Time for the Creation of a Standing U.N. Armed Peace Service and the Potential Employment of Experienced U.S. Veterans as a Significant Component of Such a Force

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Time for the Creation of a Standing U.N. Armed Peace Service and the Potential Employment of Experienced U.S. Veterans as a Significant Component of Such a Force

RONALD SIEVERT*

"We must make sure that its work is fruitful, that it is a reality and not a sham, that it is a force for action, and not merely a frothing of words . . . ."¹

Winston Churchill, speaking of the U.N. Fulton, Missouri 1946

I. History

Since its inception, the founders of the United Nations (U.N.) envisioned agreements among nations that would establish a responsive, proactive military force that could take action under Chapter VII of the U.N. Charter “as may be necessary to maintain or restore international peace and security.”² But the Cold War immediately intervened, and when the Military Staff Committee established by the Charter³ first met in 1946, it found significant disagreements among the permanent five members of the Security Council as to the size, composition, and basing of such a force.⁴ Then U.N. Secretary-General Trygve Lie proposed, in succession, a U.N. Guard Force, a U.N. Legion, and a U.N. Volunteer Reserve to at least maintain peace and perform constabulary functions pursuant to Chapter VI.⁵ The U.N. abandoned even these less ambitious plans, however, because the plans received no support.⁶ The United States and USSR were concerned that a permanent force might act against their interests, especially in the

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³ U.N. Charter art. 47.

⁴ Roberts, supra note 2, at 100.


⁶ Id. at 8-9.
developing Cold War proxy wars between the two superpowers. The U.N. eventually obtained Security Council authorization to dispatch troops from a few contributing member states to act as lightly armed truce observers who would monitor compliance with peace treaties in Palestine, the Sinai, Kashmir, and Lebanon with the consent of the parties. These troops were generally under orders never to take the initiative in the use of armed force and to only act in self-defense. At one point, however, they acted to remove foreign troops and mercenaries from the Congo.

The end of the Cold War reinvigorated the original expectation that the U.N. should have the ability to quickly field a strong force to maintain peace and prevent aggression. Between 1988 and 1993, the Security Council actually sanctioned twelve limited operations in “conflicts that had [previously] been fueled by Cold War intrigue.” But these operations were limited in scope, and the U.N. troops were “weak[] in the face of violent harassment . . . [and stymied by] delays in getting states to contribute forces to . . . urgent [U.N.] mission[s] . . . .” This was painfully obvious in Cambodia, Angola, Somalia, and, perhaps above all, in the failure to immediately act during the horribly tragic genocides in Bosnia and Rwanda. Something had to be done. Sir Brian Urquhart, echoed by the Netherlands Foreign Minister Hans Van Mierlo, put forth the strongest proposals for a standing U.N. Volunteer Military Force. As Urquhart wrote:

Recent [U.N.] experiences provide a good argument for at least considering the establishment of an immediately available élite [U.N.] force directly recruited from volunteers worldwide. Hitherto the Security Council has lacked the capacity to deploy a convincing military presence at the outset of a crisis before the situation has disintegrated and become uncontrollable . . . . [This] might give the Security Council (and the Secretary-General) the capacity to display strength and determination at a point where larger disasters could be avoided.

7. Id. at 7-8.
8. Id. at 6; Finn Seyersted, United Nations Forces Some Legal Problems, 37 BRIT. Y. B. INT’L 351, 354 (1962).
9. Seyersted, supra note 8, at 399.
10. Id. at 397.
12. Id. at 9.
14. Id. at 107; see also IN SEARCH OF INTERNATIONAL JUSTICE (Bullfrog Films 2005); GHOSTS OF RWANDA (Frontline 2004).
15. Gordon Wilson, Arm in Arm After the Cold War? The Uneasy NATO-UN Relationship, 2 INT’L PEACEKEEPING 1, 91-92 (Spring 1995); see also H. PETER LANGILLE, DEVELOPING A UNITED NATIONS EMERGENCY PEACE SERVICE 55 (Palgrave Macmillan 2016); Roberts, supra note 2, at 117.
This suggestion was not limited to peacekeeping only but also envisioned a fast military response to external threats as well as enforcing a ceasefire in an incipient civil war.\textsuperscript{17}

The idea of a standing U.N. volunteer force, instead of calling on member nations on an ad hoc basis, seemed to make sense on its face. As Carl Kaysen and George Rathjens observed, nation states are naturally reluctant to supply contingents to any mission where they perceive there is a good possibility that their units will incur significant casualties.\textsuperscript{18} In democratic societies, politicians are very sensitive to the fact that this could cause a major backlash against them.\textsuperscript{19} As a result, many nations spent months debating whether they should assist, thus slowing overall deployment time.\textsuperscript{20} The most common contributing states to date had been developing countries (in part motivated by U.N. funding) that lacked the well-equipped and trained armed forces that a permanent volunteer armed force would have.\textsuperscript{21}

But some experts responded that such a U.N. force would theoretically create a disconnect between power and responsibility.\textsuperscript{22} The Security Council would have the ability to authorize operations, but permanent members would not have the responsibility to take any real action themselves.\textsuperscript{23} In addition, there was overt fear of the U.N. assuming an aggressive independent military role in world affairs as opposed to functioning primarily as an organization who maintains peace.\textsuperscript{24} Others were concerned about the cost and believed an active military organization “risk[ed] the [U.N.’s] reputation for impartiality . . . [and] could seriously undermine the [U.N.’s], and more especially the Secretary-General’s, reputation and capabilities.”\textsuperscript{25} Some claimed that such a force could lead to world government and an abuse of authority that would threaten the independence of smaller nations as well as the prerogatives of major powers.\textsuperscript{26}

\begin{footnotes}
\footnotetext{17}{Id. at 108.}
\footnotetext{19}{Id. at 93.}
\footnotetext{20}{Id.}
\footnotetext{21}{Griffith, supra note 5, at 28.}
\footnotetext{22}{See Wilson, supra note 15, at 92.}
\footnotetext{23}{Id.}
\footnotetext{25}{Roberts, supra note 2, at 126–28.}
\end{footnotes}
Accordingly, the U.N. even gave some thought to hiring private military contractors (PMCs) when needed instead of establishing a U.N. force.\textsuperscript{27} Throughout the 1980s and 1990s, PMCs provided security services on a global scale.\textsuperscript{28} They were deployed to Mozambique, Saudi Arabia, Hungary, Croatia, and Bosnia; the United States used them to outsource some aspects of military training.\textsuperscript{29} But “evidence [had] show[n] [that] PMCs [were] capable of human rights abuses and severe criminal acts with little or no recourse . . . to address those violations.”\textsuperscript{30} After considering PMCs as a quick reaction force in Rwanda, Kofi Annan, then U.N. Undersecretary General for Peacekeeping, rejected the idea, concluding that “the world may not be ready to privatize peace.”\textsuperscript{31}

Recognizing member states’ resistance to the idea of a permanent force, the potential issues with private corporations, and the fact that the ad hoc system of soliciting troops at a moment of crisis was not working, Secretary General Boutros Ghali established a U.N. Standby Arrangements System (SAS) in the early 1990s.\textsuperscript{32} The SAS, still in place today, is “based upon commitments by Member States to contribute specified resources within agreed response time for [U.N.] peacekeeping operations.”\textsuperscript{33} Resources remain on standby in their home country until the Secretary-General requests their use.\textsuperscript{34} States still have discretion as to whether the SAS can use their troops or resources in individual operations.\textsuperscript{35}

SAS appeared to have a lot of promise at its inception; within ten years, eighty-eight nations expressed their willingness to participate.\textsuperscript{36} But, although there were some successes, it was increasingly obvious over time...
that states have chronically failed to deploy forces in a timely manner. In 2000, the U.N. Panel on Peace Operations issued the Brahimi report (named after panel chairman Lakhdar Brahimi) concluding that the failure of states to meet their commitments, shortages of well-trained troops, and poor access to necessary material and resources prevented rapid and effective peacekeeper deployment.

A stop-gap emerged in 2000 with the implementation of a Danish proposal to create a U.N. Standby Forces Brigade at High Readiness (SHIRBRIG) composed of 5,000 troops from sixteen states. This force was for U.N. peacekeeping operations under Chapter VI only and still relied on the consent of the parties as well as a nation-state's willingness to participate on a case by case basis. The U.N. deployed 1,200–1,500 SHIRBRIG troops to Eritrea and Ethiopia with some success, but the U.N. abandoned the Brigade in 2009 due to the failure of members to meet pledges of actual military support. As noted by Denmark's Defense Minister, "in the case of SHIRBRIG, either member countries were unable to relinquish the troops needed[,] or if soldiers finally were provided, countries wanted specific influence over [exactly] how they were put to use."

With the continuing sting and embarrassment of the U.N.'s failure to intervene in the Balkans and Rwanda, the General Assembly in 2005 endorsed the concept of Responsibility to Protect (R2P). Pillar One of R2P notes that every nation has the responsibility to protect its populations from genocide, war crimes, crimes against humanity, and ethnic cleansing. Pillar Three, however, states that if a country "is manifestly failing to protect its populations, the international community must be prepared to take appropriate collective action, in a timely and decisive manner and in accordance with the [U.N.] Charter."

R2P clearly provided greater incentive for the U.N. to, at the very least, make the Standby Arrangements System work. Nevertheless, as recently as 2015, the U.N.'s High-Level Panel on Peace Operations concluded that:

37. Griffith, supra note 5, at 10.
38. Id. at 12.
39. Lieverse, supra note 36, at 43.
42. Jonas von Freiesleben, Denmark Remains Committed to UN Peacekeeping but is Contemplating SHIRBRIG Pull-Out, CTR. FOR UN REFORM EDUC. (Aug. 6, 2008), http://www.centerforunreform.org/?q=node/359.
44. Id.
45. Id.
Slow deployment is one of the greatest impediments to more effective peace operations . . . . The [U.N.] Security Council has no standing army to call upon. Reliance on ad hoc solutions for rapidly deploying new missions and for crisis response has limited the timeliness and effectiveness of international response . . . . [R]epeated calls for a global on-call standby capacity have foundered time and again on concerns about predictability, availability and cost.46

Rather than recommending a permanent standing U.N. force, as previously suggested by Urquart, the Panel instead recommended that regional forces, such as the European and African Union, step up.47 Regional forces eventually intervened in the Balkans with the insertion of NATO forces48 and in the Congo with active operations of the U.N. Intervention Brigade.49 But the world watched for many years as Serbia undertook ethnic cleansing in Bosnia and Kosovo,50 and rebel groups committed atrocities in the Congo51 before these regional organizations finally took action. African Union troops deployed to Somalia were "simply inadequate,"52 while in Mali, deployment was slow and the force small and untrained.53 As Secretary-General Ban Ki-Moon stated:

We have been talking for some time about the need for the [U.N.] and key regional actors to be able to deploy more rapidly, especially in acute emergencies. The EU Battlegroup was created for this purpose, as was the African Standby force. But despite years of investment, we are still far from having predictable and effective mechanisms for rapid deployment.54

52. Rachman, supra note 26.
54. U.N. Secretary-General, Remarks at the Security Council’s open debate on “United Nations Peacekeeping: Regional Partnerships and Its Evolution” (July 28, 2014 U.N.),
In light of this history, including the recent failures of SAS and regional forces, conflict resolution scholar Peter Langille proposed a United Nations Emergency Peace Service (UNEPS). As explained at length in his 2016 book, *Developing a United Nations Emergency Peace Service*, UNEPS would be a well-qualified and dedicated U.N. force composed of approximately 14,000 or greater if needed, volunteer civilian, police, and military professionals who are selected, trained, and employed by the U.N. It would be multidimensional and multifunctional, capable of aggressive military operations as well as humanitarian, health, and environmental missions. UNEPS would prepare deployable personnel, equipment, and supplies for prompt staging on short notice from designated U.N. operational bases.

Reviewing prior opposition to such a force, Langille notes that UNEPS members would be highly trained and could rely on the lessons learned from the considerable, difficult experience the U.N. has had in previous peacekeeping deployments. As for undermining the U.N.'s reputation and impartiality, he argues that the use of force, when needed, would be to "support peace processes, protect civilians, and fulfill legitimate international mandates." Overall, the U.N.'s reputation has not diminished from the U.N.'s use of force, but it has suffered from the reluctance and failure to use force when it could have saved thousands of lives, even hundreds of thousands.

Langille acknowledges that one of the key objections to such a force is cost as "austerity is a [U.N.] priority and departments are [constantly] ordered to 'do more with less.'" But he convincingly argues that "when delays on securing approval and deployment fail to stem violence, there tend to be far higher [financial and humanitarian] costs and lower prospects of success." To cite one example, General Dallaire, who commanded the small U.N. peacekeeping force in Rwanda, claimed that:

[P]rompt access to a force of 5,000 well-trained soldiers could have prevented much of the genocide. In response to pleas for further troops, which might have cost US $200–300 million, the international community simply delayed for three months. After initially refusing to help, while 800,000 people were slaughtered, it then poured several billion dollars into relief for refugees and reconstruction aid. Yet, the

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55. LANGILLE, supra note 15, at vii.
56. Id. at 2–3.
57. Id. at 2.
58. Id. at 2, 4.
59. Id. at 60–68 (Langille reviews opposition and provides response; capabilities are reviewed at 61–67).
60. Id. at 66.
61. LANGILLE, supra note 15, at 65.
62. Id. at 74.
63. Id. at 76. See also costs addressed at 73–80.
violence triggered in Rwanda did not stop there as the armed conflict gradually spilled over into neighboring states . . . .

Langille notes that the same “familiar pattern” followed in the Congo, Darfur, and Central African Republic. It is reasonable to assume that those responsible for planning [such] violent actions might be deterred from such behavior if the [U.N.] had ready access to a mechanism that could not only thwart their plans, but hold them accountable for their actions.” In this latter respect, the international criminal tribunals and International Criminal Court (ICC) can be an important deterrent, but the ICC itself lacks a police force of its own. “UNEPS could serve in this capacity, representing both the psychological and physical presence required to uphold international law.”

Of course, if UNEPS is deployed by the Security Council under Langille’s plan, one is always concerned about historical instances of the veto preventing the Security Council from acting. The Council’s members have different interests and views, making rapid agreement on action hard to secure. But the Security Council’s unanimous votes since the end of the Cold War concerning the invasion of Kuwait, terrorism, and especially the concepts promulgated by the Responsibility to Protect and the 2004 U.N. Panel on Threats and Challenges offer hope that the Security Council may not be an obstacle in every case. Recognizing that the permanent members’ veto power was necessary to establish the U.N., the Panel on Threats and Challenges nevertheless concluded:

[As] a whole the institution of the veto has an anachronistic character that is unsuitable for the institution in an increasingly democratic age and we would urge that its use be limited to matters where vital interests are genuinely at stake. We also ask the permanent members, in their individual capacities, to pledge themselves to refrain from the use of the veto in cases of genocide and large-scale human rights abuses.

64. Id. at 74–75.
65. Id.
66. Id. at 77.
67. LANGILLE, supra note 15, at 77.
68. Id.; see also Ron Sievert, A New Perspective on the ICC: Why the Right Should Embrace the ICC and How America Can Use It, 68 U. PITT. L. REV. 79 (2006).
69. Roberts, supra note 2, at 127.
74. Id. ¶ 256.
The existence of UNEPS or a similar permanent force would likely make the exercise of the veto even less likely, as “for the Security Council, the ‘will’ to do a job often depends on having an appropriate tool for the job, preferably one that is readily available and reliable.” In the words of Professor Juan Mendez:

If the [U.N.] had at its disposal a deployment-ready force with both military and civilian capabilities, trained on the basis of the accumulated experience of previous peace-keeping operations, it would be less possible to allege that the international community’s hands are tied, and less likely that the lack of political will to act, will again condemn us to frustration.

II. The United States As a Primary Source of Recruits for a Permanent Force

A review of previous history, as well as the arguments in support of a permanent U.N. peace force, leads to the inescapable conclusion that we should witness the creation of such an organization at some point in the near future. One cannot predict the time, but it would appear to be part of the necessary and inevitable flow of events. In contemplating the formation of this force, it is hard to imagine a better recruiting source to help fill the ranks than U.S. military veterans. The U.S. armed forces are well regarded as probably the best trained troops in the world. More veterans are available as the military has decreased in size from 2.1 million to 1.3 million in the last twenty-five years, with a 100,000 reduction since just 2004. It is estimated that there will be approximately 2.1 million retirees by 2020.

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75. LANGILLE, supra note 15, at 69–70.
76. Juan Mendez, Prevention of Genocide and Its Challenges, in STANDING FOR CHANGE IN PEACEKEEPING OPERATIONS 44, 45 (Global Action to Prevent War 2009).
Africa, and other hot spots around the world. The United States is already the largest contributor of personnel to the U.N. Secretariat, with many of these employees working in the Diplomatic Security Section.8 While the U.S. unemployment rate may fluctuate, a number of veterans consider their service as their job especially in comparison to their current employment.83 Specifically, a 2010 survey found that the four services ranked in the top ten places to work, beating out Microsoft, Johnson and Johnson, and Disney.84 Professor Bradley Brummel noted that “the military provides many of the essential elements to finding happiness at work, including having a meaningful impact on the world, having true camaraderie with your co-workers and having the opportunities to develop skills.”85 It would seem that such highly trained and motivated individuals could easily supply up to a quarter or more of a contemplated 20,000- member U.N. force.

But little known constitutional and statutory provisions present potential obstacles that must be addressed before U.S. citizens could make such a contribution. The first is the Emoluments Clause of the Constitution, which states that “no Person holding any Office of Profit or Trust under [the United States], shall, without the consent of Congress accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.”86 Emolument has been defined as “profit arising from office or employment; that which is received as a compensation for services . . . [such as salary].”87 Additionally, the nineteenth century Neutrality Acts make it illegal for a U.S. citizen to “enlist . . . or to go beyond the jurisdiction of the United States . . . to be enlisted . . . in the service of any foreign prince, [or] state . . . as a soldier or as a marine or seaman . . . .”88


84. Id.

85. Id.


87. Apple v. County of Crawford, 105 Pa. 300, 303 (1884) (quoting definition of emolument from Webster’s Unabridged Dictionary (n.d.)).

Finally, the Immigration Acts provide for loss of U.S. nationality if a U.S. citizen “enter[s] or serv[ed] in the armed forces of a foreign state . . . as a commissioned or non-commissioned officer . . . .” 89

At first glance, the archaic wording of the Emoluments Clause might appear to have little practical importance in the twenty first century. But in light of judicial and administrative opinions, as well as the new military retirement system, it could potentially apply to a sizable portion of all U.S. military veterans. In 1883, the Supreme Court held that “officers of the army on the retired list are [still] a part of the army of the United States . . . .” 90 Relying on this and subsequent case law, the Attorney General in 1909 extended this finding to enlisted men, concluding the following: “The military status, whether that of an officer or enlisted man, is an office or fundamentally like one. The quoted language is therefore directly applicable to the case of a military officer and is applicable either directly or by analogy to the case of an enlisted man.” 91

In 1922, the Comptroller General of the United States, referring to the Dual Office Act of 1894, found that:

Enlisted men on the retired list are now as much a part of the Army or Navy, respectively, as . . . commissioned or warrant officers are . . . . I see no grounds for distinction . . . . The term office as used in the act of 1894 is a broad [sic] general term which has been construed to include any person holding a place or position under the government and paid from government funds. 92

According to Major Joseph P. Creekmore in his extensive article on military status, by the end of World War II, the concept of “office of an enlisted man on the retired list” had solidified and become firmly entrenched as a rule in administrative opinions considering the applicability of Article 1, Section 9, Clause 8 (the Emoluments Clause), to retired enlisted persons, as being an “office under the United States.” 93

Jeffery Green in his 2013 article, Application of the Emolument Clause to DOD Civilian Employees and Military Personnel, appears to concur, noting that: “This prohibition [now] applies even after retirement . . . . [R]eservists are also subject to the Emoluments Clause, even after

92. Director United States Veterans Bureau, 1 Comp. Gen. 700, 702 (1922).
completing the requisite number of years to be eligible for retired pay and having been transferred to inactive status.94

An analysis of the recently enacted military retirement system would bolster these conclusions as officers and enlisted members both may have lengthy military obligations after active duty and all are now eligible to receive government funds for life.95 Members of the armed forces today are committed for a minimum of eight years.96 This means that if they serve on active duty for three years, then they may still be recalled to duty as a member of the Individual Ready Reserve for five years.97 Further, if they serve at least twenty years and receive retirement pay, then they may be called to active duty for life.98 Under the new U.S. Uniformed Services Blended Retirement System, however, anyone who has served, no matter how short their term on active duty, “can [now] get automatic and matching Thrift Savings Plan contributions . . . in addition to monthly annuities for life.”99 This, in combination with the previous administrative opinions cited above, suggests that virtually all veterans can receive continuous payment from the U.S. Government and are potentially almost always holding an “office of profit” in the United States.

But is an international organization like the U.N. a “foreign state” under the constitution’s Emoluments Clause? Surprisingly, the answer is not clear. In 1957 the Judge Advocate General (JAG) of the Army advised a retired officer who was considering accepting a position with the United Nations Technical Assistance Administration that the Emoluments Clause could preclude such employment because “the character of the United Nations might justify the conclusion that it is a ‘foreign state’ within the meaning of the constitutional provision.”100 This position was confirmed by JAG a year later with respect to the United Nations Educational, Scientific and Cultural Organization, although it was noted the Department of Justice would eventually have to make a final determination.101 In 1977, the Foreign Gifts

97. Id.
98. Powers, supra note 96.
100. Creekmore, supra note 93, at 147.
101. Id.
Act\textsuperscript{102} was amended to include international organizations under the definition of “foreign government.”\textsuperscript{101}

In 1953, the Office of Legal Counsel (OLC) at the Department of Justice had indicated there would be no problem with a federal judge serving on a U.N. International Law Commission because such organizations were unknown when the framers had drafted the Emoluments Clause.\textsuperscript{104} Later, the OLC expressed doubt about this conclusion with regards to the U.N., noting that “employment by the United Nations Secretariat contains elements comparable to accepting an office from a foreign government.”\textsuperscript{105} In the opinion of the Assistant Attorney General, there was “some basis for regarding United Nations employment as coming within the spirit if not the letter of the prohibition of Article I, Section 9, Clause 8 of the Constitution.”\textsuperscript{106}

The Office of Legal Counsel appeared to reverse its position again with a 2001 opinion on the World Bank. The OLC stated that “[i]n recent years, this Office in oral advice has consistently construed the terms ‘King, Prince or foreign State’ to exclude international and multinational organizations” although our “few formal written opinions, going back to the 1950s, have not shown the same consistency.”\textsuperscript{107} With regards to the World Bank, the OLC stated that this U.N.-sponsored international financial organization “has neither a defined territory nor a permanent population under its control.”\textsuperscript{108} The United States appoints a governor for the bank as well as an executive director, and “by tradition[,] the World Bank’s President is a national of the United States, which is the World Bank’s largest shareholder.”\textsuperscript{109} Based on these facts, the Bank’s “important role in carrying out our foreign policy,” and the United States’ “leadership role in its decisionmaking[] . . . employment . . . would not directly raise the concerns about divided loyalty that the Emoluments Clause was designed to address.”\textsuperscript{110}

There are obvious contradictions implicit in these OLC opinions with respect to servicepersons serving in a U.N. Peace Force. On the one hand, the OLC has provided consistent oral advice that the Emoluments Clause does not apply to international organizations, which have neither a defined territory nor a population, and acknowledges the restriction cannot apply because such organizations did not even exist in 1789. Furthermore, at least in the case of the World Bank, there is likely to be little conflict between this

\textsuperscript{105} Id. at 115.
\textsuperscript{106} Id.
\textsuperscript{107} Id. at 114–115 (emphasis added).
\textsuperscript{108} Id. at 116.
\textsuperscript{109} Id. at 113.
\textsuperscript{110} Emoluments Clause and the World Bank, supra note 104, at 116. (emphasis added).
international organization and U.S. policy because the United States has such control over decision-making. On the other hand, the United States does not control the leadership of the entire U.N. as a reliable instrument of U.S. foreign policy as it does the World Bank, a fact aptly demonstrated by numerous U.N. decisions, from the second Gulf War\textsuperscript{111} to the official and widespread condemnation of the U.S. announcement that it would move its embassy in Israel to Jerusalem.\textsuperscript{112} The OLC could thus in the future treat the U.N. as a foreign state and find that employment with various U.N. organizations other than the World Bank actually comes within “the spirit if not the letter” of the Emolument clause.\textsuperscript{113}

The Emolument Clause does, however, state that such employment is prohibited “without the consent of Congress,” so any ambiguity reflected in these opinions could be resolved with congressional legislation.\textsuperscript{114} In 1982, Congress passed a law specifically referencing the Emolument Clause and consenting to the civil employment of retired servicepersons with a foreign government only “if the Secretary concerned and the Secretary of State approve.”\textsuperscript{115} This was followed by legislation applicable to “retired member[s] of the uniformed services” accepting employment or holding office in the “military forces of a newly democratic nation” if the Secretary of the service-member’s former branch and the Secretary of State “jointly determine whether a nation is a newly democratic nation” and “approve the employment or holding of such office or position.”\textsuperscript{116} If the Department of Justice were to reverse its most recent oral and written opinions suggesting that international organizations are not a “foreign state,” Congress would have precedent for passing legislation that would open the door and eliminate the problem.

As for the Neutrality Acts pertaining to accepting a commission or enlisting in the service of a foreign state,\textsuperscript{117} completely aside from the previous discussion on the meaning of “foreign state,” a close reading of the statutes reveals that they refer to recruitment “within the jurisdiction” of the United States,\textsuperscript{118} or “within the United States.”\textsuperscript{119} The Supreme Court in \textit{Wiborg v. United States} held that these statutes did not apply to someone who went abroad to enlist as long as they were not hired in the United States.\textsuperscript{120} Signing up at U.N. Headquarters would not be a problem, as the U.N. is

\textsuperscript{111} MARK WESTON JANIS & JOHN E. NOYES, INTERNATIONAL LAW, CASES AND COMMENTARY 777 (5th ed. 2014).
\textsuperscript{113} Emoluments Clause and the World Bank, \textit{supra} note 104, at 115.
\textsuperscript{114} U.S. CONST. art. I, § 9, cl. 8.
\textsuperscript{115} 37 U.S.C. § 908(a)-(b) (2012).
\textsuperscript{116} 10 U.S.C. § 1060 (a)-(c) (2003).
\textsuperscript{117} 18 U.S.C. §§ 958-60 (1994).
\textsuperscript{120} \textit{Wiborg v. United States}, 16 S.Ct. 1127, 1130 (1896).
"International Territory." The Neutrality Acts have not been an obstacle to many American citizens who have recently joined the Israeli and Australian armed forces. It would be treason, however, if the soldier found themselves in a position where they would "lev[y] war" against the United States "or adhere to [our] enemies, giving them aid and comfort."

Finally, it is fairly clear today, that despite some of the original language of the Immigration Code pertaining to loss of nationality when entering the armed forces of a foreign state, a U.S. national will not automatically lose their citizenship when entering another nation's army. This was not always the case as the U.S. statutes and the Supreme Court were at one time fairly strict in enforcing the loss of citizenship on those who engaged in a list of prohibited acts including foreign service. In 1958, the Supreme Court held that it was proper for Congress to require that anyone who voted in a foreign election should immediately lose their U.S. citizenship. This was part of Congress' ability to regulate foreign affairs and avoid potential diplomatic embarrassment. Just nine years later, however, in *Afroyim v. Rusk*, the Court held that citizenship was not fleeting and could not be lost without voluntary and intentional renunciation. Title 8 U.S.C. 1481 (a)(3) thus now:

provides for [the] loss of nationality if a U.S. national voluntarily and with the intention of relinquishing U.S. nationality enters or serves in the armed forces of a foreign state engaged in hostilities against the United States or serves in the armed forces of any foreign country as a commissioned or non-commissioned officer.

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127. *Id.* at 576.
129. *Id.* at 1665.
In adjudicating loss of nationality cases, the State Department has established an administrative presumption that a person serving in the armed forces of a foreign state not engaged in hostilities against the U.S. does not have the intention to relinquish nationality.\textsuperscript{131} The aforementioned soldiers who are citizens of the United States serving in the armed forces of Israel, Australia, and other nations thus do not generally lose U.S. citizenship.\textsuperscript{132} This should not be a problem for veterans serving with a U.N. Peace Force except in the very rare, and hopefully unimaginable, case that the U.N. was somehow engaged in hostilities against the United States.

### III. Would Deployment of Such a Force Need Congressional Authorization?

If U.S. military veterans are still technically U.S. troops because they “hold an office of profit” in the United States pursuant to the cited Attorney General’s and Comptroller’s opinions and the new retirement system providing for retirement for life, can they be deployed in a U.N. peace force without congressional approval? This gets into a war powers issue that has bedeviled scholars and politicians for decades.\textsuperscript{133} Plenty has already been written on the subject and it is beyond the scope of this paper to embark on a complete recitation of the numerous lengthy arguments. But, it is important to review the essence of the matter.

A bare reading of the U.N. Charter would support the position that once the Security Council decides to use force, the United States and other nations are then obligated to supply troops. Article 42 of the Charter states that if other measures prove inadequate, the Security Council may decide to “take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security.”\textsuperscript{134} Article 25 of the Charter states that “[t]he Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter.”\textsuperscript{135} This could be the end of the discussion. But Article 43 states that members “undertake to make available to the Security Council . . . in accordance with . . . agreements, armed forces . . . necessary for the purpose of maintaining international peace and security.” These agreements “shall be subject to ratification by the signatory states in accordance with their

\textsuperscript{131} Id.
\textsuperscript{132} Lamothe, supra note 122.
\textsuperscript{134} U.N. Charter art. 42.
\textsuperscript{135} U.N. Charter art. 25.
respective constitutional processes." Depending on interpretation, Article 43 is either an anachronistic red herring completely irrelevant to the legal deployment of troops mandated by Article 42 and Article 25, or the sine qua non establishing the absolute necessity of "agreements" sanctioned by Congress before U.S. forces may be utilized.

When the U.N. Charter was submitted to the Senate for ratification as a treaty, many Senators appeared to believe in the necessity that Article 43 agreements must be sanctioned by the legislature before U.S. troops could be dispatched. John Foster Dulles, the State Department advisor to the U.S. delegation in San Francisco, testified that such agreements would need the approval of the Senate and could not be done unilaterally by the President. Congress subsequently passed the U.N. Participation Act (UNPA) stating that:

The President shall not be deemed to require the authorization of the Congress to make available to the Security Council on its call in order to take action under article 42 of said Charter and pursuant to such special agreement or agreements the armed forces . . . provided [for] therein: Provided, That nothing herein contained shall be construed as authorization to the President by the Congress to make available to the Security Council for such purpose armed forces . . . in addition to the forces . . . provided for in such special agreement or agreements.

Thus, in the opinion of Louis Fisher and others, it is only after “the President receives the approval of Congress for a special agreement [that] he does not need its subsequent approval to provide military assistance under Article 42 . . . [N]othing in the [UNPA] is to be construed as congressional approval of [any] other agreements entered into by the President.” James A.R. Nafziger & Edward M. Wise point out that “no such special agreements have ever been concluded . . . under Article 43 of the [U.N.] Charter.”

Proponents of Security Council and presidential power could argue, however, that the UNPA only related to the process of negotiating Article 43 “agreements,” and that this is a matter separate and apart from the obligations created by Article 42 and Article 25. Indeed, this appeared to be the position of President Truman when he ordered U.S. forces to Korea in

136. U.N. Charter art. 43, ¶¶ 1, 3.
138. Nafziger & Wise, supra note 133, at 430.
140. Id. (statement of John Foster Dulles, Advisor to U.S. Delegation in San Francisco, State Department).
142. Fisher, supra note 133, at 29; see also O'Hara, supra note 133.
143. Nafziger & Wise, supra note 133, at 429.
1950 without Congressional authorization.144 The President stated: “The Security Council called upon all members . . . to render every assistance to the United Nations in the execution of this resolution [to defend South Korea]. In these circumstances I have ordered United States air and sea forces to give the [South] Korean Government troops cover and support.”145 Secretary of State Acheson claimed the deployment was “under the aegis of the United Nations”146 and “in conformity with the resolutions of the Security Council.”147

President George H.W. Bush and President Clinton appeared to be of the same belief as President Truman. President Bush initially made the decision to deploy troops to the Gulf to defend Kuwait without seeking Congressional authorization.148 He eventually sought a congressional authorization of force for political reasons, but at the same time stated that he had the constitutional right to unilaterally implement the U.N. resolutions.149 President Clinton prepared for a large scale invasion of Haiti in 1994 without congressional permission in order “to carry out the will of the United Nations.”150 When the unanimous Senate claimed that the U.N. Haiti resolution was not constitutional authorization,151 Clinton responded that he believed “[l]ike [his] predecessors of both parties,” that the Constitution did not require him to receive congressional approval to fulfill a U.N. resolution.152

This approach is arguably directly in conflict with the UNPA as well as the War Powers Act (WPA) requiring the President to receive congressional permission within sixty days of sending our forces into hostilities.153 The fact that the U.N. Charter is a Treaty would not necessarily avail the President, as the WPA states that authority to introduce forces into hostilities “shall not be inferred . . . from any Treaty . . . unless such treaty is implemented by legislation specifically authorizing the introduction of United States Armed Forces.”154 The UNPA certainly does not specifically authorize a significant use of such forces. A major deployment, therefore, could easily provoke a constitutional crisis in which the Supreme Court’s landmark decision in Youngstown Sheet and Tube v. Sawyer would be a crucial part of the analysis.155 Youngstown famously held that when the President acts inconsistent with Congress’ express will, “his power is at its lowest ebb,”

144. Fisher, supra note 133.
145. Id. at 32.
147. Id. at 46.
148. O’Hara, supra note 133, at 590.
149. Id.
153. War Powers Resolution, 50 U.S.C. §1544(b) et seq.
and “he can only rely upon his constitutional powers minus any constitutional powers of Congress over the matter.”156

But aside from the fact that most Presidents have maintained that the WPA is unconstitutional,157 we are not dealing here with the deployment of a major part of the standing U.S. Army, but rather with U.S. veterans as part of a U.N. peacekeeping force. President Truman appeared to be thinking of his constitutional ability to use U.S. troops in a limited role when he initially called the assignment of forces to Korea a “police action.”158 After the WPA was passed, President Clinton deployed a brigade sized unit to Kosovo despite Congress' refusal to authorize action,159 and President Obama conducted an air war in Libya without seeking legislative permission on the grounds that there was a limited mission, danger, or risk of escalation.160 Indeed, Presidents have ordered some type of military deployment in U.S. history over 200 times with only five congressional declarations of war.161 At least in this type of restricted action, the President appears to be backed up by both history, which is a factor in Youngstown analysis,162 as well as such Supreme Court cases as Cunningham v. Neagle, referring to the President's unilateral “rights, duties, and obligations growing out of the constitution itself, our international relations, and all the protection implied,”163 and United States v. Curtis Wright Exporting Co., highlighting the President's “delicate, plenary and exclusive power . . . as the sole organ of the federal government in the field of international relations.”164

IV. Conclusion

As noted in the first section of this paper, it was the intent of the founders of the U.N. that some force would always be ready to maintain and restore international peace and security. It was originally envisioned that these forces would be supplied by nation states. The Cold War and the inability of nations to agree to always provide well trained national troops immediately upon U.N. request has extinguished this vision. The result has been the horrors of Rwanda and the Balkans, which are now being followed by despotic actions and ISIS inspired atrocities on the African continent. It is understandable that democracies do not want to send active duty armies to some of these dangerous hot spots, but, where there is a good chance of success, a permanent U.N. force could be deployed without the same political repercussions. The time has truly come for such a force. Statesmen

156. Id. at 871.
157. Morrison, supra note 133, at 452.
161. O'Hara, supra note 133, at 601.
162. Youngstown, 72 S.Ct. at 872.
such as Sir Brian Urquhart and Hans Van Mierlo and scholars like Peter Langille have now led the way. It is only necessary to act.

Troops for a permanent force could come from all over the world. Since 9/11, the United States has done an outstanding job training thousands of young soldiers, who have also gained invaluable experience in Iraq and Afghanistan. Many are now "retired" veterans. The author has often noted in his conversations with these young veterans that they are proud of serving in the military, partly because of the discipline, but also because, in Professor Brumley’s words, as soldiers, they were “having a meaningful impact on the world.” Any potential issues posed by their retirement pay and the Emoluments Clause because they may still hold an “office of profit” in the United States could be easily met with legislation in the same manner that Congress acted to permit service with foreign and newly emerging democracies in 1982 and 2003. Furthermore, if the retirement system still technically makes them US troops, there exists plenty of precedent for the veterans’ deployment in narrow and limited peace-focused missions without Congressional authorization, which is consistent with the President’s constitutional foreign affairs powers.

The creation of a U.N. Peace Force and the utilization of U.S. veterans to continue their service in support of world peace and stability are two ideas which simply make sense. We do not want to simply stand by and repeatedly observe genocide as we did in Rwanda and the Balkans because nation states and the U.N. were powerless to act.

165. Hernandez, supra note 83.