Unrealizable Expectations:

Collective Security, the UN Charter, and Iraq

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Ian Hurd

ianhurd@northwestern.edu

Dept. of Political Science
Northwestern University

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The UN Security Council has rarely been as much in the public eye as it was before the US-Iraq war of 2003. Its institutional position, both as one channel for authorizing the use of force and as a party in the sanctions regime against Iraq, made it inevitable that a good part of the diplomacy over the war would take place in the Council. The Council paid dearly for its prominent place in the episode and it has been vilified by critics from across the political spectrum. Two sets of critical voices have been the loudest: the pro-war cohort has criticized the Council for failing the support the war and anti-war commentators have attacked it for failing to stop it. From very different perspectives, and with very different evidence, these two groups come to a common conclusion: that the Security Council failed to fulfill its obligations and so abandoned the mandate it has for international security in the United Nations system and in the world more generally.

This article argues that both sets of critics are mistaken and that they are mistaken for essentially the same reason: both overestimate the power of the Council because they misunderstand its basic powers and design. They subscribe to the fallacious, though popular, understanding of the Council as a collective security system and neglect to see it instead as a great-power compact. This point is often misunderstood and lies at the heart of the confusion over the Iraq war. From its earliest origins, the Council was intended to manage the international system on behalf of the Great Powers according to rules that minimized the underlying conflicts among them. The debates over the Charter in 1945 make clear that collective security was secondary in the Council and would be activated only when the Great Powers agreed with each other. The activism of
the Council in the 1990s came from such an agreement and helped disguise for the post Cold-War period the true nature of the bargain at the heart of the Council. The Council is more accurately seen as a concert of Great Powers in which the Great Powers consult among themselves on the management of the system but take on no obligation to respond in any way to collective threats or to modify their own ambitions. Ironically, the critics of the Council on both sides ascribe too much power to the Council even as they decry its ‘failure’ to act more forcefully.

Understanding the Council properly is important for interpreting the Iraq episode, but the Iraq episode can also be used to shed light on more general questions of interest to IR theory and to policy-makers. There is more at stake than finding that the Council is still ‘relevant’ (Lynch 2003). Chaim Kaufmann is right that “it matters whether this episode should be considered an uncommon exception to the rule” in world politics or whether it is part of a more general pattern (Kaufmann 2004, 6).\(^1\) He concludes, as do I, that long-lived features of the international system are at the heart of the case, and so its lessons are valuable for future policy-making – this was not an exception to the normal patterns of world politics. Recognizing the Great Power compact in the Council helps to correct a number of misperceptions about the Council that have been allowed to remain in circulation due to the prevalence of the collective security view. I examine three of these. First, we see that disagreement among the permanent members of the Council is neither a crisis in itself nor a sign of fundamental problems in the international system. It is rather evidence that the Council is functioning as designed in 1945. Second, it requires a different set of criteria for assessing what is a success and what is failure of the Council.

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\(^1\) Kaufmann’s statement refers particularly to the justifications for the war by the US government, not to the role of the Council.
The interpretation that the Council ‘failed’ over Iraq is wrong, but it raises interesting questions about what constitutes an appropriate yardstick for assessing the performance of the Council. Finally, a more realistic reading of the Council’s power than is offered by the critics leads to a different set of expectations about what we should expect from the Council in the future. This is especially relevant today given the many inquiries into the future of the UN and proposals for reform of the Council. For these efforts to be productive, we must first correctly understand the powers and purpose of the Council in order to begin analyzing its performance and worth. None of this is to say that the Council behaved entirely admirably around the Iraq crisis, nor that the UN more generally has not suffered diminished relations with Washington D.C. and others since 2002. It is also not a commentary on the non-Council obligations in the Charter that may be relevant to the episode, including Articles 2(3) and 2(4) – these two create universal obligations to settle disputes peacefully and to refrain from wars of conquest.\(^2\)

The main conclusion is that the Council performed its functions entirely in line with the expectations set by the Great Powers in San Francisco.

The paper is presented in four substantive sections. The first identifies three popular assessments of the Council’s ‘failure’ over Iraq: that the Council failed to defend its credibility in the face of Iraq’s obstinacy; that Council effectiveness was always premised on a post-WWII distribution of power which no longer exists; and that it failed to defend international law against the power of the US. The second section examines

\(^2\) Both clauses apply to all states without distinction and do not mention the Council, and so my argument here about the special privileges of the Great Powers in the Council does not touch on them. However, their applicability to the Iraq case is debatable on the grounds that 2(3) requires a dispute between states (and the Iraq war is seen by some as a dispute between the UN and a state) and 2(4) outlaws wars against “the territorial integrity or political independence of any state” (and many argue that sovereignty should not protect leaders who fail in their responsibility to protect their citizens). The debate over these obligations is separate from that around the Council’s functions.
the UN Charter and the debates of 1945 to show that the aspirations for the Council
underpinning all three sets of critics are misplaced. The third section argues in defense of
a more realistic interpretation of the Council, reading it as a great-power compact. The
final section shows the importance of the distinction between the two visions of the
Council. A brief conclusion summarizes the argument and points to future research on
the history of norm development around the Council.

THREE CHARGES AGAINST THE COUNCIL

In the aftermath of the diplomacy over the Iraq war in 2003, three distinct lines of
critique were offered of the Security Council’s performance. These disagreed with each
other over basic matters such as the interpretation of international law, the assessment of
security threats to the US, and the likely consequences of invading Iraq, and as a result
they offered distinct policy prescriptions – some overlapping and some in conflict. But
they all agreed that the Council failed a significant test in the episode. I examine each of
the three in turn before discussing their shared commitment to a collective-security
interpretation of the Council’s purpose.

I. ‘Defending the Credibility of Past Council Resolutions’

One line of critique suggested that the Council failed in its obligation to fully
enforce its resolutions by refusing to explicitly authorize a US-coalition invasion to
remove Saddam Hussein. The resolutions in question are those stemming from Iraq’s
invasion of Kuwait in 1990 and the subsequent cease-fire agreement in 1991. In 1990,
the Council passed Resolution 678 which authorized “member states cooperating with the
Government of Kuwait… to use all necessary means to uphold and implement resolution
660 (1990) and all subsequent relevant resolutions and to restore international peace and security in the area.” In 1991, it passed Resolution 687 to certify the cease-fire that ended the war and to bar Iraq from possessing or developing a list of chemical, biological, and nuclear weapons and some delivery systems. It also imposed a series of financial obligations on Iraq in recompense for damage caused by the war on Kuwait and a monitoring regime of inspections to validate Iraq’s claims about its weapons programs. Resolution 715 required that Iraq “cooperate fully with the Special Commission and the Directory of the Agency”, referring to the Council’s weapons inspectors and those of the IAEA respectively.³

Some of these obligations can be considered fully satisfied, such as the central demand of Resolution 660 that Iraq’s military retreat to its prewar positions and that Iraq recognize the sovereignty of Kuwait. But others were arguably not, including Iraq’s cooperation in the weapons-inspections programs. The US Ambassador to the UN described Iraq’s conduct relative to the inspectors as of 1998 as a “flagrant material breach of resolution 687” that amounted to a justification for American airstrikes against targets in Iraq.⁴ As a result, the British government, among others, argued before the 2003 Iraq war that the state of war between Iraq and the 1990 coalition had not been ended by Iraq’s mere withdrawal; there were other necessary conditions that remained to be met (Franck 2003). The British Attorney General said in 2003 “Resolution 687 suspended but did not terminate the authority to use force under Resolution 678.”⁵ This being the case, the requirement for a new Council authorization to use force against Iraq

³ For a full list of obligations, see Krasno and Sutterlin (2003).
in defense of the goals of Resolution 678 was unnecessary. Based on this logic, one could say further that the Council had an *obligation* to fully enforce its past resolutions and so was negligent to the extent that it did not successfully press Iraq to fully comply with the inspections regime. The importance of full enforcement comes from two sources: first, as a matter of international security, remedying the original threat requires carrying out all of the measures included in Council resolutions; and second, as a matter of reputation, future Council action may be undermined if current resolutions are not forcefully defended by the Council.

Many have taken this interpretation as the foundation for criticizing the Council for failing in 2003 to carry out the necessary implications of its earlier resolutions. Schaefer, for instance, argued that because “many members of the Security Council refuse[d] to support forcefully disarming Iraq in spite of ample evidence of Iraq’s violation of 17 Security Council resolutions,” the Council therefore failed “to fulfill its primary duty to Iraq.” This, he concludes, is entirely in the tradition of “delay and indecisiveness” that is characteristic of the Council, and raises “questions about the effectiveness of the Security Council” with respect to its “ultimate responsibility – enforcement of peace and security” (Schaefer 2003). Richard Perle argeed, saying “The chronic failure of the Security Council to enforce its own resolutions is unmistakable: it is simply not up to the task. We are left with coalitions of the willing” (Perle 2003).

Similarly, Charles Krauthammer identified the failure to forcefully implement Council resolutions (in this case 1441) as a demonstration of the Council’s “moral bankruptcy and its strategic irrelevance: moral bankruptcy because it… made a mockery of the very resolution on whose sanctity it [the UN] insists; strategic irrelevance because the United
States disarm[ed] Iraq anyway” (Krauthammer 2003). Giving explicit approval to the invasion of Iraq is one way that these critics would be satisfied that the Council was living up to its commitments of the past. Whatever the legal weaknesses of this line of argument, it is important to see how it has been used as the basis for a more general attack on the Council’s behavior in the episode.

II. ‘Structural Change Makes the Council Irrelevant’

A distinct critique has been offered by Michael Glennon, among others, who takes a longer historical view. The central elements of his analysis are not inconsistent with the first category of critics although it does rely on a different starting point and aims at a different target. Glennon finds that the changes in power distribution in the international system since 1945 have taken away the Council’s necessary geopolitical base. “It was the rise of American unipolarity – not the Iraq crisis – that, along with cultural clashes and different attitudes toward the use of force, gradually eroded the Council’s credibility.” Thus, “the fault for this failure [to respond to Iraq forcefully] did not lie with any one country; rather, it was the largely inexorable upshot of the development and evolution of the international system” (Glennon 2003, 18). This identifies a more chronic, and likely fatal, condition in the Council than did the first set of critics. If the structure of the international system is no longer conducive to the existing design of the Council, then the relevance and power of the Council will be low until the distribution of power in the system changes again to some pattern more supportive of collective security. This, however, it not likely to be soon. As Glennon says, “The forces that led to the

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6 Thomas Franck, for one, disagrees sharply with the legal interpretation at the heart of this complaint and so ends up with a very different analysis of the Council’s position. His legal disagreement points out that there is nothing in any of the resolutions regarding Iraq that would indicate that the Council intended for individual member states to have the unilateral right to determine whether Iraq had satisfied the Council’s demands. Franck (2003).
Council’s undoing will not disappear” – and the Council just might (35). The crux of Glennon’s argument is the connection he draws between the distribution of power in the international system and possibility for effective Council action.

Glennon is not clear on the precise relationship that he hypothesizes between these two variables, but he implies that they are connected through the operation of the balance of power. He says that American unipolarity has provoked a backlash from other strong states in an attempt to balance against American hegemony. These countries include most of the other main powers in the world, including Russia, Germany, France, and China, in various coalitions and combinations and with support from a host of smaller countries. The balancing efforts of these countries have been met by an American reaction that aims “to do all it can to maintain its preeminence” (20). In the tug-of-war between the hegemon and its counter-hegemonic balancers, the Council cannot function effectively – thus, he concludes that while “the body managed to limp along… it proved incapable of performing under periods of great stress” as in 2002-03 (20).

Glennon’s analysis implies that there was some moment in the history of the Council when the distribution of power in the system was compatible with the Council’s goals. He doesn’t say when this was, but the existence of such a moment is crucial to his central argument about the change in the Council. The question thus arises: If American unipolarity is a brake on Council effectiveness, what was the past distribution of power allowed it to function? Glennon cites September 12, 2002 as “the beginning of the end” for the Council but the logic of his argument suggests we look for the transformation earlier, at the moment that US unipolarity began (16). This might be identified as any
number of moments from the mid-1980s on. His logic thus suggests that the Council was more effective, or at least better suited to the international environment, in the period of bi- or multi-polarity that preceded the relative increase in US power in the 1990s. Unfortunately Glennon doesn’t explore how this might have worked, nor why in this prior period the supposedly universal and constant aspiration of states to balance against potential threats led to ‘better’ results in the Council in that period than he says it did in 2003.

Such an exploration would be fruitful because his unipolar hypothesis is precisely the opposite to the conventional understanding of the Council’s ineffectiveness through the Cold War. The more common view agrees with Glennon that the Council’s effectiveness is dependent on its ‘fit’ with the broader context of international geopolitics, but identifies bipolarity rather than unipolarity as the key problem. Kupchan and Kupchan present this interpretation succinctly: “The United Nations was formed under the assumption that the two countries emerging from World War II with predominant military capabilities could cooperate in forging a postwar order. But even as the UN was coming into being, the United States and the Soviet Union were pursuing conflicting goals, making collective security untenable… Commitments to collective security [institutionalized in the Security Council] were repeatedly challenged – and superceded – by the rivalry and hostility associated with the Cold War” (Kupchan and Kupchan 1991, 129). Thus, on this argument, it was the advent of bipolarity in the system that signaled a quick end to the Council’s security functions, not American unipolarity.
Both the bipolar and unipolar variants of this argument agree that the Council could conceivably operate as intended in the field of international security if its membership or structure (or both) were reconfigured to better match the realities of state power politics. Glennon concludes that with either a different membership (better reflecting the current distribution of power) or a different attitude among the existing members (better reflecting existing members’ power realities) the Council might have been able to avoid clashing so directly with the United States and so could have prolonged its relevance to American decision-makers.

III. ‘Illegal Aggression by the US Demands a Council Response’

The third set of critics stands apart from the first two in that its political project is generally the opposite: they aim to assert the primacy of international law over American ‘unilateralism.’ These critics generally conclude that the American decision to go to war with Iraq despite of the Council’s refusal to authorize the operation was a violation of international law, and they find the Council ineffective for not being able to better defend the legal and normative principles upon which it is based. The ‘failure’ of the Council identified here is the inability to restrain the American government from what the critics see as committing a new breach of international peace and security.

In this view, the veto is inherently dangerous to world order, and to the peace-and-security mission of the United Nations, because it protects the US from criticism by the Council and ensures that illegalities conducted by Great Powers are immune from action (Ramonet 2003). This is a long-standing critique of the UN’s security arrangement and has been heard since the founding of the organization. It has lead to a variety of proposals for reform, from doing away with the veto entirely to limiting it to a
subset of Council decisions to recommending self-restraint by the permanent members. With respect to the Iraq episode, we have seen many of these proposals and others reanimated, although they arrive with little chance of being adopted (Ratner and Lobel 2003, Whitney 2004).

THE COMMON FOUNDATION OF THE THREE CRITIQUES

These different critics share some comment elements, in addition to the common conclusion that the Council failed in its purpose. First, they all see the presence of disagreements among the Great Powers in the Council as a sign of a problem. Second, they all subscribe to the view that what the Council should have done was recognize the existence of a threat to international security (they disagree on the nature of the threat) and respond automatically with action under Chapter VII of the Charter. Third, they all identify the permanent-member veto as the ultimate obstacle to such a response. It was the veto, they say, that prevented the Council from fulfilling its obligations to satisfactorily respond to a breach of international peace and security.

These common features among the various critics reflect a shared underlying foundation about the Council: a ‘paradigm’ in the Kuhnian sense. At the core of the paradigm is the belief that the Council is part of a system of collective security for the international system. If we accept this belief, then it is possible to maintain that the body failed in any of the three ways described above: in other words, we expect the Council to respond to threats to the system and we are disappointed when it fails to do so.

As many have noted, collective security is a term used with unfortunate looseness in IR resulting in broad range of institutions being identified with the term. For my
purposes, I define it following George Downs as a “collective commitment of a group to hold members accountable for the maintenance of an internal security norm” (Downs 1994, 2). This entails two commitments on the part of the members of the group: first, a commitment to the principle of ‘all-for-one, one-for-all;’ and second, an agreement on a binding institutional device for activating that principle in the defense of a threatened member. Both must be present. Glaser rightly emphasizes the necessary requirement of a prior commitment to this principle – this is important because it allows one to distinguish collective security from a range of standard alliances and ad hoc collective actions (Glaser 1994, 235). Lipson rightly emphasizes the need for a binding institution to enforce the principle – collective security cannot exist if group members are free to decide, case-by-case, whether or not to participate in collective actions (Lipson 1994). For collective security systems to have the deterrent effects and other benefits desired by their proponents, both of these elements must exist. Other kinds of security coordination may be important in practice, but lacking these two crucial elements they cannot work by the mechanisms that underlie collective security.

A brief review of the Charter and its negotiating history makes clear that collective security was at best a secondary intention of the founders, subordinate to the needs and interests of the Great Powers individually. At times, when they found it useful, they let stand the misperception among small that they were creating a collective security system, but their adamant defense of the veto ensured this would not come to pass. The small states did not press for a real system of collective security and accepted as given the concert-based design of the Council.

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I take this to include a commitment to protect against aggression by group members and by outsiders against group members, and so combine what are sometimes separated between ‘collective security’ and ‘defensive alliances.’
There is some support in the Charter for the view that the Council anchors a collective-security system, and many commentators identify it as one, but to conclude that collective security is a central element of the UN system requires a very selective reading of the Charter and leads to very poor predictions about the Council’s behavior. In other words, the paradigm is faulty.

The boldest references to collective security in the Charter appear early, in the preamble and first Articles, where the ambitions and purposes of the organization are set out. These reflect the values of the organization, although the institutional machinery of the Charter does not make them effective. The preamble states that one purpose of the organization is “to ensure, by the acceptance of principles and the institutions of methods, that armed force shall not be used, save in the common interest.” In the formal clauses of the Charter, Article I restates that ambition in more active language and with the greater legal authority: the first purpose of the UN is “to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace.” Article 2(5) requires states to assist the UN in actions it decides to take. These obligations are operationalized in later articles that spell out the specific powers of the Security Council: Article 24 gives the Council “primary responsibility for the maintenance of international peace and security” and Article 39 states that it is the Council that must “determine the existence of any threat to the peace, breach of the peace, or act of aggression.” Once such a finding has been made, the Council can “call upon the Members of the United Nations to apply such measures” as economic and cultural sanctions (Art. 41) and may use military force “by air, sea or land

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8 For instance, Kupchan and Kupchan (1991), Ruggie (1993), Russett and Oneal (2001), and Lipson (1994) all give qualified support to the proposition that the UN is a collective security body.
forces as may be necessary to maintain or restore international peace and security” (Art. 42). Finally, Article 49 enacts the collective principle set out in the preamble: “The Members of the United Nations shall join in affording mutual assistance in carrying out the measures decided upon by the Security Council.”

These clauses create a number of binding legal obligations on members with respect to collective international security. When the Council tells members to act against a threat, they must do so. When the Council initiates a military operation, members must contribute resources to support it and must not act in ways that impede it. Most broadly, members must not act in ways that are inconsistent with the general purposes and principles of the organization, including the objective of effective collective measures against international aggression.

But there are several things that the Charter does not do: it does not create an active requirement for action by the Council or any other part of the organization; it does not limit how the Council decides whether a threat exists; and it does not mandate that aggression against one member must automatically be construed as aggression against all. All of the collective provisions of the Charter on international security are filtered through the Council so that obligations come into effect only after the Council decides by a formal resolution that they should exist. Compare this to the League of Nations, where the Covenant included a legal obligation on all members to “preserve against external aggression” the integrity of other members; the Covenant therefore had half of a collective security system, the legal commitment to all-against-one, but didn’t have the institutional structure to make it real. The UN Charter has neither. In the Charter,

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9 Other collective obligations may exist in areas such as economic and cultural affairs, or arising from other security treaties, but I am concerned here only with the implications of the Charter for international security.
collective obligations for international security exist only once the Council brings them into being in individual cases. Collective security in the Charter is subordinate to the decision rules, and the veto, of the Council. Leaving out the obligations that would have made for a collective security system was not an accident in the drafting of the Charter. It was in fact a central goal of the Great Powers and a *sine qua non* of their participation. The veto for the permanent members was important to them precisely because it made it impossible for the organization to operate as a collective security system. It ensured that there would be *no* collective obligations in international security without the active agreement of each Great Power on a case-by-case basis.

The idea that the new world organization should comprise a special privilege for the Great Powers was in place from the very earliest discussions about the UN among the US, the UK, and the Soviet Union in 1944. This was made necessary by the early decision that the organization should have the capacity to make authoritative and binding decisions on behalf of all members with respect to international security. A body with such powers was acceptable to the Big Three only if each retained the right to opt out of its decisions, and the veto in the Council was therefore essential. The general shape of the veto in the Security Council was agreed upon by the Great Powers very early in the process of thinking about the new world organization and defended by them against all challenge through to the end of the San Francisco conference. In meetings among the Big Three at Dumbarton Oaks and Yalta, they debated important details regarding the scope of the veto, such as its relationship to peaceful dispute-settlement, procedural questions, and disputes involving Great Powers, and some of these disputes carried

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10 On these earliest discussions, see Notter (1949, 526-634), Hilderbrand (1990, 25), Luard (1982, 17-18).
forward to San Francisco, but the in-group consensus about the basic concept of the veto was never broken.

At San Francisco in 1945, the task facing the Big Four (ie. the Big Three plus China, with France soon to join) was to gain support for the veto and for the rest of the Charter among the small and medium states who would make up the rank-and-file members of the UN (Hurd 2005, Ch. 4). The world conference of 1945 was designed as a conversation between the Great Powers as a bloc and the rest of the UN membership-to-be. In this sense, San Francisco was not a post-war peace conference on the model of, for instance, the Versailles Peace Treaty, and so it followed a different dynamic than predicted by Ikenberry among others. Ikenberry has argued that these post-war moments are useful to Great Powers as they attempt to entrench their powers in new institutional arrangements (Ikenberry 2001). This was clear after WW I, but after WWII is more complicated. After the Second World War, Ikenberry says, there were two distinct ‘settlements,’ linked but each with its own logic: one was within the western bloc and the other between that bloc and the Soviet alliance. In neither settlement does he find the founding of the UN to be a major event. In Ikenberry’s history, the early UN is seen as being conditioned by (and perhaps a victim of) the tentative military settlement reached elsewhere between the US and Soviet blocs, rather than as itself contributing to the settlement. That San Francisco was not a peace conference is evident from the fact that the big issues, like territorial settlement and armistice terms, were not on the table and also that it both explicitly excluded enemy states and was begun before the end of hostilities. The purpose of the conference was to allow conversations between the Great Powers and the small states in the system with the intention of ratifying a Great Power
settlement that already existed. Ikenberry leaves aside this purpose and so understates the importance of the conference in contributing to the post-WWII institutional order. In distinguishing between collective security and a Great-Power compact, these discussions are important.

The deliberations at San Francisco did include a great deal of controversy over the veto. Indeed, the veto was the most debated element of the entire plan, and at times the work of the whole conference was stopped because the subcommittee dealing with the veto reached an impasse. The objections of the small states were varied, but centered on the great freedom from collective constraint enjoyed by the permanent members of the Council. The small states proposed a series of amendments that would have limited the absolute quality of the veto in different ways: for instance, by applying it only to enforcement measures, or by not applying it to enforcement measures, or by increasing the required level of non-permanent member support to pass resolutions.

Rather than concede any points of substance, the Great Powers responded to this pressure with a series of explanations of the logic behind the veto. The Sponsors clearly saw the dissent by the small states as a problem that called for diplomacy and legitimation, rather than as a substantive matter to be negotiated with compromise. They were prepared to offer justifications but not legal compromises. To a series of questions collected by a subcommittee of dissident states, the Big Four produced a long narrative restatement of the rationale for the veto, with hints of the political leverage they were willing to bring to bear to see it enacted without modification. This statement has become well-known as the ‘Four Power Statement’ and it helped bring to an end the
debate over the veto. The statement cast the proposals as a continuance of an existing system, improved by a small, reasonable change. It emphasized the inevitability and naturalness of an inequality between the Great Powers and the rest, and suggested that the proposed voting procedure was simply a way of dealing responsibly with that fact. Moreover, the proposed Security Council was not giving the permanent five anything new, according to the statement, since the five already had a veto power in the Council of the League of Nations under the League’s rule of unanimity: “As regards the Permanent Members, there is no question under the Yalta formula of investing them with a new right, namely, the right of veto, a right which the permanent members of the League Council always had” (UNCIO 1945, 713). The question was restricting the right of non-permanent members to veto a decision, a power which they formerly had in the League but which would be restricted in the Security Council in the interest of making “the operation of the Council less subject to obstruction than was the case under the League of Nations rule of complete unanimity” (UNCIO 1945, 713). This interpretation of the League of Nations was useful because it let the Great Powers cast the choice as one between everyone having the veto (as in the League) or just the P-5 plus a “collective veto” for two or more non-permanent members. Opponents could therefore be made to look like partisans of “obstruction.”

The Four Power Statement was extremely powerful, largely because it was interpreted as the last word from the Sponsors on the veto. It signaled that no substantive

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11 Statement by the Delegations of the Four Sponsoring Governments on Voting Procedure in the Security Council, UNCIO (1945, v.11, 711-714). The government of France, which was not a sponsor of San Francisco but was included by the Charter among the permanent members, noted at the time that it “associates itself completely” with the Four Power Statement. The twenty-three questions from the subcommittee to which the statement reacted is Questionnaire on Exercise of Veto in Security Council, UNCIO (1945, v.11, 699-709).
amendment to the terms of the veto would be accepted by the Sponsors, and it changed the dynamic of the deliberations. A vote was then taken on the most modest of the anti-veto proposals, that of the Australian delegation which would have classed peaceful settlements as procedural questions and so be outside the scope of the veto, and when this failed to win a two-thirds majority, the Sponsors’ own draft was adopted.

The Great Powers, through a combination of legitimation and coercion, won the day on the veto. They gave up nothing on the veto to win the support of the small states, and gave up very little on any other issues. There were no significant concessions made in other parts of the Charter to win small state support on the veto. A number of changes to the original text were made in the course of the deliberations but almost all were the result of amendments proposed by the sponsors themselves and they were all in areas far from the central concerns about the Council and the veto. These so-called ‘sponsors’ amendments’ were generally negotiated among the Great Powers behind closed doors and then presented to the relevant committee the next day for a vote. These included increasing the Council’s role in issuing recommendations of peaceful settlement, including regional groupings as having rights with respect to self-defense, peaceful settlements, and local disputes and adding “equitable geographic representation” to the criteria for non-permanent Council membership. A handful of textual changes did result from pressure by the small states but these were very minor. For instance, the General Assembly was given slightly greater freedom of operation in Article 10. On

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12 See Russell (1958) and Simma (1994) for discussions of the controversies.
13 Where the Dumbarton Oaks draft gave the Assembly the right to “make recommendations for the purpose of promoting international cooperation” and to “consider the general principles of cooperation in the maintenance of peace and security” (V-B 6 and V-B 1), the small states managed to change this to “the right to discuss any questions or matters within the scope of the Charter…” except where already being treated by the Council (Art. 10).
the role of ECOSOC, the small states won some minor increases in its authority, including in Article 56 (that the members should undertake “joint and separate action” to achieve the economic and social goals of the organization rather than just “action”), Article 64 (on how ECOSOC can consult with other international organizations), and Articles 71 and 72 (on the right to consult with NGOs in the operation of ECOSOC). These were all formally proposed in sponsors’ amendments but were motivated by continual pressure from one or more small states. The single instance in which a small-state amendment officially made it into the final Charter appears to be a Peruvian amendment regarding the Military Staff Committee in Article 47.14

In short, the conference ended with the unanimous support for the draft Charter, including the Sponsors’ veto, among the small states. They all voted for it, carried it back to their domestic legislatures, and won ratification of it at home. As Grewe says, the result of the conference was “the adoption and enactment of the draft negotiated [at Dumbarton Oaks] by the Great Powers without significant amendments or firm opposition” (Grewe 1994, 11).

The significance of the negotiating history at San Francisco is that it makes clear that the Great Powers saw the veto as the sine qua non of the entire UN security system, and were willing to scuttle the new organization if any reduction in the veto was voted by the rest of the membership. Maintaining the individual opt-out for the Great Powers over any collective security obligation in the UN was essential for their participation; proposals that moved toward enacting the collective security principle were treated by the Sponsors as mortal threats to the entire enterprise. The process of negotiation helped

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14 The change was very slight and involved adding the right of the MSC to “consult with appropriate regional agencies” ahead of establishing regional sub-committees. Russell (1958, 678). Given the stillbirth of the MSC, the practical import of this change went from negligible to nil.
reveal how important the veto was to the Great Powers, and therefore contributes to our understanding of the UN’s security system as fundamentally hierarchical: the Great Powers were vested with the power to decide when the collective provisions of the Charter would be enacted and were insulated from any collective obligation except when they explicitly consented.

**IF NOT COLLECTIVE SECURITY, THEN WHAT?**

The permanent-member veto in the Council is the most important institutional device in the entire UN security system. With the veto in place, we know that the Council cannot function as a collective security system and further we know that it was never meant to. This remains the case today. Nothing has changed in the intervening years to modify the Great Powers’ obligations toward the Security Council. The absence of change means we are justified in taking a literal and ahistorical reading of the Charter in this case: the text that was negotiated in 1945 remains the relevant international law on collective security obligations in the United Nations.¹⁵ What we have instead of a collective security institution is a forum for navigating around the fundamental interests of the strong states – in other words, a Great Power concert.¹⁶

A Great Power concert exists when the main players in the international system institutionalize a mechanism for consulting with each other over the management of the system. The objective is to minimize the potential conflicts among the Great Powers in the course of contributing to the stability of the system as a whole (Glaser 1994, 218,

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¹⁵ The three amendments to the Charter that have been made do not affect the security provisions in question here. Two were on the size of ECOSOC and one on the non-permanent membership of the Council. Karl and Mützelburg (1994).
¹⁶ I equate being a permanent member with being a Great Power. This covers up a great deal of interesting controversy, both in 1945 (for instance, France clearly didn’t qualify) and now (the permanent membership does not reflect current geopolitical realities). However, it makes sense within the institutional structure of because of the overwhelming power of veto holders relative to the rest.
Cronin 1999). Such a system exists to serve the interests of the strong states; smaller states are treated as “the objects of international politics, not the subjects” (Lipson 1994, 121). The design, strength, and efficacy of these mechanisms vary greatly from one case to another, and range from mere consultation to full-blown consensus decision-making, but all reflect a realization by the great powers that each stands to gain by diplomatic collaboration among themselves.\(^{17}\) It is not the case, as Dueck claims, that “concerts require moral consensus” among the Great Powers (Dueck 2004, 205). The desire for consultation by the Great Powers is generally not motivated by the shared sense of identity that constructivists associate with strong forms of international community,\(^{18}\) but rather by the recognition among the strong that some kinds of conflicts among themselves can be mitigated by dialog among them. This may then create a sense of community, with important effects on state behavior, but that is a subsequent step in the process independent of and perhaps even counter to the original interests of the participants.\(^{19}\)

The veto reflects the UN founders’ interest in creating a compact rather than a collective security system. It is a negative power in that it allows permanent members to stop the process of creating collective security obligations at any moment. The permanent members thus have absolute control over the shape of their responsibilities toward the Council. The result is a strong bias in the direction of inaction by the Council. But this is not an oversight or an unintended consequence—quite the opposite. Inaction

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\(^{17}\) Cronin goes too far in requiring that in a concert “any action [by a Great Power] must either be approved or initiated by the group.” Cronin (1999, 10). This would give each a veto over the independent actions of all the others, which is inimical to the autonomy-preserving nature of a concert.

\(^{18}\) Thus, ‘security communities’ are beside the point here since our concern is with situations where common identity doesn’t exist.

\(^{19}\) For examples of this effect, see Schimmelfennig (2003), Risse (2000), and in general the literature inspired by Habermas’ ‘communicative action’ thesis.
is strategically important at those moments where the Great Powers cannot agree with each other. The drafters of the Charter believed that in such cases the Council *should not* act, since to act would necessarily alienate a strong state and thus invite disaster for the whole organization. This is not a ‘flaw’ in the design of the Council, nor evidence that the Council is based on “imaginary truths that transcend politics” as some critics would have it (Glennon 2003, 32). It is the *raison d’être* of the Council. It reflects the sensitive political balance that was struck between the small states and the Great Powers at San Francisco to allow the possibility of *some* collective action within the broader context of a Great Power concert. The Council has a legal position that can influence how the strong states collectively manage the rest of the system, but it has no power to regulate how the strong behave individually.

Kupchan and Kupchan confuse collective security systems with Great Power concerts and so overstate the authority of the Council (Kupchan and Kupchan 1991). They identify the latter as that subset of the former that have i) membership limited to the Great Powers, and ii) no binding commitment to collective action. “Because a concert operates on the notion of all against one and relies on collective action to resist aggression, it falls into the collective security family” (119, fn.12). They are thus able to conclude that the Security Council is a collective security institution, albeit one that has not worked as intended, for the reasons identified above. They cite Articles 42 and 43 of the Charter as “establishing a mechanism through which collective military action would take place,” although the veto “ensured that the UN’s provisions for collective action could not be directed against any of the major power, and prevented the UN from being

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20 For more on this point, see Hurd 2004.
able to address the most serious threats to the peace, disputes between the great powers” (122).

The limited scope of the obligations this places on the Great Powers does not qualify as ‘all-against-one.’ With the veto as the key to all collective action by the UN, we see that the Council was designed to regulate the behavior of the small states but not that of the Great Powers. Kupchan and Kupchan recognize that a collective security mechanism needs to be egalitarian, creating obligations on all members equally and automatically. Thus, the two security arrangements are mutually exclusive, and the Council does not meet the minimum requirements for a collective security. What the veto creates in the Council is a committee of states, dominated by the Great Powers, where discussions are held on issues of potential mutual interest and decisions are taken on whether or not to create collective obligations. Collective obligations for the permanent members follow from decisions in the Council; they are not prior to decisions.

The mixed history of UN adventures in peacekeeping and peacebuilding supports the view that the Council operates still as a Great Power compact: When the Great Powers agreed on interventions in the 1990s, the Council was empowered to intervene dramatically in places like Cambodia, East Timor, and Latin America – but these same conflicts were allowed for years to fester while the Great Powers vetoed their way through the Cold War. As Russett and Oneal say, “The founders of the United Nations were realistic enough to recognize the difficulties the institution would face if the great powers, which constitute the core of the Security Council, were in serious conflict…. Nonetheless, those who wrote the UN Charter gave the organization the power to act forcefully when circumstances were right” (2001, 163). Inis Claude made a similar point
in 1971 summarizing the relationship between collective security and the concert system in the Charter: “The founding fathers of the United Nations were realistic enough to accept the necessity of operating within the confines of the existing power structure and to recognize the grave dangers of future conflict among the superpowers; they were idealistic enough to make a supreme effort to promote great power unity and to capitalize upon the chance that the wartime alliance might prove cohesive enough to uphold world peace.”

Claude is careful to limit the idealism of the founders to promoting great power unity, not to regulating great power behavior. Claude recognized that the Council’s opportunity to ‘uphold world peace’ depended on the prior existence of great power unity. The capacity to take collective action is surely there, but enacting it into a legal obligation on states is dependent on the consent of each veto holder.

**THREE IMPLICATIONS OF THE CONCERT**

Recognizing that the Council is a concert rather than a collective security body changes how one interprets a number of features of international politics around the United Nations. The Council’s three sets of critics generate misleading conclusions regarding these features because of their faulty paradigm.

First, if we take the collective-security view, then we are led to conclude that the existence of disagreement among the Great Powers is a problem for the Council. The various critics are united that the crucial disagreement between the pro-war and anti-war factions in the P-5 was an obstacle to the Council operating as it should on international security. They see dissensus as the origin of a failure. By contrast, the concert view highlights the important role that Great-Power disagreement played in the planners

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design of the Council in 1945. The Sponsors fully expected the Great Powers to disagree with each other, and to disagree on matters of fundamental importance to their national interests. It was the very high likelihood of this kind of disagreement that motivated them to design the veto in the first place and defend it from every amendment. The veto was the ultimate protection for Great Powers against collective action that they opposed.

Second, we must reassess the standard by which we measure the success and failure of the Council. Neither disagreement among the Great Powers, nor inaction by the Council, can be taken as evidence that the Council has failed since the Council was designed to incorporate both. The use or threat of the veto may indeed lead to the failure of an individual case of collective action, but this is not in itself a failure of the Council. What *would* count as a failure for the Council are instances where a veto was essentially ignored by the other Great Powers and collective action was taken against the express wishes of one of their number. The Kosovo campaign by NATO may be one such case: the Western states used NATO to legitimize its collective action against Yugoslavia when Russian opposition made action in the Council impossible. Using force in Kosovo did not itself violate the terms of the Great Power compact inherent in the Council (since the right to individual action by Great Powers is preserved by San Francisco) but finding a secondary collective international body to legitimize it against the interests of a permanent member did.

Finally, we must reconfigure our expectations about the Council. Because it creates no legal obligations on them, we should not expect it to directly regulate the behavior of the Great Powers. We also cannot expect it to endorse a collective solution just because one permanent member strongly desires it; the veto can’t *cause* collective
action, it can only prevent it. Getting our expectations right is important for thinking about Council reform. The recent report of the High-Level Panel on UN reform, for instance, seeks to encourage the higher expectations of those who want the Council to act as a collective security body but without suggesting the institutional reforms that would make this possible (United Nations 2004). The Panel proposes that the Council adopt the view that it has a ‘responsibility to protect’ civilian populations whose security has been abandoned by their national government, and intends this principle to provide a conceptual foundation for Council activism.22 At the same time, it proposes no change to the voting structure of the Council; the veto remains primary. Thus, while promoting the higher expectations shared by the critics of the Council described above, it recognizes that there will be no change to the legal structure established in 1945, and whatever responsibility to protect it might engender therefore can exist only when the Great Powers collectively want it to.

This should not mean that we conclude that the Council is irrelevant to power politics. To come to this result, as Glennon does requires that we assume that the Council’s legal powers fully describe its political powers. This is as unrealistic as is expecting the Council to embody collective security, and it well illustrated by the Iraq case.

In the Iraq episode, many states behaved as if they believed the Great Powers should be regulated by the Council. To this end, many said publicly that they would only support the war against Iraq if the Council approved it. The American strategy toward the Council, and more generally toward rationalizing the war according to accepted

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22 The phrase ‘responsibility to protect’ was popularized by the International Commission on Intervention and State Sovereignty (2001).
international law (Kaufmann 2004), was arranged around trying to accommodate those states. There may be no legal foundation in the Charter to support this view of the Council’s power, but to the extent that it is widely shared among states it must be taken into account. The belief that such a norm or law exists is a separate social object from the actual existence of such a law. Widespread belief in the legitimacy of the Council can entrap the Great Powers and lead them to accord greater weight to the Council than its legal powers would suggest. It is in fact this expectation that the critics are reacting to, more so than to the law of the Charter itself.

How this ‘unrealistic’ expectation came to be so prevalent is worth more research. The process seems to involve a combination of three forces important in normative evolution: available rhetorical resources (such as the references in the Charter to an aspiration to collective security), development in thinking about humanitarian obligations (such as in reaction to the Rwandan genocide in 1994), and the practice of some states in some cases (such as of the US to use collective measures in 1990 against Iraq). These changes embody no legally binding precedent, but taken together may change the normative environment in which the Council exists.

To the extent that some states believe that a norm exists that war is illegal unless authorized by the Council, and act in accordance with that belief, then all countries need to anticipate that response as they plan their policies. Norms can increase the reputational costs of pursuing individual action and so the prudent Great Power could be faced with a choice between two unwelcome options: unilateral action that damages its reputation as a rule-follower, and (legally unnecessary) deference to the Council. The possibility of this kind of ‘entrapment’ of strong states by norms they did not consent to
motivates a number of recent works that combine constructivist and rational-choice variables to explore strategic behavior in socially constructed environments.\textsuperscript{23}

\section*{CONCLUSIONS}

The Iraq episode should serve to remind us that the Charter did not create a collective security institution. Rather, it created a forum where collective measures could be discussed and, \textit{when the Great Powers give their consent}, collective obligations may be brought into being. The individual veto power of the Council’s permanent members allows them to defeat any collective action they disagree with, and so leaves them with no legal obligations. This point of law is overlooked by the Council’s three sets of critics over Iraq because they miss the basic premise of the Council: it was carefully constructed to avoid legal obligations that applied automatically to the Great Powers. This is not a failure but rather a key piece of institutional design.

The critics of the Council agree on the basic claim that since the Council failed to act decisively to (either) prevent the Iraq war or endorse it, it violated the fundamental Charter obligation that the Council “maintain and restore international peace and security.” This demonstrated its weakness at a crucial point of crisis and so, for the critics, signals a broader problem for the Council as currently constituted. This interpretation begins with a flawed understanding of the power of the Council and leads to flawed conclusions about its performance. In putting collective security ahead of the Great Power compact in their interpretation of the Iraq episode, the Council’s critics take too seriously the aspirational phrases of the Charter’s preamble at the expense of a careful reading of the legal articles that set out its real powers. In aspiration, it may point toward

\textsuperscript{23} Schimmelfennig (2003), Johnstone (2003), Hurd (2005a).
an automatic collective security system; in law, it has always been precisely what Downs describes in defining a classic concert: “a mechanism for encouraging and enabling states to cooperate if they desired” (Downs 1994, 4). The critics expect too much. However, in ignoring the real, though modest, constraints on American unilateralism that exist due to the Council even when it does not invoke collective action, the critics simultaneously recognize too little.

Rather than demonstrating failure, on Iraq the veto and the Council worked as we would expect it to given the legal structures created by the Charter. The episode reflects the normal progress of power-politics in the UN: the Council provided a forum and a procedure for the Great Powers to discuss system-management issues, and when it became clear that they could not agree amongst themselves about the best course of action the veto ensured that no collective action would be taken. Disagreement among the permanent members is not a crisis for the Council; the veto was designed in anticipation of such moments. Thus, collective action either against Iraq (for its violations of the resolutions) or against the US (for its alleged violations of the laws of war) was made impossible by disagreement among the Great Powers. The possibility of individual action was not affected. Krauthammer was right when he said “The Security Council is, on the very rare occasions when it actually works, realpolitik by committee” (2002/03, 12). He presumably meant this as a criticism, but a realistic understanding of why being part of a committee is different than working alone reveals it to be a creditable account of the useful function of the Council.

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24 Other international commitments may exist that regulate individual action, such as treaties and custom on the laws of war. These are distinct from UN members’ obligations with respect to the Council.
It cannot be seriously claimed that the UN Security Council is a failure as an institution unless it effectively restrains the Great Powers from their military adventures, nor that Great Power disagreement over collective action by the Council signals its irrelevance. The founders of the UN intentionally made collective action subordinate to consensus among the Great Powers; had it been otherwise, the organization would not have been acceptable to them. At the heart of the Council is a utilitarian political compromise between the Great Powers that reinforces a strict hierarchy between them and the small states. The Council’s capacity to act collectively ends when the Great Powers disagree with each other. Nevertheless, even in such situations, the Council still has some effect on the behavior of states, both large and small, by virtue of normative expectations that have developed around the Council but independent of its legal authority. Appreciating these changes is the key to a more realistic understanding of the Council’s influence on power politics.


