



Lord Callaghan: Comments following the article in The...

Comments following the article in The House Magazine, and his questions answered

1. Lord Callaghan asks, “In what circumstances would intervention in the affairs of another country be justified” and, “should intervention be justified only on a breach of the peace grounds or should it be extended to breaches of human rights or on humanitarian grounds”.

Answer : The circumstances in which the Shield Council would act autonomously would be strictly limited by the mandate imposed on it by the UN. The Council would only be empowered - and obliged - to act autonomously when two or more nations are in a state of armed conflict.

Unless authorised and directed by a specific resolution of the UN General Assembly. Shield would not be permitted to interfere in the internal affairs of a sovereign nation. The most likely events which would cause the UN to order an intervention by Shield in a nation’s internal affairs would be civil war or a blatant disregard for human rights. Under such circumstances the Shield Council would act as commanded by the UN whereas when confronted with armed conflict between sovereign nations Shield would act autonomously to uphold UN law, subject to the mandatory rules of engagement.

2. Lord Callaghan also asks, “Who would exercise authority over an international force, whether armed or not?”

Answer : The Shield Council would be the authority to which the military enforcement arm of Shield would be subject. The enforcement arm would be armed, heavily armed.

The constitution of the Shield Council has been described earlier in this Review and it would be answerable to the UN. However, the UN would have empowered the Council to take autonomous decisions to uphold the UN law forbidding unauthorised military violation by one nation of another nation’s sovereignty.

The relationship between the Shield Council and the UN would be identical in principle to that of a democratic government’s relationship with its police force and courts. Police and courts are answerable to the parliament of the nation but they are autonomous in their case by case actions to uphold the law enacted by parliament.

Shield is essentially about establishing enforceable international law and it is a reasonable assumption that the process of international law must be based on the well proven principles which govern international law. There are, however, two aspects of procedure (rather than principle) which diverge from national law.

Firstly, unlike a national police force, the military enforcement arm of Shield would not be empowered to initiate any action against an aggressor nation unless prior authorisation had been given by a 66% majority resolution of the Shield Council. These resolutions may be regarded as the equivalent to a court order which authorises the police to take action normally forbidden them. There would be no circumstances in which the enforcement arm of Shield would be permitted to initiate action without the prior authorisation of the Council.

The second aspect in which there is a divergence from national law relates to the identification of the law breaker. Within a nation a criminal takes the risk of breaking the law in the hope, all too often justified, that the police will be unable to establish his identity or whereabouts. By contrast, the identity and whereabouts of a nation committing the international crime of aggression would be known before, during and after its unlawful act. When this aspect is coupled with Shield's autonomy of action, a potential aggressor could be in no doubt whatsoever that retribution would inevitably fall upon his nation should he decide to break the UN law.

It will be clear from the foregoing, that the Shield Council should be regarded as a near equivalent of a criminal court within a nation. If, however, one nation has an unresolved grievance against another nation it must approach the existing International Court of Justice to seek arbitration on the issue. The plaintiff nation, however just its cause, would be forcibly opposed by Shield if it took the law into its own hands and used military force in pursuit of its objective.

This procedure under law is equivalent to a civil action brought by an aggrieved citizen. The citizen is also under restraint that he must not take the law into his own hands.

Governments insist that their citizens accept both the rule of law and the decisions of the courts as regards the interpretation of the law. Under the proposed rationale of Shield, governments would be required to emulate their citizen's commitment to the rule of law, but in an international setting.