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LEGAL AND INSTITUTIONAL RESPONSES TO CONTEMPORARY  
GLOBAL THREATS: AN INTRODUCTION TO THE U.N.  
SECRETARY-GENERAL'S *HIGH-LEVEL PANEL REPORT ON  
THREATS, CHALLENGES AND CHANGE*

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When the United Nations (U.N.) was formed in 1945, its main task was “to save succeeding generations from the scourge of war.”<sup>1</sup> Under the shadow of the Second World War, this meant halting military aggression between combative states and their neighbors. War, within living memory and for most of the twentieth century, was waged by states, and the concept of “security” was a matter of interstate relations. States, for their part, were the privileged actors on the world stage. International law was focused on interstate relations and was employed to shield states by guaranteeing their privileges and immunities. In fact, if properly named, the United Nations should have been termed “the United States,” but that label was already taken.

In the Westphalian system of states, “national security” meant that the state itself had to be secured by rendering its sovereignty and territory untouchable. The idea of “collective security” upon which

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1. U.N. Charter pmbl.

the United Nations was founded signaled a willingness by states to pledge that military aggression against one would be viewed as aggression against all and thus bring on the collective response of the United Nations. As Professor Andrew Mack, Director of the University of British Columbia's Human Security Centre, showed in his groundbreaking study, the incidence of international wars dramatically declined beginning in the 1980s.<sup>2</sup> Between 1816 and 2002, the study counted 199 international wars, including wars of colonial conquest and decolonization. As "the anti-colonial struggles and . . . the conflicts related to the Cold War came to an end, the total number of international wars declined both absolutely and relatively."<sup>3</sup> The number of ongoing wars fell from about five in 1987 to two in 2000, and the number of civil wars fell from over fifty in 1990 to around thirty in 2000.<sup>4</sup> This decline resulted from an increase in the number of democratic states, growing economic interdependence, and a decline in the economic utility of wars.<sup>5</sup> Significantly, growth of international institutions, such as the United Nations, also contributed to the decline. The durability of this decline remains to be seen.

While Article 2(4) of the Charter of the United Nations prohibits the use of force by one state against another, Article 51 recognizes the right of self-defense in response to an armed attack.<sup>6</sup> In addition to Article 51, Chapter VII of the Charter leaves another option for overriding sovereignty through diplomatic, economic, and military actions in response to threats to international peace and security.<sup>7</sup> During the Cold War, state sovereignty remained well-entrenched and was challenged only rarely and then under special circumstances associated with anti-colonial and anti-apartheid struggles. The

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2. HUMAN SEC. CTR., HUMAN SECURITY REPORT 2005: WAR AND PEACE IN THE 21ST CENTURY (2005), available at <http://www.humansecurityreport.info/content/view/28/63>.

3. *Id.* at 148.

4. *Id.* at 148-49.

5. The Secretary-General, *A More Secure World: Our Shared Responsibility: Report of the High-level Panel on Threats, Challenges and Change*, ¶¶ 1-16, delivered to the General Assembly, U.N. Doc A/59/565 (Dec. 2, 2004) [hereinafter *A More Secure World*], available at <http://www.un.org/secureworld/report.pdf>.

6. U.N. Charter art. 2, para. 4, art. 51.

7. *Id.* arts. 39-51.

Security Council's resolutions under Chapter VII slowly grew from feeble protests against continued Portuguese colonialism and Southern Rhodesia's declaration of independence to the imposition of an arms embargo against the South African apartheid regime.

A more radical challenge to an immutable view of sovereignty, the notion of humanitarian intervention, emerged only in the post-Cold War era. In the early and mid-1990s, as several civil wars with genocidal and ethnic cleansing aims flared up, the limits placed by Article 2(7) of the U.N. Charter on domestic jurisdiction<sup>8</sup> were questioned and urgent calls were made to invoke Chapter VII, which authorizes the Security Council to override the privilege of sovereignty.<sup>9</sup> The Council, in fact, invoked Chapter VII in response to the collapse of the Somali state, again to address the humanitarian crisis in Bosnia, and finally, to provide protection and humanitarian assistance in Rwanda. Though the Security Council excused its actions by pointing to unique, and therefore non-precedent forming, circumstances in each case, it justified its actions by referring to a loosely-articulated threat these conflicts posed to international security and peace. The U.N.'s resolutions "appear to suggest the halting emergence of a generally accepted norm that permits intervention in the event of grievous lapses in the protection of human beings."<sup>10</sup>

While the state has historically been the object secured in international relations, elements of an alternative approach focused on the protection of the individual have begun to make an appearance. Starting in the nineteenth century, these efforts were concentrated around attempts to guarantee the protection of special categories of individuals. The efforts focused on the treatment of aliens, the abolition of slave trade, the establishment of common employment conditions, and the protection of minorities.<sup>11</sup> An inclusive language of human rights for the universal protection of individuals had to wait,

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8. *Id.* art. 2, para. 7.

9. *Id.* arts. 39-51.

10. S. NEIL MACFARLANE & YUEN FOONG KHONG, *HUMAN SECURITY AND THE UN: A CRITICAL HISTORY* 176 (2006).

11. Gershon Shafir, *Citizenship and Human Rights in an Era of Globalization*, in *PEOPLE OUT OF PLACE: GLOBALIZATION, HUMAN RIGHTS, AND THE CITIZENSHIP GAP* 18-19 (Alison Brysk & Gershon Shafir eds., 2004).

however, until after the Second World War.<sup>12</sup> And, even during the forty-five years of the Cold War, human rights were selectively and unevenly enforced.

It was only in the past two decades or so that the notion of security itself evolved to accommodate the new thinking. The understanding of security, as S. Neil MacFarlane and Yuen Foong Khong pointed out, has expanded in two new directions.<sup>13</sup> Horizontally, security came to encompass, in addition to military concerns, economic, environmental, and cultural security concerns as well. Vertically, the focus on a state's national security was being complemented by attention to the needs of individual human beings.<sup>14</sup>

The new thinking was accompanied by a new language organized around the core goal of "human security." Human security was conceived in its first formulation by the U.N. Development Programme in 1994 as a combination of two dimensions: freedom from fear and freedom from want, though the solution to the latter—sustainable development—was viewed as the foundation for the former.<sup>15</sup> In the report's words, "[w]ithout peace, there may be no development. But without development, peace is threatened."<sup>16</sup> Indeed, the 1994 *Human Development Report* proposed that a global human security fund be established to address common threats.<sup>17</sup> This original idea was accompanied by another principled innovation. The 1994 Carnegie Commission on Preventing Deadly Conflict proposed, and Kofi Annan adopted, the idea of moving the United Nations "from a 'culture of reaction to a culture of prevention.'"<sup>18</sup> Out of this idea arose the broader notion of the "responsibility to protect" vulnerable populations.<sup>19</sup> Even so, the Security Council refused to authorize NATO's intervention in Kosovo, and the Ottawa Treaty on the Ban on

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12. Universal Declaration of Human Rights, G.A. Res. 217A, U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc. A/810 (Dec. 12, 1948) [hereinafter Universal Declaration of Human Rights].

13. MACFARLANE & KHONG, *supra* note 10, at 1-2.

14. *Id.*

15. U.N. Development Programme, Human Development Report: 1994 (1994).

16. *Id.* at iii.

17. *Id.* at 6.

18. MACFARLANE & KHONG, *supra* note 10, at 153.

19. *Id.* at 177-81.

Land Mines was adopted outside the U.N. Conference on Disarmament. These examples point to the limits on the U.N.'s capacity to put this vision into effect.

These developments—the new practices and thinking that provided their foundations and justification in the optimistic mood of the post-Cold War 1990s—have produced expectations for continued measurable progress. These expectations were articulated in the ambitious “United Nations Millennium Declaration” and the “Millennium Development Goals” adopted by the General Assembly in a meeting of world leaders on September 8, 2000.<sup>20</sup> The Declaration set specific goals in a wide range of categories, from “Peace, Security and Disarmament,” through “Development and Poverty Eradication,” “Protecting our Common Environment,” “Human Rights, Democracy and Good Governance,” “Protecting the Vulnerable,” and “Meeting the Special Needs of Africa,” to “Strengthening the United Nations.”<sup>21</sup> The document that formed the basis of the joint California Western School of Law-Institute for International, Comparative, and Area Studies lecture series in 2006-2007, *A More Secure World: Our Shared Responsibility*,<sup>22</sup> was prepared for the 2005 World Summit, which was billed as the largest gathering of world leaders. The Summit was organized in order to review the Millennium Goals’ Implementation.

*A More Secure World* was prepared by a “High-level Panel on Threats, Challenges, and Change” appointed by Kofi Annan, the Secretary-General of the United Nations, and represents Annan’s legacy to the body he led for eight years. The panel consisted of sixteen distinguished members. The Chair of the panel was Anand Panyarachun, the former Prime Minister of Thailand, and some of the other dignitaries included Gro Harlem Brundtland, former Prime Minister of Norway, Gareth Evans, President of the International Crisis Group, Amre Mussa, Secretary General of the Arab League, Sadako Ogata, former U.N. High Commissioner for Refugees, Yevgeny Primakov, former Prime Minister of the Russian Federation, and Brent Scowcroft, the former U.S. National Security Advisor.

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20. U.N. Millennium Declaration, G.A. Res. 55/2, 8th plen. mtg., U.N. Doc. A/Res/55/2 (Sept. 8, 2000).

21. *Id.*

22. *A More Secure World*, *supra* note 5.

The report's most notable contributions and recommendations fall within three areas. First, in stark contrast to traditional conceptions of security, the panel offered a broader conception within which it recognized six clusters of threats.<sup>23</sup> These clusters of threats are the focus of the four articles in this issue of the California Western International Law Journal. Second, the panel sought to make more consistent the criteria for the use of force by the Security Council under Chapter VII, by suggesting that it satisfy tough criteria of both legality and legitimacy.<sup>24</sup> Finally, the panel recommended that the United Nations be made more representative by expanding the Security Council.<sup>25</sup> Neither the second nor the third group of recommendations was adopted.

In view of the changes that have taken place in international relations since 1945, and in particular in the wake of the Cold War, the panel made the case for a new view of collective security. The three premises on which its recommendations rest are that contemporary threats faced by humanity "recognize no national boundaries," that no individual state, however powerful, "can by its own efforts alone make itself invulnerable," and that, in the report's cautious language, there are states that are unable or unwilling "to meet . . . the responsibility to protect [their] own peoples and not to harm [their] neighbors."<sup>26</sup> These characteristics gave rise to the six clusters of threats identified by the panel.

(1) Poverty, infectious disease, and environmental degradation:

This part of the report not only presents dreadful statistics on loss of life, lopsided economic inequality, and life expectancy that deserve attention on their own right, but also ties them together in a novel fashion, namely in stating that these humanitarian calamities also pose a threat to security. In so doing, the notion of security itself is redefined.

The purpose of this formulation is to bridge the two schools of human security already mentioned: protection from violence and sustainable development. Canada, in particular, played an important

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23. *Id.* at 11-13.

24. *Id.* ¶¶ 185-209.

25. *Id.* at 6.

26. *Id.* at 11.

role in arguing for and sponsoring resolutions for the purpose of protecting civilians, especially women and children, in civil wars. Japan, limited by its constitution from engaging in military actions abroad, found its niche in advancing development-related plans. It has been argued, in particular by those who come out of the traditional “security” framework, that the concept of human security has been stretched too far to be useful, and it would best be limited to the protection of vulnerable populations, non-combatants, women, and children from organized, that is man-made, violence. In this view, characterizing economic, health, environmental, and related socio-economic concerns as security issues is ill-advised since it leads to the loss of analytic traction.<sup>27</sup> Indeed, in comparison with the discussion offered in the other five threat clusters, this chapter proceeds in a somewhat haphazard fashion. But whether “human security” is an ill-defined grab-all threat category or not, its wide use and appeal drives home the vast difference in the concerns raised in the developed and the developing parts of the world.

The human security argument adopted by the panel is as follows: if we plot the relation between poverty and civil war, we find that a per capita gross domestic product (GDP) of \$3,000 predicts a three percent probability for the onset of a civil war within five years, whereas a per capita GDP of about \$100 raises the probability to twelve percent.<sup>28</sup> Thus, poverty, added on top of ethnic or regional inequalities, is likely to further compound the grievances that lead to civil wars.<sup>29</sup> Though not explicitly spelled out, various forms of environmental degradation, loss of arable land, water scarcity, deforestation, and climate change, in the panel’s view, should also be factored in with security considerations. And while the panel does not link the scourge of HIV/AIDS to security per se, it points to the successful efforts of global institutions, in particular the World Health Organization, in limiting the spread of Severe Acute Respiratory Syndrome.<sup>30</sup>

The panel’s main recommendations to tackle the threats clustered under this heading are to reduce poverty in accordance with the

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27. MACFARLANE & KHONG, *supra* note 10, at 264.

28. *A More Secure World*, *supra* note 5, ¶ 22, fig. II.

29. *Id.* ¶¶ 22-23.

30. *See id.* ¶ 51.

Millennium Development Goals, reschedule international debt, conclude the Doha trade talks by 2006, adopt a long-term strategy for reducing global warming beyond the period covered by the Kyoto Protocol, increase resources devoted to combating HIV/AIDS (but also to develop long-term strategies for diminishing its threat), and rebuild local and national public health systems in the developing world.<sup>31</sup>

Doctor Thomas Novotny's essay analyzes the last challenge in a comprehensive fashion. Novotny reiterates the effects of globalization on health concerns and presents the multiple actors, including private-public partnerships, of the global health community. In particular, he highlights several new areas of thinking and institution-building in this community. Novotny observes the limited legal powers of the World Health Organization and focuses on two novel or revised binding legal mechanisms—International Health Regulations and the Framework Convention on Tobacco Control—that seek to enhance compliance.<sup>32</sup> He highlights the growing understanding of health as part and parcel of the broader human security paradigm, and the ensuing focus on social determinants of health that fall outside the health sector itself. Novotny then goes beyond the panel's recommendations with his wholly original discussion of the emerging field of health diplomacy.

(2) The threat of international conflict:

Though, as we have seen, there has been a noticeable reduction in the incidence of inter-state wars, unresolved regional disputes in South Asia, North-East Asia, and the Middle East continue simmering and occasionally break out into armed conflict. Since the end of the Cold War, the Security Council has played a greater role in addressing international threats. In fact, while it imposed sanctions only twice before 1989, it has done so fourteen times since then in order to reverse aggression, combat terrorism, protect human rights, support peace agreements, and restore democratic governments. Significantly, the Council invoked its authority under Chapter VII on several occasions and though “[c]ollectively authorized use of force may not

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31. *Id.* ¶¶ 59, 62-63, 67-68, 72.

32. Thomas E. Novotny, *Global Governance and Public Health Security in the 21st Century*, 38 CAL. W. INT'L L.J. 19 (2007).



be the rule today . . . it is no longer an exception.”<sup>33</sup> Humanitarian interventions are significant because they tend to circumvent state sovereignty, represent a collective effort at establishing security, and strengthen the influence of international institutions.

Since addressing international and internal wars requires similar measures, the panel lumped together its recommendations for these two threats, and they will be examined jointly at the end of the next section.

(3) The threat of intra-state conflict:

Civil wars are also occurring with less frequency than they were two decades ago, and the United Nations provides greater leadership in this area, though its mediation efforts produced settlements in only a quarter of civil wars and an even smaller share of negotiated agreements were successfully implemented.<sup>34</sup> The panel mentions wistfully, but not necessarily with a clear conscience, that “[i]f the Security Council had been seriously committed to consolidating peace in Afghanistan in the early 1990s, more lives could have been saved, the Taliban might never have come to power and Al Qaida could have been deprived of its most important sanctuary.”<sup>35</sup> The panel considers the most egregious failures of the United Nations in regard to civil violence to have been its inability to halt ethnic cleansing and genocide in Rwanda, Bosnia and Herzegovina, and Kosovo.<sup>36</sup>

The panel’s main legal recommendations for preventing war and armed conflict are as follows: “more attention to developing international regimes and norms to govern some of the sources and accelerators of conflict,” as well as regional frameworks for the protection of minorities and democratically-elected governments; better management of natural resources (such as conflict diamonds); and, on the institutional side, having the Security Council refer cases of mounting conflict to the International Criminal Court; establishing a facility for training U.N. mediators, and making use of preventive deployment of peacekeepers.<sup>37</sup>

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33. *A More Secure World*, *supra* note 5, ¶ 81.

34. *Id.* ¶ 86.

35. *Id.*

36. *Id.* ¶ 89.

37. *Id.* ¶¶ 89-106.

As part of its discussion of Chapter VII of the U.N. Charter, and reflecting on the humanitarian disasters in Somalia, Bosnia and Herzegovina, Rwanda, and Kosovo, and the unfolding tragedy in Darfur, the panel made another suggestion—though one that fell short of a recommendation. However, its words are worth quoting at length:

There is a growing recognition that the issue is not the “right to intervene” of any State, but the “responsibility to protect” of every State when it comes to people suffering from avoidable catastrophe . . . . And there is a growing acceptance that while sovereign Governments have the primary responsibility to protect their own citizens from such catastrophes, when they are unable or unwilling to do so that responsibility should be taken up by the wider international community . . . .<sup>38</sup>

The panel endorsed “the emerging norm that there is a collective international responsibility to protect”<sup>39</sup> in the event of genocide or ethnic cleansing, and this responsibility is to be exercised through the authorized use of military force by the Security Council as a last resort.<sup>40</sup>

Professor Mary Ellen O’Connell’s paper is focused on the preservation of peace from the legal and normative perspective. O’Connell explores the debate between the perspectives of political scientist Hans Morgenthau and realist diplomat George Kennan on the one hand and legal theorists and philosophers H.L.A. Hart, Louis Henkin, and Thomas Franck on the other to assess the range of established legal criteria for the exercise of the right of self-defense under international law. O’Connell sides with the latter’s emphasis on the validity of international law even in the absence of enforcement, citing favorably the 1986 *Military and Paramilitary Activities (Nicar. v. U.S.)* International Court of Justice ruling, which holds that armed self-defense may be undertaken only in response to acts that “amount to armed attacks.”<sup>41</sup> This approach is more radical than that taken by

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38. *Id.* ¶ 201.

39. *Id.* ¶ 203.

40. *Id.*

41. Mary Ellen O’Connell, *Preserving the Peace: The Continuing Ban on War Between States*, 38 CAL. W. INT’L L.J. 41, 46-47 (2007).

the panel, which interprets Article 51 of the U.N. Charter to mean 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.”<sup>42</sup>

(4) The threat of nuclear, radiological, chemical, and biological weapons:

The panel points out that the very effective Treaty on the Non-Proliferation of Nuclear Weapons (NPT), under which the number of states with known nuclear arsenals rose from four at the time of signing in 1963 to only eight in 2004, is now under a great deal of stress.<sup>43</sup> The NPT regime is under threat by states that do not comply with its obligations or that threaten to withdraw from them.<sup>44</sup> In addition, the large stockpiles of nuclear, and the more readily-available radiological materials, are not adequately safeguarded and, in fact, states have publicly admitted to twenty cases of nuclear material diversion and more than 200 cases of illegal trafficking of such materials have been documented.<sup>45</sup> States with chemical weapons have fallen behind in their commitments to destroy them and biological agents, such as toxin ricin, have been discovered in several terrorist sites.<sup>46</sup>

The panel recommends that the demand for these materials be reduced by calling on nuclear states to disarm, not threatening non-nuclear states with nuclear retaliation, and agreeing to nuclear-weapon-free zones in the Middle East and South Asia.<sup>47</sup> The supply of such materials should be reduced by adopting the more stringent standards of the NPT’s Model Additional Protocol for inspection and verification, and “the Security Council should be prepared to act in cases of serious concern over non-compliance with non-proliferation and safeguards standards.”<sup>48</sup>

Larry Johnson’s article provides a succinct but thorough survey of the differences among the way nuclear, chemical, and biological

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42. *A More Secure World*, *supra* note 5, ¶ 188.

43. *Id.* ¶¶ 107-12.

44. *Id.* ¶ 111.

45. *Id.* ¶ 112.

46. *Id.* ¶ 115.

47. *Id.* ¶ 124.

48. *Id.* ¶ 129.

weapons are regulated by existing treaties.<sup>49</sup> In particular, Johnson shows how the provisions of the NPT divide states into distinct groups: the five original members of the nuclear club (all permanent members of the Security Council), the three countries that did not sign the NPT and developed such weapons—India, Pakistan, and Israel, the states without such weapons, many of which received help from the International Atomic Energy Agency in developing nuclear energy for peaceful uses, and the two countries—North Korea and Iran—that violated the treaty.

(5) The threat of terrorism:

The panel indicated that the threat posed by contemporary terrorism contains two new dimensions. These dimensions are the global network capacity of Al-Qaida, which allowed it to attack more than ten U.N. member states on four continents in the five years after 2001, and its desire to cause mass casualties.<sup>50</sup> The panel recommended the development of a comprehensive strategy addressing the root causes of terrorism while also strengthening state capacities and anti-terrorism instruments, education for tolerance, and the rule of law and human rights.<sup>51</sup> But the most compelling aspect of the panel's work in the area of prevention was its ability to come up with what had eluded other attempts—a definition of terrorism that will provide moral authority and undermine the justification for terrorism “even for the most defensible of causes.”<sup>52</sup> In the panel's words, terrorism is

any action . . . that is intended to cause death or serious bodily harm to civilians or non-combatants, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or to abstain from doing any act.<sup>53</sup>

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49. Larry D. Johnson, *Protecting the World from Weapons of Mass Destruction: Reflections on the High-level Panel Report on Threats, Challenges and Change*, 38 CAL. W. INT'L L.J. 65 (2007).

50. *A More Secure World*, *supra* note 5, ¶ 146.

51. *Id.* ¶¶ 147-48.

52. *Id.* ¶ 164.

53. *Id.*

The panel, in short, highlighted the main characteristics of an act that defines it as terrorism—attacking civilians and non-combatants.<sup>54</sup> Simultaneously, the panel brushed aside the two most common objections to an agreed-upon definition by holding that violent acts committed by states against civilians are already strongly regulated by international humanitarian law and asserting that not even occupation “justifies the targeting and killing of civilians.”<sup>55</sup>

Todd Landman’s comparative study of American and British legal and practical responses to global terrorism goes beyond this part of the report but shares the panel’s attempt to standardize the criteria for legitimate responses.<sup>56</sup> Landman examines the two countries’ legal standards and policies in light of the imminence of the threat and the proportionality of counter-terrorism measures under existing international and regional human rights standards in order to clarify the trade-offs between the protection of civil liberties and the risks to national security.<sup>57</sup>

(6) The threat of transnational organized crime:

The panel holds that transnational organized crime, like poverty, infectious disease, and environmental degradation, poses serious threats to international peace and security since corruption, illicit trade, and money-laundering contribute to state weakness, impede economic growth, and undermine democracy.<sup>58</sup> Contemporary organized crime operates through fluid and inter-connected networks. In fact, a network of networks, more agile than earlier transnational crime, has developed whereas information-sharing and cooperation among state agencies remains cumbersome. Consequently, such crime’s single largest source of income—drug trafficking—has expanded and compounded other threats.<sup>59</sup> For example, “[t]here is growing evidence of a nexus between terrorist groups’ financing and

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54. *Id.*

55. *Id.* ¶ 160.

56. Todd Landman, *Imminence and Proportionality: The U.S. and U.K. Responses to Global Terrorism*, 38 CAL. W. INT’L L.J. 75 (2007). See also *A More Secure World*, *supra* note 5, ¶ 207.

57. Landman, *supra* note 56.

58. *A More Secure World*, *supra* note 5, ¶ 23.

59. *Id.* ¶ 166.

opium profits, most visibly in Afghanistan.”<sup>60</sup> Among the panel’s main recommendations are the adoption of a convention on money-laundering and the establishment of a central authority for exchange of evidence among states.<sup>61</sup>

Kofi Annan reworked and combined the recommendations of the High-level Panel with the plan for the implementation of the Millennium Development Goals by 2015 to produce his own report entitled *In Larger Freedom: Towards Development, Security, and Human Rights for All*, for the 2005 World Summit.<sup>62</sup> Annan reiterates the value of the new paradigm of human security that was born in the bosom of the United Nations in the mid-1990s for highlighting the interconnectedness and global character of contemporary threats. Annan argues that “we will not enjoy development without security, we will not enjoy security without development, and we will not enjoy either without respect for human rights.”<sup>63</sup> In particular he holds that the Panel’s vision of “a more comprehensive concept of collective security . . . [C]an bridge the gap between divergent views of security and give us the guidance we need to face today’s dilemmas.”<sup>64</sup>

*In Larger Freedom* was further revised and distilled during six months of negotiations into a “Draft Outcome Document” submitted to the General Assembly by its President in early August 2006 in preparation for the September 14-16 World Summit.<sup>65</sup> The pre-summit negotiations on the outcome document were, however, thrown sharply off-course by the recess appointment by President George W. Bush of John R. Bolton, a well-known critic of the United Nations and multilateralism, as U.N. Ambassador. Bolton immediately proposed hundreds of revisions to the draft that would have removed the words “Millennium Development Goals,” and, while affirming many of the

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60. *Id.*

61. *Id.* ¶¶ 173-74.

62. The Secretary-General, *In Larger Freedom: Towards Development, Security and Human Rights for All*, delivered to the General Assembly, U.N. Doc. A/59/2005 (Mar. 21, 2005).

63. *Id.* ¶ 17.

64. *Id.* ¶ 77.

65. Revised Draft Outcome Document of the High-level Plenary Meeting of the General Assembly of September 2005 Submitted by the President of the General Assembly, U.N. Doc. A/59/HLPM/CRP.1/Rev.2 (Aug. 5, 2005) [hereinafter Revised Draft Outcome Document].

principles contained in the document, he would have deleted references to their implementation, targets, and timetables.<sup>66</sup> For example, while Bolton retained Article 48 (Article 72 in the adopted Summit Outcome document; Resolution 60/1 of the General Assembly), which recognizes that “development, peace, security and human rights are mutually reinforcing,” he insisted on deleting Article 49, which stated:

We resolve to take concerted action, through such a system of collective security, based on the United Nations Charter and respect for international law, so as to prevent, mitigate and remove threats to international peace and security, respond effectively to natural disasters, ensure economic development and the full enjoyment of human rights for all States and peoples.<sup>67</sup>

When it seemed that the summit would collapse, and even close U.S. allies such as the United Kingdom “expressed dismay over the scope and direction of the Bolton amendments and his approach,”<sup>68</sup> Secretary of State Condoleezza Rice instructed Bolton to temper his polemic, and an outcome resolution was eventually adopted. But, as a *New York Times* op/ed concluded “[b]y the time Washington retreated to a more realistic position, it was too late to retrieve much of the bold agenda . . . .”<sup>69</sup> Indeed, the term “human security” is never affirmed in the resolution. Rather, it makes its appearance as part of a vague promise to continue “discussing and defining the notion of human security in the General Assembly.”<sup>70</sup>

To assess the legacy of the High-level Panel Report, I will focus on the way its recommendations in regard to three security threats—

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66. Letter from John R. Bolton, U.S. Ambassador to the United Nations, to Kofi Annan, Secretary-General, United Nations (Aug. 30, 2005), *available at* [www.reformtheun.org/index.php?module=uploads&func=download&fileId=813](http://www.reformtheun.org/index.php?module=uploads&func=download&fileId=813).

67. Revised Draft Outcome Document, *supra* note 65, ¶¶ 48-49; 2005 World Summit Outcome Document, ¶ 72, G.A. Res. 60/1, U.N. Doc. A/RES/60/1 (Oct. 24, 2005) [hereinafter 2005 World Summit].

68. Howard LaFranchi, *At U.N., Bolton Softens His Tone*, CHRISTIAN SCIENCE MONITOR, Sept. 12, 2005, *available at* <http://www.cbsnews.com/stories/2005/09/12/world/printable835261.shtml>.

69. Op-Ed, *The Lost U.N. Summit Meeting*, N.Y. TIMES, Sept. 14, 2005, at A28.

70. 2005 World Summit, *supra* note 67, ¶ 143.

terrorism, nuclear proliferation, and the “responsibility to protect”—were treated in the 2005 Summit Outcome Resolution.<sup>71</sup>

The most novel aspect of the response to terrorism recommended by the panel was an agreed-upon definition of terrorism that would eliminate the moral equivocation in regard to attacks on civilians and non-combatants. This definition made its way into the draft summit outcome document, but it does not appear in the final summit outcome resolution.<sup>72</sup> The opposition to the definition has come mainly from Middle Eastern countries, but it also seems that the United States was unwilling to throw its weight behind this proposal. Though the summit adopted a resolution “to conclude a comprehensive convention on international terrorism”<sup>73</sup> during the 2005 and 2006 session of the General Assembly, Bolton suggested the deletion of the proviso to include “a legal definition of terrorist acts . . . .”<sup>74</sup> The loss of this definition cost the United States a major moral victory and a practical tool that would have made cooperation against terrorism more justifiable and effective.

The Summit Outcome resolution also lacks an entire section that appeared in the draft, the response to the threat of nuclear, chemical, and biological weapons.<sup>75</sup> Larry Johnson’s very plausible explanation is that the United States objected to the inclusion of a call for steps to be taken by nuclear weapons countries to “restart disarmament,” an obligation that appears in the original NPT.<sup>76</sup> The U.S. objection, namely that it had reduced its stockpiles after the end of the Cold War and that the international security climate must improve before disarmament is put back on the table, carries considerable weight. However, giving up on the agreed-upon U.N. resolution on non-proliferation at the time when Iran is suspected of trying to develop just such weapons, looks particularly short-sighted. It is very likely that if the United States would not have fought the summit resolutions on so many distinct fronts, it could have secured a less committal

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71. *See generally id.*

72. Revised Draft Outcome Document, *supra* note 65, ¶ 65.

73. *Id.* ¶ 66.

74. *Id.*

75. *Id.* ¶¶ 57-62.

76. Johnson, *supra* note 49.



resolution on disarmament while still having a clearer one on non-proliferation.

Finally, let us turn to one of the significant innovations of the summit: its adoption of the principle of “responsibility to protect” (R2P) populations from genocide, war crimes, ethnic cleansing, and crimes against humanity.<sup>77</sup> The final outcome resolution includes the language Bolton sought to expunge, namely a commitment that member states “are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII” should such circumstances emerge, though this commitment is watered down by the added caveat “on a case-by-case basis . . . .”<sup>78</sup> Even so, while the willingness to use powers granted under Chapter VII weakens the immunities of state sovereignty and offers a novel and broader version of mutual responsibility and collective security, the fact is that the spirit of the 1990s in which “humanitarian intervention” was undertaken on several occasions seems to have come and gone. Samantha Power, the author of the famed *A Problem from Hell: America and the Age of Genocide*, summed up the changing climate: “Humanitarian intervention—the nonconsensual use of force—is dead. It had a very short life—September 1995 to the summer of 2003—and it’s been killed for the next decade. America is the only power that can do it and, after Iraq, we would just be recruiting fodder for this apocalyptic nihilism.”<sup>79</sup> The repeated failure of the United Nations and the international community to take more decisive action to stop the spiraling ethnic cleansing and genocide in Darfur is sad proof of Power’s pessimistic assessment and of the transformation of the “responsibility to protect” into a dead letter.

It remains to be seen whether the progress towards a more secure world made through the articulation and attempted enforcement of human security and the responsibility to protect in the 1990s will continue in the era of the “war on terror,” or whether its accomplishments and legacy will remain in suspension. We might find solace in remembering that the principles of the Universal

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77. 2005 World Summit, *supra* note 67, ¶ 138.

78. *Id.* ¶ 139.

79. Roger Cohen, *Of Sarajevo and Baghdad*, INT’L HERALD TRIB., June 24, 2007, available at <http://www.iht.com/bin/print.php?id=6299408>.

Declaration of Human Rights,<sup>80</sup> drafted in 1949 just as the Cold War broke out in full force, began to bear fruit in the cracks of that era. For example, the Helsinki Agreement<sup>81</sup> was not fully implemented until the end of the Cold War. The fact that most post-1945 human rights legislation lay in abeyance for two generations only to reemerge in a more auspicious time shows the resilience and longevity of powerful ideas.

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80. Universal Declaration of Human Rights, *supra* note 12.

81. Final Act of the Conference on Security and Cooperation in Europe (Helsinki Agreement), Aug. 1, 1975, 14 I.L.M. 1314.