Crafting Security Council Mandates

“By entrusting a collective institution with safeguarding peace among nations, the States Members of the United Nations have indeed taken a decisive step towards the establishment of a true constitution of the international community. Chapter VII of the Charter is the key element of that constitution.”

Article 39 of the Charter of the United Nations, the first Article in Chapter VII, states that “the Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken … to maintain or restore international peace and security.” In discharging this responsibility, the Security Council has vast powers. Its ability to employ those powers turns on the political will of the international community as represented by the membership of the Council. In half a century of practice the Council has been through periods when it was unable to form the necessary will to take action and other periods when the options open to the Council appeared limitless. In the Cold War years, the common denominator for action was a very narrow field hardly extending beyond the fight against apartheid. In the immediate post-Cold War years the Council took it upon itself to tackle problems as varied as humanitarian disasters in the horn of Africa, state-sponsored attacks on civil aviation, the establishment of international criminal courts, imposing peace conditions, organising national elections, reinstating elected national leaders and undertaking humanitarian interventions.

In adopting resolutions mandating action, the Security Council is acting at times as both an executive and a legislature. It is a decision making body deciding on enforcement actions, peacekeeping missions, the imposition of sanctions or steps towards state building. The decisions are couched in terminology that has a critical bearing on the particular action. The terminology to devise limits on actions, assign roles to various international actors, and furnish the UN secretariat with its mandate is contained in the resolutions adopted by the Council and their accompanying documents. Just as the Council combines both executive and legislative decision making elements, so does the terminology in its resolution flow from both political and quasi-legal considerations.

The purpose of this chapter is to examine the way Security Council resolutions are crafted, in particular in relation to the democratization mandates laid down by the Council. This will require an examination of the body of work accomplished by the Council in this field as well as an examination of the development of the terminology employed and the process of arriving at that terminology.

THE BREADTH OF ACTION

The volume of work of the Council in recent years suggests that the key developments in this regard have taken place since the end of the Cold War. In the 43 years between 1946 and 1989, 646 resolutions were passed by the Council at the rate of about 15 a year. In
the following 13 years to 2002, the Council passed a further 808 resolutions at the rate of about 62 a year or four times the annual volume of work.

In the past decade the complexity of the Council’s work has also increased. Sanctions regimes have become more sophisticated, at times targeting non-state actors and occasionally dealing with individuals’ criminal responsibility. The interdiction regimes have also become ‘smarter’, often focusing on arms embargoes but also incorporating difficult features such as the oil-for-food rules in the Iraqi sanctions regimevi or freezing of government funds in the Libya sanctions regimevii. The most difficult and ambitious development in the Council’s work has been its attempts at state building. Since the first attempt outside the Trusteeship system at taking responsibility for a territory and its people in the case of Namibia in the late 70s, which itself only entered the implementation stage at the end of the Cold War, the Council has spent the last decade grappling with a score of situations on four continents while attempting to build or rebuild states traumatized by war, genocide or foreign occupation.

While each of the situations is clearly sui generis flowing from their unique combinations of history and geography, the common aspect of the UN’s work in these situations is the multiplicity of objectives to be achieved. Whereas the few arms embargoes of the Cold War years basically required member states of the UN to undertake not to trade arms with the country or entity the subject of the embargo, the recent interventions require the UN itself to take the front line role. That role may incorporate an interdiction regime but is likely to include many other aspects. There is often a requirement for monitoring the implementation of a peace agreement including separation of forces agreements, cantonment and storage of weapons. There may also be a complicated logistical process of food delivery in a humanitarian emergency. The security situation may not be fully resolved at the time of the UN intervention thus requiring a strong military component. To add to these complicated logistical exercises one must also often add a difficult sociological exercise of capacity building for institutions to take over key governance activities. And one of the most common and visible of these governance activities is the holding of elections, at times in the form of an act of self-determination and at times as a means of determining the political choice to govern the country as a critical initial step in the state building process. The multiple objectives are expressed in a mandate and the mandate is part of or authorised by the key Security Council resolution triggering an intervention.

The table below lists the ‘state building’ situations the Council has faced. The single resolution listed for each situation is perhaps open to misinterpretation. The Council often returned repeatedly to the various situations to consider developments and debate options. The resolutions listed are the first or key mandates for state building in each case. Where two resolutions are listed, the Council significantly altered or extended the mandate. The Secretary-General’s reports listed in the table are the documents before the Council when considering the intervention. This chapter will draw mainly on these examples to examine the democratization element in those mandates.

2
Mandates containing democratisation
or state building aspects

<table>
<thead>
<tr>
<th>Situation</th>
<th>Mandate</th>
<th>Year</th>
<th>S-G’s Report</th>
</tr>
</thead>
<tbody>
<tr>
<td>Namibia</td>
<td>SCRs 431 &amp; 435</td>
<td>1978</td>
<td>S/12636</td>
</tr>
<tr>
<td>Namibia - implementation</td>
<td>SCR632</td>
<td>1989</td>
<td>S/20412</td>
</tr>
<tr>
<td>Western Sahara</td>
<td>SCR690</td>
<td>1991</td>
<td>S/22464</td>
</tr>
<tr>
<td>El Salvador</td>
<td>SCRs 693 &amp; 832</td>
<td>1991/93</td>
<td>S/22494</td>
</tr>
<tr>
<td>Croatia</td>
<td>SCR743</td>
<td>1992</td>
<td>S/23592</td>
</tr>
<tr>
<td>Cambodia</td>
<td>SCR745</td>
<td>1992</td>
<td>S/23613</td>
</tr>
<tr>
<td>Angola</td>
<td>SCR747</td>
<td>1992</td>
<td>S/23671</td>
</tr>
<tr>
<td>Mozambique</td>
<td>SCR797</td>
<td>1992</td>
<td>S/24982</td>
</tr>
<tr>
<td>Somalia</td>
<td>SCR814</td>
<td>1993</td>
<td>S/25354</td>
</tr>
<tr>
<td>Liberia</td>
<td>SCR 866</td>
<td>1993</td>
<td>S/26422</td>
</tr>
<tr>
<td>Haiti</td>
<td>SCR867</td>
<td>1993</td>
<td>S/26480, S/26352</td>
</tr>
<tr>
<td>Angola - consolidation</td>
<td>SCR1118</td>
<td>1997</td>
<td>S/1997/438</td>
</tr>
<tr>
<td></td>
<td>SCR1230</td>
<td>1999</td>
<td>S/1999/98</td>
</tr>
<tr>
<td>Kosovo</td>
<td>SCR1244</td>
<td>1999</td>
<td></td>
</tr>
<tr>
<td>East Timor</td>
<td>SCR1272</td>
<td>1999</td>
<td>S/1999/1024</td>
</tr>
<tr>
<td></td>
<td>SCR1410</td>
<td>2002</td>
<td>S/2002/432</td>
</tr>
<tr>
<td>Congo (DRC)</td>
<td>SCR1291</td>
<td>2000</td>
<td>S/2000/30</td>
</tr>
<tr>
<td>Afghanistan</td>
<td>SCR1378</td>
<td>2001</td>
<td></td>
</tr>
</tbody>
</table>

Law or politics?

Straddling the executive and legislative divide, the resolutions of the Security Council tend to be the product of both law and politics. The Council is the ultimate political organ of the UN. Its very composition and voting method are designed to reflect a certain world order and to accommodate a certain global balance of power. One of the great challenges facing the Council is that the changing nature of the world order in the post-Cold War era is raising fundamental political questions about the composition and voting methods of the Council. It comes as little surprise that the Council would employ political solutions in its decision-making.

At the same time, the Council is aware that there is a need for a certain level of consistency in its work. While not bound by any concept of legal precedent, the Council’s will nevertheless needs to be conveyed by recourse to terminology that should have clear meaning to both the parties involved in the situation and the implementers of
the decision. This calls for great care in the terminology employed and for use of processes analogous to those used by law-making bodies.

The result is a hybrid system of law and politics. At times the identical formulation is used to convey the identical decision, but at other times fine distinctions are employed in terminology either to distinguish the resulting decision from previous ones or simply to hint at a certain result where the necessary political will may not be present.

Some formulations are necessary to trigger certain effects. The Council will invariably utilise the term “acting under Chapter VII of the Charter” or refer to certain Articles of Chapter VII where it wishes its decision to have mandatory effect.⁵ Because the Charter arms the Council with this power only in certain circumstances, the resolution has a recitation of one of the three broad triggering circumstances: a threat to the peace, a breach of the peace, and an act of aggression.⁶ The formulation most commonly used is a determination that certain developments constitute “a threat to international peace and security.” This formulation covers the broadest fact situations and requires less by way of supporting argumentation than does a determination that there has been a breach of the peace. However, where the breach of the peace is glaring, as in Iraq’s invasion of Kuwait, the Council did employ the language of “breach of the peace.”⁷ The Council has never determined in its resolutions that there has been an “act of aggression.” This is probably because the concept of “breach of the peace” is sufficiently broad to cover an “act of aggression” and also because the exact definition of an act of aggression is not fully clear even though a 1974 General Assembly resolution attempted to settle a definition of aggression.⁸

The legal power of a phrase in a Council resolution and the politics behind that phrase was never better demonstrated than in the crafting of Resolution 678 of 29 November 1990, which authorised the use of force against Iraq. Yet the resolution did not actually use the term ‘use of force’, instead it employed the phrase ‘all means necessary’. Noted journalist Bob Woodward has described the process of arriving at this phrase in detail.⁹ The terminology of the draft resolution was the subject of over 200 meetings held by Secretary of State James Baker with foreign ministers and heads of state but the key phrase was finally agreed upon in a meeting with Soviet Foreign Minister Eduard Shevardnadze who initially rejected recourse to the term ‘use of force.’ While the Soviet leadership accepted the concept of using force to evict Saddam Hussein from Kuwait, they preferred to employ a euphemism to authorise it. Five different formulations were tried before the ‘all necessary means’ language was finalised. To cement the meaning of the phrase, it was agreed that Baker, in his coincidental role as rotating Chair of the Council in November 1990, would describe the intent of the phrase to include the use of force. If there were no disagreement, this would make the meaning of the phrase open to no other interpretation. Once the meaning of the phrase was accepted by the Council to authorise the use of force, it was used again on several subsequent occasions where this meaning was required.

The use of this language brings into stark relief the more equivocal language used in Resolution 1441 of 2003 where the threat against Iraq is contained in the phrase ‘it will
face serious consequences.’ Whereas some leaders have argued that this is equivalent to an authorisation of use of force, it is noteworthy that the same process of examining the accompanying statements made by the United States representative does not necessarily lead to this conclusion. In the United States statement after the vote on UNSCR 1441, Ambassador Negroponte specifically accepted that the resolution contained “no ‘hidden triggers’ and no ‘automaticity’ with the use of force.”

This raises the question of the consistence of usage of language by the Council and what can be drawn from that usage. The evolution of language authorising action is shown in the following table, which tends to reinforce the consistency of employment of the ‘all necessary means’ language when the Council is authorising use of force as compared to the situations when it is employing the ‘serious consequences’ language. A possible distinction could be made whereby the ‘serious consequences’ language is seen as threatening the use of force as opposed to authorising it.

<table>
<thead>
<tr>
<th>Situation</th>
<th>Resolution</th>
<th>Year</th>
<th>Authorising Terminology</th>
</tr>
</thead>
<tbody>
<tr>
<td>Korea</td>
<td>83</td>
<td>1950</td>
<td>“assistance as may be necessary to repel the armed attack”</td>
</tr>
<tr>
<td>Rhodesia (sanctions)</td>
<td>221</td>
<td>1966</td>
<td>“the use of force if necessary”</td>
</tr>
<tr>
<td>Iraq</td>
<td>678</td>
<td>1990</td>
<td>“all necessary means”</td>
</tr>
<tr>
<td>Somalia</td>
<td>794</td>
<td>1992</td>
<td>“all necessary means”</td>
</tr>
<tr>
<td>Bosnia Herzegovina</td>
<td>781 - no fly zone</td>
<td>1992</td>
<td>“all measures necessary”</td>
</tr>
<tr>
<td></td>
<td>836 - safe zones</td>
<td>1993</td>
<td>“necessary measures, including use of force”</td>
</tr>
<tr>
<td></td>
<td>1031 - peace agr.</td>
<td>1995</td>
<td>“all necessary means”</td>
</tr>
<tr>
<td>Haiti</td>
<td>940</td>
<td>1994</td>
<td>“all necessary means”</td>
</tr>
<tr>
<td>Albania</td>
<td>1101</td>
<td>1997</td>
<td>“ensure the security and freedom of movement of the personnel of the force”</td>
</tr>
<tr>
<td>Central African Republic</td>
<td>1125</td>
<td>1997</td>
<td>“ensure the security and freedom of movement of their personnel”</td>
</tr>
<tr>
<td></td>
<td>1136</td>
<td>1997</td>
<td></td>
</tr>
<tr>
<td>Iraq</td>
<td>1154</td>
<td>1998</td>
<td>“any violation would have severest consequences”</td>
</tr>
<tr>
<td>East Timor</td>
<td>1272</td>
<td>1999</td>
<td>“all necessary measures to fulfil its mandate”</td>
</tr>
<tr>
<td>Iraq</td>
<td>1441</td>
<td>2003</td>
<td>“Iraq will face serious consequences”</td>
</tr>
</tbody>
</table>

The political nature of the Council’s decisions is quite clear. The use of accompanying statements to elaborate on the meaning of the resolution resembles the method of treaty interpretation whereby if the meaning of certain words cannot be understood through their ordinary and natural meaning, the records of the negotiating conference may be referred to as a guide to the meaning of the words under review.

Another example of the hybrid political and legal effect of Council resolutions can be found in the use of legal sounding terms that have weighty political impact. Resolution 731 (1992) took measures to bring to justice the terrorists who destroyed a civilian
aircraft over Lockerbie. The resolution directed its actions against Libya. A Libyan agent has subsequently been convicted for his involvement in the attack on the aircraft. But the original resolution linked the action to Libya by noting that investigations “implicate officials of the Libyan Government.” The resolution used this quasi-legal term to put political pressure on Libya to accept the eventual court proceedings that proved guilt beyond reasonable doubt.

WHO HOLDS THE PEN?

Mandates are normally written into Security Council resolutions. Upon adoption by the Council, the mandate provides the direction, guidelines and limits of the mission the UN is undertaking. If adopted under Chapter VII of the Charter, as are most mandates having democratisation as one of the key objectives, the terms of the mandate become the critical words establishing the legality of the UN’s subsequent actions. The question of who drafts the resolutions thus becomes an important element in determining objectives and intentions.

As with so many issues concerning the Security Council, it is necessary to draw a line between the Cold War and the post-Cold War work of the Council. It is only in the latter period that the Council could be said in any sense to be acting in a collegial fashion and thus using methodology appropriate to that method. Remnants of the Cold War methodology may remain insofar as China is concerned because while insisting on being consulted closely, China does not engage as actively in the drafting process as the other permanent members. Leaving aside therefore the dominant fissure of the Cold War era, the drafting process can be viewed in terms of a number of tensions within the Council’s work methods.

National or collective responsibility for drafting resolutions?

While the Council ultimately takes collective responsibility for its resolutions, the almost invariable practice is that responsibility for the first draft of that resolution falls to one country. This is for reasons both of politics and practicalities. Clearly drafting in committee is not an efficient method of work unless that committee has a coherent first draft before it. Politically, it is usually a delegation closely involved in the issues before the Council that will undertake the drafting process.

Political proximity to an issue might emerge through one or more of several factors. Proximity and membership of the same geographic group as the subject country or countries may often be the determining factor. Past or present alliance or other close relationship may be another factor determining which delegation will take responsibility for producing the first draft.

Given the continuing nature of many of the troubled situations before the Council, there has been an increasing tendency informally to designate a particular group of countries to
oversee certain situations. These ‘contact groups’ or ‘core groups’ or simply ‘friends’ maintain a close watch on the situation and when drafting work is required, designate one of their number to undertake it. The following comments draw on Teixeira, who lists seventeen such contact groups currently operating in the Security Council. Where the matter is of the highest political importance such as was the case with Iraq before the 2003 war, the five permanent members consult among themselves. In certain regional situations the core group is constituted by a small group of most interested countries whether or not they happen to be currently members of the Security Council. Accordingly, the East Timor ‘core group’ comprises the United States, the United Kingdom, Portugal, Japan, Australia and New Zealand, and the responsibility for preparing the first draft of Council resolutions and decisions falls on one or other of the two permanent members. Where one of the permanent members has a particular interest in a situation, such as Russia’s interest in Abkhazia (Georgia) it plays the main role but four other countries, the United States, France, the United Kingdom and Germany have constituted themselves as ‘friends of the Secretary-General’ and attempt to have a moderating influence on Moscow and Tbilisi.

The pragmatic nature of these arrangements can be seen in the fact that in relation to the long standing issue of Western Sahara, although there is a ‘group of friends’ comprising the United States, France, the United Kingdom and Russia, the main influence including over the drafting process is exercised by the Secretary-General’s Special Representative, Mr James Baker, former United States Secretary of State.

The result of these arrangements is to combine the necessity for collective engagement and responsibility with the efficiency of individual drafting of the base document.

**P5 dominance or E10 influence?**

An examination of the contact group process quickly demonstrates the dominant role of the permanent members (P5). One of the permanent members tends to take the lead role in virtually all the groups. The United States, for example, participates in 14 of the 17 groups. The dominance of the P5 is largely a function of the veto power they wield. Having a far more valuable vote than the elected members (E10) of the Council translates into far broader influence over decision-making.

But there are reasons beyond the veto. Security Council processes and politics are not easy to master. The issues are such that they involve not only diplomats but also ministers and heads of government or state. The E10 are placed in the role of enthusiastic amateurs when compared with the P5 hard-bitten professionals. The P5 have seen the elected members come and go and there is a natural tendency to concert more closely with fellow permanent members. The P5 therefore have the advantage of continuity, mastery over process, broad diplomatic networks on which to draw and the capacity to exert political, economic and military influence.
There is often resentment among the E10 with what certain members may see as the high-handedness of the P5. The criticism usually is a variation on the problem of lack of consultation with the E10. The tendency to seek consensus decision within the Council tends to put a premium on the P5 reaching agreement first with the E10 then falling into line. This tends to establish as the key decision-making issue whether any of the P5 is prepared to veto a resolution. Rarely is decision-making on resolutions dependent on the availability of the 9 votes in favour required under Article 27 of the Charter. Yet the bitter debates concerning a second resolution on Iraq in 2003 turned at times on whether the United States and the United Kingdom could attract the nine votes necessary to necessitate a veto from one or more of the other P5. In this tricky situation the E10 were far less comfortable, with Chile pleading to the P5 in effect to return to their normal hegemony over Security Council affairs.

This episode demonstrates the essentiality of P5 involvement and concertation in the Security Council’s affairs for the Security Council to be effective under current conditions. P5 dominance is a reflection of global politics, though it may not be a perfect reflection. It therefore stands to reason that the P5 will have the most decisive influence on the shape and text of the Council’s resolutions and decisions, including their state-building and democratization mandates.

**Is the UN Secretary-General an equal actor in the process?**

Any discussion with senior figures in the UN secretariat will elicit self-deprecating comments that the Secretary-General and his staff are the mere servants of the organisation and that on matters of peace and security the secretariat simply follows the instructions of the Security Council. This deference is politically understandable but does not reflect accurately on the relationship between the secretariat and the Council.

It goes without saying that the Council and in particular its permanent members wield a level of political and military might which the Secretary-General and his handful of staff cannot in any way match. After all, while the General Assembly formally appoints the Secretary-General, it is the Council that nominates and has the decisive say in the appointment. This is true of the original appointment and perhaps the permanent members have an even greater weight in the reappointment of the Secretary-General for a possible second and final term after which they lose their influence through that power of reappointment. It is also true that the Secretary-General has no vote or veto in the Council and has no option but to accept the mandates handed down by the Council. The Charter nevertheless envisages that the Secretary-General is more than a mere servant of the members because he has been given the power independently to draw matters to the Security Council’s attention. Yet even in this case, the Charter suggests that the formal role is more that of a messenger than that of an actor in the political process.

But on this issue, reality belies formality. The table above of the twenty key democratization mandates contains a column on the relationship of the resolution to a report by the Secretary-General. In these 20 situations, 18 refer to such a report or
reports. The reports do not normally flow from the Secretary-General’s personal initiative. The Security Council usually requests them but the baton is then clearly passed to the secretariat to fashion recommendations to resolve the situation under review. The secretariat’s involvement may not always be as the principal external mediating force. But the presence of the Secretary-General or his representative either as principal mediator or as providing legitimacy to a regional or other mediating process is nevertheless critical to the eventual shape of the international response to the situation. The reports tend therefore to be a key means of shaping the Council’s decision-making. In recent years the reports have become more detailed and constructive to the point that in several resolutions the Security Council has considered it sufficient to approve the report and adopt its recommendations as the mandate for the intervention.\textsuperscript{xviii}

The table also notes two situations in which the mandate setting resolution does not refer to a report by the Secretary-General – Resolutions 1244 and 1378 on Kosovo and Afghanistan respectively. In both cases the mandate is drawn from annexes to the resolution that are not UN reports. In the Kosovo case, the intervention was by NATO with the UN scrambling to keep up. The intervention was authorised by the Security Council retrospectively and the mandate flowed from previous political negotiations, in particular the Rambouillet Agreement. The UN played a legitimising role rather than a leadership role and the involvement of the Secretary-General in shaping events was less pronounced than in other cases under study. The Afghanistan case, however, while flowing from the UN authorised use of force under the inherent right of self-defence in Article 51 of the Charter, also appears at first blush to be a case of minimal secretariat involvement. The resolution, however, adopts a subtle means of allowing the situation in Afghanistan to progress through a transitional administration to a democratic form of governance. While this situation does not have a mandate-shaping report, it has a most influential special representative of the Secretary-General in the form of Lakhdar Brahimi playing a key role.

The Secretary-General is clearly a highly influential figure in the setting of mandates. He, his staff and his special representatives can often play a critical role in conceptualising the shape of the UN intervention, articulating it in reports and quietly negotiating it through the Security Council. It would, however, be wrong to think of this process as separate from the deliberations of the Council. The Secretary-General does not work in a vacuum. Delegations keep in close touch with progress and offer their assessments and concerns as the process develops. While the Secretary-General’s reports are his own for which he must take responsibility, their substantive provisions have often already obtained the tacit approval of the key members of the Council.

\textbf{Does the action take place in New York or in capitals?}

It follows that much of the negotiation and drafting of mandates takes place in New York. This allows for a certain body of expertise to develop that can build on common experience. New York most often is the negotiating place for resolutions. At times, delegates in New York will have considerable latitude and discretion in this process.
This is often a function of the size of the country and the time zone it is in. Many small countries serving a rare term as elected members of the Council have little option but to arm their representatives with considerable discretion to participate in the negotiating process within the scope of broad guidelines set by capitals. They often do not have the expertise, the experience or sufficiently timely advice of the issues to do otherwise.

Foreign Ministries of course wish to involve themselves as closely as possible in the issues and the Foreign Ministries of the permanent members tend to be best placed to do so. While most countries adopt the practice of having the drafting of resolutions done by their delegations in New York, it can certainly be the case that where the resolution is being initiated by a certain country, the first draft will originate at headquarters rather than at the New York mission.

The time zone also comes into play. Washington and New York being in the same time zone allows far greater scope for involvement by the State Department, the National Security Council or even the White House than for example by the Chinese Foreign Ministry, which is 12 hours ahead of New York.

Another key element is how politically sensitive the issue under consideration may be. As noted above, Secretary of State Baker negotiated the key terms of Resolution 678 in face-to-face talks with his Soviet counterpart. In the 2003 battle of wills as to whether there should be a new resolution enabling the use of force against Iraq, the key figures were heads of state and government with diplomats in New York playing out parts in a play whose script had been written on the basis of phone calls and press releases at the highest levels of government.

IS THERE A MANDATE JURISPRUDENCE?

In many ways this is the critical question. Is there a coherent and iterative process that builds on the style and terminology of the previous resolutions to establish an understandable pattern? Is that pattern understandable to the implementers of the mandate? Is there a broad concept of precedence in mandate language? The answer to these questions would seem to be substantially in the positive.

One readily identifiable development is the growing complexity and detail of the mandates. The mandate given to the UN in Resolution 632 in 1989 was to “ensure conditions in Namibia which will allow the Namibian people to participate freely and without intimidation in the electoral process under the supervision and control of the United Nations leading to early independence of the Territory.” The relative simplicity of the decolonisation situation in Namibia lent itself to a relatively simple and understandable mandate with a definite objective of independence. Yet the rather vague injunction to the mandate implementers to “ensure conditions” that will allow the objective to be fulfilled would be progressively refined in future mandate-setting resolutions.
By 1997, dealing with neighbouring Angola with all its complications of internal rivalries and decades of foreign interference, the complexity of the mandate had increased remarkably. The Security Council adopted Resolution 1118 establishing the United Nations Observer Mission in Angola and incorporating the mandate recommended by the Secretary-General. The mandate has 25 separate elements divided into five major areas. An indication of the complexity of the operation can be gleaned by noting the many different operative verbs shaping the mandate, including: monitor, verify, promote, carry out, provide good offices, inspect, supervise, help develop, investigate and serve as focal point. This is a quantum leap from the vague “ensure conditions will allow.”

Another example of the increasing detail and complexity of the mandates can be found in the broadly analogous situation of the proposed self-determination referenda in Western Sahara and East Timor. Neither represented a traditional decolonisation situation, both involved occupation by a neighbouring country rather than by a distant colonial overlord, and both situations were presented before the Security Council after considerable negotiations among the parties principal involving the Secretary-General. Yet in Resolution 690 in 1991, the Council referred to the apparent political agreement and the Secretary-General’s report and then decided, “to establish a United Nations Mission for the referendum in Western Sahara”, elegant in its simplicity but avoiding many of the tough issues that have since dogged the process. Eight years later the Council was far more prescriptive. Resolution 1246 decided “to establish the United Nations Mission in East Timor to organise and conduct a popular consultation, scheduled for 8 August 1999, on the basis of a direct, secret and universal ballot, in order to ascertain whether the East Timorese people accept the proposed constitutional framework providing for a special autonomy within a unitary Republic of Indonesia or reject the proposed special autonomy for East Timor, leading to East Timor’s separation from Indonesia…”

A possible exception to the increasing complexity of mandates is the process being adopted in Afghanistan. The mandate is based on the assumption that the international community’s role in the state building process must be subservient to local efforts given the weak state/strong society dichotomy. The tactic is therefore to adopt the ‘small footprint’ idea by setting out the broad goals but leaving considerable discretion as to means in the hands of the Special Representative.

The shape of the mandate has also developed in the post-Cold War Security Council’s work. From the single sentence mandates in the Namibia and Western Sahara situations there appears to be an evolution in mandate drafting. Resolutions in the early to mid-1990s tended to spell out in greater detail the elements of the mandate. The security aspects were invariably spelled out first followed by the technical assistance and humanitarian aspects of the mandate. A good example is Resolution 797 of 1992 establishing the United Nations Operation in Mozambique (ONUMOZ) and approving the mandate terms recommended by the Secretary-General, which comprised six elements: four significant security-related tasks followed by the task to “provide technical assistance and monitor the entire electoral process” and completed by the task to coordinate humanitarian assistance.
A similar pattern can be seen in 1993 with the revised mandate of the United Nations Mission in Haiti (UNMIH) where Resolution 867 sets out the security elements of the mandate first. But an important development was the specific separation of the military and civilian tasks of the mandate. The security assistance was to be provided by UNMIH while the civilian assistance was to be the responsibility of the International Civilian Mission in Haiti (MICIVIH). This pattern of separating the different aspects of the mandate into its component parts was a practical innovation that assisted the implementers to discharge their specific responsibilities.

By the time the Security Council was authorising large interventions such as those in Bosnia-Herzegovina in 1995 and in Eastern Slavonia in Croatia in 1996 it had become normal practice to separate the military and civilian tasks of mandates. The practice was also followed in Resolution 1181 establishing UNOMSIL in Sierra Leone where the military and civilian components of the mandate were clearly distinguished.

The pattern of compartmentalising mandates was greatly refined in Resolution 1118 of 1997 which incorporated the Secretary-General’s recommended mandate comprising five elements: political aspects, police matters, human rights issues, military aspects and humanitarian aspects. A further refinement can be seen in Resolution 1291 of 2000, extending the mandate of the United Nations Organisation Mission in the Democratic Republic of Congo (MONUC), which specifically lists, in operative paragraph 4, the seven elements of the civilian mission as: human rights, humanitarian affairs, public information, child protection, political affairs, medical support and administrative support.

The process of refinement with each mandate, building on the experience and learning of the previous mandates, amounts to a body of jurisprudence for both mandate drafters and implementers. That process does not equate to a formula that must be slavishly adhered to. Every situation will invariably present particular problems and issues that will require specific mandate language and formulations. The MONUC mandate provides a good example of a task calibrated to a particular situation. It does not fall back on the common injunction to hold free and fair elections but instead focuses on the preliminary task of state building by requiring close cooperation with the Facilitator of National Dialogue foreshadowed by the 1999 Lusaka Ceasefire Agreement. The human rights objective is also carefully worded to give priority focus to vulnerable groups such as women, children and demobilized child soldiers.

As with any political process, faults can be found. The mandates can at times be seen as exercises in political expediency rather than the implementation of universal principles. A dominant underlying theme in the mandates, expressed openly in the early mandates and more subtly in later mandates is a concern to keep down costs. The impact can be seen both in the size of the intervention and its duration. There is accordingly a growing sophistication in the drafting of democratisation and nation-building mandates by the Security Council reflecting the body of practice that has been developed and incorporating the lessons learned from previous interventions.
MANDATE TERMINOLOGY

In examining the terminology used in mandates one is also struck by a consistency of language. As noted above, there is a necessary repetition in the verbs used to describe the action. Many mandates require monitoring and verification. Many require support for local capacity building. Others require the implementers to advise, support or assist local processes in various fields. The repeated use of the verbs facilitates better understanding of the scope of the particular mandate.

Yet the crafting of mandate language is certainly a far more involved process than one of cut and paste from previous resolutions. The art is to find a mandate that fits and that is achievable. In searching for the right terminology, the first instinct, particularly of the international lawyers involved in the drafting process both in New York and in capitals, is to find a formulation that has meaning based on a certain use in the past. For generalists or geographic experts involved it is also often a question of settling upon a term that has worked in the past, that has been used by the other members of the Council in previous resolutions and that has been previously approved by political leaders.

An examination of the core group of mandates demonstrates that below the general similarities there are significant variations. Resolution 1244 on Kosovo simply requires that one of the responsibilities of the international civilian presence shall be “protecting and promoting human rights.” Resolution 1181 on Sierra Leone required the civilian element to “report violations of international humanitarian law and human rights.” Resolution 866 of 1993 on Liberia requires a “report on any major violations of international humanitarian law.” Resolution 1118 on Angola contains three human rights objectives: contributing to the promotion of human rights, help develop capacity and “investigate adequately allegations of abuses and initiate appropriate action.” The use of the term “adequately” is a reflection of the difficulty of taking action on the ground and a concession of the limits of the UN’s reach. An example of the specificity of the mandate provisions on human rights can be found in Resolution 1020 which required UNOMIL in Liberia “to assist local human rights groups in raising voluntary contributions for training and logistic support.”

Similarly fine-tuned formulations may be found in the mandates dealing with electoral matters. The mandates in the early 1990s were relatively simple requiring the UN, as did Resolution 797 of 1992 concerning Mozambique, “to provide technical assistance and monitor the entire electoral process.” In Liberia, Resolution 1020 shared the task of observing and verifying the election results with the then Organisation for African Unity and the Economic Community of West African States. But in relation to the Central African Republic, Resolution 1230 of 1999 described MINURCA’s mandate in the electoral field as restricted to playing “a supportive role.” In Eastern Slavonia, on the other hand, the UN was required to organise the elections and certify the results. While in East Timor, conscious of the various devices employed by Indonesia over the years, Resolution 1246 spelled out in clear detail that “a direct, secret and universal ballot” was required for the act of self-determination.
Perhaps the most difficult aspect of crafting Security Council resolutions is the articulation of the political result being sought. When that result is clear, as in the Namibian decolonisation situation or the East Timor case after its clear decision in the act of self-determination, the Council can confidently work towards independence and democratic governance. In Haiti it was assistance to the legitimate constitutional authority and the Security Council expressly stated in Resolution 940 (1994) "that the goal of the international community remains the restoration of democracy in Haiti and the prompt return of the legitimately elected President." In relation to Sierra Leone the major demand made by the Security Council in Resolution 1132 (1997) was "that the military junta take immediate steps to relinquish power in Sierra Leone and make way for the restoration of the democratically elected Government and a return to constitutional order." But in other cases where the people are still engaged in a form of state building, the terms require more careful elaboration. In relation to the Democratic Republic of Congo, the objective is national dialogue. In Somalia it was to rehabilitate national institutions and promote national reconciliation. At times the best that can be achieved at a particular moment is to establish a process towards a final goal of democratic governance. In Afghanistan that process is based on the establishment of an interim authority that has guidelines on how it is to operate. But when the objective is unclear or unknown as in the case of Kosovo, the terminology cannot hide the confusion and the goal of “substantial autonomy” becomes more of a hindrance than a help to the implementers of the mandate.

PROBLEMS WITH MANDATES

The foregoing account of the way democratisation and state-building mandates are drafted looks at only one aspect of a far larger issue. The crafting of the mandate is an important part of the process but it is not in itself decisive to the success of an intervention. The importance of the mandate is, nevertheless, beyond question.

Then Secretary-General Boutros Boutros-Ghali in his Agenda for Peace and its companion agendas for development and democracy offered “a comprehensive vision through which global problems might be more effectively met by global solutions.” In relation to the large UN interventions, he notes that “the basic conditions for success remain unchanged: a clear and practicable mandate; the cooperation of the parties in implementing that mandate; the continuing support of the Security Council; the readiness of Member States to contribute the military, police and civilian personnel, including specialists, required; effective United Nations command at Headquarters and in the field; and adequate financial and logistic support.” Thus a clear and practical mandate was seen as one of six basic requirements for success. The other five requirements are very weighty. They encompass large issues of politics and implementation. Yet the political and implementation issues have both direct and indirect impacts on the crafting of mandate language.
One of the political problems concerns the actions of other parties. Mandates are constructed based on certain premises. One of those premises is the coherence of the political agreement negotiated by the disputing parties. If the agreements are negotiated in bad faith, or are beyond the ability of the signatories to implement, or are overtaken by subsequent events, the mandate that flows from them may be inappropriate. Many of the major UN interventions are built on the foundations of a peace agreement:

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<tr>
<th>Organization</th>
<th>Country</th>
<th>Agreement/Proposal</th>
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<tr>
<td>MINURSO</td>
<td>Western Sahara</td>
<td>UN Settlement Proposals 1988</td>
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<tr>
<td>UNTAC</td>
<td>Cambodia</td>
<td>Paris Agreement 1991</td>
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<tr>
<td>ONUSAL</td>
<td>El Salvador</td>
<td>Mexico Agreements 1991</td>
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<tr>
<td>ONUMOZ</td>
<td>Mozambique</td>
<td>Rome Agreement 1992</td>
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<td>UNOMIL</td>
<td>Liberia</td>
<td>Further to Cotonou Ag 1993</td>
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<td>MONUA</td>
<td>Angola</td>
<td>Lusaka Protocol 1994</td>
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<tr>
<td>MINURCA</td>
<td>Central African Republic</td>
<td>Further to Bangui Ag 1997</td>
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<td>UNAMET</td>
<td>East Timor</td>
<td>New York Agreement 1999</td>
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<td>UNAMSIL</td>
<td>Sierra Leone</td>
<td>Lome Peace Agreement 1999</td>
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One can point to examples of problems with mandates caused by problematic underlying agreements. The timetables and tasks assigned to MINURSO turned out to be unachievable because of continuing disagreement between the parties. UNTAC performed its mandated tasks but the refusal of Hun Sen to accept defeat in the elections and the formation of an unworkable coalition government would leave basic political problems unresolved. UNAMET successfully conducted the self-determination ballot but its limited mandate did not foresee or prepare for the subsequent violence intended to vitiate the result of the vote.

In *Agenda for Peace*, Boutros-Ghali points specifically to problems with mandates that could in themselves trigger the lapse of the agreement of the feuding parties:

> “There are three aspects of recent mandates that, in particular, have led peacekeeping operations to forfeit the consent of the parties, to behave in a way that was perceived to be partial and/or to use force other than in self-defence. These have been the tasks of protecting humanitarian operations during continuing warfare, protecting civilian populations in designated safe areas and pressing the parties to achieve national reconciliation at a pace faster than they were ready to accept. The cases of Somalia and Bosnia and Herzegovina are instructive in this respect.”

Another situation where the UN’s mandate may be hostage to the politics of outside forces is where the principal outside political force is not the UN itself but another country or regional group. The best example of this is the Kosovo operation. The UN was constantly playing catch-up, first in the process leading to the Rambouillet Accords and then after the humanitarian intervention by NATO forces. It is a telling fact that the documents establishing the political context on which the mandate of UNMIK is based in Resolution 1244 are annexes to the resolution drawn from negotiations conducted outside
the UN. In such circumstances the UN had no choice but to accept an unusual mandate requiring uncertain provisional steps “pending a political solution.”

Other problems with mandates have been highlighted by the Brahimi Report. A basic premise of the report is “the pivotal importance of clear, credible and adequately resourced Security Council mandates” and it notes that “most (UN failures) occurred because the Security Council and the Member States crafted and supported ambiguous, inconsistent and under-funded mandates.” The Brahimi Report refers to some of the political problems noted above including the problem of implementing mandates developed elsewhere but it also highlights other serious problems.

One such problem is the Secretariat recommending mandates it thinks the Security Council wishes to implement rather than mandates it thinks it is in a position to fulfil. This can occur because of the apparent urgency to reach a compromise formulation making it expedient to paper over the anticipated problems. These compromises can often lead to vague and ambiguous formulations that are difficult to implement and may thus compromise the integrity of the operation. Formulations such as an instruction “to promote a climate of confidence” or “establishing an environment conducive to the organization of free and fair elections” are too vague to be of much service to the implementers on the ground.

Mandates need to be clear and practical but the political process of their drafting may lead to inconsistent obligations. The UNMIK operation in Kosovo provides an example. Resolution 1244 contains a mandate requiring a raft of differing and slightly contradictory functions: the provision of transitional administration by UNMIK; the establishment of provisional self-governing democratic institutions for autonomous self-government; a general injunction to work towards substantial autonomy and meaningful self-administration; as well as facilitating a political process designed to determine Kosovo’s political status as long as it is in line with the Rambouillet accords. No wonder the Head of Mission confessed to being confused.

Ambiguity and inconsistency can be and often are cured by sensitive management of the situation by those on the ground but under-resourced operations are far more difficult to cure. The problem of funding shortfalls is largely based on a decade long dispute between the United States and the United Nations over the American contribution to the peacekeeping budget. In view of the UN’s activism in the 1990s, peacekeeping budget blew out to be two or three times the size of the regular budget. UN members have argued that the cost of the privileged situation of the permanent members is that they must pay a larger percentage share of the peacekeeping budget. The US share was 31% for the peacekeeping budget as compared to 25% for the regular budget. As part of the US pressure to renegotiate these percentages, large parts of the assessed contributions were withheld leading to a US debt to the UN that at one point almost led to the possibility of a loss of the US vote in the General Assembly under Article 19 of the Charter. The dispute has been largely resolved with the UN decision to lower the US assessed share to 27% of the peacekeeping budget and 22% of the regular budget. But in the period of the UN’s state-building activism the lack of funds largely due to US
withholdings had a deleterious effect on peacekeeping operations. The lack of funds also had an impact on mandates with drafters having to limit the scope of UN responsibilities to meet the available funds. The most notorious example was the inability of the inadequate peacekeeping force in Bosnia-Herzegovina to protect ‘safe areas’. The mandate only asked the peacekeepers to assess threat levels because the Security Council was not prepared to accept the cost of the 30,000-strong force requested by the Secretary-General which would have allowed for a broader mandate to protect civilian populations.\textsuperscript{xxxix}

Inaction or half-hearted actions flowing from concerns about the cost of implementing mandates undermine the legitimacy of the UN interventions and thus have a corrosive impact on their effectiveness. Clearly, funding is not unlimited for such interventions but at the very least the UN efforts should not be undercut by nations wishing to prove a political point through the withholding of their assessed contributions.

APPRAISING MANDATES

Having described the alchemy through which mandates are forged and having analysed problematic aspects of mandates, how can one conclude the study and appraise the process? One obvious difficulty is that of selectivity. By focusing on the interventions shaped by mandates, those situations that fall outside the realm of the possible in international politics also fall outside the appraisal process. So appraising mandates tells us nothing about the fate of Chechnya or self-determination for Kurdish people or the future of Tibet.

Focusing on the interventions themselves poses further problems of appraisal. Is an intervention successful because fighting stopped or ceasefires were maintained? This is often the media interpretation of events and thus a key component in shaping public perceptions. But the fundamental question of the health of the polity that is the subject of the intervention remains unanswered if we look simply at the cessation of hostilities. Measuring state building is a difficult medium to long-term venture. Perhaps the best political measurement is the satisfaction with the UN intervention by the parties principal including not only the leaders and factions within the polity but also the key actors in the international community such as the permanent members, the troop and civilian staff contributors and the neighbouring countries. It is perhaps on this basis that the 1995 \textit{Agenda for Peace} claimed that in most cases the interventions have been “conspicuously successful” with Namibia, Angola, El Salvador, Cambodia and Mozambique drawing particular praise. Many commentators would agree with this general comment.\textsuperscript{xl}

The success of an intervention tells us that the clear and practical mandate was well suited to the result being sought. But the success of the intervention is also due to the five other factors said to be critical: the cooperation of the parties in implementing that mandate; the continuing support of the Security Council; the readiness of Member States to contribute the military, police and civilian personnel, including specialists, required;
effective United Nations command at Headquarters and in the field; and adequate financial and logistic support. So the mandate is only one part of the formula.

Within the process of judging the intervention as a whole, mandates need to be appraised on their clarity and practicality. A workable mandate will comprise mainly of action tasks that are simply described for the benefit of both the implementers and the subjects. Many of these tasks will be measurable in terms of performance, cost and timeliness. A workable mandate will avoid vague compromise words that paper over essential differences and thus leave the dilemma unresolved and in the hands of the implementers. A workable mandate will have direction and closure. The end point may not always be predictable but the direction should be clear and a point should be ascertainable where the emergency intervention ends and the regular processes of development assistance take over. A workable mandate will have a defined division of labour. This may be based on subject matter, on geographical area or on organisational competence. One of the avoidable problems referred to in *Agenda for Peace* concern difficulties with coordination arising from the various specific mandates decreed for the agencies by discrete intergovernmental bodies. The UN has the responsibility to coordinate its various inputs into a coherent effort.

It is open from the foregoing analysis to conclude that the UN process of developing mandates for democratisation and state-building purposes have improved with practice. Mistakes have clearly been made but they have contributed to the learning and drafting process. It would be unrealistic to demand that the vagaries of international politics be somehow eliminated from the process of decision-making and formulation of mandates. The power of the permanent members can be seen as a way of channelling realpolitik into the decision-making process. For that reason alone, it would be futile to demand consistency. Interventions that have a direct impact on one of the permanent members will not be treated in the same way as the more remote situations.

To what extent should democratisation be a priority in the mandate? The problem with asking this question is that democratisation competes with the reestablishment of security and the provision of humanitarian aid as the three major thrusts of mandates. There can hardly be a process of democratisation without a generally secure environment and humanitarian aid in an emergency situation is clearly a priority for the subject peoples. The better way of posing the question is to ask whether sufficient priority is being given to the democratisation process. That is a valid question because without a democratisation process it is unlikely that the polity can ultimately achieve a form of governance that will encourage reconciliation and favour long-term recovery socially and economically.

The reply, inevitably, is yes and no. Yes, democratisation has found a place in the UN’s rhetoric and in its mandates. As one practitioner noted ruefully, even delegates from non-democratic countries happily accept the inclusion in mandates of provisions for free and fair elections and support for civil society. Mandates have become more sophisticated and the UN’s response is improving with experience. There have been significant
achievements in half a dozen difficult situations and a willingness to build on these processes in the future.

But there is also a negative response. The problem is one of maintaining focus. Democratisation is not achieved by putting out fires, nor is it established by a single transition election; it is a long-term process requiring the patience to endure setbacks and to accept the slow pace of reform. Each new crisis faced by the UN naturally detracts attention from the smoky ruins of the last fire. The funds required for the long haul are often inadequate and the benefits gained initially are put at risk.

A mandate can therefore only begin a process of democratisation. It can put some of the basic foundations in place and set a certain direction. Thereafter the process of democratic transition and consolidation is in the hands of many actors and political forces. No more should be asked of the UN interventions in the field.

Roland Rich
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Research School of Social Sciences
Australian National University


v Though Schachter notes that the UN was never conceived as a legislative body, the mandate terminology tends to have a legislative effect. Oscar Schachter, ‘United Nations Law’ in *The American Journal of International Law*, Vol. 88, Issue 1 (1994) at 1.

vi UNSCR 706 (1991)

vii UNSCR 883 (1993)


ix A useful discussion on perceptions of fairness in the Council’s work can be found in Thomas M. Franck *Fairness in International law and Institutions* Oxford University Press 1995 particularly Chapter 7 ‘The Bona Fides of Power: Security Council and Threats to the Peace’ pages 218-244.


xii UNSCR 660 (1990)

xiii UNGA Res 3314 (XXIX)


xv Australian Prime Minister John Howard argued that it “self-evidently meant the use of military force” ABC Radio 25 February 2003

xvi UN Press Release SC/7564 of 8 November 2002


xviii A three-judge panel found Abdel Basset Ali Al-Megrahi, a former Libyan intelligence officer, guilty of murder and sentenced him to life in prison. CNN.com 1 February 2001

xix But note the difficult impact of having the UNTAC operation under Chapter VI whereby all parties including the Khmer Rouge knew that force could only be used in self-defence, in Frederick Brown’s ‘Cambodia’s Rocky Venture in Democracy’ in Krishna Kumar (ed) *Postconflict Elections, Democratization and International Assistance* Lynne Rienner Publishers, Boulder 1998 at 105-106.

xx From the veto of Bangladeshi membership of the UN in 1972 to the veto in 1999 of the continuation of UNPREDEP in Macedonia, China has allowed narrow bilateral issues to influence its voting pattern, though both actions were subsequently allowed to proceed.

xxi The following comments are based on interviews with officials dealing with Security Council matters from Foreign Ministries of some permanent members in March and April 2003 as well as discussions with officials of the UN Secretariat in September 2002.


Article 97 UN Charter


A good example is the establishment of MONUA under Resolution 1118 where operative article simply adopts chapter VII of the Secretary-General’s report.

The Secretary-General’s first Special Representative to Kosovo, Bernard Kouchner is quoted as saying he read Resolution 1244 twice every morning and still had no idea what ‘substantial autonomy’ meant, in Simon Chesterman, Kosovo in Limbo: State-Building and “Substantial Autonomy”, International Peace Academy, August 2001, at 4.


David Hamburg and Karen Ballentine, Boutros-Ghali’s Agenda for Peace: the Foundation for a Renewed United Nations in Boutros Boutros-Ghali Amicorum Discipulomrumque Liber, Emile Brulant, Brussels 1998 at 496

Op cit footnote 29


UNSCR 867 (1993) drawing on the Secretary-General’s Reports S/26480 and S/26352

See footnote 28


See Jean-Marc Coicaud The legitimacy of Security Council activities under Chapter VII of the UN Charter after the end of the Cold War in Jean-Marc Coicaud and Veijo Heiskanen (eds) The Legitimacy of International Organisations UNU Press Tokyo 2001 at 272

Considerable support can be found in the analysis of the UN supervised elections in El Salvador and Mozambique in the chapters by Enrique Baloyra’s El Salvador:From Reactionary Despotism to Partidoctratia and in J Michael Turner, Sue Nelson, and Kimberly Mahling-Clerk’s Mozambique’s Vote for Democratic Governance in Krishna Kumar (ed) Postconflict Elections, Democratization and International Assistance Lynne Rienier Publishers, Boulder 1998. More nuanced assessments are made in relation to Cambodia and Angola in Frederick Brown op cit and Marina Ottway’s Angola’s Failed Elections in the same volume.