



**New Zealand Centre  
for Global Studies**

Te Pokapū Akoranga Aorere o Aotearoa

**GLOBAL STUDIES RESEARCH SERIES**

**Research Report 1**

*JULY 2015*

**Global Governance  
and the UN Security Council:  
*From the 20<sup>th</sup> century to the 21<sup>st</sup>***

Kennedy Graham

**Copyright:**

First published in New Zealand 2015 by:  
NZ Centre for Global Studies Publications  
Auckland, New Zealand

© NZCGS Publications

All rights reserved  
National Library of New Zealand  
ISBN 978-1-99-118740-6

**Author:**

Dr Kennedy Graham is founding Director of the NZ Centre for Global Studies. His career has spanned four decades as a civil society leader, NZ diplomat, UN official and university teacher, and as a Member of the NZ Parliament since 2008. He served as a Senior Consultant to the UN Dept. of Political & Security Council Affairs and to UNDP (2004-7). His academic background covers Auckland University, Victoria University of Wellington, University of Canterbury, and Fletcher School of Law & Diplomacy (Boston). Dr Graham has been a Fulbright Scholar, Quatercentenary Fellow at the University of Cambridge, and Visiting Professor at the College of Europe.

**Disclaimer:**

The NZ Centre for Global Studies undertakes, as its trusteeship responsibility, to encourage and facilitate informed interdisciplinary research into global affairs in the 21<sup>st</sup> century, and publish and circulate research reports for the purpose of education and benefit of the international and domestic community. While the Centre ensures that the subject of a report lies within its area of focus before endorsing publication in its Research Report Series, responsibility for the content of a report remains exclusively with the author(s).

**Acknowledgment:**

The author acknowledges the assistance of NZCGS Board colleagues, in particular Prof Ramesh Thakur, Prof Kevin Clements and Ass. Prof Chris Gallavin, in the preparation of this report.

## ABSTRACT

This research report explores how the UN Security Council, a body designed to handle international problems of the 20<sup>th</sup> century, can successfully handle the global problems of the 21<sup>st</sup>.

The principal contention is that, in the course of the late-20<sup>th</sup> and early-21<sup>st</sup> 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 report analyses the nature of the human challenge – its evolution from international problems of the 20<sup>th</sup> century to global problems of the 21<sup>st</sup>. It then reviews the Security Council – whether and how it is adapting to that evolution. It previews the broader, underlying global trends of the 21<sup>st</sup> 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 report 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 21<sup>st</sup> 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’.

## Contents

	<b>Section</b>	<b>Page</b>
I.	Introduction	5
II.	The Emergence of Global Problems	6
	(a) The evolution of international peace and security	
	(b) The ' <i>global problematique</i> '	
III.	Global Governance and the UN Security Council	7
	(a) The record to date	
	(i) The causes and nature of conflict	
	(ii) A typology of modern conflict	
	(b) The challenge for the future	
	(i) Existing powers, greater resolve	
	(ii) Charter amendment, greater powers	
IV.	Global Trends and the UN System	13
	(a) Erosion of the nation-state	
	(i) Earth Inc. and the rise of the 'market-state'	
	(ii) Sustainability and existential risk management	
	(b) Global response: the United Nations in teleological perspective	
	(i) Global governance and the UN	
	(ii) World constitutionalism and the UN	
V.	Conclusions and Proposals	19
	(a) Conclusions	
	(b) Proposals	
	(i) Short-term proposals 2015-30	
	(ii) Long-term possibilities 2030-50	

## I. Introduction

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

The question is theoretical yet intensely pragmatic. The 21<sup>st</sup> 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 report is between ‘international’ and ‘global’.<sup>1</sup> 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.<sup>2</sup> The criterion adopted to assist in the judgement then, is whether the 21<sup>st</sup>-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 21<sup>st</sup> century – how these are impacting upon the Council and indeed on the UN system as a whole, and what the response should be.

The research report draws conclusions and advances proposals for consideration.

---

<sup>1</sup> 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](http://www.nzcgs.org.nz)

<sup>2</sup> 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.”

## 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.

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 21<sup>st</sup> 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 21<sup>st</sup> 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 21<sup>st</sup> 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-21<sup>st</sup> century something new is under way.

The early Westphalian period, from the mid-17<sup>th</sup> century to the late-19<sup>th</sup>, 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 20<sup>th</sup> 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-20<sup>th</sup> 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 20<sup>th</sup> 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 21<sup>st</sup> 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.<sup>3</sup> Some definitional clarity was advanced around that time by Ruggie,<sup>4</sup> 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-21<sup>st</sup> 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, ecology, fascism and communism – played out in this arena.

---

<sup>3</sup> 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).

<sup>4</sup> 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.<sup>5</sup> 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,<sup>6</sup> and many times subsequently.<sup>7</sup> The global nature of nuclear weaponry was recognised in the early effort to internationalise their ownership under UN control.<sup>8</sup> 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 Iraq, and was described as an ‘international threat’ in itself, rather than the entities employing it or the causes for which it is employed.

---

<sup>5</sup> 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 21<sup>st</sup> 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)

<sup>6</sup> 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)

<sup>7</sup> 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 forswear 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> .

<sup>8</sup> 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 21<sup>st</sup> 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 2005; Ebola in 2014). And it has declared climate change to be a ‘risk multiplier’ and a ‘potential threat’ to international peace and security.

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-20<sup>th</sup> 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 21<sup>st</sup> 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.”<sup>9</sup> Each approach has potential, and pitfalls.

(i) *Existing powers; greater resolve*

---

<sup>9</sup> Carl-August Fleischauer, in Preface to ‘The Changing Constitution of the United Nations’, E. Fox Ed. BIICL, London; 1997), p. xvi.

Can the international community bring greater political resolve to bear on 21<sup>st</sup>-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.<sup>10</sup> 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.<sup>11</sup> 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.<sup>12</sup> 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.”<sup>13</sup> Essentially, the state exists to serve the security of the individual rather than the reverse.<sup>14</sup> 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).

---

<sup>10</sup> 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”.

<sup>11</sup> A/RES/47/120, 18 Dec. 1992

<sup>12</sup> 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.

<sup>13</sup> Ibid. p. 4

<sup>14</sup> ‘Human Security Now: Protecting and Empowering People’, Report of the Commission on Human Security (New York; 2003), p. 2. [www.humansecurity-chs.org](http://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 17<sup>th</sup> 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 21<sup>st</sup> 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 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.”

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.<sup>15</sup> 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,<sup>16</sup> acknowledged by the General Assembly in 2005<sup>17</sup> and in the Secretary-General’s report on implementation<sup>18</sup>, 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 Assembly<sup>19</sup> and the cautious but purposeful usage by the Council.<sup>20</sup> 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.<sup>21</sup> 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.

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.

---

<sup>15</sup> ‘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.”

<sup>16</sup> [http://en.wikipedia.org/wiki/International\\_Commission\\_on\\_Intervention\\_and\\_State\\_Sovereignty](http://en.wikipedia.org/wiki/International_Commission_on_Intervention_and_State_Sovereignty)

<sup>17</sup> [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/RES/60/1](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/60/1)

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

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

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

<sup>21</sup> 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 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.<sup>22</sup>

### *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 hegemony will preclude this route, however often it is tried. The idea of an informal regional structure for Council membership, however, is a credible alternative.<sup>23</sup>

### *The veto*

In 2001, France proposed that the P-5 should voluntarily refrain from using the veto power when dealing with 'atrocious 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.<sup>24</sup> 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,<sup>25</sup> 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.<sup>26</sup> Somewhat ironically, France is re-introducing its proposal in anticipation of the 75<sup>th</sup> 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.<sup>27</sup> 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.

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

---

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

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

<sup>24</sup> 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

<sup>25</sup> 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.

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

<sup>27</sup> 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

place large national military contingents at the UN's disposal.<sup>28</sup> 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.<sup>29</sup>

*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 21<sup>st</sup> century.<sup>30</sup>

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. Global Trends and the United Nations system**

Beneath the issue of Security Council reform, deeper forces are playing out, independently, as already noted, in the emerging global community. They are likely to shape the nature and role of both the nation-state and international organization as currently configured.

##### ***(a) Erosion of the nation-state***

In recent decades the legitimacy and capability of the nation-state has diminished. Challenges to its authority have come from above, at the macro level in the form of global problems for which only global solutions can be found, and the micro-level through human rights enjoyed, and criminal accountability faced, by the individual. In the latter half of this short space of time – the late-Westphalian period – the conceptual struggle has not been between international law and national power but between political legitimacy and corporate power. The factors at play in the 21<sup>st</sup> century are less the tug between national sovereignty and international law than between international organization and globalisation. As Thakur has observed:

“International relations is shaped by the interplay of power and ideas. ... As power and influence seep out of the US-led transatlantic order and migrate towards Asia and elsewhere, how, and by whom, will the transition from the Westphalian to a replacement system of structuring world affairs be managed? ... A much-needed global moral rebalancing is in train. ... Not just the process but the structures and rules of the game for conducting negotiations must be agreed to jointly. This includes the rise and consolidation of new norms of international behaviour by sovereign states.”<sup>31</sup>

---

<sup>28</sup> '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/>

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

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

<sup>31</sup> R. Thakur, 'The Responsibility to Protect: Norms, Laws and the Use of Force in international Politics' (Routledge; London, New York; 2011) p. 13

The nature of power and legitimacy in the 21<sup>st</sup> century is thus not easily definable, and yet the problems are increasingly daunting. What lines might this take in the 21<sup>st</sup> century?

(i) *Earth Inc. and the rise of the global 'market state'*

The struggle has been described by Gore as occurring between Earth Inc.<sup>32</sup> and the Global Mind,<sup>33</sup> with political power being the consequent factor.<sup>34</sup> The strain this poses on existing international organizations to claim legitimacy and assert global policy, or even international cooperation, is immense.

A similar analysis is made by Bobbit who foresees the emergence of the global 'market state'.<sup>35</sup> Some are tempted to give up, and dismiss the UN as a failed second attempt, lasting longer than the League but hobbled by similar shortcomings, and with insufficient capacity to adapt.<sup>36</sup>

Indeed the private sector appears to be driving global policy, in resource planning and the ensuing environmental impact, not only on Earth but more recently in space.<sup>37</sup> The UN appears to be increasingly side-lined. But not all are so persuaded. As Gore concludes, washing one's hands of the UN's work in these fields represents intellectual defeatism and political escapism.<sup>38</sup>

---

<sup>32</sup> Al Gore, *The Future* (Random House, New York; 2013) pp. 4, 5. "We are living with, and in, Earth Inc.: national policies, regional strategies, and long-accepted economic theories are now irrelevant to the new realities of our new hyper-connected tightly integrated, highly-interactive, and technologically advanced economy. ... This powerful driver of global change – sometimes loosely and inadequately referred to as 'globalization' – marks not only the end of one era in history and the beginning of another, it marks the emergence of a completely new reality with which we as human beings must come to grips

<sup>33</sup> *Ibid.*, p. 46. "Just as Earth Inc. is changing the role of human beings in the production process, the Global Mind is changing our relationship to the world of information."

<sup>34</sup> *Ibid.*, p. 93. "With a tightly-integrated global economy and a planet-wide digital network, we are witnessing the birth of the world's first truly global civilization. ... As a result, the balance of power is changing dramatically. ... [J]ust as nation-states emerged as the dominant form of political organization in wake of the printing press, the emergence of the Global Mind is changing many of the social and political assumptions on which the nation-state system was based. Some of the sources of power traditionally wielded primarily by nations are no longer as firmly under their exclusive control. While our individual political identities remain primarily national and will for a long time to come, the simultaneous globalization of information and markets is transferring power – once reserved for national governments to private actors – including multinational corporations, networked entrepreneurs, and billions of individuals in the global middle class. No nation can escape these powerful waves of change by unilaterally imposing its own design. The choices most relevant to our future are now ones that confront the world as a whole. But because nation-states retain the exclusive power to negotiate policies and implement them globally, the only practical way to retain control; of our destiny is to seek a global consensus within the community of nations to secure the implementation of policies that protect human values

<sup>35</sup> Philip Bobbit, *The Shield of Achilles: War, Peace and the Course of History* (Anchor Books: New York; 2003) p. xxvi. "The emergence of the market state will produce conflict in every society as the old ways of the superseded nation-state (its use of law to bring about certain desired moral outcomes, for example) fall away. ... Most important, however, the global society of market states will face lethal security challenges in an era of weakened governments and impotent formal international institutions."

<sup>36</sup> *Ibid.* p. xxvii. "The pattern of epochal wars and state formation, of peace congresses and international constitutions, has played out for five centuries to the end of the millennium just past. A new constitutional order – the market state – is about to emerge. But if the pattern of earlier eras is to be repeated, then we await a new, epochal war with state-shattering consequences. Many persons see wars as an illness of states, a pathology that no healthy state need suffer. This way of looking at things more or less disables us from shaping future wars, as we search, fruitlessly, for the wonder serum that will banish war once and for all... Yet we can shape future wars, even if we cannot avoid them. We can take decisions that will determine whether the next epochal war risks a general cataclysm.

<sup>37</sup> In the past five years, the private space industry has increased six-fold, to some 800 companies (such as Virgin Galactic, Space X), at an investment level of US\$10 b. To quote a leading planner at Space X: "...investors have the sense that there is money to be made, and there have been a flurry of business plans since Space X." Bloomberg, in *NZ Herald* (10 Feb. 2015, p. B15). Proposals at the UN since the 1980s for a World Space Organization never materialised.

<sup>38</sup> *Ibid.*, p. 268



(ii) *Sustainability and existential risk management*

Avoiding escapism requires an accurate assessment of the measure of risk the world now faces. At the global level, where the problems humankind confronts are so pervasive and daunting, and where the international community is proving so slow and to some extent inept, the risk has become existential. As Bostrom puts it, “Existential risks are those that threaten the entire future of humanity. ... Despite their importance, issues surrounding human-extinction risks and related hazards remain poorly understood.” Bostrom clarifies the concept of existential risk and develops a classification scheme for it. The notion of existential risk, he maintains, suggests a new way of thinking about global sustainability.<sup>39</sup>

The management of such risk, argue Innerarity and Solana, can be seen in the 21<sup>st</sup> century as a new source of political legitimacy.<sup>40</sup> This is new. Risk management, hitherto confined to corporate planning, is now becoming a political imperative. And risk management at the global level is unprecedented. As Beck notes: “To the extent that risk is experienced as omnipresent, there are only three possible reactions: denial, apathy or transformation. The first is largely inscribed in modern culture, the second resembles post-modern nihilism, and the third is the ‘cosmopolitan moment’ of the global risk society.”<sup>41</sup> Beck asks how we can make sense of a world that appears to be ‘unhinged’. He uses the metaphor of a caterpillar undergoing a profound transformation in its cocoon, yet with no idea of what is taking place around. Because of the environmental crisis, far-reaching technological change and the inadequacy of modern national institutions, something similar is happening to us, but we are hardly, if at all, aware of what it consists.<sup>42</sup>

**(b) *Global response: the United Nations in teleological perspective***

In response to this, what is the likely direction of the United Nations to be? How, if at all, can the UN adapt to Earth Inc.? Will the global ‘market state’ operate independently of international organization and essentially direct the future of the planet in the face of a collective political impotence by uncoordinated and competitive national leadership? Can the UN harness the ‘global mind’ toward the ‘common ends’, developing a potent new political-military strategy that is self-directed and which engages in effective global risk management?

It becomes clear, at this deeper level, that no successful adaptation by the United Nations is likely to occur without far-reaching amendment to the Charter, of the kind explored earlier. The United Nations, as Chesterman notes, has not fully entered the globalised, interdependent world of the 21<sup>st</sup> century. Individual leadership, primarily by the Secretary-General, will be the key to avoiding irrelevancy of the UN.<sup>43</sup> This is endorsed by Evans: “The Council should encourage the UN’s Secretary-General to be less nervous about using his formidable authority under article 99 of the Charter to bring matters to the Council’s attention on his own.”<sup>44</sup>

---

<sup>39</sup> Bostrom, N., ‘Existential Risk Prevention as Global Priority’ (Global Policy 2012)

<sup>40</sup> Daniel Innerarity and Javier Solana, ‘Humanity at Risk: The Need for Global Governance’ (Bloomsbury, NY, London, New Delhi, Sydney; 2013), pp. x-xii. “We must deepen the debate surrounding global governance as a goal to which humanity must strive with all its might. This might seem like a tough programme, but there is not pessimism in it; governing global risks is the major imperative of humanity if we do not want the thesis of the end of history to be confirmed, not as the climax of the quiet victory of liberal democracy, but as that of the most terrible of collective failures”. Innerarity defines ‘global risk’ as encompassing risks that originate from humans; affect all humans; are usually unpredictable, resulting from long and complex causality; are irreversible beyond a certain point; represent a major, sometimes fatal, threat to humanity; are within human capacity to understand; and can be managed at a global level.

<sup>41</sup> Ulrich Beck, in Daniel Innerarity and Javier Solana, ‘Humanity at Risk: The Need for Global Governance’ (Bloomsbury, NY, London, New Delhi, Sydney; 2013), p. 11.

<sup>42</sup> Ulrich Beck, ‘The Metamorphosis of the World’, (2015, forthcoming)

<sup>43</sup> Simon Chesterman, ‘Secretary of General? The UN Secretary-General in World Affairs’ (Cambridge; CUP; 2007) p.p. 31-32. “The Secretary-General is one of the world’s best examples of responsibility without power, a situation that is often not understood. The United Nations is one of the last bastions of national sovereignty. It is, above all, an organization where independent sovereign states can cooperate, hope to reach agreement, and even take action, on issues of general importance. ... The Secretary-General has no sovereign rights and no sovereign resources. ... To carry out the SG’s responsibilities effectively, therefore, demands unusual strength of character, temperament, and intellectual capacity. ... The United Nations as an international organization has not fully entered the globalised, interdependent world of the 21<sup>st</sup> century. One of the standing labours of the Secretary-General is to try, step by step, to complete that entry before the organization makes itself irrelevant.”

<sup>44</sup> G. Evans, ‘The Security Council’s Credibility Test’, in Project Syndicate, 28 Oct. 2014. <http://www.project-syndicate.org/commentary/un-security-council-reform-legitimacy-by-gareth-evans-2014-10>

Any amendment to the UN Charter, however, will affect only the principal organs of the UN itself, including the Security Council. Yet if the Security Council expands its powers, this impacts on the other agencies within the UN system and even the Bretton Woods system as well. So some concern for system-wide change in the 21<sup>st</sup> century is necessary. This is where the concept of 'global governance' becomes relevant.

(i) *Global governance and the United Nations*

Recent action by the Security Council has in fact been an assertive expression of global governance. At the start of the 21<sup>st</sup> century, the Council entered what has been described as its 'legislative phase',<sup>45</sup> with SCR 1373 (2001) on terrorist financing (and ensuing resolutions 1456 and 1566), SCR 1540 (2004) on WMD proliferation for terrorist acts, and SCR 2178 (2014) on foreign terrorist fighters.<sup>46</sup> In 2004 the Council president, on the adoption of SCR 1540, offered the view that "Council would be needed more and more to do that kind of legislative work".<sup>47</sup> Having the Security Council act as 'world legislator', however, has been described by at least one leading scholar as a 'revolutionary' development'.<sup>48</sup>

A broader systemic change to international organization than simply improving the Security Council is envisaged in the concept of global governance. The concept was developed in the '80s<sup>49</sup> but it was given prominence by the 1995 independent Commission.<sup>50</sup> "The strongest message we can convey", said the Commission, "is that humanity can agree on a better way to manage its affairs and give hope to present and future generations. The development of global governance is part of the evolution of life on the planet, and that process will always be going on. ... We are in a time that demands freshness and innovation in global governance."

Global governance is not global government, as the Commission was careful to stress. "The challenge is to strike a balance in such a way that the management of global affairs is responsive to the interests of all people in a sustainable future, that it is guided by basic human values, and that it makes global organization conform to the reality of global diversity."<sup>51</sup> The Commission stopped short of a precise definition, but describes the concept as a dynamic complex process of interactive decision that operates within an agreed global framework.<sup>52</sup>

The 'planetary interest' concept is relevant to the development of global governance. In 1991, a parliamentarian network declared that "The organization approaches the problems of our time with a new political maxim: that the paramount value is no longer the national interest but rather the planetary interest".<sup>53</sup> In 1994, the UN Secretary-General declared that

---

<sup>45</sup> José E. Alvarez, 'Hegemonic International Law Revisited', AJIL 2003

<sup>46</sup> At the adoption of SCR 1373, Costa Rica stated that "for the first time in history, the Security Council enacted legislation for the rest of the international community". UN Doc. A/56/PV.25, p. 3 (2001). SCR 1540 was described by Germany, as Council President, "the first major step towards having the Security Council legislate for the rest of the UN membership". <http://www.un.org/press/en/2004/pleugerpc.DOC.htm>

<sup>47</sup> <http://www.un.org/press/en/2004/pleugerpc.DOC.htm>

<sup>48</sup> Stefan Talmon, 'The Security Council as World Legislator' (AJIL 2005) pp. 175 *et seq.*

<sup>49</sup> J.G. Ruggie, 'On the Problem of 'the Global Problematique': What Roles for International Organizations?', (Alternatives V (1979-80), p. 549). "...international organizations are playing an increasing role in global governance. The role is not that of actor but of catalyst of intergovernmental processes. International organizations have played an increasing role in developing holistic perspectives of the complex of global processes and problems, and in expanding the collective knowledge base concerning it."

<sup>50</sup> 'Our Global Neighbourhood', Report of the Commission on Global Governance (Oxford, OUP; 1995), pp. xvi, xvii.

<sup>51</sup> Ibid.

<sup>52</sup> Ibid., pp. 2-6. "Governance is the sum of the many ways individuals and institutions, public and private, manage their common affairs. ... At the global level, governance has been viewed primarily as intergovernmental relationships, but it must now be understood as also involving non-governmental organizations (NGOs), citizens' movements, multinational corporations, and the global capital market. ... There is no single model or form of global governance, nor is there a single structure or set of structures. It is a broad, dynamic complex process of interactive decision-making that is constantly evolving to changing circumstances. ... There must be an agreed global framework for actions and policies to be carried out at appropriate levels. ... It is our firm conclusion that the United Nations must play a central role in global governance. ... But both the United Nations itself and the broader UN system need to be reformed and revitalised." An overview of the various 'tests of global governance' has been provided, using the series of 'world conferences' convened by the UN through the 1990s as the litmus test – tests of diplomacy, leadership, discipline, sovereignty, civilization, gender, and values. See A. F. Cooper, 'Tests of Global Governance: Canadian Diplomacy and UN World Conferences' (Tokyo, New York, Paris; UN University Press; 2004)

<sup>53</sup> K. Graham, 'The Planetary Interest' (Global Action III(3), NY; Parliamentarians for Global Action, Sept. 1991, p. 8)



“States have always defined their national interests. Today, States must be prepared to accommodate the concept of a common – global or planetary – interest”.<sup>54</sup>

In 1999 a number of political leaders and academics took the concept further, developing the definition at two levels. The ‘vital planetary interest’ was comprised of: the survival and viability of humanity, contingent on maintenance of the physical integrity of Earth and the protection of its ecological systems and biosphere from major anthropogenic change. The ‘normative planetary interest’ was comprised of the universal improvement in the human condition in terms of basic human needs and fundamental human rights.<sup>55</sup> Three criteria were developed for determining when the planetary interest is applicable: spatial scale, time-period and magnitude.

The relevance of the ‘planetary interest’ to Security Council thinking was explored by Ramphal.<sup>56</sup> He recalled that the ‘vital planetary interest’ encompassed those issues that threatened the integrity of the planet and the survival of the species. The three contemporary global imperatives – strategic security, environmental integrity and sustainability – met the criterion of survival. They could only be attained through global solutions backed by ‘legitimate global powers’. These are not the powers of world government but the authority of a strengthened global cooperation.

(ii) *World constitutionalism and the United Nations*

Legitimate global power depends on constitutional change to the United Nations system. The doctrine of ‘implied powers’, acknowledged in the Vienna Convention<sup>57</sup> and endorsed in ICJ deliberation,<sup>58</sup> allows a teleological interpretation of the current Charter. The International Court of Justice has noted: “Under international law, the Organization must be deemed to have those powers which, though not expressly provided in the Charter, are conferred upon it by necessary implication as being essential to the performance of its duties. This [is a] principle of law”.<sup>59</sup>

The idea that the UN can evolve into a stronger global body is attractive to many. Hammarskjöld’s vision of the UN was of an organic creation,<sup>60</sup> a ‘living organism’ that would experience a natural evolution to political self-consciousness,<sup>61</sup> with continuous adaptation to the constitutional needs of the changing times.<sup>62</sup> Taking this thought further three decades later,

---

<sup>54</sup> Boutros Boutros-Ghali, address to Argentine Council for Foreign Relations, 14 March 1994 (UN Chronicle XXXI(2), June 1994, p. 3)

<sup>55</sup> Graham K. ed. ‘The Planetary Interest’ (Taylor & Francis (London) and Rutgers University Press New Jersey; 1999). The ‘planetary interest’, said UN Secretary-General in the foreword, “is the kind of forward-looking concept we need as the world goes through a period of profound transformation.”

<sup>56</sup> Ramphal, S., ch. 12. ‘Global powers: Earth’s planetary interest’ in ‘The Planetary Interest’.

<sup>57</sup> Vienna Convention on the Law of Treaties, article 31 (1). A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.

<sup>58</sup> “Teleological interpretation has always been recognized in international rulings and has been applied to the Charter as well.” In *The Charter of the United Nations: A Commentary* (Simma, B., Ed.; OUP, 1995), p. 42). See ICJ cases: *Aerial Incident*, ICJ Reports (1959), pp. 127 *et seq.*, and *Certain Expenses*, ICJ Reports, 1962, pp. 162 *et seq.*

<sup>59</sup> *Reparations for Injuries*, ICJ Reports (1949), p. 182. And *Effects of Awards (ICJ Reports) 1954*, p. 56.

<sup>60</sup> Secretary-General’s Introduction to the Annual Report of the United Nations, 1960, in Manuel Fröhlich, *Political Ethics and the United Nations: Dag Hammarskjöld as Secretary-General* (Routledge 2008) 37. “The United Nations is an organic creation of the political situation facing our generation. At the same time, however, the international community has, so to say, come to political self-consciousness in the Organization and, therefore, can use it in a meaningful way in order to influence those very circumstances of which the Organization is a creation.”

<sup>61</sup> Secretary-General’s Introduction to the Annual Report of the United Nations, 1953, in Manuel Fröhlich, *Political Ethics and the United Nations: Dag Hammarskjöld as Secretary-General* (Routledge 2008) 27. “The United Nations is a positive response by the world community to the fundamental needs of our time. ... Its efforts are significant insofar as they show the growing maturity of the Organization as an instrument by means of which the nations can solve conflicts threatening the natural evolution of the world community.”

<sup>62</sup> Manuel Fröhlich, ‘The Quest for a Political Philosophy of World Organization’, in *The Adventure of Peace: Dag Hammarskjöld and the Future of the UN* (Palgrave MacMillan; Stockholm; 2005) p. 144. “The statement of objectives in the Charter is binding and so are the rules concerning the various organs and their competencies, but it is not necessary to regard their working methods indicated in the Charter as limitative in purpose. Thus, others may supplement them under the pressure of circumstances and in the light of experience if these additional procedures are not in conflict with what is prescribed. ... In this respect the United Nations, as a living organism, has the necessary scope for continuous adaptation of its constitutional life to the needs.”

Allott speaks of the ‘self-constituting of ‘international society’—an international community into a global community.<sup>63</sup> Yet that evolution still begs the question, explored in Section III, whether change can be effected through Charter amendment or through improved practice within the existing Charter.<sup>64</sup>

#### *Global institutional coherence*

Oversight belongs to the General Assembly, but the UN’s three current councils have respective obligations on its behalf for the above purposes – the Security Council for the first, ECOSOC and the Human Rights Council for the third. The difference is that, whereas the Security Council and ECOSOC are primary bodies of the United Nations, the Human Rights Council is a subsidiary body of the General Assembly. Yet it has far-reaching influence that in many ways render it stronger than ECOSOC. It peer reviews member states and can expel them from membership of the Council.

As the international community of states evolves towards a global community of peoples, both bodies – the Security Council and the Human Rights Council are interacting increasingly frequently and purposefully. The recommendation by the HRC in 2014 that the Security Council refer the situation in North Korea to the ICC for potential crimes against humanity is the most recent and potent example.<sup>65</sup>

The problem is, however, that having 193 member states working through the ‘appropriate bodies’, on all matters relevant to security in the broadest sense, is a nightmare. This involves another primary organ of the UN (Economic and Social Council), a subsidiary body of the General Assembly (Human Rights Council), other international institutions (International Seabed Authority, International Criminal Court), treaty-making bodies (governing climate change, biodiversity, outer space and Antarctica), and then relating all this across the ‘institutional divide’ to the Bretton Woods institutions (World Trade Organization; International Monetary Fund). Each of these entities has different purposes and mandates, jurisdictional powers, and membership. It is simply impossible to gain coherence and singular purpose from this mosaic.<sup>66</sup>

There is no doubt that something qualitatively new and far-reaching is necessary. As a former NZ Prime Minister, Sir Geoffrey Palmer, has put it, “... policy failures at both international and national levels are a sad indictment of the incapacity of the peoples of the world to act in their own collective self-interest. The lack of leadership, and the limp global response so far, is lamentable. A quantum leap forward in international governance is required.”<sup>67</sup>

---

<sup>63</sup> Philip Allot, *Eunomia: New Order for a New World* (OUP 2001) xvi, xx. “It may be that the hallowed diplomatic concept of ‘international security’ is changing into something much more like the ancient and hallowed constitutional concept of the ‘public order’, so that a collapse of internal constitutional order or a massive abuse of constitutional power within a state may come to be seen as a threat to international public order, which international society, and hence international law, cannot ignore. ... Central to this challenge is the question whether we can see signs of an emerging public mind of international society, since it is in the public mind of society that a society stores its ideas about itself and its high values, and in which a permanent struggle about its ideas and values is enacted. The hypothesis proposed in *Eunomia* suggests that a society constitutes itself, not only on the form of law and legal institutions and not only in the real world struggles, political and economic and personal in everyday life, but also in society’s struggle about ideas. The self-constituting of the international society of the 21<sup>st</sup> century will be no different.”

<sup>64</sup> R.S. Macdonald & D M Johnston, Eds. *Towards World Constitutionalism: Issues in the Legal Ordering of the World Community* (Martinus Nijhoff, Leiden, Boston; 2005) p. xvi. “Some constitutionalists argue that the UN Charter, because of its unique status, should be extremely difficult to revise, given ever-present political temptations to undertake revision for special interest rather than common-interest reasons. Others argue, on the contrary, that precisely because of its basic constitutive status, the Charter should be subject to periodic, or at least occasional, review, so that it remains viable as a ‘living constitution’. Numerous proposals for Charter revision have been submitted over the years, but all have failed to clear the political or bureaucratic hurdles erected along the course.”

<sup>65</sup> <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14255&LangID=E>. The Security Council considered the matter in December 2014. China’s argument that a human rights issue was not a matter for the Security Council was rejected.

<sup>66</sup> The UN report ‘Delivering as One’ (2006) sought to increase ‘coherence’ across UN agencies working in many countries around the world. <http://www.un.org/events/panel/resources/pdfs/HLP-SWC-FinalReport.pdf>. But the scope of the report was on administrative, logistical and managerial dimensions, not political and jurisdictional goals for ‘global security’.

<sup>67</sup> *Dominion Post*, 17 February 2015

## V. Conclusions and Proposals

### (a) Conclusions

Six conclusions can be drawn from the foregoing analysis. They are:

1. Humankind faces a range of global problems in the 21<sup>st</sup> century, to which only global solutions can be found. This poses a qualitatively new challenge to political thought and action.
2. The United Nations, based on the mid-20<sup>th</sup> century concept of the sovereign equality of states and thus an international arena for negotiations, is ill-equipped to address global problems.
3. International negotiations for voluntary treaty-making such as climate change and WMD, are floundering through the sheer numbers (200 parties) and the competitive pursuit of their respective national interests.
4. The choices in responding to inter-related global crises, the choice in responding is between international negotiation and global executive action. These can be mutually reinforcing rather than competitive, but the trend will be away from international negotiation and towards global executive action.
5. Global executive action through an empowered Security Council will not succeed without prior constitutional amendment that accords it global legitimacy through changes in membership and procedure.
6. Beyond Charter amendment, there will be a need, perhaps before mid-century, for a rethink in global governance, involving perhaps a merger of the UN and Bretton Woods systems that takes into account a genuine involvement of the civil society (through a global parliamentary assembly with legislative power) and of the corporate world (through a financial and trade organization).

### (b) Proposals

In anticipating the strategic direction of the Security Council, a distinction needs to be drawn between the short-term and the long-term. In the short-term, perhaps between 2015 and '30, incremental change can only be achieved through the introduction of informal protocols over the Council's procedure and practice, or change to the Charter governing membership.

#### (i) *Short-term proposals 2015 to 2030*

These conclusions look ahead to the short-term (Charter amendment, or greater resolve in using existing powers) and to the long-term (systemic strengthening of global governance). As Paul Kennedy judges it, change to the UN will need to be incremental only.<sup>68</sup> The first step in incremental change is most likely to be an insightful assertion of the Council's implied powers.

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'.

---

<sup>68</sup> 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 measureable 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?"

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.<sup>69</sup>

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.

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".<sup>70</sup> And in March 2013, the UK and Pakistan led an informal Arrria 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

---

<sup>69</sup> See 'The UN Charter: A Commentary' (pp. 25 to 44) for a useful chapter of Interpretation of the Charter.

<sup>70</sup> SC/10332, 20 July 2010

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.”<sup>71</sup>

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.<sup>72</sup>

(ii) *Longer-term possibilities 2030-50*

The conceptual exploration above reflects the prescriptive premise identified at the outset of this study – that global governance of some kind is a ‘global public good’.<sup>73</sup> Global solutions, it is held, are, axiomatically, required for global problems, and they can only be formulated and applied through stronger forms of global cooperation and institutions.

That premise has always been queried by some leaders and analysts, and the nature and speed of dynamic global change of the past 20 years intensifies their scepticism. An alternative worldview is gaining strength, and it is this. The world of 2015 is qualitatively different, not only from that of 1915, but from that of 1945 and even ‘95. The world has fundamentally changed in the past two decades, perhaps more than the totality of accumulated change before then.

As Mazower says: “...if internationalism originated as an expression of Western political philosophies and Great power needs, it is clearly now moving beyond that into something much more multi-centred and fissiparous.”<sup>74</sup>

There are two worldviews. The first is that global governance, even world government is desirable, even necessary, to save us from ourselves. The second is that world government, even global governance, must be avoided to save us from ourselves. The first stresses the tragedy of conflict and places faith in human rationality and morality to govern lightly and wisely at the global level – the benevolent philosopher-king at the macro-level. The second stresses the vulnerability to abuse of power and places faith in the coordination of atomised self-governance – the invisible hand in the market and political society, at the micro-level.

Somewhere between these worldviews, humanity has to negotiate solutions to the global problems of the 21<sup>st</sup> century. As one recent commentator on the subject has astutely noted, it is rare for international organizations to die; they either dwindle into obscurity, or they evolve with the times.”<sup>75</sup> This is the question for the United Nations, and not least the Security Council.

---

<sup>71</sup> ‘Security Council Takes on Climate Change’, Matthew Berger | March 28, 2013

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

<sup>72</sup> SC/10457, 23 November 2011

<sup>73</sup> Inge Kaul, ‘Global Public Goods’ (OUP, Oxford; 1999)

<sup>74</sup> Mark Mazower, ‘Governing the World: The History of an Idea’ (London. Penguin; 2012) p. xv, xvi

<sup>75</sup> Peter Bernholz, ‘Are International Organizations, Like the BIS, Unable to Die?’ (Review of International Organizations 4, no. 4, 2009), pp. 361-81.