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# THE THEORY AND PRACTICE OF REGIONAL ORGANIZATION INTERVENTION IN CIVIL WARS

CHRISTOPHER J. BORGEN\*

## I. INTRODUCTION

The United Nations's reach in peacekeeping is fast outdistancing its grasp. Spread across seventeen countries, its over 80,000 civilian and military personnel monitor cease-fires, protect aid convoys, and separate warring parties.<sup>1</sup> As the United Nations extends its arms, financial resources seem to slip through its fingers like grains of sand.<sup>2</sup> In short, the United Nations lacks the resources to continue increasing its peacekeeping responsibilities.

In *An Agenda for Peace (Agenda)*, Secretary-General Boutros Boutros-Ghali proposes that part of the solution to the economic problems of the United Nations lies in reconsidering how regional organizations interact with the United Nations,<sup>3</sup> a suggestion which revisits a half century debate between advocates of globalism and advocates of regionalism.<sup>4</sup> This Note examines the globalist/regionalist debate as it affects an area of particular importance in the post-Cold War era: the international community's response to the growing number of civil wars.

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1. *Report of The Secretary-General on the Work of the Organization*, U.N. GAOR, 48th Sess., Supp. No. 1, at 59, U.N. Doc. A/48/1, at 59 (1993).

2. Paul Lewis, *United Nations is Finding Its Plate Increasingly Full but Its Cupboard is Bare*, N.Y. TIMES, Sept. 27, 1993, at A8.

3. AN AGENDA FOR PEACE, U.N. Doc. A/47/277/ S/24111 (1992) [hereinafter AGENDA].

4. For a history of the globalism/regionalism debate, see EDVARD HAMBRO ET AL., CHARTER OF THE UNITED NATIONS: COMMENTARY AND DOCUMENTS 354 (3d ed. 1969).

In studying this topic, parts I and II will provide brief summaries of the legal issues relating to civil wars in general and to issues raised by the language of the U.N. Charter itself. By means of a case study of the European Community's (E.C.)<sup>5</sup> reaction to the conflict between Croatia and Serbia, part III will act as a counterpoint to the textual summary of the preceding sections. It will illustrate practical considerations in regional organization intervention. Part IV, by reincorporating the textual and historical approaches, will return to the Charter and re-examine its text in light of the Croatian case and other examples. Part V will consider various political and empirical factors that affect the action of regional organizations and will suggest a series of textual and institutional changes that can be made to invigorate cooperation between the United Nations and regional organizations.

## II. REGIONAL ORGANIZATIONS IN A CHANGING WORLD

### A. *Writing Regional Organizations Into the Charter of the United Nations*

Fifty years ago, the failure of the League of Nations to prevent World War II was a brutal lesson in the potential shortcomings of global organizations. At the San Francisco Conference, wherein the U.N. Charter was drafted, debates concerning the relationship between global and regional arrangements re-emerged in the international agenda.<sup>6</sup> The debates rang not only in San Francisco meeting rooms, but in State Department hallways in Washington. However, it was at the San Francisco Conference that the growing Inter-American Treaty System<sup>7</sup> led North and South American delegates to discuss the issue of regional organizations. For the United States, Under-Secretary of State Sumner Welles favored the regional principle, presumably because of his concern with Latin

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5. Although the E.C. is now called the European Union, this Note will refer to it by its name at the time of the case study.

6. See generally UNITED NATIONS COMMISSION ON THE INTERNATIONAL ORGANIZATION.

7. This culminated in the Inter-American Treaty of Reciprocal Assistance, Sept. 2, 1947, 62 Stat. 1681, and the Charter of the Organization of American States, Apr. 30, 1948, 2 U.S.T. 2394, as amended by the 1967 Protocol of Amendment, 21 U.S.T. 607 (effective Feb. 27, 1970) [hereinafter OAS Charter].

American affairs, while Secretary of State Cordell Hull was an "advocate of the global emphasis."<sup>8</sup> Hull did not deny that regional arrangements could exist, but believed that they "should be subordinate to a strong centralized organization."<sup>9</sup> This view resulted in the drafting of Chapter VIII of the U.N. Charter.

The Charter's treatment of regional organizations is primarily contained in two sections: Chapter VIII (Articles 52-54) and Article 51. Chapter VIII, the focus of this Note, defines the duties and privileges of regional organizations, while Article 51 considers the special case of collective self-defense.

The most basic exposition of the role of regional arrangements takes place in Article 52. The first paragraph states that nothing in the Charter precludes regional organizations from addressing issues of international peace and security in matters "as are appropriate for regional action, provided that such arrangements or agencies and their activities are consistent with the Purposes and Principles of the United Nations."<sup>10</sup> Although commentators have viewed this paragraph as a broad overview of the role of regional organizations,<sup>11</sup> it puts in place two specific criteria: regional action should be both appropriate and consistent with the purposes and principles of the United Nations.

While during the Cold War issues of appropriateness or first principles may have caused deadlock in a divided Security Council, the United Nations faces different problem in the post-Cold War era. In particular the increasing number of failed states and the amount of civil strife calls for a renewed consideration of these limitations. In a world of limited resources and constant conflict, one should address the issue of appropriateness not only by examining the U.N. Charter, but also the charters of the regional organizations themselves and their varied political and military capabilities. Such an interpretive strategy implies not only that every regional organization may not have the same logistical capabilities,<sup>12</sup> but that

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8. HAMBRO ET AL., *supra* note 4, at 354.

9. *Symposium, The United Nations and the New World Order*, 81 *Geo. L.J.* 491, 515 n.132 (1993).

10. U.N. CHARTER art. 52, para. 1.

11. HAMBRO ET AL., *supra* note 4, at 356.

12. Consider, for example, the military disparity between NATO and the Organization for African Unity.

each may face different idiosyncratic legal barriers due to their individual charters.<sup>13</sup> Simply put, the issue of appropriateness determines who may act under certain circumstances.

This issue is of particular importance to Article 53's stipulation that "no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council . . ." <sup>14</sup> But what is an enforcement action? The term is used in numerous points throughout the Charter: Articles 41 and 42 both make some mention of "measures" or "action[s]" that the Security Council may undertake to enforce compliance with its resolutions. Article 2(7) also uses the term, prohibiting U.N. intervention in the domestic affairs of states, even though it does not apply to "enforcement measures under Chapter VII."<sup>15</sup>

How should the term "enforcement action" be read when describing the actions for which regional organizations need

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13. See *infra* part VI.B.1 for a discussion of the Organization of American States.

14. Article 53, paragraph 1 states, in relevant part: "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. . . ." U.N. CHARTER art. 53, para. 1.

15. Article 41 states, in relevant part, that:

[t]he Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions . . . These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.

*Id.* art. 41.

Article 42 is applied if Article 41 measures would be "inadequate." In such a case the Security Council "may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security."

*Id.* art. 42.

Article 2, paragraph 7 states:

Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.

*Id.* art. 2, para. 7.

Security Council approval? Many of the cases considered below will turn on this definition.

Article 54 creates a similar concern, as it states that “[t]he Security Council shall at all times be kept fully informed of activities undertaken or in contemplation” by regional organizations for the “maintenance of international peace and security.”<sup>16</sup> Clearly, for the United Nations to approve or disapprove of a regional organization intervention, it must be aware of the issues involved.

Finally, any discussion of regional organizations must take Article 51 into account.<sup>17</sup> Participants at the San Francisco Conference were concerned that a permanent member of the Security Council would use its veto to prevent any military actions—defensive or otherwise—by regional arrangement. The worry that a veto by a permanent member “might cripple the functioning of regional arrangements finally led to a provision safeguarding the right to individual and collective self defense.”<sup>18</sup> Article 51 was written “to allow a measure of autonomy for regional and other groupings in case of an armed attack;”<sup>19</sup> but it was placed in Article VII as opposed to Article VIII to make clear that it was a right that was not only held by regional arrangements, but by all states. Thus, the unified concept of a regional arrangement was split as some regional organizations attempted to define their rights not on the articles of Chapter VIII, but solely on Chapter VII’s Article 51.<sup>20</sup>

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16. *Id.* art. 54, para. 1.

17. Article 51 states:

Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.

*Id.* art. 51, para. 1.

18. Gerhard Bebr, *Regional Organizations: A United Nations Problem*, 49 *AM. J. INT’L L.* 166, 169 (1955).

19. HAMBRO ET AL., *supra* note 4, at 364.

20. Bebr, *supra* note 18, at 169.

While the San Francisco Conference opted for Hull's formulation, the issue is still very much a topic of debate, as exemplified by the Secretary-General's *An Agenda for Peace*.<sup>21</sup> Rather than attempting to close the book concerning the U.N. relationship to regional organizations, the *Agenda* invites the various organizations and the United Nations to author a new chapter in their ongoing relationship.

### B. *Themes in an Evolving Relationship*

Three themes dominate the discussion of the evolving role of regional organizations in the modern world: the capability of regional organizations to undertake military action, the expertise and possible bias that regional organizations may have in policing local conflicts, and the oversight that the United Nations has over any regional action. The interrelation of these themes sets forth a broader set of concerns which will be the focus of this Note. These themes include:

#### 1. *The Problem of Deadlock*

The dilemma of deadlock arises when a regional organization wishes to undertake an enforcement action but is unable to get Security Council approval because either:

- a. The Security Council stays silent as to whether or not a given situation is a threat to international peace and security, or
- b. Security Council members believe that any attempt officially to label the situation as such would result in a veto.

#### 2. *The Insufficient Means of Regional Organizations*

Having insufficient means becomes problematic when a regional organization receives U.N. approval but lacks the necessary resources to complete the task at hand. Regional organizations generally have only limited (if any) military and financial resources. Moreover, the charters of many regional organizations forbid any involvement of the organization in the internal affairs of a member state.

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21. See generally *AGENDA*, *supra* note 3.

### 3. *The Dilemma of Economic Coercion*

One possible solution to the problem of having insufficient means would be for regional organizations to refrain from undertaking military action. Instead, they should apply economic sanctions, a mechanism which has not been traditionally considered an "enforcement action" within the realm of Chapter VIII jurisprudence. In today's interdependent world, economic sanctions are increasingly lethal. However, this raises another issue: should a body such as the Security Council or the General Assembly be able to regulate instances of economic coercion that reach a certain level of lethality?

### 4. *Leadership and Hegemony*

The leadership of strong states in regional organizations has the potential of having either positive or negative effects. How can the United Nations harness the advantages of the leadership of regional powers without encouraging predatory hegemony?

### 5. *Consultation and Bias*

How can the United Nations tap the informational resources and cultural understandings of regional organizations without succumbing to an unduly biased view of events in the region?

### 6. *Theory and Practice*

The issue underlying all of these dilemmas is the divergence of theory and practice. The words of Chapter VIII of the Charter do not clearly describe how states should act. Although it is difficult to proclaim peacekeeping efforts by regional organizations as successful, can it be said that such successes result from Chapter VIII guidelines or perhaps in spite of them? This Note argues that the latter is the case.

The following section will begin to unpack these themes by examining the changing definitions of certain central terms.

## III. THE LEGAL DEFINITION OF INTERVENTION IN CIVIL WARS

One of the most basic problems in discussing the norms of multilateral intervention into civil wars is the problem of



imprecise language. Many terms are seemingly similar—intervention and enforcement action, for example—but have differing applications in international law. A further complication is that at times the same words may have different meanings in different parts of the U.N. Charter. The term “enforcement action,” which is central to this Note’s topic, is one such term. Consequently, we will begin the inquiry into these issues by defining the terms that are of particular importance.

### A. *Civil Wars and International Law*

A civil war is a “war between two or more groups of inhabitants of the same State.”<sup>22</sup> It may be fought for the control of the government, or for the secession of part of the country, or even by two factions while the government remains neutral.<sup>23</sup> States have only limited rights under international law to intervene in civil wars to which they are not parties. The legality of intervention in such circumstances is based on the type of assistance granted to the parties.<sup>24</sup>

Although civil wars have generally been considered to fall within a state’s domestic jurisdiction, they often have a serious international impact. Many of the international wars since 1945 have had their roots in civil wars.<sup>25</sup> Therefore, the difficult question is to determine when these civil wars become a threat that affects international peace and security.

More precisely, given the system of U.N. and regional organization charters and treaties, who can define a civil war as a threat to international peace and security? This question is the root of almost every other issue regarding the relationship between the United Nations and regional organizations.

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22. Michael B. Akehurst, *Civil War*, in 3 ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW 88 (Max Planck Institute ed., 1982).

23. *Id.*

24. *Id.* at 89. The legality of civil wars is particularly questionable when a dependent people is forcibly prevented from expressing its right to self-determination. *Id.* Paragraph 4 of United Nations General Assembly Resolution 1514 (XV) of December 14, 1960, states “[a]ll armed action or repressive measures of all kinds directed against dependent peoples shall cease in order to enable them to exercise . . . their right to complete independence.” G.A. Res. 1514, U.N. GAOR, 15th Sess., Supp. No. 16 at 67, U.N. Doc. A/4684 (1960).

25. *Id.*

## B. *Interventions and Enforcement Actions*

### 1. *What is an Intervention?*

“Intervention” is a broad term that has been narrowed in scope due to state practice.<sup>26</sup> While political scientists use the word “intervention” to describe when one “comes between” contending parties with the ability to impose a settlement, international lawyers apply the term to situations in which an external power interferes unlawfully with a state’s territorial integrity or political independence.<sup>27</sup> Despite their differences, both definitions agree that an intervention is an act intended to alter an existing relationship. The U.N. Charter lists two methods by which regional organizations may justifiably intervene: through the peaceful settlement of disputes or through enforcement (generally interpreted as military) action.<sup>28</sup>

Libraries can be filled with explications of when states may or may not intervene on behalf of rebels, governments, and third parties. Such a detailed summary of this realm of jurisprudence is beyond the scope of this Note.<sup>29</sup> Rather, this Note will explore the specific issues that regional organizations face concerning intervention.

### 2. *Enforcement Actions as a Subset of Interventions*

The meaning of the term “enforcement action” as used in Chapter VIII has been a point of contention since the establishment of the United Nations. This section will attempt to trace the evolution of the meaning of the term, as well as to present the problems created by the use of that accepted definition in today’s world.

The debates in San Francisco preceding the ratification of the U.N. Charter strongly support “that ‘enforcement action’ was intended to mean any and all measures the Security Coun-

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26. Lori Fisler Damrosch notes that the etymology of the word “intervention” is very clear, simply meaning “to come between.” Lori Fisler Damrosch, *Introduction to ENFORCING RESTRAINT: COLLECTIVE SECURITY IN INTERNATIONAL CONFLICTS* 3 (Lori Fisler Damrosch ed., 1993) [hereinafter *ENFORCING RESTRAINT*].

27. *Id.*

28. U.N. CHARTER arts. 52-53.

29. For an excellent summary, see Akehurst, *supra* note 22. *See also* Military and Paramilitary Activities (Nicar. v. U.S.), 1986 I.C.J. 14, 98 (June 27).

cil was authorized to take under Articles 41 and 42."<sup>30</sup> Thus, if the term "enforcement action" encompassed both Articles 41 and 42, a regional organization could not pursue a policy of coordinated economic sanctions or interrupted diplomatic relations, let alone a blockade or other military action, without approval of the Security Council. However, practice has evinced a much more restricted interpretation of "enforcement action."<sup>31</sup>

In 1960, the Organization of American States (OAS) voted for collective economic measures against the Dominican Republic. The Soviet Union argued in the Security Council that such a measure requires the approval of the Council "so as to give it legal force and render it effective."<sup>32</sup> Others argued that the OAS action was justified by the reporting procedure of Article 54, and, since OAS states could legally undertake such sanctions individually, they should be allowed to take them collectively. The Security Council concluded that "[A]rticle 53 does not apply to nonmilitary measures of the kind indicated in Article 41,"<sup>33</sup> it only applies to Article 42 actions.

During the Punta del Este debates in 1962, the issue was briefly revisited when Cuba asked the Security Council to request an advisory opinion from the International Court of Justice as to whether or not the Article 53 usage of enforcement action included Article 41 provisions. The Security Council voted not to make the request because the question was political in nature. It had already decided that in the Cuban case both economic measures and the exclusion from participation in the OAS did not constitute an enforcement action.<sup>34</sup>

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30. HAMBRO ET AL., *supra* note 4, at 365. See also U.N. CHARTER arts. 41, 42; *supra* note 13; Joachim Wolf, *Regional Arrangements and the U.N. Charter*, in 6 ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW 289, 292 (Max Planck Institute ed., 1983).

31. HAMBRO ET AL., *supra* note 4, at 365.

32. U.N. SCOR, 15th Sess., 893d mtg. at 13, U.N. Doc. S/PV.893 (1960), *quoted in* HAMBRO ET AL., *supra* note 4, at 365.

33. HAMBRO ET AL., *supra* note 4, at 365; see also U.N. SCOR, 15th Sess., 874th and 875th mtgs., U.N. Docs. S/PV.874 and S/PV.875 (1960) (debate over U.S. and O.A.S. treatment of Cuba).

34. HAMBRO ET AL., *supra* note 4, at 366; see U.N. Doc. S/5095 Mar. 20, 1962. For the purposes of this paper, the issue is not whether the I.C.J. can consider political questions, per se, but rather that the fact that the act of defining "enforcement action" was considered a political, rather than inter-

### C. *What is a Regional Organization?*

In 1926 Alejandro Alvarez, who later became a judge on the International Court of Justice, wrote that there is "no rule to determine regions. Their existence must be shown by circumstances, and, in particular, by the agreements made by the States who constitute them . . . . Regions are constituted by certain countries having affinities of race, institutions, or, above all, political interests."<sup>35</sup>

The San Francisco Conference seems to have agreed: "Neither the General Assembly nor the Security Council has found it necessary or desirable to attempt to define what constitutes regional arrangements and agencies."<sup>36</sup>

The task of definition is no longer purely legal, but rather political. Inasmuch as there is no textual guide, an organization may be perceived as a regional organization based largely on how it defines itself and on the acceptance of that definition by other U.N. member states. The OAS is one of the few organizations that explicitly stated in its Charter that it intended to be a U.N. Charter Chapter VIII regional organization.<sup>37</sup> Historically, though, self-definition was an issue when organizations such as NATO or the League of Arab States claimed that they should not be considered Chapter VIII regional organizations, and as such were exempt from the rules and constraints of Chapter VIII. They feared that if they called themselves regional organizations, the Security Council would oversee their actions, thus causing them to lose the very flexibility of action which was central in their establishment as a regional organization.<sup>38</sup> Consequently, regional organizations with such concerns stated that they were established pursuant to the right to collective self defense of Article 51.<sup>39</sup>

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pretive, issue. This implies the possible need to hedge legal questions because of political realities.

35. "La Reforme du Pacte de la Societe de Nations Sur des Bases Continentales et Regionales" (a report to the 5th Session of the Union Juridique Internationale, Paris, 1926) 99, *quoted in* E.N. van Kleffen, *Regionalism and Political Pacts*, 43 AM. J. INT'L L. 666, 667 (1949).

36. HAMBRO ET AL., *supra* note 4, at 356.

37. OAS Charter, *supra* note 7, art. 2; *see also* Bebr, *supra* note 18, at 176.

38. Tom J. Farer, *A Paradigm of Legitimate Intervention*, in ENFORCING RESTRAINT, *supra* note 26, at 316, 336.

39. Ambassador Austin, in testimony before the Senate Foreign Relations Committee, said, concerning NATO, "[w]e are not in that objective of the

However, the interests of these organizations are in a state of flux. NATO now claims it is willing to work with the Conference on Security and Co-operation in Europe (CSCE) on a case by case basis,<sup>40</sup> and the Arab League undertook peacekeeping activities in Lebanon in the late 1970's,<sup>41</sup> thus bringing both organizations closer to Chapter VIII oversight. Moreover, the European Community is asserting its ability to handle foreign policy matters.<sup>42</sup> While there is an increase in regional organizations paying lip service to their ability and desire to help maintain international peace and security, there are few cases of such organizations successfully taking on these responsibilities. Consequently, this Note will address situations wherein regional organizations have been relatively successful in maintaining or restoring international peace. It will also address whether such success was achieved in spite of Chapter VIII constraints. A case of regional organization intervention will be examined first.

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treaty which functions under Chapter VIII at all; are we? We are in article 51 . . . ." *Hearings on the North Atlantic Treaty Before the Senate Foreign Relations Committee*, 81st Cong., 1st Sess. (1949), *quoted in* Bebr, *supra* note 18, at 180. Commentators analyzing the Collective Security Pact of the Arab League have concluded that the lack of references to Article 54 "bears clear evidence of the unmistakable intention to keep the Pact exclusively within Article 51." Bebr, *supra* note 18, at 181; *see also* Wolf, *supra* note 30, at 289.

40. IN AN AGENDA FOR PEACE: PREVENTIVE DIPLOMACY, PEACEMAKING AND PEACEKEEPING, REPORT OF THE SECRETARY GENERAL, which collates the replies of various regional organizations to the AGENDA, NATO stated:

In June 1992, the Allies stated their preparedness to support, on a case by case basis, peace-keeping activities under the responsibility of the Conference for Security Cooperation in Europe (CSCE), including by making available resources and expertise. [In December 1992], Allied Ministers stated their readiness to respond positively to initiatives that the United Nations Secretary-General might take to seek Alliance assistance in the implementation of United Nations Council resolutions.

AN AGENDA FOR PEACE: PREVENTIVE DIPLOMACY, PEACEMAKING AND PEACEKEEPING, REPORT OF THE SECRETARY-GENERAL, U.N. Doc. S/25996, at 18 (1993) [hereinafter REPLY].

41. Mufeed Shihab, *Arab States, League of*, in 6 ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW, *supra* note 30 at 22.

42. REPLY, *supra* note 40, at 7-9.

### III. CONTAINING THE APOCALYPSE: EUROPEAN COMMUNITY POLICY TOWARDS THE BALKAN WAR, 1991-1992

Looking back on the opening days of the Balkan break-up, one almost forgets that it was neither the United Nations nor the United States that was called upon to stop the bloodshed, but rather the European Community.<sup>43</sup> The twelve members of the Community were the first to respond to the fighting between Serbia and Slovenia in June 1991 and between Serbia and Croatia in July and August of the same year.<sup>44</sup> On June 29, 1991, at the Luxembourg summit designed to focus on the economic and political integration of the twelve E.C. members, the delegates instead focused their attention on the Balkan crisis, deciding unanimously to dispatch an immediate peace mission consisting of the foreign ministers of Italy, Luxembourg, and the Netherlands, to the strife-torn region.<sup>45</sup> Since Yugoslavia was not a member of the European Community, the European Community acted under the aegis of the CSCE, a larger regional organization to which both the E.C. states and Yugoslavia belonged.

#### A. *The Constraints on Regional Action*

One of the key problems was that neither the E.C. or the CSCE had the necessary tools needed to address the Balkan situation. Although the European Community had substantial economic muscle, it did not have any clear jurisdiction over internal conflicts. Thus, since Yugoslavia and the break-away republics were not Community members, the European Community did not have the necessary clout to address the problem. However, the Balkan states were members of the CSCE. As a result, the two organizations addressed the Balkan crisis in unison: the CSCE provided the jurisdictional framework while the European Community provided the credible threat of economic sanctions. In fact, E.C. leaders threatened to sever all economic ties (worth nearly one billion U.S. dollars) with any Yugoslav republic that did not abide by the cease-

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43. Marc Weller, *Current Development: The International Response to the Dissolution of the Socialist Federal Republic of Yugoslavia*, 86 AM. J. INT'L L. 569, 570-581 (1992).

44. *Id.* at 571, 575.

45. William Drozdiak, *West Europeans Send Envoys, Debate Yugoslav Crisis*, WASH. POST, June 29, 1991, at A18.

fire.<sup>46</sup> Community leaders were hopeful that the threat of falling into disfavor with the E.C. would push the governments of Yugoslavia and the republics towards a settlement of the conflict.<sup>47</sup>

Although delegations jointly representing the European Community and the CSCE attempted to broker a solution in the early days of the conflict, their arranged cease-fire was "reduced to tatters" within forty-eight hours of the original agreement.<sup>48</sup> It therefore became increasingly clear that the CSCE's fledgling conflict mechanism was not prepared to address the deteriorating situation in the Balkans. The Community itself—rather than the joint E.C./CSCE—took center stage as the primary international negotiator in the crisis.

The early attempts by the European Community and CSCE at policing international peace and security were a sharp reminder that, although regional organizations may have the privilege to seek peaceful solutions within their regions, they do not necessarily have the legal, political, military, or financial capabilities to do so. Constraints ranging from a charter that does not give the right to intervene in the internal affairs of member states to the simple lack of political, military, or economic leverage are continuously encountered by regional organizations.<sup>49</sup> Beyond the legal constraints of the regional organizations' charters, the constitutions of certain member states may preclude military action. For example, Germany's Basic Law has traditionally prevented its armed forces from taking part in military activities beyond NATO boundaries.<sup>50</sup>

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46. William Drozdiak, *Europeans Laud Their Efforts in Yugoslavia*, WASH. POST, June 30, 1991, at A20; see also Weller, *supra* note 43, at 576.

47. *Id.*

48. *EC Delegation to Visit Yugoslavia to Pave Way for Observers*, REUTER LIBR. REP., July 2, 1991, available in LEXIS, News Library, Lbyrpt File.

49. Regarding charter prohibitions on intervention, see Charter of the Organization of African Unity, May 25, 1963, 2 I.L.M. 766 (entered into force Sept. 13, 1963); Protocol to the Charter of the Organization of African Unity, 1964, July 21, 1964, 3 I.L.M. 1116; Treaty of the Economic Community of West African States, 1975, May 28, 1975, 14 I.L.M. 1200.

50. See BASIC LAW OF THE FEDERAL REPUBLIC OF GERMANY; Nomi Morris, *Debate Rages Over Germany's U.N. Role*, FIN. POST, Mar. 4, 1993, at 10. Morris's article states that the Basic Law allows for defensive "maintenance of security." German courts have interpreted that to mean that no troops are allowed outside of NATO boundaries. The government of Germany has tried to get a broader interpretation of the Basic Law so that it could send troops to

### B. *The Risk of Bias*

The European Community proceeded to focus on mediating an agreement between the parties. On July 28, 1991, Stipe Mesic, the Croatian chairman of Yugoslavia's joint presidency, asked for the Community to mediate an end to the fighting.<sup>51</sup> Such a task required that the European Community be trusted to some extent by all parties. But, due to Germany's historic ties to Croatia, Germany was "unlikely to be seen by the Serbs as a disinterested party."<sup>52</sup> Moreover, Britain and France, with their ties to Serbia stemming from both World Wars, were perceived as favoring the maintenance of a federal Yugoslavia.<sup>53</sup> In this manner, the biases of the individual member-states and of the European Community as a whole became an issue. Rather than balancing out, these competing biases created policy confusion within the Community<sup>54</sup> and caused concern within the Balkans.<sup>55</sup> It is unclear whether or not a regional organization can intervene effectively if it is perceived to be biased towards one or more of the parties in a civil war.

### C. *Security Council Deadlock*

Another constraint that the European Community faced concerned the possibility that the United Nations would not get involved even when asked. There were two scenarios for that case: either the U.N. Security Council would not act, or, if it did act, it would not define the situation as a "threat to the peace." Either option would preclude the European Community from undertaking an enforcement action because, should the Security Council either remain silent regarding the Balkans or address the situation but fall short of declaring it a

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Somalia but the political opposition complained such a tactic was unfair and only a constitutional amendment could allow for such a change.

51. *Croat Leader Asks Europe to Help Ethnic Fighting*, USA TODAY, July 29, 1991, at 4A.

52. Lawrence Freedman, *A Catastrophe We Must Avoid*, THE INDEPENDENT, Aug. 6, 1991, at 17, available in LEXIS, News Library, Indpnt File.

53. STJEPAN G. MESTROVIC ET AL., THE ROAD FROM PARADISE: PROSPECTS FOR DEMOCRACY IN EASTERN EUROPE 32 (1993); S. Neil MacFarlane & Thomas G. Weiss, *Regional Organizations and Regional Security*, SECURITY STUD., Autumn 1992, at 6, 27-28.

54. MacFarlane & Weiss, *supra* note 53, at 28.

55. Freedman, *supra* note 52, at 17.



threat to the peace, the Community would not have the Article 53 predicate to undertake an enforcement action.

In July 1991, the United Nations appeared to rebuke the European Community. When the foreign ministers of Germany, Belgium, and Austria suggested the possibility of U.N. involvement, then-Secretary-General Perez de Cuellar declined involving the Organization, stating that "[a]ny action by the United Nations at this point would appear as a kind of interference in European efforts."<sup>56</sup> Community leadership was skeptical of the chances of U.N. military support. On August 12, Hans van den Broek, then president of the E.C. Council of Ministers, announced that "internal problems in the Soviet Union and China will prevent the Yugoslav crisis from being debated in the United Nations Security Council," which made the European Community consider organizing an international peace conference on Yugoslavia.<sup>57</sup> Moreover, van den Broek thought that even if the U.N. Security Council did consider the Yugoslav situation, it would find the conflict was "not a threat to international peace," and as such would not act.<sup>58</sup>

#### D. *The Effects of Nonmilitary Options*

By the time summer turned to autumn, the initial optimism was gone, but there was still a belief among Community leaders that a solution could be found. Although military options had faded<sup>59</sup> and mediation was stalled, there were still the options either of increasing the economic pressure on the region or of formally recognizing Croatia and Slovenia. E.C. President Jacques Delors was confident of the impact of such steps, and stated that recognition would be "the diplomatic equivalent of the atomic bomb," and, should the European

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56. *EC States Consider Recognition of Rebel Yugoslav Republics*, REUTER LIBR. REP., July 3, 1991, available in LEXIS, News Library, Lbyrpt File.

57. *Yugoslavia: EC Proposes International Conference*, INTER PRESS SERVICE, Aug. 12 1991, available in LEXIS, News Library, Inpres File.

58. *Id.*

59. In September, the twelve foreign ministers circulated a communique that read, in part, "The Community and its member states . . . [understand] that no military intervention is contemplated. *EC Rules Out Intervention in Yugoslavia*, REUTER LIBR. REP., Sept. 19, 1991, available in LEXIS, News Library, Lbyrpt File. For examples of later refusals, see *Serbs Reject European Peace Plan*, CHIC. TRIB., Nov. 5, 1991, at 5.

Community break off economic relations with Serbia, “[Serbia] would not be able to survive.”<sup>60</sup> Three months later, Germany argued that “speedy recognition” would “internationalize” the crisis and entitle an “E.C. force” to enter the Balkan republics.<sup>61</sup> Should such means used to bring about an end to a conflict be viewed as an Article 53 enforcement action?<sup>62</sup> This Note will argue that while all examples of economic coercion should not be considered enforcement actions, some type of international regulation of economic sanctions that reach such lethal proportions is warranted.

During the autumn of 1991, the Community proposed numerous peace plans. Most republics signed, but the Serbs refused and continued the prosecution of the war, killing thousands.<sup>63</sup> The European Community recognized Croatia, Slovenia, Bosnia-Herzegovina, and, with certain reservations, the former Yugoslav Republic of Macedonia.<sup>64</sup> It demanded that a stringent set of requirements be met, or at least be pledged to by the applicants, before granting recognition.<sup>65</sup> These requirements surpassed those of regular international law. However, despite the special requirements for recognition, the European Community never launched a peacekeeping operation into the Balkan region.<sup>66</sup>

Keeping in mind the various experiences of the European Community in attempting to address the Balkan War, the text of Chapter VIII can be more fully analyzed.

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60. *Failure to Send Force to Yugoslavia Shows EC Immaturity*, REUTER LIBR. REP., Sept. 2, 1991, available in LEXIS, News Library, Lbyrpt File.

61. Weller, *supra* note 43, at 575.

62. For a discussion of the E.C.’s debate regarding recognition of the Balkan states, see generally Weller, *supra* note 43.

63. SERBS REJECTS EUROPEAN PEACE PLAN, *supra* note 59, at 5.

64. See Conference on Yugoslavia Arbitration Commission, Opinions on Questions Arising from the Dissolution of Yugoslavia, January 11 and July 4, 1992, Opinions 4-7, 31 I.L.M. 1488; see also Weller, *supra* note 43, at 586-96.

65. Weller, *supra* note 43, at 588.

66. See James B. Steinberg, *International Involvement in the Yugoslav Conflict*, in ENFORCING RESTRAINT, *supra* note 26, at 27, 36-41. Moreover, the debates within NATO during the late autumn of 1994 further underscore the potential difficulties of achieving political consensus within a regional organization. See, e.g., Richard W. Stevenson, *Britain and France Criticize U.S. on Bosnia Positions*, N.Y. TIMES, Nov. 29, 1994, at A16.

#### IV. THE THEORY AND PRACTICE OF REGIONAL ORGANIZATION IN THE MAINTENANCE OF INTERNATIONAL PEACE

##### A. "As Appropriate for Regional Action"

##### 1. *The Appropriateness Test*

The appropriateness of regional action is based on a "double yardstick" which examines "firstly . . . the existence of a 'local dispute' and secondly [sic] on the choice of peaceful means to settle it (Art. 52(2))."<sup>67</sup> Judging whether a conflict can be qualified as "local" is simple. It must take place within a discrete geographic area that is adjacent to or within the region in question.<sup>68</sup> We will turn to the more difficult issue of means of settling disputes.<sup>69</sup>

Aside from using the double yardstick, it is also useful to envision the appropriateness test as a question of jurisdiction. One must ask if the conflict in question falls under purely domestic jurisdiction. Article 2(7) of the U.N. Charter prohibits U.N. interference in domestic affairs.<sup>70</sup> If a situation falls under this category and the United Nations does not have the capacity to undertake an enforcement action, then it does not have the jurisdiction to approve an enforcement action under-

67. Wolf, *supra* note 30, at 291.

68. Note how the E.C., and not the CSCE, became the primary decision-maker in responding to the Balkan War although the Balkan republics are not within the E.C., but adjacent to it.

69. Prior to considering enforcement actions themselves, one final "appropriateness" issue deserves consideration: whether regional organizations may legally intervene in the affairs of a non member-state. "There is considerable support for the view that regional action under Article 52 is not appropriate in a matter involving a state not a party to the regional arrangement." HAMBRO ET AL., *supra* note 4, at 358.

Thus, ECOWAS easily overcame this legal hurdle since they were originally called in by a member state's government.

The European Community had a trickier procedural stance. While Yugoslavia had not been a member of the E.C., it had been a member of the CSCE. All the members of the Community were members of the CSCE as well. Each institution had what the other lacked: the CSCE lacked the "economic muscle and institutional authority to threaten economic sanctions," the E.C. had formidable sanction power; the E.C. lacked direct legal ties to the Balkans, the CSCE provided a loose, albeit recognized set of political agreements and norms. Weller, *supra* note 43, at 603.

Thus the E.C., acting under the legal aegis of the CSCE, provided the economic power necessary to try to effect change.

70. U.N. CHARTER art. 2, para. 7.

taken by a regional organization. Moreover, a regional organization cannot independently decide to undertake an enforcement action in the internal affairs of a state. Article 2(4) states that “[a]ll Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.”<sup>71</sup>

As a result, two types of regional organization activities have been traditionally recognized as appropriate under the U.N. Charter: the peaceful settlement of disputes and enforcement actions authorized by the Security Council.<sup>72</sup>

## 2. *Civil Wars and Domestic Jurisdiction*

As already discussed, civil wars traditionally have been considered issues of domestic jurisdiction outside the scope of multilateral action. However, the recent increase in failed states, as well as the overstretch of the United Nations, has prompted scholars to begin questioning traditional constraints on multilateral action.<sup>73</sup>

The Balkan War is a case that forces such rethinking. The European Community maintained that the break-up of Yugoslavia posed a threat to regional stability.<sup>74</sup> Initially, the Community perceived the break-up as a possible refutation of the principle of territorial integrity.<sup>75</sup> Consequently, the European Community based its regional stability claims on the argument that it should attempt to limit the disintegration of a country rather than to disregard the redrawing of well settled national boundaries.<sup>76</sup> However, three events occurred as the war progressed: first, Germany became more forceful in its defense of Croatia;<sup>77</sup> second, it became increasingly clear that neither the European Community nor the United Nations had the means to “rejoin” Yugoslavia; and, third, Serbian brutality began wiping cities and their populations off the map. The

71. U.N. CHARTER art. 2, para. 4.

72. *Id.* arts. 52, 53.

73. See generally Farer, *supra* note 38, at 319.

74. Weller, *supra* note 43 at 573; see also Steinberg, *supra* note 66, at 34.

75. *Id.* at 572.

76. Drozdiak, *supra* note 45.

77. MacFarlane & Weiss, *supra* note 53, at 27.

logic for justifying intervention had to shift. Consequently, the Community diplomats heard their call to action in the danger of migrations and the possibility of a spillover in the fighting.

### 3. *Appropriateness Reconsidered: ECOWAS and The Liberian Civil War*

The recent intervention by the Economic Community of West African States (ECOWAS) into the Liberian civil war provides a marked contrast to traditional views of appropriateness.<sup>78</sup> The Liberian case intertwines the legal issues of appropriateness and the justification of enforcement actions under Chapter VIII with the Article 51 issue of collective self-defense.<sup>79</sup> In responding to the crisis in Liberia, an ECOWAS member-state, ECOWAS undertook action that may have begun as a response to a plea for help, but which evolved into enforcement action. In this case, the lack of an outcry by the international community implied a shift of what is considered to be appropriate regional organization intervention.

In 1980, Samuel Doe seized the reins of government in Liberia by means of coup d'état. In July 1990, the roles were reversed as Doe was embroiled in a three-way civil war against Charles Taylor, one of his former ministers, and Prince Johnson, one of Taylor's former commanders. Of the three, Doe welcomed ECOWAS's decision to intervene.<sup>80</sup>

Two months earlier, in May 1990, ECOWAS had established the Standing Mediation Committee which, although

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78. The following historical summary and discussion relies heavily on a draft of Georg Nolte's article *Restoring Peace by Regional Action: International Aspects of the Liberian Conflict*. Page numbers in citations referring to this piece correspond to a draft of this article which is on file at the *New York University Journal of International Law and Politics*.

79. This is akin to Nolte's argument that, "[b]oth prevailing scholarly opinion and state practice support the view that military action by third states which is undertaken within a country upon the request of its lawful government is not prohibited by Art. 2 (4) of the Charter." *Id.* at 20

80. There is some disagreement among commentators over whether Doe requested intervention or whether ECOWAS decided to intervene and Doe merely acquiesced. Georg Nolte argues the first while David Wippman, a former counsel to the interim government of Liberia, seems to lean toward the second: "President Doe, to the extent he retained any legal authority, did welcome the decision to intervene." David Wippman, *Enforcing the Peace: ECOWAS and the Liberian Civil War*, in *ENFORCING RESTRAINT*, *supra* note 26, at 157, 189; see also Nolte, *supra* note 78, at 4.

given a mandate to find a "peaceful resolution" to "any conflict in the ECOWAS region," was constructed as a response to the Liberian Civil War.<sup>81</sup> After meetings on August 6-7, 1990, the Committee passed a four point resolution which stipulated:

1. There was to be an immediate cease-fire;
2. the ECOWAS cease-fire Monitoring Group, ECOMOG, was established under the authority of the Chairman of ECOWAS;
3. ECOMOG would supervise the implementation and ensure strict compliance of the cease-fire;
4. an interim government would be established as a step to restoring democracy.<sup>82</sup>

Although Doe and Johnson concluded a cease-fire, Taylor, who controlled most of the country, questioned the impartiality of ECOMOG and finally declared open hostility against it.<sup>83</sup> ECOWAS responded by ordering ECOMOG "to oust Taylor's forces from Monrovia."<sup>84</sup> Several weeks later, ECOMOG controlled Monrovia.

ECOWAS's actions went beyond simple peacekeeping. The organization not only sponsored discussions among the warring factions, it played an integral part in the formation of the new Liberian government. ECOWAS notified Doe, Taylor, and Johnson that they would not be allowed to participate personally in the interim government, although their parties could be represented.<sup>85</sup> An anonymous ECOWAS official told a reporter that although Taylor and Johnson could eventually run for President, Doe's role in Liberia's political future would be "[a]bsolutely none. The [peace] proposals are based on [the] assumption that Doe would leave as soon as possible."<sup>86</sup> One month later, Johnson's men killed Samuel Doe was killed by Johnson's men<sup>87</sup> and a new round of fighting ensued until

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81. Nolte, *supra* note 78, at 4.

82. LETTER DATED 9 AUGUST, 1990 FROM THE PERMANENT REPRESENTATIVE OF NIGERIA TO THE UNITED NATIONS, ADDRESSED TO THE SECRETARY-GENERAL, U.N. Doc. S/21485 (1990)(Annex), as quoted in Nolte, *supra* note 78, at 4-5.

83. Wippman, *supra* note 80, at 167.

84. Nolte, *supra* note 78, at 6-7.

85. Kenneth B. Noble, *Liberia Leader, Rejecting Truce Offer, Won't Quit*, N. Y. TIMES, Aug. 21, 1990, at A11.

86. *Id.*

87. Wippman, *supra* note 80, at 168.

a cease-fire was signed in November.<sup>88</sup> Along with ongoing negotiations for national reconciliation, the cease-fire lasted for two years.<sup>89</sup>

The declaration that Doe could not be part of Liberia's future cannot be easily reconciled with ECOWAS's consent-based justification for intervention. One may argue that inasmuch as Doe's party may continue participating in Liberia's political life, ECOWAS did not really overstep its bounds. But evidence points to the conclusion that ECOWAS unilaterally decided to marginalize Doe in an interim government whose structure ECOWAS itself designed. There is no doubt that Doe, a strong-arm dictator, was not a sympathetic character and that the situation probably called for the measures that ECOWAS undertook. However, that is exactly the point: ECOWAS's actions were determined by political realities, not the niceties of the U.N. Charter.

ECOWAS did not seek prior approval for its intervention from the United Nations nor was it told by that entity that it had to end its intervention. Thus, in the Liberian scenario the supposedly clear line of what was appropriate action for a regional organization to undertake became rather blurred.

#### 4. *The Spectrum of Justification*

Could ECOWAS's action be justified as appropriate for a regional organization? Since ECOWAS marginalized the Doe government and forged a future for Liberia that did not envision Doe at all, the legitimacy of its action cannot be argued to be based on the consent of the parties. Instead, one may analyze the Liberian case through the optic of Chapter VIII intervention. Although two treaties, the Protocol on Non Aggres-

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88. *Id.* at 169 (citing the Joint Declaration on the Cessation of Hostilities and Peaceful Settlement of Conflict, Bamako, Mali, Nov. 28, 1990).

89. Starting in July 1992, the political situation once again devolved. Taylor was accused of not complying with various cease-fire regulations. ECOWAS threatened to impose sanctions upon Taylor if he did not follow the cease-fire agreement. Taylor attacked Monrovia on October 15, 1992, precipitating economic sanctions, an arms embargo, and an armed offensive by ECOMOG. Nolte, *supra* note 78, at 9. Taylor was driven from power in April 1993.

Eventually, the Organization for African Unity became involved and brokered a peace agreement. See Kenneth Noble, *After 13 Years of a Vicious War, Liberians Dare to Hope for Peace*, N.Y. TIMES, Aug. 2, 1993, at A2.

sion of April 22, 1978, and the Protocol Relating to Mutual Assistance on Defense of May 21, 1981, establish defensive capabilities similar to those embodied in Article 51, neither provides for the right of intervention without state invitation.<sup>90</sup> Consequently, justification for the resolutions of August 6 and 7<sup>91</sup> and their implementation would have to stem from a customary rule not embodied in these texts.

Some believe that intervention similar to the one taken in Liberia is appropriate. For example, Georg Nolte lists three major arguments for the appropriateness of intervention:

1. The imperative to avert a humanitarian disaster;
2. the need to restore democracy;
3. the prevention of the destabilizing effects of refugee flows.<sup>92</sup>

Nolte further argues that each of these reasons is too imprecise to provide a strong legal basis for intervention.<sup>93</sup> Uninvited intervention for humanitarian purposes, he argues, is incompatible with Article 2(4) of the U.N. Charter. It is also open to widespread abuse by states using "humanitarian" concerns as a pretext for invasion.<sup>94</sup> The restoration of democracy may be taken simply as a backdoor entrance to humanitarian intervention and is fraught with all of its problems. Finally, refugee flows may threaten the peace, but they do not warrant as a sufficient encroachment on state sovereignty.<sup>95</sup> While Nolte's criticisms are incisive, the shifting norms of customary international law may shore up the validity of these disputed justifications.<sup>96</sup>

In the case of humanitarian intervention, a determination must be made of whether the potential for abuse denies a right in customary international law. Particularly as a result of the horrific spectacles of Croatia and Bosnia, there is an increasing sentiment in the world community that new risks in the post-Cold War world may call for more interventionist policies. In light of the changing circumstances, former U.N. Un-

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90. Nolte, *supra* note 78, at 11 nn.75 & 77.

91. *Id.* at 4-5.

92. *Id.* at 15-19.

93. *Id.* at 16.

94. *Id.* at 18; U.N. CHARTER art. 2, para. 4.

95. Nolte, *supra* note 78, at 17.

96. *See infra* text accompanying notes 97-98.



dersecretary of Political Affairs Brian Urquhart opened the door to a possible re-interpretation of state obligations to the U.N. Charter: "Until now [civil wars] have generally been considered as beyond the jurisdiction of international or regional organizations . . . . In Yugoslavia the pattern of non-intervention has been cautiously put aside."<sup>97</sup>

The above-noted critiques of this argument also apply to Nolte's dismissal of intervention to save democracy. Besides there being a strengthening consensus around the legality of interventions into humanitarian disasters, there is also a growth in the recognition of the democratic rights of individual citizens.<sup>98</sup> In particular, the International Covenant on Civil and Political Rights has been ratified by approximately eighty-nine states,<sup>99</sup> and it is taking on the mantle of customary international law applicable to all states, signatory or not.<sup>100</sup> While the entrance of democratic entitlement into customary international law would not in and of itself lead to justifiable interventions for the sake of democracy, it provides an indication as to what obligations the international community may ask of a state.

While these justifications may be persuasive to varying degrees, one is nonetheless led to conclude that, based on the black letter text of the U.N. Charter, ECOWAS's action was not appropriate for a regional organization. Without Security Council authorization, ECOWAS essentially undertook an unauthorized enforcement action.

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97. Brian Urquhart, *Who Can Stop Civil Wars*, N. Y. TIMES, Dec. 29, 1991, sec. 4, at 9. There are numerous volumes concerning humanitarian intervention. For a recent symposium of scholars and policymakers, see *Humanitarian Intervention*, HARV. INT'L REV., Fall 1993, at 8-32.

98. The OAS in particular points out that the democratic entitlement has taken on the color of law in the Inter-American System. REPLY, *supra* note 40, at 12; see also Thomas M. Franck, *The Emerging Right to Democratic Governance*, 86 AM. J. INT'L L. 46 (1992).

99. International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171. The number of state parties is taken from BARRY E. CARTER & PHILLIP R. TRIMBLE, *INTERNATIONAL LAW: SELECTED DOCUMENTS* 357 (1991).

100. For an explanation of general state practice regarding custom, see RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW OF THE UNITED STATES sec. 102, cmt. b (1990).

## B. *The Changing Means of Enforcement*

### 1. *Security Council and Enforcement Actions*

Article 53 states that no enforcement action shall be undertaken without authorization by the Security Council,<sup>101</sup> realizing Secretary of State Hull's view that regional organizations should be subordinate to the United Nations. However, regional organizations have not been well integrated into the U.N. system. At times they have carved out their own policies regardless of whether or not they had the blessings of the world organization.<sup>102</sup> The very existence of regional organizations was a hedge against the possible paralysis of the Security Council due to a permanent member's veto.<sup>103</sup> As such, regional organizations have been at times more responsive to the needs of their members than to the stipulations of the U.N. Charter.

#### a. *State Practice*

The E.C. response to the Balkans is indicative of the degree of initiative that a regional organization may take in response to international security issues. The E.C. did not act against the wishes of the Security Council. On the contrary, the E.C. acted when the Security Council chose not to get involved.<sup>104</sup> The economic sanctions against Haiti—first an OAS embargo and then a U.N. blockade—is a similar case. In both of these instances, the regional organizations provided much needed stop-gap measures until the Security Council was unified in an approach to the situation.

However, there has been at least one instance in which a regional organization pursued an enforcement action without formal U.N. approval. At the time of the ECOWAS intervention, "[n]ewspaper reports suggest[ed] that U.N. Secretary-

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101. U.N. CHARTER art. 53, para. 1.

102. ECOWAS is an example of a regional organization undertaking military operations with neither the express approval of the United Nations nor any promise that the Organization would itself intervene if ECOWAS became bogged down. The OAS and E.C. decisions to move forward and address the Haitian and Balkan crises are two examples of regional organizations willing to involve themselves in civil conflict without any assurances from the United Nations that it would consider the cases as well.

103. Bebr, *supra* note 18, at 167; Wippman, *supra* note 80, at 183.

104. See discussion *supra* part III.C.

General Perez de Cuellar advised ECOWAS that no authorization by the Security Council was needed for its action, and both the Organisation of African Unity (OAU) and the United States of America supported the decision."<sup>105</sup> Exactly why ECOWAS did not need authorization is unclear; even if the original action is portrayed as a response to a request made by Doe, it is doubtful that ECOWAS stayed within the bounds of the requested action.

b. *Cooperation and Independence*

The Security Council maintains the power to define which situations actually constitute threats to peace, but it has been reluctant to do so in the case of civil wars.<sup>106</sup> Due partly to this reluctance, some regional organizations are searching for greater legal independence. The OAS, whose gestation played such a large part in the formation of Chapter VIII, wrote a particularly individualistic response to the Secretary-General's *Agenda*.<sup>107</sup> Noting first that the American states had developed international norms amongst themselves, such as the defense of representative democracies, that were not yet cemented in the global arena, the OAS stated that its "sphere of action" was distinct from that of the United Nations.<sup>108</sup> But the analysis did not stop there. The response further concluded that "[t]he ties that bind OAS to the United Nations are *not based on hierarchical relations between the two organizations*."<sup>109</sup>

Moreover, the OAS argued:

[c]ooperation implies by definition working with others for a common purpose. O.A.S. could not be a mere executor of decisions issuing from the United Nations or any of its organs. Any attempt to establish collaboration on the basis of prescriptions by one or

105. Nolte, *supra* note 78, at 6.

106. The Chinese are particularly wary of any increase in U.N. involvement in domestic affairs.

107. See REPLY, *supra* note 40.

108. *Id.* at 12-13.

109. *Id.* at 13 (emphasis added). Compare U.N. CHARTER art. 103 and Richard H. Lauwaars, *International Law: The Interrelationship Between United Nations Law and the Law of Other International Organizations*, 82 MICH. L. REV. 1604, 1605-07 (1984) (comparing a hierarchical text with a non-hierarchical interpretation).

ganization to the other would vitiate the concept of cooperation.<sup>110</sup>

Implicitly, decisions which would need regional organization implementation should be made in concert with that regional organization. It is a call for policy coordination.<sup>111</sup>

The drafters of the OAS response make it clear that such coordination should neither be in the form of U.N. supervision of regional organizations, nor should there be a division of labor "on the basis of specialization."<sup>112</sup> They claim the first option would not ease the load on the United Nations, but rather would place greater demands on limited resources and ultimately weaken the will to cooperate. The second option is inappropriate because neither the United Nations nor regional organizations, such as the OAS, are specialized. These organizations are general in nature.<sup>113</sup>

Cooperation is especially necessary in the case of civil wars because although the United Nations is noticeably reluctant to intervene, and regional organizations are all but forbidden from military actions according to traditional interpretations, both recognize that such conflicts present a growing threat to international security in the world today. The need for better coordination during times of crises is merely an outgrowth of a deeper problem: the lack of flexible and defined cooperation procedures designed to prevent the outbreak of such crises.

## 2. *Economic Sanctions and the Circumvention of the Security Council*

When ECOWAS was faced with the possibility that the Security Council would not approve an enforcement action, it simply chose to go forward and put the Council in the position of having to tell it to stop. But what if a regional organization is not prepared to test, or possibly even defy, the Security Council? Similarly, what option is left for a regional organization that wishes to undertake an intervention but does not have the means for a military excursion? An attractive answer to both dilemmas is that rather than undertaking military action, the organization should enact economic sanctions. As

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110. REPLY, *supra* note 40, at 13.

111. *Id.*

112. *Id.* at 14.

113. *Id.*

enumerated in Article 42, economic sanctions (as opposed to a blockade which requires air, land and/or sea power) are not traditionally considered an enforcement action open to Security Council regulation.<sup>114</sup> Thus, regional organizations may opt to project their power not by the sword, but by the use of sanctions.

a. *E.C. Reactions to the Balkan War*

This analysis can explain why the European Community was able to use the economic and diplomatic measures that it did in addressing Serbian aggression in the Balkans. However, while this separation of Article 41 from Article 42 is understandable for political reasons (it is much more difficult to regulate economic force projection, which is ubiquitous in interstate relations, than it is to monitor military action<sup>115</sup>), one wonders if the distinction is truly satisfying. Recalling Delors's rhetoric of "diplomatic. . . atomic bombs" and the very survival of an economically cut-off Serbia,<sup>116</sup> one may ask whether these means are so much less intrusive than a military intervention.

b. *The OAS and Haiti*

Turning one's gaze to Haiti, one sees an even more dramatic example of the potential lethality of economic coercion. In the aftermath of the coup that exiled democratically elected President Jean-Bertrand Aristide, the OAS recommended that all of its member states "suspend their economic, financial, and commercial ties with Haiti and any aid and technical cooperation except that provided for strictly humanitarian purposes."<sup>117</sup> The OAS also requested from its members "action

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114. U.N. CHARTER art. 42. Regarding the interpretation of economic sanctions in relation to the term enforcement action, see Tom J. Farer, *Political and Economic Coersion in Contemporary International Law*, 79 AM. J. INT'L L. 405, 406 (1985).

115. See generally Louis B. Sohn, *The Security Council's Role in the Settlement of International Disputes*, 78 AM. J. INT'L L. 402 (1984).

116. *Failure to Send Force to Yugoslavia Shows EC Immaturity*, *supra* note 60.

117. LETTER DATED 3 OCTOBER 1991, FROM ECUADOR TRANSMITTING TEXT OF A RESOLUTION ON THE COUP D'ETAT IN HAITI ACCORDED BY A MEETING OF OAS FOREIGN MINISTERS, at 3, U.N. Doc. S/23109, *quoted in* Arend, *supra* note 9, at 501 nn.59-60.

to bring about the diplomatic isolation of all those who hold power illegally in Haiti."<sup>118</sup>

Such a response was particularly telling for two reasons: first, it facially contradicts Article 18 of the OAS Charter which states:

No State or group of States has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. The foregoing principle prohibits not only armed force but also any other form of interference or attempted threat against the personality of the State or against its political, economic, and cultural elements.<sup>119</sup>

Article 18 recognizes the fact that, although individual states may choose to have or not have economic and diplomatic relations with another state, the *concerted* interruption of such activities by a large group of states—and in this case of a country's major trading partners—calls into question a host of issues not present in a single state's action. Such unified action leaves the target state the alternative of succumbing to the organization's will or suffering the consequences. Thus, the states drafting the OAS Charter were wary of such encroachments on state independence.

A second point of interest is that even prior to the addition of a U.N. blockade nearly two years later, the economic sanctions imposed by the OAS and like-minded members of the United Nations had a devastating impact on the Haitian economy.<sup>120</sup>

### 3. *Economic Coercion and Enforcement Actions*

The main response to the Article 18 objection is that economic sanctions were justifiable since the military junta that had control of the country was not the legal government and thus not subject to the protections that the OAS Charter af-

118. *Id.*

119. OAS CHARTER, *supra* note 7, art. 18.

120. Howard W. French, *Jobs Are at Risk in Haiti Sanctions*, N.Y. TIMES, Oct. 31, 1991, at A5; Howard W. French, *Land and Health Also Erode in Haiti*, N.Y. TIMES, Jan. 28, 1992, at A3; Howard W. French, *Sanctions Said to Fuel Haitian Exodus by Sea*, N.Y. TIMES, Nov. 23, 1991, at 1. For a criticism of the effectiveness of the sanctions on Haiti, see *Fight Haiti's Thugs with Oil*, N.Y. TIMES, May 19, 1992, at A22.

fords rightful governments. This answer can be compounded with Professor Thomas Farer's analysis that "[a]s a legal proposition, [Article 18] is perfectly empty; for if read literally, it would outlaw diplomacy."<sup>121</sup> Professor Farer continues: "The international community clearly believes that many tactics for making states behave in ways they would prefer not to behave are well within the realm of its law . . . . [T]he word 'coercion' has no normative significance; there is nothing illegal about coercion."<sup>122</sup>

Moreover, the U.N. Charter was not meant to outlaw economic coercion. Its purpose was quite simply to "outlaw war as an instrument of state policy or self-help . . . . [S]ome efforts by small states to introduce the concept of economic coercion into the Charter at the very outset . . . were categorically defeated."<sup>123</sup>

But one is left with the problem that, although the use of economic measures cannot be controlled by the Security Council, they still have a devastating impact in today's world. While interdependence makes coercive economic measures difficult to regulate, it also makes them particularly lethal. Thus, while economic sanctions may not be defined as an "enforcement action," they may nonetheless place severe pressure on the target country.<sup>124</sup>

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121. Farer, *supra* note 114, at 406.

122. *Id.*

123. *Id.* at 410.

124. Professor Farer recognizes this and notes that there may be some rare instances in which economic coercion may violate international law; but the burden of proof would be heavy and lie on the complaining state. *Id.* at 411. Professor Farer further states that he "would be willing to go no further than treating economic coercion as aggression when, and only when, the objective of the coercion is to liquidate an existing state or to reduce that state to the position of a satellite." *Id.* at 413. Such aggression is not the issue in the cases being considered here. It is obvious that the OAS and the E.C. were attempting to defend human rights and deter aggressors. However, while their goals were not to liquidate an existing state, the effects or expected effects (remember Delors) of their actions would have been indistinguishable from those that Professor Farer views as beyond the pale. The task at hand, then, is to reconcile the basic texts of international law with the realities of today's state practice.

### C. *Information of Activities Undertaken or in Contemplation*

Another topic in need of such attention is the issue of Security Council authorization for enforcement actions undertaken by regional organizations. Article 54 sets forth an obligation of regional organizations to keep the Security Council "at all times . . . fully informed of activities undertaken or in contemplation . . . for the maintenance of international peace and security."<sup>125</sup> The above discussion underscores why this article is of vital importance, now more than ever.

### D. *Textual Conclusions*

Based on the preceding discussion, one may draw the following conclusions:

1. Regional organizations may define their membership and the scope of their functions. There has been a pendulum swing from wanting to be identified only with Article 51 self defense procedures, to a growing interest in Chapter VIII's enforcement action dimensions.<sup>126</sup>

2. Traditionally, civil wars were beyond the scope of appropriate regional organization action. However, the threats of mass migrations, spillover fighting, and extensive human rights violations have given the Security Council an opening to enter into the domestic affairs of states. While regional organizations seem to believe that this opening should also be large enough for them to enter into the domestic arena, as yet there are no conclusive decisions by the Security Council or the International Court of Justice to give weight to this argument.<sup>127</sup>

3. The term "enforcement action" does not have a conclusive definition. Whether or not economic coercion is an enforcement action presents a troubling dilemma. If it is an enforcement action, then the Charter in its current form outlaws the use of a common diplomatic tool absent Security Council ratification. On the other hand, if economic coercion is not an enforcement action, then the United Nations is ignoring one of the most destructive means of power projection. As these economic practices are embedded in the very concep-

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125. U.N. CHARTER art. 54.

126. See discussion *supra* part II.C.

127. See discussion *supra* parts II.B, IV.A.



tion of modern diplomacy, it is unlikely that state practice will change. The text of the Charter may itself need to change in order to maintain vitality in today's world.<sup>128</sup>

4. According to Article 53, authorization is needed for an enforcement action. Since the majority of coercive techniques by regional organizations are economic in nature, this clause is not often cited. However, as the Liberian case illustrates, regional organizations have been able to take military action without Security Council consent. The legal justification for intervention was never articulated well, although its political necessity was clear. Analysts cite Article 51 as a method of authorization.<sup>129</sup>

5. There is a Charter-based obligation to keeping the United Nations well informed.<sup>130</sup>

How should we read the text? Instead of simply changing the meanings of the words to fit state practice, a habit which could lead to the same words meaning very different things in different articles, one should observe state practice and ask if the text is still relevant to the trends of state practice. One therefore needs to examine certain pragmatic considerations of regional organization action and incorporate these insights into the text.

## V. THE SEEDS OF A NEW SYSTEM?

In considering the possibilities for the future of regional organization/U.N. relations, certain political factors need to be further analyzed in light of the preceding discussion of the Charter text: the dangers of institutional deadlock and the various (non-U.N. Charter) constraints on regional organizations. These issues may in turn be the seeds from which a revitalized Chapter VIII may grow.

### A. *Article 51 and Institutional Deadlock*

The fear of a politically paralyzed Security Council, which fueled the drafting of Article 51, also explains why regional organizations in the Cold War era attempted to define themselves by Article 51 as opposed to Chapter VIII. The flexibility

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128. See discussion *supra* parts II.B, IV.B.

129. See discussion *supra* part IV.A.3.

130. See discussion *supra* part IV.C.

afforded by this self-defense provision gave a sense of security that did not exist when a state or organization had to worry about an ideologically split Council.

However, the threat of deadlock still exists in attempts to resolve civil wars. In the Balkan, Haitian, and Liberian cases the Council showed an aversion to entering conflict. Although the OAS simply used sanctions, ECOWAS fielded an expeditionary force which was later justified by Article 51.

Due to the above objections to Article 51 justification, Liberia may prove to be an instance of the Security Council allowing by tacit approval the prosecution of an enforcement action by a regional organization. Due in part to the burdens faced by the United Nations and to the uncertain prospect of passing a Chapter VII or VIII measure in the Security Council, there were no attempts to stop ECOWAS. The United Nations, in effect, deferred to the regional organization. Such a reaction is telling for the possibilities of methods to avert future deadlock. However, it leaves many questions as to the competence of regional organizations in attempting enforcement actions.

### B. *Constraints on Regional Organizations*

#### 1. *The Charters of the Regional Organizations*

Many regional organizations may not have the legal foundations which would allow military interventions into member states involved in civil wars.<sup>131</sup> In its reply to the *Agenda*, the OAS stated:

There is no provision in the [OAS] Charter to authorize the organization to use force in any situation but the exceptional one of external aggression. Apart from that exception, therefore, the use of force has no legitimacy in the legal framework that governs the relations among the American States. . . The best way to update instruments and mechanisms in response to the changing international reality is to

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131. For OAU and ECOWAS documents, see *supra* note 49. See also Conference on Security and Co-operation in Europe: Charter of Paris for a New Europe and Supplementary Document to Give Effect to Certain Provisions of the Charter, Nov. 21, 1990, 30 I.L.M. 190 (1991); Conference on Security and Co-operation in Europe: Declaration and Decisions from Helsinki Summit, July 10, 1992, 31 I.L.M. 1385 (1992).

modernize their charters by known and accepted procedures. The technique of creative interpretation of provisions is neither effective nor advisable . . . . Any decision taken to impose on a regional organization the adoption of coercive measures not authorized in its own basic instruments could bring into crisis the operation and the very existence of that organization.<sup>132</sup>

By the OAS's logic, for an enforcement action to be legal, it must not only pass the Chapter VIII test, it must also be legal by the charter of the regional organization.

Now, more than ever, regional organizations are exploring the possibilities of Chapter VIII responsibilities.<sup>133</sup> However, these aspirations should be codified so as to provide a clear guide for future generations as to the rights and responsibilities of these organizations in relation to the United Nations. It would be a step toward ending all the confusion surrounding which actions are allowable and which are not.

## 2. *Implementation Problems*

### a. *Military and Financial Capabilities*

As a starting point, one should recognize the operational constraints of regional organizations. Many do not have the ability to field armed forces.<sup>134</sup> Considering the prolonged and complex operations that could be necessary to resolve a civil war, the only hope many regional organizations may have of undertaking such an enforcement action is through U.N. subsidy.

132. REPLY, *supra* note 40, at 14.

133. *See id.*; *see also* G.A. Res. A/Res/46/13, U.N. GAOR, 46th Sess., Supp. No. 49, at 16, U.N. Doc. A/46/49 (1991) (exhibiting the cooperation between the United Nations and the Organization of the Islamic Conference); G.A. Res. a/Res/46/20, U.N. GAOR, 46th Sess., Supp. 49, at 20, U.N. Doc. A/46/49 (1991) (exhibiting the cooperation between the United Nations and the Organization of African Unity); G.A. Res. A/Res/46/24, U.N. GAOR, 46th Sess., Supp. No. 49, at 23, U.N. Doc. A/46/49 (1991) (exhibiting the cooperation between the United Nations and the League of Arab States).

134. This could be due to any of a number of reasons, such as a lack of financial resources, a lack of experience in conducting coordinated military operations, or a charter provision that prohibits military excursions into member states.

b. *The Role of Hegemony*

In the past, the Security Council acted as a defense against regional hegemony. States could seek Security Council involvement "particularly where the possibility exists that a powerful state uses a regional agency for coercing a smaller state."<sup>135</sup>

Today, given the attempts at burden sharing, the Security Council may find it wise to harness the abilities of regional hegemons. In the Liberian scenario, ECOWAS' decisive action was largely led by Nigeria. By contrast, the E.C. faced debates between three of its central members: Britain, France, and Germany. The first case was an example of leadership and significant intervention, the second of indecision. The E.C., one of the world's most economically and politically powerful organizations, was taunted by Serb gunmen. The promise of hegemony is the benefit of leadership: speed, flexibility, and oversight. Its peril is the risk of bias and abuse.<sup>136</sup>

C. *Necessity and Invention*

Given these interconnected issues, what are the possibilities of a renovation of the relationship between the United Nations and regional organizations?

1. *The Need for a Flexible Relationship*

Assuming that a regional organization plans and has the ability to undertake an enforcement action, there may be instances in which the Security Council would prefer that the regional organization not become involved. One obvious case is that of predatory hegemony, in which a regional organization is essentially controlled by one or two states which may be merely using civil conflict as a pretext to invade. Another example would be the fear of exacerbating a conflict.<sup>137</sup>

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135. HAMBRO ET AL., *supra* note 4, at 357 n.13 (referring to the Punta del Este debates).

136. See, e.g., Suzanne Crow, *Russia Promotes the CIS As An International Organization*, Radio Free Europe Research Report, (Mar. 18, 1994) 1-6 (describing how Russia's attempts to have the world community accept the Commonwealth of Independent States (C.I.S.) as a regional organization factors into Russia's attempts at regional influence).

137. Hans Kelsen mentioned the risk of two regional organizations each claiming an Article 51 self defense and going to war with one another. Hans

At the same time, the United Nations should give leeway to the rapid reactions that are sometimes necessary to prevent a bloodbath. Although it would be difficult to portray as an Article 51 measure, a NATO or E.C. intervention without Security Council approval in the early days of the Balkan crisis would probably have been perceived as essentially conforming to the purposes and principles of the United Nations. Nonetheless, the strict tone of Article 53 would prevent such an enforcement action without the approval of the Security Council. What if one or more members causes deadlock? A mechanism which would allow rapid responses to take place, but still act as a check against abuses, is necessary.

## 2. *A New Chapter VIII*

Based upon these observations, policymakers are presented with three main courses of action. One may choose to ignore the divergences between the theory and practice of Chapter VIII and interpret the Charter as an internally consistent text. Thus, state practice is disregarded and one simply waits for states to conform to textual legal norms. A second possibility would be to change how one interprets the words of Chapter VIII so that they better conform to state practice. This is the idea of a "living" or "evolving" text.<sup>138</sup> Finally, one may change the Charter itself so that a new text, which explicitly takes into account modern state practice is written.

## VI. CONCLUSION

This Note concludes that since Chapter VIII was written prior to the formation of most of today's regional organizations, and could not take into account the changes that both strengthened and weakened regional action, a new Chapter VIII should be drafted to respond to the evolution of politics and custom since World War II.<sup>139</sup> The basic question raised

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Kelsen, *Collective Security and Collective Self Defense Under the Charter of the United Nations*, 42 AM. J. INT'L L. 783, 795 (1948).

138. There is a particularly rich tradition in American Constitutional interpretation of analyzing the Constitution as a document that changes with the times. See Justice Cardozo's concurrence to *Home Building & Loan Assoc. v. Blaisdell*, 290 U.S. 398 (1934) (Cardozo, J., concurring).

139. Recently, the Russian Federation proposed to the Special Committee of the Charter of the United Nations and on the Strengthening of the Role

throughout this Note has been whether the relative successes of regional organizations have been due to the regulations of Chapter VIII, or in spite of them. In the cases of ECOWAS's unauthorized enforcement actions, and the Security Council deadlock over the Balkans, regional organizations have either acted or planned to act despite what the letter of the Charter says. On the other hand, the Charter has also proven to be underinclusive in its scope by not addressing the issue of lethal economic coercion. Vacillating between being too restrictive or not restrictive enough in dealing with regional organizations, the U.N. Charter is in need of repair. If one simply ignores state practice and devises legal doctrine, that doctrine is sure to fail when applied in the real world. If one starts redefining words and clauses in the Charter, then the Charter may begin to appear as a castle built on sand, subject to interpretive gusts from one direction, then the other. But if one openly recognizes the disparity between theory and practice and chooses to take the extraordinary measure of rewriting the Charter, an even less frequent decision than the amendment the U.S. Constitution, the importance of the situation would be stressed and the legitimacy of the new text would be much greater.

It is not the goal of this Note to provide such a reformulation. However, for the sake of providing an example, the following possible revision is proposed:

A new Chapter VIII could be changed with the goals of increasing the flow of information between the regional and global organizations, allowing not only an increased flexibility for regional organizations to undertake enforcement actions, but also allowing greater U.N. regulation of regional organization policies—be they traditional enforcement actions or not—that reach a certain level of lethality.

In this schema, regional organizations would be responsible for monitoring their regions for issues regarding international peace and security and giving regular reports to the Se-

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of the Organization a draft declaration concerning regional organizations, U.N. Doc. A/AC.182/L.72/Rev.1. For a discussion of this draft proposal, see U.N. GAOR Special Comm., 48th Sess., Supp. No. 33, U.N. Doc. A/48/33 (1993). I am indebted to Dr. Kening Zhang for bringing the Russian draft to my attention.

curity Council.<sup>140</sup> An overlap of coverage by organizations may occur, but with a clear organizational structure, this is of no great concern.<sup>141</sup> Rather, subregional organizations would be encouraged to coordinate reporting responsibilities with broader organizations from their regions. For instance, ECOWAS and other smaller regional organizations may provide reports to the Organization of African Unity, which would collate and present the data, with due credit, to the Security Council.

Regional organizations would be charged with notifying the Security Council of any potential conflicts within the region so that any necessary coordination may take place between the Security Council and that organization. If a regional organization intends to undertake an enforcement action, it must notify the Security Council of its intentions. Once notified, the Security Council may veto any such enforcement action by a majority of the sitting members. Although the Security Council may not have vetoed a particular enforcement action, the regional organization may not assume that it would receive any U.N. subsidization unless it requests such aid and the request is approved by the normal channels.

Such a mechanism would allow regional organizations a certain freedom in pursuing their agendas. However, if it becomes clear that any of their actions do not meet the basic requirement of consistency with the purposes and principles of the United Nations, the United Nations may veto the action. By this reasoning, the Security Council could veto economic sanctions that are unjustly intended to cripple their targets.

As with the current system, there remains the problem of enforcement: a regional organization may ignore a veto of its intervention into a civil war. However, such a policy may not only distance that organization's member-states from the United Nations, the organization could risk being labeled as

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140. A similar proposal was made by Louis B. Sohn, *supra* note 115, at 402, 404. However, he constructed a system of monitoring groups that would report to the Security Council and consult with regional organization.

141. At the moment, overlap is a concern among the various supranational institutions in Europe (E.C., CSCE, WEU, NATO, etc.). However, this is not so much a dilemma of overlap, as it is an example of each institution searching for a new identity for itself and in relation to the other organizations.

an aggressor by the Security Council, which could lead to international sanctions or Article 51 operations.

There may well be other problems with this proposal, some readily apparent, others that can be found only through actual practice. Nonetheless, the shortcomings of the current system are well-known. The text of Chapter VIII has become separated from state practice. Given the changes taking place in the world, the specter of divorce is not out of the question. However, for a reconciliation to occur, theory and practice will have to change somewhat, and state practice is notoriously stubborn.



