International Security, The United Nations and The Post-Cold War Era

The end of the Cold War in the 1980s signalled a major change in the global security environment which had existed for most of the first half century of the UN era. This variation in the modern pattern of international relations has necessitated a radical review of international defence and security architecture, although it would be erroneous to represent this as having been in any way a clean break from past experience. It is rather the case that long-standing problems in international relations have presented themselves in changed forms and in so doing have demanded new, and possibly more effective, responses.

The UN collective security system as it was established at the end of the Second World War is set out in Chapter VII of the UN Charter, specifically in Articles 30-42. In principle, if a threat to, or breach of, international peace and security appears to have occurred, the UN Security Council determines under Article 39 whether such a threat or breach in fact exists and, if it does, it is to:

> make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42 to maintain international peace and security.

Before making a final recommendation, the Security Council may, under Article 40, call upon the States involved to comply with 'provisional measures' for the mitigation of the situation without prejudice to the ultimate resolution of the dispute. Article 41 then provides for the implementation of:

> measures not involving the use of armed force ... [which] may include ... interruption of economic relations ... means of communication and the severance of diplomatic relations.

If the Security Council considers that such measures either would be or have proved to be ineffective, it may, under Article 42:

> take such measures by air, sea or land forces as may be necessary to maintain or restore international peace and security.

The structure thus set out represents *prime facie* a genuine system of collective security which sought to remedy some of the defects of the former, pre-1939, League of Nations system. It was founded upon the proposition that an attack upon any State is a threat to the security of all States and therefore a matter which demands a swift and effective response from the world community. To this end, the UN Security Council was conceived as a body both small enough to undertake rapid and efficacious crisis management, in contrast with the former League Assembly, and, by including them as Permanent Members, able to assume the support of the major powers.

In fact, the UN collective security system has never operated in quite this manner and was *ab initio* in fact a mixed collective security and balance of power system. From the beginning the Security Council was seen to depend upon, at a minimum, the acquiescence of the major powers in its decisions and the veto power which was so much (ab)used during the Cold War era was not in fact developed as a Cold War-driven phenomenon but was an initial prerequisite for the acceptance of the UN system. Indeed, the post-war US Secretary of State, Cordell Hull, went so far as to state that the veto was a *sine qua non* for the operation of the system.[1] The effect of the Cold War with its relatively clearly defined and opposed ideological camps,[2] was to polarise the system and, through the use of the veto, effectively to remove from the remit of Security Council action any actual or potential conflict in

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[1]See I. L. Claude, *Swords into Plowshares*, 4 ed., (McGraw-Hill, 1984), at p. 143.

[2]This is not to suggest a simple bilateral confrontation. Relations between the USA, USSR and PRC actually underwent many changes and shifts in balance over the course of the Cold War years.

which there was a superpower interest or commitment. It was this which made the UN security system in its first half century as much a balance of power as a functional collective security system, a fact pointedly illustrated by the effective exclusion of the UN from intervention in so cataclysmic security crises as the wars in Vietnam and Afghanistan.

Apart from this general effect, or, arguably, distortion, the Cold War also affected the operation of the UN system in detail in so far as it remained one of collective security *stricto sensu*. The first, and self-evident, difficulty lay in the absence of designated UN forces. Thus, although the phrasing of Article 42 of the Charter suggests that the Security Council itself should 'take ... action' using forces immediately at its disposal, this has never strictly been possible. Provision is made for such forces by Articles 43 and 45 of the UN Charter. The former provides for an undertaking by member States to enter into agreements to make forces available to the Security Council for immediate deployment in the maintenance or restoration of international peace and security. Article 45 then provides, in somewhat more imperative language, that member States should hold national contingents in readiness for deployment in international enforcement action. Neither of these provisions have been implemented in practice, largely because of variously derived sovereign sensitivities over the commitment and loss of control which this would seem to imply. This left the UN Military Staff Committee, set up under Article 47 of the Charter to provide strategic but not tactical direction for UN forces, effectively in the position of a General Staff without an army and relegated it to a rather exiguous advisory role.

The principal consequences of the effective abrogation of Articles 43 and 45 were, firstly, that the role of the Security Council as an organ of rapid response crisis management became much more difficult, if not actually impossible to sustain and, secondly, an enhancement of the importance of the Article 51 'self-defence' provision of the Charter to a level far beyond that originally intended. As to the first of these points, UN 'Blue Helmet' Forces have inevitably had to be set up *ad hoc* at short notice and have been beset by severe problems of interoperability, resourcing, command and control. These problems were shown all too clearly in the experience of UNPROFOR in former-Yugoslavia. This is not to say that UN Forces have there-

fore over the past 50 years been *ex hypothesi* ineffective. On the contrary, such Forces have played a highly significant role in many peacekeeping operations. The problems have arisen, rather, in the context of the more robust and resource-intensive peacemaking and enforcement operations for which there has been an increasing demand since the end of the Cold War. Again, UNPROFOR affords the classic example. The Force was sent with unclear – even mutually contradictory – mandates as a 'peacekeeping' Force into a situation in which there was no peace to 'keep'. Despite this, it did succeed in securing at least some degree of humanitarian relief and in holding a near impossible situation until the Dayton Peace Accords were negotiated. Paradoxically, it was only at this stage that the much more robust NATO-led IFOR Implementation Force was sent in[3], much more in a role of peacemaking and enforcement. Much has been built upon the experience of former-Yugoslavia, as also upon the UNITAF/UNOSOM operations in Somalia and upon the tragedy of the African Great Lakes crisis in the conceptualisation of the shape of the future pattern of peace support operations. Whether, however, the appropriate lessons have been derived from these experiences remains an open question with regard to which the international response to the 1999 Kosovo crisis raises serious doubts.

The second overt consequence of the distortion of the apparent originally intended UN collective security system referred to above was the much enhanced significance of the self-defence proviso of Article 51. Article 51 preserves an "inherent" right of individual and collective self-defence in the event of an armed attack occurring against a State until the UN Security Council has taken measures for the restoration of international peace and security in the affected area. It is evident upon the face of the text that this was intended as a short-term "emergency" response prior to the effective intervention of the Security Council in a given case – much as in almost any system of municipal law a victim of assault is permitted to use reasonable force in self-defence until the police arrive upon the scene. The problem in the international context has, of course, been that if the "police", in the shape of a UN "Blue Helmet" Force, arrive at all, they have done so

[3]Un Security Council Resolution 1031 of 15 December 1995.

very late and in inadequate strength. As a result, Article 51 early ceased to be a short term crisis response and became the primary, indeed in some cases the only, vehicle of response to military aggression. The briefly stated provision has, unsurprisingly, proved both ill-conceived and badly drafted for the significantly enhanced role which it has in practice been called upon to play.[4] Amongst the immediately obvious questions and ambiguities are those of just what is "inherent", when for this purpose an armed attack is deemed to "occur", and what amounts to "action" terminating the application of the Article on the part of the Security Council. These matters fall somewhat outside the scope of the present discussion and in most practical circumstances they may not occasion major difficulties, but the ambiguities of Article 51 may nonetheless be problematic in the wider post-Cold War redevelopment of international security architecture. In particular, some commentators take an extremely broad view of the permission granted by Article 51 and in some cases this may seem not only to extend the meaning of the Article far beyond anything which was originally intended, but also to distort the relationship between globalism, regionalism and national capacity in the UN system to a dangerously destructive degree.

Changing Security Architecture in the Post-Cold War Era

The mixed collective security and balance of power structure which characterised the Cold War era lost its political *raison d'etre* with the end of the ideological confrontation. In the famously misguided phrase of President Bush of the USA uttered in the context of the 1990-91 Gulf Conflict, hopes were initially expressed of the dawn of a "new world order" which was taken to imply an inauguration of the supposed originally intended working of Chapter VII of the UN Charter. Such perceptions and expectations were naive upon at least two levels. In the first place, the Coalition action in the Gulf Conflict took place in a unique historical and political context characterised by the maximum eclipse of Soviet power and an unusual degree of conformity of

[4] See D. W. Greig, "Self-Defence and the Security Council: What does Article 51 Require?" (1991) 40 *International and Comparative Law Quarterly*, pp. 366-402.

interest and opinion within the Security Council and the wider body of the UN. In this regard, the 1990-91 Gulf Conflict signified not a "new order" but an atypical moment in the winding down of the Cold War confrontation with, perhaps, a distant and highly qualified parallel in the Korean War. In that instance, the US-led UN intervention was facilitated not by consensus but by a Soviet withdrawal from involvement with the Security Council which means that its veto was not employed as it otherwise surely would have been. Events after 1991, notably but not only in former-Yugoslavia, have demonstrated that in many respects, the post-Cold War order presents difficulties no less significant than those which went before. Indeed the events of the Kosovo crisis in 1999, including a degree of Russian support for the quasi-Genocidal Serbian regime and stalemate in the Security Council were strongly reminiscent of the Cold War itself.

Secondly and less immediately obviously, the multiplication of the conflicts, including especially intra-State conflicts, calling for UN intervention with the end of the post-1945 balance of power system placed demands upon Security Council resources which could not well be sustained. The difficulties encountered by UNPROFOR, UNOSOM and in the African Great Lakes crisis rapidly showed that the compromised Chapter VII peace support structures which emerged from the Cold War in the 1980s were unable to meet all the demands of a radically changed international relations and security environment.

These experiences led to a search for alternative and enhanced peace support strategies. Prominent amongst the possibilities canvassed was a significant devolution of peace support action, and especially enforcement action, to regional organisations and alliances. In *Supplement to Agenda for Peace*, the former UN Secretary-General, Boutros Boutros-Ghali, remarked that:

> The capacity of regional organizations for peacemaking and peacekeeping varies considerably. ...Given their varied capacity, the differences in their structures, mandates and decision-making processes and the variety of forms that cooperation with the United Nations is already taking, it would not be appropriate to try to establish a universal model for their relationship with the United Nations. Nevertheless it is possible to identify certain principles on which it should be based.

> Such principles include: (a) Agreed mechanisms for consultation should be established, but need not be formal; (b) The primacy of the United Nations, as set out in the Charter, must be respected. ...; (c) The division of labour must be clearly defined and agreed in order to avoid overlap and institutional rivalry...; (d) Consistency by members of regional organizations who are also Member States of the United Nations is needed in dealing with a common problem of interest to both organizations, for example, standards for peace-keeping operations.[5]

The caveats set out in this analysis remain fundamental to the question of the future shape of regional peace support action and its relation to the UN itself. It is in particular very clear that in the light of the diversity of the character and capacities of regional organisations, no simple or singular solution to global security problems is available through a regional paradigm. Unfortunately the deployment of the NATO-led IFOR and SFOR Forces in former-Yugoslavia to replace UNPROFOR and police the implementation of the Dayton Peace Accords led some to imagine that precisely such a solution might be possible – despite the fact that both the situation and the organisation were in many ways markedly atypical. The NATO action in the 1999 Kosovo crisis and the eventual emplacement of KFOR may in time be thought to have contributed an equally misleading precedent so far as general analysis is concerned.

Although in many respects a political and strategic innovation in terms of previous Security Council practice, this pattern of development occasions no particular difficulty in principle from a legal viewpoint. Article 53 of the UN Charter provides that:

> The Security Council shall, where appropriate, utilize such regional arrangements or agencies for enforcement action under its authority. But no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council... .

[5] S/1995/1, 3 January 1995, paragraphs 87-88.

It will be noted that the provision for utilisation of regional arrangements and organisations by the Security Council is mandatory rather than permissive, although the addition of the caveat 'where appropriate' without further specification rather weakens this element of the provision. In practice, the post-Cold War use of regional organisations in peace support and enforcement operations has been by no means so simple as the wording of Article 53 might seem *prime facie* to suggest. The experience of NATO in former-Yugoslavia may serve as a pointed example of the difficulties encountered and this is especially so in regard to the 1999 Kosovo crisis.

NATO, the UN and Kosovo

The Kosovo crisis in mid-1999 provided a major test of the way forward for a regional paradigm, or paradigms, in regional peace support action in the post-Cold War era. The general background to the Kosovo crisis is well enough known. Suffice it to say that whilst the post-1945 government of Marshal Tito had established an apparently stable Federal order between the constituent Yugoslav republics, the post-Tito Milosevic government adopted policies of greater-Serbian hegemonism which sufficiently unsettled the non-Serbian Republics to inspire secessionist and independence movements. The separation of Bosnia-Herzegovina from the Federal Republic of Yugoslavia led to 'ethnic cleansing', most notably but by no means only, by the Bosnian Serbs and the eventual emplacement of UNPROFOR, the inadequate mandating and resourcing of which severely impeded its operational efficacy. Although it may be added that, notwithstanding these many difficulties, the Force did succeed both in securing significant humanitarian relief and in holding a near-impossible situation until the Dayton Peace Accords had been signed. The implementation of the Accords was eventually entrusted to the NATO-led IFOR[6] and eventually SFOR and this experience contributed largely, if misleadingly, to the eventual NATO action in Kosovo.

[6]See UN Security Council Resolution 1031 of 15 December 1995.

The Kosovo crisis revived the problems of former-Yugoslavia in a renewed and, if possible, yet more vicious form. Although a province of Serbia within the remnant of the former Federal Republic of Yugoslavia, Kosovo is not ethnically Serbian and when faced with the greater Serbian hegemonism of the Milosevic government, its majority Albanian population resisted. In part this took the form of armed action by the Kosovo Liberation Army (KLA) which campaigned for either outright independence or, at a minimum, autonomy within the rump Federal Republic. Like most liberation armies, the KLA comprised a variety of elements, including both genuine national liberation forces and fringe criminal or "terrorist" groups. Be that as it may, the Serbian response was a renewed resort to 'ethnic cleansing' involving increasing evidence of kidnap, forced labour and mass murder. Internationally sponsored negotiations at Rambouillet in France collapsed in early March 1999 when Serbia refused to accept international supervision or monitoring of any agreement. At this point NATO, already playing through SFOR a major peace support role in former-Yugoslavia, undertook a campaign of air strikes against Serbia with a view to ending the 'ethnic cleansing'.

At this point, two basic questions of authority arise, relating to NATO's internal authority for such action and to its authorisation therefore under the UN Charter. As to NATO's internal authority, the 1949 North Atlantic Treaty, the organisation's founding document, sets a limited remit founded upon Articles 5 and 6 which ground the purposes of NATO upon the individual and collective self-defence of Member States under Article 51 of the UN Charter, within a narrowly defined geographical remit of western Europe and the North Atlantic area. Manifestly, Kosovo did not fall within this remit. However, upon a proper reading of the Treaty it seems clear that whilst action within Articles 5 and 6 would be a mandatory obligation for Member States, there is no reason why Members should not undertake other action, assuming such action to be lawful, by consent using the infrastructure which they themselves created. In this sense the Kosovo action was not and is not internally *ultra vires* the organisation.

The question of necessary external authority is in some ways more complex. Article 53 of the UN Charter makes it unequivocally clear that enforcement action by regional agencies requires Security Council

authorization and it is not clear how, if at all, this was given for the NATO air strikes. Some NATO leaders initially argued that the air strikes were implicitly authorised by the authority granted to the NATO-led, but not wholly constituted, IFOR and SFOR forces. This argument is, however, vanishingly thin. The authorities granted to IFOR and SFOR referred explicitly to the Dayton Peace Accords, which did not, and could not have, dealt with the later situation in Kosovo. Thus, paragraph 12 of Security Council Resolution 1031 of 13 December 1995 stated that the Security Council:

> authorizes the Member States acting through or in cooperation with the organization referred to in Annex 1-A of the Peace Agreement [NATO] to establish a multinational implementation for [IFOR] under unified command and control in order to fulfil the role specified in Annex 1-A and Annex 2 of the Peace Agreement;[7]

This was hardly a 'blank cheque' authorisation for any action over the whole of former-Yugoslavia which NATO, or any other organisation, might from time to time consider appropriate. Indeed, when the Security Council came specifically to consider the Kosovo situation, no reference was made to extending the already existent NATO mandate. Resolution 1160 condemned "the excessive use of force by Serbian police against civilians and peaceful demonstrators in Kosovo" and "emphasise[d] that failure to make constructive progress towards the peaceful resolution of the situation in Kosovo will lead to the consideration of additional measures". However, despite the absence of any such peaceful resolution, in its subsequent deliberations the Security Council fell far short of an express authorisation of use of force, resolving only that:

> (16) ... should the concrete measures demanded in this resolution and resolution 1160 (1998) not be taken, to consider further action and additional measures to maintain or restore peace and stability in the region;
> (17) Decides to remain seized of the matter.[8]

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[7] UN Security Council Resolution 1031 of 13 December 1995.

[8] UN Security Council Resolution 1199 of 25 September 1998.

This position was not amended by Security Council Resolution 1203 of 24 October 1998 and it must therefore be concluded that authorisation for NATO action was demanded under the provision of Article 53(1) of the UN Charter.

The question therefore arises of why the Security Council did not authorise action for the suppression of 'ethnic cleansing' in Kosovo when the situation clearly represented a threat to regional peace and security placing the Council under a duty to act in terms of the mandatory language of Article 39 of the UN Charter? The answer lies in part in a phenomenon familiar from the Cold War, an almost certain use of the veto by Russia and possibly China, in the face of any direct proposal for robust interventionist action. The end result was that the Security Council was unable directly to authorise the NATO action, even if it had been inclined to do so. On the other hand, a Russian motion to have the air strikes declared unlawful was decisively voted down in the Council.[9] This left the NATO action at the time neither clearly lawful nor unlawful, although the UN authorisation of the emplacement of KFOR at least implicitly acknowledged the earlier NATO action. This cannot be considered a satisfactory model for future regional peace support action and indeed Boutros Boutros-Ghali remarked, prior to the Kosovo crisis, that:

> The experience of the last few years has demonstrated both the value that can be gained and the difficulties that can arise when the Security Council entrusts enforcement tasks to groups of Member States. On the positive side, this arrangement provides the Organization with an enforcement capacity it would not otherwise have and is greatly preferable to the unilateral use of force by Member States without reference to the United Nations.[10]

Both the potential and the danger have been re-emphasised by the 1999 experience.

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[9] The motion was supported by the PRC and Namibia, but opposed by the majority vote of five NATO Member States, Canada, France, Holland, the UK and the USA, and seven non-NATO members, Argentina, Bahrain, Brazil, Gabon, Gambia, Malaysia and Slovenia.

[10] *Supplement to Agenda for Peace*, paragraph 80.

Other legal arguments may be advanced in support of the NATO air strikes, including the thought that they were undertaken as a form of humanitarian intervention. This, however, enters a very uncertain area of international law. Arguments have long been advanced that in certain cases of gross humanitarian abuse military action by external powers may be justified notwithstanding Article 2(4) of the UN Charter.[11] State practice does not, however, offer any certain guidance upon this. The only putative pre-Kosovo examples of such military interventions – by India in former-East Pakistan in 1971, of Vietnam in Kampuchea (Cambodia) in 1978 and of Tanzania in Uganda in 1979 – were never so categorised by the States involved. Indeed in each of these cases the intervening State sought to justify its actions primarily in terms of self-defence. It is also worthy of note that in each case the intervening States were to varying degrees criticised on the grounds of violation of the UN Charter. No NATO member-State has any obvious national interest in intervening in Kosovo and it might even be argued that their action was actually the first such unequivocal 'humanitarian intervention', but even if this were so, it does not greatly advance the legal argument. It may also be argued that Article 1 of the 1948 Genocide Convention provides that:

> The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law *which they undertake to prevent* and to punish.

The emphasis is added and it may be that the requirement of 'prevention' constitutes an exception to the proscription upon use of force set out in Article 2(4) of the UN Charter. However, N. D. White points out, the ban upon resort to armed force in the conduct of international relations, beyond the very limited permissions granted by the UN Charter, is a prime norm of the Charter and a rule of *jus cogens* which cannot be overridden.[12]

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[11] For a useful discussion, see N. Ronzitti, *Rescuing Nationals Abroad through Military Coercion and Intervention on Grounds of Humanity* (Martinus Nijhoff, 1985), also R. Lillich, ed., *Humanitarian Intervention and the United Nations* (University of Virginia Press, 1973).

[12] H. McCoubrey and N. D. White, *International Organizations and Civil Wars* (Dartmouth, 1995), p. 14.

The legal status of the pre-KFOR NATO air strikes thus remains ambiguous. They cannot properly be seen as an aggressive attempt to settle an international dispute, but were rather an attempt to terminate a commission of grave violations of international law and specifically the commission of actual or quasi-Genocide, following failure to achieve a diplomatic solution. Nonetheless is must seem that, confronted with a situation which was manifestly a threat to sub-regional peace and security and which could have led to a general South East European war, the UN Security Council was effectively paralysed. The initial response of NATO may have been necessary but had at best an equivocal foundation in existing international law.

The agreement over Kosovo finally reached on 3 June 1999 in fact followed a *prima facie* obvious model – which is not to underestimate the practical difficulties encountered in brokering the agreement. The emplacement of KFOR as an Implementation Force with UN authorisation primarily comprising NATO units but with significant Russian involvement clearly reflected the IFOR and SFOR Forces in Bosnia-Herzegovina. It may indeed be argued that such a resolution might have been sought earlier, for example through the Organisation for Security and Cooperation in Europe (OSCE).

It may be that the evolution of the international response to the Kosovo crisis was a *sui generis* incident at a particular point in international political and legal development. The legal impasse which resulted from a situation in which the UN Security Council should have acted but could not, whilst the NATO alliance could act but lacked unequivocally explicit authority, although possibly having an implicit authority, indicate dangers implicit in the development of an emerging regional peace support paradigm. The long-term answers undoubtedly lie in the processes of development of both the relationship between regional arrangements and the Security Council and the structure and *modus operandi* of the Security Council itself. In both regards, the Kosovo crisis has much to teach.

The value of a militarily capable alliance such as NATO are self-evident, but it is also clear that lines of authorisation and control must be clearly established, primarily as directed by Article 53 of the UN Charter. This is essential, *inter alia*, to ensure that it is a UN agenda and not other and possibly incompatible regional agendas which are

being served in action taken in response to a security crisis. In reference to coalitions of willing States, from which the practical operations of an organisation such as NATO cannot realistically be separated, Boutros Boutros-Ghali has pointed out that:

> ...There is also the danger that the States concerned may claim international legitimacy and approval for forceful actions that were not in fact envisaged by the Security Council when it gave its authorization to them. Member States so authorized have in recent operations reported more fully and more regularly to the Security Council about their activities.[13]

There are obviously shadings of opinion and possibility in this regard but the point is one of fundamental importance for the shaping of a future global security architecture.

It is also clear that there must be a developed sense of the capacities of the varieties of regional organisation and what in fact each, individually or in combination, has to offer in peace support. The point of diversity is essential for any understanding of post-Cold War peace support and also leads back to the centrality of the UN itself in any future global security architecture.

The ASEAN Experience

The Association of Southeast Asian Nations (ASEAN) affords a different perspective upon the potential for regional peace support from that offered by a military alliance like NATO. It was established in 1967 with a rather different and broader concept of regional security from that embodied in an alliance such as NATO, in which internal security and economic development are seen as no less important than possible external threats. At the same time, the "ASEAN way" has been developed as a form of regional discourse which seeks to develop consensus and in so doing to build peace and confidence for the aversion of any possible regional conflict whilst also seeking to avert external interventions of which the region had such traumatic experience in

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[13] *Supplement to Agenda for Peace*, S/1995/1, 3 January 1995, paragraph 80.

episodes such as the Korean War, the Malayan Emergency, the Vietnam War and the long agony of Cambodia/Kampuchea. D. K. Emmerson remarks pertinently that:

> From its inception in 1967, ASEAN had kept regional security off its formal agenda – for fear of resembling a military alliance, which might have provoked outsiders and because its members' divergent views made discord on the subject too likely.[14]

The basic documents of ASEAN make the fundamental purposes of the organisation clear. The Preamble to the Bangkok Declaration of 8 August 1967 declares that the Member States:

> Considering that the countries of Southeast Asia share a primary responsibility for strengthening the economic and social stability of the region and ensuring their peaceful and progressive national development, and that they are determined to ensure their stability and security from external interference in any form or manifestation in order to preserve their national identities in accordance with the ideals and aspirations of their peoples.

No specific reference is made to collective security here or elsewhere in the Bangkok Declaration and, significantly, ASEAN itself is described in the Declaration as 'an Association for Regional Co-operation among the countries of Southeast Asia'. It may be noticed, significantly, that other broadly defined security initiatives such as the Zone of Peace, Freedom and Neutrality (ZOPFAN) have been created outside ASEAN, even if they involved key members of the organization and have been explicitly adopted as part of its policy structure. It may be added that the ZOPFAN concept itself was initially highly sensitive and was even taken at first by Vietnam as a potential threat leading to a Vietnamese sponsoring of an alternative ZOPFIN (Zone of Peace, Freedom, Independence and Neutrality) concept. Such fears on the part of Hanoi were however calmed and ZOPFIN was dropped

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[14] D. K. Emmerson, "Indonesia, Malaysia, Singapore: A Regional Security Core?" in R. J. Ellings and S. W. Simon, eds., South *East Asian Security in the New Millenium* (M. E. Sharpe, 1996), p. 35 at p. 75.

and the original ZOPFAN concept was accepted. Despite its discretion, ASEAN is still in a broad sense a regional security organisation.

The 'ASEAN way' with its foundation in the avoidance of intramural controversy, including matters of 'security', for the maintenance of regional stability operates very much in the mould of a peace-building organisation. In so doing ASEAN has served the region well and a much more stable international order has been achieved than might have been anticipated in the eras of the Korean and Vietnamese Wars. This experience of conflict avoidance and consensus building has parallels elsewhere, not least in the Organisation of American States (OAS) but has reached its most developed form in the 'ASEAN way'. As such, South East Asia has important lessons to teach the world community in the vital peace and confidence building dimensions of regional security architectures. A European comparison may be made with the relative under-development of the OSCE which might be hoped to come to play something of the same role in a future European/North Atlantic security order, leaving the more robust "enforcement" actions to NATO and associated forces. In the context of ASEAN, as with any system founded upon consensus, the question must, however, arise of what is to be done if consensus fails or the region should be faced with a hostile external intervention.

In the 1990s, ASEAN has felt the need to develop a somewhat more overt security discourse, notably though the establishment, in July 1993, of the ASEAN Regional Forum (ARF). The ARF involves the overwhelming majority of Powers in or with an interest in the region, including the ASEAN Member States together with, notably, such Powers as the PRC, USA and Japan. The inclusion of the USA and the PRC is especially significant for its credibility as a potential security factor since neither of them would have been content with a South East Asian security forum dominated by the other. The ARF is in fact a forum involving almost all the Powers likely to have an interest in South East Asian security in a consultation. It is thus not a military alliance, still less a revival of the failed SEATO concept,[15]

[15]SEATO was in effect an attempt to create a Southeast Asian equivalent to NATO which proved, ill conceived and regionally inappropriate. The treaty relations still exist and might in certain circumstances still prove important but the organisation in the sense of a Secretariat and office structure is defunct.

but rather in many ways an extension of the ASEAN way to include potential external actors in a process of peace and confidence building. As such, the ARF may play a most valuable role in the diffusion of potentially dangerous disputes, such as, for example, that over the Spratly and Paracel Islands. The general question still, however, remains of what is to be done if consensus should fail in any future case? The diversity of the ARF Member States, as also that of their interests and security concepts renders it questionable whether the organisation is well suited to an immediate role of security crisis management. It should not, of course, be presumed that this is actually the intended role of the ARF, it is indeed probably better to see it as a judicious extension of the ASEAN way which is primarily engaged in peace building rather than in any proposed peace enforcement. The practical South East Asian mechanism of peace enforcement action, should any such be needed, would thus almost certainly be that of a coalition of the willing either immediately under Article 51 of the UN Charter or, by Security Council authorisation, under Article 42.[16]

Unity in Diversity: The Future of Regional Security Architectures

The comparison between European and South East Asian Security architectures does not, of course, reflect the totality of the diversity of regional security structures. The OAS has already been referred to, another case may be seen in the Organisation of African Unity (OAU). The pan-African remit of the OAU involves in itself a vast diversity of States, needs and agendas and it would, by virtue of its situation, be difficult for the organisation to play a direct role in immediate crisis management, its function being rather that of peace and confidence building together with some oversight and co-ordination where crisis management becomes necessary. Enforcement action of various sorts have been undertaken, with OAU approval, by subregional organisations such as ECOWAS (through ECOMOG) and the SADC Organ.

[16] Article 42 is in fact rarely referred to explicitly, circumlocutions such as "acting under Chapter VII of the Charter" being preferred. Some have indeed suggested that authorisation of enforcement action is actually undertaken under Article 39, especially in view of the absence of Article 43 standby forces. This, however, seems a curious reading of all three Articles.

It must also be remembered that there are regions, including some with a very fragile security base, in which there is no regional organisation or none capable of taking the action which may be thought necessary for peace support. These include the Subcontinent where the dangerous Kashmir confrontation re-emerged in 1999, with both India and Pakistan now established as military nuclear Powers. There is also the continuing crisis of the Middle East where the Arab League performs valuable work in peace and confidence building but is not in a position to act to resolve the key Arab-Israeli dispute.

The lesson to be learnt is rather obvious. There is indeed no simple or singular regional peace support paradigm to be found in the post-Cold War era, it is rather the case that a number of options may exist in the context of a broad paradigm already set out by Chapter VIII of the UN Charter. It must of course also be said that paradigm is likely to be much more extensively used and developed in the future than has previously been the case in view of the paucity of the resources practically available to the UN. The fundamental questions are perhaps those of when delegation to regional arrangements is "appropriate" within the meaning of Article 53, to which an answer can only emerge from progressive UN and regional practice, and the actual potential of the various regional organisations themselves. It has been made clear above that the sheer diversity of these bodies means that careful policy decisions will need to be made as to the appropriateness of their involvement in any given case. Thus, an organisation like NATO has a clear role in regional enforcement action, but a much less clear capacity in prior or subsequent peace building, whereas the capacities of organisations such as ASEAN and the OAS are rather the reverse. It must also be reiterated that in many areas beset by security crises, there are effectively no appropriate and available organisations for peace support action. To some extent, therefore, peace enforcement action will necessarily be taken by *ad hoc* coalitions of the willing, which may involve elements of regional organisations even where the total membership of the organisation is not willing to participate.

The overreaching concern for this whole potential spectrum is that the UN must retain ultimate control if the evident danger of regional hegemonism under the guise of "peace support" is to be avoided. This is of course required by Article 53 of the Charter, as also by Article

51, and remains a prime norm in the present context. This does not mean that short-term *ad hoc* regional arrangements are precluded but both the potential and the dangers were clearly illustrated by the 1999 Kosovo crisis and the NATO response thereto. By the same token, the problems of Security Council action, notably the Superpower veto, remain in the post-Cold War era – the Cold War having been more a specific illustration of Superpower interest than a unique instance – and, as again seen in relation to Kosovo, this may paralyse the Security Council in performing its essential role in peace support and peace enforcement activity. The conclusion is thus that regional arrangements will have a vital but diverse role to play in a spectrum of peace support actions but must do so in the context of the norms of the UN Charter, the operation of which themselves may be ripe for reform half a century after they were first devised in an international relations context very different for that which now obtains. The use of regional organisations must also clearly take account of the highly varied and in some cases, very sensitive regional contexts.

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TERMA DAN SYARAT KONTRAK PEKERJAAN PEKERJA KANAK-KANAK DAN ORANG MUDA : TERLINDUNGKAH MEREKA DI SISI UNDANG-UNDANG?

I. Pengenalan

Malaysia tidak menjadikan sistem pendidikan sebagai sesuatu yang wajib. Apa yang disediakan hanyalah peluang pendidikan kepada semua rakyatnya bermula daripada peringkat sekolah rendah, menengah dan institusi pengajian tinggi.[1] Tanpa menjadikan pendidikan sebagai sesuatu yang wajib, maka sudah tentulah akan terdapat keadaan-keadaan di mana para pelajar yang tidak mampu meneruskan pelajaran mereka atas sebab-sebab tertentu, perlu bekerja. Makalah ini akan membincangkan sejauhmanakah undang-undang melindungi golongan ini yang perlu bekerja. Perbincangan akan dihadkan hanya kepada terma dan syarat kontrak pekerjaan dan Akta yang digunakan untuk perbincangan ini adalah Akta khusus yang diadakan untuk golongan ini, iaitu Akta (Pekerjaan) Kanak-kanak dan Orang Muda 1966[2] (selepas ini dikenali sebagai "Akta"). Perbincangan ini adalah terhad hanya kepada Malaysia Barat kerana Akta ini hanya terpakai di Malaysia Barat[3] dan ianya mula berkuat kuasa pada 1 Oktober 1966.[4]

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[1] Lihat Akta Pendidikan 1996, Akta 550.

[2] Akta 350 dan disemak pada tahun 1988. Versi sahihnya adalah versi Bahasa Inggeris iaitu 'Children and Young Persons (Employment) Act 1966', 'Act 350 (Revised – 1988)'.

[3] Lihat seksyen 1(2).

[4] Lihat P.U. 356/66.