

The challenge of United Nations reform

CHRISTIAN REUS-SMIT

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Introduction

CHRISTIAN REUS-SMIT

The first half of the twentieth century saw multiple crises in the expanding international system, characterised most tragically and dramatically by two world wars, the Great Depression, and the Holocaust. In response, the international community engaged in history's most ambitious program of international institution building, a program that centred on the creation of the United Nations, the Bretton Woods institutions, and a plethora of functional regimes governing everything from arms control to the prohibition of genocide. Despite the impediments imposed by four decades of Cold War, these institutions have evolved into a complex global architecture of institutions which can claim partial yet significant credit for the decline in traditional interstate warfare, the containment of nuclear proliferation to a handful of states, management of the world economy, and the prosecution of an ever more comprehensive humanitarian agenda.

At the dawn of the new millennium the international system is again facing multiple challenges. Fifteen years after the end of the Cold War, superpower confrontation has been replaced by the threat of transnational terrorism, by colonialism's and the Cold War's legacy of failed or failing states in parts of the developing world, by new challenges to the non-proliferation regime, by persistent global inequality and impoverishment, by multiple environmental crises, and by widespread human rights abuses, including ethnic cleansing and genocide. In the early 1990s many in the West hailed the emergence of a 'new world order', marked by the victory of liberalism and capitalism globally and by a new 'governing' consensus among the major powers, evident apparently in the unity of the Security Council at the time of the first Gulf War. This optimism has now collapsed, replaced by contention and confusion about how the international community can respond to all too palpable sources of global disorder.

Given the centrality of the United Nations to the post-1945 international order, and its present entanglement in issues ranging from the use of force to development assistance, it is not surprising that the question of UN reform is receiving renewed attention. For liberal internationalists, it is axiomatic that when sovereign states, living without a central world authority, face common problems, they should seek institutional solutions, and so their impulse is naturally toward renovating the UN system. In contrast, the UN's shortcomings in the post-Cold War era have hardened, even radicalised, realist sceptics, who want the constraints of the UN system revised to more adequately reflect the dynamics of the global balance of power. All of this has been exacerbated by the gap between the Bush Administration's animosity toward the UN and multilateralism more

generally and the position of most other states, which evinces ongoing commitment if not consistent compliance.

In spite of these divides, the scope for effective reform of the UN is probably greater now than at any other point since its creation, as evident in Kofi Annan's establishment of an expert committee to probe the contours of Security Council reform. When the United States acted without a UN mandate after failing to gain a second Security Council resolution licensing war against Iraq, many predicted the precipitous decline of the UN—the Security Council, it was claimed, could not agree to uphold the rule of international law, and it could not constrain the world's sole remaining superpower. Subsequent events, however, have shown how difficult it is for even the United States to rebuild a state without the support of the international community through the UN. All of the major powers now have strong incentives to think seriously about UN reform, particularly Security Council reform. These immediate incentives are reinforced by a host of background incentives pushing in the same direction. All of the major functional challenges now facing the international community, from combating transnational terrorism and fostering global development to strengthening the arms control regime and preventing global warming, require multilateral solutions—unilateralism and bilateralism cannot solve them. Furthermore, it is difficult to see how a renaissance in global multilateralism can occur without the UN being at the centre of such a renaissance.

This *Keynote* is intended to contribute to community debate about UN reform. We have chosen to focus on three aspects of such reform. Marianne Hanson takes up the central question of Security Council reform, looking at the needs for change, the proposals currently on the table, and the diverse problems facing any strategy for reform. Hilary Charlesworth examines reform of the UN human rights system. In recent years, the system has been criticised by conservative governments in the West, angered by the Commission on Human Rights' willingness to highlight the records of 'gold-plated democracies', and by non-Western authoritarian regimes who seek to deflect criticism by claiming that human rights are Western, not universal, values. Charlesworth moves beyond this controversy to identify genuine areas for reform and to look at the obstacles to effective revision of the system. In the last of the three essays, William Maley considers the UN's role in meeting humanitarian crises around the globe. During the 1990s, in response to domestic conflicts in the Balkans, Africa, and Southeast Asia, the UN role in this area has greatly expanded. Its record, however, is at best mixed. There are many people whose lives depend upon the continuation of UN peacekeeping and humanitarian relief operations, and the UN has come to play a vital role in facilitating transitions to democracy. Yet its failures in Somalia, the Balkans, and Rwanda are sizeable and undeniable. Maley examines the challenges facing the UN in this area, explores the problems with current responses, and recommends a series of new initiatives.

Security Council reform: Prompters, proposals and problems

MARIANNE HANSON

INTRODUCTION

The United Nation's Security Council (UNSC) remains the world's primary instrument for maintaining international peace and security. This is so, notwithstanding the numerous problems and challenges to its authority in the fifty-nine years since the creation of the UN. Calls for reform of the UNSC have appeared on numerous occasions; the UN's Millennium Conference highlighted the issue, and a Working Group on Security Council Reform¹ has been considering proposals for many years. But these calls were given an added impetus by acrimonious debates at the UN's 58th Session in September 2003.

These debates reflected, at a general level, substantial and long-standing disaffection with UNSC voting and representational issues. At a more specific level, however, profound concern was expressed about the way in which the United States launched its invasion of Iraq in March 2003 without explicit Security Council authorisation.² The dissatisfaction in this case was not so much with voting procedures (although the US and Britain would undoubtedly have resented any use of the veto on this occasion) so much as grave concern that a key Security Council member—notably the US—seems increasingly unwilling to abide by the established rules of international society outlined and upheld by the Security Council. All of this has fed into renewed calls for urgent reform of the Council, for democratisation and transparency, and for building a system that cannot so easily be circumvented by the great powers.

The circumstances of these calls were made all the more unusual by the fact that by September 2003, the US was in the rare position of being a supplicant to the UN and in clear need of this organisation which US President George W. Bush had earlier labelled 'irrelevant'. Faced with increasing costs and casualties in his Iraq campaign and unable to establish effective law, order and reconstruction, Bush made a personal appeal to the UN to provide troops and other material assistance to the US. Not surprisingly, most states were cautious in

¹ This group has been labelled, rather inelegantly, the Open-ended Working Group on the Question of Equitable Representation on and Increase in the Membership of the Security Council and Other Matters Related to the Security Council.

² As Ramesh Thakur notes, 'the Iraq war highlighted the gravity of structural inadequacies and the urgency of reform'. See Ramesh Thakur, 'UNSC reforming the United Nations', *Daily Yomiuri*, 24 October 2003.

responding to this call, but the occasion did provide the political space for member states to argue that this was a good opportunity for the international community to press the case for Security Council reform. Reflecting this concern, UN Secretary General Kofi Annan announced on 23 September 2003 the formation of a group of eminent persons tasked with making recommendations for significant UN reforms.³

Reform—at a practical level at least—is not something generally associated with the Security Council; only one substantial reform has ever been enacted since 1945. Reflecting the dominant political and military structures at the end of World War Two, the Council was composed of eleven seats, six of which were rotating and five of which were permanent and carried the power of veto over any UNSC Resolution. These Permanent Five (P5) members were the United States, the Soviet Union (this seat was taken by the Russian Federation after the Cold War), the United Kingdom, France and China (initially occupied by Taiwan, this seat was subsequently given to the People's Republic of China). As noted above, only once has there been significant change to the UNSC; this occurred in 1965 when membership was expanded from eleven to fifteen seats, thus incorporating four extra non-permanent members, a move designed to reflect the reality of a greatly expanded system of states.

Considerations of *realpolitik* had been paramount in negotiations among the wartime allies over the composition and functioning of the Security Council, with it being evident that great power involvement would require the conferring of special powers and a special status not available to lesser states. The veto power ensures that any resolution would have to attract at least nine votes out of fifteen, including the approval (or at least abstention) of all the P5 members. Essentially, this has meant that no resolution could pass unless all P5 members agreed or abstained; similarly, even if fourteen members of the UNSC approved a resolution, this could not be passed if vetoed by any one of the P5 states.

At the same time, however, the Charter of the UN went some way to dilute the potential of the veto. It indicated that all states enjoy

³ “‘Time is ripe’ to reform UN institutions, Annan tells world leaders’, UN News Centre, 23 September 2003, <www.un.org/apps/news/storyAr.asp?NewsID=8331&Cr=reform&Cr1=&Kw1=reform&Kw2=security+council&Kw3>. The eminent persons group had not released its report at the time of writing (October 2004), however the long-standing Open-ended Working Group on the Question of Equitable Representation released its latest report in 2004. Its recommendations were far from precise and direct; instead it urged, unsurprisingly, that the 59th Session of the UN continue to consider the issue of Security Council reform. See ‘Report of the Open-ended Working Group on the Question of Equitable Representation on and Increase in the Membership of the Security Council and Other Matters Related to the Security Council’, A/58/47 (New York: United Nations, 2004), <ods-dds-ny.un.org/doc/UNDOC/GEN/N04/417/02/PDF/N0441702.pdf?OpenElement>.

sovereign equality (Article 2.1), that matters of procedure in the UNSC should be decided without the veto applying (Article 27.2) and that states, in voting on a matter under Chapter VI, must abstain from voting if they are a party to a dispute (Article 27.3). Even a cursory examination of UNSC activities will reveal that these provisions have done little to constrain the P5. It remained doubtful in any case that such measures could act as a serious balancer to great power self-interest. The Cold War ensured opposition between the P5, especially between the Western states (the US, UK, and France) and the Soviet Union, with 201 resolutions falling victim to the veto between 1946 and 1990.⁴ And although the ending of the Cold War enabled unprecedented cooperation between the major powers—notably over the first Gulf War and a number of humanitarian interventions—both the issue of the veto and of geographical representation on the Security Council continued to be matters of some concern. The inability of the US, Britain and France to secure a resolution authorising action against Serb forces in Kosovo in 1999, and most recently, the clear knowledge by the US that it would not get approval from France, Russia, China and a large number of non-permanent members for its campaign against Iraq in 2003, illustrated these difficulties.

A CASE FOR REFORM?

Before surveying the various proposals for reform, it is useful to give some thought to the extent to which reform of the Security Council may be necessary, and by whom it is deemed as necessary. While there is a reasonable degree of consensus on the need to increase the number of seats in the UNSC, the ‘need’ for reform of the veto is far from an uncontested issue. Is it for instance the case, as Russia’s representative has argued, that the veto is

not a privilege, but a serious factor for ensuring consensus and effectiveness of Security Council decisions ... the backbone of the coherent work of the Council, a guarantee against an arbitrariness of unilateral actions against the interests of the UN members, on whose behalf the Council acts?⁵

Put another way, is there something to be said for a system that seeks to prevent unilateral action by a dominant power intent on pursuing a narrow self-interest at the possible cost of destabilising wider peace and security? There does seem to be a case for retaining the veto when we consider that it was arguably the only thing that might have halted what

⁴ This figure, and a general survey of UN reforms proposed by the Commission on Global Governance, can be found in Ingvar Carlsson, ‘The UN at 50: A time to reform’, *Foreign Policy*, 100(Fall) 1995, pp. 3–18.

⁵ Cited in ‘In two-day debate, 110 member states air views on Security Council reform’, UN Press Release GA/9827, <www.un.org/News/Press/docs/2000/20001117.ga9827.doc.html>.

most UN members saw as an illegitimate invasion of Iraq by the US and its 'coalition of the willing'. In the end of course, not even the veto (or threat of a veto) was able to curb a determined US Administration, but the broader point still holds: why remove the closest thing we have to a brake on unilateral power? The veto may have served no useful purpose in this instance, but its very presence is an important symbolic—and sometimes effective—reminder that all states are answerable to the broader international community and depend on the UN for legitimacy of their actions.

Further questions arise: what purpose will be served by reform, and who stands to gain from reform? Responses here stress the need to modify the UN system so that it can reflect the changed patterns of world politics since 1945—including the need for a more democratic and representative Council—and so that it can effectively address the new kinds of security threats the world faces today. What we cannot get away from in this discussion is the fact that reform of the Council will inevitably dilute the power of the P5 at the same time as it increases access to and influence over the Council by a greater number of other states. Distributing power to a greater number of participants and amending decision-making practices will, in the short term, reduce P5 power at the same time that it opens up possibilities for new states. Substantial obstacles will thus stand in the way of reform (even if there was consensus on which particular set of reforms ought to be adopted), the most likely of which is that without the political will of the P5 states, very little might be achieved.

If there is indeed virtue in the veto (or at least some virtue) and if reform will be structurally difficult to achieve, what then is the case for pursuing reform? Here, my answer is unequivocal: without substantial reform of the Security Council, we cannot hope to build an inclusive international order. And without a more equitable and inclusive international order, lasting solutions to a range of complex and highly globalised problems will in all likelihood continue to elude us. I concede that a case might be made for keeping the veto as a potential brake on unilateral actions against the interests of UN members, and that P5 members should use their special status and power to protect and act on behalf of the broader community of states (as the Russian delegate above noted). But I am not convinced that sufficient and genuine cases of this have occurred to offset the greater benefits to be gained from amending the voting procedure. No longer is there a widespread perception—if there ever was—that Security Council members, and especially the P5, protect and act on behalf of lesser states. It is precisely a rejection of this view that prompts calls for reform; in a world of some 192 states, the select body of the Security Council is no longer always seen as constituting a representative, legitimate or authoritative voice for the UN. What UN members want is

not just more seats in the Council, but importantly, a serious re-think of the power wielded by the P5.

This is not to say that a democratised and more representative Security Council will be the answer to all ills, but the Council's make-up and decision-making processes adopted in 1945 do not sit well with the majority of the world's states and populations in 2004. There is, in the corridors of the UN and elsewhere, a sense of profound dissatisfaction with the workings of the UNSC. This, coupled with a growing depth of feeling against the West and especially against the US—notwithstanding that non-Western P5 members also resist reform—from many developing states and others angered by US foreign policy, has the potential to derail the rules-based international order the UN has worked so hard to create in the past fifty-nine years. The majority of states—including many Western allies—will not be prepared to tolerate indefinitely a system that continues to allow unlimited power over, and selective use of, the UN by the world's largest powers. It may be stating the obvious, but the cooperation and consent of a large proportion of states—indeed the sense of *belonging* to a global body in which they have a stake and where they believe that their views are duly considered—is vital for realising a more effective and sustainable international security order. The reconstruction of Iraq is an illustrative case: had the US operation been conducted within the parameters of a global issue and with a greater degree of global consent, it is more likely that UN members would assist the US and UK in their present imbroglio in Iraq.

The point here then is that while Security Council reform may entail some loss of power for the P5, in the longer term, inclusivity and a sharing of power is more likely to gain the large states the broad-based international support they require to meet the security challenges of this century. If established norms of order and justice are not seen as being upheld by the very powers that demand compliance of others, it is unlikely that even a huge military preponderance will secure the long-term interests of individual P5 states.

UNSC REFORM: PROPOSALS

What then are seen as necessary reforms of the Security Council? Generally, there are two categories: the composition of the Council, and the decision-making process (often reduced to as the 'problem of the veto').

Composition of the Council

As noted, this aspect of Security Council reform is relatively unproblematic. There is widespread agreement, even among P5 members, that membership of the Council should be expanded. However, there is disagreement over the number of new seats to be created, how geographical regions ought to be represented, and what status and

powers should be accorded to those who fill these new seats. Should any of the new seats be permanent? If so, should these states have the veto? If not, will this create a new tier of 'standing members' and will this be acceptable to other regional contenders?

Calls have been made to expand the number of seats from the present fifteen up to twenty or even twenty-five. A dominant view allows for up to five extra permanent seats. In all likelihood these would include industrialised states (possibly Japan and Germany, although a strong case can be made that the industrialised world is already over-represented on the Council) together with India, and a representative each from Africa and Latin America (possibly Nigeria and Brazil), although there is no clear agreement on this, with other states vying for representation and thus raising questions about whether these seats should indeed be permanent. Between two and five more rotating seats could be added, allowing for more representation from developing states. It is commonly proposed that these be drawn from Asia, Africa, Latin America and the Caribbean, and also from Eastern Europe.

As mentioned above, one factor militating against the addition of permanent seats is the problem of regional representation. There is a growing realisation that the ideal envisaged in 1945 is not being met; states elected on a rotating basis tend invariably to pursue their particular interests first and their regional interests (assuming there *can* be a common regional interest) second. There is no reason to expect that Nigeria, Brazil or India, for example, will consider and present a purely regional position in their activities. Regional representation would occur in terms of a physical presence, but not necessarily in terms of reflecting a common regional position. If regional representation is something of a fiction, it may be more prudent for *all* new seats created to be rotating ones which are nevertheless allotted to specific regions.

This same factor inclines against granting these states the power of veto. It is highly unlikely that the P5 would allow this in any case, but it would also set back efforts to do away with the veto and seriously undermine any emerging norm that seeks to limit, rather than expand, the use of the veto.

Decision-making in the Council

It is here, unsurprisingly, that most difficulties arise. However, there have been several very good proposals and it is not too difficult to imagine that some of them may be implemented. Proposals include:

- A self-imposed moratorium on the use of the veto. It is envisaged that the P5 would mutually undertake not to use the veto for a specified period of time (in the first instance, say five years), unless there is a supreme security emergency. A period of restraint would go some way towards strengthening a norm of non-use, making it in time harder for P5 states to resort to the veto. This may be an

acceptable measure for P5 states which at the same time is seen by other states as an important step in phasing out the veto altogether.

- Utilising a double or triple veto. Two or three P5 states, rather than merely one, would need to exercise their veto for a resolution to fail. This does not address the issue of the veto being undemocratic, but requiring a double or triple veto would make the procedure arguably 'less undemocratic'.
- Unanimous overrule of the veto. A resolution would still be passed if a single P5 member vetoed it, but the remaining fourteen Council members united to overturn it. As with the option immediately above, this would prevent a single power from blocking a resolution, although it might be considerably harder to achieve a consensus of fourteen than it would be to achieve a double or triple veto.
- Switching from the veto to a system of weighted voting. The permanent members would retain a degree of enhanced power, but this power could nevertheless be overturned by the combined weight of others. The system of qualified majority voting employed in the European Union serves as an exemplar here. In the UNSC, the P5 may be given a vote of say, ten points, with rotating states given five points each. Even if a resolution was not favoured by one or two P5 members, provided that other states could muster the political will and votes to oppose it, the resolution need not fail. This model would require attention to what the ratios between P5 and other states would be, whether a simple majority or other kind was required, what number of states would be required to vote in favour, and so on. The appeal of this model is that a weighted system still preserves the greater power of the P5 relative to other UNSC members; for this reason it may be a more appealing system than other proposals. It would continue to give more influence to the permanent members, but importantly, it puts a limit on that influence, something not present with the existing veto mechanism.
- Limiting the use of the veto to Chapter VII enforcement operations. It may be possible to push for limiting the use of the veto to enforcement issues only. This would limit the arbitrary and self-interested use of the veto, even on procedural matters, that we have seen before.

There have also been calls for the P5 to be more accountable in their use of the veto. A sense of greater transparency in decision-making is seen as necessary, together with the need for dissenting P5 members to be called to explain and justify their use of the veto. Here, the hope is that by opening the process up to more accountability and transparency, the effect might be to curb veto use and strengthen the norm against its use.

CONCLUSION

However straightforward and obvious the above cases may appear on reading, we cannot escape the fact that the P5 are unlikely to relinquish their special status and power easily. This is bound to be so especially in times where international relations are marked by turmoil and great insecurity, as they are at present, and where the world's most powerful state prefers hierarchy to the kind of international society provided by the UN.⁶ What is achievable may be limited for some years to come. Ideas and proposals for UNSC reform abound, but political will and commitment are not yet on the horizon. It must also be remembered that even a reformed Security Council will remain imperfect, reflecting as it will the diversity and competing interests that abound in world politics.

Yet there are indications that things are not altogether hopeless. Paradoxically, the recent challenge to the UNSC posed by the Iraq war has demonstrated the resilience of the Security Council. One need only think how history would have viewed the UNSC and its members if it had simply caved in and authorised what the majority felt to be an illegitimate use of force against Iraq. The bypassing of that body has also made the international community *more* rather than less keen to defend the UN. The US decision not to use the Security Council has resulted in a renewal of calls to limit the conditions under which the Council can be held hostage to veto by the Permanent Five members. While the US had labelled the UN as inefficient and irrelevant and called for a more streamlined and decisive body, it is the call for limitations to the power held by the P5 that is more prevalent today. In other words, by not using the UN, the US has increased rather than decreased the international community's determination to keep the UN as the principal mechanism for addressing security issues, and to cushion it from great power misuse. It may be that the greatest blow to the UNSC has opened up possibilities for the construction of a more politically inclusive 'international space' than existed previously. Reform of the Security Council represents an opportunity for the UN to create a more equitable and sustainable world order, something that will surely be needed as we seek to address complex and pressing challenges to global security.

⁶ See Tim Dunne, 'Society and hierarchy in international relations', *International Relations*, 17(3) 2003, pp. 303–20.

The United Nation's human rights system

HILARY CHARLESWORTH

WHAT IS THE UN HUMAN RIGHTS SYSTEM?

The United Nation's human rights system is a complex and convoluted set of mechanisms. It consists of two 'families' of institutions: bodies created by the UN Charter and those created by various UN human rights treaties. The former category includes both political bodies such as the Commission on Human Rights, to which states are elected as members, and expert bodies such as the Sub-Commission on the Promotion and Protection of Human Rights, whose members are elected as individual experts. The role of the Charter bodies includes standard-setting (for example, preparing new treaties or declarations on human rights), responding to human rights violations and promoting human rights. The Commission on Human Rights also has the capacity to appoint Special Rapporteurs on particular human rights issues or on particular countries. The latter category of institutions comprises seven committees created by some of the major UN human rights treaties.¹ The members of these committees are elected by the UN General Assembly, but are considered independent human rights experts. The role of the human rights treaty bodies is to monitor the implementation of the treaties by states that have become parties to them. The primary monitoring method is through scrutiny, comment on and discussion of periodic implementation reports submitted by states parties to the treaties. Treaty bodies produce valuable compilations of jurisprudence, known as general comments or general recommendations, on the scope of particular human rights. Four of the committees also consider complaints from individuals about states' failure to implement their treaty commitments.

¹ The human rights treaty bodies are the Committee on the Elimination of Racial Discrimination, created by the Convention on the Elimination of All Forms of Racial Discrimination; the Human Rights Committee, created by the International Covenant on Civil and Political Rights; the Committee on Economic, Social and Cultural Rights, created by the UN Economic and Social Council to monitor the International Covenant on Economic, Social and Cultural Rights; the Committee against Torture, created by the Convention against Torture; the Committee on the Elimination of Discrimination against Women, created by the Convention on the Elimination of All Forms of Discrimination against Women; the Committee on the Rights of the Child, created by the Convention on the Rights of the Child; and the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, created by the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

PROBLEMS

Criticism of the UN human rights system comes from all directions. The Charter bodies are often regarded as inefficient and as having done little to improve the observance of human rights. A recent study of the Commission on Human Rights, for example, recommended streamlining the Commission's agenda and business, although it also acknowledged that the intensely political context of the Commission's work inevitably affected its efficacy.² The study noted that states sometimes seek membership of the Commission as a strategy to prevent criticism of their own serious human rights abuses. It however rejected a proposal that states could not be elected to the Commission unless they met specific human rights criteria on the basis that this would increase the politicisation of that body.

The system of UN human rights treaty-monitoring bodies has also been strongly criticised. It is cumbersome and inefficient in many ways. Parties to the human rights treaties often submit the required reports on treaty implementation late and in unsatisfactory form. Report preparation is a considerable demand, especially on developing countries, and there is repetition and overlap in the reporting requirements of the seven different committees. In turn, the treaty-monitoring committees have been slow in considering reports and some have disorganised practices. Follow-up of human rights violations tends to be haphazard. These bodies are part-time and members receive token payment for their work. The bureaucratic support for the committees is minimal. The quality of the work of various committees is variable and the independence of many of the committee members is compromised by the fact that they are, or recently have been, government employees.

A series of reports prepared by a distinguished Australian jurist, Professor Philip Alston, for the UN Secretary-General in 1989, 1993 and 1997 focused on the shortcomings of the UN human rights treaty bodies. Alston observed that the system was able to function only because of the 'continuing delinquency of states' in either ignoring their reporting obligations or performing them late. He proposed the creation of a single expert monitoring body in place of the then six (now seven) specialist committees, and the proper resourcing of such a committee.³

² Walter Kälin and Cecilia Jimenez, 'Reform of the UN Commission on Human Rights' (Bern/Geneva: Institute of Public Law, University of Bern, 30 August 2003), <www.oefre.unibe.ch/oe-forsc.htm>.

³ *Effective implementation of international instruments on human rights, including reporting obligations under international instruments on human rights: Note*, UN Doc. A/44/668 (New York: United Nations, 8 November 1989); *Status of preparation of publications, studies and documents for the World Conference: #World Conference on Human Rights: Note*, UN Doc. A/CONF.157/PC/62/Add.11/Rev.1 (Geneva: United Nations, 22 April 1993); *Effective functioning of bodies established pursuant to United Nations human rights instruments: Note*, UN Doc. E/CN.4/1997/74 (Geneva: United Nations, 27 March 1997).

No action has yet been taken on Alston's conclusions and recommendations although the number of overdue reports to the treaty bodies is over 1000. More recently, a Canadian scholar, Professor Anne Bayefsky, has published a major study of the UN human rights treaty body system.⁴ She made a range of suggestions for reform including consolidating the reporting duties of states and the reporting functions of the treaty bodies, ensuring that treaty-monitoring bodies are truly independent and providing adequate resources for the system. Amnesty International issued a set of proposals to strengthen the human rights treaty bodies in September 2003.⁵

AUSTRALIA'S CRITIQUE OF THE UN HUMAN RIGHTS SYSTEM

Governments—the primary subjects of criticism by all parts of the UN human rights structure—have also censured the system. Australia was elected chair of the Commission on Human Rights in 2004 and Mike Smith, the Australian Permanent Representative to the UN in Geneva, has made some interesting proposals to reform that body. He has suggested for example that all members of the UN should be members of the Commission. This would give greater legitimacy to the Commission's work and streamline the current cumbersome process in which the General Assembly's Third Committee reviews the work of the Commission. Ambassador Smith has also proposed reducing the number of agenda items to allow more substantive debate.⁶

The major object of governmental critique however has been the human rights treaty body structure, perhaps because the treaty bodies are formally independent of control by states and less susceptible to political influences than the Charter bodies. Australia has taken a leading role in devising a state-centred program of reform of the UN treaty body system. The Australian initiative appeared to be prompted by comments critical of Australia by three of the treaty-monitoring bodies in 1999 and 2000: the Committee on the Elimination of Racial Discrimination, the Committee against Torture and the Human Rights Committee. The Committees expressed particular concern with the situation of Indigenous peoples in Australia and the mandatory detention of asylum seekers. After a tense meeting of the Minister for Immigration, Philip Ruddock, with the Committee on the Elimination

⁴ Anne F. Bayefsky, 'The UN human rights treaty system: Universality at the crossroads', 18 April 2001, <www.bayefsky.com/report/finalreport.pdf>.

⁵ Amnesty International, 'United Nations: Proposals to strengthen the human rights treaty bodies', September 2003, <web.amnesty.org/library/Index/ENGIOR400182003?open&of=-ENG-375>.

⁶ Mike Smith, 'The UN Commission on Human Rights: Reflections on a year as chair', address delivered at the Centre for International and Public Law, Faculty of Law, Australian National University, Canberra, 31 August 2004.

of Racial Discrimination in Geneva in 2000, the Minister for Foreign Affairs (Alexander Downer), the Attorney-General (Daryl Williams) and Ruddock issued a joint press release announcing a review of Australia's participation in the United Nations human rights system.⁷

The August 2000 press release offers the fullest available account of the Australian international human rights reform agenda.⁸ Information about the method or content of Australia's review is difficult to obtain. No terms of reference for the review were issued and no submissions called for. The outcomes of the review were not publicly available. The secretive nature of the review seemed inconsistent with the Australian government's reforms to the treaty-making process in 1996, when it declared that participation in treaties should not be the preserve of the executive, but subject to the scrutiny of the legislature and involving consultation with the public.

Although the press release stated that Australia would take 'strong measures' to improve the effectiveness of the UN human rights treaty bodies, its overall tone implied that 'reform' required winding back the UN role in human rights monitoring. The Ministers referred to the need to 'ensure adequate recognition of the primary role of democratically elected governments and the subordinate role of non-government organisations' in the human rights system.⁹ Governments of necessity play a primary role in human rights protection through enacting laws. But the implication of the government's statements seemed to be that, if a government is democratically elected, it can be relied on always to protect consistently the rights of its inhabitants. As the philosopher Ronald Dworkin has pointed out, however, the very basis of human rights is the protection of minorities against the will of the majority in certain defined areas.¹⁰ While the democratic political card game should usually be run along majoritarian lines, a civilised society needs to protect particular rights of minorities. For example, a majority of Australians may profess Christianity, but it would go against our ideas of tolerance if an Australian government attempted to ban all other faiths. While non-democratic governments by definition are in breach of their citizens' human rights, they are not alone. Democratically elected governments also regularly violate human rights—decades of decisions by the European Court of Human Rights against the United Kingdom testify to this. Prime Minister John Howard himself has not refrained from criticising the actions of the

⁷ 'Improving the effectiveness of United Nations Committees', Joint Media Release FA97, 29 August 2000, <www.dfat.gov.au/media/releases/foreign/2000/fa097_2000.html>.

⁸ See also 'Australian initiative to reform the UN Treaty Committees: Frequently asked questions', <www.dfat.gov.au/un/untreaty_faq.html>.

⁹ 'Improving the effectiveness of United Nations Committees'.

¹⁰ Ronald Dworkin, *Taking rights seriously* (London: Duckworth, 1977), p. 205.

democratically elected government of Malaysia in relation to the Anwar Ibrahim trial. Governments, even 'gold-plated democracies',¹¹ have little interest in exposing their own human rights breaches. Without a robust culture of scrutiny and debate, often led by human rights non-governmental organisations (NGOs), many human rights issues would remain covered up.

The Australian announcement of a reform agenda took the paradoxical approach of improving the UN human rights system by distancing Australia from it. The rationale of the reporting system is to promote 'constructive dialogue' between the committees and the countries concerned. Australia's reform policy appears designed to avoid a genuine dialogue by limiting cooperation with the UN. The August 2000 press release referred to a decision to take a more 'economical and selective' approach to reporting under the human rights treaties.¹² Given Australia is typically very late with its reports, it is not clear what further economies might entail. Another aspect of the reform program outlined by the three Ministers was a decision that Australia would not become a party to the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women. The Protocol would have allowed direct complaints about non-implementation of that treaty to be made to the Committee on the Elimination of Discrimination against Women.

The August 2000 press release also announced a general rejection of visits to Australia by the treaty committees, unless the government considers there is a compelling reason, a tactic made familiar by countries such as North Korea and China. Critics of the UN system have argued that Australia has been dealt with more harshly by the treaty bodies than overt and systematic abusers of human rights. As proof of this tendency, Prime Minister Howard noted in Parliament that the number of recommendations made by particular human rights treaty bodies to Cuba and China in a particular year was less than the number made to Australia. This is a simplistic and inappropriate measurement: the important indicator of course is not the number of recommendations made, but the actual content of the recommendations. On such a criterion, it is clear from reading the human rights committees' reports that Australia has not been singled out for particular opprobrium.

What progress has Australia's international campaign for treaty body reform made? Australia has sponsored workshops at the UN involving the Office of the UN High Commissioner for Human Rights, members of the treaty bodies and some thirty countries. The conclusions of these

¹¹ Attorney-General Daryl Williams' description of Australia in 2000.

¹² 'Improving the effectiveness of United Nations Committees'.

workshops are not available but the problems of the human rights treaty bodies have now attracted increasing attention from the UN General Assembly and from NGOs. Progress has been rather slow however. One problematic development in 2003 was the reduction of treaty committee members' already modest stipend to the sum of US\$1 per annum, undermining the goal of independence of committee members.

The restricted information available suggests the Australian initiative for reform of the UN human rights treaty bodies was initially limited because of its focus on protecting state sovereignty. 'Efficiency' and 'effectiveness' often appear as code words for reducing criticism of the human rights records of developed countries. While it is clear that the system is in need of serious attention, the initiative needs to move to address the significant issues of competence and impact. The political rhetoric attacking the UN human rights system appears to have reduced in the last year and there are signs that the Australian initiative may now provide useful pressure on the UN human rights system to itself scrutinise its working procedures.

The problems of the human rights treaty bodies can be grouped under the following headings.

Encouraging state participation in the human rights system

Some major international players, such as the United States, have been reluctant to participate in international human rights treaties. Many states that are party to human rights treaties have attached formal reservations, or exceptions, to their commitments, reducing the scope of international scrutiny.

Procedures

The multiplication of reporting requirements on states is inefficient and leads to frustration with the reporting process. Follow-up to comments on reports by the treaty bodies is limited.

Quality of committee members

Members are regularly elected to committees without background or experience in human rights. Some members retain very close links with their government, compromising the appearance of independence.

Resources

The reporting system has been consistently under-resourced, as has the Office of the High Commissioner for Human Rights generally. With a reduction in central budgetary allocation, voluntary contributions now comprise two-thirds of the Office's budget, leading to states earmarking contributions for particular projects rather than for core funding.

These problems suggest a broader agenda for UN human rights treaty body reform that could be usefully taken up by Australia and other countries. As Alston proposed almost a decade ago, a major step

forward would be the creation of a single human rights treaty-monitoring body. Although this would mean the loss of the expertise and focus of particular treaty committees, a single body would allow a more co-ordinated approach to dealing with human rights concerns. In June 2004 the chairpersons of the human rights treaty bodies adopted draft guidelines for the production of an expanded 'core document' on human rights by states and harmonised guidelines on reporting to the treaty bodies.¹³ These developments may foreshadow an eventual move to a single human rights report from states. NGOs should be able to have regular contact with the body and the opportunity to offer comment on state reports. The human rights treaty-monitoring committee should be a full-time institution with a properly staffed secretariat to enable the efficient processing and consideration of state party reports and the creation of effective follow-up mechanisms. Members of the committee should be independent of government and not on leave from government service. The imbalance in representation of women and men in the committees should be addressed. The process for nominating members should include statements of compatibility of nominees with established criteria of competence, experience, expertise and independence. States parties could provide a single report on implementation of its human rights treaty obligations, thus reducing the possibility of overdue and poor quality reports. Finally, any serious approach to reform requires an adequate budgetary commitment. The human rights system should be primarily funded through regular allocations rather than relying on voluntary contributions. The implementation of these reforms could assist in reviving the rather creaky UN human rights edifice.

¹³ *Guidelines on an expanded core document and treaty-specific targeted reports and harmonized guidelines on reporting under the international human rights treaties: Report of the Secretariat*, UN Doc. HRI/MC/2004/3 (Geneva: United Nations, 9 June 2004).

The humanitarian imperative

WILLIAM MALEY

At 4.30 pm on 19 August 2003, a flatbed truck carrying 1000 kilograms of high explosives was detonated by a suicide bomber in a service road adjacent to the Baghdad Headquarters of the United Nations Assistance Mission for Iraq. Among those killed in the blast was Arthur C. Helton, Senior Fellow of the Council on Foreign Relations in New York and one of the most penetrating and insightful commentators on the dilemmas of humanitarian action in the post-Cold War world. In 2002, he had warned that the ‘international system for delivering humanitarian assistance to needy populations around the world is badly fragmented’.¹ It was therefore a tragic irony that he died while investigating the roles that the United Nations could play in the aftermath of an invasion which itself had badly fragmented the understandings on which effective multilateral action depends.

The United Nations was founded in the aftermath of the most catastrophic conflict that the world had ever known, and the lives of countless millions at that very moment were in disarray. Thus, the UN was charged very early in its own life with coping with humanitarian challenges and with the need to develop appropriate structures for addressing them. The Economic and Social Council established by Chapter X of the Charter of the United Nations was viewed as a major innovation, although in the immediate pre-war period, the League of Nations had taken some steps in this direction in the light of recommendations from a committee headed by Stanley Bruce. However, the following five decades were to highlight the importance of flexibility in the face of diverse challenges, and for a range of reasons, the UN system on occasion proved notably flat-footed. It is with the character of these challenges, and the appropriateness of UN responses, that the remainder of this essay is concerned.

HUMANITARIAN CHALLENGES

In recent years there has been a great deal written about ‘complex humanitarian emergencies’, but as Fiona Terry has pointed out, humanitarian emergencies have always been complex, and to the extent that things have changed in recent years, it has been in the intensity of the demands upon agencies and institutions to respond expeditiously and effectively. ‘It is the international response’, she argues, ‘that is

¹ Arthur C. Helton, *The price of indifference: Refugees and humanitarian action in the new century* (New York: Oxford University Press, 2002), p. 223.

more “complex”; proliferation in the number and type of actors in the field has exacerbated inherent dilemmas in the provision of humanitarian assistance’.² It is also tempting to see the involvement of the UN in internal conflicts as a recent development, but that too is a suspect conclusion, as those who recall the Congolese crisis of 1960–63 would recognise. Rather, when one surveys the history of the UN, one witnesses a mixture of institutionalised and ad hoc responses to problems, with the level of initial understanding of a problem’s complexity varying considerably. A number of specific cases help to highlight the nature of these problems.

Some forms of humanitarian challenge arise from territorial division. One of the early issues to confront the UN, one inherited from the League of Nations mandate system, was that of Palestine. The turbulent circumstances of the birth of the state of Israel and the population displacements which accompanied it left a legacy of hatred and despair which continues to haunt both the political and humanitarian agendas of the UN. The United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), established in 1949, is one of the longest-standing UN relief agencies, and its activities are now integrally related to the mythologies of the Palestinian population. Bodies such as UNRWA can hardly play more than an ameliorative role. In this respect, UNRWA differs markedly from the office of the United Nations High Commissioner for Refugees (UNHCR), which has a general protective mandate in respect of refugees, and is much more heavily involved in promoting so-called ‘durable solutions’ to refugee problems.³ However, as the more recent case of the breakup of Yugoslavia demonstrates, even a body such as UNHCR may have limited scope to shape the wider context within which humanitarian catastrophes unfold.

Of course, refugee movements are often symptoms of deeper problems of state disruption, which may create an apparently urgent need for humanitarian assistance. This was well illustrated by the case of Somalia. In the preamble to Security Council Resolution 767 of 27 July 1992, the Council recognised ‘that the provision of humanitarian assistance in Somalia is an important element in the effort of the Council to restore international peace and security in the area’. Here one sees a certain ingenuity at work. Article 2.7 of the Charter provides that nothing in the Charter ‘shall authorize the United Nations to intervene

² Fiona Terry, ‘Reconstituting whose social order? NGOs in disrupted states’, in William Maley, Charles Sampford and Ramesh Thakur (eds), *From civil strife to civil society: Civil and military responsibilities in disrupted states* (Tokyo: United Nations University Press, 2003), pp. 279–99, at p. 280.

³ On UNRWA, see Robert Bowker, *Palestinian refugees: Mythology, identity, and the search for peace* (Boulder: Lynne Rienner, 2003). On UNHCR, see Gil Loescher, *The UNHCR and world politics: A perilous path* (Oxford: Oxford University Press, 2001).

in matters which are essentially within the domestic jurisdiction of any state', but an exception to this is to be found in Chapter VII, which permits enforcement action to 'restore international peace and security'. Thus, by wording its resolution as it did, the Security Council implicitly brought humanitarian assistance within *its* mandate. The outcome in Somalia was not exactly a happy one, and this highlighted another serious challenge for the UN: restoring order in disrupted states is an exceptionally difficult and time-consuming undertaking, and may require considerably more patience than key states are capable of displaying.⁴

In the case of Somalia, the UN's involvement came at a time when there was a relatively high degree of optimism about the potential fruits of multilateral action. US President George Bush (1989–93) had spoken in visionary terms of a possible 'new world order', and in his 1992 report *An agenda for peace*, UN Secretary-General Boutros Boutros-Ghali had called for the UN to consider a wider range of activities than simply classical peacekeeping as instruments for the prevention of conflict.⁵ This optimism did not last long, for several reasons. First, the early 1990s witnessed a burst of intense internal conflicts which significantly stretched the resources of the UN system. Second, as major powers found themselves preoccupied with challenges such as the fragmentation of Yugoslavia, it proved difficult for other trouble spots to secure their attention. Thus, instead of being able to proceed proactively with adequate support from member states, the UN found itself increasingly confronted with the demand to clean up messes not of its own making. The frustrations which accumulated during the 1990s found voice in the blunt language of the 2000 Brahimi Report,⁶ which warned against entanglement in ill-conceived operations. However, this is easier said than done. For example, despite the dubious legality of the US-led 'Operation Iraqi Freedom' in March and April 2003,⁷ the UN nonetheless was drawn into the provision of an Assistance Mission, largely because of pressure from the US. It took the killings of 19 August 2003 to drive Brahimi's warnings home. It is much easier to be a spoiler than a builder, and the old norms that protected

⁴ See William Maley, 'Twelve theses on the impact of humanitarian intervention', *Security Dialogue*, 33(3) 2002, pp. 265–78.

⁵ Boutros Boutros-Ghali, *An agenda for peace: Preventive diplomacy, peacemaking and peace-keeping*, Report of the Secretary-General pursuant to the statement adopted by the Summit Meeting of the Security Council on 31 January 1992 (New York: United Nations, 1992).

⁶ *Report of the Panel on United Nations Peace Operations*, A/55/305-S/2000/809 (New York: United Nations, 21 August 2000), also known as the Brahimi Report (Ambassador Lakhdar Brahimi chaired the panel).

⁷ See William Maley, 'Bypassing UN sets dangerous precedent', *Canberra Times*, 19 March 2003.

humanitarian workers are breaking down. They are not so much angels of mercy as soft targets.

In the worst of circumstances, the UN is confronted with wholesale slaughter. The cases of Cambodia from 1975 to 1978, and Rwanda in 1994, saw millions killed in the face of an ‘international community’ that did nothing of benefit in response to the victims’ cries. The failings of the UN in cases such as these, and in more limited but nonetheless agonising atrocities such as the 1995 Srebrenica massacre and the 1999 slayings in East Timor following the announcement of the results of a UN-run popular consultation on independence, have been documented in distressing detail,⁸ and it should therefore be repeated, in the UN’s defence, that it has no military force of its own and confronted with humanitarian challenges on a genocidal scale, it is entirely dependent upon the willingness of member states to take prompt action. One of the more unseemly spectacles of the 1990s was the gusto with which US political figures blamed the UN, and specifically the Secretary-General, for action which the US had given prior approval in the Security Council, or inaction resulting from the known reluctance of the US to support the kind of response required. Rwanda was one of the worst examples of the latter situation, as Samantha Power has documented in searing detail.⁹

What unites all these cases is the political element. Natural disasters can occur where political factors play no role (although ostensibly ‘natural’ disasters such as fires or mudslides may actually be a product more of inappropriate past policy decisions—on issues such as forest management—than of ‘nature’ on the rampage). But in most cases where the UN’s humanitarian agencies are drawn in, political factors are plainly at play. And from this a sobering implication arises. If root causes of humanitarian problems are political, then the only solutions that are likely to prove durable will be political as well. The provision of humanitarian relief on its own is unlikely to address these root causes; indeed, it may have severe unintended consequences, the worst of which is the sustaining of unappetising political forces as occurred in refugee camps in Zaire after the Rwandan genocide, when *génocidaires* actually found sanctuary. Here we see in stark form the paradox of humanitarian action, to which Terry and other writers have recently

⁸ See Michael Barnett, *Eyewitness to a genocide: The United Nations and Rwanda* (Ithaca: Cornell University Press, 2002); *Report of the Secretary-General pursuant to General Assembly Resolution 53/35: The fall of Srebrenica*, A/54/549 (New York: United Nations, 15 November 1999); William Maley, ‘The UN and East Timor’, *Pacifica Review*, 12(1) 2000, pp. 63–76.

⁹ Samantha Power, *‘A problem from hell’: America and the age of genocide* (New York: Basic Books, 2002).

devoted considerable attention.¹⁰ This can create acute tensions within the UN system, for the 'constitutional mechanisms' to ensure that relief does not aggravate political problems are weak. On occasion, different parts of the UN system have sent inconsistent signals to actors on the ground; this occurred in Afghanistan in May 1998, when a UN relief official actually signed a Memorandum of Understanding with the Taliban which provided that 'women's access to health and education will need to be gradual'.¹¹ Here, the humanitarian imperative to deliver relief overwhelmed basic common sense, which suggested that it was not a good idea to contradict in writing some of the key principles of gender equality which the UN system had been fostering.

RESPONSES

When looking at the UN's response to humanitarian challenges, it is important first of all to recognise that the UN has some splendid achievements to its credit. Its successes in providing succour to refugees, often with very little notice and limited cash resources, is remarkable. UNHCR, for example, helps around twenty million people, but has a total staff of only just over 5000. It is anything but a bloated bureaucracy. Too often, member states casually dump huge problems in the lap of the UN: Kosovo comes immediately to mind.¹² There are many outstanding staff on the UN's payroll, and without their dedication and commitment, countless evils of the world might never have been confronted. Those who scorn the UN should think of foot-soldiers of UN activity such as UNHCR's Bettina Goislard, who was callously murdered by the Taliban in the Afghan town of Ghazni on 16 November 2003 while working to help Afghans rebuild their lives. Some problems, for some people at least, *can* be ameliorated through well-crafted action.

The UN has also sought to fine-tune its mechanisms for the delivery of humanitarian assistance. In 1991, General Assembly Resolution

¹⁰ See Fiona Terry, *Condemned to repeat? The paradox of humanitarian action* (Ithaca: Cornell University Press, 2002). This issue is also taken up in Edward Luttwak, 'Give war a chance', *Foreign Affairs*, 78(4) 1999, pp. 36–44.

¹¹ William Maley, 'The foreign policy of the Taliban', Council on Foreign Relations Paper (New York: Council on Foreign Relations, February 2000), p. 24. For further perspectives on these dilemmas, see also Paula R. Newberg, 'Politics at the heart: The architecture of humanitarian assistance to Afghanistan', Carnegie Endowment Working Paper (Washington, DC: Carnegie Endowment for International Peace, 1999); and Antonio Donini, 'Principles, politics, and pragmatism in the international response to the Afghan crisis', in Antonio Donini, Norah Niland and Karin Wermester (eds), *Nation-building unraveled? Aid, peace and justice in Afghanistan* (Bloomfield: Kumarian Press, 2004), pp. 117–42.

¹² See A. J. R. Groom and Paul Taylor, 'The United Nations system and the Kosovo crisis', in Albrecht Schnabel and Ramesh Thakur (eds), *Kosovo and the challenge of humanitarian intervention: Selective indignation, collective action, and international citizenship* (Tokyo: United Nations University Press, 2000), pp. 291–318, at pp. 300–2.

46/182 set out a mechanism for the raising of funds through consolidated appeals. This continues to the present, and on 18 November 2003, Secretary-General Kofi Annan launched the 2004 appeal, seeking US\$3 billion for forty-five million people in twenty-one countries. The appeal, as usual, was the product of work in the UN Office for the Coordination of Humanitarian Affairs (OCHA). The OCHA is headed by the UN Emergency Relief Coordinator, a senior official directly responsible to the Secretary-General. Resolution 46/182 called for joint inter-agency needs assessment missions in response to requests for emergency assistance.

Nonetheless, on occasions things have gone horribly wrong. The UN's inability to choke off the Rwandan genocide will forever stain its reputation. This case was one in which the indifference of key states was matched by the wariness of the UN Secretariat about becoming involved in a situation which could turn into another Somalia. As a result, not only were vast numbers of Rwandans killed by ethnic Hutu extremists, but the UN's own Force Commander—a truly heroic Canadian, General Roméo Dallaire—was forced to bear witness to an orgy of killing which he was not authorised to stop. To deal with this problem was far beyond the capacity of Dallaire's foot-soldiers, and the case highlights the structural weakness of the UN in dealing with large-scale political problems which no great power has a great interest in solving.¹³

CHANGE

If such problems are to be overcome, some attention needs to be given to the architecture of humanitarian assistance. Resolution 46/182 was an important step in the right direction, but it remains the case that the UN system is constitutionally fragmented in areas where effective coordination is required. The biannual meetings of the United Nations System Chief Executives Board for Coordination highlight the ongoing problem of a multiplicity of Chief Executives rather than a single one. There is no prospect of the UN Specialised Agencies (such as the Food and Agriculture Organization, World Health Organization and United Nations Educational, Scientific and Cultural Organization) or even the UN Funds and Programs (such as United Nations Development Programme, UNHCR, World Food Programme and the United Nations Children's Fund) being drawn back into the Secretariat, and from time to time problems of coordination will surface as a result. A more severe problem relates to resources. Whereas the UN Secretariat is financed from the dues paid by member states, the vital activities of UNHCR are

¹³ See Roméo Dallaire, *Shake hands with the devil: The failure of humanity in Rwanda* (Toronto: Random House, 2003).

almost entirely funded from voluntary contributions. As UNHCR has been increasingly driven into large-scale emergency relief operations, it has on occasion met with the displeasure of key donors as it attempts to discharge its other function of offering protection to refugees and asylum seekers in those donor countries. Separating the function of refugee protection in the strict sense from that of providing emergency relief to displaced populations might be a step in the right direction, but there is no indication that anything like this is about to occur.¹⁴

There is also a serious *global* problem of resources for addressing humanitarian problems, and a fashionable new emergency or political crisis can easily ‘crowd out’ a much needier ‘at-risk’ population. Here, the situation in Afghanistan is instructive. After the signing of the Bonn Agreement in December 2001, there was a great deal of optimism that Afghanistan might at last have turned the corner, but also a desperate need for further measures to ensure that the momentum created in Bonn would not be lost. Yet unfortunately this was exactly what happened. With a view to conserving air-lift assets for future use against Iraq, the US responded dustily to suggestions that the new International Security Assistance Force be extended beyond Kabul,¹⁵ and funds pledged for Afghanistan at a January 2002 Donors’ Conference in Tokyo simply failed to materialise. The scale of the problem can be appreciated from work carried out by the Center on International Cooperation at New York University.¹⁶ Figures compiled from the Government of Afghanistan Donor Assistance Database showed that by November 2003, while US\$5.37 billion had been ‘committed’, the amount spent on ‘projects begun’ was only US\$1.78 billion (of which US\$378.87 million was for the Afghan National Army), and the amount spent on completed projects was a mere US\$112.5 million. And while the Administration of George W. Bush trumpeted its intention to deliver further aid to Afghanistan, its actual behaviour belied its rhetoric. As Ivo Daalder and James Lindsay recorded, the ‘White House’s 2004 budget submission failed to include any funds for Afghan reconstruction’,¹⁷ and the *Emergency Supplemental Appropriations Act for the Reconstruction of*

¹⁴ See William Maley, ‘A new tower of Babel? Reappraising the architecture of refugee protection’, in Edward Newman and Joanne Van Selm (eds), *Refugees and forced displacement: International security, human vulnerability, and the state* (Tokyo: United Nations University Press, 2003), pp. 306–29.

¹⁵ See Alan Sipress, ‘Peacekeepers won’t go beyond Kabul, Cheney says’, *Washington Post*, 20 March 2002.

¹⁶ See Barnett R. Rubin, Humayun Hamidzada and Abby Stoddard, ‘Through the fog of peace building: Evaluating the reconstruction of Afghanistan’ (New York: Center on International Cooperation, New York University, June 2003); and ‘Afghanistan aid flows as of November 2003’ (New York: Center on International Cooperation, New York University, June 2003).

¹⁷ Ivo H. Daalder and James M. Lindsay, *America unbound: The Bush revolution in foreign policy* (Washington, DC: Brookings Institution Press, 2003), p. 114.

Iraq and Afghanistan of November 2003 approved just US\$1.2 billion for Afghanistan, out of a total of US\$87.5 billion. (By contrast, the amount for relief and reconstruction in Iraq was US\$18.6 billion.) The UN simply has little say in what will be spent on humanitarian operations, and how.

Most serious of all is the problem of security. Humanitarian action is most often required in an environment rich with spoilers. On 2 July 2003, President Bush responded to threats to US forces in Iraq with the words 'bring 'em on'. Rarely can such a reckless plea have passed the lips of a prominent leader, and in the months that followed, spoilers lined up to meet his request. Many US soldiers died in the attacks which followed, but so did staff of the two leading humanitarian missions in Iraq, the UN and the International Committee of the Red Cross. In Afghanistan, the resurgence of Taliban groups, operating out of bases in Pakistan, created a similar climate of insecurity. In the long-run, security sector reform, encompassing both military and police, may be required to provide a firm basis for future stability, but it offers no short-term palliative. Thus, if humanitarian action is to succeed, a neutral security force of adequate size and with a 'Chapter VII' mandate may be required—not to carry out humanitarian action itself, which can dangerously blur the distinction between aid workers and combatants, but to secure an environment in which humanitarian action can proceed.

If the 1990s were not easy for the UN, they were not easy for humanitarian action either. While earlier crises such as the Biafran emergency had brought the paradoxes of humanitarianism into focus, it was in the 1990s that they appeared in a deluge. And ultimately, there is no magic solution to the dilemmas which haunt contemporary humanitarian action. In modern humanitarianism, the tension between deontological and consequentialist ethics is fully on display. David Rieff in a recent discussion has argued that it is necessary for humanitarian action to recover its independence. Humanitarianism, he has argued, 'is neutral or it is nothing'.¹⁸ His observations are based on both extensive field experience and deep reflection, and deserve to be taken seriously. Yet if neutrality is necessary for humanitarian effectiveness, it is scarcely achievable within the framework of an integrated UN system with the Security Council in charge. Improving the efficiency of relief delivery does not begin to come to terms with this deeper structural and conceptual tension. The best, therefore, for which one can hope is an uneasy and compromising balancing of the UN's political and humanitarian responsibilities.

¹⁸ David Rieff, *A bed for the night: Humanitarianism in crisis* (New York: Simon & Schuster, 2002), p. 330.

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