

**Expanding the Mandate of the UN
Security Council to Account for
Environmental Issues**

Lorraine Elliott

Preface

This paper is part of series of working papers that represents one of the first outputs from a two-year United Nations University Institute of Advanced Studies project on International Environmental Governance Reform, being conducted in collaboration with Kitakyushu University, Japan, and with support from The Japan Foundation Center for Global Partnership.

The project was initiated in response to increasing calls, from both within the UN and from external sources, for a more detailed analysis of the current weaknesses and gaps within the existing system of international environmental governance (IEG) and a more elaborate examination of the various proposals that have been put forward for reform. In responding to these calls, the project has drawn upon the expertise of several renowned academics and practitioners in the fields of international environmental law, science, economics, political science, the humanities, and environmental politics.

The first section of the project focuses on the identification of weaknesses and gaps within the current system of international environmental governance. The individual research papers commissioned within this section have concentrated on six key aspects of international environmental governance: the inter-linkages within the environmental governance system; the science/politics interface; industry/government partnerships for sustainable development; the participation of NGOs and other civil society representatives; the interaction between national, regional, and international negotiation processes; and the role of international institutions in shaping legal and policy regimes.

The second section of the project elaborates upon specific reform proposals that have been generated throughout recent debates and evaluates the potential of each proposal to strengthen the existing IEG system. The papers commissioned within this section of the study have focused on exploring the potential advantages and disadvantages of specific reform models and explained, in detail, how each model may be structured and how it would function. The models of reform that have been explored include: clustering of MEAs; strengthening UNEP; expanding the role of the Global Ministerial Environment Forum (GMEF); reforming existing UN bodies; strengthening financing sources and mechanisms; building up the environmental competence of the World Trade Organization (WTO); different possible models for a World Environment Organization; reforming the UN Trusteeship Council; expanding the mandate of the UN Security Council; and establishing a World Environment Court.

The final section of the project combines insights gained through the first two sections in order to provide an in depth evaluation of current reform proposals, elaborate on how they may resolve current gaps and weaknesses, and offers alternative recommendations for reform.

For more information relating to the International Environmental Governance Reform Project and for details of related publications, please visit the United Nations University Institute of Advanced Studies website at <http://www.ias.unu.edu> or contact Shona E.H. Dodds dodds@ias.unu.edu or W. Bradnee Chambers chambers@ias.unu.edu or visit The Japan Foundation Center for Global Partnership website at <http://www.cgp.org/cgplink/> or contact Norichika Kanie kanie@kitakyu-u.ac.jp

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Abstract

This paper examines the kinds of environmental challenges that might warrant Security Council attention and assesses how those concerns fit within the Council's mandate for maintaining international peace and security. The Security Council's mandate is *already* being reinterpreted to accommodate non-traditional threats to peace and security such as complex humanitarian emergencies and gross abuse of human rights. Further attention is required to determine which environment-related circumstances might invoke or require a response, particularly a military one, under Security Council auspices and on what basis the Council would have a mandate for such action. Such action would involve an interpretive extension of the Security Council mandate relying in part on analogy with intervention on human rights grounds. It draws our attention to what is, in effect, a normative development of the *jus ad bellum* – the reasons for which states, and by extension the international community of states, might legitimately deploy force.

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Introduction

The mandate of the United Nations Security Council, elaborated in chapters VI and VII of the UN Charter, is the maintenance of international peace and security. It is further based on the norms of international law including (but not confined to) the laws of war and international humanitarian law. The Security Council's mandate to act also derives from the normative and operational precedent established by actual Council practice on behalf of the international community of states. Questions about whether this mandate – legal, normative and functional – can or should be expanded to take account of environmental issues have arisen against the backdrop of debates about how security and threats to international peace is to be defined in a post-Cold War world. A further impetus comes from demands for UN reform in the face of accusations that it is undemocratic and administratively and normatively ill-equipped to deal with contemporary challenges.

The expansion of the Security Council mandate could arise through formal amendment to the UN Charter. While Parkin argues that 'environmental problems offer an impeccable motive for refreshing the United Nations Charter' (1999, p.45) Charter amendment is an unusual event, difficult to achieve and one which is highly politicised. Expansion of the Security Council mandate is much more likely through an interpretive process which constitutes what Justice Roslyn Higgins has called 'lawful, imaginative adaptations to contemporary needs' (cited in Fassbender, 2000, p.219). This paper examines the kinds of environmental challenges that might warrant Security Council attention and assesses how those concerns fit within the Council's mandate for maintaining international peace and security. In his Millennium Report, Secretary General Kofi Annan identified a number of strategies crucial to the pursuit of peace and security in the 21st century (UNSG 2000, pp.44-53). These included preventing deadly conflict, strengthening the centrality of international humanitarian law, targeting sanctions and strengthening peace operations. Together these outline a useful and manageable framework for the expansion of the Security Council's mandate to address the environmental causes and consequences of conflict and to contribute to international environmental governance.

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United Nations Security Council

Article 24 of the UN Charter establishes the Security Council's principal mandate for the maintenance of international peace and security on behalf of the UN members. Article 39 provides the Security Council's mandate to determine what constitutes a threat to the peace, a breach of the peace or an act of aggression. Chapters VI (on the peaceful settlement of disputes) and VII (on action with respects to threats to the peace, breaches of the peace and acts of aggression) provide the Council with its operational guidelines. Together these chapters provide the Security Council with a suite of options for action in the face of events which might endanger the maintenance of international peace and security. This ranges from investigation of a dispute, enjoining parties to settle their dispute peacefully, recommending the terms of a settlement, establishing compliance measures, imposing sanctions, and taking such action based on the use of force as may be necessary. In exercising its mandate, the Security Council is required to respect the fundamental international legal principle of non-interference in the internal affairs of member states. In practice, this has come to require the consent of sovereign governments before forces under UN mandate can be deployed 'on the ground'.

Despite the apparently broad power of article 39, for much of the life of the United Nations the international legal norm has been that threats to peace and security were to be closely defined as military aggression, armed conflict or violence between two or more states. Under the UN Charter and the laws of war, the legitimate grounds for the use of force and for UN intervention were self-defence and collective security. Since the end of the Cold War and the relaxing of the veto, the Security Council has overseen Chapter VII interventions in what would in earlier times have been determined as the internal affairs of sovereign states and therefore out of bounds. It has done so on grounds other than those of armed conflict between states or an attack against a member state and, in some cases, has acted to protect citizens and others *against* the state, sometimes without the consent of the state in question.¹ The UN Secretary General and the Security Council have also come to place greater rhetorical emphasis at least on a culture of prevention – including early warning, preventive diplomacy, preventive deployment as well as post-conflict peace-building – as the best means for achieving and maintaining international peace and security (see UNSC, 2000c, p.1). It is within this context that this paper examines how the Security Council mandate can or could be expanded to accommodate environmental threats.

Environmental 'Threats'

The relationship between environmental degradation and the maintenance of international peace and security is captured in the phrase 'environmental security'. The term has been part of the international policy lexicon since the late 1980s. It was first used in the UN context, expressed 'ecological security', by what were still the Soviet

¹ The UN mission in Somalia, established in 1992, was the first time that the Security Council had authorised an intervention on humanitarian grounds without sovereign consent (see Wheeler, 2000, p.172).

bloc countries (see Timoshenko, 1992, p.423).² While the purpose here is not to revisit the debates about the intellectual and policy usefulness of the term, a very brief *tour* of the major themes is warranted. The dominant area for investigation is the extent to which environmental degradation or resource scarcity – non-military threats – will generate or intensify conflict, violence and instability between and within states. While such research draws for its initial legitimacy on historical example, investigators have come to focus on the ‘new’ strategic and potentially scarce resources such as freshwater, arable land and environmental services including clean air and ecosystem viability. The causal relationship is a matter of some dispute, but includes actual or potential environmental scarcity, including the loss of natural resources and environmental services; ‘differences in environmental endowment’ (WCED, 1987, p.292); the disruption of social and political relations; population pressures and the involuntary movement of peoples (environmental refugees).³ The environmental security literature also draws attention to damage the environment in times of armed conflict through the deliberate targeting of environmental facilities, or as an unintended consequence or collateral damage.

There are worries within the traditional security community and the more critical environmental community that the linking of ‘environment’ with ‘security’ will either make the term security ‘so elastic as to detract seriously from its utility as an analytical tool’ (Ayoob, 1991, p.259) or lock environmental challenges into the ‘emotive power of nationalism’ (Deudney, 1990, p.461). Despite these concerns, there is now good evidence that environmental degradation has been accepted as a potential if not actual threat to peace and security. The 1987 report of the World Commission on Environment and Development (the Brundtland Report) argued that ‘the whole notion of security as traditionally understood...must be expanded to include the growing impacts of environmental stress’ (WCED 1987, p.19). Principle 24 of the 1992 Rio Declaration, adopted at the United Nations Conference on Environment and Development, declares warfare to be inherently destructive of the environment. Principle 25 observes that ‘peace, development and environmental protection and interdependent and indivisible and principle 26, echoing the injunctions of the UN Charter, requires that states should solve their environmental disputes peacefully.

As early as 1991, the US National Security Strategy acknowledged that ‘the stress from ...environmental challenges is...contributing to political conflict’ (cited in Butts 1994, p.86) and more recent NSS reports have reconfirmed this concern (see Foster, 2001, pp.384-5).⁴ In a 1994 speech, then Secretary of State Warren Christopher identified environmental security in company with terrorism and nuclear-proliferation as key issues of strategic importance to US and international security (see Timura 2001, p.104).

² The idea that environmental concerns should be figured into national security calculations, particularly those of the United States, has an earlier provenance; see, for example, Brown (1977) and Ullman (1983).

³ For more on these issues and debates surrounding them, see (inter alia) Dabelko and Dabelko (1996); Myers (1996); Homer-Dixon (1999); Elliott (1998; 2000).

⁴ Foster also reports that the US Central Intelligence Agency now has an environmental centre whose responsibilities include ‘monitoring and assessing the role played by the environment in country and regional instability and conflict’ (2001, p.387).

NATO's Strategic Concept observes that 'security and stability have...environmental elements as well as the indispensable defence dimensions' (NATO, 1996).⁵

The relationship between environmental degradation and security has also featured in UN documents. The UN Secretary General's *Agenda for Peace* identified ecological damage a new risk for stability (UNSG 1992, p.5). The Millennium Report identified a 'real risk that resource depletion, especially freshwater scarcities, as well as severe forms of environmental degradation, may increase social and political tensions in unpredictable but potentially dangerous ways' (UNSG 2000, p.44). The 1992 Communique of the Security Council Summit of Heads of State/Government declared that 'non-military sources of instability in the economic, social, humanitarian and ecological fields have become threats to the peace and security' (UN Security Council, 1992). This suggests that the Council anticipated some authority over environment-related threats to peace and security.

The Security Council's Environmental Mandate: A Repertoire of Options

The Security Council's mandate is *already* being reinterpreted to accommodate non-traditional threats to peace and security such as complex humanitarian emergencies and gross abuse of human rights. Further attention is required to determine which environment-related circumstances might invoke or require a response, particularly a military one, under Security Council auspices and on what basis the Council would have a mandate for such action. Such action would involve an interpretive extension of the Security Council mandate relying in part on analogy with intervention on human rights grounds. It draws our attention to what is, in effect, a normative development of the *jus ad bellum* – the reasons for which states, and by extension the international community of states, might legitimately deploy force.

An Environmental Mandate in Times of Armed Conflict

Security Council resolutions have clearly come to articulate a more expansive view of what constitutes a threat to international peace and security, including the consequences of the repression of civilian populations (Resolution 688) and humanitarian emergencies and the violation of international humanitarian law (Resolution 794). This re-interpretation now also accommodates environment and resource-related concerns. The Secretary General's 1998 report on conflict and peace in Africa identifies 'competition for scarce land and water resources' as a factor in conflict in Central Africa (UNSG 1998, para 15). Extensive starvation in both Somalia and Liberia – which have broadly environmental and resource causes – have been implicated in the conflict in those countries. The Commission on Global Governance identified environmental deterioration along with population pressures as factors in the 'social breakdown and internal conflict in Somalia, Rwanda and Haiti' (1995, p.95).

⁵ NATO's Committee on the Challenges of Modern Society (CCMS), which was established in 1969 to give the Alliance a 'social dimension', focuses primarily on environmental protection and quality of life, including defence-related environmental problems (see <http://www.nato.int/ccms/info.htm>).

There is also a view that environmental scarcity was implicated in the intra-state conflict and genocide in Rwanda in 1994 (see Ruff et al, 1997, p.89).

In the case of already-existing inter-state armed conflict which arises partially or predominantly because of environmental or resource depletion, it is within the Security Council's mandate under article 39 to determine that the conflict itself constitutes the threat to peace and security and act accordingly. A more contentious issue is whether the Security Council has or should have a mandate to act when environmental degradation or resource depletion is determined to be a key cause of or antecedent to violence *within* a state and, if it does, what kind of action would be most appropriate. The precedent for expanding a mandate for such intervention would almost certainly need to rely on analogy with humanitarian intervention. The Security Council could determine, under article 39, that environmental degradation or resource depletion and the violence or armed conflict that resulted constituted a gross abuse of human rights. However this would require more certainty in international law than presently exists about whether there is a recognised human right to a clean and safe environment. At present, such claims are articulated almost entirely in soft-law declarations or in formal agreements and treaties other than human rights law (see Foster, 2001, p.45).

The developing norm of human security, again by analogy with humanitarian intervention, offers scope for invoking Security Council action or expanding its mandate with respect to environmental degradation. The United Nations Development Program (1994) has clearly articulated a view that environmental degradation is a non-military threat to human well-being. Threats to international peace and security which allow for a Security Council determination under article 39 could, therefore, encompass those activities which undermine human security. The Security Council has become more open to working with non-governmental organisations, through the Global Policy Forum, to examine ways in which human security can be made more relevant to its mandate. Nevertheless, the phrase itself does not appear in Security Council resolutions and there are strongly differing views about whether its mandate to act can accommodate such a 'liberal' interpretation of security.

A much stronger basis for confirming that the Security Council has a mandate under Chapter VII to act to protect the environment or to protect states and/or individuals from environmental degradation in times of armed conflict is provided by international humanitarian law (IHL) and the laws of war. The International Committee of the Red Cross (ICRC) has confirmed environmental protection in times of armed conflict as a fundamental tenet of the laws of war and international humanitarian law.

The 1977 *Convention on the Prohibition of Military or Other Hostile Use of Environmental Modification Techniques* (ENMOD) is the main piece of international law that specifically covers protection of the environment during times of armed conflict. However Article 1 places restrictions only on those military or hostile uses of environmental modification practices which have 'widespread, long-lasting or severe effects' as a means of destroying, damaging or injuring any other state which is party to

the convention.⁶ Optional Protocol I to the 1949 Geneva Convention adopts similar language, requiring combatants to limit environmental destruction, language often described as 'vague and permissive' (Drucker, 1989, p.145). Article 35 of the Protocol prohibits methods of warfare that are 'intended or may be expected to cause widespread, long-term and severe damage to the natural environment'. Article 55 reinforces this injunction and further links such damage to 'the health or survival of the population'. Such practices are not, however, listed as grave breaches of the Protocol or the Geneva Conventions (and, thereby, a war crime) under article 85. This has been rectified in the Rome Statute establishing the International Criminal Court. Article 8(2)(b)(iv) includes in its definition of war crimes 'intentionally launching an attack in the knowledge that such attack will cause...widespread, long-term and severe damage to the natural environment which would clearly be excessive...to the overall military advantage anticipated'. The tests of what constitutes 'widespread', 'long-term', 'severe' and 'excessive' are interpretive but together these agreements confirm that 'destruction of the environment not justified by military necessity violates international humanitarian law' (ICRC, 2000, p.80). General Assembly Resolution 47/37 (1992) on the destruction of the environment in times of armed conflict employs similar terminology (UNGA 1992). Other legal statements give further strength to the view that the international community condemns damage to the environment in times of armed conflict. The draft articles on state responsibility prepared by the International Law Commission, for example, included mass pollution of the biosphere in its category of international crimes (see Timoshenko, 1992, p.437). Principle 26 of the Stockholm Declaration avows that the environment must be protected from all means of mass destruction. The 1982 World Charter for Nature (UN General Assembly, 1982) states that 'nature shall be secured against degradation caused by warfare and other hostile activities' (in article 5) and that 'military activities damaging to nature shall be avoided' (in article 20).

The ICRC argues that 'under certain circumstances, such [environmental] destruction is punishable as a grave breach of international humanitarian law' and that 'in the event of breaches of rules of international humanitarian law protecting the environment, measures shall be taken to stop any such violation and to prevent further breaches' (ICRC, 2000, pp. 81; 82). Although the ICRC does not specify by whom such measures should be taken, the Security Council has already claimed, by other actions, competence to prevent, halt or punish breaches of international humanitarian law. The Council has also stated quite clearly that 'the perpetrators of...serious violations of international humanitarian law should be brought to justice' (UNSC 2000a, p.3). ENMOD specifically invokes the Security Council in cases of default of the Convention's provisions. Under Article 5, states can bring a complaint to the Security Council which is then entitled to undertake an investigation in response to such complaints. Parties to the Convention are required to provide support or assistance to any other party which

⁶ A number of understandings adopted as part of the negotiating record, set out definitions of each of these criteria. Widespread is interpreted as encompassing an area of several hundred square kilometres. Long-lasting means for a 'period of months' and 'severe' indicates 'serious or significant disruption or harm to human life, natural and economic resources or other assets'. Cf Protocol I which identifies long-term as 'measured in decades' (check in Stills et al. 1.1).

requests, if the Security Council decides that harm has or is likely to be caused although the nature of that support or assistance is not specified.

The Security Council has acted specifically on concern for the environmental consequences of warfare, most notably in the case of the 1990 Gulf War and Iraq's firing of Kuwaiti oil wells and the deliberate spill of oil into the Persian Gulf. Security Council Resolution 687 confirmed, in clause 16, that Iraq was 'liable under international law for any direct loss, damage – including environmental damage and depletion of natural resources – or injury to foreign governments, nationals and corporations as a result of its unlawful invasion and occupation of Kuwait'. The Compensation Commission later established under resolution 692 awarded Kuwait compensation in the sum of US\$610 million. This has been defined as 'the first determination under international law of a state's liability for harm to the environment itself' in the context of armed conflict (Tinker 1992, p.789). It is the only example thus far of the Security Council acting to hold a state accountable for environmental destruction in times of armed conflict. It does, however, reinforce the view that 'environmental destruction outside the permissible bounds of the laws of warfare constitutes an act of aggression, breach of peace or threat to international peace and security' (Malone 1996, p.523) and that the Security Council has a mandate to act in such circumstances.

Environmental Threats to Peace and Security

It is less clear, however, whether the Security Council has or should have a mandate to act against more general environmental threats to peace and security or, in an even broader context, to act against environmental pariah states or enforce compliance with international environmental law.

The proposition that the Security Council has or should have a mandate to deploy force on environmental grounds has been explored at some length, usually by analogy with the expansion of the mandate on other grounds. Former British Admiral of the Fleet, Sir Julian Oswald, anticipated that Chapter VII powers might accommodate a traditional coercive role for militaries (individually or collectively) in the face of environmental insecurities. Oswald perceived this as an enlargement of 'that laudable sense of general responsibilities expressed by the current UN actions based on human rights violations' (1993, p.118). Crispin Tickell, a former UN diplomat, has also suggested that 'environmental problems in one country affecting the interests of another could easily come within the purview of the Security Council'. Such action, he suggests, is 'no less likely than a force to rid the world of weapons which could threaten [hu]mankind and compel respect for the rules of the international community' (1993, p.23). A report for the Environmental Change and Security Project at the Woodrow Wilson Centre identified the threat of force 'to compel compliance...on environmental agreements' as one of a number of ways in which military assets could be used to address environmental challenges (Ruff et al. 1997, p.83).

In the absence of actual armed conflict, the Security Council would need to determine under article 39 that environmental degradation or some action with environmental

consequences constituted a non-military threat to international peace and security. Under the Charter, the Security Council has the authority and responsibility to respond to complaints concerning a threat to the peace brought before it by a member State. Thus member states themselves can determine that environmental disputes between or among them are likely to constitute a threat to peace, in this case because they might lead or have led to armed conflict. The Secretary General is also able to bring to the Council's attention matters which, in his/her opinion, are a threat to international peace and security.

The grounds for a mandate for the Security Council to act in such cases have been assumed to rely on states' individual or collective right to self-defence, in this case against environmentally destructive activities which have a transboundary impact. Murphy (1999) argues that the right of self-defence enshrined in article 51 of the UN Charter can be taken to include defence against environmental threats under *jus ad bellum*. He suggests that 'there is little doubt' that the Security Council 'holds the legal authority to respond to serious environmental disasters with military force pursuant to its enforcement powers' (Murphy, 1999, p.1197). As noted earlier, there is considerable evidence that governments now view environmental degradation as crucial to their broader security interests. The International Court of Justice has also identified 'ecological balance' as central to the 'essential interests of all states' (cited in Murphy 1999, p.1192). But this is probably insufficient to establish a mandate for the Security Council to take action on the grounds of environmental collective self-defence in the absence of armed conflict.

Such a right *might* be strengthened if the Security Council were to issue a decision that environmental practices with severe consequences constitute a threat to international peace and security and are contrary to the purposes of the Charter as it has done on terrorism for example. Under article 25, member states agree to accept and carry out Council decisions (which are, in theory at least, made on behalf of the international community). Expansion of the Security Council mandate to take action in cases of environmental self-defence encounters the same 'dilemma of intervention' that Secretary General Annan has identified in humanitarian situations (UNSG, 2000, p.47-8). Yet 'sovereignty' and 'consent' are concepts and practices made fragile by the transnational and global environmental consequences of activities within states. Environmental degradation blurs the distinction between domestic and international jurisdictions. Further, the view that states, or more particularly political regimes or governments, lose their sovereign right to non-intervention and legitimate statehood in cases of gross human rights abuses could, in such circumstances, be extended to environmental degradation and the potentially non-derogable norm of planetary trust.

The problem here rests on whether international environmental law provides a normative or legal basis for such directives. This body of law articulates a number of principles which suggest that states are bound by a global environmental obligation. These principles include the precautionary principle and the requirement that states should not cause damage to the environment of other states or to areas beyond national jurisdiction. If these principles were determined to have achieved the status of customary international law or peremptory norms from which no derogation is permitted,

this might allow the Security Council to claim that the 'fundamental values of the international community' were being violated (Reilly 1996, p.767).

However, this is complicated further by the fact that environmental treaties generally do not forbid practices with transboundary environmental consequences. Rather they seek to regulate them and to manage their impact. Nor is there anything within this legislative framework which mandates the Security Council to determine whether there has been a breach of an international environmental agreement or whether such a breach constitutes a threat to the environment in a way analogous to its article 39 powers to determine a breach of the peace or a threat to international peace and security. There are also political dangers in expanding the Security Council mandate on what are as yet quite shaky legal and normative grounds. Tinker (1992) for example, is concerned that such action would likely reflect the interests of the permanent members of the Security Council, or could run the risk of authorising states to pursue unilateral and punitive military action on environmental grounds.⁷ In general, commentators have been cautious about a role for the Security Council where member states are in dispute over issues related to environmental degradation but where there is no obvious threat to peace. Such issues should be dealt with under the appropriate mechanisms established by relevant multilateral agreements or under the auspices of other agencies within the UN.⁸ The deployment of force and military strength is itself contentious as a modality for responding to environmental scarcity and insecurity, even in the context of a response to armed conflict. Military intervention could itself result in further environmental damage. Such deployment might be able to halt any further environmentally destructive behaviour on the part of aggressors (whether states or other actors) but it has limited or no utility as a strategy for environmental repair. It also runs the risk of focusing on symptoms rather than causes. Yet as the World Commission on Environment and Development observed, 'there are no military solutions to environmental insecurity' (1987, p.19).

Intervention of this kind, however, is not the only modality available to the Security Council. Indeed, military action and the use of force under Chapter VII is intended to be a *last* resort, in general accordance with the laws of war. The Security Council has a number of other options. The Council can investigate and mediate, appoint special representatives or request the Secretary General to do so. It can determine the principles upon which peaceful settlement should be reached. It can employ its 'good offices' in times of environmental dispute. Article 36(3) of the UN Charter allows the Security Council to encourage parties to a legal dispute, which would include those relating to treaties on the environment and resources, to seek arbitration from the International Court of Justice. Under article 41 the Council may recommend sanctions or the severance of diplomatic relations. Sanctions in particular have been identified as a 'particularly effective measure for environmental delinquencies' (Malone, 1996, p.532).⁹

⁷ Malone also draws attention to the dangers that 'ecological self-help or ecological self-defence' will cloak 'expanded assertions of state authority to engage in unilateral or collective measures' (1996, p.525).

⁸ In 1997, for example, US Ambassador John McDonald suggest that the UN establish an environmental mediation program which, as well as training environmental mediators, would also set up a panel of expert mediators to help resolve transboundary environmental disputes (see Sills et al. [n.d]).

⁹ Szasz makes a similar point, arguing that 'the use of collective economic pressures under article 41 might be more effective in respect of environmental offences' (1992, p.360, fn 61).

Nevertheless, as the imposition of economic sanctions against Iraq demonstrates, sanctions tend to affect the poorest and most vulnerable in the target state and could, in fact, exacerbate environmental degradation and its impact on human security rather than mitigating it.

Rapid Deployment in Environmental Emergencies

Malone suggests that the 'legitimation of Security Council authority in environmental management can and should begin with the relatively modest, but compelling proposal that environmental emergencies be absorbed into its sphere of activity' (1992, p.523). This echoes proposals such as those of the Swiss government for the establishment of a Green Cross to parallel the Red Cross, or OSCE suggestions of some form of 'Green helmets' as a counterpart to the UN's peacekeeping/making 'blue helmets'. There is a history, although not a very well known one, of the UN responding to concerns about environmental emergencies that might provide a basis for Security Council authority or action. In 1991 the United Nations Environment Programme established, a pilot UN Centre for Urgent Environmental Assistance (see Malone 1996). In general, however, the Security Council does not and probably should not have a role in environmental emergencies except to the extent that they can be determined to fit within its role in humanitarian intervention or as a result of conflict or extreme violence or when such emergencies are bound up in dispute. Environmental emergencies have become the responsibility of the Joint Environment Unit established and run by the United Nations Environment Program and the Office for the Coordination of Humanitarian Affairs, supported by the Advisory Group on Environmental Emergencies (AGEE). The unit provides an 'integrated United Nations emergency response capacity to activate and provide international assistance to countries facing environmental emergencies' (AGEE 2000, para 1). It is notable, however, that Security Council is not represented on the Advisory Group.

A Mandate for Preventive Environmental Security

In the last decade, the United Nations in general and the Security Council in particular have paid considerably more attention to the importance to peace and security of preventive action and preventive diplomacy which addresses the root causes of conflict. The Secretary General has confirmed that these deep-rooted causes of conflict include environmental ones and that conflict prevention is one of the primary obligations of member states (UNSG 2001, p.2). Both the Secretary General and the Security Council have accepted that conflict prevention and sustainable and equitable development (which includes environmental protection) are mutually reinforcing activities. The Secretary General has challenged the Security Council to consider how prevention can be made a more tangible dimension of its day-to-day work (see Agam 2000). Indeed, the Security Council has committed itself, in Resolution 1366, to 'pursue the objective of

prevention of armed conflict as an integral part of its primary responsibility for the maintenance of international peace and security' (UNSC 2001c, clause 1).¹⁰

The Secretary General has identified a number of strategies, especially under Chapter VI of the Charter, by which the Security Council might enhance its contribution to preventive diplomacy. These include the consideration of periodic reports from the Secretary General on issues likely to constitute potential threats (including natural resources) and the expansion of Security Council fact finding missions (see UNSG 2001, p.12). At present, a number of factors mitigate against the Security Council taking a more active role in preventive diplomacy. Any such role would require a strengthening of the Secretariat's early-warning capacity. Greater attention would have to be given to the provision of 'timely and in-depth briefings' from the Secretariat under article 99 of the Charter. In general, the Council's role is likely to be confined primarily to operational rather than structural prevention, focusing on 'measures applicable in the face of immediate crises' and those which are 'implemented as a preventive or peacebuilding response to problems that could lead to the outbreak or recurrence of violent conflict' (UN Secretary General 2001, p.7).¹¹

The Secretary General has also suggested that the Security Council's role in preventive diplomacy might require the development of new mechanisms which might include informal working groups or other forms of subsidiary organs. Article 29 allows the Security Council to establish such subsidiary organs as it deems necessary for the performance of its functions. Under this article, the Council has established both standing and ad hoc committees. Both Standing Committees focus on procedural matters and it seems unlikely that agreement would be reached to establish a Standing Committee with a focus on policy such as environment and development.¹² Two of the three existing Ad Hoc committees do have a policy focus but were established in conjunction with specific Security Council resolutions.¹³ The Security Council committee on terrorism, comprising only representatives of those UN members who are already permanently or temporarily on the Security Council, was established under paragraphs 6 and 7 of Resolution 1373 (UNSC, 2001d). It is required to monitor implementation of the resolution which includes a requirement that member states provide reports on their actions to give effect to Resolution 1373. Beyond that, however, it is charged with delineating its own tasks and work programme. In the policy sphere of environment and sustainable development, it is important that a Security Council committee, were it to be established, not duplicate competence elsewhere. For example, the Commission on Sustainable Development is charged with monitoring implementation (with emphasis on

¹⁰ In a statement early in 2001, the President of the Security Council expressed the Council's view that 'the quest for peace requires a comprehensive, concerted and determined approach that addresses the root causes of conflict' (UNSC 2001, p.1).

¹¹ Structural prevention, on the other hand, encompasses longer-term development and humanitarian measures which seek to prevent crises arising in the first place or to prevent them from recurring.

¹² The two Standing Committees are the Committee of Experts on Rules of Procedure and the Committee on Admission of New Members.

¹³ The two ad hoc committees with a policy focus are the Governing Council of the UN Compensation Commission established by Security Council resolution 692 (1991) and the Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism.

Agenda 21) and calling for reports. There is also the danger that any new committee would become just one more 'talk shop' (a charge levied at the Commission on Sustainable Development) or duplicate the power imbalances and political interests of the Council's members.

Post Conflict Peace-Building

As part of the reinvigorated focus on prevention, the Security Council has emphasised the importance of social reconstruction in post-conflict peace-building which includes 'fostering sustainable institutions and processes in areas such as sustainable development' (UNSC 2001a, p.2). As an example, the Secretary General has observed that 'access to land-based resources by the poor' can 'help to prevent conflicts that are based on or related to tensions over limited [or degraded] natural resources' (UNSG 2001, p.26). This is important also because the environmental as well as social consequences of armed conflict frequently act as a barrier to such social reconstruction and economic rehabilitation. For example, 80 percent of Angola's farmland was abandoned during the Civil War because of the extent of landmine infestation. During recent conflict in Burundi, food production which was already inadequate, dropped a further 17 percent (see UN Secretary General, 2001, p.6).

The importance of sustainable development as a key component of Security Council mandates for peace-building and social reconstruction in disrupted states is not in doubt. A few examples will suffice. In his letter to the Security Council of June 1999 on the Council's mandate in Guinea-Bissau, the Secretary General referred to the overall goal of 'restoring peace and sustainable development' in that country (Secretary General 1999). Resolution 1318 on an effective role for the Security Council in maintaining international peace and security (particularly in Africa) reaffirms its 'determination...to give special attention to the promotion of durable peace and sustainable development in Africa' (UN Security Council 2000a, p.2). The mandate for the United Nations Transitional Administration in East Timor (UNTAET), authorised under Chapter VII of the Charter and set out in Resolution 1272, includes assisting 'in the establishment of the conditions for sustainable development' (UNSC, 1999b, clause 2(f)). Resolution 1346, which extended the life of UNAMSIL (the United Nations Mission in Sierra Leone), referred in the preamble to the importance for peace and sustainable development of the 'legitimate exploitation of the natural resources...for the benefit of its people' although it is quite likely that, in this particular context, the natural resources in question were diamonds (UNSC 2001b). Similarly, resolutions on Cambodia (see Resolution 792 (1992) for example) included references to the importance of regulations on the use of natural resources including support from Member States for a moratorium on the export of logs. The challenge is one of expertise, an issue returned to below.

While mandates for peacekeeping and peacebuilding missions, including transitional authorities, identify sustainable development as a goal they rarely specify that the peacekeeping or intervention forces must themselves adhere to relevant environmental principles and multilateral environmental agreements. This is in contrast, for example, to the now regular injunction in Security Council resolutions that 'Member States... incorporate HIV/AIDS awareness training into their national programmes in preparation

for deployment' (UNSC 2000b, p.3). Or, as with Resolution 1270 on Sierra Leone, the requirement that the UN mission there include personnel with 'appropriate training in international humanitarian, human rights and refugee law, including child and gender-related provisions, negotiation and communication skills, cultural awareness and civilian-military coordination' (UNSC, 1999a, clause 15). Yet this is particularly important because, as the Secretary General has observed, 'humanitarian action can have important...environmental repercussions' (1998, para 48; see also para. 56.)

In 1994, the ICRC presented to the Secretary General draft Guidelines for Military Manuals and Instructions on the Protection of the Environment in Times of Armed Conflict'. These were later attached to the Secretary General's report on the UN Decade of International Law and General Assembly resolution 49/50 invited states to disseminate these guidelines widely and to give 'due consideration' to incorporating them into their military manuals (see ICRC 2000).¹⁴ A recent study for the Millennium Project of the American Council of the United Nations University confirmed that 'no mandates or instructions regarding environmental security in the theatre were included in any Council resolution' (Sills et al, [n.d.], section 1.2). The only formal statement is found in the Secretary-General's Bulletin on the observance by United Nations forces of international humanitarian law, dated August 1999. Paragraph 6.3 states that 'the UN force is prohibited from employing methods of warfare ... which are intended or may be expected to cause widespread, long-term and severe damage to the natural environment' (cited in Sills et al. [n.d.]). In general the attention given to environmental protection by forces under a UN mandate varies depending on the extent to which such issues are accounted for in contributing countries' military manuals. Environmental protection, including clean-up on departure, seems to have not been well managed by UN forces. In some cases, 'host' countries of UN missions have sought some form of financial compensation from the UN for environmental damage caused in the execution of a Security Council mandated mission (see Sills et al. [n.d.]).

International Environmental Governance

The Security Council's likely mandate to act in response to environmental threats fits well with Secretary General Kofi Annan's strategies for 'freedom from fear' outlined in his Millennium Report and identified in the introduction to this paper. The Council's environmental mandate, as it applies to peace and security, can or could best be expanded in the following areas:

- appropriate action to enforce the environmental dimensions of international humanitarian law, the laws of war and war crimes
- potential imposition of economic or other sanctions in response to severe 'environmental delinquencies'
- contribution to environmental conflict prevention and preventive diplomacy as part of the development of a culture of prevention within the UN

¹⁴ The ICRC later produced a model draft military manual that incorporated the guidelines (see Henckaerts 2000).

- reinforcing and supporting sustainable development and environmental protection in post-conflict peace-building and social reconstruction
- including environmental guidelines in the rules of engagement and deployment for UN-mandated forces, including transitional authorities and observer missions.

The central question is how the expansion of the Security Council's mandate in this way can contribute to the overall functioning of the system of international environmental governance.

Approaches to International Environmental Governance

Oran Young argues that 'an effective governance system is one that channels behaviour in such a way as to eliminate or substantially ameliorate the problem that led to its creation' (1994, p.30). The expansion of the Security Council mandate to accommodate environmental 'threats' (broadly defined) could contribute to this goal in two ways. The first is functional, particularly through a commitment to environmental protection in times of armed conflict and through the pursuit of sustainable development in post-conflict reconstruction. The second is normative. An expanded mandate for the Security Council may contribute further to dismantling the separation between so-called global 'welfare' issues and global security policy and to strengthening international commitment to the precautionary principle and norms of global stewardship.

Under article 24 of the UN Charter, the rationale for authority to be delegated to the Security Council is to ensure prompt and effective action. However, prompt and effective action in accordance with an expanded mandate – and thus the enhancement of international environmental governance – will be difficult absent Security Council reform. Such reform needs to take account of demands for democratisation, more equitable representation, transparency and accountability.¹⁵ There are two reasons. First, as Ambassador Hasmy Agam of Malaysia has observed, 'the working method and procedure of the Council constrain innovative action' (2000, para 5). Second, without Security Council reform, the risk is high that various forms of environmental interventions become caught up in the geopolitics and charges of selective intervention and 'liberal western imperialism' that have been levied at humanitarian intervention.

In pursuing an environmental mandate, the Security Council will also need to develop more effective working relations with other agents of environmental governance within and outside the United Nations. This will obviously include the United Nations Environment Programme but will also likely include the Commission on Sustainable Development, relevant General Assembly committees, and a range of non-governmental actors. This will be essential to enhance the Security Council's contribution to environmental preventive security, to ensure that the appropriate expertise is available for fact-finding missions, to monitor compliance with international environmental law, and to strengthen the environmental dimensions of UN peacekeeping operations. Again, this could enhance international environmental governance by ensuring that global or international environmental decision-making is

¹⁵ For a brief introduction to these issues see, inter alia, Kelly (2000) and Paul (1995).

more fully integrated across a range of policy concerns and institutional actors. However this would require better coordination across the United Nations than presently exists in the area of environment and development.

It is crucial, however, that an expanded Security Council mandate gives greater priority to preventive and reconstructive Chapter VI powers rather than to coercive Chapter VII powers. The 'securitisation' of environmental issues in the Security Council can help to 'generate concern at the top level for the threats to the global environment' (Schrijver, 1989, p.116). However, the militarisation of environmental policy, should Security Council attention comes to focus primarily on coercive measures, is an inappropriate long-term methodology for responding to environmental insecurity and scarcity. Such coercive measures are not directed towards environmental repair or mitigation. They also run the risk of creating further environmental damage or exacerbating the root causes of conflict as well as authorising the unilateral deployment of force in response to environmental threats.

Interface between Policy and Science

The legitimacy of an expanded environmental mandate for the Security Council will be enhanced if its actions are based on the best scientific information available in areas in which the Council seeks to establish competence. Security Council fact-finding missions must now include scientific evaluation of environmental harm as well as a social science analysis of the likely impact of such harm on conflict and insecurity (including human insecurity). The implementation of the environmental components of IHL will require careful assessment of the environmental impact of armed conflict and the development of a body of expertise in making such assessment.¹⁶ Security Council mandated peacekeeping missions and transitional peace-building arrangements will need to involve and coordinate expertise in environment repair and sustainable development.

Financing

An expanded mandate for the Security Council draws attention again to the inadequacy of funding for international environmental governance and sustainable development and for peace-keeping, peace-making and peace-building. Preventive environmental diplomacy cannot be achieved without adequate and stable funds. Yet as the Secretary General has observed, the Secretariat has 'regularly encountered difficulties in securing financial and human resources in a timely fashion' to support Security Council missions (UNSG 2001, p.34). It is important to recognise again that preventive security (or what former US Secretary of Defence Perry called 'preventive defence') is less costly than

¹⁶ UNEP was closely involved in the Security Council commission which was established to determine compensation for Kuwait after the invasion by Iraq. The bombing campaign in Kosovo prompted the UNEP and the UN Centre for Human Settlements (HABITAT) to undertake a formal assessment of the environmental consequences. The Balkans Task Force (BTF) identified a number of direct and indirect environmental and related humanitarian consequences of the Kosovo Conflict. NGOs with an interest in armed conflict and environmental degradation include Green Cross International and the Institute for International Cooperative Environmental Research (IICER) which works closely with NATO on environmental protection and security.

coercive interventions in times of armed conflict or as punitive action against environmental dispute or environmental destruction.

Participation Levels

The Security Council is notoriously closed in its policy deliberations. The issue of participation challenges Security Council practice and the legitimacy of an expanded environmental mandate on two levels. The first is the extent to which the Council itself is broadly representative of the international community of states. This has become a central theme in debates about Security Council reform, as it is in demands for reform of the UN more generally. The second level is that of non-state 'stakeholder' participation. Strategies for expanding the Security Council's environmental mandate will only work if the articulation and implementation of Council decisions recognises the important contribution of a range of actors including local communities and civil society organisations, the scientific community and the private sector. Security is no longer the preserve of the military and strategic community alone. This is especially important in post-conflict peace-building and a new emphasis on sustainable development and environmental protection which requires greater attention to effective civil-military relations in UN missions.

Policy Influence

An expanded environmental mandate for the Security Council could have an important role to play in influencing the policy milieu and actor behaviour at a global, regional, national and local level. The potential for Chapter VII action in times of armed conflict or threats to peace and security can provide incentives (albeit negative ones) for compliance with the environmental (as well as other) components of international humanitarian law or the laws of war. In the context of broader Security Council and UN reform, smaller states could be made to feel more secure in the knowledge that a fair and effective Security Council will act to implement collective environmental security by which the international community condemns environmentally destructive behaviour. The more effective incorporation of environmental guidelines in Security Council rules of engagement and deployment would provide models for national defence forces to adopt such guidelines in their own military manuals. Further, Security Council decisions which reinforce the importance of sustainable development for post-conflict peace-building will enhance, if properly resourced, capacity building and technology transfer. The Security Council also has an important role in building international norms, including those on the environment. Security Council decisions, under both Chapters VI and VII, could contribute to the strengthening of international environmental law, including compliance and enforcement strategies, and to a more effective normative commitment to the precautionary principle, extra-territorial stewardship and sustainable development.

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