

AN INFORMAL WORLD: THE ROLE AND STATUS OF “CONTACT GROUP” UNDER INTERNATIONAL LAW

QERIM QERIMI*

“I should never mistake informality for insolence. One, I rather like; the other, no free-born person would submit to, even for a salary.”

-- Joan Fontaine in *Jane Eyre* (1944)

INTRODUCTION

This article examines the role and status of the so-called “Contact Group” under present-day International Law. An alternative policy invention designed to intervene in traditional conflict prevention, mediation, and settlement, the Group’s configuration reflects a representation of the world’s major powers that both share and project strategic spheres of influence in particular countries or regions and play key roles in global governance. In all cases so far, permanent members of United Nations Security Council were at the forefront of the Contact Group. At the operational level, the Group partially acts as a *de facto* executive body, such as the Security Council, or at least performs functions similar to those of the Security Council. Such actions may be authorized by the Council,¹ either explicitly or implicitly, or not authorized at all, and thus the Group acts, at least *ab initio*, without any formal authorization or legitimization.² In this latter case, however, there has always been *ex post facto* approval of the Contact Group’s actions, due in large part to the fact that those actions were undertaken by a majority of the

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¹ The operation of the Group in the case of Bosnia and Herzegovina may be considered of such a nature. See discussion *infra* Part III.

² This is the case with initial involvement of the Group in Namibia. See discussion *infra* Part II.

Security Council's permanent members. Furthermore, on various occasions, the Group seems to have even acted on behalf of the Security Council;³ though this relationship, as the following discussion will show, is at best described as being complementary.⁴

In fact, it is the lack of a more active, cohesive, coordinated, and effective UN collective security system that provides the primary justification for the existence of such an informal *ad hoc* grouping of states. It thus may make sense to link the Group's emergence to the lack of more coordinated and effective global diplomatic efforts in the areas of conflict prevention, mediation, and settlement.

For the first time under this name, the Contact Group declared its existence on April 10, 1978, as a facilitating mechanism to Namibian independence, in response to South Africa's continued military occupation of Namibia. It emerged against a backdrop of largely unsuccessful UN led negotiations to bring about a solution to the Namibian question. This Group consisted of five Western nations: Canada, France, the United Kingdom, the United States, and West Germany; all members of the Security Council at that time.

Another Contact Group emerged after the European Union (EU), the UN, and the Conference on Security and Co-operation in Europe (CSCE, now OSCE) failed to bring about a solution to the Bosnian conflict. This Group was formed in April 1994 and was composed of France, Germany, the Russian Federation, the United Kingdom, and the United States; four of them being permanent members of the Security Council.

With the escalation of violence in Kosovo in 1998, this Contact Group came once again onto the scene with Italy becoming a member of the Group. Currently the Group is playing a leading role in the process of finding a settlement to the issue of Kosovo's political status. In November 2005, the Group established its own Guiding Principles for

³ See, e.g., The Guiding Principles of the Contact Group for a Settlement of the Status of Kosovo, in Letter from the President of the Security Council to the Secretary-General, Annex, U.N. Doc. S/2005/709 (Nov. 10, 2005), available at <http://daccessdds.un.org/doc/UNDOC/GEN/N05/597/68/PDF/N0559768.pdf?OpenElement> (last visited April 24, 2007) [hereinafter Guiding Principles].

⁴ See, e.g., Kosovo Contact Group Ministerial Statement (September 20, 2006), <http://www.state.gov/r/pa/prs/ps/2006/72892.htm> (last visited April 24, 2007) (recalling that “[t]he Security Council and the Contact Group will continue to play key roles”).

a settlement of the status of Kosovo. These principles provide that all involved parties should respect the process of finding a political settlement.⁵ The Guiding Principles were circulated as a Security Council document,⁶ as was the case with the Contact Group's proposal of April 10, 1978 for Namibia.⁷ A number of other meetings of the Contact Group on Kosovo have provided further clarification of its own positions regarding the status issue⁸ and have also demanded that the parties involved take concrete actions in the process.⁹

⁵ See Guiding Principles, *supra* note 3 (providing “[t]he Contact Group ... informs all the involved parties that the outcome of the Status process should be based on the principles set out below...”).

⁶ See *id.*

⁷ S.C. Res. 431, U.N. Doc. S/RES/431 (July 27, 1978).

⁸ See, e.g., Kosovo Contact Group Ministerial Statement, *supra* note 4 (stating, *inter alia*, “[M]inisters support the Special Envoy’s efforts to work with the parties in cooperation with the Contact Group to arrive at a realistic outcome that enhances regional stability, is acceptable to the people of Kosovo and preserves Kosovo’s multi-ethnic character.”); Contact Group Statement, Bureau of European and Eurasian Affairs, High-Level Meeting on the Future Status of Kosovo (July 24, 2006), <http://www.state.gov/p/eur/rls/or/69376.htm> (last visited April 24, 2007) (providing, in relevant part, “[t]he Contact Group reaffirms that all possible efforts should be made to achieve a negotiated settlement in the course of 2006 that is, *inter alia*, acceptable to the people of Kosovo and promotes a multi-ethnic society with a future for all of its citizens”).

⁹ See, e.g., Contact Group Ministers’ Statement of 31 January 2006, Kosovo Contact Group Statement (Jan. 31, 2006), http://ue.eu.int/ueDocs/cms_Data/docs/pressdata/EN/declarations/88236.pdf (stating in relevant parts, “[t]he Provisional Institutions of Self-Government, alongside all communities in Kosovo, must do much more to ensure that the UN Security Council-endorsed Standards are implemented. ... Ministers look to Belgrade to bear in mind that the settlement needs, *inter alia*, to be acceptable to the people of Kosovo. ... Ministers equally urge Pristina to recognise that a multi-ethnic settlement is the only workable option and that the more the vital interests of minorities are addressed the quicker a broadly acceptable agreement can be reached.”).

See also Contact Group Meeting on Kosovo (Sept. 20, 2005), <http://www.state.gov/p/eur/rls/or/54040.htm>; Contact Group Plus Statement (Feb. 2, 2005), <http://www.state.gov/p/eur/rls/or/41481.htm>; Contact Group Statement (Dec. 16, 2004), <http://www.state.gov/p/eur/rls/or/40038.htm>; Contact Group Chairman’s Statement (Sept. 28, 2004), <http://www.state.gov/p/eur/rls/or/37536.htm>; Contact Group Statement (Sept. 3, 2004), <http://www.state.gov/p/eur/rls/or/37533.htm>; Contact Group Plus Meeting Press Statement (July 20, 2004), <http://www.state.gov/p/eur/rls/or/37531.htm>; Conclusions of the Contact Group Meeting with the

Considering the Group's considerable powers and its growing involvement in conflict mediation and resolution, this article seeks to give an appraisal of the legal sources under which the Contact Group operates. It also strives to expose and examine the cases in which the Group has been involved, discuss its role and functions in those cases, and finally draw certain conclusions and recommendations for the global common interest. Part I considers the legal sources upon which the Group bases its authority. Part II examines the Group's justification for its involvement in the case of Namibia (formerly South West Africa) and the result of its actions. The conditioning factors leading to the formation of Contact Group also form part of this discussion. Part III concerns the role the Group played in bringing a peaceful settlement to the Bosnian conflict, and Part IV discusses the involvement of the Group in the process of finding a political settlement to the yet unresolved Kosovo status issue, beginning with the pre-Rambouillet peace talks and continuing through the recent process of negotiations. Finally, Part V contains general prescriptive content built upon substantive issues discussed in the rest of the article.

I. LEGAL BASIS FOR THE CONTACT GROUP OPERATION

Given its nature and *modus operandi*, the principal question of inquiry into the Group's operation in external arenas is its relationship vis-à-vis international legal authority and the formal UN structures.

Although member states of the Contact Group are at the same time members of the UN, they do not necessarily act as a UN structure, but rather on behalf of their own governments. An exception exists in cases where there is explicit authorization and recognition of the Group by the UN Security Council in matters concerning international peace and security.

Additionally, a more explicit basis can be found in the UN Charter. The Group may claim its authority is derived from Article 35 of the Charter, which provides that

Provisional Institutions of Self-Government (June 8, 2004), <http://www.state.gov/p/eur/rls/or/37530.htm>;
Joint Statement of the Contact Group on Kosovo (Apr. 20, 2004),
<http://www.state.gov/p/eur/rls/or/37539.htm> (last visited Oct. 11, 2006).

“[a]ny Member of the United Nations may bring any dispute, or any situation of the nature referred to in Article 34, to the attention of the Security Council or of the General Assembly.”¹⁰ The disputes or situations referred to in Article 34 are of the nature that present, can likely endanger, or constitute potential threats to international peace and security.¹¹ However, any determination of such a threat or potential threat is within the ambit of the Security Council’s powers.

Speaking about the Namibian case, Professor Richardson observes that the Contact Group’s intention “appears to have been to act as individual governments fortuitously engaged in a joint endeavor, with their authority deriving from the validity of each government’s acting as a member of the Security Council, whether under Article 34 of the Charter, or under more general notions of the authority of Security Council members.”¹² In fact, Article 34 of the Charter does not authorize any individual member state to act *per se* in such circumstances; the wording of Article 34 merely suggests that UN Member States are authorized to bring any dispute or situation posing a threat to international peace and security to the attention of the Security Council. In this sense, the legitimacy of the Contact Group is or, rather, should be grounded on explicit approval, authorization, and recognition by various Security Council resolutions.

Other sources of authority may be found in the flexibility and plurality of the UN Charter itself. The Charter allows for the utilization of certain *ad hoc* regional or international arrangements to perform complementary functions on behalf of the UN. In spite of its relatively precise allocation of responsibilities to a number of organs, the Charter of the United Nations leaves room for innovative alternative or complementary functions to be exercised by regional or international arrangements. Such flexibility

¹⁰ U.N. Charter art. 35, para. 1.

¹¹ U.N. Charter art. 34.

¹² See Henry J. Richardson, *Constitutive Questions in the Negotiations for Namibian Independence*, 78 AM. J. INT’L L. 76, 84 (1984). On the Contact Group’s role in negotiations for Namibia’s independence, see generally Elizabeth Landis, *The Never-Ending Namibian Negotiations*, in LAWYERS COMMITTEE FOR CIVIL AND RIGHTS UNDER LAW, A SPECIAL REPORT: SOUTHERN AFRICA (1982); ELIZABETH LANDIS, *NAMIBIAN LIBERATION: SELF-DETERMINATION, LAW AND POLITICS* (Episcopal Churchmen for South Africa, 1982); R.H.F. Austin, *Namibia and Zimbabwe*, 35 CURRENT LEGAL PROBS. 203 (1982).

allows states to resort to regional alliances or coalitions that use military force on behalf of the United Nations, provide peacekeeping troops that serve under the authority of the United Nations, or perform such functions as deemed necessary to achieve pacific settlement of local disputes.¹³

Under a more expansive reading of Charter provisions, though still carefully and contextually analyzed, one could argue for an informal *ad hoc* grouping of states as a supplementary instrument of collective security, provided that such an informal grouping of states (acquiring much of its authority from provisions of the Charter which grant such authority to UN member states and to regional or other international arrangements) behave in accordance with and serve the purposes and principles of the UN Charter, contribute to the maintenance of international peace and security, and communicate its activities to or perform its activities in consultation with the relevant UN organs. Various provisions of the Charter provide support for such an informal grouping of states. “All Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter ...”¹⁴ and shall “contribute to the maintenance of international peace and security”¹⁵ by undertaking “to make available to the Security Council, on its call and in accordance with a special agreement or agreements, armed forces, assistance, and facilities . . . necessary for the purpose of maintaining international peace and security,”¹⁶ Moreover, all members shall keep the Security Council “fully informed of activities undertaken or in contemplation under regional arrangements or by regional agencies for the maintenance of international peace and security.”¹⁷

¹³ See, e.g., U.N. Charter art. 52, para. 1 (providing that “[n]othing in the present Charter precludes the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action provided that such arrangements or agencies and their activities are consistent with the Purposes and Principles of the United Nations”).

¹⁴ U.N. Charter art. 2, para. 5.

¹⁵ U.N. Charter art. 43, para. 1.

¹⁶ *Id.*

¹⁷ U.N. Charter art. 54.

A more detailed discussion of the Group's legal basis, examined in the context of its legal relationship with formal UN structures, can be found under each of the cases discussed in the sections that follow.

II. THE ROLE AND FUNCTIONS OF THE CONTACT GROUP IN NEGOTIATIONS FOR NAMIBIAN INDEPENDENCE

A. Exploring the Past: Background, Context and Decision-making Processes

The origins of the colonization process of Namibia, known at the time as South West Africa,¹⁸ go as far back as the 1880's, when Germany began to colonize the territory.¹⁹ The territory remained under German control until after World War I, when, on June 28, 1919 Germany transferred title of the territory to the Allied and Associated States. The Allied and Associated States subsequently transferred title to the League of Nations on the condition that Namibia enter the mandate system.²⁰

In 1920, the League of Nations Council granted a class "C" mandate²¹ over South West Africa to Britain, which was to be exercised by South Africa on Britain's behalf.²²

¹⁸ South West Africa was acknowledged by the General Assembly with its new name of Namibia in 1968. G.A. Res. 2372 (XXII), U.N. GAOR, Supp. No. 16A, U.N. Doc. A/6716/Add. 1 (June 11, 1968).

¹⁹ See RICHARD LEONARD, *SOUTH AFRICA AT WAR* 61 (1983).

²⁰ See Deneice C. Jordan-Walker, *Settlement of the Namibian Dispute: The United States Role in Lieu of U.N. Sanctions*, 14 CASE W. RES. J. INT'L L. 543, 551 (1982).

²¹ Under the mandatory system, there were three types of mandates, designated as "A," "B," and "C" mandates. This differentiation was based on "[t]he stage of development of the people, the geographical situation of the territory, its economic conditions and other similar circumstances." League of Nations Covenant art. 22, para 3. Class "A" mandates included communities formerly under Ottoman Empire, which have reached a stage of development where their independence can be provisionally recognized, subject to receiving further advices and assistance as far as they would be able to stand alone. The wishes of these peoples constituted the principal factor in the selection of a mandatory power. Class "B" mandates, which largely covered Central African peoples, provided that the mandatory power must be responsible for the administration of the territory, subject to guaranteeing freedom of conscience and religion, maintaining public order and morals, prohibiting abuses of the nature of slave trade, arms and liquor traffic, and the prevention of the establishment of military and naval bases and/or of military training

South Africa was thus granted full power of administration over the territory, with the aim of promoting the well-being and development of the indigenous inhabitants of South West Africa.²³ By accepting to serve as a Mandatory, South Africa accepted contingent obligations under international law, including the duty to submit to international supervision, the duty to submit annual reports on the administration of the mandate, and the duty to transmit petitions to the Security Council from the people of South West Africa.²⁴

Contrary to South Africa's insistence to incorporate South West Africa into its own territory both at the time of the League of Nations and the United Nations,²⁵ the international community consistently rejected such a proposal. Unable to reach a negotiated diplomatic solution, the General Assembly in Resolution 339 (IV) of December 1949 requested the International Court of Justice ("ICJ" or "the Court") to give an advisory opinion on the legal status of South West Africa. The Court was unanimous in rejecting South Africa's request to annex South West Africa, holding that South Africa did not possess the right to modify the international status of the territory of South West Africa without the consent of the UN.²⁶ However, this did not prove to be

of the natives for purposes other than police functions and the defense of territory, as well as providing equal opportunities for the trade and commerce to other Members of the League. Under class "C" mandates were territories, such as South West Africa and certain islands in the South Pacific, which were characterized by either small size of territory, sparseness of their population, or their contiguity to the territory of the mandatory power, or any other similar circumstances. Because of these reasons, it was considered that they can best be administered under the laws of the mandatory power, subject to the guarantees mentioned in other classes of mandates that could best benefit indigenous communities. League of Nations Covenant art. 22, paras. 4-6.

²² The Mandate for South West Africa, Terms of League of Nations Mandates, U.N. Doc. A/70, No. 10 (1940), *reprinted in* R.W. IMISHUE, SOUTH WEST AFRICA: AN INTERNATIONAL PROBLEM 66-68 (1965).

²³ International Status of South-West Africa, Advisory Opinion, 1950 I.C.J. 128, 132. *See also* Jordan-Walker, *supra* note 20, at 552.

²⁴ International Status of South-West Africa, 1950 I.C.J. 133, 136-37.

²⁵ *See* RICHARD FALK, REVIVING THE WORLD COURT 62 (1986). *See also* Jordan-Walker, *supra* note 20, at 554-55.

²⁶ International Status of South-West Africa, 1950 I.C.J. 144.

sufficient for terminating South Africa's intention towards annexing the territory of South West Africa. Thus the UN had to proceed with further actions.

The UN asserted the right to govern the territory of Namibia after the General Assembly terminated the mandatory power of South Africa and created a UN Council for South West Africa. The General Assembly empowered the Council with the authority to carry out the functions of governance in the territory.²⁷ However, South Africa declined to yield the territory of Namibia to UN administration. Although the Council was not yet in a position to directly and effectively administer the territory, it was nevertheless able to perform some of the administrative functions assigned to it through use of the United Nations Fund for Namibia. Some of the activities carried out by the Council and financed by the UN Fund for Namibia included helping Namibian refugees, organizing training programs for Namibians, issuing travel documents, and establishing an emergency program of economic and technical assistance.²⁸ Yet, the South African government continued to maintain its sovereign control over the territory.

After the UN had terminated the mandate, the Security Council put forward a new initiative and requested an advisory opinion on the legal consequences for states of the continued presence of South Africa in Namibia.²⁹ The ICJ held that the continued presence of South Africa in Namibia was illegal and called upon the South African government to immediately withdraw its administration and put an end to its occupation of the Namibian territory.³⁰ The Court further held that Member States of the UN were under an obligation not to recognize the legality of South Africa's presence in Namibia.³¹ However, the South African government continued with its rejection policy of the validity of ICJ decisions, calling them "entirely untenable" and a "result of political

²⁷ G.A. Res. 2248 (XXII), ¶ 1, U.N. GAOR, 5th Spec. Sess., Supp. No. 1, U.N. Doc. A/6657 (May 19, 1967).

²⁸ See AFRICA COMMITTEE, NATIONAL COUNCIL OF CHURCHES OF CHRIST IN THE U.S.A., ET AL., NAMIBIA: THE CRISIS IN UNITED STATES POLICY TOWARD SOUTHERN AFRICA 13 (1983).

²⁹ S.C. Res. 284, U.N. Doc. S/INF/25 (July 27, 1970), <http://documents-dds-ny.un.org/doc/UNDOC/GEN/NR0/757/49/img/NR075749.pdf?OpenElement>.

³⁰ Legal Consequences for States of the Continued Presence of South Africa in Namibia (South-West Africa) Notwithstanding Security Council Resolution 276 (1970), 1971 I.C.J. 15 (June 21, 1971).

³¹ *Id.*

maneuvering instead of objective jurisprudence,” as well as its noncompliance trend concerning the decisions of other principal organs of the United Nations.³² A number of major world powers, most notably France and Great Britain, joined South Africa in its rejection policy by “refusing to accept those conclusions of the Court,” after considering them to be in conflict with their vital foreign policy interests.³³ France and Great Britain were key trading partners of South Africa.

After a relatively long period of continuous failures to resolve the Namibian knot through formal settings, most notably through the UN system, the next step was the shift to informal settings.³⁴ It was in this context that the need for a more coherent and influential decision-making body emerged. This is how the Contact Group came into existence.

B. The Role of the Contact Group in Namibia

1. Origin

Originally, the Contact Group was created as part of a private initiative by a group of Western States (Britain, Canada, France, the United States, and West Germany), intending to overcome the failed efforts of the UN in the Namibia negotiations. The Group’s existence was formally declared on April 10, 1978, when it submitted a proposal for a Namibian settlement to the UN Security Council.³⁵ The proposal, which was

³² Hofmann, *Vorster Rejects Opinion*, N.Y. TIMES, June 22, 1971, at A3, col. 5. See also U.N. SCOR, 31st Sess., Supp. 1 for Jan.-Mar. 1976, at 39, U.N. Doc. S/11948 (1976); Jordan-Walker, *supra* note 20, at 559.

³³ Lisa Stearns, *The Dilemma of Struggle through the International Order*, 11 INT’L J. SOC. L. 65, 73 (1983)

³⁴ For a thorough discussion of the decision-making process in institutionalized and non-institutionalized settings, see Siegfried Wiessner, *International Law in the 21st Century: Decision Making in Institutionalized and Non-Institutionalized Settings*, 23 THE SAURUS ACROASIMUM 137 (1997).

³⁵ See U.N. SCOR, 33d Sess., Supp. for Apr.-June 1978, at 17, U.N. Doc. S/12636 (1978).

accepted by both South Africa and South West Africa People's Organization (SWAPO), eventually formed the basis of Security Council Resolution 435.³⁶

2. Aims

The main goal of the Contact Group was to facilitate Namibian independence in accordance with Security Council Resolution 385 of January 30, 1976. As stated in the Contact Group's proposal of April 10, 1978 to the Security Council, the Group members consulted with various actors involved in the Namibian question "with a view to encouraging agreement on the transfer of authority in Namibia to an independent government in accordance with resolution 385 (1976)."³⁷ Resolution 385 reiterated the Security Council's "demand that South Africa take the necessary steps to effect the withdrawal, in accordance with Security Council resolutions 264 (1969), 269 (1969) and 366 (1974), of its illegal administration maintained in Namibia and to transfer power to the people of Namibia with the assistance of the United Nations."³⁸

3. Legal Authority

In its initial phase, the Contact Group operated outside United Nations authority and held separate negotiations with the involved parties outside UN auspices. In a wide and implicit interpretation of its text, Security Council Resolution 431 could be one possible source upon which to base the formal authority of the Contact Group. This statement can be deduced from the formulation of Resolution 431, which states that Security Council "tak[es] note of the proposal for a settlement of the Namibian situation ..."³⁹

³⁶ S.C. Res. 435, U.N. Doc. S/RES/435 (Sept. 29, 1978).

³⁷ Letter from the Representatives of Canada, the Federal Republic of Germany, France, the United Kingdom of Great Britain and Northern Ireland and the United States of America to the President of the Security Council, 33 U.N. SCOR Supp. for Apr.-June 1978, at 17, U.N. Doc. S/12636 (Apr. 10, 1978).

³⁸ S.C. Res. 385, ¶ 10, U.N. Doc. S/INF/30 (Jan. 30, 1976).

³⁹ S.C. Res. 431, *supra* note 7.

“Taking note” does not mean “recognizing.” However, the fact that the Council has considered the proposal and has taken note of it means that the proposal has automatically received some form of recognition as authoritative. In this sense, one may argue for an implicit recognition of the Contact Group. Yet, this also illustrates that the Group has not received any formal mandate or delegation of powers to negotiate within the *normal processes* of the UN.

A phase of clarity came with the adoption of Resolution 435 of September 1978,⁴⁰ where the Security Council approved the Secretary-General’s preceding report on the transition process.⁴¹ This included the formation and guidelines of operation for the United Nations Transition Assistance Group (UNTAG), which were proposed by the Contact Group for settlement of the Namibian question. To this effect, the Secretary-General provided in his report on the implementation of Resolutions 435 and 439 that, “[i]n agreeing to the implementation of Security Council resolution 435 (1978), the parties have agreed to abide by those provisions,”⁴² and that in case “[t]he implementation of the Proposal be jeopardized as a result of the failure of any party to carry out its provisions, I would bring the matter immediately to the attention of the Security Council.”⁴³

The Secretary-General’s recognition of the Contact Group Proposal and its approval by the Security Council provided *ex post facto* approval to the activities of the Contact Group. In the alternative, the Group operated within the framework of the UN intended goals as outlined in Security Council Resolution 385, which helped to further the achievement of such goals.

4. Effectiveness

⁴⁰ S.C. Res. 435, *supra* note 36.

⁴¹ See Report by the Secretary-General submitted pursuant to paragraph 7 of Security Council resolution 435 (1978), ¶ 1, U.N. Doc. S/12903 (1978).

⁴² Report of the Secretary-General concerning the implementation of Security Council resolutions 435 (1978) and 439 (1978), U.N. Doc. S/13120 (1979).

⁴³ *Id.*

The Contact Group, however, neither brought about Namibian independence nor was it the final regime to bring about the solution to the Namibian question. With a change in the U.S. executive administration, the Group effectively dissolved, which in turn led to a change of American policy towards southern Africa.⁴⁴ The Reagan administration and the South African government conditioned Namibian independence on the withdrawal of Cuban troops from Angola. This so-called “linkage” policy seems to have also been the reason for France’s withdrawal from the Contact Group and ultimately the termination of the Group’s operation.⁴⁵ France suspended its membership in the Group on December 7, 1983, but it maintained its support for Resolution 435. In absence of the Contact Group’s multilateral approach, the United States took over leadership. In December 1988, the Contact Group finally reached an agreement that was signed by Angola, Cuba, and South Africa at UN Headquarters. This agreement was decisive for the implementation of the settlement plan.⁴⁶

In terms of its overall contribution, the Group’s role decisively gave new impulse to the diplomatic impasse that had surrounded the UN-led negotiations. Its proposal, submitted to the Security Council, became the guiding light in the process of Namibian independence. Although the Group operated independently of the United Nations system, its objectives were in concordance with the framework of objectives as stipulated in Security Council Resolution 385. As stated by former UN Secretary-General Javier Pérez de Cuéllar, the Contact Group and the United Nations were “working separately but within the framework of objectives defined by the UN Security Council.”⁴⁷ In addition, the Contact Group informed the UN Secretary-General throughout the negotiation process.⁴⁸

⁴⁴ See Margaret P. Karns, *Ad Hoc Multilateral Diplomacy: The United States, the Contact Group, and Namibia*, 41 INT’L ORG. 93, 112-14 (1987).

⁴⁵ *Id.* at 114-16.

⁴⁶ See Jochen Prantl and Jean Krasno, *Informal Ad Hoc Groupings of States and the Workings of the United Nations*, 3 INTERNATIONAL RELATIONS STUDIES AND THE UNITED NATIONS OCCASIONAL PAPERS 30 (2002).

⁴⁷ JAVIER PEREZ DE CUELLAR, PILGRIMAGE FOR PEACE. A SECRETARY-GENERAL’S MEMOIR 320 (1997).

⁴⁸ Jochen Prantl and Jean Krasno, *supra* note 46, at 31.

As expected, the Group had both advantages and disadvantages. On the one hand, the Group's advantages mainly concern some of the inadequacies that characterized the UN system of conflict settlement, *i.e.* bureaucracy, lack of information, state sovereignty concerns, lack of coordinated efforts and of enforcement powers. On the other hand, the UN is well-equipped with legality, and to a certain extent, credibility, which is what the Contact Group lacked. Thus, the ideal format of a conflict resolution body would need to possess such fundamental features as legality, credibility, and effectiveness.

III. BACK ON THE SCENE: MEDIATING THE CONFLICT IN BOSNIA AND HERZEGOVINA

A. Origin and Context

The re-emergence of the Contact Group in another conflict, Bosnia and Herzegovina, was again due to largely inadequate and unsuccessful diplomatic efforts by formal structures such as the EU⁴⁹ and the UN.⁵⁰ As one author put it, the creation of the Contact Group came in response to the “frustration and the belated realization that nothing useful could be achieved while the major powers pushed moderately different policies.”⁵¹ In other words, its creation was conditioned by “unproductive sets of multilateral and bilateral negotiations of the outsiders involved in working out an undeclared agenda,”⁵² if there was an agenda at all.

The Group declared its existence on April 19, 1994 and held its first ministerial meeting one week later in London. The idea for the Group as an alternative diplomatic tool for the Bosnian conflict was first discussed between the co-chairmen of the International Conference on the Former Yugoslavia (ICFY), David Owen and Thorvald

⁴⁹ For a detailed discussion of the EU mediating efforts in the Balkans region, *see* DAVID OWEN, *BALKAN ODYSSEY* (1995).

⁵⁰ Concerning international mediation efforts in Bosnia, *see* Nimet Beriker Atiyos, *Mediating Regional Conflict and Negotiating Flexibility: Peace Efforts in Bosnia Herzegovina*, ANN. AM. ACADEMY OF POL. & SOC. SC. (1995).

⁵¹ Thomas Halverson, *American Perspectives*, in INTERNATIONAL PERSPECTIVES ON THE YUGOSLAV CRISIS 22 (Alex Danchev and Thomas Halverson eds. 1996).

⁵² *See* Nimet Beriker Atiyos, *supra* note 50, at 201.

Stoltenberg, and the representatives of the United States. The initiative came at a time when the United States was showing a greater willingness to get involved in the diplomatic process, which had been frozen a year earlier. The Group brought together key global actors that shared certain strategic interests and could influence the outcome of the process. The Group was composed of France, Germany, Russia, the United Kingdom, and the United States, and served the purpose of coordinating the separate diplomatic efforts of the European Union, Russia, and the United States. At the outset, the Group was formally referred to as the representatives of the UN, the EU, the United States, and the Russian Federation. This reference can be found in two of the Security Council resolutions, adopted after the formation of the Group. Security Council Resolution 942, for instance, expressed its appreciation “for the efforts undertaken by the representatives of the United Nations, the European Union, the United States of America, and the Russian Federation to assist the parties in reaching a settlement.”⁵³ The subsequent resolution of the same day used the same language.⁵⁴

B. Structure

Membership and composition of this Contact Group reflects at least three underlying principles: the permanent members of the Security Council serving in the Contact Group are the Groups most powerful members; membership of non-permanent states depends on a concordance of their interests with those of the Security Council permanent members; and the relationship of the (possible) Contact Group members with the parties involved in the dispute is an important factor when states consider whether to join the Group.

Four out of the five members (France, Russia, the United Kingdom, and the United States) occupy permanent seats in the Security Council. One of them, Russia, had the additional role of influencing the Serbian party, given their historic ties.⁵⁵ Germany’s

⁵³ S.C. Res. 942, U.N. Doc. S/RES/942 (Sept. 23, 1994).

⁵⁴ S.C. Res. 943, U.N. Doc. S/RES/943 (Sept. 23, 1994).

⁵⁵ On the genesis of the Group and the functions and relationship between its members, *see generally* LEONARD J. COHEN, *BROKEN BONDS: YUGOSLAVIA’S DISINTEGRATION AND BALKAN POLITICS IN*

presence in the Group may be explained because of its relations with one of the parties in Bosnian conflict, the Croats, and because of the policy interests it shared with the United States.⁵⁶

C. Authority

The Contact Group's efforts were explicitly recognized by the Security Council with its approval of the Contact Group's territorial approach as a basis for political settlement in the first two operative paragraphs of Resolution 942:

1. *Expresses its approval of the proposed territorial settlement for the Republic of Bosnia and Herzegovina which has been put to the Bosnian parties as part of an overall peace settlement;*
2. *Expresses its satisfaction that the proposed territorial settlement has now been accepted in full by all except the Bosnian Serb party.*⁵⁷ (*Emphasis added*).

In a later section of the same resolution, the Security Council strongly condemned "the Bosnian Serb party for their refusal to accept the proposed territorial settlement,"⁵⁸ and demanded that the party "accept this settlement unconditionally and in full."⁵⁹

The Council also explicitly recognized and supported the Contact Group peace plan for Bosnia in a number of subsequent resolutions. Resolution 959 reiterated "the importance of maintaining Sarajevo, the capital of the Republic of Bosnia and Herzegovina, as a united city and a multicultural, multi-ethnic and pluri-religious centre,"⁶⁰ and noted "in this context the positive contribution that agreement between the parties on the demilitarization of Sarajevo could make to this end, to the restoration of normal life in Sarajevo, and to achieving an overall settlement, consistent with the

TRANSITION 310 (2nd ed. 1995); LEO TINDEMANS ET AL (EDS.), UNFINISHED PEACE: REPORT OF THE INTERNATIONAL COMMISSION ON THE BALKANS 47 (1996).

⁵⁶ Greece, which held the EU Presidency at the time, did not become a member because its policy interest diverged with those of the United States. See DAVID OWEN, *supra* note 49, at 365.

⁵⁷ S.C. Res. 942, *supra* note 53, ¶¶ 1, 2.

⁵⁸ *Id.* at ¶ 3.

⁵⁹ *Id.*

⁶⁰ S.C. Res. 959, U.N. Doc. S/RES/959 (Nov. 19, 1994).

Contact Group peace plan.”⁶¹ Resolution 982 also welcomed “the efforts of Member States, in particular those of the Contact Group,”⁶² and emphasized “the utmost importance of the work of the Contact Group in the overall peace process in the area.”⁶³ Resolution 987 noted again “the need for resumed negotiations aimed at an overall peaceful settlement of the situation in the Republic of Bosnia and Herzegovina on the basis of the acceptance of the Contact Group peace plan as a starting- point.”⁶⁴ Moreover, other UN bodies, such as the General Assembly, recognized and endorsed the Contact Group’s peace plan and any necessary additional action. In Resolution 49/10, the General Assembly endorsed “the peace proposal of the Contact Group as outlined by the communiqué of Foreign Ministers of 30 July 1994, including the decisions taken by the Contact Group regarding further actions in the event of a rejection of the proposed peace plan.”⁶⁵

D. Aims and Outcomes: Between Unity and Effectiveness

The underlying principle of the Bosnian Contact Group was the maintenance of the unity of the Group. Its declared aim, as Pauline Neville-Jones articulates it, was to “establish an informal but strong policy-making core around which the main international players could unite.”⁶⁶

While the Group in large part managed to maintain its functional unity until a solution was found to the Bosnian conflict, the internal relations of the Group were often characterized by divisions. However, the Group was primarily interested in keeping, or at least showing in public, its unity, at all costs, even by sacrificing much of its effectiveness in conflict resolution. As an author put it, “although the Group managed to

⁶¹ *Id.*

⁶² S.C. Res. 982, U.N. Doc. S/RES/982 (Mar. 31, 1995).

⁶³ *Id.*

⁶⁴ S.C. Res. 987, U.N. Doc. S/RES/987 (Apr. 19, 1995).

⁶⁵ G.A. Res. 49/10, U.N. Doc. A/RES/49/10 (Nov. 8, 1994).

⁶⁶ Pauline Neville-Jones, *Dayton, IFOR and Alliance Relations in Bosnia*, SURVIVAL, vol. 38, No. 4, 44, at 46 (Winter 1996-97).

hold together, publicly at least, the effort to do so meant that the maintenance of unity, rather than conflict resolution, became its priority.”⁶⁷

IV. STRUGGLING WITH THE STATUS OF KOSOVO: FROM AN INTERIM PEACE ACCORD TO A FINAL POLITICAL SETTLEMENT

A. Pre-Conflict Kosovo Initiatives

1. Context

As in the cases of Bosnia-Herzegovina and Namibia, the Contact Group on Kosovo played a key role in the process of finding an interim peaceful settlement and is now playing a role in the process of finding a final political settlement to the question of the status of Kosovo; a role as crucial as its role in the pre-conflict period. The Group’s activities concerning Kosovo emerged amid growing international concerns following the escalation of violence as a result of systematic repression of the majority ethnic Albanians in Kosovo by the Serbian regime. Until 1996, the Albanians led a peaceful struggle. Many Kosovar Albanians, however, were growing impatient with the passive non-violent policy advocated by their elected leader, Ibrahim Rugova, a French-educated Professor of Literature. Additionally, Kosovar Albanians were disappointed that the Dayton Peace Accords did not address the issue of Kosovo.

The Contact Group on Kosovo is a continuation of the Group on Bosnia and Herzegovina. The first statements concerning the situation in Kosovo came from the Contact Group on Bosnia at a meeting held in New York in September 1997. The Group stressed its deep concern over the escalation of violence in Kosovo and called for a dialogue between the parties in conflict.⁶⁸ It further voiced its concern at two other meetings, the Peace Implementation Conference in Bonn (Dec. 9-10, 1997) and the

⁶⁷ Helen Leigh-Phippard, *The Contact Group on (and in) Bosnia*, 53 INT’L J. 306, 319 (1997-1998).

⁶⁸ See Office of the High Representative, Bosnia Contact Group Statement on Kosovo (Sept. 24, 1997), <http://www.ohr.int/docu/d9709044.htm>.

Contact Group meeting of January 8, 1998, but without any practical effect. Stronger measures, however, were introduced following the Drenica massacre. On March 9, 1998, the Group called for the implementation of an arms embargo against Federal Republic of Yugoslavia (FRY) and a ban on the transfer of equipment that could be used for the suppression of Kosovar Albanians.⁶⁹ These measures eventually formed the content of Security Council Resolution 1160, which imposed an arms embargo on the FRY and called for a substantially greater degree of autonomy and meaningful self-administration in Kosovo.⁷⁰ By April 1998 the Group had announced additional measures, including a freeze on FRY funds held abroad.⁷¹

2. Structure

Membership in the Group remained the same except for the addition of Italy, which joined the Contact Group as holder of the EU Presidency in 1996. Italy managed to remain a member of the Contact Group even after its EU Presidency term had expired; partly due to its reluctance to leave the Group and, to a certain extent, due to the pressure it was able to exert on other influential members of the Group, most notably the United States. While holder of the EU Presidency, Italy regularly threatened to forbid the deployment of American Stealth Bombers from Italian air bases.⁷²

Despite commonalities that exist between the Contact Groups on Bosnia and Kosovo, such as geographic location, formerly being part of the same federation, and dealing with the same leadership (*i.e.* Belgrade regime), a few differences should be noted. Procedurally, there is a new member in the Contact Group on Kosovo, Italy. Substantively, while the Group on Bosnia and Herzegovina aimed at stopping the bloodshed by mediating a territorial-based settlement for Bosnia, the Contact Group on Kosovo had to both mediate an end to the conflict and find a political settlement on the

⁶⁹ See London Contact Group Statement on Kosovo (Mar. 9, 1998), http://secretary.state.gov/www/travels/980309_kosovo.html.

⁷⁰ S.C. Res. 1160, U.N. Doc. S/RES/1160 (Mar. 31, 1998).

⁷¹ See Contact Group Joint Statement: Kosovo, ¶ 8 (June 12, 1998), http://www.g7.utoronto.ca/foreign/fm980612_2.htm.

⁷² See CARL BILDT, PEACE JOURNEY: THE STRUGGLE FOR PEACE IN BOSNIA 101 (1998).

status of the territory. Another important difference is the demographic structure of the territories; while the population of Kosovo is predominantly ethnic Albanians, Bosnia's demographic structure is far more complex and heterogeneous.

3. Aims

The original political aim of the Contact Group was to negotiate an interim solution that would bring an end to hostilities between the parties and restore the autonomy and the self-administration of Kosovo until a final settlement could be found. This aim was presented in the *Rambouillet Accords: Interim Agreement for Peace and Self-Government in Kosovo*,⁷³ but the Serbian delegation refused to sign the Accords. On March 23, 1999, after a final diplomatic effort by US Ambassador Richard Holbrooke in Belgrade failed, NATO launched a military operation against FRY.

A new set of principles was subsequently established in order to bring the conflict to an end. An international team of mediators headed by former Finnish President Martti Ahtisaari, in his capacity as the EU envoy, and including an American envoy, the former Under-Secretary of State Strobe Talbott, and a Russian envoy, the former Prime Minister Victor Chernomyrdin, eventually reached an agreement with Belgrade regime. The principles of the agreement drew substantially on a statement of principles previously agreed to by the G-8 Foreign Ministers and were included as annexes to Security Council Resolution 1244.⁷⁴

4. Authority

As previously mentioned, the Contact Group on Kosovo is best described as a continuation of the Contact Group on Bosnia, which is why some authors refer to it as "the Balkans Contact Group."⁷⁵ In this respect, there is no explicit prior legal

⁷³ *Rambouillet Accords: Interim Agreement for Peace and Self-Government in Kosovo*, Feb. 23, 1999, U.N. Doc. S/1999/648 (June 7, 1999), available at http://www.un.org/peace/kosovo/99648_1.pdf (last visited Feb. 8, 2006) [hereinafter *Rambouillet Accords*].

⁷⁴ S.C. Res. 1244, U.N. Doc. S/RES/1244 (June 10, 1999).

⁷⁵ E.g., Michael J. Kelly, *Traveling the Road to Rambouillet: Is the Imposition of Federalism in Kosovo Pragmatic Foreign Policy or Unwise Meddling?* 40 S. TEX. L. REV. 789, 792 (1999).

authorization or special procedure of legitimization of the Contact Group's activities. As with the other cases discussed above, however, its policies and activities have acquired subsequent recognition in Security Council resolutions. Security Council Resolution 1160 noted "with appreciation the statements of the Foreign Ministers of France, Germany, Italy, the Russian Federation, the United Kingdom of Great Britain and Northern Ireland and the United States of America (the Contact Group) of 9 and 25 March 1998 ... including the proposal on a comprehensive arms embargo on the Federal Republic of Yugoslavia, including Kosovo."⁷⁶ Resolution 1199 also noted with "appreciation the statement of the Foreign Ministers of France, Germany, Italy, the Russian Federation, the United Kingdom of Great Britain and Northern Ireland and the United States of America (the Contact Group) of 12 June 1998 at the conclusion of the Contact Group's meeting with the Foreign Ministers of Canada and Japan ... and the further statement of the Contact Group made in Bonn on 8 July 1998."⁷⁷

In contrast to the pre-conflict period, there have been no Security Council resolutions authorizing or recognizing the functioning of the Group and its leading role in framing the future status of Kosovo. The Group has rather acquired its legitimization through the participation of, and the coordination of its policies with, the UN Mission in Kosovo and the UN designated envoys and representatives.⁷⁸

5. Outcomes: Political Effectiveness vs. Unity

As can be seen from other cases, unity within the Contact Group is essential in order for it to achieve the intended results. Despite difficulties in the process, which may be quite normal in complex conflict situations, the Group was able to maintain its unity in the case of Bosnia. Contrary to the case of Bosnia, where the Contact Group was interested in the maintenance of the unity of the Group at all costs, the Contact Group on Kosovo has risked the unity of the Group by sacrificing the interests of its members. The Group favored NATO air strikes against FRY instead of preserving their cooperation with one of the members, the Russian Federation. As a result of this, the Contact Group did not meet again until after the post-conflict period, except at an unofficial meeting

⁷⁶ S.C. Res. 1160, *supra* note 70.

⁷⁷ S.C. Res. 1199, U.N. Doc. S/RES/1199 (Sept 23, 1998).

⁷⁸ *See* Contact Group statements in *supra* notes 3, 4, 8, and 9.

convened during the NATO air strikes on April 7, 1999 in Brussels that did not result with any official declaration or statement. The Group's *life*, however, continued, as it assumed a crucial role in the post-conflict period.

B. Post-Conflict Activation

The Contact Group on Kosovo re-emerged in the post-conflict period in response to the violence of March 2004 and coordinated Kosovo policy with the United Nations Interim Administration Mission in Kosovo (UNMIK).⁷⁹ Its representatives have met regularly to monitor the situation on the ground. It supports UNMIK and the NATO-led Kosovo Force (KFOR) by urging Kosovo's leadership to continue to repair any damage caused by the March violence and by monitoring Kosovo's progress in the process of implementing UN-endorsed standards.⁸⁰

Recently, the Group has played a leading role in the process of finding a political settlement to the issue of Kosovo's status. Whether the Group will manage to keep its unity until the end of the process or whether it will once again fail to keep its unity due to Russia's position remains to be seen. However, several important developments have already come out of the Contract Group. The most important these are the core principles, which articulated the Contact Group's position and aims concerning Kosovo's future political status (although these principles are not without the ambiguities that typically surround complex territorial disputes).

The first attempt of the Group towards providing a general framework for a political settlement resulted in the Guiding Principles of November 2005, which reminded the parties that there should be "no return of Kosovo to the pre-1999 situation,

⁷⁹ See Joint Statement of the Contact Group on Kosovo, *supra* note 9. The Group provided in its statement: "Meeting in Pristina for the first time, the Contact Group declares its intention to step up its engagement in Kosovo. The Contact Group will meet periodically in Pristina and actively support the work of UNMIK, KFOR and the PISG and intends to foster enhanced cooperation among them. ... We are meeting in the shadow of violent attacks on people and property in Kosovo..."

⁸⁰ On Standards Implementation, see UNMIK, *Kosovo Standards Implementation Plan* (Mar. 31, 2004), http://www.unmikonline.org/pub/misc/ksip_eng.pdf#search=%22Kosovo%20Standards%22 (last visited Apr. 20, 2006).

no partition of Kosovo, and no union of Kosovo with any or any other country.”⁸¹ The Contact Group Ministers re-stated the international community’s “willingness to establish, for an interim period after a settlement is reached, appropriate international civilian and military structures to help ensure compliance with the settlement’s provisions.”⁸² In a policy statement in January 2006, the Group further articulated its position by making explicit, for the first time, the principle that any solution to the status of Kosovo must “be acceptable to the people of Kosovo,”⁸³ while acknowledging that “disastrous policies of the past lie at the heart of the current problems.”⁸⁴ Meeting at a ministerial level, the Group recalled that “the character of the Kosovo problem, shaped by the disintegration of Yugoslavia and consequent conflicts, ethnic cleansing and the events of 1999, and the extended period of international administration under UNSCR 1244, must be fully taken into account in settling Kosovo’s status.”⁸⁵ Another core principle advanced by the Group provided that “a multi-ethnic settlement is the only workable option and that the more the vital interests of minorities are addressed the quicker a broadly acceptable agreement can be reached.”⁸⁶ The Contact Group statement of July 24, 2006 reaffirmed the principles that the settlement should be “acceptable to the people of Kosovo and promotes a multi-ethnic society with a future for all of its citizens.”⁸⁷

The Group again refined its position in a recent statement issued after a ministerial meeting in New York chaired by the US Secretary of State Condoleezza Rice. It provided, in relevant part, that “Ministers support the Special Envoy’s efforts to work with the parties in cooperation with the Contact Group to arrive at a realistic outcome that enhances regional stability, is acceptable to the people of Kosovo and preserves Kosovo’s

⁸¹ Guiding Principles, *supra* note 3.

⁸² *Id.*

⁸³ See Statement by the Contact Group on the Future of Kosovo (Jan. 31, 2006), <http://www.state.gov/p/eur/rls/or/62459.htm> (last visited Oct. 14, 2006).

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ High-Level Meeting on the Future Status of Kosovo, *supra* note 9.

multi-ethnic character.”⁸⁸ These statements demonstrate that the Contact Group attaches great importance to three fundamental principles: acceptance of the settlement by the people of Kosovo, strong guarantees for protection of minorities, and regional stability. The first two principles would, as stated by the Contact Group, “immeasurably enhance regional stability,”⁸⁹ and a settlement itself would further contribute to regional stability. As stated by the Contact Group on July 24, 2006, “a status settlement in Kosovo will enhance regional stability”⁹⁰ by removing the “destabilizing political and economic effects of continuing uncertainty over Kosovo’s future status.”⁹¹

V. ALTERNATIVE SOLUTIONS AND RECOMMENDATIONS IN THE GLOBAL COMMON INTEREST

The cases discussed above reveal the complementary role of the Contact Group and the Security Council in conflict mediation and resolution. The effectiveness of an informal grouping, characterized by influence, power, and persuasion, permits the support of a formal executive body, such as the Security Council. This support adds credibility and legality to the informality of a Group. Additionally, the Contact Group does not operate illegally, even though its initial involvement may be described as having an extra-legal character. A unique feature of the Group is its lack of a single prescribed source of authority. Its legal authority is grounded on a range of sources that are manifested in a variety of ways.

The flexibility and plurality of the UN Charter allows for a mixture of authority concerning the role of member states and regional or other international groupings in conflict mediation and resolution. The role taken on by member states and groupings can manifest itself in a variety of ways.

Groups, by themselves, may assist the UN by dealing with matters related to the maintenance of international peace and security, provided that their assistance is

⁸⁸ Kosovo Contact Group Ministerial Statement, *supra* note 4.

⁸⁹ Statement by the Contact Group on the Future of Kosovo, *supra* note 83.

⁹⁰ High-Level Meeting on the Future Status of Kosovo, *supra* note 9.

⁹¹ *Id.*

consistent with the purposes and principles of the United Nations.⁹² Groups may also contribute to the maintenance of international peace and security by making its assistance directly available to the Security Council.⁹³ This type of assistance may take the form of an operation taken within the outlined goals of UN formal bodies, such as the Security Council,⁹⁴ or a continuation of operations of a previously established Group in a subsequent crisis or in a geographically contingent territory.⁹⁵

Beyond the flexible language of the Charter, authority for a Group may arise from explicit or implicit authorization and recognition by the Security Council. This authorization may create the Group and authorize its subsequent actions or it may consist of *ex post facto* approval of a Group's actions.⁹⁶ Finally, legitimization of the actions of the Group may come merely from UN participation in the process.⁹⁷

The *necessity* of resorting to such an informal body will depend in large part on the reform process and effectiveness of the United Nations system, most notably the Security Council in its capacity as an executive body. An increase in the number of the state actors involved, however, either within the Contact Group or the Security Council, will not necessarily bring about greater efficiency.⁹⁸ An alternative might be to ensure a higher degree of transparency with regards to the Group's and Council's debates and deliberations⁹⁹ and to consult substantially and comply with the wishes of those most

⁹² U.N. Charter art. 52, para. 1.

⁹³ U.N. Charter art. 43, para. 1.

⁹⁴ An example may be S.C. Res. 385, *supra* note 38. *See also* discussion on the Legality Authority of the Namibian Contact Group *supra* Part II.B.3.

⁹⁵ *See e.g.*, discussion on Bosnia *supra* Part III.

⁹⁶ *See, e.g.*, discussion on Namibia *supra* Part II.

⁹⁷ *See* discussion on the Contact Group's authority in post-conflict Kosovo *supra* Part IV.

⁹⁸ *See, e.g.*, EDWARD HALLETT CARR, *THE TWENTY YEARS' CRISIS: 1919-1939*, 29 (2nd ed. 1945) (stating that "[t]he Council, in becoming more 'representative,' lost much of its effectiveness as a political instrument. Reality was sacrificed to an abstract principle."). *See also* W. Michael Reisman, *The Constitutional Crisis in the United Nations*, 87 AM. J. INT'L L. 83, 96 (1993) (noting that "[e]xpansion of the Council would be unlikely to satisfy those agitating for change, yet it would make the Council more unwieldy and less efficient").

⁹⁹ *See* Jochen Prantl and Jean Krasno, *supra* note 46, at 34 (noting the increase in number of closed sessions within the Security Council). The authors state that "[u]ntil 2000, the number of informal

affected by its decisions. This would result in a sense of legitimacy born out of both the transparency and empirical needs and wants of the affected community. In this respect, the ultimate aim should be to act in a manner that preserves intrinsic human values, which would in turn contribute to the maximization of the realization of these values. Just as important would be the creation of an improved, more coherent, better coordinated, and effective UN system for conflict mediation and settlement. A new commission or council within the UN system with the purpose of mediating and settling conflicts could serve that purpose. As an alternative, any informal *ad hoc* grouping of states could include a representative of the United Nations.

All in all, as long as there exists a Security Council that fails to act adequately or in a timely manner, or continues to make use of veto even in matters related to *human concerns* or the *common interest*, and thus is unable to properly allocate its indispensable functions in the global community and make effective use of its power on a global scale, any other alternative legal and policy instrument which is in a position to exercise such functions in an authoritative and controlling manner¹⁰⁰ and is accepted as such by those affected by its decisions, *should act*. Whatever the inadequacies of such *ad hoc* extra-legal grouping may be, a relatively unified, influential, and globally representative body has, to a certain degree, an empirical advantage in effectuating its decisions and

consultations clearly outweighed the formal meetings, with the gap slowly closing, given the increased number of public debates and opening meetings of the Security Council at the end of the decade. While the Council held 55 formal meetings and 62 consultations in 1988, adopting 20 resolutions and eight presidential statements, these numbers increased to 135 meetings and 251 consultations in 1995, with 66 resolutions and 63 statements... From 1991 onwards, the number of informal consultations had increased much faster than the number of formal meetings. The high point was reached in 1994, when the Security Council convened 165 formal meetings but closed the doors 273 times for informal consultations.” *Id.* See also Siegfried Wiessner, *supra* note 34, at 153 (stating that “[t]he great bulk of ... work occurs in environments other than formal dispute settlement. The roles of actors in these settings are essentially different and less restricted.”).

¹⁰⁰ For an innovative and lucid analysis of the distinction and intersection between “authority” and “control,” see HAROLD D. LASSWELL, *POLITICS: WHO GETS WHAT, WHEN, HOW* (1950); Myres S. McDougal & Harold D. Lasswell, *The Identification and Appraisal of Diverse Systems of Public Order*, 32 AM. J. INT’L L. 1, 9 (1959); Myres S. McDougal, Harold D. Lasswell & W. Michael Reisman, *The World Constitutive Process of Authoritative Decision*, 19 LEGAL ED. 253 (1967).

considering their political and moral consequences more easily and efficiently. Any decision-making process should, however, be in full harmony with a public order in which the human values that individuals desire most are widely shaped and shared: a system that promotes and protects a higher level of freedoms, rights, and values in the interest of individuals rather than in the state. Utilizing Nietzsche's statement on the "falseness of an opinion," the answer to the justification of informality raised in the context of the Contact Group would be: "[it] is not for us any objection to it... [t]he question is how far it is life-furthering, life-preserving, species-preserving, perhaps species-creating."¹⁰¹

¹⁰¹ FRIEDRICH NIETZSCHE, *BEYOND GOOD AND EVIL* (trans. Helen Zimmern), ch. 1 (1989).