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**Global Governance
and the UN Security Council**

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Part A

ABSTRACT

This essay, in the form of a research report, asks how the UN Security Council, a body designed to handle international problems of the 20th century, can successfully handle the global problems of the 21st. The principal contention is that, in the course of the late-20th and early-21st centuries, we have begun to confront ‘global problems’ that impact the planet as a whole and humankind as a single group, just as some traditional international problems are falling away. The contemporaneous overlay of global upon international problems causes conceptual imprecision, giving rise to a political lassitude over choosing among jurisdictional competencies. Without dynamic change the effectiveness of the Security Council and indeed the United Nations, born of the Westphalian era of sovereign equality, is limited.

The essay analyses the nature of the human challenge – its evolution from international problems of the 20th century to global problems of the 21st. It then reviews the Security Council – whether and how it is adapting to that evolution. It previews the broader, underlying global trends of the 21st century, asking how these are impacting upon the Council, and indeed on the UN system as a whole, and what the response should be.

The essay concludes that, in face of an approaching inter-related global crisis, the Council will need to assert powers that are both wider (through an expanded interpretation of threat determination) and deeper (decision-making in legislation and executive action) in response to defined global problems. Under its existing constitutional mandate the Council could distinguish between ‘peace’ and ‘security’ in determining threats and applying binding powers.

Beyond this, however, there is a need for transformational change. Global legislative and executive action may, under pressure of circumstance, come to supersede international negotiation on the most pressing global problems. Yet such expanded powers should not, and never will, be granted without major reform to the UN system including especially the Security Council. These include representative membership, circumscription of the veto, procedural transparency, and a more independent rapid deployment capability. The question of nuclear disarmament of all states, including the Council’s permanent five members, as opposed to non-proliferation, will remain vexatious and problematic.

If these developments do not occur, other global trends reflecting an underlying metamorphosis in power from the political nation-state to the global market-state will render the UN and the Council increasingly irrelevant. The prevention of global disaster in the 21st century requires unprecedented foresight and unified resolve, in reforming the UN-Bretton Woods systems, through a strengthened form of global governance, resting on a juridical foundation known as ‘world constitutionalism’.

The essay is divided into two parts.

- Part A explores the trends in security thinking during the Westphalian era, from the 17th to 20th century, incorporating the first two decades of the 21st. It uses the basic constitutional document of our times, the UN Charter, as the central focus for analysis and prescription.
- Part B looks forward into the 21st century, picking up on the dynamics that are characterising the present decades, and anticipating potential changes and their effect on the UN/Bretton Woods system, and the extent to which the contemporary institutional and legal precepts can handle the future challenges, or will need fundamental change.

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PART A

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I. Introduction

The central question addressed in this paper is how the UN Security Council, a body designed to handle international problems of the 20th century, can successfully handle the global problems of the 21st.

The question is theoretical yet intensely pragmatic. The 21st century may prove to be the most tumultuous period yet experienced by humankind. The forces affecting the human condition are impacting at greater speed and magnitude than ever before. The capacity of the international community of states, representing an embryonic global community of peoples, to summon the foresight and resolve to adapt to that change is by no means guaranteed.

The main conceptual distinction underpinning analysis in this essay is between ‘international’ and ‘global’.¹ It is held here that a qualitative distinction exists between an international problem and a global problem, between an international solution and a global solution, and between an international organization and a global one, including the law that underpins it. That distinction informs the nature of the various challenges currently facing the Security Council and the means by which they may be addressed.

The conclusions developed here reflect the conceptual lens of ‘global governance’. The concept is prescriptive; it presumes the idea of governance at the global level to be a desirable state. The presumption is contestable; it can be, and often is, argued that global governance is antithetical to the universal public good.² The criterion adopted to assist in the judgement then, is whether the 21st-century challenges are best addressed through global governance of some kind or through some other systemic arrangement.

The structure used to explore the question posed is the following:

- An analysis of our emerging global problems – with special focus on the conceptual frameworks for the management of peace and security;
- A review of the nature of the Security Council – whether and how it is adapting to that evolution;
- A preview of the broader, underlying global trends of the 21st century – how these are impacting upon the Council and indeed on the UN system as a whole, and what the response should be.

The essay draws conclusions and advances proposals for consideration.

II. The Emergence of Global Problems

The challenges faced by humankind change with the passage of time. They reflect a natural and continuous dynamic of human affairs, year by year, decade by decade, over the centuries.

The institutions designed to deal with them are disadvantaged. They are struck at a particular moment in time, reflecting a snapshot of values and beliefs, relationships and power, pinpointed to the year in which they are founded. The success with which the institutions handle such challenges in the course of their lifespan depends on their capacity to adapt – retaining the legitimacy of their foundational concordat while transforming at the pace, and to the magnitude, of change. If these are huge and the stakes are high, the drama is intense.

¹ This distinction between ‘international’ and ‘global’ as analytical and prescriptive concepts is what underpins the constitutional nature and purpose of the NZ Centre for Global Studies. See www.nzcgs.org.nz

² J. R. Bolton, ‘Should We Take Global Governance Seriously?’ *Chicago Journal of International Law*, Vol. 1, No. 2 (2000), “Even the apparently simple act of entitling a conference ‘Trends in Global Governance: Do They Threaten American Sovereignty?’ is likely to expose the vast disparities which exist between two quite different factions within the United States. One party, small but highly educated, voluble and tireless, knows instinctively (and often emotionally) what global governance is and why it is desirable. Consisting of academics (largely, but not exclusively, law and international relations professors) and media professionals; members of self-styled human rights, environmental and humanitarian groups; ratified circles within the “permanent government,” and at present even in the White House; and a diverse collection of people generally uneasy with the dominance of capitalism as an economic philosophy and individualism as a political philosophy, these “Globalists” find allies all around the world. Their agenda is unambiguously statist, but typically on a worldwide rather than a national level. The other faction, consisting silently of virtually everyone else in the United States, has no clue whatever that “global governance” is even an issue worth discussing, since, among other things, it has formed no part of any political campaign in recent memory. This large party cannot define global governance, does not think about it, and-when it is explained-typically rejects it unhesitatingly.”

We are in such a period now. The capacity of our current international organizational structure – essentially the UN and Bretton Woods systems, to transform fast enough and far enough to take on the problems of the 21st century, is uncertain.

The central body in this institutional-legal-political drama is the UN Security Council. The ability of the Council, founded in 1945, to adapt and handle the human challenges throughout the 21st century, is in question. Everything depends on gaining an accurate perception of changes underway, and a sympathetic understanding of the scope for institutional evolution – creative enough for adaptation, practical enough to meet the constraining realities of our time.

(a) The evolution of international peace and security

The fundamental concept around which the world, in its current configuration, functions is ‘international peace and security’. That is the phrase enshrined in the Charter of the United Nations and the objective which the Security Council has primary responsibility to maintain. A precise understanding of the concept, however, is elusive which complicates effective policy-making for the execution of that responsibility. Some clarity in how the concept has evolved and what it might mean in the course of the 21st century is important to the strengthening of global governance.

The modern era is comprised of four centuries of ‘international relations’ in which the both the reality and theory of peace and security have evolved in far-reaching ways. The Westphalian period of world history has witnessed the rise of the nation-state, its apogee, and the beginning of its decline. In the early-21st century something new is under way.

The early Westphalian period, from the mid-17th century to the late-19th, witnessed international peace and security in the classical sense – Napoleonic armies with horse and cannon fighting in the plains with civilian observers observing the outcome from the hilltops. Carnage was more or less constrained, and civilian populations more or less protected. The scale was regional and focused on Europe, with Africa and Asia open and vulnerable but the Americas largely cordoned off.

The mid-Westphalian period, through the first half of the 20th century, witnessed mechanized and motorized armies, supported by naval and aerial combat, conducted on a continental scale, with cities subject to devastation. World Wars I and II remain scarred in the human psyche. Yet those events were still quintessentially ‘international’ – warfare between sovereign nation-states. Until the mid-20th century, states remained free to initiate war against one another if all avenues for pacific settlement were exhausted.

The United Nations was born amidst the writhing of that mid-Westphalian period. The year of its birth, 1945, forms the pivot in modern world history. That year, captured through doctrine and principle in the Charter, looks to both the past and the future in a manner unprecedented to this day.

The past was captured in the Organization’s foundational principle of sovereign equality of states and the associated mechanism of collective security. The process of decolonisation, moreover, based on the self-determination principle, resulted in a rapid proliferation of UN members that reinforced the nation-state system itself. Yet with the passage of time, it paradoxically diminished the viability of the system through the diminished effectiveness of sovereign equality – with 193 nation-states undertaking a daily search for the ‘common interest’.

The future was captured in the principle, enshrined in the Charter itself, of the inalienable human rights of the individual in international law, to be respected and enforced at a level ‘below’ the nation-state. It was additionally captured in a technological development, also in 1945 but extraneous to the Charter, that forced the UN to look ‘above’ the nation-state. The advent of atomic weapons took the world by surprise, and in this regard history played a trick: the Charter was signed on 26 June; the Hiroshima bomb was exploded on 6 August. So in the year of its birth the United Nations, designed to maintain international peace and security in the mid-Westphalian style, was immediately required to address a weapon which, through sheer scale, evoked the concept of global security.

The second half of the 20th century is most accurately described as the late-Westphalian period. During this time the UN grappled with challenges that at the same moment seemed reassuringly familiar yet alarmingly different. The inability of the political and diplomatic establishment to understand the opposing tendencies that have been forcing sovereignty in different directions has weakened the capacity of the Security Council to maintain international peace and security.

This partly explains the conceptual difficulty the Security Council faces in meeting its responsibilities, and its frequently ambivalent, occasionally schizoid, behaviour. The 21st century is a time of turmoil, in which security concepts are employed with imprecise meaning, unanchored in any widely-shared reality. In short, world leaders are no longer united on what is meant by peace and security.

(b) The ‘global problematique’

The tendency to be profligate over threat perception confounds any clear-sighted, consistent or objective policy-formulation in the maintenance of international peace and security. The Council would do better to confine itself to the types, or causes, of conflict rather than the means by which it is waged. In the current late-Westphalian period these reflect both traditional and novel types, merging sub-national, international and global contexts in a potpourri of human insecurity.

In a sense the idea of ‘global problems’ is not new, the contextual framework of the ‘*global problematique*’ having been coined in the ‘70s by the Club of Rome.³ Some definitional clarity was advanced around that time by Ruggie,⁴ but it is only in recent decades that the magnitude of these problems and their potential impact has grown to the point where the idea of ‘global problems requiring global solutions’, pioneered in the ‘90s, is now universally accepted.

The question arises, then, how the phenomenon of emerging global problems will affect the Security Council. It is not simply those which the Council has seized itself of, to date. The global commons – the high seas, the deep seabed, the atmosphere and outer space – have all been recognised as requiring global management. In the early-21st century other kinds of problems have emerged that are more global than international. They draw from pressures arising from issues of sustainability – the ecological crisis arising from the ‘twin-growth’ of global population and economic activity that threatens planetary boundaries; cross-border immigration and refugee movement; health pandemics, trans-national crime and financial instability.

The trend is essentially away from international conflict-prevention towards global crisis-management – with the response mechanism changing from responsibility for ‘international peace and security’ by the Security Council to responsibility for global governance; but by whom or what?

III. Global Governance and the Security Council

The Security Council, as the central body for international peace and security, operates within the context and constraint of the Charter. The Charter’s constitutional constituency is the nation-state in its sovereign equality. The Council is designed to handle international problems. While global problems have now joined international problems on the agenda, the United Nations has not developed any conceptual method, or any formal institutional awareness, of the need to make the distinction. This inhibits the development of the Council’s capacity to come to grips with our contemporary problems.

(a) The record to date

In the modern age the nation-state has been the dominant, almost exclusive, institutional vehicle of political legitimacy and capability. Through the Westphalian period, the struggle in the human mind – the tectonics of political contestation – has been waged between the freedom of national sovereignty and the constraint of international law. It was in this context that the first generations of international organization, the League and the United Nations, were conceived. The confrontation between rival political ideologies – conservatism, liberalism, ecologism, fascism and communism – played out in this arena.

³ See Aurelio Peccei: *The Chasm Ahead* (Macmillan, NY; 1969); *The Human Quality*, (Pergamon Press; 1977); *One Hundred Pages for the Future*, (Pergamon Press; 1981); *Before It Is Too Late*, with Daisaku Ikeda (Kodansha America; 1985).

⁴ J.G. Ruggie, ‘On the Problem of ‘the Global Problematique’: What Roles for International Organizations?’, (Alternatives V (1979-80), pp. 518-520). The concept reflected “a complex of problems and processes concerning the planet itself... they occur in many places, affect many people, take place in areas beyond or across national jurisdiction, pose the danger of future world conflict, offend universal moral standards, emanate from the same underlying structure, and require action at the global level.”

The ideological division within the international community split the Council and thwarted attainment of its primary function of collective security for the prevention of aggression. Creative diplomacy and political leadership resulted in ‘classical peacekeeping’ – the patrolling of post-conflict truce arrangements, with force used only in self-defence. But with the exception of Korea (1950) and Iraq (1991), the UN has not successfully employed combat-style enforcement action in response to aggression or breaches of the peace since its inception. Nuclear deterrence, based on collective defence (under article 51), became the basis of war-prevention more than the primary collective security provisions of the Charter (articles 39 to 50).

‘Collective security’ means a system in which each state accepts that the security of one is the concern of all, and agrees to join in a collective response to threats to, and breaches of, the peace. Collective security is qualitatively different from ‘collective defence’; the latter is a defence alliance in which a subset of states employs collective security against another subset, with no overarching, unifying system.⁵ The promotion of ‘universal peace’ in the Charter through harmonizing inter-state action to the ‘common ends’ remains aspirational only, but evocative of the ultimate goal for the emerging global community – and more insightful than political caution normally allows us to acknowledge.

(i) The causes and nature of conflict

It is perhaps necessary first to distinguish, which the Security Council does not do with any real precision, between the nature of conflict and its underlying causes. It can be argued that identifying a particular weapon or military tactic as a ‘threat to the peace’ is unhelpful. The two most prominent examples are weapons of mass destruction (WMD) and terrorism.

The proliferation of weapons of mass destruction was declared by the Council to be a generic threat to peace and security in 1992,⁶ and many times subsequently.⁷ The global nature of nuclear weaponry was recognised in the early effort to internationalise their ownership under UN control.⁸ But the failure to do so, and the ensuing nuclear arms race, signified that even these weapons were seen, for all practical purposes, as an international issue. The main legal instrument, the NPT, reflects this schizophrenia, envisaging their ‘elimination from national arsenals’ while according de facto recognition to a number of countries for their national retention.

Similarly, terrorism has become identified as an issue of ‘international peace and security’. In its early form from the 1960s to the ‘80s, the Council’s focus on Palestinian terrorism (Berlin Olympics, 1972) was seen as a specific inter-state issue (Israel v Palestine). But from the ‘90s, the rise of terrorism by private groups (Al Qaida) against the West, originating in Afghanistan, then Yemen, Syria and Iraq, was described as an ‘international threat’ in itself, rather than the entities employing it or the causes for which it is employed.

⁵ In fact the UN Charter does not explicitly refer to collective security. See ‘The United Nations Security Council and War’, Lowe E., Roberts A., Welsh J., and Zaum D. Eds. (OUP, 2008, p. 13. It does, however, accord powers to the Security Council to respond to threats to, or breaches of, international peace and security, as if a unified system of states exist in the form of the entire UN membership. And the concept is acknowledged as the accepted foundation of UN action in peace and security. The first Security Council Summit meeting (31 January 1992) reaffirmed a universal ‘commitment to the collective security system of the Charter’. The Secretary-General’s ‘Agenda for Peace’ of June ‘92 referred to ‘the concept of collective security as contained in the Charter’, and a ‘universal system of collective security’. The Security Council itself issues a millennium declaration which contained a reference to ‘the collective security system established by the UN Charter’ (SCR 1318, 7 Sept. 2000). And the Commission on Threats, Challenges and Change (2004) asserted that: “The central challenge for the 21st century is to fashion a new and broader understanding, bringing together all these strands, of what collective security means – and of all the responsibilities, commitments, strategies and institutions that come with it, if a collective security system is to be effective, efficient and equitable”. (UN Doc A/59/565, 2 Dec. 2004, synopsis)

⁶ Statement by the President of the Security Council, 31 January 1992, S/23500; UNSCR 1977 (20 April 2011), 1984 (9 June 2011), 2141 (5 March 2014)

⁷ More specifically, the Council has decreed that Iraq, a sovereign nation-state, can never acquire nuclear, chemical or biological weapons (SCR 687 (8 April 1991) North Korea will return to the NPT and undertake nuclear disarmament UNSCR 1718 (21 Oct. 2006) and 1928 (7 June 2010) ; and Syria will relinquish chemical weapons UNSCR 2118 (21 Sept. 2013) . The Council is putting pressure on Iran to foreswear any such ambition UNSCR 2159 (9 June 2014), notwithstanding that the experts (such as Nobel prize-winner Mohamed El Baradei) affirm that Iran ceased any suspected nuclear weapon programme in 2003(15 Feb. 2015).

<http://www.scoop.co.nz/stories/HL1502/S00089/iran-not-developing-nukes-not-imminent-threat-el-baradei.htm> .

⁸ The US proposal (Baruch Plan) to place atomic energy and weaponry under international control, and the rival Soviet plan were mutually killed off in 1946.

In fact neither issue is necessarily required to be identified as a 'threat to peace' for the Security Council to handle it, effectively. Article 26 explicitly accords the Council the power to regulate armaments, and terrorism is more appropriately addressed as a criminal offence under articles 7 and 8 of the ICC's Rome Statute.

(ii) A typology of modern conflict

In light of these complications it is instructive to employ a typology of conflict, with a view to enhancing the response mechanism for international peace and security. While each conflict is unique, there are underlying patterns of causation generic to the times. In a generic sense, four types of conflict can be identified today.

A. Inter-state belligerence

The traditional threat of inter-state conflict is declining but is not entirely absent. Outright conflict between the major powers (US, Russia, China) has become unthinkable but is not impossible as long as national arsenals remain so potent. Conflict between hostile adjacent middle powers (India and Pakistan, Iraq and Iran, North and South Korea) and between smaller belligerents (Israel and Palestine, Vietnam and Cambodia, Ethiopia and Eritrea) remains possible. In some cases the hostility is inflamed through nuclear deterrence or domination, which globalizes the threat.

B. Internal instability

In recent decades the phenomenon of states fragmenting (Yugoslavia, Czechoslovakia) or imploding (Somalia, Central African Republic) or struggling through turmoil (Sri Lanka, Algeria, Tunisia, Libya, DR Congo) has become a regular feature of world events. In every case the crisis has been seen as a genuine threat to international peace and security, despite its internal nature. The reason for that judgement is the indirect but real risk of internal instability spilling over into bilateral or regional crises.

C. Egregious rights violations

The inclusion in the UN Charter of human rights and fundamental freedoms has transformed the relationship between social morality and state power. The first generation of Security Council concern with human rights was the series of sanctions against apartheid South Africa, which lowered the bar of domestic jurisdiction from the early '50s. The second generation has been the 'gravest crimes of human concern' as identified in the ICC's Statute: genocide, crimes against humanity and war crimes, which subjected domestic jurisdiction to primary responsibility for a universal norm.

D. Global problems

A new type of threat, unlike the others, has arisen in the 21st century. These are truly global problems that threaten humanity and the planet without regard to national sovereignty or borders. The Security Council has acknowledged this in recent decisions, declaring global diseases to be a threat to international peace and security (HIV/AIDS in 2000 and '05; Ebola in 2014). And it has declared climate change to be a 'risk multiplier' to existing threats.

The past half-century has thus witnessed a trend in the typology of conflict. The first of these reflects the mid-Westphalian period – traditional conflict of the early-20th century. The second and third reflect the beginning of the late-Westphalian period in which sub-national convulsions within nation-states, effectively civil wars, have become a legitimate concern of international peace and security. The fourth evokes the maturation of the late-Westphalian period, in which global convulsions are becoming a concern, perhaps the central concern, of 'international peace and security'.

(b) The challenge for the future

How is the Security Council to respond more effectively to the emerging global problems of the 21st century? There are two possibilities. It can employ existing powers and simply become more effective through greater political resolve, or the Charter can be amended to accord it greater powers. The distinction is accurately caught by Fleischauer: "While most of the constitutional changes of the United Nations are the result of the necessity to react to the changing realities of the political world, this is not true for all of them. In some important aspects they were the result of a will to change."⁹ Each approach has potential, and pitfalls.

⁹ Carl-August Fleischauer, in Preface to 'The Changing Constitution of the United Nations', E. Fox Ed. BIICL, London; 1997), p. xvi.

(i) Existing powers; greater resolve

Can the international community bring greater political resolve to bear on 21st-century problems? On a few occasions in the past, this has been achieved through the combined creativity of a UN secretary-general and a supportive member state. The prime examples of such flair are Hammarskjöld and Pearson in developing peacekeeping, Pardo and Borghese with the ‘common heritage’, and Axworthy and Evans with Kofi Annan that led to the ‘responsibility to protect’ doctrine.

A more general case is ‘fabric of peace’ developed by Boutros-Ghali. The provenance for this was the Council’s first summit in ‘92, which noted that threats to international peace and security arose now from a multiplicity of sources – economic, social, humanitarian, and ecological.¹⁰ The UN was beginning to acknowledge an inter-related system of global governance. The proposed response mechanism was far-reaching, comprised of a multi-stage process: preventive diplomacy, conflict resolution, peacekeeping, peace enforcement, and peace-building. Especially ambitious was the proposal for a rapid-deployment UN force, comprised of national contingents ready for quick collective enforcement action to maintain the peace.

The General Assembly adopted the ‘forward-looking’ 1992 report and encouraged further work.¹¹ Ensuing events, however – the break-up of Yugoslavia, the collapse of Somalia, and the genocide in Rwanda – dashed hopes of its realisation. The collapse in confidence within the international community required a re-write of the proposals, and a ‘Supplement to Agenda for Peace (1994) lowered the level of ambition. The Brahimi Report (2000) introduced some needed pragmatic proposals pertaining to the procedure and capacity of UN peace-keeping and peace-building, developing the notion of ‘complex emergencies’, ‘robust peace-keeping’ under chapter VII mandates, and ‘civil-military peace-building missions’. This reflected progress but of a more modest scale than the original vision.

Expanded interpretation of ‘threat to the peace’

There is a need for facilitating concepts and criteria to legitimate an expanded interpretation of ‘threat’ – conveying a level of objectivity to override any national subjective judgement of Council members. What might these be?

The concept of ‘human security’ could perhaps be utilised by the Security Council as part of its expansive interpretation of a ‘threat to the peace’. The theme was conceived in UNDP’s Human Development Report 1994, which defined the term to encompass security in income, food, health, environment, physical non-violence, culture, and political rights.¹² The Commission on Human Security (2003) gave it an added boost. The Commission defined ‘human security’ as: “to protect the vital core of all human lives in ways that enhance human freedoms and human fulfilment.”¹³ Essentially, the state exists to serve the security of the individual rather than the reverse.¹⁴

¹⁰ UN Department of Public Information, Yearbook of the United Nations 1992, 34. “The absence of war and military conflicts amongst States does not in itself ensure international peace and security. The non-military sources of instability in the economic, social, humanitarian and ecological fields have become threats to peace and security. The United Nations membership as a whole, working through the appropriate bodies, needs to give the highest priority to the solution of these matters”.

¹¹ A/RES/47/120, 18 Dec. 1992

¹² Economic security: an assured basic income for individuals; Food security: continual physical and economic access to basic food; Health security: minimum protection from diseases and unhealthy [lifestyles](#); Environmental security: protection from short- and long-term ravages of nature, man-made threats in nature, and deterioration of the [natural environment](#); Personal security: Protection from physical [violence](#), whether from the state or external states, from violent individuals and sub-state actors, from [domestic abuse](#), or from predatory adults; Community security: Protection from the loss of traditional [relationships](#) and values and from sectarian and ethnic violence; Political security: Enjoyment basic human rights – freedom from repression, inhumane treatment or forced disappearance.

¹³ Ibid. p. 4

¹⁴ ‘Human Security Now: Protecting and Empowering People’, Report of the Commission on Human Security (New York; 2003), p. 2. www.humansecurity-chs.org. “The international community urgently needs a new paradigm of security. Why? Because the security debate has changed dramatically since the inception of state security advocated in the 17th century. According to the traditional idea, the state would monopolise the rights and means to protect its citizens. State power and state security would be established and expanded to sustain order and peace. But in the 21st century, both the challenges to security and its protectors have become more complex. The state remains the fundamental purveyor of security. Yet it often fails to fulfil its security obligations – and at

The concept was endorsed by the General Assembly in its 2005 World Summit Outcome, with a commitment to define it. Since then it has established a trust fund, a special adviser to the Secretary-General, and a strategic plan to promote the concept (2014-17).

But might the concept prove to be effective in the Security Council? It can be argued that, in passing resolutions on the protection of civilians in armed conflict, especially children and women, journalists and humanitarian personnel, it is embracing at least the spirit of the concept. But such a view has been criticised as unduly enthusiastic.¹⁵ The prevailing view, at present, is that human security is a genuine concept for conflict prevention, but not specific enough for Security Council decision-making on robust peace enforcement.

A competing interpretation is that human security finds its most compelling expression in the ‘responsibility to protect’ concept. The R2P doctrine, coined by the 2001 Commission,¹⁶ acknowledged by the General Assembly in 2005¹⁷ and in the Secretary-General’s report on implementation¹⁸, is becoming perhaps the central concept for an expanded interpretation of a ‘threat to the peace’. In doing so, it is merging human rights with security policy. The idea is now accepted of Council intervention with armed force in cases of ‘atrocities crimes’ and referrals of situations to the International Criminal Court for individual criminal accountability. The doctrine remains controversial but has the general backing of the General Assembly¹⁹ and the cautious but purposeful usage by the Council.²⁰ Yet the debate is not entirely settled over when to use force and how much, as the post-Libya stand-off over Syria has demonstrated.

(ii) Charter amendment; greater powers;

Amendment of the Charter raises more fundamental issues concerning the nature of the Security Council and its powers, and indeed the structure of the UN system as a whole.

The two periods in which the UN system was debated are its genesis (1944-45), and the immediate post-Iraq crisis of confidence (2004-5). The same broad issues were touched on in each case: membership, veto, military capability and jurisdictional power. In each case, far-reaching proposals were advanced.

In the initial planning stage, European and North American groups put forward proposals to allied powers.²¹ Their principal ideas included automatic UN membership for all nation-states; General Assembly power to change or create international law; abstention from voting by any Security Council member involved in a dispute; compulsory dispute settlement; and procedures for peaceful change.

times has even become a source of threat to its own people. That is why attention must now shift from the security of the state to the security of the people – to human security.”

¹⁵ ‘A Regime in need of balance: the UN counter-terrorism regimes of security and human rights’, Isaac Kfir, *University of Miami National Security & Armed Conflict Law Review*, 2013-2014, p. 4. “The Security Council follows a traditional conception of security-- national security. Under this paradigm, the security of the state drives the political process, aiming to adopt policies to make sure that the state is safe from internal and external threats. Drawing from this, advocates argue that a strong state serves as the best guarantor for human rights; after all, the right to life is the most important human right. It is under this reasoning that the Council has accepted the state defense of public emergency as a means to justify new state policies vis-à-vis international terrorism. In contrast, the General Assembly and other UN organs follow a human security formula arguing that the suppression of social, economic, civil and political rights encourages people to turn to terrorism. Accordingly, their focus is to call upon states to ensure that they do not violate international human rights, refugee, or humanitarian law. This is in large part why their counter-terrorism formula is more holistic, typically non-military, and human rights-based.”

¹⁶ http://en.wikipedia.org/wiki/International_Commission_on_Intervention_and_State_Sovereignty

¹⁷ http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/60/1

¹⁸ <http://responsibilitytoprotect.org/Implementing%20the%20R2P.pdf>

¹⁹ General Assembly resolution A/RES/60/1 (24 Oct. 2005), paras. 138-139.

²⁰ UN Security Council resolutions 1674 and 1706 (2006); 1970, 1973, 1975, 1996 and 2014 (2011) and 2121 (2013).

²¹ The Swedish and Swiss associations for the League of Nations circulated resolutions for a new universal body with greater powers. In April '44 a memorandum (‘Postulates, Principles and Proposals of the Two Hundred’) prepared by US and Canadian lawyers acting in private capacity, was presented to the American Society of International Law, outlining the structure of a world body.

The first two proposals were not included in the UN Charter. Abstention for a disputant state is touched upon in article 27(3), but only in respect of pacific settlement and regional enforcement, not enforcement action by the Council under chapter VII. Dispute settlement is quasi-compulsory in the Charter: disputant states are required, 'first of all', to seek pacific settlement and the Council 'shall' call upon them to do so (article 33). If the disputants fail to agree, they 'shall' refer the situation to the Council (art. 37) which may 'recommend' solutions (art. 36). In short, the private proposals had little influence on the official thinking that went into the Charter.

The Iraq crisis of '03 occasioned deep reflection on the role of the United Nations, initiated by the Secretary-General's call for a high-level panel to reflect on the developments of the past decade and propose reform measures. The 2004 report, 'Threats, Challenges and Change', building on the 'Responsibility to Protect' report of 2001, listed a variety of proposals to the Secretary-General who, in turn, submitted a far-reaching report, 'In Larger Freedom', to the General Assembly. The Assembly adopted some of those proposals in its Summit resolution.²²

Council Membership

The 2004 Report advanced two alternative models for expanded membership. The first envisaged six new permanent seats without veto and three new non-permanent seats. The second had no new permanent seats: eight four-year renewable seats and one non-renewable seat. Yet the General Assembly failed to reach agreement. Eternal rivalry between adjacent regional hegemonies will preclude this route, however often it is tried. The idea of an informal regional structure for Council membership, however, is a credible alternative.²³

The veto

In 2001, France proposed that the P-5 should voluntarily refrain from using the veto power when dealing with 'atrocities crimes'. The moral argument for this, as Evans notes, is overwhelming and the political case, that the credibility and legitimacy of the Council is at stake, is also compelling.²⁴ Some 65 member states have expressed support for the French proposal.

From 2005 to '12 a group of states, the Small Five, proposed a range of Council reform measures,²⁵ including the same self-denying ordinance as the French proposal. Its final attempt in 2012 encountered the implacable opposition of the P-5, assisted by a UN legal opinion that a two-thirds majority of the Assembly was required on the grounds that it involved reform of the Council.²⁶ Somewhat ironically, France is re-introducing its proposal in anticipation of the 75th anniversary of the UN in August 2015.

The proposals on the veto are many and varied. There is the suggestion to waive the veto in all proceedings under pacific settlement (Ch. VI). It could be limited to actions taken under enforcement powers of Chapter VII. It could be operative only when cast by at least two permanent members. It could be excluded from certain decisions such as despatching observers or requesting an ICJ opinion. It could be overruled by a two-thirds majority of the General Assembly. It could be allowed only when matters of vital national interest to a permanent member are at stake, emulating the NPT's article X. Or a system of 'indicative voting' could be used, involving a public indication of position that precedes a non-binding voting round, with a view to gaining consensus before a formal vote.²⁷ No agreement on any of these has been reached. Power proves, in historical experience, to be intoxicating and incestuous.

A standing UN force

The original idea in the 1940s of a standing UN force to give the UN independent military capability was always an ambitious goal. The bipolar rivalry, however, spelled an early end to this notion. The inability of the UN to have an effective rapid-deployment capability, even 70 years after the UN was founded, limits its effectiveness.

²² Summit Outcome Document, UN General Assembly 60/1.

²³ K Graham & T Felicio, 'Regional Security and Global Governance (VUB Brussels University Press, 2006)

²⁴ G. Evans, 'Limiting the Security Council Veto', Project Syndicate, 4 Feb., 2015. <http://www.project-syndicate.org/print/security-council-veto-limit-by-gareth-evans-2015-02> her is

²⁵ Draft Resolution: Enhancing the accountability, transparency and effectiveness of the Security Council, A/66/L.42/Rev. 2, 15 May 2012, advanced by Switzerland, Liechtenstein, Jordan, Singapore and Costa Rica.

²⁶ 'Big Five Crushes Small Five over Veto powers', <http://www.sundaytimes.lk/120527/Timestwo/int05.html>

²⁷ Jan Wouters & Tom Ruys, 'Security Council Reform: A New Veto for a New Century?' (Egmont Paper 9, IRRI-KIIB; Academia Press; Brussels; 2005) pp. 21-23

The Arab-Israel conflict of 1948 was the first major test of the UN's enforcement capacity. Secretary-General Trygve Lie at the time proposed the establishment of a 'comparatively small UN guard force...recruited by the Secretary-General and placed at the disposal of the Security Council.' Even a small UN force, he argued, would command respect, for it would have 'all the authority of the United Nations behind it.'

In fact, the Charter had originally envisaged something much more ambitious. To this day article 43 allows for member states to make military forces available to the Council. There was a serious intent on the part of some of the founders to place large national military contingents at the UN's disposal.²⁸ The scale of such action is illustrated by the US estimate of the forces it would supply – 20 divisions (300,000 troops), a 'very large' naval force, 1,250 bombers and 2,250 fighters. By 1948, however, such ideas were already frozen by the Cold War and by Soviet insistence that the great powers would need to make exactly equal contributions.

This is different, however, from a volunteer standing army, without naval or air support which could be contributed under the current UN Standby Force Arrangements System (UNSAS). It would be a brave Secretary-General who forcefully pursues this idea. A group of smaller nations, however, collectively offering to support volunteers from their own countries could provide the catalyst.²⁹

Wider and deeper powers: the question of legitimacy and Council reform

Two developments can thus be observed: an increasingly expansive interpretation of threat by the Council, and an increasing disposition to legislate for the world. These developments raise questions of the Council's global legitimacy. If it is prepared to empower itself to legislate for the world on generic 'threats' of its own determination, as it has done on several occasions now, what other issues might it legislate for?

The broader membership will not acknowledge its global legitimacy without fundamental structural and procedural change, yet the P-5 will not agree to such change. It is probably universally accepted, even by the P-5, that the Council is overdue for reform. There is, however, no agreement over precisely what reform is practicable and acceptable.

According to Evans, the Security Council faces five principal challenges. There is a need for better peacekeeping and conflict resolution. There is a need for consensus on rules for military response to mass-atrocity crimes. There should be an accord governing self-denial over the veto by the P-5 over mass-atrocity crimes. More broadly, there should be recognition that the collective interest is, in fact, the national interest. And there needs to be structural improvements to reflect the world of the 21st century.³⁰

Meanwhile the Council is arrogating implied powers for itself without the associated structural and procedural reform that is widely seen a precondition of commensurate legitimacy. It is the view of many that a more fundamental constitutional change to the wider UN system is necessary, and feasible, to meet that precondition.

IV Short-term proposals 2015 to 2030

The above considerations look ahead to the short-term (Charter amendment, or greater resolve in using existing powers). As Paul Kennedy judges it, change to the UN will need to be incremental only.³¹ The first step in incremental change is most likely to be an insightful assertion of the Council's implied powers.

²⁸ 'For a UN Volunteer Military Force' Interview with Brian Urquhart (NY Review of Books)

<http://www.nybooks.com/articles/archives/1993/jun/10/for-a-un-volunteer-military-force/>

²⁹ An initiative along these lines by Denmark (SHIRBRIG) laid the foundation for UNSAS.

³⁰ G. Evans, 'Five Challenges for the UN Security Council' <http://www.gevans.org/speeches/speech558.html>

³¹ Paul Kennedy, 'The Parliament of Man: The Past, Present and Future of the United Nations' (Random House, New York; 2006) p. 244. "When the UN changes, if it changes at all, the transformations will therefore have to be partial and gradual. ... a 'softly, softly' approach to reforming the United Nations is critical, to get around the usual roadblocks by the Great Powers, national legislatures, and others who prefer things to stay the same. Change is not impossible, but the burden is on the reform-minded critics of the present system, whether they are indignant groups in the developing world or liberal internationalists in the developed world, to propose changes that might work. Any such proposals have to pass two tests: First, do they actually offer a prospect of measurable and practical improvement in our human condition; and second, do they have a good chance of being agreed to by the governments that control the world body?"

In this respect, perhaps the most useful development would be a Council practice of distinguishing between ‘international peace’ and ‘international security’. This would require, in the first instance, a formal definition of ‘security’ and all associated ‘threats’ to security. The Charter (article 39) empowers the Council in three ways: to determine when acts of violence have been committed (‘breach of the peace’; ‘act of aggression’) and when something, including something that may be difficult to define, may be a threat to security (‘threat to the peace’). It shall then ‘make recommendations’ or decide on ‘measures’ to maintain or restore ‘international peace and security’.

The wording of article 39, seventy years old and of constitutional status, accords scope for creative interpretation. Using the legal doctrine of ‘implied powers’ and the socio-economic tool of risk management, it would be feasible for the Council to adopt a resolution along the following lines:

“In pursuit of the purposes of the United Nations in article 1 of the Charter and in discharging the duties of the Security Council in article 24, the Council agrees to the following definitions:

- (1) A threat to international peace and security means any natural event or human action which, in the judgement of the Council, poses unacceptable risk to the common interest of all peoples as identified in the preamble to the Charter.
- (2) International peace means the absence of unauthorised armed force between member states, and the effective and peaceful self-governance of each member state with full respect for universal human rights.
- (3) International security means the capacity of humankind to exist in a sustainable manner that meets the needs of the present generation without compromising the ability of future generations to meet their own needs, through cooperation among member states, for the health and integrity of the Earth’s ecosystem, in a spirit of global partnership as stated in Principle 7 of the Rio Declaration on Environment and Development, 1992.

These definitions would open the way to more rigorous yet more creative interpretation by the Council of its responsibilities.

‘International peace’ is closely akin to ‘universal peace’ in the Charter (article 1.2) and also to the contemporary concept of ‘human security’ identified earlier. It is a long-term concept, and an aspirational state.

The concept of ‘international security’ is more operational in nature. It would encompass all global environmental and sustainability problems. It would take legitimacy from the legal concepts of ‘common heritage of humankind’ as enshrined in the global treaties (Law of the Sea; Antarctic; Climate Change; Ozone Layer). But the term ‘international security’ would be retained since this is the Charter’s wording, and it is important to avoid any amendment. It is a matter of Charter interpretation rather than amendment.³²

By differentiating peace and security, it is possible to empower the Council with the constitutional function of serving both goals in a legitimate manner. This would empower it, on the one hand, to adopt binding measures to use armed force to restore international peace, and on the other hand, to adopt binding measures not involving armed force (such as economic sanctions) to maintain international security.

The Security Council could be empowered to respond to threats to international peace, and threats to international security, in different procedural ways. The veto could be retained for the former, and the latter could be decided by the procedural voting method (9 out of 15 votes). Article 27(2) allows procedural votes to be decided by any nine affirmative votes; article 27(3) requires the veto on non-procedural votes. Issues of international security, not involving the use of armed force, could be taken, by formal agreement, to be a procedural matter. If armed force is not available for the latter, restoring international security, there is a sufficient argument for the permanent members not to exercise the right of veto.

The concept ‘international security’ could be judged by the Council to encompass the planetary boundaries identified by the scientific community. This concept represents the most modern thought on the subject available. The Stockholm Resilience Centre has developed the idea of nine planetary boundaries which, any of which, if breached by human action for any significant time-period, will spell catastrophic disturbance to the planet’s well-being. These are: biodiversity loss, climate change, nitrogen loss, ozone depletion, land-use stress, fresh water stress, ocean acidification, toxics level, and aerosol atmospheric loading. Already, four boundaries are being breached.

³² See ‘The UN Charter: A Commentary’ (pp. 25 to 44) for a useful chapter of Interpretation of the Charter.

One of those boundaries is atmospheric carbon concentration. In April 2007, the UK brought the subject of climate change before the Security Council, but primarily through the opposition of China, no action or even statement was made. In July 2011, however, the Council held a meeting under German presidency, and expressed concern that the possible adverse effects of climate change could, in the long-run, aggravate certain threats to international peace and security. The Secretary-General was precise: “The facts are clear: climate change is real and accelerating in a dangerous manner. It not only exacerbates threats to international peace and security; it is a threat to international peace and security”.³³ And in March 2013, the UK and Pakistan led an informal Arria Formula session of the Council on the connection between climate change and security challenges. The Council was briefed by one of the world’s leading climate scientists, who noted that, while action by UNEP and UNFCCC towards a binding global agreement was important, “the Security Council is where the world powers are convening and taking hard decisions. So it would be a good thing if its members put their full weight behind the quest for that global climate agreement.”³⁴

In the view of the Secretary-General, transnational crime, pandemics, and climate change were three defining challenges, and as the nature of such threats continued to evolve, the Council must also keep pace.³⁵

Part B of this essay will explore the broader issue of modern global trends and their impact on the United Nations system.

³³ SC/10332, 20 July 2010

³⁴ ‘Security Council Takes on Climate Change’, Matthew Berger | March 28, 2013

<http://www.theinterdependent.com/environment/article/security-council-takes-on-climate-change>

³⁵ SC/10457, 23 November 2011