department Press Conference*, FED. NEWS SERVICE, Nov. 14, 1991, available in LEXIS, Nexis Library, Current File.

Libya to surrender al-Megrahi and Fhimah to either of them for criminal proceedings.<sup>413</sup>

The principal evidence referenced in the U.S. indictment was the following: (1) a shirt fragment found in the wreckage that, according to the owner of a boutique in Malta, had been purchased there by al-Megrahi;<sup>414</sup> (2) a computer printout supplied by the German company that operates the luggage-transfer system at Frankfurt showing that the suitcase in question arrived from Malta and was transferred to Pan American 103;<sup>415</sup> (3) a fragment the size of a fingernail of a green circuit board found in a piece of shirt that had been in the Samsonite suitcase, which according to forensic experts was part of the bomb's timing device;<sup>416</sup> (4) a timing device used in the bomb that was of a type manufactured in Switzerland and shipped to Libya at the request of the Libyan security agency;<sup>417</sup> (5) a document alleged to be a diary of Fhimah in which he described plans to get Air Malta baggage tags to put on the suitcase containing the bomb.<sup>418</sup>

On the strength of this evidence the United States and Britain asked the Security Council to order Libya to turn over the two Libyan officials named in the indictment.<sup>419</sup> Libya denied involvement.<sup>420</sup> Third World members of the Security Council balked, leading to a modification to the vaguer language that Libya was "urged" to "provide a full and effective response" to the requests made by the United States and Britain.<sup>421</sup> In this formulation, the resolution was adopted by the Council.<sup>422</sup>

Two months later, when Libya had not turned over the two men, the United States and Britain asked the Council to impose diplomatic and economic sanctions on Libya; the Council imposed sanctions by

413. Ronald J. Ostrow & Douglas Jehl, *U.S., Britain Demand Libya Extradite 2 in Pan Am Case*, L.A. TIMES, Nov. 28, 1991, at A14.

414. *Justice Department Press Conference*, FED. NEWS SERVICE, Nov. 14, 1991, available in LEXIS, Nexis Library, Current File (statement of Asst. Attorney-General Robert Mueller).

415. *Id.*

416. *Id.*

417. *Id.*

418. Douglas Frantz & Ronald J. Ostrow, *Sleuths Zero in on Killers*, HOUS. CHRON., Nov. 17, 1991, at A28.

419. France was involved because it sought the right to question four Libyans in connection with the bombing of a French U.T.A. aircraft over Niger in 1989, in which 171 persons were killed. This article will not treat in detail the French request.

420. See U.N. SCOR, 47th Sess., 3033d mtg. at 6, 16, U.N. Doc. S/PV.3033 (provisional) (1992) (statement of Mr. El-Talhi, Libya).

421. S.C. Res. 731, U.N. SCOR, 47th Sess., U.N. Doc. S/RES/731 (1992).

422. *Id.*

calling for a reduction of diplomatic contacts with Libya and a termination of all air traffic to and from Libya beginning April 15, 1992, if Libya did not turn over the suspects by that date.<sup>423</sup> This latter resolution was based on U.N. Charter Chapter VII, which provides for the possibility of sanctions in the event of a threat to the peace. The premise of the resolution was that Libya's failure to turn over the two officials for criminal proceedings constitute a "threat to the peace."<sup>424</sup> In the resolution, the Council recited that Libya's "failure to respond" to the requests made to it by the United States and Britain "constitute a threat to international peace and security."<sup>425</sup>

The Council's action against Libya was criticized as unlawful under the Charter, even if the facts alleged were true.<sup>426</sup> Putting those issues of Charter construction aside, however, serious questions were raised about the facts. The government of Malta investigated and said there were no unaccompanied suitcases on Air Malta flight 180 to Frankfurt on December 21, 1988.<sup>427</sup> *Time* magazine investigated and concluded that the version of the bombing as related in the U.S. indictment was deficient in critical respects.<sup>428</sup> *Time* obtained a message by an FBI agent from the U.S. embassy in Bonn to the FBI director in Washington on October 23, 1989 that cast doubt on whether the suitcase in question could have been transferred in Frankfurt in the manner later alleged in the indictment.<sup>429</sup> The message pointed out that the printout produced by the company responsible for baggage transfers at Frankfurt "does not indicate the origin of the bag which was sent for loading on board Pan Am 103;<sup>430</sup> nor does it indicate that the bag was actually loaded on Pan Am 103."<sup>431</sup> It indicates only that a bag of unknown origin was sent from Coding Station 206 at 1:07 p.m.

423. S.C. Res. 748, U.N. SCOR, 47th Sess., U.N. Doc. S/RES/748 (1992).

424. U.N. CHARTER arts. 39-42.

425. *Supra* note 423.

426. U.N. SCOR, 47th Sess., 3063d mtg. at 32, U.N. Doc. S/PV. 3063 (provisional) (1992) (statement of Mr. Mahmoud, Mauritania); cf. Mark Weller, *The Lockerbie Case: A Premature End to the 'New World Order'?*, 4 AFR. J. INT'L & COMP. L. 302 (1992).

427. *Supra* note 420, at 7 (statement of Mr. El-Talhi, Libya, quoting press statement of the prime minister of Malta of Dec. 17, 1991); see also U.S., *British Lockerbie Charges Against Libya 'Preposterous'*, EXECUTIVE INTELLIGENCE REV., May 1, 1992, at 43, 46 (interview of Francis A. Boyle) (reporting results of Maltese government investigation); *Air Malta*, Aviation Daily, Dec. 2, 1991, at 371, available in LEXIS, Nexis Library, Current File.

428. Roy Rowan, *Pan Am 103: Why Did They Die?*, TIME, Apr. 27, 1992, at 24, 28.

429. *Id.*

430. *Id.*

431. *Id.*

to a position from which it was supposed to be loaded on Pan Am 103."<sup>432</sup> The FBI agent said, "[t]here remains the possibility that no luggage was transferred from Air Malta 180 to Pan Am 103."<sup>433</sup>

The message also explained that during a guided tour of the baggage area at Frankfurt in September 1989, detective inspector Watson McAteer of the Scottish police and FBI special agent Lawrence G. Whitaker "observed an individual approach Coding Station 206 with a single piece of luggage, place the luggage in a luggage container, encode a destination into the computer and leave without making any notation on a duty sheet."<sup>434</sup> This observation convinced the two investigators that someone unknown might have gotten the suitcase onto Pan Am 103-A in Frankfurt, and perhaps that the suitcase did not come from Air Malta 180.<sup>435</sup>

Libyan judicial investigators conducted an inquiry into the possible guilt of the two persons named in the indictments and requested relevant evidence from Britain, France, and the United States, but none of the three sent any material.<sup>436</sup> Iraq said the evidence was lacking for the Security Council to act against Libya.<sup>437</sup> The Sudan deemed it illogical to make a finding against Libya when the guilt of the two Libyan officials had still to be proved, given that they were only at the stage of being indicted.<sup>438</sup> "Therefore," it said, "placing the subject before the Security Council during this stage of the investigation runs counter to the principles of justice, and even common sense."<sup>439</sup> It pointed out that "the investigations which have taken place thus far . . . have been carried out by only one party," a reference to the United States.<sup>440</sup> It said that Libya had been given no opportunity to take part in that investigation.<sup>441</sup> Therefore, it called for "a neutral, impartial venue to consider and decide upon [Libya's] degree of involvement, if any."<sup>442</sup>

The League of Arab States asked the Security Council "to place this question before a neutral international commission of inquiry,

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432. *Id.*

433. *Id.*

434. *Id.*

435. *Id.*

436. *Supra* note 420, at 8-10 (statement of Mr. El-Talhi, Libya).

437. *Id.* at 37 (statement of Mr. Kadrat, Iraq).

438. *Id.* at 32 (statement of Mr. Hassan, Sudan).

439. *Id.*

440. *Id.*

441. *Id.*

442. *Id.* at 33.

which, thanks to its composition, might undertake an objective, neutral and comprehensive investigation of all files and all suspects and reveal all facts."<sup>443</sup> The League remarked,

We believe it illogical for the investigators, the judges, the jury and those who mete out punishment to be one and the same; it would contravene the most basic rules of law. Thus, we re-emphasize how important it is for the investigation to be conducted by a neutral, objective body.<sup>444</sup>

Libya said it was willing to cooperate in an international investigation of the incident.<sup>445</sup> It proposed that the Secretary-General set up a committee of neutral judges "to carry out fact-finding activities and to verify the seriousness of the accusations made against our two citizens, including a comprehensive investigation."<sup>446</sup> The Council, however, did not take up this suggestion. Whatever the true facts, at the time the Security Council adopted its two resolutions about Libya, it had, at best, information that might meet a probable cause standard.<sup>447</sup> The United States and Britain insisted that Libya was responsible,<sup>448</sup> and the Council accepted the evidence that they presented.<sup>449</sup>

The Libya case would have been ideal for a Security Council investigation. The facts were sharply in dispute and were critical to the action the Security Council contemplated. Since there were no ongoing military confrontation, the time for an investigation could have been taken. The conclusion of an impartial body about the facts would have carried considerable weight.

## XIX. A MECHANISM TO ASCERTAIN THE FACTS

The International Court of Justice has some fact-finding capability, but not one that can substitute for the Security Council's, as occurred in the Nicaragua case. The Court, however, is seized only of cases over which it has jurisdiction, and in most military conflicts it does

443. *Supra* note 420, at 28 (statement of Mr. Omran, League of Arab States).

444. *Id.* at 31.

445. *Id.* at 11 (statement of Mr. El-Talhi, Libya).

446. *Supra* note 426, at 11.

447. The Security Council finding of the guilt of the two Libyans also prejudiced any future trial that might be held against them, particularly if held in the United Kingdom or United States. It would be awkward for either government if its courts acquitted the two Libyans after the Council imposed sanctions on Libya on the premise that the pair was guilty.

448. *Supra* note 426, at 66.

449. *See supra* notes 423-25 and accompanying text.

not have jurisdiction. The Court accepts evidence presented by the parties but does not undertake independent investigation. Moreover, it rules only after briefing and oral argument, which takes months. The Court thus does not provide a viable alternative to the Council.

These cases indicate that the Security Council has the potential of doing fact-finding that can defuse conflict situations, but that it typically has not utilized that potential. Under the U.N. Charter, the Security Council is explicitly given a power of investigation only in Chapter 6, where Article 34 reads: "The Security Council may investigate any dispute, or any situation which might lead to international friction or give rise to a dispute, in order to determine whether the continuance of the dispute or situation is likely to endanger the maintenance of international peace and security."<sup>450</sup> This language is aimed at a situation in which a dispute has arisen, and the issue is whether the situation is sufficiently serious that it may endanger the peace. This is different from a situation in which one state alleges that another has committed aggression against it, where the issue is whether the other state committed aggression.

Threats to the peace, breaches of the peace, and acts of aggression are covered in the Charter in Chapter 7, which has no article on investigation comparable to Article 34. It is, however, generally agreed that the Council does possess a power to investigate regarding any matter within its competence.<sup>451</sup> The Council has established committees to carry out various kinds of investigations, and its power to do so has not been challenged.<sup>452</sup> In those cases which it has discussed, the Security Council has at least typically heard from the relevant parties before taking action. This provides a first-hand account of the positions of the parties. Since those positions typically diverge factually, additional inquiry is appropriate.

The commissions have in some instances been successful in clarifying a situation. The committee investigating the Greek frontier gathered considerable objective data and reported accurately. The deficiency was in the committee's terms of reference. In the Corfu Channel incident, again the committee collected solid data but stopped short of exploring the facts sufficiently to determine whether Albania was responsible. In Korea, the commission was one appointed not by the Security Council as an inquiry team, but earlier by the General Assembly for broader political goals. The Security Council, despite

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450. U.N. CHARTER art. 34.

451. LELAND GOODRICH ET AL., *supra* note 7, at 267.

452. *Id.* at 267-68.

the skepticism of some of its members, relied on the commission's reports about the outbreak of hostilities in Korea, even though the Council should have been aware of the commissions's inability to report accurately.

In Lebanon in 1958, the U.N. mission succeeded in gaining a reasonably accurate picture of the situation regarding outside involvement in the Lebanese civil war. The Lebanon investigation was helpful in limiting a military intervention that might have escalated. In the Korea and Vietnam cases, however, the Security Council failed to investigate, and those failures may have contributed to the escalation of wars that continued for periods of years. With Iraq, the Council's failure to investigate may have set events in the direction of war rather than a peaceful resolution. With the Dominican Republic, Grenada, Nicaragua, and Panama, the Council's failure to investigate allowed the United States to maintain in public a version of events that seemed to justify its intervention. The result was that the United States was able to put in power a government that it favored in place of one it did not favor. The inaction of the Council in each of these four instances likely contributed to the next intervention, because the United States knew that it had successfully intervened with false stories.

To some extent, the United Nations' reluctance to properly fact-find is understandable. Fact-finding is difficult and time-consuming, and in a fast-moving situation, time is of the essence. What the organization needs is a mechanism that can cope with these situations. It needs a body with the expertise to assess a situation and the practical capability to do so on short notice, similar to a rapid deployment force of fact-finders.

Even if such a force operated only after the fact, the effort would be worthwhile. After the Panama invasion, such a force could have investigated whether the Canal was threatened, and whether U.S. nationals were being victimized. After the Grenada invasion, it could have investigated whether the U.S. students were in danger, and whether the Governor-General made a request. If they showed the invader's story to be false, such after the fact investigations would at least make it difficult for the invader to gain support for its action. A potential invader would know that its story would be scrutinized.

As matters stand, the United Nations deals only with crises, and once a crisis is past, it moves on to the next. If an invading state can get its story believed for a short time, the odds are strong that the story will not be questioned. Even with the sophistication of the media, and its ability to transmit stories instantaneously from any point on the globe, states have been successful in gaining acceptance of versions of military interventions that did not correspond to reality.

Even where an intervention is completed in a few days, and thus the Security Council's opportunity to influence the outcome is limited, an investigation has significance nonetheless. The world community moves from one incident to another, and each adds to a body of precedent. If an unlawful intervention based on false assertions of fact is unchallenged, it enters that body of precedent and provides a basis for similar unlawful actions in the future.

The League of Arab States made a salient point in the Council's discussion of the Libya extradition case by saying that the Security Council acts as investigator, judge, jury, and sentencer.<sup>453</sup> In some measure, of course, the Charter calls on the Security Council to play all those roles, by giving it the power both to inquire into the facts and to impose sanctions in the event of a breach of the peace.<sup>454</sup> Nonetheless, when, as in the Libya case, the Council imposes sanctions on the basis of a fact presentation by Council members who have a strong interest in the outcome by virtue of the fact that their citizens are the injured parties, the appearance of justice is lacking. At the very least, the Council in such a situation should appoint a committee of its own members.

Better still, it should enlist, as the League of Arab States proposed, impartial individuals with the appropriate experience and expertise to conduct a thorough investigation. For states, such a procedure can be risky, because the investigation may not come to a result in accord with their inclinations as to what the result should be. Despite the risk of an adverse result, it is a risk for states on both sides of a controversy, and they should be willing to run the risk.

Proposals have been made to upgrade the fact-finding capacity of the Security Council in order to improve its ability to enforce the peace.<sup>455</sup> If a world order based on non-aggression and respect for sovereignty is to be created, the United Nations must take a more serious role in fact-finding. Too often it has limited itself to calling for an end to ongoing hostilities without exploring the origins. That approach represents the path of least resistance; it does not require the Council to condemn any party, a matter that is particularly difficult if the party is, like the United States, a permanent member of the Security Council. However, this approach undermines the Council's credibility and the moral force of its pronouncements.

If the Security Council were to undertake fact-finding in a manner that would command general respect, the ability of states to violate

453. See *supra* notes 444-46 and accompanying text.

454. U.N. CHARTER ch. VII.

455. FRANCK, *supra* note 51, at 182.



the non-aggression norm would be reduced. So long as the Council avoids active fact-finding, a state that has the capacity both to use force unlawfully and to cover its tracks will be able to violate the U.N. Charter with impunity.

For whatever reason, the Security Council appears to have shied away from appointing investigating committees in its more recent history. Those instances in which it did, among those studied here, were in the Council's early years: the Greek frontier and the Corfu Channel in 1946-47, and Lebanon in 1958. One possible mechanism is to utilize the Military Staff Committee envisaged in Articles 46 and 47 of the Charter. Article 46 provides: "Plans for the application of armed force shall be made by the Security Council with the assistance of the Military Staff Committee." The committee, according to Article 47, is composed of the chiefs of staff of the five permanent members of the Security Council.

The Military Staff Committee exists, but it has rarely been utilized. Soviet President Mikhail Gorbachev suggested after Iraq's invasion of Kuwait in 1990 that the Committee should manage any action the Council might take.<sup>456</sup> Following the Security Council's call for a trade embargo against Iraq, the United States met with the other permanent members of the Council to explore whether the Military Staff Committee could coordinate blockade activities that the states might initiate to enforce the embargo.<sup>457</sup>

These meetings produced no results, however, and the Military Staff Committee took no role in coordinating the blockade that the Security Council called for a few weeks later.<sup>458</sup> Iraq objected that "only collective action under the command and control of the Security Council, in co-ordination with the Military Staff Committee, can lead to the use of force against any country, and no individual Member State may be authorized to lynch a particular country for any reason."<sup>459</sup>

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456. Frank J. Priol, *Confrontation in the Gulf: Crisis Breathes Life into a Moribund U.N. Panel*, N.Y. TIMES, Sept. 6, 1990, at A20. The Committee met to discuss the Council's economic sanctions. See also Paul Lewis, *Confrontation in the Gulf: Security Council's Military Panel Reviews Naval Efforts to Enforce Trade Embargo*, N.Y. TIMES, Sept. 19, 1990, at A11; Paul Lewis, *Soviet Announces Shift on U.N. Staff Demanded by U.S.*, N.Y. TIMES, June 4, 1988, at A1 (proposal by Gorbachev to revive Military Staff Committee).

457. U.S. State Dept., Regular Briefing, Aug. 14, 1990 (Margaret Tutwiler), Federal Information Systems Corp., Aug. 14, 1990 available in LEXIS, Nexis Library.

458. S.C. Res. 665, U.N. SCOR, 45th Sess., U.N. Doc. S/RES/665 (1990), reprinted in 29 I.L.M. 1329 (1990).

459. U.N. SCOR, 45th Sess., 2963d mtg. at 21, U.N. Doc. S/PV.296 (1990) (statement of Mr. Al-Anbari, Iraq).

The Military Staff Committee holds the advantage of being composed of persons whose profession is removed from politics and who, therefore, might be impartial in assessing a situation. The negative side, however, is that for military officials, fact-finding is not their ordinary line of work. One possibility might be to give the Military Staff Committee a role along with others who could be recruited for expertise in fact-finding.

## XX. CONCLUSION

As reflected in the cases analyzed, the Security Council resorted to investigations more readily in the early years of its existence. In more recent years, it has used investigation less. The Council would do well to return to that early experience. That experience was not entirely satisfactory, to be sure, but it was preferable to the strong presumption against investigation that later took hold. By establishing a permanent mechanism for fact-finding, the Council would improve its ability to fulfill its Charter responsibilities.

