REFORMING THE UNITED NATIONS: LEGITIMACY, EFFECTIVENESS AND POWER AFTER IRAQ

by SIMON CHESTERMAN∗

Reform of the international security architecture tends to be driven by crisis: the First World War made possible the creation of the League of Nations; its failure to prevent a Second World War laid the foundations for a new United Nations. For some, the 2003 war in Iraq was a similar challenge not merely to the institutions but to the very idea of international order. This article examines efforts to understand and respond to that challenge, focusing on the effort to develop a shared understanding of threats, design institutions to respond to those threats, and manage the unequal capacity that enables some states to undertake coercive action unilaterally. These competing claims to legitimacy, effectiveness, and power illustrate the limitations of collective security through an organisation like the United Nations as well as why such an organisation is indispensable.

I. INTRODUCTION

In addition to the perennial problems of dysfunctional institutions, inadequate resources, and ephemeral political will, the United Nations (UN) has always faced crises of expectations. At the beginning of the 1990s, the United States (US), while proclaiming itself the victor of the Cold War, magnanimously asserted that this provided an opportunity for the UN to fulfil its long-promised role as the guardian of international peace and security. The Security Council saw new possibilities for action without the paralyzing veto; Secretary-General Boutros Boutros-Ghali laid out grand plans with An Agenda for Peace. In the words of US President George H.W. Bush, the rule of law would supplant “the rule of the jungle”.1

The rhetoric was euphoric, utopian, and short. International security issues continued to be resolved by reference to Great Power interests; development remained an area where words were more plentiful than resources. Rhetoric is not nothing, however, and the language of human rights and the rule of law became more accepted during this period, as was the principle of greater international engagement in areas previously considered to lie


solely within the domestic jurisdiction of member states. Whether such principles should be supported by action remained a bone of some contention.

In this context, discussion of reform has always begged the question of whether that reform must take place primarily in the structures, procedures, and personnel that make up the UN, or in the willingness of member states to use them. Past efforts at creating and changing the international institutions of peace and security have tended to be led by political will, which is most plentiful in a time of crisis. The First World War was the backdrop for the establishment of the League of Nations; the League’s failure to prevent the Second World War led to its replacement by the UN. Importantly, US President Franklin Roosevelt pushed for the negotiation of the UN Charter to be held in San Francisco while the bombs of the Second World War were still falling. Unlike the Covenant of the League of Nations, which was negotiated as one agreement among many at Versailles in 1919, the Charter’s references to “the scourge of war” were reinforced by daily reports of final battles in the worldwide conflict.

For some, the US-led invasion of Iraq in March 2003 was a similar challenge not merely to the institutions but to the very idea of international order. The war split the Security Council, divided the North Atlantic Treaty Organisation (NATO), and prompted the creation of a high-level panel to rethink the very idea of collective security in a world dominated by US military power. In the wake of the Iraq war, anxiety concerning the role and relevance of the UN was widespread. But leadership on the reform agenda came, unusually, from the Secretary-General. It was Kofi Annan who appointed the High-Level Panel on Threats, Challenges, and Change, which attempted to grapple with legitimate US security concerns while broadening discussion of international threats beyond its counter-terrorism and non-proliferation agenda. He had already commissioned Jeffrey Sachs’ UN Millennium Project to propose strategies for achieving the Millennium Development Goals. And in March 2005 these security and development agendas were joined by a third, human rights, in a Secretary-General’s report unusual for its ambition and its rhetoric.

That report, In Larger Freedom, was intended to set both the tone and the substantive agenda for the sixtieth General Assembly, which included a Summit of Heads of State on 14–16 September 2005. The report was broad in scope, seeking to define a new security consensus based on the interdependence of threats and responses, and narrow in detail, setting specific targets for official development assistance, calling for the creation of a Peacebuilding Commission, and outlining a long-awaited definition of terrorism. On the most contested political question of Security Council expansion, however, the report endorsed the fence-sitting position of the High-Level Panel, laying out options but not choosing between them, while urging member states to take a decision on Council expansion even if consensus was not possible. Such discretion did not detract from larger anomalies in this approach: that the Secretary-General was trying to use reform to generate political will rather than reflect it, and that he was taking a lead role just when his political and moral credibility was being called into question by allegations of corruption and mismanagement in the Oil-for-Food Programme.

---


3 Investing in Development: A Practical Plan to Achieve the Millennium Development Goals (Report of the UN Millennium Project to the Secretary-General), 17 January 2005, online: Millennium Project<http://www.unmillenniumproject.org/reports>.


As the member states gathered in New York, there was much talk of consensus; such discussion is normally a veil for underlying issues of politics and expectations. In political terms, arguments over consensus imply divergent views as to whether the UN should be a forum for intergovernmental cooperation or an independent actor that can lead on issues of global import. The former view tends towards a lowest-common denominator approach to standards and implementation; the latter could lead to greater effectiveness but at the risk of the UN’s legitimacy as a club of states.  

In terms of expectations, UN Secretary-General Kofi Annan had consciously put pressure on member states not to leave New York empty-handed. He also tied his own legacy to the outcome of the push for reform. This was certainly a more desirable legacy than the Oil-for-Food scandal or sexual abuse by peacekeepers in the Democratic Republic of the Congo, but points to the ambiguous position occupied by the Secretary-General. At once civil servant and a kind of secular pope, he depends on states for both the legitimacy and resources that make the UN possible. At the same time, however, the disparate national interests of those states require mediation through a body such as the UN and its Secretary-General if they are to work together effectively and respond adequately to threats unanswerable by any one state alone.

In the end, the September 2005 Summit was nearly derailed by the sheer number of issues being considered, not helped by the disengagement of the US at key stages. US wariness was due in part to traditional ambivalence concerning multilateral forums, in part to the ongoing difficulties in Iraq, and in part to the fact that the Bush Administration’s proposed ambassador was held up in confirmation hearings. By the time John Bolton arrived in New York—weakened by the requirement for a recess appointment to avoid an uncertain Senate vote—the draft outcome document had become a shopping list of aspirations and motherhood statements, with many states apparently waiting for Bolton to begin imposing some discipline before heads of state began arriving mere weeks later.

The final document was underwhelming, but days before it was adopted there were doubts that there would be a document at all. The most glaring absence was any reference whatsoever to weapons of mass destruction or disarmament—an omission that Secretary-General Annan rightly labelled a “disgrace”. Agreement on expansion of the UN Security Council was also unattainable, not surprising those who had argued that this had always been an unhelpful distraction from more pressing reform issues. Two major institutional changes were endorsed: the creation of a Peacebuilding Commission and in-principle agreement on a Human Rights Council, though the details of each were left unclear. But perhaps the most important issue was one little noticed at the time: endorsement at the highest levels of government of the doctrine of “responsibility to protect”, an understanding of sovereignty that acknowledges the potential for intervention for human protection purposes when a government is unable or unwilling to protect its own population.

This article briefly surveys past reform initiatives before examining in Part III the work of the High-Level Panel and how its recommendations were received and, selectively, implemented. Meaningful reform of the UN to respond to this new environment and the challenges it brings requires balancing questions of legitimacy, effectiveness, and power. Parts IV, V, and VI consider these questions in the areas of shared understanding of threats, institutional responses, and lingering questions concerning the use of force. Such a study
is useful not merely due to the enduring relevance of analysis and recommendations of the High-Level Panel, but also because the transformation of those proposals as they moved through the political process illustrates the limitations of UN reform in the absence of a crisis on the scale of a World War. The conclusion will consider the central message of the High-Level Panel report—the need to link divergent experiences of threats around the planet—and the possibility of converging responses.

II. PAST REFORM EFFORTS

Many discussions of reform tend to imply that major changes in the UN are both too hard and too easy. Those who say reform is too hard forget that, in the right circumstances, likeminded countries were able to negotiate the UN Charter and amend it three times, including an expansion of the Security Council in the face of superpower reluctance. Those who suggest reform is therefore easy forget that amending the Charter took years and depended on a perfect storm of the circumstances driving reform—the near doubling of the membership—corresponding directly to the reform agenda of expanding key institutions.

The UN Charter is much like a constitution. And, like most constitutions, it is designed to be difficult to amend. Article 108 of the Charter requires an amendment to be ratified by two-thirds of the UN member states, including all five permanent members of the Security Council (the P-5). The three amendments that have been made to the Charter all took place in the period 1963–1973. The first amendment expanded the membership of the Security Council from eleven to fifteen and increased the number of votes necessary to pass a resolution from seven to nine; it also expanded the membership of the Economic and Social Council (ECOSOC) from eighteen to twenty-seven. The second amendment corrected the amendment procedures themselves, in line with the increased size of the Council, requiring that nine (rather than seven) members be required to support a call for a General Conference of Member States for the purposes of reviewing the Charter. The third amendment further increased the membership of ECOSOC from twenty-seven to fifty-four.

Since the Security Council is widely seen as the most influential part of the UN system, much discussion of reform focuses on its membership. In 1993, the General Assembly established an open-ended working group (that is, open to all members of the UN) to consider, among other things, the question of increasing Council membership.10 More than a decade into its deliberations, there is still no agreement on an appropriate formula for Council representation and the body is jokingly referred to as the “never-ending working group.” Issues of general consensus are that the Council should be expanded and should probably include new permanent members—but perhaps without granting newcomers the coveted veto, currently held by only the P-5.

In March 1997, Razali Ismail, chairman of the working group, presented a paper synthesizing the majority view on expansion of the Council. Now known as the “Razali Plan,” it proposed increasing Council membership from fifteen to twenty-four by adding five permanent members (one each from the three groups of developing states—Africa, Asia, and Latin America and the Caribbean—as well as two from the industrialized states—generally recognized as Germany and Japan) and four non-permanent members (one each from Africa, Asia, Eastern Europe, and Latin America and the Caribbean). Though unable to generate much enthusiasm, the Razali Plan became the benchmark for other reform proposals.11 Efforts to abolish the veto itself are not presently taken seriously. Even proposals to limit it—such as that discussed in the report of the International Commission on Intervention

and State Sovereignty, which outlined a possible “code of conduct” whereby permanent members without vital national interest at stake would agree not to use their veto to block a resolution responding to a humanitarian crisis—appear to be off the table following the severe disagreements in the Council over the handling of Iraq.

The barriers to change are significant. There is, however, much that can be done to improve the effectiveness of the UN without amending the Charter. Indeed, in the case of the Council, there is a tendency to conflate the question of the Council’s “representativeness” with that of its effectiveness. Would expanding the Council’s membership make it more capable of responding to threats to international peace and security? It is arguable that other areas of reform, such as transparency of Council decision-making practices, the analytical role of the UN Secretariat, the availability of forces under UN command, and financial and human resources devoted to peacekeeping would better address the problems the Security Council currently faces. For this reason, the position of some governments has long been to support Council expansion in theory while opposing any specific reforms to membership in practice.

III. THE HIGH LEVEL PANEL ON THREATS, CHALLENGES AND CHANGE

The High-Level Panel on Threats, Challenges, and Change was set up in response to the political crisis that followed the US-led invasion of Iraq in March 2003. Speaking to the General Assembly that September, the Secretary-General was blunt about the challenges confronting the UN:

Excellencies, we have come to a fork in the road. This may be a moment no less decisive than 1945 itself, when the United Nations was founded. At that time, a group of far-sighted leaders, led and inspired by President Franklin D. Roosevelt, were determined to make the second half of the twentieth century different from the first half. They saw that the human race had only one world to live in, and that unless it managed its affairs prudently, all human beings may perish. So they drew up rules to govern international behaviour, and founded a network of institutions, with the United Nations at its centre, in which the peoples of the world could work together for the common good.

Now we must decide whether it is possible to continue on the basis agreed then, or whether radical changes are needed. And we must not shy away from questions about the adequacy, and effectiveness, of the rules and instruments at our disposal.

The aim of the Panel was to “recommend clear and practical measures for ensuring effective collective action, based upon a rigorous analysis of future threats to peace and security, an appraisal of the contribution collective action can make, and a thorough assessment of existing approaches, instruments and mechanisms, including the principal organs of the United Nations.” Specifically, the Panel’s terms of reference asked it to:

1) Examine today’s global threats and provide an analysis of future challenges to international peace and security. While a diversity of perception on the relative importance of the various threats facing particular member states on an individual basis continues to exist, it is important to find an appropriate balance at a global level. It is also important to understand the connections between different threats.

2) Identify clearly the contribution that collective action can make in addressing these challenges.

---

12 Supra note 9, para. 6.21.
3) Recommend the changes necessary to ensure effective collective action, including but not limited to a review of the principal organs of the United Nations.14

On November 3, 2003, the Secretary-General announced the 16 members of the Panel in a letter to the president of the General Assembly. Chaired by Anand Panyarachun, a former prime minister of Thailand, the panelists included Robert Badinter of France, João Clemente Baena Soares of Brazil, Gro Harlem Brundtland of Norway, Mary Chinery-Hesse of Ghana, Gareth Evans of Australia, David Hannay of the United Kingdom, Enrique Iglesias of Uruguay, Amre Moussa of Egypt, Satish Nambari of India, Sadako Ogata of Japan, Yevgeny Primakov of Russia, Qian Qichen of China, Nafis Sadik of Pakistan, Salim Ahmed Salim of Tanzania, and Brent Scowcroft of the United States.15

The Panel met for the first time in Princeton, New Jersey, on 5–7 December 2003. It had been asked originally to report back to the Secretary-General by 15 August 2004—a deadline that was later pushed back to December 2004. Subsequent formal meetings were held in Switzerland in February 2004, Ethiopia in April 2004, Austria in July 2005, and the US in September and November 2004. Panel members also took part in a variety of side meetings and consultations around the world.16

A. A New Security Consensus?

Speaking to the General Assembly in September 2003, the Secretary-General had referred to “hard” and “soft” threats, with the latter denoting “the persistence of extreme poverty, the disparity of income between and within societies, and the spread of infectious diseases, or climate change and environmental degradation”.17 The final sentences of the terms of reference stated that “The Panel’s work is confined to the field of peace and security, broadly interpreted. That is, it should extend its analysis and recommendations to other issues and institutions, including economic and social, to the extent that they have a direct bearing on future threats to peace and security.”18

In place of “hard” and “soft” threats, in early meetings the Panel turned its attention to six “baskets” of threats: (i) intra-state violence; (ii) inter-state rivalry and war; (iii) economic and social issues, including infectious diseases; (iv) weapons of mass destruction; (v) terrorism; and (vi) organised crime. A point of ongoing discussion for the Panel was whether these threats should be prioritised, and how the “soft” threats figured in discussions of peace and security.

Since the Security Council passed a resolution in 2000 stressing that HIV/AIDS “if unchecked, may pose a risk to stability and security”,19 it has been accepted that “soft” threats such as disease may have an impact on traditional security questions—most obviously through the impact of the HIV/AIDS pandemic on the armed forces of various African countries. But some argued that defining poverty, for example, as a threat on par with terrorism or inter-state violence does little more than render the word “threat” vague. Poverty may be a partial cause—or, in some cases, an effect—of conflict, but there are other policy

---

15 Ibid.
16 Supra note 2, Annex IV.
17 Supra note 13.
18 Supra note 2, Annex II.
frameworks in place to deal with this and related issues, most prominently the Millennium Development Goals.

One way of resolving this question was through explicitly recognising the disparate ways in which different stakeholders perceive threats. While the combination of terrorism and weapons of mass destruction is the primary fear of many countries in the industrialised North, economic concerns dominate in the South. Some members of the Panel and its staff thought it might be possible, therefore, to link these issues and secure greater support and cooperation by countries in the South for counter-terrorism and counter-proliferation activities in exchange for greater development assistance and reform of agricultural subsidies by countries in the North. This “grand bargain” approach was not fully embraced, though the report and the Secretary-General’s synthesis document, *In Larger Freedom*, bear distinct traces of its philosophy.

By far the greatest speculation on the Panel’s deliberations focused on the Security Council. In his September 2003 speech, the Secretary-General drew attention “to the urgent need for the Council to regain the confidence of States, and of world public opinion—both by demonstrating its ability to deal effectively with the most difficult issues, and by becoming more broadly representative of the international community as a whole, as well as the geopolitical realities of today.” Noting that the composition of the Council had been on the agenda of the General Assembly for over a decade, Annan stressed the need to address the issue with greater urgency. The terms of reference for the Panel, however, emphasised the need for effectiveness, calling on the Panel to “[r]ecommend the changes necessary to ensure effective collective action, including but not limited to a review of the principal organs of the United Nations.” Indeed, one of the interesting contradictions in the report is that the Council was said to have become more effective and more willing to act, while remaining the UN body “most capable of organizing action and responding rapidly to new threats”. It was nonetheless said to be urgently in need of expansion, when it is far from clear that this would enhance—and may in fact limit—its effectiveness. The implicit argument was that greater representation would enhance the body’s legitimacy, though this rests on the dubious premise that states sitting on the Council represent their region. This is questionable on the part of elected members and, on its face, seems inconsistent with the creation of additional permanent seats.

Specific recommendations in the area of political commitments, institutional change, and norms will be considered in parts IV, V, and VI. The Panel’s most important general contribution was its argument for a new security consensus. The world, it said, poses new and evolving threats that could not have been anticipated when the UN was founded in 1945. These threats are not answerable through a unilateral response; every state—even the most powerful—requires international cooperation to make it secure. In addition to the prospect of catastrophic attacks using weapons of mass destruction, this new security consensus is also built upon the foundation of globalisation. Global economic integration means that a major terrorist attack anywhere in the industrial world would have devastating consequences for the well-being of millions in the developing world. The 700 million international airline passengers every year bring many benefits but could also be carriers of deadly infectious diseases. And, as Afghanistan demonstrated, the erosion of state capacity may weaken the protection of every state against transnational threats such as terrorism and organised crime.

---

20 *Supra* note 13.
21 *Supra* note 18.
B. In Larger Freedom

Responses to the report were generally positive, particularly given the low expectations that had dominated early discussion of the Panel. Predictably, those states seeking permanent membership of the Security Council commenced a lobbying campaign on behalf of that issue and their own candidacy for permanent status, though hesitation about the choice of two African candidates meant that Japan, Germany, India, and Brazil launched themselves as the “Group of 4” or “G-4”—countering a Coffee Club of opposition, which later sought to recast itself as “Uniting for Consensus”, led by Italy. Criticism of the Commission on Human Rights was generally well-received, though the proposed transformation of the Commission into a universal body that might resemble the General Assembly was greeted with horror. The Peacebuilding Commission was seen as a positive contribution, though in significant part because different constituencies understood it very differently—variously as a standing pledging conference, a coordination mechanism, or a new Trusteeship Council.

The most important response came from the Secretary-General, whose report In Larger Freedom: Towards Development, Security, and Human Rights for All sought to synthesise the work of the High-Level Panel and Jeffrey Sachs’ UN Millennium Project. The document was ambitious in both its scope and its rhetoric. In Larger Freedom took its title from the preamble to the UN Charter, which outlines the determination of “we the peoples” in the areas of peace (“to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind”), human rights (“to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small”), justice (“to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained”), and development (“to promote social progress and better standards of life in larger freedom”).

Some of the language in In Larger Freedom consciously echoed US President Franklin Roosevelt, notably his 1941 “Four Freedoms” State of the Union Address. In addition, two months earlier, US President George W. Bush had delivered a second inaugural address that used the word “freedom” no less than 27 times. The High-Level Panel, for its part, had quoted President Harry Truman’s injunction to the final plenary session of the founding conference of the UN that “we all have to recognize—no matter how great our strength—that we must deny ourselves the license to do always as we please.” The Secretary-General in turn quoted Roosevelt’s call for leaders to demonstrate “the courage to fulfil [their] responsibilities in an admittedly imperfect world.” All these references, of course, had the open intent of demonstrating the importance to the UN of the strong and active participation of the US.

But the “In Larger Freedom” conceit also ran through the document, attempting to bind three hitherto separate fields of activity within the UN system:

Even if he can vote to choose his rulers, a young man with AIDS who cannot read or write and lives on the brink of starvation is not truly free. Equally, even if she earns enough to live, a woman who lives in the shadow of daily violence and has no say in how her country is run is not truly free. Larger freedom implies that men and women everywhere have the right to be governed by their own consent, under law,

25 UN Charter, Preamble.
28 Supra note 2, Synopsis.
29 Ibid., para. 222.
in a society where all individuals can, without discrimination or retribution, speak, worship and associate freely. They must also be free from want—so that the death sentences of extreme poverty and infectious disease are lifted from their lives—and free from fear—so that their lives and livelihoods are not ripped apart by violence and war. Indeed, all people have the right to security and to development.30

In Larger Freedom adopted President Roosevelt’s calls for freedom from want and from fear in its sections on development and security respectively. Roosevelt’s two other freedoms (of speech and thought, and of worship) were replaced with a broader concept of freedom to live in dignity. This was said to embrace respect for the rule of law, human rights and democracy. It also suggested a certain symmetry in the Secretary-General’s call for the Commission on Human Rights to be replaced with a Human Rights Council, to stand alongside the Economic and Social Council, and the Security Council. The first leg, freedom from want, endorsed the Millennium Development Goals and called for priority action in 2005 on the adoption and implementation of national development strategies “bold enough to meet the Millennium Development Goals targets for 2015.”31 At the same time, developed countries should establish timetables to reach the target of 0.7 percent of gross national income for official development assistance by no later than 2015, starting with significant increases no later than 2006 and reaching 0.5 percent by 2009.32 On trade, the Secretary-General called for the Doha round of multilateral trade negotiations to fulfill its development promise and to be completed no later than 2006. And, as a first step, states should provide duty-free and quota-free market access to exports from least developed countries.33

The second leg, freedom from fear, began by noting that while the UN development agenda suffers from a lack of implementation, its security agenda begins without even a basic consensus on appropriate priorities for the UN. The Secretary-General embraced the “broad vision … of collective security” articulated in the High-Level Panel’s report and sought to make the case that collective security today means “accepting that the threats which each region of the world perceives as most urgent are in fact equally so for all.”34 At times this blended arguments that were analytical, normative, and ethical:

On this interconnectedness of threats we must found a new security consensus, the first article of which must be that all are entitled to freedom from fear, and that whatever threatens one threatens all. Once we understand this, we have no choice but to tackle the whole range of threats. We must respond to HIV/AIDS as robustly as we do to terrorism and to poverty as effectively as we do to proliferation. We must strive just as hard to eliminate the threat of small arms and light weapons as we do to eliminate the threat of weapons of mass destruction. Moreover, we must address all these threats preventively, acting at a sufficiently early stage with the full range of available instruments.35

The third leg, freedom to live in dignity, was the most novel and, potentially, the most controversial. By embracing the language of “responsibility to protect,” the Secretary-General challenged member states to put deeds behind words in their commitment to international humanitarian law in particular:

While I am well aware of the sensitivities involved in this issue, I strongly agree with this approach. I believe that we must embrace the responsibility to protect, and, when

30 Ibid., para. 15.
31 Ibid., para. 34.
32 Ibid., para. 49.
33 Ibid., para. 55.
34 Supra note 4, paras. 74, 77, 79.
35 Ibid., para. 81.
necessary, we must act on it. This responsibility lies, first and foremost, with each individual State, whose primary raison d'être and duty is to protect its population. But if national authorities are unable or unwilling to protect their citizens, then the responsibility shifts to the international community to use diplomatic, humanitarian and other methods to help protect the human rights and well-being of civilian populations. When such methods appear insufficient, the Security Council may out of necessity decide to take action under the Charter of the United Nations, including enforcement action, if so required.36

In this context, he encouraged member states to “cooperate fully with the International Criminal Court and other international or mixed war crimes tribunals, and to surrender accused persons to them upon request,”37 but stopped short of recommending that the Security Council use its power to refer matters to the International Criminal Court.38

The following three parts will focus on the major reform issues raised by the High-Level Panel, considered by the Secretary-General, and debated by the member states in September 2005: interdependence of threats, institutional reform, and changes to the norms governing the use of force.

IV. INTERDEPENDENCE OF THREATS

As indicated earlier, one of the contributions of the High-Level Panel was broadening the definition of threat to reflect the different perceptions of populations around the world. This embraced calls to action in response to each of the “baskets” of threats. This part describes the Panel’s recommendations and what was eventually agreed to by member states.

A. Poverty, Infectious Diseases, and Environmental Degradation

The Panel called on all states to commit themselves to the goals of eradicating poverty, achieving sustained economic growth, and promoting sustainable development.39 The Millennium Development Goals should be at the centre of this poverty-reduction strategy, with the many donor countries that currently fall short of the United Nations 0.7 percent gross national product (G.N.P.) target for official development assistance (O.D.A.) establishing a timetable for reaching it.40

In addition to greater assistance and debt relief, the Panel also called – indirectly—for a reduction in agricultural subsidies:

In Monterrey and Johannesburg, leaders agreed that poverty alleviation is undermined by continuing inequities in the global trading system. Seventy per cent of the world’s poor live in rural areas and earn their income from agriculture. They pay a devastating cost when developed countries impose trade barriers on agricultural imports and subsidize agricultural exports. In 2001, the World Trade Organization (WTO) Doha Declaration explicitly committed signatories to put the needs and interests of developing countries at the heart of negotiations over a new trade round. WTO members should strive to conclude the Doha development round at the latest in 2006.41

On HIV/AIDS, the Panel acknowledged that resources devoted to combating the disease had risen from about $250 million in 1996 to about $2.8 billion in 2002; more than

36 Ibid., para. 135.
37 Ibid., para. 138.
38 Cf supra note 2, para. 90.
39 Ibid., para. 59.
40 Ibid., para. 60.
41 Ibid., para. 62.
$10 billion annually is needed to stem the pandemic.\textsuperscript{42} To raise the profile of the problem and formulate an appropriate strategy, the Panel urged the Security Council to convene a second special session on HIV/AIDS as a threat to international peace and security.\textsuperscript{43} In addition to greater support to local and national public health systems throughout the developing world, the report called for better disease monitoring capabilities, in particular through increasing resources to the WHO Global Outbreak Alert and Response Network.\textsuperscript{44}

On the question of climate change, the Panel stopped short of endorsing the Kyoto Protocol and calling on states (most obviously the US) to sign it. Instead, member states were asked “to reflect on the gap between the promise of the Kyoto Protocol and its performance, re-engage on the problem of global warming and begin new negotiations to produce a new long-term strategy for reducing global warming beyond the period covered by the Protocol” which ends in 2012.\textsuperscript{45}

Such compromises did little to defuse tensions in the lead-up to the September 2005 Summit, culminating in an unedifying and ultimately unsuccessful battle by US Ambassador John Bolton to remove any reference to the Millennium Development Goals in the Outcome Document. As the goals had come to define UN policy on development, this was a curious battle to pick and the US ended up compromising and effectively endorsing them.\textsuperscript{46} The language accepted at the Summit referred to “development goals and objectives agreed at the major United Nations conferences and summits, including those agreed at the Millennium Summit that are described as the Millennium Development Goals”.\textsuperscript{47} On the target of 0.7 percent of G.N.P., the Summit did not set out any new commitments but merely welcomed the increased resources that would be made available “as a result of the establishment of timetables by many developed countries to achieve the target of 0.7 per cent of gross national product for official development assistance by 2015 and to reach at least 0.5 per cent of gross national product for official development assistance by 2010”.\textsuperscript{48} Other commitments in the area of disease control and climate change also emphasised ongoing rather than new commitments.\textsuperscript{49}

B. Conflict Between and Within States

As the Panel noted, the threat of inter-state war has declined but has far from disappeared. Intra-state conflict, meanwhile, appears to be undergoing a period of growth, although the actual number of civil wars has been in decline since 1992. Indeed, in the last fifteen years, more civil wars were ended through negotiation than in the previous two centuries.\textsuperscript{50}

How much responsibility the UN may claim for these changes is open to debate. The Panel suggested that the resolution of civil wars was possible “in large part because the United Nations provided leadership, opportunities for negotiation, strategic coordination, and the resources needed for implementation. Hundreds of thousands of lives were saved, and regional and international stability were enhanced.”\textsuperscript{51} Unprecedented success, however, was accompanied by major failures. Mediation was successful only in one-quarter of civil wars, and only some of those were given the political and material resources necessary for
successful implementation. Those which did not—such as the 1991 Bicesse Agreement in Angola, the 1993 Arusha Accords for Rwanda and periodic efforts to consolidate peace in Afghanistan in the early 1990s—greatly increased the number of deaths attributable to war.52

The biggest failures of the UN with regard to civil violence have been in failing to halt ethnic cleansing and genocide:

In Rwanda, Secretariat officials failed to provide the Security Council with early warning of extremist plans to kill thousands of Tutsis and moderate Hutus. When the genocide started, troop contributors withdrew peacekeepers, and the Security Council, bowing to United States pressure, failed to respond. In Bosnia and Herzegovina, United Nations peacekeeping and the protection of humanitarian aid became a substitute for political and military action to stop ethnic cleansing and genocide. In Kosovo, paralysis in the Security Council led the North Atlantic Treaty Organization (NATO) to bypass the United Nations. Only in one instance in the 1990s—in East Timor—the Security Council, urged on by the Secretary-General, work together with national Governments and regional actors to apply concerted pressure swiftly to halt large-scale killing.53

Improving this record of prevention requires, of course, political will. The Panel also outlined some of the tools that may be used. First, the Security Council should stand ready to use the authority it has under the Rome Statute to refer cases to the International Criminal Court. Such an indication that the Council is carefully monitoring a conflict may deter parties from committing crimes against humanity and violating the laws of war.54 Secondly, better mechanisms are required to govern the management of natural resources for countries emerging from or at risk of conflict. Evidence from Sierra Leone and Angola suggests that efforts to cut down on illicit trade in “conflict diamonds” and other goods contributed to the end of their civil wars.55 Thirdly, the UN should draw upon the experience of regional organisations in developing frameworks for minority rights and protection of democratically elected governments from unconstitutional overthrow. These networks are important both as early-warning systems but also as normative standards that can guide preventive efforts.56 Fourthly, better controls on small arms—the weapon of choice in most civil wars—would be an important constraint on civil wars, but efforts in this direction have barely moved beyond rhetoric to action.57

Each of these recommendations was watered down by the intergovernmental process. The Summit Outcome Document made no reference to the International Criminal Court—though in March 2005 the Council had referred a situation (Darfur) to the Court for the first time.58 No explicit linkage was made between natural resource extraction and conflict. There was tepid enthusiasm for an expanded role for regional organisations to support peace and security, especially in Africa.59 And where the Panel had called for binding agreements on the marking and tracing, as well as the brokering and transfer, of small arms and light

52 Ibid., para. 86.
53 Ibid., para. 87.
54 Ibid., para. 90.
55 Ibid., para. 91-92.
56 Ibid., para. 94.
57 Ibid., paras. 95-97.
59 Supra note 47, para. 65.
C. Nuclear, Radiological, Chemical, and Biological Weapons

The High-Level Panel considered measures intended to reduce both demand and supply of weapons of mass destruction. On the demand side, the Panel stressed the “lackluster” efforts by nuclear-weapon states to fulfil their obligations under the non-proliferation regime, undermining its ability to constrain proliferation. These states were called upon to honour their obligations under the Non-Proliferation Treaty (NPT) to move towards disarmament and to reaffirm previous commitments not to use nuclear weapons against non-nuclear-weapon states. The Security Council should support this by explicitly pledging to take collective action in response to a nuclear attack or the threat of such an attack on a non-nuclear-weapon state.

In order to reduce supply, the International Atomic Energy Agency (IAEA) requires greater powers. Only one-third of states parties to the NPT have ratified the Model Additional Protocol to the Treaty, which provides for more stringent inspection rules. The Panel therefore recommended that the IAEA Board of Governors recognise the Model Additional Protocol as the standard for IAEA safeguards, with the Security Council prepared to act in response to non-compliance with these standards. The IAEA should be empowered to act as a guarantor of the supply of fissile material to civilian nuclear users. To combat illicit trade, states were encouraged to join the (voluntary) Proliferation Security Initiative.

As Kofi Annan observed in his speech to the September 2005 Summit, posturing by member states in the subsequent negotiations took precedence over results—just as it had at the Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) the previous May. The failure to agree on language was in significant part due to the late intervention by the US, with newly arrived Ambassador John Bolton introducing hundreds of amendments to the rolling draft of a document dated 17 August 2005. Though media coverage tended to exaggerate the number and importance of these amendments, in the area of non-proliferation and disarmament, these amendments were responsible for the collapse of a fragile compromise. This was particularly true of US opposition to the linking of non-proliferation to disarmament. For example, a provision emphasising that “progress in disarmament and non-proliferation is essential to strengthening international peace and security” would have been replaced by a statement that “[t]he proliferation of weapons of mass destruction and the possibility that terrorists might acquire such weapons remain the greatest threats to international peace and security.” Similarly, a reaffirmation of the NPT’s three pillars of “disarmament, non-proliferation, and the peaceful use of nuclear energy” was replaced by a commitment to its role in “preventing the further spread of nuclear weapons.”

---

60 Supra note 2, para. 96.
61 Supra note 47, para. 94.
62 Supra note 2, paras. 118-122.
63 Ibid., paras. 129-132.
66 Ibid., para. 59.
nuclear powers themselves to disarm encouraged countries not party to the NPT—notably India and Pakistan—to reintroduce language stressing disarmament and thereby sabotaged agreement.

D. Terrorism

The desire on the part of the US to focus on the threat posed by terrorists—especially the prospect of such actors gaining access to weapons of mass destruction—is a reflection of a new strategic reality confronting the UN. On 11 September 2001, the UN had twelve counter-terrorism conventions on the books but only two states had ratified them all (Botswana and the United Kingdom). The High-Level Panel endorsed the approach of the Counter-Terrorism Committee (CTC) established by Security Council resolution 1373 (2001), calling on member states to ratify these conventions, with the CTC facilitating inter-state cooperation and capacity-building.

Despite such normative developments, the UN continues to founder on the question of what “terrorism” actually means. Agreement on a definition is typically undermined by two issues. The first is the question of whether it should include acts undertaken by states. As the Panel argued, the use of force by states is comparatively well-regulated and prohibits most acts that might otherwise be classed as terrorism; it is therefore unnecessary to include so-called “state terrorism” within the definition. The second issue is the objection that peoples under foreign occupation have a right to resistance that should not be overridden by a broad definition of terrorism. But this conflates ends and means: there is nothing in the fact of occupation that justifies the targeting and killing of civilians and non-combatants.

The definition proposed by the High-Level Panel, intended for adoption by the General Assembly as part of a comprehensive convention on terrorism, included four elements:

(a) recognition, in the preamble, that State use of force against civilians is regulated by the Geneva Conventions and other instruments, and, if of sufficient scale, constitutes a war crime by the persons concerned or a crime against humanity;
(b) restatement that acts under the 12 preceding anti-terrorism conventions are terrorism, and a declaration that they are a crime under international law; and restatement that terrorism in time of armed conflict is prohibited by the Geneva Conventions and Protocols;
(c) reference to the definitions contained in the 1999 International Convention for the Suppression of the Financing of Terrorism and Security Council resolution 1566 (2004);
(d) description of terrorism as “any action, in addition to actions already specified by the existing conventions on aspects of terrorism, the Geneva Conventions and Security Council resolution 1566 (2004), that is 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 or an international organization to do or to abstain from doing any act.”

This was summarised by the Secretary-General in his report as providing that an action constitutes terrorism if “it is intended to cause death or serious bodily harm to civilians

---


68 Supra note 2, paras. 147–150.

69 Ibid., para. 163–164.
or non-combatants with the purpose of intimidating a population or compelling a Government or an international organization to do or abstain from doing any act.”

The draft Outcome Document had similar text at various stages but in the acrimonious final days of negotiations, the terrorist/freedom-fighter argument resurfaced and the Summit confined itself to “strongly condemn[ing] terrorism in all its forms and manifestations, committed by whomever, wherever and for whatever purposes”—a powerful statement but somewhat incoherent in the absence of a definition.

E. Transnational Organised Crime

Combating transnational organised crime would both improve human and state security, the Panel argued. Drug trafficking, in particular, has major security implications: the $300 to $500 billion illegal trade in narcotics is the largest single source of income for organised criminal groups. The consequences of this trade range from the spread of HIV/AIDS through intravenous drug use to the destabilisation of governments confronting criminal enterprises wealthier than the state. Afghanistan, in particular, demonstrates the link between opium and terrorist financing.

Addressing this problem requires better international regulatory frameworks and better capacity-building in weak states. The Panel urged states to ratify the 2000 United Nations Convention Against Transnational Organised Crime and its three Protocols and the 2003 United Nations Convention against Corruption, as well as the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children. A new convention is required on money-laundering. These sentiments were broadly endorsed at the Summit, but in hortatory rather than mandatory language.

V. Institutional Reform

Accepting the interdependence of threats was intended to lay the foundation for a shared agreement on responses. Yet these responses required greater political will and resources from member states, of which there was little in September 2005. Representatives of the various governments participating in the Summit tended to spend far more time on the question of institutional change within the UN. This part will briefly consider proposals to reform three existing institutions—the Security Council, the Economic and Social Council (ECOSOC), and the General Assembly—and to create two new bodies in the form of a Human Rights Council and a Peacebuilding Commission. The depressing conclusion is that many countries fought to protect their ability to sit on these bodies rather than ensuring that they might have something interesting to say.

A. The Security Council

The one issue on which the Panel was unable to reach agreement concerned the expansion of the Security Council. Presaging the debates by member states, the Chair of the Panel, Anand Panyarachun, noted that some members of the Panel “believe strongly that only the model involving expansion of permanent membership, albeit without a veto, will equip the Security Council to deal with the new century’s threats. Others believe equally strongly that

70 Ibid., para. 91.
71 Supra note 47, para. 81.
72 Supra note 47, paras. 163-166, 171.
73 Ibid., paras. 172, 174-175.
74 Supra note 47, paras. 111-115.
the alternative model involving elected, long-term but non-permanent members is the better way to proceed.”  

The Panel did manage to settle on four principles for reform of the Council. First, any reform should increase the involvement of those who contribute most to the UN financially, militarily, and diplomatically. This should be understood as meaning contributions to UN assessed budgets, participation in mandated peace operations, contributions to voluntary activities of the UN in the areas of security and development, and diplomatic activities in support of UN objectives and mandates. Among developed countries, achieving or making substantial progress towards the internationally agreed level of 0.7 per cent of G.N.P. for O.D.A. should be considered an important criterion of contribution. Secondly, reform should bring into the decision-making process countries more representative of the broader membership, especially of the developing world. Thirdly, any reform should not impair the effectiveness of the Security Council. And fourthly, reform should increase the democratic and accountable nature of the body. 

In order to advance debate, the Panel proposed two models—“A” and “B”—which distributed seats on the Council between four major regional areas. The four regions were not defined but simply identified as “Africa”, “Asia and Pacific”, “Europe”, and “Americas.” This in itself would be a departure from the status quo agreed in 1963 at the time of the expansion of the Council, that the elected ten members would be allocated along the following lines: five “African and Asian states;” one “Eastern European” state; two “Latin American and Caribbean states;” and two “Western European and Other” (W.E.O.G.) states. The change would have merged Eastern Europe into “Europe,” while moving Australia and New Zealand on the one hand, and Canada and the US on the other, from W.E.O.G.’s “Other” into “Asia and Pacific” and “Americas” respectively. Israel, which only joined W.E.O.G. in 2000, would remain part of “Europe”.

Table 1. Current Membership of the Security Council

<table>
<thead>
<tr>
<th>Regional Area</th>
<th>No. of States</th>
<th>Permanent Seats</th>
<th>Rotating Seats</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Africa</td>
<td>53</td>
<td>0</td>
<td>378</td>
<td>3</td>
</tr>
<tr>
<td>Asia</td>
<td>54</td>
<td>1 (China)</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Eastern Europe</td>
<td>22</td>
<td>1 (Russian Federation)</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Latin America and Caribbean</td>
<td>33</td>
<td>0</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Western Europe and Other</td>
<td>29</td>
<td>3 (France United Kingdom, United States)</td>
<td>2</td>
<td>5</td>
</tr>
<tr>
<td>Total</td>
<td>191</td>
<td>5</td>
<td>10</td>
<td>15</td>
</tr>
</tbody>
</table>

75 Supra note 2, Cover Letter.
76 Ibid., para. 249.
78 Africa and Asia share five rotating seats, one of which is an Arab country, alternately from the African and Asia group.
Model A provided for six new permanent seats, with no veto being created, and three new two-year term non-permanent seats, divided among the proposed new regional areas as follows:

Table 2.
Model A

<table>
<thead>
<tr>
<th>Regional Area</th>
<th>No. of States</th>
<th>Permanent Seats (Continuing)</th>
<th>Proposed New Permanent Seats</th>
<th>Proposed Two-Year Seats (non-renewable)</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Africa</td>
<td>53</td>
<td>0</td>
<td>2</td>
<td>4</td>
<td>6</td>
</tr>
<tr>
<td>Asia and Pacific Europe</td>
<td>56</td>
<td>1 (China)</td>
<td>2</td>
<td>3</td>
<td>6</td>
</tr>
<tr>
<td>Europe</td>
<td>47</td>
<td>3 (France, Russian Federation, United Kingdom)</td>
<td>1</td>
<td>2</td>
<td>6</td>
</tr>
<tr>
<td>Americas</td>
<td>35</td>
<td>1 (United States)</td>
<td>1</td>
<td>4</td>
<td>6</td>
</tr>
<tr>
<td>Totals model A</td>
<td>191</td>
<td>5</td>
<td>6</td>
<td>13</td>
<td>24</td>
</tr>
</tbody>
</table>

Model B provided for no new permanent seats but created a new category of eight four-year renewable-term seats and one new two-year non-permanent (and non-renewable) seat, divided among the major regional areas as follows:

Table 3.
Model B

<table>
<thead>
<tr>
<th>Regional Area</th>
<th>No. of States</th>
<th>Permanent Seats (Continuing)</th>
<th>Proposed Four-Year Renewable Seats</th>
<th>Proposed Two-Year Seats (Non-Renewable)</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Africa</td>
<td>53</td>
<td>0</td>
<td>2</td>
<td>4</td>
<td>6</td>
</tr>
<tr>
<td>Asia and Pacific Europe</td>
<td>56</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>6</td>
</tr>
<tr>
<td>Europe</td>
<td>47</td>
<td>3</td>
<td>2</td>
<td>1</td>
<td>6</td>
</tr>
<tr>
<td>Americas</td>
<td>35</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>6</td>
</tr>
<tr>
<td>Totals model B</td>
<td>191</td>
<td>5</td>
<td>8</td>
<td>11</td>
<td>24</td>
</tr>
</tbody>
</table>

The Panel concluded that there was no practical way of changing existing permanent members’ veto powers, but neither model included provision to expand the veto to new permanent members. An interesting proposal frequently overlooked in the wake of the report was the suggestion of a system of “indicative voting” whereby members of the Security Council could call for a public indication of positions on a proposed action. A “no” under such circumstances would not have a veto effect—indeed, the vote itself would have no legal
force. But it might provide a modest improvement in accountability for the threat or use of the veto function.\textsuperscript{79}

As indicated earlier, the Secretary-General confined himself to endorsing the Panel’s two options,\textsuperscript{80} but he also stressed that the absence of consensus should not become an excuse for postponing action.\textsuperscript{81} Though he was under considerable pressure to adopt this position, Annan thereby encouraged a paralyzing debate over seats on the Council that took time from consideration of other issues and divided member states in a process that was intended to unite them. The efforts of the G-4 (Japan, Germany, India, and Brazil) to promote Model A’s vision of six new permanent seats ran aground on the African Group. Paralysed by the overlapping constituencies of the Non-Aligned Group and the Group of 77 (G-77), African countries could not decide between the competing claims of Nigeria, South Africa, and Egypt, with Kenya and Senegal later playing spoilers’ roles. This was interpreted by some as a failure of African diplomacy; others suggested that the G-4 had engineered its own destruction by taking African cooperation for granted and presenting the African Group with a \textit{fait accompli}. Such divisions were welcomed by those states that saw new permanent seats as being likely to undermine their own influence on the Council due to over-representation of permanent members from their region—most obviously the presence of four European permanent members.

Various alternatives were proposed with occasional signs of desperation on the part of the G-4. A draft resolution was tabled on 6 July 2005 to increase the size of the Council from fifteen to twenty-five, abandoning the changed regional arrangements and adding a new rotating seat from Eastern Europe.\textsuperscript{82} No action was taken, but the same draft was resubmitted on 5 January 2006 in the hope of keeping debate on expansion alive.\textsuperscript{83} Where twenty-seven countries had sponsored the initial draft, however, only three signed onto the later effort—Brazil, Germany, and India—with even Japan deciding to cut its losses and wait for a more propitious moment to raise the issue in the future.

Among other things, the focus on membership distracted from other ideas proposed by the Panel such as reconfiguring regions and the idea of indicative voting, neither of which appeared to be seriously considered.

\textbf{B. The Economic and Social Council}

The UN Charter recognises the connections between peace and security on the one hand, and development on the other. Two of the three councils established in the Charter deal with these issues: the Security Council and the Economic and Social Council respectively. The third council, the Trusteeship Council, now exists in name only, the last trust territory having become independent in 1994.\textsuperscript{84} The role of the UN in international economic matters is not quite so anachronistic, but decision-making on such matters, especially in the areas of finance and trade, has long since been overtaken by other forums.\textsuperscript{85}

Nonetheless, the Panel found three areas in which the UN might play a significant role in economic and social development: providing normative and analytical leadership on

\textsuperscript{79} \textit{Supra} note 2, paras. 256-257.

\textsuperscript{80} See \textit{supra} note 4.

\textsuperscript{81} \textit{Ibid.}, para. 170.


\textsuperscript{83} \textit{Question of Equitable Representation and Increase in the Membership of the Security Council and related matters} (Brazil, Germany and India: Draft Resolution), 60th Session., Agenda Item 117, UN Doc A/60/L.46 (5 January 2006). Online: German UN Mission <http://www.germany-un.org/N0620213.pdf>.

\textsuperscript{84} On proposals to abolish the Trusteeship Council, see \textit{infra} note 145.

\textsuperscript{85} \textit{Supra} note 2, para. 274.
topics such as the social and economic aspects of security threats; providing an arena in which states measure their commitments to achieving key development objectives; and engaging the development community at the highest level in a kind of “development cooperation forum”. Doing this effectively would require abandoning much of ECOSOC’s current agenda, which tends to focus on administrative issues and program coordination, in favour of a more focused agenda built around the major themes in the Millennium Declaration.86

Such implicit criticisms were more restrained than other accounts of the relevance of ECOSOC, but were essentially rejected by the member states. The Outcome Document reaffirmed ECOSOC’s role “as a principal body for coordination, policy review, policy dialogue and recommendations on issues of economic and social development, as well as for implementation of the international development goals”.87

C. The General Assembly

The General Assembly enjoys unique legitimacy through its near universal membership of states. Nevertheless, as the High-Level Panel concluded an “unwieldy and static agenda” has led to repetitive debates. The Assembly has frequently squandered its normative role on debates about minutiae or thematic topics overtaken by real-world events. And its inability to achieve concrete conclusions on issues has undermined its relevance. Achieving the potential of this body, the Panel argued, requires more than procedural fixes. Instead, a new attitude towards the Assembly is required in order to enable it to perform its function as the main deliberative organ of the UN: “This requires a better conceptualization and shortening of the agenda, which should reflect the contemporary challenges facing the international community. Smaller, more tightly focused committees could help sharpen and improve resolutions that are brought to the whole Assembly”.88 The Secretary-General tentatively embraced these criticisms, reframing them as a call on the Assembly to streamline its agenda and procedures, as well as strengthening the role of its President.89

Such proposals were rejected. The Summit merely reaffirmed the central position of the Assembly as the chief deliberative body of the UN system and welcomed the measures it had already taken to strengthen that role.90

D. A Human Rights Council

An important and provocative argument in the High-Level Panel’s report concerned the Commission on Human Rights, which was said to have been undermined by “eroding credibility and professionalism”:

Standard-setting to reinforce human rights cannot be performed by States that lack a demonstrated commitment to their promotion and protection. We are concerned that in recent years States have sought membership of the Commission not to strengthen human rights but to protect themselves against criticism or to criticize others. The Commission cannot be credible if it is seen to be maintaining double standards in addressing human rights concerns.91

86 Ibid., paras. 275-279.
87 Supra note 47, para. 155.
88 Supra note 2, para. 242.
89 Supra note 4, para. 160.
90 Supra note 47, paras. 149-150.
91 Supra note 2, para. 283.
Identifying membership as the most difficult and sensitive issue, the Panel recommended avoiding the problem through universal membership. Though it was generally accepted that the Panel’s diagnosis of the problem with the Commission on Human Rights was correct, the Secretary-General’s response took a different tack by proposing more limited membership for a Human Rights Council, whose members would be elected directly by the General Assembly by a two-thirds majority. The Outcome Document endorsed the principle of establishing a Council, but left all details to the sixtieth session of the Assembly that was about to begin.

Membership was the key fault line in subsequent negotiations, with the US pushing for the two-thirds requirement recommended by the Secretary-General, as well as automatic exclusion of states that are the subject of coercive measures imposed by the Security Council related to human rights abuses or terrorism. (Some concerns were expressed within the State Department that more restrictive criteria could preclude the United States itself from membership.) Failure to include these provisions led the US to vote against the draft resolution, which was adopted on 15 March 2006 by a recorded vote of 170 in favour to four against (Israel, Marshall Islands, and Palau joining the US) with Belarus, Iran, and Venezuela abstaining. The US also expressed opposition to the inclusion of term limits, which prevent states from serving more than six years out of every seven, apparently on the basis that this might mean that the US would, occasionally be forced to rotate off the new body.

The new Council has forty-seven members that are elected directly and individually by secret ballot by a majority of members of the General Assembly. This ballot is constrained by a requirement to distribute seats among the regional groupings (thirteen from the African Group; thirteen from the Asian Group; six from the Eastern European Group; eight from the Latin American and Caribbean Group; and seven from W.E.O.G.). When electing members of the Council, states are asked to “take into account the contribution of candidates to the promotion and protection of human rights and their voluntary pledges and commitments.” Once on the Council, members are to uphold the highest standards and cooperate with the new body; a member that commits gross and systematic violations of human rights may be suspended by a two-thirds majority of votes in the General Assembly. The bar to expulsion is extremely high, but the key provision is individual election of members by an absolute majority of the General Assembly, as opposed to a majority of members present and voting. This should prevent regional slates being presented and remove regional solidarity as a rationale for appointing countries with dubious human rights records to the Council—a common problem confronting its predecessor, the Commission on Human Rights.

As in the case of the Security Council, more time and energy was focused on the membership of the Human Rights Council rather than on what it might do once constituted.

---

92 Ibid., para 285. The Commission on Human Rights had 53 members.
93 Supra note 4, para 183.
95 Pressed to explain his opposition to the draft in late February 2006, US Ambassador John Bolton said that “My concern now, given the term limits, is that America will go off, and that will be to the detriment of the Commission”: L. C. Moss “New Council Opposed by Unusual Duo: US and Cuba” Miami Herald (13 March 2006).
97 Ibid., para. 8.
98 Ibid., paras. 7-8.
Key substantive innovations include sitting through the year\textsuperscript{99} (rather than for an annual six-week session) and undertaking a “universal periodic review, based on objective and reliable information, of the fulfilment by each State of its human rights obligations and commitments.”\textsuperscript{100} Diffusing the political contests surrounding election of members and the annual fight over censoring resolutions has created the possibility for the Council to play a more constructive role than the Commission, but it is far from clear that agreement on what the Council should not be will ensure agreement on what it should do.

E. A Peacebuilding Commission

The other major institutional change proposed by the Panel was the creation of a Peacebuilding Commission. The report rightly criticised the UN experience of post-conflict operations as characterised by “countless ill-coordinated and overlapping bilateral and United Nations programmes, with inter-agency competition preventing the best use of scarce resources.”\textsuperscript{101} Its key recommendation to remedy this situation was the call for a Peacebuilding Commission to be established as a subsidiary organ of the UN Security Council under Article 29 of the UN Charter.\textsuperscript{102} This new body was to have four functions. First, it would identify countries that are under stress and risk sliding towards state collapse. Second, it would organise, “in partnership with the national Government, proactive assistance in preventing that process from developing further”. Third, it would assist in the planning for transitions between conflict and post-conflict peacebuilding. Fourth, it would marshal and sustain the efforts of the international community in post-conflict peacebuilding over whatever period may be necessary. Other guidelines mapped out institutional and procedural considerations, including the need for the body to be small and flexible, considering both general policy issues and country-by-country strategies. It was to include representatives of the Security Council, the Economic and Social Council, the International Monetary Fund and the World Bank, donor countries, troop contributors, and regional organisations—as well as national representatives of the country under consideration.\textsuperscript{103} A Peacebuilding Support Office would integrate system-wide policies and strategies, develop best practices, and provide support to field operations. Among other functions, the office would submit twice-yearly early warning analyses to the Peacebuilding Commission to help it in organising its work.\textsuperscript{104}

The Commission was generally considered to be one of the more positive ideas to come from the High-Level Panel and appeared likely to be adopted by the membership of the UN. When the Secretary-General drew upon this to present his own vision of the Peacebuilding Commission in his \textit{In Larger Freedom} report of March 2005, he specifically removed any suggestion of an early warning function—anticipating pressure from governments wary that they might be precisely the ones under scrutiny.\textsuperscript{105} This essentially dropped the first two of the High-Level Panel’s four functions, but the Secretary-General elaborated on how the other two might work in practice:

A Peacebuilding Commission could perform the following functions: in the immediate aftermath of war, improve United Nations planning for sustained recovery, focusing on early efforts to establish the necessary institutions; help to ensure predictable

\textsuperscript{99} \textit{Ibid.}, para. 10.
\textsuperscript{100} \textit{Ibid.}, para. 5(e).
\textsuperscript{101} \textit{Supra} note 2, para. 38.
\textsuperscript{102} \textit{Ibid.}, paras. 261-265.
\textsuperscript{103} \textit{Ibid.}, paras. 264-265.
\textsuperscript{104} \textit{Ibid.}, paras. 266-267.
\textsuperscript{105} \textit{Supra} note 4, para. 115.
financing for early recovery activities, in part by providing an overview of assessed, voluntary and standing funding mechanisms; improve the coordination of the many post-conflict activities of the United Nations funds, programmes and agencies; provide a forum in which the United Nations, major bilateral donors, troop contributors, relevant regional actors and organizations, the international financial institutions and the national or transitional Government of the country concerned can share information about their respective post-conflict recovery strategies, in the interests of greater coherence; periodically review progress towards medium-term recovery goals; and extend the period of political attention to post-conflict recovery.106

Two essential aspects of how the Commission would function were left unresolved: what its membership would be, and to whom it would report—the Security Council or the Economic and Social Council. These issues ended up paralysing debate on the Commission in the lead up to the September 2005 World Summit and were deferred for later consideration. The World Summit Outcome document broadly endorsed the Secretary-General’s view of the Peacebuilding Commission as essentially limited to mobilizing resources for post-conflict reconstruction:

The main purpose of the Peacebuilding Commission is to bring together all relevant actors to marshal resources and to advise on and propose integrated strategies for post-conflict peacebuilding and recovery. The Commission should focus attention on the reconstruction and institution-building efforts necessary for recovery from conflict and support the development of integrated strategies in order to lay the foundation for sustainable development. In addition, it should provide recommendations and information to improve the coordination of all relevant actors within and outside the United Nations, develop best practices, help to ensure predictable financing for early recovery activities and extend the period of attention by the international community to post-conflict recovery.107

In one sense, the evolution of the Peacebuilding Commission is a fairly typical example of ideas and norms being diluted as they move through the policy and intergovernmental waters. Early warning died a fairly quick death even before reaching the Summit. A second attempt by the High-Level Panel to strengthen early warning by creating a Deputy Secretary-General for Peace and Security was dropped entirely.108 The outcome document of the 2005 Summit did resolve to develop early warning systems for natural disasters, in particular tsunamis, but early warning of man-made disasters was the subject for a more tepid call for the international community to support the UN in developing such a capability at some point in the unspecified future.109

On the post-conflict responsibilities of the Peacebuilding Commission, its role in planning and formulating strategies was more subtly undermined. The High-Level Panel had seen it as assisting in the “planning” for the transition from conflict to post-conflict.110 The Secretary-General limited it to improving “United Nations planning for sustained recovery”.111 By the Summit, it was limited to “advis[ing] on and propos[ing] integrated strategies”.112 The Peacebuilding Support Office, meanwhile, did not receive the requested twenty new staff or any new responsibilities beyond assisting and supporting the Commission by drawing upon existing resources within the Secretariat.113

106 Ibid., para. 115.
107 Supra note 47, para. 98.
108 Supra note 2, paras. 98, 293-294.
109 Supra note 47, paras. 56(f), 138.
110 Supra note 2, para. 264.
111 Supra note 4, para. 115.
112 Supra note 47, para. 98.
113 Ibid., para. 104.
The General Assembly formally established the Peacebuilding Commission on 30 December 2005. Described as an “intergovernmental advisory body”, its standing members comprise seven members of the Security Council (ambiguously described as “including permanent members”), seven members of ECOSOC, five of the top providers of assessed and voluntary contributions, five of the top troop contributors, and a further seven elected by the General Assembly for regional balance. Selection of these members was likely to be highly politicised.

Far from being a new Trusteeship Council, then, the Peacebuilding Commission began to look more like a standing pledging conference, one of the most important forms of coordination for donors that currently exists. If it can succeed in sustaining attention on a post-conflict situation beyond the current limits of foreign policy attention deficit disorder, the Commission will have achieved a great deal. It is less clear that this additional layer of coordination will assist in how these new resources are spent.

VI. USE OF FORCE AND THE “RESPONSIBILITY TO PROTECT”

As the Panel emphasised, the maintenance of world peace and security depends on there being a common global understanding and acceptance of when the application of force is both legal and legitimate: “One of these elements being satisfied without the other will always weaken the international legal order—and thereby put both State and human security at greater risk.”

The UN Charter prohibits the use of force with two exceptions: self-defence under Article 51 and enforcement action authorised by UN Security Council under Chapter VII. During the Cold War, these rules were frequently violated with the Council paralysed and Article 51 only rarely providing credible cover for military adventures. In the post-Cold War era, the Council became more active but problems of defining the limits of Article 51 remain, as do questions of what should happen when the Council is divided (as it was over Kosovo in 1999 and Iraq in 2003), and what general principles are emerging (if any) as to how the UN should treat threats that are primarily internal.

115 S. Patrick, “The Donor Community and the Challenge of Postconflict Recovery”, in S. Forman & S. Patrick, eds., Good Intentions: Pledges of Aid for Postconflict Recovery (Boulder, CO: Lynne Rienner, 2000) 35 at 40-1. In the absence of funds that can be disbursed quickly to a recovery process, significant external resources typically arrive only after such a conference, which brings donor states, UN agencies, and the International Financial Institutions together with local representatives to evaluate proposed reconstruction plans. The relative transparency of these meetings reduces the temptation of donors to “free ride” on the efforts of others. More subtly, by involving disparate actors in providing support for post-conflict recovery as a form of public good, the pledging conference encourages the notion of a “donor community”, bound by certain ethical obligations towards the recovering state. Pledging conferences also enable donors to shape and publicise recovery plans jointly, which may increase domestic support for foreign assistance as part of an international effort. For recipients, pledging conferences offer the opportunity to focus the minds of donors on a crisis and to gain public assurances that some of their needs will be met. While these aspects are positive, pledging conferences often bear the trappings of political theatre. Donors may make grand gestures that, in reality, double-count resources previously committed to a country, or which cannot be delivered promptly. In addition, mediating different donor interests through a conference does not remove the problems caused by the inconsistency of those interests. Donors continue to avoid controversial areas like security sector reform, preferring to fund items that will gain recognition and prestige. Finally, despite the public nature of the pledges made, there is no consistent monitoring process to ensure that pledges are realistic and transparent.
117 Supra note 2, para. 184.
A. Self-Defence

The first question, self-defence, has arisen specifically due to assertions that a right of pre-emptive action might be allowed in response to a gathering threat.118 Intimations that this had been the justification for the US-led invasion of Iraq led to accusations that the US had conflated anticipatory self-defence and preventive war.119 (This was despite the formal legal argument that the action was undertaken by the US in support of past Security Council resolutions dating back to Iraq’s invasion of Kuwait.120) The Panel stressed that “a threatened State, according to long established international law, can take military action as long as the threatened attack is imminent, no other means would deflect it and the action is proportionate.”121

This is debatable as a matter of law,122 but usefully separated out the most controversial aspect of the argument of expanded self-defence: where the threat in question is not imminent but still claimed to be real—such as the acquisition, with allegedly hostile intent, of the capability to make nuclear weapons. Might a state act unilaterally in such circumstances? The answer given by the Panel is worth quoting at length:

Those who say “yes” argue that the potential harm from some threats (e.g., terrorists armed with a nuclear weapon) is so great that one simply cannot risk waiting until they become imminent, and that less harm may be done (e.g., avoiding a nuclear exchange or radioactive fallout from a reactor destruction) by acting earlier.

The short answer is that if there are good arguments for preventive military action, with good evidence to support them, they should be put to the Security Council, which can authorize such action if it chooses to. If it does not so choose, there will be, by definition, time to pursue other strategies, including persuasion, negotiation, deterrence and containment—and to visit again the military option.

For those impatient with such a response, the answer must be that, in a world full of perceived potential threats, the risk to the global order and the norm of non-intervention on which it continues to be based is simply too great for the legality of unilateral preventive action, as distinct from collectively endorsed action, to be accepted. Allowing one to so act is to allow all.123


121 Supra note 2, para. 188.

122 “Anticipatory self-defense” remains a controversial sub-theme in the literature, which typically cites Israel’s actions in the Six-Day War of 1967 and its destruction of Iraq’s Osirak nuclear reactor in 1981. The normative impact of either case is debatable, however. The 1967 war provoked mixed views in the General Assembly; the Osirak incident, which successfully derailed Iraq’s nuclear program for some years, is viewed positively today but was unanimously condemned at the time by the Security Council as a clear violation of the Charter: see B. Simma, ed., The Charter of the United Nations: A Commentary, 2nd ed. (Oxford: Oxford University Press, 2002), vol I at 803-804; SC Res. 487 (1981), para 1. Other incidents are occasionally cited by commentators, but states themselves have generally been careful to avoid articulating a right of self-defence that might encompass the first use of force—even if they have been unable or unwilling to rule it out completely. See generally T. M. Franck, Recourse to Force: State Action Against Threats and Armed Attacks, Hersh Lauterpacht Memorial Lectures (Cambridge: Cambridge University Press, 2002) at 97-108. During the 1962 Cuban missile crisis, for example, U.S. President John F. Kennedy acknowledged that nuclear weapons meant that “[w]e no longer live in a world where only the actual firing of weapons represents a sufficient challenge to a nation’s security to constitute maximum peril.” Nevertheless, the United States sought to justify the subsequent blockade of Cuba not on the basis of self-defence, but rather on the regional call for action from the Organization of American States: A. Chayes, The Cuban Missile Crisis (Oxford: Oxford University Press, 1974) at 62-6.

123 Supra note 2, paras. 189-191.
On the question of what to do when the Council is divided, the Panel adopted a similar position to that of the International Commission on Intervention and State Sovereignty. The Commission’s report, *The Responsibility to Protect*, argued that the task is not to find alternatives to the Council as a source of authority but to make the Council work better than it has. Nonetheless, the High-Level Panel was realistic about the ability of the Council alone to constrain states that feel that they have both the obligation to their own citizens and the capacity to do; such states may feel that they must act “unburdened by the constraints of collective Security Council process.” Although such an approach might have been tolerated during the Cold War, however, “the world has now changed and expectations about legal compliance are very much higher.”

This was, predictably, an extremely sensitive topic. The Secretary-General essentially endorsed the Panel’s position on self-defence: that Article 51 of the UN Charter covers self-defence against an “imminent attack.” This dropped even those limited qualifications in the High-Level Panel’s description—that no other means would deflect the threatened attack and that the response is proportionate—but this was presumably for economy of language rather than to mark a normative shift. He also called on the Security Council to adopt a resolution (leaving out the additional call for the General Assembly to do so also) setting out the principles according to which it would use force. This was politely ignored by the Summit, which confined itself to reaffirming existing obligations and noting that “the relevant provisions of the Charter are sufficient to address the full range of threats to international peace and security.”

B. Internal Threats

The High-Level Panel also incorporated the substance of *The Responsibility to Protect* in relation to its recommendations on Security Council guidelines in response to internal threats. In particular, it embraced the rhetorical and political move from considering the question of the inviolability of governments to their responsibility. This reflected the growing awareness that the pertinent question is not whether there is a “right to intervene” but what obligations there are on a state to protect the population within its territory. And, as the Panel noted, there is a growing acceptance that when a government is unwilling or unable to fulfil such obligations then these may devolve to the international community. Whether the responses open to international actors include the use of force remains controversial. The Security Council has a unique capacity to authorise the use of force, but it has been inconsistent and sometimes ineffective. Action has come too late, hesitantly, or not at all. Nevertheless, there has been a gradual recognition that Chapter VII of the UN Charter can appropriately authorise military action to redress catastrophic internal wrongs that reach the level of a “threat to international peace and security.”

The Panel proposed guidelines that could form the basis for such Security Council deliberations. The aim was not to produce agreed conclusions or guarantee that the best outcome would always prevail. Instead, the stated intention was to maximise the possibility of achieving Council consensus as to when it is appropriate to use force, to maximise international support for Council decisions, and to minimise the possibility of individual member states  

---

124 Ibid., paras. 196, 198.
125 Supra note 4, para. 124.
126 Supra note 2, para. 188.
127 Supra note 4, para. 126.
128 Supra note 47, para. 79.
129 Not coincidentally, former Australian Foreign Minister Gareth Evans was both an architect of *The Responsibility to Protect* and perhaps the most active member of the High-Level Panel.
130 Supra note 2, paras. 201-203.
bypassing the Council:

(a) **Seriousness of threat.** Is the threatened harm to State or human security of a kind, and sufficiently clear and serious, to justify prima facie the use of military force? In the case of internal threats, does it involve genocide and other large-scale killing, ethnic cleansing or serious violations of international humanitarian law, actual or imminently apprehended?

(b) **Proper purpose.** Is it clear that the primary purpose of the proposed military action is to halt or avert the threat in question, whatever other purposes or motives may be involved?

(c) **Last resort.** Has every non-military option for meeting the threat in question been explored, with reasonable grounds for believing that other measures will not succeed?

(d) **Proportional means.** Are the scale, duration and intensity of the proposed military action the minimum necessary to meet the threat in question?

(e) **Balance of consequences.** Is there a reasonable chance of the military action being successful in meeting the threat in question, with the consequences of action not likely to be worse than the consequences of inaction?\(^{131}\)

The Panel suggested that the Council might adopt these principles in a declaratory resolution, but also stressed that member states generally might subscribe to them as the appropriate guidelines for Council decision-making.\(^{132}\)

Whether the Council is best served by acting in a principled manner is an open question. When it was first established, there was no expectation that the Council would be bound by anything other than the political will of those states that were victorious in the Second World War. Now that the UN and the Security Council have become more active, however, taking on far greater responsibilities not merely in responding to threats to the peace but also acting to maintain the peace in a far broader sense, legitimacy requires more than reliance on discretion granted by the Charter: “The effectiveness of the global collective security system, as with any other legal order, depends ultimately not only on the legality of decisions but also on the common perception of their legitimacy—their being made on solid evidentiary grounds, and for the right reasons, morally as well as legally.”\(^{133}\)

In order for the Security Council to maintain the respect it needs to fulfil its role effectively, the Panel argued that its most important decisions have to be “better made, better substantiated and better communicated.” On questions of the use of force, the Council should develop agreed guidelines “going directly not to whether force can legally be used but whether, as a matter of good conscience and good sense, it should be.”\(^{134}\)

As indicated above, the Summit did not propose guidelines for the use of force and there is no indication that the Security Council plans to do so in the near future. Nevertheless, the Summit did endorse the concept of responsibility to protect—though in the section of the Outcome Document titled “Human Rights and the Rule of Law”, rather than “Peace and Collective Security”. There was, again, a progressive dilution of the norm in question. In order to avoid controversial debates over humanitarian intervention,\(^{135}\) emphasis throughout this process had been placed on the threshold for international concern rather than what form any response might take. For the High-Level Panel, this was “genocide and other large-scale killing, ethnic cleansing or serious violations of international humanitarian

---

\(^{131}\) Ibid., paras. 206-207.

\(^{132}\) Ibid., paras. 208-209.

\(^{133}\) Ibid., paras. 204.

\(^{134}\) Ibid., paras. 205.

law which sovereign Governments have proved powerless or unwilling to prevent”, including situations where this is “actual or imminently apprehended”. The Secretary-General raised the threshold, limiting it to situations where a government is unwilling or unable to prevent “genocide, ethnic cleansing and crimes against humanity” (omitting “large-scale killing” and serious violations of international humanitarian law). The Summit added “war crimes” to this list but further raised the bar to situations where national authorities are “manifestly failing to protect their populations”.

Even so, the Secretary-General rightly called this aspect of the Outcome Document a “revolution in international affairs”. It was a marked contrast to the apoplectic reaction to his own comments on humanitarian intervention in 1999 and perhaps the only important normative development from the Summit. The language has been increasingly used in statements within the Security Council, and in January 2006, was included in a unanimous Council resolution on the Great Lakes region of Africa. The test of its relevance is not whether states are compelled to intervene in response to humanitarian crises, but whether it is harder to say “no”. The hand-wringing response to ongoing massacres in the Darfur region of Sudan suggests that this negative aspect of the responsibility to protect may be working, but also that anxiety about doing nothing is a far cry from effective intervention to protect the population at risk.

VII. CONCLUSION

At the heart of the substantive reform agenda that was put to the UN in 2005—in particular, the Secretary-General’s efforts to link security, development and human rights—is a paradox of globalisation. Globalisation has long been seen as a tool of integration, binding states into a network of financial, political and cultural relationships that should make conflict less likely because the severance of those relationships is in no state’s interests. But globalisation is now seen as a threat—not merely an economic opportunity, integration into global networks may expose a state to attack by non-state actors or biological hazards. A dilemma for those who propose to reform the UN is how far to push these linkages. In the course of the High-Level Panel’s deliberations, it was suggested that participation by developing states in the “global war on terror” might plausibly be linked to action on, for example, reducing agricultural subsidies in the developed world. This approach was rejected largely because it was seen as politically naïve. The linkage remains, however, in varying degrees throughout the High-Level Panel report, the Secretary-General’s In Larger Freedom, and, more subtly, the Outcome Document. Unfortunately, even this level of connection was

136 Supra note 2, para. 203, 207(a).
137 Supra note 4, Annex, para. 7(b).
138 Supra note 47, paras. 138-139.
140 See generally K. A. Annan, The Question of Intervention: Statements by the Secretary-General (New York: UN Department of Public Information, 1999).
141 See, e.g., M. Turner, “UN ‘Must Never Again Be Found Wanting on Genocide’”, Financial Times (16 September 2005).
142 See, e.g., UN Doc S/PV.5319 (Resumption 1) (9 December 2005) at 4-5 (Nepal), 7 (France), 9 (United Kingdom), 10 (Norway), 13 (Slovakia), 15 (Liechtenstein), 17 (Republic of Korea), 19 (Rwanda); UN Doc S/PV.5353 (24 January 2006) at 4 (High Commissioner for Refugees), 9 (Argentina), 15 (Tanzania); UN Doc S/PV.5359 (27 January 2006) at 18 (Slovakia), 20 (Denmark); UN Doc S/PV.5359 (Resumption 1) (27 January 2006) at 2 (Canada), 46 (Guatemala); UN Doc S/PV.5376 (22 February 2006) at 11 (Peru). For less enthusiastic statements, see UN Doc S/PV.5319 (Resumption 1) (9 December 2005) at 2 (Algeria), 6 (Egypt).
143 SC Res. 1653 (27 January 2006), para. 10 (adopted unanimously). (The Security Council “Underscores that the governments in the region have a primary responsibility to protect their populations, including from attacks by militias and armed groups and stresses the importance of ensuring the full, safe and unhindered access of humanitarian workers to people in need in accordance with international law.”)
sometimes misunderstood as suggesting that the only reason development assistance should be a priority is because failing to invest in development might give rise to a threat along the lines of the collapse of Afghanistan prior to the 2001 attacks on the US. Action on the development front should indeed help provide security for all, in the broad sense intended here, but development should also be a priority simply because it protects and improves the quality of life of fellow human beings.

Legitimacy, effectiveness, and power—examined here in the context of whether threats are perceived as shared, whether the institutions to combat them are adequate, and whether coercive measures are regulated—are understood differently around the world. What was lost in the reform debate after Iraq is that an emphasis on the membership of such institutions, or even on the rules that might constrain the most powerful, may undermine the key value of the UN in serving as a forum to develop common positions on threats and formulate common responses. The concept of a “grand bargain” may yet be helpful—if only as a rhetorical device—in calling upon the industrialised nations to accept that their concerns about terrorism and weapons of mass destruction occupy a similar place that concerns about poverty and disease do in the global south.144 It is possible, indeed, that the legacy of the efforts at reform described here will be largely rhetorical—a Human Rights Council that differs from the Commission in name only, a new layer of inter-governmental bureaucracy still lacking a strategic approach to peacebuilding, and the promise of responsibility to protect without additional resources or political will.145 Political compromises have, as they must, compromised the vision of reform laid out by the High-Level Panel and the Secretary-General. But the linkage between the security, development, and human rights priorities of the UN is likely to endure. The role of the UN’s “chief administrative officer” in articulating a vision of global order will persist. And expectations for what can be achieved by the World Organization will continue to be disappointed—even as they continue to rise.

144 See above Part III A.
145 Other proposed changes not discussed here were essentially cosmetic. References to “enemy states” in Articles 53 and 107 of the UN Charter should be deleted. As the High-Level Panel noted, the UN Charter should reflect the hopes and aspirations of the present rather than the fears of 1945. Chapter XIII on the Trusteeship Council should also be deleted. After the independence of Palau in 1994, the Trusteeship Council ceased to have any function and amended its rules of procedure to remove the obligation to meet annually, agreeing instead to meet as required. Thirdly, Article 47 on the Military Staff Committee (and reference to it in Articles 26, 45, and 46) should be deleted. The Military Staff Committee was intended to advise and assist the Security Council on the “employment and command of forces placed at its disposal”, but remains little more than a curiosity. Its published records indicate that Committee has met once every two weeks since February 1946; in almost sixty years, it has done nothing of substance since it reported to the Council in July 1948 that it was unable to complete the mandate given to it two years previously. Meetings presently last a couple of minutes.
146 UN Charter, Article 97.