

January 1998

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Edward A. Amley Jr.

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### Recommended Citation

Edward A. Amley, Peace by Other Means: Using Rewards in UN Efforts to End Conflicts, 26 Denv. J. Int'l L. & Pol'y 235 (1998).

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## Peace by Other Means: Using Rewards in UN Efforts to End Conflicts

### Keywords

Military Law, Peacekeeping Forces, United Nations, War, Securities Law

# PEACE BY OTHER MEANS: USING REWARDS IN UN EFFORTS TO END CONFLICTS\*

EDWARD A. AMLEY, JR.\*\*

## INTRODUCTION

At the international level and in a variety of domestic contexts, institutions and processes such as judicial mechanisms, elections, and legislatures that are designed to manage conflict have either never existed or fallen apart. Thus, the United Nations continues to face a variant of the following scenario: Electronic media outlets have begun to broadcast reports of civil strife and mass violence in a given state. How should the UN diplomats who meet to discuss the crisis respond? They might impose economic sanctions on the parties to the potentially destabilizing conflict. Or, should the UN Secretary-General appoint a special representative? This agent could then attempt to broker a settlement through mediation. Finally, the Security Council might use military muscle to generate a resolution to the crisis.

During the past decade, numerous observers have taken note of the UN's enlarged role in managing both domestic and international conflicts.<sup>1</sup> Part II of this Article surveys the strategies that it has employed to bring disputes to an end. This discussion is intertwined with an attempt to identify the strengths and limits of these conventional

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\* For reading and reacting to drafts of this Article, I thank W. Michael Reisman, Ruth Wedgwood, Jeff Anton, Asli Bali, Christopher Coleman, Mary Eliza Kimball, Julian Ku, and Kaoru Okuizumi.

\*\* J.D. Candidate, Yale Law School, 1998.

1. See *Report of the Secretary General on an Agenda for Peace—Preventative Diplomacy, Peacemaking and Peacekeeping*, P 3, U.N. Doc. S/24111 (1992), reprinted in 31 I.L.M. 953, 956 (1992) (asserting that "an opportunity has been regained to achieve the great objectives of the Charter—a United Nations capable of maintaining international peace and security, . . ."); Ibrahim J. Gassama, *Safeguarding the Democratic Entitlement: A Proposal for United Nations Involvement in National Politics*, 30 CORNELL INT'L L.J. 287, 287 (1997) ("United Nations participation in the conduct of national elections has become one of the most visible and concrete aspects of U.N. involvement in the domestic affairs of independent countries today."); Anne Orford, *Locating the International: Military and Monetary Interventions After the Cold War*, 38 HARV. INT'L L. J. 443, 443 (1997) (referring to "the revitalization and expansion of the United Nations collective security system"); Boutros Boutros-Ghali, *Global Leadership After the Cold War*, FOREIGN AFF., Mar.-Apr. 1996, at 86 (1996) (arguing that "the United Nations can help deal with the challenges that globalization and fragmentation pose now and in the future"). However, the ability of the UN to play a dominant role in international affairs may have been overestimated. See Anne-Marie Slaughter, *The Real New World Order*, FOREIGN AFF., Sept.-Oct. 1997, at 183 ("Many thought that the new world order proclaimed by George Bush was the promise of 1945 fulfilled, a world in which international institutions, led by the United Nations, guaranteed international peace and security with the active support of the world's major powers. That world order is a chimera.").

conflict-resolution approaches.

Unlike military force or diplomatic persuasion, positive inducements have not gained widespread currency in international affairs. Accounting for the failure of rewards to become entrenched in world politics is the concern of Part III. It also attempts to isolate such measures from other attempts to influence international actors.

Part IV identifies and discusses considerations that may drive UN positive inducement strategies. If international organizations recommend rewarding a party instead of relying upon military force, in which kinds of conflicts are such measures likely to be most effective? What form might these gestures take? At what point in the conflict-resolution process should they be utilized? Finally, how would the UN need to change institutionally to harness the full promise of reward-based strategies? In confronting these questions, this Part of the Article concludes that multiple considerations will drive the decision to influence disputants through positive inducements.

## II. UN CONFLICT-SUPPRESSION STRATEGIES: THE CURRENT STATE OF PLAY

The UN's current activism in the area of dispute-resolution represents a clear break from the past. Before the end of the Cold War, the superpowers monopolized this activity. They attempted to ensure global stability by brokering settlements to local and regional contests.<sup>2</sup> During this period, the UN sometimes played a peripheral role in the resolution of conflicts, usually by coordinating deployments of small, lightly-armed peace-keeping<sup>3</sup> forces that carried out tasks like cease-fire monitoring.

Since 1989, the international community has handed the UN an expanding conflict-resolution brief. First, states have called upon the UN to preside over the settlement of various violent manifestations of the Cold War that the superpowers had not been able to resolve by

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2. See I. William Zartman & Saadia Touval, *Mediation: The Role of Third-Party Diplomacy and Informal Peacemaking*, in *RESOLVING THIRD WORLD: CHALLENGES FOR A NEW ERA* 239, 241 (Sheryl J. Brown & Kimber M. Schraub eds., 1992) (finding that the United States was involved as "a mediator on at least ninety occasions, and the Soviet Union on at least twenty").

3. For the purposes of this Article, the term, "peace operation" functions as a generic expression for the efforts involving a significant UN presence that have been undertaken around the world to settle conflicts. It encompasses peacekeeping ventures, which usually consist of small military contingents presiding over cease fire and force withdrawal agreements. Meanwhile, peacebuilding efforts are multifaceted operations involving military and civilian components that usually follow the successful negotiation of a comprehensive accord between warring factions. Finally, peace enforcement operations denote UN attempts to use forcible measures to bring peace to a given context.

1989.<sup>4</sup> The UN has also begun to respond to the strife that has become a fixture of the current landscape in many areas of the world.<sup>5</sup> To settle conflicts, the UN has relied upon various options.

### A. *Mediation*

In some situations, the UN has played the role of diplomatic troubleshooter or mediator.<sup>6</sup> The considerable legitimacy and credibility the UN commands justifies these mediation efforts.<sup>7</sup> Usually, UN mediation initiatives take the form of attempts by a representative of the Secretary-General to open lines of communication between adversaries. This individual also facilitates negotiations and dialogue and persuades the disputants to settle their differences.<sup>8</sup>

4. The UN has formulated and implemented settlements designed to end conflicts in Namibia, Nicaragua, El Salvador, Mozambique, Angola, Afghanistan, and Cambodia. See Trevor Finallay, *The New Peacekeepers and the New Peacekeeping*, in CHALLENGES FOR THE NEW PEACEKEEPERS 1, 31 (Trevor Finallay ed., 1996) (referring to "the largest and most ambitious post-cold war missions . . . (notably those in Cambodia, El Salvador, Mozambique)").

5. Illustrations of such conflicts are the ongoing hostilities in Rwanda and Bosnia-Herzegovina. See Adam Steinfeld, Note, *Nuclear Objections: The Persistent Objector and the Legality of the Use of Nuclear Weapons*, 62 BROOK. L. REV. 1635, 1636 n.4 (1996) ("The recent UN peacekeeping operations in Rwanda and Bosnia-Herzegovina are indicative of the expanded scope of UN peacekeeping.").

6. In 1980, the Secretary-General appointed a representative to resolve the conflict in Afghanistan. This position continues to exist. See, e.g., *Taliban Chief Ready for Talks with Opposition*, Agence France-Presse, Dec. 28, 1997, available in 1997 WL 13461887 ("Meanwhile outgoing UN envoy for Afghanistan, Norbert Holl, expressed the hope that peace initiatives including those by the so-called group of eight countries would reach 'tangible results in the foreseeable future.'). Prior to the entrance into force of the latest peace agreement in Angola, a UN diplomat, Alioune Bloudin Beye, attempted to broker an agreement between the factions involved in the conflict that has plagued this country. See, e.g., *U.S. Backs Extension Of U.N. Mission In Angola*, Afr. News Serv., Jan. 29, 1998, available in 1998 WL 6607122 (reporting appreciation expressed "to the Secretary-General's Special Representative, Maitre Blondin Beye, for his devotion to the cause of peace in Angola."). A UN representative has worked to bring about a settlement to the seemingly intractable conflict in Burundi. Before resigning, Ahmedou Ould Abdullah, one previous UN representative in Burundi, was quoted as saying, "[t]his country [Burundi] does not need soldiers, it needs psychiatrists." *Bubbling Over*, ECONOMIST, Jan. 6, 1996, at 32.

7. As Saadia Touval has asserted, "[l]everage is, of course, also a matter of legitimacy and credibility. This is the main U.N. asset: the aura of legitimacy its actions carry as representing the consensus of the international community." Saadia Touval, *Why the U.N. Fails*, FOREIGN AFF., Sept.-Oct. 1994, at 52.

8. Touval, for example, has noted:

Mediators must offer their 'good offices' to help disputants communicate. They try to persuade each party to change its image of the adversary or to interpret the adversary's behavior in a manner that will facilitate a settlement. Mediators can help a party understand its adversary's concerns and constraints. They also suggest compromises and help parties save face in making concessions. Disputants, for example, often believe that it is less

In the course of mediation efforts, the UN has encountered several problems. First, the parties may simply refuse to enter into discussion. Alternatively, they could deal in bad faith while hoping that the political-military tide on the ground will turn or run more strongly in their favor.<sup>9</sup> Even subtle shifts in the balance of power between two parties may allow recalcitrant actors to negotiate from a position of strength.

Second, the fact that the UN is an international organization hampers its ability to engage in diplomatic mediation efforts. According to Saadia Touval, the necessity that UN initiatives enjoy the continuing support of its members, especially those that hold permanent seats on the Security Council, "saps the United Nations of necessary dynamism and flexibility in pursuing mediation. Once the United Nations agrees on a mediating proposal or framework, it cannot easily be modified in response to changing circumstances."<sup>10</sup> Moreover, the effectiveness of UN mediation may be undermined by individual states that could conceivably withdraw their support from international peace efforts. For example, the United States reversed its stance on the plan formulated by Cyrus Vance and David Owen in the course of a joint UN-European

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damaging to their reputations to accept a proposal made by a mediator than an adversary.

Touval, *supra* note 7, at 51. Touval's conception of mediation aligns with the one offered by Ronald J. Fisher and Loreleigh Keashly, who characterize this activity as "interventions by credible and competent intermediaries who assist the parties in working toward a negotiated settlement on substantive issues through persuasion, the control of information, the suggestion of alternatives and in some cases, the application of leverage." Ronald J. Fisher & Loreleigh Keashly, *The Potential Complementarity of Mediation and Consultation Within a Contingency Model of a Third Party Intervention*, 28 J. PEACE RES. 29, 30 (1991). Stephen R. Ratner identifies still other roles that mediators are called upon to play. These include providing face-saving and escape routes, redefining issues, taking steps to contain the dispute, and ensuring compliance in the event an agreement is reached. STEPHEN R. RATNER, *THE NEW UN PEACEKEEPING: BUILDING PEACE IN LANDS OF CONFLICT AFTER THE COLD WAR* 47 (1995).

9. Larman C. Wilson and Raúl González Díaz have written on the talks between the Frente Farabundo Martí de Liberación Nacional (FMLN) and the El Salvadoran government that began in September 1989. Two months later, the guerrillas launched a violent offensive in San Salvador "designed to silence the [Alfredo] Cristiani government's report that the FMLN was finished, thus improving the insurgency's position at the negotiating table." Larman C. Wilson & Raúl González Díaz, *UN Peacekeeping in Central America*, in *A CRISIS OF EXPECTATIONS: UN PEACEKEEPING IN THE 1990S* 141, 146 (Ramesh Thakur & Carlyle A. Thayer eds., 1995). At the same time, according to Touval:

[I]t is sometimes possible for mediators to induce ripeness and contribute to the making of a 'hurting stalemate.' They help create a disposition among the disputants to settle the conflict. Having an interest in a settlement, mediators sometimes bargain with the parties, offer them incentives, or subject them to pressure in order to induce them to accept specific settlement terms.

Touval, *supra* note 7, at 51.

10. Touval, *supra* note 7, at 54. This is not to downplay the role that international organizations can play in mediation. For examples of some of the services that such entities can provide, see Touval, *supra* note 7, at 55-56.

Union effort to broker a political settlement in Bosnia-Herzegovina.<sup>11</sup>

### B. Punitive Measures

The use of negative incentives, or sticks, as some commentators may have mislabeled such inducements,<sup>12</sup> has figured into UN efforts to end conflicts. The Security Council has authorized economic sanctions, threats to use military force, or its actual employment. Sometimes, it has combined these measures with purely diplomatic mediation efforts.

Sanctions regimes played roles in the international community's response to such events as the 1990 Iraqi invasion of Kuwait, the 1991 coup in Haiti that overthrew the government of Jean-Bertrand Aristide, and the civil strife in the former Yugoslavia. Imposed by the UN pursuant to Article 41 of its Charter, sanctions may represent a way to force recalcitrant actors in these conflicts to change their ways while minimizing military force.<sup>13</sup> The sanctions applied to Iraq before the Persian Gulf War, however, were not given sufficient time to work.<sup>14</sup> Also, the package currently in force has not induced Baghdad to comply with numerous Security Council decisions made in the wake of the Iraqi military defeat in 1991.<sup>15</sup> In contrast, sanctions may function as part of the explanation for the Haitian junta's decision to go into exile and for Serbia's move to distance itself from the Bosnian Serbs in 1994.<sup>16</sup>

11. For the text of this instrument, see Report of the Secretary General on the Activities of the International Conference on the Former Yugoslavia: Peace Talks on Bosnia and Herzegovina, U.N. SCOR, 48th sess., U.N. Doc. S/25479 (1993).

12. Opinions about the actual meaning and origins of the phrase, "carrots and sticks," abound. See WILLIAM SAFIRE, *I STAND CORRECTED: MORE ON LANGUAGE FROM WILLIAM SAFIRE* 65-66 (1984); WILLIAM & MARY MORRIS, *MORRIS DICTIONARY OF WORD AND PHRASE ORIGINS* 114-15 (1971).

13. The UN has imposed sanctions and arms embargoes on Iraq, the then-Rhodesia, South Africa, Libya, Somalia, Liberia, and Serbia. See, e.g., *Economic Sanctions Are Criticized from Inside, Outside the U.N.*, Deutsche Presse-Agentur, Dec. 22, 1997, available in Westlaw, All News Plus Wires File ("The [Security] council in past years has imposed sanctions against Libya, Liberia, Haiti, Angola, Serbia and Bosnian Serbs in Bosnia-Herzegovina, Rwanda and Sudan."). On October 1, 1996, the Security Council lifted the sanctions that had been imposed on Serbia as well as the Serb component of Bosnia-Herzegovina. See S.C. Res. 1074, U.N. SCOR, 51st Sess., 3700th mtg., U.N. Doc. S/RES/1074 (1996).

14. See, e.g., *As U.S., Japan Look Ahead*, OAKLAND TRIB., Dec. 9, 1991, at B6 ("Japan disagreed with the American choice of going to war rather than allow economic sanctions to work against Iraq.")

15. See, e.g., S.C. Res. 794, U.N. SCOR, 47th Sess., 3145th mtg., U.N. Doc. S/RES/794 (1992); S.C. Res. 678, U.N. SCOR, 45th Sess., 2963d mtg., U.N. Doc. S/RES/678 (1990).

16. See, e.g., Kenneth R. Himes, *War by Other Means: Criteria for the Use of Economic Sanctions*, COMMONWEALTH, Feb. 28, 1997, at 13, available in 1997 WL 12635327 ("As in South Africa and Haiti, sanctions work better if there is a substantial domestic opposition to the government and if there are powerful classes or groups involved in international business who will feel the impact quickly."); *Keep Up Pressure on Serbia*, S.F. CHRON., Aug. 5, 1994, at A22 ("If the split [between Serbia and the Bosnian Serbs] is in-

Like sanctions, military force has become an increasingly common UN strategy during the post-Cold War era. Before the Persian Gulf War and in Haiti, the UN authorized ad-hoc coalitions of states to use military force pursuant to Chapter VII of the UN Charter.<sup>17</sup> In the wake of the breakdown of civil order in Somalia, the Unified Task Force (UNITAF) tried a similar approach.<sup>18</sup> However, decisionmakers did not target military force at any one actor in this anarchy-plagued region. Similarly, the UN integrated threats of North Atlantic Treaty Organization (NATO) air strikes in Bosnia-Herzegovina to gain leverage over the disputants in this conflict after an attempt managed directly by the UN to bring peace to this country faltered.<sup>19</sup> Finally, following the establishment of the Second United Nations Operation in Somalia (UNOSOM II), troops engaged in combat against parties that were seen as hostile to the settlement process.<sup>20</sup>

The UN's use of punitive measures has attracted controversy and encountered problems. Generally, this strategy opens the UN up to charges of partiality. As Henry Wiseman has argued, "the necessity for [UN] 'impartiality' in word and deed continues to be imperative. Yet, this will be all the more difficult to ensure in multifaceted civil conflicts."<sup>21</sup> Meanwhile, a problem specific to nonviolent economic sanctions is the potentially significant amount of time that must elapse before they are likely to be effective. There are also the difficulties and expense of mounting efforts to enforce them. Although the UN has successfully sanctioned states involved in conflict that pitted them against much of the rest of the international community, their effective use in internal contexts seems less assured.<sup>22</sup> Sanctions also can cause a tre-

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deed genuine, the so-called Contact Group—the U.S., Europe and Russia—can take satisfaction in the success of the economic sanctions on Serbia, which drove Milosevic's decision.").

17. See S.C. Res. 678, U.N. SCOR, 45th Sess., 2963rd mtg., U.N. Doc. S/Res/678 (1990) (authorizing states, vis-à-vis Iraq, "to use all necessary means to uphold and implement resolution 660 (1990) and all subsequent relevant resolutions and to restore international peace and security in the area;").

18. John L. Hirsch & Robert B. Oakley, *Somalia and Operation Restore Hope: Reflections on Peacemaking and Peacekeeping* 45 (1995) (noting that UNITAF "would be not a UN force, but one endorsed by the Security Council.").

19. See, e.g., Diane Bartz, *NATO Airstrikes Aimed at Peace but Could Delay It*, Agence France-Presse, Aug. 31, 1995, available in 1995 WL 7850289 ("The airstrikes and artillery fire that have hit Bosnian Serbs have been aimed at bringing peace to Sarajevo").

20. See HIRSCH & OAKLEY, *supra* note 18, at 122-23 ("UNOSOM activities were almost entirely directed at the military struggle with the SNA [beginning in 1993]").

21. Henry Wiseman, *Peacekeeping in the International Political Context: Historical Analysis and Future Directions*, in *THE UNITED NATIONS AND PEACEKEEPING: RESULTS, LIMITATIONS AND PROSPECTS: THE LESSONS OF 40 YEARS OF EXPERIENCE* 32, 43 (Indarjit Rikhye & Kjell Skjelsbaek eds., 1990).

22. Sanctions were applied to the Bosnian Serbs and targeted at UNITA-held areas of Angola. See, e.g., Michael Littlejohns, *Security Council to Penalise Angola Rebels*, *FIN. TIMES*, Aug. 29, 1997, at 4 ("The United Nations Security Council last night unanimously



mendous amount of collateral damage to innocent bystanders. They can impoverish private citizens in the target area and bankrupt countries and firms that maintain trading relationships with the targets. Sanctions, moreover, may cultivate the growth of a siege mentality among members of the state or community at which they are directed.<sup>23</sup> Finally, some commentators have questioned the legality of economic sanctions.<sup>24</sup>

Employing military force presents the UN with numerous challenges. In some situations, it has attempted to "subcontract" military responsibilities out to a regional organization or to an ad-hoc coalition of states. This has proven to be operationally effective.<sup>25</sup> For example, the alliance that took part in Desert Storm successfully repelled Iraqi aggression against Kuwait. In other contexts, international military efforts have achieved more modest objectives. These include the American-dominated military involvement in Haiti, the UNITAF period of the international community's efforts in Somalia, and the operations carried out by the NATO Implementation Force and Stabilization Force.

The danger of allowing non-UN military forces to manage conflicts should be apparent. The subcontracting entity may overstep its mandate. However, if the UN vigorously monitors the activities of the subcontractor, this may be unlikely to happen. In a situation where serious differences of opinion regarding the role of the outside military force exist, the UN could withdraw its endorsement of the venture.

Second, it may be that the great powers will use subcontracting as a way to regain or maintain hegemony in their traditional spheres of

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adopted tougher sanctions against the Unita movement in Angola in an attempt to force it to honour a commitment to a 1994 peace agreement with the Angolan central government."). It is unclear what role they played in inducing these parties to become more receptive to international diplomatic efforts to achieve a settlement in the Balkans and Angola.

23. *The Economist* reported that due, in part, to the sanctions that were imposed on them, "the Serbs passionately believe themselves to be the Bosnian conflict's victims. Far from being weighed down by guilt, they consider themselves, if anything, the most aggrieved party in the Bosnian nightmare—indeed, one of the most aggrieved peoples in the entire world." *Serbia: Another Country*, *ECONOMIST*, July 23, 1994, at 47. Similarly, Richard Haass has noted that sanctions imposed on South Africa "tended to push whites into the *laager* (a defensive posture similar to 'circling the wagons'), thus reducing further the chance for meaningful political dialogue." RICHARD N. HAASS, *CONFLICTS UNENDING: THE UNITED STATES AND REGIONAL DISPUTES* 117 (1990).

24. See Stephen C. Neff, *Economic Warfare in Contemporary International Law: Three Schools of Thought, Evaluated According to an Historical Method*, 26 *STAN. J. INT'L L.* 67 (1989) (assessing the legality of economic sanctions).

25. See Kofi A. Annan, *Sovereignty Challenged, An Interview with U.N. Secretary-General Kofi A. Annan*, 21 *FLETCHER. FOR. WORLD AFF.* 1, 4 (1997) ("Such cooperation will continue, as the United Nations is incapable of taking on all of the world's problems and often regional organizations are better-suited to addressing aspects of a conflict."). But see John Quigley, *The "Privatization" of Security Council Enforcement Action: A Threat To Multilateralism*, 17 *MICH. J. INT'L L.* 249 (1996).

influence, and to legitimize it as well. US troops played a pivotal role in the peace operation in Haiti. Russian troops loomed large in the UN venture undertaken in Georgia, which has unfolded under the auspices of the United Nations Observer Mission.

Third, subcontracting may wrongly assume that a capable military instrument can always be located to carry out the requisite operational objectives. However, the usual players, including NATO or a coalition led by the US, may characterize the troublespot as strategically insignificant and refuse to commit forces abroad. In the post-Cold War era, broad swaths of Africa fall outside the security umbrellas of the great powers. Thus, when order in this region breaks down, it may be difficult to find qualified candidates to restore it.

Finally, coordination problems have cropped up in situations where non-UN military assets assume responsibility for the military aspects of conflict-resolution strategies while the UN employs diplomacy and provides humanitarian assistance to noncombatants. For example, observers criticized the "dual key"<sup>26</sup> system developed by NATO and the UN, which provided that each organization sign off on punitive air strikes before they could be undertaken against targets in Bosnia-Herzegovina.<sup>27</sup> The complicated and unwieldy chains of command that this approach engendered hampered the effective utilization of military might as an inducement strategy.

Rather than rely on an outside authority to use military force, the Security Council could simply order troops operating under its direction to compel recalcitrant disputants to settle their differences. Even before the failure of the military component of UNOSOM II, some questioned whether the UN lacked the capacity to manage a large operation making liberal use of robust military force.<sup>28</sup> Thus, in December 1992, former UN Secretary-General Boutros Boutros-Ghali lobbied for the establishment of UNITAF led by the US even though he would have preferred the creation of a humanitarian enforcement operation under UN

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26. See generally, Tom Post and Rod Nordland who characterized the "dual key" approach as "the cumbersome chain of command that relied on U.N. civilians to approve NATO air power." Tom Post & Rod Nordland, *For Shame*, NEWSWEEK, July 31, 1995, at 20; see also Giandomenico Picco, *The U.N. and the Use of Force: Leave the Secretary General Out of It*, FOREIGN AFF., Sept.-Oct. 1994, at 14 (contending that "the confused chain of command that we have witnessed in the Balkans has helped neither the credibility of the institution nor the effectiveness of the international effort.").

27. See, e.g., Susan R. Lamb, *The UN Protection Force in Former Yugoslavia*, in A CRISIS OF EXPECTATIONS: UN PEACEKEEPING IN THE 1990S 65, 78 (Ramesh Thakur & Carlyle A. Thayer eds., 1995).

28. Proposals to strengthen the UN's ability to manage peace enforcement operations have proliferated during the post-Cold War era. See, e.g., Jim Whitman & Ian Bartholomew, *UN Peace Support Operations: Political-Military Considerations*, in BEYOND TRADITIONAL PEACEKEEPING 169 (Donald C.F. Daniel & Bradd C. Hayes eds., 1995).

command.<sup>29</sup> Boutros-Ghali also attempted to delay the transfer of authority over military activities from this force to UNOSOM II.<sup>30</sup> In the wake of what transpired during this phase of the Somali operation, opposition to the utilization of force by UN military units has solidified.

Although the UN may ultimately develop a capacity to direct large-scale military peace enforcement operations, it still must rely on states to contribute troops. Governments may be hesitant to make these commitments, especially when the UN is involved in an area considered low on the contributing country's national security agenda.<sup>31</sup> Thus, until the UN establishes some sort of military structure that exists independently of domestic armed forces, the willingness of governments to contribute personnel to UN military efforts will constrain the extent to which this approach can be used.<sup>32</sup>

Members of the international community may allow the UN to utilize military might quickly and with relative ease. However, it would be shortsighted to regard military force and other punitive policies as the only way by which settlements to conflicts can be achieved. As David A. Baldwin has observed, "two of the most important weaknesses in traditional theorizing about international politics have been the tendency to exaggerate the effectiveness of military power resources and the tendency to treat military power as the ultimate measuring rod to which other forms of power should be compared."<sup>33</sup> Indeed, "[i]n some situations, force works very well, but in others it is counterproductive."<sup>34</sup> Even where military response is warranted, some weapons and tactics will clearly be inappropriate.

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29. Robert G. Patman, *The UN Operation in Somalia*, in *A CRISIS OF EXPECTATIONS: UN PEACEKEEPING IN THE 1990S* 85, 93 (Ramesh Thakur & Carlyle A. Thayer eds., 1995).

30. See HIRSCH & OAKLEY, *supra* note 18, at 112 ("The military side of the transfer [from UNITAF to UNOSOM II] was flawed in several respects.")

31. The squeamishness displayed by many Western countries, whose troops play important roles in UN peace operations because they are most likely to possess the training and equipment to carry out the complicated requirements that such missions demand, can be attributed to several causes. These include 24-hour live television news and the shrinking size of families in this region's countries. For example, Edward C. Luck has recounted that "some graphic pictures on [Cable News Network] CNN and a score of deaths in an ill-fated Ranger raid convinced US policymakers to beat a hasty retreat from Somalia." Edward C. Luck, *The Case for Engagement: American Interests in UN Peace Operations*, in *BEYOND TRADITIONAL PEACEKEEPING* 67, 77 (Donald C.F. Daniel & Bradd C. Hayes eds. 1995); see also Edward N. Luttwak, *Toward Post-Heroic Warfare*, *FOREIGN AFF.*, May-June 1995, at 115; Edward N. Luttwak, *Where Are the Great Powers? At Home with the Kids*, *FOREIGN AFF.*, July-Aug. 1994, at 23.

32. See, e.g., Kai Bird, *The New Case for a U.N. Army: Humanitarian Intervention*, *NATION*, Aug. 8, 1994, at 160; Brian Urquhart, *For a UN Volunteer Military Force*, *N.Y. REV. BOOKS*, June 10, 1993, at 3-4.

33. David Baldwin, *Power Analysis and World Politics: New Trends Versus Old Tendencies*, 31 *WORLD POL.* 161, 180 (1979).

34. *Id.* at 181.

### C. *Judicial Management*

Using law to mold the behavior of disputants has colored UN peace-making strategies. It is possible to view the International Criminal Tribunals for Rwanda and the former Yugoslavia as components of larger UN efforts to gain leverage over the parties to these two conflicts.<sup>35</sup> Unfortunately, the supervision over a party that a supranational judicial entity can achieve seems likely to be indirect. For example, the existence of a court may propel a disputant to become less receptive to a negotiated settlement to the conflict. If this party triumphs militarily and manages to translate its victory into an advantageous political settlement, the likelihood that it will be successfully prosecuted recedes dramatically. On the other hand, closing down a tribunal because the UN's political efforts to broker a settlement have succeeded would hardly qualify as a principled course of action. The rule of law at the international level would be undermined. Moreover, individuals who have been indicted for violations of international humanitarian law would not be able to respond to the allegations lodged against them.

### D. *Isolation*

The UN can attempt to ignore or isolate parties to conflicts. Before what remained of Yugoslavia ended its overt military backing of the Bosnian Serbs, David Gompert called for "an international cold war" in conjunction with economic sanctions against this country.<sup>36</sup> According to him, "[a] sustained economic and information war against Serbia should in time topple the Belgrade regime and permit a more principled and lasting settlement in Yugoslavia than anything within reach today."<sup>37</sup> In Cambodia, meanwhile, the UN tried something akin to this approach. When the Khmer Rouge failed to comply with the demobilization and disarmament provisions of the settlement agreement that emerged from the 1991 Paris Conference on Cambodia,<sup>38</sup> the United Nations Transitional Authority in Cambodia (UNTAC) attempted to marginalize the Khmer Rouge. This posture worked due to the decision of the Khmer Rouge to fall "*de facto* into a policy of passive boycott during much of the [settlement] process."<sup>39</sup> If the Khmer Rouge had in-

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35. See W. Michael Reisman, *Institutions and Practices for Restoring and Maintaining Public Order*, 6 DUKE J. COMP. & INT'L L. 175, 181 (1995).

36. David Gompert, *How to Defeat Serbia*, FOREIGN AFF., July-Aug. 1994, at 46.

37. *Id.* at 44.

38. For the texts of the Paris Accords, see Letter Dated 30 October 1991 from the Permanent Representatives of France and Indonesia to the United Nations Addressed to the Secretary-General, UN Doc. A/46/608-S/23177, Annex (1991), reprinted in 31 I.L.M. 180 (1992).

39. James A. Schear, *Beyond Traditional Peacekeeping: The Case of Cambodia*, in

stead used its considerable military strength to declare war on the UN, the accomplishments of UNTAC may not have been attained. Thus, efforts to bring an end to conflicts while neglecting parties that are openly hostile to the settlement are likely to be effective in only a small universe of scenarios.<sup>40</sup>

### III. TOWARDS A THEORY OF UN REWARD STRATEGIES: ACCOUNTING FOR THE INSIGNIFICANCE OF POSITIVE INDUCEMENTS IN CURRENT CONFLICT MANAGEMENT AND DIFFERENTIATING REWARDS FROM OTHER INFLUENCE ATTEMPTS

When relying on diplomacy, coercion, criminalization, marginalization, or some mixture of these approaches to end conflicts, the UN has encountered difficulties. Thus, it is surprising that there has been so little sustained debate on rewards, positive inducement strategies, positive incentives, or positive sanctions<sup>41</sup> in attempts to manage destabilizing strife.

#### A. *The Neglected Subject of Positive Inducements*

Only a small amount of discussion on rewards in the context of conflict-resolution efforts has taken place. Some observers simply assert that this strategy represents an option for the UN to pursue.<sup>42</sup> It is somewhat ironic that there should be such a shortage of comment on UN rewards while discussion of its use of coercive measures has grown exponentially.<sup>43</sup> Since its founding, the UN has accumulated a wealth of experience and expertise in providing technical assistance and development aid to states. This knowledge might serve as the basis for the development of sophisticated positive inducement strategies.<sup>44</sup> Thus,

BEYOND TRADITIONAL PEACEKEEPING 248, 253 (Donald C.F. Daniel & Bradd C. Hayes eds., 1995).

40. The success of this strategy may have stemmed from the fact that the Khmer Rouge had earlier signed off on the Paris Accords. It seems doubtful whether UNTAC could have attained the success it did in the event the Khmer Rouge had not acceded to this agreement and the UN had attempted to isolate this faction nevertheless.

41. These terms will be used interchangeably.

42. Few have addressed this question. James A. Schear, for example, has noted that "[t]he financial instrument can offer powerful incentives for conflict termination, but it is not always in synchronisation with the exigencies of peacekeeping operations." Schear, *supra* note 39, at 263.

43. (The focus on this latter subject is understandable in light of the emphasis in the UN Charter on using military force to respond to aggression. Article 42 of this instrument, for example, provides that the Security Council "may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security." UN CHARTER, art. 42.

44. The UN, it can be argued, made such a sustained foray into areas like providing development aid to states due to the superpower confrontation. The Cold War hamstrung its ability to respond militarily to international instability. Unable to play the role of the

until the UN relies more heavily on rewards, it will have effectively turned its back on one of its comparative advantages.

The shortage of probative discussion on UN rewards mirrors the extent to which general comment on positive sanctions has been marginalized in the dominant discourse of such disciplines as law and political science. This may be a consequence of the fact that important figures in these fields have rejected the notion that rewards, as an inducement strategy, are as efficient and effective as punishments.<sup>45</sup> Louis Kriesberg, for example, has assumed that an imbalance in the attention devoted to negative and positive incentives should exist.<sup>46</sup> Others vigorously question why so little study of positive inducements has been attempted. According to Baldwin, one explanation flows from "an implicit assumption that the distinction between positive and negative sanctions is not worth making."<sup>47</sup> Fred H. Lawson, meanwhile, attributes diplomatic practice:

The unfavorable connotations that have surrounded the notion of appeasement since the negotiations at Munich . . . , along with the prediction that statespeople have to think in terms of the 'security dilemma' when faced with a conflicted situation, seem to have had a profound influence upon students of international affairs and their writing about war.<sup>48</sup>

Finally, Nancy Kanwisher has observed that "policy-makers . . .

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world's policeman, the UN needed a compelling mission. See Major Louis A. Chiarella, *United Nations Operations: Problems Encountered by United States Forces when Subject to a "Blue Purse,"* 154 MIL. L. REV. 53, 58 (1997) ("The UN became a victim of the Cold War soon after its creation. The mutual mistrust between the United States and the Soviet Union as military rivals only exacerbated the conflicting ideologies of the two nations.").

45. See John Austin, *The Province of Jurisprudence Determined*, reprinted in JURISPRUDENCE: UNDERSTANDING AND SHAPING LAW 270 (W. Michael Reisman & Aaron M. Schreiber eds., 1987). According to Austin:

The greater the eventual evil, and the greater the chance of incurring it, the greater is the efficacy of the command, and the greater is the strength of the obligation: Or (substituting expressions exactly equivalent), the greater is the *chance* that the command will be obeyed, and that the duty will not be broken.

*Id.* at 273-74. Meanwhile, Baldwin has noted that theorists like Max Weber, Talcott Parsons, and Peter M. Blau define power in terms of the threat to use or the actual employment of negative or coercive measures. David Baldwin, *The Power of Positive Sanctions*, 24 WORLD POL. 19, 20 (1971).

46. According to Kriesberg, "[t]hree basic types of inducements can be combined in waging a struggle or ending it: coercion, positive sanctions, and persuasion. Coercion, understandably, has received the most attention in the study of conflicts." LOUIS KRIESBERG, INTERNATIONAL CONFLICT RESOLUTION: THE U.S.-U.S.S.R. AND MIDDLE EAST CASES 83 (1992).

47. Baldwin, *supra* note 45, at 21.

48. Fred H. Lawson, *Using Positive Sanctions to End International Conflicts: Iran and the Arab Gulf Countries*, 20 J. PEACE RES. 311, 311 (1983).

have mislabeled simple regression phenomena and incorrectly concluded that negative sanctions are more effective than positive sanctions."<sup>49</sup> The predominance of punishments in the operation of domestic political and legal spheres provides a final way to account for the disparity in the amounts of attention directed at positive and negative sanctions.<sup>50</sup> However, as Baldwin has suggested:

Positive sanctions are more relevant to international than to domestic politics, to the underworld than to the overworld [due to the greater amount of political integration in domestic politics and the overworld]. Since the prospects for success are worse in the international and underworld arenas, the incentives to use positive sanctions instead of negative ones should be greater (assuming, of course, that other things are equal). In a well-integrated domestic polity, however, negative sanctions are more useful. It is only because of the high probability that most people will obey the law that governments can afford to enforce laws with threats. It is much cheaper to punish the few who disobey than to reward the many who obey.<sup>51</sup>

Although negative sanctions are a prominent part of the operation of national political and legal structures, rewards play a key role in the successful functioning of the market, which is increasingly seen by jurisdictions around the world as a desirable mechanism for allocating scarce resources and achieving development.<sup>52</sup> Meanwhile, arrange-

49. Nancy Kawisher, *Cognitive Heuristics and American Security Policy*, 33 J. CONFLICT RESOL. 652, 664 (1989).

50. As Arthur A. Leff has noted in his study of the legal system of the USA, a thinly veiled reference to US society, "behind every US Judge stands ultimately the naked power of the 101st Airborne Division of the US army." Arthur A. Leff, *Law and*, 87 YALE L.J. 989, 997 (1978).

51. Baldwin, *supra* note 45, at 29.

52. Negative inducements such as the fear of unemployment or poverty provide an incomplete explanation of why most people decide to participate in the life of a market economy, especially when government social welfare programs that exist in much of the developed world guarantee individuals a minimum standard of living. Rather, their involvement, which often implies extreme sacrifices in terms of time, effort, and incurring other opportunity costs, is also likely to be motivated by the possibility of achieving prosperity, status, and other rewards. In fact, the attraction of these positive incentives is so strong in many cases that negative measures and laws, which take the form of antitrust, securities, and safety regulations, have had to be woven into the economic fabric of many countries. *Cf.* Rothberg v. Rosenbloom, 628 F. Supp. 746, 759 (E.D. Pa. 1986) ("Allowing Rothberg to recover would frustrate the purposes of the securities laws by rewarding well-structured greed."); Charles C. Cox & Kevin S. Fogarty, *Bases of Insider Trading Law*, 49 OHIO ST. L.J. 353, 353 (1988) ("The wave of major insider trading prosecutions has been taken by many as a symptom of cancerous greed on Wall Street."); Eleanor M. Fox, *The End of Antitrust Isolationism: The Vision of One World* 1992, U. CHI. LEGAL F. 221, 236 (1992) ("Many individuals in the Eastern European nations see antitrust law foremost as a means to control the greed of and abuse by powerful firms and as a means to assure that entrepreneurs are not foreclosed from markets."). *But see* David McGowan & Mark A. Lemley, *Antitrust Immunity: State Action and Federalism, Petitioning and the First Amendment* 17 HARV. J.L. & PUB. POLY 293, 334 (1994) ("Under the normal conception of

ments such as the command economy, strict quotas, and state-led models of development, which require the use of negative incentives by those managing the system to function at all, have become thoroughly discredited as a means for achieving sustained societal prosperity.<sup>53</sup>

This Article does not take the view that using rewards as a strategy to manage conflicts is always an appropriate option. In some contexts, they may be out of place. Though, it does seem likely that positive sanctions can be deployed as a force for shaping behavior in discrete realms of human activity. In short, institutional actors that see positive inducements as an option to pursue in some contexts may be more successful when confronted with complex situations and emergencies than those that instinctively scoff at the viability of this approach.

### *B. Distinguishing between Rewards and Other Strategies Designed to Influence*

For the UN to harness the full potential of positive inducements, it must be able to differentiate them from activities that it would engage in without the expectation of gaining leverage.<sup>54</sup> Also, a capacity to recognize what sets positive sanctions apart from their negative counterparts must exist. Perceptions and subjective assessments are likely to loom large as gestures are characterized and categorized. As Kriesberg has observed, "[t]he criterion for distinguishing among coercive, persuasive, and rewarding actions may be based (1) on the intentions of the sender (2) the interpretations of the receiver, (3) the judgment of the observer, (4) the purported meaning which the sender wishes the action to have for the receiver."<sup>55</sup> The meanings ascribed to a given gesture are likely to multiply in cases where the entity making use of it is the UN. Numerous actors, including states, nongovernmental organizations (NGOs), and the media, play important roles in the functioning of this structure. Each of these parties is in a position to scrutinize transactions in which it is possible that inducements are being used. Also, the intended recipient may be composed of numerous relatively autonomous factions. These may attach different meanings to specific UN policies. Moreover, the entity to be influenced could be relatively new to the international stage and lack experience in engaging in the processes by which actors at the international level relate to each other.

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the goals of the antitrust laws, individual private greed is desirable; in fact it is precisely the state of affairs the antitrust laws are designed to maintain.").

53. See, e.g., *Overcoming the Asian Economic Crisis*, BANGKOK POST, Feb., 20, 1998, available in 1998 WL 7888183 (reporting on the South Korean government's desire "to realise economic development in harmony with the principles of democracy, a free market economy and enhanced social justice.").

54. An example would be humanitarian gestures.

55. Louis Kriesberg, *Noncoercive Inducements in U.S.-Soviet Conflicts: Ending the Occupation of Austria and Nuclear Weapons Tests*, 9 J. POL. & MIL. SOC. 1, 2 (1981).



Thus, in a given situation, it is possible that these disputants may not appreciate that rewards are being used.

### 1. Perceptions Among Relevant Decision-makers

Officials responsible for managing the international community's response to conflicts may interpret UN efforts to settle disputes differently. For example, in the case of Cambodia, humanitarian considerations, an imperative that permeates much of the UN's work, would seem to mandate that this country receive reconstruction funds.<sup>56</sup> However, some policymakers involved in the settlement process were providing rehabilitation assistance to Cambodia for entirely different reasons. Michael W. Doyle explains:

In July 1992, US Assistant Secretary of State Richard Solomon explained the strategy of the aid package in testimony before Congress: 'Let me say that the very resources that the international community pledged in Tokyo provide a basis for strengthening, for hopefully, the whole country if it opens up, but as Deputy Secretary [Lawrence] Eagleburger said in Tokyo, those resources should go to those factions who cooperate in the settlement plan, just as one form of influence.'<sup>57</sup>

### 2. Perceptions of the Recipient:

Interperative faultlines may divide recipients. Some may perceive the action taken by the UN as an entitlement, thus warranting no ef-

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56. Given the UN's heavy involvement in humanitarian work in the past, many within it may be apt, due to a sort of organizational momentum, to see what really is a reward as an extension of the UN humanitarian agenda, which means that no strings would be attached to what is distributed. With the passage of time, however, this perception may change as the UN begins to make more use of military force to suppress conflict. For the time being, however, the meaning of a given UN gesture is likely to be determined, in part, by the extent to which it has been traditionally undertaken for humanitarian reasons. Thus, deliveries of food, which if placed on a continuum of activities running from strictly humanitarian functions to more elective ones like democratization funds, would exist at the humanitarian end. A.B. Fetherston, for example, has asserted that "the most serious failures reported in Bosnia were accusations that the peacekeeping force used humanitarian aid as a bargaining chip." A.B. FETHERSTON, *TOWARDS A THEORY OF UNITED NATIONS PEACEKEEPING* 136 (1994). Historically, the provision of basic items like food has been used quite openly as an inducement strategy. For example, John H. Herz notes that during the Allied occupation of Germany following World War II, all individuals over 18 years of age were required to fill out forms detailing their activities during the Nazi period. According to him, "[t]here were about 13 million people involved and few could avoid submitting questionnaires because the receipt of food-ration coupons was made dependent on handing them in." John H. Herz, *Denazification and Related Policies*, reprinted in 1 *TRANSITIONAL JUSTICE: HOW EMERGING DEMOCRACIES RECKON WITH FORMER REGIMES* 21-22 (Neil J. Kritz ed., 1995).

57. MICHAEL W. DOYLE, *UN PEACEKEEPING IN CAMBODIA: UNTAC'S CIVIL MANDATE* 65 (1995).

forts to respond by cooperating with it or other disputants. For example, some Somalis felt that "the international community responded to . . . [the] apocalypse slowly, and when it did, it did so only in a fragmented manner . . . [This reading of the situation] alienated Somalis and turned them against the UN even before its arrival. They felt the international community had abandoned them."<sup>58</sup> Meanwhile, similar gestures, perhaps due to the cultural background of the recipient, will propel it to feel obligated to take actions that materially advance the cause of peace.

### 3. Perceptions among Observers

Entities observing the UN's work may view UN actions through different lenses. These views are likely to dovetail with their larger political agendas or organizational *raison d'être*. Thus, during the UN conflict-resolution process in Cambodia, a human rights NGO that had earlier decried the efforts of various states to destabilize that country might regard UN gestures toward Cambodia as a form of corrective<sup>59</sup> or distributive<sup>60</sup> justice. Meanwhile, realist foreign policy analysts could stress the enhanced bargaining power over the disputants that a given strategy confers upon UN decisionmakers.

There has been little systematic examination of the conditions under which the UN and spectators to UN gestures are most likely to view conflict-resolution strategies as rewards. However, Baldwin has noted that a recipient's response to an influence attempt will flow from its "baseline of expectations."<sup>61</sup> A reward conveyed to a party in times of peace might elicit a totally different response if made in the midst of war. Similarly, a pledge to suspend hostilities, if certain conditions are first satisfied, may function as a powerful positive inducement were it to be made while the promisee is being subjected to withering military attacks. Moreover, it is important to recognize that a party's baseline expectations may shift over time. Baldwin remarks:

A's offer to stop tipping the boat if B will row is unlikely to be perceived by B as a carrot unless A actually is tipping the boat at the time the offer is made. A tips the boat in order to shift B's expectation baseline, so that B will perceive the offer to stop tipping the boat as a reward.<sup>62</sup>

For Baldwin, "conditional influence attempts," or promises to re-

58. JARAT CHOPRA ET AL., *FIGHTING FOR HOPE IN SOMALIA* 30 (1995).

59. JULES COLEMAN, *RISKS AND WRONGS* 355 (1992) (arguing that "an actor has a duty in corrective justice to repair a loss only if that loss is his responsibility").

60. For a discussion of distributive justice, see JOHN RAWLS, *A THEORY OF JUSTICE* 253-332 (1971).

61. Baldwin, *supra* note 45, at 24.

62. *Id.* at 25.

ward, can be included in the range of positive sanctions that may be utilized to modify the behavior of another party. However, the "possibility that withholding a reward may be regarded by B as a punishment tempts one to regard threats and promises as two sides of one coin."<sup>63</sup> Baldwin argues:

The fallacy of this line of reasoning lies in the assumption that withholding a reward is *always* a punishment . . . If rewards and punishments (and, correspondingly, promises and threats) are defined in terms of B's expectations at the moment A begins his influence attempt, it is clear that a conditional commitment not to reward if B fails to comply is not necessarily a threat. 'If you do not do X, I shall not reward you' is a threat to punish if—and only if—B had a prior expectation of receiving the reward.<sup>64</sup>

By assuring B that its noncompliance will go unpunished while its compliance will be rewarded, threats can be conceptually isolated from promises.

Theorizing about positive sanctions may provide the beginnings of an explanation of how these gestures can be distinguished from other UN policies. Examination of previous UN attempts to end conflicts represents another path to pursue. Reconstruction aid,<sup>65</sup> quick impact projects,<sup>66</sup> human rights technical assistance,<sup>67</sup> side-payments,<sup>68</sup> election monitoring support,<sup>69</sup> trust funds designed to spur democratization,<sup>70</sup> demobilization services,<sup>71</sup> demining efforts,<sup>72</sup> the carrying out of civil functions like policing and issuing passports<sup>73</sup> as well as help with repatriation<sup>74</sup> have figured into UN work to address internal and international disputes. It is possible that all, or none, were conceived as a way to influence the actions of parties.

These efforts have encountered varying degrees of success. For example, UNITAF decisionmakers established a weapons incentive program. F.M. Lorenz has noted:

Planners considered several incentive concepts, variations of 'food for guns' or 'cash for guns' and evaluated the US experience with disarming the civil populace in Panama. However, Somali social and political

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63. *Id.*

64. *Id.* at 26.

65. Mozambique and Cambodia

66. Cambodia

67. Cambodia and El Salvador

68. Haiti

69. Namibia, Angola, Mozambique, and Cambodia

70. Mozambique

71. Cambodia, Mozambique, and Nicaragua

72. Mozambique, Afghanistan, and Cambodia

73. Cambodia

74. Namibia, Mozambique, Rwanda, and Cambodia

dynamics were considerably different from those encountered in Panama. . . . The large quantity of weapons in the region created another challenge. There would be little incentive for the bandits to turn in their best weapons, and the program potentially would have disarmed the hungry people who needed protection from the bandits. A cash-for-weapons program also would have run the risk of creating more crime by encouraging bandits to steal weapons to turn in, or providing incentives for arms dealers to import more weapons from other parts of East Africa. An informal, small-scale weapons incentive program was used during the third week in January when UNITAF Marine forces began giving a receipt for the turn-in of weapons or for information on where to find weapons. These receipts were then exchanged for bags of wheat provided by the humanitarian relief organizations. This informal program was never expanded beyond a single sector of Mogadishu, however, and it had [a] limited effect on the number of weapons in circulation. In late January, a decision was made by the UNITAF Commander not to implement a nationwide weapons incentive program.<sup>75</sup>

This tack, formulated and implemented by a subcontracting authority, was ad-hoc. Its framers hoped to push forward one aspect of the process that was designed to pacify Somalia, namely disarmament.<sup>76</sup> The designers of the weapons incentive scheme attempted to influence a relatively large cohort of players.<sup>77</sup>

Several months before the inauguration of the UNITAF disarmament program, the sides in the war in Mozambique were concluding the Rome Accords, an agreement that was designed to serve as the basis for this country's transition from war to peace.<sup>78</sup> One of the components of this instrument certified that the Mozambican National Resistance (RENAMO):

as a partner in the peace process, was entitled to financial assistance for the process of transforming itself from a military organization into

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75. F. M. Lorenz, *Law and Anarchy in Somalia*, PARAMETERS, Winter 1993, at 27, 31.

76. See, e.g., Robert G. Patman, *Disarming Somalia: the Contrasting Fortunes of United States and Australian Peacekeepers During United Nations Intervention, 1992-1993*, 96 AFR. AFF. 509 (1997), ("The initial American focus on voluntary disarmament in Mogadishu brought several small-scale weapons incentive programs to the fore. Variations of the 'food for guns' and 'cash for guns' concepts were considered.")

77. Patman, for example, implies that this was the case when he notes that "[g]iven the large quantity of weapons, any 'weapons for cash' plan in Mogadishu faced enormous difficulties. For one thing, it would have been prohibitively expensive." Patman, *supra* note 76, at 509.

78. See General Peace Agreement for Mozambique. Letter Dated 6 October 1992 from Mozambique to the Secretary-General, Transmitting a Letter from President Joaquim Chissano of Mozambique Requesting the Participation of the United Nations in Monitoring the General Peace Agreement, in THE UNITED NATIONS AND MOZAMBIQUE: 1992-1995 at 111 (Dep't of Public Information ed., 1995) [hereinafter General Peace Agreement].

a political party. . . . The Peace Agreement stipulated that the Mozambique Government would provide the financing and, if lacking the necessary means, could appeal to the international community, in particular to Italy. The United Nations Trust Fund for the Implementation of the Peace Agreement in Mozambique, established in 1993, was the main instrument for this critical task. Its creation was one of the most innovative features of the Mozambique operation and was a pivotal factor in maintaining the momentum of the peace process at this stage.<sup>79</sup>

Unlike the Somali weapons incentive strategy, the trust fund emerged from a comprehensive political settlement. The UN played a direct role in its creation although a separate authority implemented this initiative. Moreover, the targets of this program were a small group of actors, the leadership of RENAMO. Decisionmakers tied this reward, if it indeed can be called that, to progress by this group on the realization of all of the objectives codified in the Mozambique settlement, not just a particular subset of the process to normalize conditions in this country.<sup>80</sup>

Although stark, the differences between the Somali and Mozambique programs do not, by themselves, prove anything definitive about the inherent superiority of the latter strategy over the former. Additionally, the UN's activities in Mozambique, which were carried out under the auspices of the UN Operation in Mozambique nearly ended in disaster.<sup>81</sup> Thus, it would be foolish to argue that the employment of positive inducements always represents a viable overall strategy for the UN to pursue in its attempts to end conflicts. Rather, in many cases, decisionmakers may opt for a more multifaceted approach; one that synthesizes positive and negative approaches could be used. A host of considerations should provide answers to questions such as who ought to be rewarded, when positive sanctions can be used and what form the inducements should assume. Part III attempts to identify and discuss the range of concerns that might arise as reward-based strategies are pursued.

#### IV. THE IMPLEMENTATION OF UN REWARDS: CONSIDERATIONS THAT

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79. Boutros Boutros-Ghali, *Introduction*, in *THE UNITED NATIONS AND MOZAMBIQUE: 1992-1995* at 1, 58-59 (Dep't of Public Information ed., 1995).

80. See Letter Dated 14 January 1994 from the Secretary-General to Carlo Azeglio Ciampi, President of the Council of Ministers of Italy, Requesting a Contribution to the United Nations Trust Fund for Assistance to RENAMO, in *THE UNITED NATIONS AND MOZAMBIQUE: 1992-1995*, at 216 (Dep't of Public Information ed., 1995) (declaring that the "monthly allowance [received by RENAMO] would be tied to scrupulous implementation of the [the Mozambican] peace agreement . . .") [hereinafter Letter Dated].

81. See Bill Keller, *Mozambique Vote Thrown Into Doubt*, S.F. CHRON., Oct. 28, 1994, at B7 (reporting that "main opposition leader cast the entire exercise into doubt with a last-minute announcement that he will reject the outcome").

## MATTER

*A. Institutional Sophistication and Coordination Needed to Utilize Positive Inducements:*

To tap into the power of rewards, the UN may need to reinvent itself institutionally. It has been argued that organizations with relatively simple institutional arrangements can make effective use of positive sanctions. Baldwin, for example, has asserted that "when A's influence attempt is based on a promise, B's compliance obligates A to respond with a reward, whereas B's failure to comply call for no further response from A."<sup>82</sup> Similarly, Lawson attempts to account for the use of positive sanctions by the Gulf Cooperation Council to end the Iran-Iraq War in 1982. He has observed:

Positive sanctions are especially well-suited to those countries that have poorly developed foreign policy-making institutions or that have difficulty carrying out sustained foreign policy programs. . . . There is thus little that can be carried out in the way of long-range contingency planning and international developments can for the most part be monitored only sporadically. States such as these have a strong incentive to find ways to carry out their interests that do not require the adoption of complex or high-risk policies. Offering rewards for acquiescing in one's demands provides a way of using a minimal degree of state organizational resources most efficiently in dealing with other countries.<sup>83</sup>

Lawson also contends that international organizations, in particular, are apt to make ample use of rewards to influence the actions of disputants. He argues:

To the extent that an actor is predisposed to deal with co-operation rather than with conflict as a general rule, using rewards to achieve policy objectives will be an obvious diplomatic maneuver. Thus institutional arrangements designed to facilitate co-operation among countries should also be more likely to develop plans that involve positive sanctions. In other words, international organizations should make more use of reward-based foreign policy programs than individual countries do.<sup>84</sup>

Surprisingly, with the UN's emergence as a more active participant in the settlement of conflicts following the end of the Cold War, coercive measures emerged as one of the first strategies this organization em-

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82. Baldwin, *supra* note 45, at 28.

83. Lawson, *supra* note 48, at 315.

84. *Id.* at 317.

braced to deal with recalcitrant disputants.<sup>85</sup> It has also become apparent that for the UN to construct a package of rewards to gain leverage over the parties to a conflict, interaction among several facets of the UN may be required. In some contexts, it may be important to ensure the harmonization of the activities of a varied cast of characters. These include Secretariat departments,<sup>86</sup> specialized agencies and UN programmes,<sup>87</sup> and international financial institutions (IFIs).<sup>88</sup> Touval has highlighted the importance of UN collaboration transcending bureaucratic boundaries:

Part of the U.N. problem is that it has no readily accessible military [for the utilization of coercive measures] or economic resources [for positive inducements] of its own. It is entirely dependent on member states or at least some of them, to provide the resources necessary for a successful mediation. The United Nations cannot even harness the assets of financial and trading institutions. Doing so depends yet again on the decisions of member states. A U.N. mediator cannot commit the International Monetary Fund or World Bank to provide credit to reluctant disputants. While U.N. member states might theoretically be able to pool their resources and enhance the organization's bargaining power, that type of cooperation seldom comes about. Governments are usually reluctant to commit resources to such a venture, negotiations for such commitments are slow and cumbersome, and the resources states do make available are often inadequate.<sup>89</sup>

Coordination difficulties plague the work of the UN. Alvaro de Soto and Graciana del Castillo have described the communication breakdown that occurred between the UN and IFIs as each devised a reconstruction and rehabilitation strategy for El Salvador, which was emerging from years of civil war:

El Salvador's case illustrated the lack of transparency and coordination within the U.N. system as the [International Monetary Fund] IMF and the [World] Bank did not keep the U.N. abreast of the economic program they sponsor, and the U.N. neglected to inform the Bretton Woods institutions of the peace accords. It was as if a patient lay on

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85. During one of the first major UN peace operations, the Namibian venture, decisionmakers confronted this problem. See, e.g., Adrien Wing et al., *Southern Africa: Prospects for Peace?*, 83 AM. SOC'Y INT'L L. PROC. 350, 351 (1989) ("UNTAG arrived at an unprecedented decision. Before even dispatching its own investigative team or acquiring any independent verification of the facts, UNTAG's head, Mr. Ahtisaari, authorized the release of certain units of the South African military from their restriction to base in order to engage the SWAPO combatants").

86. Examples would include the Department of Peace-keeping Operations (DPKO) and the Department of Political Affairs (DPA).

87. The United Nations Development Programme (UNDP) and World Food Program (WFP) function as illustrations.

88. The World Bank and the International Monetary Fund (IMF) are both examples.

89. Touval, *supra* note 7, at 52.

the operating table with the left and right sides of his body separated by a curtain and unrelated surgery being performed on each side.<sup>90</sup>

However, UNTAC's experience suggests that limited UN/IFI cooperation is possible.<sup>91</sup> Similarly, at the regional level, there is a precedent for collaboration between the Organization of American States (OAS) and the Inter-American Development Bank.<sup>92</sup>

Lack of coordination sometimes even characterizes the interaction of various agencies within the Secretariat. Erskine Childers noted that "[t]here is no intergovernmental assembly or council of the UN system as a whole. Its main linkage, therefore, is through its senior civil servants in the Administrative Committee on Co-ordination [ACC], chaired by the Secretary-General. This is a very weak link."<sup>93</sup> Several years ago, the ACC was meeting only twice a year and key members of it were not required to attend. Rather, "all agency heads, having been elected in a different governing body, have the legal right to claim that their agencies' policies are 'sovereign.'"<sup>94</sup> This fragmentation could deprive the UN of the ability to take advantage of the promise of positive sanctions. Kriesberg, has emphasized the importance of undertaking efforts to lay the political groundwork for an influence attempt. According to him, "[i]n initiating de-escalation, positive sanctions are more likely to be effective if preceded by communications about the desirability of conciliatory gestures and de-escalating negotiations than if there are no such communications."<sup>95</sup> Thus, for positive inducement to be effective,

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90. Alvaro de Soto & Graciana del Castillo, *Obstacles to Peacebuilding*, FOREIGN POL'Y, Spring 1994, at 74.

91. For example, James A. Shear has noted that "UNTAC benefited greatly from having World Bank personnel involved in the management of its financial oversight and rehabilitative programmes. Still, it proved difficult to obtain swift action by the IFIs." Shear, *supra* note 39, at 263.

92. L. Ronald Scheman and John W. Ford cite the way a dispute between Brazil, Paraguay, and Argentina over the use of the Parana and de la Plata rivers during the late 1960s was handled by these two institutions. According to them, "they helped lay the groundwork for large hydroelectric installations, but the bank would not finance them unless the countries resolved the disputes capable of disrupting the venture." Ronald Scheman & John W. Ford, *The Organization of American States as Mediator*, in INTERNATIONAL MEDIATION IN THEORY AND PRACTICE 197, 199 (Saadia Touval & I. William Zartman eds., 1985).

93. ERSKINE CHILDERS, *RENEWING THE UNITED NATIONS SYSTEM* 31 (1994).

94. *Id.* Boutros-Ghali's successor, Kofi A. Annan, established a Policy Coordination Group during the first year of his tenure as UN Secretary-General. This body consists of "department heads and senior officials [and was] created to improve communication, cooperation and coordination among the Secretariat, the United Nations Development Programme (UNDP), the United Nations Children's Fund (UNICEF), and the United Nations Population Fund (UNFPA)." Kofi A. Annan, *Strengthening United Nations Action in the Field of Human Rights: Prospects and Priorities*, 10 HARV. HUM. RTS J. 1, 6 (1997). It is unclear whether this body has enhanced the UN's ability to react to a given situation in an orchestrated manner.

95. Louis Kriesberg, *Carrots, Sticks, De-escalation: U.S.-Soviet and Arab-Israeli Rela-*



minimal synchronization between the UN's political or public affairs components and the agency or agencies actually delivering the reward may be needed.

Coordination concerns may arise as peace operations attempt to use positive inducements. To reward a given party, several UN agencies might need to act in concert while maintaining close contacts with the political arm of the operation. At best, peace ventures have a mixed record of integrating their activities. US Secretary of State Madeleine K. Albright has criticized the failure of UN humanitarian relief organizations to mount coordinated efforts. Anecdotal evidence from different operations supports her gloomy assessment.<sup>96</sup> Although the Department of Humanitarian Affairs was established to function as a mechanism to coordinate aid efforts, its writ does not run long enough to actually bring this about, Albright has charged.<sup>97</sup>

Effective collaboration between humanitarian, political, and military activities has eluded some peace operations. Although the political and military components of UNITAF were able to operationalize excellent cooperation, this came to an abrupt halt when the hand-off to UNOSOM II was complete.<sup>98</sup> According to one commentary on the UN's involvement in Somalia, the "Political Division was completely in the dark. Between 7 May and 9 October 1993 there were no relations between the political and military side of UNOSOM."<sup>99</sup> Similarly, during the Cambodian UN venture:

*tions*, 13 ARMED FORCES & SOC'Y 403, 420 (1987).

96. *Albright Accuses UN Aid Agencies of Turf Wars*, Reuters News Serv., Nov. 2, 1993, available in LEXIS, Nexis Library, Wires File. At the same time, examples of limited coordination exist. As Fetherston has asserted, "in Cyprus and Cambodia, [the United Nations High Commissioner for Refugees] UNHCR worked closely with the peacekeeping force. In Namibia, one of the designated tasks of the peacekeepers who remained until independence was to write detailed situation reports for the incoming United Nations Development Programme (UNDP)." FETHERSTON, *supra* note 56, at 135.

97. In Mozambique:

All U.N., government, and non-governmental relief efforts operate under the umbrella of the U.N. Office for Humanitarian Assistance Coordination (UNOHAC), providing the coordination and balance that earlier missions have lacked . . . . In Mozambique, even programs that seem military have been handled as humanitarian issues. If UNOHAC succeeds, it could lead to increasing emphasis on humanitarian work, ending the recent dominance of the military component of U.N. missions.

Jim Wurst, *Mozambique Disarms*. BULL. ATOM. SCIENTISTS, Sept.-Oct. 1994, at 36.

98. Susan R. Lamb has noted:

complex problems of coordination has arisen within [the United Nations Protection Force] UNPROFOR due to its mix of military and civilian functions. The military—civilian interface in Bosnia, whereby the UNHCR has acted as the 'lead agency,' has highlighted the need for strengthened coordination and planning between the military and humanitarian components of the mission.

Lamb, *supra* note 27, at 78.

99. CHOPRA, *supra* note 58, at 91.

Most decision making was organized on a component-by-component basis, without sufficient procedures for sharing of information and coordination of response. Aside from thrice-weekly staff meetings and the later 'action cell' (composed of [Deputy Special Representative Behrooz] Sadry and the heads of components) to make recommendations on measures against the SOC [State of Cambodia], UNTAC lacked a transparent intercomponent coordination process, and component heads acted very independently.<sup>100</sup>

Enhancing overall UN coordination is an item that should top any reform agenda for this organization. In fact, until decisionmakers realize this goal, the UN's ability to design and deliver rewards will be determined, in part, by the number of agencies whose participation in the strategy is required. Its capacity to utilize positive inducement strategies will also depend on how closely the different aspects of the UN will have to work together. Thus, for the present, it would appear that gestures relying on measures that are relatively simple to execute are more viable than positive sanctions requiring the cooperation of a large number of actors in the Secretariat, among IFIs, and agencies working at the field level.

### *B. The Politics of UN Rewards*

#### 1. Debate over Inducements at the Domestic Level

In some situations, popular opinion may make the use of rewards difficult. Thus, the UN would do well to be sensitive to how pressure groups in various national jurisdictions are likely to regard using positive sanctions. As Kriesberg has noted:

Government leaders generally avoid making a bold conciliatory move toward an adversary. It is likely they believe they are susceptible to charges of having yielded to the enemy, of appeasement, and of cowardliness. This could have greater effect in societies where the public plays a significant role in the selection of heads of government. If so, leaders of nondemocratic countries may be in a better position than leaders of democratic ones to proffer major conciliatory gestures. . . . This helps explain the use of major conciliatory gestures by [Egyptian leader Anwar] Sadat in 1977 and [Soviet leader Nikita S.] Khrushchev in the mid-1950's.<sup>101</sup>

Compared to an institution like the US Congress or the European Parliament, the UN is relatively insulated from popular pressures. Many of its members, including two permanent members of the Secu-

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100. RATNER, *supra* note 8, at 196.

101. Kriesberg, *supra* note 95, at 412.

rity Council, are either not democracies or occupy some twilight zone between authoritarianism and the maintenance of popularly-elected governing institutions. Since public opinion in these countries counts for relatively little, it would appear that the UN must be mainly concerned that its approaches to settling conflicts enjoy the support of important constituencies in the democratic members of the Security Council.

Among many advanced democratic nations, it is relatively important that UN policies are supported at the grassroots as well as the government level.<sup>102</sup> Popular perceptions of the UN's work matter more in these countries, from which the lion's share of this organization's funding originates. These states also supply the UN with much of its capacity to carry out complicated peace operations and robust enforcement efforts. If popular opinion in these countries takes issue with UN strategies, politicians may attempt to score points with their constituents by providing as little cooperation with the UN as possible.<sup>103</sup> Nevertheless, the electorates of many democracies have generally been willing to defer to the expert judgments of those who inhabit their government's foreign policy-making arm. The US polity keeps its representatives on a relatively short foreign policy leash. However, few elections hinge on a particular international affairs issue or function solely as a referendum on an administration's handling of international relations.<sup>104</sup>

Given the deference normally accorded foreign policy determinations, the UN might use a wide array of positive inducements without incurring serious political risks. However, meaningful predictions about the popularity of many UN policies may be hard to generate. It is even possible that a given undertaking will fail to register on the radar screens of influential domestic groups. The American electorate,<sup>105</sup> for example, continues to be relatively receptive to the idea of a major UN

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102. See Kofi Annan, *Peace-Keeping in Situations of Civil War*, 26 N.Y.U. J. INT'L L. & POL. 623, 625 (1994) ("Without sustained political and popular support, it is not possible to give a mission the sense of strength and continuity that it needs to attain its goals.").

103. This is the stance that many members of the US Congress have adopted toward the United Nations. For more on this subject, see Carolyn J. Logan, *U.S. Public Opinion and the Intervention in Somalia: Lessons for the Future of Military-Humanitarian Interventions* 20 FLETCHER F. WORLD AFF. 155 (1996).

104. Even Ted Koppel, an American journalist, may have overestimated the role that international relations plays in the US political equation when he noted that "[s]ome shrewd political observer once noted that snow removal is to local politics what foreign policy is to the president. It won't get you elected, but it can get you fired." *Nightline* (ABC television broadcast, Jan. 12, 1996).

105. Because the US is the world's sole economic and military superpower, it is crucial that UN undertakings enjoy American support. The discussion in this Article on how positive sanctions might be received by important political constituencies is limited to the US.

role in conflict-resolution.<sup>106</sup> However, vocal portions of the same electorate are convinced that the UN lies at the heart of a giant conspiracy to strip the US of its sovereignty.<sup>107</sup> In light of the military debacle in Somalia, some Americans have rejected the idea of US military personnel serving under foreign commanders in UN peace operations.<sup>108</sup> However, for strategies relying exclusively on positive sanctions, states would not need to contribute military assets to make them operational.

Some US observers characterize the UN as an inefficient, bloated bureaucracy that is unable to mobilize or utilize resources efficiently. Making use of positive inducements will, of course, require funds. The rewards themselves will come at a price. Moreover, the task of distributing them, especially if they must be dispersed among a relatively large number of actors, might carry a hefty price tag. Ensuring that the recipients of UN rewards use these appropriately will also consume resources. In keeping with public skepticism regarding UN efficiency, the cost of implementing positive sanctions might cause some to question their use.<sup>109</sup>

The popularity of UN inducement strategies may be linked to perceptions of the actor to be influenced. For example, some commentators questioned the US decision to allow military leaders of Haiti during the early 1990s to escape punishment and gracefully exit the country. Washington employed this strategy after President Bill Clinton, in an attempt to build up popular support for an American invasion of that country, "evoked human rights in Haiti, speaking of a 'campaign of rape, torture, and mutilation,' under Mr. Cedras."<sup>110</sup> Similarly, a

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106. In an article on the results of a Chicago Council on Foreign Relations (CFR) poll on American attitudes toward foreign affairs, Kermit Lanser has noted:

Only 19% of the American people feel that the U.S. should refuse to join a United Nations peacekeeping force in a troubled part of the world; they are evenly split (44% to 45%) on whether U.S. troops should serve under a U.N.-appointed commander; and 65% think it would be best for the country if 'we take an active part in world affairs.'

Kermit Lanser, *Taking an Attitude on Foreign Affairs*, FIN. WORLD, Apr. 25, 1995, at 80. John E. Rielly, meanwhile, reported that 51% of Americans favor a strengthened United Nations according to the CFR poll. John E. Rielly, *The Public Mood at Mid-Decade*, FOREIGN POL'Y, Spring 1995, at 76, 82.

107. See, e.g., Tom Bethell, *Patterns of Conspiracy: Intricate Yarns of Secret Meetings and Insidious Plots Unravel when the Right Thread is Pulled*, NAT'L REV., Aug. 28, 1995, at 33.

108. See, e.g., *Zaire Proceed with Caution*, FLA. TIMES UNION (Jacksonville), NOV. 15, 1996, at A14 ("Also the [planned Zaire] mission will be headed by a Canadian general, and that could cause some dissension—particularly if some U.S. soldiers are killed—because many Americans are queasy about having their troops under foreign command.").

109. See, e.g., Rob Lever, *As UN Role Expands, US Grows More Reluctant to Pay Bills*, AGENCE FRANCE-PRESSE, May 21, 1995, available in 1995 WL 7819605 ("The United States withdrew a decade ago from the UN educational and cultural organization UNESCO because of concerns over waste and anti-Americanism.").

110. *The Nightmare Next Door: America Hopes to Give Haiti a New Stable, Demo-*

promise of rewards to the United Somali Congress (USC), even if it had taken confidence-building measures in the wake of the October 1993 raid that spawned numerous American casualties, would probably have provoked howls of protest in the US. After all, it was USC followers who dragged bodies of American servicemen through the streets of Mogadishu.<sup>111</sup>

Because disputants like Cedras and the USC became part of the US mainstream political debate, limits were imposed on how the UN could deal with them. Once this occurred, Washington's blessing would be needed before the UN could have embarked on any new initiative to bring about a resolution in either conflict. These constraints simply do not exist when the US is not deeply involved in a dispute. Neither are they tangible when the UN has not become embroiled in a bitter, personalized conflict with one of the disputants. Of course, both of these conditions, which tend to attract intense media scrutiny, existed in Somalia during 1993.

In some situations, it seems likely that the public will be indifferent about the substance of UN techniques to end disputes. For example, key US decisionmakers had adopted a posture of benign neglect with regard to the conflict in Mozambique. Also, the UN chose not to become involved in a heated dispute with RENAMO. These dynamics may explain the lack of public controversy surrounding the decision to provide positive inducements to RENAMO even though it bears responsibility for particularly flagrant violations of international humanitarian law.<sup>112</sup>

Given the relative novelty of peace operations, the UN's impulse to assess various ways of carrying out conflict-resolution ventures is understandable. One observer has even characterized Somalia as a "laboratory for new theories of U.N. peace-keeping."<sup>113</sup> Such experimenta-

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cratic Government. Two Centuries of History Are Ranged Against It, *ECONOMIST*, Sept. 24, 1994, at 19. This periodical characterized the deal as "perplexing to many by virtue of the generous treatment it promised to Mr. Cedras." *Id.*

111. See HIRSCH & OAKLEY, *supra* note 18, at 127 (noting that "the degrading treatment of a U.S. soldier's body, dragged through the streets of Mogadishu, shown repeatedly on American televisions, fueled public outrage and revulsion").

112. What these funds are used to buy may also prove controversial to taxpayers, many of them Italian, due to the extent to which Rome contributed funds that went to assist RENAMO. Christina Lamb has noted that "[a]ny self-respecting guerrilla leader turned politician needs a wardrobe of Italian suits, a state-of-the-art bullet-proof Mercedes, a multi-million dollar allowance and a whitewashed villa overlooking a palm-fringed bay." Christina Lamb, *UN Pays Pounds 390m for Mozambique poll*, *SUNDAY TIMES*, Oct. 10, 1994, available in LEXIS, Nexis Library, English Non-US File.

113. Chester A. Crocker, *The Lessons of Somalia*, *FOREIGN AFF.*, May-June 1995, at 2, 4. Ultimately, the heavy American involvement in this country cut both ways. On one hand, the US forces brought with them some of the finest weaponry, logistical support, and training in the world. From a purely military standpoint, UNITAF and the American forces pledged to support UNOSOM II had the capacity to pursue a more dynamic approach to the conflict than any other peace operation force ever constituted with the pos-

tion, however, may be dangerous if the UN has become involved in a war of words with one of the disputants or if one of the great powers, particularly the US, has become actively engaged in the management of the conflict.

## 2. UN Pressure Groups

NGOs may oppose efforts to reward disputants. Since the early 1990s, these groups have begun to play a more influential role in UN affairs.<sup>114</sup> NGO support has helped push through a number of UN reforms. However, many of these same organizations, especially human rights NGOs, have condemned the UN for its response to various conflict situations.<sup>115</sup> These groups fault the UN for not being tough enough with uncooperative parties or those responsible for egregious human rights violations. For example, an Asia Watch report assessing the progress of UNTAC concluded:

Standing up to the Khmer Rouge and the Phonn Penh government early on, in particular, might have prevented the escalation of violence that came later. A clear determination to act firmly, decisively, publicly and quickly against abusive officials and party cadres might have

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sible exception of the NATO Implementation (IFOR) and Stabilization (SFOR) Forces currently in the Balkans. On the other, the very presence of American troops in that country precipitated heavy press coverage of the conflict and meant it would receive intense congressional scrutiny. This meant that certain options that might have been utilized were foreclosed at the outset due to domestic political constraints.

114. Their representatives routinely attend and even address intergovernmental conferences. NGO forums held parallel to UN gatherings have become events in themselves and the sources of important proposals for restructuring and reinventing the UN. See Peter J. Spiro, *New Global Communities: Nongovernmental Organizations in International Decision-Making Institutions*, WASH. Q., Winter 1995, at 45.

115. The impetus for some of this criticism has been the actions of UN personnel, especially troops attached to peace operations, who are alleged to have committed human rights or other criminal offenses. See AMNESTY INTERNATIONAL, *PEACE-KEEPING AND HUMAN RIGHTS* (1994); HUMAN RIGHTS WATCH, *THE LOST AGENDA AND U.N. FIELD OPERATIONS* (1993). At the same time, NGOs have condemned the posture that the UN has adopted toward various disputants. See AMERICA'S WATCH, *PEACE AND HUMAN RIGHTS: SUCCESSES AND FAILINGS OF THE UNITED NATIONS OBSERVER MISSION IN EL SALVADOR* (1992); ASIA WATCH, *AN EXCHANGE ON HUMAN RIGHTS AND PEACE-KEEPING IN CAMBODIA* (1993); ASIA WATCH, *CAMBODIA: HUMAN RIGHTS BEFORE AND AFTER THE ELECTIONS* (1993); see also Brian D. Tittemor, *Belligerents in Blue Helmets: Applying International Humanitarian Law to United Nations Peace Operations*, 33 STAN. J. INT'L L. 61 (1997). Meanwhile, in Mozambique, human rights NGOs criticized the UN for hiring mine manufacturers whose products litter this country to carry out demining activities. *Overmined: Mozambique*, ECONOMIST, June 11, 1994, at 40. For articles stressing the need for vigorous human rights monitoring efforts to be built into the efforts that the UN undertakes to end conflicts, especially those where massive denials of human rights were previously the norm, see IAN JOHNSTONE, *RIGHTS AND RECONCILIATION: UN STRATEGIES IN EL SALVADOR* 21 (1995); Ian Martin, *Haiti: Mangled Multilateralism*, FOREIGN POL'Y, Summer 1994, at 72, 87.

acted as a deterrent to further killings, disappearances, arbitrary arrests, abusive detention practices, intimidation and harassment.<sup>116</sup>

Additionally, many NGOs have lobbied for the establishment of international criminal tribunals to prosecute individuals violating international humanitarian law and human rights norms.<sup>117</sup> They also have been consistent backers of the establishment of a permanent international criminal court.<sup>118</sup>

Humanitarian NGOs may be particularly sensitive about the way in which the UN interacts with the parties to a conflict. In Somalia, UNOSOM II decisionmakers rejected a weapons incentive program because of the opposition by NGOs that it was likely to engender. Clement Adibe has noted:

[T]he Director of Humanitarian Relief in Somalia had notified the Force Command that the concept of providing factional militia with cash and other incentives was not 'supportable.' The apparent reason for the disapproval was that many donor agencies believed that the original UNITAF idea was morally repugnant because it amounted to rewarding the militias and the warlords for their brutality toward Somalis.<sup>119</sup>

Thus, UN reward strategies may encounter stiff opposition from the NGO community.

### *C. Monitoring the Activities of the Disputant(s) to be Influenced*

Positive sanctions may allow the UN to cut down on its monitoring responsibilities. Baldwin has observed:

Influence attempts based solely on negative sanctions provide B with no incentive to comply with A's demands if B can find a way to avoid detection. This fact, together with the relative difficulty of legitimizing influence attempts based on negative sanctions, means that A must spend more on specialized machinery for monitoring B's activities when he uses negative instead of positive sanctions.<sup>120</sup>

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116. ASIA WATCH, CAMBODIA: HUMAN RIGHTS BEFORE AND AFTER THE ELECTIONS 37 (1993).

117. The parties to be prosecuted included the Khmer Rouge, the Bosnian Serbs, the Haitian junta that came to power following its 1991 coup, and the Rwandans responsible for the 1994 civil strife in that country.

118. See Amnesty International, *The Quest for Justice: Time for a Permanent International Criminal Court*, FOCUS, Sept. 1995, at 1.

119. Clement Adibe, United Nations Institute for Disarmament Research, *Managing Arms in Peace Processes*, at 87-88, U.N. Doc. UNIDIR/95/30, U.N. Sales No. GV.E.95.0.20 (1995).

120. Baldwin, *supra* note 45, at 35.

Monitoring, as an activity, forms part of the core functions that the UN often carries out when attempting to reconstruct shattered societies. For example, military personnel taking part in a peacekeeping operation could report cease fire violations. Meanwhile, multidimensional peacebuilding ventures may address such issues as repatriation, demobilization, and the organization of elections. In this context, the UN will need to evaluate the extent to which steps are being taken by each of the parties to make progress on multiple fronts.<sup>121</sup> Even in those rare situations where all of the disputants realize that it is in their long-term interests to comply, monitoring is imperative. Each party will need reassurances that the others are actually upholding their ends of the bargain. Where efforts to evade the UN's scrutiny are rife, even more individuals will be required. Past operations have suffered from a shortage of personnel to evaluate compliance. As Paul F. Diehl has contended:

The enormous area that [the United Nations Transitional Assistance Group] UNTAG had to cover proved problematical. UNTAG was often unable to verify that South African forces had been confined to their bases, relinquished their weapons or released political prisoners. In some cases, the South African forces moved troops, weapons and prisoners from location to location several steps ahead of the peacekeeping forces which could not monitor the whole country. The UN Transitional Authority in Cambodia (UNTAC) had similar difficulties in monitoring the military activities of the Khmer Rouge.<sup>122</sup>

Unfortunately, tight budgets continue to constrain the ability of the UN to engage personnel in monitoring capacities.<sup>123</sup> Positive sanctions, it can be argued, actually lessen the need for monitoring efforts to be undertaken. After all, rewards may induce parties to cooperate more readily with UN efforts. Thus, their employment would seem to emerge as a particularly effective way for the UN to carry out its peace operations while making efficient use of scarce resources. However, these savings might be offset by the cost of ensuring that the rewards distributed to the parties are used appropriately by them. It would also appear that these efforts may be relatively costly in situations where the

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121. See, e.g., Stephen Baranyi & Sean Loughna, *Guatemala at the Crossroads*, JANE'S INTELLIGENCE REV. Oct. 1, 1995, at 472, available in 1995 WL 14357421 ("Finally, the parties requested the establishment of an on-site UN Verification Mission to ensure immediate compliance with these [human rights] commitments.").

122. Paul F. Diehl, *Peacekeeping in Civil Wars*, in A CRISIS OF EXPECTATIONS: UN PEACEKEEPING IN THE 1990S 223, 229 (Ramesh Thakur & Carlyle A. Thayer eds., 1995).

123. See *IraqKuwait—UN to Reduce Border Monitoring Force*, PERISCOPE-DAILY DEF. NEWS CAPSULES, Aug. 6, 1996, available in 1996 WL 7601585 ("The United Nations will cut its military observer force on the Iraq-Kuwait border by 20 percent by April 1997 due to financial problems, the commander of the force said in remarks published on Tuesday.").



inducement being distributed takes the form of monetary payments.<sup>124</sup>

#### D. *Propriety of the Influence Attempt*

An important aspect of using reward-based strategies is ensuring that these measures comply with all relevant regulations and norms. However, due to the relatively small number of attempts by international actors to use inducements, there are few rules or customs governing their employment. Meanwhile, an entire legal regime has grown up around the conduct of war, a staple of conventional statecraft.<sup>125</sup> Still, it can be argued that some standards regulating the use of rewards exist. At a minimum, the use of such inducement strategies should be consistent with UN rules, UN values, and its operational objectives.

##### 1. UN Rules

Some attempts to use rewards have violated, or, had they not been implemented by another entity, would have contravened UN regulations. For example, Virginia Page Fortna has noted that during the Second United Nations Angola Verification Mission (UNAVEM II), “[t]he UN World Food Program [WFP] made an exception to its rule of not supplying military forces, and agreed to take over the job of feeding Angolan troops.”<sup>126</sup> This measure was taken to spur demobilization. Similarly, the UN asked Italy to finance aspects of RENAMO’s electoral preparations. A UN-administered fund could not be set up because “the United Nations rules under which Trust Funds are administered are

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124. For example, the formulation of accounting procedures would be a transaction cost associated with such an endeavor. Actually implementing them would consume more resources. The accounting issue has been raised in the context of UN peacekeeping operations. See *UN: Streamlined Peace-keeping, Rapid Liquidation of Missions Called for in Admin & Budgetary Committee Part 2*, M2 PRESSWIRE, Nov. 8, 1996, available in 1996 WL 14652859 (“With the Brindisi Base playing a pivotal role in receiving and deploying assets to and from field missions, the maintenance of a comprehensive central inventory for all operations will be critical, the Secretary-General states in his report on the management of peace-keeping assets: policy, technique and accounting issues.”).

125. See generally United Nations Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects, Oct. 10, 1980, U.N. Doc. A/CONF./95/15, reprinted in 19 I.L.M. 1523 (1980); Protocol Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), June 8, 1977, 1125 U.N.T.S. 609; Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287. For other instruments regulating the conduct of armed hostilities, see W. MICHAEL REISMAN & CHRIS T. ANTANIOU, *THE LAWS OF WAR* (1994).

126. Virginia Page Fortna, *United Nations Angola Verification Mission II*, in *THE EVOLUTION OF UN PEACEKEEPING: CASE STUDIES AND COMPARATIVE ANALYSIS* 388, 399 (William J. Durch ed., 1993).

too rigid to meet the needs which stem from the transformation of a military organization into a political party, all the more so in the social and economic context of an African country."<sup>127</sup> Rome later agreed to comply with this request.<sup>128</sup> Because countries like Italy will sometimes be unwilling to carry out such tasks, the rules governing some UN activities may need to be changed. Greater flexibility may maximize the possibility that rewards will induce the disputants in a given conflict to make peace.

## 2. UN Values

With the UN's emergence on to the world political stage as an influential actor, how it intervenes in a given context has become an issue of greater importance. For example, many believe that UN agents, including mediators and peace operations personnel, ought to "maintain their neutrality and perform their mission in an impartial manner."<sup>129</sup> Similarly, UN military commanders speak of resisting the urge to cross the "Mogadishu line."<sup>130</sup> However, it has become increasingly difficult for this organization to be perceived as impartial as its involvement with the parties to a conflict expands and deepens.<sup>131</sup> As Steven R. Ratner has noted, "[b]ecause the UN acts as administrator, mediator,

127. See Letter Dated, *supra* note 80, at 216.

128. Letter Dated 4 March 1994 from the President of the Council of Ministers of Italy to the Secretary-General on Italy's Further Contribution in the United Nations Trust Fund, in *THE UNITED NATIONS AND MOZAMBIQUE: 1992-1995*, at 230 (Dep't of Public Information ed., 1995).

129. Diehl, *supra* note 122, at 224. *But see* Richard K. Betts, *The Delusion of Impartial Intervention*, FOREIGN AFF. Nov.-Dec. 1994, at 20 (arguing that impartiality "becomes a destructive misconception when carried over to the messier realm of 'peace enforcement,' where the belligerents have yet to decide that they have nothing more to gain by fighting").

130. This term was coined by Sir Michael Rose, a British military officer who served as commander of UNPROFOR. He insisted that UN forces never become involved in the hostilities in Bosnia-Herzegovina as a combatant. See, e.g., Louis Meixler, *U.N. in Somalia: Humanitarian Success, Military Failure*, AP, Feb. 24, 1995, available in 1995 WL 4364135 (reporting that "the former commander of U.N. forces, Lt. Gen. Sir Michael Rose, has often cautioned against taking aggressive action there, warning that peacekeepers must not cross what he has calls 'the Mogadishu line,' separating peacekeeping and warfare.").

131. Sometimes, events seemingly outside the UN's control thwart its intentions to act as an impartial participant in the conflict-resolution process. As Robert G. Patman has noted:

In mid-June 1992, a Russian Antonov plane with UN markings delivered military hardware and newly printed Somali currency to [United Somali Congress (USC) leader] Ali Mahidi's airfield in north Mogadishu. The UN had no ready explanation for this highly-disruptive blunder which prompted an already suspicious [Somali National Alliance (SNA) leader General Mohamed Farah] Aideed to accuse the UN of favoring his arch-rival.

Patman, *supra* note 29, at 90. Apparently, this aircraft had been previously leased to the WFP and its UN markings were not removed after this agency no longer needed it.

and guarantor, it is pulled by forces not present in the earlier operations."<sup>132</sup>

If the UN managed a conflict in a way that consistently tended to support one of the parties, its impartiality would be seriously undermined.<sup>133</sup> However, taking "a stance vis-à-vis one party in response to a specific action, rather than through any predisposition" is justifiable.<sup>134</sup> Thus, the UN could target positive inducements at only one or a small number of the disputants involved in a conflict without operating in a partial manner.<sup>135</sup> If the UN chose to pursue this course of action, it would need to be clear that the party was being rewarded because it had taken an action that advanced the settlement process. Impartiality concerns may explain the premium Kriesberg has placed on ensuring that messages about the desirability of rewards are communicated before they are actually utilized.<sup>136</sup>

In theory, the case for UN impartiality seems unassailable. However, some observers of the conflict-resolution process have questioned whether such a posture is a precondition for, or even consistent with, effective mediation and the successful employment of positive sanctions. For example, I. William Zartman and Touval have argued:

Impartiality is not necessary for successful mediation. This is borne out by the success of mediators perceived to have been close to or allied with one of the parties. Witness American mediation in the Arab-Israeli conflict, Anglo-American mediation between Italy and Yugoslavia on the Trieste issue, Soviet mediation between India and Pakistan at Tashkent, and Algerian mediation between Iran and the United States.<sup>137</sup>

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132. RATNER, *supra* note 8, at 52.

133. Tom Farer, *Intervention in Unnatural Humanitarian Emergencies: Lessons of the First Phase*, 18 HUM. RTS. Q. 1, 3-4 (1996) ("UN officials generally construe impartiality to require that they refrain from two things: One is publicly judging or even implying any judgment concerning the merits of a dispute or conflict; the other is acting in any way which affects the balance of power among contending groups.").

134. RATNER, *supra* note 8, at 52.

135. The parties to a conflict are likely to jump at every chance to take the UN to task for its alleged partiality. If the UN is attacked from various quarters, the overall impartiality of the UN will be underscored. Referring to Cambodian views of UNTAC, Janet Heninger has remarked that:

[s]ome thought that the mission leaders were biased in favor of the State of Cambodia, while others thought that UNTAC was insufficiently tough with the Khmer Rouge. If all parties believe the United Nations is biased in favor of their opponents, that may be an indicator of a balanced approach.

JANET E. HENINGER, *PEACE-KEEPING IN TRANSITION: THE UNITED NATIONS IN CAMBODIA* 137 (1994).

136. Kriesberg, *supra* note 95, at 420.

137. Saadia Touval & I. William Zartman, *Introduction: Mediation in Theory*, in *INTERNATIONAL MEDIATION IN THEORY AND PRACTICE* 7, 15 (Saadia Touval & I. William Zartman eds., 1985).

It is unclear whether positive sanctions will accomplish more if they are employed by a fellow disputant or a mediator. Lawson's work on the use of rewards, for example, deals with influence attempts by actors that fall into both categories. Kriesberg distinguishes between rewards given by mediators and those conveyed by parties to a dispute. According to him, "particularly in the Israeli-Arab continuing conflict, intermediaries have initiated de-escalating efforts. UN representatives, U.S. officials, journalists, and others have made or transmitted proposals from one of the adversary parties. These usually did not include any coercive or conciliatory actions, and they did not result in de-escalating negotiations."<sup>138</sup> Meanwhile, Zartman and Touval have contended:

[US Secretary of State Henry] Kissinger offered economic aid to the white Rhodesian settlers. [US President Ronald] Reagan offered economic aid to an Angola free of Cubans, and the OAS and IDB have told conflicting [Latin] American states that no development funds would be available until their conflict was settled.<sup>139</sup>

They also state:

Through the diplomatic intervention of mediation, the mediator transforms the bargaining structure from a dyad into a triangle. . . . [I]f the mediator is to mediate—that is, intervene to diminish or resolve the conflict—it must use the triangular structure to move the parties to agreement rather than creating a victory for one side. Paradoxically, this may mean temporarily reinforcing one side to keep it in the conflict, maintain the stalemate, and preserve the triangular relationship.<sup>140</sup>

Thus, positive sanctions might enhance the mediation and conflict-resolution efforts that third parties undertake, especially if maintaining the triangular relationship identified by Zartman and Touval facilitates dispute-settlement initiatives. Rewards may act as an effective vehicle to keep disputants, who would otherwise drop out, engaged in the peace process.<sup>141</sup>

The UN has sought to operate in a transparent manner.<sup>142</sup> Thus,

138. Kriesberg, *supra* note 95, at 411.

139. I. William Zartman & Saadia Touval, *Conclusion: Mediation in Theory and Practice*, in *INTERNATIONAL MEDIATION IN THEORY AND PRACTICE* 251, 264 (Saadia Touval & I. William Zartman eds., 1985).

140. Touval & Zartman, *supra* note 137, at 10-11.

141. In an age where the UN is increasingly called upon to undertake peace enforcement operations, its involvement in disputes will not always be as a third party. Rather, as were the cases in Somalia and Iraq, it may become involved in a direct armed confrontation with another actor. This posture would seem to complicate the work of the UN. One advantage of the UN's becoming directly involved in a dispute as a party to it may be that it might make more effective use of positive sanctions than if it had continued to function as a third party mediator.

142. Transparency denotes the extent to which the operation of public institutions is

covert reward-based strategies might be difficult to justify. However, demand for such measures might be minimal. After all, most disputants are likely to desire basking in the legitimacy and favorable publicity that the UN rewards are likely to confer upon them. In some settings, personalities might wish to downplay the fact that they are the beneficiaries of positive sanctions.<sup>143</sup> For example, if evidence of cooperation between the UN and the disputant surfaced, it might be characterized as the puppet of foreign influences.<sup>144</sup>

### 3. Operational Objectives

Positive sanctions may be configured to achieve important operational outcomes. Just as important as how the UN goes about its work is the results that its efforts achieve. For example, a UN-endorsed settlement codifying blatant international aggression or serious violations of international humanitarian law would likely be rejected outright.<sup>145</sup> Similarly, UN rewards should be compatible with its larger mission. At a minimum, inducement strategies might vindicate international legal principles and safeguard the long-term welfare of the population in the conflict area.<sup>146</sup> Baldwin has addressed the importance of this latter

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open to outside scrutiny. See, e.g., *UN: Secretary-General Calls Education One of Most Effective Forms of Defence Spending*, M2 Presswire, Dec. 18, 1997, available in 1997 WL 16296321 ("United Nations legal officers are helping nations erect sound and transparent legal frameworks, and fair and reliable judicial systems.").

143. For example, by functioning as the recipient of NATO support, Biljana Plavsic has risked losing her credibility with indigenous constituencies. See Howard Feinstein, *Shellshock in Sarajevo*, GUARDIAN (London), Nov. 7, 1997, at T004 ("Now she [Plavsic] has become the West's puppet in the effort to eradicate Radovan Karadzic's power base in the town of Pale.").

144. Interestingly, Ali Mahdi did not attempt to try to hide the fact that he maintained friendly relations with outsiders. His opponents, meanwhile, made much of this interaction, using it to depict "Ali Mahdi [as] a stooge of foreign interests-in this case Italian and Egyptian-bent on reestablishing dominance over Somalia. Ali Mahdi denies he gets any such foreign backing, although he says he enjoys good relations with Italy, the former colonial power." Keith B. Richburg, *It Makes A Warlord Smile Somali Watches U.N. Batter His Rival*, WASH. POST, June 24, 1993, at A32.

145. As I. William Zartman and Saadia Touval have noted:

[a]n interest in specific outcomes occurs quite often in mediation sponsored by international organizations. The [International Committee for the Red Cross] ICRC, [the Organization of African Unity] OAU, and OAS all seek specific solutions to disputes, not just agreements. They try to promote solutions that can be interpreted as compatible with the standards of the Geneva Conventions and of their charters, respectively, and that protect their image as a guardian of these standards.

Zartman & Touval, *supra* note 139, at 257.

146. Given this, a proposal to reward a disputant for its cooperation by providing it with arms would be summarily rejected unless such transfers were needed to stabilize a skewed balance of power. The propriety of other packages of positive sanctions might be less clear-cut. This is an area where NGOs, particularly those operating in the fields of human rights and humanitarian assistance, might be able to offer the UN guidance on

concern, arguing:

It seems unwise to assume that B [the actor to be influenced] always knows what is best for him. It is not necessarily harmful to restrict the choices available to children, drug addicts, or nation-states. Children can be rewarded with too much candy; drug addicts can be rewarded with too much heroin; and countries can be given more foreign aid than is good for them.<sup>147</sup>

Some disputants, especially those born and bred on the battlefield, might be particularly apt to lack an appreciation of the rewards likely to contribute to their country's sustainable development.

Rewards might act as a vehicle to increase the amount of cooperation and interaction between the disputant and the UN. As Baldwin has noted, "[a]n important side effect [of an influence attempt utilizing positive sanctions] is the 'spill over effect' on B's relations with A with respect to other issues. While positive sanctions tend to enhance B's willingness to cooperate with A on other issues, negative sanctions tend to impede such competition."<sup>148</sup> Thus, positive sanctions rewarding a party for its demobilization efforts might lead to greater cooperation in the area of electoral activities. Similarly, increased interaction resulting from the use of rewards could serve as the basis for future collaboration between the UN and the disputant. This result, it can be argued, would be especially likely if the party that had been rewarded was integrated into the governing authority of the post-conflict order. Thus, the support and assistance that the African National Congress (ANC) received from the UN while both crusaded against apartheid may function as one reason why the current ANC South African government has undertaken active efforts to help bring conflicts in Southern Africa to an end.<sup>149</sup>

The UN will also be interested in restoring the long-term economic health of areas plagued by conflict. If it is not, disputes may ensue.<sup>150</sup> Positive sanctions might make a vital contribution to the economic reconstruction process. Moreover, given the role that private sector entities like multinational enterprises now play in the economic development processes of a variety of countries, it may be wise for the UN to integrate these actors into its attempts to use rewards as an induce-

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what measures would be appropriate and which would not pass muster.

147. Baldwin, *supra* note 33, at 184.

148. Baldwin, *supra* note 45, at 32-33.

149. More pragmatic concerns such as regional stability may also account for South Africa's activism in this area.

150. See Gregory Jowdy, Note, *Truth Commissions in El Salvador and Guatemala: A Proposal for Truth in Guatemala*, 17 B.C. THIRD WORLD L.J. 285, 292 (1997) ("Much of the Salvadoran civil conflict springs from this division between a landed elite and an impoverished peasantry.").

ment strategy.

#### 4. Scrutiny of the UN's Use of Positive Sanctions

Little monitoring of the UN's use of rewards is likely to occur. Compared with a jurisdiction like the US, whose courts play a vigorous role in appraising the legality of official conduct, judicial mechanisms occupy a relatively peripheral place in the UN's constitutional arrangements.<sup>151</sup> This marginalization imposes special responsibilities on UN bodies and personnel to ensure that its conflict-resolution strategies are compatible with UN principles. Besides this self-policing, NGOs will probably assume a watchdog role, taking the UN to task for problematic policies.<sup>152</sup>

#### *E. Using Only Rewards or Employing a Multifaceted Strategy*

To suppress conflicts, the UN might rely on strategies that utilize rewards exclusively. Or, more multifaceted approaches, which combine punishments with positive sanctions, could be employed. Of course, for the foreseeable future, it may be difficult for the UN to preside over and effectively use negative inducements like economic sanctions. Even if this organization does enhance its capacity to utilize positive inducement strategies, the UN would do well to prevent its limited prowess with negative sanctions from atrophying. Indeed, as Kriesberg has concluded, "[n]egotiations dependent solely on coercive or noncoercive inducements provided by intermediaries or by parties not directly involved in the conflict have not usually culminated in agreements."<sup>153</sup>

If the UN successfully managed to harness the power of both punishments and rewards, its pronounced compartmentalization, which is widely thought to thwart its ability to deal with situations in a coordinated manner, might actually function as an advantage.<sup>154</sup> As Ratner has noted:

[I]f one party undertakes outrageous or illegal actions, the political organs can adopt a strong, condemnatory position and signal to the parties the firmness of the international community's view. Far from the corridors of power in New York, the Special Representative could distance himself [sic] a bit and assume the role of mediator in a way that

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151. The International Court of Justice has attempted to scrutinize the legality of actions taken by the Security Council, *See* W. Michael Reisman Note, *The Constitutional Crisis in the United Nations*, 83 AM. J. INT'L L. 83 (1993).

152. *Cf.* Paul Brest, *The Conscientious Legislator's Guide to Constitutional Interpretation*, 27 STAN. L. REV. 585 (1975) (questioning the assumption made by some officials "that their job is to make policy without regard to questions of constitutionality which rest within the exclusive domain of the courts").

153. Kriesberg, *supra* note 95, at 418.

154. *See supra* text accompanying note 93.

further the settlement process.<sup>155</sup>

The number of agencies in the UN means that there would be a relatively large pool of candidates to engage in this "good cop, bad cop" routine.<sup>156</sup> For example, one component of a peace operation might take a fairly hard-line stance in relation to a disputant while another would promise to reward the party for greater compliance.

To be effective, this approach might require a great deal of orchestration. However, it would allow the UN to manage conflicts in a way that states cannot. Governments, after all, place a premium on speaking with one voice in the area of foreign affairs.<sup>157</sup> To avoid the appearance of inconsistency, they are not likely to modify or refine their stances on specific issues often.<sup>158</sup> The UN, meanwhile, may have fewer qualms about shifting its position on particular matters.

Under a variation of this approach to conflict-resolution, the UN might take responsibility for rewarding the parties when they cooperate. If their commitment to peace wavered, states bordering the conflict area might threaten the disputants. This course of action was pursued in Mozambique. The UN directly disbursed rewards to the government and RENAMO, including reconstruction and electoral assistance. Meanwhile, when the settlement process seemed to be breaking down, leading regional figures intervened to persuade these parties to settle

155. RATNER, *supra* note 8, at 80.

156. *Id.* at 80.

157. See, e.g., Jack L. Goldsmith, *Federal Courts, Foreign Affairs, and Federalism*, 83 VA. L. REV. 1617, 1621 (1997) ("In foreign affairs, the nation must speak with one voice, not fifty.").

158. In states where power over the conduct of foreign affairs is distributed among several branches, the achievement of an approach utilizing both positive and negative sanctions simultaneously is possible. In a study of US human rights policy toward Indonesia during the 1970s, Timo Antero Kivimaki has remarked:

[p]ublicly, the [US] Embassy [in Jakarta] alleged that it did not want sanctions against friends and allies (such as Indonesia), but that political pressures from the Congress were forcing its hand. Pressure from the Congress and US public opinion could be used by [US Ambassador to Indonesia David] Newson as leverage in human rights bargaining. Some US Embassy officials have said that US officials in Indonesia had secretly encouraged US congressmen to investigate human rights policies in Indonesia in order to gain bargaining leverage at the administrative level.

Timo Antero Kivimaki, *National Diplomacy for Human Rights: A Study of US Exercise of Power in Indonesia, 1974-1979*, 16 HUM. RTS. Q., 415 (1994).

In situations in which the executive branch has taken the lead in dealing with a foreign affairs issue, it will be more difficult for it to adopt an approach utilizing both rewards and punishments. *The Economist*, for example, has criticized the "Clinton administration's own careless policies towards Haiti—shifting ground under pressure, whether it be from thugs at the harbour in Port-au-Prince, from public opinion, from the congressional black caucus, from Florida voters, or whatever—that put credibility on the line in Haiti in the first place." *Nightmare*, *supra* note 110, at 19.



their differences peacefully.<sup>159</sup> Obviously, the viability of this approach will depend on the existence of individuals in the region who command the requisite moral authority and possess the means to make good on their threats.<sup>160</sup>

*F. Combining UN Rewards with Ones Offered by the Disputants Themselves*

Besides providing positive sanctions to cooperative disputants, the UN might attempt to persuade the parties to a conflict to reward each other. Kriesberg has asserted that "[i]ntermediaries can often provide compensatory benefits to both adversaries, which, in turn, induces them to make additional concessions to each other: witness the Camp David negotiations with the Israeli and Egyptian governments."<sup>161</sup> Of course, if the parties are emerging from a long conflict that has exhausted their resources, they may lack the capacity to channel material rewards to their adversaries. Some unilateral measures, however, are inexpensive to finance. These include truce declarations,<sup>162</sup> troop withdrawals, demobilization initiatives, and the establishment of truth commissions. It can be argued that the structure of the Mozambican peace agreement fostered cooperation between the governing Front for the Liberation of Mozambique and RENAMO. Protocol III of the Rome Accords<sup>163</sup> stipulated that RENAMO request funds to finance its electoral activities from the Mozambican government, which would either provide the needed resources or seek them from overseas sources.<sup>164</sup>

Besides agreeing to pay for an adversary's return to civilian life, one

159. As *The Economist* reported:

In October Mozambique was due to hold its first free election. Led by . . . [South African President Nelson] Mandela and [Zimbabwean President] . . . [Robert] Mugabe, other countries of the region warned its rival parties to accept the result and said that if need be they would send in a force to help keep order. Then, only hours before the poll, Afonso Dhlakama, the former rebel leader, said his Renamo movement would pull out. Both Mr. Mugabe and South Africa's first deputy president, Thabo Mbeki, promptly got on the telephone to persuade him to change his mind. Mr. Dhlakama complied, Renamo took part in the election, and says its leader, accepts its defeat.

*Neighborhood Watch in Southern Africa*, *ECONOMIST*, Dec. 3, 1994, at 51.

160. In Mozambique, both of these conditions were present. South African President Nelson Mandela enjoys almost universal respect. His country, moreover, is able to project military might with relative ease.

161. Kriesberg, *supra* note 95, at 419.

162. More than a month before the signing of the Act of New York, the document that ended El Salvador's civil war, in December 1991, the FMLN announced that it was suspending its military activities. See *Salvadoran Army to Continue Operations Despite Rebel Truce*, *Agence France-Presse*, Nov. 19, 1991, available in 1991 WL 3231671 ("The Salvadoran military Monday refused to match a unilateral rebel cease-fire in effect since last week and accused the insurgents of breaking their own truce.")

163. General Peace Agreement, *supra* note 78, at 111.

164. *Id.* The interaction between RENAMO and FRELIMO that this scheme might engender may have functioned as the basis for greater cooperation between the parties.

disputant can offer its counterparts particular positions or administrative competencies in the post-conflict authority. If these are accepted, a government of national unity (GNU) would exist. Managers of the transition to democratic rule in South Africa used this approach successfully. It also is said to have materially advanced at least one peace offensive pursued in Angola.<sup>165</sup> In both contexts, the party that seemed likely to win the upcoming electoral process or had, in fact, triumphed at the polls, offered its rivals posts in specific ministries and/or ambassadorships.<sup>166</sup> Although offers to establish a GNU have the advantage of setting a precedent for direct cooperation between groups that have been bitter enemies in a previous incarnation, these alliances may also represent an extremely effective way for the dominant party to marginalize political opposition in the emergent regime. Because they are a part of the government, junior partners may experience difficulty credibly criticizing official policy decisions.<sup>167</sup> Thus, given the key role that vigorous political opposition plays in the functioning of many successful democracies, GNUs may be problematic in the long run.

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165. The international community pressured FRELIMO, which anticipated winning the 1994 elections in Mozambique and did, but by a smaller-than-expected margin, to bring RENAMO into some sort of power-sharing arrangement. Lamb, for example, has reported:

Facing the political wilderness, Dhlakama wrested what concessions he could. While publicly issuing a statement drafted by the British embassy that the international community would investigate his allegations of fraud, he also secured agreement from negotiators to pressure Chissano to give Renamo members places in the new government and at least one provincial governorship.

Lamb, *supra* note 112, available in LEXIS, Nexis Library, English Non-US File. *The Economist* indicated that "[t]he Americans, Portuguese (Mozambique's former colonisers) and the United Nations would like to see the two sides strike a pre-election deal to share power, as a way of giving the defeated party a stake in future stability. To this end, they want Mr. Mandela's help." *Good Neighbor: South Africa*, *ECONOMIST*, Aug. 13, 1994, at 40. In the end, however, a GNU was not set up and no RENAMO provincial governors were appointed.

166. After the 1994 elections, F.W. de Klerk, whose Nationalist Party finished second to the African National Congress (ANC), became the country's second deputy president. Chief Mangosuthu Buthelezi, the head of the Inkatha Freedom Party (IFP), which finished a distant third, took over control of the Ministry of Home Affairs. Similarly, in Angola, "[f]ollowing the recommendations of intermediaries and trying to allay UNITA's grievances, the MPLA-led government agreed on [the] creation of a government of national unity, offering UNITA four ministerial portfolios, seven vice-ministerial posts, as well as three provincial governor and seven vice-governor posts." Leonid L. Fituni, *The Collapse of the Socialist State: Angola and the Soviet Union*, in *COLLAPSED STATES: THE DISINTEGRATION AND RESTORATION OF LEGITIMATE AUTHORITY* 143, 150 (I. William Zartman ed., 1995).

167. Before leaving the South African GNU, the Nationalist Party encountered problems challenging public policies. See *A Blacker Future for the Nats?*, *ECONOMIST*, Jan. 27, 1996, at 40.

*G. The Disputants' Access to Alternative Donors and Sources of Funding*

The UN may experience difficulty with reward-based strategies if the disputant to be influenced can go elsewhere to meet its resource needs. In his article on various attempts to use positive sanctions by Middle Eastern states during the 1970s, Lawson asserted:

[O]n the whole, offers of rewards that were made under conditions of increasing bipolarity succeeded in limiting if not terminating these conflicts. This result arose from the first place from a convergence between the dependence of relations associated with positive sanctions and the pattern of dominance and subordination that characterize relations among countries in a bipolar order. It was also a consequence of the inability of potential recipients in this situation to manipulate the offers of positive sanctions by using them as bargaining chips to play rival powers off against one another.<sup>168</sup>

Presumably, influence attempts utilizing positive inducements would be an even more effective vehicle to mold the actions of disputants if made in a unipolar environment. After all, there is no possibility that the party to be influenced will play the donor off of a rival since the donor, by definition, lacks one. Thus, the success of UN efforts making use of rewards will be partially determined by the number of outside actors that have an interest in the conflict to be resolved. Due to the relatively large number of external players that queued up to play supporting roles in the settlement of the conflicts in Cambodia and the former Yugoslavia, efforts using positive inducements may not be as successful in these situations than in a post-Cold War backwater like Rwanda.

Disputants that can rely on the assistance of a wealthy patron may feel relatively inclined to reject UN initiatives to use rewards to gain leverage over them. Therefore, the UN ought to stress the importance of states using established channels for disbursing reconstruction and development assistance to the factions involved in a given settlement process. For example, in Cambodia, aid pledged by various states at the 1992 Ministerial Conference on Rehabilitation and Reconstruction of Cambodia was earmarked for projects approved by the SNC (Supreme National Council)/UNTAC Technical Advisory Committee. In practice, countries sometimes executed end-runs around this body. As Janet E. Heninger has argued:

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168. Fred H. Lawson, *Positive Sanctions and the Managing of International Conflict: Five Middle Eastern Cases*, 11 INT'L J. 628, 650 (1985).

The Thai government rebuilt roads in the border area to facilitate its own logging interests. Other projects that were not submitted included the rehabilitation of roads, schools, and health facilities in the [National United Front for an Independent, Neutral, Peaceful and Cooperative Cambodia] FUNCINPEC zone by the United States. This effort was the continuation of an aid program designed to bolster the non-Communist resistance. Similarly, the Japanese government undertook reconstruction of the bridge of Chruai Changvar as a gesture of goodwill to the Hun Sen administration.<sup>169</sup>

UN leverage over a disputant may be further enhanced by restricting the disputant's ability to sell resources on world markets. For example, even after Soviet support of the Popular Movement for the Liberation of Angola government and South African and US aid to the National Union for the Total Independence of Angola dried up, these parties used Angolan diamonds and oil to continue military operations in this country.<sup>170</sup> Thus, the successful use of positive sanctions may need to rest on the use of negative inducements. In Angola, the UN applied economic sanctions to those areas under UNITA control. Similarly, in Cambodia, the Security Council, in 1992, halted exports of timber from this country. The justification invoked for this latter action was "to protect Cambodia's natural resources."<sup>171</sup> However, perhaps the real logic driving it was to induce the Khmer Rouge to comply with the Paris Accords by increasing its dependence on funds disbursed through UN channels.

#### *H. The Timing of Inducement Efforts*

Positive sanctions may be more effectively employed during specific stages of a conflict's lifespan than others.<sup>172</sup>

##### 1. Before the Conflict

It may be crucial to deploy rewards before conflicts turn violent. Indeed, the importance of taking measures early on in the development of a conflict has been emphasized by Steven John Stedman. According to him:

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169. HENINGER, *supra* note 135, at 59.

170. See Paul Taylor, *With Mischievous Outsiders Gone, Angola Creates Its Own Suffering*, WASH. POST, July 28, 1994, at A20 ("The government draws revenue from offshore oil wells that produce 550,000 barrels a day, according to official Angolan estimates. UNITA draws at least \$100 million a year - perhaps much more - from diamonds it extracts from mines in northeastern Angola, . . .").

171. *Id.* at 62.

172. Of course, it may be difficult to separate a given conflict from other periods in history that have seen strife between the same parties. Kriesberg, for example, notes "it is not possible to isolate instances with clearly marked beginnings and ends." Kriesberg, *supra* note 95, at 407.

[C]onflict emerges from tangible interests, but as soon as the conflict turns overtly violent, concerns about security and survival coexist with the issues that caused the conflict. Resolution of conflict necessarily becomes more difficult, since problem solving must work on two distinct levels: the issues that prompted the conflict in the first place, and the ending of the violent expression of the conflict.<sup>173</sup>

Thus, rewards may prove particularly potent during the prelude to a conflict. In addition to mediating between the potential combatants, the UN might intervene and offer rewards to discourage those who are believed to be fueling the dispute. This strategy may prove successful because many internal conflicts run through a stage marked by the "formation of a single movement led by charismatic organizers who seek to unite disparate groups and force the attention of the government to . . . [its] grievances."<sup>174</sup> Or, action could be taken to eliminate the roots of the conflict, especially if they are predominantly economic or social.

The problems with offering positive sanctions during the early stages of conflicts should be obvious. First, at any given time, there are a multitude of situations where stresses between groups and interests seem to be present.<sup>175</sup> Even the best intelligence will be unable to deliver reliable predictions regarding the ones likely to explode into actual hostilities.<sup>176</sup> For example, according to David Gompert, "[t]he \$4 bil-

173. Stephen J. Stedman, *Conflict and Conflict Resolution in Africa*, in CONFLICT RESOLUTION IN AFRICA 367, 388 (Francis M. Deng & I. William Zartman eds., 1991). Similarly, L. Ronald Scheman and John W. Ford have remarked that "[i]nternational economic leverage is most influential in the early stages of potential disputes." Scheman, *supra* note 92, at 199. At the same time, they proffer little empirical data to back up this assertion.

174. I. William Zartman, *Dynamics and Constraints in Negotiations in Internal Conflicts*, in ELUSIVE PEACE: NEGOTIATING AN END TO CIVIL WARS 3, 13 (I. William Zartman ed., 1995).

175. Ernie Regehr has argued:

The capacity of the UN to intervene is immensely complicated by the fact that the descent into this type of war is usually slow and gradual. Civil wars are not declared; they are inadvertently drifted into. There is typically no clear moment of crisis and thus no consensus on when and how the international community should intervene.

Ernie Regehr, *Warfare's New Face*, WORLD PRESS REV., Apr. 1994, at 14.

176. There are some contexts, like smoldering tensions existing at the margins of conflicts already involving actual fighting, which seem particularly apt to degenerate into armed strife. A desire to thwart the spread of fighting in Bosnia-Herzegovina to Macedonia explains the UN's decision to insert a peace-keeping operation, originally carried out under the auspices of UNPROFOR, there. At the same time, more could have been done to defuse hostility in Macedonia. For example, the UN could have followed the lead of the United Nations Peacekeeping Force in Cyprus, which "organized a series of meetings between Greek and Turkish Cypriot community leaders out of which . . . a process of reconciliation might develop." FETHERSTON, *supra* note 56, at 53.

In situations where a conflict has already broken out and threatens to spread to a neighboring region, the disputants themselves may have a stake in ensuring that the

lion aid carrot the EC . . . produced [in 1991] could have been the last hope for avoiding war, had it not been dangled in front of the Yugoslavs at least a year too late."<sup>177</sup> The UN has become more adept at collecting and processing information. However, its intelligence-gathering capabilities still lag behind those of many governments. States routinely fail to foresee even massive transformations in the international system.<sup>178</sup> For example, the US Central Intelligence Agency (CIA) devoted a massive amount of resources to tracking events in the former Soviet Union and its sphere of influence. However, the collapse of authoritarian socialism in Eastern Europe caught the CIA off guard.

Second, the disputants to be influenced might hold entirely genuine, although exaggerated, expectations of what they can accomplish by taking up arms against an adversary. The political platform of Russian ultranationalist leader Vladimir Zhirinovskiy, who promised to reincorporate Alaska into a resurgent Russian Empire under his leadership, embodies this tendency.<sup>179</sup> It was also operative during the period before the fighting in the Balkans. Politicians of various ethnic backgrounds in this region staked claims on a greater Serbia or Croatia, which invariably encompassed all or most of the former Yugoslavia's territory.<sup>180</sup> Given what these parties and other disputants around the

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strife remains contained. As *The Economist* has reported:

But while the Russians have been wielding a big stick, they have also been dangling, at least in Ingushetia [a region bordering Chechnya] a carrot. Since 1994, they have pumped in money: Ingushetia enjoys a special 'off-shore' tax status within the Russian federation, bringing in \$100m a year—hence the new hotel and artificial lake. Now it is to become an international tax haven, a would-be Russian Jersey.

*Jersey in the Caucasuses?*, *ECONOMIST*, Mar. 23, 1996, at 48.

177. Gompert, *supra* note 36, at 35.

178. As Kenneth Allard has noted:

It has taken the United Nations several years of ever more intense involvement in complicated operations before it has quietly admitted something that military people have always known: intelligence is the key to any operation, including those designed to secure the peace. While 'information' is the term of choice, operations in Somalia proved that, whatever it is called, intelligence has a crucial role to play at the lower end of the conflict spectrum as well as in other places.

KENNETH ALLARD, *SOMALIA OPERATIONS: LESSONS LEARNED* 74 (1995).

179. See, e.g., *All Things Considered* (NPR radio broadcast, Dec. 13, 1993) (reporting Zhirinovskiy's desire "to reclaim American Alaska for Russia.").

180. Ed Vulliamy has noted that during the period leading up to the outbreak of hostilities in the Balkans:

[N]owhere were the maps so ubiquitous as in former Yugoslavia, and nowhere were their frontiers so charged with historical emotion. . . . [Serb] maps show a 'future Yugoslavia' in which Serbia encompasses all of Bosnia-Herzegovina and all southern Croatia, leaving behind a rump around Zagreb and Osijek and what looks like a vassal Dalmatia. . . . [while their Croatian counterparts] show a Croatia that envelopes all of Bosnia-Herzegovina, which ceases to exist.

world have hoped to gain through violence, few rewards were likely to placate them.<sup>181</sup> Meanwhile, the years of devastating fighting in the Balkans have seen the combatants scale back their demands by modifying negotiating positions, withdrawing from the fray, or teaming up with a former adversary.<sup>182</sup>

Third, heavy pre-hostilities reliance on rewards before conflicts involve armed strife may create perverse incentives for other disputants. A party that would not have otherwise resorted to violent conflict might make noises about heading in that direction to collect inducements. As Baldwin has argued, "[i]t is sometimes suggested, perhaps in jest, that poor nations have an incentive to create or maintain an internal Communist threat in order to qualify for foreign aid from the United States."<sup>183</sup> If the UN made serious attempts to use positive inducements to prevent the outbreak of conflicts, it might be viewed as a font of free sustenance by unscrupulous players in the international political arena.<sup>184</sup>

## 2. At the Outset of Hostilities

The viability of using positive sanctions would seem to bottom out after a conflict has begun, but before it is amenable to settlement. In actuality, it may be critical for mediators, especially the UN, to rely heavily on rewards for an eventual resolution to the conflict. As David A. Lax and James K. Sebenius have argued:

If 'not ripe' [for settlement] is the diagnosis, . . . getting people in a room together and employing all sorts of careful procedural means to foster negotiation will be to no avail. The basic conditions for a negoti-

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ED VULLIAMY, *SEASONS IN HELL: UNDERSTANDING BOSNIA'S WAR 8-10* (1994).

181. As Stedman has written:

Individuals such as Somali warlord Mohamed Farah Aidid, Serbian President Slobodan Milosevic, Bosnian Serb leader Radovan Karadzic, and Angolan rebel leader Jonas Savimbi and genocidal factions such as the presidential guard in Rwanda decided on civil war because they thought they could prevail militarily and that the international community was powerless to stop them.

Stephen J. Stedman, *Alchemy for a New World Order: Overselling 'Preventative Diplomacy'*, *FOREIGN AFF.*, May-June 1995, at 14, 18.

182. For example, efforts have been made to forge an alliance between Bosnian Croats and Bosnian Muslims.

183. Baldwin, *supra* note 45, at 36.

184. It might be more effective to use negative inducements at the outset of conflicts. For example, David Gompert has highlighted the role that a peace enforcement force in Bosnia-Herzegovina during early 1992 could have played "to discourage violence before it began." Gompert, *supra* note 36, at 37. Similarly, "General Romeo Dallaire, the brave Canadian on the spot [in Rwanda], says that, given a few motivated soldiers, he might have fended off many of the massacres." *The Rwanda Crisis: History of a Genocide (book review)*, *ECONOMIST*, Nov. 11, 1995, at S11.

ated agreement will not be met since possible agreements appear inferior to at least one side in comparison with its unilateral alternatives. When this is the case, strategy should focus *not* on the negotiation process but instead on actions *away* from the table that can reshape perceptions in a manner that generates a zone of possible agreement.<sup>185</sup>

Richard Haass has exhorted actors attempting to resolve disputes to spur this process along by trying "to get governments and their constituents to recognize the costs of disagreement and the potential benefits of agreement, as well as to expect compromises."<sup>186</sup> According to Haass, mediators can alter the perspectives of disputants by offering them military assistance, intelligence support, security guarantees, and the commitment of an alliance.<sup>187</sup> Of course, the UN is not in a position to provide such services. However, UN decisionmakers could make limited economic commitments to the parties.<sup>188</sup>

### 3. When Conflicts "Ripen"

Using rewards when conflicts ripen could be counterproductive. According to Zartman, a conflict has reached this point when it:

is associated with two different sorts of intensity—called here *plateaus* and the *precipice*—which produce different sorts of pressure—called respectively *deadlocks* and *deadlines*. A plateau and its deadlock begin when one side is unable to achieve its aims, to resolve the problem, or to win the conflict by itself, and they are completed when the other side arrives at a similar perception. Each party must begin to feel uncomfortable in the costly dead-end into which it has gotten itself. A plateau must be perceived by both not as a momentary resting ground, but as a hurting stalemate, a flat, unpleasant terrain stretching into the future, providing no later possibilities for decisive escalation or for graceful escape.<sup>189</sup>

However, it is sometimes unclear when a conflict has ripened. According to Kriesberg:

Whether circumstances are ripe for an agreement is unequivocally clear only in extreme cases. Only sometimes is there no chance for an agreement or the pressure to reach a settlement so strong it is difficult to imagine failure, as when reaching a disengagement agreement between Egyptian and Israeli forces in 1973 was unequivocally neces-

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185. DAVID A. LAX & JAMES K. SEBENIUS, *THE MANAGER AS NEGOTIATOR: BARGAINING FOR COOPERATION AND COMPETITIVE GAIN* 59 (1986).

186. HAASS, *supra* note 23, at 146.

187. *Id.* at 147.

188. *Id.* at 146.

189. I. WILLIAM ZARTMAN, *RIPE FOR RESOLUTION: CONFLICT AND INTERVENTION IN AFRICA* 268 (1989) (emphasis added).



sary.<sup>190</sup>

Haass, meanwhile, has asserted that "it is important to keep in mind that ripeness is dynamic; it can emerge as easily as it can disappear. What may have been a ripe moment in Lebanon in 1982 soon passed."<sup>191</sup> Thus, it may be difficult to implement a positive inducement policy when conflicts reach the ripeness point. Even if an observer or mediator is able to ascertain that a given dispute has ripened, it may be counterproductive to employ them at this stage of the conflict-resolution process. Rewards given at this juncture may dull the pain that has caused disputants to become more receptive to settlement. Any flexibility that the party derives as a result of possessing rewards may encourage it to be less accommodating in the positions it stakes out at the negotiating table.<sup>192</sup> If rewards must be used, they might be explicitly linked to the disputant's accession to the agreement or to the achievement of progress on issues that continue to divide the parties. Such areas of disagreement are likely to exist. As Haass has asserted:

Ripeness is not either totally present or totally absent. Often only parts of a problem are ripe for negotiation; it would be an error in most cases not to address part of a problem in an attempt to solve the entire problem. There is some risk in this—the easier unsolved parts of the problem can in principle lubricate the more difficult ones—but this danger tends to be outweighed by the need to reduce tensions and in the process demonstrate that progress is possible.<sup>193</sup>

#### 4. After the Storm

The importance of formulating strategies to keep disputants engaged in settlement processes should not be underestimated. It may take months or even several years for the UN to implement the provisions of a comprehensive accord.<sup>194</sup> The UN's experience with the Khmer Rouge suggests that even after a disputant consents to cooperation, it may subsequently withdraw its support. It is possible that such situations will be avoided by rewarding the parties for their con-

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190. KRIESBERG, *supra* note 46, at 146.

191. HAASS, *supra* note 23, at 145.

192. When parties take steps that advance the settlement process, their patrons may feel intense pressure to respond with rewards. Such actions, though politically expedient, may be hazardous to the long-term health of the settlement of the conflict-resolution process.

193. HAASS, *supra* note 23, at 144.

194. Deployments did not always take so long to effect. Upon being told in 1960 "to whisk a UN force to the Congo, Brian Urquhart, top peacekeeper at the time, was under the impression that Leopoldville (now Kinshasa) was on the Indian Ocean, not the Atlantic, side of Africa. Nevertheless, he got 3,000 men to the right place in three days." *Rwanda*, *supra* note 184, at S11.

tinued cooperation. However, positive inducements are unlikely to succeed in contexts where the disputant has signed off on an agreement, but has no intention of abiding by it. As Stedman has noted:

[I]f the UN is to continue to work to implement negotiated settlements of civil wars, it must start to think strategically about a generic problem in such settlements: namely, that some of the antagonists are not sincere towards ending the conflict. The UN operations in the Western Sahara, Cambodia and Angola were undermined by parties whose commitment to negotiations was tactical.<sup>195</sup>

### I. *Rewards and the Roots of Conflicts*

Reward-based strategies may prove more effective in disputes with specific causes. What underlies strife is a subject that has received intense scrutiny. According to Zartman:

Internal conflicts are about many different things in different cases, but all aggravated grievances can be subsumed under two related categories—neglect and discrimination, or a distributional element and an identity element. Without distributional deprivation, identity remains a positive factor and not a motivation for conflict; without an identity element, distributional inequities remain unfocused and nonmobilizing. The mix of the two elements may vary, situating the conflict toward one end of the spectrum or the other.<sup>196</sup>

At the identity end of this continuum lie primarily ethnic wars like the ones unfolding in the Balkans, Rwanda, and Burundi although these conflicts have economic explanations.<sup>197</sup> Meanwhile, the conflict in El Salvador served as a reminder that extreme distributional inequities will sometimes spawn mass violence.<sup>198</sup>

If positive sanctions are more likely to take the form of material support and incentives, it can be argued that their utilization would be more successful in the latter category of conflict. After all, gaining more resources is likely to explain why the disputant took up arms in the first place. Indeed, the reward itself may provide the sustenance or en-

195. Stephen J. Stedman, *UN Intervention in Civil Wars: Imperatives of Choice and Strategy*, in BEYOND TRADITIONAL PEACEKEEPING 44, 55 (Donald C.F. Daniel & Bradd C. Hayes eds., 1995).

196. ZARTMAN, *supra* note 174, at 5.

197. See Chaim Kaufmann, *Possible and Impossible Solutions to Ethnic Civil Wars*, 20 INT'L SECURITY 136, 136 (1996) ("Ethnic civil wars are burning in Bosnia, Croatia, Rwanda, Burundi, Angola, Sudan, Turkey, Azerbaijan, Georgia, Chechnya, Tajikistan, Kashmir, Myanmar, and Sri Lanka, and are threatening to break out in dozens of other places throughout the world.").

198. See Marjorie Miller & Tracy Wilkinson, *Despite Lingering Distrust, Salvador Truce Holds Firm Central America*, L.A. TIMES, Aug. 15, 1992, at 1 ("Land is one of the most complicated and, historically, one of the most divisive issues in tiny El Salvador.").

tlement the faction seeks. However, the UN could also construct positive sanctions to enhance a given community's sense of identity. These might take the form of safe havens, UN-sponsored truth commissions, and assurances that the threatened group will receive representation or be guaranteed special rights and privileges in the post-conflict order.<sup>199</sup>

Other disputants would have to cooperate before some identity-enhancing rewards could become operational. Of course, inducements designed to satisfy the material needs of the disputant would not be completely out of place in conflicts driven by discrimination or denials of identity. In these environments, the disputants' post-conflict need for material support may be as pronounced as the identity grievances that originally prompted the fighting.<sup>200</sup>

Although ethnic and economic conflicts are likely to spawn a great deal of suffering and instability in particular regions, strife involving combatants who fight for the sake of fighting has featured more prominently in the post-Cold War universe. As Martin van Creveld has noted:

[W]ar, far from being merely a means, has very often been considered an end—a highly attractive activity for which no other can provide an adequate substitute. The reason why other activities do not provide a substitute is precisely because they are 'civilized,' in other words, bound by artificial rules.<sup>201</sup>

Unfortunately, it seems likely that this harrowing reason for becoming involved in civil strife will grow in relation to other motives for taking up arms. Robert Kaplan has argued that "[a]s anybody who has had experience with Chetniks in Serbia, 'technicals' in Somalia, Tontons Macoutes in Haiti, or soldiers in Sierra Leone can tell you, in places where the Western Enlightenment has not penetrated and where there has always been mass poverty, people find liberation in violence."<sup>202</sup> Should combatants with such an orientation function as the main protagonists in a given conflict, the utility of positive sanctions would be marginal.<sup>203</sup>

199. Part of the agreement hammered out at Lancaster House between the various factions in the then-Rhodesia guaranteed whites 20% of the seats in the new country's legislative authority during a transitional period. See *Agreements Concluded at Lancaster House Conference*, Dec. 21, 1979, reprinted in 19 I.L.M. 387, 394-95 (1980).

200. See, e.g., *Angry Demobilised Bosnian Soldiers on Hunger Strike*, Dec. 5, 1996, AGENCE FRANCE-PRESSE, available in 1996 WL 12194071 ("A group of 100 Bosnian building workers, including many former soldiers, are staging a hunger strike in Sarajevo over poor living conditions, a Bosnian radio station reported Thursday").

201. MARTIN VAN CREVELD, *THE TRANSFORMATION OF WAR* 218 (1991).

202. Robert Kaplan, *The Coming Anarchy*, ATLANTIC, Feb. 1994, at 44.

203. As *The Economist* has reported, "[p]art of the potency of the Shining Path lies in its indiscriminate use of violence. It will kill officials, leftists, rightists, trade unionists, tourists, anyone; on August 19th, for instance, it slaughtered 60 Indians in Peru's Ama-

*J. Positive Sanctions and the Nature of the Conflict*

The success of reward-based strategies may be determined by the complexion of the dispute the UN is seeking to end. Assuming that disputes can be reliably characterized as internal or international,<sup>204</sup> much of the literature on positive incentives deals with influence attempts made in the context of international disputes. As Zartman has asserted, resolving internal conflicts can often be more difficult than ending international ones. According to him:

[T]he most striking characteristic of internal conflict is its asymmetry, one party (government) is strong and the other (insurgent) is weak. . . . Negotiations under conditions of asymmetry (asymmetrical negotiation) are a paradox, because one of the basic findings about the negotiation process is that it functions best under conditions of equality, and indeed only takes place when the parties have some form of mutual veto over outcomes.<sup>205</sup>

The international community is not likely to task the UN with the resolution of such conflicts. Fearing that its sovereignty might be undermined, the overwhelmingly dominant party to the dispute (the government) is likely to do everything in its power to keep the UN or any international organization from becoming involved in the settlement of the conflict.<sup>206</sup> For example, the UN's failure in Somalia partially stems

zon jungle." *The Other Obstacles to Change*, ECONOMIST, Nov. 13, 1993, at 125.

204. In its *Tadic* ruling, the ICTY attempted to determine whether the Bosnian conflict was internal or international. The Tribunal commented:

[I]n 1993, when the Statute [of the International Tribunal] was drafted, the conflicts in the former Yugoslavia could have been characterized as both internal and international, or alternatively, as an internal conflict alongside an international one, or as an international conflict that had subsequently been replaced by one or more internal conflicts, or some combination thereof.

*The Prosecutor v. Tadic (Decision on the Defense Motion for Interlocutory Appeal on Jurisdiction)*, U.N. International Tribunal for the Former Yugoslavia, Case No. IT-94-1-AR72, reprinted in 36 I.L.M. 908 (1997).

205. ZARTMAN, *supra* note 174, at 7-8.

206. In this respect, the UN efforts to end the disputes in such countries as El Salvador, Cambodia, Mozambique, and Angola may represent an aberration. The parties controlling the state structure in each of these contexts were severely weakened as a result of prolonged war; they were pressured into accepting a UN presence by their Cold War patrons or influential regional power brokers. Haiti is also an exception to this general rule. Not only was the military takeover condemned universally, but Haiti exists in the shadow of a superpower, which was unwilling to live with the massive refugee flows that the repression unleashed by the junta generated. The uniqueness of Haiti is hammered home by the international community's reaction to the events in the Gambia and Niger. While the democratic governments of both countries have been overthrown by military coups, there has been no talk of injecting a UN presence into these countries to restore them. See W. Michael Reisman, *Humanitarian Intervention and Fledgling Democracies*, 18 FORDHAM INT'L L.J. 794, 798 (1995) (criticizing the international community's failure to respond to the 1994 coup in the Gambia and other military overthrows of civilian govern-

from the meddling in that country by Sudan, which believed that if UNOSOM II prevailed, the UN might attempt to resolve the long-standing Sudanese civil war.<sup>207</sup> Similarly, such countries as Indonesia, China, Russia, Nigeria, and Colombia are likely to do everything in their power to keep the resolution of the conflicts unfolding in these states off of the UN's agenda.

Were governments to consent to international involvement in resolving conflicts within their borders, it is unclear how useful positive sanctions would be in bringing an end to these disputes. The stark asymmetries likely to exist in these environments may explain why it is doubtful that using rewards will be successful. Insurgents might be disposed to respond favorably to reward-based strategies. This posture may advance, somewhat, the cause of peace. However, it seems less likely that the UN could gain leverage over the government, which is more likely to enjoy access to a wide variety of resources.

Where power imbalances are less extreme, the UN is more likely to become involved. Zartman's generalization about the distorted balance of capacities inherent in most internal conflicts may have applied to the lion's share of disputes that unfolded during the Cold War.<sup>208</sup> However, it retains less pertinence now.<sup>209</sup> What gives many internal conflicts their asymmetry is the presence of a viable state structure. Those who control it are able to mobilize resources easily.<sup>210</sup> During the super-power confrontation, the continued existence of the state during periods of conflict was assumed. Assistance from the government's overseas allies ensured that it continued to function. The side possessing it at any stage of the conflict enjoyed considerable advantages over any force challenging it. Of course, the state has come under unbelievable strains

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207. Walter R. Mead, for example, has highlighted the role that Sudan played in the strife in Somalia. According to him:

Somalia has a strategic location with the longest coastline on the Horn of Africa. As chaos descended on that unhappy country, Iranian-oriented Muslim fundamentalists—already in power in the Sudan nearby—looked likely to gain control of all or part of a country that controls the sea-lanes through which Middle Eastern oil flows to the United States, Europe and Japan.

Walter R. Mead, *In Quagmire of Serbia, Path for U.S. Involvement*, L.A. TIMES, Dec. 27, 1992, Opinion, at 1.

208. See ZARTMAN, *supra* note 174, at 7-8.

209. Thus, many observers have characterized some internal conflicts as "wars of attrition." See *Bosnia Counters Serb Offensive near Sarajevo*, BOSTON GLOBE, Sept. 18, 1992, at 5 ("Although the fighting was intense, Gen. Hussein Ali Abdel Razek, the Egyptian commander of UN forces in Bosnia, saw it as part of a 'war of attrition' in the capital that neither side had much chance of winning.").

210. Cf. Martin Jacques, *A New Morality Could Grow out of Corruption in High Places*, TIMES (London), Mar. 28, 1993, available in 1993 WL 10564999 ("The kind of influence exercised by the governing parties over the public sector means they enjoy access to vast resources. The temptation to abuse this influence for party or personal gain is hard to resist.").

in many parts of the world.<sup>211</sup> In those situations where a functioning state apparatus is no longer part of the political equation, conflict has become more fluid. For example, since the beginning of the fighting in Bosnia-Herzegovina and during the round of strife in Angola between 1992 and 1995, the battle lines in both conflicts fluctuated dramatically.<sup>212</sup> Similarly, at the beginning of 1997, Laurent Kabila existed at the margins of politics in Zaire. Barely five months later, he controlled this country.<sup>213</sup> In fact, where anarchy reigns in the sense that power has become increasingly decentralized, factions, it can be argued, interact with each other in much the same way as do disputing countries. Thus, generalizations about the use of positive sanctions, which are often the product of study about their use in international conflicts, would seem to apply to civil strife plaguing areas in which the state has either withered away or been intentionally destroyed.

### *K. Rewards and Bystanders*

As the UN generates reward-based strategies, it should be concerned about who is on the receiving-end of these measures. Ex-combatants and bystanders are both potential targets. Individuals in possession of the disputant's destructive capacity are well-situated to prolong conflict or re-ignite it. Thus, the case for channelling positive sanctions to this cohort seems compelling. Adopting this policy, how-

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211. Zartman has noted that "[i]n the world after the Cold War, not only has the bipolar, interstate system of world order dissolved, but in many places the state itself has collapsed." I. William Zartman, *Introduction: Posing the Problem of State Collapse*, in *COLLAPSED STATES: THE DISINTEGRATION AND RESTORATION OF LEGITIMATE AUTHORITY* 1, 1 (I. William Zartman ed., 1995). According to Ernie Regehr, "[u]rgent wars are properly understood as civil wars. They are primarily a consequence of failed states—states that are unable to forge a minimum national consensus and to meet basic human needs. Current wars are typically desperate attempts by states to halt the spread of internal chaos." Regehr, *supra* note 175, at 14. Finally, Ibrahim A. Gambari has written that "the incidence of state collapse in Africa appear to have increased in the period since the high point of the Cold War, continuing into the aftermath of superpower confrontation. Africa's growing marginalization in the post-Cold War period may, in fact, have accelerated the process of state collapse." Ibrahim A. Gambari, *The Role of Foreign Intervention in African Reconstruction*, in *COLLAPSED STATES: THE DISINTEGRATION AND RESTORATION OF LEGITIMATE AUTHORITY* 221, 221 (I. William Zartman ed., 1995).

212. At one point in the round of fighting in Angola that began in 1992, UNITA controlled as much as 70% of Angola although the MPLA was able to hold on to Luanda and the oil-rich province of Cabinda. However, due largely to the military training and assistance that Executive Outcomes, a South African firm made up largely of ex-SADF personnel, provided to the government forces, the MPLA was able to reverse these losses and was closing in on rebel strongholds when the latest peace agreement was signed. See, e.g., *Mercenaries Changing Face of For-profit Fighting*, Agence France-Presse, Nov. 15, 1997, available in 1997 WL 13434983 ("Executive Outcomes, based in South Africa, is active throughout Africa including Angola.").

213. See James Rupert, *In Rebel City, the Powers That Would Be*, WASH. POST, May 15, 1997, at A25.

ever, may generate a backlash among noncombatants, who, in many cases, have borne the full brunt of the conflict. Experience suggests that the UN alienates the populace at its peril. According to Heninger:

UNTAC's experience . . . suggests that in the situations where consent has been obtained, but where it may suspect for one or more parties, the United Nations ought to take into consideration the views of the local populace. The people's support for the UN mission may substitute, in some instances, for the faltering commitment of a contending party's leaders, thus helping to keep the mission going.<sup>214</sup>

However, the sheer intensity and depth of the desire on the part of bystanders to see the strife end may decrease this possibility. Heninger, for example, has underscored the Cambodian "people's overwhelming desire for peace . . . Similarly, Salvadoran and Mozambican exhaustion with civil war lent support to UN peace-keeping."<sup>215</sup> Further mitigating this risk of alienation is the fantastic success that the UN has had in getting its message out via radio in various peace operations.<sup>216</sup> This medium could be used to explain why rewards are being targeted at a particular group.

### *L. Rewards and the Situation Prevailing within the Party to be Influenced*

#### 1. Internal Dynamics

The political state of play within the party to be influenced may de-

214. HENINGER, *supra* note 135, at 131.

215. *Id.* At the same time, many have been guilty of overestimating the desire of combatants and their followers to make peace. As Lamb has noted:

Diplomats and UN officials tried to reassure themselves that the situation was different. Mozambicans, they said, were tired of a war that left more than half a million dead, displaced 4m people and created 1.5m refugees as well as leaving the country devastated and littered with landmines. Renamo was a spent force and Dhlakama had insisted he would not return to the bush. Similar things were said in Angola in 1992 and in the suddenly empty streets of Maputo, there was evidence here of a return to civil war.

Lamb, *supra* note 112, available in LEXIS, Nexis Library, English Non-US File.

216. Heninger has mentioned:

UNTAC's information and education was a model for informing the population about UN objectives and progress. It conducted a successful massive civil education campaign in human rights awareness, mine precautions, and electoral matters. Most important, it did a superb job of mass instruction in some of the basic tenets of democracy.

HENINGER, *supra* note 135, at 121. Given this success, some have called upon the UN to use radio and television to "head off or stop wars by mobilizing airwaves that are too often used to set them off." Keith Spicer, *Propaganda for Peace*, N.Y. TIMES, Dec. 10, 1994, at 23.

termine the success of UN rewards. Like states, political organizations involved in strife are inevitably not unitary actors. Rather, they will be comprised of factions vying with each other for control over charting the course taken by the group.<sup>217</sup> If militants are in ascendancy, inducement efforts may prove ineffective.<sup>218</sup> Lawson, for example, has pointed to the domestic political equation in Iran as an explanation for the failure of an influence attempt using positive inducements.<sup>219</sup> He has speculated that the effectiveness of rewards will be determined by multiple domestic variables. These include the strength of interests favoring a continuation of hostilities, whether the political costs of accepting the positive sanctions outweigh continuing on with the conflict, and the extent to which the rewards offered can be used by the target.<sup>220</sup>

Before the UN relies on rewards, it would do well to gather information about the political dynamics inside the party to be influenced. When it comes to disputants involved in conflicts considered marginal to the security of the great powers, such data is likely to be difficult to acquire. The sudden appearance of new parties in disputes only complicates matters.<sup>221</sup> The absence of a functioning state apparatus in many post-Cold War conflict areas would seem to make the task of gathering reliable information even harder. Structures such as legislative bodies and regulatory agencies may be controlled, or lobbied by, different interest groups or factions under the umbrella of a given disputant. These activities have the potential of leading to a greater awareness of what issues are important to, unite, and divide the different factions in an organization and how deep these bonds and fissures are.

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217. See *Issue of Multi-Party Politics in Sudan Causes Heated Debate*, AGENCE FRANCE-PRESSE, Jan. 26, 1998, available in 1998 WL 2208488 ("Breakaway rebel factions from the mainstream Sudan People's Liberation Army (SPLA) have meanwhile rallied to the junta.").

218. See, e.g., Bill Schiller, *ANC-Pretoria Relations at Lowest Ebb*, TORONTO STAR, Apr. 10, 1991, at A19 (reporting that while negotiations between the ANC and South African government stalled, the ANC was "undergoing an internal struggle between doves committed to negotiations, led by Mandela, and hawks who demand a more militant posture, lead by Chris Hani").

219. Lawson, *supra* note 48, at 321.

220. *Id.* at 321.

221. Late 1994, for example, saw the entrance of the Taliban into the conflict occurring in Afghanistan. *The Economist* reported:

A new force is emerging in Afghanistan, the taliban. The word means "seekers", and is generally applied to Islamic theology students. They have taken control of Kandahar, a sizable town in the south, and are reported to be advancing on Ghazni, 140 kilometres (90 miles) from Kabul, the capital, and on Sheikabad, which is even closer.

The taliban who have taken over Kandahar seem to have appeared out of nowhere late last year and taken possession of the road between Pakistan and Kandahar, before going on to capture the town itself.

*With Gun and Koran: Afghanistan*, ECONOMIST, Feb. 4, 1995, at 30.



Where there is no state or in the case of actors, like rebel organizations, that are fighting for control, it can be argued that such patterns of interaction and the attendant understanding that can be gleaned from observing them disappear. Rather, internal decisionmaking processes may be ad-hoc or shrouded in secrecy. This posture allows the group to present a united front to its adversaries and the rest of the world. To realize this same imperative and to maximize scarce resources, there may simply be no political debate within the organization. After all, this activity consumes time and other scarce resources.<sup>222</sup> Similarly, in entities led by charismatic leaders, discussion may be a scarce commodity. In situations where the leader's word is accepted as law by an overwhelming portion of the organization's backers, directing positive sanctions at this figure is not likely to change the group's internal dynamics. At the same time, the absence of serious contenders for leadership of the group might mean that it will be easier for the person heading it to make a move in the direction of peace in return for a reward. If such figures are resistant to UN overtures, little is likely to be accomplished.

The cohesiveness or political unity of disputants may influence UN reward strategies. In many conflicts, especially those that have arisen since the end of the Cold War, it is unclear how much authority those who purport to command and control the party's rank-and-file actually enjoy.<sup>223</sup> When a cease fire violation occurs, a breakaway group that no longer recognizes the authority of the agent that has signed off on the truce agreement may have committed it.<sup>224</sup> Or, the violators, who are only posing as rogue elements, may actually be acting pursuant to the

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222. Georg Simmel, for example, has noted that groups tend to become more centralized when they are involved in conflicts. According to him:

The need for centralization, for the tight pulling together of all elements, which alone guarantees their use, without loss of energy and time, for whatever the requirements of the moment may be, is obvious in the case of conflict. It is so obvious that there are innumerable historical examples where such centralization supersedes even the most perfect peacetime democracy.

GEORG SIMMEL, *CONFLICT* 88 (Reinhard Bendix trans., 1955).

223. The history of the Euskadi Ta Euskadi (ETA) has been a succession of internal conflicts. In 1966, the movement split into two groups, ETA-Zarra (Old ETA) and ETA-Berri (Young ETA). The latter forsook violence and eventually became the Movimiento Comunista de España. In 1970, ETA-Zarra divided into ETA 5th Assembly and ETA 6th Assembly. ETA 6th Assembly also gave up the armed struggle and re-named itself the Liga Comunista Revolucionaria. Then in the mid-seventies there was yet another parting of the ways when ETA 5th Assembly gave birth to ETA-Military and ETA-Político-military. Finally in 1981 ETA-Político-military was grievously weakened when it split into ETA-pm (7th Assembly), whose members dissolved their organization the following year, and ETA pm-(8th Assembly).

JOHN HOOPER, *THE SPANIARDS: A PORTRAIT OF THE NEW SPAIN* 223 (1986).

224. See, e.g., *Nation-World Briefing*, SALT LAKE TRIB. Jan. 9, 1996, at A2, ("NATO's Warning: NATO officials, stung by a series of nasty cease-fire violations, told rogue elements from all Bosnian warring parties to stop shooting or face the consequences.").

directives of the signatory.<sup>225</sup> These ambiguities may complicate the conflict-resolution process.

Using rewards may prove particularly effective in efforts to gain leverage over important subsets of a faction involved in a conflict. It may, for example, be strategically helpful to deliver rewards to factions that are only loosely aligned with the party's power structure. In return, they would withdraw from the conflict or actively support the adoption of a settlement posture.<sup>226</sup> Such actions may hasten other defections or cause the leadership to rethink its intransigence. Kriesberg has highlighted the logic undergirding the selective application of negative incentives, concluding that "coercion may be applied divisively....[t]hus, it may be conducted selectively so that only a segment of the adversary party experiences it. The segment of the conflict group suffering a disproportionate burden of the fight may be especially likely to become disenchanted with the struggle."<sup>227</sup> This insight may pertain to the discriminatory application of positive incentives as well. However, a faction would be singled out for a reward or promised one, not punished or threatened with punishment.<sup>228</sup>

If attempts to bring about the defection of moderate elements fail, the UN could target positive inducements at recalcitrant subsets of parties. For example, the leadership of a group or those in control of its capacity to generate propaganda might be singled out for rewards in exchange for their agreement to make peace or simply bow out of the strife.<sup>229</sup> Of course, if these cohorts are not identifiable, the feasibility

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225. Leonid L. Fituni has asserted:

UNITA's tactics at the negotiations were in many ways similar to that of the parties in the Bosnian war: every time some kind of agreement had been reached at the peace talks, UNITA tabled new demands, and cited disobedience of field commanders as the cause for the breakdown of ceasefires.

Fituni, *supra* note 166, at 154.

226. Referring to the reconstruction program that the international community is attempting to put in place in Bosnia-Herzegovina, a senior European diplomat has said, "[c]all it a bribe but economic reward is the best way of undermining the hardliners and making peace stick. It is not happening and that is worrying." See, e.g., Margaret de Streel, *Europe Eastern Update: A Roundup of East European Business and Political Developments*, Mar. 12, 1996, WALL ST. J. EUR. at 1. Similarly, "[w]hile working hard to establish good relations with major warlords like Aideed and Ali Mahidi, [Mohamed] Sahnoun, [the Secretary-General's first special representative in Somalia], also bypassed them by cultivating the support of clan elders, a traditional source of authority in Somali society, for a sustained grassroots reconciliation effort along the lines initiated in northern Somalia." Patman, *supra* note 29, at 90.

227. LOUIS KRIESBERG, *THE SOCIOLOGY OF SOCIAL CONFLICTS* 169 (1973).

228. Kriesberg ignores the possibility that punishing a subset of a disputant will only alienate it further. This possibility may function as another argument for rewarding it for taking steps to remove itself from the conflict.

229. Keith Spicer, for example, has drawn attention to the fact that "[h]ate campaigns on Serbian and Croatian television helped brew Bosnia's horrors." and has noted that "[t]he Hutu's Radio Mille Collines ordered half a million murders and a death march of

of this approach could be questioned.

An overly ambitious policy of encouraging defections may ultimately generate anarchy. If the leadership of a disputant is induced to go into exile, measures will have to be taken to accommodate the remaining fighters. These may be heavily-armed and subject to no authoritative chain of command. Kriesberg has asserted:

Engaging in a common popular purpose submerges internal discord. For example, there is some evidence that during civil rights campaigns [during the 1960s in the American South], aggressive crimes by Negroes decreased. . . . This can happen by absorbing energy and attention or by seeming to provide alternative ways of attaining sought-for ends.<sup>230</sup>

The boundaries separating the military operations and criminal activities of disputants in many conflicts may be decidedly hazy or even nonexistent. Thus, it seems quite possible that former combatants might resort to banditry. This scenario seems especially plausible if they retain possession of the organization's destructive capacity and no efforts are made to integrate them into civilian life.<sup>231</sup>

## 2. Inducements as a Means to Alter the Internal Dynamics of a Disputant

UN positive sanctions may change the distribution of power between different factions. Party cohesiveness could also be altered by the use of rewards. Kriesberg, for example, has focused on the role that President John F. Kennedy's offer of several inducements to the Soviet Union played in Moscow's decision to sign on to the Partial Nuclear Test Ban Agreement.<sup>232</sup> In short, US gestures like the unilateral cessation of American atmospheric atomic tests were linked to the universal observance of a similar moratorium. These concessions gave the Soviet leader, Khrushchev, "something he could use to override his domestic opponents to reach a weapons test ban."<sup>233</sup> Similarly, strengthening

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two million Rwandans." Spicer, *supra* note 216, at 23.

230. KRIESBERG, *supra* note 227, at 250-51.

231. As van Creveld has concluded:

[o]nce the legal monopoly of armed force, long claimed by the state, is wrested out of its hands, existing distinctions between war and crime will break down much as is already the case today in places such as Lebanon, Sri Lanka, El Salvador, Peru, or Colombia. Often, crime will be disguised as war, whereas in other cases war itself will be treated as if waging it were a crime.

VAN CREVELD, *supra* note 201, at 294.

232. Treaty Banning Nuclear Weapons Tests, Aug. 5, 1963, 14 U.S.T. 1313, T.I.A.S. No. 5433, 480 U.N.T.S. 43.

233. Kriesberg, *supra* note 55, at 12.

RENAMO's leadership functioned as part of the logic pressed into action by the UN to justify its establishment of a trust fund for this political organization.<sup>234</sup>

*M. Rewards and Perverse Incentives*

Before the UN decides to rely on rewards, it should ensure that these are not behavior-distorting in other contexts. This is a valid concern. As Baldwin has noted, "[h]abitual use of positive sanctions is more likely to encourage blackmail attempts than is habitual use of negative sanctions."<sup>235</sup> Until now, positive sanctions have played a peripheral role in international affairs.<sup>236</sup> Were their prominence to increase, groups might attempt to extort rewards. Fortunately for the UN, many of the disputants it is likely to interact with in the post-Cold War era may lack an in-depth familiarity with UN activities in other parts of the world. Ultimately, their awareness of previous UN reward strategies may be determined partially by the amount of media attention such initiatives receive.<sup>237</sup> However, compared with military efforts, which many media outlets scrutinize closely, the utilization of positive inducements probably does not readily lend itself to intense press coverage.

The UN can also minimize extortion efforts by establishing clear linkages between its positive sanction and the action taken by the disputant that is being rewarded. Thus, with regard to the RENAMO trust fund, Boutros-Ghali made this connection. He noted that the "monthly allowance [received by RENAMO] would be tied to scrupulous implementation of the peace agreement according to the calendar approved by the parties concerned."<sup>238</sup> Finally, disputants may be less willing to argue that the UN's past use of rewards justifies their demands for them if previous approaches utilized by this entity made use of both positive and negative sanctions.

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234. According to the Secretary-General, "[i]f the RENAMO leader is not enabled to meet the expectations of his supporters, he will lose authority and prestige, and the entire peace process will be destabilized." Letter Dated, *supra* note 80, at 216.

235. Baldwin, *supra* note 45, at 36.

236. See discussion *supra* part III.A.

237. As Edward C. Luck has noted, news of the failed raid against Aideed quickly reached the "thugs who run Haiti [and they] dispatched a handful of their henchmen to the docks in Port-au-Prince to chant that it would become another Mogadishu. This was enough to turn US troop-carrying vessels around . . ." Luck, *supra* note 237, at 77. Of course, in the case of positive sanctions, disputants in one conflict would not attempt to capitalize on failures to use them in another dispute, which was what the Haitian junta did, but on their successful utilization. Thus, even if the UN is shaken down, it still wins if the use of a reward ultimately persuades the disputant to lay down its arms.

238. Letter Dated, *supra* note 80, at 216.

*N. Prior UN Involvement with the Parties to be Influenced*

What rewards accomplish may be determined by the UN's previous dealings with the party to be influenced. Based on his study of various cases in which positive sanctions were employed, Lawson concluded that "countries that do not already have relatively substantial commercial or financial connections with one or both of warring parties prior to an attempt to use positive sanctions cannot use offers of economic assistance or greater investment to establish such relations *de novo* as an inducement to end the conflict."<sup>239</sup> Thus, it may be very difficult for the UN to rely on positive inducement strategies. As an organization designed to enhance international security, the maintenance of commercial or financial ties with different actors on the world stage does not rank high on the UN's agenda.<sup>240</sup> Rather, most of its dealings take place on the political level although it is true that states and NGOs do receive development and humanitarian assistance from such parts of the UN system as the United Nations Development Programme. The UN might make use of these contacts to gain leverage over the parties to an international dispute. However, these will be of little use in many internal conflicts because it does not routinely interact with nongovernmental political entities<sup>241</sup> although there are some noteworthy exceptions to this rule.<sup>242</sup>

The UN's ability to employ positive sanctions may also depend on its presence in the theater of the conflict. For example, UN decision-makers may feel that rewards must be distributed rapidly to be effective. They could also feel that the measures to be taken should reach a large number of actors. Thus, inducement strategies might have made more of a difference in Cambodia than in Angola. After all, the UN had developed, as a result of its Cambodian multidimensional operation, a relatively elaborate infrastructure in that country.<sup>243</sup> Meanwhile, in

239. Lawson, *supra* note 168, at 651.

240. See U.N. CHARTER art. 1, ¶ 1 (declaring that the core function of the United Nations is "[t]o maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace.").

241. As Sydney D. Bailey has remarked:

A major problem for the United Nations has been that international peace has often been endangered by the aspirations and actions of entities other than states, and that the Organization is so constructed that its organs prefer to deal with states rather than with dissident political organizations, insurgent groups, liberation movements, communal minorities, and the like.

SYDNEY D. BAILEY, *HOW WARS END: THE UNITED NATIONS AND THE TERMINATION OF ARMED CONFLICT*, AT 1946—1964 21 (1982).

242. For example, the UN certified SWAPO as the "sole and authentic representative of the Namibian people." See G.A.Res. 31/152, U.N. GAOR, 31st Sess., Supp. No. 39, at 136, U.N.Doc. A/31/39 (1977).

243. See Mats Berdal & Michael Leifer, *Cambodia*, in *THE NEW INTERVENTIONISM*

Angola, during UNAVEM III, the few UN personnel there were engaged primarily in electoral monitoring and demobilization.<sup>244</sup>

#### IV. CONCLUSION

##### A. *Findings of Part III*

Since the end of the Cold War, foreign policy experts have attempted to prescribe the optimal level of great power involvement in conflict-prone areas around the world.<sup>245</sup> Branding their opponents "neo-isolationists," many of the participants in this discourse insist that outside actors actively suppress overseas strife. William Pfaff, for example, has asserted that "[m]uch of Africa needs, to put it plainly, what one could call a disinterested neo-colonialism" by European countries.<sup>246</sup>

A policy of "engagement wherever, whenever" may have been viable to pursue during the Cold War. Today, it is less tenable due to a variety of political and economic obstacles that the great powers confront at home. Ironically, this disengagement may allow the UN to take advantage of the full promise of reward-based strategies. Indeed, this Article has attempted to show that as the number of outside actors involved in a given conflict area shrinks, so does the number of potential agents who are in a position to dole out favors. Thus, the UN is likely to be able to gain more leverage over the disputants in a unipolar environment than in contexts where a variety of sources of support exist. Politically, the UN may enjoy more flexibility in its interaction with disputants in situations where the great powers, particularly the US, are not actively involved.

There are other reasons for keeping states out of the dispute-resolution process. As conflicts ripen, states may be pushed by domestic constituencies to reward their clients if these parties begin to appear to be settling. Elites should not succumb to these demands. After all, the conflict's resolution may be delayed if disputants do not experience the pressure usually associated with the ripening of a conflict. If they do not feel this, these parties may be less inclined to make peace.

Surfacing at a number of points in Part III is the proposition that the UN should be able to employ negative and positive strategies simul-

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1991-1994, at 25, 25 (James Mayall ed., 1996) ("At a cost of around US \$1.7 billion, 22,000 military and civilian personnel were deployed [in Cambodia] . . .").

244. See STEPHEN M. HILL & SHAHIN P. MALIK, *PEACEKEEPING AND THE UNITED NATIONS* 160 (1996) (noting that fewer than half of the expected 7,500 UNAVEM III troops had arrived when their policing duties began).

245. See, e.g., Richard N. Haass, *Paradigm Lost*, *FOREIGN AFF.* Jan.-Feb. 1995, at 43 (evaluating multiple foreign policy postures for American decisionmakers).

246. William Pfaff, *A New Colonialism? Europe Must Go Back into Africa*, *FOREIGN AFF.*, Jan.-Feb. 1995, at 2.

taneously to settle conflicts. Possession of this capacity would allow it to pursue a generally more dynamic strategy when called upon to end conflicts. Once subject to economic sanctions, a disputant would be deprived of its access to income and supplies, thus increasing the amount of leverage the UN could achieve through a later use of positive sanctions. The UN's decentralized structure, which features autonomous agencies subject, more or less, to the gravitational pull of the Secretariat, appears to lend itself to the utilization of a multipronged approach to conflict-resolution. Thus, in some instances, the institutional balkanization of the UN may actually endow it with the ability to pursue relatively varied negotiating strategies.<sup>247</sup> Decisionmakers can pursue numerous goals and use diverse methods simultaneously. Over time, as it becomes apparent which ones are being achieved, these can be accentuated.

This Article has stressed the contribution that intelligence is likely to make in UN efforts to end conflicts. Indeed, the form that rewards take and when they are offered is likely to be shaped by the overall social, economic, and political context in which the conflict-resolution process is unfolding. Intelligence, in turn, will be required to ascertain this information. To generate reliable intelligence, the UN can pursue several different approaches. For example, it may attempt to tap into conventional, covert intelligence-gathering mechanisms like satellites, drones, remote sensing devices, and human intelligence.<sup>248</sup> These efforts raise a host of profound legal, political, and security questions.<sup>249</sup>

UN rewards may encourage disputants to voluntarily open themselves up to outside scrutiny. This would facilitate UN intelligence-gathering efforts and allow the UN to evade the problems that crop up when clandestine attempts to accumulate intelligence are made. In contrast, punitive policies may make gaining intelligence about disputants even more difficult. Conflict, after all, may spawn the formation of a siege mentality within the disputant or cause it to go on a war footing, cutting off some or all of its contacts with the outside world.<sup>250</sup>

The UN should make it clear that it is using rewards to settle conflicts. If it does not, there may be confusion about what it is trying to accomplish. The recipient of the positive sanction as well as individuals observing the UN influence attempt may misconstrue the gesture,

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247. See *supra* text accompanying notes 154-158.

248. See, e.g., Captain Gregory P. Harper, *Creating A U.N. Peace Enforcement Force: A Case for U.S. Leadership*, 18 FLETCHER F. WORLD AFF. 49 (1994) ("As for intelligence, the United Nations clearly will need some type of permanent capability.").

249. See, e.g., Lt. Col. Geoffrey B. Demarest, *Espionage in International Law*, 24 DENV. J. INT'L L. & POL'Y 321, 321 (1996) (asserting that "[t]he intelligence gathering activities of international organizations, however, generate ethical and practical problems similar to those caused by the efforts of nation states.").

250. Cf. sources cited *supra* note 23.

thinking it is a gift and thus warranting no response.<sup>251</sup> There are other reasons for establishing linkages between UN reward strategies and the action being rewarded. If, for example, positive inducements are granted when a conflict begins to ripen, it should be clear that they are contingent on the parties finding common ground on questions that continue to divide them. Also, by continually emphasizing that its rewards are tied to the party's unwavering commitment, the UN may be less likely to be blackmailed in future situations. Finally, explicit connections made between the positive inducement and the action being rewarded may allow the UN to rebut charges that it is behaving in a partial manner.

### *B. Consequences for International Law*

If the UN placed more faith in reward-based strategies, clearer rules and regulations governing their use will need to be developed. UN decisionmakers will have to spearhead this process. NGOs are likely to play a crucial supporting role. The decisions ultimately arrived at will be subject to little judicial scrutiny.<sup>252</sup> Thus, it is crucial that efforts are made to ensure that the strategies used dovetail with the principles undergirding the UN's work.

By articulating rules for its positive inducement efforts, the UN would be confirming the importance of shifts taking place in the international law-making process. The post-Cold War era, after all, has seen non-state actors, including the UN and NGOs, become an increasingly important presence in the formation of international norms and legal arrangements.<sup>253</sup> Thus, by articulating norms governing its use of positive sanctions, the UN would be part of the international community's move away from a conception of international law formation that is utterly dominated by the nation-state.

By formulating rules for its reward strategies, the UN would be able to set a precedent for the use of positive inducements by other important actors, including states. Usually, governments spearhead the process of creating norms regulating the conduct of international affairs. For example, states played a key role in the development of customs and legal instruments governing the conduct of armed hostilities, which had come into force long before the UN came into being.<sup>254</sup> In

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251. See discussion *supra* part III.B.

252. See discussion *supra* part IV.D.4.

253. See, e.g., Jost Delbruck, *The Role of the United Nations in Dealing with Global Problems*, 4 *IND. J. GLOBAL LEGAL STUD.* 277, 292 (1997) (noting that "many other U.N. organs, including the General Assembly, the Security Council, and the subsidiary organs created under treaty law drawn up under the auspices of the U.N., allow NGO participation").

254. See, e.g., Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, June 17, 1925, 26 *U.S.T.* 571,



important respects, these rules privilege the interests of states. For example, some of the legal protections available to participants involved in an international conflict are not applicable to combatants waging an internal war.<sup>255</sup> Thus, governments enjoy relatively pronounced freedom of action in how they prosecute a war against their own citizens. This flexibility shrinks when they have been attacked by a hostile neighboring regime.

By taking the lead in generating customs, or even codifying norms, to regulate how rewards are employed, the UN would be in a position to ensure that it has more of a say in the substance of these rules. As an institution that increasingly interacts with NGOs and other non-state entities, the policies it adopts might be more sensitive to the needs and aspirations of these important actors. In contrast, if states themselves controlled the process by which rules regulating reward strategies were articulated, the resulting regime might be very different.

If a UN-inspired body of rules regulating reward strategies developed, states electing to make use of positive inducements might feel bound by it. The possibility of UN conflict-resolution strategies shaping future state action underscores the importance of UN efforts remaining consistent with the principles and values this entity is attempting to inject into the conduct of foreign affairs around the world as a new century dawns.

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571-82, 94 L.N.T.S. 65, 65-74; Convention Respecting the Laws and Customs of War on Land, Oct. 18, 1907, 36 Stat. 2277-2309; and the Convention with Respect to the Laws and Customs of War on Land, July 29, 1899, 32 Stat. 1803-26.

255. See, e.g., William J. Fenrick, *Attacking the Enemy Civilian as a Punishable Offense*, 7 DUKE J. COMP. & INT'L L. 539 (1997) (noting that "... nor do the grave breach provisions of the Geneva Conventions apply to internal conflicts.").

