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**US Foreign Policy and UN Reform: A Canadian
Perspective**

Check against Delivery

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U.S. Foreign Policy and UN Reform: A Canadian Perspective

By Paul Heinbecker

Introduction

Multilateral cooperation will continue because it must. Global problems, including security problems, simply will not yield to national action alone or even to action by coalitions of the willing. To manage international security, trade and finance, health and environmental protection, human rights and human development, in sum, the totality and diversity of the issues of modern life, the world cannot dispense with the complex of treaties, conventions, norms and institutions and networks that governments, business and civil society have created, and continue to create. Multilateral cooperation, not multilateralism as an ideology or as an end in itself, will remain essential, and the United Nations will remain at the centre of that system of cooperation.

At the same time the status quo at the UN cannot endure indefinitely. At the heart of the current system is the UN Charter, written in another age in light of the problems suffered in another age. It retains its salience in the 21st century, particularly as regards preserving peace and security between states, but it is not sufficient for the 21st century. The laws, rules and norms governing relations between states developed pursuant to the Charter will be integral to peace as long as states remain the principal organizing unit of international relations. Nevertheless, from humanitarian emergencies, to catastrophic communicable diseases to the potential nexus of terror and weapons of mass destruction to the eradication of poverty, the international community faces new challenges for which it needs to find new answers. Reform, including UN reform, is necessary and urgent.

The framers of the UN Charter were developing international law while acknowledging national power¹. The Charter could not have been negotiated otherwise; hence the veto and the status of permanent membership on the Security Council of the

¹ See: Schlesinger, Stephen C. Act of Creation: The Founding of the United Nations. Boulder, Colo.: Westview Press, 2003.

five most powerful countries when the Charter was negotiated. The UN will not be reformed in a vacuum, if it will be reformed at all, unless it makes itself relevant to the concerns of its most powerful members as well as those of its least powerful members.

Power, as well as principle, remains at the heart of the United Nations and no country is more powerful, or more influential in the UN than the United States. At the same time, the US is neither an actual nor a virtual empire. The simple truth is that the US is the most powerful country in history but that even its unprecedented power does not deliver unqualified latitude to act. Militarily, the US can, and more or less does, match the rest of the world combined; economically, it is the biggest single entity; and, culturally, its influence is pervasive². The US is too strong to be challenged militarily by any rival country or combination of rival countries for the reasonably foreseeable future, (if any wanted to do so, for which there is no evidence)³. At the same time, the US is not strong enough to determine alone the course of world events. The US is too powerful to be coerced by anyone but not powerful enough to coerce everyone. Most significantly, in an age of asymmetric warfare, as Chris Patten of the EU has acutely observed, the US is invincible but not invulnerable⁴.

US Foreign Policy

Successive American administrations have progressively come to realize that with the demise of the Soviet Union, there will be no counterbalancing international power to US foreign policy for a long time to come. Constitutional checks and balances are the key restraint on the exercise of power domestically in the US. The US faces neither abroad. At the same time, others, particularly other industrialized countries, have been more than

² Organization for Economic Cooperation and Development. "Basic Structural Statistics". *Main Economic Indicators*. May 2004. <http://www.oecd.org/dataoecd/8/4/1874420.pdf>

³ Marcus Corbin and Olga Levitsky, "Vital Statistics: The U.S. Military." *Defense Monitor*. Volume XXXII, Number 5. November/Dec. 2003. Center for Defense Information. Washington, D.C. <http://www.cdi.org/news/defense-monitor/dm.pdf>

⁴ Patten, Chris. "Democracy Doesn't Flow From the Barrel of a Gun." *Foreign Policy*. Sep/Oct 2003.

ready to cede global leadership to Washington, in part because of the US's sheer capacity to lead, in part because others saw (and still see) no international threat to themselves or, much more distressing from a human security perspective, no obligation to others sufficient to warrant heavy investments in military capability⁵. Many preferred to spend their tax resources and political energy on domestic needs, where political demands were most urgent and political rewards most likely to be reaped.

As a consequence of the leadership role that others readily conceded to the US, albeit one the US willingly sought, and because of the considerable costs and risks involved in the US's acquitting these responsibilities, many in Washington on both sides of the political aisle came increasingly to regard the US as bearing a disproportionate burden and, partly as a consequence, and partly because of the assumptions inherent in American exceptionalism, as meriting, therefore, exceptional dispensations from international law and norms⁶.

The notion of America-as-exceptional harks back to the Puritan landing at Plymouth Rock and has ebbed and flowed in the American psyche ever since. American "exceptionalism" has unquestionably had its positive as well as its negative characteristics⁷. The US has exercised exceptional leadership, for example, in the development of post-war institutions, including particularly the UN, in the promotion of human rights and the development of international law, in the containment of Communism and the collapse of the Soviet Union and in the preservation of stability, particularly in North-East Asia. The US has, also, chalked up some exceptional errors.

⁵ See: The Pew Research Center for the People and the Press. *What the World Thinks in 2002 How Global Publics View: Their Lives, Their Countries, The World, America*. Washington, D.C. Released December 4, 2002. <http://people-press.org/reports/display.php3?ReportID=165>

⁶ See Harold Koh's "On American Exceptionalism," 55, *Stanford Law Review*, 1479 (2003).

⁷ Heinbecker, Paul. "Washington's Exceptionalism and the United Nations". *Global Governance*. 10 (2004), pp 273-279.

In its attempt to exempt itself from the jurisdiction of the International Criminal Court in the summer of 2002 the US held peace-keeping hostage, insisting on an Alice-Through-the-Looking-Glass legal interpretation of the Criminal Court statute and of the UN Charter, itself. In doing so, the US was seen by many as taking exceptionalism to extreme lengths, an unvarnished and unapologetic demand for one law for the goose and another for the gander. The court was, in fact, intended to end immunity for the world's monsters who had committed the most heinous of crimes, i.e., genocide, war crimes and crimes against humanity. It was not intended to prosecute ordinary American G.I.'s. There were ample protections against frivolous prosecution in the Rome Statute, not the least of which was the provision that the ICC could not prosecute an alleged perpetrator if a domestic court were doing so⁸. Hence, in the case of Abu Ghraib, for example, the ICC would have no jurisdiction if the US prosecuted, as it is doing. To their credit, Mexico and Canada, from their positions on the Council and the sidelines, respectively, mounted a spirited defence of the principle of equality before the law⁹. They were instrumental in denying the US the permanent exemption it sought for its soldiers on UN sanctioned military missions. Now, in the wake of the Iraq war, even that limited exemption has been set aside.

More fundamentally, exceptionalism impulses have, inter alia, led to an American questioning of the applicability of the UN Charter, indeed of international law per se, to the United States. Consistent with that view was the advice to President Bush, recently made public, that he was not bound by the Torture Convention or the Third Geneva Protocol, and indeed that these international agreements might have been unconstitutional¹⁰. US officials frequently expressed the view that obtaining UN Security

⁸ United Nations. *Rome Statute of the International Criminal Court*. Rome, 17 July, 1998. <http://untreaty.un.org/ENGLISH/bible/englishinternetbible/partI/chapterXVIII/treaty10.asp>

⁹ Washington Working Group on the International Criminal Court. July 12: UN Security Council Grants One-Year Exemption for Peacekeepers. <http://www.wfa.org/issues/wicc/unsc1422/july12.html>

¹⁰ See *Newsweek* July 12, 2004 edition. See also Joan Biskupic. "White House memo criticized". *USA Today*. May 25, 2004. http://www.usatoday.com/news/washington/2004-05-25-memo_x.htm

Council endorsement of US military action against Iraq was merely discretionary¹¹. In this vein, Charles Krauthammer of the Washington Post, spoke for many Americanists when he observed “Why it should matter to Americans to get a Security Council nod from the butchers of Tiananmen Square is beyond me¹².” That the US had a legal obligation, and a political necessity if it wanted any help, to obtain a Security Council warrant for an entirely elective war, seems to have escaped him, as have the consequences to American interests if others behaved in the same way he was advocating for American foreign policy.

In the recent documentary, “The Fog of War”, the Secretary of Defense of the Kennedy-Johnson administrations, Robert McNamara, asks “Have we a record of omniscience? I do not believe we should ever apply [our] economic, political or military power unilaterally...If we cannot persuade nations with comparable values of the merit of our cause, we’d better re-examine our reasoning.”¹³ This is particularly good advice in any circumstances, especially in the current circumstances, but will this administration or the next one take it? One of the hallmarks of recent American policy, and a parallel with Vietnam, has been an apparent unwillingness even to hear dissent let alone to “re-examine... reasoning”.

At no time in the lead-up to the Iraq war in the Winter of 2002 and the Spring of 2003 did it seem to give official Washington any pause that a large majority of UN member states disagreed that war in Iraq was necessary and urgent. Nor did it seem to occur to the war’s advocates that these objections were not just the unavoidable and transitory reaction to decisive, enlightened American leadership, to be endured until the

¹¹ Refer to *Interview with Vice-President Dick Cheney*, NBC, “Meet the Press with Tim Russert,” Transcript for March 16, 2003. HREF=<http://www.mtholyoke.edu/acad/intrel/bush/cheneymeetthepress.htm> MACROBUTTON HtmlResAnchor <http://www.mtholyoke.edu/acad/intrel/bush/cheneymeetthepress.htm>

¹² See: Krauthammer, Charles. “Is This the Way To Decide on Iraq?” *The Washington Post*. Friday, September 20, 2002; Page A29. <http://www.washingtonpost.com/ac2/wp-dyn/A42100-2002Sep19?language=printer>

¹³ *The Fog of War: An Errol Morris Film*. Produced by Sony Pictures Classic. ©2003.

policy was vindicated, but a disagreement that mattered, not least to the US's prospects of success in Iraq beyond the war itself.

9/11 did not change everything but it certainly changed some things. After 9/11, Washington seems to have persuaded itself that U.S. security can best, in fact, only be assured by American military power. Neither treaties nor international law nor institutions, including the United Nations, are deemed to be either relevant to protecting US interests or necessary to confer legitimacy on U.S. action.

It did not have to be that way. There was little in the reaction of the international community to 9/11 to warrant such unilateralism, nor to justify the US's recklessly jeopardizing 60 years of development of international law, most of which previous US Administrations had promoted, (and all of which was significant to Canadian and Mexican interests). In fact, after the al Qaeda attacks on New York and Washington, the UN General Assembly and the Security Council had acted sympathetically to the United States, and with dispatch. On September 12, 2001, the General Assembly, which is not a decision-making body, issued a unanimous declaration of solidarity with the American people¹⁴. Within days of September 11, the UN Security Council, whose decisions are legally binding in international law, proscribed cooperation with terrorists, ordering member states to deny them both safe haven and the use of national banking systems to finance their operations. The Council also established an oversight committee to monitor member states' compliance and to promote capacity-building in the poorer states. This was on top of the 12 counter-terrorism treaties that the UN had negotiated previously, on aircraft hi-jacking, hostage-taking, chemical explosives-marking, etc¹⁵.

¹⁴ See UN Security Council Resolution 1368 on solidarity with the United States after September 11, 2001 terrorist attacks. <http://ods-dds-ny.un.org/doc/UNDOC/GEN/N01/533/82/PDF/N0153382.pdf?OpenElement> September 12, 2001.

See UN Security Council Resolution 1373 regarding prevention of terrorism. <http://ods-dds-ny.un.org/doc/UNDOC/GEN/N01/557/43/PDF/N0155743.pdf?OpenElement> September 28, 2001.

¹⁵ For further information on UN Conventions regarding Counter-Terrorism, please refer to *United Nations Treaty Collection: Conventions on Terrorism*. <http://untreaty.un.org/English/Terrorism.asp>

Many governments sent troops to Afghanistan to fight the Taliban and al Qaeda alongside American forces. The only hesitation about this cooperation came not from allied governments but from the Pentagon, who did not want to repeat the Kosovo experience of war by international committee. After the war, many countries committed substantial sums of money to lift Afghanistan out of its failed state status, so that it would not again become a rear operating base for terrorists¹⁶.

Books by Bob Woodward, Richard Clark and Paul O'Neill and others show that the administration was drawing up plans to attack Iraq even before the Afghanistan fight was over. In the Spring of 2002, support for a prospective invasion of Iraq had become a loyalty test in the Pentagon. By the summer of 2002, the Beltway (Washington) and Turtle Bay (the United Nations) had become two solitudes, a phenomenon that was also evident in NATO, in APEC, at the OAS, in the G-8, and even in the World Bank and International Monetary Fund (albeit less so). It was difficult to reason together when Washington was mainly "on send", not receive and wanted acquiescence not debate.

In the fall of 2002, the Bush administration unveiled the 2002 US National Security Strategy¹⁷. Much of that strategy is readily acceptable to most governments, especially to most democratic governments. The problem lies, of course, in its unilateralist, preventive posture and the intent it expresses to dominate others. The national security strategy talks of preemption, which is permitted by Article 51 of the UN Charter and under customary international law, but the US has implemented it in a way that amounts to prevention, which is not.

¹⁶ Canada has responded to the Afghan government's appeal for long-term development investments. CIDA contributed \$266.5 million from September 2001 to March 2004, and plans to allocate another \$100 million for the fiscal year 2004-05. Canada renewed its commitment to Afghanistan in March 2004 with \$250 million in new funds for development assistance from 2005 to 2009. This brings our total allocation to \$616.5 million from 2001 until 2009. Canadian International Development Agency. *Afghanistan Overview: Canada's Commitment*. July 19, 2004. <http://www.acdi-cida.gc.ca/CIDAWEB/webcountry.nsf/VLUDocEn/Afghanistan-Overview>

¹⁷ The White House. *The National Security Strategy of the United States of America*. Washington, D.C. September 17, 2002. <http://www.whitehouse.gov/nsc/nssall.html>

The difference is not just legalistic hair splitting. Pre-emption requires much more rigorous tests than prevention does, as regards the capability and intent of an adversary to do harm and the urgency of the need for self-defence. In addition, the intent to dominate and to deter all challengers, first seen in draft NSC guidance in 1992 in the George H.W. Bush administration, and rejected then, but included in the 2002 National Security Strategy would, if carried to its logical conclusions, eventually generate major wars. In a nuclear age, especially, it is American exceptionalism taken to an absurd conclusion.

Iraq is seen, correctly, as the first exercise of the policy of prevention. The war in Iraq actually was preventive -- to bring down a tyrant with potentially malignant intentions and possible, suspected capabilities to act on the intentions. It was presented, however, as pre-emptive -- to stop a tyrant already possessing weapons of mass destruction and prepared to use them imminently. The rationale for the invasion of Iraq has been retooled several times in the intervening months, particularly at the most recent Republican Party Convention, to highlight the dangers that Saddam Hussein, the tyrant, is said to have posed to Americans, in order to try to connect the Iraq war more convincingly to the war on terror.

Under the national security strategy, the US Administration reserves the right to act to defend America as it sees fit, which in itself is unobjectionable. Sometimes implicitly, sometimes explicitly, however, the argument is made that this right can and, indeed, should be exercised without reference to its impact on international law. It is also done, as seen recently as the Republican Convention, in a way that is calculated to deprecate the United Nations, gratuitously¹⁸.

The proponents of such unilateral decision-making disregard the lessons of World War II on the advantages of collective security and hold the norms and laws established in the wake of the bloodiest conflict in history to be irrelevant to contemporary security.

¹⁸ President G.W. Bush. "In Acceptance Speech, President Bush Shares His Plan for a Safer World & More Hopeful America" Tuesday September 2, 2004. Republican National Convention. *Bush-Cheney 04* (Official Campaign website). <http://www.georgewbush.com/News/Read.aspx?ID=3422>

In a post 9/11 world of terrorists and weapons of mass destruction, it is enough that a US Administration says a danger is gathering for it to set aside international law and attack the prospective perpetrator. Where the Founding Fathers found it prudent to organize governance by off-setting the power of one branch of government, but relied on checks and balances of power among them, US administrations have recently assumed that others abroad should be expected to presume American good faith and to trust American judgment and motives.

Some academics, including some Canadian academics, have talked admiringly of a new grand strategy, of a combination of John Quincy Adams and Woodrow Wilson, of putting unilateral power at the service of universal principle¹⁹. But what happens if others claim the same right of prevention as the United States does? While some strategic studies scholars presume a state of chaos as the default position of civilization, as if the world were incapable of progress, is it really in American interests to risk that state, to return to the law of the jungle? If everyone takes the initiative to prevent harm to themselves, where does it end? In a world that US power cannot control, this is not a trivial question, including for the US and especially for an international business community dependent on an open, rules-based international system. Indifference to the unilateralist precedents being set is not consonant with the long-term interest of the US and of others in a world of cooperation rather than competition. Would anyone be happy conceding a similar exceptional status to China in 40 years time?

Perhaps the most glaring problem with this new grand strategy and with the impulses of contemporary US foreign policy to take the fight to the terrorists is the unrealistic assessment that the US can go it alone effectively. That theory is unraveling in the harsh political science laboratory of Iraq. If the US cannot have its way in Iraq, a third world country of 25 million people, how would it handle, for example, an Iran of 65 million or a Pakistan of 160 million, to name just two countries with populations in some proportion susceptible to Islamist arguments? Around the world, there is, on the one hand, an understandable anxiety about apparently growing extremism on the fringes of

¹⁹ For further reading, refer to Gaddis, John Lewis. *Surprise, Security, and the American Experience*. Cambridge, MA: Harvard University Press, 2004.

Islam, and on the other, a considerable apprehension about the direction of American foreign policy, whose only check or balance is an evidently divided and often distracted US electorate. US foreign policy itself has come to be seen by many as part of the problem.

That is not to exculpate the Islamic radicals for the atrocities they have perpetrated in the cause of some delusional jihad they think Islam has with the West. Nor is it to impute moral equivalency to things that are by no means equivalent. Nor is it to condone the complicity of those governments that have made it possible for the extremists to survive and flourish. It is to say that it is in the interest of Americans to be more circumspect about the impact of US foreign policy on others.

Such circumspection will not come easily. In his Democratic Convention nomination acceptance speech a few weeks ago, Senator Kerry said: “The USA never goes to war because it wants to. We only go to war because we have to.”²⁰ President Bush said not long ago: “It is not in our nature to seek out wars and conflicts. We only get involved when adversaries have left us no alternative.”²¹

History, particularly Mexican history, cannot carry the weight of these arguments. There were the Barbary Wars, the Mexican War, Nicaragua (several times), the Spanish American War, the Philippine War, Cuba (several times), Panama (several times), Haiti, the Dominican Republic and Grenada. In more contemporary history, there was Iran in the ‘50’s, and the overthrow of Mossadeq, the democratically elected leader, an act still being paid for today²², the Congo in the 60’s and the overthrow of Patrice Lumumba, its democratically elected leader, Chile in the 70’s and the overthrow of Allende, its democratically elected leader, Viet Nam and Cambodia, support for the poison gas-using

²⁰ Sen. John Kerry. Speech to the 2004 Democratic National Convention. *Remarks of John Kerry*. July 29, 2004. Boston, M.A. http://www.johnkerry.com/pressroom/speeches/spc_2004_0729.html

²¹ The White House. *Remarks by the President at Memorial Day Ceremony*. Arlington National Cemetery. Arlington, Virginia. May 28, 2001. <http://www.whitehouse.gov/news/releases/2001/05/20010531-1.html>

²² See Kinzer, Stephen. *All the Shah's Men : An American Coup and the Roots of Middle East Terror*. Hoboken, N.J.: John Wiley & Sons, 2003.

Saddam Hussein in the Iran-Iraq war and for the Mujahiddeen in Afghanistan against Russia. That there is a striking gap between the US's self-perception and others' perception of the US will not come as major news to Mexicans. At the Republican convention, Senator Libby Dole proclaimed at the Republican convention that America was great because its people are good²³. For others, though, the issue is not whether Americans are innately good people, believing in values of tolerance and respect for others and guided by religious faith, so much as that they are human, and subject to the same human proclivities everyone else is²⁴.

When Washington declared war on terrorism, essentially on a heinous tactic but a tactic nonetheless, not on a tangible, defeatable enemy such as the Al Qaeda network, it gave itself mission impossible. When Washington attacked Iraq with only the sketchiest of evidence of links between Al Qaeda and the Iraqi regime and despite having no hard evidence that Iraq had weapons of mass destruction, and over the objections of undoubtedly the great majority of the international community, including many allies and "nations with comparable values", to quote McNamara, the US both estranged itself in world public opinion and generated resistance to US policies, including on terrorism. In portraying terrorism in monolithic terms, Washington allowed others to pursue their discrete, disparate and all too often reprehensible interests under the same banner as the US, and may, inadvertently, have set the stage for a larger conflict with Islam.

The world is transiting an especially dangerous period of history. The US occupation of Iraq and Afghanistan, together with uncritical US support for Israel vis-à-vis the Palestinians, will not necessarily morph into a conflict of the West versus Islam. A religious war in an age of asymmetric weaponry is a danger that wise people, on all sides, know that they must do all they reasonably can to circumscribe. If only a minute fraction

²³ Sen. Elizabeth Dole. "Speech at the Republican National Convention". August 31, 2004. <http://www.gopconvention.com/cgi-data/speeches/files/nk43y562n6yvptlq223p3bar9w49728z.shtml>

²⁴ Keohane, Robert O. and Anne-Marie Slaughter. "Bush's Mistaken View of US Democracy." *International Herald Tribune* (June 23, 2004) p.6.

of the world's 1.2 billion Moslems were radicalized, there could be no outcome to a war with Islam that could rationally be regarded as success.

In the meantime, much will depend on the American people and the outcome of the Iraq war. If, in the November elections, the American people prove indifferent to the war or if they judge the war to have been worth the cost, there will be no other check or balance to prevent Washington from trying to carry on down the list of "countries of interest". While American policy could moderate if President Bush were re-elected, as was the case with President Reagan's second term, the recent Republican Convention gave few clues in that regard. The administration's apparent determination to proceed with research on "low-yield" nuclear weapons in contradiction of the spirit if not the letter of the Non-Proliferation Treaty is a current and dangerous example of exceptionalism.

Multilateral Cooperation and the United States

There is an alternative to unilateral marauding and that is enlightened multilateral cooperation. The United States took the lead in building the existing complex of institutions, treaties and networks, of rules, laws and norms of international behaviour, a system that serves US interests and that the US would be foolish simply to abandon or to undermine. The US led this multi-year effort to build the multilateral system not, presumably, because it was just waiting for the day when its power would permit it to transcend it, but because American leaders genuinely believed that cooperation was a better way to run international affairs than competition. The leadership role of this multilateral cooperation remains open to the United States to fill, as it has done since Franklin Roosevelt.

However Washington decides to proceed, the world will muddle through, more effectively if the US leads, undoubtedly, but muddle through it will nonetheless. In fact a good argument can be made that current US truculence differs from past practice only

in degree and that US multilateral cooperation with others has long been chequered. Consider the experience of the International Criminal Court and the anti-personnel land mines treaty. As discussed above, US opposition to the ICC was and is more rooted in the ideology of exceptionalism than it is in the very few shortcomings of the Court. Still, while the US prefers not to cooperate, as it has the right to do. Nonetheless, 139 other countries have signed the treaty and 94 have ratified it, and that in the face of a bare-knuckled US campaign against the Court²⁵. Likewise for anti-personnel landmines. The US has not acceded to the landmines statute but 152 other countries have signed it, of which 143 have ratified it²⁶. In fact, the US has not signed and/or ratified numerous treaties that others have, notably the Kyoto climate change protocol, the Law of the Sea, arms control and disarmament treaties and several of the core human rights treaties. The world's experience of this phenomenon is that in many, perhaps most cases, US signature is beneficial but not critical to the success of a given treaty. That is the case, for example, with respect to the Treaty on the Elimination of Discrimination Against Women; US non-accession does not directly affect the rights of non-US citizens. In many cases, the US finds a way to comply with the spirit if not of the letter of treaties that it broadly but not totally agrees with.

The US's decision to walk away from the Kyoto protocol, however, is a bigger problem because the US is the single largest polluter and because, given the uniquely global nature of the problem, the efforts of others to combat it will be nullified if the US does not cooperate. The US has also distanced itself from the nuclear test ban treaty and is reconsidering its own ban on nuclear weapons research. These are very serious matters which can have negative consequences for everyone else. In those cases where US participation is indispensable to the success of the initiative, and the US is balking, there is not much to be done but to keep working the issue until US concerns are met or the US changes its mind or both. US participation or lack of it has not so far crippled the international system, although it has helped to deadlock nuclear and other disarmament negotiations, with what consequences we simply do not now know.

²⁵ United Nations. *Rome Statute of the International Criminal Court*. Rome, 17 July, 1998. <http://untreaty.un.org/ENGLISH/bible/englishinternetbible/partI/chapterXVIII/treaty10.asp>

²⁶ Foreign Affairs Canada. "The Ottawa Convention Status Report". *SafeLane: Canada's Guide to the Global Ban on Landmines*. As of May 12, 2004. <http://www.mines.gc.ca/convention-en.asp#signature>

The United Nations

While the U.N. is often the butt of criticism in Washington and in the right wing US (and Canadian) media, and in some cases justifiably so, as anyone who has spent an eternity in the General Assembly any afternoon can attest, a distressingly small amount of that criticism is well-informed on the particulars of a given issue, and a depressingly large amount of it is just plain ideology, prejudice and ignorance of the facts. For example, although some have reflexively deprecated the UN's counter-terrorism capacity, the UN Security Council passed one of the most intrusive decisions in history when it proscribed cooperation of member countries with terrorists, prohibiting the provision of safe havens and the use of national banking systems. The UN General Assembly has passed a dozen counter-terrorism treaties²⁷. What is true for terrorism is similarly true for human rights, where the U.N. has passed six core treaties including on the protection of women's rights; for arms control and disarmament, where the U.N. is at the heart of the nuclear non-proliferation regime, including its weapons inspection capability; or health, on which the World Health Organization is integral to the effort to control and eradicate infectious diseases and other diseases such as HIV-AIDS, malaria, and SARS; for the environment where the U.N. has fostered 76 treaties, for international development, trade and investment, where the World Bank and the IMF have also contributed. As those treaties have been progressively absorbed into domestic legislation, they have facilitated the establishment of norms and standards of international behaviour.

Beyond rules, norms and laws, there is an alphabet of UN acronyms, e.g., ICAO, IPU, ITU, WMO, WIPO, among many others, that stand for organizations that help the world to manage one aspect or another of international interchange. The UN is indispensable, also, to international humanitarian objectives. For example, since 2000, UNICEF, in cooperation with the Global Alliance for Vaccines and Immunization, has

²⁷ For further information on UN Conventions regarding Counter-Terrorism, please refer to *United Nations Treaty Collection: Conventions on Terrorism*. <http://untreaty.un.org/English/Terrorism.asp>

inoculated 59.8 million children against childhood diseases. The World Food Program has fed 104 million people in 2003 alone, the UNHCR has helped 17 million refugees and internally displaced people, the U.N. Mine Action Service has destroyed 30.5 million landmines and saved countless limbs and lives²⁸. This work has been belittled by some as mere international social work but it is social work with very real human and very real security benefits.

At the same time, there is no denying that the UN has real problems of its own and that reform of the UN has proven excruciatingly difficult. Just how difficult is evident from the fudged title of the Secretary General's high level panel on Threats, Challenges and Change. The word "reform" does not appear in the panel's title nor in its terms of reference, because presumably to use the word is to concede that the UN is in need of reform, a proposition that many member countries against all evidence dispute.

The UN Needs Both Renovation and Innovation.

In attacking Iraq against the will of the international community, and in mishandling the occupation, the US did the UN, and itself, incalculable harm. It would be a major mistake, nevertheless, simply to lay all the UN's misfortunes at Washington's door. The UN has its own serious problems. The UN's strength, its universal membership, has become also its weakness. The disparate purposes of 191 countries make the achievement of consensus on any issue a Sisyphean task. The convention of consensual decision-making in the General Assembly and in other UN bodies invites

²⁸ United Nations International Children Education Fund. www.unicef.org
Global Alliance for Vaccines & Immunization.
http://www.vaccinealliance.org/home/General_Information/About_alliance/progupdate.php
United Nations – World Food Program. *WFP in 2003: A Quick Glance*.
<http://www.wfp.org/index.asp?section=1>
United Nations – UN High Commissioner for Refugees. *Refugees by Numbers (2004 edition)*.
<http://www.unhcr.org/>
United Nations Mine Action Service. <http://www.mineaction.org/index.cfm>

diplomatic games-playing by spoilers, such as Cuba, Libya and Sudan, among the so-called G77 and the Non-Aligned Movement (the NAM), two overlapping and hoary hangovers from the Cold War. There remains no agreement on how to reform the aging, unrepresentative Security Council, still the most important political/security body on earth, although the high level panel intends to make a proposal for change.

The UN suffers from an acute case of diplomatic inertia at a time when it is facing decidedly new challenges. The most pressing and fundamental challenge the UN faces is to come to a common understanding of when and under what circumstances the international community is justified in intervening in the internal affairs of member states. The possible grounds for intervention include humanitarian crises, the illegal development or acquisition of weapons of mass destruction, the provision of safe haven or financing for terrorists, the inability of states to control international crime and the overthrow of democratic governments. These are not the only mega-issues the UN faces. How to alleviate poverty and how to combat communicable diseases are also major issues for the UN and the international, multilateral community more generally. These are all extremely difficult issues and there are understandable reasons that the UN's approach to them tends to be cautious to a fault.

The UN Charter was written in and for a different age and treats national sovereignty as absolute and immutable. As a consequence, over time a contradiction has arisen between the most basic purpose of the UN, "to save succeeding generations from the scourge of war", and one of its cardinal tenets, state sovereignty. Most wars, the Iraq war being a significant exception, currently arise within the borders of existing states and the inhabitants often cannot legally be protected from the scourge without intervention from the outside. On no issue is new practice more needed, consider Darfur, than on the determinants of military intervention for humanitarian purposes, that is, to prevent or stop genocide. That means addressing the main weaknesses the UN now faces with respect to military intervention for humanitarian objectives in the Third World. As Secretary General Annan said in his Nobel Prize acceptance speech: "[the] sovereignty of States

must no longer be used as a shield for gross violations of human rights”²⁹. The irony is that in cases of humanitarian emergency, the poorer countries fear too much outside intervention but history has recorded that there is too little, as Rwanda demonstrated, and the conflicts in the Congo and Sudan continue to confirm.

It would be tragic if the suspicion and hostility created by the invasion of Iraq makes military intervention for humanitarian purposes even more difficult than it already is. While US motives in attacking Iraq might be widely suspect, that scarcely constitutes grounds for leaving the grossly abused elsewhere to suffer what they must. “Bad cases make bad law”, as lawyers in the Common Law tradition know only too well. Iraq was a bad case with which to establish norms of behaviour. Darfur would be a better case. Darfur would meet the just cause threshold proposed in the *Responsibility to Protect*, the seminal report commissioned by the Government of Canada, particularly as regards “ethnic cleansing” and “large scale loss of life, actual or apprehended.” Darfur arguably also meets the Genocide Convention test as regards the intentional destruction of a group, in whole or in part. Moreover, there must be little doubt that crimes against humanity are still being perpetrated there. Although the Security Council has been unconscionably slow to act, still US Secretary of State Powell and Secretary General Annan appear to have learned the lessons of the nineties³⁰.

The UN high level panel appointed by Secretary General Annan last fall is engaged on these issues. There are several things that it can and should recommend. First, it should encourage the UNSC to establish operational principles that will encourage Council consistency and coherence in protecting the innocent. Specifically, the Council should be urged to establish thresholds for action and principles to guide decision making. It could do worse than simply endorse the triggers of the Responsibility to Protect report, mentioned above, and its precautionary principles.

²⁹ UN Secretary General Kofi Annan. “We Can Love What We Are – Without Hating What – And Who – We Are Not”. *Nobel Lecture*. Oslo, Norway. October 12, 2001. <http://www.un.org/News/Press/docs/2001/sgsm8071.doc.htm>

³⁰ Secretary Colin L. Powell. *The Crisis in Darfur*. Testimony Before the Senate Foreign Relations Committee. September 9, 2004. U.S. State Department. <http://www.state.gov/secretary/rm/36042.htm>

Second, the UN panel should recommend strengthening links between international human rights/humanitarian action organizations and the Council's decision making process, both to ensure the Council has the clearest possible understanding of what is happening in a given conflict and to facilitate more timely decision making.

Third, the panel should recommend that Council members assume a special responsibility for the UN's military operations. Membership on the Council is a privilege that, under the Charter, derives primarily from a capacity to contribute to maintaining international peace and security, and implies a responsibility to do so. If a country wants to be on the Council, above all if it aspires to a permanent seat, it ought to be ready and willing to participate in peace-support missions and human security interventions.

Fourth, and fundamentally, the panel should urge the General Assembly to modify its interpretation of sovereignty to include the responsibilities of states as well as the privileges, notably the responsibility of the state to protect its citizens, which is closer to the original Westphalia model of sovereignty in any case. The Assembly should specifically acknowledge that when the state is unable or unwilling to acquit these responsibilities, it is incumbent on the international community, pursuant to a Security Council decision, to do so.

Fifth, the panel should recommend the full participation of all the Breton Woods institutions into a combined international effort, under UN leadership, to assist the Security Council both to prevent war and to rebuild the peace after conflict, through development. These tasks are too important and too expensive to allow for overlap or, worse, as has been the case in Afghanistan, for example, to work at cross purposes.

The panel report will be just the beginning of the reform. There is much the membership, itself, can and should do to improve the prospects of reform and to give effect to the panel's forthcoming proposals.

The first thing for the membership to do is to recognize that reform will require that member states behave responsibly and recognize that they have an overarching interest in making the UN as effective as possible, even if that might mean changes in Security Council structures that do not satisfy their aspirations for themselves. Everyone has an interest in preserving the credibility of the organization so that it can achieve its most basic objective of preserving international peace and security. Canada and Mexico can make effective UN reform a major objective of our foreign policies. Our respective credibility with third parties can be very persuasive in selling high level panel recommendations.

Second, the membership needs to face the reality that the world is transiting a very dangerous time and needs to set petty and mundane differences aside. The many skirmishes between the West and Islam must not be allowed to morph into a new global conflict. The UN with its proven techniques of consultation and conciliation can be extremely valuable in moving these many disagreements onto a more constructive plane.

Third is the need for the international community to acknowledge that it is wise to attract the US back to the UN, and to persuade Americans how important the UN is to them in an integrating world. Perhaps the most important role Mexico and Canada, relatively recent graduates of the UN Security Council, can do is in helping the world and the US to reconcile their very considerable differences. We can take the initiative to impart to others the particular insights into what is motivating the United States that we gain from our respective geographic proximities and political engagements there. To maintain our credibility in the world and to be true friends of the United States, we will, as well, need the courage to “speak truth to power” in Washington. Judging by the recent Security Council performances of Canada and Mexico, we are both capable of doing so.

Fourth, the Secretary General should be helped to rebalance the international agenda more generally, in order to deal with the non military sources of conflict. Member states need to empower the United Nations to organize a global response to the global challenges of disease control, hunger, lack of schooling and environmental destruction.

The world needs a vision encompassing education and health, democracy and human rights and good governance, as per the Millennium Goals. Currently, no one is doing enough, according to the World Economic Forum monitoring project³¹. Peace cannot be built poverty and freedom cannot be built on foundations of injustice. The international community needs systematically to work with states at risk to enhance the quality of their governance structures, to increase the accountability of their leaders, to reduce corruption, to build institutional capacity and to strengthen legal and judicial systems.

Fifth, there will be no satisfactory reform unless the newfound insecurity of people in the richer countries is also addressed. The potential nexus of WMD and terrorism, therefore, also must figure in our calculations of when intervention by the international community, pursuant to a Security Council resolution, is justified. This is an extraordinarily complex issue but not one that the UN membership can, or should, shrink from addressing. Radical changes may be needed. This is the fork in the road that last Fall in the UN Secretary General Annan warned world leaders they faced. Washington's sense of unique vulnerability needs also to be addressed, so that the UN is relevant to Americans.

Sixth, it is evident that reform of the United Nations is necessary but not sufficient to meet the challenges of the 21st century. The weaknesses of other existing bodies need remedying and the lacunae between them need filling. The Bretton Woods organizations, for example, also have representation and voting rights aberrations. Further, the World Bank has grown to dominate other institutions in the development field and its role vis à vis the regional development banks and especially the UNDP needs recalibrating. Nor is the IMF's mandate clear in a floating exchange rate world, including vis à vis the more powerful countries which currently can and do ignore its prescriptions.

³¹ World Economic Forum. *Global Governance Initiative: Annual Report 2004*. Davos, Switzerland: World Economic Forum, 2004. http://www.weforum.org/pdf/Initiatives/GGI_Annual%20Report%2004.pdf

Seventh is the need for innovation. Canadian Prime Minister Martin has proposed the creation of an L-20, a north-south group of about 20 government leaders that would be more reflective of power and population realities now and foreseen than the G-8 is. Such a grouping would improve prospects for progress on HIV-AIDS and other communicable diseases, on trade and agricultural subsidies, on terrorism and WMD, on protecting the innocent, on international financial reform, on the Millennium Development Goals and not least on the reform of the UN itself. Leaders would sensitize each other to the particular problems they face, diminish the differences between them and, where possible, reach general understandings among themselves that they could commend to the wider international community. Such a group would reinforce and complement the UN rather than compete with it. The UN would retain its unique legitimacy by virtue of its universal membership and its indispensable security role as framed in the Charter and international law. But it would not face every issue divided into mutually uncomprehending camps.

Eighth is the need for democracy in the UN. There is a good argument for the creation of a democracy caucus inside or, if need be, outside the UN. Such a caucus would not be a panacea, because democracies can and do disagree on major issues. Absent identical values and interests, democracies are bound to disagree, as was the case with the Iraq war. A democracy caucus can, nevertheless, establish common interests across geographic boundaries, break down the rigidities inherent in regional groups and build up support for a given course of action across geographic, regional and, possibly religious lines. By virtue of the attractiveness of the membership, it might also induce reforms in some non-democratic countries, as prospects of EU membership have done in Eastern Europe.

Ninth, all countries should pull their own weight. It is neither fair nor wise to leave international leadership to the US. Furthermore, when the US declines to lead, as it will undoubtedly do sometimes, that must not come to mean no help for the dispossessed and the abused.

Tenth, and finally, reform will never come from New York. UN Ambassadors will never be able to agree among themselves, unless their governments give them the requisite directions to do so. It is capitals that must effect change. For capitals to do so, citizens will need to persuade their leaders of the need to act. For citizens to present a compelling case to governments for better ways to interact abroad, they must be both knowledgeable and committed. That means that universities will need to do a better job of understanding the UN system and advocating change to it.

Conclusion:

It is evidence of the UN's resilience that despite the many difficulties it faces, the organization has persevered and, even, begun to rally. Member countries have, by and large, come to realize again both that multilateral cooperation is a necessary means to important ends and that the UN is not irrelevant, as President Bush implied in his UN General Debate statement in September, 2002³², but rather indispensable. Further, the Iraq experience has reconfirmed that the general concurrence of the world expressed through the UN remains necessary to confer legitimacy on acts of war and that that legitimacy is a prerequisite to broad based, effective cooperation.

It is perhaps the case for Mexico as it is for Canada that a two track policy is necessary in the current circumstances. In North America, we need to be good neighbours to the United States, taking all reasonably possible steps to ensure that we do not become a source of insecurity to a United States under attack. Globally, we need to take care to maintain a respectful but reasonable independence from US foreign policy both because of the problems inherent in that policy and in order to retain our usefulness as interlocutors.

Finally, it is an old cliché but nevertheless true: if we did not already have the UN, we would need to invent it.

³² President G.W. Bush. *President's Remarks at the United Nations General Assembly*. September 12, 2002. The White House: Washington, D.C. <http://www.whitehouse.gov/news/releases/2002/09/20020912-1.html>

