1. Introduction

The deployment of large numbers of British troops to both Korea in 1950 and to Kuwait in 1990 followed similar domestic and international legal paths, though the political contexts were quite different, one occurring at the outset of the Cold War and the other at its end. Britain was instrumental in shaping the idea of coalitions acting under the authority of the UN as an alternative to the more centralized application of military force envisaged under the UN Charter. The parliamentary and international political debates that led to the development of this as a form of lawful military action will be traced in this chapter. In particular, the chapter will concentrate on why it was necessary to obtain UN authority for these actions when they could readily be justified as the exercise of the right of collective defence.

2. Coalitions of the Willing in International Law

Before looking at the parliamentary debates during the Korean and Gulf conflicts, it is necessary to review the international legal basis of UN military actions. This will set the framework within which to analyse the justifications of the British government and the debates that occurred in parliament.

Under international law as established by the UN Charter of 1945, a state, or group of states, is allowed to use military force in only three situations: self-defence (the sovereign right being embodied in article 51); if authorized by the Security Council itself under article 42; or acting through a regional agency authorized by the Security Council under article 53. There is disagreement about the legal basis of the only two operations authorized by the Security Council to combat aggression; Korea in 1950 and Kuwait in 1990. It has been claimed that states responding to aggression were simply exercising, with the encouragement of the Security Council, their inherent right of self-defence. This explanation is incorrect, however, as the actions taken against North Korea and Iraq
were United Nations’ operations empowered under article 42. Such an explanation is not only a more accurate analysis of the doctrinal law, but is also evidenced by the attitude of governments contributing to such operations, Britain being no exception. Indeed, the significant British role in each operation meant that its views were instrumental in helping to shape the future of coalitions of the willing designed to deal with threats to the peace as well as aggressions.

Although Security Council authorized military actions have not followed the text of the Charter, UN practice, and its acceptance by members, has created an alternative system more reflective of a world in which powerful states jealously guard their military strength and only allow its collective use within a system that protects their interests. Furthermore, the decentralized security system—one relying on volunteers—that has emerged has been used not only to combat aggression but also to address threats to the peace arising out of events within states.¹ Thus, it is no longer possible to view the UN’s involvement in military enforcement operations as aberrant or ad hoc. Paradoxical though this statement may seem, the decentralized military option has been institutionalized.

If the legal basis for the interventions in Korea and Kuwait was provided by article 51 of the Charter, authorization by the Security Council would become legally superfluous, as the military action would be founded upon the right of self-defence. It would simply take the form of collective defence as other states co-operated with the victim to repel the attack.² It is argued here that those states participating in the Korean and Kuwait conflicts, and the UN itself were all of the legal opinion that they were taking part in UN military operations, not traditional actions taken in self-defence. Denying that article 42 provided the legal basis for these actions ignores the political pressures that have limited the application of chapter VII of the Charter, by preventing the development of mechanisms to make its operation more effective, and obliging the UN to adopt a decentralized security system in place of the collective system envisaged by the drafters of the Charter in 1945.

The application of the decentralized military model to intra-state as well as inter-state conflicts weakens the claim that article 51 provides the legal basis of UN-sanctioned military operations. Such conflicts rarely derive from claims of self-defence because, according to article 51, the right of self-defence is only triggered by an ‘armed attack’ by one state on another. The only alternative for those who might argue that the legal basis of such operations is not the UN but

customary law independent of the Charter is to contend that they are applications of the doubtful doctrine of humanitarian intervention, that is, foreign military intervention to protect the lives of an endangered population. Even the most fervent advocates of unilateral humanitarian intervention admit that, when authorized by the Security Council under chapter VII, the operation becomes a UN military operation and not one based on the alleged customary right of humanitarian intervention.³ The same model of UN resolution has been used to deal with aggression and with threats to the peace. In other words, plenty of examples can be found of military measures taken by the UN in which the constitutional link between the operation and the Charter is either article 42, in the case of multilateral military operations (coalitions of the willing), or article 53, in the case of regional organizations taking military action.

Indeed, the existence of article 53 supports the decentralized model: if the Security Council may authorize a regional organization under chapter VIII of the Charter, it should be entitled under chapter VII to authorize a group of states, or indeed a single state, to act. Authorizing just a solitary state may undermine the legitimacy of the operation, as such delegation is more readily abused than in a multilateral or regional response in the current loose and voluntary collective security system. Abuse by a military or regional superpower—seen for example in Nigerian domination of the ECOWAS force in Liberia retrospectively endorsed by the Security Council in 1992⁴—can be anticipated and reduced, however, by greater precision in the formulation of the mandate in the enabling resolution.

The decentralized security model, though far from perfect, is evolving piecemeal in dealing with threats to the peace as well as breaches of article 2(4) of the Charter that prohibits states from using force. The military responses authorized to date by the United Nations lie between ‘multilateral’ and ‘collective’. Collective responses involve a collective military operation under the Charter as well as collective authorization by the Security Council: multilateral responses are simply those undertaken by a group of states outside the UN’s security system. Under the system developed by the Council, it gives collective authorization, but does not insist on truly collective command, control, and composition of the force. That the system falls short of the Charter or indeed, collective security ideal, however, does not make it unconstitutional.⁵


⁴ For an argument that self-defence includes a right to protect others (states and individuals) see G.P. Fletcher and F.D. Ohlin, Defending Humanity: When Force is Justified and Why (Oxford: Oxford University Press, 2008) 63–85.

3. Collective Security and Collective Defence

Collective security has been defined as ‘the proposition that aggressive and unlawful use of force by one nation against another will be met by the combined strength of all other nations. All will co-operate in controlling a disturber of the peace. They will act as one for all and all for one. Their combined strength will serve as a guarantee for the security of each’.⁶

A truly collective security system, whether international or national, demands the provision of a police force independent of any of the members or groups that make up the society. No state or small group of states should be able to dominate the system. Seen in this light, the UN-sponsored actions against North Korea and Iraq were defective in that the United States dominated them, both militarily and politically. However, there are degrees of collective security and a system is not ruled out because it does not match the ideal. Indeed, there is disagreement about what constitutes an ideal collective security system.⁷ The greater the multilateral component of a UN force, the greater its legitimacy, even if it would be unrealistic to expect to mount a major military operation without a contribution from one of the major military powers. However, if a military action dominated by one state is not only authorized by the Security Council but is also supported by the international community, it meets the requirements for collective security.

A collective security system is not normally designed merely to deploy defensive force on a par with collective defence pacts. ‘Collective measures’ or ‘enforcement actions’,⁸ taken for the maintenance or restoration of peace, do not have to conform therefore to the principles limiting the right of self-defence, whether individual or collective. Enforcement action may not be unlimited in scope, but must be proportionate to the ends aimed at, namely the maintenance or restoration of peace.⁹ Moreover, it must comply with the restrictions of international humanitarian law, protecting civilians and other non-combatants, as well as restricting the use of indiscriminate weapons and the types of target chosen.

Sometimes enforcement action may be limited to repelling an aggressor; at others, the removal of an aggressor, or of a situation that threatens international peace, may be required. Thus proportionality is a more flexible concept when applied to a collective security system than to self-defence. Self-defence is limited to repelling the attack, while enforcement action may be mandated to repel the

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⁸ Arts 1(1), 2(5), 2(7), 50, 53 of the UN Charter.
attack and remove the aggressor, or it may be given specific tasks such as removing weapons of mass destruction from a state, or dealing with terrorist training camps in another. Unlike peacekeeping forces, whose weaponry has traditionally been limited to personal defence, enforcement operations are limited only by the mandate.¹⁰ The phrase 'necessary measures', used by the Council to mean military measures, allows the contributing states wide choices in selecting not only the weapons to be used but also the number of troops to be deployed subject, of course, to the limitations of international humanitarian law.¹¹

In the Korean War, the initial authorization from the Security Council in Resolution 83 of 27 June 1950, not only mandated the pushing back of North Korea to the 38th parallel but also added an ambiguous phrase recommending the restoration of peace and security to the area. The General Assembly gave the mandate a potentially more offensive character by calling for steps to unify Korea,¹² and as shall be seen the UN forces did cross into North Korea.

By contrast the Coalition's military actions in the Gulf in 1991 appeared to be mainly defensive, despite an equally ambiguous Security Council mandate. Security Council Resolution 678 of 29 November 1990 authorized the enforcement of previous Council resolutions demanding the withdrawal of Iraq from Kuwait and requiring the restoration of international peace and security to the area. However, it will be seen in chapter ten that the UK argued in 2003 that Resolution 678 was still operative and legally justified the American and British invasion of that country. Whatever the basis of this argument both the Korean and Iraq mandates did not just condone collective defence; they were authorizing enforcement action. Clearly such ambiguity in the mandates gives the states taking military action on behalf of the UN too much discretion. Events in both Korea and the Gulf illustrate the lack of accountability to the UN and its lack of control over operations carried out in its name.

Not only is UN enforcement action potentially offensive, it can be taken in response to a greater variety of situations than aggression including the breach of fundamental human rights protecting life. The Council has authorized states to use force to prevent starvation (the initially effective US-led intervention in Somalia in 1993) and to stop genocide (the ineffective French intervention in Rwanda in 1994). It is recognized that the Security Council is not confined to authorizing military action to deal with violations of fundamental international laws,¹³ it can authorize force to restore democracy (as with the US-led intervention in Haiti in 1994) or to deal with anarchy (as with the Italian-led intervention

in Albania in 1997), or to provide post-conflict security (as with the EU force—EUFOR—in Bosnia since 2004).¹⁴

Despite the extension and institutionalization of UN military enforcement action, volunteer states will only normally step forward if it is in their interests to do so. The operations in North Korea and Iraq were a product of a confluence of the interests of the intervening states, especially the United States in confronting the expansion of communism in the case of Korea and the protection of an oil-rich and western friendly state in the case of Kuwait, and the violation of a fundamental rule of international law prohibiting aggression.¹⁵ That Britain shared these concerns is not only shown by its decision to contribute to the operations, but by parliamentary support as the debates below show. This would suggest that a violation of a fundamental law would not by itself trigger a UN-sponsored military intervention, which considerably weakens the UN’s military capability. However, it is not always the case that there must be a combination of self-interest and violation of basic laws, as shown by the US-led intervention in Somalia in 1992 when there was a singular lack of American self-interest. Such altruistic military interventions, though, are the exception rather than the norm.

4. The Failure of the UN Charter Scheme

The UN’s collective security role was premised on the ability of the primary organ, the Security Council, to use military force to keep the peace. Though article 42 allows the Council to take action by air, sea or land forces as may be necessary to maintain or restore international peace and security, the mechanism envisaged for achieving this was not through coalitions of the willing assembled on an ad hoc basis to combat a threat to the peace or armed aggression. Article 43 provided that armed force were to be available to the Security Council under special agreements with member states to be arrived at as soon as possible; those agreements stipulating the numbers, location, and the state of readiness of their forces.

Although the onset of the Cold War forestalled the agreements stipulated by article 43, the Council did instruct the Military Staff Committee, set up under article 47 and composed of the chiefs of staff of the permanent members, to report by April 1947 on the principles that should govern the operation of the

¹⁴ The main instances of post-Cold War military enforcement actions: SC Res. 678, 29 Nov. 1990 (Iraq); SC Res. 794, 2 Dec. 1992 (Somalia); SC Res. 940, 31 July 1994 (Haiti); SC Res. 929, 22 June 1994 (Rwanda); SC Res. 1031, 15 Dec. 1995 (Bosnia—IFOR); SC Res. 1080, 15 Nov. 1996 (Zaire); SC Res. 1088, 12 Dec. 1996 (Bosnia—SFOR); SC Res. 1101, 28 March 1997 (Albania); SC Res. 1244, 10 June 1999 (KFOR); SC Res. 1264, 15 Sept. 1999 (E. Timor); SC Res. 1386, 20 Dec. 2001 (Afghanistan—ISAF); SC Res. 1484, 30 May 2003 (Congo); SC Res. 1511, 16 Oct. 2003 (Iraq); SC Res. 1529, 29 Feb. 2004 (Haiti); SC Res. 1575, 22 Nov. 2004 (Bosnia—EUFOR).

statutory UN forces. Unfortunately, only half of the Committee's proposals were accepted by all the permanent members. The Security Council did agree that initially its permanent members should contribute armed forces to the UN, with other members contributing later. It also agreed that forces should remain under the command of the contributing state except when they were being deployed by the Council, when it would take political control and the Military Staff Committee would take operational and military control. Although these were significant steps towards the ideal of collective security in the control of UN forces (singularly lacking in UN military enforcement operations to date), the Council was divided on the size of the force and more particularly the size of the contribution from each of the permanent members.

With no likelihood of consensus among the permanent members as long as the Cold War lasted, the idea of a UN force was shelved in 1948, although the Military Staff Committee continued and still continues to hold unproductive meetings. The collective security ideal, unachievable for military enforcement operations, has been realized to a greater extent in UN peacekeeping operations (in which control is exercised through the UN Secretary General rather than the Military Staff Committee). The less intrusive nature, at least traditionally, of UN peacekeeping, explains the greater centralization of command and control, though if the peacekeeping forces become engaged in combat, permanent members are less willing to contribute under UN command and control. In these circumstances they may still supply forces under national command to provide support for UN peacekeeping forces.

This was the situation as regards British forces in Sierra Leone in May 2000. The lack of a Security Council mandate for the government’s decision to send 700 troops to the country on 8 May resulted in some discussion in Parliament. The lack of clarity as to the role of the military operation, especially whether it was meant to support the struggling UN peacekeeping operation (UNAMSIL), or whether it was in fact sent to rescue British nationals, led to sharp exchanges in the House, with the opposition objecting to the use of troops for wider purposes other than the protection of nationals. Mission creep did occur, however, despite continued criticism in parliament. The Defence Secretary, Geoff Hoon, stated later in May that ‘our aim is to help the UN create a more effective force in Sierra Leone, which had to restore peace and order to Sierra Leone and help the Government there re-establish security’. The government’s large majority enabled it to weather the protest put up by the opposition, and contribute to a successful international operation in Sierra Leone by bringing an end to the civil war.

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16 SC 105th mtg, 1947.
17 SCOR 2nd sess., special supp. No 1, 1947.
The absence of article 43 agreements does not negate the Council power to authorize military action under article 42, though it does denude that power. This means that the Council cannot legally oblige states to contribute troops, it has to rely on volunteer states, making it thus dependent on willing states stepping forward. The absence of earmarked UN forces under international contract to the UN also has knock-on effects on the remainder of the Charter scheme for the application of military enforcement measures. The Charter provides that ‘plans for the application of armed force shall be made by the Security Council with the assistance of the Military Staff Committee’, and further that the ‘Military Staff Committee shall be responsible under the Security Council for the strategic direction of any armed forces placed at the disposal of the Security Council’.²⁰ Without guaranteed involvement of all permanent members in enforcement actions, there would inevitably be no role for the Military Staff Committee, which consists of the military commanders (or their representatives) of the permanent members. No permanent member would step forward to lead a coalition if it knew that it would be subject to the command and control of a committee containing the other permanent members.

5. The Constitutionality of Coalitions

In the place of a centralized military enforcement option there has emerged coalitions of the willing, accepted as constitutional by the membership, and being compatible with the aims and objectives of the UN to prevent wars and maintain peace and security. The elements of the decentralized system are first a resolution authorizing ‘necessary measures’ (a UN euphemism for the use of armed force) under chapter VII after determining that there exists either a threat to or breach of the peace, or act of aggression. States taking action under this resolution report on their actions to the Security Council. Ideally the mandating resolution should specify the extent, nature, and objectives of the military action. Unfortunately, as has been seen, the mandates of the two UN coalitions of the willing authorized to combat the aggressions of North Korea in 1950 and Iraq in 1990 were ambiguous and this has led to continuing problems of (mis)interpretation in the case of Iraq. The mandates of enforcement actions tasked with dealing with threats to the peace have generally been more precise, though they often lack sunset clauses which give a date or event for the termination of the operation.

Such a denuded constitutional system produces a minimal level of Security Council control over military enforcement operations undertaken under its authority, and it is certainly not able to prevent dominant groups within the Council from using it to achieve the ends of that group, though as the failure to gain clear authority for the invasion of Iraq in 2003 shows, such dominance

²⁰ Arts 46 and 47(3) of the UN Charter.
does not guarantee a compliant Security Council. Use of centralized power to achieve the ends of a dominant group within any society is not necessarily unlawful however, if the power is channelled through the institutional structures and is approved by an organ with the necessary competence. The West’s current dominance in the Council need not imply that the use of its power to protect and further western interests is automatically a misuse, provided that the military action achieves the collective security purposes of the UN.

The result is an unstable collective security system that does not automatically respond to every situation that constitutes a threat to or breach of the peace. However, coalitions might not be asking for authority out of national interests in every case. Sometimes, it appears at least, the interests of the international community provoke powerful states to step forward; as with the United States in Somalia in 1992–3, and with NATO states in Bosnia before and after the Dayton Peace Accords of 1995. The fact that the EU has now taken over NATO’s security duties in Bosnia from December 2004 may be explained by the fact that the Union has a vested interest in containing the Yugoslav conflicts; but this rationale is not convincing when applied to the EU-led operation in Bunia in the Democratic Republic of the Congo in 2003. The voluntary nature of the military option, however, jeopardizes the collective security ideal that every aggression (and threats reaching a certain level, for instance genocide) is met with counterforce, because no state may volunteer, or those that do may withdraw without legal hindrance.²¹

6. The International Legal Basis of the Military Operations in Korea and Iraq

The three most important issues pertaining to the legal basis of decentralized military operations in Korea and Iraq were: first, whether the imposition of sanctions by the Security Council against Iraq meant that, in law, the right of self-defence no longer persisted; second, whether states viewed the operations in Korea and Iraq as UN operations or simply as multilateral defensive operations; and third, whether the mechanisms used to terminate the military operations in Korea (armistice) and Iraq (Security Council resolution) affected the identification of their legal basis.

According to article 51 of the Charter the right of self-defence persists until ‘the Security Council has taken measures necessary to maintain international peace and security’. One issue that was raised during the Gulf War of 1990–1 was whether the imposition of non-forcible measures against Iraq, in the form of a comprehensive economic embargo, undermined the right of self-defence.

Ultimately this issue remained undecided, as shall be seen. In the Korean War the Security Council did not first impose sanctions under article 41, which authorizes the adoption of measures other than the use of force. Although the operation was not simply an action in collective self-defence, the Cold War had weakened the collective security mechanisms at the disposal of the Council. The opportunity created between January and August 1950 by the Soviet Union’s absence in protest at the failure to sit the Chinese Communist regime in the Council as opposed to the Nationalist Chinese government, allowed the Council to activate the collective security machinery. However, the brief window of opportunity only allowed it to authorize military measures to combat North Korean aggression—it did not permit an incremental use of chapter VII powers, as with Iraq, nor to mark the termination of the conflict by Council resolution, again as with Iraq. The fact that, in the Gulf, the Council not only imposed sanctions against Iraq before authorizing military measures but also ended the conflict, illustrates a limited strengthening of the collective security system.

In the case of Iraq, Security Council-imposed sanctions were implemented shortly after Iraq invaded Kuwait, thereby arguably denying the exercise of the right of self-defence in accordance with the terms of article 51. By Resolution 661 of 6 August 1990, the Council imposed mandatory economic sanctions against Iraq with the aim of forcing Iraq to comply with the terms of Resolution 660 of 2 August 1990, which had demanded Iraq’s withdrawal from Kuwait. The ‘measures’ were imposed to remove Iraq from Kuwait, the objective of an action in self-defence of Kuwait. However, coalition forces from Western and Arab states and led by the United States were gathering in the Persian Gulf in August 1990 to act in collective self-defence of both occupied Kuwait and Saudi Arabia (should it be attacked), at the request of the rulers of these two states.

The two leaders of the coalition, the United States and Britain, argued that their right of self-defence was not curtailed by a resolution imposing sanctions which itself affirmed ‘the inherent right of individual or collective self-defence, in response to an armed attack by Iraq against Kuwait, in accordance with Article 51’. The other permanent members of the Council, although less vociferous, seemed to hold the opinion that article 51 signified that the right of self-defence was lost as soon as the Council applied article 41, meaning that armed force could
be used against Iraq only if the Council took the next step by authorizing military action.\textsuperscript{26} Eventually, the United States sought authorization from the Council to use limited force against vessels suspected of breaching the embargo on trading with Iraq.\textsuperscript{27} and later to use whatever force should prove necessary to evict the Iraqis from Kuwait.\textsuperscript{28} The United States seemed to imply, however, that it sought UN authority to interdict suspected sanctions-busting ships to make the use of force in the Gulf acceptable internationally, not to satisfy the legal requirements of the Charter. Both Britain and the United States claimed that the authorization, although unnecessary, gave the operations an ‘additional’ legal basis.\textsuperscript{29}

The Gulf crisis did not provide a definitive answer to the question of whether sanctions affect the right of self-defence, since the Security Council ultimately authorized the operation in Resolution 678, thereby placing the action under article 42 as a UN military enforcement action, not article 51 as an action in collective self-defence. In the light of the evidence that sanctions by themselves are unlikely to reverse aggression, it would not be wise or indeed acceptable to states for their inherent right of self-defence to be restricted by the imposition of sanctions.

The United States and Britain argued in the early stages of the Gulf crisis that the right of self-defence was the sole legal basis for military action. Although the argument challenges the need for participating states to view the action as an enforcement action under UN auspices, it was made primarily to counter the alternative argument that sanctions under article 41 removed the right of self-defence, not directly to challenge the authority of Resolution 678. Having made the argument on sanctions, and after securing Resolution 678, they acted under the authority of the United Nations, not under the right of self-defence embodied in article 51. The argument for self-defence was in effect a reservation that if no authorizing resolution were forthcoming, the imposition of sanctions under article 41 would not impinge on the right. Obviously, the reservation will affect responses to aggression on occasions when the Security Council will not agree to go beyond the imposition of economic sanctions. Once Resolution 678 had authorized the use of force, the reservation no longer applied in the Gulf.

7. The British Attitude in the UN

If military action were taken in the Gulf in collective self-defence, an enabling resolution would not have been needed. To argue that the purpose of the resolution was simply to make the operations more widely acceptable internationally

\textsuperscript{26} The Independent, 9 Nov. 1990, USSR; The Observer, 11 Nov. 1990, France and China. See also the statement of the UN Secretary General Perez de Cuellar, The Independent, 9 Nov. 1990.


\textsuperscript{28} SC Res. 678, 29 Nov. 1990.

\textsuperscript{29} SC 2938th mtg, 25 Aug. 1990. This, at least, appears to be incorrect in that enforcement of an embargo imposed by the Council is only possible by a further resolution of the Council. See Gill, ‘Legal and Political Limitations’, 99.
is to ignore the fact that it authorized action; it did not simply endorse self-defence. This should be contrasted with the Security Council’s response to the terrorist attacks on the United States of 9 September 2001, when the Security Council recognized the right of individual and collective defence but did not authorize military action, and the United States and Britain took military action against al-Qaeda and the Taliban regime in Afghanistan on the basis of self-defence. Although the leading participating states may have initially based their preparations to liberate Kuwait in 1990 on the right of self-defence, once they sought the Security Council’s authority, and the Council gave it on the basis of its collective security powers, their actions have to be evaluated as collective security operations not as action taken in collective self-defence. The participants referred to the enabling resolutions of the Council as the source of authority, as indeed did the target states and their supporters or opponents. The international consensus shows that both the Gulf and Korea were UN operations. As references to the authorizing resolutions far outweigh any to collective self-defence, the international legal discourse about the conflict recognized Council authority as the legal basis of the operations.

In the case of Korea, the US and UK initially appeared to base their actions on self-defence as they gathered forces to combat North Korean and Iraqi invasions, but they only did so until Security Council authority was gained. Once it was gained it was clear that the operation was viewed as a UN military enforcement action, albeit one dominated by one state—the US. In relation to Korea when Resolution 83 was adopted on 27 June 1950, the contributing states argued about the constitutional basis but only in terms of the collective security provisions of chapter VII. The resolution recommended ‘that the Members of the United Nations furnish such assistance to the Republic of Korea as may be necessary to repel the armed attack and to restore international peace and security in the area’. The British representative, Sir Gladwyn Jebb, based the military action in Korea on article 39 of the Charter: in the absence of agreements made under article 43, the Council could not ‘decide’ on military action within the terms of article 42, but could call on states to volunteer to help. France agreed and the United States, although it argued at first that the basis was article 42, eventually agreed with Britain.

When describing the war effort in Korea, the British government constantly referred to ‘UN action’ and ‘UN forces’. Furthermore, after the Soviet Union had returned to the Council in August 1950, the British sponsored the General Assembly resolution that authorized the crossing of the 38th parallel by UN forces. The British Foreign Secretary, Ernest Bevin, commented on

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31 SC Res. 1368, 12 Sept. 2001. See further chapter eight.
34 GA Res. 376, 7 Oct. 1950; Farrar-Hockley, Distant Obligation, 100, 102, 191.
26 September 1950 that ‘the resolution contemplates the contingency that the United Nations’ forces may enter North Korea but . . . it very carefully defines their functions there. I feel strongly that if the authority of the United Nations is to be established we cannot be content with restoring the status quo’.³⁵ Bevin helped to ensure that the Assembly enacted the resolution before the commander-in-chief of the UN command, US General Douglas MacArthur, crossed the 38th parallel, thus maintaining UN authority over the operation.

Later as the war was drawing towards a stalemate at the 38th parallel in 1953, the British supported a joint policy declaration by UN participants, which stated that:

We, the United Nations members whose military forces are participating in the Korean action, support the decision of the Commander-in-Chief of the United Nations Command to conclude an armistice agreement . . . [and] we affirm, in the interests of world peace, that if there is a renewal of the armed attack, challenging again the principles of the United Nations, we should again be united and prompt to resist.³⁶

Similar references to the military operation in Korea as a UN operation were made by the United States and the other contributors, as well as by opposing and non-aligned states.³⁷ Furthermore, the UN Secretary-General, Trygve Lie, although uncertain at first whether the force could be regarded as a UN force, given that it did not strictly follow the terms of chapter VII concerning command and control,³⁸ endorsed the operation in 1950 as a UN operation and thereafter consistently referred to it as one. And although similarly uncertain at first whether the United Nations could base an action on article 42 in the absence of agreements arrived at under article 43, Lie stated in his annual report of 1950 that, despite the lack of such agreements, the Security Council’s recommendation to use military force meant that:

The United States of America, and other countries, are providing assistance to the Republic of Korea in the form of both military material and contingents of their armed forces. At this moment, as I complete my annual report, these forces are fighting on behalf of the United Nations to assist the Republic of Korea to repel the attack and to restore international peace and security in Korea.³⁹

Lie repeated his view that the military operation came under the UN umbrella by referring to the ‘United Nations collective security action’ in Korea. ‘For the first time in the history of the world’, he remarked on 8 September 1950, ‘the enforcement of peace has been undertaken by a world organization’. This unique

³⁵ Farrar-Hockley, Distant Obligation, 209.
³⁶ Ibid., 225, 402.
occurrence had ‘happened in response to a recommendation of the Security Council, rather than a command’. Furthermore, he pointed towards both the General Assembly resolution of October 1950, which authorized action for the unification of Korea, and the Uniting for Peace resolution of November 1950, implying that such decision-making, whether by the Council or the General Assembly, constituted a new collective security system to replace the balance-of-power system based on defence pacts: ‘[e]ven if the Security had been blocked by the use of the veto, the General Assembly, where there is no veto, could have made the same recommendation’.

Lie had no difficulty reconciling the cessation of hostilities in Korea negotiated by US commanders with his view that the operation was a UN operation. Security Council resolutions had authorized the creation of a Unified Command led by the United States, ‘authorized . . . to conduct such military negotiations on behalf of the United Nations’. With the armistice in sight in April 1953, Lie spoke of ‘a great victory for collective security’, and, as the truce was announced in July, added that ‘collective security has been enforced for the first time in human history’. In the three years since the North Korean invasion, Lie had moved from the view that no collective security system was in place to the view that the military action was taken on behalf of the UN, and then to describing it as a rudimentary form of collective security. At no time did Lie describe the operation as the collective self-defence of Korea.

Similarly, although Britain and the United States had claimed to be acting in self-defence in the Gulf prior to the adoption of Resolution 678 on 29 November 1990, they did not restate the claim afterwards. Like Resolution 83 on Korea, Resolution 678 gave ambiguous directions, appearing first to give an ultimatum to Iraq and only secondly authorizing the use of force. The delay was inserted at the insistence of the Soviet Union in the hope that the threat of force would compel Iraq to withdraw from Kuwait. The second operative paragraph of the resolution authorized ‘Member States co-operating with the Government of Kuwait, unless Iraq on or before 15 January 1991 fully implements . . . the foregoing resolutions [of the Council on the crisis], to use all necessary means to uphold and implement Security Council resolution 660 and all subsequent resolutions and to restore international peace and security in the area’.

Despite the unnecessarily ambiguous language, the Security Council treated the resolution, which required the coalition to report to the Council on the actions taken under the resolution, as the necessary constitutional link between the Council and the military operation. At the meeting of 29 November 1990 at which the resolution was adopted, both the US Secretary of State, James Baker, and the British Foreign Secretary, Douglas Hurd, emphasized the Council’s

40 GA Res. 377, 3 Nov. 1950.
41 Cordier and Foote, Public Papers, 351.
decision to authorize the enforcement of its own resolutions.\textsuperscript{43} Finland and even the Soviet Union referred to the exercise of collective security, thereby withdrawing the latter’s objection to this type of operation lodged at the time of the operation in Korea.\textsuperscript{44} Most of the members of the Council discussed the matter as an exercise of its authority, even though Cuba and Yemen claimed that the Council had exceeded it.

The level of legal debate was perfunctory when compared with the detailed legal expositions that occurred during the Korean War, perhaps because the legal arguments about the decentralized military option (with the exception of the question of whether sanctions affected the right of self-defence) were aired (and mostly resolved) at that time. Since the end of the Cold War, however, such issues are dealt with in informal discussions of key Council members, leaving public meetings for the formal adoption of decisions already made. Once the arguments for self-defence were discarded in Resolution 678, the Council debate on 3 April 1991 about the adoption of Resolution 687 was based on the Council’s authority to bring an end to a war that it had legitimately sanctioned.\textsuperscript{45} That the hostilities were formally terminated by Council resolution, and that the Council decided to continue the economic sanctions in order to achieve the objectives set out in Resolution 687, attests to collective security, not collective self-defence, being the basis for the military operation against Iraq.

8. Britain and the Korean War

Having considered the international legal basis of the two coalition actions in 1950 and 1991, we turn to parliament to see how the government’s explanations of the necessity of contributing to such operations far from British shores were received by MPs, and in particular to consider the role of international law in that debate, especially the international legal basis of the military operation.

In responding to aggression under a UN mandate, the model has been for the executive to decide and for parliament to have several lengthy debates during the course of the operation, particularly after there has been a new development. Aggression is a clear breach of article 2(4) of the UN Charter and there is generally little doubt that it has occurred. To respond to such aggression is seen by the UK, as the following analysis will show, as a minimum condition for the continued existence of the UN.

On 25 June 1950, 100,000 North Korean soldiers crossed the 38th parallel, which had divided the two halves of Korea since the Japanese withdrawal at the end of the Second World War. The aim of Communist North Korea was to unite

\textsuperscript{43} SC 2963rd mtg, 29 Nov. 1990.
\textsuperscript{44} Bowett, \textit{United Nations Forces}, 46.
\textsuperscript{45} SC 2981st mtg, 3 April 1991.
the country by force. One aspect of the Security Council’s action as regards Korea was that the USSR was absent from the Council when the relevant Council resolutions were adopted.

In parliament, on 26 June the Leader of the Opposition, Winston Churchill, asked the Labour Prime Minister, Clement Attlee, for a statement on the situation on Korea. The Prime Minister explained that in response to the invasion, the Security Council had been convened by the United States, and that a resolution had been passed that found that the invasion constituted a breach of the peace and called for a cessation of hostilities and a withdrawal of North Korean forces to the 38th parallel. In a brief exchange, one member of the House caused uproar and was ruled out of order by the speaker when he suggested that if the North Korean government refused to comply with the resolution, the atomic bomb should be used against it. Though this now appears to be a complete over-reaction, it was a refrain that was heard again during the Korean conflict, including comments made by President Truman following the Chinese intervention in the conflict later in 1950.

On 27 June 1950, the Prime Minister was asked if the government would join the US in coming to the assistance of South Korea in an action in collective self-defence. Attlee answered that it was better to wait for the outcome of the Security Council debates before commenting on what the UK’s response to the North Korean invasion would be. Later in the day the Prime Minister interrupted a debate to state that the UK representative on the Security Council was ‘authorised to support’ the proposed Resolution (83) that recommended the furnishing of assistance to South Korea. The Prime Minister emphasized that effective measures would be taken through ‘international machinery’. Mr Churchill thanked the Prime Minister for making the House acquainted with these matters and expressed the unity of the whole House. On 28 June, Prime Minister Attlee informed the House of the resolution and was asked whether the UK intended to take action to support it. In a very brief exchange the Prime Minister stated that action was being considered and that it was left to the UK as to what assistance was provided. Mr Churchill had confidence that the government would ‘act up to [its] supreme international obligations’. Later on 28 June, the Prime Minister informed the House of the government’s decision to place its naval forces in Japanese waters at the disposal of the United States. Subsequently the UK deployed up to 12,000 troops in the Korean conflict. Again the Leader of the Opposition expressed his full support. One MP did suggest that such matters of grave peril ought to be fully debated in the House of Commons.

46 SC Res. 82, 25 June 1950.
47 Hansard HC vol 476, cols 1094–6, 26 June 1950 (Roberts).
49 Hansard HC vol 476, col 2103, 27 June 1950 (Blackburn).
50 Ibid., cols 2159–60.
52 Ibid., cols 2319–20, 28 June 1950 (Silverman).
The first full House of Commons debate on Korea was held on 5 July 1950, clearly after the decision to deploy troops and initial deployments had been made. The Prime Minister requested the support of the House for the action taken by the government under the United Nations Charter ‘in helping to resist the unprovoked aggression against the Republic of Korea’. The government position on the international legal basis was that it was a UN action, not an action in collective self-defence. This was made clear by the Prime Minister’s heavy reliance on Resolution 83, and his explanation that Soviet absence at the time of its adoption did not invalidate it. He quoted article 27(3) of the Charter, which contains the veto power, and stated that although the Soviet Union had not indicated its concurrence with the resolution as seemingly required by article 27 a custom had emerged in the permanent membership to the effect that abstention did not invalidate a resolution:

If a member of the Security Council, and in particular a permanent member, chooses to refrain from exercising its right of voting, not by failing to vote when present, but by refraining from attending the meeting at all, that member must be regarded as having deliberately abstained from the vote.

He supported this legal argument on the validity of Resolution 83 by citing article 28 of the Charter which provides that the Security Council should function continuously, a provision which made it clear that a permanent member could not prevent its functioning by being absent. The practice of abstention had not fully been accepted in 1950 though it certainly came to be, and was recognized as legitimate by the International Court of Justice in 1971. The argument about a permanent member not being able to prevent the continuous functioning of the Council seemed to disregard the fact that a veto could do this anyway. Despite weaknesses in the argument the importance of the Prime Minister’s explanation of the validity of Resolution 83 was that it showed the importance of this resolution and therefore UN authority to the government’s case for going to war.

Furthermore, the Prime Minister stated that the United States’ initial assistance to the Republic of Korea before Resolution 83 had been a justifiable action in collective self-defence in accordance with article 51 of the Charter, but after the passing of the resolution of the 27th, justification for the continued action of America and the United Kingdom and of other members is to be found in this resolution. More widely the action in Korea was justified out of the need to combat aggression to prevent the UN collapsing in a similar manner to the League. Interestingly, the Prime Minister saw no need to seek public support for such operations when he stated ‘if the peoples wish to avoid another world war they must support their governments in asserting the rule of law’. Mr Churchill’s speech in reply was supportive, although he put greater emphasis on the need

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54 Ibid., col 489.
to combat Communism, while the Liberal leader, Clement Davies, put more emphasis on the action of forty-one countries in support of the Security Council, though he would have preferred to see a truly international army.⁵⁶ Overall, there was very little critique of the international legal basis of the operation, in particular there was no highlighting of the fact that the military action being mounted under the auspices of the UN was a long way from that which was envisaged in the UN Charter of 1945. There was some dissent, but this was due to disagreement with the government’s policy of siding with the United States, which could lead to world conflict with the Soviet Union.⁵⁷ The debate ended with the House supporting a substantive motion that ‘this House fully supports the action taken by His Majesty’s Government in conformity with their obligations under the United Nations Charter, in helping to resist the unprovoked aggression against the Republic of Korea’.⁵⁸

The importance of the operation being a UN-authorized one is clear. Without that source of legality and legitimacy, it would have been more difficult to explain to parliament, but more particularly to the British public who had only five years previously come out of a devastating world conflict, to support such an action far away from British shores. Simply put it would have been much more difficult to make the case out for defending a distant state from attack than it was to be seen to be clearly acting in support of UN principles and under UN authority to preserve world peace. For all practical military purposes, the distinction between collective defence of Korea and collective security against aggression was at this stage a fine one, but legally and, more importantly, politically the difference was great.

With Resolution 83 secured, the UN force was established, it flew the UN flag, but it was not commanded and controlled by the UN. The fact is that the resolution was simply a delegation of authority to the US, which supplied ninety percent of the force. In Resolution 84, the Security Council recommended that contributing states make forces available to a unified command under the US, requested the US to designate the commander of such forces, and to report to the Security Council on the course of action taken by the unified command. The force’s commander, General MacArthur, was appointed by the US and took his orders from Washington, not the UN in New York. When the Soviet representative returned to the Security Council at the beginning of August 1950, thereby preventing the Security Council from adopting any further resolutions, the military action was already underway and so did not require any further mandate until the US-led force had turned the war around and had pushed North Korea back to the 38th parallel. The United States decided to push over the 38th parallel, with a nod towards the ambiguous phrase in Resolution 83 which recommended the restoration of peace and security in the area.

⁵⁶ *Hansard* HC vol 477, col 503, 5 July 1950.
⁵⁷ Ibid., col 552 (Hughes).
⁵⁸ Ibid., cols 485–90, 492–3, 502, 596.
In any event the Western-dominated General Assembly obliged by adopting a resolution on 7 October that called for stability throughout Korea and for steps to be taken for the establishment of a unified Korea.\(^59\) This was the day US troops crossed the 38th parallel. Furthermore, the resolution stated that UN forces should stay in Korea to fulfill these objectives. This implicitly legitimated that crossing into North Korea. The Assembly’s resolution on Korea was adopted nearly a month before the Assembly’s Uniting for Peace Resolution, which clearly stated that the Assembly could recommend enforcement measures in response to breaches of the peace and acts of aggression, when the Council was deadlocked by the veto.\(^60\) MPs welcomed the development of the Uniting for Peace Resolution in the General Assembly, seeing it as making the collective security machinery fully effective, though not adding to the powers of the Assembly.\(^61\) The idea was that after Korea, the Assembly would be able to authorize military action in cases where the Council was deadlocked by the veto, thus making the UN as a whole more active and interventionist.

Unfortunately, the crossing of the 38th parallel and the subsequent pushing of UN forces up towards the Chinese frontier did not restore peace and security to the area; instead it provoked a massive military intervention by the Peoples’ Republic of China, an act characterized as ‘aggression’ by the General Assembly.\(^62\) By July 1951, the belligerents were in a stalemate around the 38th parallel and truce negotiations eventually resulted in an armistice but not until July 1953, negotiated, in effect, by the United States.

Beyond the full debate of 7 July 1950, which centred on Resolution 83, subsequent events were not always subject to scrutiny by parliament, notably the decision to cross the 38th parallel, which was not debated at the time. There was greater concern about the pressure on British forces necessitating amendments to the National Service Acts,\(^63\) though in King George VI’s speech at the opening of parliament on 31 October 1950, there was a strong restatement of the cause underlying the military operation:

In Korea forces, for the first time under the flag of the United Nations, are overcoming the invaders. The success of this historic action in which My Forces are playing their part marks a decisive moment in world affairs, and is arousing fresh hopes of achieving a united, free and democratic Korea. It has already given proof of the ability of the United Nations to meet a threat to world peace.\(^64\)

In debating this speech MPs seemed to think that the Korean War was drawing to a successful conclusion with Winston Churchill stating that the ‘successful

\(^{59}\) GA Res. 376, 7 Oct. 1950. \(^{60}\) GA Res. 377, 3 Nov. 1950.

\(^{61}\) Hansard HC vol 480, col 239 1 Nov. 1950 (Foot, Davies). See further the statement on Uniting for Peace: vol 480, cols 328–9, 11 Nov. 1950 (Davies).

\(^{62}\) GA Res. 498, 1 Feb. 1950.

\(^{63}\) See lengthy debate on defence starting with Hansard HC vol 479, col 951, 12 Sept. 1950 (Attlee).

\(^{64}\) Hansard HC vol 480, col 6, 31 Oct. 1950.
intervention of the United Nations in Korea and General MacArthur’s brilliant conduct’ were ‘things for general rejoicing’, while the Prime Minister spoke of the ‘success’ of the operation,⁶⁵ though by late October Chinese forces had already been involved in skirmishes with the UN force.

China entered the war fully in late November 1950. On 16 November 1950, the government reported to the House of Commons the presence of Chinese troops in strength in Korea.⁶⁶ In a debate on foreign affairs on 29 November 1950, the Foreign Secretary, Ernest Bevin, restated that the primary aim of the British and UN policy was ‘peace, our second a unified democratically governed Korea, and the third the rehabilitation of the country’. He dealt with criticism of the leeway given to General MacArthur by saying that ‘this is the first real effort at collective security in resistance to aggression, which came very suddenly, and much had to be improvised’. On the Chinese intervention, Bevin could only guess at their motives and stated that ‘the first essential is to stabilise the military situations and then to explore a political settlement’,⁶⁷ a hint perhaps that the UK might be willing to forgo the second of its policies (a unified Korea) in pursuance of the first—peace. Anthony Eden, speaking for the Conservative opposition, took this further and stated that the policy should be to hold the ‘wasp waist’ of Korea in the light of the aggressive Chinese government which has not only intervened in Korea but had also marched into Tibet in October 1950.⁶⁸ Criticisms were made in the House of the decision to cross the 38th parallel. With the US-led army in Korea in retreat in the face of the Chinese action, the House was less supportive of government policy. By December 1950 the situation had worsened but Prime Minister Attlee recognized that defeat could be disastrous not only for the fight against communism but for the UN:

Korea is essentially a United Nations problem. Its outcome will have an important effect on the authority and prestige of the United Nations. It is vital that that authority should be maintained, and it is therefore, of supreme importance that any settlement should be arrived at under United Nations auspices.⁶⁹

Winston Churchill took the opportunity to criticize the government for not talking over the decision in October to cross the 38th parallel with the United States,⁷⁰ demonstrating some accountability for government policies but again as the great man himself recognized ‘it is always easy to be wise after the event’. Accountability to parliament is retrospective and in matters of war this comes too late to make any difference. Had a debate been held in October and MPs expressed concern about heading into North Korea, the government might have

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⁶⁵ Ibid., col 18 (Churchill), col 31 (Attlee).
⁶⁶ Hansard HC vol 480, col 1905 (Shinwell), 16 Nov. 1950.
⁶⁷ Hansard HC vol 481, cols 1161–6, 29 Nov. 1950 (Bevin).
⁶⁸ Ibid., cols 1177–8 (Eden).
⁷⁰ Ibid., col 1364 (Churchill).
tried to influence the US command. The government’s response to this criticism though was that the UN force had the authority of the General Assembly to cross into North Korea, and this certainly seemed to influence a number of MPs.⁷¹

By February 1951 it was clear that the government was in favour of seeking a cease-fire and that, as the Prime Minister put it, ‘the 38th parallel ought not to be crossed again until there are full consultations with the United Nations’.⁷² The government was questioned when the parallel was crossed again by the US.⁷³ As it was, the conflict in Korea ebbed and flowed around the 38th parallel, eventually resulting in a stalemate by May 1951. In June 1951, the Foreign Secretary, Herbert Morrison, made a statement on the first anniversary of the outbreak of the conflict:

The immediate objective of driving back the attacking forces to the general area from which the original act of aggression was launched has now largely been attained. Great credit is due to the United Nations Forces for the military success that has been achieved, in which our own Forces have played a gallant and distinguished part.

The longer term objectives were stated to be limiting the fighting to Korea, and to bring the fighting to an end so that peace may be restored and the task of repairing the damage could be started.⁷⁴ The government had clearly decided, along with its UN partners, that the war aims should be more realistic especially in the light of the fact that, as the Foreign Secretary indicated, the Soviet Union had indicated that the fighting should stop. China indicated its willingness to seek a cease-fire in early July 1951.⁷⁵ Peace negotiations started that month but a cease-fire was not agreed until July 1953, when an armistice was signed by the United States and North Korea. That the negotiations were being conducted by delegates of the Commander in Chief (General Ridgway who replaced General MacArthur in 1951) was made clear by the government,⁷⁶ with the new Prime Minister Winston Churchill stating that the US was negotiating on behalf of the United Nations.⁷⁷

In the lengthy period of negotiations a number of debates were held, in which criticisms were levelled at the government for not seeking greater consultation with the United States on UN policy on Korea, and for the continued

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⁷¹ Ibid., col 1459 (Bevin).
⁷² Hansard HC vol 484, col 62, 12 Feb. 1951 (Attlee). See also statement by the Defence Secretary, vol 484, col 1072, 20 Feb. 1951 (Shinwell), who related the improving situation.
⁷³ Hansard HC vol 484, col 1274, 21 Feb. 1951 (Brockway). See statement by government on its policy re the 38th parallel and the need to make small incursions: vol 484, col 1743, 26 Feb. 1951 (Davies). See also statement by Foreign Secretary Herbert Morrison regarding the UN policy in Korea when he stated that the real issue was not the re-crossing of the 38th parallel but whether the North Koreans and Chinese would agree to a cease-fire: vol 486, col 1025, 11 April 1951.
⁷⁴ Hansard HC vol 489, col 1006, 25 June 1951 (Morrison).
⁷⁵ Hansard HC vol 489, col 1902, 2 July 1951 (Morrison).
⁷⁷ Hansard HC vol 495, col 197, 30 Jan. 1952 (Churchill). He stated that British losses in the War were nearly 3,000 while US losses were over 105,000.
bombing campaigns of the US.⁷⁸ In defending the government’s policy from a vote of censure in the House of Commons during July 1952, Prime Minister Churchill spoke about the huge burden and cost to the United States giving the example that the ‘bickering on the front’ during armistice negotiations had led to 32,000 US casualties while the UK had suffered 1,200.⁷⁹ Fighting continued, with regular reports to the House of Commons from the government on this and the continuing negotiations, until July 1953. In November 1952 the government reported that the one issue holding up armistice negotiations was that of repatriation of prisoners of war, with the communist side wanting assurances that prisoners would be returned to North Korea or China, and not be given freedom to choose whether to be repatriated.⁸⁰ The government reported that there were debates in the UN General Assembly on this matter, and the Assembly did adopt an Indian sponsored resolution which laid down the principles and process under which repatriation should be conducted,⁸¹ though this was rejected by China and North Korea as well as the Soviet Union.⁸² The government reported that there were 949 British PoWs in North Korea.⁸³

On 1 April 1953 a breakthrough came when the Chinese accepted the proposals for repatriating prisoners,⁸⁴ a decision which eventually led to the armistice in July 1953 when a demilitarized zone was established around the front line at the time, which was close to the 38th parallel. The agreement was announced to the House of Commons on 27 July 1953, with the government minister stating that ‘for the first time since the formation of the United Nations, member states have taken up arms in collective resistance to aggression, and the joint action has been successful’ asserting that the ‘forces of aggression have been driven back beyond the line from which they first started’.⁸⁵ Though it was the United States who signed the armistice, the British government and parliament were concerned that the matter go to the UN General Assembly,⁸⁶ which endorsed the armistice as a major step towards the restoration of peace and security in the area, but also stated that the UN’s aims were to achieve by peaceful means a united, independent and democratic Korea.⁸⁷ The resolution

⁷⁸ *Hansard* HC vol 502, col 2353, 25 June 1952 (Shinwell); vol 503, col 255, 1 July 1952 (Noel-Baker).
⁷⁹ *Hansard* HC vol 503, col 270, 1 July 1952 (Churchill). The government narrowly survived the vote of censure by 300 votes to 270.
⁸⁰ *Hansard* HC vol 508, col 631, 27 Nov. 1952 (Eden).
⁸¹ GA Res. 610 (VII), 3 Dec. 1952. See also Korea: *Hansard* HC vol 511, col 1233, 18 Feb. 1953 (Birch).
⁸² *Hansard* HC vol 511, col 1219, 1 April 1953 (Churchill).
⁸³ *Hansard* HC vol 513, col 1233, 18 Feb. 1953 (Birch).
⁸⁴ *Hansard* HC vol 513, col 1219, 1 April 1953 (Churchill).
⁸⁵ *Hansard* HC vol 518, col 894, 27 July 1953 (Lloyd). See also Special Report of the Unified Command on the Korean Armistice Agreement, presented by the Secretary of State for Foreign Affairs to Parliament, September 1953 (Korea No 2 (1953)).
⁸⁶ *Hansard* HC vol 518, col 1091, 28 July 1953 (Butler).
envisaged a political conference of Korea to try and further these objectives, but the Geneva Conference of 1954 on Indo-China concentrated on the next battleground in that region—Vietnam.⁸⁸

9. Britain and Iraq’s invasion of Kuwait

The Korean model of security action, seemingly unique in the circumstances of the Cold War, appears to have influenced the action taken by an *ad hoc* coalition of forces under US command, but authorized by the Security Council in the Gulf Crisis of 1990–1. Following, the Iraqi invasion and subjugation of Kuwait on 2 August 1990, the Security Council, acting under articles 39 and 40 of the UN Charter, adopted Resolution 660 on the same day, condemning the Iraqi invasion and determining that it constituted a breach of the peace. When this was not heeded, the Security Council adopted mandatory, comprehensive economic sanctions under article 41 of the Charter in Resolution 661 of 6 August. The Council then adopted a series of resolutions either condemning Iraqi actions, such as the purported merger of Kuwait into Iraq,⁸⁹ and the taking hostage of foreign nationals in Iraq and Kuwait;⁹⁰ or fine-tuning the embargo, as with the authorization for states to use limited force to stop ships in the Gulf in Resolution 665, and clarification of the humanitarian exception to the embargo on food and medicine.⁹¹ While there was only a brief opportunity to utilize the Council in the Korean conflict, the relaxation on the political constraints of the Council in the immediate post-Cold War period meant that it seemed to take charge of the situation with a series of detailed chapter VII resolutions.

Resolution 678 of 29 November 1990, which sanctioned the use of force, was a compromise between the permanent members, with the Soviet Union wishing to delay any military action, while the US and UK were pressing for it. The result that the Council imposed a fairly generous ultimatum to Iraq when it authorized ‘member States co-operating with the Government of Kuwait, unless Iraq on or before 15 January 1991’, fully implemented Resolution 660 and all subsequent resolutions, ‘to use all means to uphold and implement Security Council resolutions and all subsequent resolutions and to restore international peace and security in the area’. Despite the appearance of permanent member consensus, pushing to one side the Chinese abstention, the driving force behind the resolution was the United States and in this respect the military action against Iraq was little different to that taken against Korea, with the United States commanding the

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⁸⁸ See Documents Relating to the Discussion of Korea and Indo-China at the Geneva Conference, presented by the Secretary of State for Foreign Affairs to Parliament, June 1954 (Miscellaneous No 16 (1954)) 1–96.
contributing half a million troops to the coalition force of 750,000 drawn from twenty-nine countries. Once the Security Council had adopted Resolution 678, and the deadline had passed, the coalition was free to prosecute the war and the only obligation *vis-à-vis* the UN being was to provide reports to the Security Council.

It was under the UN umbrella but not under the UN flag that a coalition of Western and Arab forces started their campaign on 16 January soon after the Security Council-imposed deadline had run out. The ground offensive for the liberation of Kuwait started on 24 February 1991 and was successful in achieving its objectives within five days. Despite the fact that Resolution 678 contained the nebulous phrase authorizing the use of force to ‘restore international peace and security in the area’, the coalition interpreted Resolution 678 restrictively as limiting military operations to the enforcement of Resolution 660 and other resolutions aimed at Iraqi withdrawal from Kuwait. Although the air campaign was directed at military and industrial sites in Iraq, and the ground offensive included southern Iraq within it, these actions appeared necessary to achieve the successful liberation of Kuwait. Overall the coalition kept within the mandate, as laid down in Resolution 678. Whether the mandate could have been interpreted to include the overthrow of the brutal regime of Saddam Hussein seemed a moot point in 1991, though it became all too real in 2003. Certainly when Resolution 678 was adopted by the Security Council, member states, including the UK and the US made it clear that they saw the resolution as enabling them to remove Iraq from Kuwait, no more.⁹²

The defeat of Iraq enabled the coalition to impose very strict cease-fire terms, differing greatly from the protracted armistice agreement ending the Korean War. A temporary cease-fire was detailed in Security Council Resolution 686 of 2 March 1991, in which Iraq accepted liability for any damage caused by the invasion and agreed to rescind its annexation of Kuwait. A formal cease-fire was established by Resolution 687, adopted on 3 April 1991. This lengthy document also imposed further punishment and conditions upon Iraq, not least the destruction of its chemical biological and nuclear capability to be overseen by a Special Commission and the IAEA, with a Compensation Commission established to oversee the payment of compensation by Iraq. Although Resolution 687 allowed for the lifting of some sanctions, particularly on foodstuffs and other essential civilian requirements, sanctions were maintained to enforce the disarmament provisions of the resolution.

While the Korean War lasted for three years, the Gulf conflict lasted a few weeks, or at least that seemed to be the case in April 1991. However, the Korean War included not only the repulsion of aggression but also an attempted conquest of North Korea. In 1991 the UN-authorized operation stopped at expulsion of

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⁹² SC 2963rd mtg, 29 Nov. 1990, 78 (UK), 101 (US).
Iraq, though in a sense the second phase came twelve years later with the invasion and conquest of Iraq in 2003.

Considering the role of parliament in the UK it is worth recounting that UN authority for the use of military force was not forthcoming until several months after the Iraqi invasion of Kuwait of 2 August 1990. This period of time gave the House of Commons some room for debate on the question of whether there was a need for such authority, or whether, as the government insisted, the gathering of US and UK troops in the region and their future use against Iraq, was justifiable collective defence of Kuwait. British troops were deployed to the region before the debates occurred in the House of Commons on 6 and 7 September 1990, but there had been no final decision committing them to action. Thus there was a greater opportunity for parliamentary debate prior to military action than there was in Korea.

The Prime Minister, Margaret Thatcher, opened the debate in a parliament recalled from its summer recess, by expressing the UK’s support for UN measures (demanding a cease-fire and imposing economic sanctions), while informing the House on the deployment of British troops at the request of various Gulf rulers. She condemned Iraq’s actions as ‘an outrageous breach of international law’ and further:

Iraq’s actions raise very important issues of principle as well as of law. There can be no conceivable justification for one country to march in and seize another, simply because it covets its neighbour’s wealth and resources. If Iraq’s aggression were allowed to succeed, no small state would ever feel safe again. At the very time when at last we can see the prospect of a world governed by the rule of law, a world in which the United Nations and the Security Council can play a role envisaged for them when they were founded, Iraq’s actions go back to the law of the jungle.

As with Korea, the credibility of the UN was at stake. However, the Prime Minister made it absolutely clear that the Security Council resolutions adopted so far did not affect the right of the UK and its allies to take military action under the rubric of collective self-defence embodied in article 51 of the Charter (as recognized in the terms of Council Resolution 661). In response to some criticism that authority to take military action should be sought from the Security Council, the Prime Minister stated ‘I have full legal authority for everything I say on these matters … and I am not willing to limit our freedom of action’. While Iraq was vulnerable to sanctions, and the Prime Minister hoped that they would work, she made it clear that ‘we are not precluded by reason of any of the Security Council resolutions from exercising our inherent right of collective self-defence in accordance with the rules of international law’.

93 Hansard HC vol 177, cols 734–8, 6 Sept. 1990 (Thatcher). Questions from Benn and Dalyell.
the Security Council, there was clearly insufficient confidence at this stage in the willingness of the Council to authorize the use of force.

The opposition used this period in the build up of forces to press for any future military response to be founded upon a Security Council resolution. While supporting the need for a firm response to Iraqi aggression, the Leader of the Opposition, Neil Kinnock, pressed the case for sanctions being allowed some time to work and then, if these failed, to seek a Security Council mandate for a forceful eviction of Iraq. To push ahead with an action in collective self-defence of Kuwait would potentially destroy the unanimity among the Council and shatter the prospects for a new world order.

We had better think very hard and politically before risking that potential on the basis of even the most distinguished and technically correct legal advice about the extent of article 51.

Thus while not disagreeing with the Prime Minister’s ‘technical’ interpretation of the right of self-defence, he did think that it would be politically wiser to obtain Security Council authority. He pointed out the fact that the government seemed to accept the need for a Council Resolution (665) to legitimate the maritime blockade in the Gulf. Though the government had stated in the Security Council that Resolution 665 simply provided an ‘additional’ legal basis for the maritime action, it did seem to be the case that it had accepted the political case for Security Council authority for the enforcement of sanctions.

Neil Kinnock’s speech was also interesting in that he saw beyond the attainment of the primary objectives of the UN—to remove Iraq from Kuwait—stating that there must then be an arms embargo on Iraq, its chemical weapons must be destroyed, there must be monitoring of its nuclear and weapons making capability, and finally there must be reparations by Iraq for its aggression. These indeed formed the core elements of Resolution 687 that ended the 1991 conflict.

There was a view, by no means universal in the House of Commons, but shared by MPs from different parties, that it was essential, for political reasons, for UN Security Council authority to be sought and gained for any military action. Former Conservative Prime Minister Edward Heath said that while the right of self-defence under article 51 should not be ruled out if Iraq tried to invade another country such as Saudi Arabia, if there was no further expansion ‘it is difficult to imagine a position in which we would launch a deliberate attack without at least having the authority of the United Nations’. The leader of the Liberal Democrats, Paddy Ashdown, endorsed this view stating that in this political

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94 Ibid., cols. 746–9 (Kinnock).
96 Hansard HC vol 177, col 750, 6 Sept. 1990 (Kinnock).
97 Ibid., col 752 (Heath).
phase of the crisis it was necessary to build the ‘strongest international consensus’. He stated in the strongest terms that:

I believe that the Government would find it extremely difficult to carry public opinion in this country—and international opinion abroad—if they were to embark on such an adventure without the backing of the United Nations.

To shatter this consensus ‘through impatience would be foolish, and even a successful military outcome could nevertheless represent a serious political failure’.⁹⁸

Although the government, using its large majority and with considerable bipartisan support, won a vote supporting its action in the Gulf by 437 votes to 35, a number of members made it clear that their vote was contingent upon the ‘widest possible international agreement’ being achieved if the use of force proved necessary.⁹⁹

Events show that the British government came round to the view that politically, at least, a UN resolution was necessary to sanction the use of force against Iraq. The Queen’s prorogation speech of 1 November accurately reflects the delicate balance at that stage between taking any military action under UN authority and simply acting in collective self-defence of Kuwait. Queen Elizabeth II stated:

My Government has played a full and vigorous part in the actions taken by the United Nations and the international community to bring about the withdrawal of Iraqi forces from Kuwait and the restoration of that country’s independence and legitimate government. They have responded quickly to requests by Kuwait, Saudi Arabia and other Governments of the region to contribute to their defence. They have made clear their determination that this act of aggression will not be allowed to succeed.¹⁰⁰

Clearly the government did not want to jeopardize its freedom of action under article 51, though it was, with the United States, working towards a further Security Council resolution.¹⁰¹

On 28 November 1990, the day before Resolution 678 authorizing force was adopted by the Security Council, the government informed the House of Commons of the imminent resolution. The Foreign Secretary, Douglas Hurd, stated that the resolution was necessary for the ‘military option to be fully credible’.¹⁰² Though this represented a change in government policy, it did not amount to a concession that there was a legal need for such a resolution. Indeed, in the later debate of 11 December Douglas Hurd unequivocally stated that ‘article 51 and the original request from the Kuwaits provided a legal basis; the argument

⁹⁸ Ibid., col 756, 6 Sept. 1990. But see for example Dr David Owen stating that ‘it is nonsense to rule out action under article 51’: col 786.
⁹⁹ Hansard HC vol 177, col 883, 7 Sept. 1990 (Steel).
¹⁰⁰ Hansard HC vol 178, col 1088, 1 Nov. 1990.
was about whether there should be an additional political basis. This has been supplied by resolution 678.¹⁰³ Though this might explain the British position leading up to and including the adoption of Resolution 678, as an explanation of the legal basis after that Resolution, it is unsustainable. After the resolution was secured, as with Korea, the military action, both legally and politically speaking, was a UN authorized operation, not one in collective self-defence. Once the Resolution was adopted it was under article 42 of the Charter, not article 51, that action was taken.

Thus the necessity for a Security Council resolution was fully debated in the House. In addition, there was a debate on 11 December 1990 on the timing of military action with some members wishing more time to be given for sanctions to work, and others opposing the use of force. The government’s position was that time favoured Iraq, at least in its military preparations, and in its policy of subsuming Kuwait into Iraq, and that coalition forces would be ready to act within a few weeks.¹⁰⁴ With the political consensus in place, the question was now one of military timing. The government won a vote on the issue of the necessity of military action by 455 votes to 42.

Thus the government was pressed on both the need for a Security Council resolution and the necessity of military action in the build up to the conflict in January 1991. On the day given for withdrawal by Iraq—15 January 1991—with war looming, the new Conservative Prime Minister, John Major, updated the House. His main reason for calling for the debate was that it was ‘acutely important that our forces in the Gulf should feel that they have the united support of the vast majority of the House and of the country’. He also used the occasion to reiterate the government’s position, amidst some criticism from opposition members, that waiting longer for sanctions to work was not an option given the atrocities occurring in Kuwait.¹⁰⁵ He concluded his speech by declaring:

We do not want a conflict. We are not thirsting for war, but if it comes to it I believe that it would be a just war…From tomorrow, we are ready, with our allies, to do whatever is necessary to implement the resolutions of the United Nations in full to ensure that Iraqi forces leave Kuwait without condition, without delay and without reward.¹⁰⁶

Despite the misgivings of a number of opposition MPs, the government defeated a vote opposing the use of force by 534 votes to 57. On 17 January 1991, Prime Minister Major made a statement to the House announcing the start of hostilities in the Gulf, and reiterating the aims of the operation: ‘to get Iraq out of Kuwait—all of Kuwait; to restore the legitimate Government; to re-establish peace and security in the area; and to uphold the authority of the United Nations’.¹⁰⁷ When asked by Tony Benn MP ‘what role he sees for the Security Council in monitoring the operation?’, the Prime Minister stated that the action was taken ‘under

the authority of the United Nations, freely given’, and that there was ‘no need to reconvene the United Nations Security Council’, concluding that the UN was ‘not directly involved in the conflict; its member states are, but under the authority of the United Nations’.¹⁰⁸ Carrying parliament with it, the government moved that the House fully support British forces in the Gulf and ‘their contribution to the implementation of United Nations resolutions by the multinational force, as authorized by United Nations Security Council Resolution 678’.¹⁰⁹ This was supplemented by the Labour leader, Neil Kinnock, with the words: ‘commends the instruction to minimise civilian casualties wherever possible; and expresses its determination that, once the aggression in Kuwait is reversed, the United Nations and the international community must return with renewed vigour to resolving the wider problems in the Middle East’.¹¹⁰ The approval for the substantive amended motion was 563 to 34.

Thus with the House overwhelmingly behind it, the government subsequently reported on the state of hostilities to the House on 31 January, 18 February, 22 February, 25 February (just after the ground campaign had started), 26 February and 28 February (when the ground campaign ended). In the latter, the Prime Minister told the House that the Security Council would shortly discuss the ‘necessary political arrangements for the war to end’, though to all intents and purposes the ‘war had been won’.¹¹¹

Despite this high degree of accountability to parliament in the period leading up to the conflict and indeed during the war, there was no discussion of the settlement, in particular proposals for what were to become Security Council Resolutions 686 and 687. This is somewhat surprising given the problems of enforcing such an ambitious post-war settlement. It was a breach of the Resolution 687, in combination with the original mandate of Resolution 678, which was used to justify further uses of force against Iraq, most particularly in 1993, 1998 and finally with the invasion of Iraq in March 2003 reviewed in chapter ten.

There were detailed discussions in parliament on the plight of the parts of the Iraqi population who had rebelled against Saddam Hussein’s regime in the wake of his defeat in Kuwait.¹¹² The repression of the Kurds and Shias by the still powerful Iraqi army led the Security Council to adopt Resolution 688 on 5 April which condemned Iraq’s actions but did not authorize any military intervention within Iraq. The breach of this resolution was also used by western states as a reason for military action against Iraq, most especially in 1996. These actions, to protect the Kurds and Shias, as well as to enforce the disarmament provisions of

¹⁰⁸ Ibid., cols 980, 987 (Benn/Major).
¹¹⁰ Ibid., col 31 (Kinnock).
Resolution 687, raise a new raft of legal and political problems, and will be subject to separate discussion in chapters nine and ten.

10. Conclusion

In a violent world dominated by sovereign states, aggression is bound to occur. Traditionally, the victim of aggression has acted in self-defence and, if fortunate, has been joined by its allies in collective defence. However, both individual self-defence and collective self-defence are often abused. Israel claimed to be acting in self-defence when it launched the Six Day War in 1967. When the Soviet Union claimed in 1968 to be defending Czechoslovakia, the West ignored the Czechs' plea for help against defenders who were actually aggressors.

The UN Charter was intended to provide for a collective response to aggression, as well as dealing with other threats to the peace. Although the system that has developed since 1945 does not match the ideal, the United Nations has established its authority over military responses to aggression by North Korea and Iraq, and has thereby removed some, if not all, of the subjectivity and abuse inherent in a system based on defence pacts. Though the legal and political links between the United Nations and the operation should have been stronger in both Korea and the Gulf, a line can be drawn linking the Cold War action in Korea and the coalition's post-Cold War action in the Gulf. Several systemic defects remain, in particular, lack of precision in the enabling resolutions and the dependence on voluntary rather than compulsory commitment, but they remain UN operations and form the basis upon which modern day coalitions of the willing are authorized by the UN and dispatched by contributing states. Ultimately by seeing the operations in their true UN colours, as opposed to viewing them in traditional self-defence terms, we can see the defects in the UN system, and work towards improvement of it.

It must be said that Britain, along with the United States, has been instrumental in creating a decentralized UN military option under which the UN Security Council authorizes coalitions of the willing. Indeed, the creativity shown as regards UN Charter law in the action against North Korea was taken further by attempting to extend the constitutional development of military enforcement to include occasions when the General Assembly authorizes such action in situations when the Council is deadlocked by the veto. Though the 'Uniting for Peace' procedure has been used, its sponsors in 1950, including the UK, have long distanced themselves from it because of the vast changes in composition of the General Assembly. Simply put, the Assembly was dominated by the West in 1950, but that majority was lost later in that decade, as the first swathe of newly independent states joined the organization.

It also appears to be the case that parliament (and the population) is more likely to support an action to reverse aggression against a distant country when the action is taken under UN authority, rather than under the more traditional
right of self-defence. In trying to understand this, it is necessary to recognize that international law does not distinguish between a state’s right to defend itself and its right to come to the aid of another state. Legally speaking there is a clear right of collective self-defence, whereby the UK can come to the aid of an attacked state if so requested by that state. However, the core of self-defence is deep within the sovereignty of state, and its moral duty to protect that state from invasion. While we might technically speak of the ‘right’ of self-defence, from the perspective of the attacked state it is more in the nature of a duty, which can be placed deep within British constitutional practice and law,¹¹³ placed upon the government to protect the state, its territory, institutions and population from outside attack. Further discussion on the nature of the right of self-defence and collective self-defence will be left to chapters seven and eight, suffice it to say at this stage in Korea and Iraq there was no overwhelming sense that the UK was in danger from the acts of aggression in question, but the UN order was. As a member of the UN, more particularly a permanent member, the UK has a duty to uphold the principles of the UN Charter, which are most sharply challenged by acts of naked aggression. By taking the case for war to the Security Council and receiving the authority of that body, those states prosecuting the wars against Korea and Kuwait were able to present much more convincing cases to their parliaments and peoples.