



25

## Reforming the United Nations: Kofi Annan's legacy gets a reality check

by Simon Chesterman

As the dust settles from the 2005 UN reform jamboree and Kofi Annan enters the twilight months of his second term as Secretary-General, the United Nations has created two new institutions—a Peacebuilding Commission and a Human Rights Council—but has anything really changed? This *Strategic Insight* examines the context within which recent efforts at reform should be understood and then assesses the key institutional and

normative achievements of the last few years. Considered in the abstract, those achievements are underwhelming. But when contrasted with the divisions over Iraq that split the United Nations in 2003, the better evaluation might not be whether the glass is half-empty or half-full, but how it is that we continue to have a glass at all.

---

*The rhetoric was euphoric, utopian, and short. International security issues continued to be resolved by reference to Great Power interests...*

---



United Nations Secretary-General Kofi Annan listens to a reporter's question during a press conference at United Nations headquarters in New York, Wednesday, 28 April 2004. EPA/Justin Lane © 2004 AAP

### Great expectations

In addition to the perennial problems of dysfunctional institutions, inadequate resources, and ephemeral political will, the United Nations has always faced crises of expectations. At the beginning of the 1990s the United States, while proclaiming itself the victor of the Cold War, magnanimously asserted that this provided an opportunity for the United Nations to fulfil its long-promised role as the guardian of international peace and security. The Security Council saw new possibilities for action without the paralysing veto; Secretary-General Boutros Boutros-Ghali

laid out grand plans with *An Agenda for Peace*. In the words of US President George HW Bush the rule of law would supplant 'the rule of the jungle'.

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 through 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.

---

*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.*

---

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 United Nations, 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 establishment of the League of Nations; the League's failure to prevent the Second World War led to its replacement by the United Nations. 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 United Nations 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.<sup>1</sup> He had already commissioned Jeffrey Sachs' UN Millennium Project to propose strategies for achieving the Millennium Development Goals.<sup>2</sup> 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.<sup>3</sup> 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 Program.

---

*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...*

---

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 United Nations 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 United Nations' 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 United Nations possible. At the same time, however, the disparate national interests of those states require mediation through a body such as the United Nations and its Secretary-General if they are to work together effectively and respond adequately to threats unanswerable by any one state alone.

---

*...the September 2005 Summit was nearly derailed by the sheer number of issues being considered, not helped by the disengagement of the United States at key stages.*

---

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 United States at key stages. This wariness on the part of the United States 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.

---

*... 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' ...*

---

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 items. 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.<sup>4</sup>

### Institutional reform

Accepting the interdependence of threats was intended to lay the foundation for a shared agreement on responses. Yet these responses



John Bolton, United States Ambassador to United Nations addressed the media after closed doors Security Council consultations on the nuclear program of Iran at United Nations headquarters in New York, Wednesday, 3 May 2006. AP/David Karp © 2006 AAP

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 formal question of institutional change within the United Nations than on what functions these institutions might perform.

### *The Security Council*

The one issue on which the High-Level Panel was unable to reach agreement concerned the expansion of the Security Council. In order to advance debate, two models were offered—'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 have been 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' (WEOG) states. The change would have merged Eastern Europe into 'Europe,' while moving Australia and New Zealand on the one hand, and Canada and the United States on the other, from WEOG's 'Other' into 'Asia and Pacific' and 'Americas' respectively. Israel, which only joined WEOG in 2000, would remain part of 'Europe'.

---

*...Annan thereby encouraged a paralysing 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 Secretary-General confined himself to endorsing the Panel's two options, but he also stressed that the absence of consensus should not become an excuse for postponing action. Though he was under considerable



The United Nations Security Council meets on Threats to International Peace and Security during the 2005 World Summit of the United Nations at UN headquarters in New York City, Wednesday, 14 September 2005. EPA/Justin Lane © 2005 AAP

pressure to adopt this position, Annan thereby encouraged a paralysing 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

**Table 1: Current Membership of the Security Council**

Regional area	No. of States	Permanent seats	Rotating seats	Total
Africa	53	0	2.5 <sup>5</sup>	2.5
Asia	54	1 (China)	2.5	3.5
Eastern Europe	22	1 (Russian Federation)	1	2
Latin America and Caribbean	33	0	2	2
Western Europe and Other	29	3 (France, United Kingdom, United States)	2	5
<b>Totals current</b>	<b>191</b>	<b>5</b>	<b>10</b>	<b>15</b>

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**

Regional area	No. of States	Permanent seats (continuing)	Proposed new permanent seats	Proposed two-year seats (non-renewable)	Total
Africa	53	0	2	4	6
Asia and Pacific	56	1 (China)	2	3	6
Europe	47	3 (France, Russian Federation, United Kingdom)	1	2	6
Americas	35	1 (United States)	1	4	6
<b>Totals model A</b>	<b>191</b>	<b>5</b>	<b>6</b>	<b>13</b>	<b>24</b>

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**

Regional area	No. of States	Permanent seats (continuing)	Proposed four-year renewable seats	Proposed two-year seats (non-renewable)	Total
Africa	53	0	2	4	6
Asia and Pacific	56	1	2	3	6
Europe	47	3	2	1	6
Americas	35	1	2	3	6
<b>Totals model B</b>	<b>191</b>	<b>5</b>	<b>8</b>	<b>11</b>	<b>24</b>

and presenting the African Group with a 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. No action was taken, but the same draft was resubmitted on 5 January 2006 in the hope of keeping debate on expansion alive. 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 use of indicative voting as a possible check on the veto, neither of which appeared to be seriously considered.

#### *The Economic and Social Council (ECOSOC)*

The UN Charter recognizes 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 (the Republic of Palau) having become independent in 1994. The role of the United Nations 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.

---

*... 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 major themes in the Millennium Declaration.*

---

Nonetheless, the Panel found three areas in which the United Nations might play a significant role in economic and social development: providing normative and analytical leadership on 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 major themes in the Millennium Declaration.

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'.

---

*The Assembly has frequently squandered its normative role on debates about minutiae or thematic topics overtaken by real-world events.*

---

### *The General Assembly*

The General Assembly enjoys unique legitimacy through its near universal membership. 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 United Nations: 'This requires a better conceptualisation 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'. 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.

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.

### *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'. 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 United States 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 US State Department that more restrictive criteria could preclude the United States itself from membership.) Failure to include these provisions led the United States 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 United States) with Belarus, Iran, and Venezuela abstaining (the remaining 14 member states did not participate in the vote). The United States 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 United States would, occasionally be forced to rotate off the new body.

---

*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...*

---

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 WEOG). 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 blocs 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.



Sudan's deputy UN Ambassador Omer Bashir Mohamed Manis, speaks out against Sichan Siv's decision to walk out of a vote approving Sudan for a third term on the UN's Human Rights Commission at the UN in New York, Tuesday, May 4 2004. AP/Kathy Willens © 2004 AAP

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. Key substantive innovations include sitting through the year (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'. 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. This is unlikely to be helped by the United States reserving judgment on the body and deciding not to seek a seat in its first term.

---

*The report rightly criticised the UN experience of post-conflict operations as characterised by 'countless ill-coordinated and overlapping bilateral and United Nations programmes ...*

---

#### *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.' 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. This new body was to have four functions. First, it would identify countries that are under stress and risk sliding towards state collapse. Secondly, it would organise, 'in partnership with the national Government, proactive assistance in preventing that process from developing further'. Thirdly, it would assist in the planning for transitions between conflict and post-conflict peacebuilding. Fourthly, 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. 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.

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 United Nations. When the Secretary-General drew upon this to present his own vision of the Peacebuilding Commission in his *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.

This essentially dropped the first two of the High-Level Panel's four functions.

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 mobilising resources for post-conflict reconstruction.

---

*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.*

---

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 is 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.

### **Use of force and the 'Responsibility to Protect'**

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 United Nations should treat threats that are primarily internal.

---

*Intimations that this had been the justification for the US-led invasion of Iraq led to accusations that the United States had conflated anticipatory self-defence and preventive war.*

---

#### *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. Intimations that this had been the justification for the US-led invasion of Iraq led to accusations that

the United States had conflated anticipatory self-defence and preventive war. (This was despite the formal legal argument that the action was undertaken by the United States in support of past Security Council resolutions dating back to Iraq's invasion of Kuwait.) 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.'

This is debatable as a matter of law, 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. If there are good arguments for preventive military action, however, these should be put to the Security Council: '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.'

The topic 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'.

### *Internal threats*

The High-Level Panel incorporated the substance of the report of the International Commission on Intervention and State Sovereignty, *The Responsibility to Protect*, in relation to its recommendations on

Security Council guidelines in response to internal threats. (Not coincidentally, former Australian Foreign Minister Gareth Evans was both an architect of *The Responsibility to Protect* and the most active member of the High-Level Panel.) 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 Security Council has a unique capacity to authorise the use of force, but it has been inconsistent and sometimes ineffective.*

---

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 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?

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 United Nations 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.'

---

*... 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 following the Kosovo intervention ...*

---

The Summit did not endorse 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 embrace 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, 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 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 following the Kosovo intervention 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.

## The future of the United Nations

At the heart of the substantive reform agenda that was put to the United Nations 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 was 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 United Nations 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 naive. The linkage remains, however, in varying degrees through 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 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 United States. 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... are understood differently around the world.*

---

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 United Nations 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. 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. 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 United Nations 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 Organisation will continue to be disappointed—even as they continue to rise.

---

*... the linkage between the security, development, and human rights priorities of the United Nations is likely to endure.*

---



A view of the Peace Gun outside the United Nations building. AAP/Nicolas Khayat © AAP 2003

## Endnotes

A longer article drawing upon some of this material is forthcoming in the *Singapore Year Book of International Law*.

- 1 *A More Secure World: Our Shared Responsibility* (Report of the High-Level Panel on Threats, Challenges, and Change), UN Doc A/59/565 (1 December 2004), available at <<http://www.un.org/secureworld>>.
- 2 *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), available at <<http://www.unmillenniumproject.org/reports>>.
- 3 *In Larger Freedom: Towards Development, Security, and Human Rights for All*, UN Doc A/59/2005 (21 March 2005), available at <<http://www.un.org/largerfreedom>>.
- 4 See generally International Commission on Intervention and State Sovereignty, *The Responsibility to Protect* (International Development Research Centre, Ottawa, December 2001), available at <<http://www.iciss.ca>>.
- 5 Africa and Asia share five rotating seats; in practice this means two seats each with the fifth alternating every two years.

## Important disclaimer

This publication is designed to provide accurate and authoritative information in relation to the subject matter covered. It is provided with the understanding that the publisher is not engaged in rendering any form of professional or other advice or services. No person should rely on the contents of this publication without first obtaining advice from a qualified professional person.

## About the Author

**Simon Chesterman** is Executive Director of the Institute for International Law and Justice at New York University School of Law. Educated in Melbourne, Beijing, Amsterdam, and Oxford, Chesterman has written widely on international institutions, international criminal law, human rights, the use of force, post-conflict reconstruction, and intelligence. He is the author of *You, The People: The United Nations, Transitional Administration, and State-Building* (Oxford University Press, 2004) and *Just War or Just Peace? Humanitarian Intervention and International Law* (Oxford University Press, 2001). Prior to joining NYU, he was a Senior Associate at the International Peace Academy and Director of UN Relations at the International Crisis Group in New York. He has previously worked for the Office for the Coordination of Humanitarian Affairs in Belgrade.

## About Strategic Insights

Strategic Insights are intended to provide expert perspectives on specific current issues. They reflect the personal views of the author(s), and do not in any way express or reflect the views of the Australian Government or represent the formal position of ASPI on any particular issue.

© The Australian Strategic Policy Institute Limited 2006

This publication is subject to copyright. Except as permitted under the *Copyright Act 1968*, no part of it may in any form or by any means (electronic, mechanical, microcopying, photocopying, recording or otherwise) be reproduced, stored in a retrieval system or transmitted without prior written permission. Enquiries should be addressed to the publishers.