

Ralph Zacklin. *The United Nations Secretariat and the Use of Force in a Unipolar World. Power v. Principle*. Cambridge: Cambridge University Press, 2010. Pp. 163. \$64.00. ISBN: 9780521194136.

Global governance has been the buzzword for many internationalists for quite some time now, and the United Nations has been one of the primordial focal points in controversies about global order. This prominence of the UN has been especially remarkable in the context of deliberations about the legality and legitimacy of military force. For, despite the growing importance of the US as the world's most capable superpower, internationalists have not been muted by voices stressing the impossibility of successfully grappling with power-based interests and high-political considerations of predominant states through international law and organization. The emergence of a unipolar moment, a constellation supposedly characterized by a high concentration of military capabilities and widespread scepticism as regards the fruitfulness of multilateralism in the US has rather enticed many commentators to ponder all the more seriously the potential role of multilateral institutions, such as the UN – as a mediating structure *vis-à-vis* national interests, as a legitimacy-conferring agent the main function of which it is to rationalize the regime of the great powers, or as a potential counterweight to US-American unilateralism. The author of the book under review adds to this list as he endeavours to show that, after the end of the Cold War in 1990, the Secretariat of the UN repeatedly championed views that brought it into conflict with the US and other influential member states of the UN. Based on his own experience as a staff member in the Office of Legal Affairs since 1973, as the Director of the UN Secretariat's Office of Legal Counsel since 1988, and as an Assistant Secretary-General for Legal Affairs of the United Nations from 1998 to 2005, he delivered The Sir Hersch Lauterpacht Memorial Lectures at Cambridge University in 2008, in which he made a strong point for an independent role for the UN Secretariat as regards questions concerning the legality and legitimacy of military force.

The three lectures that the book comprises are broken down into four chapters to which various Security Council Resolutions are appended. The first chapter is about the Iraq War in 1991; the second and third chapters are about the military sanctions against Serbian forces in Bosnia and, respectively, in Kosovo; the fourth chapter is about the war of a US-led coalition against Iraq in 2003. The first two chapters provide some background to the discussions about military power within the Security Council. Zacklin points to the dilemmas that these discussions posed for the UN Secretariat, especially its legal department, as it grappled much harder than the Security Council with the legal issues involved in the use of military force in the Gulf and Bosnia. The third chapter elaborates the position of the Secretariat concerning the crisis in Kosovo and spells out the legal considerations that stood behind the

reservations of the Secretary General and his staff as regards the *ex post facto* legitimation of NATO air strikes by the Security Council in 1999. The fourth chapter is specifically about the legal issues surrounding Security Council Resolution 1441 and the unilateral decision of the US government to employ military force against Iraq, together with its coalition partners in March 2003. Zacklin takes issue with the unfounded allegations of the US that Iraq was developing weapons of mass destruction, and criticizes the subsequent war of the coalition despite the lack of an affirmative vote by the Security Council. The war may have lessened the importance of the UN machinery, and it may have undermined the status of the UN Charter, together with the role of the Secretariat as the guardian of its fundamental principles. Yet, in Zacklin's view, it is precisely because the Bush Administration paid so little attention to the UN and its Charter when it came to questions of military force that the world may soon witness the resurgence of a 'new multilateralism', and the reassertion of traditional concerns about collective security.

As regards the contribution of the book to ongoing academic debate, it may be considered interesting by researchers in two different camps. On the one hand, and probably to a greater extent, it speaks to theorists of international organization who are dedicated to elaborating the conceptual importance of bureaucracy and bureaucratic culture in the context of international relations. The decisive question in this literature is whether and to what extent organs of international organizations like the UN Secretariat have agency power, meaning the capacity not only to appraise events but to also affect decision-making by powerful groups of states. Even though the author does not explicitly refer to this literature, he speaks to this very *problematique*, as it is his avowed aim to examine the role and views of the UN Secretariat regarding the use of force during a period that has become known as the unipolar moment. The book thus undertakes to show how the Secretary General and his staff were actually able to act on their own behalf insofar as they interpreted various issues at stake in terms of Charter law and not primarily with a view to political exigencies, and as they did not refrain from submitting their estimations to the Council, even though they were repeatedly being confronted with pressures from the Security Council, and especially the Permanent 5, not to hamper the realization of their more circumscribed political interests. It thereby touches upon such hotly debated questions as the extent to which bureaucratic units like the Secretariat find ways to chart a course that is not attuned to the interests of state principals.

Theorists of international bureaucracy, that is, especially those who are associated with the rationalist, the institutionalist, and, respectively, the constructivist camps¹ have tried to clarify when and how inter- and supranational administrative bodies manage to emancipate themselves and their actions from the grip of their state sponsors, the principals. Numerous straightforward claims of the author about the supposedly impartial stance, and about an active, even activist, role of the UN Secretariat with regard to the use of force in the abovementioned 'cases' speak to this question. According to Zacklin, the Secretariat, and especially the Secretary General supported by his legal advisers, strove more often than not to understand the problems and define possible solutions through the prism of fundamental Charter principles. In doing this, the Secretariat and its various departments were not necessarily integrated on the basis of a coherent *esprit de corps*. The Secretariat was itself divided between factions with a more pragmatic and result-oriented view on the one hand, and factions with a more principled and traditional

¹ For the rationalist branch see, e.g., the collection of essays in D.G. Hawkins, D.A. Lake, D.L. Nielsen *et al.*, *Delegation and Agency in International Organizations* (2006); for institutionalist and constructivist voices see C. Weaver, *Hypocrisy Trap: The World Bank and the Poverty of Reform* (2008), and see Nielsen, Tierney, and Weaver, 'Bridging the Rationalist–Constructivist Divide: Re-engineering the Culture of the World Bank', 9 *J Int'l Relations and Development* (2006_107).

understanding of the UN on the other. The decisive point for Zacklin is that, despite some heterogeneity which has always been fomented by the great powers in the Council, the Secretariat repeatedly emerged as an advocate of the world community's legal consciousness, relying on a rather strict interpretation of the law proscribing the use of force. When faced with pressures by the permanent members, the Secretariat emphasized all the more vigorously the requirement that force be employed by states, if at all, in a non-partisan and proportionate manner, and only in accordance with the procedures laid out in the UN Charter. In addition, notably Secretaries General Boutros-Ghali and Annan arguably harboured strong beliefs about human rights and international law. So what ultimately mattered for the Secretariat was questions as to whether mandates for action, including those that allowed responding with military force to humanitarian concerns, were interpreted narrowly by military forces, even if this forestalled taking timely and effective measures such as airstrikes by NATO to deter the Serbs' shelling of safe areas in Bosnia. This, so Zacklin says, was essentially the result of the Secretariat's predominant culture as it has evolved since the late 1940s in relative isolation from the pressures of the Council, and as it has become embodied in the outlook of succeeding Secretaries General as well as professional activities of the Secretariat's staff. The incessant fabrication of legal memoranda, commentaries, reports, and surveys that are crafted for internal use by Secretariat staff, but that may have wider implications in the event that information is leaked into the UN system, led to a particular Secretariat practice evidencing a rather formal understanding of Charter law in concrete cases. Thus it is not surprising that the Secretariat saw itself repeatedly pitted against the US Government's and NATO's much more pragmatic concerns about political exigencies and military effectiveness.

On the other hand, the book also speaks to international lawyers concerned about the law pertaining to the use of force, i.e., the growing body of formal and not so formal rules specifying conditions for governments about how and when they may be entitled to exert military power. Theorists of international law, and among them especially those who debate the constitutional importance of the UN Charter, have spent a considerable amount of energy on such questions as whether what is called global governance may be taken to touch upon questions of war and peace.² Constitutionalists have agreed that the UN Charter is not just a 'constituent treaty' but may better be seen as the constitution of the international community. When pressed by so-called realists, constitutionalists are ready to admit that this premise is entirely based on normative grounds. Yet, from their perspective the reconstruction of Charter principles as international constitutional law does not necessarily amount to a transmogrification of international legal norms. It may rather be seen as one possible, and legitimate, form of interpretation. So the mere fact that the Security Council has become more active after the end of the Cold War, passing one resolution after another with allusions to threats of peace and invoking the foundational principles of the Charter relating to the use of force, may be taken as evidence for attempts by the leading executive organ of the UN to render the Charter a living constitution. Given that the Secretariat, especially its legal department, aided by a great number of sympathizers in the academic community, has incessantly clarified the law on force with respect to the intricacies of ethnic conflict and civil war, a considerable body of commentary has evolved that may be seen as a step towards the evolution of some global constitutional law of sorts. To be sure, Zacklin himself does not explicitly concern himself with debates regarding the constitutional status of Charter law. However, a close reading of

² See, e.g., B. Fassbender, *The United Nations Charter as the Constitution of the International Community* (2009); see also von Bogdandy, 'Constitutionalism in International Law: Comment on a Proposal from Germany', 47 *Harvard Int'l LJ* (2006) 223; and see E. de Wet, *The Chapter VII Powers of the United Nations Security Council* (2004).

his rather sympathetic rendering of the legal activities by the Secretariat suggests that many principles and doctrines of the UN Charter are in fact subject to reconsideration, not only by theorists but also by practitioners in the Secretariat, as to their quality of centralizing and circumscribing the legal use of force.

Taken as a whole, Zacklin's book is a valuable evaluation of the practice of international law and organization as it relates to the use of force. To this reviewer it provokes the question whether the role of the UN Secretariat does not also need to be evaluated against the background of the selectivity of UN involvement, the mismatch between the UN's legal mandates, the operational capacity of implementation units, and – above all – the seriousness and authenticity, or perhaps the lack thereof, with which questions of war and peace are discussed by state representatives and high-ranking officials of international organizations.

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