

Fall 2005

Introduction and Postscript: Partial Progress on UN Reform

Douglass Cassel

Follow this and additional works at: <http://scholarlycommons.law.northwestern.edu/njihr>

Recommended Citation

Douglass Cassel, *Introduction and Postscript: Partial Progress on UN Reform*, 4 Nw. J. INT'L HUM. RTS. 1 (2005).
<http://scholarlycommons.law.northwestern.edu/njihr/vol4/iss1/1>

This Article is brought to you for free and open access by Northwestern University School of Law Scholarly Commons. It has been accepted for inclusion in Northwestern Journal of International Human Rights by an authorized administrator of Northwestern University School of Law Scholarly Commons.

Introduction and Postscript: Partial Progress on UN Reform

Douglass Cassel*

¶1 The conference on *Reforming the United Nations: The use of force to safeguard international security and human rights*, co-sponsored by Northwestern University School of Law and the Katholieke Universiteit Leuven Faculty of Law as their Fourth Annual Transatlantic Dialogue, was held in January 2005.

¶2 Its timing was propitious. It was held one month after publication of the report of the prestigious and geographically diverse High-Level Panel on Threats, Challenges, and Change, appointed by UN Secretary-General Kofi Annan.¹ Among many other proposals to reform the UN, the High-Level Panel recommended expansion of the Security Council, new guidelines for use of force and for collective intervention in human rights crises, a new consensus against terrorism, and replacement of the discredited UN Human Rights Commission by a new Human Rights Council.

¶3 There was hope that 2005 might prove to be the year of UN reform; the Secretary-General spoke of an “historic opportunity.”²

¶4 As of this writing in early November 2005, the year to date reminds us that reforming the UN is like kicking sand uphill: some grains may indeed go up the slope, but it is not easy to predict which ones, or where and when they will land.

¶5 The frustration of reforming the UN is a reflection of the organization’s principal virtue: its universality. With 192 UN member states, equal in pride if not in power, achieving broad agreement is no mean task. But once achieved, the weight of the “international community” can be said to support a given proposition.

¶6 If the ten months since the conference reveal the elusiveness of comprehensive reform, they also show the possibilities for gradual, piecemeal improvement. The recommendations of the High-Level Panel were largely adopted by the Secretary-General in his report of March 2005.³ Nonetheless several key Panel recommendations failed to

* Douglass Cassel is the Lilly Endowment Professor of Law at Notre Dame Law School. Professor Cassel is an attorney, journalist and scholar specializing in international human rights, international humanitarian and international criminal law, including terrorism. He is member and former President of the Board of Directors of the Justice Studies Center of the Americas, to which he was elected by the Organization of American States, and President of the Due Process of Law Foundation, which promotes justice reform in the hemisphere. He has served as consultant on human rights to the United Nations, the Organization of American States, the United States Department of State and the Ford Foundation. His commentaries on human rights are published in the Chicago Tribune and Chicago Daily Law Bulletin and broadcast on Chicago Public Radio.

¹ High-Level Panel on Threats, Challenges, and Change, *A More Secure World: Our Shared Responsibility*, U.N. Doc. A/59/565 (Dec. 2, 2004) [hereinafter *High-Level Panel Report*].

² The Secretary-General, *In Larger Freedom: Towards Development, Security and Human Rights for All: Report of the Secretary-General*, 3, U.N. Doc. A/59/2005, (Mar. 21, 2005) [hereinafter *In Larger Freedom*].

³ *Id.*

win full support at the September 2005 World Summit of heads of state and government.⁴ Even so, most of the Panel's main recommendations are still in play, and may yet be adopted, at least in part.

¶7 Much of the Summit Outcome document addresses development issues, which were not the subject of our conference. The following is a summary of results to date on five core issues involving security and human rights.

I. SECURITY COUNCIL EXPANSION

¶8 The recommendations by the High-Level Panel⁵ and by the Secretary-General to expand the Security Council to include new permanent and rotating members ran aground on rivalries among current and aspiring members of the Council. Japan's bid to become a permanent member was backed by the US but blocked by China. Germany's bid was blocked by the Bush Administration, still peeved by Chancellor Gerhard Schroeder's refusal to support the American war in Iraq. India's bid was complicated by Pakistani opposition, Brazil's by Mexican rivalry, and so on.⁶

¶9 The best the summit leaders could achieve was an endorsement of early reform to make the Council "more broadly representative," a commitment to continue their efforts to bring it about, and a request to the General Assembly to review progress by the end of 2005.⁷

¶10 Good luck. As the Secretary-General remarked at an academic conference in October 2005, "I hope we will have something to review."⁸

II. USE OF FORCE AGAINST NON-IMMINENT THREATS

¶11 As discussed at our conference, the High-Level Panel came within a hair of recommending that force may never be used against non-imminent threats, except by authorization of the Security Council.⁹ The summit document mainly ducks the issue. While agreeing with the Panel that no amendment of UN Charter provisions on use of force is needed, the summit document simply reaffirms those provisions, without attempting to explain what they mean in this context.¹⁰ Clarification of this issue fell afoul of the US refusal to accept any express constraint on its military intervention in cases like Iraq, where the alleged threat to the US did not appear to be imminent.

⁴ General Assembly, *2005 World Summit Outcome: Draft Resolution Referred to the High-Level Plenary Meeting of the General Assembly*, U.N. Doc. A/60/L.1 (Sept. 20 2005) [hereinafter *Summit Outcome*].

⁵ *High-Level Panel Report*, *supra* note 1, ¶¶ 244-60.

⁶ For a summary of the opposing political alignments, see Ryan Gawn, *A Year of Bold Decision? What UN Reform Would Have Looked Like*, 21 PEACE MAG. (Oct. 1, 2005).

⁷ *Summit Outcome*, *supra* note 4, ¶ 153.

⁸ Secretary-General Kofi Annan, Keynote Address Before Conference on Reforming the United Nations at Columbia University (Oct. 17, 2005), in *UN: Secretary-General describes steps under way on proposals for reform of United Nations: Areas of Progress Noted; Keynote Speech to New York Conference Regrets Failures, So Far, on Mass Destruction Weapons, Security Council Change*, M2 PRESSWIRE (Oct. 18, 2005).

⁹ *High-Level Panel Report*, *supra* note 1, ¶¶ 183-98 and 204-09, especially ¶ 190.

¹⁰ *Summit Outcome*, *supra* note 4, ¶¶ 77-80.

III. HUMANITARIAN INTERVENTION

- ¶12 Here the High-Level Panel scored an important conceptual advance. The summit document adopts its concept of an international responsibility, exercisable by the Security Council on a case by case basis, “to help protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity.”¹¹ Although the summit document does not embrace the Panel’s prudential criteria for when force should be used to intervene against atrocities,¹² it does specify that collective force can be used “should peaceful means be inadequate and national authorities are manifestly failing to protect their populations”¹³
- ¶13 This removes any remaining doubt that the Security Council’s authority under Chapter VII of the UN Charter to authorize use of force against threats to international peace and security,¹⁴ empowers the Council to authorize force to stop gross and widespread violations of human rights. But it does not obligate the Council to do so. Even as the summit document was issued, the Council, constrained by Chinese, Russian and African resistance, was still failing to authorize decisive use of force to halt the carnage in Darfur. Unfortunately, the summit document does not adopt the High-Level Panel’s recommendation that veto powers pledge to refrain from vetoing use of force in such cases.¹⁵
- ¶14 However, the principle of the collective responsibility to protect may be further elaborated by the General Assembly, which is asked by the summit document to continue consideration of the topic.¹⁶

IV. TERRORISM

- ¶15 Here again the High-Level Panel successfully consolidated an emerging consensus within the UN. The summit document follows its recommendation in “condemn[ing] terrorism in all its forms and manifestations, committed by whomever, wherever and for whatever purposes”¹⁷
- ¶16 Although the summit document does not adopt the Panel’s proposed definition of terrorism,¹⁸ it does “stress the need to make every effort to . . . conclude a comprehensive convention on international terrorism” – which would define terrorism – during the 2005 session of the General Assembly.¹⁹

V. HUMAN RIGHTS COUNCIL

- ¶17 Both the Secretary-General’s March 2005 report and the September 2005 summit document agree with the High-Level Panel’s recommendation to abolish the UN’s

¹¹ *Id.* ¶ 139; see *High-Level Panel Report*, *supra* note 1, ¶¶ 199-203.

¹² *High-Level Panel Report*, *supra* note 1, ¶¶ 204-09, especially ¶ 207.

¹³ *Summit Outcome*, *supra* note 4, at ¶ 139.

¹⁴ UN Charter art. 42.

¹⁵ *High-Level Panel Report*, *supra* note 1, ¶ 256.

¹⁶ *Summit Outcome*, *supra* note 4, ¶ 139.

¹⁷ *Id.* ¶ 81; see *High-Level Panel Report*, *supra* note 1, ¶¶ 157-64.

¹⁸ *High-Level Panel Report*, *supra* note 1, ¶ 164.

¹⁹ *Summit Outcome*, *supra* note 4, ¶ 83.

discredited Commission on Human Rights and to replace it with a Human Rights Council.²⁰ But they radically disagree with the Panel on how to do so. Moreover, as of this writing it remains unclear whether the new Council will meaningfully differ from the old Commission.

¶18 Recognizing that the Commission has become populated by some of the world's leading human rights abusers, who use it to protect themselves from scrutiny, the High-Level Panel proposed to solve the problem by abolishing the Commission and admitting all UN member states into a new Human Rights Council.

¶19 The Secretary-General took an opposite approach to the new Council. He suggested that it be smaller, and limited to states elected by a two-thirds vote of the General Assembly, which he hoped would screen out the worst human rights abusers.²¹

¶20 Resistance to an effective Human Rights Council was predictably fierce at the summit. The upshot was an agreement to create a Council, but no agreement on its composition or on how to make it more effective than the Commission.²² The summit document requests the President of the General Assembly to open negotiations, to be completed during the 2005 Assembly session, "with the aim of establishing the mandate, modalities, functions, size, composition, membership, working methods and procedures of the Council."²³

¶21 As of this writing, it does not appear that agreement has been reached on any of these issues.²⁴

¶22 On the other hand, whatever happens with the Council, the pressure to improve UN human rights performance may have paid off; the summit document calls for a doubling of the regular budget of the High Commissioner for Human Rights within five years.²⁵

* * *

¶23 Although the foregoing summarizes the state of play as of early November 2005 on the main issues discussed at our conference, it does not reflect the broader scope of UN reforms agreed at the World Summit. Extensive reforms were agreed to in regard to economic and social development and UN management.²⁶ Helpful agreements were also reached on certain aspects of security and human rights not covered in our conference, such as adoption of the High-Level Panel's recommendation to establish a UN Peacebuilding Commission for post-conflict situations,²⁷ and recognition of the Guiding Principles on Internal Displacement "as an important international framework for the protection of internally displaced persons"²⁸

¶24 Whatever may happen in the further elaboration and implementation of the summit's package of reforms involving development, security, human rights and UN

²⁰ *High-Level Panel Report*, *supra* note 1, ¶¶ 282-91.

²¹ *In Larger Freedom*, *supra* note 2, ¶¶ 181-83.

²² *Summit Outcome*, *supra* note 4, ¶¶ 157-60.

²³ *Id.* ¶ 160.

²⁴ As of October 18, 2005, the Secretary-General stated that the General Assembly "has just begun consultations on it." Secretary-General Kofi Annan, *supra* note 8.

²⁵ *Summit Outcome*, *supra* note 4, ¶ 124.

²⁶ *Id.* ¶¶ 17-68.

²⁷ *Id.* ¶¶ 97-105; see *High-Level Panel Report*, *supra* note 1, ¶¶ 261-69.

²⁸ *Summit Outcome*, *supra* note 4, ¶ 132.

management reform, the Bush Administration now seems friendlier to UN reform than might have been expected. Whether this reflects its having been chastened by the negative consequences of its initial marginalization of the UN in Iraq, or is perhaps due to a more multilateralist approach by Secretary of State Condoleezza Rice, or to some other factor, the consequence is a startling new tone emanating from the US Ambassador to the UN, John Bolton.

¶25 In a statement before the Senate Foreign Relations Committee in October 2005, Bolton sounded almost like a UN booster.²⁹ Noting a “good start” on management reform at the World Summit, he allowed, “Many UN agencies are, in fact, well run and do work which serves the international community and member states well.” He was “pleased” by the Summit Outcome language on the Human Rights Council, the Peacebuilding Commission, and the UN Democracy Fund. He saw “important progress” in its provisions on development and its endorsement of the international responsibility to protect against atrocities.

¶26 And representing the executive branch, Bolton opposed as too strong a House bill on UN reform that he might once have denounced as too weak. Passed by the House in June 2005, the Henry J. Hyde United Nations Reform Act of 2005 would withhold half of US dues unless the UN meets more than 40 demands for reform.³⁰ Speaking before the Senate Committee in October, Bolton was compelled to state, “With greatest respect, we oppose mandatory withholding, but look forward to working with Congress on legislation that would give the Secretary leverage in her efforts to negotiate UN reform.”³¹

¶27 So who knows: If even John Bolton can be reformed, there is hope for UN reform, too. While the World Summit has announced important beginnings, they will not do much to advance security and human rights, unless there is further progress during the General Assembly which concludes in December 2005, and in the future. Stay tuned.

November 8, 2005

²⁹ *Prospects for United Nations Reform: Briefing/Hearing Before the S. Comm. on Foreign Relations*, 109th Cong. (Oct. 18, 2005) (testimony of John R. Bolton U.S. Permanent Representative to the United Nations).

³⁰ Henry J. Hyde United Nations Reform Act of 2005, H.R. 2745, 109th Cong. (as passed by House by a vote of 221-184, June 17, 2005) (As of this writing, the bill has not yet passed the Senate). See generally Stanley Meisler, *It Works Well. Tweak It; Right-Wing Critics Want to Use Reform as a Club to Beat the Independence Out of the World Body*, LOS ANGELES TIMES, Nov. 6, 2005, at M1.

³¹ *Prospects for United Nations Reform*, *supra* note 29, at 10-11.