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'...offers a number of sharp conceptual lenses as well as in-depth empirical studies of personalities that have proven to be crucial for the work of the United Nations in the realm of development and security.' Manuel Fröhlich, Professor of International Organisations and Globalization, Friedrich-Schiller-University JenaWooster on Individual Agency and Policy Change at the United Nations

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Introduction

‘In this highly readable volume, Jolly explores the lessons for leadership in the UN and powerfully calls for applying these lessons for humane global governance in the wider world.’ Mark Malloch-Brown, former UN Deputy Secretary-General on UNICEF (United Nations Children’s Fund).

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Roles and Functions of International Organisations
Chapter 1: Roles and Functions of International Organisations

Resolution 60/251 requires the Council to fulfil certain roles and functions in order to protect and promote human rights. The body's roles and functions are intrinsically linked to, and dependent on, the UN, wider human rights machinery, NGOs, states and non-state actors.

1. Roles of international organisations

General theories on the relationship between international organisations and states may assist understanding of international organisations' roles. International organisations are presented as playing various roles, of which three main theories will be examined: arenas, instruments and actors.

Conor Cruise O'Brien, one-time Special Representative to the UN Secretary-General, described the UN as 'stages set for a continuous dramatisation of world history'. This metaphorical view is perhaps better explained by Archer: the UN is often seen as solely an 'arena' in which member states can advance their own viewpoints and suggestions in a public and open forum. Member states, observers and NGOs use regular HRC sessions as an 'arena' to voice opinions and to set forth their agendas. State and non-state entities use HRC mechanisms to air their opinions. Informal meetings, the complaints procedure, and Special Sessions, are examples of such mechanisms. As an 'arena', the HRC is privy to vast amounts of information from states and specialised entities. This enables the Council to examine many human rights issues at each of its regular sessions. Despite the body's clear emphasis on its role as an 'arena', and the importance of this function for its work, the HRC aims to be more than merely a forum for discussion. The Council is able to act through, for example, undertaking fact-finding missions, reporting on human rights issues, and passing decisions and resolutions. Powers for the body to be proactive in protecting and promoting human rights, even though those powers are non-binding, indicates that the Council was intended to be more than simply an 'arena' for interstate discussions.

5 108 The United Nations Human Rights Council

'Perhaps the most usual image of the role of international organisations is that of an instrument being used by its members for particular ends'. International organisations as instruments go beyond an 'arena' by doing more than staging debates. Instruments, as the regular use of the word indicates, are used to achieve results. A main hope at the HRC's inception was that it would actively protect and promote human rights.
issues. Nobel Laureate Karl Gunnar Myrdal stated that 'international organisations are nothing else than instruments for the policies of individual governments', implying that actions of an international organisation result directly from one or more member states' national policies. That assertion is supported by McCormick and Kihl's study of international organisations, which concluded that international organisations 'are used by nations primarily as selective instruments for gaining foreign policy objectives'. Despite political agendas dominating the Commission's final years and significantly contributing to its demise, the Council has failed adequately to address and overcome this problem.

Claude, re-stating the institutionalist position, explained that 'an international organisation is most clearly an actor when it is most distinctly an "it", an entity distinguishable from its member states'. One fundamental way to distinguish an organisation from its members is through an ability of the former to regulate the latter's behaviour. International organisations employ different methods of decision-making, but in order for the organisation to achieve 'actor-capacity', resolutions, recommendations or orders must compel member states to behave differently than they would have otherwise done.

The theories of arenas, instruments and actors do not address the nature of the powers that an organisation holds. The fewer binding powers an international organisation has, the more likely it will be used for political aims. Countries are reluctant to relinquish autonomy to international organisations holding legally binding powers. Kahler asserts that the higher the degree of obligation under an agreement, the more credibility is given to a government commitment. Similarly, he argues that where an agreement is strengthened by enforcement mechanisms and the ability to adjudicate on issues of non-compliance, the credibility of a government commitment is also increased.

5 Archer, International Organizations, p. 130.

6 Former Executive-Secretary of UN Economic Commission for Europe.


12 Kahler, 'The Causes and Consequences of Legalization', 663.
2. Functions of international organisations

Three main functions are: inputs, outputs and the conversion process. International organisations can be understood as political systems that convert inputs into outputs. Demands and support from the organisation’s environment are transformed into that institution’s policies. Many of the demands and support for international organisations stem from its member states or expert bodies. The power position of a state, and its control over relevant resources, is of great importance. Power is manifested through specific control over resources in an area, or through overall control of issue-transcending resources. States may use control of important resources in other issue areas to exert influence in areas where they lack relevant power.

2.1 Inputs

The Council’s inputs demonstrate that the body is fulfilling the requirements, under Resolution 60/251, that it operate within the UN human rights machinery and work with wider society and non-state actors. Input sources include a variety of actors, which create ties between the Council and the wider human rights field. Three main input sources are specifically mentioned in Resolution 60/251. Input from all three forms part of the Council’s legal mandate.

Administrative Staff. Input sources include the administrative staff of an international organisation. Administrative staff can exert considerable influence on the input aspect of policy making. Creation of the HRC, and the many reform proposals regarding its predecessor, can be attributed to Secretary-General Kofi Annan’s 2005 ‘In Larger Freedom’ report. Speeches of the High Commissioner for Human Rights at HRC sessions demonstrate administrative staff’s ability to influence the agenda. The Secretary-General, although his words are not always adhered to, often calls for the Council to deal with particular thematic or country-specific issues. States have, at times, attempted to discredit information provided by administrative staff.

13 On international law as an operating system, see P.F. Diehl and C. Du, The Dynamics of International Law, Cambridge: Cambridge University Press, 2010.


16 See Chapters 7 and 8.

Special Procedures. Communities of experts are another main source of input at the HRC. Institutionalists, such as Keohane, regard expert advice as being of growing importance due to the increasingly complex problems being dealt with by
organisations. UN bodies make frequent use of individual experts and committees of experts, selected according to the usual geographic criteria. Expertise is provided which may be lacking among administrative staff and member states. Effect on policy-making is inevitable. Unanimity amongst experts, as is often the case at the HRC either through joint fact-finding missions or where experts provide similar recommendations to countries, lends greater credibility to the advice. However, states do ignore or attack experts' reports at the Council, particularly on politically sensitive or contentious issues. Experts are frequently used to undertake HRC factfinding missions, provide reports, or indeed are appointed as mandate holders regarding specific human rights issues.

The Special Procedures system plays a role within every aspect of the Council's work. However, assessing the system itself goes beyond the scope of this work. A general understanding of Special Procedures will be necessary in order to assess the Council. Special Procedures were described, by former UN Secretary-General Kofi Annan, as 'the crown jewel of the [UN human rights] system'. The system assisted human rights protection and promotion, primarily by investigating and reporting on human rights violations, and making recommendations. The Commission on Human Rights' Special Procedures system was adopted by the Council under General Assembly Resolution 60/251 Paragraph 6. Special Procedures were established to assist the Commission's human rights monitoring and allow investigation of specific human rights situations within individual countries or of general, global human rights issues. Special Procedures mechanisms are universal, reflecting the UDHR's universality. Human rights protection and promotion thus applies across all UN member states, unlike at treaty bodies which only deal with states party to the relevant treaty.

The legal basis for mandates derives directly from the Commission's powers to submit proposals, recommendations and reports concerning all questions of human rights. Special Procedures involve a range of activities, including:


19 See, for example, I. Nifosi, The UN Special Procedures in the Field of Human Rights, Antwerp: Intersentia, 2005.

20 ECOSOC Res 5(), 'Commission on Human Rights', 16 February 1946, UN Doc. E/Res/5(l), as
fact-finding missions; meeting local authorities, NGOs, human rights defenders, and individuals; and visiting relevant facilities. Information gathered is used for reports and recommendations. Special Procedures mandate holders communicate with concerned governments about alleged violations, requesting responses and corrective actions. Clarification is sought on alleged violations, and governments are encouraged to fulfil human rights duties. Special Procedures issue public statements on human rights situations to draw wider attention to violations. The main function for mandate holders is submitting annual reports to the Council, and sometimes to the General Assembly, and making recommendations. Mandate holders are almost always active participants in an interactive dialogue on their reports.

Special Procedures impact on states’ national jurisdiction through investigating country-specific or thematic human rights issues and issuing reports and recommendations on the findings. Fact-finding and other aspects of Special Procedures allows information sharing, which can damage states’ national interests. Certain countries, in particular those from the Global South, sought to restrict Special Procedures at the new body. Those states were most affected by, or most fearful of, the system’s impact on domestic jurisdiction.

Special Procedures’ functions are key for protecting and promoting human rights, and are utilised by the entire UN human rights machinery. Farer and Gaer argue that, at the Commission, mandate holders fulfilled their duties to a high level, and gave ‘recommendations that push beyond traditional thinking and practice at the UN.’21 It is therefore imperative that the system be maintained, not only for the new body but for the UN as a whole. However, although mandate holders provide useful information and encouraged protection and promotion of human rights, Special Procedures were criticised at the Commission for lacking practical impact. Hampson criticises the Commission’s failure to devote sufficient time to consider Special Procedures’ reports or for follow-up to such reports.22 She argues that failure to listen to or act upon expert advice was a main failing of the Commission. Farer and Gaer similarly comment on a lack of systematic follow-up to reports given by thematic mandate holders.23 They argue that reports were not discussed at the Commission in any systematic way, which limited their exposure and efficacy.


Resolution 60/251 requires the Council to maintain a system of special procedures, expert advice and a complaint procedure. The Council was not mandated to adopt the Commission’s system in its entirety, but instead was given the ability to adapt and change aspects of Special Procedures so long as a system was maintained. Schrijver notes that, prior to the Council’s creation, tensions arose regarding modifying the system. The compromise was to retain the system for the Council’s first year, and undertake a review as to whether to keep, and where necessary rationalise or improve, individual mandates. Prior to the review taking place, Scannella and Splinter argued that the Council should strengthen rather than preserve the system. They advocated focusing on gaps in coverage and creating a comprehensive system. The review occurred throughout early sessions, culminating in the Institution Building Package’s adoption. Part II of the text establishes Special Procedures’ modalities and mechanisms and the review process for individual mandates.

The Special Procedures system operates independently of the Council. Although there is much overlap, its existence as a concurrent system allows mandate holders to retain independence of the Council and, indeed, any UN body. That independence is crucial for the Special Procedures system. However, respecting that independence does raise questions regarding, for example, adherence to the Council’s founding principles, fulfilment of its mandate, and the impact of politicisation.

Each mandate is allocated a mandate holder. Mandate holders occupy unique positions as independent experts with wide investigative and reporting powers. They are expected to be independent, are unpaid by the UN, and serve in a personal capacity for a maximum of six years. Farer and Gaer comment that mandate holders, by virtue of their expertise, ‘have in general seemed insulated from the sort of political pressure that cripples effective and impartial inquiry.’ Perhaps, as experts, such persons have been afforded sufficient respect by delegations to ensure they are not targeted for political aims. However, at times, politicisation has occurred. Almost all mandate holders are human rights experts, either Special Rapporteurs of the Commission, Special Representatives of the Secretary-General or Independent Experts. Despite little practical difference between


27 Two terms of three years for thematic mandates, and six one-year terms for country mandates.
28 Farer and Gaer, 'At the End of the Beginning', pp. 287–8.

29 See Chapter 7.

30 In reality, there is very little difference in the ways in which these different types of Special Procedure operate. One exception is that Special Representatives tend to be appointed by the Secretary-General, whereas the others are appointed by the Chairperson of the Commission (now the President of the Council).

31 See, for example, OHCHR, Human Rights Fact Sheet No.27, Seventeen frequently asked questions about the United Nations special rapporteurs, (Online). Available HTTP: <http://www.ohchr.org/Documents/Publications/FactSheet27en.pdf>

these forms of mandate holders, Farer and Gaer comment that a hierarchy emerged at the Commission with Special Rapporteurs being favoured over Special Representatives or Independent Experts.32 It was rarer for the Commission to appoint Working Groups as mandate holders. Working Groups are composed of five human rights experts, one from each of the geographic regions. That format is considered more suitable when a collegiate body is required, either to promote wider discussions or to render opinions on cases with participation of experts from different legal backgrounds. The Working Group model is also favoured by some because of representation from all five regional groups. Hampson notes the confusion between different forms of Special Procedures.33 Her opinion is that Working Groups should only be used where each individual’s legal knowledge of his/her region is required in order for the mandate to be fulfilled, for example on arbitrary detention.

**NGOs.** Interest groups are another HRC input. NGOs have consultative status at the body and are a source of specialised quality input through formal and informal channels. International organisations need access to the information and expertise held by NGOs. One innovative reform to the UN human rights body enabled the HRC to be one of very few international organisations that allow NGOs to participate directly in the body’s proceedings. These input sources directly implement Resolution 60/251, which mandates the body to provide a forum for information sharing and for dialogue between state and non-state actors. NGOs are also an input source for the Special Procedures system. NGOs provide specialised input through formal and informal channels. Scannella and Splinter comment that NGO participation was widely accepted by states, and that they engaged with the substance of NGO concerns rather than the legitimacy of NGO involvement.35 Rudolf comments that Special Procedures provide an ‘independent intermediary’ between NGOs and states.36 NGOs or other human rights activists may provide information to mandate holders, which then forms part of the overall report and recommendations. Although NGOs are given the opportunity to participate in the Special Procedures system, their role during Council discussions on individual mandates is not afforded sufficient weight. NGOs are given the opportunity to speak after states during the interactive dialogue with mandate holders. However,
the list of NGO speakers is often limited due to time constraints. State delegates leave the

34 ECOSOC Res 1993/31, ‘Consultative Relationship between the United Nations and
35 Scannella and Splinter, ‘The United Nations Human Rights Council: A Promise to be Fulfilled’,
57.

room or stand at the back of the chamber talking and using phones during NGO
interventions. Such behaviour is not unusual at the Council, but occurs far more
frequently during NGO, rather than country, statements. Observers at Council sessions,
this author included, frequently witness such behaviour. Many observers, however, do
not include descriptive details in their reports or scholarship, despite it being of
critical importance for understanding the Council.

2.2 Conversion process

The conversion process takes place in Council sessions and through informal meetings,
Working Groups and negotiations. Special Procedures play a role in the conversion
process through mandate holders presenting reports during Council sessions, followed
by interactive dialogues with states, observers and NGOs. Discussions provide the
opportunity for mandate holders to explain their findings, as well as for states to
express any concerns. Conversion is intended to create suitable outcomes, usually in
the form of resolutions or decisions.

Conversion of inputs into outputs at the HRC occurs in two main ways.
Intergovernmental negotiations are a common mechanism for decisions to be taken
within international organisations. Negotiations occur between the most powerful
actors representing divergent interests. Decisions require either a package deal or a
compromise; an agreement on the lowest common denominator of all parties.
Intergovernmental negotiations result in the most powerful states, groups or blocs
controlling the decision-making. Informal meetings occur throughout regular HRC
sessions, either between member states, involving entire regional groups, or with
various states from likeminded groups in attendance. Draft resolutions and decisions
are created through informal meetings, as well as internal decisions taken regarding
states’ approaches to agenda items.

Majority voting, the other method of conversion most often used at the HRC, is decision-making characterised by formation of a majority through coalition building. Decisions represent the interests of the majority rather than of powerful states. International organisations become executors of shifting coalitions of member states. HRC membership is ever-changing, as states serve three-year terms with one-third of the body changing annually. Coalitions are often formed within regional groups or through alliances between these groups, as will be discussed. Majority voting is easier for member states to accept where the decisions taken are legally non-binding. Majority voting thus suffices at the HRC for most states regarding most issues. However, political sensitivities regarding the hortatory power of the Council’s decisions and resolutions often results in a high level of informal and formal intergovernmental negotiation before the majority voting takes place.

Resolution 60/251 does not expressly state the need for unanimity consensus in decision-making. At the Commission, where unanimity was required, each state effectively had a veto. However, it had been generally understood that consensus should be reached. The Chairperson usually seeks, and stresses the importance of, consensus but this has generally meant very little in practice. One key example was the somewhat controversial, lack of consensus on the IBP. Much of the body’s work is arguably undermined by failure to reach unanimous decisions.

The Council Chairperson seeks to ensure consensus, rather than calling for a vote, as this gives significant weight to the decision or resolution. Achieving consensus sends a strong message about the decision reached. It has been observed that consensus is often reached through the lowest common denominator, both within and between groups.

38 At the Fifth Session, Council Chairman de Alba, discussing negotiations on the IBP, noted this issue but stressed the importance of achieving consensus:

[i]n the talks over the last few days, the biggest question I have been asked is whether I consider if we have been making a true contribution, or simply a lowest common denominator. I say no, and that real progress has been made. Although the text does need improvement, it does have a high degree of agreement; we have been working largely in consensus.


39 Ambassador Luis Alfonso de Alba (Mexico), Informal meeting, 5th Session, 8 June 2007.

Despite the emphasis placed on reaching decisions by consensus, Scannella and Splinter comment that, at the Council’s First Session, members of the Organisation of the Islamic Conference undermined attempts to ensure that all decisions were adopted by consensus.

40 The OIC is the strongest bloc at the Council, with members and allies from across all of the regional groups. Rather than engaging with intergovernmental
negotiations on its draft resolutions, the OIC and its allies often vote as a bloc at the Council in order to further the group's political agendas.

The majority of Council decisions are reached by consensus. However, where consensus cannot be reached and a vote is called, member states often express disappointment. Votes tend only to be called where a decision or resolution is on a particularly sensitive subject matter, often on a countryspecific situation or regarding a contentious human rights issue. At times, non-achievement of consensus angered state delegates who sought to underscore politically sensitive decisions or resolutions.


41 Author's own observations from attending Human Rights Council sessions.

2.3 Outputs

International organisations create outputs in the form of, amongst others, policy programmes, operational activities and information activities. Most of the HRC's work takes one of those three forms. Policy programmes aim to direct states' behaviour by setting normative standards. General rules prescribe or proscribe certain behaviour in certain circumstances, acting as guidelines for states. Programme decisions impact directly on states' autonomy by providing norms and rules directing states' behaviour. States wish to dominate this type of decision-making process. Programme decisions affecting states' autonomy are unlikely to be allowed unless the states are directly involved in the process.

Morgenthau notes that even when rules are violated they are not always enforced, and that even when enforcement takes place it is not always effective. From a realist perspective, HRC policy programmes are merely political recommendations, owing to a lack of enforcement mechanisms within that body. Although the Human Rights Council at times calls for other bodies to enforce its recommendations, such calls are generally not heeded.

42 Archer, International Organizations, p. 79.


Norms and rules of policy programmes generally require implementation, typically occurring through national governments. International organisations usually assist member states to implement norms and rules, as opposed to implementing them directly. This occurs at the HRC through assisting states to implement policy programmes at a national level. Monitoring of implementation, by the international organisation, is required. As previously discussed, Resolution 60/251 mandates the
body to provide, amongst others, advisory services, technical assistance, and capacity-building (para. 5 (a)). Assistance with implementation of policy programmes, when they occur in practice, fulfils these aspects of the mandate.

Fact-finding missions and reports given to the Council are examples of monitoring by this body. Fact-finding primarily occurs through the Special Procedures system, either through pre-existing mandate holders or through Working Groups set up by the Council to investigate specific human rights situations. Although the Special Procedures system operates independently of the Council, its role in fact-finding is crucial for the Council to fulfil its mandate. Steiner et al. comment that the concept of fact-finding, that is of international monitoring of a situation to verify ‘facts’ given by a sovereign government, would have been inconceivable ‘not many years ago’.45 However, today, fact-finding is a commonplace task which, when carried out fairly, is widely accepted by all parties.46 Fact-finding enables the Council to identify where and when human rights protection and promotion is required, and to monitor implementation of previous outputs in that regard.

Reporting requirements are another method for monitoring human rights standards and implementation. Sands and Klein note that many international organisations have reporting requirements, with some expressly including them in the constituent instrument.47 The Council arguably included a reporting requirement through the mandate for the UPR to be carried out on all member states during their term of Council membership. Although reporting requirements in the human rights field have been criticised, not least due to the backlog and delays within many treaty bodies,48 the UPR arguably is a stringent requirement owing to its review of all UN member states within a four-year cycle, resulting in all states complying with the requirement on a regular, and indeed perhaps frequent, basis.

44 Direct implementation occurs, for example, through UN peacekeeping missions.


46 Ibid.


48 See, for example, Sands and Klein, Bowett’s Law of International Institutions, pp. 317–18.

Some international organisations may also adjudicate on issues of compliance, although the HRC does not hold this power. If a member state insists that it has implemented a programme but other states disagree, the international organisation may be asked to intervene to determine compliance. HRC discussions often centre on disputes regarding human rights, whether between states and experts or between states themselves. Members, observers and NGOs will discuss reports on specific
issues, and the Council may pass resolutions on the findings. Member states may raise
issues of violations within other countries, which the HRC will debate and pass
resolutions where required. Special sessions are convened to deal with urgent human
rights situations. Compliance with HRC decisions will largely depend on political
factors. Abbott et al. commented that the less legally binding a resolution is, the greater
the influence of politics on compliance:

On the whole [we have reached] the rejection of a rigid dichotomy between
‘legalization’ and ‘world politics’. Law and politics are intertwined at all levels of
legalization. One result of this interrelationship [...] is the considerable difficulty in
identifying the causal effects of legalization. Compliance with rules occurs for many
reasons other than their legal status. Concerns about reciprocity, reputation, and
damage to valuable state institutions, as well as other normative and material
considerations, all play a role. Yet it is reasonable to assume that most of the time,
legal and political considerations combine to influence behaviour.50

Information activities include collecting and publishing information relating to the
international organisation’s mission. Reports influence the organisation’s own
decision-makers, as well as states and other actors. Information activities are an
important factor in the social construction of reality, and can influence political
positions of actors within member states.51 Experts’ reports and fact-finding missions
often gather information that is difficult to access. This may be disseminated through
the HRC to a wide audience of states, NGOs and the public. The impact of human rights
information activities cannot be underestimated. Very often the information is used
further in a wide range of settings at national, regional and global levels. Information
activities are particularly influential when transnational groups of experts make
similar assessments to each other.52 International organisations facilitate the
exchange of information between member states, and also between member states
and NGOs. Furthermore, allowing NGO participation at Council sessions results in
information sharing from those organisations with specialist knowledge that would
not otherwise be available to the Council.

49 Abbott uses the term ‘legalization’ to mean subsuming into legal discourse, as opposed to
the more general use of the term to mean making something legal.


52 J. Goldstein and R.O. Keohane (eds.), Ideas and Foreign Policy: Beliefs, Institutions and Political
The Powers of the United Nations Security Council and Resistance to its Resolutions

This chapter ascertains the power of the SC to adopt mandatory resolutions; identifies their addressees; and determines the effects of such resolutions. It reviews the methods of interpretation of SC resolutions; affirms that the SC is bound to respect the Purposes and Principles of the Charter; affirms the presumption of lawfulness and validity of SC resolutions; reviews the power of autodetermination and autoenforcement; and analyses the ICJ instruments for reviewing the lawfulness of SC resolutions. What follows is a brief panorama of the different topics, without the aim of exhausting any of them. This overview, albeit incomplete, is necessary for the proper understanding of the notion of resistance that is introduced later in the book.

1. Scope of the powers of the UNSC and mandatory resolutions

Article 24(1) of the Charter bestows on the SC primary responsibility for the maintenance of international peace and security, with Article 24(2) declaring that its specific powers are defined in Chapters VI, VII, VIII and XII, concerning, respectively, the pacific settlement of disputes; actions with respect to threats to the peace, breaches of the peace and acts of aggression; regional arrangements, and the international trusteeship system. Also, as the SG noted in 1947, provisions in Chapters not listed in Article 24(2) also grant specific powers to the organ.¹ For example, Article 26 in Chapter V enables the Council to take action to regulate armaments, and Article 94(2) in Chapter XIV authorises it to make recommendations regarding, or enforce decisions of, the ICJ. Notable among the above is Chapter VII, which allows the Council, inter alia, to seize a situation that it deems to constitute a threat or breach of international peace, adopt provisional measures without prejudice to the rights of States, and adopt measures that it deems necessary for maintaining and restoring peace, which may or not involve the use of force. Furthermore, the practice is now established in that the Council, apart from such specific powers, has ‘powers commensurate with its responsibility for the maintenance of peace and security’.² Powers not explicitly granted in the Charter are implicit in it on account of their necessity to the Council in the discharge of its responsibilities.

Under Article 25, MSs agreed to accept and carry out the decisions of the SC in accordance with the Charter. For the moment, the last part of the provision (in accordance with the present Charter) is left aside.³ The combination of Articles 24(1) and 25 result in obligations arising from a Council’s resolution, adopted under any part of the Charter, having the potential of being mandatory. While
generally accepted today, this proposition has been challenged in the past, notably by South Africa, which claimed that Article 25 only made it mandatory for MSs to comply with resolutions which were already binding under specific provisions of Chapter VII. The ICJ, however, rejected that assertion, holding that ‘Article 25 is not confined to decisions in regard to enforcement action but applies to “the decisions of the Security Council” adopted in accordance with the Charter’;\(^4\) furthermore, ‘the obligation of States to comply with the decisions of the Council under Article 25 of the Charter extends to all decisions of the Council, not merely those under Chapter VII.’\(^5\) Accordingly, in *Namibia*, the Court considered the relevant resolutions of the Council adopted under Article 24; their binding effect resulting from Article 25.\(^6\)

Nevertheless, Article 25 must be placed in the perspective of the Council’s practice. The first time the SC invoked Article 25 as its main or sole legal basis for action was in 1966, in resolution 232 (1966) concerning Southern Rhodesia. To date, the Council has expressly invoked Article 25 on very few occasions.\(^7\) There seems to be general agreement that all such resolutions are mandatory in nature. The canons of interpretation put forward by the ICJ in *Namibia*, and discussed later in the text, also lead to this conclusion. Since the end of the 1990s, explicit invocation of Article 25 has become rare. However, that should not be taken as signalling a weakening of the interpretation that Article 25 can ground mandatory resolutions. Far from it, the Repertoire indicates that States are in agreement that resolutions under that Article are mandatory.\(^8\) What is more, the SC has recently overcome a difficult diplomatic impasse concerning what should be its actions in regards to the Syrian conflict with the unanimously adopted resolution 2118 (2013), whose legal basis was Article 25. In fact, in this resolution, the SC expressly affirmed that MSs ‘are obligated under article 25 ... to accept and carry out the Council's decision’.\(^9\) Milanovic correctly observes that this was the first time that the SC ‘so openly adopted this view’ finally settling the issue by corroborating the ICJ dictum in *Namibia*.\(^10\)

There has been a discussion on whether an obligation arising from a resolution is a ‘Charter treaty obligation’ and it seems that the correct answer is that it ‘is not a treaty obligation. The obligation to comply may be, but the decision *per se* is not’.\(^11\) As this work emphasises, it is a Charter-based obligation. However, it is submitted, that does not stop resolutions of the Council from modifying States’ obligations and rights. Bowett questioned whether ‘states ratifying the Charter ever believed they were granting to the Council a blank cheque to modify their legal rights’.\(^12\) For him, Council’s resolutions may ‘spell out, or particularize, the obligation of members that arise from the Charter’, but may not ‘create totally new obligations that have no basis in the Charter, for the Council is an executive organ,'
not a legislature’. As an example, he suggested that the Council could not decide with binding effect that a State must transfer part of its territory to another State, even if it deemed such transfer necessary for the maintenance of international peace.

But the fact is that the Council has acted as a legislature, for instance, when it adopted resolutions 1373 (2001) and 1540 (2004), which laid down obligations of general and abstract nature, i.e. of legislative character, that had no direct basis in the Charter. Resolution 1373 (2001) addressed the financing of terrorism, and many of its provisions were simply taken from the International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly (GA) in 1999 and entered into force in 2002. As to resolution 1540 (2004), it addressed the threat of nuclear terrorism, and preceded the adoption of the International Convention for the Suppression of Acts of Nuclear Terrorism in 2005.

Furthermore, although the Council has never determined the transfer of territory from one to another State, it certainly established the legal grounds for Kosovo to secede from the former Federal Republic of Yugoslavia (FRY), and materially facilitated the unfolding of the facts that led to its secession. Resolution 1244 (1999) completely suspended the Yugoslavia sovereignty over that part of its territory by guaranteeing ‘substantial autonomy and self-administration’ for Kosovo. Without prohibiting a declaration of its independence or reserving for itself the final determination of its status, the Council made it possible for Kosovo to secede from the State of the Serbia.

These and other resolutions, such as those that established the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR), may be legally justified in a constitutional reading of the Charter and on the doctrine of implied powers. The next section provides an overview of how resolutions of the Council developed so as to address non-members and nonstate actors.

2 Addressees of mandatory UNSC resolutions

SC resolutions may address not only MSs, but also non-members, by force of Article 2(6) of the Charter, which determines that the organisation must ensure that non-members abide by the principles listed in Article 2 insofar as this is necessary for the maintenance of international peace and security. While this provision has lost much of its importance given that almost all States are members of the UN, it still bears a theoretical relevance in face of the *pacta tertiis non nocent* rule, a principle of customary law that is also enshrined in Article 34 of the
VCLT, and of the theoretical possibility that a State be expelled from the organisation under Article 6 or simply withdraw from it.21

Opinions on the reach of Article 2(6) vary. Some deny that the provision is ‘capable of obliging a third state to behave in a certain way’,22 while others assert that this provision may be construed not only as revoking the principle that States cannot be bound by treaties they have not ratified, but also as forbidding MSs which decide to quit the organisation, or are expelled from it, from escaping their basic obligations under the Charter.23 The interpretation that extends the effects of mandatory resolutions on former and non-members seems more appropriate in face of the UN and States’ practice. Illustrating, when Indonesia withdrew from the organisation in 1965, the UK ascertained that that country’s obligations under Article 2 survived its withdrawal.24

What is more, the Council has in many resolutions established obligations to MSs and non-members alike. Until the 1990s, the language it used in reference to non-members was not as emphatic as that used in reference to MSs. Usually, the Council ‘called upon’ or ‘urged’ non-members to respect the terms of the resolution.25 As section 1.4 explains, such and similar expressions although suggesting a mere recommendation, may nevertheless camouflage a mandatory decision in diplomatic language. Be it as it may, the language of provisions addressed to non-members became clearly mandatory in the 1990s as can be evidenced, inter alia, by resolutions 748 (1992) and 757 (1992), which, respectively, affirmed the duty of ‘every state’ to refrain from any involvement with terrorism and decided that ‘all states’ should adopt the sanctions it imposed in the FRY, respectively.26

Furthermore, at a certain moment IOs were also targeted by mandatory resolutions. Resolution 748 (1992), for instance, had language calling ‘all international organizations to act strictly in accordance with the provisions of the present resolutions’, irrespective of ‘any rights or obligations conferred or imposed by any international agreement or any contract entered into or any licence or permit’.27 Albeit the expression used was ‘called upon’, careful interpretation of the resolution made it clear that determination was mandatory. In fact, the contextual interpretation of the resolution clarifies that it addressed regional organisations that were challenging the lawfulness of the demand that Libya surrender of two of its nationals.28 The Repertoire lists other cases in which IOs were so addressed.29

Also in the 1990s, mandatory resolutions started targeting individuals and collectives of individuals – rebel and terrorist groups, parties to conflicts and to ceasefires, as the following examples illustrate. Resolution 1267 (1999) addressed
the 'Afghan faction known as the Taliban' and demanded that it cease supporting terrorism and surrender Usama bin Laden to authorities in a country in which he had been indicted. Resolution 1540 (2004) defined nonstate actors as individuals and entities not acting under the lawful authority of a State and declared that acquisition of nuclear, chemical and biological weapons, means of delivery and related materials by NSAs constituted a threat to international peace. Resolution 1572 (2004) demanded that all parties to the Ivorian conflict comply with a ceasefire agreement. Resolution 2098 (2013) condemned armed groups in the Democratic Republic of the Congo (DRC) for violations of human rights, demanded that they cease all forms of violence and disband, and reiterated that ‘those responsible for human rights abuses ... will be held accountable.’ Hence, the practice of targeting NSAs evolved thenceforth in unprecedented ways. The last resolution established an 'Intervention Brigade' within the United Nations Stabilization Mission in DRC (MONUSCO) with the ‘responsibility of neutralizing’ such armed groups. It is clear that the practice of addressing NSAs finds no express support either in the wording of Article 2(6), or in any other Charter provision. Nevertheless, it may be legally justified on constitutional readings of the Charter and the doctrine of implied powers applied to Articles 25 and 39.

3 Effects of mandatory resolutions

Pursuant to Article 103, obligations arising from the Charter prevail over obligations arising from any other international agreement irrespective if entered into prior or subsequently to the adoption of the Charter. Commenting on this provision, McNair asserted that the Charter was the closest to a ‘legislation of the whole community of states’ ever materialised. He submitted that ‘those of its provisions purported to create legal rights and duties possess a constitutive or semi-legislative character’, and that MSs could not ‘contract out of them or derogate from them by treaties’ and that ‘any treaty whereby they attempted to produce this effect would be void.’ But the full scope of this Article may only be grasped if the later practice in its regard is properly considered.

Article 103 refers to obligations under any other agreement, which triggered a debate over whether it also reaches rights and customary law. The scholarship seems to remain divided on this topic. Bedjaoui, opining in dissidence in Lockerbie, answers in the negative – it neither trumps rights, nor prevails over customary law. However, that interpretation seems too formalistic and is here rebutted. Given the same hierarchy treaty and custom enjoy as sources of international law, it seems ‘illogical to presume’ that the Charter prevails over the former but not the latter.
In reference to the right controversy, the entwining between rights and obligations makes it difficult to address any of them separately. Take the ‘extradite and prosecute’ rule under the Montreal Convention, its subject of Bedjaoui review that supported his opinion as mentioned earlier.

Pursuant to Article 7:

[The Contracting State in the territory of which the alleged offender is found shall, if it does not extradite him, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case to its competent authorities for the purpose of prosecution.]

Similar wordings are found in many other treaties contemplating the ‘extradite or prosecute’ rule. Bedjaoui emphasised rights under the Convention and, notably, ‘the right to submit the case to its own criminal courts’ under Article 7. Nevertheless, as decided by ICJ in reference to the Convention against Torture, the provision institutes an obligation to submit the case to the competent authorities. Furthermore, the alternatives of extradite and prosecute do not have the same weight: ‘Extradition is an option offered to the state by the Convention, whereas prosecution is an international obligation under the Convention.’ Hence, it seems that the obligation to prosecute may be clearly overridden by a resolution of the Council demanding the surrender of suspects, so much that the practice of demanding such surrenders seems established now. By implication, the Council has also the power to override any ‘sovereign right’ not to extradite, found in treaty and customary law.

Resolutions of the SC often implicitly invoke Article 103, affirming that the resolution prevails over rights but without making any express reference to customary law. They usually use a standard formula ‘calling upon’ or ‘deciding’ that all States and IOs must ‘act strictly in accordance with the provisions of the present resolution, notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement.’ This notwithstanding, in practice, resolutions override conflicting customary norms. The opinions of MSs are not uniform as made clear by the Lockerbie crisis, when many States affirmed that SC resolutions only reached international agreements while others clearly disagreed.

Mandatory resolutions, notably if adopting enforcement measures, often impact on contracts, licenses, permits and other private law instruments. To stay in just one of many examples, resolution 1306 (2000) decided that all States should ‘take the necessary measures to prohibit the direct or indirect import of all rough diamonds from Sierra Leone to their territory’, ‘notwithstanding the existence of any rights or obligations conferred or imposed by ... contract entered into or any
licence or permit granted prior’ to the resolution. Furthermore, the wording ‘calling upon’ or ‘deciding’ that all States and IOs must ‘act strictly in accordance with the provisions of the present resolution, notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or any contract entered into or any licence or permit’ has become standard.

What is the meaning of the word ‘prevail’ in Article 103? Although the commentary is not uniform, a teleological interpretation of this provision is here adopted. Article 103 aims at ‘securing that Charter obligations can be performed effectively and not as abolishing other treaty regimes however incidental the conflict may be’. It is submitted that the same rationale applies to customary norms and, in principle, to obligations arising from private law instruments. In summary, a mandatory resolution may create obligations to MSs and non-MSs, as well as to nonstate actors, including individuals. Such obligations override any contrary right or obligation of treaty or customary nature, domestic legislation and contracts and other private instruments. The next section turns to the question of the determination of whether the Council has exercised its mandatory powers in a particular case.

4 Interpreting Council resolutions for the ascertainment of their nature

In the present work, ‘resolution’ refers to the written document through which the Council and other political organs of the UN publish and officially communicate recommendations (non-binding nature) and decisions (mandatory character). It may appear that other documents, notably Statements of the President of the SC, could eventually contain SC decisions. However, the UN practice is clear in that only resolutions formally declared adopted by the President are capable of giving rise to legal obligations binding on MSs. An SC resolution is composed of two parts, the preamble with unnumbered paragraphs and the operative part with numbered paragraphs; eventually, there may be annexes. The preamble often clarifies the purpose and object of the resolution, indicates its legal basis and provides its context. It is not unusual for the last preambular paragraph to invoke specific provisions of the Charter as legal basis for the resolution.

Resolutions are generally considered to be ‘mandatory’ or ‘non-mandatory’. However, such rigid categorisation does not always hold. The operative part of a resolution may, and often does, comprise both recommendations and decisions. A resolution that is generally recommendatory may have one or more paragraphs of a mandatory nature and vice versa. It is thus for the sake of simplification that the expressions ‘decision’ and ‘mandatory resolution’ are used as synonyms in the present work. However, whenever necessary the proper language is used.
Kelsen noted that those resolutions that the Council intended to be mandatory are, in fact, mandatory. This proposition provides a useful initial basis for the forthcoming analysis. However, contrary to what Kelsen posited, it is not necessary that the Council attach a ‘sanction’ (enforcement measure) to a resolution for it to be considered mandatory. It may be the case that enforcement actions are never applied, or are only applied much later after the adoption of one or several mandatory resolutions.

Different approaches to interpretation are usually identified and it is here suggested that they complement each other. The few scholars who have dedicated to this topic usually start by affirming that Articles 31 to 33 of the VCLT offer some guidance in interpreting SC resolutions. However, as Wood cautions, the VCLT must be applied with care because SC resolutions are very different from treaties and may become ‘artificial if not impossible’ to apply the VCLT in interpreting SC resolutions. Drawing from the VCLT, the following may be asserted with some degree of confidence. A resolution must be interpreted in good faith in accordance with the ordinary meaning to be given to its terms in its context and in light of its objectives and purposes.

Also, the preparatory work of the resolution, the circumstances of its adoption, preceding and subsequent practice, related resolutions, that is, its full context must be taken in due consideration. In a summarised manner, there is a textual and a contextual approach to interpretation, both equally necessary:

The language of a resolution of the Security Council should be carefully analysed before a conclusion can be made as to its binding effect. In view of the nature of the powers under Article 25, the question whether they have been in fact exercised is to be determined in each case, having regard to the terms of the resolution to be interpreted, the discussions leading to it, the Charter provisions invoked and, in general, all circumstances that might assist in determining the legal consequences of the resolution of the Security Council.

Textual interpretation is grounded on the premise that the Council usually indicates its intent through the wording it employs in the resolution itself. Expressions such as ‘in discharging of its responsibility for the maintenance of the peace and security’, ‘in reference to its powers under article 25’, and ‘acting under article 39’ usually reveal a mandatory nature. Conversely, expressions such as ‘calls upon’ or ‘urge’ usually, but not always, signal a mere recommendatory character. However, this criterion has clear limitations. For instance, Article 41 uses the wording ‘call upon’ to designate resolutions that, in fact, have binding nature. Henderson and Lubell also observe that either expression may give rise legal obligations depending on the contextual interpretation. Likewise, standard
terms shall be interpreted as bearing the same meaning in different resolutions, unless there are reasons for believing that the SC employed them with different connotations. Contrary to treaties, SC resolutions are not self-contained and often make reference to other international instruments; also, they are often part of a series of resolutions addressing the same situation. Nevertheless, as Wood noted, 'it would be a mistake to approach the text as if it were drawn up with the care and legal input of a treaty.' As a result, there must always be caution in drawing absolute conclusions from the text alone.

Provisions of the Charter invoked usually provide good tokens as to the intention of the SC. In adopting mandatory resolutions, the Council has many times invoked Articles 24(1) and 25 or Chapter VII of the Charter. These provisions may be invoked implicitly or explicitly, individually or in combination with each other. The majority of the Council’s mandatory resolutions explicitly invoke Chapter VII. Less frequently, the Council invokes its 'primary responsibility for the maintenance of international peace and security', which is an implicit reference to Article 24(1). Only in exceptional circumstances does it ground mandatory resolutions on Article 25. Likewise, Chapter VII is usually, but not always, invoked when provisional or enforcement measures under Articles 40, 41 and 42 of the Charter are adopted. There is no legal explanation for the Council’s choice between invoking Chapter VII or Articles 24 or 25. As the Repertoire indicates, many States have asserted that draft resolutions grounded in Chapter VII could have been grounded in Article 25, because the latter provision provides the necessary legal grounds for the resolution to bind States. Political motivations undoubtedly play a role; meetings of the Council indicate that whenever it wants to send 'a strong message' to the targeted States, it expressly invokes Chapter VII. Some MSs prefer to invoke Chapter VII because they fear that the context in which the Council acts could trigger controversy about the nature of the resolutions under scrutiny should they be grounded solely in Article 25. However, inclusion of a reference to Chapter VII may prove diplomatically impracticable and a resolution may end up being explicitly or implicitly based on Article 25. That was the situation with resolution 2118 (2013) which demanded, inter alia, that the Syrian government destroy its arsenal of chemical weapons. It is important always to bear in mind that, irrespective of the provisions of the Charter expressly or implicitly invoked, the mandatory character of a resolution results from the SC considering the resolution necessary for the maintenance of international peace and security.

The determination of the purpose and object of the resolution is important for asserting its nature, and is not always free from difficulties. Their importance increases if the resolution adopts enforceable measures, such as economic
embargoes, which must be necessarily linked to definite and clear objectives.\textsuperscript{67} The purpose and object may be determined by careful review of the preamble of the resolution, background documents, such as reports by the SG and letters by or to the President of the SC, statements by representatives of States present in the SC meetings or, as Wood summarises, all the circumstances of its adoption.\textsuperscript{68}

The contextual approach usually involve a narrow context concerning those States more directly involved with the drafting and negotiation of the resolution, and a broad context formed by different factors – specific provisions of the Charter invoked in the interpreted resolutions and in others of the same series; presence of enforcement measures in the interpreted resolution or in others of the same series; the debates in the meetings of the Council in which the interpreted and other resolutions of the same series were adopted; debates in which draft resolutions in the same series failed to be adopted. More broadly, attention must be paid to the political, military and economic factors that explain the reasons behind the adoption of the resolution. Wood ascertains that ‘it is necessary to have as full a knowledge as possible of the political background and of the whole of the Council’s involvement, both prior and after the adoption of the resolution under consideration.’\textsuperscript{69}

Citing a ruling of the former UN Administrative Tribunal,\textsuperscript{70} Wood adds, but does not elaborate on it, a third criterion in that the interpreter must seek to give ‘maximum effect’ to the resolution.\textsuperscript{71} This is an important criterion and must be understood along the lines of the theory presented in Chapter 2: effectiveness of the SC must be sought with due respect to the UN rule of law, which requires respect to the Purposes and Principles of the UN, the procedure for the adoption of resolutions and norms of \textit{jus cogens}. A fourth, more specific, interpretive rule concerns the presumption against normative conflict, which is covered in the next section.

\section*{5 Resolutions in accordance with the Charter, the resumption against normative conflict and voidability}

Kelsen acknowledged the ambiguity of the expression \textit{in accordance with the present Charter}, found in Article 25 of the Charter, noting it could either refer to ‘decisions of the Security Council’ or to the phrase ‘accept and carry out’.\textsuperscript{72} Today, the notion that ‘in accordance with the present Charter’ applies to decisions of the Security Council is gaining strength through the work of scholars, notably those who approach the Charter as a constitution, and decisions of courts.\textsuperscript{73} As Chapter 2 discusses the constitutional nature of the Charter, this topic is taken over there. Suffice it here to assert that States are not bound by resolutions contravening the
Charter, that is, resolutions which violate the Purposes and Principles or adopted in a manner that does not conform to the proper procedure established by the Charter for their adoption.

However, the determination that a resolution is incompatible with the Charter cannot to be made lightly, because there is a presumption that favours its prima facie lawfulness and validity. To be sure, in Certain Expenses, the ICJ asserted that if a resolution is ‘appropriate to the fulfilment of the purposes of the Organisation’, it is not ultra vires. It further affirmed that a resolution adopted by a UN organ is presumed to be validly adopted. Furthermore, in Namibia, it asserted that ‘a resolution of a properly constituted organ of the United Nations which is passed in accordance with that organ’s rules of procedure, and is declared by its President to have been so passed, must be presumed to have been validly adopted.’

Almost as a corollary of their prima facie lawfulness and validity, resolutions of the Council must be construed as ‘producing and intending to produce effects in accordance with existing law and not in violation of it’. Hence, if by way of a particular interpretation, it is possible to preserve the compatibility of a resolution with the Charter and, as Chapter 2 explains, with peremptory norms of international law, such interpretation must in principle be adopted. This principle is consequent of the ‘strong presumption against normative conflict’ in international law. As the International Law Commission (ILC) noted, the principle may be formulated in different manners and three cases are illustrative of its application in regard to resolutions of the Council, all concerning the alleged incompatibility of the resolutions with norms of international human rights law. As it becomes clear in Chapter 2, such norms may be read into Articles 1(3) and 55 of the Charter.

In Sayadi, Rodley offers some criteria ‘to be applied in interpreting the resolutions for the purposes of establishing whether there is indeed a conflict’ between them and the human rights standards, suggesting that such criteria may also be ‘helpful to those called upon to assess the legal validity of a Security Council resolution’. He ascertains the presumption that the Council does not intend its resolutions to allow or require for actions in violation human rights, notably human rights covered by the jus cogens and those which are non-derogable in times of emergency. In regards to those rights that are derogable, he maintains that departures would remain conditioned to the principles of necessity and proportionality.

In Al-Jedda, the European Court of Human Rights (ECtHR) asserted the same principle, further noting that in case of ambiguity in the terms of a resolution, the
Court should ‘choose the interpretation which is most in harmony with the requirements of the Convention and which avoids any conflict of obligations’.\textsuperscript{84} The Court grounded this dictum on the UN objective of promoting and encouraging respect for human rights. It concluded that ‘it is to be expected that clear and explicit language would be used were the Security Council to intend States to take particular measures which would conflict with their obligations under international human rights law.’\textsuperscript{85} The same principle was recently confirmed by the Grand Chamber of the ECHR in the \textit{Nada} case.\textsuperscript{86} However, in this case, the Chamber considered that the presumption was rebutted given the wording of the resolution in question – resolution 1390 (2002).\textsuperscript{87}

Another consequence of the presumption in favour of the validity of a resolution is that an eventual determination of its unlawfulness only makes it voidable, and not void \textit{ab initio}.\textsuperscript{88} Osieke shows that the practice of the Inter-Governmental Maritime Consultative Organisation, the International Labour Organisation and the International Civil Aviation Organisation confirmed unlawful acts of IOs are voidable.\textsuperscript{89} In his review of the issue, Alvarez argued that ‘allegedly \textit{ultra vires} acts by the UN are neither void \textit{ab initio}, nor invariably valid, but potentially voidable if the Member State challenging the act (1) establishes a \textit{prima facie} case for invalidity and (2) seeks judicial resolution of the question.’\textsuperscript{90} Hence, a State faced with a resolution it deems to be unlawful has the burden of establishing a \textit{prima facie} case for invalidity or, in the words of De Wet and Tzanakopoulos, a ‘strong case’ for invalidity.\textsuperscript{91} The next section addresses the competence to decide on such challenges.

6 The Council’s competence to decide, States’ powers of autointerpretation and judicial review by the ICJ

In his authoritative treatise on the law of the UN, Kelsen asserted that the Council, not MSs, has the competence to decide whether its own decisions are binding. Kelsen acknowledged that the wording of Article 25 of the Charter, under which MSs ‘agree to accept and carry out the decisions of the Security Council’, might have the ‘unintentional effect to make possible the interpretation that also members concerned are competent to decide whether a concrete decision ... is in accordance with the present Charter’.\textsuperscript{92} He ultimately rejected this possibility, emphasising that the Council’s power to determine the existence of any threat to the peace, breach of the peace, or act of aggression,\textsuperscript{93} and to decide what measures shall be taken was ‘independent of the interpretation of the members’.\textsuperscript{94}

However, that view is contested and commentary on the theme is divided. Authors
Generally agree that the Council is competent to decide such issues in the first place. However, for some scholars, States retain, as a mechanism of last resort, the so-called powers of autointerpretation. Other commentators reject the notion that States enjoy those powers. Hambro, writing under the name of Pollux, correctly dismissed autointerpretation as ‘the easiest, the most primitive and the most unsatisfactory solution’ to disputes between MSs and a UN organ in regards to decisions of the latter.

It was the exercise of powers of autointerpretation vis-à-vis the GA that provided opportunity for the ICJ to opine on the matter. To be sure, in Certain Expenses, MSs withheld payments of their respective shares of peacekeeping-related expenditures, as apportioned by the GA. The USSR and France decided that the UN, in incurring those expenditures, acted *ultra vires* and as a result they were not obliged to contribute towards associated expenses. As the States in question withheld payments, the Assembly consulted the Court. As seen in the last section, this advisory opinion established the presumptions of lawfulness and validity in favour of the challenged resolutions. Moreover, the Court did not shy away from the question of whether manifestly *ultra vires* resolutions were not binding on MSs. As correctly pointed out by Alvarez, even in cases of manifestly *ultra vires* resolutions, it was not for MSs to decide as both presumptions remained valid. In fact, the Court decided that the Court itself should test the validity of the expenses, finding ‘it appropriate’ to review the challenges put forward by MSs. Nevertheless, it emphasised that its review would be in the form of an advisory, i.e. non-binding, opinion.

However, as pointed out by Alvarez, the fact that the resulting advisory opinion had no binding effect does not obfuscate the fact that a legal review was actually carried out by an independent judicial organ with legitimate authority to undertake such action. Citing Lauterpacht, Alvarez posits that ‘there can be ‘review machinery of a non-compulsory character’, and that the ‘the procedure of the advisory opinion can constitute a sufficient mode of review.’

Some years after Certain Expenses, a question on the exercise of powers of autointerpretation came before the ICJ in the Namibia case. In view of South Africa’s ‘decision’ that it was not bound by SC resolutions as they lacked a mandatory character, the Council consulted the Court. The Court rejected South African attempts to determine the nature of the Council’s resolutions, ruling that:

> [W]hen the Security Council adopts a decision under Article 25 in accordance with the Charter, it is for member States to comply with that decision, including those members of the Security Council which voted against it and those Members of the United Nations who are not members of the Council. To
hold otherwise would be to deprive this principal organ of its essential functions and powers under the Charter.\textsuperscript{105}

Scholars who reject autointerpretation tend to attribute to the UN organ the competence to definitively decide the necessity and lawfulness of a resolution,\textsuperscript{106} to propose that an independent decision be reached through an advisory opinion of the ICJ or a committee of experts or through agreement by the community of MSs.\textsuperscript{107} In view of the ICJ decisions above, the latter alternatives seem more legally sound. It is here submitted that States may interpret and challenge the nature of a resolution of the Security Council. However, they cannot ascribe an authoritative nature to their own interpretation of resolutions, nor can they enforce it against the organisation. They must in any case put their challenges before the Council, which has the competence to appreciate such challenges in first place. When challenges to its resolutions arise, the Council should request an opinion from the ICJ, or alternatively ask for the opinion of a committee of experts. The Council may consult the ICJ under Article 96(a) of the Charter, or resort to a committee of experts under Article 36. Although not binding in nature, the opinion of the Court or committee of experts may, as emphasised by Lauterpacht and Alvarez, function as a legitimate mode of reviewing Council resolutions by an independent organ.

Besides this mechanism of non-binding nature, there is the possibility of the Court pronouncing the lawfulness of a resolution incidentally, in an inter-State dispute under its consideration. The dispute could involve one party challenging the unlawfulness of the actions of the other, which relied on or implemented a mandatory resolution.\textsuperscript{108} This was the situation put before the Court in \textit{Lockerbie}, a case reviewed in detail in Chapter 6, when it will become clear that the Court has jurisdiction to hear cases involving disputes with are part of situations seized by the SC and that the adoption by the latter of mandatory resolutions does not ‘bring to an end \textit{ipso facto} and with immediate effect all judicial arguments on the Security Council’s decisions’.\textsuperscript{109} Nevertheless, as Bowett explains the shortcomings of this mechanism are many. The parties would need to have accepted the jurisdiction of the Court and the judgment would have effects only \textit{inter partes} ‘confined … to the proposition that the one party could not oppose the resolution to the other: it would not quash or condemn the resolution for all purposes’.\textsuperscript{110}

The review mechanism, either incidental in a contentious case of or through an advisory opinion, is clearly insufficient to provide relief for States facing a resolution that they consider unlawful. On the one hand, the Council is reluctant to consult the Court\textsuperscript{111} as much as the Court is reluctant to decide against the lawfulness of a resolution, either incidentally in a dispute or in the procedure of
an advisory opinion. On the other, even if the ICJ abandons its traditional caution and holds a resolution unlawful, there would be no mechanism in place to enforce its decision or guarantee that the opinion would be respected.

In fact, it must be recalled that the Council is responsible for enforcing ICJ decisions against a recalcitrant party, if the Council deems enforcement necessary. Article 94(2) of the Charter and 41(2) of the ICJ Statute only authorise, but do not enjoin the Council to enforce a decision. Historically, this has proved clearly insufficient. When the US rejected the ICJ decision in Nicaragua, the Council had two opportunities to adopt resolutions calling ‘for full and immediate compliance’ with the decision; on both occasions, the draft resolutions had the support of 11 MSs but failed to be adopted due to the veto cast by the US.\(^{112}\) This is a case involving a major power with veto powers in the Council, but it cannot be seen as an exceptional circumstance. Take Lockerbie; in this case the Court decided that it had jurisdiction to hear the dispute although the same was part of a situation seized by the Council. The parties to the dispute were Libya, the US and the UK. Eventually the case was settled by negotiations. Furthermore, the Repertoire evidences that the Council has in general not enforced ICJ decisions, limiting itself to convey consultations among the parties in an attempt to find a negotiated solution.\(^{113}\)

Hence, it seems that the major conditions for an ‘effective’ judicial review of the Council’s resolutions are lacking. By effective it is meant judicial review guarded by an enforcement mechanism capable of prevailing irrespective of the willingness of the Council. It is submitted that resistance arises as a necessary mechanism to fill, albeit in a rudimentary manner, this vacuum.

7 Resistance to prima facie mandatory resolutions

As already explained in the Introduction, resistance is behaviour that occurs naturally, comprising actions and omissions of various kinds – inter alia, statements, protests, non-cooperation, resort to the GA and regional organisations, submission of disputes arising from the implementation of the resolution to judicial or quasi-judicial organs, rejection of the resolution, all of which may be followed or not by noncompliance. Many of the above are legitimate behaviours. Only when resistance starts disrupting the enforcement of a resolution it becomes relevant for this work; and it becomes relevant as prima facie unlawful behaviour. This is coherent with the principle that a resolution is reputed lawful and valid and that its interpretation must assume it is in accordance with the pertinent law, here understood as consisting in the Purposes and Principles of the UN, the procedure for the adoption of mandatory resolutions and jus cogens norms.
The theory in this book proposes that, insofar as the following requisites are present, resistance may lose its *prima facie* unlawfulness. It must necessarily consist in nonviolent political behaviour against a perceived unlawful resolution, i.e. a resolution whose adoption has not complied with the procedure established in the Charter, or which is or requires behaviour incompatible with the Purposes and Principle or *jus cogens*. It must be ascertained in coherent and consistent legal arguments, aimed at persuading other MSs to the unlawfulness of the resisted resolution and to the need of the resistance for the protection of the law. It must be carried out and the arguments be made publicly offering the opportunity for MSs and others to review them. It must be tolerated by a significant number of MSs which, by deeds and opinions, may eventually become resisting States on their own.

Resistance must, necessarily, be grounded on interpretations of the Charter and *jus cogens* shared by the community of MSs, and not on merely *ad hoc* and self-serving interpretations, as well as it must be grounded on a shared understanding that it is necessary. Dialogue with the SC and the community of resisting MSs needs be maintained at all times, and resisting States may propose alternative policies to those contained in the resisted resolution. The community of MSs is the principal community that must be persuaded to the unlawfulness of resolution and the need for resistance. MSs are the main addressees and enforcers of the resolutions with real capacity to undermine their implementation. Also, they are the main interpreters and appliers of the Charter, which must be convinced that the resolution is incompatible with it. If the resisting State fails to persuade a significant number of MSs, resistance has feeble chances of losing its unlawfulness. Moreover, it must be supported in favourable opinions and decisions by other actors directly or indirectly concerned with the issue, such as other UN organs, IOs and scholars. This section now unpacks the theory sketched above.

The first class of requisites concern the quality of arguments on which the resisting behaviour is grounded. There needs to be a coherent and consistent demonstration that the resolution violates the procedure for its adoption, the Purposes and Principles or norms of *jus cogens*. States should also characterise their resistance as the remaining instrument available for the protection of such norms, i.e. they should have by now put their case before the Council, by means for instance of letters addressed to its President, including requesting SC meetings, and statements made by their representatives at Council’s meetings. Libya, in particular, made extensive use of such means in the case studied in Chapter 6. The weight of the legal arguments must be enhanced in the rationale put forward by the resisting States. In order to qualify as potentially lawful, the
resisting behaviour must have legal basis, irrespective of the existence of reasons of moral, political, economic or any other nature. Resisting States must clearly indicate inconsistencies and flaws in the wording of resisted resolution, and resort to legal experts so as to enhance the weight of legal arguments. The sincerity of those proffering persuasive legal arguments is not as important as it may appear. As Johnstone explains, citing Elster, there is a ‘civilizing force in hypocrisy’, insofar as States affirming legal norms will eventually find themselves in the situation of having to match their own deeds to their words, given pressure exerted by other States.\textsuperscript{114} Insincere States may found themselves locked in ‘argumentative self-entrapments’.\textsuperscript{115} In short, arguments based on norms, notably if they are well founded and well built, often have an independent impact on behaviour.\textsuperscript{116}

The arguments must also be made public, so as to provide opportunity for third disinterested parties, States, IOs, and the invisible college of international lawyers more broadly, to review and debate them.\textsuperscript{117} Resistance and the reasons for the resistance must not be clandestine. The reasons must be put to the test in the open market of ideas, where they can be freely debated, and where the better argument has chances to prevail.\textsuperscript{118} Public meetings of the Council and other UN organs offer an excellent occasion for doing so. Corroboration of the arguments by non-interested parties lends strength to the argument, by showing their compatibility with prevailing or at least acceptable canons of legal interpretation of the Charter and international law. By publicising their arguments, resisting States may find support in decisions of UN organs and IOs, and opinions legal experts and scholars. Bosnia and Herzegovina (BH) had support of the Assembly and IOs, and Libya, in Lockerbie, had the support of IOs.

Toleration of the resisting behaviour by a significant number of MSs and, eventually, by the SC and other UN organs, constitutes another requisite. Persuading MSs to the unlawfulness of the resolution and to the need of resistance is of primary importance to the resisting State for different reasons. Membership to the UN is restricted to States under Article 4 of the Charter. The UN is still State-centred and governments are central to all its activities in reference to the maintenance of peace and security. Resolutions of the SC are carried out and enforced by MSs and a decision, by a significant number of MSs, to no longer carry them out or enforce them may completely jeopardise their enforceability. Also, MSs define the policies towards international security at the UN and IO levels, they authorise and finance specific actions; provide personnel when necessary.\textsuperscript{119} Also, ‘they are the parties, or at least one of the parties, to each conflict the United Nations is trying to control and resolve.’\textsuperscript{120} Furthermore, the interpretation and application of the Charter by MSs has the strength of providing or clarifying the meaning to the Charter, establishing practice in its regards, and
eventually giving rise to norms of customary law.\textsuperscript{121}

It is important to emphasise that resistance needs be tolerated by a significant number of MSs. It is not required that all MSs agree on the incompatibility between the resisted resolution and the pertinent law. For example, the opinions remained highly divided as to whether MSs had the right to reject the Council embargo over BH, a case studied in Chapter 5, and provide the means for that country to defend itself, under Article 51 of the Charter, against genocidal actions, constituting the prohibition of genocide a norm of \textit{jus cogens}. Nevertheless, as can be seen in Chapter 5, massive disobedience of the embargo was tolerated by a great number of the MSs.

What constitutes a significant number of MSs? It is submitted that the answer will vary on a case-by-case basis. The number must be such that it objectively undermines the Council’s capacity to enforce the resisted resolutions. Thus, because of the number of MSs threatening noncompliance, or carrying it out, it becomes impossible for the Council to enforce its resolutions. But it is not only a matter of head-counting; a collective of States is in principle significant if it reasonably represents the whole community of MSs. How can a resisting State objectively assess whether it has the support of other States, notably if resistance builds up gradually? The most reliable criterion, it seems, is having a favourable resolution adopted by the Assembly. For instance, BH, with the support of more than 100 countries,\textsuperscript{122} asserted that the arms embargo jeopardised the exercise of its right to self-defence. But the case of Libya shows that a favourable vote in the Assembly is not a necessary requirement for resistance to become lawful. Libya was supported by more than 80 States\textsuperscript{123} when it claimed that the Council could not demand immediate payment of compensation and surrender of the suspects to either the US or the UK. In different forms, and at different levels, both countries seem to have prevailed against the resisted resolution. Thus, at what threshold the number of States becomes so significant as to make the difference remains elusive.

At a certain point, toleration by MSs may characterise collective resistance. There is always the possibility of one State beginning a resistance campaign alone and gathering support from other States gradually. This occurred in \textit{Lockerbie}, the subject of Chapter 6. The Libyan government alone resisted the resolutions demanding the surrender of its nationals for several months before obtaining the support from States of regional organisations. Eventually, the Council was facing collective resistance of great spread.\textsuperscript{124} Once third States, non-targeted by the resisted resolutions, agree with the arguments put forward by resisting State, and behave in manner to disrupt the enforcement of the resolution, e.g. by denying enforcing sanctions, they too become resisting States, lending legitimacy to the
resistance. The borders between toleration and resistance are necessarily blurred. It is here suggested that massive toleration or collective resistance has a true potential to lose the prima facie unlawfulness. The emphasis on them is an emphasis on same interpretations of the Charter and jus cogens shared by a significant collective of MSs. This work places more weight on same, shared interpretations than on unilateral interpretations. What Johnstone posits in reference to treaties may be applied, mutatis mutandis, in the present context. In entering a treaty, States commit to a process of intersubjective rather than individual interpretation.\textsuperscript{125} Interpretation is an activity that occurs as part of ‘an ongoing relationship in which the parties generate, elaborate and refine shared understandings and expectations’.\textsuperscript{126} Citing McDougal, Lasswell and Miler, he recalls that interpretation is the discovery of such shared expectations, and that one party distorts the agreement whenever it enforces unilateral understandings unsubstantiated by the shared expectations.\textsuperscript{127} He invokes Postema’s notion of friendship to claim that so unsubstantiated unilateral interpretations fail to ‘recognise the common perspective and discourse that structures the relationship’.\textsuperscript{128} He recalls Schachter and asserts that interpretation must be justified ‘not in terms of self-interest but in terms of the shared values expressed in the Charter or through other consensual procedures’.\textsuperscript{129} As ‘extreme constructions’ deviate from accepted practices, insisting on them is an inappropriate behaviour.\textsuperscript{130} Note that it is admissible that the State acts alone in certain circumstances insofar as it remains clear it is part of a significant group. Its reasons must be supported by the group.

Another requisite is the maintenance of dialogue between resisting States and the Council. If correctly calibrated, resistance reduces State cooperation, and as a consequence, undermines the authority of the Council only to the extent necessary for alternative policies to be implemented through the SC. As will be seen in this book, the maintenance of dialogue between non-targeted resisting countries and the SC was vitally important insofar as the States put forward, for the Council’s consideration, alternatives to those policies that they opposed. For instance, in the Libyan case in Chapter 6, States acted through the Organisation of the African Unity (OAU) and the Organisation of the Islamic Conference (OIC) and proposed another means of solving the dispute by suggesting that the suspects be surrendered to a third, neutral country. Moreover, by maintaining dialogue with the Council, putting forward alternative courses of action and urging that it review its resolutions, they emphasised their preference for involving the Council in any solution and avoided excluding or isolating it. Implicitly, and sometimes explicitly in their opinions, there is the recognition that the SC remained the principal UN organ with primary responsibility towards international peace and security.
Furthermore, the notion that resistance may go beyond mere noncompliance and entail dialogue with the resisted authority and the proposal of alternatives to resisted commands is not new. It was first developed and applied successfully in the context of Indian independence. Gandhi’s strategy was not only to resist, but to keep dialogue open with the British authorities and to establish new institutions to compete with and substitute for the resisted British counterparts. Modern definitions of resistance incorporate both dialogue and the creation of alternatives. Vinthagen, for instance, defines resistance as behaviour that creates alternatives, hindrances, new definitions and evasion of both subordination and violence in an attempt to undermine power and the legitimacy of violence while fostering conditions of reconciliation and dialogue. This has been the definition adopted in this work.

Another class of requisites comprise tokens or cues on which the resisting States, the SC and the other actors may rely to assess the lawfulness of the resisted resolution and resisting behaviour. Their qualification as cues will probably be familiar to the readers of Alvarez and Frank and Lauterpacht, who in different manners identified a ‘cueing function’ of judicial decisions in the sense that they may warn the Council against actual or potential incompatibility of its resolutions with the Charter or jus cogens. Along with judicial decisions by international courts, this work emphasises judicial decisions and opinions from regional and domestic courts that corroborate or reject the arguments put forward by the resisting States; opinions of the SG and resolutions of the other political organs of the UN; statements and opinions by UN special procedures; statements by representatives of non-governmental organisations; opinions of scholars, notably ‘the most highly qualified publicists of the various nations’; resolutions of IOs, among others.

All these actors may, to different extents, act as neutral reviewers of the resisted resolutions and of the arguments on which resistance is founded. Insofar as they favour the arguments of the resisting States, they may also partake in resisting the resolutions. Conversely, if they favour the Council’s interpretation, they undermine resistance, increasing the threshold for resistance to lose unlawfulness. Their role as actors of resistance is outside the scope of this work, which concerns State resistance. Hence, their immediate importance rests in providing interpretation on which the resisting State and the SC may rely. They form, in this perspective, interpretive communities, i.e. communities of those directly or indirectly involved with the interpretation of the law in the circumstances of each case.

Moreover, UN political organs and IOs may assume the role of brokers between resisting States and the Council and of sponsors of alternative policies, including
those put forward by resisting States. This is evocative of the resistance strategy usually known as alternative political institution, or parallel government. As Sharp explained, an alternative political institution is a rival source of power, ‘an organisation that conducts certain particular governmental affair that is not a part of the established and recognized government’. 136 Usually, the appearance of alternative institutions is gradual and unanticipated. Ultimately, if it receives overwhelming support from the subjects that it addresses, the alternative institution may threaten to replace the resisted organ.137

The use of this strategy against the Council has the potential to undermine its power to enforce the resisted resolution because of three factors. States will only find a need to resort to the Assembly and IOs in case the Council is deaf to their pleas. In doing so, resisting States consciously, or otherwise, made it clear that the Council is not the only organ concerned with international peace and security. They will remind it that it has primary rather than sole responsibility over the field. Second, the Assembly and IOs by reviewing the pleas made by the resisting States, confirming their arguments and suggesting alternatives to the resisted resolutions, start playing a role parallel and complementary to that of the SC. This was particularly clear in the case of Bosnia, in which the GA openly suggested the lift of the embargo and implementation of alternative policies. Third, resisting States may demonstrate willingness to proceed and act as agreed within the Assembly and IO, even if it ultimately implied acting in opposition to the resisted resolutions. Hence, resolutions of the GA and IOs become the basis for State actions that are incompatible with the resisted SC resolution. As a result, the Council’s role as the organ with primary responsibility over that issue in specific is undermined by the rise of those organisations as rival sources of political power, although that will likely be questioned by States that side with the SC. It is worth mentioning that, in the case studies, the strategy was not carried out to its ultimate consequences, and the Assembly and IOs did not act to irreparably undermine the powers of the Council as the organ with responsibility towards international peace and security. On the contrary, the resistance was aimed exclusively at undermining the powers of the Council in respect of the resisted resolutions. This dimension, it is submitted, is one of the main requirements for resistance to qualify as lawful. It is this balance between safeguarding the Council and undermining its powers to enforce one particular resolution on grounds that it violates the Charter or the jus cogens which guarantees that the constitutional architecture of the Charter is respected.

Moreover, by keeping up the dialogue with the Council, States and institutions respect the spirit of Articles 53 and 54 of the Charter, which require their submission to the authority of the Council and to keep it fully informed of their
actions. By maintaining dialogue with the Council, and engaging it in a debate over the propriety and lawfulness of its resolutions and requesting their modification, resisting States strike a balance between safeguarding the general role of the Council and undermining its powers to enforce the resisted resolutions.

Based on the above, a rudimentary procedure is suggested – the resisting State must first submit its arguments to the SC, acknowledging the latter’s competence to appreciate them in first instance. Failing that, it must involve the other MSs through the UN organ in which they enjoy equal participation and voting rights, the GA. It must also seek the opportunity for involving other IOs, notably those relevant for the regions more concerned with the crisis. They must also seek the opportunity for the ICJ to review their legal arguments as to the unlawfulness of the resisted resolution for instance by bringing claims against states enforcing the resolutions.

Finally, to be successful resistance requires from the Council neither the withdrawal of the resolution, nor an acknowledgement of the latter’s unlawfulness. In BH, a successful case of resistance by all accounts, that has never occurred. Resistance was so disseminate and pervasive that the military embargo became a fiction.

Concluding this chapter, it may be asserted that resistance is behaviour that creates hindrances and alternatives to the enforcement of the resisted resolution, while fostering conditions of reconciliation and dialogue. The theory de-emphasises the role of autointerpretation and emphasises that of common, shared interpretations. It takes the whole resisting behaviour in consideration, rather than restricting its focus to the rejection of the resolution, and posits that such behaviour may lose its prima facie unlawfulness insofar as some requisites are present. It must be grounded on the unlawfulness of the resolution; the arguments in that regard must be coherent and consistent and publicly available; the resisting State must attempt to obtain support from other States, from UN organs and from IOs. Resistance must be calibrated so that the enforcement of the resolution is undermined while not undermining the capacity of the Council to function as the guardian of international peace and security. Resisting States must also keep a dialogue with the Council – resistance is an invitation for the Council to change its interpretation of the Charter. The next chapter turns to the constitutional character of the Charter and introduces the notion of constitutional resistance.
Notes

1 UNSC, S/PV.91 (1947), Statement submitted by the Assistant Secretary-General to the Council.

2 Ibid.

3 See section 1.5.


9 UNSC resolution 2118 (2013), last preambular paragraph.


12 Ibid., 92.

13 Ibid., 93.

14 Ibid., 93 and 96.


16 UNSC resolution 1244 (1999), preamble and paragraphs 10 and 11.

17 Accordance with International Law of the Unilateral Declaration of Independence in
Respect of Kosovo, 2010 ICJ Reports 1, 101 et seq. (ICJ 2010).

18 Ibid.

19 UNSC resolution 808 (1993).

20 UNSC resolution 995 (1994).


27 UNSC resolution 748 (1992), paragraph 7.

28 See Chapter 4.

29 See footnote 26.

30 UNSC resolution 1267 (1999), paragraphs 1 and 2.

31 UNSC resolution 2098 (2013), paragraphs 8 and 9.


33 Franck, ‘Is the UN Charter a Constitution?’, 7.


35 Ibid.


40 Ibid., article 7.


42 Questions of Interpretation and Application of the 1971 Montreal Convention Arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United Kingdom and United States of America), Provisional Measures, 148. Emphasis added.

43 Questions Relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal), 2012 ICJ Reporter 1, 94 (International Court of Justice 2012).

44 Ibid., paragraph 95. Emphasis added.


49 UNSC resolution 1306 (2000), paragraphs 1 and 9.


54 Ibid., 96.

55 For all, see the South Africa case study in Chapter 3.


62 Ibid., 89.


65 UNSC, S/PV.4950, pp. 63–68; S/PV.4950, pp. 7 and 17.

66 UNSC, S/PV.4950, especially p. 7.

67 See Chapters 4 and 8, when the objectives of the resolutions became blurred.


69 Ibid, 79.

70 Abolished in 2009, it was replaced by the current two-instance system comprising the UN Dispute Tribunal and the UN Appeals Tribunal. See UNGA resolutions 61/261 of 4 April 2007, 62/228 of 22 December 2007 and 63/253 of 24 December 2008.

71 Howrani and four others, UNAT Judgment n. 4 (1951). JUNAT n. 1-70, 8; cited in Wood,
'The Interpretation of Security Council Resolutions', 85.


74 Certain Expenses of the United Nations (Article 17, paragraph 2, of the Charter), Advisory Opinion, 168. In this work, the expressions 'ultra vires', 'illegal', 'unlawful' and 'unconstitutional' are in general used interchangeably to designate incompatibility with the Charter or jus cogens.

75 Ibid.


77 ILC, 'Fragmentation of international law: difficulties arising from the diversification and expansion of international law' 2006, paragraph 39.

78 Ibid., paragraph 37.

79 Ibid.


81 Ibid.

82 Ibid.

83 Ibid., pp. 36 and 37.

84 Al-Jedda v. the United Kingdom [GC], no. 27021/08, § 102, ECHR 2011, paragraph 102.

85 Ibid.


87 Ibid. See discussion in Chapter 8.


93 Article 39, UN Charter.
97 Pollux, ibid., 56.
98 Certain Expenses of the United Nations (Article 17, paragraph 2, of the Charter), Advisory Opinion, 151 (IC) 1962.
100 Certain Expenses of the United Nations (Article 17, paragraph 2, of the Charter), Advisory Opinion, 276 et seq.
101 Ibid., 1962: 170 et seq.
104 Lauterpacht, ibid., 113. That excerpt is also cited in Alvarez, ibid., 276.
106 Separate Opinion of Judge Morelli, in Certain Expenses of the United Nations (Article 17, paragraph 2, of the Charter), Advisory Opinion, 224. Notably, Judge Morelli asserted ‘that the Charter confers finality on the Assembly’s resolution irrespective of the reasons, whether they are correct or not, on which the resolution is based; and this must be so even in a field in which the Assembly does not have true discretionary power.’ Ibid.


111 In only one of the case studies (South Africa), did the SC refer MS challenges to its resolutions to the ICJ. See Chapter 3.


115 Ibid.

116 Ibid., 455.


118 Johnstone, 'Security Council Deliberations'.


120 Ibid.

121 See Chapter 2.

122 See Chapter 5.

123 See Chapter 6.

125 Ian Johnstone, 'Treaty Interpretation: The Authority of Interpretive Communities', 

126 Ibid., 381.

127 Ibid.

128 Ibid., 383.

129 Ibid., 413.

130 Ibid., 385.


134 Article 38 (d), Statute of the International Court of Justice, Treaty Series N. 993, 1945.

135 The notion of interpretive community may sound similar to that proposed by Johnstone and Henderson, who draw on Stanley Fish. However, this work distances itself from Fish, and does not attribute to interpretive communities the same level of authority in regards interpretation. The expression is employed simply to designate the referred actors when interpreting the law. Stanley Eugene Fish, *Is There a Text in This Class?: The Authority of Interpretive Communities*, Harvard, MA, Harvard University Press, 1980; Stanley Eugene Fish, *Doing What Comes Naturally: Change, Rhetoric, and the Practice of Theory in Literary and Legal Studies*, Durham, NC, Duke University Press, 1989; Ian Johnstone, 'Treaty Interpretation: The Authority of Interpretive Communities', *Michigan Journal of International Law* 12, 1991/1990, 371; Christian Henderson, *The Persistent Advocate and the Use of Force the Impact of the United States Upon the Jus Ad Bellum in the Post-cold War Era*, Farnham, Ashgate Publishing, 2010.


137 See entry for 'Dual Sovereignty and Parallel Government', ibid.
Accounting for the influence of empowered individuals in the United Nations system: The constitutive empowerment model
Chapter 3: Accounting for the influence of empowered individuals in the United Nations system: The constitutive empowerment model

Individuals can become empowered and therefore exert influence on policy processes within the UN in a process that favourably connects their influence practices and their particular subjectivity-based position in the respective UN fields. In order to show that possibilities for individual empowerment and influence-exertion emerge out of a process in which agentive and structural elements interact immediately, I consider two constitutive processes: the constitution of individuals' practices and the constitution of their subjectivity. The empowerment of individuals is therefore constitutive – that is, neither agentive nor structural elements are assigned explanatory or temporal primacy. Instead, both practices and subjectivity are constituted in themselves and in their effects on each other. That said, the constitution of the subject is in some way a precondition for the analysis of its actions in the constitution of practices. The two processes are, however, not entirely sequential. The subject is ‘under construction’ even when it acts. Subjectivity and practice construction should therefore be understood as an enabling context for effecting change. Altogether, the constitutive empowerment model is targeted at the micro-level and tries to understand how it is possible for (temporary) international civil servants to influence processes of policy change within the UN system.

The constitutive empowerment model is informed by Bourdieuan concepts, in particular the triad of field, habitus and capital beyond its economic form. Over the last few years, the sociology of Pierre Bourdieu has received much attention in the discipline of International Relations (Adler-Nissen 2013). It has been applied to the study of international security (Bigo 1996; Williams 2007; Pouliot 2010), international political economy (Leander 2001, 2010), diplomacy (Adler-Nissen 2014; Adler-Nissen and Pouliot 2014), the discursive influence of NGOs in global governance (Holzscheiter 2005), European integration (Kauppi 2005), European and international law (Madsen and Dezalay 2002) and questions of (constructivist) methodology (Guzzini 2000). Bourdieu’s work leaves much room for differential application and I follow a non-structuralist reading as proposed by, for example, Leander (2011).

Despite using Bourdieuan work as a source for inspiration, my approach makes two particular departures, following, in fact, a stance advocated by Bourdieu in terms of using his analytical concepts as ‘thinking tools’, oriented on practical demands (Colliot-Thélène et al. 2005, p. 8; Leander 2008). First, I apply the concepts of habitus and capital to studying the agentive capacities of specific individuals, whereas Bourdieu was interested in the collective categories of classes and groups. Bourdieu also identified prominent individuals in different fields, in particular in his works on the literary field (Bourdieu 1992a) and on the French elite school and university system (Bourdieu 1996 [1989]). However, to him, the potential for individual influence-exertion
rests in the relations between individuals, rather than in the individuals themselves. This primacy of relations is Bourdieu's answer to the agency-structure debate. While this relational perspective is also part of the constitutive empowerment model in the form of relational capital, I do not attribute it with absolute priority. The constitutive empowerment of individuals does not emerge out of relations alone, but also rests within their constituted subjectivities. This first departure is facilitated by combining Bourdieu's ideas with Lahire's plural understanding of habitus. Second, the constitutive empowerment model attempts to understand possibilities for change, in contrast with Bourdieu's explanations for systemic reproduction. As a consequence of my focus on change, the model combines Bourdieuan concepts with analytical insights from political psychology and constructivist International Relations theory.

I develop the constitutive empowerment model in two processes: the constitution of subjectivity and the constitution of practices. The constitution of subjectivity provides an understanding of the capacities of individual agents by introducing their habitus—that is, their social grounding and specific empowerment dispositions, which has a direct impact on the way they are able to act and comport themselves (see Section 3.1). The habitus is a matrix of dispositions agents acquire throughout their lives, which informs their ways of thinking and acting. As a product of their history, habitus incorporates the agents' various private, public and professional socialization experiences into a structured style of acting, which is expressed in their sense of situations. This social anchoring is enhanced with two personality dispositions from the psychological literature that have been identified as crucial factors for individual influence-exertion in leadership studies: task focus and cognitive complexity.

Social experiences and personality factors are combined with relational capital in social and symbolic forms—that is, social relations/networks that help individuals in their endeavours and the positive recognition appropriated to them. Relational capital is not strictly part of agents' habitus, but, as it is linked to the kind of person the individual is, I mention it in the context of the constitution of subjectivity.

How the subjectivity of individuals is constituted marks the beginning of their agency and of the influence practices individuals are able to engage in successfully (see Section 3.2). These practices are the discursive statements individuals make, which are designed to connect discursive referents and thereby shape meaning in ways that support their intended outcome—that is, promoting regulative or constitutive ideas. Regulative ideas define standards for behaviour, while constitutive ideas attempt to create new interests, actors and categories of action.

Individuals circulate these ideas through integrating them into stories, narrative representations of events in a chronological fashion that impose a certain account and interpretation of events, shape possible responses and limit other potential
representations (Onega Jaén and García Landa 1999, p. 3; Wiben 2011, p. 59).
Constructing these stories is an innovative and creative individual practice, rather than
a re-enactment of existing discursive settings and ideas. The story is analysed on three
content-related levels: plot, cast of characters and interpretive theme. However, the
subjectivity of the individual as narrator is constantly at the background of their
storytelling practices. Their subjectivities shape not only what kind of stories they tell
(content), but also how they are perceived and whether they resonate with their
addressees (performance). Stories are therefore performed in a field, the delimited,
 hierarchically structured social arena that constitutes around the policy issues at stake
and includes other actors, the addressees of the story, who are actively involved in
these policy processes.

Taken together, the model’s two constitutive processes include three major analytical
elements: habitus, story and field. Only if these work together, as depicted in the
interlinking cog wheels of Figure 3.1, can the empowerment process run smoothly and
the new discursive meanings individuals attempted to shape become part of discursive
structure, which makes new practices possible.

Individual empowerment therefore rests on what kind of value the individuals’
particular set of dispositions, ways of behaving and acting, relational capital (habitus)
and practices (stories) have in the field and how well the individuals can uphold this
value. This makes habitus and story contextually mobilized resources in the field.
Differentially constituted fields therefore likewise require different constitutions of
subjectivity and practices in order for individual influence-exertion to succeed: the
social background, dispositions and story that make a temporary UN official an

Figure 3.1 Interplay of analytical elements in the constitutive empowerment model.
empowered narrator in the UN development field do not necessarily work in the UN peace and security field and vice versa. The analytical advantage of the constitutive empowerment model therefore lies in its adaptability to various constitutions of UN fields: different favourable combinations of individual agents are examined through applying the constitutive empowerment model to three empirical cases across Chapters 4–6.

3.1 The constitution of subjectivity

The constitution of subjectivity refers to the agentive side of individual empowerment in the UN: what are their potential 'power resources' and how are these constituted in the social sphere? The key to answering this question lies in the individuals' habitus. My conceptualization of habitus combines Bourdieu's reasoning with Lahire's refined definition. Lahire's understanding is based on three critiques of the Bourdieuan model: its assumed coherence and transferability, the determining power of the actors' past and its pre-reflexive conception of action (Lahire 1998, 2003, 2008).

3.1.1 Pluralist habitus: socially grounded actors

Habitus refers to the procedural incorporation of a specific social background, history and culture by actors (Bourdieu 1980, p. 101). Their experience and living conditions manifest into dispositions of perceptions and actions inside individuals. These conditions therefore continue to be present and effective even when the individual's living conditions have profoundly changed because they inspire their practices. In other words, habitus is embodied personal history:

We can say that social reality exists twice, within objects and within heads, within the fields and within the habitus, within and outside actors. [...] The world understands me, but I understand the world, because it understands me; because it has produced me, because it has produced the categories which I apply on it, it appears natural, self-evident to me. (Bourdieu 1992b, p. 103)

Habitus is at the same time agentive and structural and it is therefore neither exclusively: derived from the agent's interaction with the field, it becomes incorporated structure, a structure that is stable yet not static and responds to the agent's creative usage in practices. Habitus has a dual nature as both a product and a producer of practices, it is a 'structured structure predisposed to function like a structuring structure' (Bourdieu 1980, p. 88). In this way, the habitus unites cognitive, evaluative and motor schemes into an internalized 'generating principle of practices' (Bourdieu 1996 [1989], p. 161). This comparatively limited number of schemes enables actors to enact a potentially infinite number of practices adapted to specific situations (Bourdieu 2000
Deeply ingrained in the actors, the functioning of habitus often requires no thought, it appears 'natural', when it really is not, but it comes 'naturally' to the actor.

The incorporation process of habitus and plural socialization

Social background, history and culture are crucial in creating and shaping habitus as they relate to different volumes of economic, social, symbolic and cultural capital. In contrast to economic capital, which is directly visible and immediately convertible into financial assets, symbolic, cultural and social capital are other forms of socially recognized capital that work in less visible, but nonetheless effective, ways (Bourdieu 1986, p. 242). Individuals may be appropriated with different forms of capital that contextually legitimates or enables them to pursue certain actions. Bourdieu uses this terminology to clarify society's unequal distribution of resources – and, consequently, opportunities. The possibility of societal success depends on what kind of capital an individual is appropriated with, while the relevance of different forms or combinations of capital varies across societal fields. In Bourdieu's terms 'the unequal distribution of capital is the source of the specific effects of capital' (1986, p. 244).

Capital can be distinguished into objectified capital consisting of material possessions, such as monetary means or art, and incorporated capital, which is part of the habitus (Bourdieu 1980, p. 95). When it comes to incorporated capital, cultural capital is particularly relevant: cultural capital is information capital, such as embodied cultural competences, education and qualifications, and may be institutionalized in educational degrees. Embodied cultural capital can be acquired both unconsciously through domestic transmission and consciously through investing time and effort. While the accumulation of cultural capital is assumed to be easier in the case of domestic transmission – in other words, if the family of the individual is already endowed with cultural capital – agents from a low to middle class background can compensate some of what they lack with regard to cultural capital with good education. In La distinction: critique sociale de jugement, Bourdieu goes as far as stating that once an individual has successfully completed his studies at a widely recognized elite university, their social origins cease to be negatively relevant in capital terms (Bourdieu 1979, p. 68).²

Cultural capital secures profits for the individual through the 'symbolic logic of distinction': the value of any individual cultural competence derives from its relative scarcity within the distribution of cultural capital (Bourdieu 1986, p. 243). As capital can become incorporated into an actor's habitus, 'the internalisation of exteriority' (Bourdieu 2000 [1972], p. 258), the advantages and disadvantages in recognition and social position tied to different volumes of capital become part of the actor's second nature. Actors literally internalize the social, material and cultural structures that surround them – their specific social positions become integral parts of who they are without
question. This makes habitus more than a set of dispositions associated with an individual style – it contains key elements of the social:

The entire structure of the system of living conditions [position in the social hierarchy, social trajectory, capital, I.B.] as the experience of a particular social place with a particular position within this structure is embedded in the dispositions of the habitus. (Bourdieu 1979, p. 191)

As a product of history, habitus can be altered as the actor’s trajectory continuously adds new experiences. Alterations can, however, never be consciously made because the patterns that make up the habitus are the products of repeated practices, experiences and social reinforcements. To Bourdieu, habitus is tied to a certain class, as societal groups are marked by similarities in the social structures that surround them. Through their inclusion into the actors’ habitus, whose process of acquisition is forgotten, arbitrary cultural and social hierarchies acquire a taken-for-granted quality and thus serve to perpetuate the societal status quo. Habitus therefore plays into the reproduction of social inequalities.

Bourdieu portrayed habitus as the singular and coherent outcome of internalizing a specific set of structural class relations. However, I follow Lahire’s understanding of habitus, who sees socialization as a much more diverse process. In a plural understanding, actors’ habitus is the product of internalizing numerous and dissimilar socialization experiences in multiple institutions or through multiple individual interactions in their family, at school, with friends and in the work environment: ‘All individuals immersed in a plurality of social worlds are subject to heterogeneous and at times even contradictory socialization principles they incorporate’ (Lahire 1998, p. 50). Individuals are therefore the products of the social heterogeneity they traversed. As social actors, individuals have been participants of various social universes either successively, in different periods of their lives, or simultaneously, during the same period of their lives. In these, they occupied different positions and have, by consequence, a stock of distinct, but interconnected, social repertoires. As a consequence, actors in differentiated societies go through frequent crises of adaptation between incorporated dispositions and new situations (Lahire 1998, p. 83). Their socialization and the associated incorporation of habitus are therefore not progressive and linear, but lined with obstacles. This also applies to the transmission of, for example, cultural capital, which is not an automatic and homologous process, but is subject to distortion, adaptation, reinterpretation and, ultimately, reconstruction from one generation to the next (Lahire 1998, p. 305).

Way of functioning/fit between habitus and field

As a product of the actor’s history, habitus therefore guarantees the active presence of
previous experiences through their representation in perception, acting and thinking schemes (Bourdieu 1980, p. 91). This has two distinctive effects: first, it constrains the habitus’ ability to generate practices. While its creative nature enables the habitus to produce an infinite number of relatively unpredictable practices, they are limited in their diversity: ‘Habitus makes it possible to freely produce all thoughts, all perceptions and all actions which are inscribed within the inherent limits of its particular conditions of production’ (Bourdieu 1980, p. 92, own emphasis). The dispositions encompassing the habitus are therefore a negative freedom, representing a border for acting, just as much as an opportunity to act (Bourdieu 2000 [1972], p. 288). Second, the habitus is able to generate particularly successful practices when it encounters ‘conditions of its effectiveness’, in other words, conditions ‘which are identical or analogue to those of which it is the product’ (Bourdieu 1987, p. 128). This means that there is a certain fit, also called ‘complicity’, of habitus and what Bourdieu calls field – ‘objectified history’ in the form of a functionally differentiated system within a society (Bourdieu 1982, p. 38; compare also Section 3.2.2).

Habitus is generated through the practices of agents within a field and is adapted to the specificities of the field in question. It follows that if the field and its rules display similar conditions to those under which the habitus was ‘originally’ formed, then the actor’s habitus has a perfect fit. In this instance, actors intuitively act in the way best suited to the field. Bourdieu goes as far as stating that, by way of this intuitive fit, agents may see themselves and are seen as perfectly disinterested in the workings of the field – a perception that adds to their sense of ‘natural’ authority (Bourdieu 1980, p. 120). The fit of habitus and field is therefore considered elementary for the action possibilities of an actor: certain actors may be favour ed in terms of finding conditions enabling their empowerment by virtue of their habitus.

We would therefore find actors who are more successful in crucial social fields because they are endowed with a certain habitus that enables them to act in suitable ways by their very ‘nature’. At the same time, actors with a different, ‘non-fitting’ habitus have to work against the actions suggested to them by their ‘nature’ in order to fit in. A different habitus thus does not necessarily mean that individuals will not be able to succeed or to become empowered within a certain social field, yet their chances for success are slimmer and tied to great efforts on their side, as well as to their fair share of circumstantial luck. Bourdieu would also hold that, despite a successful modification of habitus, a sense of insecurity, foreign to those endowed with an ‘originally fitting’ habitus, remains.

In contrast to Bourdieu, who considers this fit between habitus and field as homologous and pre-reflexive, I follow Lahire’s reasoning in highlighting the habitus as plural and its functioning as characterized by a sense of situations. As the past of actors
is plural rather than unified, their stock of social repertoires comes with an understanding of what one appropriately does and says in any particular context (Lahire 1998, p. 61). Practices thus cannot be understood on the basis of actors’ habitus alone; we also need to take the character and the logic of the social situation into account as these activate past experiences of the habitus. In Lahire’s words: ‘The practice is always the meeting point of past individual experiences, incorporated in action schemes, habits and manners, and a present social situation’ (Lahire 1998, p. 117). The actors’ capacity to do this depends on whether they are able to find something in the current social situation that resembles former situations they have lived through. Finding resemblance enables them to mobilize, not always consciously, competences that allow them to act in a more or less adequate manner (Lahire 1998, p. 118).

This contrasts sharply with Bourdieu’s notion of habitus as a scheme of dispositions that is transferable and generalizable under all conditions and in all different social contexts. Following Bourdieu, habitus enables individuals to actualize the same dispositions in all contexts – they simply do not have the room to choose between dispositions. Only the success of their practices, and not their actualization, depends on whether the context they are actualized in is similar to that in which they were acquired. This assumption results in an ‘enchanted relationship to the world’ (Lahire 2003, p. 339). To Lahire, habitus does not function in the same way everywhere, but rather produces observable differences in how actors comport themselves from one context to the other.

Their sense of situations also implies that actors can choose consciously between how to react in different situations – and can therefore chose what they consider to be the most fitting way of behaving in a certain context. For the most part, Bourdieu constructed his pre-reflexive theory of practice in contrast to the ideas of rational practices, marked by intentionality and the systematically calculated pursuit of an intended goal (Lahire 1998, p. 250). As a consequence, Bourdieu’s ‘unthinking’ actors manage to act in habitually suitable ways on the basis of their practical sense. Bourdieu liked to illustrate this with sports situations, referring to practical sense as an intuitive sense for the ‘immanent necessity of the game’, comparable with the game sense of a football player (Bourdieu 1987, p. 81). Yet, as Lahire points out, these sports images paint a selective picture of the social world: they all refer to situations in which actors have to act on the spur of the moment with no time to consider a variety of actions and in which no error is permissible as the situation cannot be redone or repeated. While there are social situations that correspond to these qualities, this is certainly not the case for all social situations (Lahire 1998, p. 256). Their prominence in Bourdieu’s reasoning has the effect of privileging a particular type of social situation, one that necessitates pre-reflexive behaviour, at the expense of other types of social
situations that require the reflexive engagement of actors within a longer time frame. Lahire therefore concludes that the question of whether actions are intentional or unintentional cannot be answered in a general, a priori fashion, but rather depends on the action sequence considered (Lahire 1998, p. 264).

In summary, habitus is a helpful analytical tool for conceptualizing agentive empowerment bases in two major ways: first, by showing how actors acquire their habitus through their individual yet plural socialization experiences, it helps to understand how their agentive empowerment is constituted. Habitus is acquired through vastly different socialization experiences that individuals integrate over the course of their social lives. Whether and how these are actualized depend on the contexts individuals encounter. In other words, ‘the singular is necessarily plural in nature’ (Lahire 2003, pp. 343–4). In their socialization processes, individuals learn that they have to comport themselves differently in different contexts, and they are able to adapt reflexively. This adaptation can be performed unconsciously or consciously pursued. Individuals thus define themselves, not through a singular and compartmentalized cultural heritage that originates in a social class, but rather through several heritages acquired in multiple institutions or through multiple interactions. The dispositions that make up the habitus are tied to specific contexts and are therefore variable. They are, however, still finite in that they represent a specific mix of the socialization experiences the individuals went through.

Second, by expressing its way of functioning in the sense of situations, habitus therefore helps to understand why their differentially constituted empowerment bases make agents able to act in more or less suitable ways. Therefore, the sense of situations introduces a useful means to see how the individuals’ subjectivity enables them to interact more or less competently with their surroundings and what kind of impact this has on their empowerment possibilities. It points forward to the second part of the empowerment model: the constitution of practices. Notably, the sense of situations appears in different conceptual guises in the wider UN literature – Michael Møller, Kofi Annan’s former Deputy Chef of Cabinet, for example, very figuratively refers to it as Annan’s ability ‘to read the political tea leaves’ (quoted in Hochschild 2010, p. 81).

Habitus informs us about the ‘agentive bases’ for individual empowerment at the UN. Individuals’ ability to act in a pertinent and successful manner depends on the integration of the ‘right’ mixture of socialization experiences – right with reference to the kinds of social situations they are likely to encounter in promoting their ideas. The ‘right’ mixture of experiences depends on the positions of the individuals within the UN and their interaction partners or, in other words, the other major players of the field they seek to convince. This makes the ‘right’ mixture variable in terms of the demands
of the social situation and the policy field in question. To give an example, in a field where NGOs and other third UN actors are prominently positioned, it would be crucial for an individual to have a civil society background or knowledge and expertise on how to interact with civil society actors. The ‘right’ habitus therefore depends on the nature and constitution of the field in question – habitus-wise, there is no one ‘recipe for success’.

Apart from the pivotal socialization experiences of the individuals’ social and professional trajectory on a broader scale, habitus also refers to their specification in dispositions and traits. Yet, while Lahire moves in the direction of a sociological psychology, he does identify or focus on specific dispositions, which can be supplemented from psychology.

3.1.2 *Psychological dispositions as part of the habitus*

Over the last 50 years, the sub-branches of political and personal psychology have been the disciplines most concerned with studying individuals and politics. I therefore add two psychological dispositions, in precise psychological terms a trait (task focus) and a cognition (cognitive complexity), to the sociological understanding of habitus. These dispositions affect how individuals deal with information and handle problem situations and therefore have a key impact on the individuals’ potential scope for influence practices. I have selected these two dispositions because they are considered to be crucial in determining leadership ability in personality psychology. Thus their study contributes to developing a better understanding of the background of individual actions – and, in particular, in what way this background is likely to help individuals to become empowered.

Political psychology usually treats personality and likewise personality elements as independent of societal interaction: personality is something innate. By contrast, I follow a constructivist perspective in suggesting that habitus, as well as the psychological dispositions it incorporates, is by-and-large social and intersubjective. Habitus/personality, while in parts potentially inherent to the individual, also is social in that the social contexts individuals live in have a great part in forming, strengthening or weakening their dispositions. Habitus/personality is intersubjective in that its observable elements are subjectively perceived in the social sphere by social others and therefore constructed. How do we actually know if, for example, an individual is self-confident? Political psychologists have typically derived the ‘value’ of this factor through analysing speeches and statements of the individual in question and counting certain word markers – they have only focused on self-perception. I argue instead that we can only talk about the values of a disposition such as self-confidence and the impact this has on the constitution of the individual’s subjectivity when self-perception and other-perception combine. In other words, do their colleagues and collaborators
think they are self-confident? An individual is therefore only taken to be self-confident when both the individuals' own thoughts or statements (self-perception) and the perception of their peers (other-perception) conflate. This intersubjective dimension, however, only applies to those parts of the individual's habitus/personality that are observable and in this way prone to other-perception and construction: it does not apply to cognitions, because they are not directly 'observable', as I outline in the following.

Political psychologists have focused on individual actors in positions of state power: their personality – that is, 'individually patterned integration of processes of perception, memory, judgment, goal-seeking, and emotional expression and regulation' (Winter 2003, p. 110) – is used as a means of understanding and potentially predicting and explaining their political behaviour. Assessing a political actor’s personality is considered to be useful when it comes to explaining policy decisions because it offers psychological insights into what preceded an actor’s decision. Following David Winter’s definition, actors' personality affects what kind of goals they have, how these are weighed in relation to each other and how conflict between these goals is managed. Personality has a further impact on how actors perceive cues, symbols or signs and how they make judgements in specific social situations. Although expressed in other terms, this understanding is similar to the role played by the habitus.

Building on personal, developmental and social psychology, personality is generally thought to consist of four basic elements: traits, cognitions, motives and social context (Winter 2003, p. 115; compare Table 3.1). Many psychological studies focus on one or two personality aspects (Suedfeld and Rank 1976; Winter 1980), while there are also multivariate personality studies that integrate several personality elements (Hermann 2005). Among the multivariate personality studies, so-called leadership trait analysis, as developed by Margaret Hermann in the late 1970s, has been particularly influential. Leadership trait analysis is also very relevant to my research objective because

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<th>Table 3.1 Four units of personality (dispositions examined in the constitution of subjectivity are highlighted in bold italics)</th>
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<td><strong>Stable</strong></td>
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<td>Outer, public, objective</td>
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Hermann wants to understand what kind of individual personalities are most likely to be influential in political decision-making (Hermann et al. 2001). She develops lists of traits and differentiates between leadership styles (crusaders, strategists, pragmatists and opportunists) on the basis of, for example, leaders’ reactions to political constraints (task focus), their openness to information (cognitive complexity) and their motivation for action (motive) as independent variables (Hermann et al. 2001, p. 95). On this basis, Hermann and her collaborators explain or predict foreign policy decisions. Further, Kent Kille has applied leadership trait analysis to assess the leadership styles of seven UN Secretary-Generals (Kille 2006, pp. 15–22). Kille aims to analyse the impact that the different leadership styles of Secretary-Generals have on their performance in office and whether their leadership extends the authority of the organization they are serving. Among the factors examined in leadership trait analysis, cognitive complexity and task focus stand out as crucial in differentiating between leadership styles (Bass et al. 1975; Hermann et al. 2001, pp. 91–93; Preston 2001, pp. 9–11; Winter 2005, p. 34; Thoemmes and Conway 2007, p. 194).

Returning to the four units of personality given in Table 3.1, traits are a public and therefore observable element of personality as they are supposed to be readily noticed and ‘accurately’ described by other people. Traits are considered to be consistent over time and across different situations. The trait I include is task focus, as used in leadership trait analysis. It describes whether individuals emphasize the completion of tasks (task focus) or interpersonal concerns (people focus). Psychological studies on leadership indicate that an effective leader is one who strikes a balance between accomplishing the task at hand and focusing on building co-operative and inspirational relationships with their colleagues, as the latter orientation also includes a greater willingness to delegate tasks (Bass and Stogdill 1990, p. 472). In UN terms, task versus people focus can be translated as the act of balancing between ‘the purposes and principles of the UN as set out in its Charter’ and ‘the need to maintain the confidence and support of the member states’ (Rushton 2008, p. 96). Individuals with a moderate task focus would therefore decide between completing their task or putting interpersonal or country working relationships at risk, depending on the particular context (Hermann 1999, p. 198). In order to promote their ideas successfully, temporary international civil servants must demonstrate a willingness for confrontation (Weiss 2010, p. 44), as expressed by a moderate task focus.

Compared with traits, cognitions are also assumed to be consistent over time and across situations, yet they are inferential: mental representations of the self, schemas for representing other people, groups and institutions, as well as beliefs, attitudes, conceptions and values fall into this category (Winter 2003, p. 122). Analysing cognitions is thus likely to contribute to a deeper understanding of why political actors decide to pursue certain policies. The cognition I study is cognitive complexity,
because it is a crucial factor in leadership trait analysis and has been studied widely on its own (Suedfeld and Rank 1976; Wallace et al. 1996). Cognitive complexity refers to the ways political actors process information and thereupon base their decisions. Its extreme values range from considering simplistic black and white alternatives and focusing on single perspectives with no differentiation, to recognizing different points of view and integrating various alternatives into a broad, complex and evaluative outlook. This factor emphasizes the structure and not the content of an argument and a higher score thus indicates a more complex statement rather than a more accurate or normatively better one (Baker-Brown et al. 1992, p. 403).

Cognitive complexity is frequently analysed by way of conceptual complexity through content analysis (Tetlock et al. 1994). Indicators for moderate/high conceptual complexity are a high general need for information – the individual is an active collector of information from the policy environment and displays a sensitivity to potential constraints on policy (Preston 2001, p. 22). Preston goes on to argue that individuals with moderate to high cognitive complexity are assumed to be 'more capable in dealing with complex decision environments and with information that demands new or subtle distinctions' (Preston 2001, p. 9). This is also underlined by Winter, who notes that high scores in cognitive complexity are 'generally associated with more sophisticated and better adaptive behaviour' (Winter 2005, p. 27). Because the UN is the prime example of a complex decision-making environment, in addition to its multi-cultural and multi-language nature, which also adds to complexity, I therefore argue that individuals with pronounced levels of cognitive complexity should be well-suited to navigating UN fields (Suedfeld et al. 2006). Pronounced cognitive complexity further indicates a balanced need for alternative information that can be accounted for through consulting with team members and other peers at the UN: it should therefore lead to a cognitive predisposition towards engaging with, and including, differentiated viewpoints represented by actors within the UN fields.

Apart from traits and cognitions, personality as a concept includes two further elements: motives, i.e. anticipated goals and needs that people perceive as worthwhile pursuing (Winter 1987; Feldman and Valenty 2001) and the social context, subdivided into (1) the situational micro-context, i.e. the immediate social situation actors find themselves in, and (2) the macro-context, i.e. a broad range of influences on an individual's personality, such as gender, life stage, culture and religion (Winter 2003, p. 130). I do not include these two elements in the constitutive empowerment model for two reasons. First, motives are left out because they are not strictly relevant to the study of empowerment, but rather study the unconscious intentions behind individual actions. Second, social context is already theorized as part of habitus, although expressed differently in terms of individuals' socialization processes and the social contexts they inhabit(ed).
One further social context factor I include as part of the habitus is nationality. In the UN context, the nationality can work as an 'added bonus' rather than a decisive empowerment factor in its own right. Nationality is important as both an entry criterion into the UN system and as a factor in selecting and employing senior-level staff. The first is an attempt to foster diversity within the UN through opening the annual National Recruitment Examinations, which are the formal way of entering the UN system, to citizens of under-represented member states only. This limitation, however, only concerns career international civil servants. Political selection for senior-level jobs is also frequently dependent on having the 'right' nationality: due to P-5 earmarking of senior positions and other member states' sensitivities, highly qualified and experienced UN staff members are frequently not considered for certain posts because they have the 'wrong' nationality (Hochschild 2010, p. 63). A famous example is Sérgio Vieira de Mello, who was not able to remain as the Secretary-General’s Special Representative (SRSG) in Kosovo in 1999 because he was not European (Power 2008, pp. 281–2). Nationality therefore regulates entry and can occasionally work as an added bonus to the individual's performance in the field, but it does not contribute substantially to the empowerment of the individual on the job.

3.1.3 Relational capital: social and symbolic capital

Apart from subjectivity-based capital in the form of a pluralist habitus and two dispositions that individuals may mobilize within the field, there are two relational forms of capital that serve as additional sources of influence-exertion for individuals in the UN: social capital and symbolic capital. While these forms of capital do not strictly rest within the individual as incorporated parts of their habitus, they are appropriated to individuals within a social context on account of how their subjectivity is constituted.

Social capital implies the individual's possibilities to benefit from personal and social relations, 'the aggregate of the actual or potential resources which are linked to the possession of a durable network of more or less institutionalized relationships of mutual acquaintance and recognition' (Bourdieu 1986, p. 249). Social capital refers to both the immanent capacities to act that individuals might begin to have by virtue of their capital and realized, actual capacities. Social capital is appropriated on both a collective and an individual basis. It is collectively owned, because individuals may mobilize the capital of a group by proxy through their 'membership'. It is also individually appropriated in that the 'membership' of the collective it derives from is not naturally given, but is the product of an 'endless effort at institution' (Bourdieu 1986, p. 250) and requires investment strategies individuals may be differentially able to uphold.

Simply put, then, social capital refers to the social relations of actors that may increase their ability to advance their interests. In this network of social relations among actors
endowed with social and other forms of capital, some are 'more equal than others': it thus matters not only how many of these stable social connections an individual has within a field, but also what their 'quality' in terms of endowment with capital is, i.e. the aggregate volume of capital they represent. In the context of social capital, its appropriation and, more importantly, the individual's strategies for its mobilization and reproduction, cross over into the second element of the constitutive empowerment process. In the constitution of practices, the possibilities for individual empowerment are affected by how successful individuals are in putting their social capital to use and in maintaining it through interaction, i.e. successfully building coalitions, alliances and integrating social networks into their work. This serves to illustrate the analytical difficulties associated with separating the constitution of the subject and the constitution of practices.

Bourdieu provides another form of capital – symbolic capital – that works together with other types of capital, but also beyond them, because it refers to appreciation, esteem, status, prestige, legitimacy, accentuation or positive recognition in general terms. Examples of symbolic capital include when an individual is considered to be 'honourable', to have 'good' taste or a 'good' name. These appropriations only work as symbolic capital to the individual when they are perceived and recognized to function like a type of credit to the bearers. One element contributing to individuals' empowerment is therefore their ability to persuade others of their view by way of a unique personal appeal. Hochschild summarized the effect of symbolic capital in stating that 'people wished to see them succeed and went out of their way to assist them' (Hochschild 2010, p. 85). In contrast to one of the oldest traits of influential individuals in the book – charisma – an individual's symbolic capital cannot be understood as an incorporated characteristic that individuals have regardless of social perception. Instead, their symbolic capital emerges from attribution by others. In the context of UN individuals, these others are the individuals' peers, people in the other three UNs. This relational part of symbolic capital has been neglected in most leadership studies on charisma, but is very much part of Bourdieuan thinking. For my argument, using symbolic capital therefore has the added value of seeing its positive effects as part of an attributing relationship within the field.

To sum up, the constitution of subjectivity is a construction process of potential agentive empowerment resources. Individual agency is conceptualized as habitus in a pluralist form, a set of embodied dispositions incorporated throughout the actor's social trajectory, adaptable to varied social situations. Whether actors are able to produce fitting and therefore successful practices within the field depends on whether the situations they encounter 'find' corresponding practical dispositions within their habitus. This relationship becomes understandable through actors' ability to notice these correspondences: their sense of situations.
Building on Bourdieu and Lahire, the first 'dimension' of habitus consists of the varied socialization experiences of the individuals and their individualized incorporation of cultural capital. On the basis of this, and in a second 'dimension', the constitution of subjectivity also includes studying two psychological elements – moderate task focus and high cognitive complexity – that are considered crucial for 'effective' leaders within complex organizational contexts. I supplement these psychological concepts with a dimension of intersubjective understanding and thereby emphasize their constructedness. Agent-embodied subjectivity is complemented with two additional forms of capital – social and symbolic – that rest within the relations to the addressees in the field. The constitution of subjectivity therefore provides a varied conceptualization of individual agents and a plural understanding of their agentive empowerment bases.

3.2 The constitution of practices

To understand how individuals within the UN can become empowered, capturing the specificities of their habitus in their constituted subjectivity only provides an analytical perspective on one part of the process. The second necessary part consists in understanding what kind of practices individuals engage in to promote and spread their ideas and how other UN actors react to these practices within a structured context. The constitution of practices depicts this interactive process as the place where the individuals’ subjectivity-based capital and their positions as UN representatives meet. First, the practices of individuals aimed at inducing change are directed towards allocating new sense or meaning. Second, this allocation of meaning is not a causal process – the meanings individuals seek to allocate in their practices only 'stick' if they are intersubjectively comprehensible (Herborth 2004, p. 67).

What kind of practices do individuals engage in? Introducing discourse and its sub-components, such as discursive elements, as meaning-mediators helps to account for what practices are feasible and for why certain practices turn out to be successful. Individual agents may use discourse as a 'resource' around which their practices are oriented. I argue that individuals attempt to shape new social meanings in discourse through the practice of storytelling. Discourses are 'structures of signification that construct social realities' (Milliken 1999, p. 229), which are historically contingent and 'inherently unstable' (Doty 1996, p. 6). Therein lies the potential to transform them. Storytelling analyses these transformations at the micro-level. The exercise of narration involves linking real-world events through a number of characteristic narrative devices such as the inclusion of characters and the development of plots. Individual storytelling practices are performed within a social context – the fields
constituting around different UN issue areas and connected visions of what the UN should be (Section 3.2.2). Individuals perform their storytelling practices within these fields, delimited social arenas shaped by a positional hierarchy, vis-à-vis a number of addressees – that is, other field actors. Addressees’ perception of the individual storytelling performances within the field is influenced by, first, the subjectivity of the individual as the storyteller and, second, the contextualized content of the story, which needs resonance in order to become accepted. Empowered individuals need to be recognized as authoritative speakers by way of their subjectivity and the meanings they try to convey in their discursive statements have to be legible and acceptable.

3.2.1 Storytelling as practice: narrating reality

Individuals narratively represent events in a meaningful temporal and frequently causal way in order to suggest specific interpretations, shape possible responses and limit potential other representations (Onega Jaén and García Landa 1999, p. 3; Wibben 2011, p. 59). In presenting a particular interpretation of political events, stories reduce discursive complexity and can thus show how different versions of social reality are perpetuated (Delgado 1989, p. 2415). Stories are told by individuals in such a way that their main interpretive theme – that is, their underlying main idea – refers to valued ideas and prevalent discursive stances.

I focus on storytelling as a discursive practice based on three reasons: first, devising and passing on stories are basic human methods of making sense of and thereby shaping social reality (Suganami 1999, p. 381; Kacowicz 2005, p. 344; Sheshav 2006, p. 245). This argument is supported by scholars of history: ‘Narrative is a metacode, a human universal on the basis of which transcultural messages about the nature of a shared reality can be transmitted’ (White 1980, p. 6). Stories are therefore omnipresent and familiar parts of social life. Narratology studies like to quote Graham Swift, who characterized human beings as ‘storytelling animals’ (Swift 1983).12 Agents are usually aware that they are ‘telling’ – that is, constructing – stories (White 1980, p. 21). By contrast, the frame,13 story’s most obvious theoretical competitor, is an analytical category assumed by the researcher. While stories presuppose intentional behaviour on the part of the individual, they also imply that the individuals are never in full control of them: the story demands interpretation by its very nature. In contrast to discursive statements such as arguments, stories elicit interpretive expectations from the listeners. The story, as a concept, looks behind the discursive façade in showing that its meanings are contingent, interpretable and negotiable. Empowered individuals are never the only authors of their stories: stories unfold their discursive relevance through the ways they speak to their addressees – that is, in how far they are able to contain discursive references that relevant addressees share.

Second, the person telling the story is an immediate and integral part of the analytical
picture – the story and the person telling it cannot be separated. The story's discursive success is as much a product of the way its narrator is telling it, and who this narrator is, as of its discursive and intersubjective construction. Some stories resonate more than others, not because of the quality of their content, but because of assumptions made about their tellers' (Polletta 2006, p. xii). The kinds of stories individuals are able to tell with authenticity thus depend on their subjectivity. This does not mean that content or timing are irrelevant; however, my understanding of storytelling again contrasts with the rather internalist analysis of frames. Frame analysis does not make any assumptions about the actors who are framing, but evaluates the success and resonance of frames solely based on the quality of their content – that is, how well they fit with the normative context, how well they diagnose a problem and how well they motivate action (Snow and Benford 1992). For this kind of analysis, it does not matter who frames, but how they frame, an approach that bypasses an in-depth examination of the actor.

Third, stories entail an element of creativity. They capture how agents make innovative use of discursive opportunities. Individuals construct stories to propagate constitutive ideas or develop regulative ideas on the basis of existing constitutive ideas. Constructed around these ideas, stories are therefore the main practical means by which individuals induce change in actors' behaviour, preferences and policies.

Storytelling therefore accentuates the role of agency and follows an action-oriented, creative and reflexive understanding of practices. This particular understanding is shared by a number of researchers from both organizational research and International Relations – for example, Francesca Polletta in her research on social movements (Polletta 2006), Jessica Senehi in her studies on mediation (Senehi 2000, 2002, 2008), or David Campbell in his analysis of the textuality of the 1990 Gulf War (Campbell 1993). Through telling stories, individuals manipulate events and turn them into influence opportunities. Their success depends on whether the individuals are, in fact, capable of using these opportunities – in other words, how competently their constituted subjectivities allow them to perform their stories.

As a narrative representation of events, stories contain three basic elements: a plot, consisting of four chronologically developing phases; a cast of characters; and an expectation for interpretation, which I cast here as the interpretive theme (Polletta 2006, p. 9). The plot and the characters are consciously configured in such a way that they suggest a specific interpretation. The plot, understood as a structuring sequence of events with a (clearly) defined beginning, middle and end, has been the lowest common denominator of narratology studies since Aristotle's Poetics and is therefore crucial to understanding how individuals construct stories (Poletta 2006, p. 9; Shenshav 2006, p. 247; White 1980, p. 6). Following W.B. Gallie, the plot of a story is developed
in four phases: (1) the initial situation or setting; (2) change; (3) the revelation that uncovers 'hidden aspects of the situation and the people involved, and engender[s] a new predicament which calls for thought, action or both'; and (4) the conclusion (Gallie 1968, p. 22). The revelation phase, also referred to as the peripeteia or turning point, is crucial: the events and actions of the turning point have to be 'story-worthy' – that is, they have to deviate from daily routine and offer moments of surprise (Gallie 1968, p. 2). Their turning points therefore illustrate a key function of stories: they should contribute to explaining surprising or difficult situations or offer sensible interpretations of these situations. The story's turning point goes hand in hand with a normative solution, which makes its ending desirable or non-desirable (Polletta 2006, p. 10). Stories support some action possibilities while casting others in a negative light, turn some characters into active subjects and others into passive objects, and are frequently 'structured across binary oppositions, which result in excluding important elements of social reality' (Polletta 2006, pp. 14–15). Hayden White goes as far as stating: 'could we ever narrativise without moralising?' (White 1980, p. 27). Successfully told stories implicitly legitimize particular readings of social reality.

Across the four phases of plot, individuals develop 'novel' interpretations of political events and thereby attempt to narratively create resonance for their stories. An interpretive theme is therefore both inherent to the plot and holds it together, frequently taking the form of a constitutive or regulative idea (Katzenstein 1996, p. 5; Finnemore and Sikkink 1998, p. 892; Barnett and Finnemore 2004, pp. 30–31). Regulative ideas define standards of behaviour and therefore try to order, constrain or, in a broader sense, regulate it. Constitutive ideas go beyond this in attempting to create new interests, actors and categories of action and in defining actors' identities.

Individual storytellers articulate the interpretive theme of a story in the shape of regulative and/or constitutive ideas, attempting to create a 'fit' with existing ideas and discursive elements and offering an innovative solution to the difficult situation that defines the story's turning point (Laffey and Weldes 1997, p. 203):

The nature of prevailing political discourse can work to the advantage and disadvantage of new policy proposals. In terms of prevailing discourse, some new proposals will be immediately plausible, and others will be barely comprehensible. (Hall 1989, p. 383)

Its interpretive theme makes the story comprehensible and interesting. Comprehensibility is equated here with the story's constructed connections of prevalent discourses – that is, discourses that are referred to and define the actions of many field actors and ways of grouping them to form a coherent, plausible and 'new' theme. Finally, a story also contains a cast of more or less clearly defined characters with differential action possibilities and identities. It makes a great difference who appears
as a character, how these characters are introduced and characterized, and what they are able to do, actually do and are unable to do. Stories may present certain characters in an active and others in a passive role – a narrative move that has immediate implications for the perception of the social reality they purport and their resonance. It is also significant where the storytelling individuals themselves figure in the story: are they active narrators, do they appear in the cast of characters, or do they leave themselves out? The subjectivity of the individuals comes into their storytelling through this role as narrators.

To sum up, analysing storytelling as a practice requires identifying the story told on the levels of plot development, the story's interpretive theme and its underlying regulative and/or constitutive ideas, as well as its cast of characters. On a content level, the sensible narration of the story, and, in particular, whether it is able to plausibly combine elements originating in various prevalent discourses and therefore shared by actors in the field, is crucial in order for it to gain discursive acceptance and resonance. For the purpose of my study, stories are used as an analytical device to depict the connections individuals make between discursive elements on a practical level. In contrast to other concepts, such as frames, the story includes a consciousness of the speaker's role and highlights the nature of their repeated retelling by individuals in the field.

Storytelling is an intersubjective and social process. The storytelling practices of individuals are defined by their performance in a social context; their success depends on how they are perceived, recognized and reflected. Their constituted subjectivity can enable individuals to tell successful stories through an awareness of situational and field demands. Therefore there is no internal logic of discourse outside 'its social anchoring and the role of authorized positions' (Leander 2008, pp. 24–25) – new elements which individuals try to include into discourse through their stories in some way need to speak to those held by crucial actors in the field and the storytelling individuals themselves need to occupy a position of some relevance within the field.

3.2.2 Storytelling individuals and the addressees: the field

Because their practices are constituted, empowered individuals are never the only authors of their stories: ‘In every conversation a positioning takes place which is accepted, rejected, or improved by the partners in a conversation’ (Czarniawska 2004, p. 5). The perception, acceptance, resonance and, as a consequence, the social construction of individual stories thus depends on their addressees. Are central actors persuaded to follow the interpretations of the story, its world view and the ideational or policy suggestions it contains? This can be examined by considering whether actors within the UN share the stories' plots and ideas. The wider stories are shared and visible and the more they are reflected in practices and within organizational discourse, the higher their resonance.
Simply put, the stories that individuals construct have to make sense by way of their content and the subjectivity of their speakers. Their addressees in the UN include international civil servants from their own and other organizations, national diplomats and, occasionally, people from the third UN, such as representatives of NGOs. As Polletta summarizes: 'Stories are influential not because they are told over and over again in identical form, but rather because they mesh with other familiar stories that navigate similarly between the culturally privileged and denigrated poles of well-known oppositions' (Polletta 2006, p. 15). This highlights the role of the story's addressees, who are active participants in the process of constructing meaning (Wibben 2011, p. 45). Consequently, these actors are as involved in the policy processes as the storytelling individual. The relevant addressees of the storytelling individual and the individuals themselves are thus situated within the same field.16

A field is a more or less clearly delimited social arena that follows its own logic, has its own rules and contains its own positional hierarchy of social actors. It further demands a certain combination of capital and skills of said actors – ‘capital is valid in relation to a certain field’ (Bourdieu 1980, p. 114) – in order for them to act successfully within its margins. Fields are shaped by a competition among actors for whatever is at stake in that particular field. Each field has its own capital structure – different volumes and combinations of capital that count as valuable. The internal dynamics of a field are shaped by actors’ competition for the best social positions a field offers and for particular combinations of capital. The field is thus an area of social battles or competition. The agents within a field share a number of fundamental interests that are the objects of the struggle for authority. Capital in a field is variable and what can be mobilized as capital is stake-dependent. Spaces for capital mobilization are the individual’s subjectivity and their stories. Positions in the field assigned to individuals – the formal positions they occupy and what they make of them by way of the relevant capital they mobilize and alliances they build with crucial field actors – make story success possible.

Bourdieu’s arguments with regard to the field can be directly related to considering the UN as a field and help to gain a relational understanding of organizations (Emirbayer and Johnson 2008). Apart from its analytical fit with the two other central concepts of the constitutive empowerment model – habitus and story – this sociological perspective has further advantages in comparison to the three ‘classic’ approaches of UN decision-making that portray the world organization as an instrument, a forum, or an actor (Karns and Mingst 1987, pp. 35–62; Gareis and Varwick 2005; Rittberger et al. 2012, pp. 14–24). The instrument and forum perspectives tend to a priori privilege the role of one of the three components, usually the first UN member states, or view power competition as determined by the distribution of material resources (Cox and Jacobson 1973; Keohane 1989; Young 1991). Even the actor perspective, which takes the
relevance of the second UN seriously, tends to focus on their bureaucratic unity rather than highlighting internal competition (Barnett and Finnemore 2004).

Conceptualizing the UN as a field provides answers to these shortcomings. First, the field perspective does not prioritize one UN component over the other, but rather seeks to uncover their particular relevance empirically through examining their potentially variable positions within a field’s hierarchy. Second, the field is a common site of social battles between and among actors invested in its issue at stake. This allows for a diversified view of the three UN components: actors from one component – for example, the second UN – can still be vested with different combinations and volumes of capital and engage in different practices. Third, the field perspective puts all three UN components in the same boat and sees them as competing for the same stakes, rather than separate ones. This stands in contrast to the work of Richard Jolly, Louis Emmerij and Thomas G. Weiss, who sometimes illustrate the three UNs as a triptych – a painting or other work of art that is divided into three panels (Jolly et al. 2009, p. 5). This image highlights the boundaries between the three UNs that make it possible to separate them. Sticking to this boundary-drawing not only stands in contrast to empirical observation, but also arguably impedes us from capturing the processes of decision-making in the UN more dynamically. Portraying the UN as a field in the Bourdieuan sense therefore has the advantage of thinking about the three UNs as occupying one space instead of separate compartments.

Fields constitute themselves around the stakes and different position-takings of actors on this stake: in the widest sense, the stake in the UN field is a vision of what the UN should be about. Within this wide UN field, fields constitute themselves around further stakes, such as the design of international development policy at the UN, in flexible ways. In order to define the addressees of the individual’s influence story and to map the field, identifying the stake is thus the starting point for empirical analysis, followed by accounting for actors’ standing in terms of capital distribution and looking at the positions they articulate with regard to the issue.

There are different constitutions of the UN field depending on the issue at stake. The addressees of Mahbub ul Haq’s story about human development were thus a different group than those of Francis Deng’s story about IDPs. In both instances, however, their influence stories and their own subjectivity-based position in the field allowed them to mobilize resources and build alliances with key field actors. This is not an easy process, but requires constant activities on the side of the individual in order to overcome the field constraints posed by other powerful actors. The concept of the field therefore offers a topology of the story’s addressees – what and who to look for in trying to uncover the story’s acceptance, plausibility and resonance – within a positional hierarchy. Not all actors within the field are equal; instead, possibilities of actors to
exert influence in the field are tied to their social positions. The position of empowered individuals within the field is thus an important factor influencing the possible resonance of their stories. Each field defines a space of possibilities, a ‘terrain of contestation between occupants of position differentially endowed with the resources necessary for gaining and safe-guarding an ascendant position within that terrain’ (Emirbayer and Johnson 2008, p. 6). Depending on their positions in the field, which result from a combination of mobilizing the ‘right’ capital and building alliances with crucial players, the influence stories individuals tell to place their ideas are more or less likely to succeed.

### 3.3 Methods and operationalization

How can we put the theoretical elements that make up the two processes of the constitutive empowerment model into practice? This section concerns the selection of data and its acquisition, research methods and the operationalization of my theoretical concepts in the sense of expressing them in practical terms.

For the most part, the book’s analysis of individual influence-exertion relies on two qualitative methods: document analysis and semi-structured interviews. I supplemented these methods with quantitative statement analysis to study the two psychological dispositions of cognitive complexity and task focus (Table 3.2).

Starting with document analysis, I qualitatively analysed documents such as books, journal articles, newspaper articles, web sources, (auto)biographies, interviews and official UN documents. I selected these documents to provide variation in terms of, first,

<table>
<thead>
<tr>
<th>Theoretical concept</th>
<th>Applied method</th>
</tr>
</thead>
<tbody>
<tr>
<td>Story</td>
<td>Narrative analysis of different texts (e.g. autobiographies, books, articles, interviews) authored by the individual case studies</td>
</tr>
<tr>
<td>Field</td>
<td>Qualitative document analysis of texts written by and about the individuals; semi-structured interviews with the individuals and their colleagues</td>
</tr>
<tr>
<td>Habitus (including specific dispositions)</td>
<td>Qualitative document analysis of texts written by and about the individuals; semi-structured interviews with the individuals and their colleagues; and quantitative content analysis of recorded vocal statements in spontaneous speaking situations</td>
</tr>
<tr>
<td>Social and symbolic capital</td>
<td>Semi-structured interviews with the individuals’ colleagues; qualitative document analysis of texts written about the individuals</td>
</tr>
</tbody>
</table>
content and, second, authorship. The first variation is the basis for cross-checking documents in order to include different perspectives. The second variation of authorship is theoretically necessary: in the case of habitus, self- and other-perception combine. Moreover, symbolic capital is based on positive recognition from others. By definition, then, only texts about the individuals written by other authors can be considered for analysis.

Altogether, the data corpus is composed of three major groups of documents: (1) background texts that (a) give broad insights into the discursive developments in the three UN policy fields I consider or (b) explicitly mention the parts played by the empowered individuals, although their roles are not the explicit subject of the texts; (2) texts that have the individuals and their roles as their explicit subject, such as newspaper articles about the individuals’ work and, occasionally, obituaries and biographies; and (3) primary sources of the individuals themselves. The corpus of documents is different for each individual, although there are some overlaps in relation to the prevalent discourses of the time.

The texts in group 1 (a) and (b) are scholarly articles and books on the broad ideational areas the individuals were concerned with, as well as official UN documents and biographies by former colleagues of the empowered individuals. There is one major source for interviews with former colleagues in text group 1 (b): the UNHLP’s oral history interviews. The availability of material was more mixed for the text groups 2 and 3, which required archival study. The kind of material that was available differed enormously from case to case. The UN archives in New York only collects material by the UN Secretariat and not that of other agencies. During the time I spent at the UN archives, I therefore only had access to unclassified documents for the case of Goulding from 1986 to 1991. I went through two main sets of documents in the Secretary-General Pérez de Cuéllar fonds (AG-019): those related to the multi-functional peacekeeping operations of this period (Peacekeeping Code Cables Series 1023) and those related to the management of his office in correspondence with Secretary-General Pérez de Cuéllar (UN Secretariat Departments Series 1048). In terms of archival time spans, these records were brand new: I was the first researcher to look through them. A further important text source in groups 2 and 3 are biographies or autobiographies: Two cases – Goulding and Deng – wrote autobiographies that either deal explicitly with or touch upon their work at the UN (Goulding 2002; Deng 2006). There is also an intellectual biography on Mahbub ul Haq (Haq and Ponzio 2008). Interview material in text group 3 was available for all three cases, yet in varying form: I found the least material from Mahbub ul Haq, whereas I could rely on substantial interview material for Marrack Goulding through an extensive interview for the Yale UN Oral History Project and I was able to interview Francis Deng personally. All three individuals, however, published extensively on their influence stories.
While the constitution of practices could thus be almost completely covered with the available material, the constitution of subjectivity faced other methodological challenges. The information that is already available is frequently too broad to uncover how habitus and the specific dispositions contained therein were constructed. Two kinds of interviews were therefore important for my research: first, interviews with the empowered individuals and, second, interviews with their colleagues. This assumption again follows the idea that an individual's habitus is a composite of self- and other-perception. I selected interview partners from a variety of backgrounds, ranging from close colleagues to state representatives and academic observers (see the Appendix table for a full list of interviewees). The fact that interviews generate 'a particular representation or account of an individual's view or opinions' (Kitzinger 2004, p. 182, emphasis in original), instead of access to 'what has actually happened' is an advantage for my research instead of a methodological difficulty. After all, I am precisely looking for varied, particular representations (Silverman 2006, p. 117). In fact, access to the supposed 'what has actually happened' is only possible through the representations of involved others – in other words, interviewees actively create meaning as truth is impossible to recover. I therefore follow a constructionist philosophy in using interviews and handling interview material (Rubin 2005, pp. 27–30).

A third method that I used is quantitative content analysis. Personality psychology scholars use this at-a-distance method through considering the statement or combination of specific words and assigning high and low values to their usage in order to determine different scores of personality factors. Quantitative content analysis comes across as the best among alternative at-a-distance assessment techniques, and it is also the one most widely used in current personality psychology (Taysi and Preston 2001; Hermann 2005; Dyson 2006). Only the spontaneous statements of individuals gathered in settings where they have not previously been provided with written-down background information are used for this method. Authors argue that quantitative statement analysis is particularly valuable for studying inferential elements, such as cognitions, as thought processes manifest themselves in spoken or written forms of communication (Suedfeld et al. 2005, p. 246).

I used a combination of quantitative statement analysis and qualitative methods to analyse task focus, thereby combining self- and other-perception. This procedure also served to counter a common critique on quantitative statement analysis, related to whether one could infer to mental states from interview statements. However, as the empirical chapters show, the results of the quantitative and qualitative analysis corresponded closely with each other in all three cases. As a result of the inferential nature of cognitive complexity, I exclusively used quantitative statement analysis to study it.
Both cognitive complexity and task focus are coded as words in context. Cognitive complexity is coded as words associated with high or low complexity – Hermann compiled extensive word lists (Herman 1987). Words are associated with high complexity if they indicate that the speakers see and weigh between different dimensions; they are associated with low complexity if they indicate that speakers only take few categories into account. Words that suggest high complexity include 'approximately', 'possibility', 'trend' and 'for example', whereas words suggesting low conceptual complexity include 'absolutely', 'without a doubt', 'certainly' and 'irreversible' (Hermann 1987). Phrases such as 'without a doubt' signal low complexity because they indicate a high level of certainty in a statement at the expense of considering possible alternatives and therefore low differentiation. Because cognitive complexity is only one of several analytical elements, I relied on computerized quantitative statement analysis. The scores for different values of complexity are calculated on the basis of the percentage of high and low complexity words in each interview response, derived from frequency-count content analysis. The scores assigned to cognitive complexity in the model range from 0 (low complexity) to 1 (high complexity) and are based on individuals' average score across interview responses (Hermann 1987, p. 22).

To come to reliable assessments of cognitive complexity, previous studies using this method mention two requisites: the coded data should contain no fewer than fifty interview responses, each comprising 100 or more words (Hermann 1987, p. 23), and these interview responses should span more than one concrete time period to preclude distortion on the basis of a specific event. Hermann's coding technique and the respective word lists have been automated in the Profiler Plus software. After coding the words in each interview response, the program calculates the cognitive complexity scores. In order to evaluate what counts as high with respect to low cognitive complexity, the model calculates the mean value from the respective data as well as the standard deviation. As these cannot be significant for my small group of three individuals, I compared their scores with two groups of leaders, as suggested by Hermann (1999, p. 33). The two comparison groups are eighty-seven heads of state and 122 political leaders. I used these as points of reference for whether the individuals' scores for both task focus and cognitive complexity were low or high. Scores around the mean score of the group that are neither one standard deviation above or below the mean indicate moderate cognitive complexity.

The coding method for task focus is similar to that of cognitive complexity, as Hermann again compiled word lists assumed to suggest high and low scores. A high task focus is connected to the usage of words that refer to activities, such as 'preparation', 'goal' and 'initiative'; while low task focus is supposed to be tied to 'interpersonal' words that broadly capture greater concern for others, such as 'assistance', 'sympathy' and 'understanding' (Kille 2006, p. 29; Hermann 1987, p. 34). Again, the score is calculated.
based on the percentage of high task focus words versus low task focus words.

3.3.2 Data interpretation: operationalizing the constitution of subjectivity and practices

Habitus. Bourdieu does not provide methodological guidance on how to conceptualize habitus empirically. In general, his empirical studies are marked by a focus on quantitative analysis on the basis of questionnaires, while he also used narrative interviews. This characteristic approach is, for example, applied in La distinction: critique sociale du jugement (Bourdieu 1979), which also offers the most concrete advice on operationalizing habitus. At the same time, Bourdieu’s focus here is on identifying class-based tastes – not all indicators mentioned are relevant for the study at hand. I operationalize habitus by way of three categories: social background, experiences/trajectory and cultural capital (Table 3.3).

The individual’s social background is mostly based on their direct family background, with indicators such as their parents’ occupation and education level, information about their family and living conditions. This first impression is more consistently filled with the second indicator: cultural capital. Here, I only consider cultural capital in its embodied form – that is, the individuals’ educational trajectories. The educational trajectory is composed of high school and university education and place, the highest qualification reached and education-related scholarship or prizes the individual was awarded with. In this context, I will pay attention to the specific university/universities the individuals attended – did they receive their academic degrees from universities generally considered to be elite? Universities are qualified as belonging to this elite group if they were considered as such within the individuals’ historical context. Agents’ passage through the educational system also may play a pivotal part in their

| Table 3.3 Operationalization of habitus |
|-----------------|-----------------|
| Habitus element | Indicator        |
| Social grounding |                 |
| Social background | Parents’ occupation and education level |
|                   | Family background (family size, etc.) |
|                   | Nationality (bonus point) |
| (Embodied) cultural capital Experiences | Educational trajectory |
|                   | Professional trajectory |
|                   | Socialization experiences |
|                   | Personal expertise in areas relevant to influence occasion |
| Specific disposition |                 |
| Cognitive complexity | Percentage of high versus low complexity words (e.g. approximately for high complexity versus absolutely for low complexity) |
| Task focus | Percentage of task-focussed versus interpersonal words (e.g. preparation for task-focussed versus assistance for interpersonal) |
appropriation with social capital. The third and final category of habitus is the experiences/trajectory of the individuals. Here I look at plural socialization experiences, such as their occupational trajectory and personal expertise. Areas of professional expertise are derived from their occupational trajectory, but I go into some more detail as regards the ways in which these may be relevant to their influence story. Task focus and cognitive complexity are operationalized as outlined in Section 3.3.1.

**Story.** The story, a narrative representation of reality, is an outcome of individual storytelling and is associated with three distinct elements: the story’s plot (its main interpretive theme), the associated constitutive and/or regulative ideas and its cast of characters (Table 3.4). As discussed in Section 3.2.1, the story’s plot is developed in four phases: (1) the initial situation, (2) change, (3) the revelation and (4) the conclusion. I get to the story’s interpretive theme by considering the discursive elements of the story and how these are related to the prevalent discourses. The construction of these relations is shaped by regulative or constitutive ideas. As noted in the introduction, two of my cases, Haq and Deng, tried to promote constitutive ideas, while Goulding’s story focused on regulative ideas around an existing constitutive idea of peacekeeping. Analysing the story is concluded with the cast of characters – the actors whose actions are the sequential content of the plot. I will refer to the position of the storytelling individual as narrator of the story and also consider the general introduction of characters, what attributes are connected to them and what actions are available to them.

**United Nations fields.** The storytelling practices of individuals are performed within delimited social arenas that follow their own logic – the UN fields. Understanding their positional hierarchies is analytically crucial for identifying the addressees of the influence story, who determine its perception, acceptance and resonance. The field is operationalized through three interconnected elements: the issue at stake, the key actors and their positional hierarchy (Table 3.5). I identify fields constituting around the issue at stake at a particular point in time – that is, the time of the individual influence stories.

<table>
<thead>
<tr>
<th>Table 3.4 Operationa**lization of story</th>
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<tbody>
<tr>
<td><strong>Story element</strong></td>
</tr>
<tr>
<td>Plot</td>
</tr>
<tr>
<td>Interpretive theme</td>
</tr>
<tr>
<td>Cast of characters</td>
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<td></td>
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The first step of field analysis is therefore to define the issue at stake. The social space of the field becomes visible through looking at the positions actors have taken with regard to this. In concrete terms, I observe how actors define the policy to be taken. Let me illustrate this with Haq and the issue of development policy. At the starting point of Haq’s term as adviser for the UNDP in 1989, I map both the actors and their positions with regard to international development policy. This results in a ‘social space of standpoints’ concerning the issue at stake (Bigo 2008, p. 48) and identifies the actors who took these positions – in other words, the ‘who-is-who’ of that particular field. This ‘who-is-who’ contains information on the field’s positional hierarchy and through this also visualizes the relevant kinds of capital. Those actors who are in privileged contact positions are apparently attributed with the relevant combination of capital in the field. As this operationalization indicates, I will look at several UN fields constituting around the issues at stake, with different actors and their standpoints.

The methodological translation of the field’s indicators is tricky as many empirical applications of Bourdieuan field analysis are based on considerable amounts of quantitative data (Bigo 2007). Instead of constructing a complete and in-depth picture of the constituted field at the time of the individual influence occasions, I focus on the crucial field actors in terms of its positional hierarchy.

### Table 3.5 Operationalization of field

<table>
<thead>
<tr>
<th>Field element</th>
<th>Indicator</th>
</tr>
</thead>
<tbody>
<tr>
<td>Issue at stake</td>
<td>Actors discursive position-takings regarding the issue at stake</td>
</tr>
<tr>
<td></td>
<td>Discursive distribution of story plot</td>
</tr>
<tr>
<td>Key actors</td>
<td>‘Who is who’</td>
</tr>
<tr>
<td>Relevant kinds of capital</td>
<td>Analysis of privileged contacts and their combination of capital</td>
</tr>
</tbody>
</table>

### Table 3.6 Operationalization of relational capital

<table>
<thead>
<tr>
<th>Type of relational capital</th>
<th>Indicator</th>
</tr>
</thead>
<tbody>
<tr>
<td>Social capital</td>
<td>Key contacts of individuals in the field and their position within the field’s positional hierarchy</td>
</tr>
<tr>
<td>Symbolic capital</td>
<td>Appropriation of positive attributes to the individual</td>
</tr>
</tbody>
</table>
My picture of the fields is therefore more of an analytical snapshot than a comprehensive field analysis. Relational capital – social and symbolic capital.

Analysing social and symbolic capital concludes the constitution of subjectivity and therefore the constitutive empowerment model. Both are subjectivity-based, yet only become visible in the relations to other people in the field – the story's addressees. This is why they are included in the field analysis sections (Table 3.6). Some information on the social capital of individuals can already be derived from the previous analysis of the field and of the habitus – that is, people the individuals have been in contact with throughout their trajectory. At the micro-level, I consider the key contacts the individuals have and where these contacts stand within the field.

Interviews with former colleagues are crucial for understanding an individual's symbolic capital. Should several document and interview sources concur in their general appropriation of, even diffuse, positive attributes to the individual in question, I conclude that the individual is vested with symbolic capital. In interviews, I will try to reach the interviewees' viewpoint through a mixed strategy of asking interview partners to talk about their common work and specifically targeted time periods and only then asking concrete questions about the person. The expected logic behind this is that issues of their personal impression might already slip into the work account as they are aware of the context the interview is set in – that is, they know that they are being interviewed to talk about their work with the empowered individuals.

**Conclusion**

Understanding individual influence-exertion within the UN is a complex process. Indeed, nothing different should have been expected when trying to uncover how single persons can be involved in shaping the policy outcomes of a multi-level, multi-purpose organization. Assuming that a fluid interaction of agency and structure is at the heart of both the very creation or constitution of the individual agent and their agent-based influence practices, I call this the constitutive empowerment model composed of two processes: the constitution of subjectivity and the constitution of practices. Trying to keep the complexity at bay, I present three argumentative steps corresponding to the main analytical elements of the model to consecutively understand this process (Table 3.7 and Figure 3.1). First, the constitution of subjectivity considers how agentive subjects are formed through socialization processes in the course of which they incorporate a matrix of dispositions: their habitus. Their habitus enables them to match their behaviour to the social situation they encounter. On this level, whether individuals are able to enact 'fitting' influence strategies and practices depends on whether they have encountered similar situations with similar counterparts
throughout their plural socialization. This broader level of the constitution of subjectivity is supplemented with an analysis of two specific dispositions – task focus and cognitive complexity – that leadership studies consider to be significant in shaping the agent-based influence capacities of individuals.

Second, the constitution of practices includes both the practices individuals engage in and their performance within the field. I focus on the practice of storytelling, by way of which individuals narrate a sequence of events in such a way around underlying ideas that it speaks to crucial addressees. On a content level, the story therefore contains pointers to or links ideas of discursive salience – that is, ideas acknowledged to be important or of value by actors – in an innovative way. Considering whether these stories hold leads to a consideration of the field within which the individuals and their addressees act.

Third, the field combines the two constitutive processes as the acceptance/ resonance of the individuals’ story is not only tied to the way it is constructed, but also to the position of the speakers – that is, their constituted subjectivity. Within the field, the individual is only one actor among many who invests in a certain policy vision, the stake, in the UN context. The field therefore captures the individual’s position within the social hierarchy that constitutes around actors invested in a certain stake on account of the differential sources of capital they are appropriated with. The capital of the empowered individual is their agent-based qualities incorporated in their habitus, but also the story itself – both may be mobilized to build alliances within the field. A final subjectivity-based element complementing this process of mobilizing capital in the field is the capital that rests within the relations that the individual holds to other actors, their social capital – that is, social relations that connect them to (potentially) crucial individuals within the field.

I used three methods to analyse the individuals’ influence occasions: qualitative document analysis, semi-structured interviews and quantitative content analysis. These
methods help in combining individual and self- or other-perception for both the constitution of practices and subjectivity. I selected texts for qualitative document analysis on the basis of them providing a large variety of intentions and authorship. I conducted semi-structured interviews with four colleagues for each individual case and, if possible, the individuals themselves. Quantitative content analysis provided initial and individual assessments of two dispositions in comparing the percentages of coded words associated with a high or a low factor of the trait or cognition. Each core theoretical concept is defined in terms that allow for its empirical application.

Notes

1 I worked with the original French versions of Pierre Bourdieu's and Bernard Lahire's works – the translations are all my own. There are four exceptions to this: I did not have access to the French version of two articles by Lahire (2003, 2008), one article by Bourdieu (1986) and to The State Nobility (1996 [1989]).

2 There are, however, important constraints that the individual faces in ever reaching this achievement: the habitus-field complicity implies that those individuals who enjoyed domestic transmission of cultural capital are already well-suited to the demands of the educational and, in particular, the elite educational system, as this system is marked by implicit rules that correspond to the habitus of the ruling classes.

3 This is not the place to settle one of the biggest questions of psychology and biology – that is, to what extent human beings are the products of their genes or the products of their socialization – the nature versus nurture debate. What I want to highlight in this context is the influence of the social context in shaping habitus/personality without commenting on the 'ultimate' scope of that influence.

4 There are many definitions of personality. Winter's definition is representative because it is based on a summary of the relevant literature. It includes two assumptions scholars in the field agree on: first, that personality is an 'inferred entity', rather than something that is strictly observable and, second, that the purpose of this construct is to account for regularities in an individual's behaviour (Greenstein 1987, p. 3).

5 The specific inclusion of 'trait' in leadership trait analysis is misleading, as Hermann does not only focus on traits, but also on other elements of personality.

6 Cognitions are the basis of cognitive mapping approaches as popularized by Robert Axelrod. He uses cognitive maps to analytically understand individual processes of thinking, reasoning and decision-making through graphically representing causal connections between mental beliefs (Axelrod 1976, p. 58).

7 See Section 3.3 for methodological issues.

8 Scholars in this area measure charisma through splitting it into a number of 'qualities', such as vision, energy, unconventionality and outstanding rhetorical ability (Conger and Kanungo 1988;
Bass 1989).

9 Bourdieu, unfortunately, does not provide the researcher with tools that would make us understand first, what kind of practices are at the possible disposal of agents and, second, why agents’ practices are successful or unsuccessful in reaching their intended outcomes.

10 The closest Bourdieu comes to the concept of discourse is doxa, which refers to all opinions whose validity is unquestionably assumed and therefore shapes the agent’s variety of practices. However, doxa appears to be more of an overarching backdrop of agents’ practices that does not account for their varied, day-to-day enactment (Bourdieu 2000 [1972], pp. 325–326).

11 Discourse theory usually locates ‘agency’ at the level of discourse itself and examines connections between discursive signifiers based on the logics of equivalence and difference (Laclau and Mouffe 2001 [1985]). Meaning is therefore discursively created through processes of positively linking signifiers and negatively differentiating them (Hansen 2006, pp. 18–20). These macro processes of meaning creation are by definition and intention too grand to be employable by individuals.

12 I locate stories, in contrast to narratives, at the micro-level: there is a personal element to storytelling that requires the active involvement of individuals. Narratives, located at the meso-level, contain stories, and discourses, located at the macro-level, contain narratives. The ‘concept’ narrative is also used to describe the defining elements of a story (characters, plot, interpretation) – in this case, narrative is an adjective indicating that something is recounted or story-like.

13 Framing is defined as ‘placing issues in a certain context that will favour certain interpretations and promote particular ideas, and thereby modify and change the normative context’ (Snow and Benford 1992, pp. 136–137).

14 The nature of the plot, especially as it relates to chronology and coherence, is also the most disputed element in the definition of stories. In fact, authors such as David Boje differentiate story and narrative on the basis of the former lacking plot and coherence, which is only contained in the latter. Following Boje, stories should be thought of as ‘antenarrative’, ‘told without the proper plot sequence and mediated coherence’ and thus inherently fragmented, non-linear and collective (Boje 2001, p. 3). This critique is important in the context of this project, as Boje argues for this differentiation because the emphasis of narrative methodology on coherence and closed endings is at odds with the reality of storytelling in post-modernity, which precisely does not occur within ‘the linear time frames of modernity’ (Boje 2001, p. 8). In my understanding of story, plot is crucial, but should neither be seen as entirely coherent nor requiring full closure. This echoes a basic differentiation between reality and fictional narratives: the former can only rest temporarily, but never conclude (terminate) as life goes on’ (Wibben 2011, p. 59).

15 Gallie is best known in the social sciences for his contribution to the philosophy of science. He famously argued that human action is characterized by ‘essentially contested concepts’, such as social justice and democracy, whose content is continuously discussed, negotiated and thus never fixed nor permanently fixable (Gallie 1956, p. 168).
16 The term ‘field’ is already used in a specific way in UN-speak: it denotes UN operational activities on the ground. For the purpose of clarity, I will use the term ‘on the ground’ throughout this book to denote what is usually referred to as ‘the field’ in UN studies.

17 Seeing the UN as a site of continuous social battles is a familiar picture for UN scholars (Sommaruga quoted in Weiss et al. 2005, p. 358). There is certainly less coherence and cohesion within the UN system than its name implies – the reality is one of overlapping mandates, ‘turf battles’ and a competitive spirit in relation to funding and creeping responsibilities.

18 Mahbub ul Haq was, for example, known for his lack of enthusiasm when it came to record-keeping:

Mahbub was not concerned with keeping a record for the way his thinking had developed and was developing. […] He never filed away the correspondence he received and the replies he sent back. He didn’t even keep a record of his publications. (Burki quoted in Haq and Ponzio 2008, p. 3)

Unfortunately, this does not make my life as a researcher any easier.

19 Non-classified records are generally open to the public only 20 years after their date of issuance, while classified records, i.e. those marked as strictly confidential, are not accessible even after 20 years, unless an individual declassification request is granted.

20 While the Secretary-General fonds of the UN archives would have been relevant to the other cases, only those of Secretary-General Pérez de Cuéllar are currently accessible to the public as 20 years have not yet elapsed for the fonds of both Secretary-General Boutros Boutros-Ghali and Secretary-General Kofi Annan.

21 Psychologists have, for example, also used expert surveys to measure personality at a distance: in this method, a number of experts are asked to evaluate eminent personalities, such as US Presidents, on several personality elements (Murray and Blessing 1994).

22 The psychological differentiation between observable traits and inferential cognitions is obviously difficult to maintain from a critical perspective. The argument here is that traits such as task focus can be noticed and described by others, whereas cognition refers to the how the individuals’ thinking is structured, something that usually cannot be accurately described by people just on the basis of day-to-day interactions.

23 In applying quantitative statement analysis, I rely on how it is used and developed in the leadership studies of Hermann (2005) and its adaptation for the leadership study of UN Secretary-Generals by Kille (2006, pp. 23–30).

24 One may again doubt the empirical applicability of this – the cognitive complexity scores derived from quantitative statement analysis are therefore an approximation, albeit a standard one. Some personality scholars, focusing on cognitive complexity as a single variable, use more sophisticated tables for cognitive complexity on seven levels to be coded by the researchers themselves (Suemfeld 2010, pp. 2–5).

25 The programme goes through each interview response, one word in context at a time, decides whether the word indicates high or low cognitive complexity and then either marks it
accordingly or moves on.

26 Following Hermann’s description of the comparison groups, ‘the 87 heads of state represent some 46 countries from all parts of the globe; the 122 leaders are drawn from 48 countries and include members of cabinet, revolutionary leaders, legislative leaders, leaders of opposition parties, and terrorist leaders in addition to the 87 heads of state’ (Hermann 1999, p. 52).

**Bibliography**


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UNICEF Today
Chapter 4: UNICEF Today

- Equity: the overarching priority
- The limits of “focus on equity”
- Renewing the promise
- Economic policy and budgeting in the 2000s
- Funding and management
- A new goal for the year 2035
- UNICEF’s future within the UN
- Conclusion: protecting the strengths of UNICEF

By the end of Ann Veneman’s first term, a Democratic Administration had been elected in the United States, and the US government proposed to the UN secretary-general the appointment of Anthony Lake as executive director. Again there was strong feeling among many board members, especially those from donor countries in Europe, that a wider range of candidates should be considered and the post should no longer be held by an American. However, as the appointment is by the secretary-general in consultation with the board, it was not long before Lake was appointed in 2010.

Lake came to the organization with an outstanding record and a number of past involvements with UNICEF, including with Grant himself. Because of this, he took up his post with highly relevant experience and a vision of the global role that UNICEF could still play. While careful not to lay claim to the Jim Grant mantle, Lake spoke frankly about what he himself had gained in inspiration and lessons of Grant’s leadership. In his first month, Lake travelled to UNICEF country offices to get the opinions of staff firsthand. Within a few months, he had focused on “equity” as UNICEF’s first priority. This related to the current situation of children in greatest need and echoed a concern felt widely in the development community. It embraced a forward-looking agenda and, at the same time, looked back to the unfinished actions of previous decades. This was a sensitive choice which raised hopes within UNICEF’s senior staff. This was followed by other priorities in the same vein: “a promise renewed” and a new initiative and long-run goal for reducing child mortality. At the time of writing it is too early to assess the prospect of these initiatives, but it is already clear that the morale and visibility of the organization had begun to move up again.

Box 1. Anthony Lake, UNICEF’s sixth executive director, 2010–

Anthony Lake was the most senior American ever to be appointed to the post of
executive director of UNICEF. He came to the organization after 45 years in public service and with many contacts and a strong background in government, international diplomacy, and academia. In 2007–08, he had been senior foreign policy advisor to the presidential campaign of Barack Obama, a role he had also performed for Bill Clinton's presidential campaign of 1991–92. In his early career he was director of policy planning under President Jimmy Carter in 1977–81, and national security advisor to the Clinton Administration in 1993–97. Between these appointments, he held the chair of the “five college professor of international relations,” teaching at Amherst and Mount Holyoke College. He has written a number of books, several critically analyzing US policy towards Africa, threats to American security, and US policy towards radical regimes under Carter and Ronald Reagan. Immediately before his appointment as head of UNICEF, he was “distinguished professor in the practice of diplomacy” at Georgetown University.

Lake's international involvements began in the 1970s, when he became director of International Voluntary Services and served on the boards of Save the Children and the Overseas Development Council. Later, he was international advisor to the International Committee of the Red Cross and chair of the Marshall Legacy Institute, which works in conflict-affected countries to remove landmines, assist survivors, and advance child rights. In 1998–2007 he was on the board and, in 2004–07, chair of the US Fund for UNICEF, the oldest of the UNICEF National Committees.

Perhaps most significant, however, Lake had personally known and long admired Jim Grant and was keen to follow in his footsteps. He also adopted a non-hierarchical approach to the UNICEF post, preferring to be known as Tony, and in his first month visiting field offices to meet UNICEF field staff and obtain firsthand their views and learn from their experience. He reinstated the small office on the thirteenth floor which Grant had used when director.

Notes

1 Lake obtained his first degree at Harvard University, studied international economics at the University of Cambridge, joined the US government as a foreign service officer in 1962, and obtained a doctorate from the Woodrow Wilson School at Princeton University in 1974.


**Equity: the overarching priority**

As emphasized above, Lake made equity his first priority. By this he primarily meant giving primary attention to the most marginalized children and mothers, the bottom 20 percent, 30 percent, or even 40 percent depending on the country. This priority grew out
of reviewing the experience and results of previous decades, during which children “on average” had made impressive progress in terms of health, education, nutrition, and access to water, sanitation, hygiene, and other basic services. However, as Lake emphasized, averages were misleading. There was increasing evidence that reductions in child mortality, access to health services, increases in school attendance, and general improvements in the situation and welfare of girls, boys, and mothers had involved faster progress among the better-off than among the poorest. This was true in almost every country and went along with evidence of growing inequalities in other respects: in income, accumulation of wealth and assets, and opportunities later in life.

Marginalized children were the ones disproportionately missing out—whether they were children in the poorest parts of a country’s rural areas, in its most deprived slums, or far outside the mainstream because of their ethnic group or other reasons of social exclusion. Children with disabilities were also an oft-neglected group to which Lake gave new attention, creating a Disabilities Unit in headquarters and devoting the 2013 State of the World’s Children Report to their needs.1 Usually, it was a combination of disadvantages that compounded the difficulties for these children and their families, in what has been termed the challenge of intersecting inequalities.2

The focus on equity matched a growing worldwide awareness that the previous decades had been marked by increasing inequalities more generally. Soaring income inequalities had begun to hit the headlines round the world, reinforced by the financial and economic crisis of 2008 and after. Economic and political analysis suggest ever sharper links between rising inequality and the causes, national and international, of the crisis. The “Indignados” movement and popular protest in Wall Street in New York and outside St Paul’s Cathedral in London (and in many cities elsewhere) had brought inequality to public attention, often combined with outrage at the weak responses to the global financial and economic crises. Unfortunately, however, inequality was more often a focus for protest than for action, especially in developed countries. Therefore, for UNICEF to make equity its priority focus for its programs became a highly visible example of global leadership. The emphasis on equity has met with an increasing response from UNDP, WFP, and others in the UN family.3 More surprising, after several decades of neglect or playing it down, the IMF and the World Bank have also been emphasizing the importance of inequality for policy and action.4

Within UNICEF, the priority focus on equity is being carried forward in a number of ways:

1 A steady evolution of initiatives under the name of Refocusing Policies and Actions on Equity;

2 An approach of "Monitoring Results for Equity System" (MoRES);
3 Analytical work and publications based on literature reviews and modeling pro-equity and cost-effective strategies for responding to it;

4 Identification of areas where results showed priorities for action. Regional and country offices as well as headquarters were involved in exploring the different contexts where action was required; and

5 Advocacy with donors and the executive board.

In some ways, these have parallels with the Triple-A approach applied earlier for nutrition. Assessment, analysis, and application in relation to equity were to be followed in sequence with feedback after application. However, equity gave the Triple-A approach a special focus, and literature reviews and modeling enabled it to draw on a wider base of evidence.

UNICEF’s MoRES approach encompasses all country offices in bringing equity into their situation analyses for country programs as well as in channeling results to headquarters. Country programs are required to address the more prevalent forms of child deprivation and to link this with monitoring and resource use. More specifically than in earlier times, actions and measurable progress in tackling deprivations are encouraged to be made a joint focus with partners. Progress in reducing deprivations and in tackling bottlenecks to such progress would then validate—or refute—the strategies for reducing child deprivations.

It is a big and bold agenda and it is too early (at the time of writing in mid-2013) to assess how well it is proceeding, especially in areas where inequities are longstanding and deep-seated. Inequality involves many complexities and action many difficulties, but there is no doubt that by focusing on equity, UNICEF has been re-energizing its advocacy, policies, and operations towards one of the major challenges of development today, not merely for children but for human and economic development more generally. An equity focus can also take forward many of the major elements of a human rights-based approach.

One early UNICEF study on the costs of reaching the marginalized produced a surprise result. Against the expectations of many, this showed that it would now often be more cost-effective to focus on the marginalized. This was partly the result of economies of scale when there was a geographically concentrated or otherwise clearly identifiable group which had been left out and which was now to be the target of action.®

By 2012, Lake had what was needed for a global two-year management plan. Implementation was embarked upon in a first wave of 26 countries.

**The limits of “focus on equity”**
UNICEF’s focus on equity has mainly meant giving priority to actions for those left out of mainstream actions, whether through extremes of poverty or marginalization by gender, disability, geography, ethnicity or some other dimension of social exclusion. In policy and analysis, this covers most dimensions of deprivation. At the same time, such a focus extends to only a limited range of the causes of such deprivations. It also leaves to one side the broader issues and upper extremes of inequality of income and power, influence and institutions which are central to the reasons why inequalities have been soaring.

In analysis and publications, UNICEF has made some important contributions to these wider issues. In 2010 and 2011, UNICEF’s policy unit produced some high-profile and well-publicized publications on income inequality, providing data on how inequalities had been rapidly increasing globally and within the majority of the 141 countries covered by the data analyzed. 6 The unit also produced publications on what could be done—the possibilities for generating additional revenues for expanding child-focused actions, proposals of practical relevance to the financing of health and education in the context of austerity and cutbacks. 7

At the same time, Lake set up an “Innovation Laboratory” within UNICEF. Bill Gates was asked to advise on such questions as “how do you decide when an innovation is ready to be taken to scale?” This led to UNICEF winning an award in 2011 for innovation. One early example was in Uganda, where boy and girl scouts used mobile phones to report each week on their villages. Reporting covered such issues as whether teachers were in school or absent, whether vaccines were available in the local clinic or not and whether immunization services were being offered. This so-called “U-Report” system was receiving some 30,000 answers a week at the end of 2012 and was being explored as a basis for real-time monitoring and as a new way to encourage civil society mobilization. Later examples included using mobile phones for automatic reminders of antenatal clinic visits and “AnthroWatch,” which allows real time monitoring of children’s nutritional status.

Renewing the promise

Issues of equity were also combined in a further new UNICEF global program entitled, Committing to Child Survival: A Promise Renewed. 8 This focused on the earlier child survival and development agenda, but with greater attention on the groups and countries where child mortality was still high. It learnt from and applied lessons from the countries that had earlier made accelerated progress in reducing child deaths, and asked how in the present situation these lessons could now be applied to the countries where progress had been lagging.
The program builds on the findings that reductions in child mortality have been particularly impressive in nine low-income countries which reduced their under-five mortality rate by 60 percent or more in 1990–2011. These are Bangladesh, Cambodia, Ethiopia, Liberia, Madagascar, Malawi, Nepal, Niger, and Rwanda. It also takes account of the 19 middle-income countries that over the same period reduced their rate by 75 percent or more, among them Brazil, China, Mexico and Turkey, and the 10 high-income countries that achieved the same, including Oman, Portugal, and Saudi Arabia. These experiences have demonstrated that high per capita income or even high rates of economic growth are neither necessary nor sufficient for ensuring such progress for children. The program seeks to apply the lessons of success to other countries in each group, with an especial focus on the poorest and marginalized groups within countries.

The “Promise Renewed” also looks at wider areas of progress; not only reductions in under-five mortality rates but reductions in fertility and the numbers of children born, which together have contributed to the fall in total child deaths each year. Although maternal mortality rates have also fallen, the drop from 32 to 22 per 1,000 live births of women dying in pregnancy-related causes over 1990–2010 was less than that of child mortality, which fell from 87 to 51 per 1,000.

Regional progress in reducing child mortality has been greatest in Central and Eastern Europe and the Commonwealth of Independent States, Latin America and East Asia, and least in South Asia and sub-Saharan Africa.10 This said, nine of the top 10 countries that have most sharply accelerated reductions in child mortality are in sub-Saharan Africa. This impressive progress has, however, resulted in a concentration of high child death rates in some of the world’s poorest regions and countries. As regards the causes of child death today, violence, conflict, and fragility stand out as major factors, which characterize eight of the 10 countries with the highest rates of child mortality. Somewhat in contrast, however, and because of their large populations, five countries now account for about half of the world’s under-five deaths each year: India, Nigeria, the Democratic Republic of the Congo, Pakistan, and China.

The program focuses the lessons of the past on the new commitments required for the future. Some 21,000 under-fives are still dying each day, almost all in developing countries and mostly unnecessarily. Renewed political commitments are needed to implement at national scale the actions needed. Low-cost remedies are available today even more than in the 1980s. However, the causes of death and the actions required have often changed as countries have made progress. The strategy therefore underlines the need for countries to prepare evidence-based national strategies, properly costed and with five-year milestones for monitoring. UNICEF is also encouraging governments and partners to work together to report progress with transparency and transparent accountability, with UNICEF itself committed to collect and disseminate the data. A
common template has been developed by the UN Commission on Information and Accountability for Women's and Children's Health.\textsuperscript{11}

A third priority of the "Promise Renewed" is social mobilization and global communication. Here there are also echoes of social mobilization under Grant's leadership in the 1980s.\textsuperscript{12} The terrain is now more crowded, however, with many voices speaking out about the importance of many agendas, including the MDGs, sustainable development, the eradication of polio, and Scaling up Nutrition. All are important, but the chance of achieving the same attention for global mobilization has become more difficult, even for the cause of children.

As the earlier causes of under-five mortality have been successfully tackled—though nowhere near eliminated—child deaths are increasingly those of the first month, with neo-natal mortality now accounting for 40 percent of all under-five deaths. Complications of birth stand out as well as other causes such as sepsis, meningitis, and tetanus. Among children who survive the first month, the leading killers are today pneumonia, diarrhea, and malaria. Many of these deaths occur in children already weakened by under-nutrition, an element in some two-thirds of all such deaths worldwide. There are other causes as well: HIV/AIDS; injuries; and of course some deaths from vaccine-preventable diseases, since through lack of immunization, the numbers still dying from such diseases amount to around 750,000 each year. As the equity agenda emphasizes, the highest risks in all these categories are children in the poorest and most marginalized groups.

At the time of writing, UNICEF had other goals, under the all-encompassing umbrella objective of “equity.” A Promise Renewed is one, education and child protection are two others. There are also three relatively new ones: adolescents, environmental sustainability, and humanitarian action. In the first two of these areas, UNICEF’s support for reports or advocacy is among the most important part of its contributions. Its Report Card on Adolescents—the tenth in the series—tracks the growth of the world’s population aged 10–19 years and analyzes the social dimensions of their lives: their use of technologies and the internet, their access to work, as well as health-related issues such as sexual behavior and HIV/AIDS, early marriage, use of tobacco and drugs, mental health, violence and homicide. The Report assesses these and other aspects of teenage lives in relation to their rights and the CRC.\textsuperscript{13}

Action for environmental sustainability falls into three areas: financial and technical support for water, sanitation and hygiene is still the largest, with programs focused ever more sharply on equity issues and expenditure of nearly US$400 million in 106 countries in 2010.\textsuperscript{14} In addition, environmental analyses and country- or region-focused publications assessing how children will be affected by climate change and its diverse consequences are the basis for an important range of advocacy. Climate Change and
Children in the Pacific Islands is a good example. Education and advocacy on environmental issues is a third area, with support for school programs in many countries. In addition, UNICEF has often involved teenage children in advocacy, nationally, regionally or internationally. In support of each of these are also cross-cutting actions, embodying human rights, gender equality, and the girl child, as well as communications and partnerships with others. It is a big agenda and time is needed to see how the balance of effort and resources is spread among them.

**Economic policy and budgeting in the 2000s**

Over the 2000s, UNICEF’s Office of Evaluation Policy and Planning focused attention on multidimensional child poverty and inequalities, social protection along with social budgeting and public finance as contributions to ensuring that national development strategies responded to children. These areas were approved by the board, which supported work to strengthen the capacities of states and societies in designing and implementing social and economic policies. The link was with legislative measures and budgetary allocations that enable countries to meet their obligations under the CRC and CEDAW. This important step formalized support for UNICEF's broader mandate.

The pool of economists also expanded in UNICEF. Apart from the policy team in headquarters, economists were assigned to country offices and regional centers. Building on its field experience and in alliance with other UN agencies, UNICEF began collaborating with partners to stimulate dialogue around macroeconomic and sector policies that guide national frameworks, and advocating for actions, budgets, and investments that contribute to fulfilling the best interests of the child. By 2010, 95 UNICEF country offices were involved in social budgeting and public finance, 67 were working on multidimensional child poverty and inequalities/disparities, 76 were building social protection systems, and 44 were dealing with economic policy reforms and children.

With the spread of recession and downturns in the world economy after 2008–09, UNICEF once again emphasized a broader approach to global economic governance, focusing on the impact and implications of the worsening crisis and growing inequalities in many countries and actions to protect and preserve the fulfillment of children’s rights. A key requirement for ensuring equitable outcomes for children is an enabling policy environment. As mentioned earlier, UNICEF produced several pioneering publications, documenting the statistical dimensions of worldwide inequality, the trends and levels of income inequality within countries and the fiscal space open to governments to protect budgets for children and the poor.

In 2011, UNICEF issued “Austerity Measures Threaten Children and Poor Households.”
This report analyzed the severe results of the rapidly growing and widening range of austerity programs. Seventy countries had reduced spending by nearly three percentage points of gross domestic product (GDP) during 2010, and 91 planned cuts by 2022. Moreover, it showed that nearly a quarter of developing countries were undergoing excessive fiscal contraction, defined as cutting public spending to below pre-crisis levels.

In 2010, after equity for children had been set as its all-encompassing goal, UNICEF’s economists embarked on a broader range of supportive studies in the pursuit of equity, inequality reductions, social budgeting, social protection and ensuring fulfillment of children’s rights.19

Funding and management

One of the organizational challenges with which Lake has had to deal has been financial—declining regular resources from traditional donors, a challenge also faced by many other parts of the UN. Total resources for UNICEF have almost always been on a rising trend, including under both previous executive directors, but within this, there has been a gradual shift of government support from “regular resources,” which can be used for any budgetary purpose, to “other resources,” funds which are tied by the donor to particular countries or specific purposes. This has limited UNICEF’s ability to make the rapid responses which have been its traditional hallmark.

One of Lake’s early moves was to issue a report explaining why regular, unrestricted funds were important for UNICEF’s programs.20 Regular resources enabled funding to be more predictable for individual countries and also enabled UNICEF to allocate 60 percent of its regular resources to least developed countries and 50 percent to sub-Saharan Africa, in line with commitments made in the Paris Declaration. Regular resources were also essential for achieving UNICEF’s commitments to equity.21 To back up this new appeal, Lake took a number of initiatives to increase the transparency of UNICEF’s operations. All internal audit reports issued from September 2012 would be made accessible to the public, along with all annual reports, evaluations and more financial information.22

By 2012, total UNICEF funding reached almost $4 billion. Total regular resources increased in both 2011 and 2012 to reach $1.2 billion in 2012. Government contributions to regular resources were only $600 million, but fortunately there was nearly another $600 million of regular, unrestricted resources from other funders, almost all from UNICEF’s National Committees. (Figure 7.1 provides further details.) In total, government contributions amounted to about half of UNICEF’s revenue, $2 billion, including the $1.4 billion of restricted government contributions, earmarked for
Figure 7.1 Program assistance expenditure by medium-term strategic plan focus area, 2012
Note: Totals for the UNICEF medium-term strategic plan (MTSP) focus areas may not add up to $2,933 million or 100 per cent because of rounding.

Figure 7.2 Program assistance expenditure by geographic region, 2012
Note: Totals for the geographic regions may not add up to $2,993 million or 100 per cent because of rounding.
* Programme assistance for Djibouti and the Sudan is included under sub-Saharan Africa

particular programs or countries, including emergency operations. UNICEF’s longstanding system for raising revenue through its National Committees added a total of $940 million in contributions from the general public and other sources, almost a quarter of UNICEF’s annual revenue. There was also a further $350 million of earmarked resources from intergovernmental arrangements, nearly 40 percent being UN support for emergency operations. Intergovernmental organizations contributed $235 million, almost all from the European Commission. Finally, other nongovernmental international organizations contributed a further $220 million, including from the Gates Foundation, the Global Fund (for fighting AIDS, TB and malaria), Rotary International, GAVI, the UN Foundation and the Micronutrient Initiative.
A new goal for the year 2035

By 2012 the governments of the United States, Ethiopia, and India, along with some 700 NGOs, private-sector partners, and governments, had signed up to a renewed global commitment to child survival and to global mobilization. A new goal was also adopted—that by 2035 every country should have reduced its under-five mortality rate to 20 per 1,000 at the maximum. This implies a major acceleration in the rate of reduction of child mortality among some of the most populous countries—the Democratic Republic of the Congo and Nigeria in particular. India and Pakistan also
require some acceleration in the rate of reduction, though only a little compared to what they already have achieved over the last decade.

To achieve this new goal, UNICEF has identified five key strategies for action:
1 A prioritization of actions and budgets, focused on the countries and regions accounting for most under-five deaths;
2 Scaling-up nutrition and health systems and the services that reach the most underserved and marginalized;
3 Targeting action on the biggest opportunities—for instance reducing neonatal deaths—backed up by support for innovations and evidence-based action;
4 Creation of a more supportive environment by the education and empowerment of girls and women, the promotion of “Water & Sanitation” (WATSAN) programs and sustained inclusive economic growth; and
5 Mutual accountability through sharing results, sharing goals, and regular monitoring.

Renewing the promise requires scaling-up in the 24 countries that account for 80 percent of under-five deaths: India, Nigeria, Democratic Republic of the Congo, Pakistan, China, and Ethiopia, the largest. It also requires action in about another 20 smaller countries, mostly in sub-Saharan Africa. The goal is to reduce under-five mortality in every country to 20 or below by 2035, the level already achieved in countries such as Argentina, Barbados, China, and Sri Lanka, as well as in all developed countries. Some other countries like Cuba and Israel already have rates of child mortality less than one-third of the target.

In most countries, this challenge is linked directly to equity—to reduce child mortality rates in the neglected geographic areas or among the neglected marginalized communities of the country. In the better-off countries, this requires a focus on the poorest 5 percent, 10 percent, or 20 percent of the population. In poorer countries with high child mortality rates on average, equity requires a focus on the poorest 20 percent, 40 percent, or even 50 percent.

The actions needed for scale-up can learn from the Scaling-Up Nutrition (SUN) initiative, but need to go far beyond nutrition, health, agriculture, and food: education, especially for girls, is also vital, as is care and support by other members of the household and the community. At the community and local government levels there is also need for improvement of management, data systems and support in the difficult areas of maternal, newborn, and child health outcomes. This in turn requires stepping-up activity in global communications and social mobilization, along with improved data reporting and analysis.
By autumn 2012, some 90 governments and dozens of NGOs had signed pledges of support. UNICEF has committed itself to the production of an annual report on progress. One novel feature for extending mobilization is a Design for UNICEF contest, in which students in New York are being mobilized in a competition for designing innovative strategies for child survival. Another is the example already mentioned, the “U-Report initiative” in East Africa, under which children are already reporting regularly on the situation of schools and health clinics and other such services in the villages where they live.

With these initiatives, UNICEF may be recovering some of its global leadership for children. The organization is now active in some 150 developing and emerging countries, with country offices in 143 states and programs without country offices in some seven to 10 others. Altogether some 75 governments contributed financially to UNICEF in 2012. In addition, there are 36 UNICEF National Committees in developed countries. These committees, long a part of UNICEF, have major responsibilities for fundraising but increasingly also for advocacy about global problems of children, including children in developed countries. Advocacy is also supported by UNICEF’s goodwill ambassadors, with 32 global stars from the world of film, football, tennis, music and other fields joined by 14 regional and over 200 national celebrities using their prominence in the media to speak about children and what can be done to respond better to their needs. UNICEF’s Research Office in Florence and its National Committees in Europe have been especially active in analyzing children’s problems and making comparisons between the situations and needs of children in different European and other OECD countries.25

**UNICEF’s future within the UN**

Over the period since UNICEF’s founding in 1946, there have been dramatic improvements in the situation and well-being of children in all parts of the world, on a scale never seen before. In the industrial countries of Northern Europe and after World War II, infant mortality rates were typically around 30 per 1,000 live births, higher in Southern Europe.26 In developing countries, infant mortality was often at levels not seen in Western Europe since the dark days of the industrial revolution. In spite of world population nearly tripling, child deaths each year have decreased during the life of UNICEF from an estimated 24 million in 1950 to below 7 million in 2011. School enrollments of children have increased from a third or less in the poorest parts of the world to 80 percent or 90 percent, with better-off countries, developing and developed, now treating primary and secondary education as the norm.

In parallel with these reductions of child mortality have been worldwide advances in
responses to other basic needs of children: nutrition, access to water and sanitation, and care and protection for children in difficult circumstances. Equally significant have been the changes in awareness and attitudes. These and other priority areas for child actions have achieved increasing attention—and after 2000, global legitimacy and support by being incorporated in the Millennium Development Goals, several of which grew out of the World Summit for Children. UNICEF has specific responsibilities for mobilizing global efforts for three of the eight goals as well as monitoring four of them. UNICEF’s earlier pursuit of goals in the 1980s as part of the child survival and development revolution and its support of the World Summit for Children goals in the 1990s provided much of the foundation for the adoption of the MDGs at the time of the Millennium Summit.

Increasingly, UNICEF has broadened its concerns from developing countries to children in all parts of the world. The Convention on the Rights of the Child was a major step towards this embrace of all children in all countries. So also was the World Summit for Children in 1990, in which all countries pledged to prepare action plans for their own children based on the goals and commitments of the meeting. With the end of the Cold War, UNICEF gave increased attention to children in countries in transition from the former Soviet Union. Recently UNICEF has issued a series of scorecard reports documenting the well-being of children in the 29 industrial countries, measured along five dimensions: material well-being; health and safety; education; behavior and risks; and housing and environment. The ranking of countries in relation to child well-being serves both as a record of the current situation and a challenge for improvement.

It is impossible to assess quantitatively, or even qualitatively, the direct contribution of UNICEF to the achievement of all these advances over the years. Country action has almost always been central, led not only by governments but by many others—activists, NGOs, universities and the private sector. Nevertheless, throughout, UNICEF has been one of the leading players in countries and internationally, especially through its advocacy, mobilization, monitoring, and financial support country by country. UNICEF has played a leading role internationally in support of children, often the leading and most outspoken role. UNICEF has used its legitimacy as a UN organization and its leadership to speak out for children and for setting goals and priorities for advancing efforts to meet their needs. In this, UNICEF, at its best, has formed partnerships with WHO, UNESCO, UNDP and other parts of the UN, as well as with leading international NGOs (especially natural allies such as Save the Children).

In the second decade of the twenty-first century, there is still an important global role for UNICEF’s leadership and support. Although internationally there are now a number of other voices, organizations and funds, none has the legitimacy and accepted global
voice of UNICEF. Nor have any others UNICEF’s outreach into 150 developing countries and regional offices with staff to ensure follow-up, or the capacity and commitment in industrial countries of UNICEF’s National Committees which provide further advocacy, support, and fundraising.

Conclusion: protecting the strengths of UNICEF

One can end, therefore, by listing some of the key features of UNICEF which need to be protected in the years ahead. They are also the reasons why UNICEF has been able to develop its strengths and sustain them over some two-thirds of a century.

1 An unwavering focus on children, with the challenging appeal that children everywhere need and deserve the best that each country and the world can offer;
2 International leadership for children, backed up by country representatives and country and regional teams and National Committees;
3 A nearly universal worldwide network of country offices and National Committees;
4 A sustained focus on practical action to achieve results;
5 A long tradition of commitment, initiative, efficiency and effectiveness, especially in setting or adopting goals, mobilizing action towards them, monitoring and publicizing results, nationally, regionally, and internationally;
6 Expertise in communications and outreach to promote knowledge about children and their needs, linked to the latest research and monitoring;
7 A well-established diversity of funding—from governments, the general public and private-sector sources—with a quarter of funding still coming from individuals and other private sources;
8 A longstanding tradition of speaking out loudly and boldly for children, including on occasion adopting challenging positions and speaking truth to power in condemning governments or other parties in their treatment of children or blocking international relief for children;
9 A structure established as part of the United Nations and commitments to work in partnership with other institutions in and outside the UN; and
10 An ethical basis for its actions founded on the Convention on the Rights of the Child, along with a rights-based approach for continuing action and leadership for children.

These are the factors that have made UNICEF strong and enabled the organization, decade by decade, to have made an undoubted and sustained impact. These factors
have also attracted increasing amounts of funding and support from governments and from the public at large, but they need to be built on and protected, not taken for granted. At the heart of UNICEF’s effectiveness is the tradition of bold and outspoken leadership, at all levels, but especially of its executive director. When the next executive director is to be chosen, the role of the executive board will be vital. Much could be lost unless the selection is based clearly and with unity on finding someone with the capacity for global leadership for children, a clear vision of the potential of the position, and deep understanding of what the organization has achieved in the past. Nationality will inevitably be a consideration but all who care about UNICEF must play a part in holding out for the capacities and qualities of leadership which the position so clearly requires.  

UNICEF has contributed to humane global governance and been a model of what works.

Notes


3 Helen Clark, UNDP’s administrator in her statement to the UNDP Executive Board on 10 June 2013, proposed a sharpened focus and streamlined operations for UNDP, based on a “single vision focused around simultaneously eradicating poverty and reducing inequalities and exclusion.” See www.post2015.iisd.org/news/undp-proposes-focus-on-povertyand-inequalities.


9 Ibid., 4.

10 Ibid., 7.

11 For details see www.itu.int/net/itunews/issues/2011/01/53.aspx.

12 Ibid., 5.


21 Ibid., 73.

22 Some of this was in line with the multilateral review by the UK, one of the most
comprehensive reviews of all the UN agencies undertaken by any donor. The Department for
International Development (DFID) had scored UNICEF as "strong" in meeting international and
UK objectives and in focus on poor countries, “satisfactory” in financial resources management
and cost and value consciousness and in responding to cross-cutting issues such as gender and
fragile country situations and partnership behavior, but “weak” in response to climate change
and transparency, accountability and strategic and performance management. Although DFID
judged the likelihood of positive change after this evaluation as “uncertain,” this evaluation
judged UNICEF relatively well in relation to other UN agencies: DFID, Multilateral Aid Review:
Assessment of United Nations Children’s Fund (UNICEF),
24 Ibid., last section showing NGOs.
Comparative Overview (Florence: UNICEF Innocenti Research Centre, 2013).
26 Giovanni Andréa Cornia and Sheldon Danziger, Child Poverty and Deprivation in the
27 UNICEF, The Children Left Behind: A League Table of Inequality in Child Well-being in the World’s
Rich Countries (Florence: UNICEF Innocenti Research Centre, 2010).
28 This was well put by The Lancet 374, no. 9703 (2009): 1733–34. “UNICEF’s Executive Director
is an important global leader in health. The person appointed should not be in the gift of one
powerful government. Instead, ... the next Executive Director of UNICEF [should] be selected
through a transparent, merit-based appointment process. Candidates, nominated by their
governments or applying directly, should have to declare themselves, publish manifestos, and be
available for public scrutiny and questioning. Most importantly, the next Executive Director of
UNICEF should be someone with a proven track record in children’s issues, including child
health. He or she should be a person who can command the confidence of countries, political
leaders, and technical staff. That person should also be someone who has demonstrable
leadership and communication skills. UNICEF is too important an agency to leave to the
contingency of domestic US political pay-back. Such an appointments process only erodes the
integrity of the UN. It is time to stop that erosion.”
Origins and History of UNIDO
no reference list?
Chapter 5: Origins and History of UNIDO

- Hesitant beginnings
- New status
- Funding crisis
- UNIDO under fire
- A new reform phase
- Conclusion

No part of the United Nations (UN) development system has evolved through as many stages as the UN Industrial Development Organization (UNIDO), which is what makes its origins and history of special interest. The organization—growing from a modest UN division to a full-fledged specialized agency—has undergone considerable buffeting along the way, in part a reflection of the doubts of the dominant developed country donors about the proper place of an international public agency in the promotion of industrial development. This chapter traces UNIDO's evolution that accompanied these concerns.

Like many other UN entities, UNIDO has been the victim of funding vagaries. The uncertainties were exacerbated when its principal source of technical assistance (TA) funding within the UN withdrew its support for reasons that had little to do with performance. Consequently, UNIDO became even more dependent on bilateral donors and right up until the present day, it has been preoccupied with staying onside with its principal patrons.

A funding nadir was reached in the 1990s, and UNIDO had to weather further criticism from developed countries, some of which subsequently withdrew from the organization. However, it managed to build back better. It cut down drastically on redundant activities and concentrated its growth on areas of emerging priority, including trade capacity building and the promotion of production processes more sustainable in terms of energy and the environment. Today, the organization has regained its earlier levels of activity, with substantially fewer staff.

Hesitant beginnings

In the post-war debates within the UN on economic and social issues, industrial development was a relative latecomer to the agenda. For its first 10 years, the UN was preoccupied with financing, trade, transport and a range of social questions including full employment, the status of women and children, refugees, narcotic drugs, social
welfare and human rights.  

From 1952, however, the Economic and Social Council (ECOSOC) began asking for studies on productivity, and two years later the secretariat produced a working paper, *Efforts Towards Raising Productivity in Industry.* It mainly consisted of a review of the findings of technical assistance missions on the state of manufacturing in the “under-developed countries.” Further work was requested and at the end of 1954 a much more substantial and erudite report was published: *Process and Problems of Industrialization in Under-Developed Countries.* One of its principal authors was Hans Singer, the senior economist in the secretariat at the time, and those contributing to the final draft included some of the best development minds of the day: Barbara Ward, Arthur Lewis, Simon Kuznets, Dennis Robertson, and Jan Tinbergen. A section of the report considered the implications for international organizations, noting that at the time of publication, very limited assistance had been provided to “secondary industry.” The World Bank—concentrating much more heavily on infrastructure—had extended only two loans (to India and Yugoslavia), while only 5 percent of UN technical assistance had been directed at manufacturing and mining. The paucity of funds allocated for industrial development was attributed to two factors, which corroborate the relatively low priority put on industrial development by governments:

In the first place, countries in the pre-industrial phase of development are seldom in a position to take full advantage of aid in this field ... In the second place, in many under-developed areas where secondary industry has been established, it is largely in the hands of private entrepreneurs and therefore lies outside the direct range of aid provided to governments.

Kick-starting industrialization and supporting the private sector are both concerns that would have to be answered by any forms of international public assistance to the secondary sector.

From 1956, the UN drew up a program of work in industrialization and an industry section was established in the secretariat to undertake and coordinate the UN’s work in this domain. This was the first seed from which UNIDO was eventually to grow. Three years later, the section became a full branch. In 1961 a committee for industrial development met for the first time under the auspices of ECOSOC and recommended the creation of an industrial development center within the secretariat, which began formally the following year. In the General Assembly debate later in that year, the idea of a specialized agency was mooted for the first time, and supported and opposed by an almost equal number of countries.

Momentum continued to grow, however. In 1964 the first UN Conference on Trade and Development called for the eventual creation of a specialized agency. The following
year the General Assembly passed a resolution setting up an organization for industrial development and in 1966—acting on a recommendation of an ad hoc committee—the General Assembly approved the creation of UNIDO as an “autonomous organization within the United Nations.” By the same resolution, it was decided to establish an industrial development board as UNIDO’s principal organ (replacing the committee for industrial development), comprising 45 members drawn from four different country groups (Latin America and Caribbean, other developing, centrally planned and industrialized countries). Financing of administrative costs and research would come from the regular budget of the UN, while operational activities would be supported by voluntary contributions and UN Development Programme (UNDP) funding. In December 1966, having considered several offers of host facilities, the General Assembly decided to locate UNIDO in Vienna. In January 1967 UNIDO opened for business in its new European home.

The creation of UNIDO as an autonomous UN body was something of a compromise. The developing countries, which now comprised a large majority of the UN membership, wanted a specialized agency with its own governing body, while the developed countries preferred an organization with more modest ambitions under the auspices of the General Assembly. This tension, which has been intrinsic to the UN development system throughout its history, was the result of a fundamental incongruity in development cooperation. Unlike in the pre-war era, the countries requesting technical services were not required to pay for them. Not being the principal paymasters of the system, they therefore did not exercise ultimate control over the UN organizations, and could not even guarantee that their demands would be met. This incongruity has always been taken for granted in the aid sphere. In their bilateral programs, the donor countries have largely dictated the direction and nature of their aid. However, the multilateral system, too, has been dominated by the interests of the major donors—a tendency that has only become more marked with time as earmarked financing has become predominant. As this history will soon reveal, a dependence on financing from a limited number of major donors was to render the UN development system—and UNIDO in particular—vulnerable to the funding policies of a limited number of governments, the accountability of which is primarily to rich taxpayers in the North rather than poor beneficiaries in the South.

To start with, UNIDO’s activities continued those of the former centre for industrial development. It acted as a global forum for discussions, undertook research and analysis and disseminated information. Donors had decreed that technical assistance (“operational activities”) should be financed from “extra-budgetary” sources. Over its first full decade UNIDO’s resources grew four times. In 1970 its total budget was almost US$32 million, of which extra-budgetary resources accounted for $20 million. By 1980, resources had grown to $123 million, of which nearly $73 million were from
extra-budgetary sources, mainly UNDP.

During 1972 and 1973 a group of 18 "high-level experts" established by the UN Secretary-General deliberated on a long-range strategy for UNIDO. Their report was then considered, and substantially endorsed the following year, by an ad hoc committee comprising representatives of 27 countries, which the Industrial Development Board set up for the purpose. Its recommendations pertained to the role and scope of UNIDO and urged greater financial and administrative autonomy.

The decade of the 1970s was marked by strident debate about what was perceived by developing countries as a highly inequitable global economy. The terms of trade had continued to move against the exporters of primary goods, yet market access into the developed countries was limited by tariffs that escalated with higher degrees of processing and manufacture. Rich country protectionism was compounded by opaque non-tariff measures and the persistence of agricultural subsidies for the benefit of an affluent and rapidly diminishing farming population. The terms of international finance were also dictated by the rich countries while their multinational corporations dominated the international flows of private capital and technology.

In 1973 the developing country oil-exporters held back on supply and ramped up the price of petroleum in a graphic manifestation of commodity cartelism. For developing countries the Organization of Petroleum Exporting Countries (OPEC) provided an example that they sought to emulate and, encouraged by their intergovernmental pressure group—known as the G-77—they began to make demands on the rich world for a "new international economic order." At a special session in 1974, the General Assembly passed resolutions on the Declaration and Programme of Action on the Establishment of a New International Economic Order (NIEO) designed, no less, to transform the structure of economic relations.

There was more rhetoric than result. The UN Conference on Trade and Development (UNCTAD) began a protracted campaign to establish a common fund as defense against continuing real declines in exported non-oil commodities. Agreement was finally reached only in 1980, but it was another nine years before the fund became a reality. The developed countries made modest concessions on trade and debt relief, and donor aid flows accelerated in the second half of the decade, but there was little fundamental change, and the developed countries continued to dominate the main international organs of economic power which had been created to redress global imbalances: the World Bank, International Monetary Fund (IMF) and the General Agreement on Tariffs and Trade (GATT). The unfortunate long-term consequences of the NIEO's failure were that, by maintaining an unequal balance in the global economy, the rich countries had a rationale for continuing patronage in the form of aid, while the developing countries were provided with external scapegoats for their lack of development progress.
Against the backdrop of the NIEO, UNIDO held its second general conference in 1975 in Peru. It resulted in the Lima Declaration and Plan of Action on Industrial Development and Cooperation.\textsuperscript{14} Lima was couched in the language of the global debate. It called for the share of the developing countries in world industrial production to be raised from the prevailing 7 percent to 25 percent by 2000,\textsuperscript{15} and for special measures to assist the least developed, land-locked and island developing countries. UNIDO was seen by developing countries as a key actor in implementing the NIEO Declaration, and this was the origin of the “global forum” role envisaged for the organization.\textsuperscript{16} The global forum was to be the venue for a “system of consultations” in order to “facilitate the establishment of a new international economic order”—in effect, an industrial pressure group for the South. Lima also called for developed countries to:

... undertake an objective and critical examination of their present policies and make appropriate changes in such policies so as to facilitate the expansion and diversification of imports from developing countries and thereby make possible international economic relations on a rational, just and equitable basis.\textsuperscript{17}

UNIDO was perceived by some as attaining a status equivalent to the Bretton Woods Institutions,\textsuperscript{18} but with a more equitable (UN-style) governance structure. Behind the labored style and the awkward nuances of inter-governmental debate, Lima echoed the rhetoric of the new international economic order in calling for a rebalancing of global economic power. It was idealistic declamation typical of the era, but as UNIDO’s newly appointed executive director (formerly with OPEC) put it at the time, “the ill-assorted but still encircling armaments of the third world were in opposition to the firm and controlled resistance of the industrialized countries ... the instruments to be mobilized and the measures to be implemented belonged exclusively to the developed countries.”\textsuperscript{19} Action was never likely to follow words as long as developing countries without oil were unable to exercise economic leverage. What Lima did, however, was to establish UNIDO as the industrial equivalent of UNCTAD, which was for a time the principal mouthpiece of the developing world in trade matters. The North–South divide also underlay UNIDO’s future course as an institution: its constitution enshrined the NIEO in its first article (see Box 1.1). Developing countries wanted its autonomy to be increased and its ambition reaffirmed as a future UN specialized agency. Following Lima, the UN Secretary-General initiated the preparation of a constitution, for which an “intergovernmental committee” was established. The draft was scrutinized by sessions of a special UN conference and approved in April 1979, following which it was open for signature. However, to enter into force, the constitution had to be ratified by a minimum of 80 member states and they had to include a sufficient number of developed countries to ensure a secure funding base.
**Box 1.1 UNIDO objectives, 1979**

The Constitution of UNIDO, April 1979, Article 1, states that "the primary objective of the Organization shall be the promotion and acceleration of industrial development in the developing countries with a view to assisting in the establishment of a new international economic order. The Organization shall also promote industrial development and cooperation on global, regional and national, as well as on sectoral levels." In practice, the organization exercises four broad functions: technical assistance (or technical cooperation), "global forum" through the convening of meetings, policy and research, and a normative role, which mainly entails assisting countries and enterprises to meet internationally determined standards.

Some developed countries remained skeptical of the need for a new UN specialized agency. The funding obligation that went with a new assessed budget—in addition to that of the UN organization which had supported UNIDO from the beginning—was just one of the issues. The major donor countries also had misgivings about an organization that could create competitors by assisting the private manufacturers of developing countries. More constructively, they were concerned about lack of coordination within the UN system. These concerns delayed the ratification process for several years until 1985, and it was not until 1 January of the following year that UNIDO formally became a UN specialized agency. The journey from Lima had taken a full 10 years.

**New status**

The formalization of UNIDO's status as a UN specialized agency would seem to have given belated recognition to the significance of industrial development and the key role that UNIDO could play in promoting it. Amongst the staff there was heady enthusiasm about the future of the organization. The optimism was tempered, however, by an early funding crisis. The first biennial budget came up 30 percent short as governments proved to be slow or reluctant contributors. The situation was made worse by a decline in the value of the dollar against the Austrian Schilling, in which most of the costs were paid. (It would have been an opportunity to move to a Schilling-(now euro-) based budget, like UNIDO's UN neighbor in Vienna the International Atomic Energy Agency (IAEA). However, this move was opposed by the organization's then director of finance.)

The financial crisis was a major distraction for UNIDO's first directorgeneral (DG) in the new era, Domingo L. Siazon of the Philippines. His managerial space was further cramped by pressures from member states for representation in high-level posts—a balancing task made more complex by the need imposed by the board to appoint five deputy directors-general (at UN assistant secretary-general level), when the DG would
have preferred one.21

From 1987, however, although substantial assessed contributions to the regular budget were still outstanding, the hitherto stagnant non-core funding for technical assistance grew rapidly, in large part as the financial fortunes of the main source, UNDP, revived. From less than $100 million in 1985, UNIDO delivered assistance worth almost $160 million in 1990, compared with $95.9 million for headquarters expenditures. From a total of 976 in 1976, the number of staff in Vienna had grown in 1990 to 1,392 (of whom 458 professionals), with a further 39 country directors serving in the field.

After five years UNIDO's new status seemed to be fully justified by its rapid expansion; total spending grew by over 70 percent between 1985 and 1990. However, the climate was about to change rather suddenly and brutally, with painful repercussions for UNIDO.

**Funding crisis**

After 1990, funds for technical assistance began to fall off sharply. The main reason for the initial decline was a fall in funding from UNDP, which had been the principal source for projects since UNIDO's inception. The circumstances of the UNDP withdrawal were unfortunate. UNDP had been specifically established in 1965 as a central TA fund for the whole UN development system, comprising the 30 or so organizations and agencies concerned with longer-term development. However, UNDP's role as a central funder and coordinator had never been effective, both because of the overall inadequacy of UNDP resources and because of the inclination of each part of the system to enhance its own independence. UNIDO's accession to specialized agency status was one manifestation, but UNDP itself also sought to become a development organization in its own right, downplaying its coordination role.

From the early part of the decade, UNDP began channeling its funding away from the rest of the system. One reason was that UNDP wanted to shift resources into other development domains which did not correspond with the sectoral orientation of the agencies. Industrial development fell out of favor, although UNDP continued to fund projects that fell into the domains of other UN organizations and agencies. Also, rather than relying on implementing agencies as intermediaries between funder and beneficiary, UNDP wanted to increase more direct "national execution," even though this appeared to the agencies to result in more "self-execution" through UNDP's own Office for Project Execution (OPE). A business reason for excluding the agencies was to help speed up the process of identifying and approving projects which under the traditional tripartite process (governments, agencies, UNDP) was often cumbersome. However, this also resulted in UNDP spending more TA funds on itself, either through OPE or through
programs and staff that it managed directly.\textsuperscript{22} Developing country governments willingly endorsed these forms of more direct implementation, but as a result the specialized expertise that resided in the rest of the UN system was excluded.

UNDP funding of UNIDO's TA fell in every year after 1990. Although UNIDO came to call on other sources, the total value of its project delivery was almost halved by 1996. The Industrial Development Fund had been created in 1979 and this had been intended to become the principal source of TA. Target annual funding was $50 million but pledges never exceeded $30 million in any one year. In the early stages, many of the major donors considered that UNDP would be a more appropriate source, but they did not take up the slack when UNDP funding tailed off. The fall in TA resources would have been greater but for the creation of the multilateral fund of the Montreal Protocol, a facility set up to assist countries to reduce the use and emissions of ozone-depleting substances from their manufacturing industries. UNIDO was an obvious beneficiary of this fund which is one of the principal reasons why the organization has taken on important new environmental responsibilities.

Globally, there were other important changes influencing technical assistance. The reunification of Germany in 1989 and the break-up of the Soviet Union in 1991 amounted to both an ideological and a practical watershed. Ideologically, market-driven democracy became the universal paradigm of development. The role of the state was changing from the management of industry to facilitation, and whereas the concerns of state-managed industry had been an important focus of UNIDO's activities in newly independent developing countries in its early years, there was now a preoccupation with the less familiar areas of economic liberalization and privatization, requiring new skills and approaches. At the same time, the manufacturing sectors in the countries of Eastern Europe and the former Soviet Union were facing critical problems of survival as their traditional sources and markets dried up. The new political realities thus posed additional challenges for UNIDO to meet with limited resources.

The end of the Cold War also led to declining foreign aid linked to geo-politics. An unfavorable economic conjuncture in the developed countries encouraged budget stringencies which, in Europe, were compounded by the need for fiscal alignment prior to the introduction of the single currency. Between 1992 and 1997 official development assistance from the Organisation for Economic Co-operation and Development (OECD) countries fell by almost 30 percent in real terms, leading to cutbacks in the funding of multilateral institutions including UNIDO.

**UNIDO under fire**

Internally, all was not well. In 1991 a special advisory group to the director-general was
set up, which highlighted some of the organizational weaknesses of UNIDO, including a lack of focus and poor project preparation. Recognizing the challenges facing the organization both from outside and from within, the following year the Danish Government sponsored a study of “the comparative advantages, areas of concentration, organization and resources” of UNIDO.23 The study was intended as “a contribution to the debate on making UNIDO a more efficient and effective organization”24 and it provided a useful diagnosis. UNIDO should concentrate on providing assistance at three “target levels”: the policy and strategic level, the institutional framework level and the enterprise level. In doing so, said the report, it should build on four areas of comparative advantage: its relationship with governments which facilitated policy dialogue; a readiness to recognize the linkages among the three levels of intervention; specialized knowledge of some industrial operations; and a capacity to analyze experience of industrial development from all parts of the world.

Partly inspired by the Danish study, the UNIDO secretariat embarked on a major reform program which a new director-general, Mauricio de Maria y Campos, took to the fifth general conference held in Yaoundé, Cameroon, in December 1993. The program was approved and from 1994, implementation began. Then UNIDO’s crisis deepened further. The consultations that had preceded the reform program had clearly not stemmed the criticism of some of the key donor governments. At the beginning of 1995 the Commission on Global Governance—set up as a sequel to the 1991 Stockholm Initiative on global security and governance and comprising 26 renowned experts from both North and South—completed its report. Among its recommendations was the closure of both UNIDO and UNCTAD.

In UNIDO’s case, the reasoning was that most developing countries:

... have established a wide range of industries, accumulating considerable experience both in industrial promotion and negotiations with trans-national corporations. A number of other agencies have also emerged as sources of technical assistance in those fields. Overall, industrial development is no longer viewed as a unique solution to the economic development of developing countries.25

The logic is curious. While experience counts for a lot, many developing countries had not, by the mid-1990s, successfully translated “industrial in the Introduction—the main engine of economic growth in most poor countries.

However, damage had been done. An influential report had for the first time called for a shrinking and consolidation of the UN development system and several donor governments—which had already expressed their concerns about UNIDO—appeared sympathetic. In 1994 Canada had already withdrawn from the organization and the
largest donor, the United States, followed in 1995. The United States’ withdrawal was severe blow. Not only did it mean a cut of 25 percent in the regular budget but the United States also left with substantial arrears—amounting to $61 million—in transgression of the terms of the constitution.26 These withdrawals (followed by Australia in 1997, with threats to withdraw coming from Germany, the United Kingdom and others) greatly heightened the sense of urgency.

During the period 1994–97, budget stringency brought some swingeing changes. Total staff numbers fell by over 40 percent to 755. Among the posts abolished were the five deputy directors-general (none of which was ever restored). With the heaviest staff cuts falling on administration, some services were contracted out, overhead costs were cut and a number of internal procedures were modernized and streamlined. By 1997, the secretariat structure was flatter and more focused. The three target sectors (each with many sub-sectors) were agro-based industries, chemicals and engineering, and in addition there were seven non-sectoral themes.

Yet UNIDO was still not out of crisis. These reforms were not sufficient to convince all the larger donors to support the organization, in spite of a growing demand for its services. Donor concerns were deepseated. Since the 1970s, UNIDO had become closely identified with the aspirations of the developing world. As in UNCTAD forums, these aspirations had taken on political dimensions, leading to justifiable demands not just for transfers of assistance, but for a rebalancing of an inequitable global economy. However, as a former UNIDO executive director (cited above) had pointed out, little was likely to change if all the cards were being held by the North. Experience has shown that fundamental change in the world economy has usually occurred only when the developing countries are able to summon up countervailing strengths, whether oil embargoes in the 1970s or, more recently, the development of highly competitive exports.27 In a globalizing world especially, commercial might is right.

Thus, while idealistically the multilateral system might have been conceived as a means of helping to permanently rebalance global inequalities in practice it has been used mainly as a conduit for assistance from North to South. As long as the system has been heavily dependent on funding from the developed countries, they have expected to continue driving the agendas of the multilateral organizations. Where those expectations are not met, donor interest diminishes. So it has proved with UNIDO, caught up in a broader crisis of multilateralism. From 1997, the organization had no choice but to respond to the continuing criticism of the developed countries if it was to sustain their financial support, particularly in the light of the withdrawal of several members.
A new reform phase

Denmark—always critical but constructive in its attitude to UNIDO—again showed its readiness to assist the reform process. Five years on from A Future UNIDO, the Danish Government sponsored a second and more comprehensive review which was completed in May 1997. The authors of the report admitted to a “not particularly positive” impression of UNIDO’s effectiveness at the start of their review. However, following their work, they determined that some of the criticism was unwarranted and that the secretariat “had managed to improve its overall performance considerably within a few years,” justifying the continued support of the major donors.

The report was influential in encouraging a more positive stance by Germany, the United Kingdom, and Japan. It was a blueprint of potential value to the management, but there was still a low level of confidence by the donors in the capacity of the secretariat to undertake further reforms. Following a specially convened board meeting, they formed an Inter-Sessional Working Group to draw up a road-map for the organization. Developing countries were initially reluctant about further reforms, but seeing how narrow were the options they agreed to go along with the deliberations of the group. It produced a paper which became known—not entirely appropriately—as the “business plan.” It was, in fact, much more broadly conceived: in effect a set of guidelines for future programs and organizational structure. For the only UN specialized agency to have been created mainly at the behest, and for the benefit, of the developing countries, the business plan amounted to an unprecedented degree of micro-management by a small minority of its richer members.

The business plan was formally adopted in June 1997. The plan required a clarification of scope, organization and funding. Scope was defined in terms of the twin goals of “strengthening of industrial capacities” and “cleaner and sustainable industrial development.” The inclusion of energy was debated and excluded from the formal mandate on the grounds that it was a domain better covered by other more qualified organizations. However, it soon found its way into UNIDO’s activities.

At the end of 1997 a new director-general, Carlos A. Magariños, stepped into the breach with a clear mandate to implement a new phase of radical reform. He identified two types of problem: “emerging trends in the external environment affecting wider multilateral cooperation ... and aspects of UNIDO itself which gave rise to its relevance and the effectiveness of its performance.” The first type of problem became identified with the perception that UNIDO was more friendly to central planning at a time when a private sector-led, market-based paradigm had gained universal currency among donors. This view had its origins in the NIEO debate. It was consistently held by the influential right-wing US think-tank and inveterate UN critic, the Heritage Foundation, and had been repeated, for example, in the Danish Government’s Plan of Action for
**Active Multilateralism** (1996). The second problem area was internal and therefore more amenable to change.

Magariños came up with several principles for the transformation of UNIDO. He wanted a changing and adapting organization, embracing "wholesale" rather than "piecemeal" reform. He encouraged teamwork and cooperation across the organization, and the elimination of duplication. He made the business plan the blueprint for change and conceived the reform process in two stages: first, organizational (administrative, financial and structural); and second, programmatic.

**Reorganization**

Funding was still the root of the crisis, necessitating further cuts in staff and costs, such as travel. From 755 in 1997, staff numbers fell further to 630 over the next two years. As far as possible, the reductions were through natural wastage, with minimal involuntary redundancies.

Six divisions were reduced to three, as the business plan had advocated: a main substantive division, a division for technical cooperation and field services, and an administration and finance division. Each of these was to be headed by a managing director. The office of the directorgeneral was also consolidated around fewer functions. These changes themselves represented a huge scaling down of management which had included five deputy directors-general (at the level of assistant UN secretary-general) as late as 1994 and now comprised just three managing directors in 1999 (at senior director level). The director-general, his chief of office and the managing directors formed the new executive board. At the second tier, there was also a board of directors bringing together the executive board with all directors of branches and regional bureaux. Retreats, workshops and team-building exercises were organized to help raise staff morale which had been adversely affected by more than five years of retrenchment.

The business plan had also advocated some decentralization to developing countries. There were several advantages. It would bring UNIDO closer to its clientele, permitting it to be more responsive in identifying and managing technical assistance programs, particularly as these programs were attempting to become more comprehensive at country level (see below). Field offices would also enhance visibility and enable the organization to align more closely to the rest of the UN system which was, in some cases (e.g. UNDP), already highly decentralized. (In 1997 the UN Secretary-General had also embarked on a reform program which stressed more UN coherence, particularly at the field level.)

With donors also moving to the field, there were advantages in fund mobilization.
UNIDO already had a limited field presence, but for a relatively small agency, the creation of numerous field offices presented problems of cost and coordination. UNIDO’s solution was to establish a limited number of country offices, and create a network of regional offices to cover some of the rest. By the end of 1999 there were 23 full-fledged country offices and five regional offices headed by UNIDO representatives. An innovation which UNIDO pioneered in the 1970s led to a network of Investment and Technology Promotion Offices (ITPOs) designed to mobilize investors in developed countries to support project opportunities in developing and transition countries. The first “investment promotion service (IPS)” was set up in Brussels in 1975, and several ITPOs followed in the early 1980s. Italy also sponsored four Investment Promotion Units (IPUs) in North African countries, but these were wound up when funding stopped. Today, there are 11 ITPOs, all of them funded by the respective host governments.

Programming

A review of UNIDO’s technical competences was also central to reform. If the organization was to find its place in an increasingly competitive development cooperation arena, it needed to decide what it was best at doing and what distinguished it from other sources of industrial services, including—and especially—those offered by the private sector. UNIDO was engaged in no fewer than 250 different types of activity. The aim was to designate a limited number of “services” and ensure that there was minimal overlap with other parts of the UN system and with outside organizations.

A “matrix” approach was encouraged, in order to allow countries to pick and mix services according to their specific needs. To be successful, the approach was dependent on a high degree of cross-organizational team-work. The tradition was otherwise. In 1997 there were no fewer than 1,700 separate projects in UNIDO, with an average size of $100,000. This scale of atomization was not unusual in a UN organization and it was symptomatic of a common problem. While size does not guarantee impact (small can also be catalytic), where there is a proliferation of small projects, there are also large numbers of project managers working mostly independently of each other. The result is incoherence and lack of sustainability.

As part of the reforms, therefore, UNIDO set out to consolidate its technical assistance around “integrated programs,” comprising different combinations of services, which had been seen by the Danish assessment as one of the organization’s comparative advantages. The first programs were conceived in 1998 and after two years, over 30 in all regions had begun implementation, with more in the pipeline. With improved
programming practices came the need for better performance measurement, on which donors were insisting. Like other development agencies, UNIDO began measuring impact with more rigor and since 2002, in-depth evaluations have been undertaken for all the major integrated programs.33

From 2002, the process of consolidating services continued, but there was both semantics and substance in the compression of titles. Then in 2004, the introduction of “thematic areas” was considered. Using modernized language and resembling the overall strategic objectives of UNIDO, services were regrouped into clusters. The three themes were: poverty reduction through productive activities; trade capacity-building; and energy and environment. There was a fourth “cross-cutting” area, assistance to countries emerging from crisis.

The “trade” and “crisis” priorities signified that UNIDO was moving into two new areas of opportunity. Trade capacity-building was recognition of the growing importance of export opportunities for developing country enterprises, but also the need to meet the scale and standards required by global markets and by linkages to international value-chains.

The crisis theme was a response to the growing involvement of the UN system in major reconstruction programs in fragile states. From 2004, several major UN trust funds were established to support the work of the agencies and UNIDO has developed and implemented post-conflict programs in Afghanistan, Indonesia, Iraq, Sudan and Uganda (see Box 1.2). These programs helped both to restore and create enterprises to support the livelihoods of formerly war-torn communities. In Laos, there was a different context of recovery. Working with the UN Office on Drugs and Crime (UNODC), UNIDO has helped to create income opportunities that are an alternative to opium poppy cultivation for hundreds of villagers recovering from addiction to illicit drugs.

Given the central importance of the industrialization process to development, UNIDO can also be considered well-placed to contribute to conflict prevention:

    Whereas in the past the role of development agencies in social conflict has been limited to the processes of post-conflict reconstruction, the inseparable natures of environmental, employment-related, and economic concerns today, require a preventive lens in shaping the social environment. UNIDO’s triple mandate assigns the organization an important role in this context, and possibly a comparative advantage over other organizations.34

By 2008, UNIDO had 40 projects in 17 post-conflict countries with a total value of $40 million. Evaluations of a sample of these projects have reported mixed impacts. UNIDO has not sought to make more of this role in fragile states, and there is no corporate strategy on postcrisis projects.35 The cross-cutting theme was later mainstreamed as an
area of activity under the poverty reduction objective.

**Box 1.2 UNIDO in Iraq**

With funding support from the UN’s Iraq Trust Fund, UNIDO implemented two major programs in the country between 2004 and 2007. In the Thi-qar Governorate of southern Iraq, UNIDO teamed with the UN Food and Agriculture Organization (FAO) to help 1,500 households establish small-scale enterprises. Three training centers were established to provide technical, managerial and marketing skills using local instructors. Many new viable enterprises resulted in various sectors including food processing, metal-working, wood-working and textiles.

In the second program, UNIDO helped to rehabilitate a major dairy plant in the center of the country. Through technical assistance and provision of new technology milk output was restored and made safe for the consumption of 100,000 Iraqis, mainly children. The program was a pilot, designed to be emulated throughout the country’s dairy sector, demonstrating good practice in management, processing, marketing and distribution.

At the beginning of 2006, Kandeh Yumkella became director-general. Having joined UNIDO 10 years earlier, spending time both at headquarters and in the field (Nigeria), and becoming a special advisor to Magariños in 2003, Yumkella had lived through and helped implement the post-1997 reforms. He saw his task as building on the changes he had witnessed, or as he called it: “consolidating and deepening the reform process.”

As an insider, he has been successful in raising staff morale in the organization. He has increased management transparency and enhanced internal communications. He has expanded staff training substantially and encouraged mobility within UNIDO, both horizontally between headquarters and field, and vertically through internal promotions. With 25 percent of the staff retiring between 2009 and 2013 (coinciding with his second four-year term of office), the DG has also been provided with an unprecedented opportunity for renewal which has been pursued through an external merit-based recruitment drive. Between 2006 and 2009 nearly 200 new staff were recruited, some of them through a newly instituted Young Professionals Program.

With the encouragement (and funding) of donors, UNIDO has instituted results-based management, applying performance criteria to staff as well as programs. A new Bureau for Organizational Strategy and Learning was established to oversee program quality.

Broad continuity has been maintained in UNIDO’s programming priorities. The three themes of poverty reduction through productive activities, trade capacity building, and energy and environment have been reaffirmed. The first priority has accorded more emphasis to private sector development, particularly among small enterprises in poorer
communities. Trade capacity-building has expanded in scope as UNIDO has overtaken UNCTAD and the International Trade Centre (ITC) as the UN development system’s largest trade-related TA organization in terms of spending. Energy and environment are a mix of old (work on the Montreal Protocol) and new, with renewable energy and climate change gaining prominence. In the UN development system, energy has always been something of an orphan—which may explain why it received relatively little attention in the Millennium Declaration of 2000 which helped to establish the system’s development agenda up to 2015. In order to give a boost to the UN’s work in this area, the UN development system’s Chief Executives’ Board (CEB) established a coordinating mechanism of 18 interested agencies (plus the World Bank) which it designated UN-Energy. In 2007 the UNIDO director-general was appointed as its chair. The UN Secretary-General also established a High-Level Group on Sustainable Energy in 2011 and asked the UNIDO director-general to co-chair it (see milestones, Box 1.4).

Conclusion

UNIDO’s history has been marked by advances and setbacks, as well as far-reaching changes in its structure and orientation. What it has revealed are disagreements among its principal donor sponsors about the proper role of an international public organization devoted to the industrialization process, but also a strong and unwavering fealty to its objectives by developing countries.

Partly because of donor doubts, funding has been a preoccupation from the very beginning and it remains so. UNIDO’s core resources have remained stable (but will be threatened if the United Kingdom, which contributes about 9 percent, carries out its threat to withdraw at the end of 2012; see Box 1.3). Continuing growth—and even sustaining its current levels of activity—will depend on raising additional TA resources. The dilemma for UNIDO is to know how to take advantage of new funding opportunities, while not allowing itself to be pulled in too many directions which muddy its mandate and strain its technical capacities. Within the three thematic priorities, there are now over 20 separate areas of responsibility. Some of these are dependent on the earmarked sponsorship of individual donors, and therefore more in the nature of bilateral assistance under a multilateral umbrella (“multi-bi”).

Funding patterns are nevertheless indicative of development trends, which point to opportunities for UNIDO. In 2010 environment and energy programs accounted for 44 percent of UNIDO’s total TA spending, against 31 percent for the poverty priority and 23 percent for trade capacity-building. UNIDO’s efforts in “greening industry” and enhancing access to renewable energy can play to its strengths and can attract growing support (see Chapter 6). Also in the trade area, UNIDO has successfully taken advantage
of growing funding opportunities and now has the largest trade-related TA program in the UN system, ahead of the two “trade agencies,” UNCTAD and the ITC.

**Box 1.3 The United Kingdom and UNIDO**

In 2004–05 the Department for International Development (DFID) of the United Kingdom undertook an assessment of UNIDO as part of a review of the effectiveness of the 23 multilateral institutions with which DFID has an institutional partnership. The Multilateral Effectiveness Framework (MEFF) provided an independent confirmation of the wisdom of the reforms undertaken by UNIDO and the initiatives introduced after 1997. The MEFF confirmed that reform had increased the cost-effectiveness and relevance of UNIDO and helped to increase technical cooperation delivery. It praised the commitment to the Millennium Development Goals and to the partnerships with UN and other organizations. The MEFF rated UNIDO as “the best organization among the UN standard-setting agencies.”

In 2010–11 DFID undertook another Multilateral Aid Review of 43 development agencies, including UNIDO. In “value for money terms” it was rated “poor.” It had made “good progress in its cost consciousness and demonstrated good partnership behavior,” but it was “not aligned with UK aid priorities and does not play a critical role in delivering the Millennium Development Goals (MDGs). . . . It has unsatisfactory results reporting and financial management.” In a complete reversal of its position a few years earlier, in 2011 the United Kingdom announced its withdrawal from UNIDO (to take effect from the end of 2012).

Organizationally, UNIDO is now on a sounder footing under committed leadership. The next chapter provides more details of its present structure and further anticipated reforms. Its long-term survival, however, will depend more than ever on its ability to demonstrate the kind of results that are unique to its mandate and technical capacities.

**Box 1.4 UNIDO milestones**

1954 First full UN study of industrialization
1956 Establishment of Industry Section in UN; first program of work on industrialization
1959 UN Industry Section upgraded to Branch
1961 General Assembly resolution 1712 establishes UN Centre for Industrial Development
1965 GA resolution 20/89 establishes UNIDO as special organization of the UN
1967 UNIDO formally established in Vienna
1975 Second General Conference: Lima Declaration includes recommendation to
convert UNIDO to UN specialized agency
1979 UNIDO Constitution drawn up
1986 UNIDO becomes UN specialized agency. Mr Domingo L. Siazon becomes first Director-General
1993 Fifth General Conference (Yaoundé) recommends reforms. Mr Mauricio de Maria y Campos becomes second Director-General
1994 Withdrawal of Canada
1995 Commission on Global Governance recommends closure of UNIDO. Withdrawal of United States
1997 Danish assessment of UNIDO. Withdrawal of Australia. Business Plan approved. Mr Carlos Magariños becomes third Director-General (December)
2005 Member states approve the Strategic Long-term Vision Statement
2006 Mr Kandeh Yumkella becomes fourth Director-General
2007 UNIDO asked to coordinate UN’s work on energy
2011 UNIDO director-general designated as co-chair of the High-Level Group on Sustainable Energy

**Box 1.5 UNIDO heads**

**1967–74: Ibrahim Helmi Abdel-Rahman (Egypt), Executive Director**

With degrees from the universities of Cairo and Cambridge, he was a university science lecturer until 1954, when he quit academia to become Cabinet secretary. In 1960 he established the Institute of National Planning in Cairo and was responsible for drafting the first five-year development plan for Egypt, 1960–65. He joined the UN secretariat in 1963 as Commissioner, heading the Centre for Industrial Development, becoming the first head of UNIDO when it was established within the UN in 1967.

**1975–85: Abd-El Rahman Khane (Algeria), Executive Director**

Trained as a physician, he became the head of l’Organisme Saharien, responsible for overseeing the exploitation of the country’s oil resources, when Algeria became independent in 1962, a post he held for 10 years. From 1966 to 1970 he was concurrently Minister of Public Works and Construction. In 1972 he was appointed head of the general secretariat of OPEC, also based in Vienna, becoming executive director of UNIDO in January 1975.

**1986–93: Domingo L. Siazon (Philippines), Director-General**

With degrees from the universities of Ateneo de Manila, Tokyo and Harvard, he first
followed a diplomatic career from 1964 with appointments in Japan and Switzerland. In 1973 he helped establish the Philippine Embassy in Vienna, becoming resident representative to the IAEA. From 1977 he was the permanent representative to UNIDO and in 1980 also became the Ambassador of the Philippines to Austria.

1993–96: Mauricio de Maria y Campos (Mexico), Director-General

Educated at the National University of Mexico and at Sussex (United Kingdom), he joined the government where he served in various capacities. In 1974 he was Director-General for foreign investment at the Ministry of Trade and Industry, later moving to the Ministry of Finance. In 1982 he was appointed vice-minister for industrial development and from 1989 executive vice-president of Banco Mexicano (SOMEX), responsible for strategic planning. He joined UNIDO in 1992 as Deputy Director-General before moving to the top job a year later.

1997–2005: Carlos A. Magariños (Argentina), Director-General

Graduating with an MBA from the University of Buenos Aires, he worked as a consultant before becoming national director for foreign trade and then Under-Secretary of State for Industry in 1992 and Secretary of State for Industry and Mining the following year. In 1996 he was appointed as economic and trade representative in Washington, DC, with the rank of Ambassador, taking over at UNIDO in December 1997 at the age of 36.

2005–present: Kandeh Yumkella (Sierra Leone), Director-General

With degrees from the universities of Njala (Sierra Leone), Cornell and Illinois, he commenced an academic career in the United States before returning to Sierra Leone in 1994, where he was appointed Minister for Trade, Industry and State Enterprises. In 1995 he joined UNIDO where he served in various capacities, including special advisor to the UNIDO Director-General, Director for Africa as well as Director of the first UNIDO regional office in Nigeria.
Building on the 1943-48 United Nations War Crimes Commission
Chapter 6: Building on the 1943-48 United Nations War Crimes Commission

- Legal and political amnesia
- Chinese and Indian leadership
- A global system of complementary justice
- The development of key international legal principles
- Conclusion

A renaissance in international criminal justice drawn from lost lessons of World War II can empower the international community of states today.¹ The seemingly unstoppable war crimes in Africa and the Middle East and the turgid performance of the International Criminal Court (ICC) invite a defeatist response. Barbarism triumphs in the face of ineffectual justice. The lessons of this chapter are partly that the United Nations at war achieved far more in this area than is remembered, but more importantly that especially at a time when Nazi victory seemed almost certain, the Allies put legal justice among their war aims. Faced with comparatively minor adversaries today, those who advocate abandoning international criminal justice are at best encouraging simple defeatism and at worst encouraging would-be perpetrators.

The four-country Nuremberg International Military Tribunal considered 24 cases. In contrast, cases involving 30,000 individuals were approved for prosecution at a score of national civil and military tribunals by the 17-country UN War Crimes Commission (UNWCC) in the period 1943–48. The commission’s member states submitted thousands of cases to the UNWCC, and when their charges were approved, they acted to pursue prosecutions in their own jurisdictions, which happened in countries as far apart as China and Norway.

This body of legal practice changes the paradigm of international criminal justice.² The breadth and depth of the UNWCC’s work provides a far stronger basis in political practice and law than has been the general assumption for decades. The UNWCC should be considered as a massive platform on which to build international criminal justice compared to the narrower ones of Nuremberg and Tokyo.

This chapter summarizes the work of the United Nations War Crimes Commission and its associated courts and tribunals, but emphasizes the commission’s potential to contribute to international criminal justice in the twenty-first century. The discussion of the UNWCC’s contribution begins with the issue of whether international criminal justice should be seen as a Western creation and highlights Chinese and Indian contributions. It then details the global system of international criminal justice created in the mid-1940s and the lessons for the key contemporary debate on the relationship
between the ICC and local jurisdictions, be they in Libya or under the auspices of a regional body such as the Arab League or African Union. Several specific issues are then analyzed: the crimes of aggression; the defense of superior orders; collective responsibility for crimes from being part of a group; and the prosecution of gender-based violence. The chapter concludes by outlining a research agenda on both the specific politicolegal issues and on the wider question of why experience of such value has been neglected by so many for so long.

Legal and political amnesia

Before launching into this analysis, it is worth pondering a question that only becomes clear as a result of probing the past: “Why was the UNWCC neglected for so long?” Then as now some states were hostile to the idea of war crimes trials. In the United States, an interagency conflict slowed the UNWCC’s creation, limited its scope, and led to its premature closure. Chris Simpson and Graham Cox provide illuminating accounts of the opposition by die-hard realist opponents of war crimes trials to the leadership of President Franklin D. Roosevelt and of his Ambassador Herbert Pell. As a former congressman and US ambassador to Portugal and Hungary, Pell came from a similar class background as FDR and was a vocal opponent of racial discrimination in the United States. As a diplomat in Hungary during the war, he had the then rare experience for an American of seeing the impact of fascism first hand.

Cox makes a compelling argument that absent the public campaign by Pell after his dismissal, it is unlikely that Nuremberg would ever have happened. Supporters of the absolute right of states to govern their internal affairs combined with those who prioritized alliance with Germans against Soviet communism staunchly blocked efforts at retributive justice. However, the alliance of some sections of the US government and civil society with the leadership of smaller states led to progress. As Kerstin von Lingen has reminded us, in the early 1940s it was the exiled governments of states under Nazi control—notably Belgium, Czechoslovakia, and Poland—that (along with China) combined with legal scholars and nongovernmental organizations (NGOs), including Jewish ones, to keep the issue of war crimes on the US and UK agendas.

Contemporary jurists including Justice Jackson and David Maxwell Fife were clear that the UNWCC played an important judicial role and helped develop the London Charter for Nuremberg. The commission’s members included such leading international jurists and diplomats as René Cassin, Marcel de Baer, Bohuslav Ecer, André Gros, Cecil Hurst, Wellington Koo, Herbert Pell, and Lord Wright.

The UNWCC’s mostly secret work was overshadowed by the resources and publicity accorded to the trials at Nuremberg. Subsequently, the US priority of rebuilding
Germany required the closure of the commission and its files. A story became prevalent that its ineffectiveness meant that it warranted little more than a footnote in accounts of the development of international criminal justice. Part of the background work to this research project resulted in 2011 in the UN agreeing to de-restrict partially the UNWCC’s minutes and then the Prosecutor’s Office of the ICC placing a good deal of this material online, helped by roughly parallel processes of digitization in the archives of the Australian, British, and US governments among others. In 2014, the US Holocaust Memorial Museum obtained a full copy of the until-then restricted sections of the archive, notably the 36,000 pre-trial dossiers sent to the commission by its member states.6

The UNWCC was created on the initiative of victim states to provide a global system of complementary justice to reinforce and legitimate the actions of these countries after liberation and to act as a warning to perpetrators and a glimmer of hope to victims that justice would be done. This alone is a useful example for our own time. Moreover, with respect to contemporary debates, a number of precedents stand out and can be headlined. Rape was prosecuted routinely. Legal responsibility was attributed routinely to those with collective or command responsibility and low-level functions. A uniform system of facts and evidence collection was developed and implemented. Torture, including waterboarding and stress positions, was prosecuted in a considerable number of cases. Prosecutions took place in the states where they occurred and were pursued with urgency and economy. The commission’s minutes show multilateral debates and decisions about such contemporary headlines as collective responsibility, the mandate of an international criminal court, and the crime of aggression.

In brief, the political debates of the 1940s resonate today. The stateinterest pragmatists in Washington and London were opposed to any legal process resembling Nuremberg. How would we fare today without Nuremberg? As Herbert Pell alleged at the time, there was no evident political will in Washington for the International Military Tribunal (IMT) that was established eventually at Nuremberg as late as May 1945. It was only a coalition of small states, civil society, and leading actors, notably President Roosevelt, that saw the creation of any war crimes processes. Resistance by traditionalist lawyers to legal innovation was a problem at the core of the UNWCC’s work but the national representatives pioneered constructive innovation.

Before surveying the commission’s value for our own time, it is important to specify a few caveats. Some of the conventions of the time, notably the use of the death penalty, are not practices that fit with twenty-first-century practice. The commission’s remit was limited and could only support prosecutions of enemy personnel for offences committed against the United Nations during World War II. It had no role in respect of actions by personnel of its own members. It also sought jurisdiction over crimes
committed by the Germans against their own people, notably the Jews; however, this unsuccessful pressure still contributed to the adoption at Nuremberg of crimes against humanity, a term used in formal debate in the UNWCC more than a year earlier, in the spring of 1944.

**Chinese and Indian leadership**

There is a tendency to view international criminal law, indeed international human rights in general, as a Western or even an Anglo-American invention. The records of the 1940s show a very different picture. Of the big four powers, it was China that was the first to adhere to the seminal declaration of January 1942 on the "Punishment for War Crimes" by the exiled governments in London—some months before Washington, London, and Moscow.

China went on to become a founding and prominent member of the UNWCC. It proposed and created in Chunking a sub-commission for the Far East that indicted thousands of Japanese for crimes in China. Chinese representatives proposed that the use of narcotics to subdue a population be a war crime and helped lead the effort to create a crime of aggression or crimes against peace. The Chinese role in developing the UNWCC and then applying it in its conflict with Japan has been the subject of a number of recent studies that confound the notion of international criminal law as a Western concoction.7

The representatives of the Imperial government of India sat alongside their British and Dominion colleagues on the UNWCC in London and in China, often taking different positions from the British. It appears that an Indian official, Niharendu Dutt-Majumdar, in the London meetings wrote the first main draft of a proposal for joint military tribunals. This form of justice is best known today under the titles of concentration camps where trials were held: the British at Belsen and the Americans at Dachau. The commission, thwarted by both Whitehall (the Foreign Office) and Foggy Bottom (the State Department), was unable to get support for a permanent UN criminal court. The proposal for military tribunals under the authority of commanders, including Dwight Eisenhower in Europe and Douglas MacArthur in Southeast Asia, was drafted by Dutt and appears to have been adopted and put into effect in a dozen or more tribunals. Certainly no other source of this system is clear. Chinese and Indian judges were also active in tribunals across the Pacific and mainland China. The debate on Asian involvement in the post-World War II trials usually goes no further than the rejection of the crime of aggression as imperial hypocrisy by the Indian judge Radhabinod Pahl at the Tokyo trial. Yet from the earliest moments, the ideas and practices of international criminal justice that exist today had significant and at times leading input from the
representatives of non-Western states. The leading role of China in developing the crime of aggression provides overriding empirical contradiction to the views of a single Indian judge at Tokyo. Scholars who rely exclusively on Pahl to support their arguments might explain why they overlook the position of the Chinese government, when it has been a matter of public record these last seven decades. China’s experiences with aggression were far more severe than India’s, but the Chinese nationalist government used the experience of World War II to draw a line against further aggression—in parallel with its successful efforts to overturn the unequal treaties governing many Western concessions in China.

A global system of complementary justice

The lack of a system of complementary justice in which international bodies support national legal efforts is one of the key problems in twenty-first-century international criminal justice. Yet where a state is struggling to implement its own legal measures there is no global system of support. The varied circumstances of Cambodia, Rwanda, and Libya illustrate the difficulties. While the ad hoc tribunals created in response to events in Africa and the Balkans set important precedents, they have limited mandates and are coming to the end of their lives. Although the ICC exists to prosecute cases when national legal systems fail to prosecute and has a mandate to develop a system, it has thus far failed to do so.

The UNWCC was created by its member states to provide international legitimacy through legal, political, and administrative support for trials that they wished to conduct themselves. The great power decisions in Moscow of November 1943 mandated that, aside from the Nazi leadership, war criminals would face justice in the territories where they had committed their crimes. In contrast, today’s criminal trials are conducted in the Netherlands even when the accused are not from the highest levels of government. The Hague is remote, both geographically and culturally, from the site of the crimes. The “gacaca” trials in Rwanda according to national practice echo the intent of Allied practice in World War II. A reading of the debates among commissioners reveals vigorous arguments over points of law and evidence as they sought to develop best practice. There is little sense of a “kangaroo court” to just rubber stamp cases put before them.

The UNWCC provided legal and practical advice to national jurisdictions and legal legitimacy, even authority, to national legal processes that is a useful model for the twenty-first century. The process developed in 1944 was that a country would send to the commission charges to determine whether there was a case to answer—that is, on prima facie grounds—and after endorsement, a trial. By the commission’s demise in
1948, this process was used across Europe and the Far East, with over 30,000 cases being considered, many against multiple defendants. On this basis, weak states today might bring cases to the ICC for validation of their own processes rather than simply handing them over to the ICC. Regional organizations such as the Arab League and the African Union—where currently an important push-back against the emphasis on African cases is obvious—might develop regional courts that similarly operate with the voluntary legitimation of the ICC.

States large and small considered it necessary and important to obtain international support for their national actions in the 1940s. This precedent should lend weight to legitimating such a relationship for our own era. The UNWCC member states were: Australia, Belgium, Canada, China, Czechoslovakia, Denmark, France, Greece, India, Luxembourg, the Netherlands, New Zealand, Norway, Poland, the United Kingdom, the United States, and Yugoslavia. The commission had three specific duties: to investigate and record the evidence of war crimes; to report to the governments concerned cases in which it appeared that adequate evidence existed to support a prosecution; and to make recommendations to member governments concerning questions of law and procedure as necessary for them to be able to fulfill their role of conducting trials. The UNWCC had three committees that met weekly in the British Royal Courts of Justice in London to implement these mandates: Committee I, Facts and Evidence; Committee II, Enforcement; and Committee III, Legal Affairs.

Member states set up national offices within their governments to liaise with the commission, coordinate investigations, collect evidence, and create new legal structures to handle war crimes where necessary. All national offices reported directly to the main UNWCC headquarters in London as they conducted investigations and constructed lists of suspected war criminals for review from 1944 to the end of 1947. A National Offices Conference was held in London in May and June 1945, which discussed policy and practice for the pursuit and trial of war criminals, and its papers include a number of municipal statutes for war crimes trials.

The UNWCC conducted the only comparative analysis of the different national practices to take place during this time in a report to the UN Economic and Social Council (ECOSOC) in 1948. Until recently, virtually no additional research on the work of the many national offices had been conducted over the last seven decades.

In addition to setting up national offices, some Western European governments in exile in London created enabling legislation for war crimes courts. For example, by August 1943 Belgium and the Netherlands had passed laws creating courts to try war crimes in their own countries following liberation. Through its committee structure, the UNWCC supported the national offices in conducting their investigations and also investigated some cases on its own by maintaining a small staff team that also liaised
with governments through the national offices. The UNWCC was ultimately responsible for issuing prima facie decisions on the cases brought to it by the national offices that resulted from their investigation efforts. The United Kingdom provided facilities for the commission, but the staff was international and all member states contributed to its funding on the same basis as had been agreed for UNRRA, although the United States and United Kingdom limited the budget to around $60,000 (1940s prices) a year.

Where national investigations resulted, states were encouraged to send trial reports to be recorded by Committee I. This process was incomplete at the time of the UNWCC’s hasty closure in 1948, with many countries being unable to complete and process their reports in time to be included in the commission's publications. Nevertheless, over 2,000 trials were recorded at this point.

The efforts by the national offices and Committee I were complemented by the enforcement work of Committee II, which was led by former US Congressman Herbert Pell. In short order in the spring of 1944, it developed mechanisms for a war crimes office in the territory of defeated enemies, which contributed to the creation of the Central Register of War Criminals and Security Suspects (or CROWCASS) under the command of General Eisenhower, Supreme Commander Allied Expeditionary Force. Other initiatives include a detailed proposal for mixed military tribunals under the major Allied commands that was later adopted by many states, with strong Indian leadership in the drafting. In the specific case of the United Kingdom, the discussions within the UNWCC on how to bring accused war criminals to trial “ultimately resulted”

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**Figure 4.1** The UNWCC committee and sub-commission structure
in the issuing of the Royal Warrant and the creation of the British War Crimes Executive in July 1945.\textsuperscript{23}

Committee III received complex legal questions from the different participating countries in order to generate debate and ultimately arrive at decisions and recommendations for the practice of the national offices. In addition to the national investigations and trials, the UNWCC helped design and initiate the establishment of military tribunals to address situations involving particularly complex crimes. Crimes addressed by military tribunals included incidents that did not have specific geographic locations and crimes committed against Allied nationals in Germany and across parts of the Far East under various forms of colonial administration.\textsuperscript{24} The military authorities were primarily from the United States and United Kingdom and were also responsible for aiding their respective nations in investigations and holding trials. The integration of military authorities was also in part so that trials could be conducted “without waiting for the initiative of any one Government on the matter.”\textsuperscript{25} Collectively, Allied military authorities conducted a large number of trials around Europe and the Far East.\textsuperscript{26}

**The development of key international legal principles**

The details of the national investigations and trials provide significant insight into the work of the UNWCC and the responsibility of its members in developing key aspects of public international criminal law. Indeed, the UNWCC’s accomplishments also involve its work on specific issues, many of which remain contentious today. This section briefly summarizes some of the pertinent findings from five primary issues that the commission included in its investigations and trials, and which were important precedents for contemporary public international law: the crime of aggression; the defense of superior orders; fair trials; collective responsibility; and sexual and gender-based violence.

**Aggression**

The issue of the crime of aggression was present in the commission’s debates from the very outset. The members recorded in the authoritative History of the UNWCC that “[b]y far the most important issue of substantive law to be studied by the Commission and its Legal Committee was the question of whether aggressive war amounted to a criminal act.”\textsuperscript{27} Faced with thorny questions related to the underdeveloped and highly contentious topic in the complex context of World War II, the commission sought legal ground in the Kellogg-Briand Pact of 1928. The first two articles of the pact sought to address the concept of aggressive war, explicitly stating that the contracting parties “condemn recourse to war for the solution of international controversies” and agree
that settlement and solution for all disputes and conflicts should be sought only through pacific means.

The History of the UNWCC makes the case that in the context of World War II, “there are clear precedents for the rule that it is an unlawful act to start and wage an aggressive war. It has indeed been long held by humanity that he who does such a thing is guilty of a supreme offense.”28 Despite the seemingly clear legal support for the launching and waging of a war of aggression being against international law, the politics of the time limited the advancement of this principle just as it does today; it was not until after the London Charter was concluded in August 1945 that the principle of aggressive war was endorsed by the commission.29

However, the August 1946 trial of Takashi Sakai, conducted by the UNWCC-supported Chinese War Crimes Military Tribunal in Nanking, is evidence of the commission’s support for the concept on legal grounds. The Japanese military commander was charged with crimes against peace and crimes against humanity. His incitement of numerous aggressive acts of atrocity against Chinese civilians is directly referenced in the trial report. He was found guilty “of participating in the war of aggression” and sentenced to death.30

Following the debate within the commission and the Sakai trial, Wright stated that “I am quite satisfied that in the future, even though other forces may temporarily and on occasion prevail, the nations of the world will not let the principle go.”31 However, it is clear that issues surrounding the crime of aggression continue to be contested, which is most clearly demonstrated by the ambiguous nature of the conclusions of the Kampala conference in 2010 that presented the ICC with the opportunity to incorporate the concept into the Rome Statute. While an historic agreement was reached on the adoption of a definition of the concept,32 the ICC will not be able to enforce the crime until 2017 at the earliest.

Sakai’s trial does not provide an indisputable precedent on the crime of aggression; however, it does represent support for the adoption of the principle. Additional precedents may be found in the national legislation for war crimes tribunals and in national practice. A question for further historical research is whether China pursued additional cases on the basis of the charge of making aggressive war or crimes against peace. Both the Yugoslav and Greek courts were empowered to pursue these types of cases.33 The London Charter for the IMT influenced the subsequent provisions of US military tribunals and regulations in the Pacific and China, although it is not clear whether these provisions were enacted.34 These Balkan and Asian examples of municipal practice indicate a wider application of crimes against peace than is usually assumed.
It is also worth noting that the UNWCC made routine use of “genocide” as a category of offense well before the 1948 Convention on the Prevention and Punishment of the Crime of Genocide. While further research is needed, it appears to have developed partly from a Polish proposal of “de-nationalization” as a crime in representations to the commission in 1944.

**Superior orders**

The question of the validity of the defense of superior orders was also debated throughout the duration of the UNWCC, the members of which unanimously agreed that “the mere fact of having acted in obedience to the orders of a superior does not of itself relieve a person who has committed a war crime from responsibility.” However, it did not seek to impose this view on its members. Many individuals accused in national trials pleaded the defense of superior orders. They were often anticipated by commission members and highlighted in numerous debates seeking to address “the extent to which persons pledged by law to obey orders of their superiors, in particular those issued by heads of State and Governments, were to be held personally responsible for acts committed by them in subordinate positions.” The issue was viewed as significant enough that Committee III appointed a small subcommittee to address the issue and reach solutions.

Historical disagreements about the issue complicated the commission's efforts to clarify the principle. There is at least one circumstance at the Leipzig trials of the acquittal of an officer of sinking a hospital ship on the grounds that he had obeyed orders from a superior. German law at that time held that such a defense was valid. After numerous debates, the official statement of the commission was, “civil and military authorities cannot be relieved from responsibility by the mere fact that a higher authority might have been convicted of the same offence. It will be for the court to decide whether a plea of superior orders is sufficient to acquit the person charged from responsibility.” Along these lines, one of the key issues that the UNWCC addressed was the legal conundrum presented by traditional standards of immunity for state officials and their ubiquitous practice of issuing orders to subordinates to engage in illegal actions. This contention is echoed in the commission's report to ECOSOC in 1948. This report also discusses criminal liability for keeping watch while a crime is committed, passing on orders, participating in lynching, as well as instigating crime and common design. Ultimately, Wright expressed in his introduction to the official history that “I think it can now be taken as settled that [the] plea is not a sufficient defence but that it may have effect by way of extenuation.”

**Fair trials**

Among the telling criticisms leveled at modern international criminal trials is that
Despite their long duration and enormous costs, the issue of fairness remains. The trials supported by the UNWCC rarely lasted more than a few days, and yet both contemporary and recent reviews of the practice are far from condemnatory of the quality of fairness in the trials of the 1940s.

Even in the aftermath of World War II, the interim study made by the UNWCC of trials completed by 1948 indicated that one in five of those tried was acquitted.\textsuperscript{43} This result is in itself strong evidence that the system of justice supported by the UNWCC cannot be considered a system of show trials only supporting victor's justice. The commission reported that the “basic elements of a fair trial” for the accused were emphasized in national trials. Mark Ellis noted that in relation to the trials held by the Allied nations, the UNWCC reported that:

The rules relating to evidence and procedure which are applied in trials by courts of the various countries ... when viewed as a whole, are seen to represent an attempt to secure to the accused his right to a fair trial while ensuring that the guilty shall not escape punishment because of legal technicalities.\textsuperscript{44}

Ellis cites the perception of a Japanese general who was concerned about the fairness of the court but subsequently “began to feel more at ease with the President and the members of the Court because of the way the trial has been conducted;”\textsuperscript{45} a view supported by Suzannah Linton, who states that the British military courts in Hong Kong offered a “broadly fair trial in difficult circumstances.”\textsuperscript{46} Thus, modern attempts to reduce the time and procedural processes of trials should not be assumed to be necessarily reducing the fairness of the trials.

The relationship between national trials and the global judicial body of the International Criminal Court is one of the more troubling contemporary issues. The ICC has sought in some instances to take over cases from the national authorities against their wishes, as in Libya, and has been criticized for an overemphasis on crimes alleged to have occurred in Africa. Meanwhile, the continuing bloodletting in Syria has received little attention from the ICC. As yet there has been little sign of the ICC developing a role in providing advice and support to empower local systems, a key principle of the UNWCC.

Therefore, it is intriguing that there was such extensive debate on this issue of complementarity between international and national jurisdictions in the 1940s. As Ellis discusses, the overriding practice of that era was that accused criminals faced trial in the invaded territories where the crimes had occurred, except in the cases of the top leadership.

Some disillusionment with the baroque practices of the ICC and the winding down of the ad hoc tribunals created for events in the Great Lakes region of Africa and the
Balkans has led to renewed interest in the role of national courts in applying international criminal legal standards. As Carsten Stahn has explored in detail, here too the UNWCC provides such a powerful example that he urges the creation of another iteration of the UNWCC for the modern era. He argues that the UNWCC offers “an alternative to the centralized and situation-specific enforcement model under the umbrella of United Nations (UN) peace maintenance. The Commission represents a cooperative approach to justice and sovereignty … in terms of cooperation between major powers and use of international expertise and advice in criminal proceedings, international criminal justice is still in search of a modern UNWCC 2.0.”

**Collective responsibility**

The historical precedent argument is developed further by Kip Hale and Donna Cline in respect to bringing charges for group responsibility for international crimes. They have explored a number of recent cases and legal practices and conclude that there is much to be learned from the UNWCC-supported trials, especially because some of them have already been used to support modern trials. Most importantly, these [World War II] cases are perfect examples of how the newly released trove of UNWCC archival material can have a significant impact on the work of today’s judges, legal scholars, and practitioners who are seeking further clarification on Joint Criminal Enterprise or other legal issues.” To name but one now easily available source, in the ICC Legal Tools Database there are now hundreds of case files that can be used by practitioners and scholars seeking precedents in customary international law for new cases.

Hale and Cline also argue for the relevance of the UNWCC’s effort to the interpretation of the collective responsibility provisions of the ICC Statute, which applies criminal responsibility to an individual for both co-perpetration and indirect perpetration. The ICC’s language is similar to the UNWCC’s recommendation that member states “commit for trial, either jointly or individually all those who, as members of these criminal gangs, have taken part in any way in the carrying out of crimes committed collectively by groups.” Hale and Cline urge that “ICC judges and practitioners would be well advised to research the Commission’s debate on this provision as well as investigate any national jurisdictions that applied this provision at trial. The interpretative and precedential value is manifest.” They conclude that: “It is beyond question that the UNWCC is the most underutilized and under-analyzed institution in the field of international criminal law. This fact is all the more surprising given the trailblazing role it played in many critical issues, including collective responsibility.” They continue by arguing that: “the sheer number of cases that the UNWCC supervised and supported provides a bounty of case law in a field starved of such; and the Commission gives contextual information important to understanding the Nuremberg Tribunal and post-World War II trials.”
These analysts contribute to an appreciation of how understanding the lost processes of the UNWCC can help today’s efforts to re-energize the international system of criminal justice. The commission’s work also offers reinforcement to the prosecution of horrific crimes. These are brought to the fore by Lutz Oette in his study of torture, and in an analysis of crimes of sexual violence that I conducted with Susana Sâcâuto and Chante Lasco.53

Sexual and gender-based violence

As documents relevant to UNWCC prosecutions become increasingly available for scrutiny, the varying ways in which the crimes of rape and enforced prostitution have been defined and prosecuted may offer useful guidance for contemporary tribunals faced with adjudicating similar atrocities. Indeed, the fact that these offenses were included in the list of war crimes agreed upon by UNWCC member states, and that charges for these crimes were brought by prosecutors in a wide range of jurisdictions, resulting in many successful convictions, provides important precedent for contemporary courts and tribunals facing nullem crimen challenges in sexual and gender-based violence (SGBV) cases. Moreover, the ways in which these jurisdictions defined SGBV offenses in their domestic or military codes—and, in particular, how they approached issues of consent and coercion—could offer important guidance to contemporary tribunals dealing with comparable issues. Similarly, the application of various modes of liability to crimes of sexual violence in UNWCC-supported cases provides contemporary tribunals with not only a better understanding of the roots of current concepts of criminal culpability but also important support for the proposition that the same standard of evidence should be used to hold perpetrators responsible in cases involving SGBV crimes as those involving other offenses. Finally, the UNWCC-supported cases indicate that, although only recently codified, the practice of protecting witnesses from degrading questions was observed as early as the post-World War II era, reinforcing rulings issued by contemporary tribunals that follow this practice and offering tribunals that have not yet codified such rules important precedent when dealing with this issue.

The importance of the UNWCC-supported cases for the prosecution of SGBV cases before contemporary tribunals cannot be overstated. For centuries, acts of sexual violence were viewed as “a detour, a deviation, or the acts of renegade soldiers ... pegged to private wrongs and ... [thus] not really the subject of international humanitarian law.”54 Indeed, such crimes were often perceived as “incidental” or “opportunistic” in relation to other “core” crimes.55 Even when recognized as criminal, SGBV offences committed in the context of conflict or mass violence were often tacitly encouraged or tolerated, making it challenging for prosecutors to link the perpetrator with the crime. Not surprisingly, commentators have noted that while there have been
significant improvements in the prosecution of SGBV crimes by contemporary tribunals, particularly in the last two decades, these cases continue to be plagued by prosecutorial omissions and errors as well as by a tendency on the part of the judges to require that the prosecution meet higher evidentiary standards in these cases than in other types of cases. That UNWCC member states investigated and prosecuted these crimes some seven decades ago, held both direct and indirect perpetrators responsible for such crimes and offered some level of protection to witnesses participating in these cases, is incredibly significant in light of this history.

In addition to the value of the UNWCC archives for tribunals prosecuting conflict-related SGBV cases today, the jurisprudence emerging from UNWCC-supported cases may also be relevant to contemporary policy debates. Indeed, the active role of states in pursuing crimes of sexual violence in the 1940s provides a more reinforced foundation for pursuing such crimes today than they may realize. Indeed, four permanent members of the UN Security Council—China, France, the United Kingdom, and the United States—were members of the UNWCC. They, and Russia (then the Soviet Union), were also party to the Hague Conventions, which were relied upon by many states to prosecute rape and forced prostitution. Similarly, a number of states that are members of the European Union—including Belgium, France, Greece, Italy, Poland, and the United Kingdom—endorsed rape and forced prostitution as war crimes in the 1940s. To the extent that the issue of sexual violence committed in the context of conflict or mass violence continues to be the subject of debate in UN and European Union forums, the valuable work carried out in the 1940s could be potentially of great legal significance.

Conclusion

The UNWCC should be considered a large and important historical source to reinforce the politics and law of international criminal justice. It provides a rich, varied and, until recently, largely unexploited foundation for holding the perpetrators of atrocities to legal account. After more than half a century of neglect, this lost wisdom born in the worst years of modern civilization can be of great practical import today.

The opportunity should not be lost so there are essential lessons to be learned about our approach to knowledge. The UNWCC Law Reports and History of the UNWCC were in the public domain since 1948 but were almost unused as research tools, and large parts, but not all, of the central records were in the national archives of member states and available for scrutiny.

In the documents still to be uncovered, undoubtedly more valuable materials will be discovered. The opportunity is there. In deciding whether to explore this avenue, it may
help to ask ourselves whose ideas we are going to support. Will it be the narrow pragmatists who initially fought the creation of the UNWCC and international military tribunals, and who later succeeded at the end of the 1940s in halting the pursuit of international criminal justice? Or will it be the pioneers who strove to lay the foundations for such a system, often exiled to London from their native lands and forced to meet as the Nazis bombed? We may have a difficult task in rejuvenating international criminal justice today but not in comparison to the difficulties faced by those who created it in the first place. While they display a rare unity today in standing outside the International Criminal Court, it is salutary to remind China, India, and the United States that 70 years ago they played distinct and leading roles in launching a global system of international criminal justice.

Notes

1 The author wishes to acknowledge Shanti Sattler with whom much of the previous research for this article was conducted. Previously published articles are cited below.


8 Martin J. Burke and Thomas G. Weiss, "The Security Council and Ad Hoc Tribunals: Law and

9 Thousands of accused génocidaires were in Rwandan prisons by the late 1990s awaiting trial. To speed up the process the government used gacaca, a local form of arbitration. Village populations convene assemblies to settle property and marriage disputes with a solution acceptable to both parties. The gacaca courts for the genocide have operated since 2006 and seek to combine reconciliation and justice. Unlike traditional gacaca, they are formal institutions set up according to national law and can impose sentences of up to 30 years in prison. See, for example, Phil Clark, The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda: Justice without Lawyers (Cambridge: Cambridge University Press, 2010), and Eric Stover and Harvey Weinstein, eds., My Neighbor, My Enemy: Justice and Community in the Aftermath of Mass Atrocity (Cambridge: Cambridge University Press, 2004).


11 The Netherlands laws for the trial of war criminals were enacted in 1943 and the French in 1944.

12 Minutes and papers of the UNWCC National Offices Conference, 1945. Available from cisd@soas.ac.uk.


14 The treasure trove of previously restricted UNWCC documentation, some of which was used for this chapter, is easy to consult at www.legal-tools.org/en/go-to-database/file/folder/0_28425/#results. In the references below, precise URLs are not given for each document as legal tools sometimes change. However, the documents remain plainly ordered by type, such as minutes of the main commission and its committees and the commission’s papers. The reference system for these archives is the one developed and used by the commission in its own index to its archives, which is also in the legal tools system.

15 UN document E/CN.14-AM9 (15 May 1948). For the Netherlands, see page 130 [Netherlands Extraordinary Penal Law Decree of 22 December 1943 (Statute Book D. 61) and the Decrees of 22 December 1943 (Statute Book D. 62)]. For Belgium, see page 291.

16 UNWCC, Internal Memo, 18 April 1945.

17 Some criticism of this has been that it was based on hearsay evidence, a matter discussed by the UNWCC itself. See UNWCC, Information Concerning Human Rights Arising from Trials of War Criminals, no. 1. It appears to us that the colloquial sense of “hearsay” as gossip has been used to denigrate the work of the UNWCC as a whole. Also see the UNARMS application package for the UNWCC.

cisd@soas.ac.uk.

19 See Cox "Seeking Justice for the Holocaust."

20 UNWCC 21st mtg, 3 (6 June 1944) and the accompanying UNWCC Doc. C24, as well as UNWCC 22nd mtg, 3 (13 June 1944) and the accompanying UNWCC Doc. C30.


23 Memorandum from the Treasury Solicitor's Office for the Attorney General (1945), 1, 2, 4. UK National Archives TS26, 897, 27–33.

24 See the October 1945 Trial of Kapitanleutnant Heinz Eck and Four Others, accused of killing crew members of the Greek steamship Peleus, in a British Military Court for the Trial of War Criminals.

25 UNWCC, 33rd mtg, 33, 6 (26 September 1944).

26 The UNWCC's reliance on military authorities was in part due to the UNWCC's commitment to providing justice that was swift and effective. The meaning of this was debated among members throughout the existence of the UNWCC. The internal document "Recommendation in Favour of the Establishment by Supreme Military Commanders of Mixed Military Tribunals for the Trial of War Criminals" declared that the strategy would be used in part "... so that no criminals escape trial and punishment because of the inability to effect a speedy trial" (UNWCC Doc. C52(1)). In hesitation, French representative M. Gros addressed this idea in a written statement submitted at the UNWCC's thirty-first meeting on 12 September 1944. His first point stated: "[a]lthough the notion of swift justice is found in manuals of military law, 'justice' is something that does not admit of qualifying adjectives." Also see UNWCC, History of the UNWCC, 5.

27 UNWCC, History of the UNWCC, 180.

28 UNWCC, History of the UNWCC, 17.

29 UNWCC, 77th mtg, see earlier discussions at the UNWCC Meetings M35, M36, M41.

30 Trial of Takashi Sakai, United Nations War Crimes Commission, XIV Law Reports of Trials of War Criminals 1, Case No. 83, Chinese War Crimes Military Tribunal of the Ministry of National Defence, Nanking, 29 August 1946.

31 UNWCC, History of the UNWCC, 10.

32 The Kampala conference defined the crime of aggression as "the planning, preparation, initiation or execution, by a person in a position effectively to exercise control over or to direct the political or military action of a State, of an act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations."

34 UNWCC, *Information Concerning Human Rights Arising from Trials of War Criminals*, no. 5, 158.


36 Report to the Governments on the *Plea of Superior Orders*, UNWCC, Document C86, and Meeting M54, 2.


38 See the case of Lieutenant-Commander Karl Neumann, commander of the submarine U 67, and the case of the sinking of the hospital ship *Dover Castle* on 26 May 1917.


46 Linton, “Rediscovering the War Crimes Trials in Hong Kong,” 61.


50 UNWCC Comm. doc. 105(1) (n. 141).

51 UNWCC Comm. doc. 105(1) (n. 141).

52 Hale and Cline, “Holding Collectives Accountable,” 290.


55 See P.V. Sellers and K. Okuizumi, “International Prosecution of Sexual Assault,” Transnational Law and Contemporary Problems 7, no. 1 (1997): 45, 61–62 (noting that “[s]exual assaults committed during armed conflict are often rationalized as the result of a perpetrator’s lust, libidinal needs, or stress”); C. Eboe-Osuji, “Rape and Superior Responsibility: International Criminal Law in Need of Adjustment,” International Criminal Court, Guest Lecture Series of the Office of the Prosecutor, 20 June 2005. It was argued that “the theory of individualistic opportunism proceeds ... from the ... modest premise that rape is a crime of opportunity which, during conflict, is frequently committed by arms-bearing men, indulging their libidos, under cover of the chaotic circumstances of armed conflict.”

56 See C. Steains, “Gender Issues,” in The International Criminal Court: The Making of the Rome Statute, ed. R.S. Lee (TheHague: Kluwer, 1999), 361–64. The article concludes that because earlier international law failed to do so, the Statute’s inclusion of “a range of sexual violence crimes, in addition to rape, under crimes against humanity creates an important new precedent.”

57 See, for instance, S. Sâcouto and K. Cleary, “The Importance of Effective Investigation of Sexual Violence and Gender-Based Crimes at the International Criminal Court,” American University Journal of Gender, Social Policy and Law 17, no. 2 (2009): 337–59. Indeed, despite evidence of the widespread use of rape in the Balkans conflict and during the Rwandan genocide, the record is quite mixed with respect to the ability of the ad hoc criminal tribunals for the former Yugoslavia (ICTY) and Rwanda (ICTR) to prosecute sexual violence successfully. For example, despite the widely acknowledged use of rape and sexual violence as an integral part of the genocide in Rwanda, 10 years into the Rwanda tribunal’s history, only 10 percent of completed cases resulting in a sentence contained rape convictions and “[n]o rape charges were even brought by the Prosecutor’s office in 70 per cent of ... adjudicated cases.” B. Nowrojee, “Your Justice is Too Slow”: Will the ICTR Fail Rwanda’s Rape Victims? (Geneva: UN Research Institute for Social Development, 2005), 3.