

Using military forces under international auspices and democratic accountability

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Abstract

This article reports on a research project that deals with how to ensure democratic accountability when military forces are used under the auspices of international institutions. The international community has developed a range of ways in which military forces can be used. States have also decided that in some cases military forces can be deployed to pacify intra-state as well as inter-state conflicts. States have developed a mixed system to deal with the issues of democratic accountability. Although military operations are conducted under the auspices of international institutions, states maintain control over decisions to deploy their troops. Democratic control and accountability have been maintained through national institutions and procedures. International authorization, preferably by the UN Security Council, is important to establish international and domestic legitimacy, but it is not the essential mechanism for ensuring democratic accountability.

1 Introduction

Since the beginning of the twentieth century states have sought to limit their right to use military force unilaterally. As states have done this, they have also sought to establish ways in which forces could be used for collective purposes under the auspices of international institutions. This article is a report on a

research project of the American Society of International Law that deals with the second of these trends.

The central focus of the project is on an issue that has largely been ignored in the growing literature on using force under the auspices of international institutions: the question of how to ensure democratic accountability when military forces are used under the auspices of international institutions. The gap in the literature is striking because establishing and maintaining democratic accountability with respect to the use of military force has been a major aspect of the historical development of modern democracies.

Centralizing control over the use of force – creating the monopoly of coercion – was a crucial feature of the creation of modern nation-states. Ensuring that there would be democratic accountability for the use of force was a central component of the struggle to establish democratic forms of government in these states.

This article explores the meaning of democracy and democratic accountability and examines theories about using military force under the auspices of international institutions and efforts to put these theories into practice. It identifies essential issues of democratic accountability. It assesses the record and how issues have been resolved. It explores the consequences of the solutions that have been achieved. The project on which it is based examines how the international community and nine democracies – Canada, France, Germany, India, Japan, Norway, the Russian Federation, the United Kingdom and the United States – have treated these issues.¹ All of these countries have contributed military forces to operations conducted under the auspices of international institutions. They have a crucial military capacity, and their participation would be essential in any large-scale military operation.

2 Tenets of democracy: participation in decision making and accountability

Democracy is a term that is used to describe both a set of ideals and historical and contemporary political systems. As a concept democracy means ‘government by the people’. Elaborating this basic notion, Robert A. Dahl, one of the foremost contemporary democratic theorists, stated ‘a key characteristic of

¹ We are co-directors of the project. The other members of the project team include Dipankar Banerjee, Yves Boyer, Lori Fidler Damrosch, Olivier Fleurence, Michael Glennon, Fen Osler Hampson, Karen Mingst, Georg Nolte, Knut Nustad, Akiho Shibata, Robert C.R. Siekmann, Edwin M. Smith, Serge Sur, Ramesh Thakur, Henrik Thune, Bakhtiyar R. Tuzmukhamedov and Nigel D. White. The entire team has contributed to the development of the analytical framework described here. The project is supported by a grant from the Ford Foundation. An earlier version of this article was presented at the United Nations University, Tokyo and to the International Law Group at Kyoto University in May 2000.

democracy is the continuing responsiveness of the government to the preferences of its citizens, considered as political equals' (Dahl, 1971, p. 1).

Dahl has identified five criteria that a process for governing an association should meet to be regarded as democratic.

Effective participation. Before a policy is adopted by the association, all the members must have equal and effective opportunities for making their views known to the other members as to what the policy should be.

Voting equality. When the moment arrives at which the decision about policy will finally be made, every member must have an equal and effective opportunity to vote, and all votes must be counted as equal.

Enlightened understanding. Within reasonable limits as to time, each member must have equal and effective opportunities for learning about the relevant alternative policies and their likely consequences.

Control of the agenda. The members must have the exclusive opportunity to decide how and, if they choose, what matters are to be placed on the agenda. Thus the democratic process required by the three preceding criteria is never closed. The policies of the association are always open to change by the members, if they so choose.

Inclusion of adults. All, or at any rate most, adult permanent residents should have the full rights of citizens that are implied by the first four criteria. Before the twentieth century this criterion was unacceptable to most advocates of democracy. (Dahl, 1998, pp. 37–38)

Dahl's criteria are abstract. It is relatively easy to apply them to small groups of people. Applying them to larger groups such as nation-states that involve large numbers of people spread over extensive geographic space is more complicated. The criteria nevertheless provide guidelines for evaluating the institutional arrangements that larger groups have developed over time for their own governance.

The five criteria include those that most democratic theorists consider essential. Using more popular language democratic theorists would speak of freedom of information, association, assembly and participation. They would speak of equality and majority rule. They would discuss forms of representation and voting rules.

In their efforts to meet these criteria, modern democracies embody a number of institutional variations that have been developed in specific countries over time. When the numbers of individuals involved are small, direct participation is possible, but in the modern era most polities involve large numbers of individuals and participation can only be gained through representation. To ensure that representatives are responsive to public wishes, representatives are chosen in periodic elections based on universal

adult suffrage. Elections are an important means whereby accountability is enforced.

Democracies are created to achieve majority rule but they also impose limits on majority rule. They try to protect against what James Madison termed in his classic contribution to *The Federalist* ‘the tyranny of the majority’. Majorities are enjoined from violating basic rights, and there are checks on majority powers.

In all democratic states elected representatives make policies that affect individual lives. The formal arrangements vary, but broadly divide into two types, parliamentary systems like that of the United Kingdom, and systems like that of the United States, where there is a separation of powers. In the former type executive and legislative authority is fused, and while parliamentary assent is necessary for the adoption of laws, this frequently can be assured through disciplined political parties. In the latter type, particularly when the executive and legislative branches are under the control of different political parties, legislative assent is much more problematic. But in both types of systems, accountability is thought to be assured through regular elections. Citizens vote for individuals to be their representatives on the basis of their expectations about the decisions that these individuals would make if they were in office, and they can remove from office representatives who take decisions with which they do not agree.

While a great deal of thought has been given to establishing and perfecting democratic procedures within nation states, little thought has been given to how these procedures might apply when decisions are made by collections of nation states in international institutions.² It is unclear how to ensure that these decisions are made with the same attention to democratic criteria that is applied to decisions which are taken within nation-states.

Dahl is pessimistic that international institutions can take decisions in ways that accord with his criteria for democracy. He believes that decisions in international institutions come about primarily through bargaining among political and bureaucratic élites. ‘Bargaining, hierarchy, and markets determine the outcomes. Except to ratify the results, democratic processes hardly play a role’ (Dahl, 1998, p. 115). Dahl is particularly pessimistic that opportunities can be provided to citizens for ‘political participation, influence, and control roughly equivalent in effectiveness to those already existing in democratic countries’. He is also sceptical that citizens could become as concerned and informed about decisions taken in international institutions as they now are about decisions taken by the governments of their own countries. And he doubts that an appropriate scheme for representation

2 David Held is a notable exception. His *Democracy and the Global Order: From the Modern State to Cosmopolitan Governance* (Held, 1995) is one of the few explorations of this topic.

could be created that would give equal weight to all citizens without creating a situation in which smaller democracies with particular interests and problems would be constantly outvoted.

The question of applying democratic procedures is not just a normative issue. It also relates to the effectiveness of the decisions. Popular support is essential. Unless there is popular support for a decision to use force under the auspices of an international institution, it is unlikely that sufficient resources will be provided for a sufficient length of time for the force to accomplish the goals that have been collectively agreed upon. Lack of popular support could not only jeopardize the actions, if popular attitudes became not just apathetic but hostile, it could jeopardize the international institution itself. Popular support is unlikely to be gained among educated populations unless they feel that the decisions have been taken in ways that accord with democratic accountability. This implies clear information about the purposes of the action, and ample debate and participation in the decisions by officials who are accountable.

The shift of authority to processes and institutions outside of the framework of nation-states is particularly evident in the realm of economics, and the shift has been most pronounced in the European Union (EU) which functions by delegation of authority from EU member-states. A significant literature has developed about the 'democratic deficit' in the EU, and there are many suggestions about how the deficit might be met. The shift of decision-making authority is also going on, however, with respect to military matters.

In all political systems, decisions to deploy and use military force are among the most important that can be taken. Gaining a monopoly of authority over the use of force has been an essential element in the creation of states and the establishment of sovereignty. Democracies have gone to great lengths to ensure democratic accountability in decisions about the use of force. National constitutions frequently contain special provisions specifying how the decisions are to be made.

The experience of the United States highlights this. The constitution makes the president commander-in-chief of the armed forces. It assigns Congress the power to appropriate funds for the maintenance of the armed forces and to declare war. These provisions, however, only provide a framework for the establishment of democratic accountability. Issues relating to the precise ways of maintaining democratic accountability with respect to the use of military force have been debated throughout American history.

All democratic countries have been concerned with establishing and maintaining democratic accountability regarding the use of military force, and all have developed procedures to achieve this goal. Lori Fisler

Damrosch has noted that in the closing decades of the twentieth century there has been a general trend ‘toward subordinating war powers to constitutional control, and that this trend includes a trend toward greater parliamentary control over the decision to introduce troops into situations of actual or potential hostilities’ (Damrosch, 1997, pp. 36–40).

Whatever the constitutional situation, the political reality is that throughout the world citizens have become increasingly concerned about the use of their countries’ military forces and reluctant to have them used for anything other than securing their countries’ immediate territorial integrity and political independence (see Mueller, 1989). This broad sentiment was evident in the French reaction to the war in Algeria, the American reaction to the war in Vietnam, and the Soviet reaction to the war in Afghanistan. This broad sentiment has been a factor contributing to the trend that Damrosch identified. It was a major factor in the enactment of the War Powers Act in the United States.

How do the trends toward democratization within nation-states and these basic constitutional understandings about the use of military force and the debate and developments about them fit with efforts to use military force collectively? These questions have hardly been broached. To begin to explore them we must trace the history of the efforts to use military forces collectively.

3 The doctrine of collective security and uses of military force under the auspices of international institutions for collective purposes

The goal of the victors after World War I was to replace the balance of power system and to restrict the use of force unilaterally by states. Starting with the Covenant of the League of Nations (1919) through conclusion of the Kellogg–Briand Pact (1928), representatives of states worked to fashion an international legal and institutional system to achieve these goals. Part of the system was to explore using military forces for collective purposes as work started to construct the post-World War I order. These efforts were based on the doctrine of collective security.

Collective security was designed to replace the balance of power as the means to provide international security. Collective action would replace action taken unilaterally or through an alliance. Woodrow Wilson was a prominent advocate of collective security. He argued that:

There must now be, not a balance of power, not one powerful group of nations set off against another, but a single overwhelming group of nations who shall be the trustee of the peace of the world. (Wilson, 1927, p. 343)

The doctrine of collective security drew on peace plans that had been advocated since the formation of the Westphalian system in the seventeenth century.³ According to the doctrine of collective security, the combined forces of all states should meet the unlawful use of force. Wilson and other advocates of collective security were particularly concerned with preventing cross-border attacks on the political independence and territorial integrity of states. Decisions to use force would be made collectively in an institutional framework that would set the goals and methods for such action.

In its simple and pure form, the doctrine of collective security would require the states that committed themselves to the system to use military forces more or less automatically in specific situations without further domestic debate. The executive of the state might participate in some international collective decision-making process, but the decision would have to be made quickly, and the basic issue would be the determination by some organ of an international institution whether or not the act that occurred fitted the agreed definition of one that would trigger action. There is a tension between the demands of collective security and the demand for democratic accountability with respect to decisions to deploy and use military forces.

4 The League of Nations

While neither the League of Nations Covenant nor later the United Nations Charter embodied a pure collective security system, both moved in that direction. The essential provision in the League Covenant was Article 10, which stated that:

The Members of the League undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all Members of the League. In case of any such aggression or in case of any threat or danger of such aggression the Council shall advise upon the means by which this obligation shall be fulfilled.

Wilson had wanted a stronger, automatic commitment but other states had been opposed. He and other proponents hoped that the commitment in Article 10 would particularly provide the necessary protection for small powers against the ambitions of the large ones so that international security could be established.

However, as Secretary of State Robert Lansing had warned it might, even the commitment in Article 10 proved to be too strong for many in the United States Senate. The Republican-controlled Senate sought to add a reservation

³ Examples of such peace plans include those of Bentham (1789), Immanuel Kant (1914) and Rousseau (1917).

introduced by Henry Cabot Lodge to the United States' ratification of the Covenant that would require prior congressional approval for the deployment of US military forces. Wilson adamantly opposed any reservation to the Covenant. Because of the combined votes of senators who were opposed to the Covenant without reservations and those who followed Wilson's lead and refused to accept any reservations, the Senate failed to give its advice and consent to the Versailles Treaty and the United States did not join the League of Nations.⁴

The tension between schemes to use military forces collectively instead of unilaterally and tenets of democratic accountability within states thus became glaringly evident even at this early stage. To deter military aggression, the use of military force under international auspices should be automatic and swift. If governments, and particularly legislative bodies, insisted on the right to authorize the use of their military forces on an individual case basis, the commitment would likely not be swift, automatic or overwhelming. In fact, the League's failure to react automatically, swiftly and effectively after the invasions of Manchuria and Abyssinia discredited the League as a security framework. The League would therefore have to be replaced by a new security system (see Walters, 1952; Hoopes and Brinkley, 1997).

5 The United Nations

The United Nations was established in the wake of World War II for the primary purpose of maintaining international peace and security. The United Nations Charter went further than the Covenant did in establishing a system of collective security. The framework that the Charter provided also gave greater attention to issues of democratic accountability.

The UN Charter in Article 2(4) requires members to 'refrain . . . from the threat or use of force against the territorial integrity or political independence of any state'. To support this requirement, the Charter provided for the peaceful settlement of disputes and a system for taking collective action in the event that disputes were not settled peacefully. A finding of the Security Council under Chapter VII of the Charter would trigger this system. Upon such a finding, the Council could decide to take action by military force. It would use military forces put at its disposal by member-states under special agreements negotiated under Article 43.

Under these agreements, member-states of the UN would undertake to make available, at the request of the Council, 'armed forces, assistance, and facilities, including rights of passage'. These agreements were to have the

⁴ The total vote was 49 for approval and 35 against. Supporters of the League who refused to accept any reservations to the Covenant cast 23 of the 35 votes that kept the US out of the League (Walters, 1952, p. 71).

advantage, from the point of view of the member-states, of defining the limits of their obligation to provide such assistance, and, from the point of view of the Council, of defining the forces and facilities that would be at its disposal for discharging its 'primary responsibility' for the maintenance of international peace and security. A Military Staff Committee, consisting of the chiefs of staff of the permanent members of the Council or their representatives, was to advise the Council on all matters relating to its military requirements for maintaining international peace and security, and on the employment and command of forces placed at its disposal.

Government officials in the United States and many international legal scholars have taken the position that democratic accountability with respect to the use of force was satisfied with the ratification of the Charter or would be satisfied with the ratification of an Article 43 agreement. The United Nations Participation Act of 1945 explicitly accepted this interpretation. Article 6 authorized the president to negotiate the type of agreement described in Article 43. It then stated:

The President shall not be deemed to require the authorization of the Congress to make available to the Security Council on its call in order to take action under Article 42 of said Charter and pursuant to such special agreement or agreements the armed forces, facilities, or assistance provided for therein: Provided, that nothing herein contained shall be construed as an authorization to the President by the Congress to make available to the Security Council for such purpose armed forces, facilities, or assistance in addition to the forces, facilities, and assistance provided for in such special agreement or agreements.

The position that the United States took, as reflected in these provisions of the UN Participation Act, was not unusual. To the extent that other countries debated these issues, they took similar positions.

Over time the United Nations has modified the relatively clear vision in the Charter of how military force would be used. The Article 43 agreements were never completed. Thus the Security Council has never had military forces at its disposal as the Charter envisaged it would, leaving it open to the ongoing interpretation of participating states as to the scope and nature of responses to any violations (Lobel and Ratner, 1999).

Nevertheless, by the end of 1999 military forces had been used under UN auspices 54 times. They had been used in a variety of ways and for a broad range of purposes. These included repelling cross-border aggression in Korea and Kuwait, the case for which the doctrine of collective security was designed. They also included several purposes that were not envisaged at the time that the League Covenant and UN Charter were signed. Among these

were maintaining cease-fire agreements, preventing genocide and serious violations of human rights, and restoring a democratically elected government. Many of the instances in which the UN deployed military forces involved intra-state rather than inter-state conflicts. Nineteen of the cases in which military force has been used under the auspices of the United Nations occurred before 1990 and 35 after 1990. The end of the Cold War brought a dramatic increase in UN involvement in conflicts.

6 The North Atlantic Treaty

Because of the Cold War, in addition to efforts to implement a form of collective security under the United Nations, many states became engaged in other efforts to use force collectively. Although there have been several such arrangements, the North Atlantic Treaty is the most important. It survived the Cold War, and it continued to maintain a multinational military force, components of which were deployed in the 1990s in the former Yugoslavia.

The North Atlantic Treaty Organization is an international organization that embodies a traditional military alliance. The treaty claims legitimacy under the provisions of Article 51 of the United Nations Charter rather than Chapter VIII. Article 51 allows states individually or collectively to act in self-defense ‘until the Security Council has taken the measures necessary to maintain international peace and security’. Chapter VIII, which deals with regional arrangements, would have created a closer link with the Security Council. Unlike the doctrine of collective security, which was designed to counter any threat, NATO, at least originally, was designed to counter a very specific threat, and a threat not from a member, but rather from forces external to the organization.

The key commitment in the North Atlantic Treaty is Article 5 by which:

. . . the parties agree that an armed attack against one or more of them in Europe or North America shall be considered an attack against them all; and . . . each of them . . . will assist the attacked by taking forthwith, individually and in concert with the other Parties, such action as it deems necessary including the use of armed force . . .

The phrasing of this article was deliberately chosen in deference to the US congressional prerogative to declare war. It was explicitly different from the wording that had been used two years earlier in the Rio Pact, which committed parties in the event of an attack on a party ‘to assist in meeting the attack’. In the 1940s, there was a greater likelihood of war in Europe than there was in the Americas. Given this greater probability, Congress insisted that its prerogative remain unfettered. In turn, European members of NATO insisted that to feel secure, US military forces had to be stationed at the front

line, ensuring that they would be at risk if an attack occurred and thus ensuring that the US would be involved in the conflict from the outset.

Beyond maintaining the standing military forces designed to protect the territories of the member-countries in fulfillment of the alliance's Article 5 commitment, NATO has deployed military forces in the former Yugoslavia in four military operations in the 1990s.

To the extent that NATO limited itself to the purposes of Article 5, its institutional structures took into consideration democratic accountability, since the North Atlantic Treaty had been accepted by member-states and was based on the concept of a cross-border attack. Where issues of accountability have become more complex is where the organization has expanded its concerns to protecting humanitarian values in out of area operations (NATO, 1999).

7 Uses of military forces under international auspices

Generalizing from the experience of the UN and NATO since World War II, the uses of military forces under international auspices can be placed in five broad categories described by their general purposes.⁵ The categories are based on the number of military personnel involved, their mandate and their rules of engagement, and whether or not they enter the territory of the state where they operate with the consent of that state. The five categories are:

- Monitoring and observation
- Traditional peacekeeping
- Peacekeeping plus state building
- Force to ensure compliance with international mandates
- Enforcement

Monitoring and observation is a preventive military response involving the positioning of troops, military observers and related personnel on one or both sides of a border between entities that are or have been in dispute (or where there is an emerging threat of conflict), with the primary object of deterring the escalation of that situation into armed conflict.

The first deployment of military forces under the auspices of the United Nations, the United Nations Truce Supervision Organization (UNTSO), was for the purpose of monitoring and observation. UNTSO was created in 1948 to supervise the truce in Palestine. When Israel and Egypt, Jordan, Lebanon and Syria concluded General Armistice Agreements in 1949, UNTSO's main

5 This categorization also draws heavily on the concepts developed in Evans (1993). It is related to but different from the categorization developed by Boutros-Ghali (1992). Of course it draws more broadly on the wide literature concerning peacekeeping (e.g. Diehl, 1993; Sutterlin, 1995; Thakur and Thayer, 1995; Durch, 1996).

responsibility became that of assisting the parties in supervising the application and observance of these agreements. UNTSO was still in existence in the 1990s. In the 1990s UNSTO consisted of about 160 personnel and it cooperated with other UN bodies in the Golan Heights in the Israel–Syria sector, and in the Israel–Lebanon sector.

Eighteen of the deployments of military force under the auspices of the United Nations have been for the purpose of monitoring and observation. Eleven of these missions were started before 1990 and seven after 1990. Monitoring and observation missions constituted more than 60% of the UN's deployments before 1990, but only slightly more than 30% of the deployments after 1990.

Traditional peacekeeping involves unarmed or lightly armed military contingents being engaged in the monitoring, supervision, and verification of cease-fire, withdrawal, buffer zone, and related agreements with the consent of the parties. It presumes cooperation, and its methods are inherently peaceful: the use of military force, other than in self-defense, is incompatible with the concept.

The United Nations Emergency Force I (UNEF I), which was authorized in 1956, is the classic example of traditional peacekeeping. It was established to supervise the cessation of hostilities, including the withdrawal from Egyptian territory of the armed forces of France, Israel and the United Kingdom, and after the withdrawal to serve as a buffer between Egyptian and Israeli forces. UNEF I was deployed with the consent of Egypt; it was designed to be a completely neutral force, and it was lightly armed and authorized to fire only in self-defense. It differed from UNTSO and other monitoring and observation missions in that it was a much larger force, around 6,000, and the risks of the conflict reigniting were greater.

In all there have only been four traditional peacekeeping forces, UNEF I and the United Nations Force in Cyprus (UNFCYP), UNEF II, and the United Nations Force in Lebanon (UNIFIL). All of these forces were originally deployed prior to 1990.

Peacekeeping plus state building involves supplementing traditional peacekeeping with activities such as election monitoring or organization, human rights protection, and assisting or exercising civil administration functions during transition to independence or democracy.

The exemplar case of peacekeeping plus state building is the United National Transitional Authority in Cambodia (UNTAC). UNTAC was authorized in 1992, and involved more than 20,000 personnel. UNTAC's mandate included military arrangements, clearing landmines and training Cambodians to clear landmines, civil administration, the restoration of essential infrastructure, the repatriation and resettlement of refugees and

displaced persons, the maintenance of law and order, aspects relating to human rights, and the organization and conduct of free and fair elections.

There have been 25 cases of peacekeeping plus state building, and all but two of these were deployed after 1990.

Force to ensure compliance with international mandates involves the use of force to ensure the safety of peacekeepers and to enable a peacekeeping mandate, which is being frustrated, to be carried out. Such forces usually also perform state-building tasks.

The United Nations Operation in the Congo (UNOC or ONUC after the French *Organisation des Nations Unies au Congo*) was the first instance in which military forces deployed under UN auspices used force to ensure compliance with an international mandate. ONUC was established in 1960 to ensure the withdrawal of Belgian military forces. It also assumed many state-building functions. Its mandate was later modified to include maintaining the territorial integrity and political independence of the Congo. ONUC military forces prevented the secession of Katanga province. ONUC had about 20 000 personnel.

All of the forces deployed by the UN and NATO in the former Yugoslavia would be in this category. Five of the 50 military forces deployed under UN auspices fall in this category, as do all four of those deployed by NATO. NATO's International Force (IFOR) was the largest of these military operations. It included more than 60 000 personnel. Of the deployments of force in this category, only ONUC occurred before 1990.

Enforcement involves the threat or use of military force in pursuit of efforts to maintain or restore peace, in response to conflicts or other major security crises. The classic example of such a use is that to prevent or repel an attack on the territorial integrity of a state.

The UN-sponsored operations in Korea and Kuwait are the two cases of enforcement action. The Korean operation involved close to a million personnel, and the Kuwait operation almost 800 000. UN forces suffered 95 000 fatalities in the Korean War, but only 240 in the Gulf War.

Table 1 displays the 58 instances in which military forces have been used under the auspices of the UN and NATO from 1948 through 1999 according to this categorization. The cases are classified according to their ultimate purpose. In some cases missions started modestly and subsequently were expanded. Table 1 divides the instances in which military forces were deployed into two periods: during the Cold War and after the Cold War.

Table 1 shows clearly that military forces were used under international auspices by the UN and NATO much more frequently in the decade starting in 1990 than they were used in the preceding four decades when actions were often taken either unilaterally or within the regional frameworks of the

Table 1 Uses of military forces under the auspices of the UN and NATO

Forms of use of forces	Period	
	1946–1989	1990–1999
Monitoring and observation	11 (57.9%)	7 (17.9%)
Traditional peacekeeping	4 (21.0%)	0
Peacekeeping plus state building	2 (10.5%)	23 (59.0%)
Force to ensure compliance	1 (5.3%)	8 (20.5%)
Enforcement	1 (5.3%)	1 (2.6%)
Total	19 (100%)	39 (100%)

Organization of American States or the Warsaw Pact. The UN generally carefully sidestepped areas that might pit it against one or both of the two superpowers. The UN was most frequently called on to undertake actions where neither superpower had a direct interest other than to restrain the influence of the other. In this manner, UN operations were deployed 19 times between 1945 and 1989 in contrast to the 35 times between 1990 and 1999.

Table 1 also shows clearly that the forms of use of military forces were quite different in the two periods. Monitoring and observation missions constituted almost 60% of the deployments of military forces in the first period, while in the second period they constituted less than a fifth of the deployments. In sharp contrast to the missions deployed only with the consent of the host state, many of the uses of military forces in the 1990s were deployed without the consent of the host state and were more intrusive in its affairs. They were also used much more frequently in intra-state conflicts.

The increasing frequency with which military forces have been used under the auspices of the UN and NATO and the increasing seriousness of these operations since the end of the Cold War are key factors causing issues of democratic accountability to be more pressing matters than they were.

8 The record: steps toward establishing democratic accountability

The history and experience of the use of military forces under international auspices has produced questions with regard to forms of authorization, national responsibility and individual responsibility for the conduct of operations in the field. As the forms of the use of military forces have multiplied, so have the questions of authority and responsibility in deciding to deploy troops, to select military and political objectives, to commit resources and to incur risk.

Five forms of authorization and responsibility can be identified; each of which raises its own set of accountability issues.

- International authorization to deploy military forces
- National authorization to deploy military forces
- Civilian/political control of military personnel and operations
- Civilian responsibility to the military for their safety
- Responsibility to comply with norms governing the conduct of soldiers and other international personnel in the field

These five forms for authorization and responsibility involve the issues that we think are relevant to Dahl's concept that democracy requires continuing responsiveness to the preferences of citizens. They are the elements of democratic accountability that we examine.

Democratic governments have over time developed procedures that cover the last four of these issues. These procedures are embedded in constitutions and political and military traditions. A considerable body of moral doctrine that can be used to guide choices with respect to these issues has also been developed. The Catholic 'just war' doctrine is a notable example. The first issue is newer and arises as a consequence of the effort to shift the legitimate use of force from nation-states to international institutions and from inter-state to intra-state conflict. While there are bodies of doctrine with respect to the last four issues, it is not clear how these should be applied when forces are being used under the auspices of an international institution.

Table 2 combines the categories relating to the forms of use of force and the forms of authorization and responsibility. This matrix provides an organizing framework for the analysis that follows. It is based on the assumption that different uses of military force will raise issues of accountability in different ways. The basic hypothesis is that the greater the risk to soldiers' lives, the longer the duration of the operation, and the less certain the outcome of an operation, the greater the demand will be for review by domestic institutions to enforce democratic accountability.

As the nine states in our study have used military forces under the auspices of international institutions they have begun to establish concepts and procedures that deal with issues of democratic accountability. They have, in a sense, begun to fill in the cells in the matrix in Table 2.

Different states have given different answers to the questions that have been raised. Few of the issues are firmly settled, but a start has been made to establish democratic accountability when force is used under international institutions. We shall examine each of the issues of accountability separately. The most detailed answers have been given to the issues of international and

Table 2 Uses of military forces and forms of authorization and responsibility

Forms of uses of military forces	Forms of authorization and responsibility				
	International authorization	National authorization	Civilian control	Civilian responsibility to military	Responsibility to comply with norms
Monitoring and observation					
Traditional peacekeeping					
Peacekeeping plus state building					
Force to ensure compliance					
Enforcement					

national authorization particularly with respect to enforcement and force to ensure compliance.

8.1 International authorization to deploy military forces

The intent of the UN Charter was to centralize authority concerning the use of military forces in the Security Council. Under Article 42, the Security Council could authorize the use of military forces. Under Article 51 states could individually or collectively take military action in their own self-defense, but this action had to be reported to the Security Council and the authorization was limited until the Security Council had taken action. Under Chapter VIII of the Charter regional organizations could use force but only with the authorization of the Security Council. The voting arrangements in the Security Council were intended to ensure that military action would have broad international support and that effective action would be feasible, i.e. action would be taken only with the consent of the permanent members.

In practice, the UN Security Council, the UN General Assembly, and the North Atlantic Council have all given authorization to use military forces. Whether or not any institution other than the UN Security Council can authorize the use of military forces for purposes other than self-defense has been contested, as have the legal bases for deploying forces.

Decisions involving monitoring and observation missions have not been controversial since the practice is now well established and includes the consent of the receiving state. The UN Security Council has authorized all of the 17 monitoring and observation missions. Debates have arisen with respect to decisions about the other types of uses of military forces.

The United States and the United Kingdom have been the leading proponents of the view that when the Security Council cannot act because of the veto, decisions of the UN General Assembly or the NATO Council consti-

tute appropriate authorization for the deployment of military forces. The United States and the United Kingdom were co-sponsors of the Uniting for Peace Resolution in 1950, which allowed the General Assembly to act in crisis situations when the Security Council could not act because of the inability of the permanent members to agree.

Even their Western allies have opposed this view on occasion, and China and the Soviet Union and later the Russian Federation have consistently opposed it. In 1998, when the United States and the United Kingdom decided that military forces should be used in Kosovo and they concluded that the Security Council was unlikely to authorize this, they chose not to use the Uniting for Peace procedure, but rather to seek a North Atlantic Council authorization and rely on this.

A key question arising from the Kosovo Operation Allied Force is under what, if any, circumstances should the UN structure and law be bypassed, keeping in mind that the system exists precisely to restrain the use of force? And if it should be bypassed, then on whose authority and judgment? And how much force is authorized? Are regional organizations valid sources for authorization? Can states act unilaterally? Kofi Annan expressed the dilemma clearly in a contribution to *The Economist*. He wrote:

To those for whom the greatest threat to the future of international order is the use of force in the absence of a Security Council mandate, one might say: leave Kosovo aside for a moment, and think about Rwanda. Imagine for one moment that, in those dark days and hours leading up to the genocide, there had been a coalition of states ready and willing to act in defence of the Tutsi population, but the council had refused or delayed giving the green light. Should such a coalition then have stood idly by while the horror unfolded?

To those for whom the Kosovo action heralded a new era when states and groups of states can take military action outside the established mechanisms for enforcing international law, one might equally ask: Is there not a danger of such interventions undermining the imperfect, yet resilient security system created after the second world war, and of setting dangerous precedents for future interventions without a clear criterion to decide who might invoke these precedents and in what circumstances.

(Annan, 1999, p. 49)

If the United Nations were a democratic institution these questions would be less vexing because ongoing debate would air the issues, subject proposed actions to public scrutiny, and allow decisions to be made on the basis of majority rule. However, the UN security structure was set up to provide for a speedy response particularly by those states with the most powerful military forces. The structure was designed to avoid the debate and veto that was

thought to have paralyzed the League of Nations. Because of the special responsibilities of the Security Council and the veto given to the five permanent members of the Council, it was set up not to be democratic even among states (Archibugi, 1998, pp. 244–254).

The United Nations further fails to meet democratic criteria through the inclusion and equality of all adults. Representation and voting in the United Nations are based on the doctrine of the sovereign equality of states not the inclusion and equality of all adults. China with more than 1.2 billion people and Liechtenstein with only 31 000 each have one vote in the UN General Assembly. More than a third of the 189 member-states of the United Nations do not have governments that even under the most lenient interpretation could be regarded as democratic. Their representatives may or may not represent the wishes of the citizens of these countries.

Yet on issues of war and peace, the United Nations is at the apex of the international political and legal structure. Fifty-five of the deployments of military forces under the auspices the UN and NATO have had the authorization of the UN Security Council. The only three instances when the Security Council did not authorize the initial deployment of military forces were UNEF I in 1956, the United Nations Security Force in West New Guinea (West Irian – UNSF) in 1962, and NATO's Operation Allied Force in 1999. The General Assembly authorized the first two, and the North Atlantic Council the third. In addition, although the Security Council authorized the initial deployment of military forces in the Korean case, subsequent decisions about the force were taken by the General Assembly under the Uniting for Peace Resolution.

States clearly prefer to have the Security Council's authorization when they deploy military forces under international auspices. Because of the importance of the UN in the legal and political decision-making processes within states, Security Council authorization bestows a legitimacy that cannot be gained in any other way. This legitimacy is important for gathering domestic support for the deployment of military forces.

The legal grounds for authorization in the 58 cases that have occurred have varied from measures to facilitate the pacific settlement of disputes under Chapter VI of the UN Charter, through threats to the peace as established under Article 39, Chapter VII of the UN Charter, to the necessity of preventing genocide and violations of humanitarian law. When Article 39 of the UN Charter and Article 5 of the North Atlantic Treaty were drafted, threats to peace were generally conceived as cross-border military attacks. The North Korean attack on South Korea and the Iraqi attack on Kuwait involved clear violations of Article 2(4) of the United Nations Charter. The international law involved in the other 56 cases in which military forces were

deployed under the auspices of the UN and NATO has frequently been less clear and has sometimes been contested. The humanitarian concerns that have compelled the deployment of international operations within states and without clear authorization by the UN Security Council have raised the most difficult questions, as Operation Allied Force in Kosovo demonstrated.

That many contemporary conflicts stem from intra-state rather than inter-state violence tests a key assumption of international law – that states are sovereign within their own territory. However, if the international law prohibiting genocide and providing for human rights protection appears to overcome, or even requires overcoming the concerns over intervention in the internal affairs of states, new standards and procedures must be developed if international relations are not to revert to the unregulated unilateral great power interventions of the nineteenth century.

Issues relating to NATO have been even more complex and controversial. The central question is whether NATO can legitimately take decisions to deploy military forces in out of area operations without authorization by the UN Security Council. NATO's decisions relating to the International Force (IFOR), the Stabilization Force (SFOR) and the Kosovo Force (KFOR) were all taken within a framework ultimately provided by UN Security Council resolutions. Operation Allied Force, the air war against Serbia, did not have this mandate. As in the UN Security Council's expansion of the concept of threats to peace and NATO's out of area operations, what constitutes a basis for intervention is also an issue (NATO, 1999).

The debate in October 1998 in NATO and preparation of the Activation Order authorizing the air strikes that started in March 1999 in Kosovo highlighted these issues. The legal basis for NATO's taking action was a central concern. France, Germany and Italy initially maintained that explicit authorization by the UN Security Council would be required for the NATO Council to authorize any out of area military operation. Russia, China and many other countries, including India, have maintained this consistently. Britain, in contrast to its allies, felt that international humanitarian law provided an adequate legal basis. The US assumed adequate authority from Resolution 1199 in which the Security Council acting under Chapter VII demanded that all parties in Kosovo 'cease hostilities'.

NATO countries eventually were able to build the required consensus to make a decision, and at its 50th anniversary summit in 1999, NATO adopted the Alliance's Strategic Concept, which called on the alliance to make 'full use of every opportunity to help build an undivided continent by promoting and fostering the vision of a Europe whole and free' (NATO, 1999). This suggested that NATO might again take such action. Yet, it remains uncertain whether NATO could ever again achieve the consensus required to

repeat such an operation in Kosovo or elsewhere. Moreover, the legitimacy of NATO's decision was contested by states that were not members of the alliance.

The broad issues of whether any institution other than the UN Security Council can authorize the deployment of military forces and what constitute legitimate grounds for intervention are therefore far from resolved.⁶ Further unresolved are the possibilities of these international bodies acting *ultra vires* particularly in new areas for collective action.

8.2 National authorization to deploy military forces

Once an international institution decides that military forces should be deployed, the issue of authorization then shifts to the national level. The concept entailed in Article 43 of the United Nations Charter was that forces made available under these agreements would be committed without further national authorization. Since NATO has maintained standing military forces in the territory covered by Article 5, these forces would automatically become engaged if an attack occurred. However, the Article 43 agreements were never put in place and NATO forces have never been attacked in the territory covered by Article 5. The issue of national authorization thus could conceivably arise every time that the UN or NATO decided that military forces should be used, and it has arisen in many of the cases. Not surprisingly, it has arisen more frequently and urgently the larger and more risky the military operation and the murkier the legal basis for action.

Again, except in the cases of Japan and Germany, monitoring and observation missions have not been subjected to debate. Executives in countries other than Japan and Germany acting on their own authority have routinely assigned military personnel to such missions. Frequently, however, they have only felt free to assign those personnel that had volunteered for these missions. Until the passage of the peacekeeping law in 1992, Japan's governments felt that they could not assign personnel of Japan's Self Defense Forces outside of Japan. The conditions specified in Japan's peacekeeping law limit Japan's participation to monitoring and observation and traditional peacekeeping operations.

German governments felt that they could not deploy Germany's forces outside the NATO area until a constitutional court ruling of 1994 interpreted the constitution in a way that allowed German military forces to participate in UN-authorized operations. Germany's participation in Operation Allied Force was contested, although there seems to be a consensus that NATO authorization provides a sufficient basis for German participation in a collective military deployment.

6 See the debate in *Foreign Affairs* (Glennon, 1999; Franck *et al.*, 1999).

Traditional peacekeeping has also been relatively unproblematic, again with the exception of Japan and Germany. The number of personnel required has generally been modest. Many countries have given their executives authorization to assign up to a certain number of military personnel to UN traditional peacekeeping operations, though this authorization is frequently limited to personnel that volunteer for such missions. The United States has regularly provided transport and support services and up to 1000 personnel for traditional peacekeeping missions solely on the basis of an executive action.

The other three types of uses of military forces, where the costs and potential risks are greater, have been more complicated. The situation in the United States illustrates this. The US position is also important because of its extensive military power and its crucial role in mobilizing coalitions of the willing.

As the number of instances in which military forces were used under international institutions increased in the 1990s, both the executive and legislative branches took steps seeking to define the conditions under which the United States would participate in such military actions. The executive did so in May 1994 in Presidential Decision Directive 25 requiring that there be a ceasefire and an identifiable end-point prior to deploying US troops to a UN operation. Congress took this a step further in the fiscal year 1998 appropriations acts for the State and Defense Departments by requiring a 15-day notification period before the US votes for a resolution authorizing the deployment of military forces under UN auspices.

The move towards more direct involvement of the legislature is also reflected by comparing the steps taken to commit US military forces in Korea with those taken to commit forces in Kuwait. President Truman felt that he had the authority to commit US military forces in Korea.⁷ While Truman did consult with the congressional leadership before ordering US forces into combat, he acted without formal congressional authorization. Since the Korean War the authority of the executive to act without formal congressional authorization has become problematic. Congress insisted that it had to provide authorization for the use of US military forces in Kuwait.

On the basis of this precedent, it seems likely that congressional authorization would be essential for the United States to participate in any Enforcement action. This could also apply to deploying US military forces in

7 USA, Senate, 'Memorandum of July 3, 1950, prepared by the US Department of State on the Authority of the President to Repel the Attack in Korea', in *Military Situation in the Far East: Hearings Before the Senate Committee on Armed Services and the Committee on Foreign Relations*, 82nd Congress, 1st session, Pt. 5 (Washington, DC: Government Printing Office, 1950), pp. 337–381. Whether this case constituted a precedent for future authorizations to deploy US military forces has been debated at length (e.g. Fischer, 1995, pp. 21–39).

peacekeeping plus state building operations and using force to ensure compliance with international mandates.

In Operation Allied Force, Congress refused to give the president broader authority ‘to use all necessary force and other means, in concert with United States allies, to accomplish United States and North Atlantic Treaty Organization objectives in the Federal Republic of Yugoslavia (Serbia and Montenegro)’.⁸ The president acted on his own authority. Congress did, however, authorize the participation of US forces in KFOR.

Although the debate in the United States has gone further than that in other countries, it has gone on in other countries as well. Six of the other eight countries in this study have parliamentary systems. Because of this, the debates and the legislative history in these countries have been less complex. In these governmental systems, control of the use of military forces has traditionally been an executive function. Moreover the parliamentary systems considered here ensure that there will not be the partisan division between the executive and legislative bodies that frequently prevails in the United States.

Nevertheless, in the United Kingdom, France, Canada and Norway, there appears to be a tendency toward parliamentary involvement in decisions about using military forces under the auspices of international institutions for any missions other than monitoring and observation and traditional peacekeeping. In the Kuwait case, the parliaments in the United Kingdom, France and Canada authorized or expressed support for the use of their country’s military forces to enforce compliance with the UN Security Council resolutions.

In all of the countries in our study, there have been parliamentary discussions about the use of military forces under the auspices of international institutions. Often these discussions have ended with a resolution taking note of what the government was doing or planned to do. Such resolutions carry the implicit threat that in some future instance parliament could take a negative decision.

Even for countries like Canada with a long history of participation in international peacekeeping, there was an attempt in 1995 to adopt legislation that would ensure that parliament would be involved before the Canadian military forces were committed to UN operations, but a proposed bill requiring this was defeated. In general, legislatures have become more concerned with UN military operations as the number of these operations has increased and as national military establishments have been reduced after the end of the Cold War and in response to budgetary pressures. There has been

8 USA, Congress, Senate, *Congressional Record*, 4 May 1999, SJ Res. 20, p. S4611.

an increase in the demand for military forces to serve under international auspices and a decrease in the forces available for such service. This contradiction has heightened legislative concern.

In the legislation that Japan, Germany and the Russian Federation adopted in the 1990s allowing them to participate in UN military operations, legislative approval is required in both cases for the deployment of troops that go beyond a minimal level.⁹ Japan's Self Defense Forces cannot be deployed in the territory of a state without that state's consent, which in effect rules out the use of these forces in using force to ensure compliance with international mandates and for enforcement. The German case is also interesting because the constitutional court concluded that deployments outside the NATO area are permissible as long as they receive specific 'constitutive approval' from the Bundestag for each deployment. This carefully crafted formula enabled all political parties in Germany to accept the overall concept of deployment of Germany forces outside of Germany by assuring them that they would always have a voice in the decision to deploy before any commitment to do so is made. The Law on the Procedure for the Provision by the Russian Federation of Military and Civilian Personnel for the Participation in the Activities for the Maintenance and Restoration of International Peace and Security requires that the President submit detailed plans to the upper house, the Council of the Federation, and obtain this body's explicit authorization before dispatching Russian military forces.

The practice that has been established in many countries in the Kuwaiti case, and with respect to IFOR, SFOR and KFOR, and the legislation that has been adopted in many countries, has in effect negated the automatic commitment to use military forces for collective action envisaged in the doctrine of collective security. In the legislative debates that occurred in the United States, the United Kingdom, France, Canada and Norway the question of whether or not the UN had authorized the military operation was an important issue. In all cases, there were individuals and groups within the legislative bodies for whom UN authorization was an important factor in the decision to give legislative consent for the authorization to use the national military forces.

The record indicates that democratic states are going to make independent decisions about the deployment of their military forces under the auspices of international institutions. None of the nine countries whose practices we have reviewed has made an automatic commitment to engage its

⁹ Law Concerning Cooperation in UN Peacekeeping and Other Operations, Law no. 79 (June 19, 1992), 1011 *Jurist* 33 (1992). For an unofficial English translation from the Japanese, see 32 *ILM* 215 (1993). Federal Republic of Germany, Federal Constitutional Court, International Military Operations (German Participation) Case (Case Nos. 2BvE3/92, 5/93, 7/93 and 8/93) in *International Law Reports*, vol. 106.

military forces, except those six countries whose forces would be engaged were there an attack that called into play NATO's Article 5 commitment.

States have handled decisions about the deployment of their military forces in operations conducted under the auspices of international institutions in ways that have been shaped by their national constitutions and traditions. Because of the separation of powers, the legislature has been more involved in the United States than in the other eight states, but legislatures have been involved in the others as well. Legislative approval when the governing party controls a parliamentary majority may be pro forma, but it is seen as an important instrument for gaining popular legitimacy. Traditionally executives have had considerable freedom to use military forces, particularly in parliamentary systems.

Whether or not these national decisions to deploy military forces under the auspices of the UN and NATO meet standards of democratic accountability could be a matter for discussion. But several things are clear. Only five of the nine countries – France, India, the Russian Federation, the United Kingdom and the United States – have used their military forces unilaterally in the period since the end of World War II. In terms of democratic accountability, their decisions to deploy their military forces unilaterally or collectively have been taken by roughly the same procedures.

Another point is that when large-scale and potentially dangerous military operations have been mounted, there have been many opportunities for enlightened public understanding. It was more than half a year between the time that Iraq invaded Kuwait and start of Operation Desert Storm. An almost equal time elapsed between the time that the initial warnings were given to Serbia about its operations in Kosovo and the commencement of Operation Allied Force. The media provided vast amounts of information about the issues. There were public and legislative debates.

The implication of the fact that when serious risks are involved national governments will insist on deciding whether or not to deploy their military forces in an operation conducted under the auspices of an international institution is that support for such operations will never be automatic as the doctrine of collective security demanded; they will always be coalitions of the willing. Such coalitions are likely to be organized on a regional rather than a universal basis, i.e. regional leadership will be necessary. Another implication is that since the end of the Cold War probably only the United States can provide leadership for the most dangerous operations, enforcement actions. Only the United States has the military capacity to conduct such operations with a strong probability of success. At the same time, the US has one of the most complicated structures for committing its armed forces.

8.3 Civilian control, civilian responsibility, military responsibility

Although there has been less public discussion about issues of civilian control, civilian responsibility to the military and military responsibility to act in accord with basic norms, issues concerning these matters have arisen and have been dealt with. This is also a factor identified by Robert Dahl as important to maintaining democracy (Dahl, 1998, p. 147).

In both UN and NATO operations involving military forces lines of command have been established that ultimately involve military commanders reporting to civilian authorities, usually the UN Secretary-General and Security Council and the NATO Secretary-General and Council. The Kuwait operation was an exception in that a UN chain of command was not established. The military forces involved operated under a broad authorization given by the Security Council, but reported to their own civilian authorities.

The NATO operation against Serbia's actions in Kosovo demonstrated the NATO Council's determination to maintain civilian control. Targets in the air war were chosen by consensus among the civilian authorities of the allies. A plan to interdict oil bound for Yugoslavia that the Supreme Allied Commander of NATO had advocated was put on hold because of allied concerns as to its legality (Kirgis, 1999; Sands, 1999).

In addition to reporting under the established international chain of command, commanders of national contingents in military forces operating under international institutions have maintained regular contact with their national authorities. It is highly unlikely that these commanders have ever followed an order given in the international chain of command to which their national authorities have not at least acquiesced, if not given their approval. There are indications that military forces operating under international institutions have not conducted certain operations or modified planned operations because national contingents operating on the instructions of their national authorities would not participate.

Such a case occurred during Operation Allied Force in the dispute between NATO Supreme Allied Commander General Wesley Clark and the British commander in the field in Kosovo, General Michael Jackson, over the taking of Pristina airport before the Russians could in June 1999. General Jackson refused to obey General Clark's order to secure the airport. He consulted the British government, which supported his refusal to obey the order, and the US government refused to support General Clark.

National institutions have also been important in ensuring that military personnel conduct themselves in accordance with established norms. There were major national inquiries into the conduct of the Dutch military forces in Srebrenica and the Canadian military forces in Somalia. Canadian mili-

tary personnel were prosecuted under Canadian military law. Little exists, however, beyond these national controls. To the extent that efforts have been made to develop rules of conduct for military personnel operating under the United Nations, these have been based on the assumption that the missions were engaged in monitoring and observation or traditional peacekeeping. They assume that the only legitimate use of force is for self-defense. Thus they have not been applicable when force has been used to ensure compliance with international mandates. The situation with respect to the applicability of established international norms or warfare in enforcement actions is unclear. The NATO countries insisted that operation Allied Force was not a war.

Steps to correct the situation where forces under UN command were under fewer legal restrictions than military forces under national commands were taken in 1999 when the Secretary-General of the United Nations declared that henceforth, military forces operating under UN commands would be bound by the Geneva Convention (UN/ST/SGB/1999/13). Nevertheless, national authorities have never given up ultimate command responsibilities for their military forces. Thus, in all cases, ensuring that military forces operate in accord with law and norms governing military conduct has remained a national responsibility. States try and punish their military personnel for misconduct, not the UN or NATO. International tribunals, where they exist, provide a measure of international accountability for decisions made and actions taken by individuals in military matters. The United States' unwillingness to sign and ratify the Rome Statute on the International Criminal Court raises serious questions about how soon and how effectively a permanent international tribunal will fulfill this role. Moreover, this individual and personal responsibility, however, differs from the requirements of democratic accountability.

So far there are no mechanisms other than national ones for ensuring that the civilians who decide to deploy military personnel make their decisions so that these personnel are not subjected to unnecessary risks. No mechanisms exist for holding those who shape states' policies in the UN Security Council or the NATO Council accountable other than the normal bureaucratic and electoral processes that exist within national institutions. When UN forces were given the mandate to protect safe areas in the former Yugoslavia, but the UN Security Council and the Department of Peacekeeping Operations did not provide sufficient personnel and equipment to effectively carry out the mission, there were cries that someone should be accountable. Establishing responsibility in the way that it is established in democracies, however, proved impossible.

UN Security Council proceedings are deficient in two respects. The pro-

cedures for ensuring that the members of the Security Council have reliable information about the military implications and consequences of their decisions are inadequate. A second problem is that Security Council proceedings are not fully transparent. When military forces operating under the auspices of the UN are put in situations of high risk because they do not have adequate military equipment, a clear mandate, or some other problem, affixing responsibility is difficult if not impossible. National and international officials can easily engage in blame shifting.

9 Constructing a new order for the use of military forces: shifting authority to international institutions while maintaining democratic accountability

The international community has become considerably more sophisticated about using military forces under the auspices of international institutions than it was when Woodrow Wilson and others first sought to give effect to the doctrine of collective security in the early years of the twentieth century. Practice has demonstrated that there is a range of ways in which military forces can be used running from monitoring and observation to enforcement. The doctrine of collective self-defense was developed as a supplement to collective security. And in the closing years of the twentieth century, states began to struggle with the question of the use of military forces to ensure the safety of populations within states. In some cases, states have decided that military forces can be deployed to pacify intra-state as well as inter-state conflicts, thus overcoming the barrier of sovereignty.

States have also begun to take steps to grapple with issues of democratic accountability. Wilson and others may have thought that the procedures in international institutions and the understanding that decisions would have to have a firm legal basis would satisfy democratic accountability. International institutions would take decisions to enforce international law. States would accede to the conventions and treaties that create international law through their constitutional practices. The representatives of governments would take decisions in international institutions. Since unanimity was required in the League, states – and certainly the United States – could not be forced to take action against their wishes.

As the historical record cited above indicates, however, the situation is more complicated than this stylized view. Although military operations are conducted under the auspices of international institutions, states maintain control over the decisions to deploy their troops. Democratic control and accountability have been maintained through national institutions and procedures. International authorization, preferably by the UN Security Council,

is important to establish international and domestic legitimacy, but it is not the essential mechanism for ensuring democratic accountability.

Dahl ended *On Democracy* by identifying a number of challenges to democracy. One of these is internationalization. Dahl wrote:

. . . from a democratic perspective the challenge posed by internationalization is to make sure that the costs to democracy are fully taken into account when decisions are shifted to international levels, and to strengthen the means for holding political and bureaucratic elites accountable for their decisions. Whether and how these may be accomplished is, alas, far from clear. (Dahl, 1998, 183)

In cases of the use of military forces, states have reacted to Dahl's caution by limiting the role of international institutions and insisting that control in many crucial ways remain at the national level. But this mixed system has not avoided blurring lines of accountability as the reports issued by national governments and the UN on failures to respond to various humanitarian crises are now revealing.

In his debate with Lodge, Wilson argued that a mixed system would fail to provide adequate security for the world. Yet, it is clear for the present that states are not willing to accept a more centralized system. At the same time, states have acted together under UN Security Council authorization to repel transborder attacks and to stem humanitarian crises more than 50 times. Furthermore, however desirable a centralized system might be, there are clear limits to the resources and capacity to meet all the security and state-building needs in the world.

Effective collective action today therefore may require sharing of the tasks between a centralized international authority such as the UN Security Council and an important regional power or coalition, e.g. Australia in the case of East Timor, to take the lead on fielding an operation and stabilizing a situation. As the tasks can be of long duration, states in the area may take turns in carrying out functions until the area is able to operate on its own. Only time will tell whether the mixed system that has evolved can ensure both democratic accountability for the use of military forces and that such forces are used expeditiously and effectively to promote peace and other human values.

The premise of collective security that peace is indivisible may be sound, but history has shown that it does not follow that all states will respond with maximum effort whenever a breach of the peace occurs. Interested states, however, will respond and increasingly prefer to do so under the general and central authority of the UN Security Council.

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