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*Frederic L. Kirgis**

[The following essay has been submitted by the author in lieu of a transcript of his remarks from the Colloquium presentation.]

A MYTHICAL STATE'S ATTITUDE TOWARD THE ROLE OF THE UNITED NATIONS IN MAINTAINING AND RESTORING PEACE

I represent the mythical state of Mediana. We are a democracy, with the median per capita income among all U.N. member states. We have a moderate, secular government. We are becoming industrialized. We have no serious quarrels with neighboring states at present, nor do we see any in the foreseeable future. We do have ethnic minorities within our territory, and they are not always completely satisfied with their situation. At the moment, though, we face no serious secession movement. We have a respectable human rights record. We have an army, navy and small air force. We have contributed modest numbers of troops and equipment to some U.N. peacekeeping operations. We are not closely aligned politically with any of the five permanent members of the Security Council.

The strongest belief we hold about the U.N.'s proper role in maintaining and restoring peace is that it should be a leading role, as envisaged in 1945 at San Francisco, and not just a convenient or fall-back alternative to unilateral action by powerful individual states. The U.N.'s role should not simply be to authorize Member States to take action for the maintenance or restoration of peace, or simply to disapprove of the unilateral use of armed force when it does not think a state is acting in legitimate self-defense, although the U.N. might continue to authorize individual states to use force to restore peace when a major effort is required—as in the case of the Persian Gulf War—and it should denounce the unauthorized, offensive use of force when that occurs.

On the question of authorizing the use of force, we should recognize that there may again be occasional situations like the invasion of Kuwait, requiring the kind of intricate coordination or massive logistical support that only the forces of individual states could provide. But for less intricate situations involving genuine threats to the peace, or the need to restore

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peace, Mediana would like to see universal acceptance of the principle that U.N. forces are appropriate and should normally be under U.N. control. We realize that U.N. control may raise constitutional questions in some Member States, but we trust that those questions—like the constitutional question in Germany about the use of armed forces abroad—can be resolved favorably.

A close corollary to the proposition that the U.N. should play a leading role in maintaining peace is the principle that the U.N. role should be guided by a representative decision-making process within the organization—a process that takes account of the reality that some states will have a greater voice than others, but that tries to avoid domination by any one state. In other words, our desire to see the U.N. be in the forefront of maintaining and restoring peace is very much tied to our desire that we and other states that are not in the Security Council power bloc have some meaningful input into the decision-making process, without wishing to tie it in knots.

The Security Council finally stands in a position to shoulder its primary responsibility for the maintenance of international peace and security—as contemplated by Article 24 of the Charter. It has begun to do so, but very inconsistently. Sometimes, even in recent years, it has not acted resolutely when Mediana thinks it should have. Rwanda is a case in point. That may not be the U.N.'s fault, since resolute U.N. action depends on internal politics in the powerful member states and on the political will of those who would take the lead. On the other hand, sometimes in recent years the Security Council has jumped right in. Some of those forays are quite troubling to us.

On several occasions the Security Council has invoked Chapter VII of the Charter by declaring that there is a threat to international peace, when the threat was less than obvious. In cases like Somalia and Haiti, there was certainly a threat to *internal* peace, but the Security Council did not even go through the motions of showing that the threat to *international* peace was present. We do not say that no such showing could possibly have been made, just that we think the Council should focus on exactly what the *international* threat is and how serious it is, before it marches in or authorizes Member States to march in—and especially before it adopts legally binding decisions under Chapter VII.

We are also troubled by the Security Council's willingness—maybe even eagerness—to impose Chapter VII sanctions on a Member State, Libya, for failure to turn over to three permanent members those persons the three members have accused of terrorist acts against international aviation. We deplore terrorist acts of any kind, including the acts the Libyan nationals

have been accused of. At the same time, we are very concerned about the precedent the Security Council may be setting when it finds a threat to the peace or breach of the peace under Chapter VII, without making any substantiated finding that individual terrorist acts against two aircraft are part of a pattern of state-sponsored terrorism, and without even making public any evidence to support the charges against the individuals accused in this case.

To some extent, this troubling tendency could be dealt with by a simple amendment to the Security Council's Provisional Rules of Procedure. Mediana proposes a new Rule providing that any resolution that invokes Chapter VII of the Charter must contain a summary of reasons why the Council has found a threat to the peace, breach of the peace, or act of aggression. This requirement would at least force the Council to think about the justification for such a finding in the particular case, and would force it to expose the justification to world scrutiny. In some cases the justification would be obvious, as in the case of Iraq's invasion of Kuwait, but in others the Council would have to articulate just why a situation posing no obvious or immediate threat to international peace should actually be regarded as an international threat.

The change we have suggested in the Provisional Rules of Procedure, although helpful, would not be enough to ensure that the Council uses its powers judiciously. That requires a much more ambitious change—a change, as I have already suggested, that would make the Security Council more representative of the full U.N. membership.

Mediana believes that a more representative Security Council would be more sensitive than the current Security Council is to the political and legal limits on the Council's authority to impose its will on individual member states. We think too that a more representative Council might be less likely to get embroiled in situations it cannot handle, as in Somalia or Bosnia. A more representative Council would mean a greater variety of viewpoints, and those in turn would have a moderating influence on the Council. Since there is not any effective avenue currently for judicial review of the Security Council's actions by the I.C.J. or by any other international tribunal, and since in any event there normally would not be time for judicial review before the Council has to make its decision, representative input at the initial decision-making stage, along with a requirement that the Council justify its action, is the best available safeguard.

At the same time, the Council must be able to act when there is a real threat to international peace. All the more, it must be able to act when there

has been a breach of the peace or act of aggression. We would not want another act of aggression like Iraq's invasion of Kuwait to go unanswered. Nor would we want more camouflaged threats to international peace, like Serbia's support for one side in the Bosnian conflict, to be guaranteed immunity from Security Council action. We need, in other words, a blueprint for resolute action when it is needed and caution when that is needed.

One way to approach this problem might be to try to define future situations in which it would be proper or desirable for the Security Council to take action to maintain or restore peace. But in Mediana's view that is largely a futile exercise. The permutations and combinations of facts that might call for Security Council intervention simply overwhelm the human capacity for sensible planning. Whatever role we define in advance of new situations will have to be redefined when they arise.

It is the better part of wisdom if we try instead to set up a representative Security Council that will be likely to make principled and effective decisions when situations we cannot now identify come up. Of course, we should try to do so in a way that has a decent chance of attracting the support of at least two-thirds of the member states, including the five permanent members of the Security Council. In other words, we need a Charter amendment dealing with the structure and decision-making process of the Security Council, and we face an uphill battle to get one adopted.

It would be easy to write off any serious attempt to amend the Charter on the ground that *no* meaningful amendment could get the support of the five permanent members. We concede that it will not be easy to get their support, especially given the current political climate in the United States. Nevertheless, we need somehow to convince the permanent members to look beyond their immediate self-interest and to see that a Security Council constituted to take account of a representative sampling of the views of the total U.N. membership will in the long run better serve their interest in world stability than will a Council widely viewed as dominated by one powerful state.

Here is the substance of a Charter amendment Mediana proposes for a restructured Security Council: The Council would be increased in size to no more than 25. If 25 is the chosen size, it would be large enough to reflect a reasonable variety of views of the total membership, yet small enough to function effectively.

The five current permanent members would remain as such, unless France and United Kingdom surprise us all by consolidating their permanent seats into one, and relinquishing it to the European Union.

In addition to the permanent members, there would be seven long-term members serving six-year terms, elected by the General Assembly from each of four regional groups: two would be elected from Africa, two from Asia, two from Latin America and the Caribbean, and one from the group consisting of European states (not just Western Europe) and others. The long-term members could be re-elected when their terms expire.

This would leave 13 other members, on the assumptions that there will be a total of 25 members and that there will still be five permanent members. The 13 other members would be elected at large, but with attention given to geographical distribution. They would serve two-year terms. They could be re-elected once, but then would have to remain off the Council for two years before they would be eligible again, in order to give other states an opportunity for short-term Council membership.

The structure Mediana has just outlined would assure both stability and turnover on the Council. Retaining permanent membership for the five current permanent members would make it easier for them to ratify the amendment, and would recognize their continuing importance on the international scene. The provision for seven long-term members would strengthen the representation of currently under-represented geographical areas, and would give major states in those areas some assurance that they can have a real impact on Security Council decision-making.

The permanent members might not be as pleased with Mediana's next recommendation: There should be no single-state veto in the newly-constituted Security Council. Instead, Mediana believes that there should be a combination of weighted voting and super-majority for the adoption of substantive resolutions. The weight given to the votes of each Council member would vary somewhat every second year. Every other year, when new short-term members come on the Council, the weighted votes allocated to each Council member (new and continuing) should be based on a formula that starts with the total of the current, assessed dues *actually paid* to the organization in the preceding two years by all current Council members. Each Council member would be allocated the percentage of the total votes that corresponds with its percentage of the dues actually paid by current Council members in those two years. There would, however, be two key exceptions to this formula.

First, no Council member should have more than 25 percent of the total votes, even if its ratio under the basic formula would give it more votes than that. Also no *permanent* Council member should have fewer than five percent of the total votes, even if its ratio under the basic, unadjusted

formula would give it fewer votes than that, so long as it is current in its dues payments over the relevant two-year period. (To make this work, the basic formula would have to be adjusted to credit a low-assessment permanent member with having paid five percent of the total dues paid by Council members over the two-year period, even though it has not actually paid that much).

This arrangement would give the United States 25 percent of the Security Council votes if it keeps current with its dues payments, and perhaps even if it does not quite keep current (since it would have a larger percentage of the dues paid by the 25 Council members than it does of the dues paid by all U.N. member states). The 25 percent voting strength would correspond with the United States' share of regular U.N. dues, including peacekeeping expenses if the United States gets its way by having its share of peacekeeping expenses reduced to 25 percent. The new arrangement would give the United States an incentive to pay current dues—an incentive Mediana thinks any fair-minded person, even in the United States, would regard as appropriate.

The new arrangement would give China five percent of the votes, so long as it is current in its dues payments, even though its weighted voting percentage would be lower than that if it were based only on its current dues assessment. Other permanent members would have more than five percent of the votes, but none would come close to 25 percent unless dues assessments change considerably in future years.

Substantive Security Council resolutions would require two-thirds of all weighted votes, which would have to include the votes of at least 15 states, in order to be adopted. No single state could veto a proposed resolution, but a few states with heavily-weighted votes could defeat it. The votes of *any* 11 states could defeat a proposed resolution, so—for example—11 of the 13 short-term members, acting together, could defeat a resolution.

The United States could defeat a proposed resolution with very little support—perhaps from only one other state, if the United States were current in its payment of dues and the other state has a substantial number of votes. On the other hand, even the United States would need support from at least 14 other states in order to have its proposals adopted.

All of this, in our view, should be subject to an attempt to reach a consensus before any votes are taken in the Security Council. This would promote compromise and would provide some assurance against the adoption of rash or extreme measures. Mediana recognizes, though, that attempts to reach compromise can drag on too long. The Council often needs to be able

to act quickly. This means that either the President of the Council, or a relatively small group of Council members, should be able to declare an end to the effort to reach compromise. A vote would then be taken.

The government of Mediana realizes that any proposal for significant structural change in the Security Council, including our own proposal, will be controversial. We also realize that the power of each of the five permanent members to block any Charter amendment stacks the deck against significant structural change, no matter how desirable it might seem to the vast majority of U.N. members and the people they represent.

Even the United States, which we think we have treated very favorably in our proposal, would very likely balk at the changes—given the current political climate in the United States, and maybe under *any* currently-foreseeable U.S. political climate. Other permanent members may object precisely *because* we have treated the United States so favorably.

But the alternative to structural change in the Security Council is reliance on definitions, action plans and stated good intentions by a few powerful states to act wisely and judiciously when the maintenance or restoration of peace is at stake. Without questioning the honorable intentions of any government or other political body, Mediana can only say that these are weak anchors in the storm.

We must try to achieve sensible structural change, and my government believes it has proposed just that. Mediana hopes that political forces in the United States and elsewhere will recognize that they, as well as we, have a strong interest in fashioning an international decision-making body for the maintenance of peace that reflects a fuller range of views than it now does, without unduly sacrificing efficiency in the decision-making process.

