

**An Institution in Crisis?**

**The Future of the United Nations**

**Notes for a Presentation**

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## *Introduction*

Today, my job is to set the stage for others who are experts in international law. In doing so, I am going to argue, and substantiate, four main points: First, the United Nations has served us better than most people realize, despite what its critics contend, not least in the development and promotion of international law. Second, the UN has manifestly not kept up fully with the times, and needs renovation. Third, the disappointments of last fall's UN summit notwithstanding, the UN has in fact made numerous and far-reaching innovations. And finally, the UN will remain at the heart of the international system and muddle through because it must; hegemonic power, which lacks legitimacy and, after the Iraq debacle, credibility, is not an alternative.

## *Historical Amnesia and Strategic Myopia*

I know from spending nearly four years at the United Nations that the UN has all the problems you would expect a 60 year old institution to have, and more. I know, also, from spending nearly 40 years in government that the institution remains far more central and far more important than politically motivated "UN-haters" would have the world believe. Nevertheless, partly as a consequence of bad publicity, some of it deserved and some of it not, and partly because of misapprehension of what the UN is, and what its powers actually are, even the reasonably attentive public are far more aware of the institution's weaknesses than of its strengths.

At a time when our security is under threat from seemingly every side-- terrorists, disease, pollution, population growth, natural disasters, short-sighted foreign policies — we need to remind ourselves why the United Nations remains vital to international governance, and why it warrants the world's engagement, even as it needs renovating. We live in an era of historical amnesia and strategic myopia, but if there is one lesson of 9/11 that we should all be able to agree on, it is surely that there is no security in a gated community. To quote Prime Minister Tony Blair, "[n]ations, even ones as large and powerful as the USA, are affected profoundly by world events; and not affected in time or at the margins, but at breakneck speed and fundamentally."

In an interdependent world, engagement and cooperation, not isolation and unilateralism, are the keys to security. No country is an island in our globalizing world, at least figuratively speaking, and international cooperation is indispensable.

Last September, 154 world leaders came to the UN, and regrettably, made the least of their opportunity to reform the institution. Too many UN members were either too satisfied with the status quo or too distracted by the delights of New York or too fearful of change or too angry with each other to contemplate mutual accommodation. Both the UN's critics, gleefully, and the UN's boosters, sadly, agreed that a rare opportunity for far-reaching reform had been missed.

As the dust has settled on the Summit, however, it has become evident that such profound renovations as the Secretary General sought are probably only possible in the wake of a cataclysm that sweeps all before it, as World War Two did. Happily, in part because of the efforts of the UN, the world has been spared another such cataclysm. In that sense, the UN is the victim of its own success. Nevertheless, those 154 world leaders who came to New York did re-affirm the centrality of the UN, and did commission enough for their representatives to pursue to permit the organization to soldier on. In any case, the truth is that there are not many alternatives. The delusions of unilateralism and coalitions-of-the-willing are proving a poor match for the merciless realities of the insurgency and sectarian violence of Iraq.

To understand the case for the UN, it helps to go back to its origins to review why the world needs a system of collective security based on the rule of law, and to recollect that the United Nations is at the heart of that system. Most basically, we need to remember what the world looked like before Woodrow Wilson, Franklin Roosevelt, Lester B. Pearson, and all of the other architects of multilateral cooperation created the system they did. A hundred years ago, the only effective protection against aggression was military capacity, your own and that of your allies. The only checks on would-be aggressors were the costs of fighting and the risks of failing. The issue was not law; it

was ambition, and power. The Alliances, which emerged in the 19th Century to deter aggression, ultimately collapsed and catastrophic conflicts followed.

In World War I, as armies were democratized and war industrialized, 10 million people died. In World War II, as war was democratized and technology advanced, killing soldiers and citizens alike, 60 million people died (1,600 times the death toll of three years of war in Iraq). In World War III, with the advent of sophisticated weapons of mass destruction, especially nuclear weapons, how many people would die?

The generation that fought and survived the last world war, my parent's generation, knew that World War III could not be won in any reasonable meaning of the word "win" and must never be fought. There had to be a better way and that better way, in part, was the United Nations. The world would prevent war cooperatively, where it could, and prosecute war, collectively, where it must. The UN would help the world develop new laws, starting with the UN Charter, and promote new norms and standards of international behaviour. The UN (and the Breton Woods institutions) would encourage economic growth and assist countries to provide better lives for their peoples. The UN would promulgate human rights, so that people might live in dignity. And the world body would usher colonialism into history.

### ***What Has Worked at the UN***

The world's aspirations for the United Nations have exceeded the organization's grasp but it has, nevertheless, served us reasonably well in the intervening period, far better than its critics realize or admit. Despite the Cold War, which saw transgressions of the Charter by both sides, the UN gave birth to a body of international law that, among other things, progressively stigmatized aggression and created a strong norm against it. That norm against aggression came ultimately to be more respected than not and, in the process, enhanced the authority of the Charter.

Certainly, the prevention of World War III owed a lot to nuclear deterrence and collective defence through NATO. However, bloody as the world has been in the last 60 years, it would have been a much worse place without the UN. According to the report of

the UN Secretary General's High Level Panel on UN reform, there were fewer inter-state wars in the second half of the 20th century than in the first half, despite a nearly four-fold increase in the number of states. While perusal of the international media might suggest otherwise, according to the University of British Columbia's Human Security Report, between 1992 and 2003 the number of armed conflicts dropped by 40%. The number of wars—the most deadly category of armed conflict—declined even more sharply. The Report argues that the single most compelling explanation for these changes is found in the unprecedented upsurge of international activism, spearheaded by the UN, which took place in the wake of the Cold War.

The UN has initiated numerous conflict prevention initiatives and has been much more ready since the Cold War to authorize its members to use force to stop internal conflicts. From 1945 until 1989, the end of the Cold war, there were 13 UN military operations. Since then, there have been 42 military interventions under UN auspices; and the UN's annual peacekeeping budget has grown to over \$5 billion. The UN's "forum function" has, also, been indispensable to preserving relative stability, helping in the process to create the political conditions underpinning a lengthy period of economic growth and technological advancement. While the UN is often derided as a talk shop, "Jaw, jaw", to paraphrase Churchill, is better than "war, war".

The UN has given birth to concepts we now take for granted such as peace-keeping, which provided a buffer between protagonists, so that the interstate wars that did break out did not reignite after the shooting stopped. The UN has helped East and West avoid a nuclear Armageddon by, inter alia, pioneering arms control treaties and verification, notably, the Non-Proliferation Treaty regime and the International Atomic Energy Agency (IAEA). That regime has made us all safer by limiting the numbers of nuclear-armed states, current challenges to the IAEA notwithstanding. This accomplishment was justly recognized by the Norwegian Nobel Committee last Fall when it gave the 2005 Peace Prize to the IAEA and its head, Mohamed al Baradei, bringing the number of Nobel Prizes awarded to the UN to nine.

The UN has served as mid-wife in the births of more than 100 countries since 1945, the great majority of which came into being peacefully. More broadly, the UN has helped the world to feed its hungry, shelter its dispossessed, minister to its sick and educate its children. UNICEF has helped inoculate 100's of millions of children against childhood diseases. The UNHCR protected 19 million refugees last year and scores of millions more over the years. The World Food Program helped 113 million people in 2004 alone. The UN Mine Action Service has assisted states party to the Ottawa Treaty in their destruction of 38.3 million landmines. More mundanely, the UN has regulated the world's air travel, coordinated its mail services, overseen its patents, regulated its shipping and apportioned its electromagnetic spectrum, among many other unsung but necessary tasks. It is trite but true that if the UN did not exist we would have to invent it—if our generation could generate the political will and vision to do so.

### ***What Has Not Worked at the UN***

Nevertheless, sixty years is a long time in the lives of institutions, as it is in the lives of people (god knows). The vicissitudes of time have taken their toll and the UN has not lived up to all of our expectations. In fact, it must be said that there have been serious disappointments.

The ECOSOC became lost in the ideologies of the Cold War and North-South dialectics and, consequently, has never validated the hopes of the Third World, much of its power having long since migrated to other international organizations. The behaviour of the Human Rights Commission, an Alice-in-Wonderland body where perpetrators escaped censure and pointed the finger at others, would have been funny were it not so tragic for the victims of the abuses. Worse have been the conscience-shocking failures of the UN in Cambodia, the Congo, and the Balkans that have left indelible stains on the soul of the world body.

In Rwanda, even as 800,000 people were being systematically slaughtered, the Security Council played legal word-games about genocide, preferring to talk of “acts of genocide”, splitting hairs in order not to trigger the voluntarily accepted obligation under the Genocide Convention to intervene to stop the slaughter, while the “genocidaires”

were literally, not figuratively, splitting heads. What prospects do ordinary people have when UN member states, especially its most powerful members, retreat into the complexities of sovereignty, ethnicity, religion, regional politics and economic interest and fail to act? Now, it is Darfur that appeals to the feeble collective conscience. Millions have been expelled from their homes and thousands upon thousands have died. But the UN's reaction, that is to say, the member countries' reaction, has been unconscionably slow.

The UN's failures, humanity's failures, take many other forms. Poverty traps rob the poor of their potential in vast stretches of the world, while the unfulfilled promises of assistance by some donor countries and the graft of some host governments combine to preserve the tragic status quo. New issues arise, notably religious fundamentalism and the potentially catastrophic combination of terrorism and weapons of mass destruction which, rather than eliciting a cooperative response tempt the powerful to go it alone and the weak to turn a blind eye jeopardizing as they both do so the very essence of collective security.

### ***Fixing the United Nations***

Some governments are just plain oblivious to the UN's weaknesses, or indifferent to them, trusting to fate to fix them. Others would just forsake the UN altogether and look to their own strengths in a dangerous age. The first course would condemn the UN to an existence increasingly on the periphery of humanity's vast need. The second course would condemn the world to repeat history in infinitely more dangerous circumstances. It is just plain foolish to throw out the international rule book now. Now is the time, in a single super power era, to reinforce the rules of the road, and encourage the development of a culture of law, rather than myopically waiting for the rise of the next superpower and whatever claim to exceptionalism it makes.

The wiser course is to adapt the UN, the institution our parents bequeathed us, so that it serves us better now and safeguards our children's future. Two lessons from last Fall's summit seem clear enough by now. First, absent the calamity of a world war, which provided the incentive to create the UN in the first place, across-the-board

transformations of the institution are not possible. Second, the membership will, nevertheless, agree to limited changes if they are well thought out, targeted on issues on which a consensus can be created and actively but patiently promoted by governments and civil society. That is precisely what happened with respect to the Canadian-commissioned, and -championed, report the Responsibility to Protect, which was perhaps the most promising innovation adopted in New York last September. Both the General Assembly and the Security Council have subsequently formally endorsed the concept. For R2P, the proof of the pudding will come when countries are asked to provide troops to intervene to protect vulnerable populations from genocide, war crimes and crimes against humanity, starting with Darfur.

Other outcomes of the Summit are important, for example, the creation of the Peacebuilding Commission, which will be led by a distinguished international public servant, Carolyn McCaskie, a Canadian. The UN has developed a well-justified reputation for peace-building, lauded even by the RAND Corporation, for helping states emerging from conflict to re-create institutions of government or, in some cases, create them for the first time, so that they can deliver a minimum of security, economic policy and social services. The Commission will bring together the UN's broad capacities and experience in conflict prevention, mediation, peacekeeping, respect for human rights, the rule of law, humanitarian assistance, reconstruction and long-term development. According to the RAND Corporation, although multilateral nation-building is complex and time consuming it is considerably less expensive for participants and can produce a more thorough transformation and greater prospects for regional peace than unilateral efforts. A standing police capability for the UN is being created. In the months since last fall, the old Human Rights Commission has been disbanded and what in all probability will be a more effective Human Rights Council has taken its place.

The new Council's members are somewhat fewer in number and are elected individually by secret ballot—no more regional slates. Like the UN, itself, the old commission was a victim of its own success—its criticisms of badly performing countries led them to join what they could not lick, to deflect criticism of themselves onto others. Now avoiding criticism will not be possible for Council members' because their human



rights records will be reviewed as a condition of membership. Funding of the office of the High Commissioner for Human Rights will be doubled. That office, which is now held by former Canadian Supreme Court Justice Louise Arbour, is itself another relatively recent UN innovation. There is no reference in the 1945 Charter to such an office nor is the democracy-support mission of the UN in the Charter. That is now a major line of business for the world body, inter alia, supervising elections in nearly 100 countries. The UN has helped scores of countries in their transitions from conflict to democracy—including Cambodia, Nicaragua, Namibia, Mozambique, South Africa, and, more recently, Bosnia, Burundi, and, with luck, Afghanistan and Iraq.

An extensive international criminal justice system is developing under UN auspices. The four ad hoc courts established to prosecute major crimes the ICTY, the ICTR and the Cambodia and Sierra Leone hybrid courts, constitute a major innovation, found nowhere in the Charter. The Sierra Leone court, comprised of local and foreign judges, was central to the deal that saw Nigeria end its sanctuary for former Liberian President Charles Taylor. A further major judicial innovation has been the creation of the International Criminal Court (the ICC), currently presided over by Philippe Kirsch, a Canadian, who will speak here later this week. Now, the world's monsters can no longer sleep soundly in their beds, confident that they are immune to prosecution for abusing their own peoples, or others.

It is gratifying that Joseph Kony, the head of the Lord's Resistance army, the army of child soldiers in Northern Uganda, was the first person indicted by the new court. The cases of alleged perpetrators of major crimes against the innocents of Darfur have, also, been referred to the ICC by the UN Security Council. An irony missed by no one, including the current administration of the United States, which has been carrying out a campaign to diminish the court and to seek exemptions from its jurisdiction for all US personnel, including non-citizen contractors. The UN has even been asked to take over a criminal investigation in a member country—the case of the former President of Lebanon, Hariri.

A further UN innovation in recent years has been the idea of sustainable development, the reconciliation of the once polar opposites of economic growth and environmental protection. Scores of environmental treaties have been concluded under UN auspices. The UN has, also, been innovative in its relationships with business, for example, working with Bill Gates and pharmaceutical companies to develop private-public partnerships on HIV-AIDs and other major killers. Despite the UN's well known failure to agree to a definition of terrorism, thirteen counter-terrorism treaties have been concluded by the General Assembly. Further, a potentially very important counter-terror innovation has been the legislative power assumed by the UN Security Council under Chapter VII of the Charter prohibiting all member countries from funding and sheltering terrorists and transferring weapons of mass destruction and relevant materials to them.

All told, over 500 multilateral treaties have been concluded under UN auspices. The UN has in the process helped member countries create an extensive body of international law that has been progressively written into the laws of states, helping an increasing share of the world's people live in dignity and freedom.

Perhaps the most visible recent UN innovation has been the creation of the UN Office for the Coordination of Humanitarian Affairs. That office coordinated the massive international relief response to the December, 2004, Asian Tsunami. It has managed the international responses to the massive earthquake in Pakistan last year, to the current earthquake in Indonesia and to the food shortages in Darfur and Mali. It even helped out in New Orleans when that city was tragically overwhelmed by hurricane Katrina.

The point is that from counter-terrorism treaties, to human rights conventions, to the support of democracy and promotion of the rule of law, to coordinating disaster relief, to fostering sustainable development, to rebuilding states emerging from conflict, it is clear that the UN has taken very significant strides into the 21<sup>st</sup> Century, despite all the anxiety about the UN on the part of its believers and all the deprecations of the UN on the part of its critics.

I am not suggesting that all is well at Turtle Bay. Last Fall's summit revealed how little consensus there is on some crucial issues facing the organization. For some,

especially the United States, the point of it all is security, especially security in an age of terrorism. For the poorer countries, the meaning of security is very different. For them the main issue is economic development and raising the standards of living, education and health of the poor.

Partly as a consequence, there are several important missing pieces in the reform puzzle. Notably absent is agreement on criteria to govern the use of force, which is especially important when by invading Iraq the American administration demonstrated its willingness to flout the will of the membership, and at a time when the US places unilaterally determined pre-emption at the heart of its national security strategy, and when the US reinterprets conventions and cherry picks international law, notably as regards the Non-Proliferation Treaty.

Also missing is a definition of terrorism, because of disagreement on what constitutes a legitimate response to occupation by foreign forces, including particularly on the West Bank and in Iraq. At a time when everyone is conscious of the potential dangers posed by an increase in the number of nuclear weapons states and the danger that terrorists might get their hands on such a weapon, the membership's inability last Fall even to suggest a direction that the institution might take to strengthen the nuclear non-proliferation regime was a scandalous lacuna, to paraphrase Secretary General Annan. Also missing is consensus on how to reform the management of the institution. Management reform has been made more urgent by Oil for Food program weaknesses, corruption in procurement activity, and sexual exploitation by peacekeepers and others in field. Last fall's summit lent renewed impetus to strengthening ethical conduct and accountability; modernizing UN financial regulations and rules; enhancing independent oversight; and updating the programme of work through review of mandates older than five years.

From the donor countries' point of view, the issues are essentially accountability, effectiveness and efficiency and the solution is to reinforce the comparatively scarce authority of the Secretary General to manage the institution. From the developing countries' perspective, the point is influence and the goal is to retain the maximum

possible control of the spending power in the General Assembly, where their collective numbers offset their individual weakness. They believe, and they have a point, that the five permanent members of the Security Council who effectively select the Secretary General have enormous leverage over him or her. They are reluctant to increase that leverage especially as regards the US, which they believe to be too powerful as it is.

Underlying the debate is the quite profound antipathy felt by the general membership towards US and US foreign policy as a consequence of foreign policy decisions that they consider anathema to their interests, including the frequent deprecation of the world body by the US Congress and by the White House. The predilection of the American Ambassador to play to the Washington galleries is not helping vis-à-vis the poorer countries and is making donor solidarity increasingly precarious. His style is reciprocated by the worst cut-off-your-nose-to-spite-your-face truculence of the G-77.

These approaches are programmed to collide later this month when lifting the budget “cap” is to be considered and, if savvier heads do not prevail, considerable harm could be done to the UN and another prolonged budget crisis could follow. That crisis would be troublesome but like the last time the US refused to pay its dues, it would unlikely be fatal. The budget in question is the regular budget, which does not include the peace-keeping budget and the voluntary budget; therefore, about 22% (the US share) of 25% of the UN’s funds are in play.

### ***Conclusion***

Today, in setting the stage for those who follow me, I have argued four main points: First, that the United Nations has served us better than most people realize, whatever its critics might say, not least in the development and promotion of international law. Second, the UN has manifestly not kept up fully with the times, and needs renovation. Third, the disappointments of last fall’s UN summit notwithstanding, the UN has in fact made numerous and far-reaching innovations. Finally, that there is no better way than the UN. Hegemonic power lacks legitimacy and, after the Iraq debacle, credibility, and is not an alternative to multilateral cooperation. The UN will muddle through and remain at the

heart of the international system because it must. There really is no ready and realistic alternative.

Thank you