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Collective Security, Demilitarization and 'Pariah' States

David J. Bederman*

Abstract

Demilitarization regimes under international law pose special challenges. Often the result of the retributive politics of post-war diplomatic adjustment, legal attempts to ensure that formerly aggressive states do not acquire the military establishments, logistics or weaponry to threaten their neighbours or international peace and security, are often doomed to failure. This article considers the demilitarization sanctions imposed against Iraq in the aftermath of the Gulf War of 1991 in the historic context of other such efforts, most notably the sanctions imposed against Germany under the 1919 Treaty of Versailles (and subsequently enforced by the League of Nations). The primary elements shared by most demilitarization regimes are: (1) qualitative and quantitative restrictions on weapons systems; (2) control and monitoring mechanisms; (3) the rhetorical ambition of global and regional disarmament; (4) unrealistic deadlines for compliance; and (5) the implied threat of resumption of hostilities if disarmament is not achieved. Aside from the political reality that 'pariah' states can rarely be isolated for long, the chief reason for the failure of demilitarization is the weakness of institutional mechanisms to effectively encourage and monitor compliance, as well as to punish transgressions.

Aside from the distractions of Super Power conflict during the Cold War, the primary task for the maintenance of international peace and security by the United Nations has been the control of aggressive medium-sized militaristic states. In one sense, the entire political *raison d'être* of the United Nations — as well as its predecessor institution, the League of Nations — has been the preservation of Great Power prerogatives in the face of challenges by nations which desire to join the first ranks of military and political influence. The political functions of international organizations devoted to collective security have necessarily and inevitably led to the legal structures and practices of these institutions.

* Professor of Law, Emory University. The author acknowledges the excellent research assistance of Lara M. Pair, Emory '02.

Nowhere is this more evident than in the responses of the international community to control the aggressive tendencies of so-called ‘pariah’, or ‘rogue’, states. In the last century, we have witnessed League efforts to contain the provocative policies and territorial ambitions of Soviet Russia, Fascist Italy, Imperial Japan and Nazi Germany. Since the creation of the United Nations in 1945, the Organization has had to confront the real or perceived threats of North Korea, the apartheid regime in South Africa, and Saddam Hussein’s Iraq, as well as stigmatizing the governments of Israel and Taiwan. What each of these nations had in common was, at least at the commencement of the international community’s engagement with them, that they were not regarded in the first rank of military powers, and there was at least the perception that they were subject to coercion by the united will of the Great Powers, as reflected in the actions of the League and the UN.

The pariah state phenomenon has thus become a central trope in international relations, and has achieved an almost mythic expression in various forms of speculation. Could Italian aggression in Ethiopia have been thwarted by united French and British action in 1936? Could the humiliation of appeasement at Munich have been averted by stronger, earlier resistance to Hitler? Could a transition to majority rule in South Africa have been earlier facilitated by even firmer sanctions? And, finally, would the Middle East be a safer place today if the Desert Storm allies in 1991 had marched on Baghdad and forcibly overthrown the Hussein regime? Each of these scenarios has been debated as defining a central moment in modern international relations, and each offers a kind of paradigm shift in thinking about the role of power and influence in world affairs, especially for the Great Powers in their exercise of self-interest and *noblesse oblige*. They also offer a powerful tale of the extent — and limits — of international law in conditioning world order.

Coming as part of a larger effort to canvass the effect of ten years of international sanctions on Iraq in the wake of its invasion of Kuwait in August 1990, and the Gulf War of 1990–1991, this article will attempt to put the network of international legal constraints on Iraq’s armaments and war-fighting capacity in an historical and comparative perspective. I have elsewhere sought to analyse the processes and practices of the UN Security Council and UN Compensation Commission as part of a larger and longer tradition of international claims settlement following national upheavals or cataclysmic conflicts.¹ In this essay I attempt much the same exercise by considering the arms control regime for Iraq established by UN Security Council Resolution 687 on 3 April 1991,² acceptance of which was the quid pro quo for the Coalition’s termination of hostilities against Iraq after Hussein’s armies were driven from Kuwait. My goal here is to examine the general structure and effectiveness of sanctions against Iraq to ensure limitations on its armaments, military materiel and war-fighting capacity. The precise modalities of the inspection regime maintained by the UN Special Commission (UNSCOM) and UN Monitoring, Verification and

¹ See Bederman, ‘The United Nations Compensation Commission and the Tradition of International Claims Settlement’, 27 *NYU J Int’l L. & Pol.* (1994) 1.

² UN Doc. S/RES/687 (1991) (3 April 1991).

Inspection Commission (UNMOVIC), established under Resolutions 687 and 1284,³ is beyond the scope of this contribution. I will, however, give careful consideration to the subsequent acts engaged in by states which were members of the 1991 Coalition — most notably, the United States and United Kingdom — to militarily enforce Resolution 687. The allied bombings of Iraq in the years after 1991 have generated substantial controversy, not the least of which in the international law academy. But the connection between these unilateral displays of Great Power coercion against Iraq as a pariah state, and the underlying logic of international arms control sanctions, has been less well understood and appreciated.

Lastly, I hope to draw some parallels between the legal character of the Iraqi demilitarization regime and that imposed against Germany at the conclusion of the First World War. I readily acknowledge that the parallels between Resolution 687 and the Treaty of Versailles are imperfect and fraught with some methodological danger. But there are some instructive parallels, particularly in the constitution of the arms control regimes and also subsequent efforts to enforce those rules through collective security measures, notably in the face of skilled and implacable resistance by German and Iraqi authorities. By drawing this parallel I certainly do not intend to raise a sort of consequentialist assertion that is so often made in international relations literature about the nature of pariah states and their adversaries. The selection of post-1919 Germany is a fortuitous one, largely owing to the detail of the demilitarization regime crafted in the Versailles Treaty. That this regime was effectively evaded and subverted under the Weimar government — long before Adolf Hitler came to power in 1933 and later fully denounced its restrictions — is a cautionary tale showing that even relatively moderate and cooperative governments will chaff under international restrictions of their essential sovereignty. Any examination of this theme must, therefore, confront a heavy presumption of the futility of demilitarization regimes aimed against outcast states and the fragility of international law rules that would purport to lend such collective security systems legitimacy and effectiveness.

1 The Original Conception of German and Iraqi Demilitarization

Demilitarization of vanquished foes has been a traditional feature of peace treaties concluding periods of conflict. It was a natural desire of victorious Powers to ensure, via the stipulations of peace agreements, that an enemy does not have the wherewithal to continue hostilities in the future. In the 18th and early 19th centuries, peace treaties which included demilitarization clauses tended to focus on the military

³ See *ibid.*, at para. 9(b)(1) (*Decides [on] ... the forming of a Special Commission, which shall carry out immediate on-site inspection of Iraq's biological, chemical and missile capabilities. . .*). See also UN Doc. S/RES/1284 (17 December 1999).

status or strength of particular territories, locations or fortresses.⁴ It was less common for peace treaties to regulate access to armaments and munitions or to strategic supplies.⁵

The Versailles Peace Treaty, concluded in June 1919,⁶ fundamentally altered that model by imposing a comprehensive system of disarmament upon Germany, vanquished by the Allied and Associated Powers in the months leading up to the Armistice of November 1918. The disarmament provisions of Part V of the Versailles Treaty were ostensibly couched in the idiom of a global move to demilitarization: 'In order to render possible the initiation of a general limitation of the armaments of all nations, Germany undertakes strictly to observe the military, naval and air clauses which follow.'⁷ And, indeed, some desultory efforts were made by the League to sponsor general arms reduction instruments, but it is generally acknowledged that a system of true disarmament by the Great Powers after World War One was illusory.⁸

Part V of the Versailles Treaty proceeded to lay down exceedingly precise limitations on various aspects of Germany's military establishment. The German Army was capped at 100,000 effectives and the officer corps limited to a mere 4,000 staff, such numbers to be achieved by March 1920.⁹ The German Navy was similarly limited,¹⁰ and the Air Force was completely abolished.¹¹ As for war materiel, Germany was strictly prohibited from possessing armaments and munitions in excess of the limits established under the Treaty.¹² Under Articles 169 and 192, all German war materiel

⁴ See J. Westlake, *International Law*, vol. 1 (2nd ed., 1910), at 296 (discussing demilitarization provisions concluded at the Congress of Vienna at the end of the Napoleonic Wars and the 1856 Paris Treaty at the end of the Crimean War); Bederman, 'The 1871 London Declaration, *Rebus Sic Stantibus*, and a Primitivist View of the Law of Nations', 82 *AJIL* (1988) 1. On the analytically distinct subject of neutralization of territories, see Graham, 'Neutralization as a Movement in International Law', 21 *AJIL* (1927) 79.

⁵ An early exception was the 1763 Definitive Peace, 10 Feb 1763, 42 Consol. T.S. 279, which concluded the Great War for Empire between Great Britain and the French-Spanish Alliance. Article 17 guaranteed British access to Campeche wood in present-day Belize, a valuable naval store necessary to ensure British naval supremacy.

⁶ Treaty of Peace at Versailles, 28 June 1919, Allied & Associated Powers-Ger., 225 Consol. T.S. 188 [hereinafter Versailles Treaty].

⁷ *Ibid.*, preamble to Part V.

⁸ See *The Treaty of Versailles and After: Annotations of the Text of the Treaty* (1947) 309–316 [Versailles Treaty Annotations]; G. B. Ostrower, *The League of Nations from 1919 to 1929* (1996), at 72. Two notable negotiations, although largely conducted outside the League, were the Washington Convention for the Limitation of Naval Armament, 6 Feb. 1922, T.S. No. 671, 43 Stat. 1655, and the London Convention for the Further Limitation of Naval Armament, 22 Apr. 1930, T.S. No. 830, 46 Stat. 2858. See also Treaty of St. Germain-en-Laye, 10 Sept. 1919, 7 L.N.T.S. 332 (for an instrument intended to control arms trafficking in Africa and Asia); Stone, 'Imperialism and Sovereignty: The League of Nations' Drive to Control the Global Arms Trade', 35(2) *J. Contemporary Hist.* (2000) 213.

⁹ Versailles Treaty, *supra* note 6, Arts 160, 163. Recruitment, training and retention of men and officers was also severely limited by articles 173–179.

¹⁰ See *ibid.*, Arts 181–189.

¹¹ See *ibid.*, Art. 198.

¹² See *ibid.*, Arts 164–167. Attached tables literally prescribed that Germany could possess no more than 84,000 rifles or 25,200 medium trench mortar rounds. See *ibid.*, Part V, Section I, Tables Nos. II and III.

in excess of the limits prescribed were to be handed over to Inter-Allied Commissions of Control 'to be destroyed or rendered useless'.¹³

The Control Commissions were 'specifically charged with the duty of seeing to the complete execution of the delivery, destruction, demolition and rendering things useless to be carried out at the expense of the German Government. ...'¹⁴ Germany was required to 'give all necessary facilities for the accomplishment of the ... missions'¹⁵ of the Commissions (one each for military, naval and aeronautical disarmament), and 'furnish all such information and documents ... to ensure the complete execution of the military clauses, and in particular all legislative and administrative documents and regulations'.¹⁶ These Control Commissions worked until 1926 in their task of liquidating excess German war materiel, crediting the German government with some of the proceeds (although not without substantial dispute),¹⁷ and generally imposing an arms control inspection regime on the country.¹⁸ Germany also agreed to 'give every facility for any investigation which the Council of the League of Nations, acting if need be by a majority vote, may consider necessary'.¹⁹ So even after the Locarno Treaties,²⁰ Germany's entry into the League, and the winding-up of the work of the Control Commissions, Germany remained nominally under a form of enhanced oversight by the League Council, which could order an investigation of Germany's compliance without satisfying the normal consensus requirements of the institution.²¹

In addition, the Versailles Treaty announced that the '[i]mportation into Germany of arms, munitions and war material of every kind shall be strictly prohibited'.²² Germany was prohibited from exporting arms or naval vessels.²³ The Treaty also had specific provisions banning the manufacture and importation into Germany of 'asphyxiating, poisonous or other gases', as well as 'armoured cars, tanks and similar constructions suitable for use in war'.²⁴ In addition, Germany was required to 'disclose ... the nature and mode of manufacture of all explosives, toxic substances and other like chemical preparations used by them in the war ...'²⁵ as well as 'the designs of warships, the composition of their armaments, the details and models of the guns, munitions, torpedoes, mines, explosives, wireless telegraphic apparatus and, in general, everything related to naval war material ...'²⁶ Germany was prohibited from

¹³ *Ibid.*, Arts 169, 192.

¹⁴ *Ibid.*, Art. 204.

¹⁵ *Ibid.*, Art. 206.

¹⁶ *Ibid.*, Art. 207.

¹⁷ Versailles Treaty Annotations, *supra* note 8, at 327–328.

¹⁸ See *ibid.*, at 356–359.

¹⁹ Versailles Treaty, *supra* note 6, Art. 213.

²⁰ See 20 *AJIL* Supp. 21 (1926). See also Ostrower, *supra* note 8, at 59–70.

²¹ Versailles Treaty Annotations, *supra* note 8, at 362–365. Cf. C. A. Riches, *The Unanimity Rule and the League of Nations* (1933).

²² Versailles Treaty, *supra* note 6, Art. 170.

²³ See *ibid.*, Arts 170, 192.

²⁴ *Ibid.*, Art. 171.

²⁵ *Ibid.*, Art. 172.

²⁶ *Ibid.*, Art. 209.

constructing or acquiring any submarines.²⁷ Germany's civil aviation industry was placed under international oversight to prevent diversion of resources from that sector to the military.²⁸

As can readily be seen from this summation of the Versailles Treaty's demilitarization provisions, the intention of the victorious Allied and Associated Powers in World War One was nothing less than the forced reduction of Germany to the ranks of no more than a medium-sized Power.²⁹ This was accomplished by caps on what might be considered conventional military cadres, formations and armaments. But in addition, the Versailles Treaty specifically targeted what were recognized in 1919 as new, decisive war-making technologies and weapons systems — including submarines, aircraft, tanks, torpedoes and chemical weapons — which Germany had skilfully used during the Great War to prolong the conflict. These were the practical equivalent of what we would today call 'weapons of mass destruction'.

By way of contrast, the contours of the United Nations' arms control conditions on Iraq, in Security Council Resolution 687, were seemingly far more modest. This is partially explained by the timing of the respective armistices which concluded the First World War and the Gulf War. In November 1918, Germany was militarily exhausted, its population at near subsistence levels after nearly four years of British blockade, and its government teetering on the edge of socialist revolution. Nevertheless, the German military was potent and still capable of inflicting damage on French, British and American forces in the Western theatre. Nor had Germany proper been invaded. The Armistice of November 1918 was thus a necessary pause before the political settlement required by Germany to maintain any national cohesion.

Iraqi forces, with the possible exception of Saddam Hussein's Revolutionary Guards, had by late February 1991 lost virtually all unit cohesion. Vast stocks of Iraqi conventional force materiel had been captured by Coalition forces in Kuwait and in southern Iraq. The Iraqi Air Force was virtually destroyed, with a handful of air wings suffering the ignominy of internment in Iran. By virtue of the conduct of the Gulf War, Iraq had been reduced in strength. The UN Security Council had earlier adopted Resolution 661 which had placed an arms embargo on Iraq.³⁰ This was continued in Resolution 687, which in some respects strengthened and extended the ban to include the 'means of production' for conventional weapons and 'personnel or materials for training or technical support services relating to the design, development, manufacture, use, maintenance or support' of those items.³¹ Resolution 687 clearly contemplated that the conventional arms embargo would continue to be enforced through 'full international implementation' through the Security Council's Sanctions

²⁷ *Ibid.*, Art. 191.

²⁸ See *ibid.*, Arts 198–202; see also Conference of Ambassadors, League-Ger., 22 May 1926, 58 L.N.T.S. 331 (establishing an Aeronautical Committee of Guarantee). See also Versailles Treaty Annotations, *supra* note 8, at 351–353.

²⁹ See Ostrower, *supra* note 8, at 72.

³⁰ UN Doc. S/RES/661 (6 August 1990).

³¹ SC Res. 687, paras 24(a) and (c).

Committee, as well as through 'national controls and procedures'.³² The expectation was, of course, that reconsideration of the conventional arms embargo would be made at regular intervals, 'taking into account Iraq's compliance with this resolution and general progress toward the control of armaments in the region'.³³ The conventional arms ban against Iraq has never been subsequently lifted,³⁴ although it has been widely evaded.

Additionally, the Security Council had sanctioned the enforcement of operational restrictions on the Iraqi military. The most important of these was the no-fly zones in northern Iraq (to shield Kurdish populations from Saddam Hussein's reprisals) and southern Iraq (to protect Shi'i Muslim populations and to grant an air buffer zone between Iran, Saudi Arabia and Kuwait). In many respects similar to the limits placed on dispositions of the German army and fortifications after the First World War,³⁵ these restrictions have served to prevent Iraqi projections of power in the region, or the use of the Iraqi military to coerce restive populations.

All of this background is necessary to appreciate the balance of the disarmament provisions of Resolution 687, which have received rather more attention in both policy circles and the scholarly community. While the first prong of Iraqi demilitarization (a continued conventional arms embargo) was sublimated in the Resolution, the second objective of eliminating Iraq's capacity to acquire, build, deploy and use weapons of mass destruction and missile-launching technologies was given pride of place. After inviting Iraq to adhere to the relevant arms control treaties for chemical and biological weapons,³⁶ the Council decided that 'Iraq shall unconditionally accept the destruction, removal or rendering harmless, under international supervision' of its chemical and biological weapons, its missile-launchers with a range greater than 150 kilometers, as well as research, development, support, manufacturing, repair and production facilities for those items.³⁷ In a parallel clause, Iraq accepted the destruction, removal or rendering harmless of any nuclear weapon capacities.³⁸ Iraq disclaimed the use, development, construction or acquisition of chemical, biological, nuclear or ballistic missile technologies.³⁹ Echoing the Council's pronouncement on the continuation of the conventional arms embargo against Iraq, it noted that 'the actions to be taken by Iraq . . . represent steps toward the goal establishing the Middle East a zone free from weapons of mass destruction and all missiles for their delivery and the objective of a global ban on chemical weapons'.⁴⁰

The language of Resolution 687 eerily resonates with that of the Treaty of Versailles. Both instruments rhetorically obfuscated a unilateral demilitarization of a vanquished power with a vague promise of regional or global disarmament. The

³² *Ibid.*, paras 26 and 27.

³³ *Ibid.*, para. 28.

³⁴ See SC Res. 1284, pmbl. para. 9, UN Doc. S/RES/1284 (17 December 1999).

³⁵ See Versailles Treaty, *supra* note 6, Art. 180.

³⁶ See SC Res. 687, *supra* note 2, para. 7.

³⁷ *Ibid.*, para. 8.

³⁸ *Ibid.*, para. 12.

³⁹ *Ibid.*, paras 10, 12.

⁴⁰ *Ibid.*, para. 14.

central demand of Resolution 687 — that ‘Iraq unconditionally accept the destruction, removal, or rendering harmless, under international supervision’ of its weapons and technologies of mass destruction⁴¹ — is nearly verbatim to the Versailles Treaty’s provision in Articles 169 and 192. The application of a continued arms embargo on Iraq was accomplished in virtually the same language as Versailles, especially with an emphasis on denying the target state of access to emerging decisive technologies. Indeed, both Resolution 687 and Versailles are strikingly similar in their emphasis on what might be regarded as a ‘reverse technology transfer,’ with the notionally vanquished state required to disclose all it knew in the application of the feared weapons technologies. Both documents also evidence unrealistic deadlines. German demilitarization under the Versailles Treaty was supposed to have been achieved within nine months.⁴² Likewise, Resolution 687 called for Iraq to submit within fifteen (15) *days* an inventory of its prohibited weapons, with destruction and disposition to be initiated within 45 to 90 days, and to be well along within 120 days.⁴³ With both German and Iraqi disarmament, these unrealistic deadlines contributed to the sense of impossibility and futility of the exercise, and lent support to the target states’ arguments that the expectations of demilitarization were unreasonable.

Both the Versailles Treaty and Resolution 687 provided a detailed regime to manage and supervise the process of demilitarization. The Inter-Allied Commissions of Control established in 1919 have strong parallels to the Special Commission created in Resolution 687. UNSCOM’s mission of ‘immediate on-site inspections of Iraq’s biological, chemical and missile capabilities’, supervising of Iraq’s destruction of these items (as well as nuclear technologies), and ‘future ongoing monitoring and verification of Iraq’s compliance’,⁴⁴ closely matched the Control Commission’s task of ‘seeing to the complete execution of the delivery, destruction, demolition and rendering things useless to be carried out at the expense of the German Government . . .’⁴⁵ So both Resolution 687 and the Treaty of Versailles featured permanent, ongoing institutional arrangements to enforce the terms of demilitarization and disarmament.

The last parallel in the original conceptions of the Versailles Treaty and Resolution 687 is the implicit threat of resumption of hostilities if the terms of the demilitarization demands are not fulfilled by the vanquished state. Resolution 687 makes clear that it is intended to serve as a transition from Iraq’s informal request for terms on 27 February 1991 to a ‘formal cease-fire’.⁴⁶ Iraq was required, under paragraph 33 of the Resolution, to communicate ‘its acceptance of the provisions above’, whereupon the

⁴¹ *Ibid.*, para. 8.

⁴² Versailles Treaty, *supra* note 6, Arts 160, 163.

⁴³ SC Res. 687, *supra* note 2, at paras 9(b), 10, 12, 13, 28.

⁴⁴ See *ibid.*, paras 9(b)(i) and (ii), 10, 13.

⁴⁵ Versailles Treaty, *supra* note 6, Art. 204.

⁴⁶ SC Res. 687, *supra* note 2, para. 1.

formal ceasefire would come into effect.⁴⁷ The Council decided to 'remain seized of the matter and to take such further steps as may be required for the implementation of this resolution and to secure peace and security in the area'.⁴⁸ This faintly echoed the provisions of Versailles, which required that Germany 'give every facility for any investigation which the Council of the League of Nations, acting if need be by a majority vote, may consider necessary',⁴⁹ and which enforced the Peace Treaty through various forms of guarantee clauses, including occupation of German territory for up to 15 years.⁵⁰

There is a set of broad patterns evident in both Versailles and Resolution 687. These include (1) an ambitious goal of demilitarizing what had hitherto been a major, aggressive power, (2) a comprehensive set of quantitative and qualitative restrictions on the vanquished state's ability to project force in the future and to gain access to decisive technologies, (3) the imposition of an inspection institution to carry out the demilitarization activities, and (4) the real or implied threat of subsequent uses of force to achieve compliance with the regime. Now that this parallel has been established, I propose in the balance of this essay to consider the means by which the international community attempted with both Iraq and Germany to command compliance through arms control sanctions and actual uses of military force.

2 Arms Control Sanctions Enforcement

Various forms of international sanctions, short of the use of armed force, have been applied against Iraq to enforce the demilitarization and arms control provisions of Security Council Resolution 687 and subsequent instruments.⁵¹ Inspection regimes have been managed by the UN Special Commission (UNSCOM) and the International Atomic Energy Agency (IAEA). Collateral efforts by institutions under the Nuclear Non-Proliferation Treaty (NPT) and Chemical Weapons Convention (CWC) have also been undertaken. The Security Council's Iraq Sanctions Committee, working through Member States of the UN, has tried to interdict imports into Iraq of strategic military technologies. Combined, these initiatives have attempted to root out domestic Iraqi infrastructures and capacities for weapons of mass destruction, at the same time denying Iraq the ability to replace them by importation from abroad.

One notable fact, especially in comparison with the model of demilitarization enforcement under the Versailles Treaty, is the relative weakness of the institutions used to ensure arms control compliance against Iraq. The Security Council's Sanction Committee for Iraq has been roundly criticized by a number of participants and commentators for its inability to effectively manage tight restrictions on parties that seemed eager to evade sanctions and turn profits in trade with Iraq. Paul Conlon has

⁴⁷ *Ibid.*, para. 33.

⁴⁸ *Ibid.*, para. 34.

⁴⁹ Versailles Treaty, *supra* note 6, Art. 213.

⁵⁰ See *ibid.*, Arts 428–432.

⁵¹ See SC Res. 700, UN Doc. S/RES/700 (17 June 1991), and Res. 1284, UN Doc S/RES/1284 (17 December 1999).

observed that the Sanctions Committee was charged with two, irreconcilable tasks: ‘enforcement of a trade control regime and mitigation of that regime for humanitarian purposes. This Jekyll and Hyde situation has persisted ever since and has resulted in many a protracted and lively Committee meeting.’⁵²

Enforcement of the arms control limitations of Resolutions 661 and 687, which should have been central to the task of the Sanctions Committee, became increasingly secondary to considerations of release of Iraqi oil reserves in exchange for foreign exchange needed for humanitarian reasons. It is ironic that the group of sanctions that should have been the least controversial — denying Iraq’s access to dangerous military technologies — were often ignored. This is despite the fact that arms shipments, and their collateral effects on national economies, would certainly not have qualified for conciliatory treatment under Article 50 of the Charter.⁵³ Well-documented evasions of these restrictions have been subsequently reported, and the number of recorded violations has increased over time.

In Resolution 687, the Security Council was mindful that the success of sanctions to disarm Iraq would really depend on the alacrity with which individual Member States pursued that objective through effective means.⁵⁴ In accordance with earlier Resolutions 661 and 670, the UN Secretary-General sent questionnaires to Member States about national measures to enforce the sanctions. Surprisingly, responses were provided by nearly 90 nations in 1990 and 1991.⁵⁵ The operational capacities of many states to effectively monitor arms imports into Iran were acknowledged to be feeble.⁵⁶ Nor is it by any means clear that the Security Council Iraq Sanctions Committee did all it could in the early 1990s to build the competence of those Member States that were disposed to enforce sanctions against Iraq.

This failing was impliedly noted by the Security Council in its Resolution 1051 of 1996,⁵⁷ which prescribed an enhanced regime for Resolution 715’s call for ‘a mechanism for monitoring any future sales or supplies by other countries to Iraq of items relevant to the implementation of section C of resolution 687 . . .’⁵⁸ The Council recognized that control of export/import ‘is not a regime for international licensing, but rather for the timely provision of information by States in which companies are located which are contemplating sales or supplies to Iraq of items covered by the plans

⁵² Conlon, ‘Lessons from Iraq: The Functions of the Iraq Sanctions Committee as a Source of Sanctions Implementation Authority and Practice’, 35 *Va. J. Int’l L.* (1995) 633, at 638. See also P. Conlon, *United Nations Sanctions Management: A Case Study of the Iraq Sanctions Committee, 1990–1994* (2000).

⁵³ See UN Charter Art. 50 (‘If preventive or enforcement measures against any state are taken by the Security Council, any other state . . . which finds itself confronted with special economic problems arising from the carrying out of those measures shall have the right to consult the Security Council with regard to a solution of those problems.’). See also Burci, ‘The Indirect Effects of United Nations Sanctions on Third States: The Role of Article 50 of the UN Charter’, 1 *African Y.B. Int’l L.* (1995) 157.

⁵⁴ See Res. 687, *supra* note 2, at para. 27 (‘Calls upon all States to maintain such national controls and procedures’ to enforce arms restrictions on Iraq).

⁵⁵ See UN Doc. S/AC.25/1990/1–77; S/AC.25/1991/1–23.

⁵⁶ See Joyner, ‘Sanctions, Compliance and International Law: Reflections on the United Nations’ Experience against Iraq’, 32 *Va. J. Int’l L.* (1991) 1, at 18–26.

⁵⁷ SC Res. 1051, UN Doc. S/RES/1051 (27 March 1996).

⁵⁸ *Ibid.*, pmbl. para. 2.

for ongoing monitoring and verification ...⁵⁹ The 'mechanism' fashioned by UNSCOM and IAEA,⁶⁰ and endorsed by the Council, was nothing more than an information clearing house in which potential exporters or suppliers would report to the UNSCOM/IAEA 'joint unit' certain data on pending transactions.⁶¹ At least in Resolution 1051, steps were contemplated to draft implementing measures or regulations to support the arms control mechanism.⁶² But the 'mechanism' of Resolution 1051 did not appear to have superior traction to the ad hoc consultations employed earlier by the Sanctions Committee.

The institutional weaknesses of the Security Council in regard to the enforcement of Iraqi demilitarization have been well noted.⁶³ While the composition of the Sanctions Committee always mirrored that of the Security Council, there were some serious problems in ensuring transparency and consistency in decision-making.⁶⁴ The Sanctions Committee operated under a consensus rule which, ironically enough, appeared to dilute the influence of such Great Powers as the United States and Great Britain which were desirous of maintaining a strong regime for enforcing arms importation restrictions and punishing any transgressions. Proposals to invoke the Military Staff Committee (MSC), created under the UN Charter to advise the Council on military matters,⁶⁵ were met with momentary acceptance during the Gulf War itself.⁶⁶ Nevertheless, the MSC could have been even more valuable in coordinating those aspects of the sanctions against Iraq that were concerned with access to high technology weapons of mass destruction.⁶⁷ But no such Great Power consultation or action was used in this respect.

Coordination with other international institutions devoted to arms control or non-proliferation goals have also been problematic in the case of Iraq. From the inception of Resolution 687, there was an awkward division of labour between UNSCOM and the IAEA. The IAEA was presumably charged with ensuring Iraq's adherence to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT).⁶⁸ But the IAEA was given additional responsibilities under Resolutions 687,⁶⁹ 699⁷⁰ and 707.⁷¹ The essence of the relationship was that UNSCOM was to provide 'the necessary special expertise and logistical, informational and other operational

⁵⁹ *Ibid.*, pmbler. para. 5.

⁶⁰ See UN Doc. S/1995/1017 (7 December 1995), Annex I.

⁶¹ See Res. 1051, para. 5.

⁶² See *ibid.*, para. 14.

⁶³ See Conlon, 'Sanctions Management', *supra* note 52, at 182. See also Lysobey, 'How Iraq Maintained its Weapons of Mass Destruction Programs: An Analysis of the Disarmament of Iraq and Legal Enforcement Options of the United Nations Security Council in 1997-1998', 5 *UCLA J. Int'l L. & Foreign Aff.* (2000) 101.

⁶⁴ See Conlon, 'Sanctions Management', *supra* note 52, at 27-35.

⁶⁵ UN Charter, Art. 47.

⁶⁶ See SC Res. 665, UN Doc. S/RES/665 (1990), at para. 4.

⁶⁷ See Joyner, *supra* note 56, at 17-18.

⁶⁸ 1 July 1968, 729 U.N.T.S. 161 (entered into force 5 March 1970).

⁶⁹ Resolution 687, *supra* note 2, at paras 12-13.

⁷⁰ SC Res. 699, UN Doc. S/RES/699 (17 June 1991).

⁷¹ SC Res. 707, UN Doc. S/RES/707 (15 August 1991).

support' to the IAEA Director General and to make 'use of commonly available services and information to the fullest extent possible, in order to achieve maximum efficiency and optimum use of resources.'⁷² While practical enforcement of the NPT regime is problematic in any event, it seems particularly so with states that are intent on defeating nuclear safeguards. Iraq's transgressions proved that 'an NPT State Party, apparently in good standing, could pursue a weapons program undetected'.⁷³ Iraq had succeeded in circumventing traditional IAEA modes of inspection prior to 1991 by simply creating a parallel set of facilities, engaging in secret transactions to procure needed enriched uranium and technology, and never declaring sites to be inspected.⁷⁴ And while the essential features of NPT regime enforcement have been improved by the IAEA, and a rather new approach to verification has been undertaken in the 1993 Chemical Weapons Convention (CWC),⁷⁵ substantial loopholes remain that could make it possible for future pariah states to develop and deploy weapons of mass destruction.⁷⁶

It is easy to condemn the ineptitude of some aspects of sanctions enforcement for Iraqi demilitarization. But the fault may not lie in the particular intransigence of Saddam Hussein's regime, nor in the lack of organization for the sanctions enforcement. The trouble may well arise from the nature of the exercise of disarming a once-dangerous state, especially once new threats have appeared on the international horizon. Iraqi militarism has been perceived in a cyclical fashion to be less challenging to Middle East peace and security than Islamic revolutionism from Iran, or Syria's threat to Israel, or Libya's and Sudan's penchant for state-sponsored terrorism. In the same fashion, German aggression in World War One was (relatively) quickly displaced by the threat of Soviet Bolshevism and then global economic depression. The interesting part of the dynamic is that there are always countries which remain from the original conflict that are inclined to frustrate the return of the malefactor to international society. France was implacably hostile to Germany's attempts to relax the demilitarization provisions of the Versailles Treaty and to gain admission to the League of Nations on a footing of equality.⁷⁷ Belgium — the neutrality of which was violated by Germany in 1914 — became fanatically committed to German disarmament, despite the more moderate positions of Britain and the United States. It is perhaps no surprise that Kuwait, Israel and Saudi Arabia (the neighbours most immediately affected by potential Iraqi aggression) and the United States (the leader of the 1990–1991 Coalition) are the most forceful advocates for the full implementation of Resolution 687.

⁷² SC Res. 715, UN Doc. S/RES/715, at paras 4(b) and (c) (11 October 1991).

⁷³ Gualtieri *et al.*, 'Advancing the Law of Weapons Control — Comparative Approaches to Strengthen Nuclear Non-Proliferation', 16 *Mich. J. Int'l L.* (1995) 1029, at 1031.

⁷⁴ See Ekeus, 'The Iraqi Experience and the Future of Nuclear Nonproliferation', *Wash. Q.* (Autumn 1992), 67; Scheinman, 'Lessons from Post-War Iraq for the International Full-Scope Safeguards Regime', *Arms Control Today* (Apr. 1993) 3.

⁷⁵ Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and their Destruction, 13 Jan. 1993, 32 *ILM* (1993) 800.

⁷⁶ See Gualtieri, *supra* note 73, at 1052–1101.

⁷⁷ See Ostrower, *supra* note 8, at 67–70.

Other institutional parallels in arms control sanctions enforcement with Iraq and Germany have not been overlooked.⁷⁸ As with Iraqi disarmament, German demilitarization was supervised in two, distinct international fora. The first was the institutional arrangements of the Versailles Treaty, particularly the Inter-Allied Commissions of Control, which operated from 1920 to 1926.⁷⁹ The Control Commissions were charged with the inspection, accounting, disposition and destruction of German war materiel above the levels specified in Versailles. In addition, pursuant to Article 170 of the Versailles Treaty, the Parties undertook to prohibit 'importation into Germany of arms, munitions and war materials of every kind'.⁸⁰ Germany enacted domestic legislation in compliance with that prohibition.⁸¹ Other countries followed suit. Even the United States, which was not a party to Versailles and not technically committed to respecting Article 170, did so until the terms of that provision were denounced in 1935.⁸²

The second institutional arrangement for German demilitarization was through the League of Nations. The League was charged, under Article 213 of Versailles, with a continuing oversight for German disarmament.⁸³ The League Council adopted in September 1924 a scheme which sanctioned the operation of inspection teams to visit military facilities in Germany and other former Central Powers.⁸⁴ The inspections were to be carried out by the Permanent Advisory Committee for Military, Naval and Air Questions — the League's counterpart to the Security Council's MSC.⁸⁵ The inspectors were granted full diplomatic privileges and immunities, although the German government declined to 'afford facilities' to the inspectors, required under Article 213.⁸⁶ Intriguingly, Article 213 was never invoked against Germany, although it was once triggered in relation to a shipment of machine-gun parts that was nearly smuggled into Hungary (a defeated member of the Central Powers in 1918) from Italy. The League Council, at the request of Czechoslovakia, Romania and Yugoslavia, halted the shipment and criticized Hungary's failure to abstain from the arms trade.⁸⁷ Aside from some desultory efforts at general disarmament in Europe, including a Conference for Reduction and Limitation of Armaments (which ran from 2 February 1932 to 14 October 1933), nothing more was accomplished with the Article 213 mechanism under the Versailles Treaty.

It would appear that a common feature of efforts to demilitarize dangerous states is

⁷⁸ See Conlon, 'Lessons from Iraq', *supra* note 52, at 633 and note 3, 667; Joyner, *supra* note 56, at 4–5.

⁷⁹ See Versailles Treaty Annotations, *supra* note 8, at 327–328.

⁸⁰ Versailles Treaty, *supra* note 6, Art. 170.

⁸¹ Law of 22 Dec. 1920, [1920] 2 *Reichsgesetzblatt* (published 13 Jan. 1921), at 2167.

⁸² See Borchard, 'The Export of Arms to Germany and the Treaty of Berlin', 32 *AJIL* (1938) 547; Pavenstedt, 'German Rearmament and United States Treaty Rights', 44 *Yale L.J.* (1935) 996.

⁸³ See Versailles Treaty Annotations, *supra* note 8, at 362–365.

⁸⁴ See 1924 L.N.O.J. 1592, 1658 (27 Sept. 1924).

⁸⁵ Compare League Covenant, *supra* note 6, Art. 9, with UN Charter, Art. 47.

⁸⁶ See 1925 L.N.O.J. 610, 863 (14 March and 10 June 1925). See Versailles Treaty Annotations, *supra* note 8, at 363.

⁸⁷ See League Council Resolution, 1928 L.N.O.J. 918 (7 June 1928).

both a lack of political will and institutional competence. The ability to maintain a structure of coercion for arms control sanctions degrades quickly over time, even where the vanquished state is relatively docile. There is a natural phenomenon of ‘sanctions fatigue’ in international relations. Countries quickly tire of the caustic rhetoric of isolation and containment directed against states that just do not seem as threatening as they once did. Additionally, the threat of sanctions can often act as a deterrent to government behaviour, even when the reality of sanctions does not. Nations faced with arms sanctions have traditionally been able to respond and effectively circumvent them over time. Israeli armament and munitions industries were able to completely obviate the effects of the Arab primary and secondary boycotts in the 1960s and 1970s, as was South Africa during the period of apartheid-related sanctions in the 1970s and 1980s.

As for the legal character of institutional responses, the primary blame can be laid with the weakness of sanctions institutions. The ad hoc approach pursued by Sanctions Committees under the UN Security Council have virtually replicated the failures of the League of Nations when it acted under Article 16 of the Covenant.⁸⁸ More particularly, the Security Council has had difficulty in deciding whether arms control and demilitarization actions are to be treated like run-of-the-mill economic sanctions, and thus placed in the competence of the Sanctions Committee, or, whether they should be subject to a more stringent type of enforcement under an institution (like UNSCOM and UNMOVIC) devoted to disarmament of the target state. The Security Council’s Resolution 1051 of March 1996 represented a sharp break in this respect, but it is by no means clear whether it came too late in the process of effectively disarming Iraq. Finally, the unwillingness of the international community to impose a true system of licencing and control of arms imports to Iraq, rather than merely relying on informal coordination and information exchange, reflected the gravest institutional weakness of the regime. Perhaps such an effective system of control — which was achieved by the NATO Alliance in the COCOM system of export controls of technology to the former Soviet bloc — may simply be beyond the capabilities of a global international organization.

3 Uses of Force to Achieve Demilitarization Compliance

The drama of Iraqi demilitarization has thus been played out against two international backdrops: coordination of arms control sanctions by the United Nations and the direct efforts of such Great Powers as the United States and United Kingdom. This has certainly been true with the technical aspects of enforcing arms import restrictions and also the decommissioning of Iraqi weapons of mass destruction. But while the transgressions of states that have aided and abetted the rearmament of Iraq have often gone unpunished, most international attention has been focused on the uses of force which have been directed against Iraq itself.

⁸⁸ See Versailles Treaty, League Covenant, *supra* note 6, Art. 16, para. 1. See also Ostrower, *supra* note 8, at 55–56; Sir Arthur Salter, *Memoirs of a Public Servant* (1961).

It is important to note in this regard the link between Iraqi defiance of the demilitarization regime of Resolution 687 and subsequent Great Power responses. Iraq's first material breach of the Resolution was its failure, in 1991, to promptly provide complete declarations of its inventories of weapons of mass destruction and related technologies. On 9 July 1992, the President of the Security Council indicated that Iraq was in default of its obligations when it refused access to UNSCOM inspectors of one site.⁸⁹ The same warning was substantially repeated on 11 January and 18 June 1993 when Iraq refused to have certain monitoring devices installed at a site.⁹⁰ These were preludes to Iraq's open defiance of the Resolution 687 regime when, in October 1997, it excluded US nationals from UNSCOM and threatened to interfere with UN inspection flights over the country. In February 1998, Iraq refused UNSCOM access to a number of sites not only by declaring them off-limits as 'presidential palaces' but also by refusing to guarantee the safety and security of UNSCOM staff throughout the entire country.⁹¹ In March 1998, the Security Council warned that failure by Iraq to provide 'immediate, unconditional and unrestricted access' would 'have the severest consequences'.⁹² After a brief interlude in which Iraq complied with the Council, by the late summer of 1998, Iraq had terminated all relations with UNSCOM, effectively ending that mission.

This progression of events was similar in form to German defiance of the disarmament provisions of the Versailles Treaty. As may be recalled from the discussion above, the guarantee for German compliance with the demilitarization regime was the phased occupation of German territory on the Rhineland frontier between France and Belgium.⁹³ This area was administered by an Inter-Allied Rhineland High Commission.⁹⁴ While Allied troops withdrew from most of this area in 1926 (under the Locarno Treaty) and by 1929 (under the terms of a negotiated settlement⁹⁵), the region was to remain demilitarized under Article 180 of the Versailles Treaty.

After a period of giving mixed cooperation to the Inter-Allied Control Commissions established after the War to monitor German land, naval and air disarmament, Germany managed to persuade the League of Nations that it no longer warranted the intrusive sort of monitoring demanded by the Versailles Treaty. This political turn was impelled by the debacle of the French occupation of the Ruhr Basin in January 1923, after Germany failed to make timely reparations payments under the Versailles Treaty. The Ruhr area was rich in coal deposits and France felt that it was entitled to take them in lieu of reparations. What followed was an eight-month campaign of passive German resistance in which Ruhr factories and mines were shut down,

⁸⁹ See Statement of the President of the Security Council, S/24240 (1991).

⁹⁰ See Statement of the President of the Security Council, S/25081 (1993) and S/25091 (1993).

⁹¹ See Lysobey, *supra* note 63, at 110–19.

⁹² See SC Res. 1154, para. 3 (2 March 1998).

⁹³ See Versailles Treaty, *supra* note 6, Arts 429–432.

⁹⁴ See Agreement with Regard to the Military Occupation of the Territories of the Rhine, 28 June 1919, reprinted in Versailles Annotations, *supra* note 8, at 762–791.

⁹⁵ See Exchange of Notes, 30 Aug. 1929, 104 L.N.T.S. 473.

threatening to plunge the German economy into chaos. France was ultimately forced to withdraw, but the incident laid the foundation for Germany's entry into the League and the softening of demilitarization sanctions.⁹⁶ The 1926 Locarno Treaties were supposed to seal Germany's demilitarization by ensuring French and Belgian security.

The reality was that the Weimar government in Germany had been systematically defeating the disarmament provisions of Versailles almost from day one. This was even before the 16 March 1935 decree of Chancellor Adolf Hitler, in which Germany fully and formally renounced the demilitarization provisions of the Versailles Treaty.⁹⁷ French and Italian objections followed, as did a unanimous resolution of the League Council declaring that 'Germany has failed in the duty which lies upon all the members of the international community to respect undertakings which they have contracted'.⁹⁸ No action against Germany was taken either multilaterally by the League or individually by aggrieved nations. Many countries implicitly accepted Germany's argument that because the *quid pro quo* of German demilitarization in 1919 — a general global move to disarmament — had manifestly failed to materialize, Germany was entitled to rearm, particularly in view of its collective security obligations as a member of the League.⁹⁹

The obvious difference in the course of the demilitarization regimes for Germany and Iraq was that the victorious allies after World War One never felt themselves compelled to use force in the face of Berlin's intransigence. Except for the disastrous French occupation of the Ruhr in 1923 — which arose because of German tardiness with reparations, not disarmament violations — no direct military action was ever taken against Germany for its military activities, at least prior to the invasion of Poland on 1 September 1939. In contrast, Iraq has been bombed by Coalition forces (chiefly the United States and United Kingdom) on a number of occasions after the conclusion of hostilities in April 1991, and the conclusion of Resolution 687. Putting aside the almost countless number of strikes against Iraqi anti-aircraft radars and installations, in pursuance of the enforcement of the no-fly zones established under Resolution 688, force was used in January 1993 and December 1998 precisely in response to Iraqi violations of Resolution 687's demilitarization provisions.

The important point to raise here is whether uses of force can be contemplated as an adjunct to sanctions and inspection institutions as an instrument for the enforcement of demilitarization regimes. The answer is clearly 'yes'; the precedent of the Versailles Treaty should clearly suffice for such a showing. The really vital concern is how threats to use force in pursuit of demilitarization objectives should be institutionalized and made consistent with international law.

The 'Versailles model' of demilitarization enforcement was straightforward: the peace treaty which Germany subscribed to contained its own explicit sanctions

⁹⁶ See Ostrower, *supra* note 8, at 43–45.

⁹⁷ See Garner and Valentine Jobst III, 'The Unilateral Denunciation of Treaties by One Party Because of Alleged Non-Performance by Another Party or Parties', 29 *AJIL* (1935) 569, at 569.

⁹⁸ Council Resolution, 18 Apr. 1935, 1935 L.N.O.J. 551.

⁹⁹ See Garner and Jobst, *supra* note 97, at 574–580. See also Borchard, *supra* note 82, at 548; Wright, 'The Rhineland Occupation and the Enforcement of Treaties', 30 *AJIL* (1936) 486.

system in the event of German non-compliance. Whether expressed as continued reparations payments, or occupation of German territory, or the maintenance of demilitarized zones, or restrictions on German war capabilities, the ultimate threat was the resumption of hostilities and the application of force against Germany. The Versailles Treaty also linked, almost as a fail-safe mechanism, to the nascent collective security regime of the League of Nations and even contemplated a lower trip-wire mechanism that could be used against Germany, even if Germany later became a member of the League. The Versailles model thus proceeded on two tracks — with the unilateral thrust of Great Power *revanchism* prevailing over multilateral collective security, at least until 1926 and Locarno. That both tracks to contain German remilitarization failed — and produced the spectacular train-wreck of European politics from 1933 — was not the fault of the institutions, so much as the lack of political will of Britain, France and Italy (not to speak of that of the United States and Soviet Union) to contain renewed German aggression.

The irony of the 'Resolution 687 model' is that for all of the advances made in international organization since 1919, the institutional competences of the organs created by the Security Council were woefully inadequate in the face of Iraqi subversion. Neither the Sanctions Committee nor UNSCOM could manage its tasks with any great support from the Council, much less the wider UN membership. And we will probably never be able to determine whether UNMOVIC, created by the Council under Resolution 1284, will be more effective than UNSCOM. The reason is that, by 1999, 'sanctions fatigue' had so afflicted the former Coalition members, and the arms control regime against Iraq had degraded so severely, that it may be impossible at this point to effectively disarm and demilitarize Iraq without a renewed round of intensive air-strikes and, perhaps, outright invasion of the Iraqi homeland.

The ultimate conclusion to be reached in this historic assessment of demilitarization regimes is that they rarely work. The 'pariah' state of today may become the unwarranted victim or useful ally of tomorrow. Political will to isolate a formerly atavistic country quickly fades. Without the effective occupation of the vanquished state (as with Germany after World War Two) or its complete destruction (such as Carthage after the Third Punic War), defeated states will always seek to regain the lost ground of sovereignty and unshackle themselves from imposed fetters. And while demilitarization regimes since 1919 have been rhetorically sugar-coated with the promise of universal disarmament, the obvious absurdity of such empty contingencies tends to subvert the legitimacy of demilitarization regimes far quicker than muscular enforcement.

Demilitarization regimes also raise conflicts with the very structure of international law rules. Despite the well-documented phenomenon of international legal norms acting as a solvent to state sovereignty, there remains a protected core of state prerogative that international rules and institutions have yet to effectively penetrate. Surely one aspect of this privileged domain of sovereignty is the military capacities of states, so long as those are employed in a manner consistent with the United Nations Charter. What occurred for both Germany in 1919 and Iraq in 1991 was that demilitarization regimes were imposed against states that were legitimately and

properly found to have engaged in acts of international aggression and thus in default of international law norms that would have otherwise privileged their military activities from international scrutiny and control. Indeed, the most coherent intellectual justification for the demilitarization regimes imposed in the Versailles Treaty and Resolution 687, and the consequent pariah state status conveyed by those instruments, was that Germany and Iraq were in a form of international receivership. Both countries had, after all, acquiesced in the imposition of the regimes as a *quid pro quo* for the termination of hostilities and the maintenance of at least a semblance of sovereignty.

There is thus a strong moralistic and legalistic component to the demilitarization regimes conveyed with 'pariah' state status. These strongly resonate with US foreign policy perspectives that have tended to emphasize international agency and moral opprobrium in the conduct of state relations. State actors are moral beings, responsible for their decisions. Imperial Germany and Hussein's Iraq made calculated decisions to commit aggression, and part of the punishment was to suspend certain aspects of sovereignty (particularly in the military and security sphere) in the pursuit of international peace. That demilitarization regimes have largely failed in their containment objectives remains one of the great ironies of twentieth-century international history. But it is a cautionary tale less of the failings of international law and organization, than it is of the problematic political conduct of such strategies.