

## Political Change and the High-Level Panel: Navigating the Cross-Currents

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Kofi Annan's dramatic warning to the leaders of the world's nations in September 2003 that "we have come to a fork in the road" regarding world order heightened the stakes for the high-level panel he was about to appoint. The twin blows of Al Qaeda's attack on the World Trade Center and the American invasion of Iraq shook the foundations of the 1945 compact that had increasingly become the framework for international action.

Since 1987-88, when the Security Council forged close cooperation to shut down the bloody Iran-Iraq war in (coincidentally, the only period when all three former Axis powers sat on the Council with the Second World War's victors), a long marginalized United Nations had become central to the collective management of conflict. Countless new precedents and practices were launched in the fifteen years that followed, including U.N. election assistance, multidimensional peacekeeping, transitional administrations, post-conflict reconstruction founded on democracy and rule of law, Council authorization of armed force, comprehensive sanctions, intrusive weapons inspections, delegation of peace operations to regional organizations and ad hoc coalitions, and international war crimes tribunals. In 1985, only fatuous dreamers could imagine an internationally enforceable ban on weapons of mass destruction, or sanctions successfully coercing a government into handing officials over to a foreign court for terrorist offenses. By 2000, these had all become part of the new reality of an arguably safer world -- and a global summit could commit itself to concrete goals for improving the desperate living conditions of a majority of the world's people.

But the new habits of reliance on international law and institutions proved vulnerable when the assumptions on which these were built were challenged. The Al Qaeda assault transformed terrorism from localized, low-grade fever to a major security threat waged across borders and even oceans by non-state actors, whose violence could be restrained by neither old-style deterrence nor new-age international law. The invasion of Iraq was widely seen as a repudiation by one of the U.N. system's guarantor powers of a central tenet of the United Nations Charter -- the restriction of national military operations to self-defense against armed attack.

In the United States, a public aroused by the unconscionable massacre of 3,000 civilians three years ago still sees the crushing of the Al Qaeda jihadist network -- expansively defined by the country's political leaders as a global war on terror -- as Americans' most urgent security requirement. For some

ideologically fervent Americans, the terrorist threat clearly renders obsolete, and at best quaint, the restraints of international law. The enforcement of international law, these "national sovereigntists" note, is demonstrably unreliable (thanks to the highly politicized and very *ad hoc* enforcement arm, the Security Council), and besides, impartially administered law is appropriate to a national polity, but *power* is the proper basis for upholding order internationally -- and Americans are blessed to be on the long end of the world's disparities in power.

Certainly the nationalist current in American politics is averse to any talk of a "global deal" between North and South, or even between America and Europe. But even internationalist-minded Americans are unlikely to be tempted to a global bargain, uniting the supposed security agenda of the threatened developed world and the assumed development agenda of the hard-pressed developing world. The reason is simple: Security is a universal interest. The North does not need to strike a bargain with the South on economic issues in order to strengthen security for the world at large; the South needs security as much as the North does. Indeed, its hopes for development depend on better security. Kofi Annan had acknowledged as much himself when he told the General Assembly, "Terrorism is not a problem only for rich countries. Ask the people of Bali, or Bombay, Nairobi, or Casablanca. Weapons of mass destruction do not threaten only the western or northern world. Ask the people of Iran, or of Halabja in Iraq."

Now, there may be some log-rolling to be done *within* the security area. The North can agree, for example, to act on the High-Level Panel's recommendation for marking and tracing small arms and other light weapons -- the weapons issues that most dramatically destabilize and endanger societies in Africa and Latin America -- and the South can agree to embrace the Proliferation Security Initiative and make the Model Additional Protocol the standard for International Atomic Energy Agency safeguards. But a "deal" linking increased development assistance to a definition of terrorism, or agricultural market liberalization to a fissile material cut-off, is not in the cards. Indeed, the protracted negotiations required for many of the economic and development issues that might roil constituencies at home would stall agreement on what might otherwise be quickly achievable security measures.

There should be no illusions about the ease of agreement on the security side. In the one major state where political debate still rages over whether there should even be a United Nations, the task of forming a political consensus on which Panel proposals to embrace has not even begun. Many on the nationalist Right in that country are viscerally opposed to strengthening the international security system, suspecting it as a French stratagem to build up the U.N. to foil American hegemony. They bridle at the rules and "permission slips" in which

Washington would become entangled, when it already has on its own the military and economic power to get what it wants done for security. The world's military hegemon has the power to intercept suspected shipments of nuclear materials and missile parts on the high seas; it has the power to raid suspected weapons facilities, send cruise missiles into terrorist training camps, and target militants' automobiles with Predator drones. In a world where malevolent forces respect only force, the powerful would be foolish to subject themselves to the fickle good will of the weak and envious. And starry-eyed idealists imagine that red-state Americans will not only accept a strengthening of an international system designed to hobble their country's freedom of maneuver, but will pay tribute through increased foreign aid to Third World kleptocracies and international bureaucrats?

No, the prospects of selling a wide-ranging "global deal" tying security measures to development assistance are surely nil – and not just in Washington. Each proposal must show merit on its own. No proposal that crosses the "red lines" of fundamental interest of any major state or any group of states will survive the political process. Industrialized countries will only make ironbound commitments of funds to halve maternal mortality in developing countries, for instance, if they are persuaded that the particular measure makes sense -- not because it is a *quid pro quo* for developing-country agreement to predetermined sanctions by the Security Council against states that do not comply with the Council's antiterrorism requirements.

Paradoxically, there are already signs that development concerns are gaining more respectful attention in their own right. The Jubilee 2000 campaign succeeded in winning significant first steps toward debt reduction, even from deeply conservative lawmakers. The Monterrey summit on financing for development helped crystallize a reversal in the decade-long downward spiral in wealthy countries' official development assistance to struggling developing countries. Early in 2005 the Group of Seven finance ministers agreed on substantial debt rollback. In the United States, politically potent evangelicals are beginning to see a Gospel mandate for overseas development aid that Catholic and mainstream Protestant networks have long recognized. Even hard-eyed conservatives who deride assertions that poverty is a "root cause" of terrorism now quietly acknowledge that terrorism's foot soldiers and suicide car-bombers are drawn from the ranks of the economically desperate – and that the fiscally mandated reduction in public education for the masses in, say, Pakistan has its "blowback" in the mushrooming of madrasas incubating medievalist *jihad*. Here, a perceived direct link to security is prompting a loosening of the purse strings.

But again, these signs of growing support for acting on the development agenda are proceeding on that agenda's own track. It will not be tethered to security measures proposed by the High-Level Panel.

Central both to the Panel's mandate, as expressed by the Secretary-General in announcing his intent to establish the body, and to the Charter's purpose is the regulation of the use of armed force. The Panel has sought to shore up ebbing political support for the Charter restrictions by underscoring the Security Council's right, and even suggesting its duty, to apply military force preventively to halt the emergence of a growing threat. Of course, no one -- not even Washington's most rabidly nationalist opponent of U.N. constraints -- has ever asserted that the Security Council lacks the power to invoke force against a threat (though the nationalist would dismiss such a Council action as irrelevant). The widely perceived failing is in the Security Council's flaccid will to use military force in the face of imminent threat or even immediate conflict, much less preventively. Here, the Panel could hardly prescribe rules mandating robust responses to threat scenarios from politicians leading Security Council member states; these have to gauge the political trade-offs in future security crises based on public support at the time. The Panel can only propose guidelines that may modestly increase the chances for concrete action.

The Panel's effort to win Washington back to the Charter framework restricting unilateral force warrants particular attention. The Panel makes a distinction between "preemptive" attack (when "a threatened attack is *imminent*") and preventive attack (to take out a future potential foe), and claims the former is permitted by "long established international law." The Panel's unanimity in interpreting international law is impressive, for among international jurists a quite contrary view is widely held: Many argue that the Charter means what it literally says in Article 51 ("self-defense if an armed attack occurs"), and aver that the Charter writers consciously intended to legislate that standard, barring attacks of "anticipatory defense" that prior practice had sanctioned. The Panel was almost certainly making a political rather than legal judgment in staking out its formulation: American political support for the literal Charter standard has so decayed -- more than half of Senate Democrats, and more than a third of House Democrats, rejected it in votes on the Iraq war authorization, as did almost all Republicans -- that, had the Panel sought to defend it, the report as a whole would have been "dead on arrival" in Washington.

The Panel's recommendation was to oppose either "rewriting or reinterpretation" of Article 51. This was prudent, for if the General Assembly were asked to affirm the Panel's legal reasoning, it is likely that a substantial number of states -- particularly small, weak countries -- would instead vote to reaffirm a strict construction of the Charter language. Indeed, as 2005 opened

there some agitation by critics in the "Group of 77" for a repudiation of this reasoning, amid fears that "imminent threats" might be deduced from flawed intelligence or concocted by state propaganda. The most probable outcome, however, will be no formal debate at all in the General Assembly on the criteria for use of armed force in purported self-defense: There is no gain in putting the issue to a vote that would only fan Washington's antagonisms and endanger the rest of the security reform project. Even legal purists would defer to political reality and -- trusting in recent polls that find growing majorities of Americans declaring themselves more reluctant to use force because of Iraq -- let political reality eventually catch up to Washington.

What the General Assembly is certain to debate are the Panel's recommendations for institutional reform of the U.N.'s principal organs. Indeed, these are the proposals that have proved all-consuming within a six-block radius of United Nations headquarters in New York and in some interested foreign ministries -- and virtually nowhere else. Nothing, it seems, brings out the repressed interior designer in the hearts of diplomats than discussion of rearranging the furniture in the Security Council. Security Council reform has, of course, been a battle cry since the Council itself, like Rip Van Winkle, shook off its four decades of cold war slumber and came to life as a nerve center of international politics. And the seemingly irreconcilable clashes of national ambitions over the dozen years since the Clinton administration's enthusiasm for action helped launch the debate in 1993 have yielded prolonged deadlock. Indeed, the conventional wisdom among long-time U.N. observers is that, Panel report or not, the chances of Security Council revision in the foreseeable future are zero.

That is too despairing a judgment, though Las Vegas bookmakers would probably not lose money by putting long odds on continued paralysis. The Secretary-General clearly wanted the Panel to address this issue head-on in hopes of breaking the logjam, and the Panel has exceeded the realists' expectations in fashioning a compelling case for Security Council reform. With great delicacy, the Panel hints at the deformity at the heart of the Council's eroding credibility ("the ability of the five permanent members to keep critical issues of peace and security off the Security Council's agenda"), and it forthrightly spells out the principles that must guide Council reform: (1) "greater involvement...by those who contribute most"; (2) making it "more representative...of the developing world"; (3) "not impair the effectiveness of the Security Council" (normally understood as code for keeping the Council relatively small); and (4) "increase the democratic and accountable nature of the body." The Panel then offers two models for revision, one that flows from the logic of its argument, and another -- inserted after protests from relevant governments -- that meets some of the Panel's criteria.

The debate, inevitably, has focused on whether to add permanent seats or elected seats, and the implications of that choice are profound (and outside the scope of this cursory review of the prospects for the Panel report). But with the Panel's farsighted recommendation for a mandatory revisiting of the Council's composition in 2020, ways may be envisioned to square that circle. Both alternatives reported by the Panel would expand the number of major contributors to peace and security on the Council. This is not an objective shared by many representatives of small states in the U.N., especially in the developing world, who are in adamant denial of the premise that size matters. The size of members' contributions to peace and security (enshrined in Article 23 but often ignored, especially in African rotation) is not the only such fundamental issue, however. Size also matters in terms of a political body's efficiency, especially if faced with an exploding security crisis -- and the Panel's call for enlargement of the Security Council to 24 will seem promiscuous to those governments that have arduously had to build Council coalitions for robust action. They have a major stake in keeping the Council numbers down.

The United Nations is notoriously the place where, in defiance of the laws of physics, inertia can develop momentum. Already warning signs of the U.N. membership's traditional immobilism on this issue are beginning to appear. But Council reform may yet be salvaged, and if it is, the Panel will have made the decisive difference on a well-worn issue that has long exhausted the membership.

The Panel has offered another institutional proposal that is, by contrast, quite fresh: creation of a Commission on Peace-Building to undertake conflict prevention with "early warning" of a brewing crisis, and to supervise long-term implementation of a post-conflict settlement and reconstruction after peacekeepers leave a war-torn land. The Commission would be a unique subsidiary organ of the Security Council, with variable membership for different country situations, drawing some members from the Economic and Social Council that can provide particular support to the peace-building process in question. This hybrid body would perform functions for which some tone-deaf analysts in the past have proposed resuscitating the defunct Trusteeship Council, but the commission avoids both the stigma of forfeited sovereignty and the impotence of being separate from the Security Council. It seems eminently achievable. (The Panel, incidentally, admirably proposes a clean-up amendment to the U.N. Charter to eliminate the Trusteeship Council altogether.)

The Panel devotes some attention to strengthening the capabilities for autonomous action of regional organizations, which -- with five members who have served in leadership roles in regional agencies and alliances -- was well

within its purview. But it kept coming back to the United Nations as the central nervous system of international security efforts. To some critics, it is a nervous system without a backbone, reluctant to act decisively in the face of grave security challenges. But to most of the world, the U.N.'s unique contribution has been precisely to serve as a check to the impulsiveness and rash resort to force that have arguably undermined security even in the name of protecting it -- serving as part conscience, part brain. Its durability has confounded its enemies, just as its inefficiencies have frustrated its friends. The process of institutional renewal that the High-Level Panel has hoped to facilitate can assure that the international system manages peaceably and smoothly the economic and political upheavals of coming decades.