

Stayin' Alive

The Rumors of the UN's Death Have Been Exaggerated

The End of an Illusion

EDWARD C. LUCK

In "Why the Security Council Failed" (May/June 2003), Michael J. Glennon provides a singular service by insisting that our understanding of international law should take historical practice and prevailing security and power realities fully into account. His commonsense approach offers a refreshing contrast to the tendentious claim (too often heard during the Iraq debate) that the proper role of the UN Security Council is to pass judgment on when member states can or cannot use force in defense of their national security.

Such a definition of the council's job is based on an overly narrow and selective reading of the UN Charter. The charter's provisions limiting the use of force were adopted as part of a larger system of collective security that the Security Council was meant to enforce. By repeatedly failing over the past decade to take effective action against Iraq, those permanent members now claiming to be the guardians of international law have, in fact, done the most to undermine it.

Up to this point, Glennon's analysis is right on track. But his commendable effort to apply the cold logic of political realism goes too far: what we are witnessing today is not the death of the actual Security Council, as he suggests, but of the illusion that it is meant to function like a court. Glennon takes three wrong turns in reaching the overly dramatic conclusion that the council is finished.

First, to conclude as he does that the council's failure to act as a global legal arbiter will leave the body unemployed and irrelevant requires adopting the absolutist standards of the legal purists, standards that Glennon elsewhere rejects. In fact, abandoning a maximalist view of what the council is meant to do will have a positive impact, allowing its members to refocus their energies on seeking common ground and on identifying joint projects for maintaining international peace and security. There are plenty of these missions to go around: the successful completion of the UN's 14 existing peacekeeping operations and the amelioration of the continuing violence in western Africa, Congo, and Sudan should provide the council with ample challenges in the months ahead.

No doubt the council faces an acute identity crisis. As Glennon aptly points out, the efforts of medium powers to employ it to counterbalance American primacy have debilitated the already weakened body. Neither Paris, Moscow, nor Washington, however, is ready to drop the council from its political tool kit. France wants its help in Côte d'Ivoire, the United States wants to use it for North Korea and the larger war on terrorism, and the whole council recently embarked on a fact-finding trip to western Africa. Chances are that a wounded, and hopefully chastened, Security Council will find a way to muddle through, as it has so often in the past.

Second, in seeking to draw a sharp distinction between the normative and political dimensions of world affairs, Glennon fails to take account of the critical ways in which the two interact. The fact that power politics predominates does not mean that norms, values, and even legal rules are not also relevant in shaping both the ends to which the powerful give priority and the means by which they choose to pursue them. Power gives a state capacity, but these other factors help determine what the state will do with that capacity. It is hardly coincidental that both sides in the Security Council debate on Iraq sought to invoke legal as well as political symbolism. They recognized the pull that such claims, however cynical or superficial, have on both domestic and international constituencies.

Third, Glennon, again like the legal purists, asserts that one must choose between realism and multilateralism, between power and the council. They argue for the latter, he for the former. But this is a false dichotomy, one that has been

promoted by those most resistant to invoking the muscular enforcement provisions of Chapter VII of the charter. The UN's founders had quite the opposite worry: that U.S. power, already predominant in 1945, would not be sufficiently integrated into the UN's structures and capacities. This fear was based on a stark realism forged by world war, not on vague pieties or abstract ideals.

Glennon's trenchant arguments, although they ultimately miss the mark, serve as a pointed reminder of just how far the UN community has drifted from that founding calculus. Rebuilding the bridges between power and law could prove to be a daunting task, but it beats a premature burial for such a promising partnership.

EDWARD C. LUCK is Professor of Practice in International and Public Affairs and Director of the Center on International Organization at Columbia University's School of International and Public Affairs.

Misreading the Record

ANNE-MARIE SLAUGHTER

Michael J. Glennon makes four fallacious arguments to support his claim that the Security Council has failed. First is his historical claim that the establishment of the UN represented a triumph of legalism in foreign policy. As early as 1945, *Time* magazine, reporting from the UN's founding conference in San Francisco, concluded that the UN Charter is "written for a world of power, tempered by a little reason." Or as Arthur Vandenberg, the Michigan senator whose switch from isolationism to internationalism was indispensable to U.S. ratification of the

UN Charter, described it, "this is anything but a wild-eyed internationalist dream of a world state. ... It is based virtually on a four-power alliance." Such comments make clear that the UN always was, and remains today, a legal framework for political bargaining. Glennon's central insight—that the UN's effectiveness depends on the power and will of its members—was in fact the world body's point of departure.

Second, Glennon argues that the political context in which the UN operates has changed fundamentally and permanently. The United States has become a hyperpower and is determined to preserve that status; therefore, the other permanent members of the Security Council will inevitably try to use the body to thwart the United States. Glennon concludes that for Washington to use the UN today will thus only "advance the cause of its power competitors." But while Glennon is right about the power shift and the incentives of some other powers (although he ignores the role of the United Kingdom), his definition of U.S. self-interest is too crude. The United States has long had a strong interest in allowing itself to be constrained—to the extent of playing by rules that offer predictability and reassurance to its allies and potential adversaries. As Harvard's Joseph Nye has pointed out, such behavior maximizes America's "soft power" (to persuade) as well as its "hard power" (to coerce).

Third, Glennon offers legal analysis, asserting that the charter should no longer be thought of as law because it has been violated so many times. It is certainly true that states have often used force without Security Council authorization since 1945. But in any legal system, international or domestic, breaking the law

does not make the law disappear. We all must live with imperfect compliance, and that is as true at the World Trade Organization as it is at the UN. Furthermore, even during the Iraq crisis, the United States acknowledged the force of the charter as law by relying on it as justification for its actions.

Finally, Glennon dismisses any moral claims for upholding the framework of the charter, dismissing "archaic notions of universal truth, justice, and morality" and insisting that "medieval ideas about natural law and natural rights ... do little more than provide convenient labels for enculturated preferences." But such ideals are not "imaginary truths"; they are goals that can never be fully achieved but that exist in all the world's countries, cultures, and religions. And the debate over their proper role in legal practice remains very much alive today.

Equally surprising is that Glennon is so eager to pronounce a death sentence on the Security Council *today*. As he admits, states routinely used force without UN authorization during the Cold War, when the U.S.-Soviet conflict froze the world body. But by lumping together the Security Council's stalemate this past March with its Cold War paralysis, Glennon completely ignores the UN's actions throughout the 1990s—in the first Gulf War, Bosnia, East Timor, Haiti, Rwanda, Somalia, and, after the fact, Kosovo. Some of these crises were indeed shameful failures for the entire international community and particularly for its most powerful states. But in all save Kosovo, those states used the Security Council to frame their common response.

And consider the nearly two years since September 11, during which we witnessed

the repayment of American UN dues and unanimous Security Council resolutions condemning terrorism, supporting the reconstruction of Afghanistan, and demanding the disarmament of Saddam Hussein. From November to March, Americans from Wall Street to Main Street actively watched the Security Council's every move—the same people who, ten years ago, would not have known what the council was. Even today, the principal point of debate among the council's permanent members has become whether the UN will play a "vital" or merely a "central" role in Iraq. On the ground, meanwhile, the UN presence there increases daily through myriad agencies.

Glennon argues that looking at what Washington tried to achieve during the Iraq crisis rather than what it did achieve is naive—that the Bush administration was determined from the beginning to go to war regardless of what the UN said or did. That is a fashionable view in many circles, and one that can never be disproved. But it requires believing, among other things, that the administration would have preferred sending possibly hundreds of young Americans and thousands of Iraqis to their deaths rather than genuinely trying to oust Saddam through coercive diplomacy. It requires overlooking French President Jacques Chirac's decision, for his own political reasons, to focus the world on the threat of U.S. power. And it requires listening to Richard Perle, former chair of the Defense Policy Board, who has written openly of his hope that the war in Iraq will indeed be "the end of the UN," but ignoring Secretary of State Colin Powell, who has written and spoken of U.S. determination to continue working with and through it.

I agree with Glennon that we are once again in an era in which threats to international peace and security may increasingly require the use of force. But if so, genuinely recommitting the United States to a multilateral decision-making framework is America's only hope of ensuring that its fellow nations—including its closest allies—do not form coalitions to balance against it, as if the United States were the real problem. Pursuing such a strategy requires a blueprint for reforming the UN, not one for abandoning it.

ANNE-MARIE SLAUGHTER is *Dean of the Woodrow Wilson School of Public and International Affairs at Princeton University and President of the American Society of International Law.*

Too Legit to Quit

IAN HURD

Michael J. Glennon's article is a useful introduction to the politics of the second Gulf War. But his analysis of the Security Council rests on a faulty reading of its original powers and purposes.

Glennon is right to suggest that the Security Council lies at the core of the UN's international security system, but he mischaracterizes its purpose. The council was never intended as a "grand attempt to subject the use of force to the rule of law," nor as a "legalist institution" in opposition to "geopolitical forces." It did not, as he claims, enshrine faith in "a single global view."

Instead, the council represents a political compromise to manage the competing interests of the great powers. The UN Charter clearly grants the council power

to intervene in the domestic affairs of states, but its five permanent members can each block any such intervention using their veto. There was no expectation at San Francisco that the council's contribution to world order would be to regulate the foreign adventures of the permanent members. The veto meant that these states were deliberately shielded from all accountability to the council; and without such protection, they would never have agreed to the UN in the first place. The council compromise was not primarily intended to protect the security of the small states; it was intended to avoid great-power war. At this, it has succeeded quite well.

The power that the council wields over the strong comes not from its ability to block their military adventures (which it is not empowered to do) but rather from the fact that the council is generally seen as legitimate. This legitimacy functions by raising the costs of unilateral action in the eyes of many countries and their citizens.

The legitimacy granted by the council helps explain the pattern of recent U.S. diplomacy, charted by Glennon. Washington clearly would have preferred to act with council approval rather than without it, as was demonstrated by the first round of talks, which resulted in Resolution 1441. The impact of the council's ability to convey legitimacy is also demonstrated by the fact that many countries, including Turkey, waited to see which way it would turn before deciding whether to support the U.S. action in Iraq.

In ultimately rebuffing the United States, the Security Council signaled its view that a military solution to the crisis was the wrong approach. This disapproval

was not enough to stop the American operation, but that isn't the point. It raised the costs of unilateralism, and this is the most that the council can do when the great powers clash.

IAN HURD is Assistant Professor of Political Science at Northwestern University and the author of the forthcoming *Legitimacy and Power in International Relations: The Theory and Practice of the UN Security Council*.

