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Towards a More Just United Nations

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The United Nations (UN) is perhaps our most important international, intergovernmental organisation. Yet, at the same time, it is one of the most troubled. In recent years it has become apparent that it is becoming ever more difficult for the world body to reach agreement on the crucial issues that face the future of the humanity. Whether one looks at the rules governing the use of force by nations, the proliferation of nuclear weapons, action to combat terrorism, the persistence of global poverty and inequality, protection against genocide and crimes against humanity, the scourge of HIV-AIDS, the enforcement of human rights, or the grave challenges posed by climate change — the UN seems racked by division and indecision in tackling every one.

However imperfect it may seem, the UN remains, nevertheless, the best available forum in which global responses to global challenges may be fashioned and implemented. This is quite simply because it is the only forum in which the voices of every nation in the world may be heard. It is the only multinational organisation through which every nation may influence the development and design of policies and programs that affect all nations and their peoples. Its modernisation and reform, therefore, is crucial to the attainment of future justice. In contrast, its collapse or marginalisation could signal to future generations that genuine and committed, multilateral solutions to global problems have become an ever-more distant prospect.

In this chapter, therefore, I want first to discuss how it is that the UN finds itself in such difficulty. Then, secondly, I want to propose a series of reforms that, if implemented, may make the world body more relevant and effective in tackling the global problems that now seem so pressing.

Diagnosing the Difficulties

The first thing that needs to be understood about the UN is that is not a coherent organisation with an agreed plan of work. Instead, it is a forum in which the nations of the world may encounter one another and work together to develop international treaties and agreements and respond to international crises as they arise. It is more in the nature of a perpetual conference than an international executive body. This means that, in reality, it is difficult to say that 'the UN has failed' or that 'the UN has succeeded'. It is far more accurate to say that the member states of the UN have fallen short or, alternatively, have combined to achieve their objectives. It is the intergovernmental negotiations and deliberations that fail or succeed — not the Secretary-General or the Secretariat which exists principally to serve UN's many member states.

That means, in turn, that how nations get on with one another will always be a crucial determinant as to how well the world body will succeed its fulfilling its principal purposes: the preservation of international peace and security, the alleviation of global poverty, and the promotion of fundamental human rights. If there are significant divisions between countries, then progress on the resolution of international problems will naturally be retarded. Further, the relevant divisions between countries may relate to external political, economic, social or cultural issues rather than to the specific problem at hand. But even so, these external divisions can infect and retard proceedings in every UN body and every policy arena.

Unfortunately, the member states of the UN are presently stubbornly divided along two separate but interrelated fault lines. These broad differences are making it very difficult for specific problems such as the preservation of international

peace and security and the abuse of human rights internationally to be tackled effectively. The fault lines relate, first, to the contest between sovereignty and internationalism and, secondly, to the conflict between nations of the developed world and those of the developing world — the North–South divide as it is commonly known. It is worth saying a little more about both.

Sovereignty and Internationalism

States in the developing world in particular are zealous in their advocacy of sovereignty. They maintain, almost without qualification, that issues and problems that arise entirely within the boundaries of a state are matters for the state, and the state alone, to tackle and resolve. It is not the business of other nations to intervene a state's domestic affairs, supposedly in pursuit of some vague notion of the wider interests of the international community.

It is not difficult to perceive why this position should be held so strongly. The nations that are now sovereignty's most ardent advocates were uniformly the victims of colonial exploitation. Located principally in the South, they have little or no trust in the good intentions of their former colonial masters in the North. Instead they wish to stand on an equal footing, securing the interests of their peoples in the way they best see fit without undue and unnecessary interference. This position was articulated forcefully by the Permanent Representative of Algeria to the UN recently when he said that:

> We do not deny that the United Nations has the right and duty to help suffering humanity. But we remain extremely sensitive to any undermining of our sovereignty, not only because sovereignty is our last defence against the rules of an unequal world, but also because we do not take part in the decision making process of (chief decision-making body) the UN Security Council …[2]

While all this may be accepted, it has become clear that many problems confronting the international community are ones that extend beyond the borders of states. The mass movements of peoples, the unbridled flow of international capital across

state borders, the spread of diseases such as AIDS, climate change, the intractability of poverty, the abuse of human rights, the drugs trade, the arms trade and the international spread of terrorist networks are each instances of formidable problems that defy purely national solutions.

If every country were to retreat behind its borders and seek to address these problems alone, it is clear that not much would be achieved. And for that reason there is an emerging sentiment, particularly in developed countries, that some incursions upon national sovereignty may be necessary in order to deal effectively with problems of international significance and effect.

To take but one example, international military intervention to prevent genocide, war crimes or ethnic cleansing clearly constitutes an invasion of the target nation's sovereignty. But, to put the opposite case, it hardly seems credible that the international community should stand by if a state collapses into genocidal warfare that is likely to result in the deaths of hundreds of thousands. The Rwandan experience is not one whose repetition should lightly be contemplated.

The North–South Divide

During the Cold War, the world was divided between East and West. This global division has now metamorphosed into a new division between North and South — between economically developed nations and developing ones. The perspectives of the two blocs are very significantly different.[2]

Internationally, the nations of the North promote multilateral decision making with respect to global problems such as poverty and inequality but are distinctly reluctant to contemplate the constraints of multilateralism, for example with respect to the use of force. Developing countries, on the other hand, wish to share equally in decisions with respect to global security but are too often reluctant to exercise their own responsibility to alleviate the humanitarian suffering of their own peoples.

Within the UN, Northern nations assert an entitlement to intervene in the domestic affairs of other nations in order to

achieve justice within borders while resisting all attempts by the South to secure justice across borders. In contrast Southern nations wish to use the UN as a forum within which to achieve greater political and economic equality between nations while remaining hostile to Northern attempts to prevent or reverse injustice or inhumanity within borders.

These fundamental differences play themselves out in a host of different political and policy arenas. In relation to nuclear weapons, for example, Northern nations are concerned principally with the prevention of nuclear proliferation while Southern nations are concerned to ensure that they can meet their increased energy requirements through the rapid development of nuclear technology and capacity. Northern nations are legitimately worried about the prospect that the civilian use of nuclear power in the South will permit the future development of nuclear weaponry. Southern nations dismiss such concerns by pointing to the fact that the existing nuclear powers show scant signs of willingness to engage in meaningful nuclear disarmament.

Northern nations place the preservation of international peace and security at the top of their policy priority list. They are preoccupied with the threats posed by the proliferation of weapons of mass destruction, civil disorder and international terrorism. In the changed security environment so critical to thinking in the North, sovereignty, while remaining a core value, may in certain circumstances make way in the face of competing and compelling security interests. Pre-emptive military action, humanitarian intervention and cross border pursuit of international terrorist networks, therefore, must form part of the new international security kitbag.

In the South, however, it is not security but development that is the principal concern. The South naturally favours the preservation of peaceful international relations but believes the international community should concentrate first upon tackling the underlying drivers of the present instability. These, it is thought, reside in poverty, hunger, sickness, lack of education and other forms of marginalisation. Each of these is

symptomatic, in turn, of global inequality and injustice. Further, no matter how strong the arguments for pre-emptive military action may be, it is regarded with the most profound suspicion in the South where developing countries have suffered from previous conquests and now perceive themselves as the potential targets of more contemporary interventions.

Divisions of the same character have revealed themselves with respect to action to prevent damaging climate change. Recent scientific evidence adduced by the International Panel on Climate Change (IPCC) has demonstrated clearly that climate change poses significant risks to the planet. And yet profound differences exist between the global North and South as to how the problem should be addressed. Plainly, the principal responsibility for creating the problem rests largely with wealthy Northern countries. At the same time, it is poorer nations in the global South that will bear the brunt of worsening weather conditions, droughts, and rises in sea-levels.

Consequently, Northern nations bear a special responsibility to reduce their carbon emissions. Yet they still insist that the developing world agrees to binding commitments of a similar order. South countries, however, ask why they should sacrifice their standards of living by agreeing to hard targets, particularly when developed nations show no real willingness to forego their conspicuous and considerable levels of economic and energy consumption.

Further, developed nations have the economic means to pay for effective climate reduction strategies. Most developing nations do not. Consequently, developing countries insist that they should be fully compensated for the economic costs of adopting climate change mitigation measures. The developed world is reluctant to provide such compensation both because the level of compensation required is huge and because developing countries are disinclined to subject their climate policies and programs to external monitoring and assessment.

These polar divisions, then, plague the United Nations and retard its operations. At the same time, however, it seems more

important than ever that the world body should get its act together so that it can lead international collaborative endeavours to address the globe's ills. In the remainder of this chapter, I suggest a number of avenues for UN reform that may serve to overcome at least some of the organization's present and pressing problems. In doing so, these reforms may serve to underpin the UN's standing as the principal international forum within which future justice may be pursued.

Directions for United Nations Reform

Constitutional Change

The United Nations Charter is the natural starting point for a consideration of substantive UN reform. Article 1 of the Charter outlines the main functions of the United Nations. These are to maintain peace and security; to bring about the settlement of international disputes by peaceful means; to foster economic and social cooperation; and to promote respect for fundamental human rights. To achieve these ends, the Charter created an organisational structure the key institutions within which were the UN Security Council and the Economic and Social Council, broadly corresponding to an executive; the General Assembly, broadly corresponding to a legislature; and the International Court of Justice, the principal organ of the international judiciary.

Since the Charter's adoption, this institutional framework has been supplemented by the law contained in innumerable international treaties and by what is known as customary international law. This international law-making has been so comprehensive and so dense that at the turn of the millennium it would now be desirable to identify and then codify those components of international law that are regarded as so central that they may be presumed to have achieved supra-legal or constitutional standing.

The obvious point at which to begin would be with the codification of what is known as *jus cogens. Jus cogens* is constituted by those norms of international law accepted by the international community as universal and from which no

derogation is permitted.[3] They are rules that emanate from and move the human conscience. Their breach is recognised as an international crime.

Defining such norms is difficult because their inclusion in *jus cogens* depends upon the substantial agreement of states. However, it appears generally accepted that norms outlawing aggression and genocide and the principles and rules concerning the basic rights of human beings including protection from torture, cruelty and discrimination lie at its core. To these one could add other norms denying self-determination, outlawing massive pollution and setting down the fundamental principles of the laws of war.[4]

The concept of *jus cogens* has been in existence for 40 years and yet no codification has been undertaken. The embodiment of these norms in a written and systematic form would strengthen the global rule of law and with it the UN by making global rules better known, more certain and general in application.

A second point of constitutional departure could emanate from the former UN Secretary-General Kofi Annan's proposal that twenty five international treaties be identified as having particular international significance and his launch at the Millennium Summit in 2000 of a campaign to secure their comprehensive ratification and universal application.[5]

The priority list of treaties included the international covenant on civil and political rights and the covenant on economic, social and cultural rights. Other conventions on the indicative list were the international convention on genocide, conventions to eliminate discrimination on the grounds of sex and race and to protect the rights of the children and refugees. Environmental conventions were also added. Clearly, the greater the number of signatories to these priority treaties the more forceful will be the presumption that they form part of an agreed global constitutional order. That order could then provide a sound and certain basis for international collaboration to meet future global threats and challenges.

A third and obvious component of constitutional change relates to the necessary but politically difficult task of reforming the United Nations' institutional structure. The direction of institutional change here should be towards greater democratisation. One of the weaknesses of the United Nations has been its inability to adapt its institutional arrangements to the changing realities of shifts in global power over the past half-century and therefore to reflect global democratic reality.

The Security Council, for example, has retained veto power in its five permanent members despite the fact that they are no longer representative of alterations in the relative wealth and power of nations. Further, the Council's membership remains dominated by nations of the North at the expense of those of the South, thereby weakening its democratic legitimacy. At the very least then, the Security Council should be reformed so as to include emerging world powers such as Japan, Germany, Brazil and South Africa as new permanent members. At the same time the Council's non-permanent membership could be enlarged so as to provide greater opportunities for smaller states to participate in its deliberations.

The General Assembly of the UN also requires radical reform if it is to fulfil its potential as the world body's most democratic and legitimate decision-making forum. The Assembly's unwieldy agenda should be rationalized so as to focus on matters of significance to the international community and to avoid unnecessary duplication. Its resolutions should be formulated more sharply and with an eye to their practical implementation.

Assembly rules of procedure should be altered in order to abbreviate discussion, for example by putting time limits on addresses and by opening the floor to the expression of competing positions rather than to every single member state wishing to contribute. Member states should be encouraged to dispense with an insistence upon consensus in the interests of taking decisions decisively by majority. Finally, thematic debates on issues of the greatest concern to the international commu-

nity should be scheduled regularly in each Assembly session and adequate provision should be made for the conduct of emergency debates if political circumstances necessitate the Assembly's urgent attention.

Judicial Review

The existence of an effective system of judicial review is critical to any constitutional and political system founded upon a global rule of law. Within the framework of the United Nations, however, judicial review is rudimentary at best. The problem was stated succinctly by the Commission on Global Governance:

> When the founders of the United Nations drew up the Charter, the rule of law world-wide loomed as one of its central components. They established the International Court of Justice at the Hague ... as the 'cathedral of law' in the global system. But states were free to take it or leave it, in whole or in part. The rule of law was asserted and, at the same time, undermined. Each state could decide whether it was going to accept the compulsory jurisdiction of the World Court. And a great many did not. Thus, from the outset, the World Court was marginalised.[6]

The marginalisation took two forms.[7] The first was the lack of any capacity by the Court to review the constitutionality of the actions of the United Nations' principal organs and most notably those of the Security Council and the General Assembly. No explicit power is given by the UN Charter to the International Court of Justice to review Security Council and Assembly decisions for conformity either with the Charter or with principles of general or customary international law. At the same time, however, Article 24(2) of the Charter provides that in discharging its duties, the Security Council must act in accordance with the purposes and principles of the United Nations and consequently it must be presumed that it is not to act arbitrarily.

So, it would seem appropriate for the Security Council and the other principal organs of the United Nations to be subject to the judicial review of the legal validity of their

resolutions, decisions and actions. Such review might also extend to any actions by these organs that are in the opinion of the Court calculated to undermine the integrity of the UN Charter itself.

Renewed consideration ought also to be given to the utilisation of the Court's advisory jurisdiction. Article 65(1) of the Court's statute provides that the Court may give an advisory opinion on any legal question at the request of any authorised United Nations agency. Article 96 empowers the Security Council and the General Assembly to seek such advice. A similar power should be conferred on the Secretary-General. This advisory jurisdiction could be used to assist the UN's political organs to determine the proper boundaries of their powers, to resolve disputes between them and to obtain authoritative guidance on the legal framework within which their specialised agencies must act.

The second source of the Court's marginalisation has been the voluntary and partial nature of States' acceptance of its jurisdiction. The disputes over which it may exercise jurisdiction relate to conflicts concerning the interpretation of any treaty, any question of international law and the nature and extent of reparation for a breach of an international legal duty.[8]

But the International Court of Justice may exercise this jurisdiction only where the states that are parties to a dispute have agreed to abide by its decisions. Of the UN's 192 member states, only 60 have opted into this jurisdiction. Of these, some have opted in only on condition that the country taking action against them has also accepted the Court's jurisdiction. Others have agreed to accept its decisions only under particular treaties. Still others have opted in but later withdrawn when their political interests have been adversely affected.

Equality before the law, as a value basic to the rule of law, is clearly violated when only some parties but not others agree to abide by it. There is a strong case, therefore, for the acceptance of the compulsory jurisdiction of the World Court to become a precondition for United Nations membership.

The Incorporation of Human Rights Standards

By any measure, the progress made by the United Nations and its associated institutions in advancing and protecting human rights has been enormously impressive. The UN Declaration of 1948, combined with the International Covenants on Civil and Political Rights and Economic, Social and Cultural Rights, enumerate the fundamental rights of humankind and provide the quasi-constitutional foundation for their international recognition, observance and enforcement. Beyond these a host of other more specific treaties have been negotiated most notably in relation to genocide, torture, racial discrimination, sex discrimination, refugees and the rights of the child.

Institutionally, the United Nations has established the Human Rights Council and the Office of the High Commissioner for Human Rights. It has also created a comprehensive human rights treaty monitoring system to assist in securing states' compliance with their international treaty obligations. Special International Criminal Tribunals have been established to try alleged perpetrators of crimes against humanity in Bosnia and Rwanda and most recently, the Statute of Rome creating the International Criminal Court has been adopted and criminal trials have begun. UN Special Rapporteurs have been despatched to various parts of the globe to report upon and endeavour to ameliorate egregious abuses of rights. And a concerted attempt has been made by relevant UN agencies to encourage the creation of regional human rights conventions and the creation of national rights charters and associated human rights commissions.

Here, however, I am concerned with a different facet of human rights promotion. That is, the incorporation of human rights standards in the work of the United Nations itself. As the pivotal international institution having responsibility for the spread of a human rights culture globally, it is only reasonable that the UN abide by human rights principles in every facet of its operations.

So, for example, it is crucial that the UN observe international human rights principles when it engages in international peacekeeping operations. Military peacekeepers must adhere strictly to the rule of law and to respect for international human rights when patrolling border areas and interacting with local populations. It follows obviously that peacekeepers must refrain from the abuse of local populations when occupying positions of power in relation to them. Recent examples of sexual abuse of local women by UN peacekeepers provide the clearest and most regrettable example. Similarly, the UN should promote adherence to human rights when engaged in peacebuilding following civil war or strife. It should place a high value, therefore, on establishing human rights, good governance and the rule of law as cardinal principles underlying the creation of political and governmental structures in nations recovering from internal conflict and dislocation.

The UN has been slow to incorporate human rights considerations into the regulation of international economic actors. Indeed it has been argued persuasively that the organisation's attention has been captured increasingly by neo-liberal ideology and free-market economic policy to the detriment of advancing the human rights agenda.[9] Institutionally this has been reflected in the separation of global financial institutions such as the World Bank, the IMF and the World Trade Organisation from the Economic and Social Council, its associated human rights treaty bodies and other environmental and developmental agencies. This institutional fragmentation has contributed, among other things to a diminution of the importance of economic and social rights in the deliberations of the international economic regulatory bodies. In policy terms, this has meant that human rights considerations are all too often marginalized in favour of those concerned with economic development and profit-making. This is an imbalance that ought progressively to be redressed.

Procedural Reforms

The preceding suggestions are ambitious. Consequently, they are likely to run into the same divisions of opinion and blockages that have beleaguered previous efforts at reform, particularly along North-South lines. The most recent of these was Kofi Annan's regrettably unsuccessful attempt to engage in comprehensive reform of the UN in 2005.

Given this, if a new round of reform is to succeed a series of procedural changes will be required to clear the way. The problem of how to move forward when the contenders in debate either do not, or make no effort to, take the other side seriously — when the posture of confrontation is more important than any concordance founded on compromise — needs to be tackled. Here a number of process related changes might usefully be considered.

To begin with, it is essential to inject independent thinking into the policy arena. The establishment of independent commissions of inquiry to examine politically complex problems is one strategy for doing so. Success is not guaranteed, as the fate of the reports from the High-Level Panel on Threats, Challenges and Change and the Millennium Development Project illustrated plainly. These reports formed the foundation for Kofi Annan's 2005 push for comprehensive reform. Despite their high quality, world leaders did not accept many of these reports' recommendations at the UN World Summit later that year. Nevertheless, the commissions did set down a broadly agreed upon conceptual framework within which the UN's future over the next decade could be envisioned and from which incremental, cumulative reforms are likely to be drawn and given effect.

Another strategy which has proven successful, particularly in the human rights sphere, has been to open discussion to contributions from civil society organisations. The injection of a greater plurality of views in this way can have the effect of reducing the insularity and inwardness of current diplomatic

deliberations in New York and increasing political pressure for the achievement of specific and meaningful policy objectives.

At the same time as injecting impartial inputs into UN deliberations, steps should also be taken to improve the quality of their outputs. The key idea here is to strengthen the transparency and accountability of the UN's deliberative forums . One means of doing this may be to introduce a rolling series of evaluative reviews of each UN organ's activities and performance. In addition, therefore, to each UN body producing an annual report, an independent mechanism should be set in place to examine the report and to make recommendations for constructive adaptation and change.

Such mechanisms — which may resemble a parliamentary standards commissioner, organisational ombudsman or institutional auditor or some innovative combination of the three — could play an invaluable role in setting down recommendations for improvements in the rules, procedures, practices, conduct and finances of each of the major UN organs. No doubt too, setting up an independent and impartial tribunal review of certain administrative decisions taken by the Secretariat would make a substantial contribution to improving the accountability of officials.

Conclusion

Each of these latter suggestions has as its object the amelioration of political hostilities and divisions in order to generate more considered deliberation on matters of international concern. However meritorious they may be, they are unlikely still to make a significant difference to the UN's operations while the competing political factions derailing its deliberative processes fail to communicate and collaborate with one another. Indeed, the world organisation may be approaching the point of losing the common currency of its deliberations, that is, the language of universality and multilateralism on the basis of which it was founded. It is sincerely to be hoped that this breakdown will not occur.

My own recent research on the UN suggests, however, that the North-South divide will not be closed until two global issues of immense importance are effectively dealt with. The first is global inequality. The reduction of global poverty is the first concern of the developing world. The developed world has not yet taken this problem sufficiently seriously. Until it does, the global South will be much less willing than it could be to collaborate on issues of global security, which are the North's most pressing priority. The persistence of global inequality and the associated perception of global injustice, is perhaps the primary cause of global insecurity. The spread of international terrorism provides the most cogent, contemporary example. Only when North and South can make effective progress on attacking inequality, therefore, will international peace and security be more effectively assured.

The second issue is foreign occupation. The continuing occupation of nations of the South by those of the North, and the oppression that all too often comes with it, provides an enormously powerful and damaging focus for political discontent in the developing world. The persisting occupation of Palestinian land by Israel sits at the epicentre of this discontent. There is no more pressing international political crisis than this one as it radically divides the globe. Its settlement is crucial to lessening North–South tension. The diminution of that tension, as I have argued, is in its turn critical to collaborative efforts to reform the United Nations.

It is a big ask. But these two issues now need urgent attention and early resolution. Without that resolution, the justice we owe to future generations may be fatally compromised, not just in one but in many related political, economic and environmental arenas.

Endnotes

1 Abdallah Baali, Permanent Representative of Algeria, Statement to the Informal Thematic Consultations of the General Assembly to Discuss the Four Clusters Contained in the Secretary-General's

Report 'In Larger Freedom', Cluster III: Freedom to Live in Dignity, 19 April 2005.

2 For a detailed consideration of the North–South divide at the United Nations see Zifcak, S. (2009). *United Nations reform: Heading north or south?* London: Routledge.

3 The Vienna Convention on the Law of Treaties (1969) which entered force on 27 January 1980.

4 See Cassesse, A. (2001). *International law.* Oxford: Oxford University Press, Chapter 5.

5 Secretary-General's Press Release, SG/2063 L/T/4345, 17 May 2000, Secretary-General to encourage Universal Participation in Multilateral Treaty Framework During Upcoming Millennium Summit.

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9 Falk, R. (1995). Appraising the UN at 50: The looming challenge. *Journal of International Affairs, 48*, 625.

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