

Peacemaking

W. Michael Reisman[†]

Why, we all ask, does the world community permit the carnage in Somalia or in Bosnia to go on and on? Why doesn't the United Nations (or anyone, for that matter) just go in there, knock some heads together and *make* peace? Not peace-keeping, but real peacemaking. Peace-keeping is fine as a stop-gap measure that suspends the violence and permits peace to be established. However, the U.N. peace-keeping operation in Cyprus has gone on for twenty-eight years, with no end in sight. The desired end-state is not peace-keeping but peace. Why doesn't an organization concerned with world peace make peace?

In January 1992, the Security Council met for the first time at the level of Heads of State and Government to address that question. Hopes were high. The Cold War that had paralyzed the United Nations was over. The United Nations seemed to have operated effectively in repulsing the Iraqi aggression on Kuwait. The U.N. Transition Assistance Group had overseen the transition to Namibian independence and a major U.N. operation of political reconstruction was getting underway in Cambodia. An even broader future role seemed within reach. At the conclusion of the meeting, the Council instructed the Secretary-General to prepare within six months an "analysis and recommendations on ways of strengthening and making more efficient within the framework and provisions of the Charter the capacity of the United Nations for preventive diplomacy, for peacemaking and for peace-keeping."¹ On June 17, the Secretary-General issued his report under the title of *An Agenda for Peace: Preventive Diplomacy, Peacemaking and Peace-Keeping* (Agenda for Peace).²

The Agenda for Peace, as it has come to be known, identified four critical, interconnected U.N. security functions: preventive diplomacy, peace-keeping, peacemaking, and peace-building. It defined preventive diplomacy as: "Action to prevent disputes from arising between parties, to prevent existing disputes from escalating into conflicts and to limit the spread of the latter when they occur."³ This definition was not an innovation. Even during the darkest days of the Cold War, the U.N. Secretariat practiced preventive diplomacy, often with real success, and usually without publicity. It continues to do so and its ability in this area is one of its major contributions.

"Peace-keeping" was a creation of the United Nations. It is surely consistent with the major purposes of the Charter, but it is not explicitly

[†] Hohfeld Professor of Jurisprudence, Yale Law School.

1. U.N. SCOR, 47th Sess., 3046th mtg., at 3, U.N. Doc. S/23500 (1992).

2. *Agenda for Peace: Preventative Diplomacy, Peacemaking and Peace-Keeping, Report of the Secretary-General*, U.N. SCOR, 47th Sess., U.N. Doc. S/24111 (1992) [hereinafter *Agenda for Peace*].

3. *Id.* ¶ 20.

mentioned there. The Agenda for Peace defines it as "the deployment of a United Nations presence in the field . . . normally involving United Nations military and/or police personnel and frequently civilians as well."⁴ It was always assumed that peace-keeping would be conducted only with the consent of the states concerned. The Agenda for Peace, in a radical but largely unnoticed departure, defines peace-keeping as an activity conducted "*hitherto* with the consent of all the parties concerned,"⁵ and makes clear that in the future some action under this rubric be more active and proactive.

Non-consensual peace-keeping shades into peacemaking; as the Agenda for Peace puts it, "there may not be a dividing line between peacemaking and peace-keeping."⁶ The boundaries peacemaking encompasses are rather elastic. The Agenda for Peace extends peacemaking to include a post-conflict, reconstructive function called peace-building as well as an anticipatory constructive function. The United Nations is: "To stand ready to assist in peace-building in its differing contexts: rebuilding the institutions and infrastructures of nations torn by civil war and strife; and building bonds of peaceful mutual benefit among nations formerly at war."⁷ Yet, for all this sweep, the Secretary-General proposes a formal definition for peacemaking which is modest and even anodyne: "action to bring hostile parties to agreement, essentially through such peaceful means as those foreseen in Chapter VI of the Charter."⁸ In keeping with that modesty, the Agenda for Peace specifies, as its first means of peacemaking, referring disputes to the International Court of Justice and urging all states to take the Court's jurisdictional pledge by the year 2000. This is nice but not a very realistic aspiration and it is hardly the stuff to quicken one's pulse. Moreover, it has little to do with peacemaking. Even after the Court delivered a hypothetical judgment, peacemaking could still be required.

Rather than elaborating what peacemaking will encompass, the Agenda for Peace largely confines itself to the resources the United Nations will require for peacemaking. This may be an intentional lapse. As one studies the Agenda for Peace, it is clear that it actually conceives of an expansive, intrusive, and potentially muscular concept of peacemaking that mixes U.N. Charter Chapter VI and Chapter VII competencies.⁹ For example, the Agenda's recommenda-

4. *Id.*

5. *Id.* (emphasis added).

6. *Id.* ¶ 45.

7. *Id.* ¶ 15.

8. *Id.* ¶ 20.

9. Charter Chapter VI, entitled "Pacific Settlement of Disputes," authorizes the Security Council to investigate situations which might lead to international friction or give rise to a dispute. Under Chapter VI, the Security Council may recommend procedures of adjustment. In addition, the Council can make recommendations for the peaceful settlement of the dispute if the parties so request. U.N. CHARTER ch. VI. Charter Chapter VII, entitled "Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression," authorizes the Council to issue provisional measures and to make recommenda-

tion for more coordinated U.N. assistance to internally displaced persons, "if . . . assistance to displaced persons within a society is essential to a solution,"¹⁰ implies that a matter, hitherto within the general area of domestic jurisdiction, is now actionable by the Security Council. The importance of this innovation is underlined by the new means that are to be used to make peace. The Agenda for Peace indicates that the conception of peacemaking being developed could include the imposition of sanctions under Article 41¹¹ and the use of military force.¹² Indeed, the Agenda notes that the credibility of U.N. peacemaking may require pre-existing agreements to make military units and stand-by supply depots available for this function.¹³ In view of recent practice, peacemaking may range from the design and coercive implementation of new structural arrangements to end internal wars, to imposed adjustments in territory, or to interference in inter-state conflict.

None of this seems beyond the broad authority of the United Nations. Yet legal theory aside, the awful bloodletting in Bosnia and the indiscriminate violence, massive starvation, and death in Somalia continue. Six months after the Agenda for Peace, the United Nations has not made much noticeable peace. The Agenda does not address specific cases, but it does diagnose the reasons for United Nations ineffectiveness in past peacemaking. Interestingly, none of the diagnosis has to do with problems in legal formula:

The fault lies first in the lack of political will of parties to seek a solution to their differences through such means as are suggested in Chapter VI of the Charter, and second, in the lack of leverage at the disposal of a third party if this is the procedure chosen. The indifference of the international community to a problem, or the marginalization of it, can also thwart the possibilities of a solution.¹⁴

Let us put aside the problem of the unwillingness of parties in conflict to seek a Chapter VI solution. Such unwillingness is the premise for the need for peacemaking and for the muscle that can make peacemaking effective. More saliently, the Agenda for Peace links the problem of U.N. ineffectiveness in this area to a lack of superpower agreement, to a lack of third-party leverage, and to international indifference. Because elite agreement is now attainable, the Agenda for Peace implies that the challenge is to develop international *institutional* muscle.

I submit that the reasons for the ineffectiveness of past peacemaking efforts are more complex and inhere in certain features of international politics and their relation to local politics.

tions or decisions to maintain or restore peace by using military or non-military measures if it finds that there is a threat to or breach of the peace or an act of aggression. All members of the United Nations are obliged to carry out the decisions of the Security Council. U.N. CHARTER ch. VII.

10. *Agenda for Peace*, *supra* note 2, at ¶ 40.

11. *Id.* ¶ 41.

12. *Id.* ¶¶ 42 & 43.

13. *Id.* ¶¶ 43 & 53.

14. *Id.* ¶ 34.

Four issues are pertinent:

(1) The structure of contemporary international elite politics has changed in ways that enhance the possibilities of U.N. peacemaking in general, but not in particular. Put bluntly, unless all five permanent members agree on the political outcome to be achieved in a particular case, an effective peacemaking operation cannot be mounted.

(2) The nature of the relationship between international law and national politics has not changed. The enforcement of international law still depends on the vagaries of national politics. This is an obstacle to effective U.N. peacemaking.

(3) The conflict between the idealism of international law and the exigencies of practical politics often obstructs peacemaking.

(4) Latent conflicts between an emerging international directorate, using the symbols and legal resources of the United Nations for an increasingly broad range of programs, and the rest of the nations of the world may also obstruct peacemaking.

I will consider each of these issues briefly.

(1) The United Nations system was essentially designed to enable the Permanent Five, if all agree, to use Charter obligations and the symbolic authority of the organization as they think appropriate to maintain or restore international peace, as they define it. Since the strongest and wealthiest states are the only parties capable of financing actions that can be "subcontracted" to them, the General Assembly does not even have the power of the purse. Moreover, the veto power still enables each Permanent Member to force changes in planned peacemaking activities or to stop the show entirely. Hence the critical and operational question for each putative peacemaking mission is the degree and depth of agreement among the critical elite.

The predicate of the Secretary-General's Agenda for Peace is the end of the Cold War and a new and, in many ways, unprecedented agreement between the critical elite members of the United Nations. One should not minimize the renewed agreement among the Permanent Five on the structure and general mode of operation of the United Nations: without it, nothing can be accomplished through the United Nations; it is a continuing precondition for every particular U.N. action. However, one should not glide over or minimize the other condition *sine qua non*: specific agreement among the Permanent Five on a particular peacemaking program. There is as yet no broad and enduring identity of interests between the Permanent Five. If the Permanent Five can establish a specific common interest with regard to a particular candidate for peacemaking, they can now use the United Nations and possibly use it effectively, as they did in Namibia. In the absence of that specific common interest, either the organization cannot be used for peacemaking at all or peacemaking will be ineffective or cosmetic, as it now

appears to be in Cambodia, where one of the Permanent Members supports one internal faction which is trying to obstruct the peacemaking effort.

(2) Peacemaking forces parties either in different states or in a single state to do something at least one of them would not otherwise do. Peacemaking may not actually have to use muscle in every case, but it is always based on muscle. Where will it come from? Unlike a developed federal system in which a continuing federal enforcement agency coexists with state or provincial agencies, the international system still must create or adapt a specific mechanism to enforce every international legal decision. Even assuming a consensus in the Security Council, local resistance may impose great costs on implementation. Peacemaking, in contrast to peace-keeping, will often require the demonstrated capacity and willingness to engage in what amounts to internationally directed war. We are not talking about 500 men from Fiji and 1500 from Canada, who have been issued blue helmets and side-arms, to police a demilitarized zone or to oversee some blue, red, or green line. We are talking of large-scale efforts against large-scale resistance. We are talking of actions that require the direct participation of the great industrial democracies. The Cold War no longer precludes such participation. However, contributions have not been forthcoming in many situations that merit active peacemaking. The Agenda for Peace characterizes this outcome as the result of international "indifference,"¹⁵ but does not elaborate. The matter, I submit, is more complicated.

The citizens of the great industrial democracies appear loathe to engage in costly military actions unless they are persuaded by their leaders that the expenditure of their blood and treasure is in the urgent national interest. National interest is still defined in largely national terms. The democracies were prepared to make great sacrifices to repel the Iraqi aggression, but it was not the U.N. characterization of aggression, as such, that stiffened resolve. The admission of Bosnia to the United Nations and the retroactive characterization of a theretofore civil conflict as a war of Serbian aggression has not materially changed public opinion in the West. National political leaders, whose terms in office are conditional on continuing popular support, resist getting drawn into actions that will not muster sustained national support or that will drag on interminably. Short, quick actions that pose relatively low costs and promise success may be risked. Actions that may continue, whose costs may be higher, or whose outcomes are ambiguous, are deemed political suicide.

Hence, insofar as U.N. peacemaking will depend on the great democracies, there still may be inherent political limits on how forcefully proactive such peacemaking can be. Local factions who resist a U.N. plan may

15. *Id.*

calculate that they can outlast the fragile amalgam of national interests that are supporting the international action, or alternatively, that they can kill enough U.N. personnel to escalate the crisis in ways that enure to their benefit.

(3) Peacemaking is a quintessentially political operation. It uses external power and the persuasion that external power makes compelling to rearrange internal power relationships in ways that promise stable minimum order, the absence of which has created the need for peacemaking. In prior centuries, elites at international congresses could engage in a type of peacemaking by carving up territories and assigning control of various states to each other or to their proxies in ways they believed served their common interests in a balance of power. All of this could be accomplished discreetly and privately and with little concern for legal or moral values.

The United Nations cannot engage in peacemaking in this fashion. It must operate within a high-minded normative framework, much of which is its own creation. Pragmatic solutions that might promise to reestablish minimum order may not meet its normative standards. For example, given the United Nations' commitment to self-government and popular sovereignty, it often resorts to elections subject to international monitoring and certification as a key part of peacemaking. However, if the distribution of political loyalties in a particular territory is the cause of conflict, an election, especially if it is fair, will only make the conflict more acute. In these circumstances, a pragmatic peacemaker might simply construct a government of "national unity," a euphemism for the assignment of slices of the governmental pie to each of the contending factions or warlords in proportion to their actual power. This might establish minimum order, but would fail to meet a variety of normative requirements expressed in the Universal Declaration of Human Rights that many leaders in the international community now demand.

The clash in U.N. peacemaking between normative aspiration and unyielding reality may produce anomalous outcomes. In Angola, for example, the largely predictable results of the election seem to have reignited the war. In Nicaragua, the popular will as expressed in the election — a repudiation of the Sandinistas who held effective power and, *vox populi* notwithstanding, were unwilling to yield it — was finessed by creating a *doppelstaat* in which Mrs. Chamorro received the symbols of government, while the Sandinistas, with the army and the police, kept the power. Much of the fighting stopped but the government still does not work. The Agenda for Peace, however, cites Nicaragua as an example of successful peacemaking.

The contradictions between bounding normative aspiration and unyielding political reality also take their toll at the psychological and meta-psychological levels. The publics of the democracies are presented with detailed pictures of carnage and human suffering, which law and morality have taught them are wrong, along with dramatic evidence of the failure of international law and

organization to stop it. Public concern over the suffering coupled with the oppressive sense of personal and group failure to do anything meaningful have long-term implications for the credibility of particular moral prescriptions and of expectations about the effectiveness of international law.

Because preventive diplomacy is conducted on the margins of public attention, it does not encounter these problems. Peacemaking, on the other hand, especially when it requires the application of large inventories of resources supplied by the great democracies, must operate in the media's spotlights and hence must increasingly meet the formal normative standards of the international community.

(4) Peacemaking is an activity conducted under the authority of the Security Council — with a consensus of the Permanent Five — often through the Secretariat. It is increasingly directed toward restructuring internal public order of states suffering varying degrees of disorder. It expands the Charter's contingencies for action under Article 39¹⁶ and engages the full authority of the United Nations, yet it need not be financed through the general budget and, hence, is not subject to control by the General Assembly. As such, peacemaking may aggravate certain latent tensions between the Permanent Five and the rest of the United Nations.

Happily, the deep ideological divisions of the Cold War that polarized efforts to introduce order into chaotic states is not, for the moment, a critical factor in these enterprises. There is a much wider consensus on the normative struts on which internal public order should be constructed: fundamental internationally prescribed human rights. This consensus greatly enhances the possibility of international peacemaking. Whether or not the members of the General Assembly generally support a particular peacemaking initiative, they usually will not object. However, in circumstances in which peacemaking appears to have constitutive precedence for the United Nations as a decision-making entity as well as for the autonomy of individual states, there may be intense resistance from the rank-and-file. The Agenda for Peace speaks generally about the role of the General Assembly in peacemaking, but that role actually appears to be quite marginal. In the longer run, arrangements that achieve effectiveness and wider participation must be invented, lest peacemaking come to be viewed as intervention by a new *Entente Cordiale* of the Great Powers.

CONCLUSION

The international community desperately needs peacemaking programs, so including U.N. peacemaking in the Agenda for Peace is something of an

16. The contingencies for action by the Security Council are "any threat to the peace, breach of the peace, or act of aggression." U.N. CHARTER art. 39.

accomplishment. Some of the proposals of the Agenda for Peace could enhance the power of the Secretary-General, and the creation of a standing military force of significant size could surmount some of the obstacles I have reviewed. The proposals are logical responses, but their political feasibility and, indeed, the willingness to create a more effective Secretariat remain to be tested. Even if the Secretariat's competence is expanded, it is difficult to imagine active peacemaking mounted by the Secretary-General against the interests of a Permanent Member. Even when there is a consensus among the Permanent Members, the military force required may be very great. A relatively small force can keep the peace, but order will not likely be brought to Somalia by only 7,500 soldiers.

We must, however, resist the illusion, so common in the United Nations, that to say something is to have done something. Words in a report are not deeds. The inclusion of several paragraphs in the Agenda for Peace, and even some changes in the law, do not equal peacemaking. The reason we do not have peacemaking in Somalia, in Bosnia, in the Sudan, or in Haiti has little to do with defects in the normative arrangements of the Charter. Much could be done within the existing regime. The real obstacles lie in features of international politics, and they must be overcome politically, whatever the changes in the U.N. system. As the Secretary-General has said, the real issue is, indeed, political will.

Alas, that will has been absent. The leadership of the great democracies have behaved pusillanimously in the face of horrors that the international community should never have allowed to occur. No leader has emerged as a world voice of conscience to mobilize his or her own nation and others to remedy what is remediable. Regional organizations, whose members are most acutely aware of and will bear the burden of most of the refugee outflows from the internal chaos of a neighboring state, always have the greatest incentive to stop carnage and make peace. When the world community was inactive with respect to Liberia's agony, Nigeria, leading an ad hoc coalition of states who happened to be members of a sub-regional economic group, was not. By contrast, no regional leader has come forward in Europe to provide a balm for Bosnia. No regional leader in East Africa or in the Arab League has come forward to succor Somalia or the Sudan. Trying to justify inaction on the ground that the situation is "complicated" is contemptible. All situations are complicated. Life is complicated. Trying to justify inaction on the pretense of respect for sovereignty and domestic jurisdiction is no less contemptible. These are legal concepts designed to protect people, not to protect their oppressors.

Fiddling endlessly with legal arrangements can become an excuse for inaction. Supposedly inadequate legal arrangements can even become a type of scapegoat. Let us not kid ourselves. Legal arrangements by themselves can

no more create power than alchemy can create gold. No legal arrangement has ever or will ever work by itself. A legal arrangement will only work with courageous leadership. The reasons for the failure of international peacemaking are to be found in the failure of that leadership at every level of the world community.

