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0521807476 - Democratic Accountability and the Use of Force in International Law

Edited by Charlotte Ku and Harold K. Jacobson

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Democratic Accountability and the Use of Force in International Law

The spread of democracy to a majority of the world's states and the legitimization of the use of force by multilateral institutions such as NATO and the UN have been two key developments since the Second World War. In the last decade these developments have become intertwined, as multilateral forces moved from traditional peacekeeping to peace enforcement among warring parties. This book explores the experiences of nine countries (Canada, France, Germany, India, Japan, Norway, Russia, the United Kingdom, and the United States) in the deployment of armed forces under the UN and NATO, asking who has been and should be accountable to the citizens of these nations, and to the citizens of states who are the object of deployments, for the decisions made in such military actions. The authors conclude that national-level mechanisms have been most important in ensuring democratic accountability of national and international decision-makers.

CHARLOTTE KU is executive vice president and executive director of the American Society of International Law. Her recent publications include *Global Governance and the Changing Face of International Law* (2001), "Using Military Forces under International Auspices and Democratic Accountability" (2001), and "American Lawyers and International Competence" (with Christopher J. Borgen, 2000). She is also coeditor with Paul Diehl of the widely used collection, *International Law: Classic and Contemporary Readings* (1998).

HAROLD K. JACOBSON (1929–2001) was, at the time of coediting this book, Jesse Siddal Reeves professor of political science, senior research scientist, and adjunct professor of law at the University of Michigan. His many publications include *Engaging Countries: Strengthening Compliance with International Environmental Accords* (coedited with Edith Brown Weiss, 1998). During his distinguished career he was awarded the Excellence in Education Award of the University of Michigan's College of Literature, Science, and the Arts; and was elected a fellow of the American Association for the Advancement of Science from which he also received the Award for International Scientific Cooperation.

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To Jake's family and students, that his humanity
and scholarship may live on.

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MAJOR GENERAL DIPANKAR BANERJEE's thirty-six years of distinguished service in the Indian army included service in command and staff assignments in all its operational environments and border areas and includes appointments at brigade, division, field army, and army headquarters. From May 1, 1999, he has led the Regional Centre for Strategic Studies, the only such institute in the region, at Colombo, Sri Lanka, as its executive director. Banerjee's current areas of academic interest are national security issues, confidence-building measures, Asia-Pacific security, and China's security and foreign policies. He has published extensively on these subjects. His recent edited volumes include: *South Asia at Gun Point: Small Arms and Light Weapons Proliferation* (2000); *Security Studies in South Asia: Changes and Challenges* (2000); *CBMs in South Asia: Potential and Possibilities* (2000); *Confidence Building Measures in South Asia* (1999); and *Comprehensive and Co-operative Security in South Asia* (1998).

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1998 to the present he has been a senior advisory board member, Project on Global Issues, Carnegie Endowment for International Peace, and a senior associate, International Conflict Resolution Program, Columbia University School of International and Public Affairs. In 1998 he was consultant to the UN organization, the War-torn Societies Project (WSP), in Geneva. He is a member of the Academic Advisory Committee to Olara Otunnu, special representative to the UN Secretary-General on Children and Armed Conflict. His recent publications include: *Madness in the Multitude: Human Security and World Disorder* (2001); *Multilateral Negotiations: Lessons From Arms Control, Trade, and the Environment* (2nd edn., 1999); *Nurturing Peace: Why Peace Settlements Succeed or Fail* (1996); *Unguided Missiles: How America Buys its Weapons* (1989); and *Forming Economic Policy: The Case of Energy in Canada and Mexico* (1986).

PROFESSOR HAROLD K. JACOBSON died in August 2001. He was Jesse Siddal Reeves professor of political science and a senior research scientist in the Center for Political Studies of the Institute for Social Research at the University of Michigan. He was a specialist in international institutions and politics. He was the author, editor, or coeditor of twelve books and numerous articles and monographs dealing with international institutions and politics. His most recent book is *Engaging Countries: Strengthening Compliance with International Environmental Accords* (edited with Edith Brown Weiss) (1998). Other publications include: *Behavior, Culture and Conflict in World Politics* (coeditor and contributor with William Zimmerman) (1994); *Double Edged Diplomacy: International Bargaining and Domestic Politics* (edited with Peter Evans and Robert D. Putnam) (1993); *China's Participation in the IMF, the World Bank, and GATT: Toward a Global Economic Order* (with Michel Oksenberg) (1990).

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and *Service-providing NGOs* (edited by Thomas G. Weiss) (1998); “The United Nations and NATO: The Limits on Cooperation between International Organizations” in *Trilateral Perspectives on International Legal Issues: Relevance of Domestic Law and Policy* (edited by Michael K. Young and Yuji Iwasawa) (1996); “Collective Security and Collective Defense: Changing Conceptions and Institutions” in *The United Nations in a New World Order* (Claremont McKenna College Monograph Series 6, 1993).

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Preface

Harold Jacobson died unexpectedly as we neared completion of this book, but Jake and I had finished final drafts of the opening and closing chapters and we had received all the other chapters and worked through them together. So the work remains as it began, a joint effort, codirected and coedited by the two of us.

This project had its origins in an on-going conversation that Jake and I began in late 1995 about the role of international institutions after the end of the Cold War. We both observed that the world had been unprepared for the post-Cold War world, and that this lack of preparation had handicapped the important institutions and powers in handling the problems that emerged after 1991. Since there had been no concept of opportunity for post-war planning, as there had been during the First and Second World Wars, there was no coherent vision of what the post-Cold War world, including its international institutions, should look like.

We considered what questions demanded an answer, and concluded that an important but not well-understood issue was how democracies maintained accountability to their citizens when they acted under the auspices of international institutions. As Americans, we thought of the rallying cry of the American colonists against Westminster, “No taxation without representation,” as capturing the right of citizens of democratic countries to understand and to shape their country’s international obligations. The question seemed simple, but we soon discovered the complexity of undertaking research in this area because of the academic tradition of exploring international and national political and societal issues separately. Nevertheless, we knew that we had to attempt the analysis because the world’s democracies have the military power and responsibility to use force under international auspices. They also have an obligation to their citizens to make transparent decisions that conform to tenets of democratic accountability. We needed to understand how domestic politics might be used to ensure the effective implementation of decisions made by international institutions by strengthening national commitment to those institutions and popular support for their decisions.

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We began our discussion with an open and congenial international team of authors in September 1998 at Airlie House in Warrenton, Virginia. Our colleagues listened, considered, and brought their wisdom and experience to refining and probing the questions that Jake and I posed to them. We met again in Glen Cove (New York), Bermuda, and Bergen (Norway). With each meeting, the project gained definition and depth. Our colleagues whose disciplinary home is in international law complemented our international relations and political science orientations; our non-law colleagues added valuable insight into the political and societal context in which law operates. We are grateful to all of them.

We are grateful to the many individuals who took the time to talk with us. They included officials at the headquarters of the North Atlantic Treaty Organization (NATO) in Brussels, with whom we spoke soon after the 1998 Activation Order that led to Operation Allied Force; the Secretariat and delegation members at the United Nations headquarters in New York; and academics, legislators, military officials, and policy makers in many of the countries included in this study. We benefited greatly from their insights and perspectives. Since we agreed that all information generated from the interviews would be used without attribution, we do not list these individuals here by name.

We were fortunate to have a team of informal advisers who reviewed materials as they developed and offered helpful suggestions and refinements throughout the project. These included James Sutterlin (Yale University), Oscar Schachter (Columbia University), José Alvarez (Columbia University), Anne Julie Semb (Norwegian Institute of International Studies), William Durch (Henry L. Stimson Center), Maurice Copithorne (University of British Columbia), and Edwina Campbell (Industrial College of the Armed Forces, National Defense University). Special thanks are owed to Dr. Campbell, who provided invaluable comments on various drafts of the book.

We are grateful to the American Society of International Law for its sponsorship of this project, the latest in a long line of studies produced under ASIL auspices that brought together a multinational and multidisciplinary team to examine an issue of contemporary significance. From Dayton to September 11, 2001, the course of this project seemed to span the entire spectrum of modern conflict, from peacekeeping to war. This gave the study an immediacy that reinforced the relevancy of its issues, but also made their assessment somewhat harder. As editors, we were cognizant that our discussion needed to stand the test of time, even though we were studying a highly contemporary set of questions. The bulk of the research and analysis was completed prior to September 11, 2001,

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but few changes were made as the premises and conclusions of the study remain relevant to the post-September 11 world.

We wish to thank the staff of the American Society of International Law, who provided research and administrative support, especially the contributions of Jill Watson, Kuldip Singh Dosanjh, Sandra Liebel, Edra London, and Trish Thomas. We also thank the Center for Political Studies at the University of Michigan for research and administrative support, especially Laurie Pierson for her careful preparation of the manuscript. The help of the Center's director, William Zimmerman, and Barbara Opal made it possible for me to finish the work that Jake and I began, and I am grateful to both of them.

This project was an amiable and enriching intellectual experience, thanks to our contributors, the Ford Foundation, which made our work possible, and Cambridge University Press, especially its law senior commissioning editor, Finola O'Sullivan.

The project started as a conversation between two people and grew to include scores who contributed to our understanding of accountability, democracy, and international institutions. We hope that our collective efforts offer a new approach to the complex interaction of national and international institutions in providing accountability to citizens for actions their countries take under international auspices. Jake and I concluded on an optimistic and hopeful note that democracy, accountability, and international institutions are not incompatible concepts, that a "mixed system" of national and international accountability is in the process of being crafted.

In Jake's memory, my project colleagues and I dedicate this work to his family and to his many students, in the hope and expectation that his humanity and scholarship will live on.

Washington, DC

CHARLOTTE KU

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Abbreviations

CESDP	Common European Security and Defense Policy
CFSP	Common Foreign and Security Policy
CIS	Commonwealth of Independent States
CPSU	Communist Party of the Soviet Union
CSCE	Conference on Security and Cooperation in Europe
DOMREP	Mission of the Representative of the Secretary-General in the Dominican Republic
DPKO	United Nations Department of Peacekeeping Operations
ECOWAS	Economic Community of West African States
EDC	European Defense Community
ESDI	European Security and Defense Identity/Initiative
ESDP	European Security and Defense Policy
EU	European Union
ICC	International Criminal Court
ICJ	International Court of Justice
ICRC	International Committee of the Red Cross
ICTY	International Criminal Tribunal for the Former Yugoslavia
IFOR	NATO-led Implementation Force
INTERFET	International Force in East Timor
KDOM/KVM	Kosovo Diplomatic Observer Mission/Verification Mission
KFOR	Kosovo Force
KLA	Kosovo Liberation Army
MFO	Multinational Force and Observers, Sinai
MIF	Maritime Interdiction Force
MINUGUA	United Nations Verification Mission in Guatemala
MINURCA	United Nations Mission in the Central African Republic
MINURSO	United Nations Mission for the Referendum in Western Sahara

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MIPONUH	United Nations Civilian Police Mission in Haiti
MISAB	Mission to Monitor the Implementation of the Bangui Agreements
MNF	Multinational Force
MONUA	United Nations Observer Mission in Angola
MONUC	United Nations Organization Mission in the Democratic Republic of Congo
MPF	Multinational Protection Force
NAC	North Atlantic Council
NAM	Non-Aligned Movement
NATO	North Atlantic Treaty Organization
NGO	Non-governmental organization
OAS	Organization of American States
OAU	Organization of African Unity (now the African Union)
ONUC	United Nations Operation in the Congo
ONUCA	United Nations Observer Group in Central America
ONUMOZ	United Nations Operation in Mozambique
ONUSAL	United Nations Observer Mission in El Salvador
ONUVEH	United Nations Observer Group for the Verification of the Elections in Haiti
OSCE	Organization for Security and Cooperation in Europe
OSGAP	Office of the Secretary-General in Afghanistan and Pakistan
P-5	Five permanent members of the UN Security Council
PDD-25	Presidential Decision Directive 25
RECAMP	Reforcement des Capacités Africaines de Maintien de la Paix
ROE	Rules of engagement
RPF	Rwandan Patriotic Front
SACEUR	Supreme Allied Commander, Europe
SEATO	Southeast Asian Treaty Organization
SFOR	Stabilization Force (NATO)
SOFA	Status-of-forces Agreement
UNAMET	United Nations Mission in East Timor
UNAMIC	United Nations Advance Mission in Cambodia
UNAMIR	United Nations Assistance Mission for Rwanda
UNAMSIL	United Nations Observer Mission in Sierra Leone
UNASOG	United Nations Aouzou Strip Observer Mission
UNAVEM I	United Nations Angola Verification Mission I

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UNAVEM II	United Nations Angola Verification Mission II
UNAVEM III	United Nations Angola Verification Mission III
UNCRO	United Nations Confidence Restoration Operation
UNDOF	United Nations Disengagement Observer Force
UNEF I	United Nations Emergency Force I
UNEF II	United Nations Emergency Force II
UNESCO	United Nations Education, Scientific, and Cultural Organization
UNFICYP	United Nations Peacekeeping Force in Cyprus
UNGA	United Nations General Assembly
UNGOMAP	United Nations Good Offices Mission in Afghanistan and Pakistan
UNHCR	United Nations High Commissioner for Refugees
UNIFIL	United Nations Interim Force in Lebanon
UNIIMOG	United Nations Iran–Iraq Military Observer Group
UNIKOM	United Nations Iraq–Kuwait Observation Mission
UN-IPTF	United Nations International Police Task Force
UNIPOM	United Nations India–Pakistan Observation Mission
UNITAF	Unified Task Force (Operation Restore Hope)
UNMACC	United Nations Mine Action Coordination Centre in Kosovo
UNMEE	United Nations Mission in Ethiopia and Eritrea
UNMIBH	United Nations Mission in Bosnia and Herzegovina
UNMIH	United Nations Mission in Haiti
UNMIK	United Nations Interim Administration Mission in Kosovo
UNMO	United Nations Military Observer
UNMOGIP	United Nations Military Observer Group in India and Pakistan
UNMOP	United Nations Mission of Observers in Prevlaka
UNMOT	United Nations Mission of Observers in Tajikistan
UNOGIL	United Nations Observation Group in Lebanon
UNOMIG	United Nations Observer Mission in Georgia
UNOMIL	United Nations Observer Mission in Liberia
UNOMSIL	United Nations Observer Mission in Sierra Leone
UNOMUR	United Nations Observer Mission in Uganda–Rwanda
UNOSOM I	United Nations Operation in Somalia I
UNOSOM II	United Nations Operation in Somalia II
UNPA	United Nations Participation Act
UNPREDEP	United Nations Preventive Deployment Force
UNPROFOR	United Nations Protection Force

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UNPSG	United Nations Civilian Police Support Group
UNSC	United Nations Security Council
UNSCOB	United Nations Commission for the Balkans
UNSCOM	United Nations Special Commission
UNSF	United Nations Security Force in West New Guinea
UNSMIH	United Nations Support Mission in Haiti
UNTAC	United Nations Transitional Authority in Cambodia
UNTAES	United Nations Transitional Administration for Eastern Slavonia, Baranja, and Western Sirmium
UNTAET	United Nations Transitional Administration in East Timor
UNTAG	United Nations Transition Assistance Group
UNTCOK	United Nations Temporary Commission on Korea
UNTMIH	United Nations Transition Mission in Haiti
UNTSO	United Nations Truce Supervision Organization
UNV	United Nations Volunteers
UNYOM	United Nations Yemen Observation Mission
WEU	Western European Union