



Reforming the United Nations for Peace and Security

*Proceedings of a Workshop to Analyze
the Report of the High-level Panel on
Threats, Challenges, and Change*

Yale Center for the Study of Globalization

New Haven, Connecticut
March 2005

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I want to thank the participants not only for their full involvement in the workshop itself, but also for their work in advance of the gathering in preparing their thoughts in writing. I would like to acknowledge two individuals, Mats Berdal and Andy Knight, who had planned to join us, but were unable to attend. They were kind enough to send papers which are included in this volume.

My very special thanks go to Gareth Evans, a member of the High-level Panel, who provided immense insight into the process as a whole, and also to Sebastian Graf von Einsiedel, a member of the High-level Panel Secretariat.

Thanks are due to Haynie Wheeler for organizing the workshop. I would also like to express my appreciation to the project Research Assistant and workshop rapporteur, Derek Smith of the Yale Law School, and also to our editor, Rachel Weaving, for her good work and her quick turnaround. Thanks also to Stephen Townley who served as a rapporteur as well.

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Ernesto Zedillo
New Haven, Connecticut
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Overview

Ernesto Zedillo

Director, Yale Center for the Study of Globalization

The Yale Center for the Study of Globalization takes it as an essential part of its mission to explore solutions to problems that, being global in nature, can only be effectively addressed through international cooperation. Global peace and security, and the role of the United Nations in pursuing them, is certainly one such issue, and may be the foremost among them. The pursuit of peace and security is a fundamental topic not only on its own merit, but also because of its impact on the speed and modalities of economic, social, and political integration across countries. The Kantian triad of peace, commerce, and democracy is now accepted as an empirically sound proposition. This means that our Center could hardly be involved in the study of economic globalization without, at the same time, paying good attention to the other components of the triad. It is sensible to believe that globalization will be shaped in the years to come by the way in which the international community handles the threats of conflict, violence, and war. Let us not forget that in recent history globalization was virtually destroyed by war and other man-made calamities.

Consequently, when the United Nations Secretary-General announced in September 2003, in the context of a serious crisis within the international system, that he would convene a High-level Panel to examine the current challenges to peace and security and ways to confront these challenges, it was decided that our Center should follow the process as closely as possible. We were hopeful that the publication of the Panel report would start a process of international reaction and commentary that would enrich the debate on this very central topic, and ideally help to build important momentum towards positive reform of the international system for peace and security. To contribute, albeit modestly, to that process the Center convened a select group of distinguished experts in a workshop to react candidly to the report's analyses and recommendations.

A More Secure World: Our Shared Responsibility, the report of the High-level Panel, was presented to the UN Secretary-General on December 1st, 2004 and immediately made available to the general public.¹ Our workshop on the report took place on February 11-12, 2005 at Betts House, the home of our Center at Yale University. It was decided from the outset that in planning the workshop and disseminating its proceedings, we should pay special attention to the aspect of opportunity. The UN 60th General Assembly, due to start in September 2005, is expected to provide a significant opportunity to re-launch the goals that were established in the Millennium Declaration of 2000, including the goal of UN reform. Thus, it is reasonable to think that any pertinent ideas will be more welcome, if ever at all, before rather than after the September 2005 Summit.

A good number of the participants in our workshop volunteered brief written comments on the report and related topics as a way to facilitate the discussion. These papers are included in this publication with only minor editorial adjustments. Quite deliberately, participants were not assigned specific topics. Given their solid expertise in a broad range of the relevant issues and the comprehensive nature of the Panel report, part of the purpose was to elicit their preferences about which of the Panel's recommendations should receive most attention for analysis and action.

It was necessary, however, to adopt an agenda for the workshop. Considering the limited time available—a day and a half—and what was detected in the papers submitted before the meeting, it was decided to focus on just a few of the topics covered in the report. For example, economic and social threats to collective security—certainly highlighted in the report—were not assigned their own place on the agenda. It was felt that serious consideration of this topic would likely consume all the available time and also that several participants had doubts as to whether problems such as poverty and environmental degradation should be tackled on their own merit or because they raise serious threats to collective security.

¹ *A More Secure World: Our Shared Responsibility. Report of the High-level Panel on Threats, Challenges, and Change*. New York: United Nations, A/59/565, 2 December 2004. Online at <http://www.un.org/secureworld/report2.pdf>

The important decision to make Security Council Reform the first item on the agenda was taken in contrast to the order followed in the Panel report, where this issue appears in the last of four parts. That this topic is of the highest priority is well suggested in the literature on UN reform and, in the papers received for the workshop, on solid historical, geopolitical, and institutional grounds. But it can also be supported on very practical grounds. Norms of conduct are only as good as the capacity of the pertinent institutions to enforce them. Norms and strategies to pursue collective security will only be effective to the extent that they are enforceable and practicable. Or at least, if you wish, the design of those norms and strategies should be responsive to the acknowledged capacity of institutions to apply them effectively.

The World Trade Organization provides an example. Despite being underfunded and under-staffed and usually subject to strong pressures from many quarters, this international organization has on balance been highly successful in fulfilling the mandate it received at its inception. This is the case not only because the norms it is entrusted to apply are for the most part appealing to its members, but also, equally important, because it was given a sensible dispute-settlement mechanism with reasonable means of enforcement.

At the creation of the United Nations, the Security Council was in principle conceived as the ultimate enforcement instrument of the international community to address the crucial issues of peace and security. The High-level Panel and many others—including myself—believe that a reformed Security Council should continue to play, or at least attempt to play more successfully than in the past, that role.

If this is the case, then the obvious question emerges of what kind of Security Council would be most likely to execute its core functions effectively. Naturally, this question has many angles, including those of

the Council's composition, voting rights, rules of decision making, and, of course, responsibilities and means to fulfill them.

The Security Council can either be the Gordian knot that impedes the functioning of the international system in its most sensitive aspect or it can be the lever to make of the world a less turbulent and violent place. The way in which the Security Council is engineered will determine the credibility and efficacy of all the other instruments agreed by the international community to overcome the old and the new threats to peace and security.

This then explains the decision to include Security Council Reform as the first topic on our workshop agenda, to be followed by the topics of Use of Force, Weapons of Mass Destruction and Terrorism, Human Rights, and Peacebuilding.

Needless to say, the workshop was not intended to build consensus among participants, but rather to brainstorm and debate ideas. It was agreed that the output should be produced in the form of a publication that would include the papers submitted beforehand and an overview of the main themes of discussion. It was clearly stated, however, that the content of this overview, although based for the most part on the companion papers and the notes taken at the workshop, would be solely my responsibility. It was also determined that the overview should not attribute the ideas expressed during the discussion. However, when pertinent, I make sure to indicate below when I am expressing my personal opinion.

The workshop benefited enormously from the participation of Gareth Evans, a distinguished member of the High-level Panel. Mr. Evans generously gave us a very complete presentation about the mandate, context, and process leading to the production of the Panel's report. Both in his introductory presentation and throughout the workshop, he provided extremely useful clarifications about the report's analysis and recommendations. We further benefited from the participation of a

member of the Panel's Secretariat, Sebastian Graf von Einsiedel, who also shed light on some of the report's key issues, thanks to his active involvement in the discussions.

SECURITY COUNCIL REFORM

The Security Council was conceived to be the key UN organ for peace and security, by virtue of being, in principle, empowered to impose sanctions and approve the use of force. But more often than not, the Council has in practice failed to play its role effectively. During most of the Cold War it was virtually paralyzed. Since the end of the Cold War, the Council has been much more active than before, but, a few remarkable successes apart, it has continued to be deadlocked when trying to prevent or solve serious crises. Not surprisingly, Security Council reform, which last took place some 40 years ago, has been an outstanding issue for a long time. Various attempts to adapt the Council have failed due to strong disagreements among UN members, particularly on the issue of enlargement.

To address the issue of enlargement, and purportedly to increase both the effectiveness and credibility of the Council, the High-level Panel proposes two alternative models for enlarging the Council from 15 to 24 members. In Model A, there will be six new permanent seats with no veto power, whereas in Model B there will be no new permanent seats, but eight four-year renewable-term seats. The Panel's only other proposal on Security Council reform is to introduce a system of "indicative voting" in order to make members establish explicitly their positions on a proposed action.

Not surprisingly, participants in our workshop expressed a range of views on Security Council Reform. Some are very skeptical about the chances and even the value of any reform in the near future. Others are rather optimistic; they see a much more transformational reform than is proposed by the Panel not only as advisable but as capable of achievement, albeit over the longer term. I had better say now that I adhere to the latter opinion.

Those in the skeptical camp begin their argument by recalling the experience of previous attempts at Security Council reform, and suggest that the circumstances underlying the failed experiences remain firmly in place. On this view, the conjunction of regional rivalries, the reluctance of the permanent five members to see their power diluted, and the voting thresholds that are required for an amendment of the UN Charter would make it very likely that minorities capable of blocking any proposal would emerge before a reform is brought to a vote. Taken to the extreme, the skeptical view considers that an attempt now to change the structure of the Security Council stems from a fundamental misjudgment about what most ails the Council: deep political differences among the major players rather than a faulty institutional design. In fact, the reform skeptics argue that given the events that have recently shocked the international system, the present is a very bad time to attempt to enlarge the Security Council. They judge that the Panel's bow to Security Council reform is just a formality, designed to appease widespread national interests, but should not really be expected to go far.

Others in the workshop, however, without neglecting the enormous difficulty involved, consider that reform must be attempted urgently on the grounds that the present arrangement is simply unsustainable. They see no future viability in a Security Council which, among other deficiencies, usually excludes the world's second biggest economy and the world's second most populated country, and grossly under-represents Africa and Latin America. Reform-inclined participants would go as far as to claim that *any* reform of the Security Council, almost irrespective of its specific content, has now become indispensable, if only to show that something substantive in a core UN institution can change.

Most of the workshop papers as well as the discussion provided opinions about the pros or cons of each of the two proposed models for Council enlargement. Only a minority of the participants would prefer Model A over Model B. Those who favor Model A think that it would reflect more firmly the contemporary distribution of international power and provide

the new permanent members with a clear incentive to contribute more resources to the Security Council's functioning. The validity of these two reasons was, however, disputed by others. It was argued that, actually, assured permanency in the Security Council would not only fail to respond over time to *changes* in the distribution of power but would also conspire against more ample and steady funding. In this view, renewable chairs, as proposed in Model B, would keep their holders more inclined to contribute the required resources.

In assessing the proposed models and other possible designs for restructuring the Security Council, participants were mainly concerned about the question of legitimacy versus efficiency. In terms of legitimacy, most of them thought Model B superior to Model A, because the former potentially allows for a bigger representation of the world's population and GDP over time. As regards efficiency, most of the participants thought Model B superior in that it avoids the risk of ossification that might be caused by the addition of new permanent members. They also believed that Model B would be more likely to prevail over Model A if brought to a General Assembly vote. It was generally considered that although countries such as Germany, Japan, and India would do their utmost to get Model A approved in order to finally get permanent seats, they would, in the end, also support Model B if this were the option put to a vote against the status quo. Those countries, it is believed, would have a strong expectation of being regularly elected to the non-permanent seats contemplated in Model B.

Having granted that Model B is not only better and more likely to pass than Model A, it was generally conceded that Model B would not guarantee a more efficient Security Council than the present one. Indeed, as the number of members rises, crafting the necessary agreements is likely to become more difficult. And although the Council's enlargement would raise the political cost that a single member would have to pay if it opposed decisions endorsed by a vast majority of the members, no country is likely to give up its effective power simply to avoid paying such a cost.

Enlargement by itself will not overcome the unpleasant verdict given by bargaining theory: veto gives high power; no veto gives nil or very little power.² It is then understandable why our discussants generally doubted the efficacy of a Security Council reform based solely on enlargement. This is not to say that they tended to endorse the abolition of the veto, an option that most considered to be totally out of the question in the foreseeable future.

A few, however, including myself, believe that the possibility of veto reform is being dismissed too soon. Failure to consider veto reform leaves the discussion at a cul-de-sac: enlargement alone will not bring about better resolutions, and without better resolutions the Security Council will not prove effective, and without effectiveness whatever legitimacy is provided at first by enlargement will eventually be lost. Consequently, no matter how improbable, veto reform must be entertained at least as a long-term objective. One workshop participant made the point simply but persuasively by asking the others: "Can you really believe that in 25 years from now, the Security Council will be like it is today with the existing vetoes?" If the answer is no, governments had better make sure that any immediate reform of the Security Council will make it easier, not harder, to undertake deeper changes in the long term. Under this criterion, if the choice were only between Model A and B, it is clear that the latter would again be preferable.

Participants recalled that ideas to moderate the power of veto have been available for some time. A new one that captured momentarily the imagination of some participants was that of requiring governments with veto power to have it tied, on a subject-by-subject basis, to the backing of their national parliaments or congresses. Needless to say, this idea would make sense only if all the permanent members were democracies, which is not the case at present.

² See: O'Neill, Barry (1996), "Power and Satisfaction in the United Nations Security Council," *The Journal of Conflict and Resolution* 40 (2): 219-237; and Winter, Eyal (1996), "Voting and Vetoing," *The American Political Science Review* 90 (4): 813-823.

A model for a Security Council without the present veto was tabled as a proposal for the long term, and has been outlined in a newly published book by one of the participants.³ This would be a Security Council of six permanent and eight nonpermanent members. The nonpermanent members would represent regional constituencies. Each member of the UN would have a weight determined as a function of population, GDP, contribution to global public goods, and military capacity. Regional representatives would carry the aggregation of their respective constituencies' weights. In this sense, it would be a system of universal participation. It would also be a system of weighted voting and one in which supermajorities would be required for the most important decisions. Ideally, the European Union would be represented in one permanent seat, naturally with the very significant weight that such a seat would carry as a function of the factors mentioned above.

Clearly this kind of scheme will not attract the attention of any of the pertinent political actors any time soon. But I do believe that those of us who think the status quo is unsustainable should not cease to imagine and examine alternatives that might deliver a better system for collective security—irrespective of their short-term feasibility. I am the first to admit that the time to try any of those alternatives has not yet come. In the immediate future, then, incremental reforms such as a variation of the Panel's Model B and the adoption of its indicative voting proposal may be the only way to go.

USE OF FORCE

The use of military force is the ultimate enforcement instrument for collective security. This is a very thorny issue and yet the High-level Panel report addresses it openly and comprehensively. The report claims that Article 51 of the UN Charter should be neither rewritten nor reinterpreted, and that the Security Council is fully empowered under Chapter VII of the Charter to address the full range of security threats with which states are

³ Dervis, Kemal, with Ceren Ozer (2005), *A Better Globalization: Legitimacy, Reform, and Governance*. Washington DC: Brookings Press for the Center for Global Development.

concerned.⁴ It endorses the notion of the collective international responsibility to protect—marking a strong departure from the traditional interpretation of the non-intervention principle. Finally, it proposes five explicit criteria for use by the Security Council in order to determine the legitimacy of the use of force.

The discussion at the workshop was extremely revealing not only of different opinions but also of different interpretations of what the Panel report said on these topics. Some participants thought that the report provided not only an effort of accommodation to recent US strategies to fight terrorism, but, even more, an offer of a bargain that might be struck with the US government. In this particular view, among various elements that might appeal to the US government, the report offers a less restrictive interpretation of Article 51 than traditionally has been understood; it recognizes that in some circumstances there is a need for preventive military action, albeit subject to the Security Council's determination; it advocates a much more proactive Security Council; it provides a definition of terrorism that moves closer, although not all the way, to the US position; and it embraces the notion of the responsibility to protect.

Other participants questioned whether the report really offers any meaningful accommodation to prevalent US positions, particularly on the delicate question of the preventive use of force. Most participants agreed that the report confirms a restrictive interpretation of Article 51. They concurred that the report offered a strong reassertion of Article 51 not extending itself to open-ended prevention actions, and also a strong assertion of the centrality of the Security Council under Chapter VII of the Charter. Further, without neglecting the boldness implied in embracing the responsibility to protect, participants emphasized that the report does not really endorse humanitarian intervention by individual states. On the criteria for the use of force, some argued that these simply reflect older ideas of just war theory and therefore add little to the legal solution of contemporary problems of the use of force. But it was explained that the

⁴ Article 51 says that force may be used in self-defense, without prior Security Council authorization. Chapter VII of the Charter legitimizes the use of force when the Council determines that there is a clear threat to international peace and security.

criteria are intended not just to limit the scope of the use of force, but also to encourage the use of force when the criteria are satisfied—this in clear reference to past cases where the Security Council has failed to act, with serious human consequences.

Inevitably, the discussion returned to the enforceability of the report's proposals on the use of force. The Panel proposes, for example, that the criteria for military intervention simply be embodied in a declaratory resolution by the Security Council and the General Assembly. Even more fundamental is the question of why the Security Council in its present or an enlarged form would be likely to adopt a resolution on the use of force, even if the report's recommendations on this matter were adopted.

At the end of this discussion the group was reminded of a long-standing proposal to provide the UN with a permanent, reliable, and international rapid reaction force at the disposal of the Security Council. It was claimed, and most participants accepted, that this instrument would significantly enhance the credibility and effectiveness of the UN in peacekeeping emergencies.

WEAPONS OF MASS DESTRUCTION

On radiological, chemical, and biological weapons, the Panel report makes recommendations to improve the control and, when appropriate, the destruction, of dangerous materials.

On nuclear weapons, the report stresses two concerns. One, the risk that countries party to the Treaty on the Non-Proliferation of Nuclear Weapons will illegally develop nuclear weapons. Two, the risk of persistent erosion, and eventual collapse, of the whole Treaty regime, either from lack of compliance or from outright withdrawal from the Treaty. To address these concerns, the report makes a set of recommendations to tackle both the demand and the supply sides of the problem. The recommendations essentially constitute exhortations to the nuclear-weapons states and to the Security Council. But, though certainly valuable, they do not aim at a

total revamping of the non-proliferation regime and if, implemented, they would improve only marginally the enforceability of the regime.

In general, discussants at the workshop considered the recommendations on nuclear weapons as protective of the status quo, and they questioned whether—with only marginally refined instruments such as those outlined in the report—the status quo could indeed be sustained without risking a major crisis. It was argued that the invisible steel chain that inexorably connects proliferation with possession is still present, even in the post Cold War era; the proliferation engine with its cycle of action and reaction is running and threatens to run even faster. It was noted that the report exemplified the paradox that a lot of effort goes into stopping countries from acquiring nuclear weapons and that once they have them, little or nothing is done about it.

Several participants, including myself, would have liked to see in the report a stronger endorsement, at least as a long-term objective, of a system for nuclear disarmament aimed at freeing the world from nuclear weapons, along with a more critical perspective on the sustainability of the present two-tier system of countries with legal nuclear weapons and countries without. It was noticed that some of the report's proposals—such as mandating the International Atomic Energy Agency to act as a guarantor for the supply of fissile material—would in some way tend to reinforce the present two-tier system.

It was regretted that the report did not recommend the adoption of covenants specifically to prohibit private parties from being given the opportunity to possess nuclear weapons.

As to the report's recommendation to give the Security Council a more proactive role to address issues of risk of nuclear attacks and non-compliance with the Non-Proliferation Treaty, it is again pertinent to wonder whether the Council can be expected to act if it has not been properly designed to reach agreements.

TERRORISM

The Panel report urges the General Assembly rapidly to complete negotiations on a comprehensive convention on terrorism. It offers a definition of terrorism (paragraph 164) in an attempt to resolve the long-standing disagreement among UN members on what constitutes terrorism. The definition very clearly—and adequately—does not allow for the freedom-fighter exception. The report also urges the UN, with the Secretary-General taking a leading role, to promote a comprehensive strategy against terrorism and suggests, albeit in very general terms, the aspects that should be covered by that strategy.

Some discussants interpreted the goal of the Panel recommendations as to enable the UN to provide global normative leadership on the subject of terrorism. But some felt that the recommendations may fall short of this objective, for their failure to address some important facets of the problem.

For example, it was pointed out that the report says nothing about the authority of the Security Council to take measures under Chapter VII against non-state actors in combating terrorism. A vacuum may arise when, on the one hand, states are asked to follow certain restrictions on the use of force and, on the other, non-state actors are operating in foreign territory. This vacuum is an invitation to rely on non-legal means to confront the problem. Some participants argued that the Panel should have established an explicit position on this issue, and on the question of how countries may obtain information from suspected terrorists when such information is deemed crucial to prevent future terrorist attacks. Some of the participants pointed to the recent unfortunate tendency to rely on expedients of dubious legality. They observed that this tendency arises from the perhaps-unwarranted notion that international law does not provide adequate means to deal with this problem. To reduce the likelihood of this kind of deviation from existing legality requires a better

definition of what is allowed for a state to defend itself from terrorism, and the report, it was claimed, failed to address this issue openly.

HUMAN RIGHTS

The Panel recommends making membership of the Commission on Human Rights universal and, in the longer term, upgrading the Commission to become a Human Rights Council standing alongside the Security Council. It proposes that members of the Human Rights Commission should designate prominent and experienced human rights figures to head their delegations to the Commission. It proposes that the Commission be supported in its work by an advisory council of independent experts. And it asks for the UN High Commissioner for Human Rights to be mandated to report annually on the human rights situation worldwide, as well as to report regularly on the implementation of all human rights-related provisions of Security Council resolutions.

Many participants expressed substantial reservations about the Panel's human rights recommendations. They wondered about the rationale of the proposed enlargement of the Commission on Human Rights. After some discussion, the main reason for this proposal was seen to be the intent to reduce the existing politicization of the Commission. It was argued that any attempt to introduce clear criteria to distinguish between countries with good and poor records on human rights would exacerbate that politicization and would make the Commission even more dysfunctional than at present. But several participants judged this reason insufficient; they argued that the Commission would still suffer from lack of legitimacy, because it would still remain unprotected from inappropriate membership and from having unqualified countries elected to chair it. Discussants doubted that the proposal to designate prominent human rights figures to head delegations to the Commission would be approved. Some pointed to the risk of ending up with a Commission of universal membership with no prominent figures, and thus becoming *de facto* a General Assembly on human rights.

Participants also questioned the value of creating an advisory council to the Commission. Stronger was their rejection of the idea of having the High Commissioner produce an annual report along the lines recommended by the High-level Panel. Such a report, it was argued, would call the High Commissioner's impartiality into question and would further erode the already weakened authority of this position. Instead, it was proposed, part of the solution should consist in giving the High Commissioner more authority to intervene when a crisis is imminent or under way.

Some discussants believe that the risk of introducing criteria for differentiating countries according to their respect for the Human Rights Declaration is worth taking. Some also believe that fostering the Community of Democracies, created in 2000, would be a promising approach to start introducing that differentiation in a way that avoids extreme politicization.⁵ This is a promising route to follow, not only to address human rights issues but also in general, to deal with rule-of-law issues. The Community of Democracies can be used to establish certain standards. If this approach is taken, it should be based on engagement that recognizes progress to fill democratic gaps, at least as much as it recognizes deficits in the same respect.

PEACEBUILDING COMMISSION

The Panel report recommends the creation of a Peacebuilding Commission, whose core functions would be to identify states that are under stress and risk sliding towards collapse; to organize proactive assistance in preventing such situations from deteriorating further; to assist in planning transitions between conflict and post-conflict peacebuilding; and, in particular, to marshal and sustain the efforts of the international community in post-conflict peacebuilding over whatever period may be necessary.

⁵ Information on the Community of Democracies is online at <http://www.santiago2005.org/html/what.html>

Most discussants agreed on the importance of mandating and enabling the UN to address the problem of failed states—denominated by the Panel as “states under stress.” Welcoming the proposal for the Peacebuilding Commission, discussants rejected the notion entertained in some quarters that an expedient of this kind could open the door to a new form of colonialism; they recognized that the underlying motivation of the Peacebuilding Commission would be to help restore effective sovereignty to member countries. It was argued that, as proposed, this function of peacebuilding means state building—which is better supported multilaterally than attempted unilaterally.

Participants did strongly question, however, whether it would be appropriate for the Commission to undertake the conflict prevention responsibilities proposed by the Panel. They felt that the suggested prevention activities would be very difficult, if not impossible, to execute effectively, and in some instances could prove counterproductive. Some prevention actions could push the UN into taking sides in a domestic conflict, raising the question of whether the UN is helping a failed state or a particular failed government. There is also the risk that the knowledge that a UN organ has a responsibility for proactive prevention could actually encourage rebel groups to escalate conflicts. For these and other reasons, most of the participants thought that, if created, the Commission should essentially specialize in post-conflict peacebuilding.

Also in the context of these discussions, participants strongly endorsed the Panel’s proposal to create an additional position of UN Deputy Secretary-General for peace and security. They regretted hearing that some relevant constituencies have not received this idea positively. It was further suggested that perhaps some of the monitoring activities on states at risk of failing should be carried out by the proposed Deputy Secretary-General, rather than by the Peacebuilding Commission.

Again, the idea of creating a UN rapid deployment force was brought back to the discussion with strong general endorsement.

FINAL CONSIDERATIONS

The High-level Panel on Threats, Challenges, and Change has made an extremely important contribution towards the indispensable goal of reforming the United Nations for a better system of collective security. The report's analysis and recommendations must be seen in the perspective of an endeavor designed to produce proposals that can be realistically adopted and implemented in the short to medium term, precisely at a time when the multilateral system is being severely questioned and even actively undermined by some important actors in global geopolitics. It is commendable that the Panel did not shy away from considering and discussing very thoughtfully some of the most contentious issues of contemporary international relations and UN functioning.

Our workshop was intended to stretch the discussion beyond the point to which the Panel's report has taken it. Hence our interest in analyzing critically the report's chief recommendations. As can be seen from the papers in this volume and from this overview, the workshop did share a number of the report's positions and recommendations on a number of issues, but it also produced different perspectives on some important questions.

In particular, I and other participants are concerned about the value of the Panel's proposals for Security Council reform. We believe these proposals are less bold than the report's own diagnosis leads one to expect. We fear that neither of the two proposed formulas—Model A or Model B—is likely to overcome the Council's proverbial failure to reach collective decisions on the important topics. To be sure, we recognize that in the near future perhaps only something like the proposed Model B, if indeed anything at all, will be politically achievable.

We submit, however, that the heads of state and government who will gather at the 60th General Assembly should establish now in general terms some ideals to be pursued actively only in the long term. In addition to supporting whatever reforms they may judge should be implemented in the short and medium terms, they could—at least at the declarative

level—endorse some notions for bolder reform to be undertaken in the sufficiently distant future. In this respect a commitment to work, beyond the enlargement reform, for a Security Council that improves over time its representation of the peoples of the world, while reflecting more effectively the changes in the world's economic and geopolitical circumstances, would provide a useful criterion for future undertakings, including the work to be done by the Community of Democracies.

Promoting Democracy through International Organizations*

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SUMMARY

The promotion of representative democracy is vital for three of the most important challenges of the 21st Century: securing human rights, preventing international and civil wars, and fighting terrorism. Unfortunately, the United Nations has had only limited success in promoting democracy. There are two reasons: some national governments fear that their own legitimacy could be undermined if democracy were to become a universal norm, and the United States has politicized the promotion of democracy by linking it to controversial aspects of its foreign policy such as the intervention in Iraq. Fortunately, there already exists an international organization that has great potential to further democracy, namely the Community of Democracies.

To realize its potential, the Community of Democracies itself needs reform. It needs an elected Council to replace the self-appointed group of ten nations that has provided leadership so far; it needs to obtain the institutional resources to be an active promoter of democracy; and it needs to restrict its membership to countries that adhere to democratic practices. The Convening Group of the Community of Democracies should

* This is a revised form of a paper prepared for a Workshop on the Report of the UN High-level Panel on Threats, Challenges, and Change, Yale University, February 11-12, 2005. The author thanks the workshop participants, Nicole Bibbins Sedaca, Morton Halperin, and Richard C. Rowson for their many helpful suggestions. Naturally, the author bears sole responsibility for this paper.

help the Community to meet its full potential by supporting an elected Council of the Community, the institutionalization of the organization, and high standards for membership. Non-governmental organizations and individual democracies should lobby for reform of the Community of Democracies, and should support the Community's Democratic Caucus at the UN.

The UN Secretary-General should continue to “lead from the front” in promoting democratic reform. He should (1) articulate his vision of the UN's role in promoting democracy, (2) explain how the recognized human right to participate in “genuine elections” requires a multi-party representative democracy, (3) explain that the “responsibility to protect” includes protection against anarchy and brutal tyranny, as well as against starvation and genocide, and (4) address a meeting of the Community of Democracies and a meeting of the Democratic Caucus at the UN to show support for these organizations.

THE GLOBAL STAKE IN DEMOCRATIC REFORM

The promotion of representative democracy is vital for three of the most important challenges of the 21st Century: securing human rights, preventing international and civil wars, and fighting terrorism.

Speaking at the founding meeting of the Community of Democracies in 2000, Secretary-General Kofi Annan articulated the value of democracy for human rights and for peace:

The principle of democracy is now universally recognized. The right of all people to take part in the government of their country through free and regular elections, enshrined in Article 21 of the Universal Declaration of Human Rights, is not peculiar to any culture....

Certainly, the record shows that democratically governed states rarely if ever make war on one another. But even more important, in this era of intra-state wars, is the fact that democratic governance—by protecting minorities, encouraging political pluralism, and upholding the rule of

law—can channel internal dissent peacefully, and thus help avert civil wars...

Thus democracy offers us a double promise—as an agent of peace as well as liberation.⁶

More recently, the absence of democracy is recognized as a facilitator of terrorism, for example by aiding terrorist recruitment. For this reason, the UN High-level Panel on Threats, Challenges, and Change recommended that:

The United Nations, with the Secretary-General taking a leading role, should promote a comprehensive strategy against terrorism, including... promoting social and political rights, the rule of law and democratic reform... (Recommendation 38).⁷

The UN has had substantial success in ending colonialism, eliminating apartheid, and undertaking peacekeeping. But it has not been as effective in promoting democracy. Why not?

THE GLOBAL POLITICS OF DEMOCRATIC REFORM

A. *The political limits on a UN role*

As we have seen, the Secretary-General is able to invoke the Universal Declaration of Human Rights for its affirmation of certain democratic rights.⁸ Unfortunately the Universal Declaration is not self-enforcing.

⁶ The Appendix to this paper provides links to all of the documents mentioned in this report, including this speech by the Secretary-General and the Universal Declaration of Human Rights to which he refers.

⁷ *A More Secure World: Our Shared Responsibility. Report of the High-level Panel on Threats, Challenges, and Change.* New York: United Nations, A/59/565, 2 December 2004. Online at <http://www.un.org/secureworld/report2.pdf>

⁸ Article 21 of the Declaration of Human Rights states, “(1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives. (2) Everyone has the right of equal access to public service in his country. (3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.”

In practice, the United Nations has had only limited success in promoting democracy. There are two reasons why. First, some national governments fear that their own legitimacy could be undermined if democracy were to become a universal norm. Second, most governments want to sustain what is left of the norm against non-intervention. The political reality at the UN is that with few exceptions, such as humanitarian crises in failed states, the UN has undertaken operations on the ground only with the permission of the government in question.

Since the United Nations is an organization of governments, the implications for promoting democracy are clear. Activities to strengthen a democratic government are acceptable at the UN, but activities that aim to establish a democracy where none currently exists are not. Thus “democratic reform” is acceptable because it implies that there is already a democracy in place to reform. Apparently, this is what allowed the High-level Panel to attain a consensus in favor of “democratic reform.” Even then, the Panel recommended democratic reform only in the context of a comprehensive strategy against terrorism.

The current Secretary-General, Kofi Annan, and his predecessor, Boutros Boutros-Ghali, have both been avid supporters of democracy. In their speeches and reports they have often advocated UN support for representative democracy. Indeed, their advocacy has gone considerably beyond anything to be found in resolutions passed by the General Assembly or the Security Council.

B. The international politics of democracy

In his Second Inaugural Address on January 20, 2005, President Bush declared that “the policy of the United States [is] to seek and support the growth of democratic movements and institutions in every nation and culture, with the ultimate goal of ending tyranny in our world.” The interpretation of the *Wall Street Journal* was that, “The entire speech was about Iraq, as a way of explaining to Americans why the sacrifice our troops are making there is justified.”

Many others had differences with the foreign policy implications of President Bush's policy. For example, Kenya's *Nation* said:

The differences are over what he understands by "freedom" and how the benefits of democracy should be spread in the world—or indeed whether it is any country's business to export democracy to others...It is possible to have the freer world that Bush speaks of, but the idea that those who are strong and have a larger arsenal have an unchallenged right to impose their will on the weak, undermines democracy.

China's interpretation was blunter: "Judging from Bush's inaugural theme in 2005, being morally conceited and militarily aggressive are two major elements of American nationalism."⁹

Clearly this was not the first time the promotion of democracy was invoked as a principle for policy. Throughout the entire Cold War, the US and its allies fought communism in the name of "The Free World." Nevertheless, they worked with some established tyrannies such as Franco's Spain. The US even supported coups against democratic governments, such as the coup in Chile by Pinochet. It is little wonder, therefore, that appeals to support freedom and democracy in other countries are often viewed *not* as a matter of principle but rather as a cloak that can be worn or shed in the pursuit of national interest.

Since the invasion of Iraq in 2003, the pursuit of democracy abroad has become deeply entangled with many other issues, from Palestine to globalization, and from torture to terrorism. The effect has been to make it harder than ever to achieve an international consensus to foster democracy where it does not currently exist.

The international politics of restraint at the UN has not prevented many non-governmental organizations and private foundations from playing an

⁹ These three responses to the speech are quoted in Jim Bencivenga, "World Media: Bush Inaugural a Jolt," *Christian Science Monitor*, January 21, 2005.

effective role in helping to establish democracies as well as strengthening existing democracies.

Some international organizations have also promoted democracy:

- The European Union has been very effective in promoting democracy among countries seeking membership in the Union. Membership in the European Union is so valuable that countries from Estonia to Turkey have undertaken major political and economic reforms to meet the Union's entry requirements. Among these requirements are the institutional and legal foundations for a functioning and secure democracy.
- Among regional organizations, the Organization of American States (OAS) has taken the lead by asserting an obligation to promote representative democracy. Its Charter states that "the people of the Americas have a right to democracy and their governments have an obligation to promote and defend it." Following its mandate, the OAS was effective in helping to restore democracy in Peru, but it was unable to reverse the government's own withdrawal of democratic rights in Venezuela.¹⁰
- The Community of Democracies is an international organization of more than 100 countries dedicated to the promotion of democracy. Unfortunately, it deserves its reputation as "the best-kept secret in multilateral diplomacy."¹¹

¹⁰ For a comprehensive review of democracy clauses in regional organizations and other multilateral agreements, see Theodore J. Piccone, "International Mechanisms for Protecting Democracy," The Democracy Coalition Project, 2004.

¹¹ Mark Palmer in (London) *Sunday Times*, January 4, 2004. Online at http://ccd21.org/news/ditching_dictators.htm

THE BEST KEPT SECRET: THE COMMUNITY OF DEMOCRACIES

Despite its present obscurity, the Community of Democracies (CD) has the potential to become a major contributor to the promotion and protection of democracy around the world. To see what needs to be done for the CD to realize its potential, one must understand its history and operations. In particular, one must understand why the CD initially included countries that are not at all democratic, why it has no executive or fixed location, and why it is governed by a self-appointed unchanging group of ten countries.

A. *The Helsinki analogy*

The Community of Democracies was founded at the initiative of US Secretary of State Madeleine Albright and Poland's Foreign Minister Bronislaw Geremek. The US and Poland recruited five other countries, and these seven recruited three more to form a ten-nation steering committee known as the Convening Group.¹² The Convening Group, in turn, drafted a statement of Democratic Principles and Practices that become the Warsaw Declaration. These principles and practices include the basic elements of a democracy, such as elections open to multiple parties, independent judiciary, freedom of speech, freedom of assembly, freedom of the press, and equal protection of the law. The founders hoped that the Warsaw Declaration of 2000 might do for democracy around the world what the Helsinki Accords of 1975 had done for human rights in Europe. Following this analogy, the Convening Group invited not only established democracies, but many countries that were on the path to democracy.

At the founding Ministerial Meeting, more than 100 countries signed the Warsaw Declaration, declaring their intent to pursue the detailed list of democratic principles and practices enumerated in the document.¹³

¹² The Convening Group is Chile, the Czech Republic, India, Mali, Mexico, Poland, Portugal, South Africa, South Korea, and the United States.

¹³ There are now a total of 110 signatories, representing 60 percent of the world's population.

Secretary-General Kofi Annan addressed the closing session, endorsing the new coalition and declaring democracy to be a universal value.

B. The Community of Democracies today

Unfortunately, in the five years since its founding, the Community of Democracies has yet to become a major contributor to the promotion of democracy. After the First Ministerial Meeting, the same ten countries announced that they would determine which countries to invite to the second meeting, and that their decisions would “not [be] based on participation in the Warsaw meeting but rather on a state’s *adherence* to main requisites (emphasis added).” The Convening Group also declared that, “In subsequent years the CG will review each participant’s, observer’s, and non-participant’s compliance with requisites to determine participation.”

The Second Ministerial Meeting, held in Seoul in 2002, was something of a disappointment. US Secretary of State Powell had been expected, but shortly before the meeting a critical UN vote on Iraq prevented him from attending. Following this announcement, many other foreign ministers dropped out as well. The attendance of less senior delegations at Seoul than at Warsaw gave the appearance that the Community of Democracies was losing steam. The conference itself did reach agreement on the Seoul Plan of Action, which provided a list of the essential elements of representative democracy¹⁴, and a range of measures that the CD could take to promote democracy.

¹⁴ The Seoul Plan of Action defines the essential elements of representative democracy as:

- respect for human rights;
- civil, political, economic, social and cultural including freedom of expression,
- freedom of the press, and freedom of religion and conscience;
- access to and free exercise of power in accordance with the rule of law;
- the holding of periodic free and fair elections based on secret balloting and universal suffrage monitored by independent election authorities;
- freedom of association, including the right to form independent political parties;
- separation of powers, especially an independent judiciary; and
- constitutional subordination of all state institutions, including the military, to the legally-constituted civilian authority.

Unfortunately, the Seoul Conference and its Plan of Action received virtually no media coverage in the United States and little elsewhere around the world—which is what led to the comment about the Community of Democracies being the best kept secret in multilateral diplomacy.

REALIZING THE POTENTIAL OF THE CD

A. How the CD can promote democracy

The Seoul Plan of Action suggests a variety of measures the Community of Democracies could undertake, preferably within the framework of regional or international organizations. These potential measures include:

- regional democracy-monitoring mechanisms;
- monitoring systems for democratic crisis so that early assistance can be provided;
- creating a cadre of experts to assist countries facing a threat to their democracy;
- long-term technical support or monitors to strengthen democratic institutions, election processes, and reform efforts;
- on-site analysis to provide recommendations to uphold democratic principles and rights;
- good offices to assist governments and other political actors, civil society, and public institutions to produce an accord committing to prescribed remedial measures;
- public information campaigns regarding democracy, civil rights, and civic responsibilities;
- encouragement of the media to play a role in public education and in spreading democratic values;

- promotion of the rule of law, for example by seeking to ensure open and transparent budgetary procedures that provide for oversight by an independent legislature;
- mechanisms to promote transparency in political parties' financing;
- convening countries when needed to coordinate diplomatic or other efforts or political mediation;
- supporting actions through rapid consideration mechanisms by regional and international organizations; and
- enhancing existing regional and international instruments and democracy clauses, for example by strengthening positive economic incentives, and by preventing not only ruptures in, but also the deterioration of, democracy.

While each of these potential activities is worthy in itself, perhaps the greatest impact the Community of Democracies can have is through certifying which countries are democracies and which are not. Although the Community will never have the attraction of the European Union for prospective members, a great many regimes are eager to be accepted as democratic by their peers and potential foreign investors.¹⁵

After the founding meeting, the Convening Group started evaluating the status of individual countries. In 2002, they downgraded 13 countries that had signed the Warsaw Declaration, namely Algeria, Armenia, Azerbaijan, Egypt, Georgia, Haiti, Kenya, Kuwait, Madagascar, Qatar, Tunisia, Ukraine, and Yemen. For the Santiago meeting of April 28-30, 2005, the Convening Group will, no doubt, welcome Ukraine and possibly a few others back into the Community. It may also decide that several more signatories of the Warsaw Declaration are not, in fact, adhering to the main requisites of democracy.

¹⁵ Even the Chinese regime, which has no intention of giving up one-party control, has made great efforts to promote the rule of law, largely to satisfy the needs of foreign investors.

The important point is that the ability of the Community of Democracies to fulfill its potential depends a great deal on who can speak in its name.¹⁶ Understandably, the harder it is for a country to become certified and to stay certified, the greater the value of the certification. The more the Community itself is an accurate reflection of democracy, the greater will be its ability to carry out its mission. For example, an activity or policy statement would carry much more weight with the US public, and therefore with the US government, if undertaken by a Community that was not diluted with governments whose democratic status was questionable.

In addition to activities to promote democracy, and the certification of democracies, the CD can serve as a venue for democratic governments to coordinate their pursuit of common interests. In fact, the Community would be a good place to seek consensus on when and by what means a democratic government or organization is justified in supporting opposition movements in other countries.

B. Necessary reforms in the CD

The Community of Democracies needs three reforms if it is to realize its full potential:

An elected council to replace the convening group. The Convening Group has served the Community well since its founding in 2000. Inevitably, however, the legitimacy of the CD itself will require fixing the anomaly of an organization for the promotion of democracy being led by a self-appointed and self-perpetuated group of ten countries. The Convening Group needs to be succeeded by an elected Council.¹⁷ The election process for such a Council could take many forms. I refer the reader to my memo

¹⁶ The UN Human Rights Commission provides an extreme example of credibility being destroyed by its own members. It has gotten to the point where the major violators of human rights successfully seek membership on the Commission precisely in order to avoid criticism of their record.

¹⁷ Perhaps a term other than “Council *of the* Community of Democracies” should be used, to avoid confusion with the NGO called the Council *for a* Community of Democracies (emphasis added).

on the relative merits of several of these electoral mechanisms.¹⁸ In any case, the method to elect a Council for the CD should be acceptable as a legitimate process consistent with democratic principles, should prevent domination by either a few large countries or by many very small countries, and should not privilege any specific countries.

Institutionalization. The Community of Democracies, as presently constituted, is primarily a series of ministerial meetings that takes place once every two or three years.¹⁹ To realize its potential the Community needs to be reconstituted as a permanent organization. In particular, it needs a Secretary-General, a staff, a headquarters, and the resources necessary to undertake the kind of activities suggested in the Seoul Plan of Action.²⁰

High standards for membership. As mentioned earlier, the Convening Group has already downgraded 13 governments that it decided were not adhering to democratic requirements, even though these countries had signed the Warsaw Declaration. This is a good start. The Convening Group can be expected to make further progress as it evaluates countries for invitation to the April 2005 meeting. Once the Community is established as a permanent organization, the requirements for membership will need to be established, and a mechanism to add or suspend members will need to be agreed upon. The criteria published by the Convening Group for its own use could be adapted for use by its successor. The essential factor is one that cannot be written down: namely the political will to make hard judgments. The Convening Group has served well in this regard. A noteworthy example is the Convening Group's refusal to invite Egypt as a full participant to the 2002 Seoul meeting despite the public support of its

¹⁸ See the last item in the Appendix.

¹⁹ The Convening Group itself has taken a leadership role for several important initiatives. Among these are support for the launching of the Democratic Caucus at the UN, and a Democracy Transition Center. It has also sponsored two conferences on Democratic Education, and a visit to East Timor. The NGO Council for a Community of Democracies has provided valuable support to the Community.

²⁰ Secretary-General Annan has already "noted with interest" similar proposals for institutionalizing the 15-year old International Conference on New and Restored Democracies. He finds that without institutionalization the "follow-up action has not been as effective as it should be and it needs substantive and logistical strengthening." (A/58/392, p. 15).

government by the Group’s most powerful member, the United States. The successor to the Convening Group will also need political will. In fact, its task will be even more demanding because it will need to suspend members that do not meet its standards, rather than simply refrain from inviting them to the next meeting.

RECOMMENDATIONS

A. *Recommendations for the UN Secretary-General*

The Secretary-General should:

1. Continue to “lead from the front” in promoting representative democracy. Among the themes he can draw upon are:
 - a. the universal value of democracy, and the emerging global consensus in its favor;
 - b. the long-established role of the UN in promoting democracy as a fundamental human right, as a partner of economic and social development, and as a means of reducing international conflict;²¹
 - c. the mutual dependence of democracy and many other important goals, including women’s rights, the end of racism, clean government, state capacity, and the rule of law;
 - d. the recent priority given to good governance and democratic reform by the UN, the World Bank, and the IMF;
 - e. the “responsibility to protect,” which should be seen as extending beyond humanitarian relief to include protection

²¹ If democracy is also advocated as part of the fight against terrorism, one must stress that this is only a longer-run consideration. In the short and medium run, democratization may actually cause instability.

from anarchy (absence of the rule of law), and brutal tyranny (absence of even the most rudimentary human rights);²²

- f. the right to “genuine elections” in the Universal Declaration of Human Rights, which should now be understood to require multi-party representative democracy (except perhaps in micro-states);
 - g. the need to distinguish appropriate from inappropriate measures to support democracy and democratization.
2. Advocate that the mission of the proposed UN Peacebuilding Commission include the promotion of democracy. (See Recommendations 82-85 of the High-level Panel.)
 3. Address the Third Ministerial Meeting of the Community of Democracies, to be held in Santiago, April 28-30, 2005. The Community of Democracies is an ideal setting for the Secretary-General to articulate his vision of the UN’s role in promoting democracy
 4. Address the Democratic Caucus in New York in conjunction with the start of the 60th Session of the UN in September 2005. A precedent for addressing a caucus is the Secretary-General’s speech to the Group of 77 on September 25, 2003.

B. Recommendations for the Convening Group of the Community of Democracies

The ten-nation Convening Group is responsible for the invitations and agenda of the Third Ministerial Meeting of the Community of Democracies, to be held in Santiago, April 28-30, 2005. To prepare for the

²² When Boutros-Ghali was Secretary-General, he argued for the even broader justification for dealing with non-democracies. He argued that authoritarian governments tend to reject transparency and accountability, and “[t]he resulting atmosphere of oppression and tension, felt in neighboring countries, can heighten the fear of war.” Therefore, the UN could act on the basis of one of its first purposes, as stated in the Charter, namely “to take effective collective measures for the prevention and removal of threats to the peace.” See paragraph 19 of his “Agenda for Democratization,” at the URL given in the Appendix to this paper.

Ministerial Meeting, the Convening group will meet March 1 in Santiago, and April 1 in Washington, DC.

The Convening Group should:

1. Invite only those countries that adhere to the requirements of the Community's policy enunciated in September 27, 2002. Among these requirements are freedom of speech, the rule of law, an independent judiciary, and multipartidarism—which is the freedom to form democratic political parties that can participate in elections. The Convening Group should recognize that the credibility of the Community of Democracies depends upon the inclusion of only those countries whose governments embody the principles of democracies. In deciding which countries to invite to Community meetings, the Convening Group should give due regard to the country assessments provided by the Democratic Coalition and Freedom House.²³ In 2005, the most fraught decision will be the one about Russia. Quite properly, Russia was a full participant at Seoul in 2002. A detailed assessment of developments in Russia since then has led the Democratic Coalition and Freedom House to recommend against inviting Russia to Santiago in this year.
2. Invite the Secretary-General to address the Third Ministerial Meeting of the Community of Democracies in Santiago in April 2005. The presence of the Secretary-General would increase the visibility and legitimacy of the Community of Democracies. In addition, his participation would encourage members to send high-level delegations, which would further increase the visibility and legitimacy of the Community.

²³ Working jointly, the Coalition Project and Freedom House recommended in their December 2004 report downgrading to Observer status Bahrain, Jordan, Moldova, and Morocco; and not inviting Russia and Nepal. They also recommended upgrading Georgia, Kenya, Madagascar, and Ukraine to full participation.

3. Propose the ways and means by which the Community of Democracies can reach its full potential:
 - a. Replace the Convening Group itself with an elected Council. The election process could be an adaptation of the regional quota system used to elect non-permanent members of the UN Security Council. Alternatively, the Convening Group could propose a more transparent method that explicitly takes account of the vast differences in size of the members. (My own proposal in this regard is available at the last site listed in the Appendix to this paper.)
 - b. Institutionalize the Community of Democracies with a Secretary-General, a staff, a headquarters, and the resources necessary to carry out missions such as those described in the Seoul Plan of Action. (See discussion above.)
4. Until other procedures are in place, provide leadership for the Democratic Caucus at the United Nations so that the Caucus can be an effective coordinating and lobbying group on behalf of democracies.
5. Consider the recommendations of the 2003 report by Madeleine Albright and Bronislaw Geremek including, for example, a treaty to establish serious unconstitutional interruptions of the democratic process as crimes under international law.

C. Recommendations for non-governmental organizations

1. The Democratic Coalition and other non-governmental organizations involved in the promotion of democracy should help to develop concrete proposals for transforming the Community of Democracies from a series of ministerial meetings into a permanent organization with the credibility and capacity to fulfill its mission.

2. Private foundations whose mission includes the furtherance of democracy and human rights should help the Community of Democracies achieve the financial independence and headquarters building needed for its future activities.
3. The Club of Madrid should use its International Summit on Democracy, Terrorism, and Security on March 8-11, 2005 to articulate when the promotion of democracy by outside governments and organizations is a proper means to secure human rights, reduce the likelihood of international and domestic conflict, and eliminate a facilitating factor in terrorism.
4. Freedom House, the Heritage Foundation, and other organizations involved in assessing the status of specific countries should take care to assure the continued impartiality and accuracy of their indicators. Since important consequences follow from changes in these indicators, the organizations that develop them need to be insulated from political pressures. The stakes include the billions of dollars of aid from the US Millennium Challenge Account to be dispersed under eligibility requirements that take into account the Civil Liberties and Political Rights indicators of Freedom House, the Trade Policy indicator of the Heritage Foundation, and measures of Voice and Accountability and the Rule of Law by the World Bank Institute.

D. Recommendations for individual governments as well as NGOs

Individual governments as well as NGOs should:

1. Support the Democratic Caucus so that it can become a major vehicle for coordinating the activities of its members within the UN.
2. Encourage regional organizations such as the African Union, which already take the promotion of democracy as one of their goals, to be more active in this regard.

3. Lobby the Convening Group to take the lead in transforming the Community of Democracies from a series of ministerial meetings into an effective organization capable of actively promoting democracy, with an elected council, a standing executive, and a headquarters. Among the democracies *not* in the Convening Group who might insist on at least being eligible to play a leadership role are Japan, UK, Germany, Argentina, and Turkey.
4. Help the Community of Democracies attain the financial and other resources that it needs to realize its full potential.

APPENDIX TO “PROMOTING DEMOCRACY THROUGH INTERNATIONAL ORGANIZATIONS”: ONLINE RESOURCES

Universal Declaration of Human Rights (1948)

<http://un.org/Overview/rights.html>

Secretary-General Boutros Boutros-Ghali, “Agenda for Democratization,” a comprehensive (and apparently controversial) statement that is not available on any UN web site (1996)

<http://library.yale.edu/un/un3d3.htm>

Secretary-General Kofi Annan’s Speech to the Community of Democracies (2000)

<http://un.org/News/Press/docs/2000/sgsm7467.htm>

Warsaw Declaration and Signatories (2000)

<http://state.gov/g/drl/rls/26811.htm>

Convening Group’s Criteria for Invitation to the Meetings of the Community of Democracies (CD) (2002)

http://demcoalition.org/pdf/CD_participation_criteria.pdf

Seoul Plan of Action for the Community of Democracies (2002)

[http://bucharest-cd-ngoforum.ro/Seoul Plan of Action.doc](http://bucharest-cd-ngoforum.ro/Seoul%20Plan%20of%20Action.doc)

M. Albright and B. Geremek, “Threats to Democracy: Prevention and Response” (2003)

http://cfr.org/pdf/Threats_Dem_TF.pdf

T. Piccone, “International Mechanisms for Protecting Democracy” (2004)

http://demcoalition.org/pdf/Protecting_Democracy_Piccone.pdf

Democracy Coalition Project and Freedom House country-by-country assessment of which countries should be invited to the April 2005 CD meeting in Santiago (2004)

<http://freedomhouse.org/media/pressrel/011005.htm>

International Conference on New and Restored Democracies

<http://www.icnrd5-mongolia.mn/>

Report of the UN High-level Panel on Threats, Challenges, and Change (2004)

<http://un.org/secureworld/>

President George W. Bush's Second Inaugural Address (2005)

<http://whitehouse.gov/news/releases/2005/01/20050120-1.html>

Preparations for Third Ministerial Meeting of the Community of Democracies to be held in Santiago, April 28-30, 2005

<http://ccd21.org/santiago.htm>

Democratic Caucus at the UN

<http://ccd21.org/Initiatives/undc.htm>

NGO Council for the Community of Democracies

<http://ccd21.org/>

Proposal for an Elected Council for the Community of Democracies (2005)

http://umich.edu/~axe/research/Community_of_Democracies_proposal.pdf

The Report of the High-level Panel on Threats, Challenges, and Change: A Preliminary Assessment*

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When Secretary-General Kofi Annan, in September 2003, informed the General Assembly of his decision to establish a “high-level panel of eminent personalities” to undertake a fundamental review of the role of the United Nations in the field of peace and security, he was at once reacting to but also reinforcing a profound sense of malaise enveloping the organization.²⁴ The US-led invasion of Iraq—launched without explicit authorization from the Security Council for the use of force and preceded by an intensely divisive dispute regarding the continuing value of UN inspections in the country—provided the immediate backdrop to the talk of drift and crisis. As the terms of reference for the High-level Panel recognized, however, the war also “brought to the fore deep divergences of opinion on the range and nature of the challenges” confronting the UN (Panel report, p. 90).²⁵ These “divergences” included but also transcended some of the specific issues posed by the US-led invasion. The enduring perception of crisis surrounding the UN sits somewhat oddly with the rising demand for the organization’s services over the past 18 months (no fewer than six new peacekeeping operations have been authorized by the Security Council since May 2003). But the persistence of deep-seated divisions among member states is indisputable.

* This paper draws on a commentary published by the Canadian Institute for International Affairs (*Behind the Headlines*) in January 2005.

²⁴ UN Secretary-General Kofi Annan, Address to General Assembly, 23 September 2003.

²⁵ *A More Secure World: Our Shared Responsibility. Report of the High-level Panel on Threats, Challenges, and Change*. New York: United Nations, United Nations, A/59/565, 2 December 2004. Online at <http://www.un.org/secureworld>.

In setting up the Panel, the Secretary-General urged its members to address head on the subject of major institutional reform, including that of the Security Council and, possibly, that of other principal organs of the UN. Perhaps inevitably, the question of Security Council expansion has come to dominate the headlines both during and, to some degree, after the Panel's deliberations. And yet, the search for an institutional fix to the divisions that have crystallized so sharply among member states in recent years was always going to be highly problematic. Indeed, as even a cursory look at the history of UN reform efforts makes clear, assessing the long-term value of the report primarily in terms of whether or not it has "delivered" on institutional reform is bound to result in disappointment.²⁶ Instead, the real work of the Panel is more usefully viewed as an attempt, through analysis and the language that accompanies it, to reconcile as far as possible the "deep divergences of opinion" among member states to which the terms of reference obliquely alluded: divergences about the true priorities of the organization, about the nature of threats to international security, and about the possible contribution of the UN in meeting them. The sheer diversity of the UN's membership—a reflection of the different historical experiences, economic realities, cultural influences, forms of government, and perceptions of interest by which states define their place in the international system—does, of course, make any generalization about the outlook and attitudes of states and groups of states a risky proposition. Mindful of this fact, it is still possible, in view of the Panel's specific focus on "threats", to identify three broad constituencies whose priorities and anxieties had to be addressed.

At one end are those states, led by and clustered around the United States, who consider mass-casualty terrorism and the spread of weapons of mass destruction (WMD) as "self-evidently the main challenge to world peace".²⁷ The US in particular, though immensely powerful by any conventional measure of strength and influence, has come to feel, in Annan's own words, "uniquely vulnerable" to "new" or "emerging

²⁶ See Ed C. Luck, "Reforming the United Nations: Lessons from a History in Progress", *International Relations Studies and United Nations Occasional Papers*, no.1, 2003, The Academic Council of the United Nations System, Yale University.

²⁷ UN Secretary-General Kofi Annan, Address to General Assembly, 23 September 2003.

threats”.²⁸ So vulnerable indeed that it has formally enshrined as part of its National Security Strategy a determination to act preemptively against new threats, even though these may not be considered, in the language of the Panel, “imminent”.²⁹ The governments of Britain and Australia have broadly accepted the US reading of the challenge, though reservations have been expressed (however mildly) about aspects of the US prosecution of the war on terror.³⁰ The decision to invade Iraq in 2003—a decision which several, largely uncontested accounts by Washington insiders have since imbued with a definite air of inevitability³¹—must be understood, in large part, as deriving from this newfound sense of vulnerability.

At the other end, rejecting the United States’ narrow conception of threats to international peace and security stands the vast majority of UN member states: the developing countries. To this group—which clearly contains a range of opinions and differences of emphasis within it—US-led priorities not only displace but are also artificially separated from other issues of vital if not greater concern: poverty, infectious diseases, environmental challenges, and other sources of intra- and inter-state conflict.³² A key concern among this group of states—one that predates the Bush doctrine of preemption but has been powerfully reinforced by it—is that the twin principles of sovereign equality and non-intervention, which to them are seen as performing a vital protective function against external encroachment, are gradually being eroded. Significantly, before “9/11” many of these states had already come to view these principles as under threat from another quarter, that of the “new humanitarianism”.

A third group consists mostly, but not solely, of Western states that occupy a middle position between these poles. The Panel itself may be seen as

²⁸ Ibid.

²⁹ The National Security Strategy of the United States of America, The White House, September 2002.

³⁰ Notably, the legal regime under which suspects have been held outside the US. See Joshua Rozenberg, “Guantanamo Bay Trials Unfair, says Attorney General”, *The Daily Telegraph*, 26 June 2004.

³¹ See, in particular, Bob Woodward, *Plan of Attack*. London/New York: Simon & Schuster, 2004. See also Evgenia Peretz, David Rose, and David Wise, “The Path to War”, *Vanity Fair*, May 2005.

³² For a good illustration of the position see, “A summary of remarks by the Permanent Representative of India on informal consultations of the plenary on the Report of the High-level Panel, December 9, 2004”. Online at <http://www.un.int/india/indio4o.pdf>

tending towards their reading of the challenges ahead. On the one hand, this group shares the concerns about catastrophic terrorism, especially the implications of unchecked proliferation of WMD. On the other, they recognize the limits and dangers of too narrow a definition of threats to international security and broadly accept the case made for a wider understanding of threats and challenges. By contrast with many developing countries, however, this group not only welcomed but strongly encouraged the normative changes in attitudes towards human rights and state sovereignty that followed the Cold War. Canada, an ardent champion of the notion of “human security” and sponsor of the 2001 International Commission on Intervention and State Sovereignty—whose final report, *The Responsibility to Protect*³³, has left a noticeable imprint on the work of the High-level Panel—may be viewed as a leading example of the group. So may the Nordic countries. A further characteristic distinguishes the countries holding this middle position: while they would accept that the UN’s performance over the past 15 years has been highly uneven, they do not view it as disastrous. In their view, some achievements, however incomplete and fragmentary, need to be preserved, especially in terms of the development of norms. In the present context, a growing and not unreasonable fear among these countries is that some of the more prominent aspects and consequences of the United States’ war on terror—its promulgation of a doctrine of preemption, the creation of a “new front” in the war in Iraq, questionable legal practices, and downright abuses—are, perhaps fatally, undermining those very achievements.

To reconcile these positions, the Panel was charged with developing a “new consensus on threats” (p. 7). The discussion and treatment of threats, however, required an initial and, at one level, more critical judgment to be made as to whether the basic framework provided by the Charter and the assumptions underpinning it remained sound. It was to this fundamental issue that Kofi Annan had referred in September 2003 when he suggested

³³ *The Responsibility to Protect, Report of the International Commission on Intervention and State Sovereignty* (ICISS), December 2001. Published by the International Development Research Centre, Ottawa. Online at <http://www.idrc.ac>

that the UN might be “facing a fork in the road...[a moment] no less decisive than 1945 itself”.³⁴

FIRST PRINCIPLES AND BASIC ASSUMPTIONS: THERE IS NO FORK IN THE ROAD

In terms of first principles and basic assumptions, the Panel report firmly rejects the suggestion that the UN may be facing a fork in the road.

While new threats have emerged and older ones have resurfaced in complex, less discriminatory, and more dangerous forms, the “individual sovereign state” remains the “basic unit of the international system” and the “front-line actor” in tackling the threats and challenges identified by the Panel (pp. 7-8). While important normative shifts in international relations over the past decade have made it harder for governments and despots who mistreat their own people to hide behind the protective wall of sovereignty, the principle of sovereign equality of states and its associated rule of non-intervention still provide the bases for international order. In what was widely anticipated as one of its key “rulings” relating to the use of force, the Panel rejected the “legality of unilateral preventive action, as distinct from collectively endorsed action”, on the grounds that the “risk to global order and the norm of non-intervention on which it continues to be based is simply too great” (p. 51).

Similarly, while institutional weaknesses in the UN system abound and the Panel considers the time ripe for Security Council expansion, it does not propose radical Charter reform. Whether or not the Council is in fact expanded—the modalities of which, tellingly, the Panel itself proved unable to agree on—it remains “fully empowered under Chapter VII of the Charter ... to address the full range of security threats with which states are concerned” (p. 52). “The task”, the Panel concludes, “is not to find alternatives to the Security Council as a source of authority but to make the Council work better than it has” (p. 52). Above all, the Panel stresses

³⁴ UN Secretary-General Kofi Annan, Address to General Assembly, 23 September 2003.

that it remains “as important today as it was in 1945 to combine power with principle” and that ignoring “underlying power realities” will simply “doom recommendations ... to failure or irrelevance” (p. 10). This also involves recognizing that the UN must work alongside and complement other actors; be they regional organizations, NGOs, “civil society” actors and, not least, states themselves (p. 18).

In short, while the report employs the language of “collective security”, its basic premise is that the UN does not, and was never meant to, provide a foolproof or comprehensive system of collective security. The tension between power and principle was there at the outset; it should be treated as a creative tension and not one that can easily be overcome by a simple act of will.

To some, the reassertion of basic Charter principles and the realist tone that informs the analysis will no doubt be attributed to a lack of vision, a failure to capitalize on a golden opportunity for boldness and radical ideas. Such an interpretation would be wrong for three reasons.

First, the realism of the report makes for superior analysis of how the UN actually works and of what can and what cannot reasonably be expected of it. As such the report is far finer than numerous blue ribbon reports of the 1990s that dealt with many of the same issues. This is itself an important achievement and a prerequisite for meaningful reform. To take one example: it is just as well to recognize, in a document of this kind, that “no amount of institutional reform” of the UN’s Economic and Social Council (ECOSOC) will give that body a real “decision-making role on international economic matters” (p. 68).

Second, although the report reasserts the importance of sovereign equality and non-intervention as foundational to international order, this is everywhere matched by a call for strengthening the normative changes that have taken place since the Cold War, especially in the field of human rights. Thus, while the Panel warns against ignoring “underlying power realities”, it immediately adds that recommendations that “simply reflect

raw distributions of power and make no effort to bolster international principles are unlikely to gain the widespread adherence required to shift international behavior” (p. 10). Elsewhere, the report firmly endorses “an emerging norm that there is a collective international responsibility to protect” (p. 53). It also strongly urges the Security Council to be far more proactive in exercising its powers in defense of human rights, if necessary by coercive means; and, in one of the few references to ongoing events, it laments “the glacial speed at which our institutions have responded to massive human rights violations in Darfur” (p. 19-20). In all of this, the report treats the UN as an organic creature and the UN Charter as a living document; one that does not prevent (and has not done so in the past) the organization from adapting to changing circumstances.

Third, in terms of bridging the aforementioned divergences, the approach taken by the Panel is clearly the one most likely to create, if nothing else, a starting point for a discussion of threats and challenges. The US remains indispensable to the proper workings of the UN, and ignoring this underlying reality would have achieved little. At the same time, the war in Iraq and the manner in which the US has chosen to prosecute its war on terror required a restatement of the norm of non-intervention, without suggesting that this norm can ever provide legitimate cover for massive human rights violations within the boundaries of recognized states.

A NEW SECURITY CONSENSUS?

As the High-level Panel began its work, there was much talk of arriving at a grand bargain between the North and the South. While that kind of language has been dropped, the basic idea of reaching a “new security consensus” is at the heart of the report. The Panel identifies six “clusters of threats”, ranging from poverty and infectious diseases at one end to transnational organized crime at the other (p. 8). Terrorism and WMD are treated as clusters in their own right. In short, there is something here for everyone: a prominent place for the chief concerns of the US but also a

broad enough definition to satisfy developing countries. But does it all hang together?

The central idea that underlies the HLP's assessment of threats is that none of them can be regarded as "standing alone" (pp. 15-17). Contemporary threats to international order, so the argument runs, know no boundaries and, consequently, reliance on "self-protection" is simply not a viable option, even for the strongest and most powerful state. It follows further that any attempt to impose a clear-cut and strict hierarchy of threats is unhelpful.

The need to adopt a broad definition of threats was, of course, politically unavoidable and some of the attendant dangers—a lack of focus, in parts; the inclusion of questionable or unproven causal connections; excessive simplification—can be found in the report. The report also appears to suggest, perhaps correctly, that we live in an age where what is self-evidently a global challenge will only be treated with the seriousness and degree of urgency it demands if it has first been labeled a "security problem" or a "threat". How helpful this is in purely analytical terms is unclear. Surely, eradicating poverty and fighting disease are goals justified in terms of value; goals whose intrinsic importance exists independently of any link to security.

In terms of an overall assessment, however, these cannot be considered fatal flaws. The central contention of the report, that threats cannot be viewed in isolation and that self-protection is not only of limited value but potentially counterproductive, is demonstrated beyond reasonable doubt. Indeed, the connections are most persuasively argued in those areas that evidently matter most to the US: WMD, terrorism, and transnational organized crime.

The connections also come together in the special attention paid by the Panel to "countries under stress and countries emerging from conflict" (p. 10). To deal more effectively with these countries, the Panel proposes the creation of a Peacebuilding Commission as a subsidiary organ of the

Security Council. One of the Commission's "core" tasks will be to "identify countries which are under stress and risk sliding towards state collapse" (p. 65). Like some of the other concrete proposals in the report, this one begs some obvious and thorny questions.³⁵ By what criteria does one identify a state "sliding towards collapse"? More difficult still, one imagines, will be to persuade a state thus identified to accept the invitation to attend a meeting of the Commission. What will be the precise relationship between the Peacebuilding Commission, the Security Council, and other principal organs? How will the proposed Peacebuilding Support Office relate to the Department of Peacekeeping Operations and the Department of Political Affairs?³⁶ Even so, the rationale behind the proposal and the analysis that accompanies it are convincing and well supported: "failed states" or "states under stress" clearly pose profound challenges to the UN membership as a whole.

In arguing and establishing the connections between "clusters of threats" and other seemingly disparate issue areas, the Panel has performed an important service. It is also one that provides both a sufficient and a necessary condition for member states to treat the report seriously.

³⁵ Many of these questions have been raised and authoritatively explored in "Discussion Paper on the HLP: Recommendation to Establish a Peacebuilding Commission", prepared by the Center on International Cooperation, New York University, for a January 17, 2005 meeting hosted by the Governments of Denmark and Tanzania.

³⁶ Ibid.

Thoughts on the Report of the High-level Panel on Threats, Challenges, and Change

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The Panel report provides a comprehensive and incisive analysis of security issues facing the world of the 21st century.³⁷ It has two strong messages, both of which are valid and deserve strong support:

- The different dimensions of security are linked. The six clusters of threats highlighted by the report (p. 21) include economic and social distress, which provides the breeding ground for conflicts of various sorts, including terror and civil strife.
- A set of rules of conduct is needed in the global security domain to provide guidelines for action.

While it cannot be claimed that poverty is the sole and direct cause of violence and terror, there is little doubt that poverty, injustice, and extreme inequalities create the conditions that are exploited by proponents of violence and feed conflicts of various sorts, as well as the desire by state and non-state actors to acquire weapons of mass destruction. The fight against economic deprivation and extreme income inequalities should indeed be viewed as an integral part of the effort to build a more secure world. Political and military security issues should be discussed within a framework that includes economic and social considerations.

³⁷ *A More Secure World: Our Shared Responsibility. Report of the High-level Panel on Threats, Challenges, and Change.* New York: United Nations, A/59/565, 2 December 2004. Online at <http://www.un.org/secureworld/report2.pdf>

The second message of the report stresses that rules of conduct are an important component of global governance. The need for more developed and explicit rules ranges from the domain of health and disease prevention to the domain of human rights protection and cross-border military intervention. The guidelines proposed by the report are based on a comprehensive assessment of the various security threats and provide concrete proposals for action.

What is missing from the report is a third message that would emphasize the need for *reform of institutional architecture*. Without such reform, decisive progress will not be possible. It is clear that the Panel, large as it was and working in close consultation with governments, could not reach consensus on institutional architecture issues and notably on how to renew and reform the UN Security Council. I agree with the statement at the beginning of the report that the absence of a consensus recommendation on the Security Council should not detract from the comprehensive analysis of security threats and the many other useful proposals contained in the report. I would like to support all these suggestions. Nonetheless I do believe that renewal of the institutional architecture must be part of overall reform.

The political and economic spheres of the international “system” can only function with governance that is perceived as both effective and legitimate. There is need for leadership, initiative, less duplication, and a sense of global mission. Rules of conduct, interstate treaties, more informal agreements, global civil society networks, and the spread of more transparent information are all useful aspects of better global governance. They must be complemented, however, by an institutional setup that is able to take legitimate decisions and implement global policies. It should be understood that for a very long time there will not be and cannot be a global government resembling the governments of nation states. With respect to some problems, however, there is a need for public policy formulation and execution at the global level and therefore the need for institutional mechanisms that allow joint decision making. This international decision making must involve the world’s more-than 180

sovereign nation states. At the same time it must include weighting rules that recognize that the US and China cannot be at par with Malta, Vanuatu, or Qatar. And it must reconcile the enduring role of nation states as units of the international system with the recognition that the triumph of liberal democracy as the conceptual source of legitimacy in the 21st century means that there is some legitimacy in “numbers”, even beyond the borders of the nation-state. Consent cannot stop at the borders of the nation-state.

With these considerations in mind, my comments below focus on two institutional aspects of the Panel report: the two reform proposals for the Security Council and the recommendations for better governance in the economic domain, notably with respect to ECOSOC and the G-20.

THE SECURITY COUNCIL

Both the Panel’s proposals for the Security Council, Models A and B, are based on an analysis that recognizes the anachronistic nature of the veto power as it exists today. Both wisely avoid adding new seats with veto power to the existing “problem”. The Panel also suggests that the five permanent Council members should use their veto powers sparingly.³⁸

The report proposes the introduction of a system of indicative voting, whereby formal votes would be preceded by non-binding indicative votes, during which all members of the Security Council would be “equal” (no vetoes). The indicative voting would allow positions to emerge that, it is hoped, might shame the permanent members into not using their vetoes in the second—formal and binding—voting sessions. While I understand and sympathize with these suggestions, there is really not much point in them. If an existing member is not shamed by a situation where there is a 14 to 1 vote in favor of a resolution but the resolution is blocked by the one

³⁸ “as a whole the institution of the veto has an anachronistic character that is unsuitable for the institution in an increasingly democratic age and we would urge that its use be limited to matters where vital interests are genuinely at stake.” Panel report, p. 64.

vote of this member with veto power, I do not see why this member would be more shamed by an indicative 14 to 1 vote preceding the formal vote. Moreover, a system of votes that treats countries of very unequal size and importance as equal (except for those who have the veto and who can block everything), will continue to have very limited legitimacy and will “justify” the use of the veto by those who have it.

Adding new permanent members without veto (Model A) will not at all solve the legitimacy problems. It would lead to the strange situation where a country such as India will have a permanent seat without veto, while China, of quite comparable size by all relevant indicators, has the veto essentially by pure accident of history. The same could be said if Germany were to join the Council: can it really be treated differently from say the UK or France, more than 60 years after the end of World War II at a time when hardly anybody responsible for the crimes committed by the Nazis remains alive? And if Brazil joins, why would it be treated differently from Russia, which has a comparable population and GDP? How can such a change in the Council enhance legitimacy? The other problem with Model A is the great difficulty that the choice of the proposed six new permanent members will involve, precisely because “permanence” is acquired.

Model B avoids these problems of direct comparability and new permanent inequalities by proposing the creation of eight four-year renewable-term seats rather than permanent seats. Model B is both more flexible and more reformable from within and is preferable to Model A. I think, however, that reform should go further and that it might actually be possible to achieve greater progress.

Model B could be extended/amended in the following ways:³⁹

- The voting system should be changed to one of weighted votes where individual countries would have weights reflecting factors such as population, GDP, contributions to global public goods, and

³⁹ These ideas are elaborated in my forthcoming book, *A Better Globalization: Legitimacy, Reform and Governance*, to be published in March 2005 by the Brookings Press for the Center for Global Development.

the UN budget as well as military capability and contributions to security and peacekeeping. The weights would be regularly updated.

- There could be a mixture of large permanent members and members explicitly representing constituencies and elected by the constituencies. A constituency representative would vote for the entire constituency.
- Different types of decisions would require different thresholds of the weighted votes. Cross-border military intervention, for example, would require more votes than would the imposition of economic sanctions. The US, and the European Union acting together, would each have de facto veto power because of their weight.
- The existing five permanent members (P-5) could retain an overriding veto for certain categories of decisions for a period of, say, 15 years. It could be agreed ahead of time that in 2020 the veto power of any individual country would be further limited: for example, that it could not be exercised without a two-thirds backing by national parliaments and that it would only apply to actions involving the use of military force.

With such an extended Model B, the UN Security Council would achieve a much greater degree of legitimacy and effectiveness. It could generate much greater hope in a global governance system that the people of the world would “own” and support and which therefore could provide much greater security for all.

While Security Council reform has been close to impossible in the past because of the debilitating effect of the Cold War, a new opportunity does exist today, and one should not be totally discouraged by the impossibilities of the past. It is also important for academics to set visions even if it will take time for policymakers to break out of the immediate constraints of their everyday experience.

GOVERNANCE IN THE ECONOMIC DOMAIN

While the Panel recognizes the importance of economic issues in themselves and their interrelatedness with security concerns, the recommendations regarding economic governance are confined to exhortations to accord greater importance to ECOSOC and to the G-20. Thus they do not attempt to really upgrade global economic governance. Yet there is a pressing need in the economic, social, and environmental domain for strategic leadership, legitimacy, and greater efficiency. Much greater coordination is needed among the various agencies. In the eyes of the great majority of humanity, an economic governance architecture driven purely by the G-7 is not legitimate. In the 21st century, something that is not legitimate cannot be effective.

No doubt the G-20 is a much better framework for governance than the G-7. Nonetheless a system where 7, 20, or 30 countries get together, excluding others in rather arbitrary fashion, will always lack legitimacy. That is why the alternative of creating a “twin” of the UN Security Council in the form of a UN Economic and Social Security Council (where economic includes environmental) should be given serious consideration. This new Economic and Security Council could operate with the same weighted voting system proposed for the Security Council above (though the weights could be different) and would assume a strategic leadership and coordination function in the global economic sphere. It would not in any way attempt to manage any of the existing agencies, but it would be a strategic forum, propose an allocation of tasks, drive global resource mobilization for development and global public goods, and evaluate the performance of various agencies in an impartial manner. The Economic and Security Council should be a very high-level body that periodically meets also at the heads of government level and that is recognized as the apex of overall economic and social governance in the international system. It would combine the current ECOSOC and the G-20 in a new manner and could take the G-20 as a starting point. It would also meet periodically in joint session with the Security Council and would form subcommittees with the Security Council on cross-cutting issues.

Interrelatedness of security and economic issues in an interdependent world, need for transparency and codes of conduct, and need for an institutional architecture that reflects the realities of the 21st century and that satisfies the longing for legitimacy: these are the key messages that the international community should receive and act upon if much greater security and a much better globalization is to be achieved.

Comments on the Report of the High-level Panel on Threats, Challenges, and Change

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The Report of the UN Secretary-General's High-level Panel on Threats, Challenges, and Change makes a useful contribution to the ongoing debate on UN reforms.⁴⁰ It contains several interesting ideas and concrete suggestions that deserve to be discussed seriously with a view to arriving at a consensus. This paper reviews the positive and negative features of the Panel report and concludes by offering an alternative set of proposals.

POSITIVE FEATURES

The Panel has done a commendable job in identifying six main categories of threats to international peace and security and bringing out their ramifications. In particular, it makes very useful suggestions on how to meet the threat of terrorism, emphasizing a broad-based approach that includes both coercive measures and measures to address root causes. The agreement reached among the Panel members on the definition of terrorism marks an important step forward, as it can facilitate the adoption by the General Assembly of a comprehensive convention on terrorism, which is sorely needed to combat the menace.

The Panel has rightly questioned the legality of unilateral preventive action under Article 51, and has instead commended collective action under the UN Charter. The Panel's observations that the Security Council has the authority to "address the full range of security threats with which

⁴⁰ *A More Secure World: Our Shared Responsibility. Report of the High-level Panel on Threats, Challenges, and Change.* New York: United Nations, 2004. Online at <http://www.un.org/secureworld/report2.pdf>

States are concerned”, are most helpful, and the report makes a number of valuable suggestions for fully utilizing the Council’s powers. There can be no argument with the Panel that the failure to invest adequately in prevention can lead to situations involving many times higher costs; and that therefore all necessary resources should be provided to implement enforcement actions mandated by the Security Council.

The Panel is also perfectly justified in observing that the Security Council must be enlarged. The two alternative models of expansion that it offers certainly take the debate on the subject a stage further, and have the potential to facilitate action on an extremely important issue before the United Nations.

The Panel’s suggestions for strengthening the UN Secretariat on the political and security side are also welcome, as is its suggestion for a new consensus on collective security.

FLAWED CONCEPTUAL UNDERPINNING

Notwithstanding these positive features, several of the Panel’s recommendations do not do justice to its own prognosis. Besides, the conceptual underpinnings of most of the Panel’s recommendations are seriously flawed and have far-reaching adverse implications for the developing countries.

Taken as a whole, the recommendations would disturb the delicate balance among the permanent organs of the United Nations and have the effect of tilting the balance heavily towards the Security Council. The Panel views the UN exclusively as a security system at the cost of the other objectives enshrined in the UN Charter. A major effect of its recommendations would be to transform the UN into an organization primarily engaged in identifying developing countries that threaten international peace and security and taking action to preempt, forestall, and prevent those threats—including by use of force—while neglecting the systemic and structural problems besetting the world order. The

recommendations would also have the effect of making the international order less and less participatory and conferring much greater power on those member states that are already powerful.

The report regards poverty as a problem of security and not of development. It even looks at development itself as a means of “helping States prevent or reverse the erosion of State capacity”, and as a “part of a long-term strategy for preventing civil war, and for addressing the environments in which both terrorism and organized crime flourish” (p. 23). This analysis betrays a complete lack of understanding of the purposes of development, which are to promote and enhance welfare, not only to “protect” it; to ensure human dignity; to enable individuals to exercise basic freedoms; and to bring prosperity and strength to a country so that it can occupy its rightful position in the comity of nations.

Poverty is a problem of lack of development, and not itself a threat to security. Nations have lived with poverty for generations without posing any threat to the security of other nations. Yet the report regards poverty and disease as relevant because they “increase the likelihood of State collapse and facilitate the spread of organized crime” (p. 16) and thus pose a threat to security, rather than because they constitute an affront to human dignity and may deny the most important fundamental right, the right to life.

The report asserts: “The preoccupation of the United Nations founders was with State Security” (p. 9). This is not correct. Collective security is only one component of the international order that the UN Charter sought to establish: an equally important component of this order is the promotion of economic and social progress of member states. In the Preamble of the Charter, the objective “to promote social progress and better standards of life in larger freedom” is put on the same footing as the objective “to save succeeding generations from the scourge of war”. The former objective is reiterated in several other provisions of the Charter, particularly Articles 1(3), 13, and 55.

The High-level Panel report broadens the definition of threat to include “economic and social threats, including poverty, infectious diseases, and environmental degradation”. Since the authority to counter threats to security vests with the Security Council, this broadening of the definition of threats implicitly expands the role of the Security Council into areas where it has no mandate under the Charter, and marginalizes the Economic and Social Council as well as the General Assembly. This expansion of the role of the Security Council at the expense of the Economic and Social Council is also implicit in the other recommendations made by the Panel.

The Panel sees the main advantage of the General Assembly and the Economic and Social Council as their ability to discuss development jointly with peace and security at the global level. It makes a series of recommendations to gear the Economic and Social Council to deal with security issues; these include the creation of a Committee, under the ECOSOC, on Social and Economic Aspects of Security Threats.

The effect of the Panel’s recommendations will be not only to marginalize the General Assembly and the Economic and Social Council in the U.N. system but also the overwhelming majority of the members of the United Nations which are able to play a role only in the General Assembly and its relatively more representative bodies like the UNCTAD, UNIDO, UNEP, and other bodies dealing with development and environment issues. Their sending a couple of more members to the Security Council is not going to be a substitute for being a part of the discussions in the more democratic setting of these bodies, on issues of the global monetary, financial, and trading systems of which they constitute an integral part and in which their vital interests are involved.

PANEL RECOMMENDATIONS ON ECONOMIC AND SOCIAL ASPECTS OF SECURITY

The Panel has steered clear of the systemic problems that beset the UN in the economic and social field. It does not even mention the main victims of these problems—UN organizations like UNCTAD, UNIDO, UNEP, the regional economic commissions, and the specialized agencies apart from the International Monetary Fund, World Bank, and World Health Organization.

Failure to recommend restoring economic functions to the UN

The Panel is against restoring to the UN its Charter functions in the economic field, which have been lost to the World Bank, IMF, and the World Trade Organization. The Panel clearly favors the maintenance of the status quo: “decision-making on international economic matters, particularly in the areas of finance and trade, has long left the United Nations and no amount of institutional reform will bring it back” (p. 86). It also says that “historical developments in the governance of the multilateral system have limited the capacity of that body to influence international policies in trade, finance, and investment” (p. 88).

This is not an accurate description of what has happened. The erosion of UN functions in the economic field started systematically only in the early 1980s. It was brought about by a conscious and well planned policy that included threat and actual non-payment of assessed contributions to the UN, the imposition of a zero nominal growth rate for the budgets of the UN organizations over a period of 20-25 years, and almost complete voluntarization of the funding of the activities of UN organizations. This process was pursued specifically to gain complete control over the staffing pattern, administration, programs, and activities of the UN system and to ensure that its activities reflected the priorities and policies laid down by major powers. That objective had been more or less achieved by the start

of the 1990s, but the process is still continuing in order to take it to its logical conclusion and to ensure that it is never reversed.

The report states that “it would not...be realistic to aim for the Economic and Social Council to become the center of the world’s decision-making on matters of trade and finance” (p. 86). It recommends that the Economic and Social Council should build on the UN’s comparative advantage as perceived by the Panel. But comparative advantages are not lost or acquired by any historical or natural process; they are generally built or allowed to decay by deliberate effort or neglect. The fact is that over the last three decades or so the major economic powers have pursued a deliberate policy to deny funds to the specialized agencies and other UN bodies in an attempt to dismantle their core competence and, at the same time, to place at the disposal of the Bretton Woods institutions all the resources needed to build such capacities in these institutions. This can be easily reversed by the same means if there is a political will to do so.

Millennium Development Goals

The Panel attaches great importance to the Economic and Social Council and other organizations of the UN system, concentrating on the discussion and exchange of experience in realizing the Millennium Development Goals (MDGs). It suggests the rebuilding of the agenda of the ECOSOC “around the major themes contained in the Millennium Declaration” (p.87). Nobody can question the importance of the MDGs. But the entire agenda of the ECOSOC cannot be predicated on them.

The MDGs relate mainly to the policies that developing countries themselves must adopt; the role of developed countries in realizing these goals has come in only incidentally and has since figured peripherally in the discussions on the MDGs. Besides, the MDGs have little operational significance, because in the Declaration, the resources required for achieving them are not clearly spelt out, and there is no commitment to make the resources available.

What is worse is that almost an exclusive concentration of the economic bodies of the UN on the MDGs seems to have set a seal of approval on the UN's abdication of its main Charter functions in the economic field: that is, "promotion of economic and social advancement of all peoples", the UN "being a centre for harmonizing the action of nations" in the economic and social field, and "achieving international cooperation in solving international problems of an economic, social, cultural, or humanitarian character".

The issue of inter-linkages

It is gratifying that the Panel recognizes that "there still remains a need for a body that brings together key developed and developing countries to address the critical inter-linkages between trade, finance, the environment, the handling of pandemic diseases and economic and social development" (p. 88). It rightly suggests that such a body must operate at the level of national leaders. However, since it has already ruled out such a role for the Economic and Social Council, it recommends that the present G-20 group of finance ministers, an offshoot of the G-7, should be transformed into a leaders' group.

The G-20 is a creature of the G-7. It is not only outside the UN and even outside the World Bank and IMF in the strict formal sense, but completely dominated by the G-7. It would be used to legitimize G-7 initiatives to the wider world, by securing a broader consensus for G-7 generated ideas. The 11 representatives of the developing countries that would join the G-20 at the summit level will be, to borrow a historic phrase used by Jawaharlal Nehru in 1947, "the petitioners" in the court of the G-7. The UN Charter vests the function of the coordination and harmonization of the macroeconomic policies of the member states squarely with the United Nations, and not with an elite group outside the UN. If there is indeed a need for a summit-level gathering to discuss the interrelationship between trade, finance, and social development, then the most appropriate forum for this would be the Economic and Social Council.

UN and specialized agencies

The Panel also wants the UN to get reconciled to the present situation of the specialized agencies, particularly the World Bank and the IMF, functioning independently, outside the UN's jurisdiction of coordination of their policies and activities. In justifying its suggestion, the Panel advances the specious argument that "the Charter allowed for the creation of specialized agencies independent of the principal United Nations organs, reducing the role of the Economic and Social Council to one of coordination" (p. 86).

The relationship between the United Nations and the specialized agencies cannot be seen only in the context in which the specialized agencies have been created. It has to be seen in the context of the totality of the provisions made in the Charter on the subject, particularly under Articles 57, 58, 59, 62, and 64.

Cursory treatment of development issues

Since the Panel regards the UN system as primarily a security system, it has dealt with the work of the UN in the development field in a cursory manner, discussing only the issues of "poverty, infectious diseases, and environmental degradation." Half the space devoted to these issues brings out the gravity of the threats posed by them and the remaining half suggests preventive measures to deal with them. There is no new suggestion except that the Security Council should convene a special second session on the threat posed by HIV/AIDS to international peace and security.

RECOMMENDATIONS ON THE POLITICAL AND SECURITY SIDE

As on the economic and social side, the basic thrust of the Report on the political and security side is to preserve and further consolidate the *status quo* in the world's power structure, dominated by major powers.

The conceptual underpinning of the Panel recommendations is as flawed on the political and security side as it is on the economic and social side. The report calls for a consensus on a new concept of security that would: include measures for meeting threats to international peace and security alleged to emanate from poverty, infectious diseases, and environmental degradation; legalize and institutionalize interventions into the domestic affairs of member states on humanitarian grounds; and take care of threats inherent in the malfunctioning of the so-called failed states. The redefined notion of collective security, along with the new instrumentalities proposed to be created in the UN, has the potential to make any country of the South a target for intervention by countries whose military and economic power have global reach.

This preoccupation with security will come at the cost of the continuing neglect of the systemic and structural problems that beset the world economy, and particularly the developing countries. These problems include external indebtedness, agricultural protectionism, various forms of neo-protectionism, the vagaries of international financial markets, monopolistic practices of transnational corporations, preemption of the bio-resources and other vital natural resources of the developing countries, and the inequities and imbalances in the international financial, monetary, and trading systems. These have been and will continue to be the real threats to international peace and security. The United Nations system was designed, among others, to meet these threats. In the proposed new system of collective security, there will be a decisive shift away from these fundamental concerns.

The political and security section of the High-level Panel report contains several specific and far-reaching recommendations that will strengthen the Security Council at the cost of other permanent organs of the United Nations. There are recommendations for creating new bodies under the Security Council with wide-ranging powers of surveillance, monitoring, and initiation of punitive action. There are also recommendations for creating new capability in the UN system to support these bodies. Then

there is the recommendation to create the post of a Deputy Secretary-General responsible for peace and security.

INTERVENTION ON HUMANITARIAN GROUNDS

The report endorses what it calls “the emerging norm that there is a collective international responsibility to protect, exercisable by the Security Council authorizing military intervention as a last resort, in the event of genocide and other large-scale killing, ethnic cleansing or serious violation of international humanitarian law which sovereign governments have proved powerless or unwilling to prevent” (p. 66).

There is no doubt that genocide, ethnic cleansing, and other large-scale violations of human rights occurring in any part of the world should be the concern of the entire world community on the grounds of human solidarity and shared human values. It will therefore be legitimate for the Security Council to declare such situations as threats to international peace and security and to authorize intervention. This will be a sound basis for settling the still-contested issue of intervention on humanitarian grounds.

However, it would be wrong to extend this principle to all large-scale violations of international humanitarian laws. This is because there can be a whole spectrum of such violations, the vast majority of which would not constitute threats to international peace and security.

The Peacebuilding Commission

The Panel recommends that the Security Council should establish under it a Peacebuilding Commission, with the goal of helping to avoid state collapse or a slide into war and of assisting member states in their transition from war to peace. The Panel suggests that the Commission should be able to identify countries that are under stress and risk of sliding towards state collapse; to organize proactive assistance for preventing

such an eventuality; and to assist in planning for transition from conflict to post-conflict.

This recommendation will have the effect of institutionalizing continuing interventions in the domestic affairs of the developing-country members of the UN. The mandate of identifying countries that are under stress and risk sliding towards state collapse is a very wide one, under which any developing country member state can be kept under surveillance. The identification of such states will be highly subjective and political factors, particularly the strategic and other interests of major powers, would play a decisive role. This recommendation amounts to creating a new trusteeship system in the UN—not to assist the emergence of colonial countries into independence, as was the mandate of the Trusteeship Council, but as a means to bring independent sovereign states from the developing world under a new form of colonization.

Besides, even if it is assumed that the Commission would be able to identify states that face such risks, there is no assurance that it could prevent them from sliding into collapse. Most often such difficulties stem from deficiencies in development, for which there is no short-term remedy. One of the most important constraints is paucity of resources. But here the Commission can at best make an appeal to the IMF, World Bank, and to aid-donor countries. Experience shows that adequate resources have never been forthcoming from these sources and that whatever resources come are subject to onerous and multifarious conditionality.

Use of force under Article 51

Although the Panel has excluded preventive use of force under Article 51, it has recommended the use of force in self defense by member states, in the event of an “imminent” threat to national security. It seeks to justify this extension of the scope of action under Article 51 on the grounds that such action is permitted under customary international law. This justification is not tenable, because treaty law must prevail over customary international law, and the treaty law under Article 51 of the UN Charter permits the use

of force in self defense only “if an armed attack occurs”. Invoking a so-called customary international law to expand the scope of Article 51 will provide flexibility to major powers to attack other member nations with impunity, under the pretext of self defense. This extension of the scope of Article 51 will be the thin end of the wedge to permitting preventive attacks in self defense.

Endorsement of status quo on nuclear weapons

The Panel by and large affixes its seal of approval to the status quo in the nuclear field. Its concern seems to be less with nuclear disarmament than with non-proliferation. On disarmament, it merely suggests that the nuclear weapons states “must honor their commitment under Article VI of the Treaty on the Non-Proliferation of Nuclear Weapons to move towards disarmament”. It makes no recommendation that these powers should subscribe to the objective of a world free of nuclear weapons, that they should agree to a deadline for achieving this objective, and that they should immediately resume negotiations for this purpose. By contrast, the Panel makes a multi-pronged effort to seek the nuclear disarmament of the non-NPT countries that have acquired nuclear weapons recently.

These choices by the Panel seem to be based on an assumption that non-proliferation has become a norm in the world today. But that assumption obviously has no validity in international law. If the international community has adopted any norm, it is for achieving nuclear disarmament, not for dividing the world into nuclear haves and nuclear have-nots. A discriminatory treaty can never set a norm.

Enlargement of Security Council

One of the two models recommended for the enlargement of the Security Council envisages the addition of six permanent members and three non-permanent members to the Council. The Panel recommends that the new permanent members should not be conferred the power of veto, and gives plausible arguments against the anachronistic institution of veto right.

But it compromises on its own prescription when it recommends, on pragmatic grounds, that the veto right of the existing five permanent members (P-5) should not be touched. A large number of other high-level panels on UN reforms set up during the first half of the 1990s have suggested that the veto of the P-5 should be phased out.

On the issue of Security Council enlargement, by far the most objectionable recommendation of the Panel is that the Council should “increase the involvement in decision-making of those who contribute most to the United Nations, financially, militarily and diplomatically” (p.80). In more specific terms, the Panel recommends that the General Assembly should “elect Security Council members by giving preference for permanent or longer-term seats to those States that are among the top three financial contributors in their relevant regional area, or the top three troop contributors” (p. 82).

Financial contributions to the UN’s regular budget are made on the basis of a set of criteria relating to the capacity to pay. These contributions, which constitute a treaty obligation, are based on the principle of equity. The assumption is that no country pays more and no country pays less; all countries pay equally based on their capacity to pay. Therefore, the question of rewarding those who pay more in absolute terms does not arise. As regards voluntary contributions, all that need be said in the present context is that they benefit both those who give and those who receive.

Enhancement of the UN’s own capabilities

Instead of recommending the creation of the necessary capacity within the UN, such as a UN rapid deployment force for fully implementing its mandate for peace enforcement, the Panel suggests that the UN should outsource its troops and other resources for peacekeeping, from capable member states and regional organizations—which, in effect, means from the major powers and NATO.

The Panel in general seems to be against the United Nations having its own resources and capability in order to discharge its functions effectively. For example, it has not come out explicitly in favor of the UN having access to predictable and recurring sources of income of its own. As regards the UN's role in the realm of ideas and global policy formulation, the Panel suggests that the UN "commission" studies, apparently from outside consultants and institutions.

Fuller use of regional arrangements

Some of the Panel recommendations regarding a fuller and more productive use of Chapter VIII of the Charter on regional arrangements have the effect of undermining the UN's role in peacemaking and peacekeeping. These include ex-post-facto authorization of operations undertaken by regional organizations and approval of NATO's peacekeeping operations in its mandated area. Besides, the recommendation that the UN should sign agreements with regional organizations is not practicable in the absence of the recognition or creation of regional organizations consistent with the principles and purposes of the Charter and willing and capable of undertaking peacekeeping operations.

ALTERNATIVE APPROACH

Multilateralism is not an option but a necessity, indeed an inevitability, for the international community. Any alternative approach to addressing the crisis besetting multilateralism under the United Nations has to be based on a correct understanding of the role and evolution of multilateralism in the international order. Moreover, proposals for strengthening the multilateral system should be based on a set of principles and shared objectives and not on expediency or practicability, in terms of their acceptability to a particular member state or a group of states.

The UN represents the highest level of excellence in the evolution of multilateralism. Multilateralism under the UN is based on the twin pillars of a body of the most up-to-date international laws and the framework of commonly-shared human values. The UN has been conceived and structured as the central overarching authority of the multilateral system. Except under Article 51, the Charter envisages no alternative source of authority to determine threats to international peace and security and for deciding measures to be taken to circumvent such threats. The UN also represents the authoritative centerpiece of the international system in the economic, social, cultural, and human rights fields.

In spite of its distinguished and unique achievements, the UN has not lived up to the expectations of its founders and the hopes and aspirations of the international community. This is largely due to the failure of the member states to live up to the obligations assumed by them under the Charter. Beginning from the late 1970s, a deliberate, well-planned, and concerted campaign was launched to enfeeble the multilateral system. As a result, the UN has lost most of its Charter functions. As noted above, its agenda in the economic field has been changed beyond recognition. The nature of its discourse has been drastically altered and its core competence and operational capabilities have been substantially whittled down.

Any plan to resurrect multilateralism under the UN should be based on the following principles:

- Adherence to international laws and commonly-shared human values;
- Full recognition and restoration of the position of the UN as the centerpiece of the multilateral system;
- Democratization of the UN structure and its functioning;
- Enhancement of UN capabilities.

Based on the above principles a whole array of specific measures can be suggested. For want of space, I highlight only some of the important measures that must be taken:

1. Bring to a speedy conclusion the process of expanding the membership of the Security Council.
2. Enhance the UN's capacity to mount speedily and effectively peacemaking and peace-keeping operations under Chapter VI and VII of the Charter. For this purpose, create a rapid deployment force of the United Nations.
3. Revive the UN's disarmament agenda and, in this connection, accord the highest priority to eliminating nuclear and other weapons of mass destruction.
4. Restore to the UN its Charter functions in the economic field. Moreover, the UN must be concerned with the emerging international financial architecture. The Economic and Social Council should be the forum for discussing money, finance, trade, and development in their interrelationship and coordinating the global macroeconomic policies of member states.
5. Expand the mandates of the UN organizations and enhance their capacities, to enable them to assist the international community to cope with the challenges of globalization and other recent changes.
6. End the prolonged financial squeeze on the UN organizations, in the form of deliberate non-payment of assessed contributions and the imposition of a zero nominal rate of growth in their budgets.
7. Reverse the process of the voluntarization of the funding of UN activities.
8. Provide the UN access to new and predictably recurring sources of financing through a system of global taxation.
9. Initiate negotiations with member states in order to arrive at the "special agreement" envisaged under Article 43 of the Charter, under which member states are expected to make armed forces, assistance, and facilities available to the Security Council for the purposes stated in Article 42.

The European Union in the United Nations and the Issue of UN Reform

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The member states of the European Union endeavor to coordinate and harmonize their foreign and security policies through the instrument of the Common Foreign and Security Policy (CFSP).⁴¹ CFSP continues the European political cooperation that was initiated by the then-six member states of the European Community in 1970 and first codified in the Single European Act of 1986. In 1992, the cooperation in matters of foreign policy was extended by incorporating issues of security policy, and the new CFSP was included in the Treaty on European Union (TEU, the Maastricht Treaty). The respective provisions were amended by the Treaty of Amsterdam (1997) and the Treaty of Nice (2001).

According to Article 11(1) of the TEU, “the Union shall define and implement a common foreign and security policy covering all areas of foreign and security policies.” Among the objectives of the CFSP, the following are mentioned first: “to safeguard the common values, fundamental interests, independence and integrity of the Union *in conformity with the principles of the United Nations Charter*” (emphasis added). The UN Charter is explicitly referred to once more in the same article when it proclaims, as further objectives of the CFSP, “to preserve peace and strengthen international security, *in accordance with the principles of the United Nations Charter*, as well as the principles of the Helsinki Final Act and the

⁴¹ See Arnold, “European Union, Common Foreign and Security Policy at the UN”, in H. Volger (ed.), *A Concise Encyclopedia of the United Nations* (2002), p. 129 ff. See further I. Winkelmann, “Europäische und mitgliedstaatliche Interessenvertretung in den Vereinten Nationen”, 60 *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* (2000) 413, and C. Tomuschat, “Die Europäische Union als ein Akteur in den internationalen Beziehungen”, in Frowein et al. (eds.), *Verhandeln für den Frieden—Negotiating for Peace: Liber Amicorum Tono Eitel* (2003), p. 799 ff.

objectives of the Paris Charter, including those on external borders” (emphasis added). The other stated objectives of the CFSP (“to promote international cooperation,” “to develop and consolidate ... respect for human rights and fundamental freedoms”) also correspond to those of the United Nations.

THE COMMON FOREIGN AND SECURITY POLICY IN THE UN

Article 19 of the Treaty on European Union deals with the Common Foreign and Security Policy in international organizations, including the UN, in the following terms:

1. Member States shall coordinate their action in international organisations and at international conferences. They shall uphold the common positions in such forums.

In international organisations and at international conferences where not all the Member States participate, those which do take part shall uphold the common positions.

2. Without prejudice to paragraph 1 and Article 14(3),^[42] Member States represented in international organisations or international conferences where not all the Member States participate shall keep the latter informed of any matter of common interest.

Member States which are also members of the United Nations Security Council will concert and keep the other Member States fully informed. Member States which are permanent members of the Security Council will, in the execution of their functions, ensure the defence of the positions and the interests of the Union, without prejudice to their responsibilities under the provisions of the United Nations Charter.

⁴² This provision says that the so-called joint actions adopted by the EU Council shall be binding on the member states.

In the UN, the European Common Foreign and Security Policy mainly finds expression in three different fora: the General Assembly, the Security Council, and the specialized agencies. Here, I shall only deal with the first two.

In the General Assembly, joint declarations of the EU member states, delivered by the current EU Presidency,⁴³ have become common. In the second half of 2001, Belgium, for instance, made 97 declarations on behalf of the then-15 EU member states.⁴⁴ Often, the states of Central and Eastern Europe and the EFTA member states Iceland, Liechtenstein, and Norway formally aligned themselves with these declarations.⁴⁵ Since the enlargement of the EU in 2004, the Presidency thus usually speaks for almost 30 UN member states, which gives the EU a strong influence on the deliberations of the General Assembly. However, this EU coordination has been largely reactive in the sense that common positions have rarely been developed with regard to initiatives taken by other states and groups of states; only rarely has the EU devised its own UN-related initiatives in the CFSP procedures.⁴⁶ The difficult and time-consuming proceedings through

⁴³ See Art. 18(1) of the Treaty on European Union: “The Presidency shall represent the Union in matters coming within the common foreign and security policy.” In addition, there functions in New York since 1974 a Delegation of the European Commission to the UN. On 11 Oct. 1974, the UN General Assembly granted observer status to the European Economic Community (subsequently changed to European Community). The official description of the Delegation’s work says: “The general role of the Delegation in New York is to reinforce the coordination of common EU policy and approaches in the UN, including helping draft EU statements and the adoption of EU positions on draft resolutions and other texts. All these positions are generally established through EU coordination meetings. ... While in most cases the EU is represented by the EU Presidency in UN bodies in New York, the Commission acts as negotiator in a number of areas of Community competence (e.g. trade, fisheries, agriculture, and aspects of development and environmental policy). An important innovation in EU coordination in 2001 was the establishment of regular weekly meetings devoted to consideration of Security Council matters.” See Description of Delegation’s Work in New York (19 Sep. 2002), online at <http://www.europa-eu-un.org/articles/>

⁴⁴ See Sucharipa, “Die gemeinsame Außen- und Sicherheitspolitik der Europäischen Union im Rahmen der Vereinten Nationen”, in Frowein et al. (eds.), *Verhandeln für den Frieden—Negotiating for Peace: Liber Amicorum Tono Eitel* (2003), pp. 773 - 781.

⁴⁵ The standard formula developed for that alignment was: “Mr. Chairman, I have the honor to speak on behalf of the European Union. The countries of Central and Eastern Europe associated with the European Union—Bulgaria, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia, and Slovenia, and the Associated Countries—Cyprus, Malta, and Turkey, as well as the EFTA Countries of the European Economic Area—Iceland and Liechtenstein, align themselves with this statement.”

which the EU states endeavor to coordinate and harmonize their UN policies in Brussels and New York entail a moment of inflexibility—once a common position has been adopted it can hardly be changed in the course of later negotiations with other UN member states, especially the other members of the Group of Western European and Other States (WEOG).⁴⁷

Certain characteristics of the positions adopted by the EU states contrast with the UN policy of the United States:⁴⁸ EU states are more willing to accept certain restrictions of their sovereignty (human rights, death penalty, International Criminal Court) and they insist more strongly on peaceful forms of settling international disputes. The European approach is more legalistic than the American, placing trust in the importance and efficiency of international law. In general, the EU has been more skilful in negotiations with the G-77, for whose wishes and concerns it has often had more sympathy than the US. In as far as its members can agree in questions of the Middle East conflict, the EU generally takes a view more critical of Israel and is more supportive of the Palestinians than the US. As regards the budget and financing of the UN, the EU seeks to maintain the functioning of the UN and its Secretariat, and opposes budget cuts that it regards as too drastic.

VOTING IN THE UN GENERAL ASSEMBLY

The voting of the EU member states in the General Assembly has become largely unanimous. In the years 1995 to 2001, the degree of cohesion with

⁴⁶ See Sucharipa (note 44 above), p. 777. See also EC Commission, *The European Union and the United Nations: The Choice of Multilateralism*. Communication from the Commission to the Council and the European Parliament, 10 September 2003, EC Doc. COM (2003) 526 final, p. 4: “[T]oo often, the EU is still content to play a reactive role. Taking a more proactive stance would involve more extensive dialogue and preparatory work with other countries and groups.” By way of example, see the “EU Priorities for the 58th General Assembly” of 1 July 2003, online at <http://www.europa-eu-un.org/>

⁴⁷ See also *The European Union and the United Nations*, *ibid.*, p. 21: “The Presidency (or other EU representatives) should be given greater flexibility to promote EU positions effectively in UN forums, on the basis of agreed mandates or guidelines, rather than on the basis of detailed EU statements. ... [This] would help the EU to become a more active and operational participant in UN discussions.” For WEOG, see below, text accompanying note 60.

⁴⁸ See Sucharipa (note 44 above), p. 787.

regard to resolutions put to a vote fluctuated between 70 and 85 percent.⁴⁹ There are, however, crucial areas of disagreement: the Middle East Conflict, in particular the questions of Palestine and Israeli human rights violations, nuclear weapons and disarmament (with mainly the two nuclear powers UK and France disagreeing with the other EU states), and decolonization.⁵⁰ In addition, EU members could not reach agreement on the issue of Security Council reform.⁵¹ In the EU of 15, the strongest voting cohesion was achieved by the Benelux countries, Germany, Denmark, Portugal, Finland, and Greece, immediately followed by Austria, Sweden, Spain, and Italy.⁵²

The European Commission recently described the negative effects of this situation as follows: “Votes in which the EU is unable to agree on a common line continue to occur, mainly on issues in the area of CFSP. While in the past the practical implications of such split votes have generally been marginal, their impact on the EU’s credibility is disproportionate—particularly in cases where there are established CFSP Common Positions on the issues in question.”⁵³

THE SECURITY COUNCIL

While EU cooperation thus works well in matters of the General Assembly, the same cannot be said in matters of the Security Council. Respective efforts suffered a serious setback in the Iraq crisis of 2002-03 when the EU states represented on the Council positioned themselves in antagonistic groups (the UK and Spain, who supported the US-led war, on the one side, and France and Germany, who opposed that war, on the other). A report of the German Government attributes the more limited degree of coordination and harmonization of EU member states’ policies in the

⁴⁹ See *ibid.*, p. 782 and the table on p. 796 (EU cohesion on record votes, 1977-2001, excluding consensus resolutions). See also G. Kostakos and D. Bourantonis, “Testing CFSP at the UN: EU Voting at the General Assembly 1990-1997”, 31 *Peace and Security* (1999): 19.

⁵⁰ See Sucharipa (note 44 above), pp. 783 and 797 (table).

⁵¹ See below, text accompanying note 83.

⁵² See Sucharipa (note 44 above), p. 784.

⁵³ See *The European Union and the United Nations* (note 46 above), p. 4.

Security Council to “the specific role of the Council in the UN system.”⁵⁴ This is a fine way of pointing to the fact that unlike the General Assembly the Council is entitled to make binding decisions, in particular under Chapter VII of the UN Charter. In other words, what the Council does really matters, whereas agreement in the Assembly is of relatively little political, and almost no legal, consequence.

Structurally, an important difference between the cooperation in the General Assembly and the lack of it in the Security Council lies in the fact that all EU members are members of the Assembly, and are so on the basis of equality. In contrast, EU membership in the Security Council is characterized by a fundamental difference in status between the two permanent members—UK and France—and the other (usually two) non-permanent EU members, which are elected only for two-year terms, are ineligible for immediate re-election (Art. 23(2) of the UN Charter), and lack the extraordinary power given to the permanent five members by the right of veto (Art. 27(3)). The UK and France continue to perceive their positions as permanent members as “national”, in the sense that promotion of their national interests takes priority over action as agents for Europe. Article 19(2) of the Treaty on European Union acknowledges this with the proviso “without prejudice to their responsibilities under the provisions of the United Nations Charter.”⁵⁵

Over the last few years, the EU Presidency has made declarations in the Security Council on behalf of the EU member states, and occasionally the EU High Representative for the Common Foreign and Security Policy, Mr. Javier Solana, has spoken before the Council, but such appearances are largely ceremonial and cannot be regarded as active forms of participation. It is also important to note that in the so-called informal consultations of the Security Council, in which the decisive part of the Council’s work is done, the EU as such does not appear at all.

⁵⁴ See *Report of the Federal Government about the Cooperation between Germany and the United Nations in 2001*, p. 6, quoted in Sucharipa (note 44 above), p. 788 n. 22.

⁵⁵ See the second paragraph of this paper.

The European Commission cautiously addressed the shortcomings in the implementation of Article 19(2) of the Treaty on European Union when it suggested that “EU Member States in the Security Council, and notably the Union’s two permanent members, should explore more systematic ways of fulfilling their commitments ... Where there is a common EU position on an issue under discussion, this could involve the permanent members ensuring that one of them (in turns) explicitly presents that position.”⁵⁶ A franker appraisal was recently made by an academic observer: “The status of France and the UK in the Security Council presents a greater challenge to European foreign and defense policy construction than do their occasional differences of substantive view, however sharp. When they cohere on Council business, as they often do on African issues, they are hard to oppose, even by the United States. When they oppose each other strongly (and when other EU members of the Council do likewise, as on Iraq in March 2003), the results are usually dreadful for the Council and for EU credibility.”⁵⁷

THE FUTURE PLACE AND ROLE OF EUROPE IN THE UNITED NATIONS

With the accession of Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, and Slovenia to the European Union in May 2004, Europe is almost united in the United Nations, for the first time in its history. A few European states still do not belong to the EU, but they are either on the road to membership (Bulgaria, Romania, Croatia, Turkey) or tied to the EU in the framework of the European Economic Area (Iceland, Liechtenstein and Norway) or by bilateral treaties (Switzerland).⁵⁸ The great East-West divide has been overcome.

⁵⁶ See *The European Union and the United Nations* (note 46 above), p.18.

⁵⁷ See D. M. Malone, “Conclusion”, in D. M. Malone (ed.), *The UN Security Council: From the Cold War to the 21st Century* (2004), p. 636.

⁵⁸ There remains, however, the question of the possible future EU membership of Serbia and Montenegro (including or excluding Kosovo) and Albania.

EUROPE IN THE SYSTEM OF REGIONAL GROUPS

The system of regional groups in the UN, which reflected the post-World War II division of Europe, has not been fundamentally reformed since 1990. It primarily serves to prepare elections in important UN bodies, in particular the General Assembly. Before formal elections take place, the members of a regional group reach an agreement as to which among them the group will nominate and support. Decisions in the regional groups are taken in accordance with the principle of consensus. As a rule, and on the basis of reciprocity, the candidates endorsed by a group are subsequently elected. The five regional groups existing since 1963 are the Group of African States (GAFS), the Group of Asian States (GASS), the Group of Latin American and Caribbean States (GRULAC), the Group of Eastern European States (EES), and the Group of Western European and Other States (WEOG).⁵⁹

The latter two groups reflect the East-West confrontation of the Cold War. WEOG presently has 30 members,⁶⁰ among them the 15 states that constituted the EU before the enlargement of 2004, and important Western states outside of Europe (Australia, New Zealand). For electoral purposes, the United States is counted as a member of the Group; otherwise, it has an observer status. Turkey is a member of both WEOG and GASS, but for electoral matters it is only a member of the former. Since 2000, Israel has been a “temporary” member of WEOG, under certain provisos. Estonia, which was admitted to the UN in September 2001 and was not a member of any regional group, recently joined WEOG. Cyprus, despite its newly acquired EU membership, continues to be a member of the Group of Asian States.

⁵⁹ For a list of members of the different groups (as of May 2001), see I. Winkelmann, “Regional Groups in the UN”, in Volger (note 41 above), p. 455 ff. An unofficial list as of 4 February 2003 was provided to the author by the UN Secretariat.

⁶⁰ Andorra, Australia, Austria, Belgium, Canada, Denmark, Estonia, Finland, France, Germany, Greece, Iceland, Ireland, Israel, Italy, Liechtenstein, Luxembourg, Malta, Monaco, The Netherlands, New Zealand, Norway, Portugal, San Marino, Spain, Sweden, Switzerland, Turkey, United Kingdom, United States of America.

The Group of Eastern European States comprise 21 states,⁶¹ among them the Czech Republic, Hungary, Latvia, Lithuania, Poland, and Slovenia as new EU member states, and Bulgaria and Romania as states with which the EU has entered into negotiations about accession. Since the mid-1990s, Poland, the Czech Republic, and Hungary have increasingly aligned themselves with WEOG in their statements in the UN General Assembly.⁶²

Recently, a number of proposals for a new system of regional groups have been put forward,⁶³ but none of them seeks to create a single European group. The so-called Razali plan for a reform of the Security Council of 1997 was also based on the existing scheme of groups.⁶⁴ Since the distribution of non-permanent seats in the Security Council is determined by this scheme,⁶⁵ no reorganization of the groups will take place until a general agreement about the Security Council reform is achieved. It is unclear whether such a reorganization is in the interest of the European states because it will probably result in a geographical distribution of seats less favorable than the present one for Europe as a whole. For the time being, the EU will be the most important bridge between WEOG and EES.

⁶¹ Albania, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Bulgaria, Croatia, the Czech Republic, Georgia, Hungary, Latvia, Lithuania, Macedonia, Moldova, Poland, Romania, the Russian Federation, Serbia and Montenegro, Slovakia, Slovenia, Ukraine.

⁶² See note 45 above and accompanying text, and Winkelmann, "Regional Groups" (note 41 above), p. 457.

⁶³ See Winkelmann, *ibid.*, p. 458, for discussion of a proposal of the Australian Government of 1995, and a Canadian study of 1997.

⁶⁴ Ambassador Ismail Razali of Malaysia, then President of the General Assembly, presented a paper in the form of a draft resolution, proposing an enlargement of the Security Council by five permanent and four non-permanent members. The paper proposed that of the four new non-permanent seats, one should go to Eastern Europe. See B. Fassbender, "All Illusions Shattered? Looking Back on a Decade of Failed Attempts to Reform the UN Security Council", *7 Max Planck UNYB* (2003): p. 192 ff.

⁶⁵ See GA Res. 1991 (XVIII) of 17 December 1963: "*The General Assembly, ... 3. Further decides that the ten non-permanent members of the Security Council shall be elected according to the following pattern: (a) Five from African and Asian States; (b) One from Eastern European States; (c) Two from Latin American States; (d) Two from Western European and other States.*"

THE UNITED NATIONS AND THE UN CHARTER IN THE TREATY ESTABLISHING THE CONSTITUTION FOR EUROPE OF OCTOBER 2004

Continuing the line of the Treaty on European Union, the Treaty Establishing the Constitution for Europe—adopted by the European Convention in June and July 2003, amended by the Intergovernmental Conference (IGC) in June 2004, and signed by the Heads of State or Government of the EU member states on October 29, 2004 in Rome—gives the UN Charter a prominent place in its section describing the Union’s external action. The first paragraph of the article introducing that section reads as follows:

The Union’s action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, equality and solidarity, and *respect for the principles of the United Nations Charter and international law.*

The Union shall seek to develop relations and build partnerships with third countries, and international, regional or global organisations, which share the principles referred to in the first subparagraph. It shall promote multilateral solutions to common problems, *in particular in the framework of the United Nations.* [Emphasis added.]⁶⁶

In comparison to the text of this article as adopted by the European Convention,⁶⁷ the Intergovernmental Conference introduced a change in subparagraph 1 that can easily be overlooked. The IGC replaced the phrase

⁶⁶ Art. III-292(1) of the Treaty Establishing the Constitution for Europe (in the following referred to as Constitutional Treaty); Official Journal of the EU 2004/C 310 of 16 Dec. 2004, p. 131 ff. Previously, this article was numbered III-193(1); see Draft Treaty Establishing a Constitution for Europe, consolidated version as of 25 June 2004, Doc. CIG 86/04.

⁶⁷ See Draft Treaty Establishing a Constitution for Europe, adopted by consensus by the European Convention on 13 June and 10 July 2003 and submitted to the President of the European Council in Rome on 18 July 2003, Official Journal of the European Union 2003/C 169/01, at C 169/65.

“respect ... for international law in accordance with the principles of the United Nations Charter” with the words “respect for the principles of the United Nations Charter and international law.” The new wording seemingly enhances the importance of the UN Charter by mentioning it first. But actually the Charter is depreciated in the new phrase because it is placed on the same level as “international law”: the “principles of the United Nations Charter” and “international law” (or “the principles of international law”?) are put side by side, as if they were equal in rank.

This phrase reveals a fundamental misunderstanding of the UN Charter’s place and meaning in the international legal order. It fails to recognize that the UN Charter, as constitution of the international community, embraces all international law.⁶⁸ The Charter was not conceived of as one of many multilateral treaties operating within the framework of international law but as the constitution of the international community within which international law would operate. Accordingly, there is no room for a category of general international law existing independently *beside* the Charter. Instead, the UN Charter is the supporting frame of all international law and, at the same time, the highest layer in a hierarchy of norms of international law.⁶⁹ Constitutional rules that preceded the Charter have become a part of it, and they are subject to the relevant rules of interpretation and amendment. They are valid solely in the form the Charter has given them. New customary law which would amend, or derogate from, Charter law cannot come into being. The United States Government was right when it argued in the *Nicaragua* case that “the provisions of the United Nations Charter ... subsume and supervene related principles of customary and general international law.”⁷⁰ The UN Charter and (general or customary) international law cannot be played off against each other. Accordingly, the IGC’s amendment of Article III-193 of

⁶⁸ See B. Fassbender, “The United Nations Charter as Constitution of the International Community”, 36 *Col. J. Int’l L.* (1998) 529, p. 585 ff. See also idem., “Sovereignty and Constitutionalism in International Law”, in N. Walker (ed.), *Sovereignty in Transition* (2003), p. 115.

⁶⁹ In a resolution of 29 January 2004, the European Parliament “confirm[ed] that the UN Charter constitutes the key political and legal basis for developing international relations and ensuring peace and international security.” See European Parliament 2003-2004, Texts adopted at the sitting of 29 January 2004, provisional edition PE.341.150, at 2, para. 15.

⁷⁰ See *Nicaragua*, 1986 ICJ Reports 14, p. 93, para. 173.

the Draft Treaty (now Art. III-292 of the Treaty Establishing the Constitution for Europe) is a regrettable step backwards. The phrase chosen by the European Convention, “respect ... for international law in accordance with the principles of the United Nations Charter” (or even better: “respect ... for international law in accordance with the United Nations Charter”), would have been preferable.

A similar tendency of the IGC to reduce emphasis on the UN Charter is apparent from an amendment of Article III-193, paragraph 2, of the Draft Treaty. As one of the objectives of the Union’s common policies and actions in international relations, the Convention had determined “to preserve peace, prevent conflicts and strengthen international security, *in conformity with the principles of the United Nations Charter*” (emphasis added).⁷¹ Instead, the IGC decided to say “to preserve peace, prevent conflicts and strengthen international security, *in conformity with the purposes and principles of the United Nations Charter, with the principles of the Helsinki Final Act and with the aims of the Charter of Paris, including those relating to external borders*” (emphasis added).⁷² The additional references to the Helsinki Final Act⁷³ and the Charter of Paris⁷⁴ were taken from Article 11(1) of the Treaty on European Union as still in force.⁷⁵ Probably the IGC wanted to emphasize specifically “European” principles and aims. However, both the Final Act and the Paris Charter are legally non-binding (which in the final clauses of both texts was expressed by the phrase that the Act and the Paris Charter, respectively, are “not eligible for registration under Article 102 of the Charter of the United Nations”). The European Union is of course free to orient its foreign policy to all sorts of principles, objectives, and aims, but it is inappropriate to equate the binding rules of the UN Charter with pronouncements in

⁷¹ See Art. III-193(2(c)) of the Draft Treaty as adopted by the European Convention (note 67 above).

⁷² See Art. III-193(2(c)) of the Draft Treaty as amended by the IGC (note 66 above) (= Art. III-292(2(c)) of the Treaty Establishing the Constitution for Europe).

⁷³ Final Act of the Conference on Security and Co-operation in Europe (CSCE), 1 Aug. 1975, 14 *ILM*(1975) 1292.

⁷⁴ Charter of Paris for a New Europe, declaration of the Heads of State or Government of the states participating in the CSCE, 21 Nov. 1990, 30 *ILM*(1991) 193.

⁷⁵ See the second paragraph of this paper.

political declarations, especially in the field of main responsibility of the United Nations: the maintenance of international peace and security.

In the Constitutional Treaty, the provisions of the present Article 19 of the Treaty on European Union⁷⁶ about the coordination of foreign policy action in international organizations, including the UN, were not changed much.⁷⁷ The role of the new Union Minister for Foreign Affairs is emphasized by a new provision according to which the Minister shall organize the coordination of the action of member states in international organizations and at international conferences (Art. III-305(1), second sentence). EU member states that are also members of the UN Security Council shall concert and keep the other member states *and the Union Minister* fully informed (Art. III-305(2), subpara. 2). The following subparagraph 3 was added to paragraph 2: “When the Union has defined a position on a subject which is on the United Nations Security Council agenda, those Member States which sit on the Security Council shall request that the Union Minister for Foreign Affairs be asked to present the Union’s position.”⁷⁸ However, in principle the definition of a position to be taken by the Union will require unanimity in the EU Council (Art. III-300, para. 1).⁷⁹

Further, the Constitutional Treaty dropped the special reference to the European permanent members of the Security Council (Art. 19(2), subpara. 2, of the Treaty on European Union)⁸⁰ by saying that “Member States

⁷⁶ See the second paragraph of this paper.

⁷⁷ For a review of the Draft Constitutional Treaty’s CFSP provisions, see D. Thym, “Reforming Europe’s Common Foreign and Security Policy”, 10 *Eur. L.J.* (2004) p. 5. See also F. Cameron, “After Iraq: The EU and Global Governance”, 10 *Global Governance* (2004), p. 157 (criticizing, in particular, “the confused external representation” of the EU unchanged by the Draft Treaty).

⁷⁸ See also Art. III-296(2) of the Constitutional Treaty: “The Minister for Foreign Affairs shall represent the Union for matters relating to the common foreign and security policy. He or she shall conduct political dialogue with third parties on the Union’s behalf *and shall express the Union’s position in international organisations and at international conferences.*” (Emphasis added.)

⁷⁹ For an analysis of the Constitutional Treaty’s provisions on qualified majority voting about decisions with regard to the Union’s external action (Art. III-300, paras. 2-4) in comparison with the present Art. 23(2) of the TEU, see Thym (note 77 above), p. 10 ff. That author concludes that the article now numbered III-300(2) “largely corresponds to the present Art. 23(2) TEU and does not foresee an immediate widespread extension of qualified majority voting.”

⁸⁰ See the second paragraph of this paper.

which are members of the Security Council will, in the execution of their functions, defend the positions and the interests of the Union, without prejudice to their responsibilities under the United Nations Charter” (emphasis added).⁸¹ It does not seem, however, that the substance of the provision concerning the special status of France and the United Kingdom as permanent members of the Security Council⁸² was meant to be changed by that amendment.

THE QUESTION OF UN SECURITY COUNCIL REFORM

Thus far, the EU has not been able to agree on a common position on the question of UN Security Council reform.⁸³ EU states have appeared in the reform discussion as members of different groups such as the so-called Coffee Club (Italy, Spain); the Group of 10 (Belgium, Ireland, Portugal, Austria); or the Nordic WEOG states (Denmark, Finland, Iceland, Norway, Sweden).

A particularly delicate issue is the permanent membership of the Security Council sought by Germany.⁸⁴ While the United Kingdom and France have given up their initial opposition, Italy still strongly rejects the German candidacy. Spain has adopted a reserved position while most other EU states have supported Germany. Both Italy’s and Spain’s policies have been motivated by their wish not to see their status as European powers diminished in comparison with Germany’s. In an interview with an Italian newspaper, the then-Permanent Representative of Italy to the UN, Ambassador F. P. Fulci, said, *inter alia*: “[T]he Germans thought that we would commit Hara-kiri and welcome their proposal which wants to push us out of the group of important countries. ... It is about our

⁸¹ Art. III-305(2), subpara. 2, second sentence, of the Constitutional Treaty.

⁸² See text accompanying note 55 above.

⁸³ For a recent summary of the course of the reform discussion, see Fassbender, cited in note 64 above.

⁸⁴ For a detailed description of the German policy, see L. Andreae, *Reform in der Warteschleife: Ein deutscher Sitz im UN-Sicherheitsrat?* (2002), p. 40-159.

marginalization. If the Security Council were enlarged according to the German idea, ...a new directorate would be created excluding Rome.”⁸⁵

At present, the often discussed idea of a common European seat in the UN Security Council is unrealistic. While such a seat would reduce the present overrepresentation of Western industrialized states on the Council, which is widely criticized by the developing countries, neither France nor the United Kingdom are prepared to give up their seats. Germany is not striving for a common European seat either but seeks a permanent seat of its own, and it has gained substantial support from other states for this claim. Because the EU foreign policy is still guided by the unanimity principle,⁸⁶ it is also very questionable whether the responsibilities inherent in such a seat could be carried out effectively, or whether in contrast the EU would be forced to a policy of permanent abstention. If a common EU seat is created in the Security Council, it would be difficult to explain why in the General Assembly, ECOSOC, and other UN bodies the European Union should have 25 seats. On the other hand, exchanging the present 25 votes of EU member states in those bodies for just one vote would severely diminish the European influence in the United Nations, notwithstanding the example of the United States, which is a powerful actor in the organization in spite of having just one vote.

Apart from these political questions, there are also serious legal obstacles to a European Union seat in the Security Council. The UN Charter provides only for a membership of (sovereign) states (Art. 4). The Security Council consists of 15 member *states* (Art. 23(1)). The rules of Article 9 (the General Assembly shall consist of all the members of the UN) and Article 18(1) (each member of the General Assembly shall have one vote) do not allow states to retain their individual UN membership while joining together their seats and voting power in the organs of the Organization. From this it follows that as long as the EU is not a (sovereign) state it can neither become a member of the UN nor assume a seat in the Security Council

⁸⁵ See “‘La Germania ci schiaccia’ accusa l’ambasciatore Fulci,” *Il Giornale* (Milano), 1 Apr. 1996, p. 13 (transl. by the author).

⁸⁶ See note 79 above.

without a respective amendment of the UN Charter.⁸⁷ And such an amendment is unlikely to be accepted in the foreseeable future, if only for the reason that other groups of states (such as the Organization of American States, the African Union, or the Russian-dominated Commonwealth of Independent States) would claim similar privileges.

In a communication of September 2003, the European Commission diplomatically spoke of “substantial challenges remain[ing] for the EU if it is to fulfill its potential in the UN.”⁸⁸ The Commission further stated: “While the EU has moved progressively towards speaking with a common voice in UN debates, its real influence—and its ability to project European values—on the world stage still falls short of its economic and combined political weight.”⁸⁹ This is a fair description of the present situation—a situation that will most likely persist for years to come. In small steps, EU member states will try to act increasingly in concert in the UN, and to make their unity visible by allowing EU representatives to have the floor in New York and Geneva. At the same time, EU states will individually remain members of the UN and, as such, international actors in their own right.

CONCLUDING REMARKS

Some 50 years have passed since the European Coal and Steel Community was established in 1951. This period has been not only an extraordinarily good one for the countries of (Western) Europe but also one in which, all in all, Europe has been a positive force in the United Nations, with its support of the principles and purposes of the UN clearly outweighing the questionable aspects of its political and military action.⁹⁰ Steady economic

⁸⁷ The European Parliament failed to notice this fact when it claimed for the EU a permanent seat in the Security Council “as soon as its [the EU’s] legal personality is recognized”. See the resolution of 29 Jan. 2004 (cited in note 69 above), para. 12. International legal personality and “sovereign” statehood are not the same.

⁸⁸ See *The European Union and the United Nations* (note 46 above), p. 3.

⁸⁹ *Ibid.*

⁹⁰ For analysis, see B. Fassbender, “The Better Peoples of the United Nations? Europe’s Practice and the United Nations”, 15 *European J. Int’l L.* (2004), p. 857. The present paper is an amended version of parts 5 and 6 of that article.

growth, the success of the democratic form of government, the strong military presence of the United States and the integration of the European armed forces in NATO, the threat to the independence and freedom of all Western European states posed by the Soviet Union—all these factors favorably contributed to a situation in Western Europe characterized by a general respect for the purposes and principles of the United Nations as defined by the Charter. The success of Western European economic and political integration was so obvious that after the breakdown of the Soviet rule over Eastern Europe the peoples there immediately sought to join the European Union.

However, in recent years clouds have begun to darken the clear Union sky. Economic stagnation, and cuts in social security benefits made necessary by very large national debts, could foreshadow a greater economic crisis which could not fail to impair a political stability that has been largely based on expectations of more wealth for all. Under such more difficult conditions it will be a challenge for Europe to maintain democracy, the rule of law, and the protection of human rights, and to continue a policy of goodwill and solid cooperation towards the world at large, in accordance with the guiding ideas of the UN Charter.

“The European Union’s commitment to multilateralism is a defining principle of its external policy.”⁹¹ This statement of the European Commission also applies to the foreign policy of the individual European states. As neither international anarchy nor a hegemonic world order are desirable or realistic alternatives, Europe has no other choice but to remain loyal to the idea of a multilateral international system based on the principle that all states “have equal rights and duties and are equal members of the international community”, and that “each State has the right freely to choose and develop its political, social, economic and cultural systems.”⁹² So far no other equally convincing—or equally

⁹¹ See *The European Union and the United Nations* (note 46 above), p. 3.

⁹² See UN GA, “Friendly Relations Declaration”, Annex to GA Res. 2625 (XXV) of 24 October 1970, “The principle of sovereign equality of States.” For analysis, see Fassbender, “Sovereignty and Constitutionalism” (note 68 above), p. 131 ff.

universally accepted—guiding idea of international relations has appeared.

But, as the European Commission rightly remarked, the tests we face to keep this multilateral system and its institutions standing are set to multiply, not diminish. “In the years ahead, therefore, Europe’s attachment to multilateralism—and to the United Nations, as the pivot of the multilateral system—will help determine whether, and how, the institutional architecture established in the years after World War II can continue to serve as the bedrock of the international system.”⁹³ Since the EC/EU and the global multilateral order of the UN are based on the same idea of “integration through law” and, more fundamentally, the same belief in rational and enlightened human beings able to design and organize their societal life in a reasonable way, a failure of multilateralism on a global scale necessarily would have repercussions for the European project. Intellectually and conceptually, the European Union and the United Nations are built on the same foundations. If this ground becomes shaky, both structures are in danger. Equally, the European Union would get into serious trouble if as an international actor it stopped adhering to the values that are its own spiritual foundation. This is the true reason why the EU, as long as it retains its identity, cannot engage in selfish power politics, a diplomacy of coercion, or military interventions contrary to international law.

⁹³ See *The European Union and the United Nations* (note 46 above), p. 3.

Comments on the Report of the High-level Panel on Threats, Challenges, and Change

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During Kofi Annan's tenure as Secretary-General of the United Nations, a remarkable change occurred in major reports issued by the Secretariat. They became interesting to read. Annan has had the courage and political vision to ask for and to publish intellectually serious, hard-hitting analyses of his organization's performance. Taken together, these reports provide some of the most penetrating and relevant reflections on the problem of global governance in the post-Cold War world. This is astonishing when one considers that the reports have been issued by an intensely political and status-quo minded organization.⁹⁴

The Report of the United Nations High-level on Threats, Challenges, and Change is the capstone in this series of studies undertaken on Annan's watch. In 302 paragraphs it manages to make a sweeping argument about the nature and interconnections among the major challenges facing humanity, and to present a detailed set of fairly specific recommendations about how to address them. True to the tradition of major reports issued by Annan's Secretariat, the report does not whitewash or reflexively defend the UN's current institutional set up and practices. Instead, within the bounds of diplomatic speech, it criticizes many parts of the UN system for poor performance, and is unafraid to propose quite significant reforms. Overall, I think it is an excellent report that can and should provide the basis for UN reform and major policy initiatives in the next few years.

⁹⁴The reports I have in mind are, in particular, *The Fall of Srebrenica* (A/54/549, 15 November 1999); the Report of the Independent Commission on Rwanda; the Brahimi Report, "Report of the Panel on Peace Operations" (A/55/305-S/2000/809, 21 August 2000); and the UN High-level Panel Report, *A More Secure World: Our Shared Responsibility* (A/59/565, 2 December 2004), online at <http://www.un.org/secureworld/report2.pdf>

That said, what follows will be critical in what I hope is the same constructive spirit of the report. I will argue that the panel’s own analysis unintentionally suggests that the UN requires a more fundamental overhaul than the one they propose. In brief, on the central question of UN reform, the report rests virtually all of its hopes on the Security Council (SC), arguing that “recent experience has ... shown that the Security Council is the body in the United Nations most capable of organizing action and responding rapidly to new threats” (para. 247). Except for the Secretariat, the other major organs of the UN system—the General Assembly, ECOSOC, and the International Court of Justice (ICJ)—are essentially dismissed or, in the case of the ICJ, not even mentioned.

This core strategy raises several questions. First, why should member states continue to pay for and support an international institution most of whose principal organs are either defunct or barely functional? If this is so, then shouldn’t the basic structure be redesigned? Second, can the Security Council, even if reformed as the Panel proposes, bear the weight they would have it bear? Third, can a reform strategy of agglomeration and addition—that is, keeping all the old offices and bodies while adding new ones like a Peacebuilding Commission and new Deputy Secretary-General—work? Or will this just multiply the problems of coordination and “coherence” that the report constantly points to?

AN UNINTENDED CRITIQUE?

Article 7 of the UN Charter established six principal organs of the United Nations: the General Assembly, the Security Council, the Economic and Social Council, the Trusteeship Council, the International Court of Justice, and the Secretariat.

- The High-level Panel report recommends, quite reasonably, that the informally defunct Trusteeship Council be formally disbanded and removed from a revised Charter (para. 299).
- The International Court of Justice is not discussed at all.

- Regarding ECOSOC, the report observes that “decision-making on international economic matters, particularly in the areas of finance and trade, has long left the United Nations and no amount of institutional reform will bring it back” (para. 274). The report sees the residual role of ECOSOC as being to convene conferences and to help “coordinate” the activities of the UN’s specialized agencies. There is no specific analysis of whether ECOSOC does or can perform these functions well, or whether a different structure could do a better job. Intriguingly, however, the report uses two paragraphs to suggest that the G-20 forum might provide a more promising venue for addressing the linkages between trade, finance, and development than ECOSOC.
- The General Assembly gets all of three substantive paragraphs, in the section of the report devoted to UN institutional reform (para. 240-242). The Panel correctly and bluntly observes that the General Assembly “has lost its vitality and often fails to focus effectively on the most compelling issues of the day” (Part four synopsis). The report notes that the Assembly has a “unique legitimacy” that can be tremendously important in forging an international consensus, but doubts that “procedural fixes” will be enough to allow the body to play this role effectively. The report recommends that General Assembly committees be made smaller, but otherwise merely exhorts member states to “renew efforts” to make the Assembly more effective (para. 242).

The report’s neglect of all but the Security Council and the Secretariat does not appear to be the result of lack of space. Instead, it looks like the core strategy. If the report is a bet on the future of the UN system, almost all the money is going on the Security Council and that body’s administrator, the Secretariat. The implicit argument is that the Security Council is the one working organ of the institution, so that reform efforts should be focused there to make sure the institution as a whole remains important and relevant in the 21st Century.

But why should member states continue to pay for and support an institution if all but two of its six principal organs are broken or no longer relevant? Seen in this light, the Panel may unintentionally imply that the UN needs more fundamental reform than the Report suggests. Further, is it really plausible that all hope for the UN as a vital institution in the next century can rest on a renewed Security Council? Can the Council bear this weight?

From the perspective of political strategy, the authors of the report may be doing exactly the right thing. Perhaps it will be difficult enough to accomplish Security Council reform and to set up a Peacebuilding Commission. Perhaps adding extensive institutional surgery and innovation to the agenda would make getting anything changed impossible. Perhaps it helps to largely ignore the General Assembly and ECOSOC in the report, because putting these bodies in play for significant changes or, in the case of ECOSOC, dissolution, would just create opposition.

But there are at least three reasons for considering the bolder approach that I would argue is implicit in the logic of the Panel's own analysis.

First, there is the substantive argument that if it is broken, it should be fixed, and now is the right time to start working on it. If the General Assembly and ECOSOC are largely pointless charades, it will actually undermine the United Nations to continue looking the other way.

The first drafts of the UN Charter were written more than 60 years ago, in radically different international conditions. Due to the Cold War, the institutions created by the Charter immediately went into something of a deep freeze. That is, the international divisions of the Cold War made it difficult to get a clear fix on whether the UN's institutional set up could actually function for global governance if given the chance. The end of the Cold War thawed out the Security Council in particular, and has allowed us to observe the whole institution's performance under more favorable conditions. As the report persuasively argues, in some respects the UN's performance in the 1990s has been impressive and very helpful for the

cause of international peace and security, as seen especially in the more activist role of the Security Council (which the report says must be made even more “proactive” in the future (para. 194)).

But if major organs of the United Nations as envisioned in 1947 are not functioning effectively in service of the larger mandate, then why not start pushing for change? Almost no national constitutions go significantly unrevised for 60 years at a time. Given that there is far less experience with international “constitutions,” and that in certain respects the problems that an international constitution needs to solve are much more difficult, it should hardly be surprising that a first or second stab will need serious revision. If the Trusteeship Council should be disbanded because it is no longer relevant to solving problems of international peace and security in the world as it stands, might not the same be true of ECOSOC?

Regarding the General Assembly, I disagree with the report’s suggestion that what is needed is not “procedural fixes” but rather some kind of mass attitudinal change by member states. Of course, it would be wonderful if members of the Assembly could somehow “get religion” and decide to work together to make the body more effective and relevant. But if they aren’t doing so now, surely an admonishment in a report is not going to get them to start. To the contrary, the Assembly can only be renovated by changes to its basic procedures and possibly voting rules—or, perhaps, the threat that these changes may occur.

Second, though I am no insider and may be completely wrong about this, it seems possible that even from the perspective of political strategy, a bolder approach to the several organs that are written off by the report would be more productive for overall reform. If there are vested interests in these bodies, then putting them at risk or challenging them to defend themselves on the basis of shared principles and objective measures of performance could facilitate the bargaining and trades on other matters. In addition, while it may be that exhortations for better performance will have no real effect, the threat of an initiative for more radical change might.

Third, I suspect that Annan's sense that the UN has come to a "fork in the road" is quite right, and possibly in more ways than he intended. If it is evident that central institutions of the UN are largely nonfunctional artifacts of a completely different era, living on for the sake of habit, sinecures, and an appealing but faded dream, then calls for more radical reform of the UN are likely to gain ground in the US and possibly other major supporters in the coming years.⁹⁵ The logical conclusion, consistent with the Report's own analysis, will be that it is time for a new "founding moment." Supporters of the appealing dream envisioned in the 1947 Charter might do better to try to get ahead of the whirlwind, by setting the agenda for structural reform themselves.

In paragraph 291, the Panel suggests that "In the longer term, Member States should consider upgrading the [Human Rights] Commission to become a 'Human Rights Council' that is no longer subsidiary to the Economic and Social Council but a Charter body standing alongside it and the Security Council ..." This paragraph hints at the kind of thinking about structural reform I would like to have seen more of.

SECURITY COUNCIL REFORM

The impetus for Annan's creation of the Panel was the intense division and acrimony on the Security Council in the lead-up to the Iraq war. These were so strong that many observers raised doubts about the prospects of the UN as a whole.

It is fascinating, then, that the Panel's reply amounts to a ringing endorsement and defense of the Security Council as the best hope for the future of collective security. The tacit dialogue with the Bush administration is particularly interesting:

⁹⁵I could well be wrong, but I would guess that this will be true regardless of which party holds the US presidency.

- The Panel flatly rejects the argument that Article 51 (which says that force may be used in self-defense, without prior Security Council authorization) should be interpreted to cover preventive action against a state suspected of illegally developing nuclear weapons that might be passed to terrorists. The report argues that “if there are good arguments for preventive military action, with good evidence to support them, they should be put to the Security Council” (para. 189). If the Security Council does not buy the arguments, then “by definition” there is time to pursue other strategies, since the threat is not the “imminent” kind covered by Article 51. This argument basically fails to engage the concern of the Bush administration, that we are in a new world now in which the risk of nuclear terrorism does not allow states to “wait and see” as much as they could in the past. Given that concern, the argument can only be compelling if we can reasonably expect the Security Council to be more willing to authorize preventive use of force than in the past. The Panel gives a second argument that is, in my view, somewhat stronger. Namely, “For those impatient with such a response,” it is simply not in the enlightened self-interest of the US to undertake unauthorized preventive attacks, since “Allowing one to so act is to allow all” (para. 191). The Panel might have added that unauthorized preventive strikes by the US are likely to increase middle-power incentives for developing nuclear weapons capabilities, thus increasing the risk of nuclear terrorism.
- The Panel is impressed and pleased by the breadth of the authority available to the Security Council under Chapter VII of the Charter. Since the SC can declare whatever it wants to be a “threat to international peace and security,” this gives the UN and the international system a politically feasible route to gain legal authorization for action against the array of new threats appearing in the 21st century (para. 194). This observation seems to be the basis for the core strategy of the Panel: the hope that a renewed Security Council and Secretariat can effectively tackle the diverse challenges detailed in the first two sections of the report.

To doubters who worry about the “quality and objectivity” of Council decision making, the Panel allows that “The Council’s decisions have often been less than consistent, less than persuasive and less than fully responsive to very real State and human security needs” (para. 197). “But the solution is not to reduce the Council to impotence and irrelevance: it is to work from within to reform it, including in the ways we propose in the present report. ... *The task is not to find alternatives to the Security Council as a source of authority but to make the Council work better than it has*” (para. 198, emphasis in original). Hence the emphasis on Security Council expansion: to gain the necessary assent for a more activist Council that can take the lead in addressing the new challenges, it has to bring on board a larger and more representative set of major players.

The Report’s strategy for reinvigorating the UN for a new century thus depends mainly on whether and how the Security Council can be made to “work better than it has.” On this score, I think the Panel’s recommendations for Security Council reform brilliantly combine political feasibility with substantive merit. I have only two main comments to make here, one against the Panel’s Model A, and one on the question of whether these reforms would improve the Council’s functioning.

Model B versus Model A

The report proposes two possible reform schemes for the UN Security Council (para. 244-60). In both, nine seats are added, bringing the total to 24. None of the new seats comes with veto power, which is clearly the right recommendation if the new SC is not be completely paralyzed and unable to fulfill the role the Panel asks of it. And the Panel does not propose to take the veto from the permanent five members (P-5). This is arguably not optimal for a more effective SC, but anything else is said to be infeasible (para. 256).

In Model A, six of the nine new seats are “permanent”—two for the Africa regional grouping, two for Asia and the Pacific, one for Europe, and one for the Americas. Three would be two-year non-renewable seats. One of these would go to Africa, one to Asia/Pacific, and the Americas would gain two (Model A proposes redistributing one existing nonpermanent seat away from Europe). The net effect is to give six total seats to each of the four regional groupings.

In Model B, no new permanent seats are created. Instead, eight of the nine fall in a new category of four-year renewable seats, with two allocated to each of the four regional groupings. With the one new two-year nonrenewable seat and some redistribution from the current pattern, Africa and the Americas would each gain one nonrenewable seat, Europe would lose one, and Asia/Pacific would stay the same at three. Again the total effect is to endow each of the four regions with six total seats.

I think the Panel is exactly right in stressing that for any Security Council reform the extent of financial, military, and diplomatic contribution to the United Nations constitutes the most plausible and sensible criterion for SC membership.⁹⁶ This gives states the right incentives regarding contributing to the organization. It also rests on a widely shared and plausible idea of fairness, and has the happy byproduct of producing results broadly consistent with the international distribution of power (which, as the report notes, is necessary if the UN is to be an effective organization).

The Panel argues that to encourage member states to contribute more to international peace and security, the General Assembly should elect states to the new permanent or four-year seats, giving explicit preference to the top three contributors in each region (in terms of regular budget,

⁹⁶Reforms “should, in honoring Article 23 of the Charter of the United Nations, increase the involvement of those who contribute the most to the United Nations financially, militarily, and diplomatically—specifically in terms of contributions to United Nations assessed budgets, participation in mandated peace operations, contributions to voluntary activities of the United Nations in the areas of security and development, and diplomatic activities in support of United Nations objectives and mandates” (para. 249).

voluntary contributions, or peacekeeping troops). This is essentially all the Panel says about the specifics of deciding how to allocate the new seats.

It is interesting that the Panel was unable to agree on a single proposal for Security Council reform. Model A is clearly inconsistent with the thrust of the Panel's arguments, and was probably included more for political considerations than for its substantive merit. Permanent seats cannot respond to changes in the international distribution of power and influence, a problem the Panel notes with the present arrangement (para. 246), and a problem noted by those states most active in lobbying for permanent status. Nor do permanent seats provide an incentive to contribute to the organization's goals and functioning.

Almost openly contradicting the premise of Model A, the report also states that:

The Panel was strongly of the view that no change to the composition of the Security Council should itself be regarded as permanent or unchallengeable in the future. *Therefore, there should be a review of the composition of the Security Council in 2020, including, in this context, a review of the contribution ... of permanent and non-permanent members from the point of view of the Council's effectiveness in taking collective action to prevent and remove new and old threats to international peace and security* (para. 255, emphasis in original).

But if the composition of the Security Council is to be reviewed, then what exactly does "permanent" status mean? And what body would be empowered to undertake the review? And can anyone imagine that a state given "permanent status" on the SC would give it up due to the report of a committee, or even that a committee would be willing to recommend such a thing? This paragraph makes more sense if Model B, the option with renewable four-year terms, is selected. If the Panel feels that the composition of the SC should not be regarded as permanent or unchallengeable—which it should not be if the SC is to fulfill the Panel's expectations for it—then the Report should have offered Model B alone.

The Model A version of the new SC will be less legitimate and less effective than Model B.

If the UN were to follow the Panel's recommendation about making contributions the main criterion for selecting new Security Council members, what would result in terms of membership? Both models would probably add the same set of new permanent or renewable members. In Model A, Japan and India would probably get the two new permanent Asian seats; Germany the new European seat; Brazil the new Americas seat; and two of South Africa, Nigeria, and Egypt the African seats. With Model B, the difference is that there are additional renewable seats for Europe and the Americas, which gives Italy, Mexico, and Argentina a strong incentive to prefer Model B.

Politically, there may be a danger of a log-roll in which the states agree to Model B but with permanent seats, thus adding eight permanent seats instead of six as in Model A. (Second-tier regional powers might say to first-tier aspirants, "OK, we'll sign off on the permanent status you want, but you have to bring us in as well.") Alternatively or in addition, there is likely to be pressure to increase the total number from 24 to 25 and add a ninth permanent seat, so as to avoid the choice between Nigeria and South Africa in order to get Africa on board.

As I discuss further below, for the effectiveness of the Security Council such outcomes would be worse even than Model A and considerably worse than Model B. In addition, both Model A and the log-roll outcome would establish the precedent that SC expansion means adding permanent members, which means increasing ossification of the body, and weak incentives to contribute constructively and actively to its work.

Legitimacy and efficacy

By not consistently representing several major contributors to the UN and several non-European states with large populations, the current Security Council suffers a much-discussed legitimacy deficit. Lack of legitimacy

makes for less buy-in by important states and regions, which in turn reduces its effectiveness.

Both Models A and B would significantly reduce the Council’s legitimacy problem. As Table 1 shows, both models increase the share of world population represented as permanent or semi-permanent members to well over 50 percent, considerably above the current arrangement. Model B does better. And by allowing for change and some degree of sharing of renewable seats over time among major contributors, Model B would do even better on legitimacy grounds than is indicated by the figures in the table. For example, Indonesia, the world’s largest Muslim country, might periodically serve in a four-year renewable seat.

Table 1: Likely permanent/renewable members of Model A and Model B Security Councils

Country	GDP (%)	Population (%)	UN dues (%)
United States	32.7	4.6	22.0
Japan	12.6	2.0	19.6
Germany	6.2	1.3	9.8
United Kingdom	4.9	0.9	5.6
France	4.5	1.0	6.5
China	4.0	20.4	1.5
Italy	3.7	0.9	5.1
Mexico	2.0	1.7	1.1
India	1.6	16.7	0.3
Brazil	1.4	2.9	2.2
Russia	1.1	2.3	1.2
South Africa	0.3	0.7	0.4
Egypt	0.3	1.2	0.1
P-5 total (percent of world)	47.2	29.2	36.8
Model A total (percent of world)	69.6	54.0	69.2
Model B total (percent of world)	75.3	56.6	75.4

Note: Italicized countries are Model B only. Permanent five members (P-5) are shown in bold.

Increased legitimacy helps Council effectiveness by increasing the force of SC resolutions and the likelihood of their implementation. But the overall impact on effectiveness could actually be negative if increasing the size of the Council makes it harder to get good resolutions passed in the first place. This is really the central question for the Panel's proposal. Can Model A or B improve the "quality and objectivity" of SC decisions, making these more consistent, persuasive, and "responsive to very real State and human security needs" (para. 197)?

I am doubtful, mainly because larger committees are almost always less effective at crisis management and taking initiative than are smaller bodies. It is hard to see how a considerably larger Security Council could be more "proactive" than the 15-member body was at times in the 1990s and immediately after the 9/11 attacks.

But there may be at least one reason for optimism that is not spelled out in the report. In terms of rules and procedures, a major barrier to a more effective Security Council is the veto system, which allows any of five states to quietly threaten to block any resolution they dislike, even on narrowly self-interested grounds. A more majoritarian system (qualified in some way) would allow the Council to pass resolutions that reflected more than an extremely weak "least common denominator." Since the five vetoes will remain, it is hard to imagine the post-reform SC acting all that differently from the current SC. Indeed, the increase in the number of players that is needed to get a positive agreement on a resolution may make the body slower and less effective.

However, it could also be that expansion will make the SC more effective by raising the costs of using the veto. It may be harder to stand alone against 24 states covering more than half the world's population and two-thirds of the world's economic production than it is to stand alone against

15. If so, this change may increase effectiveness by increasing the ability to get a majority with no vetoes.⁹⁷

The net effect of these several mechanisms is impossible to anticipate. It is easier to anticipate that Model A provides less incentive for Security Council members to contribute time, energy, and resources to SC business and ventures. Model A pushes the SC farther in the direction of a pure status club, rather than a working institution. The Report's gamble on SC reform is more likely to succeed if Model B comes to pass.

Beyond the structural changes associated with expanding Security Council membership, the Report makes several other recommendations intended to make the Council a more effective body. For what it's worth, my favorite is the proposal for "indicative voting" (SC members could call for public indications of positions on a resolution, to "flush out" the veto). Again, by raising the political costs of veto threats, this reform might enable action in cases that under the current system would be stalled for narrow, idiosyncratic reasons.

I am less optimistic that the proposed guidelines for the use of force (para. 204-209), and the request that the P-5 not use the veto in cases of genocide or large-scale human rights abuses, will have much or any positive effect. The guidelines are necessarily highly general and abstract, so that in almost any actual case states will have no difficulty in making plausible arguments that the guidelines have or have not been satisfied.

COORDINATION PROBLEMS AND REFORM BY AGGLOMERATION

The proposals to establish a UN Peacebuilding Commission, a Peacebuilding Support Office, and a new Deputy Secretary-General position for peace and security address critical needs that are poorly met under the current system. As the Panel observes, at present there is no place in the UN system "explicitly designed to avoid State collapse" and to help manage an extended transition from war to peace (para. 261). In

⁹⁷If the political costs of a veto are raised too much, however, then the incentive for the US to "play ball" with the UN in the first place also drops.

essence, the Panel is recommending that the UN face up to the extremely difficult problem of state building—“developing [States’] capacity to perform their sovereign functions effectively and responsibly” (para. 261; see also para. 229). Only a few years ago, the Brahimi Report stepped gingerly around this question, probably in part because of considerable reluctance to take on such missions in the Secretariat, as well as opposition from many member states.⁹⁸

Appropriately, neither the Commission nor the Support Office is described in great detail in the report. Details should be left for analysis and negotiation. My concern is that by creating new bodies within the UN without getting rid of or fundamentally restructuring old ones, the new bodies will add to the very “coordination” and “coherence” problems that they are intended to address. This goes back to the point made earlier in this paper: if institutional change happens at the UN only by agglomeration and addition, then of course the whole thing will be a nightmare of coordination failure and inefficiency. Every reform will just make the coordination problems worse, as the number of mixed committee meetings with representatives from A, B, C, D, and so on multiplies to infinity.

In some alternative universe, ECOSOC might be a natural for taking on the role of the proposed Peacebuilding Commission. After all, post-conflict peacebuilding refers mainly to post-conflict economic and social development efforts, with a healthy dose of institutional reform and reconstruction. But the Panel, probably correctly, did not see ECOSOC as up to the task, or thought it busy enough with its current efforts at coordination and coherence. My question is what power will the Peacebuilding Commission actually have, given that it is being inserted into an otherwise unchanged field of partially relevant offices, such as ECOSOC, the Department of Peacekeeping Operations, the Department of

⁹⁸ I wonder if it might have made more sense politically to have emphasized the primary mandate of the Peacebuilding Commission as *post*-conflict reconstruction, and to have put less stress on the identification of “countries which are under stress and risk sliding towards State collapse” (para. 264).

Political Affairs, and lots of agencies? What leverage will the Commission have over all these players?

Would it be better to create a new operational office in the Secretariat: a Department of Peacebuilding, on a par with the Department of Peacekeeping Operations and the Department of Political Affairs? This would have the advantage of dedicating offices to prevention, peacekeeping, and peacebuilding, so reflecting the main categories of UN theory. At least as described in the report, the Peacebuilding Commission does not sound as if it were intended to play such a role.

THE PEACEBUILDING COMMISSION: RECONSTRUCTION VS. PREVENTION

Beyond the question of institutional positioning and whether the Peacebuilding Commission can better coordinate peacebuilding activities, I am worried about the Commission's mandate as proposed in the Panel report.

The report states that "The core functions of the Peacebuilding Commission should be to identify countries which are under stress and risk sliding towards State collapse; to organize, in partnership with the national Government, proactive assistance in preventing that process from developing further ..." (para. 264). This sentence goes on to describe a Commission role in overseeing the post-conflict reconstruction activities conventionally associated with "peacebuilding." But what are intelligence and prevention functions doing in the Peacebuilding Commission?

The Panel maintains that the UN needs a single institution to coordinate activities ranging from the prevention of state collapse through to long-term post-conflict reconstruction activities (for example paras. 225 and 261). The Panel is exactly right that the UN—and the world as a whole—desperately need a capable institution that can focus attention and resources on the problem of reconstructing collapsed states and can maintain the focus for a long-term process. But it gives no rationale for why prevention and post-conflict assistance need to be coordinated and

put under one purview. There are significant drawbacks to doing so, both political and substantive.

On the political side, the sentence from paragraph 264 defining the Peacebuilding Commission's mandate reads like a red flag waved at the bull of G-77 concern over First World "monitoring" and "surveillance" of the South. This is unfortunate. By tying the prevention function to the post-conflict function, the proposal as it stands risks the latter for the former.

This is particularly unfortunate given that it clearly makes sense to spend major resources and institutional effort on post-conflict reconstruction, whereas this is much less clear regarding the prevention of state collapse.

Consider the problem of predicting where the next major civil war will break out. Since 1945, significant civil wars have begun at a rate of about 2.3 a year, and slightly fewer in the last ten years.⁹⁹ Even if we restrict attention to the 80 or so countries with low per capita incomes that are most likely to experience civil wars, outbreaks are so rare relative to the size of the population at risk that prediction is extremely difficult. We can use past history and country-specific information to make statements such as "country A has 15 times the risk of outbreak next year than does country B." But 15 times a 1 percent chance is still only 15 percent.

By contrast, we know that relapse into civil war is common among civil-war-torn states that have reached a peace agreement or tentative settlement. A recent civil war is a good indicator of a high likelihood of renewed violence. This suggests that it is much more efficient to focus international resources on peacekeeping and post-conflict reconstruction—peacebuilding—than on guessing which states are about to collapse and trying to prevent this.

⁹⁹See James D. Fearon and David D. Laitin, "Ethnicity, Insurgency, and Civil War," *American Political Science Review* 97, 1 (February 2003), 75-90.

If we had tried-and-true methods of international intervention to prevent civil war onset and state collapse, and if these methods were materially and politically low cost, then this argument would be slightly weakened. But we do not. Arguably, the most efficient short-term prevention methods we have are quiet mediation and coalition building by skilled international diplomats with support from major powers. The Panel is exactly right to call for professionalized training of Special Representatives of the Secretary General and increased funding for mediation support by the Department of Political Affairs (para.101-102). These are likely to be at least as effective and certainly less politically problematic than a high profile commission charged with labeling and pressuring “failures.”

Giving the Peacebuilding Commission a major role in prevention has one other substantively bad consequence worth considering. The very existence of an international body deployed to identify and preventively intervene with “at risk” governments may worsen the problem it is intended to solve. Rebel groups have more incentives to use violence or to be intransigent in negotiations if they have reason to think that by doing so they make UN intervention more likely. This is not a hypothetical worry. Plausible examples of this pathological consequence of the prospect of international intervention are fairly common (such as Darfur at present and the Kosovo Liberation Army in Kosovo in 1997-98).

SOME MARGINAL COMMENTS

- In a number of instances, the report in effect urges that the UN bodies engage in more serious “naming and shaming” of member states that are not living up to various important international or institutional commitments. My impression is that in the past the UN has been singularly unable to bring itself to name and shame its own members. Are there structural or procedural reforms that might make this more possible? For example, where there is a need for naming and shaming, could the device of independent commissions appointed by the Secretariat, to provide objective

reviews of behavior in some area, be used? Such committees would report to the Secretariat and the Security Council, who would be obliged by the terms of the arrangement to publish the results. It would be easier to get ex ante agreement on such a procedural device than to get ex post agreement on particular issues, where states can anticipate which of them are likely to be “shamed.”

- The definition of terrorism seems to me to work well for the most part, and I like the way the question of state terrorism is finessed by noting that such actions are already forbidden by a much more developed international legal framework (para. 160). Note, however, that as stated the definition of terrorism probably includes UN sanctions! Terrorism is said to be any action “intended to cause death or serious bodily harm to civilians or non-combatants, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a Government ... to do or to abstain from doing any act.” The only “out” for UN sanctions would be the argument that the intent is not to harm civilians. But given that this harm can be inescapable in the context, and that the purpose is certainly to compel a government, the definition would seem to fit.
- The discussion of transnational crime and illegal drugs seems to dismiss demand-reduction strategies in the main consuming countries. In the medium run, it is hard to imagine how this problem can be genuinely reduced except by demand reduction.
- Paragraph 173 proposes that member states establish “a central authority to facilitate the exchange of evidence among national judicial authorities ...” This sounds very similar to Interpol, which is not mentioned. Should Interpol be shut down? Is the proposed mission here different enough that a new body is needed?
- The Panel is keen on DDR—disarmament, demobilization, and reintegration programs—for post-conflict peacebuilding. “Demobilizing combatants is the single most important factor determining the success of peace operations” (para. 227). Much

more funding is requested for such programs. I don't know of research that really demonstrates this, and I'm not sure that the current theory behind DDR programs is well worked out either. Paying people to exit armed groups in an environment where it is simple to return to them is not "incentive compatible."

A More Secure World? A Critique of the Report of the High-level Panel on Threats, Challenges, and Change

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Detractors and supporters of the United Nations have generally tended to be worlds apart on the issue of what role, if any, the UN should play in world politics.

Critics have argued that the UN has become the depository of lost causes and a place of last resort. They point to an empirical record that seems to back their claim. That record includes, *inter alia*, the fact that the UN has failed to live up to its Charter mandate, that its Security Council is unable to manage successfully conflicts around the world, that its political organs and specialized agencies are overly competitive with each other and tend to work at cross purposes, that its disaster management capability is ineffective, that its General Assembly is irresponsible and little more than a talking shop, that many of its programs are mismanaged (the most recent debacle is the oil-for-food scandal), that its programming and budgetary planning are poor, and that its super-bureaucracy is overly cumbersome and slow. Many of these critics are particularly harsh on the UN for its failure to maintain international peace and security—its primary Charter mandate—claiming that the world organization has not made the world secure. For this reason, they say, the UN has become an irrelevant institution of global governance.

Supporters, on the other hand, claim that if the UN were to be dissolved today, we would probably try to create something much like it tomorrow. Some of them argue that despite its imperfections, the UN is still very much needed now, more than ever before. They blame any ineffectiveness and deficiencies on the UN's member states, which sometimes fail to respect and uphold the spirit and letter of the Charter. They assert that the

UN can operate efficiently and effectively when member governments exercise political will and make an effort to improve the level of cooperation within the organization and increase its resources. Some of these supporters call for attitudinal change among UN member states. Others, who may agree with critics that the UN has not been functioning properly, suggest a variety of reforms ranging from incremental process changes within various organs and programs of the UN, through constitutional changes, to a complete overhaul of the organization.

Between 2002 and 2004 both critics and supporters realized that the UN was in serious crisis. The crisis was precipitated by the United States' illegitimate decision to go to war with Iraq, without the sanction of the UN Security Council. That decision caused a major split in the trans-Atlantic alliance and within the UN Security Council. The United States and Britain were upset with the UN Security Council for failing to enforce a decade's worth of resolutions that called on Iraq to disarm. They were particularly furious when the Council could not agree to act on the so-called "last-chance" resolution—UNSC Resolution 1441—which threatened "serious consequences" if Iraq did not prove its disarmament. France and Russia, along with a number of other states, felt that the work of the United Nations Monitoring, Verification and Inspection Commission (UNMOVIC) and the International Atomic Energy Agency (IAEA) in Iraq was proceeding as planned and that Iraq was being disarmed.

Iraq was not the only problem for the UN over this period. The UN was mired in an "oil-for-food" scandal.¹⁰⁰ It seemed to be doing little to stop humanitarian disasters, such as the ongoing horror in Sudan and the internecine violence in Uganda and the Central African Republic. It was also perceived as doing little to stop Iran and North Korea from attaining nuclear weapons. Even staunch supporters of the organization began to wonder about its relevance.

¹⁰⁰ Before the American-led invasion of Iraq, the UN administered a US\$62 billion "oil-for-food" program that allowed Iraq to sell oil to pay for humanitarian goods. Since the war, documents have surfaced that seem to indicate that former Iraqi President Saddam Hussein skimmed off tens of billions of dollars from that program. He may have had some help from well-placed individuals in western governments (including the US) as well as from within the UN system.

Recognizing the crisis of confidence in the UN and the danger of its possible irrelevance, UN Secretary-General Kofi Annan convened a blue-ribbon commission of 16 eminent persons (mainly former government ministers, key diplomats, and heads of government) to assess the current global threats and challenges to international peace and security and to suggest how the UN can be reformed to meet those threats and challenges. In December 2004 the much-anticipated report of the High-level Panel on Threats, Challenges, and Change was released to the public.¹⁰¹

This paper critiques the High-level Panel report, focusing on what can be considered the conceptual confusion in its key recommendation—“to fashion a new and broader understanding ... of what collective security means—and of all the responsibilities, commitments, strategies and institutions that come with it if a collective security system is to be effective, efficient and equitable.” (Panel report, p. 9). But first, it is important to put the High-level Panel in historical perspective and critically analyze its agenda.

BLUE RIBBON PANELS AND THEIR NOT-SO-HIDDEN AGENDAS

Over the past 30 years or so several blue ribbon panels have been commissioned to examine what is required to address the problems confronting humanity. Almost all of these studies have been funded and undertaken by organizations based in Northern developed countries, and this tends to reduce their credibility and impact among developing countries.¹⁰² Nevertheless, most of these blue ribbon panels have criticized the UN and advanced recommendations for making it more efficient, effective, and relevant as a central mechanism of global governance.

¹⁰¹ *A More Secure World: Our Shared Responsibility. Report of the High-level Panel on Threats, Challenges, and Change.* New York: United Nations, A/59/565, 2 December 2004. Online at <http://www.un.org/secureworld/report2.pdf>

¹⁰² See Edward C. Luck, “Blue Ribbon Power: Independent Commissions and UN Reform,” *International Studies Perspectives*, vol.1, no. 1 (April 2000), pp.89-104.

In the late 1980s, the thawing of the Cold War and the warming of relations between the then-superpowers provided a unique opportunity to rethink governance at the global level and to critique the place of the UN system within such governance. The opportunity was seized by former West German Chancellor, Willy Brandt, who invited a number of prominent individuals from previous panels, including the one he had chaired¹⁰³, to a meeting in Königswinter, Germany, in January 1990.¹⁰⁴ The participants at Königswinter agreed that the world was undergoing a fundamental structural change, creating a propitious environment for global multilateral institutions like the UN to embark upon much needed reform and adjustment and offering hope for better cooperation and collaboration among international actors. They also recognized that the foundational changes in the international system might produce challenges that could not be adequately dealt with by states acting alone. (The need for “collective” action to meet such challenges had also been stressed in the Brandt Commission report a decade earlier.) They asked three prominent global leaders—Ingvar Carlsson (then Prime Minister of Sweden), Shridath Ramphal (then Secretary-General of the Commonwealth), and Jan Pronk (then Minister for Development Cooperation of the Netherlands)—to write a report highlighting the main global issues requiring multilateral action in the immediate post-Cold War period.

The following year, discussions of this report led to the Stockholm Initiative on Global Security and Governance¹⁰⁵, which called for the

¹⁰³ The Independent Commission on International Development Issues. See <http://www.brandt2iforum.info/BrandtCommission2.htm>

¹⁰⁴ These individuals were members of the Independent Commission on Disarmament and Security Issues (the Palme Commission), the World Commission on Environment and Development (the Brundtland Commission), and the South Commission.

¹⁰⁵ Here is a list of the 37 individuals who attended Stockholm meeting: Ali Alatas, Indonesia; Patricio Aylwin Azocar, Chile; Benezir Bhutto, Pakistan; Willy Brandt, Federal Republic of Germany; Gro Harlem Brundtland, Norway; Boutros Boutros-Ghali, Egypt; Manuel Camacho Solis, Mexico; Fernando Henrique Cardoso, Brazil; Ingvar Carlsson, Sweden; Jimmy Carter, United States; Bernard Chidzero, Zimbabwe; Reinaldo Figueredo Planchart, Venezuela; Bronislaw Geremek, Poland; Abdlatif Al-Hamad, Kuwait; Mahbub ul Haq, Pakistan; Vaclav Havel, Czech & Slovak Federal Republic; Edward Heath, United Kingdom; Enrique Iglesias, Uruguay; Hongkoo Lee, Republic of Korea; Stephen Lewis, Canada; Michael Manley, Jamaica; Vladlen Martynov, Soviet Union; Thabo Mbeki, South Africa; Robert McNamara, United

creation of an international commission to fully explore the perceived opportunities created by the end of the Cold War and to construct a blueprint for a more efficient and effective system of multilateral security and governance.¹⁰⁶

This new blue ribbon panel, The Commission on Global Governance, was co-chaired by Ramphal and Carlsson. Then-UN Secretary General Boutros-Ghali endorsed the initiative but the Commission remained independent of the UN system. Its 28 members met in the fall of 1992 to begin deliberations, each acting in a personal capacity. Funding for the Commission's operations was secured from two trust funds administered jointly by the United Nations Development Program (UNDP), nine national governments, and private foundations.¹⁰⁷

It seems that whenever the UN faces external criticism there is a knee-jerk reaction to create another blue ribbon panel and initiate another round of "reforms." As Richard Falk puts it, the impulse to form blue ribbon panels "is quintessentially liberal, in the American sense of the term..." Supposedly, the individuals selected to these panels are wise, rational, and respected leaders who carry some clout with government leaders and have much credibility with and influence on the general public. These distinguished and influential liberal statesmen use such panels as bully pulpits to urge national leaders to become more responsive to the global challenges or to make perceived needed changes to multilateral

States; Bradford Morse, United States; Julius Nyerere, Tanzania; Babacar Ndiaye, Senegal; Saburo Okita, Japan; Jan Pronk, Netherlands; Shridath Ramphal, Guyana; Nafis Sadik, Pakistan; Salim Salim, Tanzania; Arjun Sengupta, India; Edward Shevardnadze, Soviet Union; Kelevi Sorsa, Finland; Maurice Strong, Canada; Brian Urquhart, United Kingdom.

¹⁰⁶ The Commission members made it clear that they were not offering "a blueprint for all time." They considered their work "no more than a transit stop" on the journey of the development of better global governance—an ongoing effort to organize life on the planet. See *Our Global Neighbourhood, Report of the Commission on Global Governance*, p. xvi. Online at <http://www.eldis.org/static/DOC2163.htm>

¹⁰⁷ For a full discussion and critique of the Commission on Global Governance see W. Andy Knight, "Equivocating on the Future of World Order: The Commission on Global Governance," in Ramesh Thakur, Andrew F. Cooper, and John English (eds.), *International Commissions and the Power of Ideas* (Tokyo: United Nations University Press, 2005), pp. 99-122.

instruments so that they can be better equipped to address such challenges.¹⁰⁸

The latest round of reactive UN navel-gazing was commissioned by UN Secretary-General Kofi Annan in response to what he saw as a “decisive moment” to assess current threats to international peace and security. The task of the High-level Panel on Threats, Challenges, and Change (whose members had an average age of 70) was to evaluate the extent to which existing policies and institutions are addressing those threats, and “to recommend ways of strengthening the United Nations to provide collective security for the twenty-first century” (High-level Panel report, p. vii).

The Secretary-General’s agenda was not at all veiled. Against the background of criticism from US President George Bush that the UN was in danger of becoming irrelevant, and naturally worried about the deepening divisions within the UN system over the US “pre-emptive” intervention in Iraq, his concern was to ensure that the UN remain, according to the Millennium Declaration, “the indispensable common house of the entire human family.” He was clearly disturbed by the growing perception around the world that the UN was losing relevance as the US, the major actor within the organization, exhibited behavior that undermined the world body. Such behavior has included US unilateral acts of nose-thumbing with respect to multilateral agreements and treaties, notably the Kyoto Protocol, the landmines treaty, the Convention on the Rights of the Child, treaties to stop the recruitment of child soldiers, the Convention on Discrimination against Women, the Covenant on Economic and Social Rights, the Biological Weapons Convention, the Nuclear Non-proliferation Treaty, the Convention on Small Arms, the comprehensive test ban treaty, the Anti-ballistic Missile Treaty, and the Rome Statute creating the International Criminal Court.

¹⁰⁸ Richard Falk, “Liberalism at the Global Level: The Last of the Independent Commissions?” *Millennium: Journal of International Studies*, vol. 24 (1995), p. 565.

The US commitment to the global rule of law has been a matter of debate for quite some time.¹⁰⁹ As John Murphy points out, this commitment has been widely questioned particularly within the past two decades or so because of this behavior. While not necessarily an “international outlaw”, the US has certainly given the impression recently that it is lukewarm in its support of any global rule of law.¹¹⁰ Its cavalier attitude is evident in its counter-terrorism strategy and in its treatment of al Qaeda and Taliban prisoners at Guantanamo Bay. By labeling these prisoners “enemy combatants”, the US government seeks to ignore established norms of the Geneva Conventions. Many of the detainees, according to Amnesty International, are denied their rights under international law and held in conditions that amount to cruel, inhuman, or degrading treatment. They face severe psychological distress and many have attempted suicide. Until recently people worldwide admired the United States for the moral example it set. That allure risks being tarnished if the US government is understood to believe that international human rights standards are only for others, not for US citizens.¹¹¹

Kofi Annan is well aware of what the resulting corrosion of the global rule of law will mean for the future of the United Nations. Unless the UN finds a way of cajoling the US to adhere to international legal principles, this will be another nail in the UN’s coffin.

CONCEPTUAL CONFUSION ON THE ISSUE OF COLLECTIVE SECURITY

Reading the High-level Panel report, one sees almost immediately its underlying agenda: to make the case for an expanded and updated notion

¹⁰⁹ The US attitude towards a global rule of law has mirrored its attitude towards multilateral institutions generally. On the latter, see Rosemary Foot, S. Neil MacFarlane, and Michael Mastanduno, eds., *US Hegemony and International Organizations* (Oxford: Oxford University Press, 2003).

¹¹⁰ John F. Murphy, *The United States and the Rule of Law in International Affairs* (Cambridge: Cambridge University Press, 2004).

¹¹¹ See Kenneth Roth, “The Charade of US Ratification of International Human Rights Treaties,” *Chicago Journal of International Law*, Fall 2000, at <http://www.globalpolicy.org/empire/un/2003/0806charade.htm>, accessed on January 3, 2005.

of collective security and try to get states (particularly the major powers) to buy into it. The problem with this schema is that it is based on conceptual confusion from the start.

The term “collective security” has a specific root and usage. It refers to a type of coalition-building strategy in which a group of states agree not to attack each other and to defend one another from an attack by a rogue state within the group. The term is based specifically on the principle that “an attack on one is an attack on all.”¹¹² The problem is not that the traditional concept of collective security needs expanding or updating. It is that the collective security scheme, itself, is “inherently ill-suited for a world of sovereign states...” that are reluctant to give up control of their armed forces to the world body. Collective security cannot work when the major powers distrust each other. Collective security requires the unanimity of the big powers.¹¹³

Broadening the concept of collective security will not necessarily produce a more secure world. For one thing, the traditional collective security scheme never really worked. It was tried in the 1950s during the Korean conflict. However, that operation “was not collective security as envisaged in the Charter, but peace enforcement—partial and threatening action authorized by the UN.”¹¹⁴ The Korean operation was almost entirely controlled by the US, which contributed half the ground troops and most of the air and sea forces. The UN command was almost identical to the US Far Eastern Command, headed by General MacArthur. Also, North Korea was not isolated by all the members of the UN system, as required by the UN’s collective security scheme; neither China nor the Soviet Union favored such isolation.

¹¹² Note that collective security differs conceptually from “collective defense”, in that the latter involves an alliance that agrees to defend its own group against attacks coming from outside that group.

¹¹³ David Armstrong, Lorna Lloyd, and John Redmond, *International Organisation in World Politics*, 3rd edition (Houndmills: Palgrave Macmillan, 2004), p. 82.

¹¹⁴ See David Armstrong, Lorna Lloyd, and John Redmond, *International Organisation in World Politics*, p.82 and 42.

The closest the UN came to executing collective security was in the early 1990s, when the thawing of the Cold War and the improved relations between the great powers produced a favorable climate for such measures. UN Security Council Resolution 678 gave Iraq an ultimatum: either to withdraw from Kuwait by 15 January 1991 or face the might of a US-led, UN-sanctioned, coalition. Saddam Hussein refused to comply with this resolution and the stage was set for operation Desert Storm, which, like the Korean operation 40 years earlier, was US-led and US-driven.

So, by and large, the traditional idea of collective security has not panned out over the 60-year life of the UN. How can we expect an expanded conception of collective security to fare any better?

In trying to fashion a new and broader understanding of “collective security”, the Panel report is conceptually sloppy. It blends a number of concepts: state security, human security, collective security, indivisible security, common security, comprehensive security, co-operative security, proactive security, and solidarity, without acknowledging the analytical and conceptual distinctions that can be made between these terms. We are told that because the nature of security has changed since the UN’s founding in 1945, there is an urgent need for a new consensus on the concept and system of collective security. But has the nature of security really changed?

According to the Panel, the threats we face today, “go far beyond States waging aggressive war” (p. 9). Those threats include the vulnerabilities we face from poverty; the spread of infectious diseases; environmental degradation; civil wars; horizontal and vertical proliferation and possible use of nuclear, radiological, chemical, and biological weapons; terrorism; and transnationally organized crime. Many of these threats, the Panel argues, emanate from non-state actors as well as from states, and the “targets” are people as well as states.

There is no doubt that the UN founders focused on ensuring that major inter-state wars—such as the First and Second World Wars—would never

be repeated. The preamble to the Charter states that the UN's primary goal is to "save succeeding generations from the scourge of war". However, it was also recognized back then that there were other threats to security besides military ones.

In fact, the UN Charter contains a much more comprehensive concept of security than the Panel has given it credit for. The Charter views security as the absence not only of military threats but also of threats to fundamental human values. Collective security is considered as only one tool in the UN's arsenal to deal with security threats. Article 1 of the Charter calls on UN member states 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..." But the Charter also provides for a variety of other options for maintaining the peace, such as peaceful settlement of disputes, preventive diplomacy, debate and discourse, judicial settlement, trusteeship, and economic and social functional activity through specialized agencies.¹¹⁵ In addition, the UN was given the mandate for improving the lot of the poor and marginalized in states and their societies, for bringing about equality, fairness, and justice, for protecting the human rights of all people (UN Charter, Chapter IX and X), for facilitating the self-determination process for suppressed peoples (Chapter XII and XIII), and for harmonizing the actions of nations (Article 1.4).

The impression given by the High-level Panel is that the UN has been only concerned with "States security"—revolving around "traditional collective security". In fact, the historical record does not bear this out. Over the years the UN has addressed human rights abuses, deteriorating cities, the debt burden on developing countries, poverty alleviation, population pressures, homelessness, natural disasters, scarcity of vital resources, famine, drug abuse, racism, gender inequality, and even terrorism. These are all "human security" concerns as well as state security concerns. All of

¹¹⁵ For an explanation of these approaches see Inis Claude, *Swords into Plowshares: The Problem and Progress of International Organization*, 4th edition (New York: Random House, 1984), pp. 215-410.

them, as the Panel readily acknowledges, can contribute to instability and the outbreak of various degrees of strife, including military conflict.

While some of the global threats of today may differ from those faced by the international community in 1945, this does not necessarily change the perception of the nature of security. The Panel report provides quite a good description of changes in the international system that it claims have affected how security is currently viewed (pp.10-14). But none of this information is new, and one wonders why it was necessary to rehash it in the report.¹¹⁶ Furthermore, the Panel does not attempt to distinguish between structural and epiphenomenal changes in the international system, instead giving the impression that all of these changes are “systemic.”

The Panel report also asserts that today, more than ever, “threats are interrelated and a threat to one is a threat to all.” It is at this point that the case is made for a “comprehensive collective security” system. Here again, the report exhibits sloppy thinking. To start with, the interrelatedness of threats to security is not a new revelation. As the Panel itself readily acknowledges, the UN founders understood well “... the indivisibility of security, economic development and human freedom” (p. 9 of the Panel report). The Panel makes no effort to distinguish between various types and levels of threats. Not all threats are global. Not all global security threats are interrelated. Not all threats need to be dealt with via multilateral instruments.

The conceptual confusion on the issue of collective security is perhaps the greatest weakness of the High-level Panel report. The focus on this issue has skewed the entire report. It has even unduly affected the nature of some of the report’s 101 recommendations. Let us take a look at one of these recommendations: UN Security Council reform.

¹¹⁶ The Commission on Global Governance did a much better job at showing how systemic changes affected perceptions of global insecurity.

REFORMING THE UN SECURITY COUNCIL AND ITS “PREVENTION” ROLE

There has been general agreement for some time that the Security Council is an unrepresentative relic and that its composition is a throwback to the immediate post-World War II world order. Several recommendations for expanding the Council have been proposed since the end of the Cold War. For instance, the Commission on Global Governance recommended establishing a new class of five “standing members—the intent of which would be to reduce the status of permanent membership; increasing the number of ‘non-permanent’ members from ten to thirteen; and eliminating the veto, except for very exceptional and overriding circumstances related to the national interests of the major powers.”¹¹⁷

Japan and Germany, the second- and third-biggest contributors to the UN budget, have been campaigning for permanent seat status on the Council. India, the world’s second most populous country, and Brazil, Latin America’s biggest country, also have designs on achieving permanent status on the Council. These four states have banded together to press their case before the UN membership, and they are joined in spirit by the Africans, who want two seats for their continent (perhaps Nigeria and South Africa).

None of these proposals for UN Security Council expansion is likely to go far, however. China mistrusts Japan. Italy opposes a permanent seat for Germany and has instead proposed a single permanent seat for the European Union. This latter recommendation is opposed by Britain and France who would have to give up their permanent seats under that scenario. Under the current Charter regional bodies are not UN members and would therefore be ineligible for seats on the Council. Mexico and Argentina oppose Brazil’s quest for a permanent seat on the Council, and Pakistan opposes India’s bid.

¹¹⁷ W. Andy Knight, “Equivocating on the Future of World Order: The Commission on Global Governance,” in Ramesh Thakur, Andrew F. Cooper, and John English (eds.), *International Commissions and the Power of Ideas* (Tokyo: United Nations University Press, 2005), p. 106.

Though the Panel offers very little new thinking on how to break the impasse on reforming the Security Council, it does offer general suggestions on how best to improve the Council's credibility and effectiveness. At the heart of those suggestions is the notion that the Council must increase its capacity and willingness to act in the face of global threats.

The Panel asserts that to accomplish the above goal there must be greater involvement in the Council's decision making by those countries that contribute most—financially, militarily, and diplomatically—to the UN (see Article 23 of the UN Charter); that the Council should be more representative of the UN's broader membership; that Council members should not impair the Council's effectiveness; and that the Council ought to be more democratic and accountable (Panel report, p. 80). These are all commonsense recommendations that have been made in different guises before.

The Panel does little to resolve the issue of Security Council expansion. Its members could not agree on a solution, even though it feels that “a decision on the enlargement of the Council ... is now necessary.” Instead, the Panel offers two alternatives. Model A would give six countries (most likely Brazil, Germany, India, Japan, and two African countries) permanent seats without a veto, and create three extra non-permanent seats, bringing the total number of Council members to 24. Model B, which would expand the Council by the same number of seats overall, creates a new category of seats within the Council. This middle tier of members would not have a veto and would serve for four years. These members could be immediately re-elected at the end of their term. It seems that the rivals to the would-be permanent members favor Model B.

The Panel also proposes guidelines on when UN members may use force legally. Under the UN Charter, they can do so in two circumstances only: Article 51 allows force to be used in self-defense, and Chapter VII legitimizes the use of force when the Council determines that there is a

clear threat to international peace and security. The Panel does not propose any major changes to these two elements. But it does suggest some refinements, particularly to deal with the threat coming from global terrorism and from weapons of mass destruction in the hands of terrorists. Though the UN Charter was written to govern war between countries, the panel argues that even without revision, Chapter VII allows the Council to authorize force against non-state actors who commit terrorism. The Panel even considers that “preventive” wars may sometimes be justified when threats are serious but non-imminent. But it is careful to note that any such decision to use force must pass five important tests: the threat must be grave; the primary purpose must be to avert the threat; force must be a last resort; the means must be proportional; and there must be a reasonable chance that force will succeed without calamitous consequences. Most of these criteria come directly out of the *Responsibility to Protect* report of the International Commission on Intervention and State Sovereignty.¹¹⁸ So here again the High-level Panel offers little that is innovative.

CONCLUSION

The focus of the High-level Panel report on trying to expand the concept and mechanisms of “collective security” is misplaced. The way the agenda of the Panel should have been framed could be better stated as follows. If we are to have a more secure world in the 21st Century, we need a new framework to govern global security—one that recognizes the indivisible nature of security threats and the expansion of the “security” concept to include both state and human security. That new framework would incorporate a common understanding and widespread agreement about the nature of global threats and a flexible, comprehensive, and collectivized strategy for dealing with existing, new, and emerging threats to both the state and individuals. Such a strategy might include a revival of

¹¹⁸ *The Responsibility to Protect, Report of the International Commission on Intervention and State Sovereignty* (ICISS), December 2001. Published by the International Development Research Centre, Ottawa. Online at <http://www.idrc.ac>

the concept of collective security as envisioned in the UN Charter, but it could just as likely require a transformation of existing security mechanisms or the creation of new ones.

Very little in the High-level Panel report offers anything new in the way of recommendation for UN reform or much that is different from the proposals of other blue ribbon panels. Meanwhile, the report exhibits a number of major problems, including a misplaced focus on “comprehensive collective security;” muddled conceptualizations of expanded security and the relationship between “hard” and “soft” security; a misunderstanding of the relationship between development and security; and a fetishism with the securitization of the UN system itself.

It is this latter issue that ought to be of great concern to countries in the developing world. The Panel’s focus by on collective security and on addressing the new terrorist threats will have the effect of facilitating what seems like a shift in funding and effort away from development issues to “security” ones. This concern is reflected in comments made recently by the UN Under Secretary-General Ibrahim Gambari. He complained that there was little in the High-level Panel report on development and humanitarian strategies and that the report was more or less silent on Africa’s special needs. Coming from a special aide to Kofi Annan on Africa, Gambari’s criticism should be taken to heart. He went on to argue that the report “did not articulate fully the ways of increasing financial resources for the United Nations system and its agencies in order to better assist African countries.”¹¹⁹

African countries are not the only ones in need of such developmental and humanitarian assistance. Every day an estimated 50,000 people die from poverty-related causes, including contaminated drinking water, malnutrition, untreated disease, lack of health care, and HIV/AIDS. This

¹¹⁹ “UN Africa adviser says High-level Panel’s report needs to clarify development strategy,” UN News Service, 22 February 2005, online at <http://www.un.org/apps/news/story.asp?NewsID=13365&Cr=Africa&Cr1=development&Kw1=high%2Dlevel+panel&Kw2=&Kw3=>

figure represents a third of all human deaths each year—a shocking statistic indeed.¹²⁰ Deaths from global terrorism pale in comparison to these figures. Thus, it seems odd that the High-level Panel did not devote more of its time to addressing the above issues, especially after acknowledging a broadened definition of what constitute threats to international peace and security.

Failure to adequately address issues of poverty and deprivation in those corners of the world that are most susceptible to the exploitation of terrorist groups will only lead to a more insecure world. Perhaps members of the High-level Panel should have considered more carefully the views of the vast majority of the peoples of the globe. What is clear is that there is no guarantee, just because nine of the 16 members of the Panel are from “developing countries”, that the concerns of the world’s poor would be adequately represented. As noted early, this has been one of the criticisms of the reports of past blue ribbon panels.

There are initial indications from developing states that many of their leaders are concerned that the High-level Panel report tended to present the question of development “from a security angle that was too narrow.”¹²¹ In trying to develop a comprehensive system of collective security that is “equitable”, it is important to consider seriously the positions of developing countries. After all, as the contents of this report reveal, the targets for “collective security” are ostensibly developing countries. These are the regions of the world in which the “new world disorder” is mostly being played out, where states are in greatest danger of collapsing, and where terrorism is most likely to take root.

Without the input of the vast majority of the world’s people none of these schemes for improving global security governance is likely to make the world any more secure. Hence, we should look forward to the debate on the High-level Panel report that will take place this fall in the UN General

¹²⁰ W. Andy Knight, “From the War on Poverty to the War on Terror,” unpublished paper presented at International Week, University of Alberta, Edmonton, Alberta (February 1, 2005).

¹²¹ “General Assembly Critiques High-level Panel Report,” online at <http://www.scoop.co.nz/stories/WO0502/S00084.htm> (Thursday 3 February 2005).

Assembly. Hopefully that input will help to modify some of the 101 recommendations and de-emphasize the securitization of the UN system.

Rediscovering the Security Council: The High-level Panel and Beyond

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According to the theory of cognitive dissonance, our minds find it taxing to hold two mutually inconsistent beliefs for a protracted period.¹²² The mind seeks to reconcile them over time, if necessary by substantially modifying one of them or by denying its validity altogether in order to relieve the dissonance. Politics, of course, holds innumerable examples of the phenomenon. At the United Nations, there may be no starker case than that of the protracted and polarizing matter of Security Council reform. On the one hand, judging by public statements, it is generally accepted that the Security Council is long overdue for a major overhaul. The calls for its radical reform have come with such frequency, and from so many quarters, as to qualify as common wisdom. The Secretary-General's High-level Panel on Threats, Challenges, and Change, joining the chorus, both offers a series of principles to guide Council reform and contends that a decision to enlarge the Council based on these criteria "is now a necessity" (para. 250).¹²³ Strong words.

At the same time, however, the Panel asserted that the Council has, since the end of the Cold War, become more effective and more willing to act (para. 246), while remaining the UN body "most capable of organizing action and responding rapidly to new threats" (para. 247). These judgments, like the more disparaging ones noted above, are commonly held around the world body. To relieve the resulting dissonance, it is

¹²² This classic theory in social psychology was most prominently developed in Leon Festinger, *A Theory of Cognitive Dissonance* (Evanston, IL: Row, Peterson, 1957).

¹²³ *A More Secure World: Our Shared Responsibility. Report of the High-level Panel on Threats, Challenges, and Change*. New York: United Nations, A/59/565, 2 December 2004. Online at <http://www.un.org/secureworld/report2.pdf>

generally also asserted that, despite its relatively impressive performance, the Council suffers from some potentially terminal malady. Though we are told that the cure is radical reform, it remains to be asked, what actually ails the UN's most dynamic and effective organ? What remedies are readily available that promise to make a substantial positive difference without risking the body's vital signs? And why did the Panel, after proclaiming the urgency of reforming the Council, offer neither a coherent diagnosis nor a clear treatment plan? If the Panel provided few clues of how to relieve the disabling dissonance that has long plagued attempts to reform the Council, should even more radical remedies or fresh approaches be considered over time to relieve the stress?

Why the Panel rushed to underline the importance and immediacy of a problem to which it could not offer a solution remains something of a mystery. But its failure to square this circle is suggestive of how complex, difficult, and divisive the task of reforming the Council really is, once one gets beyond the superficial assertions of consensus on the need to get going. For a dozen years the General Assembly's own open-ended, never-ending working group has toiled on this subject with decidedly modest results.¹²⁴ Did anyone believe that convening one more blue-ribbon commission of relatively independent figures would provide the magic formula? There must be reasons why the Charter's provisions on the Council have been amended only once in six decades. Surely it must be more than coincidental that many of the questions concerning the Council that are so vociferously debated today also threatened to tear apart the UN's founding conference in San Francisco.

This brief paper seeks to provide some of the historical and political context necessary to understand where the debate over Security Council reform has been and where it is likely to go in the coming months and

¹²⁴ On the results of blue-ribbon commissions, see Edward C. Luck, "Blue Ribbon Power: Independent Commissions and UN Reform," *International Studies Perspectives*, April 2000 (vol. 1, no. 1); "UN Reform Commissions: Is Anyone Listening?" and Ramesh Thakur, Andrew F. Cooper, and John English, *International Commissions and the Power of Ideas* (Tokyo: United Nations University, 2005). For the annual reports of the Open-ended Working Group on the Question of Equitable Representation on and Increase in Membership of the Security Council and Other Matters Related to the Security Council, see UN A/48 – A/58/47.

years. It argues that those calling for substantial reform should clarify both their diagnosis of what is wrong with the Council today and how their favored reforms would remedy these failings. It contends that a fuller exploration of the historical context and a keener, more candid, and more searching geopolitical analysis would be a helpful place to start. One would not expect, of course, to find such straightforward assessments in the public statements of those member states and groups advocating a particular course of action (or inaction). That is the job of independent commentators. The advocates should, however, recognize that the ultimate fate of their pleas will depend not only on their power, popularity, and persuasiveness, but also on the extent to which their proposals appear to coincide with larger historical, political, and strategic dynamics shaping the international system.

The opening section focuses on some of the more prominent criticisms of the current Council, for example that it is insufficiently democratic and representative and that it lacks legitimacy and credibility. A number of glaring gaps are identified between the critiques voiced by the High-level Panel and the solutions the Panel proposes. The second section looks at these concerns from the perspective of the founders' intentions and expectations, finding that much of what current reformers object to are precisely those provisions and characteristics that the founders thought would insure that the UN's Council would not replicate the mistakes of the League's Council. This comparison then leads, in the final section, to a consideration both of current prospects for major surgery on the Council and of future possibilities; it argues for a focus in the short run on working methods rather than on composition (that is, on Cluster II rather than Cluster I issues in the rubric of the never-ending working group).

For the longer term, however, the paper calls for a reconsideration of some of the schemes for a greater regional role that were rejected at San Francisco or earlier. The paper recognizes that an effort to find a place for regional voices in the work of the Council might be construed by some as truly radical reform. On the other hand, it views the prospect of adding more permanent seats at this point as perpetuating the Council's current

shortcomings, as putting ever more distance between Turtle Bay and Washington, DC, and as displaying a distinct lack of imagination and innovation. Even a serious discussion of the pros and cons of a more regional approach could offer some fresh perspectives and insights on the tired topic of Council reform. To most member states, the increasingly sterile and circular debate on expansion offers little other than the likelihood of more years of frustrating debate and meager results.

WHAT AILS THE COUNCIL?

The litany of complaints about the Security Council has been recited so often as to take on a mantra-like quality. Council membership is archaic, reflecting the world of 1945 rather than of 2005. The Council is undemocratic and unrepresentative. It is inequitable in its composition, its decision making rules, and its working methods. It is largely unaccountable and unresponsive to its obligations towards other principal organs, particularly the General Assembly and the Economic and Social Council (ECOSOC). As a result, it lacks credibility and legitimacy, and is shedding legal authority due to selective decision making, political grandstanding, and a growing unwillingness of its members—especially the all-powerful permanent ones—to act on its decisions, even those taken under Chapter VII of the UN Charter. More recently, the Council has been said to have assumed an inappropriate semi-legislative and normative role that treads both on the legal authority of the Assembly and on the substantive spheres of competence of the Assembly and ECOSOC.

Basically, the complaints fall into three categories: (1) equity (the most frequent, persistent, and heartfelt concern); (2) effectiveness (voiced less often and at odds with the prevailing sense that, for all its faults, the Council embodies the UN's main claims to making a difference); and (3) turf and prerogatives (insider concerns that do not fit well with charges of ineffectiveness and that do not have much resonance beyond Turtle Bay). The High-level Panel's critiques of the Council, unlike those voiced by most

member states, put much greater emphasis on effectiveness than equity and they skip turf questions altogether, as follows:¹²⁵

1. The paucity of representation from the broad membership diminishes support for Security Council decisions. (para. 245)
2. Decisions taken and mandates given have often lacked the essential components of realism, adequate resources, and the political determination to see them through. The Secretary-General is frequently holding out a begging bowl to implement Security Council decisions. (para. 245)
3. The financial and military contributions to the United Nations of some of the five permanent members are modest compared to their special status, and often the Council's non-permanent members have been unable to make the necessary contribution to the work of the Organization envisaged by the Charter. Even outside the use of a formal veto, the ability of the five permanent members to keep critical issues of peace and security off the Security Council's agenda has further undermined confidence in the body's work. (para. 246)
4. It [the Council] has not always been equitable in its actions, nor has it acted consistently or effectively in the face of genocide or other atrocities. This has gravely damaged its credibility. (para. 246)
5. The distribution of power among members [has changed]...but the Security Council has been slow to change. (para. 245)

Given this array of disabilities, why has the Council, as the Panel also asserts, become more effective? Are these problems becoming less acute over time, or have other, more robust yet unidentified, factors intervened to more-than compensate for any slippage on these fronts? The Panel never explains this discrepancy in its logic.

The first two sets of concerns voiced by the Panel echo those most frequently invoked by member states. By asserting a direct relationship between equity and the will to implement Council decisions, they offer a

¹²⁵ Please note that the Panel did not number its concerns, nor list them in this order. They are presented in this manner here for the sake of clarifying and analyzing their assumptions.

powerful pairing of arguments that have broad appeal. The Panel, however, presents no evidence—empirical, statistical, anecdotal, or otherwise—to support this claim. If member states are reluctant, or refuse, to implement the Council’s decisions because of unhappiness over its composition, then this would contravene their unambiguous obligations under Article 25 and elsewhere in the Charter to carry out its mandates. At the San Francisco founding conference, a number of delegations were unhappy at having lost the battle to expand the Council to 15 or more at the outset and to restrict the prerogatives of the five permanent members, yet none of them conditioned their participation in and support for the UN as a result.

Likewise, while similar claims of lagging enthusiasm were made before the first expansion of the Council in 1965, evidence has yet to be produced that any revitalization of support for Council mandates followed. It would seem reasonable to posit, instead, that the degree to which a member state strives to carry out a Council decision has more to do with the substantive content of that decision and its consistency with perceived national interests and domestic support than with which states happened to be on the Council at the time of the decision. In other words, it would seem as counterintuitive for a state to turn its back on a favorable outcome as to embrace an unfavorable one for reasons of process over substance. Surely there is some connection between perceptions of equity and assumptions about legitimacy and authority, but *when* these act and the *degree of pull* they exert remain to be seen.

The other three items on the Panel’s list of complaints raise similarly elusive and/or troubling questions. The complaint that some of the five permanent members (P-5) have failed to carry their weight is beyond dispute. It points to the question of responsibility, rather than representation. And, as argued below, it appears to this author, at least, to be getting much closer to the Council’s core disability. But the Panel once again fails to even hint at what might be done to mobilize the will and capacity of all of the P-5 behind the efforts to implement Council decisions. So much, as well, for the contention that participation in Council decision

making leads automatically to active support for its resolutions and decisions. Perversely, after devoting so much energy and lively prose to contending that permanent seats do not necessarily produce permanent commitment, the Panel then turns around and presents, in Model A, a plan for six more permanent seats. Here, the gap between analysis and assertion is glaringly wide even by UN standards.

The Panel's fourth concern—that the Council has not acted in a consistent and equitable manner—seems to be heard with similar frequency and sincerity in the General Assembly Hall and in introductory international relations courses. Students who are new to the murky ways of international affairs are prone to assert that states and international bodies should act with a precision and consistency that is rarely, if ever, found in real life (not to mention in political life). Sophisticated diplomats, who normally place a premium on flexibility and subtlety in negotiation, often call for rigid guidelines, rules, principles, and constraints for a Council they cannot predict or control. Even the Charter requires the Council to discharge its awesome duties “in accordance with the Purposes and Principles of the United Nations” (Article 24 (2)). Surely support will ebb for Council decisions that are seen as arbitrary or unprincipled. Fair enough, but should the Council, any more than individual national foreign policies, be held to a strict standard of consistency and equity in its actions? And, if so, how would its adherence be measured and assessed, and by whom? Are any two crises, or the geopolitics surrounding them, alike?

Here, again, the Panel offers no clue about how this shortcoming could be addressed, nor suggests how its formulas for expanding the Council would help. Like so much other reform rhetoric, this assertion suffers from a distinct lack of a political and historical framework. In essence, proposals for guidelines, rules, or principles to channel Council decision making seek to take, to some degree, the politics out of the work of the Council. For the sake of consistency, equity, and predictability, they would ask the world's foremost inter-governmental decision making body to take on more of a machine-like quality, as the disembodied voice of principles developed

elsewhere and/or earlier. As discussed in the next section of this paper, that is hardly the model the founders had in mind. They sought maximum flexibility for the five permanent members (P-5), so that these members could consider each emerging threat individually, consult among themselves and with the other members of the Council on the possibilities for joint action, and decide whether and how to respond individually and collectively. They had witnessed, in the failings of the League, how pointless and debilitating it was for the League's Council to try to place its deliberations and declarations above the realities of the politics and capacities of the day, whether within or among fully sovereign states. Indeed, this complaint by the Panel seems inconsistent with its previous one on the lack of will of the P-5 (and others) to implement the Council's decisions. Would implementation improve if key members of the Council felt compelled by rules rather than by interests or norms to vote for particular mandates and resolutions?

The last of the Panel's five complaints, on the evolving distribution of power, has the most profound implications for the reform exercise, and perhaps even for the Council's future prospects. The Panel, like the Secretary-General and so many others, was quick to acknowledge both that the way the Council looks and works should be affected by changes in geopolitics and that the Council has been resistant to radical change from its earliest days. But, like the others, the Panel specified neither how the global balance of power has shifted nor what changes in the Council should follow from that analysis. Do the differences between the Panel's proposed Models A and B, for instance, reflect distinct interpretations of how the distribution of power and capacity has evolved? If not, then how significant a factor should this be in plans to reshape the Council? There are a multitude of indices concerning the capacity of states, each leading to a distinct set of hierarchies. The power potential of a state, of course, may not be automatically translated into usable capacity, national will, or a willingness to put valuable national assets at the service of the UN or its Security Council. In terms of the contributions of the current P-5 to the UN's peace and security efforts, for example, it is commonly perceived that

the United Kingdom and France tend to punch above their weight class and China and Russia below theirs.

No doubt it sounds good to assert, as so many have, that the composition of the Council should be modernized to better reflect the contemporary distribution of power in the world. But what does that mean in practice? What are contemporary power realities? For aspirants to permanent membership, this notion seems to equate roughly with the desire for an increasingly multipolar distribution of power, one that would justify having additional permanent members, especially from the developing world.¹²⁶ But in the military sphere, at least, power and capacity seem to be increasingly concentrated in the hands of one country, the United States, making the world look more unipolar. Economic capacity is no doubt more evenly distributed, but the US still possesses a GDP some two and a half times larger than the next member state, Japan.¹²⁷ True, the European Union (EU) has an aggregate economy larger than that of the US, but in political and security affairs the EU countries seem to want as many voices on the Council as possible. Indeed, if the EU were willing to be represented by a single permanent seat on the Council, then the latter's reform would be far simpler.

As long as such wide disparities in power persist, it will be extremely difficult to redesign international decision making rules and bodies on a multilateral basis that is widely accepted as both fair and realistic. In essence, Council reformers are seeking to fit a unipolar world into a multipolar architecture. Something would have to give. Indeed the rhetoric about new power realities is so far from the situation on the ground as to make cynical observers wonder whether it is little more than a ruse to obscure a quite different agenda, one that seeks not to reflect power relationships but to reverse them. The timing of the escalating calls

¹²⁶ For those nostalgic for a return to a more multipolar world order, it is worth recalling that the last time there was anything close to a multipolar distribution of power in the world was in the 1930s. That hardly proved a stable situation or a promising precedent.

¹²⁷ World Bank, *World Development Indicators* database, September 2004, Online at <http://www.worldbank.org/data/databytopic/GDP.pdf>. According to these figures, the total GDP of the US in 2003 was US\$10.882 trillion and that of Japan was US\$4.326 trillion.

for radical reform from the Secretary-General and others—in the post-Iraq debate period—is suggestive.

Many in Washington, DC, and elsewhere, perceive that one of the prime motivations behind the current drive to expand the Council and the number of permanent members is a desire to dilute American influence within the world body. The current talk of enhancing the multilateral, democratic, and representative character of the Council through expansion is reminiscent of the pleas during the debates over the use of force in Iraq for organizing the Council as a multilateral counterweight to US power in the world outside. This changing political context will no doubt make Washington markedly more skeptical of Council reform this time round than it was during the last drive in the mid-1990s. Yes, times are changing, but in a direction that promises to make major enlargement harder, not easier, to achieve.

FOUNDING INTENTIONS AND EXPECTATIONS

The High-level Panel tries to present a balanced sense of the founders' intent, as follows:

It [the Council] was created to be not just a representative but a responsible body, one that had the capacity for decisive action. . . . Article 23 of the Charter of the United Nations established that membership in the Council as a whole was explicitly linked not just to geographical balance but also to contributions to maintaining peace and security. (para. 244)

This is a distorted picture, however, because the founders were not concerned about “balancing” such matters. Indeed, their emphasis on performance, on credibility in threatening Chapter VII enforcement measures, and on the unity of the great powers was so pronounced that at the San Francisco founding conference they did not hesitate to bully or

dismiss delegations with other ideas.¹²⁸ Basically, the Big-Three (then Four, then Five) presented the other delegations with a *fait accompli* they had worked out at the restricted preparatory meetings at Dumbarton Oaks and at various wartime conferences. On various occasions in San Francisco, representatives of the Big-Three made it known that they would prefer no world body to one with the equitable but feckless properties of the League of Nations.

The new world body was not organized to be universal, democratic, or representative. None of those words—or concepts—appears in the Charter, despite appeals to those ends by numerous parties at San Francisco. Sovereign equality is included as a principle, not a voting rule, and does not even appear in Chapter IV on the General Assembly, nor in Chapter II on membership. At San Francisco, it was agreed that sovereign equality is a legal, not political, term referring to equal status under international law, not to rights of voting or representation.¹²⁹ There is nothing in the Charter about one member state representing others, whether in the Security Council or in any other intergovernmental body. The founders understood that to give the pretense of a democratic or representative quality to UN organs, including the Assembly, would be tantamount to suggesting that the new organization would have a legislative or supra-national character that would be both unintended and inappropriate for this stage in the evolution of the nation-state system. The founders would object, this author is confident, to the much-favored rhetoric these days about making the Security Council, of all bodies, more democratic, representative, and equitable. Without direct representation of the people, the UN cannot be democratic. With it, a parallel system of accountability and sovereignty would arise that would weaken the member states individually and the inter-governmental system collectively.

¹²⁸ For an insight into the thinking of US President Franklin Delano Roosevelt, see Forrest Davis, "Roosevelt's World Blueprint," *The Saturday Evening Post*, April 10, 1943.

¹²⁹ Ruth B. Russell, *A History of the United Nations Charter: The Role of the United States 1940-1945* (Washington, DC: The Brookings Institution, 1958), p. 672.

At San Francisco, the major powers rejected various proposed schemes for regional representation on the Council (a topic addressed in greater detail below). The five permanent members are simply named in the Charter, of course, with no rationale given for their selection. Earlier, the US had insisted on including China—something London and Moscow were less enthusiastic about—in part as an Asian counterweight to Soviet ambitions or a revival of Japan. But this geopolitical and strategic logic hardly amounted to an attempt to achieve geographical balance. The High-level Panel’s summary of the criteria for non-permanent membership enumerated in Article 23(1) is simply inaccurate and misleading. After listing the five permanent members, Article 23(1) reads:

The General Assembly shall elect ten other Members of the United Nations to be non-permanent members of the Security Council, due regard being specially paid, in the first instance to the contribution of Members of the United Nations to the maintenance of international peace and security and to the other purposes of the Organization, and also to equitable geographical distribution.

In essence, it mentions three criteria, giving pride of place to contributions (1) “to the maintenance of international peace and security” and (2) “to the other purposes of the Organization”. Though some delegations at San Francisco favored alternative language about geographical balance or representation, the Big Three insisted, successfully, on the awkward closing phrase “also to equitable geographical distribution.”¹³⁰ The insistence on the term “distribution” is particularly telling. While “representation” suggests a bottom-up approach to choosing Council members, “distribution” implies a top-down phenomenon and perhaps even a somewhat arbitrary selection process. The pivotal role that regional groups have come to assume in putting forward formal candidates for election to the Council is not based on any language in the Charter, of course, but rather on a series of procedural decisions by the General Assembly, as confirmed by subsequent practice.

¹³⁰ Documents of the United Nations Conference on International Organization: San Francisco, 1945, vol. 11 (New York: United Nations Information Organizations, 1945).

At San Francisco, as today, the most powerful arguments against the founding conception of the Council contended that its restrictive nature would soon undermine the legitimacy of the enterprise. It would come to be seen as a small club of the powerful that could easily trample the rights and violate the sovereignty of smaller states, which were given little say in its choices and actions. Though assessments of the Council's performance obviously vary, 60 years later it is evident that the more dire predictions about declining legitimacy have not come to pass. Perhaps it is coincidental, but it is striking that the increasing clamor for enlarging the Council has coincided with the most active phase in the Council's history. The year the Assembly's never-ending working group on Council reform was launched, 1993, happened to be the peak year for Council resolutions (93) and statements (88) and for blue helmets deployed (78,500). This last number was the result of five-fold growth over two years—a period in which the number of formal meetings of the Council had more than tripled. In 1993 the Council passed more Chapter VII resolutions than in its first 44 years, and it had cast only a single veto in three years.¹³¹ Hyperactivity may not always equate with effectiveness, of course, but it hardly sounds as if the motive for reform was to revitalize an archaic and moribund body. Indeed, it would appear, instead, that the renewal and reactivation of the Council with the end of the Cold War had made it a much more attractive and influential place with which more member states would value an affiliation. And, yes, perceptions of equity, representativeness, and fairness matter more for an active than an inactive Council.

In this context, it needs to be asked: does legitimacy flow primarily from process or from results?¹³² Surely it helps if both flow in the same direction, that is, if the right process happens to lead to effective results. But, given a choice, there is no doubt that the founders would have privileged results

¹³¹ These statistics are largely drawn from the website of the Global Policy Forum, <http://www.globalpolicy.org/security/data/index.htm>

¹³² For a fuller discussion of this relationship, seen from a US perspective, see Edward C. Luck, "The United States, International Organization, and the Quest for Legitimacy," in Stewart Patrick and Shepard Forman, eds., *Multilateralism and US Foreign Policy* (Boulder, CO: Lynne Rienner for the Center on International Cooperation, 2001).

over process. The prevailing view, at that point, was that the structure and functioning of the League had mistakenly placed equity above power, condemning the body to fruitless dithering in the face of Axis aggression. The founders were determined that the new world body would be different, structured to avoid the failings of its predecessor. In April 1946, a year after the San Francisco conference was convened, the League's Assembly held its final session, in part to reflect on these differences, as captured by the following excerpt from a book manuscript in preparation by this author:

Other than overseeing the transfer of the League's functions, activities, and assets to its successor, the main business conducted in the grand Palais des Nations in Geneva that Spring was some revealing soul-searching about what had gone wrong with their beloved League and what could go right under the new architecture. Four themes stood out, all related to the special features of the new Security Council. One, the new Council included all of the major powers and, in particular, would serve to embed American power and dynamism in the new structure. Two, the most powerful states were given special rights and responsibilities concerning the maintenance of international peace and security. Three, the new Council was to be of limited size, without what the Dutch delegate labeled the "exaggerated equality between great and small Powers" that characterized the consensus rule in the League's Council. The latter reached its greatest girth—double its initial eight members—in 1934, on the eve of the World War it was supposed to prevent. And four, the new Council had the authority to enforce its decisions, while its members had the capacity—and the experience—to crush aggressors through the collective use of force if necessary. The Council, in short, was to be the centerpiece of the boldest attempt yet to institutionalize collective security.¹³³

In light of this historical experience, as well as of the results of earlier reform efforts, the relationship between the size of a body and its

¹³³ League of Nations, *The League Hands Over* (Geneva: 1946), pp. 32-33, 46, 51, and 59. For a useful summary of the experience of the League's Council without analysis or editorial comment, see League of Nations, *The Council of the League of Nations: Composition, Competence, Procedure* (Geneva, 1938).

legitimacy would seem to bear further reflection. As ECOSOC has been enlarged not once, but twice, from 18 to 27 to 54, has it become more legitimate? Has the expansion of the Human Rights Commission brought it growing respect? The savaging of its performance by the High-level Panel suggests not. The same applies to the Geneva-based Committee on Disarmament. Indeed, there seems to be a well-established pattern around the UN system by which intergovernmental organs are enlarged to the point that their loss of effectiveness becomes so obvious as to call into question their credibility and even relevance. And if size matters so much, should we conclude that the General Assembly is the most legitimate, credible, and authoritative of the principal organs?

CURRENT PROSPECTS, FUTURE POSSIBILITIES

As of this writing, four contenders for permanent status—Brazil, Germany, India, and Japan—have declared their intentions and are working together to try to amass two-thirds support in the General Assembly for a Charter amendment roughly along the lines of the High-level Panel’s Model A. Some of these countries have acknowledged privately that semi-permanent arrangements, † la Model B, would not be acceptable to them. While predicting the course of events in the General Assembly is a risky enterprise, there are a number of reasons to believe that their effort will fall short.¹³⁴

- At this point, the African group cannot agree on candidates to fill the two permanent seats allocated to Africa under Model A. Without solid African support, it is inconceivable that any package could succeed in the Assembly.
- None of the four aspirants has the support of its regional group and each faces the determined opposition of at least one

¹³⁴ For an insightful analysis of the prospects for Security Council expansion at this point, based on a survey of UN practitioners and analysts, see Thomas G. Weiss, *Overcoming the Security Council Reform Impasse: The Implausible versus the Plausible*, Occasional Paper No. 14 (New York and Berlin: Friedrich-Ebert-Stiftung, January 2005).

significant power in its region. Their claims to be candidates to represent their neighbors on the Council, therefore, ring hollow. Historically, of course, the most acute and persistent rivalries and security challenges have arisen among neighbors.

- Adding another layer of permanent members, even without veto power, goes against the grain of the most prevalent criticisms of the existing system. There has long been resistance to the notion of adding a third category of Council membership.
- A substantial portion of UN members would gain little from either model, both of which would privilege a rather thin layer of relatively powerful states. More than a quarter of all member states have never served on the Council, and most member states are convinced that their opportunities to serve on the Council would come no more often under Model A, or possibly under Model B for that matter. In an organization of 191 member states, incremental increases in the girth of the Council do little, if anything, for most of the membership.
- In the last major drive for Council expansion, led by Assembly President Razali Ismail in 1996-7, two-thirds of the member states had privately indicated support for a plan similar to Model A and yet only a handful stood up for it publicly when it was presented to the never-ending working group.¹³⁵ Though the so-called “coffee club” states had mounted an effective drive to derail the Razali plan, on the whole the political conditions for moving forward seemed much better then than now. The sobering experience of the Razali venture has led many veteran diplomats and observers to discount the prospects for success under less favorable conditions today. In particular, there is reason to believe that some of the permanent members, China and the United States in particular, are markedly less enthusiastic this time around.

¹³⁵ This author was enlisted by President Razali to work closely with him on designing his plan.

Finally, the aspirants had hoped for a significant boost with the publication of the High-level Panel's report. Yet, in some respects, the report has proven anti-climactic, and perhaps even a setback for the campaign. For one thing, as detailed above, the case for expansion is argued with little conviction, enthusiasm, or logic in the text. If anything, the Panel seems to be laying the case for no more permanent seats. For another, the failure of the experts to agree on a single formula has underlined how difficult this task can be. If 16 hand-picked panelists cannot agree on one model, it is sometimes asked, how can we expect 191 deeply divided and sovereign member states to reach anything close to a consensus?

These sober considerations raise doubts about the original mandate and timing of the High-level Panel exercise. The Secretary-General and his advisors appear to have conceived of this venture during the summer of 2003 in the wake of the highly divisive and ultimately indecisive debates in the Security Council over the use of force in Iraq. According to a multitude of surveys, public confidence in the world body had tumbled in developing and developed countries alike.¹³⁶ "Events have shaken the international system" ominously warned the Secretary-General. If the UN's principal organs—beginning with the Security Council—"are to regain their authority, they may need radical reform."¹³⁷ The High-level Panel, he told the Assembly, would develop both a keener understanding of the changing nature of threats to international peace and security (a task they and their talented staff accomplished quite persuasively) and a blueprint for recasting the world body's architecture accordingly. Did the latter half of their mandate make sense? Should it have included the contentious inter-governmental issue of Security Council reform? And should the group have been given such a dramatic send-off as if the future of the world body rested in its hands? As this author and others at the time predicted, the Panel's suggestions on Security Council reform have gained the most attention, eclipsing its fresher and potentially more

¹³⁶ For example, see *View of a Changing World 2003*. Online at <http://people-press.org/reports/display.php3?ReportID=185>

¹³⁷ Press conference, SG/SM/8855, September 8, 2003.

consequential proposals in other areas, such as post-conflict peacebuilding, terrorism, and weapons of mass destruction. This is unfortunate, because, as noted above, its Security Council recommendations suffer from the same malady that afflicted its initial mandate: the lack of a historical and political context.

In looking to an institutional fix for what ailed the Security Council, the Secretary-General made a fundamental misjudgment. The divisions over Iraq did not reflect an institutional malaise but a political one. Having misdiagnosed the source of the illness, the Secretary-General and his panel are advocating a course of treatment that promises to make matters worse. While the wounds over the Iraq debate are still festering, and the degree of mutual trust among the Council members remains at a low ebb, is hardly the most propitious moment to try to negotiate a major expansion of the Council's membership and the addition of more permanent members. It is as if the Secretary-General, noting that his house was on fire, declared that this was a good time to redecorate. Indeed, all the fuss about Security Council expansion has distracted attention from understanding and addressing the core political differences that remain unresolved. Some of these outstanding issues, such as those on the use of force, are raised gingerly in other parts of the report, almost as an invitation to begin the overdue political dialogue.

The divisions over Iraq do cast a shadow over the Council's future, but that is not because there are too few permanent members. Would a Council with 11 permanent members or with 24 members in all have reached a consensus on the use of force in Iraq? Indeed, on what important issues would decisions or actions by the Council have been different? The disagreements in the Council result not from its size but from the fact that its most powerful member sees things, including the proper place of the Council, quite differently than many of the other members. If efforts to expand the Council are seen in Washington or elsewhere as attempts to dilute the influence of the US within the Council—and this perception is already widely held—then the future could indeed begin to look quite bleak. The misdiagnosis of what ails the Council could well transform the

charges of its irrelevance into a self-fulfilling prophecy. The old adage about the wisdom of letting sleeping dogs lie seems apt in this context.

None of this, of course, offers much encouragement to those rising powers that are frustrated by the lack of progress in finding them a more regular place at the Council table. Some of them, though surely not all, have reasonable individual claims based on years of service to the UN system. They find little solace in the observation that the founders purposely gave special rights and responsibilities to a few on a permanent basis and set the bar to Charter amendment very high. They understandably ask, if not now, when? If not this, what? Should this reform round fail—and, in terms of what they are asking for, failure seems very likely—they might usefully begin to question whether expansion is, in fact, the best way to proceed. There are ample reasons to believe that that road will remain bumpy and meandering for years to come. For a dozen years or more, Council expansion, particularly of permanent members, has been an acutely divisive, even polarizing, issue among the member states. That remains the case today and for the foreseeable future.

Two alternatives, neither of which would foreclose enlargement as a future option, are worth exploring at this juncture. The first—reforming working methods—offers fewer political obstacles and promises much quicker delivery. The second—revisiting earlier notions of regional participation in the work of the Council—implies a radical conceptual shift and requires much more concerted analysis, but could offer fresh promise for producing a Council that is more effective and enjoys greater legitimacy.

Unfortunately, the High-level Panel had little to say about working methods other than to praise the “many informal improvements [that] have been made to the transparency and accountability of the Security Council’s deliberations and decision-making procedures” and to urge continuing consultations with troop-contributing countries (para. 258). For most member states, however, enhancements in working methods are the most likely source of any tangible benefits from the reform process.

Indeed, if the Council is expanded to 24 or more members, it is very likely that the original permanent members would be even more inclined to consult among themselves informally and away from Council chambers. The experience of elected members, which tend to feel marginalized by such practices now, is likely to become even less satisfying. So movement on Cluster I (composition) without progress on Cluster II (working methods) could lead to further unhappiness down the line.

The Razali Plan put great emphasis on Cluster II measures—in fact, it went substantially farther than this author would have preferred—while the current emphasis on Cluster I steps threatens to suck much of the political air out of efforts to reform working methods. Should the aspirants acquire permanent seats, their interest in opening up Council processes and procedures could well ebb. As the old political adage puts it, where one stands depends on where one sits. Oddly enough, the High-level Panel did not address the question of how many affirmative votes would be needed under the proposed 24-member Council to pass a non-procedural resolution. Razali, recognizing that where this hurdle is set is a key factor in determining the influence wielded by the elected members, considered several different formulas in this regard. He ended up proposing 15 of 24 (63 percent, a slightly higher hurdle than the current 60 percent or 9 out of 15).

On the other hand, the High-level Panel's innovative proposal for a Peacebuilding Commission is suggestive of ways in which the Council could involve other organs and the wider membership more fully in its work. This is not a matter of adding members and expanding voting privileges, but rather of engaging in wider consultations and more frequent and sustained joint undertakings such as the fact-finding missions cosponsored by the Security Council and ECOSOC, and seeking the voice and expertise of other bodies and member states more regularly on an as-needed basis. As the Panel rightly noted, considerable progress has been made on these and other measures to enhance access,

transparency, and accountability.¹³⁸ There is a strong foundation on which to build.

In this context, it is worth recalling that much of the critical work of the Council is carried out by its subsidiary bodies. Usually chaired by elected members, governed by consensus rules, and acting as committees of the whole, these bodies address everything from individual sanction regimes, to counter-terrorism, to specific crisis situations, to the future of peacekeeping. Their number has grown to 18 and they boast larger and more substantive secretariats than the Council as a whole. Their work, however, tends to be more opaque and far less known than that of the parent body. No doubt that is among the reasons why the oil-for-food scandal was allowed to percolate along in the deliberations of the 661 Committee for so many years with little public or official attention beyond fairly narrow circles.

The rationale for reconsidering the advantages and disadvantages of a regional approach is more subtle, beyond the earlier point that the drive to add permanent or even non-permanent seats appears to have entered a cul-de-sac. The argument begins with the notion of responsibility. As the High-level Panel notes, “the founders of the United Nations conferred primary responsibility on the Security Council for the maintenance of international peace and security” (para. 244). However, collective responsibility, or shared responsibility as the subtitle of their report expresses it, has a way of inviting free riding, as each partner looks to the others to take the lead in potentially risky or costly situations. Council members appreciate too infrequently that their responsibilities only begin with the passage of a resolution or the authorization of a peace operation or sanctions regime.

The five permanent members were granted special privileges because they were also supposed to take on special responsibilities and shoulder extra burdens. As acknowledged earlier, their performance in this

¹³⁸ For a brief summary of some of these measures see Edward C. Luck, “Reforming the United Nations: Lessons from a History in Progress,” Occasional Paper Series (New Haven, CT: Academic Council on the United Nations System, 2003), pp. 13-14, footnotes 35 and 36.

regard—whether measured individually or collectively—has been uneven, though hardly negligible. The task of enhancing the performance of the Council as a whole ought to begin with giving individual members, particularly but not solely the permanent ones, a greater sense of responsibility for at least some portion of the Council’s broad agenda. Such a division of labor might be along functional, historical, or regional lines. Presumably it could be worked out through informal understandings among the members, led by the permanent ones. In peacekeeping, peacebuilding, and conflict resolution, the notion of lead nation(s) has become well developed and widely accepted through the years.

Any serious reform of the Council, therefore, should focus not just on the overall shape and size of the Council, but importantly also on how to encourage the sense of individual responsibility assumed by each member. It is not inherently obvious that this sense grows as the Council gets larger. Would one in 24 feel a keener sense of responsibility than one in 15? In fact, as the Council expands, so too would the temptations and opportunities for free riding. Such seemed to be the case with the League’s Council, as noted above. More recently, in the tragic case of the Council-declared safe havens in Bosnia-Herzegovina, some relatively small and distant elected members pushed the Council to assume responsibilities that they were incapable of meeting and others were unwilling to assume except on paper. In the case of Rwanda, neither the permanent nor non-permanent members distinguished themselves. During the Council’s debilitating debate over the use of force in Iraq, the elected members did little either to break the deadlock or to offer a promising alternative. The Council’s most conspicuous failures, in other words, appear to be collective ones.

Today, are there 11 countries—actual or potential permanent members—that could reasonably be considered to have global reach and influence on political and security matters? Many observers would contend, instead, that the United States is the last global power. It alone has developed and retained the capacity to deploy and maintain significant military assets throughout the world (though, of course, its capacity is limited and its will selective). UN peace operations, from the

Balkans to Africa to East Timor, have had to rely heavily on regional powers and arrangements, sometimes with but often without direct participation by Council members. The Council, in that sense, is largely populated with regional players on its global stage, that is, with countries more eager to take part in decision making than in high-cost, high-risk operations in the field. These asymmetries in capacity and interest suggest, if anything, a movement away from permanent membership—that is, away from the assumption of permanent and global commitments by individual states, and towards a more variable and flexible architecture for the Council. They also argue for a preliminary reconsideration of some of the regional participation schemes that were proposed by some US and British officials prior to San Francisco or by many other delegations there.

In early thinking (1942-43) about post-war organization, leading figures in Washington and London contemplated a global security body with regional pacts or groups under its overarching political umbrella. Under-Secretary of State Sumner Welles was known as an early advocate for such an approach.¹³⁹ Prime Minister Winston Churchill went so far as to call in a March 1943 radio address for a United Nations, headed by the US, USSR, and United Kingdom, with a Council of Europe and a Council of Asia to deal with post-war conflicts in those regions.¹⁴⁰ These views did not win the day. They gave way to an emphasis on a strong, centralized, global body with enforcement powers. Nevertheless, these themes emerged from time to time, particularly within the US delegation at San Francisco.¹⁴¹

There, the Latin American representatives, worried about vetoes by distant powers over collective security measures within the region, were especially vocal about preserving regional cooperation on security matters. They even sounded enthusiastic about preserving Monroe Doctrine

¹³⁹ Russell, *op. cit.*, pp. 98-99, and Townsend Hoopes and Douglas Brinkley, *FDR and the Creation of the UN* (New Haven: Yale University Press, 1997), pp. 50-51, 68-69, 193.

¹⁴⁰ Russell, *op. cit.*, p. 105.

¹⁴¹ In his account of the founding conference, Stephen Schlesinger gives a colorful rendition of some of these disputes within the US delegation. *Act of Creation: The Founding of the United Nations* (Boulder, CO: Westview Press, 2003).

barriers to external intervention in the hemisphere.¹⁴² The addition of Article 51 quelled their diplomatic rebellion, taking some of the steam out of parallel drives by Egypt, the Philippines, and other smaller countries to expand the Council in part by including regional voices.¹⁴³ The Egyptian proposal, though not accepted, contained the provocative notion that the Council really was composed of two kinds of states: the permanent members, which were to have global responsibilities, and the elected members, which were to have regional ones. How the Council would decide to address regional problems would be determined, in part, through consultations with or among the countries of the region. While a member state from a given region elected to a two-year term on the Council would not get formal instructions from its neighbors, it would be expected to try to insure that the concerns of the states of the region would be heard in Council deliberations.¹⁴⁴ In a sense, these countries would act as two-way conveyor belts of information and ideas between the regional and global levels of decision making. While individual and fully sovereign member states would continue to serve on the Council, there would be a well established assumption that they were to do their best to insure that the voices and concerns of their neighbors would be heard in the work of the Council.

In a similar spirit, in 1992 Toby Gati and I put forward two suggestions for Council reform. The more immediate and conventional one called for an expansion from 15 to 20 members, along the lines eventually advocated by the Clinton Administration, but we also floated the idea of a regional voice as a possible future option, made more feasible by the end of the East-West rivalry in the developing world. In our words:

¹⁴² Townsend Hoopes and Douglas Brinkley, *op. cit.*, pp. 192-198, and Thomas M. Campbell, *Masquerade Peace: America's UN Policy, 1944-1945* (Tallahassee, Florida: Florida State University Press, 1973), pp. 164-175.

¹⁴³ "Small States Denied Voice In Policing of World," *Washington Post*, May 13, 1945; James B. Reston, "Delegates of U.S. Map Plan to Keep Regional Powers," *The New York Times*, May 13, 1945; and Eugene Griffin, "Votes to Limit Security Group to 11 Countries," *Chicago Daily Tribune*, May 13, 1945.

¹⁴⁴ *Documents of the United Nations Conference on International Organization*, *op. cit.*, vol. 11, p. 291; "Egyptians Seek Larger Councils," *The New York Times*, April 25, 1945; and "Small Nations Seek to Expand Security Council Membership," *The Washington Post*, April 29, 1945.

Over the longer term, a more radical restructuring of the Security Council might be contemplated. Although the whole structure of the UN is based on the member state system, the growth of regionalism is likely to persist in both the economic and security realms. With the end of the global competition between the United States and the USSR, international politics are increasingly defined in regional terms, especially on security issues, and here the biggest problems are local, not global. This suggests two steps, one simple and short term, the other complex, controversial, and long term. The easy part is for the five permanent members to expand consultations within their respective regions on the major issues that are before the council or likely to arise in the foreseeable future. To a certain extent this has already taken place within the European Community (EC) and among the G-7, but the process should be regularized. Over time, if the sense of regional identity grows and regional organizations begin to assume a larger security role, the UN Charter might be amended to give a voice and possibly a veto to each major regional (North America, Latin America, Western Europe, East Central Europe, Africa, East Asia, and South Asia) on UN intervention in that area. The current permanent members would retain permanent seats, at least in the near term.¹⁴⁵

In retrospect, this sounds like a rather rash and premature notion, not unlike other ambitious and underdeveloped ideas that were floated during the heady days following the end of the Cold War. In particular, the possibility of a regional veto over Council action in the area—something that some Latin American delegations had called for in San Francisco—seems particularly unhelpful. On the other hand, our analysis did anticipate the patterns of global-regional cooperation that have come to define much of the day-to-day business of the Security Council.

The biggest roadblocks to Security Council expansion continue to arise within regions. Their persistence suggests that the task of gaining anything close to a consensus on enlarging the Council will not be accomplished any time soon. Over the years, some members of the

¹⁴⁵ Edward C. Luck and Toby Trister Gati, "Whose Collective Security?" *The Washington Quarterly*, vol. 15, no. 2 (Spring 1992), pp. 47-48.

Council, permanent or elected, have simply been much better than others about consulting with their regional groups and then trying to advance the interests and priorities of their neighbors whenever possible. That uneven experience has created hesitations about endorsing the candidacies of member states that have appointed themselves as “representatives” of their regions. On the other hand, Article 52 underlines that the founders saw the local or regional level as the first recourse for peaceful resolution of security problems, before bringing them to the Council and global attention. So establishing regional and sub-regional consultative mechanisms, in some cases in conjunction with or through standing arrangements or organizations, has long been understood as an essential building block for an effective global system for maintaining international peace and security.

In some regions, these consultative and even decision making processes are well developed and extend to matters before the Council. In other regions, there is a long way to go and political conditions are far from favorable. Both ends of this spectrum pose challenges for efforts to modernize the Council for a 21st Century that is likely to feature enhanced regional as much as global cooperation. On the one hand, it makes little sense to add to the number of permanent European seats (Model A calls for four of them) if the European Union and Constitution continue to proclaim the goal of a single foreign and military policy. Indeed, the “conveyor belt” model noted above is already practiced within the EU. On the other hand, the claim that certain regions are underrepresented on the Council rings hollow if there is no consensus or even convergence within those regions on what country or countries could best “represent” the others in the region. Once consultative processes and practices are better established within these regions, reform of the Council to take these concerns into account could more readily be contemplated. To create more permanent or even rotating seats on the Council before working out such regional processes would be tantamount to putting the cart before the horse.

Providing a greater regional voice in the work of the Council could be accomplished in several ways. One relatively simple step would be to expand and regularize Council consultations with troop-contributing countries, many of which are now within the same regions as the crisis countries, and with those regional and sub-regional groups that have carried an increasing share of the peacekeeping burden over the past decade. To a considerable extent, Council practice has moved in this direction in recent years as a natural way of bridging the gap between those who write mandates and those who carry them out.

Likewise, while the notion of regional representation was suppressed at San Francisco for good reasons, the General Assembly has often specified how many states from each region should be on the Council (or on other inter-governmental bodies). The Assembly has not, however, addressed the extent to which those states, once elected to the Council, are obligated to give voice to the concerns of their neighbors. While the question of regional representation would require a Charter amendment, and in this author's view remains a bridge too far, the Assembly could take up the more subtle but critical Cluster II issue of how elected members—not to mention the permanent members—should relate to their regional groups once they are on the Council. The matter of enhancing regional voices on the Council need not, and past practice suggests that it should not, entail Charter amendment.

Perhaps the first step towards giving a more regional perspective to the work of the Council would be a lessons-learned, best-practices exercise concerning ways in which members of the Council through the years have tried to mesh their global and regional responsibilities. What has and has not worked, and why? At what points does it become particularly awkward to fulfill one's national responsibilities and one's regional expectations? Resolving or easing some of these dilemmas could be an essential first step toward cutting the Gordian knot of Security Council reform. If pursued together with further steps to reform working methods, one might find that old, 1945 model coming to look more and more well suited to the challenges—and opportunities—of the 21st Century.

Security Council Expansion: Can't, and Shouldn't

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“Reform” of the UN Security Council has been a popular goal, an old dream, and an understandable ambition for decades. Reform typically means expanding the Council’s membership to make it, in the words of the High-level Panel report¹⁴⁶, more “representative,” “democratic,” and “accountable” (para. 249). The Panel aims to increase the Council’s “objectivity,” (para. 197), “credibility” (para. 248), and, especially, its “legitimacy” (para. 204). There is much precedent for these concerns. The only amendments to the United Nations Charter, adopted in 1963 and coming into force two years later, were principally to Article 23. That change expanded the membership of the Council from 11 member states to 15, with all the increase going to the non-permanent (and thus non-veto-wielding) members. The motivations behind that change were similar to those of the High-level Panel. The change came in the process of decolonization and the admission to the UN of some states that had initially been barred from membership because they were on the wrong side of the victors in World War II. The wish to expand the Council in order to accommodate this new diversity was appropriate and widely shared.

Such a wish is even more popular now, with the near doubling in the number of member states in the UN that has taken place between 1963 and now, reflecting the essential completion of decolonization and the breakup of many states at the end of the Cold War. Four of the five permanent members are from rich countries of predominantly white citizens from North America and Europe. The other is a rapidly developing Asian country. None is really poor, and none is from Latin America, Africa,

¹⁴⁶ *A More Secure World: Our Shared Responsibility. Report of the High-level Panel on Threats, Challenges, and Change.* New York: United Nations, A/59/565, 2 December 2004. Online at <http://www.un.org/secureworld/report2.pdf>

or the Middle East. The world's population does not look like that. Further complicating matters, some states that were weak in the early years of their UN membership are now powerful and virtually necessary to the success of any Security Council action (for example Germany, Japan, and perhaps India).

Though the term is vague, a necessary though not sufficient condition for "legitimacy" in a world body is widespread participation and voice. In discussing the conditions under which the Security Council might legitimately authorize the use of force (para. 209), the Panel lists five that bring to mind, in spirit if not in exact wording, standard criteria from international law and the normative principles of the just war tradition. The conditions are: serious threat, proper purpose, last resort, proportional means, and balance of probable consequences. Conspicuously missing, however, is the principle that the war must be declared or sanctioned by a legitimate authority. Historically, this authority was a monarch or president, but the role is one that many states and theorists have increasingly tried to pass to the Security Council. Of course the Panel assumes that the Council itself is the proper bestower of legitimacy on the military action, and so it doesn't have to say explicitly that this is so. But the Panel is concerned that the Council itself may not have the necessary stock of legitimacy to bestow.

The normative arguments for these changes in the composition of the Security Council demand respect. The Panel accords that respect, and makes two proposals for change. That it offers two proposals—only one can be adopted—shows the inability of Panel members to settle on a single recommendation. It is a very bad omen, signaling that achievement of the Panel's goal will be extraordinarily difficult politically.

It should also signal that the normative grounds for expanding the Security Council are both ambiguous and conflicting. None of the six concepts mentioned in the first lines of this essay is defined in the report. They are not synonyms. Moreover, the effort to achieve them may seriously conflict with other normative goals of the Panel, most

importantly the quite proper concern not to impair whatever “effectiveness” (para. 249c) the Council has. But the report does not at any point analyze what effectiveness means or how it is to be assured.

These ambiguities, even confusions, warn about both the feasibility and the desirability of the reform effort. A tilt too far in the direction of representativeness or democracy could undermine the Council’s effectiveness, which in turn would endanger the institution’s legitimacy from another direction. In what follows I will first point out the huge difficulties in getting *any* reform proposal adopted, and then address the question of whether expansion would really be a good idea even if it were feasible.

FEASIBILITY: BEEN THERE AND NOT DONE THAT

An immediate clue to the feasibility question arises from the fact that virtually all of the dozens of serious proposals for reforming the UN have called for expanding the Security Council in the name of some or all of the six non-synonyms. Such calls for expansion are *de rigueur* for any international commission making reform proposals, not least because such commissions virtually always include members from the chief states aspiring to Council membership. So the High-level Panel can hardly be faulted for following such a powerful precedent in trying. Yet none of these previous commissions’ proposals has ever even come to a vote of the first body that must address Charter reform: the General Assembly.

Most of those proposals have come to grief through their attempts to change the number, composition, or statutory powers of the permanent members of the Council. In this Paul Kennedy, Jim Sutterlin, and I can speak from our experience as staff to the Independent Working Group on *The United Nations in Its Second Half-Century*, which presented its report in 1995.¹⁴⁷ That Working Group recommended expansion of the Council to

¹⁴⁷ Report of the Independent Working Group on the Future of the United Nations. Online at <http://www.library.yale.edu/un/unie3co.htm>

approximately 23 members, of whom up to five would be new permanent members not specified by name. Because of the competing interests of the commissioners, it fudged the question of whether the new permanent Council members should have veto power. While some of the Working Group's many recommendations were implemented, those on the Security Council certainly were not. Nor, speaking for myself, did I expect or even want them to be implemented, most especially if veto power accompanied the new members. But we were (somewhat) faceless staff, not signing commissioners.

Jim Sutterlin and I tried to make amends for this in a subsequent book I edited, *The Once and Future Security Council*¹⁴⁸, and in the role of informal advisers to the Malaysian Representative to the UN, Mr. Razali Ismail. The Ambassador was a smart and decent man who devoted his time before, during, and after his 1996 term as President of the General Assembly to trying to broker a compromise formula that could gain assent from sufficient member states. Politics and the structure of the institution thwarted him.

The structural situation is that the composition of the Security Council can be changed only by amending the UN Charter. First, any amendment requires the vote of two-thirds of the UN's member states in the General Assembly.¹⁴⁹ This majority must include all the permanent members of the Security Council. Then, two-thirds of all the UN's member states must ratify the change, again including all the permanent members of the Council. Given the greater diversity of governments and goals, UN Charter amendment sounds—and is—harder than amending the US Constitution. It has been done once, as noted above, but that was in an era with a much smaller membership and one that was more malleable by the

¹⁴⁸ New York: St. Martin's Press, 1997.

¹⁴⁹ Two thirds of the members, not just two-thirds of the Assembly. Article 109 of the Charter provides a little wiggle-room in its provision for a General Conference called by two-thirds of the General Assembly and *any* nine members of the Security Council. A two-thirds vote of the conference—which conceivably could be boycotted by up to one third of the UN's member states—would suffice at this stage. The other requirements, for approval by all the permanent members of the Council and ratification by two-thirds of all the member governments, would still apply, however. No such conference has ever been held.

superpowers in those situations where they were in agreement. The 1963 amendments succeeded with help from a superpower deal that brought in comparable numbers of allies from both sides.

Despite much public rhetoric from all sides, private preferences have stymied all subsequent efforts to broker a compromise that would satisfy all the sticking points implied in the structural constraints. The most obvious sticking point, and one deeply enmeshed in regional rivalries, has been the problem of new permanent members. Pakistan and China have adamantly opposed any package that would give India a permanent seat; Mexico and especially Argentina have made it clear they would not permit a permanent seat for Brazil; Japan was opposed by China and others in East Asia with long memories. Even closely integrated allies could be opposed: Italy conducted an extended and vigorous campaign against Germany, partly as a result of long memories and partly because a German permanent seat would reduce the chances for Italy even to have frequent access to a non-permanent one. If Nigeria in Africa, then what about Egypt and South Africa? Nor are the permanent five members necessarily enthusiastic about adding institutional equals. The previous illustrations mention China, but all of the members have serious reservations about one or most of the chief aspirants.

The politics and politicking are more complex and arcane than these illustrations, but they all boil down to this: a coalition of minorities has always been able to defeat any such proposal even before it could be brought to a vote. Each member might accept certain kinds of changes, but any package always seemed to carry a poison pill to which the status quo was preferable. To supplement our verbal analyses for Mr. Razali, we conducted a session with diplomats in consultation with a specialist in the computer analysis of coalition formation, Professor Bruce Bueno de Mesquita. His model has an excellent track record of predicting what coalitions will form on the basis of experts' judgments on the intensity and preferences of each actor. In this case his model also produced the negative forecast: no successful coalition can form—and he too was proven right.

The coalition-of-minorities problem is especially acute regarding any assignment of veto power to new permanent members. The majority of member states feel that the veto is already abused by the current five permanent members, and to extend the power to others (especially though not only their regional rivals) would merely increase the impotence of everyone else. Most resistant to extending the veto to new permanent members, however, are the current five, because to do so would dilute their own power and make it harder than ever for them to get any resolutions through the Council. All of the new permanent members would need to be persuaded to favor or at most abstain on a resolution. Whether by persuasion, threats, or favors, the diplomacy becomes immensely more complicated, especially when dealing with powers of near-equal wealth. For them both threats and favors would have to be much bigger than with the typical state in a non-permanent two-year seat. The problem stems from the dual character of power in any parliamentary body: the power to pass a resolution and the power to block a resolution. The more veto-wielding members, the harder it is to pass, and the easier to block. This relates directly to the matter of the Council's effectiveness, and I will say more about that below. It is obvious that blocking power, for themselves or for a trusted ally, could be the more important.

While all the permanent members have a clear interest in not having more procedural equals on the Council, the position of the United States has some particular interest. During the Cold War era the US had to support publicly its allies, Germany and Japan, in their persistent efforts to achieve permanent member status with veto, while non-aligned India was quite another matter. Privately, however, the US enthusiasm for German and Japanese membership was much more muted. Could these countries be trusted in the long run to follow US leadership? After all, once a veto wielder, always a veto wielder. The present configuration of world power does not help the prospect. Is it reasonable to expect the current US administration, or any US Senate with less than a full two-thirds

Democratic majority (itself virtually unthinkable), to extend equal status to Germany after the experience over Iraq?

In short, for general and particular reasons there can be no increase in the number of permanent members with veto power. The Panel clearly recognizes that: their proposed Model A calls only for five new non-vetoing permanent members. This model avoids the problem of multiplying potential veto points and the diplomacy around them, but it probably will not satisfy the desires of the major aspirants for whom equality and prestige, not to mention the power of the veto, remain important. For similar reasons their regional rivals are unlikely to acquiesce in the permanent status upgrade of even the non-veto role. The Panel's Model B adds nothing to that category, instead settling for the addition of eight new four-year seats with renewable terms, and a single new two-year non-renewable seat (which is the current alternative to permanent membership). Eight new four-year seats (cleverly assigned equally, two each to the four big regional groups) might assuage some regional rivals that could hope to alternate occasionally if not regularly with the biggest players. But in compensating the regional rivals of permanent seat aspirants, Model B removes even more incentive for the powerful aspirants to settle for what would be continued long-term status in a downgraded second class.

A potentially intriguing issue, completely neglected in the Panel report, is what the voting rules would be. If a resolution is to pass in the current Security Council, a majority of at least 9 of the 15 members (60 percent) must vote in favor, with no permanent member voting against. (In the original Council of 11 members, the action threshold was 7, or 63.6 percent.) If all the permanent members do vote in favor, that means they need only gain the acquiescence of four of the ten non-permanent members. That is very easy, given that many of the non-permanent members are *de facto* allies of one or more of the permanent members. Moreover, the permanent members can readily play the mostly weaker non-permanent members off against one another. By some combination of favors, threats, and persuasion, the necessary four can be found. (By

contrast, when the United States and the UK wanted Council sanction for their invasion of Iraq in 2003, they failed to bring along the other three permanent members, and so could not even persuade a symbolic if legally ineffective seven other states to give approval.) The ease with which the necessary supplementary votes can usually be found means that the formal rule of one-state-one-vote hugely exaggerates the actual political power of each non-permanent member. Because of the heavy competition for the favor (or to avoid the disfavor) of the permanent members, the others acting individually have essentially no real voting power at all if voting power is defined as the probability of actually changing the outcome of the resolution.¹⁵⁰ Being a non-permanent member of the Council does have its rewards: the opportunity to express views, to interact with the real powers on the world stage, some fleeting element of prestige, and the possibility for ambassadors to garner approval back in the home country. But true voting power is not one of them. This holds major implications for the Panel's two proposed reform models. Model A, with five new permanent seats but no veto power, would leave Germany, India, Japan, and so on down with the masses in terms of near-zero voting power. Model B would add to this injury the insult of denying them even whatever prestige a non-veto permanent seat might hold.

Two developments, however, might modify this harsh statement. If a sufficient number (seven of the ten non-permanent members in the current Council) were deeply committed to similar policy and tightly bound in honor not to break ranks, they could constitute what has been called a "sixth veto" player. Such a tight bloc has never emerged and has been unlikely to do so, given that the provisions for geographical representation across the globe virtually insure that the non-permanent members will be quite diverse in their preferences. But it could be more likely to emerge if a larger Council, weighted more than at present to Africa (six seats), were combined with a voting rule that required a much higher percentage of the Council membership to pass a resolution. The higher the threshold, the greater the power accorded to the group of less-

¹⁵⁰ See Barry O'Neill, "Power and Satisfaction in the Security Council," in Russett, ed., *The Once and Future Security Council*.

developed countries known as the G-77 (actually now constituting well over a majority of the UN members). If, for example, in the 24-member body proposed by the High-level Panel, the bar were set at 18 (75 percent), requiring the permanent five members to attract at least 13 of the remaining 19 votes, the leverage of the non-permanent members would increase somewhat. But a threshold of 75 percent is not really imaginable. The big five are not fools enough to greatly dilute the power they already have—and they also have a veto to prevent such dilution.

The Panel does not mention a proposed action threshold at all. The current percentage is 60; 15 out of 24 would amount to a mild bump upward to 62.5 percent, and is the most prominent solution. That would require ten dissenting states to act as a sixth veto player. One could in principle imagine a bloc of ten veto-less states, perhaps led by India and the two African states in the role of new permanent members (Model A) or in renewable four-year seats (Model B). Even so, a diverse coalition of ten mostly weak states without the resources of a big industrialized power to bankroll it would be very hard to hold together. On inspection, the ten-state bloc possibility seems to have little substance. And to suggest any possibility of a higher threshold returns us to the question of why *all* of the big five would permit such a dilution of their current power.

Possibly some wide-ranging deal could be struck to corral the large coalition required to pass a Charter amendment, but I am very skeptical. Moreover, just to discuss the above possibilities raises the critical issue of tradeoffs between effectiveness and legitimacy (and the other non-synonyms). Anything that adds another veto point in the Security Council and increases the number of players that have leverage in its negotiations throws one more bucket of sand into the wheels of rapid and decisive action by the Council. Most observers regard 15 seats on the Council as too few to make it sufficiently representative. And most observers would probably agree that a Security Council as big as the 54-member Economic and Social Council, though more representative, would be too big to take the kind of prompt and decisive action necessary to deal with an international security crisis. But how to choose between those limits, given

that we don't even know how rapidly the curve of effectiveness falls or rises as more members are added? The Panel proposes 24 as a compromise. But that compromise would be political, not informed by careful analysis, and it might make the Council unable to act in some major crises.

How one judges such a compromise depends on where one sits, and what one thinks the Council most needs. As a world citizen I might favor the legitimacy side, and welcome what might curb further the ability of certain great powers to extract Council approval for their own visions of how world order might be enforced. Yet world citizens, as well as those great powers that have been frustrated in the Council, should be very reluctant to weaken whatever capacity the Council has to act. The coalition favoring effectiveness ought also to include some not-so-great powers chastened by such egregious failures to execute humanitarian intervention as the Rwanda affair.

A TRADEOFF BETWEEN EFFECTIVENESS AND LEGITIMACY?

Unlike wealth, military power, or even intelligence, legitimacy is an ascribed quality and not readily measured. Moreover, different actors bestow legitimacy on the same object in widely varying degrees. For many Catholics, Pope John Paul II is the legitimate leader of their church; for many Muslims, Osama bin Laden is their most legitimate political/religious leader. Neither group accords much legitimacy to the other's leader. Making the Security Council more representative and "democratic" would likely increase its legitimacy in the eyes of many people in the poor and "southern" countries of the globe, and even many in Europe and Japan as well. But would it have the same effect on other Europeans, or on many Americans? The answer may be no, for two reasons that would apply to two different groups of observers.

First, legitimacy and effectiveness are partly complementary, not polar opposites. While a body that proved ineffective might lose legitimacy

widely, an effective body might readily lose legitimacy in the eyes of those who were regularly on the wrong side of its decisions. There is a difference between approving a sanction against a member state of the UN and having the capability to make that sanction effective. Nothing can happen without the capability or power to do it, and the willingness to exert that power. In the global arena, major UN activities must have the approval, and usually the active participation and support, of the most powerful states in the system. Although the World Bank and the International Monetary Fund owe their existence to the needs of economic justice, they cannot violate the wishes of the states that provide their principal funding. The Security Council cannot, given the veto, embark on an operation against the wishes of a permanent member; nor should it do so without assurances of financial and military commitment from the major powers whose active participation in some form will be necessary. Power talks, and acts. Without adequate power, no action will be effective. And power will not act in a particular case unless the most powerful states in the UN deem the action to be worthwhile by their definition (broad or narrow, immediate or long term) of national interest. We learned that during the Cold War.

Second, if it is also to be effective, the Security Council will never be very “democratic” if democracy is defined either as one-state-one-vote or, over the whole world, one-person-one-vote. It is no coincidence that the Security Council, with the potential and some history of exerting strong powers of enforcement under Chapter VII of the UN Charter, is probably the least democratic UN organ. The Security Council can, when its members so choose, make or break states. The powerful states represented on the Council, which would bear the brunt of carrying out enforcement action, are unwilling to be committed by a vote that does not reflect their economic and military differential. By contrast, the General Assembly, often derided as a talk shop and certainly with no formal power of enforcement, is one of the most democratic (one-state one-vote) organs.

Voting power is the power to authorize action; it is also the power to block action. Veto power and provisions for supermajority voting (requiring “ayes” to exceed 50 percent, as in the Security Council and in the US Senate) give a minority the power to block, at the expense of the power of a simple majority to act. Such provisions are meant to protect certain rights and privileges of the minority from “majority tyranny.” They are part of the US Constitution, of the constitutions of many states with large ethnic minorities, and of the UN Charter.

Majoritarian democracy can succeed within a country only where there are serious limitations on the exercise of coercive violence by the state and limits on the concentration of economic power (income and wealth). Additionally, democratic government requires some community of basic values among the populace, or at least some protection for the rights and values of minorities. The international system, however, lacks all these conditions. Military power for state violence is concentrated overwhelmingly in the hands of the five permanent members (which have nuclear weapons) or a single superpower with global reach (which accounts for more than half of all world military expenditures). The 20 percent of the world’s population living in the wealthiest countries receives 85 percent of global income—a concentration far higher than within any single country, rich or poor. Despite some convergence on values, one cannot talk persuasively about a community of basic values in the world. Under such circumstances—and I lament them—the rich and powerful will not surrender real power to any organization controlled by a “democratic” majority of states or individuals. One can perhaps hope for greater consultation and transparency, and greater deference to the needs of the poor and weak. Democratization of the Security Council in the form of majority rule could happen, if at all, only in a Council deprived of the capacity to accomplish anything.

But democratization is not really the problem at hand for the Security Council. The United States can always veto any Council action, and it is now evident even in this post-Cold War “hegemonic” era that if the United States over-reaches sufficiently the Council can withhold its approval of

any US action. In much of the world the Security Council gained, not lost, in perceived legitimacy by its refusal to endorse US military action against Iraq in 2003. The Council could not, however, prevent that action by an administration determined to act unilaterally. Thus the US administration derided the Security Council (and by extension the UN generally) as wrong-headed, ineffective, and illegitimate.

Given its institutional structure and the distribution of military capability in the world, the problem for the Security Council is that it cannot pull together the resources for major effective action without US support, let alone in the face of US opposition. There is not, and will not be for at least a couple of decades more, a number two state with the power of the old Soviet Union. The principle of collective action, and experience, make it clear that the notion of restraining US power by a coalition of the willing is a dream only, of desire without ability. US power can, and will, be restrained only by the weight of its own failures.

For these reasons, it would be unwise to press ahead with a reform agenda that was opposed by the UN's most powerful members, and particularly by the United States. And it would be even less wise to press so far that US opposition took the form of an outright rejection of Charter revision by the administration or, still worse, of a job left to the US Senate. That would lead to a further decline of UN legitimacy in the eyes of many of the powerful in Washington, and to an even greater willingness of the United States to go it alone. I do not wish that for either the United States or the United Nations.

CONCLUSION: LET IT BE

The High-level Panel deserves credit for creativity and ingenuity in coming up with a plan for Security Council expansion that might appeal to a wide range of UN members. Just possibly the Panel's proposals might, in an extended process of negotiation, lead to some agreement that can be adopted. But the odds against that happening are very high, since a

coalition of minorities constituting only one-third of the members, or even just the United States alone, could kill it. Should an agreement somehow be adopted, that success would be blemished by major and foreseeable problems in how it would play out in institutional diplomacy over subsequent decades. Constitutions are made hard to change for very good reasons. The system needs to be really “broke” to make the risks of a “fix” worth taking. Is the UN that broken? I don’t think so. Better to concentrate on the many other constructive and more feasible proposals in the Report.

Some Thoughts—Mostly Cautionary—on the Recommendations of the High-level Panel on Threats, Challenges, and Change

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Secretary-General Kofi Annan established the High-level Panel to help forge a new global consensus on the threats and challenges that the United Nations faces and to recommend “specific changes in our institutions, including the UN itself, to forge a really convincing collective response to the threats and challenges that we all have to face....”¹⁵¹

As their report attests¹⁵², the Panel largely succeeded in achieving agreement on the identity and definition of the threats and challenges. This was a signal achievement, given the diverse geographic and political make-up of the Panel. The agreed definition of terrorism is the most notable example of success in this regard. While it remains to be seen whether the General Assembly will accept the definition, the chances have been improved by the agreement of the Panel.

The Panel’s recommendations on specific institutional and normative changes that would strengthen the capacity of the United Nations to meet these threats and challenges are modest and in some cases of doubtful benefit. But the Panel members wisely concluded that the institutions of the United Nations will only be as strong as the energy, resources, and attention devoted to them by member states and their leaders. Of the 101 recommendations listed by the Panel, 50 are directed to member states for action, and of those directed to the Security Council, 26 depend on

¹⁵¹ Remarks to the Brookings Institution Board, February 3, 2004. UN Press Release SG/SM/9179.

¹⁵² *A More Secure World: Our Shared Responsibility. Report of the High-level Panel on Threats, Challenges, and Change*. New York: United Nations, A/59/565, 2 December 2004. Online at <http://www.un.org/secureworld/report2.pdf>

government decisions for implementation. Many of the recommendations to governments pertain to the provision of resources. Most have been made before. They all respond to serious needs. If member states comply in good part, the United Nations will be in a much better position than now to meet challenges with or without the recommended institutional reforms. Without forthcoming responses from governments, the suggested institutional changes will make little difference in the effectiveness of the UN.

The following paragraphs comment on some of the recommended institutional reforms and offer a few complementary suggestions for consideration.

BROADENING THE CONCEPT OF COLLECTIVE SECURITY

The core concept of the report of the Panel is the need to broaden the understanding of collective security to cover all the threats that the Panel has identified. These encompass economic and social problems such as hunger, poverty, gross violation of human rights, international crime, terrorism, and degradation of the environment. This is not a new thought. In his *Report on the Prevention of Armed Conflict* (2002)¹⁵³, Secretary-General Kofi Annan stated “such [subjects] as social and economic development, good governance and democratization, the rule of law, and respect for human rights are supplementing the traditional concept of collective security. In the twenty-first century, collective security should imply an obligation ... to address grievances, inequality, injustice, intolerance, and hostilities at the earliest stage possible.”

Ever since the end of the Cold War the realization has been growing that social and economic problems can be catalysts for international and internal conflict. The World Bank, UNDP, and other aid organizations have special sections devoted to conflict prevention and peacebuilding. The

¹⁵³ New York: United Nations, April 2002. Online at <http://www.reliefweb.int/library/documents/2001/un-conflprev-07jun.htm>

Panel Report goes further, however, by proposing that the threats and challenges should be met on the basis of collective security. The question arises as to whether this proposal is meant to have more than rhetorical significance.

Collective security as a guiding principle for the preservation of international security by the UN finds its constitutional basis in Article 24, paragraph 1, and Article 25 of the Charter. These provide that the Security Council acts on behalf of all member states for the maintenance of international peace and security and that member states agree to accept and carry out the Council's decisions. Thus, the Council has mandatory power on matters affecting international peace and security. The High-level Panel, like the Secretary-General as quoted above, leaves open the extent to which threats requiring action within the suggested broader concept of collective security may be dealt with through the mandatory power of the Security Council. The Security Council has for some time been applying mandatory measures to crises falling within non-traditional security areas. The first instance was in 1992, when the Council decided that the humanitarian crisis in Somalia "constitutes a threat to international peace and security" warranting enforcement action under Chapter VII of the UN Charter.¹⁵⁴ Many comparable Security Council actions followed in the context of a broadened definition of international security, reaching their apex in the mandatory measures the Council enacted to deal with the threat of terrorism. Traditionally, however, the Council's mandate has not been interpreted as encompassing broad aspects of economic and social development, including the environment.

The High-level Panel recommends (para. 94) that protection of democratic governments from overthrow warrants "collective security" action. This would imply mandatory Security Council action. But how widely does this interpretation apply? The Security Council has taken mandatory action under Chapter VII to protect endangered democratic governments in the past (Haiti, Sierra Leone). But is it the intent of the Panel, in citing the principle of collective security, to recommend that the Security Council

¹⁵⁴ Security Council Resolution 794 (1992).

should respond to the threatened overthrow of any democratic government with mandatory countermeasures? If the answer is yes, this would have significance as a new guide for future Security Council action, even though it would not be out of line with earlier Security Council action in discrete cases.

Hunger, poverty, and the environment are also listed by the Panel as potential threats to peace to be addressed within the broader concept of collective security. There is much to be said in favor of Security Council action to impose respect for agreed environmental standards. Yet it is hardly conceivable that the Security Council would consider itself competent to impose mandatory measures to reduce poverty or environmental pollution. In these cases the Panel turns largely to governments for solutions. Given the emphasis placed by the Panel on collective security as the guiding principle for dealing with the threats and challenges to international security, the Panel's intent needs to be clarified.

The term *collective security* as used in the report can probably best be understood as a useful rhetorical phrase without constitutional significance. It can serve to rally global support to combat threats on which most states agree but, in itself, does not alter the normative basis for Security Council mandatory action. If this is so, it should be made clear in the Secretary-General's report to the General Assembly.

THE PEACEBUILDING COMMISSION

The most innovative recommendation of the High-level Panel is for the establishment of a Peacebuilding Commission, which would:

- Identify states in risk of collapse;
- Proactively organize, in partnership with such a state, the assistance needed to prevent failure of the state;

- If the state fails in the midst of internal conflict, assist in planning “for transition between conflict and post-conflict peacebuilding;”
- Marshall international assistance for post-conflict peacebuilding for as long as needed.

The Panel has left open the precise composition, procedures, and reporting lines of the proposed Commission, specifying only that it will be established by the Security Council and providing a number of guidelines as to its size, desirable participants, and method of operation. Nothing is said about the authority (if any) that it would command.

The functions suggested for the Peacebuilding Commission are essential functions in promoting peace in the present era. Whether the proposed Commission can add significantly to the effectiveness of the United Nations in this regard will depend heavily on details that the Panel did not specify. The Secretary-General will need to define these details if he proposes the creation of the Commission in his report to the General Assembly.

The first suggested function of the proposed Commission is to identify countries under stress. At present this preventive function is assigned to the Department of Political Affairs in the UN Secretariat. Using the information that the Department and other sources provide, the Secretary-General or another senior Secretariat official reports informally to the Security Council on trouble spots, taking a regional rather than country-specific approach, for reasons of national sensitivity. This procedure has not produced impressive results in identifying states in trouble before the situation is well advanced. The Department of Political Affairs has faced persistent handicaps: inadequate personnel¹⁵⁵; lack of field reporting staff and of intelligence capacity; bureaucratic obstacles in channeling information to the Secretary-General for reporting to the Security Council or for taking other preventive measures; and the political

¹⁵⁵ The High-level Panel recommends an increase in the staff of the Political Affairs Department.

sensitivity for the Secretariat of singling out a government as in risk of collapse.

Despite these obstacles, the system for identifying states in risk of collapse has improved. An Interagency Framework Team is in place that brings the relevant offices of the Secretariat and representatives of the various humanitarian agencies and the financial and development institutions together for consultation and coordination. Since 1998, the Team has been concentrating exclusively on early warning, prevention, and preparedness. Cooperation with regional organizations in these areas is being initiated, albeit slowly. A great deal of data is being processed. Should a Peacekeeping Commission be given monitoring, or preventive, responsibilities it would be replicating what is already being done, if still imperfectly, in the Secretariat. The Commission's major advantage would be direct access to the Security Council. Until now, however, the Security Council has not been receptive to early-stage briefings on individual countries in danger of collapse. The support function for the Commission—the proposed Peacebuilding Support Office—would require more staff than is suggested in the Panel Report and would almost inevitably face most of the handicaps that the Department of Political Affairs has encountered. It would be preferable to leave this function with a strengthened Political Affairs Department, which has primary responsibility for providing support to the Security Council. That Department could and should make early warning/conflict prevention information available to the Peacebuilding Commission, if one is created, and ensure that Commission representatives are included in consultative and coordination institutions such as the Interagency Framework Team.

The next proposed function of the Peacebuilding Commission is to organize, “in partnership with the national government,” proactive assistance to prevent a state's collapse. This could entail the preventive deployment of peacekeeping forces (military and civilian), technical assistance, and humanitarian and/or development aid. Normally (although preventive action of this kind at an early stage is hardly normal) the Security Council, after being alerted, would pass the task of organizing

the proactive rescue measures to the Secretary-General within the framework of a Security Council resolution. The Commission, having the participation of IMF and World Bank representatives and possibly of representatives of the endangered state, would be in a position to advise on, and possibly mobilize support for, such a preventive operation. However, the Security Council is essentially a command rather than a managerial organization. It is difficult to see how a subordinate organization, with a frequently changing membership and a line of communication that presumably leads to the Security Council rather than to the Secretary-General, could successfully *organize and manage* such a rescue operation.

The next proposed function of the Peacebuilding Commission is to assist in the planning for transitions between conflict and post-conflict peacebuilding. At present, the Department of Political Affairs (DPA) has primary responsibility for post-conflict peacebuilding. The wisdom of this assignment of responsibility has always been debatable, since so many aspects of post-conflict peacebuilding lie outside the Department's political mandate and expertise. DPA, usually preoccupied by operational demands, must rely on coordination by committee with the relevant agencies to carry out this function. Given its suggested make-up, the Peacebuilding Commission, if without operational responsibilities, would be in a good position to undertake planning for post-conflict peacebuilding operations. Commission members and support staff would need to be in close contact with all the concerned departments of the Secretariat and with any peacekeeping operation under way in the country concerned. Travel to the country for on-site consultation and observation would be essential. The planning process could mesh with what could be the Commission's most important task, namely mobilizing and coordinating sustained international support for as long as may be necessary for the successful completion of a post-conflict peacebuilding operation.

Post-conflict peacebuilding operations have frequently failed because of a lack of sustained support and sometimes because of the impatience of

Security Council members to terminate what began as a peacekeeping operation. The Security Council might be responsive to advice from its subordinate body to extend a peacekeeping operation indefinitely if this is necessary for successful completion of the peacebuilding process. There is no single organization (other than the Secretary-General) with responsibility for ensuring that a post-conflict peacebuilding operation is adequately supported and sustained until there is a solid base for lasting peace.

In considering the likely effectiveness of the Peacebuilding Commission in filling this need, the question of its authority arises. If organized as foreseen in the Panel report, the Commission would not be capable of managing the field operation of a peacebuilding enterprise. Under the present pattern, the person in charge of a peace operation in the field is the Special Representative of the Secretary-General. The Special Representative receives instructions from the Secretary-General, who provides this guidance in accordance with the provisions of a resolution or resolutions of the Security Council. The Security Council can, in effect, give instructions (through resolutions) to the Secretary-General. A Peacebuilding Commission could not assume the resolution-based power of the Security Council. It might establish a direct line of communication with the Secretary-General and with the Secretary-General's Special Representative in the field, but not for purposes of giving instructions. The only authority with which the Commission would be endowed is the reflected authority of the Security Council. This is a factor to take into account in assessing the Commission's likely effectiveness in mobilizing sustained support from governments, UN specialized agencies, and international donor organizations. If the chairman happens to be from a small country, his or her persuasive powers may be less than overwhelming. Lessons can be drawn from the experience of the Counter-Terrorism Committee, an organization also established by the Security Council and responsible to it, which has had difficulties enforcing its will. There are thus pros and cons to the establishment of a Peacebuilding Commission and ample reason to doubt its total effectiveness once established. The most important considerations, however, are:

- There is a need for early and comprehensive planning for post-conflict peacebuilding by an organization that has this as a main purpose and is not distracted by operational duties.
- Equally, there is a need for an intergovernmental organization to mobilize sustained support for peacebuilding operations until their objectives are attained.
- No existing office is equipped to fill these needs.

For these reasons, the High-level Panel's recommendation for a Peacebuilding Commission merits support. However, the Commission should not have the task of collecting the information needed to identify states in danger of collapse, nor should it have the responsibility to work with the affected government in taking the necessary measures to ward off failure. These operational functions should remain with the presently competent Secretariat Departments (strengthened as recommended in the Panel Report), and the responsibility for briefing the Security Council should remain with the Secretary-General and his senior staff. The authority of the Commission should be authoritatively defined and its functions clearly delineated before it is established. The functions should be confined to the development of plans for post-conflict peacebuilding¹⁵⁶, and the mobilization of sustained support for post-conflict peacebuilding operations. If these functions are judged to be insufficient justification for the creation of a Peacebuilding Commission then it should not be approved.

THE GENERAL ASSEMBLY

The recommendations of the High-level Panel on the General Assembly are sound as far as they go—and well-worn. But even if they are accepted

¹⁵⁶ Post-conflict peacebuilding is seldom totally discrete from a peacekeeping operation. Planning needs to foresee how the post-conflict programs can be folded into peacekeeping operations while they are still in progress.

and actually implemented, they would not get to the heart of the problem. Repetitive debates, clogged agendas, and tedious resolutions all dampen any sense of dynamism in the General Assembly. They should all be more strictly controlled. But, in the end, dynamism and a strong sense of purpose will only be restored if the Assembly has a greater role in influencing the outcome of real-time problems with which member states are immediately concerned. The General Assembly's mandate covers many of the subjects that have been identified as threats and challenges for the future. But its debates on the subjects lack relevance to the solution of specific crises. Increasingly, problems in the social area that are interpreted as potential threats to international security are referred to the Security Council even when mandatory enforcement action is not to be expected. There could be an advantage for the spirit and functioning of the General Assembly if this trend were reversed, or if a system could be developed under which the General Assembly and the Security Council could share action-responsibility for a critical issue, each contributing in accordance with its Charter mandate.

Several examples emerge from the recommendations of the High-level Panel Report. The Panel Report recommends that the Security Council, working closely with UNAIDS, should host a second special session of the Security Council on HIV/AIDS, "to explore the future effects of HIV/AIDS on States and societies, generate research on the problem and identify critical steps towards a long-term strategy for diminishing the threat." Given the purpose of the proposed session, the General Assembly would seem the more appropriate body to hold it, and the assumption of a prominent role in dealing with the HIV/AIDS crisis might restore a sense of purpose to the Assembly. The Assembly has the possibility of maintaining sustained attention to a problem like AIDS through specialized conferences, the preparation of studies, and, importantly, the creation of special committees dedicated solely to the subject. The proliferation of special committees can be self-defeating, but in well-chosen cases they can have considerable effect; the Special Committee Against Apartheid, for example, was quite effective in maintaining global pressure against the Apartheid regime in South Africa. A proactive Special Committee against

HIV/AIDS could focus sustained global attention on the problem in support of the World Health Organization program. This would yield the additional benefit of lending a sense of purpose to the General Assembly. This sense has been totally lacking in such pointless General Assembly organizations as the Disarmament Commission, which should be abandoned.

Another example: The High-level Panel recommends that the Security Council consult with the Director-General of the World Health Organization to establish the necessary procedures for working together in the event of a suspicious or overwhelming outbreak of infectious disease. This clearly is of interest to the Security Council since there could be a need for enforcement action in the case of a terrorist bacteriological attack. But otherwise oversight of disease control is within the social mandate of the General Assembly. Each president of the General Assembly pines for something meaningful to do. Why not suggest that the General Assembly, under the leadership of the Assembly president, assume responsibility for the type of consultation on disease control recommended by the High-level Panel? The Assembly could, acting in accordance with the Charter, make recommendations to ECOSOC and the Security Council for action, as appropriate. The objection will be raised that the General Assembly is only in session for three months. A subject like disease control requires sustained attention. However, the president of the Assembly remains in office for an entire year and has the staff that would permit him or her to remain in touch with WHO. Should a small special committee be established to assist the president, it can remain active throughout the year.

The monthly meetings between the president of the Security Council and the president of the General Assembly have not been as helpful as hoped in bringing the two organizations into closer rapport, partly because of the monthly rotation of the Council presidency and partly because the meetings have been more for information exchange than for discussing possible collaborative undertakings. The General Assembly, even though it is essentially a deliberative body, needs to feel that it is engaged in the

headline problems of peace and security. It needs to give evidence of its relevance. The establishment of a standing General Assembly/Security Council Consultative Committee could serve this purpose. Through such a committee, the General Assembly could be kept abreast of developments in the Council. The General Assembly participants could convey information on the attitudes of Assembly members—few of whom are on the Security Council—on current security issues. The Security Council participants could on occasion use the opportunity to suggest the desirability of a General Assembly resolution that would complement and lend the legitimacy of the Assembly to action expected to be taken by the Council. The General Assembly representatives could sound out the receptiveness of the Security Council to recommendations that it might make to the Council, something that it is authorized in the Charter to do. Most importantly, the existence of such a standing body would afford the General Assembly a greater sense of being part of the action. The resentment that has long prevailed in the Assembly over the dominance of the Security Council could be mitigated if the Committee were purposefully and intelligently utilized.

On the General Assembly, the Panel endorses the recommendation, made by the Panel of Eminent Persons on United Nations-Civil Society Relations, that the General Assembly should establish a better mechanism to enable systematic engagement with civil society organizations.¹⁵⁷ The problem that this recommendation seeks to meet is essentially irresolvable as long as the United Nations remains an organization of states. But one way to alleviate the sense of exclusion is to include persons from civil society in the official delegations to the annual sessions of the General Assembly. Several countries, including Germany, India, Japan, the UK, and the US, have long followed this practice. This provides a channel for civil society input and also spreads a better understanding of the United Nations in the home country. It should be recommended that all member states follow this custom. For countries of inadequate means, a trust fund could be established to allay the additional expense that this would entail.

¹⁵⁷ See UN document A/58/817.

THE SECURITY COUNCIL

Enlargement of the Security Council has three main objectives:

1. *Increased operational effectiveness.* Greater operational effectiveness is needed to reassure member states that the Security Council is able to provide timely protection against threats to security and to dissuade them from acting unilaterally (or in coalition) without Security Council endorsement. Neither of the models suggested by the High-level Panel would do much to meet this objective. Because of the increase in size and the more varied political orientation of Council members, decision making would be more time consuming and difficult under both models. Had the Council been reconfigured according to either Model A or Model B, its action, or inaction, would not have been different on Kosovo, the war in Iraq, or Darfur—on each of which the Council has been criticized for ineffectiveness or irrelevance. Model A, which foresees an increase in the number of permanent members, might enhance operations to a limited extent by (a) making more money available for peacekeeping operations, assuming that a larger contribution would be forthcoming from the new permanent members; and (b) having leading states of significant influence within every region represented permanently on the Council.
2. *Enhanced symbolic power as a source of legitimization.* States might more willingly accept resolutions of a Security Council that was more representative and that, as under Model A, included leading regional countries on a permanent basis. On the other hand, as long as the veto remains, the Security Council cannot symbolize democracy, and the introduction of a new class of members, especially under Model A, could brand the Council for operating on a class basis with an “underclass” at the bottom comprising the large majority of members.

3. *Satisfaction of member states.* Permanent membership as foreseen under Model A would give substantial satisfaction to the most likely candidates for this status, although their satisfaction would decline somewhat as they realized that they gained little increased power.¹⁵⁸ On the other hand, pretenders for permanent membership status that are not chosen would be dissatisfied—in some cases bitterly so—and the large majority of member states that would remain eligible only for two-year terms (to which they could expect to be elected only rarely, if at all) would gain no satisfaction from the new class order. In terms of satisfaction, then, Model A would at best be a wash. Model B would be no better, in that it would slightly reduce the already meager opportunities for small countries to be seated on the Council.

On the basis of a purely rational analysis neither of these models (or indeed any other one that has been proposed elsewhere) is worth pursuing at this point, leaving aside the very relevant consideration that neither model is likely to receive the approval needed to permit the necessary amendment of the Charter. So there is much to say for simply dropping the subject before it causes further disharmony among states.

Still, the mantra of Security Council reform has been so often and widely repeated that a failure to try to enlarge the Council would further promote the image of the United Nations as a hopelessly ossified security organization. Moreover, failure to act could alienate Germany and Japan, both of whose sustained financial support and potentially significant peacekeeping contributions are of considerable importance. The best course for the Secretary-General under these unpromising circumstances would be to send both models forward to the General Assembly, with his advice that Model A offers the greater advantage in preparing the Security Council to meet the threats that must be anticipated. He should—and undoubtedly would—caution that the Council's effectiveness under either

¹⁵⁸ For a discussion of power and satisfaction in the Security Council see Barry O'Neill, "Power and Satisfaction in the Security Council," in Bruce Russett, ed., *The Once and Future Security Council*, New York: St. Martin's Press, 1997.

model will depend, as at present, primarily on the policies of member states.

THE HUMAN RIGHTS COMMISSION

The problems that the Human Rights Commission poses are well described in the High-level Panel's report. Unfortunately the action that is specifically recommended to correct the problems would only compound them. When an organization has such fallibilities as the Human Rights Commission, enlargement offers no cure. More drastic action is required. Human rights have become a major element in the peaceful world the United Nations seeks to build. The United Nations is widely judged on its performance in advancing respect for human rights throughout the world. The judgment at present is not very good.

One way significantly to improve the reality and the image of United Nations efforts on behalf of human rights would be through the creation of a Human Rights Council, an idea that the High-level Panel mentions but without specificity. I suggest that such a Council be established as a principal organ of the United Nations. The Human Rights Council would replace the Trusteeship Council, which the High-level Panel has wisely suggested should be eliminated. The Human Rights Council would be an entirely new body, not a recycled Trusteeship Council. Its creation would recognize the central importance of human rights in tackling the threats and challenges the United Nations faces in building a peaceful world. It would signify, as no other act could, that the United Nations is putting human rights and freedom at the top of its agenda. It could also resolve the embarrassing problem of inappropriate leadership in UN human rights bodies.

As part of this proposal the Human Rights Commission, with its Sub-Commission, should be eliminated, their treaty and other functions to be taken over by the new Council. The Human Rights Committee, which was established by the Covenant on Civil and Political Rights, would continue

to function independently but in close association with the Human Rights Council. Members of the Council would be elected by the General Assembly in accordance with criteria to be spelled out in the Charter, as in the case of the Security Council. The number of members should be large enough to permit adequate regional representation, but small enough to be functionally efficient. There should be no veto. The High Commissioner for Human Rights (appointed by the Secretary-General with the approval of the General Assembly) would serve as the permanent president of the Council, without a vote.¹⁵⁹ This could ensure stable leadership and effective program direction and preclude the election of unsuitable presidents. The Human Rights Council would be authorized to establish subordinate bodies to perform the useful functions of the present Commission and Sub-Commission. A Human Rights Council should have its seat in New York to facilitate close collaboration with the Security Council, the General Assembly, and the Secretary-General.

There could be a collateral benefit. Given the importance attributed to human rights and the pursuit of freedom by the present US Administration, elevation of human rights to the status of a principal organ might—only might—make Charter amendment more palatable in Washington.

¹⁵⁹ In some of the preliminary discussions on the establishment of the United Nations the idea was considered of having the Secretary-General serve as president of the Security Council.

Brief Notes on the Report of the High-level Panel on Threats, Challenges, and Change

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A More Secure World: Our Shared Responsibility is certainly one of the most comprehensive and imaginative of the many reports on UN reform to have emerged over the last 55 years.¹⁶⁰ As with all UN reform reports, the question is less one of how sound its suggestions are than of how it can achieve practical implementation by the UN's member states. I shall comment briefly on both aspects.

COMMENTS ON THE PROPOSALS

I have very few comments on the actual proposals set forth in the report. The problem of preventing conflict and disaster rather than simply reacting to it has been with the UN from the outset—and, in the field of peace and security at least—governments have been reluctant to authorize preventive powers for the Security Council as a general rule. The new emphasis on global terrorism and the related threat of proliferation of weapons of mass destruction have given new urgency to the capacity of the Security Council for preventive action. The Panel report, in its opening pages, has widened the concept of collective security and prevention to include poverty, infectious disease, and environmental degradation—all areas where there are fewer political obstacles to UN preventive action than in the traditional peace and security field.

As regards the Panel's section on nuclear, radiological, chemical, and biological weapons, after the affair of Iraq's alleged weapons of mass

¹⁶⁰ *A More Secure World: Our Shared Responsibility. Report of the High-level Panel on Threats, Challenges, and Change.* New York: United Nations, A/59/565, 2 December 2004. Online at <http://www.un.org/secureworld/report2.pdf>

destruction and the belated recognition of the usefulness—and success—of the UN Special Commission (UNSCOM) and the UN Monitoring, Verification, and Inspection Commission (UNMOVIC), several authorities in this field have suggested that the UN should have a permanent inspection service. This seems to me worth discussing.

The section of the Panel's report on collective security and the use of force and its five basic criteria of legitimacy for the use of military force are particularly valuable. Again the question is whether governments will feel able to accept them as a standing set of criteria for action.

In the section on peace enforcement and peacekeeping capability, the paragraphs on improving capacity for rapid and effective response suggest the usual formula of standby arrangements, high readiness, self-sufficient national battalions, and so forth. That is all splendid. My question is, would the governments concerned be willing to send their standby troops immediately to another Rwanda? At that time there were, I believe, 21 standby arrangements, but not one could be mobilized. Recent years have seen a number of similar failures, most recently, I believe, in finding forces to protect UN personnel in Iraq.

In full knowledge of all the political objections, which are sometimes stated as financial objections, I am still convinced that the credibility of the UN in peacekeeping emergencies will ultimately depend on a reliable capacity to deploy quickly and effectively. That will mean a small (perhaps 5,000-strong), completely international, very highly trained UN rapid reaction force at the disposal of the Security Council. There are a number of excellent studies on this subject, so I shall not go into detail. But when peacekeeping capability is discussed, this option should at least be mentioned, however dogmatic the present opposition to it may be. It is worth remembering that as late as the early 1990s a standing UN rapid deployment force was a current and highly reputable idea. It was, I seem to remember, a plank in President Bill Clinton's first presidential campaign, and former President Ronald Reagan gave it passionate support in a

speech at Oxford in 1993. Ten years ago many people felt it was important enough to support it publicly. It should at least be mentioned.

The report's proposals on strengthening the UN Secretariat are excellent. Most certainly a Deputy Secretary-General for Peace and Security (not a new idea) is long overdue. I believe that a Deputy Secretary-General for Management and Administration is equally important. The Oil-for-Food affair has once again underlined the weakness of the UN in managing large and complex missions and operations. Improvement is urgently needed and is unlikely to be achieved with the present organizational setup.

IMPLEMENTATION

The Secretary-General has already agreed to take action on the report's recommendations that fall within his authority, and to consult with the heads of specialized agencies and other parts of the UN system on the implementation of the report's proposals that concern them.

Some of the most far-reaching proposals can only be achieved through the support and cooperation of governments and by follow-up action in the intergovernmental organs of the UN system, starting with the Security Council. I am sure that the Panel has given much thought to the kind of high-level representation that will be necessary to secure the cooperation and agreement of the UN's member governments, and in particular of the five permanent members of the Security Council. In the past many excellent and forward-looking ideas have died a dismal death being tom to pieces by junior diplomats in the committees of the General Assembly. The High-level Panel's report is too important and too valuable to suffer such a fate.

Some Comments on UN Charter Reform

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I hope people all over the world will read this report, discuss it, and urge their Governments to take prompt decisions on its recommendations. I believe the great majority of them will share my feeling that there is an urgent need for the nations of the world to come together and reach a new consensus—both on the future of collective security and on the changes needed if the United Nations is to play its part.

Kofi Annan

Foreword to *A More Secure World*¹⁶¹

SUMMARY

Charter reform has been put on the back burner in recent discussions of UN reform. This note suggests that the costs of Charter reform have been exaggerated and the benefits understated. The institutional obstacles to Charter reform are fairly modest compared to those that protect the founding treaties of other intergovernmental organizations. The benefits of Charter reform may extend beyond the actual institutional modifications that result from it. Most importantly, updating the Charter through the domestic ratification processes of states implies a renewed commitment by member states to the UN's principles and their contemporary interpretation.

¹⁶¹ *A More Secure World: Our Shared Responsibility. Report of the High-level Panel on Threats, Challenges, and Change.* New York: United Nations, A/59/565, 2 December 2004. Online at <http://www.un.org/secureworld/report2.pdf>

Negotiation difficulties, however, make it highly unlikely that Charter reform will be accomplished unless the stakes are raised for successful reform and, by implication, for failure to reform. Raising the stakes is not without risk, but the potential political benefits of reform are large enough to warrant the issue a more prominent place in reform discussions. Particular reforms that appear passable include the elimination of redundant passages, updates of existing passages with consensus interpretation, and Security Council expansion (along the lines of Model B proposed in the Panel report). Reforms of the veto, including indicative voting, should be left out of the reform discussion at present.

INTRODUCTION

A central theme in the *Report of the High-level Panel on Threats, Challenges, and Change*, and the UN Secretary-General's foreword to that report, is that there is a dire need for a new global consensus on collective security and the role of the United Nations in it.¹⁶² The report provides a much-needed focal point for what the substance of such a consensus might involve. This note discusses some issues regarding the process by which a meaningful consensus may be reached and especially the potential role of Charter reform in this process.

The Panel downplays the need for Charter reform. With the exception of Security Council enlargement, none of the Panel's substantive recommendations requires reform of the Charter.¹⁶³ Perhaps not coincidentally, the issue of enlargement is also the only issue on which the Panel is explicitly not unanimous, offering two alternative proposals rather than a single recommendation. The Secretary General's foreword to the report also puts little to no emphasis on the need for Charter reform.

¹⁶² Just to illustrate, the word "consensus" appears 41 times in the text of the Panel report.

¹⁶³ The Panel does recommend scrapping a few outdated provisions regarding the Trusteeship Council, enemy states, and the Military Staff Committee (para. 298-300).

The case against Charter reform is based on two arguments. First, the language of the Charter is flexible enough to allow the Security Council to address the current set of security threats, even if these threats were not anticipated 60 years ago.¹⁶⁴ Second, Charter reform is very difficult. It requires the affirmative vote of two-thirds of the General Assembly and ratification by two thirds of the members of the United Nations, including all permanent members of the Security Council.¹⁶⁵

There is some merit to the criticism that Charter reform is not necessary. When so inclined, the Security Council has acted decisively against new security threats such as internal conflict (as in Haiti) or terrorism (as with Security Council Resolution 1373) even if the Charter does not explicitly mention such threats. Yet, as the Panel report acknowledges at various points, the Council has not consistently or persuasively applied the flexibility granted by the Charter.¹⁶⁶ The Panel and the Secretary-General both lament the Council's current case-by-case approach, and they argue that it is essential to achieve a new consensus that guides the manner in which decisions are made on the necessity and legitimacy of force.

A moderately optimistic scenario is that when world leaders meet in New York for a special summit at United Nations headquarters in September 2005, they will endorse many or most of the Panel's recommendations through a common Declaration, not unlike the *UN Millennium Declaration* of 2000¹⁶⁷ or the *Declaration on the Occasion of the Fiftieth Anniversary of the United Nations* of 1995.¹⁶⁸ But while such declarations have been very useful in setting out new goals and directions for the organization, they have had little effect on the behavior of states that bear ultimate responsibility for the working of the UN's collective security mechanisms. Governments are rarely held accountable in consequential ways for their failures to live up to the provisions of declarations that they or their predecessors have voted for. Declarations may reflect a temporary

¹⁶⁴ See especially the report's discussion of the question of legality of the use of force (para. 183-203).

¹⁶⁵ Article 108, UN Charter.

¹⁶⁶ For example para. 197.

¹⁶⁷ A/res/55/2: <http://www.un.org/millennium/declaration/ares552e.htm>

¹⁶⁸ <http://www.un.org/UN50/dec.htm>

consensus but they embody little in the form of a commitment to that consensus.

Charter reform would indeed be an arduous process; even fairly minimal reform would stand a significant chance of failure. Yet the institutional obstacles to Charter reform should not be exaggerated. Most international governmental organizations require unanimous ratification for amending their founding treaties. In the UN, only five states can individually block the ratification of an amendment, and the dynamics of the ratification process put enormous pressures on those states to comply. The lessons from the 1963 Charter reform are useful here. In the General Assembly votes, France and the Soviet Union opposed Council expansion and the US and UK abstained. China abstained on the second part of the proposed amendment, dealing with ECOSOC. Thus, all five permanent members expressed reservations during the Assembly votes, but 19 months later all five had ratified the amendment. There was much at stake for those countries that increased their chances at a Council seat and not enough at stake for the permanent members to risk the scorn of the others.¹⁶⁹ While Charter reform poses a political challenge, it is not an insurmountable one.

Moreover, the difficult ratification process that comes with Charter reform increases the level of commitment that states make towards the proposed set of reforms. A ratified treaty not only has greater legal standing on the international level but also, perhaps more importantly, carries weight in the domestic political and legal arenas of most member states. Especially in democracies, domestic actors can hold their governments accountable for the extent to which they live up to the standards they agree to. Thus, an explicit and formal expression in support of the Charter through parliaments, referendums, or other domestic institutions would carry considerable weight.

The current Charter has lost some of these benefits. Although treaties endure beyond the tenure of specific governments, their impact gradually

¹⁶⁹ See: Edward Luck, "Reforming the United Nations: Lessons from a History in Progress," p. 9. Online at http://www.acuns.wlu.ca/publications/UN_Reform/Luck_UN_Reform.pdf

expires as practice evolves away from them. Charter reform would take the form of a series of amendments that would each need to be ratified separately. These amendments would update the Charter in various ways that would not necessarily depart dramatically from current practice. Rather, they would renew the commitment states make to the UN's principles.

First, as suggested by the Panel, passages in the Charter that are routinely ignored should be eliminated.¹⁷⁰ No document that aspires to be constitutive should retain passages that have become irrelevant. An example may be the provisions related to the long-defunct Military Staff Committee (Articles 26 and 47). If, as the Brahimi report suggests¹⁷¹, there may be some new function for this Committee, it should be assigned that role. This can be done outside the Charter.¹⁷²

Second, consensus practices and interpretations of Charter provisions could be codified into amendments. Various Charter provisions have been clarified in UN resolutions or (universal) declarations. It may be useful to entrench such interpretations in the Charter. Such reforms do not necessarily respond to concerns about the legality of existing Council decisions. Rather, they present an opportunity for the domestic political processes of countries to affirm existing UN principles. Such an affirmation would greatly enhance the UN's legitimacy. The added benefit would be the emergence of a constitutive document that is more in line with current practices.

Finally, actual institutional reforms to the Security Council should be considered. I discuss these in more detail below. But first, I comment briefly on the negotiation difficulties surrounding Charter reform.

¹⁷⁰ Para. 298-300.

¹⁷¹ Lakhdar Brahimi, et al. (2000), *Report of the Panel on United Nations Peace Operations*. New York: United Nations.

¹⁷² The Military Staff Committee is the only subsidiary body specifically named in the Charter.

NEGOTIATING CHARTER REFORM

For the architects of the UN at San Francisco, when the status quo included neither the United Nations nor any other comparable institution, many compromises seemed relatively attractive compared to the reversion value.¹⁷³ Today, states have to be convinced not just that the reformed Charter would be better from their perspective than the current Charter, but also that they cannot reasonably expect a better deal in the near future. Any chance for Charter reform to succeed thus depends on the ability to make it appear urgent and absolutely necessary for the successful survival of the UN. A halfhearted effort at Charter reform, in which failure carries no apparent consequences for the UN, will likely be frustrated by attempts at delay.

The most visible issue for Charter reform undoubtedly is Security Council expansion. No major reform effort could avoid addressing this issue. An important stumbling block in negotiating expansion resides in the distribution and intensity of interest in permanent membership by states that do not have this status. There is a widespread but diffuse dissatisfaction with the status quo but only limited interest in change. Although several countries, most notably Germany and Japan, have long been engaged in campaigns that advance their causes, the campaigns have mostly been waged by their foreign policy establishments and have rarely reached the head-of-state level.

Attempts at building coalitions for a particular model have thus been mostly confined to New York and have rarely reached the agendas of high-level bilateral or multilateral summits. This is unfortunate, because the political environment in New York is much less conducive to meaningful compromise than are high-level summits. Delegates to the UN work within the confines of instructions from their capitals and cannot embed compromises over Charter reform in deals over other issues. Moreover, delegates are much more likely to see departures from current working

¹⁷³ This is not meant to understate the difficulties involved in negotiating the original Charter or the accomplished leadership that produced it.

methods—such as particular regional groupings—as threatening and undesirable.

Therefore, the chances for successful reform are much greater if the outlines of a preliminary bargain can be discussed at high-level summit meetings, perhaps at APEC, the G-20, or in other inter-regional settings. Such a compromise could then serve as the focal point for further negotiation at the UN. While this approach may seem undesirable from the perspective of developing or smaller countries, because it limits their direct input, it may well present the best opportunity for reform to occur.

This approach requires that the issue of UN reform receive a more prominent place on the agenda of world leaders. This will only be possible if the Secretary-General and at least several other high-profile world leaders insist that Charter reform is absolutely necessary for the UN's future. For example, a group of "Friends of Charter Reform" could be formed to push the issue. Though the appearance of crisis in the UN following the Iraq war could help in this process, considerable political capital will be needed to push the case for reform.

There are obvious risks to this approach that need to be evaluated. If key states refuse to signal their commitment to a reformed UN, the ratification or negotiation processes may fail. If the stakes for reform are raised, so are the stakes for failure. Such an outcome would affect the standing of the UN in the international system and may lead states to search for alternative institutional or non-institutional solutions.

Organizations quite often respond best when challenged from the outside.¹⁷⁴ Moreover, the safe alternative of consensus declarations is likely to lead at best to piecemeal reform without commitment. Nevertheless, it requires a degree of confidence in the United Nations, and member states'

¹⁷⁴ That this applies to the UN as well was one of the main conclusions of an earlier workshop on this issue (Yale University, Spring 2004). The *Report of the High-level Panel on Threats, Challenges and Change* is quite defensive on this issue and stresses reform from within, suggesting that using competing sources of authority equals reducing the Council to "impotence and irrelevance" (para. 197).

basic willingness to commit to a system of collective security, to put the effectiveness of the UN on the line for Charter reform.

SPECIFIC INSTITUTIONAL REFORMS

A few comments follow on the specific proposals for institutional reform made by the High-level Panel on Threats, Challenges, and Change.

Expansion of the Security Council

The Panel introduces two models for expanding the Security Council: Model A, which creates new permanent members without veto power, and Model B, which creates no new permanent members but rather a new category of four-year renewable seats. There is little doubt that, if put to a vote against the status quo, Model B is the more likely of the two to be adopted. Under this model, the clearest losers are perhaps Germany, India, and Japan—the only countries thought to be “safe” among any likely set of new permanent members.¹⁷⁵ But while the governments of these countries may oppose Model B initially, it seems clear that it would improve their standing at the Council in comparison to the status quo. There is a very high likelihood that these countries would be chosen for the new non-permanent seats on a regular basis.¹⁷⁶ Assuming that reelection would depend at least partly on performance—a standard that may be made explicit in the reform¹⁷⁷—an added advantage of Model B is that it potentially introduces some incentives for the non-permanent members to contribute resources.

¹⁷⁵ There is no consensus view on which countries would take the additional seats for the Americas and Africa. India is also highly controversial, given the difficulties its membership might create with Pakistan.

¹⁷⁶ Germany might be considered “safer” than Japan and India in this regard, given that it has fewer competitors and more predictable politics for the two new seats in Europe than India and Japan have in Asia.

¹⁷⁷ Alternatively, it may be worthwhile to pursue the creation of two non-permanent seats that are not filled on a regional basis but are elected from within the entire membership. Only states that meet certain performance standards (such as relative contributions to peacekeeping) would be eligible.

If Model B were to be approved by the General Assembly, the prospects for ratification look solid. Many states stand to gain from this proposal. A few of the veto members might be reluctant to accept it, but it is questionable whether there is enough at stake to cause its failure, given the dynamics of ratification mentioned earlier.

The effects of expansion on Council decision making and legitimacy will likely be modest. Increasing the representation on the Council may improve the perceived legitimacy of Council decisions, but the perceived legitimacy of decisions is not the main problem the Council suffers from. It may be that new members will feel more responsible than existing ones for international peace and security and act accordingly. In the long run, expansion seems inevitable, given the current exclusion of large parts of the world and major contributors. Perhaps the greatest benefit will therefore be political: a signal that meaningful reform at the UN can be achieved. Security Council expansion has dominated the UN reform agenda for so long that, from the perspective of many, failure to achieve it will be perceived as failure to reform.

Veto power and indicative voting

The High-level Panel wisely recommends that there should be no expansion of the veto (para. 256). It does, however, propose the introduction of a system of “indicative voting” (para. 257). Under this system, members of the Security Council could call for a public revelation of positions on a proposed action. This vote would carry no legal force. The stated motivation behind the idea is that it increases the accountability of the veto function.

In practice, indicative voting might also be used to confer legitimacy on attempts to use force that would otherwise be blocked by a veto. Increasingly (coalitions of) states seek authorization from the Council without directly relying on actions that the UN could take under Chapters VI and VII.¹⁷⁸ UN peacekeepers are active in a minority of the cases where

¹⁷⁸ Even while formally referring to these Chapters.

recent Chapter VII resolutions have authorized the use of force. And financing for peacekeeping from outside the UN framework has vastly outpaced the financing channeled through the UN system. From the perspective of a coalition of willing states, a qualified majority in an indicative vote—even if the vote carries no legal force—may confer a sufficient degree of international legitimacy on a proposed intervention.

On balance, the use of indicative voting in this manner would be a positive development. Most importantly, it would take some force away from obstructive veto threats. The main downside of the current veto situation is that the bargaining process in the UN often focuses almost exclusively on convincing the permanent members of the merit of an initiative, thus leading to the use of side payments and narrow compromises rather than the emergence of a broad-based compromise. The (weaker) alternative of indicative voting should reduce this practice at least somewhat. At the same time, indicative voting would not carry some of the costs of alternatives that weaken veto power. Indicative voting should be most effective at legitimizing active interventions that carry broad support among Council members, but it would be less useful for sanctions or condemnatory resolutions targeted at the internal practices of states (such as Israel, Russia, China). On the other hand, any use of the indicative vote to legitimize uses of force will be fiercely contested by the permanent member(s) who would have vetoed authorization in a regular vote.

It would not be wise to include a reform of Security Council veto arrangements in amendments to the Charter. Given the above-mentioned potential, the proposed reform would likely meet with resistance from permanent members.¹⁷⁹ In a tough domestic ratification process, any semblance of weakening veto power may well sour the mood towards the UN in general. The reform could probably be formalized in the Council's rules of procedure. However, the likelihood of this reform occurring is slim.

¹⁷⁹ Especially from Russia, China, and France. I would expect the US to be supportive, unless there are fears that the procedure will be used against Israel (I think the real risk of this is minimal but it is a powerful political trump card).

CONCLUSIONS

The fact that Charter reform is so difficult and requires consequential compromises from state parties may carry the benefit that if the process succeeds, the new consensus is more meaningful and difficult to withdraw from than a new declaration would be. Potentially, the process of Charter reform thus carries benefits beyond those implied by the actual reforms: it represents an opportunity for states to express a renewed meaningful commitment to the UN and its underlying principles through their domestic ratification processes. This is especially important given that so many of the Panel's recommendations are targeted at the behavior of member states and their commitment to the Security Council. The expectation is not that all states at all times will respect the responsibilities and constraints reflected by a newly ratified Charter, but rather that these responsibilities and constraints will impose greater restraint on member states than does the existing Charter.

Of course, the higher level of commitment also makes it less than automatic that a government would favor ratifying the very same text it is willing to vote publicly in favor of. Thus, any Charter reform will be less extensive and more likely to fail than a new declaration.

The main point of this note is that the potential political benefits of Charter reform should be incorporated more explicitly in discussions surrounding UN reform. This is especially so because Charter reform requires a considerable effort on the part of political leaders to make it a "do or die" type issue. As long as the issue remains in the background and appears not to be urgent for the emergence of an effective system of collective security, Charter reform is unlikely to happen. This would be unfortunate, as the apparent crisis following the Iraq intervention presents an excellent opportunity to ask the world to renew its commitment to the institution.

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