Introduction: the new collective security

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Whether viewed as a socio-legal project gently civilizing states away from an older politics of diplomacy, deterrence, self-help and legitimate warfare,¹ or as an institutional project establishing a collective security system premised on the rule of law,² the primary purpose of the United Nations today remains the maintenance of international peace and security and the abolition of the "scourge of war." During the four long decades of the Cold War, the practice of the Security Council was shaped, and often thwarted, by superpower deadlock and the paralysis of veto. In nine major interstate uses of force between 1956 and 1982, the Council played only a marginal role.³ But with the ebbing of the Cold War in the late 1980s, and with a revitalized Council unanimously condemning

¹ The idea of the function of international law as a "gentle civilizer of national self-interest" is from George F. Kennan, *American Diplomacy 1900-1950* (Chicago: University of Chicago Press, 1985), p. 54. For Koskenniemi, this quote reveals the *cultural* and *non-instrumental* aspects of international law as opposed to *realist* and *institutionalist* views which imagine the law as an "instrument for political purposes." Martti Koskenniemi, "The Place of Law in Collective Security," 17 *Michigan Journal of International Law* 455 (1995-1996), p. 489. Thus, "[e]ngaging in the formalism of the legal argument inevitably makes public the normative basis and objectives of one's actions and assumes the actor's communal accountability for what it is one is justifying. It is the antithesis of a culture of secrecy, hegemony, dogmatism, and unaccountability." *Ibid.*, 490. See also Martti Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870-1960* (Cambridge: Cambridge University Press, 2001).

² This notion is well captured by the legal formalism of Hans Kelsen: "By its very nature, collective security is a legal principle, while the balance of power is a principle of political convenience." Hans Kelsen, *Collective Security Under International Law* (New Jersey: The Law Book Exchange, 1954), p. 42.

³ For example, Mark A. Weisburd identifies nine conflicts in his analysis: (1) the attack on Egypt by France, the United Kingdom, and Israel in 1956 (the Suez Crisis); (2) Indonesia's campaign against the Netherlands' territorial possession of New Guinea in the period 1960-1962 (the West Irian campaign); (3) India's conquest of the Portuguese colony of Goa in 1961; (4) Somalia's invasion of Ethiopia in 1975; (5) Tanzania's conquest of Uganda in 1978; (6) Vietnam's invasion of Democratic Kampuchea in 1978; (7) the

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Iraq's invasion of Kuwait in August 1990, the possibility of collective security arose anew.

The 1990s thus witnessed major shifts in multilateral efforts to maintain peace and security. Seemingly unnoticed, the permanent five began working together on major issues. The Security Council approved enforcement actions on a non-originalist interpretation of "threats to peace," now read to include humanitarian considerations in principally internal conflicts. Following a modest record of authorizing force and employing sanctions, the Council greatly expanded its use of Chapter VII enforcement measures.⁴ And over the grave of the moribund Trusteeship Council, the UN resurrected a series of modern trusteeships in the form of transitional administrations.⁵ Bolstered by announcements of the End of History, confidence in the emergence of a "new world order" reached euphoric levels.⁶

Even during this period, however, there were warnings about the dark side of the end of Cold War "stability" and the volatile effects of economic and technological globalization. While security analysts warned of a chaotic world of rogue states and terrorists intent on acquiring weapons of mass destruction, political economists warned of a central paradox: economic globalization does not strengthen the current regime of global *laissez-faire*, but may in fact work to undermine it.⁷ These warnings coalesced with a shattering reality when in September 2001 a non-state

Soviet Union's campaign in Afghanistan from 1979 through 1989; (8) Iraq's invasion of Iran in 1980; and (9) Argentina's attack on the United Kingdom's Falkland Islands colony in 1982. See Mark A. Weisburd, "The War in Iraq and the Dilemma of Controlling the International Use of Force," 39 *Texas International Law Journal* 521 (2004), p. 524.

⁴ Before 1990, the collective use of force was authorized only twice: first in Korea in 1950 (with the USSR absent from the Council), and second in the Congo in the 1960s. Comprehensive sanctions were also only implemented twice: first against Rhodesia in 1966, and second against South Africa in 1977.

⁵ See generally Simon Chesterman, *You, the People: The United Nations, Transitional Administration, and State-Building* (Oxford: Oxford University Press, 2005). Chesterman analyzes the following post-1990 UN transitional administrations: (1) Interim Administration Mission in Kosovo (UNMIK), June 1999 to present; Transitional Administration in East Timor (UNTAET), October 1999 to May 2002; Transition Assistance Group (UNTAG) in Namibia, April 1989 to March 1990; Transitional Authority in Cambodia (UNTAC), March 1992 to September 1993; and Transitional Administration for Eastern Slavonia, Baranja and Western Sirmium (UNTAES), January 1996 to January 1998.

⁶ Francis Fukuyama, *The End of History and the Last Man* (London: Hamish Hamilton, 1992).

⁷ See, e.g., John Gray, *False Dawn: The Delusions of Global Capitalism* (New York: New Press, 1998), chs. 1–4 (arguing that global capitalism, as presently constituted, is inherently unstable; that free markets are the creatures of strong states; and that a global free market is not a necessary historical development but a political project that engenders

group operating from within a failed state appeared to turn the economic and military power of globalization against itself. In an instant, the world's single-remaining superpower and the UN collective security regime alike were presented with a moment of simultaneous opportunity and peril.

Perhaps as never before in history, a worldwide consensus emerged following the September 11 attacks for collective action against a perceived global threat. Within a day, the Security Council had adopted a resolution unequivocally condemning the attacks, declaring them a "threat to international peace and security" and recognizing the "inherent right of individual or collective self defense in accordance with the Charter."⁸ By the end of the month, the Security Council had unanimously adopted a Chapter VII resolution directed towards combating terrorists and any states which "support, harbor, provide safe haven to, finance, supply weapons to, help recruit, or aid terrorists," and requiring all member states to cooperate in a wide range of areas – from suppressing and financing of terrorism to providing early warning, cooperating in criminal investigations, and exchanging information on possible terrorist acts.⁹ Resolution 1373 quickly established a comprehensive legal framework, backed by Chapter VII enforcement power, for states to address the threat of international terrorism through mutual cooperation and coordination of their criminal justice systems.

At the same time, by October the United States had initiated actions against Al-Qaeda terrorist training camps and military installations of the Taliban regime in Afghanistan asserting its "inherent right of individual and collective self-defense." Thus was born the "Bush doctrine" – the

new varieties of nationalism and fundamentalism even as it creates new elites); Amy Chua, *World on Fire: How Exporting Free Market Democracy Breeds Ethnic Hatred and Global Instability* (New York: Random House, 2003), pp. 123–175 (discussing the political consequences of globalization and arguing that the global spread of markets and democracy is a principal, aggravating cause of group hatred and ethnic violence throughout the non-Western world); and Joseph Stiglitz, *Globalization and its Discontents* (New York: W. W. Norton, 2003), pp. 23–52 (arguing that the problem lies not with globalization *per se* but with how it has been managed through international economic institutions which help set the "rules of the game" and suggesting that not only have the WTO, World Bank and IMF served the interests of the more advanced industrialized countries, they have approached globalization from particular narrow mind-sets shaped by a particular vision of the economy and society).

⁸ UN S.C. Res. 1368 of September 12, 2001.

⁹ UN S.C. Res. 1373 of September 28, 2001. The resolution also provided for the establishment of a new "terrorism committee" of the Security Council, consisting of all members of the Council, to which all member states were required to report within ninety days on the steps they had taken to implement the resolution.

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asserted right of a state to use military force in "self defense" against any state which aids, harbors or supports international terrorists or terrorist organizations.¹⁰ Such an assertion of vigorous unilateralism posed two dangers, however, to the Charter-based collective security system. First, it suggested that when a state was the victim of a terrorist attack it was entitled to use *military* force in response (whether in the territory of other states or on its own territory) thus encouraging resort to violence rather than legal or other diplomatic measures short of the use of force. Second, it posited responses to international terrorism in an undefined new category beyond the traditional laws of war and peace paradigms thereby shifting the normative legal framework governing the conduct of states' anti-terrorist activities, a matter with potentially far-reaching consequences for international law.¹¹

It is now a matter of history that in March 2003 the US and its allies would invade Iraq, a member state of the United Nations, in order to disarm it and change the regime of Saddam Hussein. In the months leading up to the invasion, a bitter struggle ensued in the Security Council as a "coalition of the willing" sought to justify the use of force on the basis of preexisting resolutions,¹² and a majority of member states – including a clear majority in the Council itself – insisted that, in the absence of express Security Council authorization,¹³ the case for war had not been established. As reflected in the 2002 National Security Strategy of the United States,¹⁴ the terrain of struggle was seen to have

¹⁰ For discussion on how this proposition conflicts with a number of settled principles of international law, see Peter Danchin, "Human Rights: *Jus Ad Bellum*: The New 'Bush Doctrine'" in *A Global Agenda: Issues Before the General Assembly of the United Nations* (US/UNA: Rowman & Littlefield Publishers) pp. 1, 4–8.

¹¹ The idea of a "universal humanitarian war" was prefigured in Schmitt's argument that such a war "becomes a war of annihilation (*Vernichtungskrieg*), a global civil war where the enemy does not have the dignity of a State and resistance will appear as 'the illegal and immoral resistance of a few delinquents, troublemakers, pirates and gangsters'." Koskeniemi, *Gentle Civilizer*, p. 434 (citing Carl Schmitt, "Die Wendung zum totalen Staat" in *Positionen und Begriffe in Kampf mit Weimar-Genf-Versailles, 1923–1939* (Berlin: Duncker & Humboldt, 1988 [1940]), p. 43 n. 45).

¹² See, in particular, UN S.C. Res. 678 of November 29, 1990, 687 of April 3, 1991, and 1441 of November 8, 2002.

¹³ UN S.C. Res. 1441 of November 8, 2002 declares that breaches must be reported to the Council for assessment, and that it "decides to remain seized of the matter and to take such further steps as may be required for the implementation of the present resolution and to secure peace and security in the area."

¹⁴ President George W. Bush, "Prevent Our Enemies From Threatening US, Our Allies, and Our Friends with Weapons of Mass Destruction," in *National Security Strategy of the United States of America* (September 2002), pp. 13, 15.

intensified and shifted from the question of "preemptive" war in Afghanistan to the question of "preventive" war in Iraq. In this respect, the war was a challenge not merely to multilateral institutions, but to the very idea of international order and collective security: "The war split the Security Council, divided the North Atlantic Treaty Organization (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."¹⁵

These developments shook the United Nations and leading capitals around the world. Now visible to all was the tension between two competing visions of world order. On the one hand stood the old ideal of multilateral cooperation and collective security – a form of international politics defined by legal liberalism and premised on the *Grundnorm* of sovereign equality. On the other hand stood the world's undisputed military and economic superpower projecting an imperial political morality based on a good/evil dichotomy which divided the world into a Great Power patrolling a civilized core of democratic nations against a periphery of rogue states and non-state outlaws.¹⁶

Unsurprisingly, the stark incompatibility between these two visions prompted calls for reform within the United Nations. These calls encompassed two dimensions of the problem: one normative, the other institutional. First was the structure of the Charter itself, and the body of international law on which it depends, still the correct framework by which to view and assess new and emerging threats in a post-September 11 world? Second, how could the 1945 UN peace and security architecture be made to work more effectively to respond to new threats and lessen the impetus for powerful states to "go it alone"?

As the post-invasion chaos of the Iraq war unfolded, these questions prompted Kofi Annan to convene in late 2003 a "High-Level Panel of eminent persons" charged with assessing current threats to peace and security, evaluating existing policies and institutions, and making recommendations for strengthening the UN "so it can provide collective security for all in the twenty-first century."¹⁷ Having already set in

¹⁵ Simon Chesterman, "Reforming the United Nations: Legitimacy, Effectiveness and Power After Iraq," 10 *Singapore Yearbook of International Law* 1 (2006), p. 2.

¹⁶ The vernacular of Great Powers and rogue states is from Gerry Simpson, *Great Powers and Outlaw States: Unequal Sovereigns in the International Legal Order* (Cambridge: Cambridge University Press, 2004).

¹⁷ Note by UN Secretary-General, A/59/565, December 2, 2004, para. 3. For the report of the Panel, see High-Level Panel on Threats, Challenges, and Change, *A More Secure*

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motion an ambitious development agenda,¹⁸ this would be followed in March 2005 with the Secretary-General's own *In Larger Freedom* report which joined human rights to the preexisting security and development agendas and, in sweeping and ambitious terms, attempted to establish the agenda for the upcoming sixtieth General Assembly and planned Summit of Heads of State in September 2005.¹⁹ The Summit, in turn, would generate a report which selectively adopted certain proposals of the High-Level Panel and Secretary-General.²⁰

This most recent of efforts to vanquish war and power politics through international law and organization is the subject of the chapters of this volume. The overarching questions the authors address are whether there is a compelling argument for a new collective security agenda, whether the eminent ones dreamed the right dreams and saw the right nightmares, and whether normatively and institutionally we are in fact moving towards a new collective security paradigm.

Structure of the volume

The book is organized in four parts, each part considering a contested element in the UN reform process. Part I addresses the impetus for and likely future success of institutional reform efforts and considers the place of international law in competing conceptions of collective security. Part Two interrogates the concept of a "threat" to collective security and asks how such threats are to be addressed (and who decides). This analysis includes the questions of massive and systematic violations of human rights and so-called "nonmilitary" threats in areas such as the environment, disease and technology. Part Three analyzes the collective security innovations and potential limitations of the newly created Peacebuilding Commission and Human Rights Council, and asks how inclusive participation is in these new international institutions. Given

World: Our Shared Responsibility (Report of the High-Level Panel on Threats, Challenges, and Change), December 1, 2004, UN Doc A/59/565 (hereinafter High-Level Panel).

¹⁸ See *Investing in Development: A Practical Plan to Achieve the Millennium Development Goals* (Report of the UN Millennium Project to the Secretary-General), January 17, 2005, online: Millennium Project: www.unmillenniumproject.org/reports.

¹⁹ Kofi Annan, *In Larger Freedom: Towards Security, Development and Human Rights for All*, UN Doc. A/59/2005 of March 21, 2005, online: www.un.org/largerfreedom (hereinafter *In Larger Freedom*).

²⁰ 2005 World Summit Outcome Document, General Assembly Sixtieth Session, UN Doc. A/Res/60/1 of September 16, 2005, online: <http://un.org/summit2005> (hereinafter World Summit Outcome).

current and proposed conceptions of collective security, each chapter in this part then addresses the likely responses to urgent issues such as state failure, massive human rights violations, the activities of rogue states and non-state actors as regards terrorism and proliferation, and attempts to hold perpetrators to account for violations of international law. Finally, Part IV concludes by asking how any new collective security regime will relate to and influence developments on the ground as viewed from the perspectives of humanitarian practitioners and actors.

Law and politics in United Nations reform

In September 2003, following the United States' invasion of Iraq earlier that year, Kofi Annan forcefully addressed the UN General Assembly and argued that the international community had come to a "fork in the road":

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

Annan thus suggested that we "face a decisive moment, in particular for the aspiration set out in the Charter to provide collective security for all." While pointing to deep divisions among states on the nature of threats to peace and security and the appropriateness of the use of force, he challenged member states to make the UN more effective.²¹

This is perhaps unsurprising. Major reforms in the international system have been driven historically by crisis, whether the creation of a League of Nations after the First World War or the founding of a United Nations after the Second World War.²² But what kind of moment was

²¹ Kofi Annan, "Secretary-General's Address to the General Assembly" (New York, September 23, 2003), online: www.un.org/apps/sg/sgstats.asp?nid=517.

²² Developments in international humanitarian law have often occurred at similar crisis points. The Geneva Conventions of 1949, for example, were signed in the aftermath of the Second World War. In 1977, in the wake of the Vietnam War, the two additional protocols to the Geneva Conventions were added. Also, during the US Civil War, the US War Department instituted the Lieber Code.

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this exactly? What kind of political space, consensus and will was there among states for major changes to the international security architecture? What is now evident is that, rather than being the kind of moment following a catastrophe of sufficient gravity as to open political space for normative and institutional reformation, this reform cycle has been driven primarily by concerns about the role of the world's single superpower in the organization and, conversely, by US concerns regarding how best to protect and project its strategic and political interests.

To some at least, the post-Iraq invasion period presented the third great opportunity after the creation of the League and UN itself to get the "international order right." Gareth Evans, for example, the former Australian Foreign Minister and himself an eminent one, suggested that if the reform attempts failed this time "we might just be putting the same death sentence on the United Nations as was put upon the League of Nations by the utter failure of political statesmanship in the 1930s."²³ But to others, calls for radical changes were simply unrealistic in the wake of six decades of largely frustrated reform efforts. Professor Edward Luck, for example, has suggested that the organization has survived because of its capacity to make corrections and take on new agendas as the needs and values of its member states shift. It has adopted formal reforms, however, with great reluctance.²⁴ Furthermore, the Secretary-General's call for reform represented a serious misdiagnosis of the problems facing the UN.²⁵

Still for others, especially those in the American foreign policy establishment, the solution was to be found elsewhere in new forms of "competitive multilateralism." Ruth Wedgwood thus argued that if the UN cannot reform, the US should rely more on regional organizations

²³ Gareth Evans, *A Make or Break Year for the UN: Reforming the 60 Year Old*, Lecture at Center for International Studies, Dublin City University (June 24, 2005).

²⁴ Edward C. Luck, "How Not to Reform the United Nations," *Global Governance* 11 (2005), pp. 412-13. For Luck, the process "has tested the member states' commitment to the organization and found it to be fundamentally sound, if as shallow and self-serving as ever." Noting that member states continue to entrust the UN to take on more and more peacekeeping, humanitarian, and counterterrorism missions, Mats Berdal has similarly observed that it is "clear that the [High-Level] Panel report firmly rejects the suggestion that the UN may be facing a fork in the road." See Mats Berdal, "The United Nations at 60: A New San Francisco Moment?," *Survival* 47 (Autumn 2005), pp. 7-31.

²⁵ For Luck, institutional reform will not address the underlying political difficulties confronting the UN. Expanding Security Council membership to achieve greater legitimacy, for example, would not increase and almost certainly would decrease the Council's effectiveness. Would an enlarged Council have agreed on what action to take in Iraq or other divisive issues? See Luck, "How Not to Reform the United Nations," p. 409.

that can deliver where the UN cannot or will not. As one example she advocated abandoning the search for consensus with "political thugs" at the UN Commission on Human Rights, and the provision of more US support to regional human rights organizations and groups. In this way, the stark choice between "going it alone or going to the United Nations" could be avoided.²⁶

What is clear, however, is that anxiety resulting from US ambivalence over, and indeed outright hostility toward, the UN undergirded many of the calls for change.²⁷ This is visible in the Secretary-General's *In Larger Freedom* report which targets Washington overtly by invoking Roosevelt's "Four Freedoms" and echoing FDR's call for leaders to have "the courage to fulfill [their] responsibilities in an admittedly imperfect world."²⁸ The same sentiment literally bursts out of a controversial speech delivered in mid-2006 by the UN Deputy Secretary-General, Mark Malloch Brown, warning that without US leadership the UN's ability to respond to the increasing challenges the world is facing was weakened, and vice versa.²⁹

²⁶ See Ruth Wedgwood, "Give the United Nations a Little Competition," *New York Times*, December 5, 2005. According to Wedgwood, the US should, however, continue to support the UN because it "remains the only all-inclusive political organization around" and because, as a member of the Security Council, "America enjoys prerogatives ... that would be hard to gain again." See also Ruth Wedgwood, "A Run for the Money: Spin-Offs, Rivals and UN Reform," *The National Interest* (Winter 2005/06).

²⁷ At the same time as unilaterally projecting increased military power, the US has repudiated a series of widely supported conventions and has rejected a long list of new treaties. These include the Kyoto Protocol on global warming, the ABM treaty on missile defence and the militarization of space, the Biological Weapons Convention prohibiting developing biological weapons, the Small Arms Convention, and the Land Mines Convention to name only the most prominent, while also seeking to exempt itself from, and indeed actively to undermine, the Rome Statute of the International Criminal Court.

²⁸ F. D. Roosevelt, "Annual Address to Congress: The 'Four Freedoms'" (Washington D.C., January 6, 1941), online: www.fdrlibrary.marist.edu/od4frees.html. Specifically in its sections on development and security, *In Larger Freedom* adopts Roosevelt's calls for freedom from want and from fear. It also combines Roosevelt's two other freedoms (freedom of speech and thought, and of worship) into a broader concept of freedom to live in dignity.

²⁹ Mark Malloch Brown, "Power and Super-Power: Global Leadership in the Twenty-First Century," speech delivered at the Century Foundation and Center for American Progress, June 6, 2006. As a result of constant American calls for "management reform," there is currently "a perception among many otherwise quite moderate countries that anything the US supports must have a secret agenda aimed at either subordinating multilateral processes to Washington's ends or weakening the institution, and therefore ... should be opposed without any real discussion of whether they make sense or not."

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What is perhaps more curious, however, is that while the Panel's imagined collective security consensus is justified by the emergence of new threats, its report strongly reaffirms the preexisting multilateral framework and normative structure. It is also important to note that most of the recommendations the Panel *did* make were either substantially watered down through the intergovernmental process, or did not make it at all into the 2005 Summit Outcome Document. This tripartite sequence of idealistic Panel recommendations, policy endorsement or repackaging by the Secretary-General, and political rejection at the World Summit, can be traced in a number of areas.

Both the Panel Report and *In Larger Freedom* discuss in some detail the connections between economic and social issues on the one hand, and security on the other. Under the rubric of "freedom from want," for example, the Secretary-General discusses expansively the Millennium Development Goals, the target of 0.7 percent of gross national income for developed states in official development assistance by 2015, and the need for a new round of multilateral trade negotiations. This builds on the Panel's endorsement of the MDGs and its call (at least indirectly) for a reduction in agricultural subsidies by the developed countries.³⁰ After fierce resistance by the US, the 2005 Summit Outcome document finally did endorse the MDG goals but set no new commitments toward reaching the 0.7 percent target.

The Panel also looked critically at the role of the UN in ending civil conflicts, and in particular its failure to halt ethnic cleansing and genocide. In order to prevent and minimize future conflicts, the Panel broadly endorsed the use of the International Criminal Court by the Security Council, suggested mechanisms to better govern the management of natural resources for countries emerging from or at risk of conflict, and called for better controls on small arms. The Summit Outcome document, however, makes no reference to the ICC, makes no connection between natural resource extraction and conflict, and fails to endorse the arms control recommendations of the Panel.

But perhaps the greatest disappointment of the Summit was its failure to reach agreement on disarmament and nonproliferation of weapons of mass destruction, despite the unambiguous call from both the Panel and Secretary-General for nuclear-weapons states to honor their obligations under the Non-Proliferation Treaty and to move

³⁰ High-Level Panel, para. 62.

towards disarmament.³¹ This omission was due mainly to US opposition to the linking of non-proliferation to disarmament. The Summit also failed to establish a definition of terrorism while calling plaintively for a comprehensive terrorism convention.³² On the nexus between WMD and terrorism then, the Summit Outcome document – influenced by the politics surrounding the “global war on terrorism” – focused almost entirely on the question of weapons falling into the wrong hands rather than their continued presence in and threatened use by those with the right hands.³³

In addition to these normative questions, the Panel made several institutional reform proposals which, again, met with tepid reception at the Summit. The first involved the reshaping of the Economic and Social Council’s agenda away from administration and program coordination toward an agenda built around the Millennium Declaration.³⁴ The Outcome Document, however, simply 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.”³⁵

The second involved reforms to the UN General Assembly. Here the Panel reached the conclusion that an “unwieldy and static agenda” had

³¹ Kofi Annan labeled this omission at the time a “disgrace.” See W. Hoge, “UN Adopts Modest Goals on Reforms and Poverty,” *New York Times*, September 14, 2005.

³² Approximately 109 different definitions of terrorism have been used in official documents between 1936 and 1983. See Alex Schmid, *Political Terrorism: A Research Guide to Concepts, Theories, Databases and Literature* (Elsevier Science Ltd., 1983). Two issues, in particular, have divided states. The first is the volatile issue of the distinction between “terrorists” and “freedom fighters.” The Organization of the Islamic Conference (OIC), for example, has stressed the need to distinguish terrorism from a people’s struggle for “national liberation ... and the elimination of foreign occupation and colonial hegemony as well as for regaining the right of self-determination.” See OIC, Ninth Summit Conference (Qatar, 2000), Doha Declaration. Second is the highly political issue of the distinction between “state terrorism” (or terrorism promoted or tolerated by states) and “terrorism emanating from irregular armed groups and other groups and organizations” which is directed against the state. See UN Doc. E/CN.4/Sub.2/1997/SR.33, para. 42. As Rosand notes, the “General Assembly’s inability to reach agreement on a definition of terrorism after more than three decades of discussions – with the unfortunate continuing relevance of the phrase ‘one man’s terrorist is another man’s freedom fighter’ – has limited the impact of its counterterrorism efforts.” Eric Rosand, “Global Terrorism: Multilateral Responses to an Extraordinary Threat,” *International Peace Academy* (April 2007), p. 13. See further Chapter 11 of this volume.

³³ The Panel also discussed means to combat transnational organized crime under the rubric of human and state security. While broadly endorsed at the Summit, the Panel’s recommendations did not generate any binding obligations on States.

³⁴ High-Level Panel, paras. 275–279. ³⁵ *Ibid.*, para. 155.

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led to repetitive debates and proposed introducing smaller, more focused committees to sharpen and improve resolutions brought to the Assembly. While the Secretary-General tentatively embraced these ideas, the Summit rejected them and merely reaffirmed the position of the Assembly as the chief deliberative body of the UN system.³⁶

Finally, the Panel proposed two bold institutional initiatives: a new Human Rights Council standing at the same level as the Security Council and ECOSOC to replace the discredited Commission on Human Rights; and the establishment of a new Peacebuilding Commission. The Summit Outcome document broadly endorsed the idea of a new Human Rights Council but left the details to be worked out at the sixtieth session of the General Assembly. Negotiations then began in earnest among states with the criteria for membership being the central issue and with little debate regarding what the Council would actually do once created. Similarly, the Outcome Document endorsed the Panel's vision of a Peacebuilding Commission to "marshal and sustain" the efforts of the international community in post-conflict peacebuilding over whatever period may be necessary to decrease the odds that a country will relapse into conflict.³⁷ This constituted official recognition that no existing international institutions are well organized for this task and that what is needed is a "single intergovernmental organ dedicated to peacebuilding, empowered to monitor and pay close attention to countries at risk, ensure concerted actions by donors, agencies, programmes and financial institutions, and mobilize financial resources for sustainable peace."³⁸

Each of the chapters in Part I discusses different aspects of these latest attempts at United Nations reform.³⁹ The first chapter by Peter Danchin provides an introduction to the analytical and historical aspects of the concept of collective security in international law. Taking the examples of Italy's invasion of Ethiopia in 1935 during the League of Nations and the complaint brought by Hyderabad against India at the very inception of the United Nations in 1948, the chapter traces the complex dialectics of normativity and concreteness in debates concerning collective security. Danchin observes that, mirroring the normative and institutional dilemmas underlying the two cases of Ethiopia and Hyderabad, the questions of "external threats" (or the threat or use of force between

³⁶ *Ibid.*, paras. 149–150. ³⁷ *Ibid.*, para. 224. ³⁸ *Ibid.*, para. 225.

³⁹ For a useful discussion and critique of the entire reform process, see Ramesh Thakur, *The United Nations, Peace and Security: From Collective Responsibility to Responsibility to Protect* (Cambridge: Cambridge University Press, 2006).

states) and "internal threats" (or what today is referred to as the "responsibility to protect") were the two most controversial issues in the post-2004 UN reform process. The High-Level Panel's recommendations should in this respect be seen as responses to a breakdown beginning in the early 1990s of the pragmatic compromise lying at the heart of the UN Charter. This can be seen in two directions: first, as a result of an instrumental *autonomy* argument which asserts that the sovereign right of self-defense includes the right to carry out pre-emptive strikes; and second, as a result of an instrumental *communitarian* argument which views sovereignty as an anachronistic obstacle to humanitarian objectives and thus outweighed by the need to protect fundamental human rights. In order to counter these two trends, the *non-instrumental* or *cultural* aspects of international law are indispensable for any robust account of collective security in relations between states.

In Chapter 2, Jan Klabbers argues that the responsibility to maintain or restore international peace is best vested in an institution rather than a single state in order to avoid abuses of power and to guarantee fairness in decision-making processes. According to Klabbers, when an institution fails to function as planned, the proposed cure is inevitably to change the institution's blueprint rather than to be critical of its actual functioning. Institutional reform, however, is an ambivalent process torn as it is between the idea of institutions as purposive, technical, managerial entities on the one hand (*universitas*) and as non-purposive, debating clubs (*societas*) on the other. For Klabbers, the UN is well-equipped to carry out its responsibility to maintain international peace and security and reform attempts, while ostensibly about improving the UN's functioning, are more often than not an emanation of politics – even to the point where reform processes in fact substitute for real decision-making. The chapter thus analyzes UN reform as a manifestation of the dual ambivalence of *universitas* versus *societas* on the one hand and instrumental versus political rationality on the other. Klabbers' analysis in this way seeks to discern whether UN reform has become more a symbolic event, aimed to portray an image of rationalization, instead of actually creating significant substantive change.

Chapter 3 by Lauri Mälksoo turns to the vexed issue of Security Council reform. Recalling Hans Kelsen's prophetic critique in 1950 of the Security Council, Mälksoo sets out the various criticisms of the High-Level Panel today – regarding, in particular, the Council's politicized agenda, its tendency to act according to double standards, and its hopeless inaction in the face of genocide and other grave threats to human

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security. Noting, like Danchin, the steady breakdown of the UN collective security system since the 1990s and especially since NATO's intervention into Kosovo in 1999, the chapter proceeds to evaluate the Panel's criticisms and its recommendations for institutional reform. Mälksoo concludes by arguing that the Panel focuses too heavily on issues of effectiveness while overlooking the more fundamental issues of the Council's structure (e.g. the veto power) and its lack of legitimacy, both products of the paradox lying at the core of the United Nations itself: "that in the age of democracy it is run by an oligarchy."

Defining "threats" to collective security

The most important claim in the High-Level Panel report is that the central challenge for the twenty-first century is to fashion a broader understanding of what collective security means and of "all the responsibilities, commitments, strategies and institutions that come with it if a collective security system is to be effective, efficient and equitable." Pivotal to this broader understanding is a substantively expanded notion of what constitutes a "threat." The Panel's Report proposes a definition of threats as "any event or process that leads to large-scale death or lessening of life chances and undermines states as the basic unit of the international system."⁴⁰ The Report then identifies six "clusters of threats" organized as follows: (1) economic and social threats including poverty, infectious disease and environmental degradation; (2) inter-state conflict; (3) internal conflict such as civil war, genocide and other large-scale atrocities; (4) weapons of mass destruction, including nuclear, radiological, chemical and biological weapons; (5) terrorism; and (6) transnational organized crime.⁴¹ The discussion that follows sets out briefly the Panel's vision of the scope and content of each of these clusters of threat.

1. *Economic and Social Threats.* Over fifty-four UN member states have seen average per capita income decline since 1990 with women and youth disproportionately affected by increased poverty.⁴² When accompanied by ethnic or regional inequalities, poverty and its accomplices (a booming youth population, urbanization, and unemployment) foster grievances that fuel civil violence.⁴³ The "shockingly

⁴⁰ High-Level Panel. ⁴¹ *Ibid.*

⁴² *Ibid.*, para. 44. Many donor countries still currently fall short of the 0.7 percent gross national product (GNP) target for official development assistance. *Ibid.*, para. 60.

⁴³ *Ibid.*, para. 45.

slow" and "shamefully ill-resourced" international response to HIV/AIDS has allowed the pandemic to continue and render states, especially those on the African continent, weakened by the reduced life-expectancy of their adult populations and an upsurge in orphaned children.⁴⁴ Increased food consumption by industrial countries, coupled with the loss of arable land, water scarcity, over-fishing, and deforestation, has aggravated food insecurity and led to greater competition for already scarce resources.⁴⁵ Furthermore, the environmental degradation resulting from attempts to feed a growing world population has enhanced the destructive potential of natural disasters, in some cases hastening their occurrence.⁴⁶

2. *Inter-State Conflict.* The Panel points to unresolved disputes between states in South Asia, North-East Asia and the Middle East as threats to international peace and security on two counts. First, these states are capable of using nuclear, biological and chemical weapons against each other. Second, such inter-state rivalry exacerbates civil conflicts also occurring in those regions.⁴⁷ Sanctions have failed to check inter-state conflict because of ineffective targeting and weak enforcement of sanctions by the Security Council when such sanctions ran counter to the strategic interests of powerful states.⁴⁸
3. *Internal State Conflict.* The vast majority of United Nations peace and security operations involve peacemaking, peacekeeping, and post-conflict peacebuilding in states undergoing civil war. However, interests of powerful states have disrupted sanctions enforcement and interfered with halting ethnic cleansing and genocide, which the Panel terms "the biggest failures of the United Nations in civil violence."⁴⁹

⁴⁴ *Ibid.*, paras. 48, 49. "Although international resources devoted to meeting the challenge of HIV/AIDS have increased from about \$250 million in 1996 to about \$2.8 billion in 2002, more than \$10 billion annually is needed to stem the pandemic." *Ibid.*, para. 64.

⁴⁵ *Ibid.*, para. 52.

⁴⁶ *Ibid.*, paras. 52, 53. The Panel notes that "entry into force of the Kyoto Protocol after ratification by the Russian Federation is a positive development ... yet problems remain ... Developing countries ... have been opposed to accepting any binding emission caps, which they perceive to be impediments to economic growth. Industrialized nations are likely to be more resistant to accepting costly reductions without increased developing-country participation." *Ibid.*, para. 72.

⁴⁷ *Ibid.*, para. 74. The Panel highlights the war and ongoing instability in Iraq and Palestine, noting that these conflicts "have fuelled extremism in parts of the Muslim world and the West." *Ibid.*, para. 75.

⁴⁸ *Ibid.*, para. 79.

⁴⁹ "The biggest failures of the United Nations in civil violence have been in halting ethnic cleansing and genocide. In Rwanda, Secretariat officials failed to provide the Security

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4. *Weapons of Mass Destruction.* Nuclear weapons, radiological weapons, and chemical and biological weapons each pose a different set of threats to collective security. Accidental or deliberate use of nuclear weapons by a state or non-state actor threatens international peace and security because of the weapons' power to create human casualties and economic dislocation on a catastrophic scale.⁵⁰ In addition to their potential use, the Panel identifies the erosion of the legal and normative constraints of the non-proliferation regime, i.e. the International Atomic Energy Agency (IAEA) and the Non-Proliferation of Nuclear Weapons Treaty (NPT), as threats. Were this regime to collapse, the result could be a "cascade of proliferation," with countries entering into arms races and placing at risk the lives of millions.⁵¹ While the immediate destructive effect of radiological weapons, or "dirty bombs," may be less than nuclear weapons, radiological weapons are equally capable of causing economic damage because they prompt public alarm and necessitate evacuation and decontamination of affected areas. Furthermore, radiological weapons are more likely to be used because of the ubiquity of radiological materials and crude requirements for detonating such a device.⁵² Chemical and biological weapons can inflict mass casualties in a single attack and cause deliberate outbreaks of infectious disease that could ultimately prove more lethal than nuclear detonation.⁵³
5. *Terrorism.* While global terrorism networks are identified as threats, the precise nature and definition of that threat remains unsettled.⁵⁴ The Panel describes terrorism in terms only of what it targets:

Council with early warning of extremist plans to kill thousands of Tutsis and moderate Hutus. When the genocide started, troop contributors withdrew peacekeepers, and the Security Council, bowing to United States pressure, failed to respond. In Bosnia and Herzegovina, United Nations peacekeeping and the protection of humanitarian aid became a substitute for political and military action to stop ethnic cleansing and genocide. In Kosovo, paralysis in the Security Council led the North Atlantic Treaty Organization (NATO) to bypass the United Nations. Only in one instance in the 1990s – in East Timor – did the Security Council, urged on by the Secretary-General, work together with national Governments and regional actors to apply concerted pressure swiftly to halt large-scale killing." *Ibid.*, para. 87.

⁵⁰ *Ibid.*, para. 107. ⁵¹ *Ibid.*, paras. 109-112. ⁵² *Ibid.*, para. 113.

⁵³ "Chemical agents are widespread and relatively easy to acquire and weaponize. There are almost 6,000 industrial chemical facilities worldwide, posing potential targets and opportunities for the acquisition of materials ... There are countless fermentation, medical and research facilities equipped to produce biological agents. Meanwhile, the biological toxin ricin has been discovered in several terrorist workshops. Unlike anthrax, which can be treated by antibiotics, ricin has no antidote and is lethal to humans in quantities smaller than the size of a pinhead." *Ibid.*, paras. 114, 115.

⁵⁴ The Panel Report does not provide a definition of terrorism. Instead it urges the General Assembly to form a consensus definition and rapidly complete negotiations on a comprehensive convention on terrorism. *Ibid.*, para. 163.

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Terrorism attacks the values that lie at the heart of the Charter of the United Nations: respect for human rights; the rule of law; rules of war that protect civilians; tolerance among peoples and nations; and the peaceful resolution of conflict. Terrorism flourishes in environments of despair, humiliation, poverty, political oppression, extremism and human rights abuse; it also flourishes in contexts of regional conflict and foreign occupation; and it profits from weak state capacity to maintain law and order.⁵⁵

6. *Transnational Organized Crime*. This type of criminal activity erodes human security and states' primary obligation to provide for law and order. The persistence of organized crime, entrenched corruption, and the use of violence to protect criminal activities threatens state authority by undermining state weapons control and thwarting the rule of law.⁵⁶ Furthermore, the lucrative business of drug-trafficking fuels the spread of HIV/AIDS via intravenous drug use.

For the Panel, this substantively expanded notion of threats generates three basic conclusions or "pillars" upon which the case for a new security consensus rests. First, the interconnectedness of today's threats – which recognize no national boundaries – necessitates a collective response, not only at the global and regional levels, but also at the national level. Second, "no State, no matter how powerful, can by its own efforts alone make itself invulnerable to today's threats." And third, "it cannot be assumed that every State will always be able, or willing, to meet its responsibility to protect its own peoples and not to harm its neighbors."⁵⁷

In emphasizing the interconnectedness and internal/external aspects of threats, the Panel thus sought to overcome the artificial dichotomy between Northern concerns regarding so-called "hard" threats of armed conflict and terrorism, and Southern concerns regarding so-called "soft" threats of poverty, disease and environmental degradation. As David Hannay notes, the correlation between poverty and insecurity literally "leaps at you from the charts in the Panel's report."⁵⁸ Furthermore, in

⁵⁵ *Ibid.*, para. 145.

⁵⁶ *Ibid.*, para. 169. It is estimated that criminal organizations gain \$300 to \$500 billion annually from narcotics trafficking, their single largest source of income. In some regions, the huge profits generated through drug activity even rivals some countries' GDP. The Panel points to the nexus between the financing of terrorist groups and profits from drug-trafficking, citing Afghanistan as the most visible example. *Ibid.*, para. 166.

⁵⁷ *Ibid.*, synopsis.

⁵⁸ David Hannay, "A More Secure World: Our Shared Responsibility," Report of the UN Secretary-General's High Level Panel on Threats, Challenges and Change," in Felix

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areas such as terrorism and the proliferation of WMDs, there will always be genuine and difficult policy choices for states to make between unilateral and multilateral approaches. A "crude juxtaposition" conceals more than it reveals and the most effective response in many cases is "both/and" not "either/or."⁵⁹

At the same time, the Panel was careful to observe that there is a great diversity of perceptions among states regarding the relative severity and imminence of threats thus recognizing that "differences of power, wealth and geography ... determine what we perceive as the gravest threats to our survival and well-being" and that such "differences of focus lead us to dismiss what others perceive as the gravest of all threats to their survival."⁶⁰ This recognition of different perceptions existing between often very differently situated states raises the conceptual question of a *hierarchy* of threats. To some, the reform process opened the possibility of a "grand bargain" between North and South: in order to secure greater support and cooperation for its counter-terrorism and counter-proliferation agenda, the wealthy Northern states could agree to provide countries in the South with greater development assistance and reform of agricultural subsidies. While the Panel ultimately decided not to embrace the grand bargain idea, and recognized instead the disparate ways in which different stakeholders perceive threats, both the Panel Report and *In Larger Freedom* bear "traces of this philosophy."⁶¹

In thinking about the fit between cause and cure in diagnosing threats to collective security, Maxwell Chibundu considers in Chapter 4 how to confront the complex and intertwined interests and institutions that make up the contemporary international system. The relationship between diagnosis and prescription is most important because of the real possibility that even the best-intentioned prescriptions create unintended consequences which may themselves constitute threats to the international order. Chibundu is critical, in particular, not only of the High Level Panel's expanded definition of collective security, but also its recommendations regarding the increased use of coercive but

Dodds and Tim Pippard (eds.), *Human and Environmental Security: An Agenda for Change* (London: Earthscan, 2005), p. 9.

⁵⁹ State intelligence and law-enforcement capabilities are essential for any effective response and cannot be replaced. However, multilateral organizations have wider scope and can organize cooperation on a wide-ranging basis to deal with threats that do not respect national boundaries that have "seized on globalization as an ally in the pursuit of their objectives." What is needed then is "judicious blend" between the national and the international. *Ibid.*, p. 10.

⁶⁰ *Ibid.* ⁶¹ Chesterman, "Reforming the United Nations," p. 7.

nonmilitaristic responses to threats (i.e. collective economic sanctions) which seek to preserve order through ostracism rather than inclusion.⁶² He suggests instead that coexistence rather than assimilation, and cooperation and collaboration rather than coercion, should be the operational norms of collective security. Given that the point and effect of collective security under Chapter VII of the UN Charter is to indicate instances in which state sovereignty must yield involuntarily to assertions of international power, Chibundu's analysis points towards a less all-encompassing and more concrete definition of collective security and less, rather than more, centralization in the international system.

Following Chibundu's elegant conceptual analysis, the next two chapters address two of the major "new threats" identified by the High Level Panel. In Chapter 5, George Andreopolous addresses the notion of "Responsibility to Protect" and analyzes the threat emanating from massive and systematic violations of human rights. His chapter first examines the nature of this threat in the context of a transition from the older idea of "humanitarian intervention" to the more recent notion of responsibility to protect. Second, he examines some of the similarities between "humanitarian intervention" on the one hand and the "war on terror" on the other, and explores some of the key issues addressed in these debates. Finally, Andreopolous examines the implications of the Responsibility to Protect for the viability of collective security itself.

In Chapter 6, Joachim Wolf then discusses the challenges that the High Level Panel's inclusion of nonmilitary threats to collective security may pose for the UN Security Council. The definition of a "threat to collective security" under the UN Charter has historically referred only to threats that can be responded to with force and under the direction of a "Commander in Chief" Security Council. The reform movement's addition of new substantive criteria to the definition of threat creates a number of challenges. First, the new definition is imprecise – it refers to *any* process or event that poses a challenge to the existing system and does not require the source of that threat to be an identifiable entity. Second, broadening the definition of threat to include nonmilitary situations calls into question the Security Council's authority as the sole responder to threats. The Council as it currently exists is unprepared to respond to nonmilitary threats and an expansion of its power to enable it to have the competency to respond to such nonmilitary threats may well not be in the best interests of the United Nations.

⁶² The same line of argument is pursued and further developed by J. Farrall in Chapter 9.

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Prevention and responses

The final section of the Secretary-General's directive instructed the Panel to make recommendations for strengthening the UN collective security system for the 21st century. The Panel Report thus responded to each of the six clusters of threats by suggesting various institutional and normative reforms,⁶³ as follows.

1. *Economic and Social Threats.* To address the threats of poverty, infectious disease, and environmental degradation the Panel called upon wealthier member states to fulfill their pledges to meet the Millennium Development Goals.⁶⁴ Donor countries need to provide greater debt relief and improved access to global markets by lowering agricultural subsidies at home. Furthermore, these wealthier member states should collaborate in a new global initiative to rebuild local and national public health systems throughout the developing world.⁶⁵ The Panel noted the gap between the promise of the Kyoto Protocol and its performance, placing responsibility for the gap on the shoulders of both industrial nations and developing countries that lack the political will to affect change.⁶⁶ The Panel urged all states to re-engage on the pressing problem of global warming and to discuss long-term strategies for reducing global warming beyond 2012, the expiration of the Kyoto Protocol. As previously noted, while the Panel endorsed the MDGs and indirectly called for a reduction in agricultural subsidies by the developed countries,⁶⁷ the 2005 Summit Outcome document set no new commitments to reaching the 0.7 percent target.

⁶³ For an early comprehensive discussion of these suggested reforms, see *Reforming the United Nations for Peace and Security*, Proceedings of the Workshop to Analyze the Report of the High-level Panel on Threats, Challenges, and Change, Yale Center for the Study of Globalization (New Haven: Connecticut, March 2005).

⁶⁴ High Level Panel, para. 60. During the debates leading up to the World Summit in October 2005, US Ambassador John Bolton sought to remove any reference to the Millennium Development Goals from the Outcome Document. See W. Hoge, "Clash By Diplomats at UN over Reform Bars Divisions," *New York Times*, September 10, 2005.

⁶⁵ High-Level Panel, paras. 63, 67.

⁶⁶ "The United States, which accounts for about one quarter of world emissions of greenhouse gases, refuses to ratify the Protocol. At the same time, developing countries, which now account for almost half of today's net emissions of greenhouse gases (but only one tenth of per capita emissions), have been opposed to accepting any binding emission caps, which they perceive to be impediments to economic growth." *Ibid.*, para. 72.

⁶⁷ *Ibid.*, para. 62.

2. *Interstate and Internal Conflict.* The Panel recommended a four-pronged regulatory and normative approach to preventing the use of force between and within states. First, the Panel stated that the Security Council needed to make greater use of the International Criminal Court by referring all cases of crimes against humanity and violations of the laws of war to the Court.⁶⁸ Second, further legal mechanisms are required to regulate natural resources to prevent states from going to war over them.⁶⁹ Third, the UN should work closely with regional organizations like the Organization of American States (OAS) and the African Union (AU) that have done significant work to set normative standards for conflict prevention.⁷⁰ And fourth, member states must comply with the UN's own Register of Conventional Arms by reporting on the sale and purchase of conventional weapons and existing weapons holdings, as well as defense postures, policies and doctrines.⁷¹ As noted above, the Summit Outcome document made no reference to the ICC, made no connection between natural resource extraction and conflict, and failed to endorse the arms control recommendations of the Panel.

The difficult question of the relationship between the Security Council and the International Criminal Court (ICC) is taken up by Carmen Márquez Carrasco in Chapter 11. Opening her analysis with the tension between the Council's objective of maintaining peace and the ICC's goal of obtaining justice, Carrasco explores the origin of the problem by tracing the evolution of the institutions' relationship. The chapter examines, in particular, the conflicting logics of coordination and subordination which underlie this relationship. First, Carrasco reveals how the Council's power to refer cases to the ICC and its role in ensuring state cooperation with the Court demonstrate attempts to coordinate the institutions' respective objectives. Second, she proceeds to describe how the Council's power of deferral and recent proposals regarding both institutions' roles in determining the crime of aggression tend to prioritize the Council's pursuit of peace over the objectives of the ICC. Carrasco concludes with a few preliminary assessments of these conflicting conceptions of the

⁶⁸ *Ibid.*, para. 90.

⁶⁹ E.g., the efforts to stem the illicit diamond trade contributed to ending the civil wars in Sierra Leone and Angola. *Ibid.*, para. 91.

⁷⁰ Both the OAS and the AU agree on the need to protect elected governments from coups. *Ibid.*, para. 94.

⁷¹ *Ibid.*, para. 97.

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relationship in the context of the UN collective security system. She particularly notes the uneasy coordination of these objectives in practice and the difficulties confronting the Court as its goal is subordinated to that of the Council. Carrasco does emphasize, however, the important role that member states and the General Assembly should play in supporting and controlling each institution, thereby ensuring the furtherance of both peace and justice regardless of the strained relationship between the Council and the ICC.

3. *Weapons of Mass Destruction.* Proposed responses to the threat of nuclear, radiological, chemical and biological weapons address the demand and supply of weapons production and require greater action from international organizations. The Panel recommended incorporating confidence-building measures and steps towards disarmament into negotiations to resolve regional conflicts, especially in the Middle East and South Asia, with the ultimate goal of establishing nuclear-weapon-free zones similar to those established for Latin America and the Caribbean, Africa, the South Pacific and South-East Asia.⁷² The Security Council should support the Non-Proliferation Treaty by explicitly pledging "to take collective action in response to a nuclear attack or the threat of such attack on a non-nuclear-weapon State."⁷³ International organizations such as the International Atomic Energy Agency (IAEA) and the Organization for the Prohibition of Chemical Weapons (OPCW) should also have greater powers to investigate non-compliance with international non-proliferation and safeguards standards and the Security Council needs to be prepared to act in cases of serious concern over non-compliance with those standards.⁷⁴

⁷² *Ibid.*, paras. 123, 124. The US staunchly opposed equating disarmament with non-proliferation and introduced provisions to remove language placing the terms side by side. This stance was an apparent rejection of the NPT obligations for nuclear powers to disarm themselves. See Chesterman, "Reforming the United Nations," p. 12.

⁷³ High-Level Panel, para. 122.

⁷⁴ *Ibid.*, para. 129. One of the unexpected outcomes of the 2003 Iraq war, and the failure to find any evidence of WMDs in Iraq, is support for the view that aggressive multilateral inspection regimes such as UNMOVIC can be effective in ensuring compliance with nonproliferation and disarmament obligations. See, e.g., Hans Blix, "Let Us Inspect Everywhere," *The Wall Street Journal*, May 16, 2003 (arguing that long-term monitoring is "more easily accepted – and more credible – if managed by authorities which are independent of the states which assist them, for instance, by providing intelligence" and that "[u]sed in this manner, inspection and long-term monitoring through international organizations could provide an important element in the prevention of the spread of weapons of mass destruction in the Middle East, on the Korean peninsula and elsewhere.").

⁷⁶ High-Level Panel, paras. 160, 161. ⁷⁷ *Ibid.*, para. 174.

⁷⁸ *Ibid.*, para. 172. ⁷⁹ *Ibid.*, para. 173. ⁸⁰ *Ibid.*, paras. 188, 192. ⁸¹ *Ibid.*, para. 188.
⁸² *Ibid.*, para. 190. ⁸³ World Summit Outcome, para. 79.

The legal standard for the Security Council to use of force under Chapter VII was also identified by the Panel as adequate to address the full range of threats to global security.⁸⁴ The Panel did find as lacking, however, a perception that Security Council decisions to use force are legitimate. In order to increase the Council's legitimacy in the eyes of all member states, the Panel thus advanced five criteria to guide its decision-making processes.⁸⁵ Both self-defense and collective use of force under Chapter VII are discussed by Danchin in Chapter 1.

In addition to its recommendations on ECOSOC and the UN General Assembly discussed above, the Panel made three major institutional reform proposals regarding first, the Security Council; second, a proposed new Human Rights Council; and third, a proposed new Peacebuilding Commission.

Security Council reform

While the Panel agreed that the Security Council needs to be enlarged to improve its credibility, it failed to come to a consensus as to how to reach this goal.⁸⁶ They agreed that any changes must meet certain basic criteria: (1) that member states which contribute financially, militarily and diplomatically need increased involvement in the decision-making of the Council; (2) that the Council needs broader membership, especially in relation to states from the developing world; (3) that any changes to membership cannot impair the effectiveness of the Council; and (4) that the Security Council should be made more democratic and accountable.⁸⁷

To satisfy these requirements, the Panel floated two plans, Model A and Model B.⁸⁸ Neither model, however, would alter the existing veto

⁸⁴ High-Level Panel, para. 198.

⁸⁵ *Ibid.*, para. 204. The Security Council needs to consider (i) the seriousness of the threat, (ii) the purpose of using force, (iii) whether all other alternatives have been explored and found to yield no chance of success, (iv) the proportionality of the response, and finally (v) whether the consequences of inaction outweigh the consequences of an action using force. *Ibid.*, para. 207.

⁸⁶ The Panel suggested that the effectiveness and the willingness of the Security Council to act had improved since the end of the Cold War. However, the Security Council's decisions have "not always been equitable," nor has the Security Council "acted consistently or effectively in the face of genocide or other atrocities." *Ibid.*, para. 246.

⁸⁷ *Ibid.*, para. 249.

⁸⁸ Both models distribute seats between four major regional areas: "Africa," "Asia and Pacific," "Europe," and the "Americas." Model A provides for six new permanent seats, with no veto being created, and three new two-year term non-permanent seats. Model B provides for no new permanent seats but creates a new category of eight four-year

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rights of the permanent five members or expand the veto to new members. The only way to temper the effects of the veto would be through a system of "indicative voting," which allows any member to call upon fellow members to provide a public indication of their positions on any relevant issue before the Council.⁸⁹ Unfortunately, the World Summit Outcome document did not address any of the Panel's recommendations and remained silent on the question of Security Council Reform.⁹⁰

Human Rights Council

Concerned that states had been seeking membership on the former Commission on Human Rights in order to deflect criticism from their own human rights records or simply to criticize the records of others, the Panel proposed universal membership as a means to "de-politicize" the UN's human rights work and to underscore the commitment of all member states to promote human rights.⁹¹ The only other substantive difference between the two bodies is the position of the Council relative to other UN bodies. Rather than being a subcommittee of the Economic and Social Council, the new Human Rights Council is a subsidiary organ of the General Assembly.⁹²

At the World Summit, the General Assembly endorsed the establishment of the Council but left all the details to be worked out at the sixtieth session of the General Assembly. Subsequent negotiations centered on the issue of membership. The US pushed for election of members by a two-thirds majority of the General Assembly and automatic exclusion of any state subject to coercive measures imposed by the Security Council for gross human rights violations or acts of terrorism. When these proposals were defeated, the US voted against the draft resolution. The resolution itself was finally adopted on March 15, 2006 by a vote of 170 in favor, four against.

renewable-term seats and one new two-year non-permanent (and non-renewable) seat. *Ibid.*, paras. 251, 252.

⁸⁹ The Panel hoped this voting system would create more transparency in the Security Council's voting process and also force the permanent members to be held accountable for the threat or use of the veto function. *Ibid.*, para. 257.

⁹⁰ For analysis of the various Security Council reform proposals, see Nico Schrijver, "Reforming the UN Security Council in Pursuance of Collective Security," *Journal of Conflict and Security Law* (2007), pp. 1-11.

⁹¹ *Ibid.*, paras. 283, 285. ⁹² *Ibid.*, paras. 285, 291.

Peacebuilding Commission

The Panel's call for a new Peacebuilding Commission arose from recognition of a glaring institutional gap: "there is no place in the United Nations system explicitly designed to avoid state collapse and the slide to war or to assist countries in their transition from war to peace."⁹³ The proposed Peacebuilding Commission's four core functions accordingly were (1) to identify countries which are under stress and risk sliding towards state collapse; (2) to organize, in partnership with national governments, proactive assistance in preventing that process from developing further; (3) to assist in the planning for transitions between conflict and post-conflict peacebuilding; and (4) in particular, to marshal and sustain the efforts of the international community in post-conflict peacebuilding over whatever period may be necessary.⁹⁴

Perhaps anticipating pressure from governments who themselves were wary of coming under scrutiny, the Secretary-General's version of the Peacebuilding Commission removed any suggestion of an early warning function. While this had the effect of eviscerating the first two of the Panel's four functions, Kofi Annan proceeded to set out a range of functions which the Commission would be tasked to perform including planning for sustained recovery in the immediate aftermath of war, helping to ensure predictable financing for early recovery activities, improving the coordination of the many UN post-conflict activities, and providing a forum in the UN for all stakeholders to share information.⁹⁵ The Summit Outcome document generally endorsed the Secretary-General's more limited view of the Peacebuilding Commission as restricted to mobilizing resources for post-conflict reconstruction.⁹⁶ As Chesterman observes, if the Panel had seen the Commission as assisting in the "planning" for transition from conflict to post-conflict, the Secretary-General limited it to "improving United Nations planning for sustained recovery." By the time of the Summit, the Commission was reduced to "advis[ing] on and propos[ing] integrated strategies."⁹⁷

In Chapters 7 and 8, Dirk Salomons and Ejeviome Eloho Otobo address respectively many of the key normative and institutional aspects of the new Peacebuilding Commission architecture. While Otobo is optimistic about the Commission's likelihood for success, Salomons argues that the Commission is a disappointing conclusion to a long

⁹³ *Ibid.*, para. 261. ⁹⁴ *Ibid.*, para. 264.

⁹⁵ *In Larger Freedom*, para. 115. ⁹⁶ See World Summit Outcome, para. 98.

⁹⁷ Chesterman, "Reforming the United Nations," p. 22.

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process which, at certain times, had considerable promise. In his chapter Salomons describes the historical trajectory which led ultimately to the Peacebuilding Commission, specifically the way in which the UN's development arm evolved from a post-colonial extension of the "imperial model" into an organizational network which has a unique array of skills and insights to support countries in transition. In so doing, he points out some of the intellectual landmarks which shaped the process and discusses various precursors of the newly established Commission.

For his part, Otobo provides a helpful description of the design and functions assigned to each of the three components of the new Commission (the Commission itself, the Support Office, and the Fund). This is followed by a brief discussion of the selection process and characteristics of the Commission's recent efforts in Burundi and Sierra Leone, including an examination of the nature and scope of the Commission's engagement in those two countries. Otobo thus presents his analysis of the challenges facing the peacebuilding structure, highlights its present and potential added value, and concludes with an explanation of how the new structure may responds to various tests of relevance.

Responsibility to protect

As noted above, one of the key normative ideas contained in the Panel's recommended reforms was the notion that states, as equal members of the international community, have a responsibility to protect. This was said to be an emerging norm "exercisable by the Security Council authorizing military intervention as a last resort, in the event of genocide and other large-scale killing, ethnic cleansing or serious violations of international humanitarian law which sovereign Governments have proved powerless or unwilling to prevent."⁹⁸ The Panel rejected the idea that global security is best preserved by either a balance of power or by any single, "benignly motivated," superpower.⁹⁹ Referring to "the wider international community," the Panel called on all states, as sovereign equals, to take responsibility and intervene when people are suffering "from avoidable catastrophe."¹⁰⁰ The Panel thus posited a transition

⁹⁸ High-Level Panel, para. 203. ⁹⁹ *Ibid.*, para. 187.

¹⁰⁰ *Ibid.*, para. 201. Avoidable catastrophes include humanitarian disasters in Somalia, Bosnia and Herzegovina, Rwanda, Kosovo, and Darfur, Sudan.

away from the idea that sovereign equality could be used to justify the immunity of state governments.

For some, one of the few "successes" of the World Summit was its endorsement of the notion of a responsibility to protect, although again in diluted form as compared to its original articulation by the Panel. In his report, Kofi Annan limited the threshold for intervention to those situations where a government is unwilling or unable to prevent "genocide, ethnic cleansing and crimes against humanity,"¹⁰¹ thus omitting "large-scale killing" and serious violations of international humanitarian law from his proposals. While the World Summit Outcome Document restored "war crimes" to the list of actions warranting international concern, it limited those situations to times where national authorities are "manifestly failing to protect the population."¹⁰² Despite a further raising of the intervention threshold, the Secretary-General described this aspect of the Outcome Document as a "revolution in international affairs."¹⁰³ For others, however, especially states in the global south, endorsement of the responsibility to protect doctrine (while rejecting all proposals regarding development aid and assistance) opened the door to a new and but equally unjustified form of neocolonialism and imperialism.¹⁰⁴

It should be noted that the leaders at the World Summit also decided formally to amend the Charter to reflect the new normative approach to global security by deleting references to "enemy states" in the Charter.¹⁰⁵

UN Sanctions reform

Finally in Chapter 9, Jeremy Farrall traces the evolution of recent attempts at UN sanctions reform starting with the High Level Panel

¹⁰¹ *In Larger Freedom*, Annex, para. 7(b). ¹⁰² World Summit Outcome, paras. 138–139.

¹⁰³ Kofi Annan, Speech at the Conclusion of the High-level Plenary Meeting of the General Assembly, UN Doc. A/60/PV.9 of September 17, 2005.

¹⁰⁴ See, e.g., Thakur, *The United Nations, Peace and Security*, p. 360 (noting that the two major sets of controversies dividing industrial from developing countries in the context of UN policy have been the "relative priority to be accorded to development and security," and the "circumstances in which sovereignty can be suspended in order to honor the collective responsibility to protect").

¹⁰⁵ "Taking into account General Assembly resolution 50/52 of 11 December 1995 and recalling the related discussions conducted in the General Assembly, bearing in mind the profound cause for the founding of the United Nations and looking to our common future, we resolve to delete references to 'enemy States' in Article 53, 77 and 107 of the Charter." See World Summit Outcome, para. 177.

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report, moving through the Secretary-General's response *In Larger Freedom*, and ending with the results of the General Assembly's deliberations in the World Summit Outcome document. Farrall begins by surveying post-Cold War developments in UN Security Council sanctions practice and identifies some of the major shortcomings of collective sanctions from both human-rights and rule-of-law perspectives. The chapter then traces the progression of sanctions-related observations in the above reports, considers the likely long-term impact of this progression on sanctions practice, and argues that the battle for sanctions reform is far from over. Farrall concludes by contending that efforts to promote further Security Council sanctions policy reform *via* external regulation, whether by normative or institutional innovation, are unlikely to succeed in the near future and suggests that meaningful sanctions regulation must come from within the Council itself.

Perspectives on the Ground

Each of the final three chapters in the collection ask how any new collective security regime may influence or impact developments on the ground, especially as viewed from practitioner or humanitarian perspectives. In Chapter 12, Dennis Dijkzeul analyzes the UN Mission in the Democratic Republic of the Congo (MONUC) as a concrete example of collective security in action. The chapter thus examines the closely related difficulties of creating a collective security system and improving security in the context of a chronic conflict. Within the DRC, Dijkzeul focuses especially on the Sud Kivu province, where the conflict changed significantly after a haphazard peace process, the entrance of armed peacekeeping by the UN Mission in 2005, and democratic elections in 2006. With the success of MONUC's actions contested by both the local Congolese and NGOs present in the war zones, it is within this ambiguous context that Dijkzeul offers concrete examples of the difficulties of collective intervention. In asking whether and how the recent UN reform process will change MONUC's functioning, he concludes by offering a grounded critique, using empirical examples, of international decision- and policy-making concerning collective security.

In Chapter 13, Elizabeth Salmón discusses whether the replacement of the Human Rights Commission with the Human Rights Council may lead to the better protection of human rights. She argues that the recent UN reform process has pursued a comprehensive human rights-based approach to the concept of collective security and that

non-governmental organizations (NGOs) will be central to the successful functioning of the new Human Rights Council. This is because NGOs can serve as a supranational and international civil society with greater flexibility than states. Salmón is optimistic that the close involvement of NGOs in the new Human Rights Council will help to restore the UN's credibility and effectiveness in the area of human rights protection and enforcement.

In the concluding chapter, J. Paul Martin and Benedicto Q. Sánchez explore collective security and UN reform from the perspective of "villages," the authors' metaphor for poor communities with little influence over the external forces and powers that shape their lives. Martin and Sánchez together examine the major security threats to such communities and explain the roles of institutions, such as international and local NGOs, foreign and national governments, and the local communities themselves, in minimizing these threats. The authors argue that the collective security paradigm presents a more inclusive view of development and the involvement of these various institutions than alternative models based on national security or focused on economic and political development. They particularly consider the UN's unique position to develop this paradigm to the advantage of local communities. As a first step to implementing their vision for the collective security model at the village level, the authors propose a collective security index which identifies threats to local communities and evaluates local capabilities while promoting the participation of villagers in their own development. In conclusion, Martin and Sánchez recommend that while implementing its reforms, the UN should use its powers to enhance institutions' abilities to combat these threats because threats to villages are relevant to collective security everywhere.