

# PLAYING POKER AT THE U.N.\*

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The sprawling institutions of the U.N.<sup>1</sup> are the major sources of a modern international law. They generate a bewildering variety of treaties which are opened for nation-states to sign (although subsequent implementation and enforcement are much more problematic), as well as create reams of international “soft” and customary law.<sup>2</sup> Founded sixty years ago, more or less, and now facing mid-life crises, the U.N. sought to reform itself through initiatives that responded to perceived crises. This process came to a head at the September 2005 World Summit, and this article seeks to explain why these initiatives largely failed, why

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<sup>1</sup> See Roger Coate, *U.N. World Summit Set to Begin*, WASHINGTON POST, Sept. 14, 2005, 2 PM (all POST articles read off <[WashingtonPost.com](http://WashingtonPost.com)>). The U.N. is a “family” of intergovernmental agencies: the International Labour Organisation, the World Bank, the World Trade Organization, etc. etc. Reform must thus be seen as systemic, “not just tinkering with things in New York.” *Id.*

<sup>2</sup> Paul Brietzke, *Insurgents in the ‘New’ International Law*, 13 WIS. INT. L. J. 1 (1995).

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international law thus remains mostly unchanged. A poker-like model is adapted to explain U.N. processes.<sup>3</sup> The 2005 reform initiatives are then analyzed with the help of this model<sup>4</sup>, with particular attention being paid to human rights (non-)reforms and (the lack of) progress over implementing the Millennium Development Goals.<sup>5</sup> Assuming that this degree of reform failure is undesirable, at least on balance, some remedies are then discussed.<sup>6</sup>

Four interrelated definitions of international law will be used in this article. Ideally, international law (and the other functions of the U.N.) seeks to enhance security and a human dignity/capability. Second, international law seeks to implement a seeming paradox: global governance without a global government, able to harmonize, integrate, and enforce laws and policies.<sup>7</sup> Such arrangements create what economists call “collective action problems”<sup>8</sup>, and analogies to such arrangements can be seen in the long history of Islamic or Judaic law and (by anthropologists)

<sup>3</sup> See notes \_\_\_ and accompanying text, *infra*.

<sup>4</sup> See notes \_\_\_ and accompanying text, *infra*.

<sup>5</sup> See notes \_\_\_ and accompanying text, *infra*. I will follow precedent set by Philip Alston \_\_\_\_\_, and reproduce the Millennium Development Goals in the Appendix.

<sup>6</sup> See notes \_\_\_ and accompanying text, *infra*.

<sup>7</sup> JOSEPH STIGLITZ, GLOBALIZATION AND ITS DISCONTENTS 21 (2002); Paul Brietzke, *Globalization, Nationalism, & Human Rights*, \_\_\_ U. FLA. J. INT. L. \_\_\_ (2006). See Tony Evans, *International Human Rights Law as Power/Knowledge*, 22 H. RTS. Q. 1046, 1054 (2005) (“discipline” as social organization without the need for coercion, “a form of modernist power”); *id.* at 1065 (pessimists quote investment banker Robert Hormats—the “great beauty of globalization is that no one is in control.”). The argument at 1054 shows Evans is British, since it was first used by the poet Mathew Arnold when he was also Headmaster of Rugby School (where the sport of loosely-organized mayhem originated). It later formed the ideology of British colonialism in Africa: governance with the fewest resources possible, sometimes called Indirect Rule.

<sup>8</sup> Eric Posner, *International Law: A Welfarist Approach* (2005) (Olin L. & Econ. Pap. 2d, No. 256 & SSRN 811554); John Yoo, *Force rules: U.N. Reform & Intervention* (2005) (Berkeley Pub. L. & Res. Pap.) (Both articles can be downloaded from <[SSRN.com](http://SSRN.com)>).

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among indigenous groups who lack formal rulers and thus live by reciprocal observances of rules.<sup>9</sup> Third, while the profits from an economic globalization can usually be appropriated by particular corporations or countries, most of the rest of international law seeks to create “public goods”: human rights, peace, development, a healthy environment, etc. These goods belong to everyone, and no one (other than an altruist) wants to bear the costs of pursuing them; unlike profits from an economic globalization, they cannot be appropriated for the pursuer’s sole benefit in the short run. Another set of collective action problems, or “market failures”, arise from the resulting under-supply of these public goods; none but altruists will pursue them in the poker games to be described, except when these public goods serve some other game purpose. In other words, everyone wants to win even more by being a “free rider”, who reaps good things paid for by others.<sup>10</sup> Fourth, international law provides the rules for the poker games that will be described. These games are about access to, and a measure of control over, an interchangeable wealth and power pursued through legal (and other) processes.<sup>11</sup>

#### **THE GAMES’ AFOOT**

To paraphrase William Blake, I must either create my own model or be dominated by someone else’s.<sup>12</sup> However, the reader is promised that taking the time to understand my poker model will yield important insights not readily available in other ways. Anyone who analyzes the international law produced by the U.N. necessarily uses an explicit or implicit model, if only to tame the intractability of the material. For example, two game theorists<sup>13</sup>

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<sup>9</sup> Brietzke, *supra* note 7.

<sup>10</sup> *Id.*; Posner, *supra* note 8; Yoo, *supra* note 8. Posner, *id.*, offers an example: even if all countries would have been better off if genocide in Rwanda has been stopped, each country would have been even better off if *other* countries bore the considerable risks and costs of procuring this stop. (This is like using other people’s money to play poker, while keeping any winnings for yourself).

<sup>11</sup> Brietzke, *supra* note 7, from which the model to be presented has been adapted.

<sup>12</sup> Regrettably, I have lost the source of this quote.

<sup>13</sup> *I.e.*, the American Thomas Schelling and the Israeli Robert Aumann. See *The Trade Game*, L.A. TIMES, Oct. 13, 2005 (all L.A. TIMES articles

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won the 2005 Nobel Prize in Economics for modeling a relatively well-known means of conflict management, which grew out of the (bipolar, in both senses) Cold War. Inevitably under such models, even sharp competitions must take place within a cooperative framework, so that a game does not end in the violent conflict that spawns international anarchy. Building trust and collaborations through small compromises proves the most fruitful path, since you can always punish uncooperative players (perceived defectors) in subsequent rounds of play ("hands" of poker).<sup>14</sup> Briefing the U.S. House International Relations Committee, Deputy Secretary General Mark Malloch Brown argues that U.N. reform "has to be the work of a coalition, and holding that coalition together is the surest way to success."<sup>15</sup>

Our topic—multidimensional and interrelated disputes and needs, occurring in many geographic and subject matter areas at the same time—is far too complex<sup>16</sup> to be modeled as the two-person, one-subject game described in the last paragraph. Likewise, there are few "economies of scale in a [legal] rule specific enough unambiguously to govern a decision; over time, the increasingly-difficult question becomes which of these proliferating specific rules resolves a particular dispute with some degree of flexibility."<sup>17</sup> This complexity, and the uncertainty it inevitably breeds, are not products of an international anarchy. A

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are read off <[LATimes.com](http://LATimes.com)>); *War Games*, THE ECONOMIST, Oct. 15, 2005, 82.

<sup>14</sup> Brietzke, *supra* note 7; *The Trade Game*, *supra* note 13 (modeling the Doha round of WTO trade negotiations); *War Games*, *supra* note 13.

<sup>15</sup> Mark M. Brown, *Briefing to the House International Relations Committee*, Sept. 28, 2005 (transcript available at <[unfoundation.org](http://unfoundation.org)>).

<sup>16</sup> Coate, *supra* note 1; Alberto Romulo, *The United Nations and the Building of a Better World*, MANILA TIMES, Oct. 3, 2005 (Philippines Foreign Affairs Secretary) (read off <[manilatimes.net](http://manilatimes.net)>). See MARK TAYLOR, *THE MANAGEMENT OF COMPLEXITY: EMERGING NETWORK CULTURE* 3 (2001) (we're in an "era of unprecedented complexity, when things are changing faster than our ability to comprehend them."); *id.* at 13 (we are far from equilibrium, at the edge of chaos under complexity theory; all significant change occurs in the area lying between too much and too little order).

<sup>17</sup> Andrew Guzman, *Why LDCs Sign Treaties That Hurt Them: Explaining the Popularity of Bilateral Investment Treaties*, 38 VA. INT'L

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more nuanced view of governance is required: a search for fairly stable “rules of the road” rather than an automatic, Hobbesian<sup>18</sup> recourse to coercion—which is usually too costly these days, for a variety of reasons.

The need for cooperation and coordination during a bargaining can often be met, even in the absence of a developed global state, because the truly significant international “players” are few in number. They are five in fact, and they constitute what economists might call a “loose oligopoly”: the U.S., Russia, China, the European Union, and the U.N. itself. (The latter two act as major players only when members coordinate their communications, power and resources effectively—something the other majors can *usually* take for granted, although Congress sometimes speaks in a different voice from that of the President for example.) The very existence of the game (described *infra*) shows that, unlike a globalized economy or science for example, politics still recognizes and informally operates through nation-state boundaries that define the “players”, through the sovereignty that still proves both inevitable and necessary in international law and relations. Thus the game fosters recognition that both the successes and the failures of the U.N. and of its international law are those of interacting nation-states. The game offers some solutions to economists’ “collective action problems,” and to dealing with “public goods” and “free rider” problems that are stimulated by the existence of very high “transaction costs” in

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L. 639, 641, 644 (1998); Werner Hirsch, *Reducing Laws Uncertainty and Complexity*, U.C.L.A. L. REV. 1233 (1974). See MICHAEL KING & CHRIS THORNHILL, NIKLAS LUHMANN’S THEORY OF POLITICS AND LAW (discussing Luhmann’s analyses), *id.* at 285 (“awareness of complexity” eclipses the claim that the problems of the world can be worked out logically or even theoretically.”); *id.* at 286 (“the pressure for action often cuts short the search for knowledge short.”); NIKLAS LUHMANN, OBSERVATIONS ON MODERNITY 27, 67-68 (1998); Paul Blustein, *U.S. Free Trade Deals Include Few Muslim Countries*, WASHINGTON POST, Dec. 3, 2004, E1; Nobles & Schiff, *supra* note 8, at 50; *Exclusive*, THE ECONOMIST, Nov. 20, 2004, 78.

<sup>18</sup> In the sense that Hobbes’ state of nature is sometimes evident in global society. He assumed that we would agree to Leviathan under such a SON, but global society is too complex and too democratic in parts for such a consensus to emerge. See text accompanying notes \_\_\_\_, *infra*.

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international relations. The resulting outcomes are necessarily too complex to be captured by simpler versions of economists' game theory.<sup>19</sup>

The global relations of the five major players play out against a backdrop of what economists might call a "competitive fringe": the many countries that are too *relatively* poor and/or powerless to effect outcomes much *overall*. Their role is usually supportive of consensus among some or all of the five major players. This tactic minimizes the antagonizing of major players and perhaps provoking their retaliation, and it gives the minor players a sense of inclusion in, and a "soft" power through, international law and relations. Some of these many countries have a situational or geographical power with regard to particular issues, a power which forces the majors to take them into account for *some* purposes: Saudi Arabia's oil and its funding of Islamic fundamentalism in many Muslim countries<sup>20</sup> or India and Pakistan in relation to Kashmir, for example.

A helpful extended analogy illustrating this small group behavior has us imagining the five majors playing global poker games.<sup>21</sup> They have played together for so long that each is aware

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<sup>19</sup> Michael Glennon, *Idealism That Won't Work* (2005) (SSRN Paper No. \_\_\_\_\_); Douglas Snidal, *Political Economy and International Institutions*, 16 INT'L REV. L. & EC. 121, 126-28 (1996). See THOMAS JACKSON, *THE JURISPRUDENCE OF GATT AND THE WTO: INSIGHTS ON TREATY LAW AND ECONOMIC RELATIONS* 149, 156 (2000); Richard Nobles & David Schiff, *Introduction*, in NIKLAS LUHMANN, *LAW AS A SOCIAL SYSTEM* 1, 49 (2004) (discussing Luhmann's ideas); notes 13-16 and accompanying text, *supra*.

<sup>20</sup> Saudi Arabia was a good counter to Egypt's Nasser and then Saddam, and a surrogate after the Shah of Iran was overthrown. But the U.S. inability to wean itself off cheap oil, and corrupting contacts between U.S. and Saudi elites blinded the U.S. to the Saudi nurturing of a militant anti-Westernism—including that of Al Qaeda, and the alienation of its own subjects and freedom lovers generally. Milton Viorst, *Desert Storms*, THE NATION, Sept. 26, 2005, 31.

<sup>21</sup> See JAMES KOCH, *INDUSTRIAL ORGANIZATION AND PRICES* 268-69 (1974); F.M. SCHERER, *INDUSTRIAL MARKET STRUCTURE AND ECONOMIC PERFORMANCE* 165 (1970); *supra* note 108, at 268-69; SCHERER, *supra* note 108, at 165; DAVID SKLANSKY, *THE THEORY OF POKER* (4<sup>th</sup> ed. 2005); HOYLE'S RULES OF GAMES 241-79 (Albert

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of the past behavior patterns of the others, although the styles of play from some new player-representatives—Bush/Bolton or Putin, for example—can disrupt the game (*infra*). In particular, each player has views about the strengths and weaknesses of its own play, and especially about the reactions other players will have to its own projected actions. Unlike chess, poker is played at speed and player information is seriously incomplete. Players try to fill informational gaps by evaluating opponents' behavior, while attempting to conceal the significance of their own behavior: in other words, practising good diplomacy. (In contrast, Bush telegraphs tactics in his speeches.)<sup>22</sup> These anticipated reactions affect the players' actions in turn.

The barriers to becoming a major player are huge, which is just the way incumbent major players want to keep it. Such conditions hold sway even if other seats around the poker table (up to a total of eight, say, although up to ten can play 5-card stud) are filled by temporary players: *e.g.*, Japan and North and South Korea, but not the U.N. for the most part, during six-sided negotiations over North Korea's nuclear ambitions. The range of feasible outcomes from any given "hand" (round of play) is reduced markedly by such particular players' predilections, but the actual outcome is still indeterminate because of unforeseen events which are external to the game and because information is imperfect: who has which cards (or which "hole" card(s), if "stud" poker is being played) and how these cards will be played, for example.

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Morehead & Geoffrey Mott-Smith, eds., 3d., rev. ed. 2001). The ideal analogy to oligopoly would: define the number of actors and account for procedures, asymmetries (especially of information and a limited understanding of political and economic forces), the ways expectations are conveyed, an uncertainty of outcomes, and the managing of cooperation. See JACKSON, *supra* note 17, at 18, 42, 156; Snidal, *supra* note 19, at 123-24. The poker game analogy arguably satisfies these criteria.

<sup>22</sup> SKLANSKY, *supra* note 21, at 17, 245. See HOYLE'S, *supra* note 21, at 267; *Marking the Dealer's Cards*, THE ECONOMIST, Nov. 26, 2005, 92 (Friedrich Hayek saw the economy running on "dispersed bits of incomplete and frequently contradictory knowledge" communicated to everyone through shifts in market prices—or bets in the poker model).

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North Korea's nukes offer a useful example here. While Russia has been rather inactive, China has bet the most and has the biggest stake in the matter—rivaling North Korea's stake, even. Resolving this dispute would greatly enhance Chinese prestige, by helping to convert its growing economic power into a geopolitical power. China has leverage, controlling 30% of North Korea's food and more than 70% of its fuel, but China also has the most to lose: the collapse of the North Korean regime would flood China with many stability-endangering refugees. South Korea's style of play has changed, from fear to an ambiguous pity for brethren who could never be absorbed economically, through reunification. U.S. game-play is difficult to evaluate. Like China (and Russia, *infra*), North Korea threatens U.S. military dominance *in the region*, and poses a diffuse threat to a valued ally, Japan (but probably not South Korea), yet Japan seems only mildly concerned. Above all, mutual incomprehension and translation difficulties plague the course of play against each other by the U.S. and North Korea. It is thus difficult to know the outcome from quite a few "hands" (rounds of play): who won and lost what? Was some agreement reached and, if so, what are its terms? Does it include a light-water reactor for North Korea?<sup>23</sup> Above all, have global concerns over a nuclear proliferation gotten lost during the heat of play—perhaps because U.N. involvement has been mostly limited to providing food aid to North Korea?

Poker player-representatives are nation-state leaders or their appointees, who thus play poker with others' (taxpayers, etc.) interchangeable wealth and power. Their style of play is thus less cautious than it would be if players were investing their personal

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<sup>23</sup> Philip Bowring, *Modeling Korean Unification*, INT. HERALD TRIB., Sept. 27, 2005 (read off Internet); Joseph Kahn, *North Korea Sets New Demand for Ending Arms Program*, N.Y. TIMES, Sept. 15, 2005 (all TIMES articles are read off <NYTimes.com>). Glenn Kessler, *What That Accord Really Says*, WASHINGTON POST, Sept. 25, 2005, B2 (all POST articles are read off <washingtonpost.com>); Tong Kim, *You Say Okjeryok, I Say Deterrent*, WASHINGTON POST, Sept. 25, 2005, B1; Charles Krauthammer, *China's Moment*, WASHINGTON POST, Sept. 23, 2005, A23; *The Deal That Wasn't*, THE ECONOMIST, Sept. 24, 2005, 49; *North Korea Rejects UN Food Aid*, Sept. 23, 2005, 2140 GMT (read off <BBCNews.com>).

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wealth and power in the game. The playwright David Mamet displays a deep understanding of poker while modeling contemporary American politics.<sup>24</sup> For Mamet, the only way to win, to seize the initiative, is to “raise” (bet more than the other players during the current betting round). But if you have never raised before, the other players will simply “fold” (leave the game, and leave you as the winner of relatively little; this is the tactic today’s Democrats use in the U.S.). On the other hand, an excess of your past raises in poker (a Bushian over-aggressiveness, for example) makes the other players suspicious. One or several will likely “call your bluff” by matching or raising your own raise(s), thus forcing you to show your cards. But if you don’t raise, you will “ante” your life away (pay the minimum necessary to play each hand) and go home broke. Mamet concludes that there is no certainty in poker, only likelihood, and “the likelihood is that aggression will prevail.”<sup>25</sup>

Over time, the “luck of the draw” (the cards you get in a particular hand) evens out, so success or failure turns on how well you play all of the hands—or perhaps on how unobtrusively you cheat; cheaters are shunned or worse, however. Players can set their own ethical standards but, generally, anything short of cheating—e.g., deviousness or deceit—is acceptable. Partnerships among players are contrary to the spirit of the game yet (like bidders’ rings at auctions) difficult to detect. The “cards speak for themselves”, and players who have not dropped out must show theirs—providing information on their style of play to the others.<sup>26</sup> David Sklansky adds: “rarely if ever is a particular play always right or always wrong. Your play is affected by the size of the pot {the money-backed chips to be won, lying in the middle of the table}, your position {whether you bet relatively early or relatively late during a round}, the amount of money they have and you

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<sup>24</sup> See David Mamet, *Poker Party*, L.A. TIMES, Sept. 16, 2005.

<sup>25</sup> *Id.* But see also SKLANSKY, *supra* note 21, at 87, 121, 136 (a raise should be a rare ploy to obtain information or when you expect greater subsequent improvement in your hand than your opponents will have); *id.* at 133 (“raising is often a better alternative than folding, with calling the worst of the three.”)

<sup>26</sup> *Id.* at 137; HOYLE’S, *supra* note 21, at 250, 266.

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have, the flow of the game, and other, more subtle factors.”<sup>27</sup> A simple game thus becomes quite complex when played by experts. Consider a decision over “bluffing” (betting when you have no chance to win if your bet is “called”) versus betting a fair hand for value, where both plays may be appropriate and it is almost never right to do neither. The decision turns on your view of your opponents, and the self-image you want to project for the future: you may want to be “caught” bluffing, to earn even more money later on a good hand because opponents think you are bluffing again. Those who never bluff or bluff too much become losers.<sup>28</sup>

As a poker player, the Bush Administration bluffs excessively and in a particular way, by acting like a “plunger.” With more wealth, military power, etc., than any other player, the U.S. bets high at every opportunity, to drive opponents out of the hand (force them to “fold” because they lack the wealth and power consistently to challenge the U.S.), and perhaps out of the entire game. The outcome, regardless of the cards the U.S. holds, is more “pots” for it since some opponents with better cards will “fold.” These pots are smaller, however, because some or many potential bettors have been driven out earlier. Expert players with adequate resources love a plunger like the U.S., relying on it to subsidize their lifestyles: consider Israel and Egypt, reaping huge foreign and especially military aid “pots,” even though they have nowhere else to go or other viable modes of play. They even seem to provoke additional bluffs from the U.S. (which they will cheerfully “call”) by praising American sloppiness: betting heavily on a dubious Mideast “democracy” while supporting autocrats, for example.<sup>29</sup> Unless the developing minor players are very skilled, their play is often desperate, since they are playing with money provided (under tight strictures) by the IMF, the World Bank, etc.

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<sup>27</sup> SKLANSKY, *supra* note 21, at 172-73.

<sup>28</sup> *Id.* at 164, 173-76.

<sup>29</sup> *E.g.*, the November 2005 Forum for the Future in Bahrain, the conference/centerpiece of Bush’s Middle Eastern democracy initiative, collapsed over “Egypt’s insistence that Arab governments should have more control over grants from a new {U.S.} fund designed to help local pro-democracy groups.” William Fisher, *Forum for the (Distant) Future*, IPS, Nov. 28, 2005.

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Some of this money originally comes from the U.S. which, in this sense, is playing against itself.

In sum, the Bush Administration plays by a failed (perhaps neoconservative or imperialist) formula, rather than adjust its play according to who the relevant players are and the structure of the particular game being played: e.g., the size of the ante and the betting rules. In contrast, good players are intentionally inconsistent—bluffing randomly and even seeming to blunder on occasion, in ways which can often be assembled into a winning strategy later. This is especially effective if it is combined with disparaging, distracting, and/or confusing talk: consider Fisher playing chess with Spassky or Khrushchev playing almost anybody. If you are a good player, you know what your opponents think your cards are, and what your opponents think you think their cards are.<sup>30</sup> The Bush Administration cannot be troubled with such niceties of the game, or even with getting to know their opponents: simply deem the North Koreans “inscrutable” for example, and you will likely lose.

Analytically, the most important point is that the major poker players recognize their interdependence, which makes the course of play less fun but more predictable. Economists might call the major players’ an “oligopolistic interdependence,” to reflect the absence of consistent collusion among the majors. Each major wants to “win” each hand for itself of course, perhaps with each major defining what amounts to a win somewhat differently, and each is keen to avoid the huge costs of monitoring the others’ opportunistic defections from a more formal “cartel.” (Interdependence does not necessarily mean stability, in the sense of an inherent tendency toward some equilibrium.) But even more important than winning for the majors is to not lose in certain ways: they seek “minimax” solutions while avoiding war or some other painful (costly) disaster. Disastrous examples would include the Zimmermann Telegram that helped to spur World War I, and putative weapons of mass destruction (W.M.D.) in 21<sup>st</sup> Century Iraq. Saddam offered a puzzle to the gamers, by giving only the most grudging cooperation to U.N. weapons

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<sup>30</sup> See *id.* at 149; *id.* at 152 (“Many aggressive players ... steal money with bluffs”, etc. “but when they get a decent hand, they wind up losing.”); *id.* at \_\_\_\_.

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inspectors when he had no W.M.D. Did he want to conceal the humiliating fact that he had nothing to hide<sup>31</sup>—a hubris surpassing even that of Zimbabwe’s Mugabe?

Players recognize that the safest way to avoid disaster while playing to win is to play by “liberal internationalism” rules, for want of a better description for ‘advanced poker’ or the anti-Hobbesian rules of the road. Ordinary poker is a zero-sum game, winners benefit only at the expense of losers, while (an imaginary) ‘advanced poker’ is played in positive-sum ways: all or most major and minor players benefiting from a particular game, through cooperation and coordination. Over time, the players display an enhanced trust, sense of injustice—particularly but not only as it affects themselves, and even self-denial on occasion. This is especially true when a public (“non-rival”) good can be won—your use of it does not interfere with my use—and reaches a peak over “network effects”: the more people who act in the same way (use Microsoft Windows or act in accord with a particular law for example), the more useful that good becomes for everyone.<sup>32</sup>

<sup>31</sup> SKLANSKY, *supra* note 21, at 252, 257; *War Games*, *supra* note 13. Posner, *supra* note 8, argues that “regional successes”—NATO, the EU or NAFTA, for example—“are based either on the small number of parties or the dominance of a few large parties.” Similarly, “the dominance” of the major players helps explain poker outcomes, but an oligopolistic interdependence among them does not consistently generate the degree of consensus seen in Posner’s “successes.”

<sup>32</sup> SCHERER, *supra* note 21, at 135, 166, 443; Snidal, *supra* note 19, at 122-23; *The Concrete Savannah*, THE ECONOMIST, Dec. 24, 2005, Christmas Survey 9, at 10; *The Economics of Sharing*, THE ECONOMIST, Feb. 5, 2004, 72. See KOCH, *supra* note 21, at 328 (in the course of play, oligopolists “outline spheres of interest” which change over time); ROGER MILLER, INTERMEDIATE MICROECONOMICS, (discussing George Stigler’s implicit collusion among oligopolists, because explicit collusion is too costly); *id.* at 352 (price wars as evidence of temporary disruption of communication channels among oligopolists); JEFF PERLOFF AND KLASS VANT VELD, MODERN INDUSTRIAL ORGANIZATION 175, 229n., 816-17 (2d ed. 1994); SCHERER at 443 (recognition among oligopolists that aggressive actions provoke aggressive reactions, which leads to mutual restraint); Snidal, *supra* note 28, at 133 (need for cooperation and coordination through bargaining internationally); *Concrete Savannah*, at 11 (“humans are hard-wired not for logic but for detecting injustice.”).

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While often-inconsistent or –incoherent rules emerge as a side-effect of ordinary poker, a relatively integrated body of international law can be built up through the group cooperation of ‘advanced poker’ over time. This is something no major player can do by itself—through its domestic rules, for example. Multinational corporations, and other nongovernmental organizations (NGOs) like Greenpeace, Amnesty International, and al-Qaeda, (the Vikings of our time, alas), also play ‘advanced poker’ at its fringes, strengthening global cooperation for their own purposes. Even though processes may have a goal-orientation, rounds (or hands) are usually played in cautious and incremental ways. Effects are occasionally broad and deep over time, but particular outcomes are more frequently halting and display some or much backsliding by some or many players. Planning or preventative action is usually impossible; you must play the cards dealt you (in our analogy and in reality) under a short time horizon. Cooperation is never perfect: mistakes happen; rebelliousness occurs, especially among states taken for granted because of their long record of cooperation; and major and minor States sometimes prefer national interests (centrifugal aspirations) over a liberal internationalist consensus.<sup>33</sup>

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<sup>33</sup> SCHERER, *supra* note 21, at 166; MICHAEL WALZER, ARGUING ABOUT WAR, 167, 170-81 (2004); Niall Ferguson, *A World Without Power*, FOREIGN POLICY July/Aug. 2004, 23, at 38 (the “Vikings” allusion); Walter Mead, *Sticky Power*, FOREIGN POLICY Mar./Apr. 2004, 46, at 51; Shawn Turnbull, *Emergence of a Global Brain: For and From World Governance* (2005) (read off SSRN.com as no. 637401). See JACKSON, *supra* note 2, at 33 (discussing the tendency to overlook GATT obligations, especially when these are owed to the poor and powerless); *id.* at 42 (perfection can’t be expected among players with diverse interests); *id.* at 156 (the tactic of erecting barriers which cost your opponents more than they do you); KOCH, *supra* note 108, at 350 (information about future states of the market isn’t free, and therefore neither are decisions about what to do so that most simply follow the behavior of the major players); *Amman Says US Should Support Millennium Development Goals*, REUTERS, Sept. 5, 2004, 2136 GMT (read off <[alertnet.com](http://alertnet.com)>) (asked about U.S. Ambassador Bolton, Amman stressed “give and take” or “in the end you can’t be effective”; “consensus at all costs” creates “191 vetoes.”).

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A country can be called a “rogue” if it refuses to follow this liberal internationalism consensus, over major issues and for extended periods of time. If a rogue is relatively poor and powerless, it is simply ignored: Zimbabwe for example—with disastrous human rights consequences there. A more powerful rogue gets disciplined by the majors *if* they can reach consensus over how to do this: for example, a proto-nuclear Iran or a chronically rights-abusing oil state like Sudan. Almost always, a relatively poor and powerless state is best advised to play a different game or by slightly different means to create a “niche” for itself (clever advertising or a slightly different product are examples drawn from the economics of oligopoly), which will be tolerated by the major players because it does not disrupt their overall games.<sup>34</sup> Singapore, for example, has become much richer and somewhat more powerful in quite specialized ways. Yet Singapore is tolerated by the majors because, as a city-state, it lacks the capacity to become a major player—a capacity possessed by the India, Brazil, Indonesia, and even the Argentina and South Africa that are thus watched carefully by the incumbent majors.

The game totters along, minor rogues notwithstanding, but its continuance is threatened—as are the disasters that liberal internationalism rules are designed to avoid—when a major player becomes a rogue. After all, the last bout of globalization ended when unresolved political tensions among the then-majors and their satraps exploded into World War I. Even sophisticated subsystems may be unable to block the causes of their own destruction. The (Younger) Bush Administration arguably turned the U.S. into a major-player rogue, by refusing to make important game moves under liberal internationalism rules<sup>35</sup> and thus

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<sup>34</sup> KOCH, *supra* note 21, at 350; SCHERER, *supra* note 21, at 10, 209; Sebastian Mallaby, *Making Globalization Work*, WASHINGTON POST, Feb. 28, 2004, A17. See SCHERER, at 209 (in an oligopolistic market, limited deviations operate to inhibit retaliation).

<sup>35</sup> *E.g.*, the U.N. supported the U.S. in the Korean War, Iraqi War I (1991), the re-installation of Aristide in Haiti (1994) and helped the U.S. settle the Suez Crisis (1956) and the Cuban Missile Crisis, 1962. Steven Schlesinger, *The U.N. Under Siege*, Mar. 17, 2005 ([Maximnews.com](http://www.Maximnews.com)). Bush the Younger thus came as a shock to foreign leaders familiar with Bush the Elder’s and Clinton’s (admittedly rather tepid) liberal

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internationalism. Already in 2002, a career diplomat resigning over the Younger's foreign policies, John Brady Giesing, ably summarized the changes taking place: "We are straining beyond its limits an international system we built with such toil and treasure, a web of laws, treaties, organizations, and shared values that sets limits to our foes far more effectively than it ever constrained America's ability to defend its interests." Paul Brietzke, *September 11 and American Law* (forthcoming) [hereinafter *September 11*] (quoting Geising). In rapid succession, the current Bush Administration repudiated the Kyoto Global Warming Treaty, the Nuclear Test-Ban Treaty, and U.S. participation in the International Criminal Court; coercive 'agreements' were subsequently wrung from a number of minor players, to keep U.S. citizens out of this Court. The U.S. even managed to lose its perennial seat on the U.N. Human Rights Commission, and the invasive U.S.A. PATRIOT Act gave the U.S. a bad name among human rights advocates because, e.g., it encouraged rights abusers. Common "anti-terrorism" cause was made with dictators in Pakistan, Saudi Arabia, Egypt, and more reliable allies in "old" Europe were ignored. Zbigniew Brzezinski attributes such strange policies to a blind fear that periodically verges on panic. Wright, *infra* note 102 (quoting Brzezinski). See AMY CHUA, *WORLD ON FIRE* 8-9 (2003); Paul Brietzke, *September 11*; Ellen Goodman, *A Post-Bush Mind Set*, WASHINGTON POST, Oct. 30, 2004, A19.

Having re-invented the doctrine of pre-emption as a kind of anticipatory retaliation, Bush marketed Iraqi War II as if it were a soft drink or toothpaste, adopting "Orwellian flourishes:" "in order to be relevant," the U.N. Security Council (that was awaiting reports on weapons of mass destruction that turned out to not be in Iraq) "must become irrelevant" by allowing "the U.S. to evaluate ... risk and respond in its sole discretion." Michael Kinsley, *By Whose Authority*, WASHINGTON POST, Mar. 21, 2003, A37. See Guehenno, at 90; Lazare, *supra* note 20-1, at 36.

Bush added fuel to foreigners' fires over detention and torture at Guantanamo and Abu Ghraib. Bush shocked even his cynical critics by appointing (without Senate consent) the abrasive John Bolton as U.N. Ambassador because, apparently, Secretary of State Rice did not want him as her Deputy. Bolton is a darling of the neoconservatives who would dissolve the U.N. or, at the least, force Kofi Annan's resignation, and whose influence over foreign policy is an increasingly permanent factor in the U.S. Bolton led the U.S. repudiation of several treaties, alienated North Korea (an easy thing to do, perhaps) and opposes EU efforts to curb Iran's nuclear ambitions. He calls the U.N. a "rusting

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distorting the goal-orientation of governance without a government. The U.S. uses radically offensive game-moves (*supra*): Bush feels unable to wait until the next terrorist attack, for example, so he is trying to change international law and politics (ultimately the “game rules”) to enhance U.S. national security. But Bush now tries to reach out to a world dismayed by the foreign policy choices of his first term: in a conciliatory, more multilateral, speech to the September 2005 U.N. World Summit, for example. An inability to understand this global dismay is typified by William Smullen: “It is clear that the American *brand* has been badly damaged. {As if I’m selling toothpaste,} I’m not suggesting we have to change our policy.”<sup>36</sup> Earlier, the Security Council’s “no” on supporting his Iraqi War II was a moment of defiance, relevance, and global significance that soon collapsed nonetheless,

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hulk”, opposes its peacekeeping and humanitarian missions, and denies that the U.S. has a legal obligation to pay U.N. dues. Bush nominated another neoconservative icon, Paul Wolfowitz, as the new World Bank President. Diplomat and a senior Defense Department official, Wolfowitz is a major architect of Iraqi War II. Glenn Kessler & Colum Lynch, *Critic of U.N. Named Envoy*, WASHINGTON POST, Mar. 8, 2005, A1; Charles Lane, *Mexicans on Death Row Get Hearings*, WASHINGTON POST, Mar. 8, 2005, A2; Lane, *U.S. Quits Pact Used in Capital Cases*, WASHINGTON POST, Mar. 10, 2005, A1; Colum Lynch, *U.S. Drops Abortion Issue at U.N. Conference*, WASHINGTON POST, Mar. 5, 2005, A13; Brian McNamara, *Letter to the Editor*, WASHINGTON POST, Mar. 13, 2005, B6 (by a retired U.S. consular official); Susan Rice, *Tough Love or Tough Luck*, WASHINGTON POST, Mar. 8, 2005, A15; Ian Williams, *Real U.N. Reform*, THE NATION, Dec. 27, 2004, 6; *The View From Abroad*, THE ECONOMIST, Feb. 19, 2005, 24 (a Special Report on Anti-Americanism). *But see Condi’s Challenge* (“there are signs that the administration is beginning to count the costs of its first-term policy.”). Neoconservatives see Europeans as “a bunch of duplicitous, atheistic wimps, whose moral laxity is leading them to an inevitable and richly deserved doom.” *The European Dreamers*, THE ECONOMIST, Dec. 18, 2004, 78. In sum, the Bush Administration continues to fuel nationalist claims hostile to U.S. interests, and repudiates or ignores key international law principles. But with some justification, neoconservatives take credit for democracy in the Middle East.

<sup>36</sup> Glenn Kessler & Robin Wright, *Report: U.S. Image in Bad Shape—Hughes Set to Begin Public Diplomacy*, WASHINGTON POST, Sept. 24, 2005, A16.

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under concentrated U.S. pressure. In sum, Bush's bungling comes close to Nixon's 35 year-old nightmare, of turning the U.S. into a "pitiful, helpless giant"—unable to subdue a rag-tag Iraqi insurgency which has no *major* external sources of support.<sup>37</sup> Intellectually-bankrupt tactics seem to involve driving lightly-armored U.S. vehicles down Iraqi roads—to see who shoots or has planted explosives.

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<sup>37</sup> Anatol Lieven, *Liberal Hawk Down*, THE NATION, Oct. 25, 2004, 29, at 34. See *European Dreamers*, *supra* note 35 (the younger Bush Administration is globally seen as having "feet of mud", literally in New Orleans and figuratively in the Iraqi quagmire); *id.* (quoting former British Minister Clare Shore) (U.N. reforms are difficult when "the world's hegemonic power has set aside international law and declared that it will act unilaterally whenever its interests are suited."); Thalif Deen, *Despite Strictures, U.N. Chief Refuses to Yield*, I.P.S., Sept. 14, 2005, 1511 GMT (all InterPress Service News Agency, IPS, dispatches are read off <[ips.com](http://ips.com)>); David Ignatius, *They're Not Going to Like Us*, WASHINGTON POST, Sept. 23, 2005, A23 (wanting to be loved, Americans assume our deep unpopularity is a "communications problem" to be treated by e.g., appointing Karen Hughes or perhaps sending more troops to Iraq); Glenn Kessler, *This Year, Bush Takes a Different Tone With the U.N.*, WASHINGTON POST, Sept. 15, 2005, A08; *U.N. Set Out to Institute Bold Reforms but Ended Up With Feeble Tweaks*, HOUSTON CHRONICLE, Sept. 15, 2005, 8:07 PM (read off <[houstonchronicle.com](http://houstonchronicle.com)>) (Bush's conciliatory Sept. 2005 speech contrasted sharply with his statement three years earlier, that the U.S. would wage war in Iraq whether or not the Security Council approved).

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Putin's Russia similarly tends toward a rogue state.<sup>38</sup> His purported emulation of Bush's "democracy" and "rule of law" are now muted by a desire to squeeze out any political opposition, to claw back powers Yeltsin devolved to the regions, and to control the media more tightly. *The Economist* sees traces of a Leninism in this: "Russian foreign policy is still warped by the phantom pain of its lost empire. The government still has too little regard for private property, too often shows a reflexive distrust of business {having repeatedly snubbed lax IMF and World Bank policies concerning Russia}, and has an inflated idea of the state's proper role in the economy—as recent developments in Russia's energy sector demonstrate...."<sup>39</sup>

<sup>38</sup> Outsiders understand little about Russia: e.g., having exaggerated the extent to which Yeltsin established liberal democracy, they exaggerate the extent of Putin's backpeddling towards authoritarianism. Admittedly, he has fought a brutal, human-rights-abusing war against nationalists in Chechniya (a separatist province), justifying this as a move against "terrorism"—the same justification Bush uses in Iraq. Russia's political meddling in Belarus, Georgia, Moldova, Abkashia (a province in Georgia), and Trans-Dniester (a separatist region of Moldova) will almost certainly continue. But the ex-Soviet Muslim "stans" are slowly drifting out of the Russian orbit while adopting a variety of anti-democratic practices, the Baltic countries are already in NATO, and the Transcaucasian region is unstable and bloody—because local rulers pursue ethnic nationalism claims. Rachel Denber, *Beyond Ukraine*, THE INT. HERALD TRIB., Dec. 28, 2004 (reprinted at <http://hrw.org/English/docs/2004.12/29/uzbeki9941.htm>); Jackson Diehl, *Russia's Unchecked Ambitions*, WASHINGTON POST, Dec. 8, 2004, A21; Peter Finn, *Krygystan Opposition Routed at Polls, Process Faulted*, WASHINGTON POST, Mar. 15, 2005, A7; Charles Krauthammer, *Why Only in Ukraine?*, WASHINGTON POST, Dec. 3, 2004, A27; Michael McFaul, *Reform and Retreat*, WASHINGTON POST, Feb. 6, 2005, BW8; *Bleak House*, THE ECONOMIST, Jan. 15, 2005, 80; *An Empire's Fraying Edge*, THE ECONOMIST, Feb. 12, 2005, 21; *Vladimir III*, THE ECONOMIST, Dec. 11, 2004, 46.

<sup>39</sup> *Bury Lenin*, THE ECONOMIST, Oct. 8, 2005, 12. See note 96, *infra*; Jim Hoagland, *Can Russia Stem This Tide?*, WASHINGTON POST, Oct. 13, 2005, A23; Andrew Osborn & Anne Penketh, *Putin Boasts of Russian Power at E.U. Summit*, THE INDEPENDENT, Oct. 5, 2005 (all

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Many E.U. and U.N. officials are appalled by U.S. and Russian behavior, and a few commentators see Ukraine as the kick off in a new Cold War.<sup>40</sup> Many minor players are seeking cover because they fear the onset of disasters and reallocations of power that the disruptions in an ‘advanced poker’ game make more likely. Such disruptions in a governance without government game are also disruptions in relatively settled political and economic expectations. Self-fulfilling prophecies of a lack of cooperation can lead to a potentially dangerous level of instability, and to even greater uncertainty and complexity. But the poker games have been running within consensus borders since the end

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INDEPENDENT articles read online at <[Independent.com](http://Independent.com)>); *Beyond Siberia*, THE ECONOMIST, Sept. 3, 2005, 45.

<sup>40</sup> Outsiders understand little about Russia: e.g., having exaggerated the extent to which Yeltsin established liberal democracy, they exaggerate the extent of Putin’s backpeddling towards authoritarianism. Admittedly, he has fought a brutal, human-rights-abusing war against nationalists in Chechniya (a separatist province), justifying this as a move against “terrorism”—the same justification Bush uses in Iraq. Russia’s political meddling in Belarus, Georgia, Moldova, Abkashia (a province in Georgia), and Trans-Dniester (a separatist region of Moldova) will almost certainly continue. But the ex-Soviet Muslim “-stans” are slowly drifting out of the Russian orbit while adopting a variety of anti-democratic practices, the Baltic countries are already in NATO, and the Transcaucasian region is unstable and bloody—because local rulers pursue ethnic nationalism claims. Russia represses a militant Islam in the Caucasus in coherent ways which alienate a hitherto supportive population; Sharia is seen as a superior alternative to Russian lawlessness. Rachel Denber, *Beyond Ukraine*, THE INT. HERALD TRIB., Dec. 28, 2004 (reprinted at <[hrw.org/English/docs/2004.12/29/uzbeki9941.htm](http://hrw.org/English/docs/2004.12/29/uzbeki9941.htm)>); Jackson Diehl, *Russia’s Unchecked Ambitions*, WASHINGTON POST, Dec. 8, 2004, A21; Peter Finn, *Krygystan Opposition Routed at Polls, Process Faulted*, WASHINGTON POST, Mar. 15, 2005, A7; Charles Krauthammer, *Why Only in Ukraine?*, WASHINGTON POST, Dec. 3, 2004, A27; Michael McFaul, *Reform and Retreat*, WASHINGTON POST, Feb. 6, 2005, BW8; Kim Murphy, *Rebellion Creeping Through Caucasus*, L.A. TIMES, Oct. 23, 2005; *Bleak House*, THE ECONOMIST, Jan. 15, 2005, 80; *An Empire’s Fraying Edge*, THE ECONOMIST, Feb. 12, 2005, 21; *Vladimir III*, THE ECONOMIST, Dec. 11, 2004, 46.

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of World War II, and most nation-states have developed buffers against threatened international instabilities. These buffers may prove effective for a long enough period—until Bush and perhaps Putin leave office, for example.

The Chinese seem faintly bemused by Bush's and Putin's carryings-on, while positioning themselves to take advantage of any future chaos. China is increasingly projecting itself as a global power, spending a great deal on a leaner, meaner, more technologically-adept military. For example, a Chinese-Russian joint military exercise, Peace 2005, was a classical battle set-piece, with Russia using the modern equipment China lacks—perhaps to awe the Chinese and to make U.S. dominance in the region seem even more tenuous. A very good poker player, China cozies up to (an anxious) Russia and Central Asian states; the U.S. schmoozes India and tries to persuade Japan to become more assertive towards China and Russia. Its insatiable quest for oil and gas has China competing with India and dealing with countries blacklisted by the U.S. as troublesome: Myanmar, Sudan, and Iran for example. Persistent U.S. complaints about Chinese human rights violations, about inadequate protections of intellectual property, and about overvaluing its currency (yuan) to boost exports (using much of the proceeds to, it should be noted, buy the U.S. Treasury liabilities that finance huge U.S. deficits) have been met only with lukewarm 'cosmetic' Chinese responses. Notwithstanding China's continuing economic boom, some commentators see China's "socialist" (or "planned"—although its 11<sup>th</sup> Five-Year Plan is called a "blueprint") market economy as the ultimate contradiction in terms. A consumer choice without political choice is believed to spawn corruption, cronyism, and a growth in the number and scale of public protests. In any event, this "harmonious society" (the new buzzword in China) is under threat from a galloping inequality in the distribution of wealth.<sup>41</sup>

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<sup>41</sup> Antoneta Bezlova, *Great Leap to Help Rural China*, I.P.S., Oct. 14, 2005, 0417 GMT; Paul Blustein, *U.S. Urges IMF Crackdown on {Chinese} Currency*, WASHINGTON POST, Sept. 24, 2005, D1; Dieter Farwick, *China is Flexing Its Military Might*, WORLD SECURITY NET NEWSLETTER, Sept. 21, 2005 (read of [newsletter@worldsecuritynetwork.com](mailto:newsletter@worldsecuritynetwork.com)); Niall Ferguson, *The Man-Eater of Asia's Tigers*, L.A. TIMES, Oct. 3, 2005; *The Cauldron Boils*,

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The E.U. attempts to achieve a common foreign policy and international law reform policy, with (only) a modest degree of success. THE ECONOMIST goes too far in playing down the E.U.'s role in international relations and law by likening it to the role of a Greek chorus (rather than a disorganized cacophony): commenting, reacting with horror or praise, but playing no part in the action.<sup>42</sup> Bush is seen as this play's tragic protagonist, "hurrying to his

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THE ECONOMIST, Oct. 1, 2005, 38; *The Dragon Comes Calling*, THE ECONOMIST, Sept. 3, 2005, 24. Peter Goodwin, *China's Transformation*, WASHINGTON POST, Nov. 4, 2005, 10 AM (China's economy will stumble at some point given "rickety" banking, water and energy shortages, social instability, the wastage of capital and "white elephants"); see note 137 *infra* (in a statement presumably calculated by Government, a Chinese General threatened to "nuke" hundreds of U.S. cities, if the U.S. intervened over Taiwan); *id.* (a 1998 Chinese Army publication recognizes the impressibility of challenging the U.S. on its own terms, so the solution is to subvert banks, stock markets, and defense contractors; flood the U.S. with drugs; seize natural resources overseas; paralyze U.S. phones, media, and traffic; and use psychological warfare); *id.* (China's regular "deliberate ambiguity" is something the Pentagon is not set up to address); Bezlova (the Chinese Public Security Ministry admitted 74,000 "serious" protests in 2004, involving 3.7 million people—up from 50,000 protests in 2003); *id.* (in 2005, to Oct., 23 policemen were killed during "riots" and 1,826 injured); Edward Cody, *China Will Pursue Reforms and Focus on Poverty*, WASHINGTON POST, Oct. 11, 2005 (with no reference to growing protests, a communiqué stated—"We have to solve the contradictions of the people", "their most crucial, direct and unrealistic problems"); *id.* (no countervailing power such as an independent court system will be tolerated, and "the most important thing is to strengthen the ability and liberty of the party."); Shasha Trudeau, *The Red China of Two Naïve Guys*, TORONTO STAR, Oct. 16, 2005, 8:19 AM (all STAR articles are read off <[thestar.com](http://thestar.com)>) (quoting Shao Ming) "China used to be only one color—red," but not it "is many colours"); *The Dragon*, at 25 (Chinese leader Hu will ask Bush to treat China as a "market economy" —thus making the application of U.S. anti-dumping measures more difficult—but the request is unlikely to be granted).

<sup>42</sup> *Europe's Cassandra Complex*, THE ECONOMIST, Oct. 29, 2005, 54 (citing Bob Kagan). Like the E.U., a Greek chorus often supports the "law"—as in Sophocles's *Antigone*, *id.*

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doom and reckless of the consequences of his actions.”<sup>43</sup> Some neoconservative Americans return the favor, seeing E.U. members as too disorganized, “cowardly, cynical and decadent to support America’s courageous and idealistic mission. . . .”<sup>44</sup> Admittedly, France is often prickly and seeks to dominate consensus, Blair’s Britain is often the outsider of Europe—trying to play poker like Bush, Europe’s ideological wounds are slow to heal, and the failure of the new E.U. Constitution in two referenda exposes a legitimization crisis within Europe. In addition to hiving off Britain, Bush managed to divide the E.U. further over Iraq: Italy, Poland and (temporarily) Spain came over to Bush’s “coalition of the willing.” Despite such disunity on some issues, the E.U. was one of the few parties that backed the World Summit draft document as a whole. In comparison, the U.S. proposed 700 amendments to this draft, while Russia, Cuba, Pakistan, Algeria, Iran and others also sought extensive changes.<sup>45</sup>

<sup>43</sup> *Id.*

<sup>44</sup> Lieven, *supra* note 37, at 34.

<sup>45</sup> See note \_\_\_ *infra* (emphasis supplied). See Stefania Bianchi, *Amid Budget Spat, E.U. Searches for the Big Picture*, I.P.S., Oct. 28, 2005, 0035 GMT; *id.* (quoting Alasdair Murray) (all EU countries face similar challenges to their social models—aging populations, low-wage competition from Asia and high unemployment in some areas); *id.* (we must reach a policy consensus before attempting other reforms); Stefania Bianchi, *U.N. Summit Being Written Off Already*, I.P.S., Sept. 21, 2005, 0323 GMT (Luis Morago, head of Oxform, Brussels urges European leaders to go further on poverty reduction and arms control); Stephen Castle, *China Says Brussels Does Not Care About Job Losses in Assault on Economic Policy*, THE INDEPENDENT, Oct. 7, 2005, 18:15 (Chirac stresses the need for an E.U. united front on globalization in “classic Chirac: defining Europe and France as the same thing.”); Romulo, *supra* note 16; *Annan Says, supra* note 25; *To Doha’s Rescue*, THE ECONOMIST, Oct. 15, 2005, 13 (Peter Mandelson, the European commissioner for trade, “needs approval from national governments if he is to go as far as his American counterpart”); Similarly the negotiating points of the U.S. must be confirmed by congressional enactment.

On the EU as a major player, see Morton Abrahamowitz and Heather Hurlbut, *Where to Start With Europe*, WASHINGTON POST, Jan. 9, 2005, BW5 (reviewing TIMOTHY GORTON ASH, *AMERICA, EUROPE, AND THE SURPRISING FUTURE OF THE WEST*, and T.R. REID, *THE UNITED STATES OF EUROPE*) (the residual affectation, resilient interdependence, and

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The European Commission calls the U.N.'s Millennium Development Goals (MDGs, *infra*) "the core" of E.U. development policy, the "new ... consensus" of "a global *player*."<sup>46</sup> A nongovernmental organization (NGO) official notes that the E.U. claims "moral leadership over MDGs", in what we might call an important "bet" in a major poker game, but E.U. countries must "deliver on their promises" through collective action—to be "credible."<sup>47</sup> Arguably, E.U. performance during the Doha Round of WTO negotiations (*infra*) saps its credibility.

A Deputy Secretary-General who recently resigned, the Canadian Louise Frechette, calls the U.N. the complex center of just about everything since the end of the Cold War, of high ambitions and often higher expectations. Outcomes have been both "notable successes and [the] shattering failures" that rarely stem from the U.N. simply walking away from a problem.<sup>48</sup> As adaptable, evolving reflections of the world, the members of the U.N. "family" (which includes international conferences even) have an international legal personality (without approximating the organs of a world government), can participate in international relations independent of their member nation-states, and can create

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furious passion of the trans-Atlantic relationship); *id.* (the Europeans' "bickering and boredom: and anxiety over "feeling dwarfed by the U.S. hyperpuissance.") *id.* (Ash shows how disunity is "one of the things we in the West have in common."); *id.* (Ash shows how "building a future in defiance of the other—the Soviet Union in the past, America today, perhaps in Islam or China tomorrow—is neither sustainable nor ennobling."); *Editorial: Backward in China*, WASHINGTON POST, Dec. 20, 2004, A22.

<sup>46</sup> #72 [????] [emphasis supplied].

<sup>47</sup> Olivia Ward, *Frechette's U.N. Challenge*, TORONTO STAR, Sept. 24, 2005, 8:13 A.M. See notes \_\_ and accompanying text (E.U.'s behavior over the Doha Round of WTO negotiations).

<sup>48</sup> JEAN-MARIE HENCKAERTS & LOUISE DOSWALD-BECK, 1 CUSTOMARY INTERNATIONAL HUMANITARIAN LAW: RULES, *Introduction*, xxv, xxxv (2005); Brietzke, *supra* note 7; Tony Evans, *International Human Rights as Power/Knowledge*, 27 H. RT. Q. 1046, 1054-56 (2005); See notes 5, 17, 26, 51 (*quoting* Annan). *But see* note 26, *supra*: in a 2003 Poll, the U.N.'s "standing" declined in the 20 countries polled, in the U.S. because the U.N. didn't sanction Iraqi War II and in the 19 others because it couldn't prevent it.

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an independent customary international law. But like the E.U., the U.N. is a major player only when adequate power and resources are delegated by members, after the requisite consensus is mustered. Then, the U.N. can build its own distinctive power: the ability to legitimate or delegitimize political, social, economic, and even military actions. Lawyers as lawyers like poker games organized around this legitimation rubric because, among other things, rules of international law are often created during the course of play. Some argue that such games serve to conceal processes of domination, however—including those ostensibly operating through “markets”, another game rubric thought legitimate by the U.S., increasingly by China, and tolerated by many developing countries as a necessary evil under strictures imposed by the WTO, the IMF, the World Bank, etc.<sup>49</sup>

A major function of the U.N. is the *collective* empowerment of the relatively powerless (i.e., the U.N. sometimes plays poker hands as a major acting on behalf of minor players), by offering a forum where minors’ concerns and arguments can be aired, and a solution to some collective action problems. This can be seen in a U.N. representation of the sometimes-diffuse interests of the 118-member Non-Aligned Movement, more powerful during the Cold War and currently led by Malaysia, India, and South Africa. This Movement is frequently ignored by widely-circulated media, as is an even less well-known Group of 77 (with 134 members) currently chaired by Jamaica and the Group of 24, formed in 1971 to unify developing countries’ positions on monetary policy and development finance. At the other end of the player spectrum, Bush’s neoconservative surrogates (Norm Coleman, Tom DeLay, and Henry Hyde, for example) created an existential crisis when they picked up Bush’s cudgels for use against *another* lame duck, Secretary-General Annan, over what

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<sup>49</sup> 5; *Commentary: United Nations to the Rescue (of Itself)*, CHRISTIAN SCIENCE MONITOR, Sept. 15, 2005 (U.N. “power lies in getting norms of behavior and then using a major voice to persuade or shame norm-breakers to follow suit.”); and *infra* notes 106 and 107. Ronald Saunders, *Small States Need a Stronger U.N.*, CARIBBEAN NET NEWS, Sept. 27, 2005; Martin Walker, *Bush v. Annan: Taming the United States*, 22 (5) WORLD POL’Y J. (Spring 2005) (read off <[worldpolicy.com](http://worldpolicy.com)>).

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amounts to an oil-for-food corruption *sidebar (infra)* to the World Summit. This crisis set two of the world's most impressive "spin machines" into motion, and the forces of liberal internationalism prevailed over the neocons: China, Russia, 105 other states and the E.U., plus the NEW YORK TIMES, WASHINGTON POST, National Public Radio, and the BBC supported the "bold reformer" Annan as the best Secretary General since Dag Hammarskjold. (Some see this as rather faint praise.)<sup>50</sup>

Like fairies, paper money or perhaps the Soviet Union, the U.N. would cease to exist (at least as a major player) if people stopped believing in it. This seems the tactic attempted by U.S. neoconservatives, along with curbing funding for the U.N., but it is wildly unrealistic. The U.N. currently oversees 18 peacekeeping operations, using 8,000 troops. Would the U.S. want to pay for and pacify these problematic hot spots by itself?<sup>51</sup> Rather, shouldn't the U.S. want to reform U.N. institutions so as to strengthen them for this purpose, out of a national self-interest—so that the U.S. can concentrate on playing poker games with greater pay-offs? But this was *not* to be. Accurately forecasting the outcome from the September 2005 World Summit, Samantha Powers notes that the "U.N.'s imperfections were manifest from its creation," as "built upon ... obvious contradictions .... Whatever they can agree upon {at the Summit} is sure to be disappointing and will be derided."<sup>52</sup>

### SUMMITRY

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<sup>50</sup> Simon Chesterman, *Duty Pulls Annan in Two Directions*, INT. HERALD TRIB., Sept. 9, 2005; Thalif Deen, *Post-Summit Dilemma of Promises and Delivery*, I.P.S., Sept. 27, 2005; Sebastian Mallaby, *Bush's Missed U.N. Opportunity*, WASHINGTON POST, Sept. 12, 2005, A19; Schlesinger, *supra* note 35. See Ward, *Frechette*, *supra* note 47 (the U.N. is looked upon as a necessary, and often most competent partner—for players major and minor); notes \_\_\_ and accompanying text, *infra* (corruption sidebar).

<sup>51</sup> See Samantha Power, *To Save the World From Hell*, LE MONDE DIPLOMATIQUE, Sept. 2005. See *id.*: 60 years ago, Henry Cabot Lodge, Jr. said that the U.N. won't "bring us to heaven", but it might "save us from hell."

<sup>52</sup> *Id.*

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For the U.N., “success never seems to resonate as much as failure”: disasters in Bosnia, Rwanda, and Somalia<sup>53</sup>; the U.S. circumventing collective (Security Council) action over Iraqi War II; sexual abuse by U.N. troops in the Congo and elsewhere; and corruption in the oil-for-food program (sidebar, *infra*). The U.N. might be thought ineffective because we still face war, injustice, and poverty, yet we avoided World War III (so far, in no small measure because of the international law rules governing the parties’ poker games), and more people now live in countries where freedoms are protected to some extent by law. The U.N. has run elections in 90 countries and peacekeeping operations in 60, helped resolve 170 regional conflicts, and assisted in the decolonization of 80 countries. Such activities are the primary cause for a 40% decline in armed conflicts since the end of the Cold War. The U.N. imposes sanctions on member-miscreants, and sets up international criminal tribunals and then convinces members to turn over potential defendants. The High Commission for Refugees aided 50 million refugees from war, famine or persecution; the International Atomic Energy Agency (winner of the 2005 Nobel Peace Prize) searches for W.M.D. and created security measures for 100 nuclear facilities in 70 countries; and the World Health Organization wiped out smallpox and markedly reduced polio.<sup>54</sup>

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<sup>53</sup> *Editorial: Short-Lived Celebration*, L.A. TIMES, Oct. 10, 2005.

<sup>54</sup> Chesterman, *supra* note 50; Kathryn Horvat & Pat Shea, *The U.N.: 60 Years and Still Counting*, SALT LAKE TRIB., Oct. 22, 2005 (read off <[sltrib.com](http://sltrib.com)>); Edith Lederer, *Global Violence Has Decreased*, U.N. SAYS, WASHINGTON POST/ASSOC. P., Oct. 18, 2005, 9:12 A.M.; Shashi Tharoor, *In Order to Redeem, the United Nations Must Be Redeemed*, THE (Lebanon) DAILY STAR Sept. 15, 2005; *Editorial: U.N. is Faced With New Challenges*, PEOPLE’S DAILY ONLINE, Oct. 24, 2005; *U.N. Set, supra* note 37. *But see* Michael Glennon, *Idealism That Won’t Work* (2005) (S.S.R.N. Pap. No. \_\_\_) (medicrease in violence “might have been the result of . . . growing economic integration, stronger alliances, military deterrence, more influential N.G.O.s, the reportage of the mass media, or merely a transnational sense of horror over the barbarism of war.”); Juan Somovia, *The Humanitarian Responsibilities of the U.N. Security Council* (1996) (downloaded from <[globalpolicy.com](http://globalpolicy.com)>)

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Past reform efforts were spurred by the vision and political will of the leaders of particular nation-states, often after a war. The current round of reform turns this process on its head, by trying to create political will internally—to make the U.N. more effective. The fear is that “under performing” U.N. institutions—some see a U.N. *system* failure, a series of market (-like) failures in the provision of public goods like peace and development—will otherwise be unable to meet new threats and opportunities.<sup>55</sup> In preparation, Secretary-General Annan named a Panel of High-Level Experts, to report on issues of peace and security<sup>56</sup>, while economists led by Jeffrey Sachs considered how the commitments made at the 2000 Millennium Summit could best be implemented.<sup>57</sup> In March 2005, Annan synthesized their key recommendations in his manifesto, *In Larger Freedom*.<sup>58</sup> The Secretary General deliberately set an ambitious and tightly-packaged agenda, given the watering-down and fragmentation that inevitably results from negotiations (poker games played) over this agenda. Pakistan, which merits some of the blame for eventual reform failures, feared that so ‘heavy’ an agenda would lead to collapse, leaving the Summit with no tangible result.<sup>59</sup> (This didn’t happen, of course: poker and especially ‘advanced poker’ rules are designed to avoid collapse/no-result at almost any cost.)

Many echo Annan over an essential interrelatedness of the development, security (including the suppression of terrorism), and

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(“sanctions as currently-practiced produce large-scale human insecurity, the opposite of their intended effect.”).

<sup>55</sup> Kofi Annan, *Secretary-General Urges Reform Process Forward*, Speech to the World Summit, Sept. 15, 2005, [SG/SM/10090/Rev.1\\*](#), [GA/10380/Rev.1](#).

<sup>56</sup> See Jean-Maria Guehenno, *Letter to the Editor*, N.Y. TIMES (Oct. 29, 2005) (the U.N. under Secretary for Peacekeeping) (the U.N. investigated 221 peacekeepers over sexual abuse in the Congo, repatriated 88 soldiers ... so some of whom are being prosecuted in their home country ... fired 10 civilians). Tharoor, *supra* note 54.

<sup>57</sup> JEFFREY SACHS, *INVESTING IN DEVELOPMENT: A PRACTICAL PLAN TO ACHIEVE THE MILLENNIUM* (2004).

<sup>58</sup> [un.org/largerfreedom](http://un.org/largerfreedom) (UNDP).

<sup>59</sup> Brown, *supra* note 15; Colum Lynch & Glenn Keasler, *U.N. Scales Back Plan of Action*, WASHINGTON POST, Sept. 14, 2005, A6; Schlesinger, *supra* note 35; David Osborne #61.

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respect for human rights, all to be achieved through U.N. reforms. But the U.S., Russia to a lesser extent, and a relatively few minor players persisted in pulling at any snag or frayed edge that emerged when Annan's proposals were put under negotiating stress. In effect, these players chose to play many separate poker games—not of the 'advanced' variety—for narrow, short-term, and sometimes-misperceived gains. A U.N. culture of inaction absent consensus enabled these players to shape non-reform outcomes, as the economists' "holdouts"—veto groups whose existence is made possible by the extraordinarily high "transaction costs" of U.N. reform. Annan's hope for an idealized, grand social contract (or a single, idealized 'advanced poker' game) were dashed—developed countries genuinely working to alleviate Third World poverty, in exchange for developing countries' support for the reforms developed countries sought. But Annan was careful not to challenge the permanent members of the Security Council—those with a veto or, roughly, what are called the major poker players here—since their power and consensus is essential to any successful reform.<sup>60</sup> Had the U.S. stood with the other majors, would it have been possible to isolate Russia and eliminate (through a broad range of coercions) the minor-player holdouts? The logic of poker suggests "yes."

The Summit, "the 900 pound gorilla, ... the largest in history," occurred when about 170 nation-state leaders gathered for a "once-in-a-generation" opportunity for U.N. reform<sup>61</sup>, in New York during September 2005. Mark Malloch Brown says that, on the morning the Summit opened, negotiations were "heading off

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<sup>60</sup> #51; Edith M. Lederer, *Leaders Fall Short on Larger Goals in Effort to Fight Poverty, Terrorism at U.N. Summit*, ASSOCIATED PRESS, 9/17/05; Monique Chemillier-Gendreau, *The Alternative U.N.*, LE MONDE DIPLOMATIQUE, Sept. 2005. The holdouts "spoiler countries" variously include the U.S., Russia, Myanmar, Turkmenistan, Belarus, India, Vietnam, Syria, Venezuela, Cuba, Pakistan, Egypt, and Iran. #5; Nick Wadhams, *General Assembly OKs Compromise Document*, AP, Sept. 13, 2005. The people deserve better than this disingenuous horse trading; there is no evidence of the political will to stop, e.g., another Rwanda, *id.* See note \_\_\_ and text accompanying, *infra* (some effects of the holdouts).

<sup>61</sup> Olivia Ward, *U.N. Faces the Fight of its Life*, TORONTO STAR, Sept. 12, 2005, 1:00 A.M.

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the rails”, with 140 passages and 27 issues still left undecided.<sup>62</sup> Annan and the incoming and outgoing General Assembly Presidents took “a high-risk gamble”: deleted contentious matters from the draft Summit outcome, adopted alternative language they thought could win approval, and submitted a “clean” copy to members—who then adopted it quickly.<sup>63</sup> Everyone had to “compromise”<sup>64</sup>, something our ‘advanced poker’ model predicts, as it does the narrow limitations on such compromises—composed as they are of diverse national interests and desires to “win.”

In any event, Annan’s proposals were criticized for ignoring the complexities of global society, and for the impossibility of reform where the major powers refuse to give up their prerogatives. Secretary-General Annan did much to open up U.N. processes to nongovernmental organizations (NGOs, including corporations, as “stakeholders” in a civil society), arguably to open up and solidify ‘advanced poker’ as the dominant game. But NGOs strongly objected to a lack of control over the Summit agenda, and the lack of access to closed-door negotiations among nation-states. In contrast, the Helsinki Summit and the (Bill) Clinton Global Initiative, held just before and just after the U.N. Summit respectively, made room for NGO participation in the “intense dialogue” no longer possible at the U.N. “because of highly ritualistic structures, protocol and conflict avoidance.”<sup>65</sup> The “multi-stakeholder” Helsinki process will go forward under

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<sup>62</sup> Edith Lederer, *U.N. Summit Leaders to Adopt Weak Document*, SEATTLE POST INTELLIGENCER, Sept. 15, 2005 (read off <[seattlepi.com](http://seattlepi.com)>).

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> Glenn Kessler, *Clinton Gathers World Leaders*, WASHINGTON POST, Sept. 16, 2005, A2 (quoting Richard Holbrook, U.N. Ambassador under Clinton). See Sanjay Suri, *Development: NGOs Talk, Governments Listen*, IPS, Sept. 7, 2005, 02:05 GMT; Monique Chemillier-Gendreau, *The Alternative U.N.*, LE MONDE DIPLOMATIQUE, Sept. 2005; 117, *supra* note \_\_, 134; (Clinton reportedly wanted to be Secretary General, and is skilled at “building bridges”); Coate, *supra* note 1; Maggie Farley, *U.N. Reform Bid Exposes its Woes*, L.A. TIMES, Sept. 14, 2005; Sanjay Suri, *NGOs Talk, Governments Listen*, I.P.S., Sept. 6, 2005 (70 governments and 600 NGOs at Helsinki).

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two NGOs, the Celso Furtado Centre in Sao Paolo, Brazil, and the Brookings Institution in Washington.<sup>66</sup>

NGO officials also came up with specific criticisms of Summit outcomes: e.g., “We wanted a bold agenda to tackle poverty but instead we have a brochure showcasing past commitments” and omitting, e.g., women’s rights issues.<sup>67</sup> Only democratic, “comprehensive, radical and transparent reform of the U.N. will enable this system to fulfill its historical role....”<sup>68</sup> The “watered-down” language of the “cleverly-crafted” Summit outcome document shows the U.N. becoming “the biggest talk—but not act—shop in the world.”<sup>69</sup> The Mauritius Ambassador speaks of a “least common denominator” Summit outcome document<sup>70</sup> which, according to a political science professor, will not move the world toward promoting human security.<sup>71</sup> There was a leadership vacuum, which is what the poker analogy would lead us to expect. Clare Short finds “depression and mistrust”<sup>72</sup>,

<sup>66</sup> Sanjay Suri, *Development: Straight Talk Expected at Post-Helsinki Roundtables*, I.P.S., Sept. 14, 2005; Goday, *supra* note 66. [?????]

<sup>67</sup> Edith M. Lederer, *Annan Appeals to World Leaders at Summit*, WASHINGTON POST, Sept. 14, 2005 (quoting Oxfam’s Nicola Reindorp). See #38; notes \_\_\_ and accompanying text, *infra* (MDGs). Oxfam’s 4,000 partner organizations in 70 countries promote dignity and development. Juan Somavia, *The Humanitarian Responsibilities of the U.N. Security Council* (downloaded from <[globalpolicy.org](http://globalpolicy.org)>).

<sup>68</sup> Elisa Marincola, *Summit Ignores People’s U.N.*, IPS, Sept. 16, 2005 (quoting Antonio Papisca of the University of Padua’s Centre for Human Rights). See Haider Rizvi, *Anger at Washington Simmers on Eve of U.N. Meet*, IPS, Sept. 1, 2005.

<sup>69</sup> Thalia Deen, *March Toward MDGs Leaving Millions Behind*, IPS, Sept. 16, 2005 (quoting Saradha Iyer, of Malaysia’s Third World Network). See Ward, *supra* note 47 (document is “heavy on rhetoric and light on substance.”)

<sup>70</sup> #61 (quoting the Ambassador). See *id.* (quoting Mark Malloch Brown): “we always knew we wouldn’t get the full loaf. We’ve got to start counting slices.”

<sup>71</sup> Coate, *supra* note 1.

<sup>72</sup> Clare Short, *Depression and Mistrust Prevail at the U.N.*, THE INDEPENDENT ONLINE, Sept. 15, 2005 (quoting former British Minister Short). See Mary Robinson, *A New Way of Doing the World’s Business*, INT. HERALD TRIB., Sept. 25, 2005 (a leadership vacuum deprived the summit of “backbone”).

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which we might see as attitudes making ‘advanced poker’ less likely. According to Mary Robinson, the U.N. “had its bluff called. . . .”<sup>73</sup> Venezuela’s Foreign Minister objected to the “anti-democratic” negotiation process, and especially to having to approve the outcome document before it was translated into Spanish.<sup>74</sup> But the elliptical *ECONOMIST* finds the document “not wholly devoid of substance.”<sup>75</sup>

American neoconservatives are even more critical: e.g., Brett Schaefer sees the Summit as another step on the path towards U.N. irrelevance, inefficiency, and more low-priority, costly mandates.<sup>76</sup> John Yoo agrees with this characterization, but goes on to argue that the U.N. reforms will markedly increase transaction costs—thus reducing the U.N.’s ability to solve collective action problems.<sup>77</sup> For Nicholas Kristof, the Summit was history’s biggest gathering of “hypocrites”, who “preen and boast”; along with the Italians and Japanese, “Americans set a dreadful example.”<sup>78</sup>

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<sup>73</sup> *Id.*

<sup>74</sup> Edith Lederer, *Leaders Fall Short of Larger Goals in Effort to Fight Poverty, Terrorism at the U.N. Summit*, AP, Sept. 17, 2005 (read off <[ABC.com](http://ABC.com)>) (quoting Minister Rodriguez).

<sup>75</sup> *Better Than Nothing*, *THE ECONOMIST*, Sept. 17, 2005, 33. See Thalif Dean, *supra* note 69 (quoting Jamaica’s Foreign Minister Knight, speaking for the Group of 77) (the Summit outcome at best “a bag of mixed results”); George Mitchell, *Don’t Write Off U.N. Reform Just Yet*, *INT. HERALD TRIB.*, Oct. 11, 2005 (document “papered over many differences and skirted other issues”, but it “establishes a starting point” and a consensus is building); Nahal Toosi, *Annan Depends Summit’s Accomplishments, Agrees Some Results Were Nixed*, *A.P. NEWSDAY*, Oct. 17, 2005, 3:15 EDT (while the absence of progress on non-proliferation a “disgrace”, administrative reforms were nixed, the Millennium Development Goals were “endorsed”, and the peacebuilding commission is a valuable creation).

<sup>76</sup> Brett D. Schaefer, *The U.N. Summit Document: At What Cost?*, *THE HERITAGE FOUNDATION*, Sept. 21, 2005 (quoting the Heritage Foundation’s Schaefer).

<sup>77</sup> Yoo, *supra* note 8.

<sup>78</sup> Nicholas D. Kristof, *Meet the Fakers*, *THE NEW YORK TIMES*, Sept. 13, 2005.

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With some justification, much of the blame for reform failures is attributed to John Bolton, Bush's recess appointment as U.N. Ambassador—because the (Republican-dominated) Senate refused to confirm him. (Some see Bush's appointment as the abandonment of a bipartisan foreign policy.) The bull in the china shop who stalemated the Summit for most observers, Bolton was regarded by the U.S. neoconservatives as showing that the U.N. emperor has no clothes. At Bolton's request, all references to the International Criminal Court and the Kyoto Protocol were deleted from the document. But he was unsuccessful at deleting all quantitative goals relating to the Millennium Development Initiative. Speaking at the Summit, Bush got to play "good cop" to Bolton's "bad cop", and the consensus was of a pleasant surprise over Bush's more conciliatory "moral obligation" to go along with much of the outcome document.<sup>79</sup> However, our poker analogy suggests that Bolton could not have had so significant an impact on the Summit without disruptions from the Russians and especially from the minor-player holdouts that, like the U.S., were grinding

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<sup>79</sup> Haider Rizvi, *Anger at Washington Simmers on Eve of U.N. Meet*, I.P.S., Sept. 14, 2005; Barbara Slavin, *Bolton Dives Right in to Effort to Change U.N.*, USA TODAY, Sept. 12, 2005; Celia Dugger, *U.N. vs. Poverty*, N.Y. TIMES, Sept. 14, 2005; Maggie Farley & Warren Vieth, *Bush, Annan Tout Role of the U.N.*, L.A. TIMES, Sept. 15, 2005; *Better Than Nothing*, *supra* note 75; *U.N. Set Out*, *supra* note 37. See Evelyn Leopold, *Fears Grow of Meltdown at Ambitious U.N. Summit*, REUTERS, Sept. 11, 2005 19:17:19 GMT (*quoting* David Schorr) (Bolton's "overreaching by niggling over small stuff rather than shoring up the major items."); Jonathan Beale, *Strained Relations for U.S. & U.N.*, BBC News, Aug. 8, 2005, 0210 GMT (the man Bolton replaced at the U.N., Nicholas Burns, had worked hard and collaboratively); Klaus Brinkbaum & Greg Mascolo, *The Gangs of New York*, SPIEGEL ONLINE, Sept. 26, 2005 (Bolton downgraded "the final document to little more than a meaningless sketchpad of world politics."); Thalif Deen, *U.S.-U.N. Relations May be on a Collision Course*, I.P.S., Aug. 5, 2005 (*quoting* James Paul Bolton is like an atheist appointed as ambassador to the Vatican); *id.* ("through threats and blackmail," the U.S. tries to bend the U.N. to its will—without breaking it); Appendix, *infra* (the MDG quantitative goals that remained).

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very different axes, trying to win short-term games for their own purposes and in distinctive ways.

These reform and non-reform outcomes will be discussed under eight headings: the composition of, and voting arrangements in, the Security Council; U.N. powers of intervention and the new “responsibility to protect” against genocide and war crimes; terrorism, a central concern of the U.S. and the U.K.; a new Peacebuilding Commission, to help nations emerging from conflict; the non-proliferation of W.M.D., and of ordinary weapons as well; management and administration within the U.N.; human rights; and (non-) implementation of the Millennium Development Goals. How all of this will be paid for remains to be seen, of course; this is a topic of little interest to players totaling up their wins and losses at poker.<sup>80</sup>

#### *The Security Council (S.C.)*

The S.C. will remain an unreformed “aristocratic” (undemocratic) yet rather “toothless” “executive” body, which suffers from a “credibility deficit.”<sup>81</sup> For example, fears of a Chinese and/or Russian veto have so far stopped the S.C. from a needed and otherwise-feasible humanitarian intervention in Darfur, in Sudan. Many minor players are opposed to reform of the S.C., as conducive to marginalizing the General Assembly (G.A.)—in what is assumed to be a zero-sum (poker) game between them. More modest (transaction cost-reducing) reforms of the G.A., the minor-players’ bailiwick, were approved by the Summit—streamlining committee structures, speeding up deliberations, and

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<sup>80</sup> *Main Divisive Issues Before World U.N. Summit*, REUTERS ALERTNET, Sept. 5, 2005, 0531GMT. See Julio Godoy, ‘*Summit Will Look for the Money*’, IPS, Sept. 13, 2005 (examining proposals to raise global Tobin taxes on currency speculation, environmentally-hazardous activities, and corporate profits); note \_\_\_\_, *supra* (holdouts). The MDGs are listed in the Appendix.

<sup>81</sup> See Chemillier-Gendreau, *supra* note 65 (S.C. has allowed conflicts to proliferate and intervened arbitrarily); Deen, *Despite Strictures*, *supra* note 37 (the S.C. fails to define its own parameters and responsibilities in, e.g., the Iraq oil-for-food program, and is inherently flawed by the lack of democracy—the vetoes of permanent members are a recipe for paralysis and failure). *But see* note \_\_\_\_ and accompanying text, *infra*.

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rationalizing the G.A. agenda—despite an apparent preference among members of the G.A. for paralyzing, protracted debates. Poker analyses show why “democratizing” reforms to the S.C.—e.g., eliminating permanent membership and thus vetoes—went nowhere. (Even Bush/Bolton were uncharacteristically coy about this reform, perhaps because they knew it was doomed to failure).<sup>82</sup>

Permanent S.C. members are roughly coextensive with our major poker players, the E.U. getting two S.C. ‘half’-vetoes: Britain and/or France don’t always reflect interests of the E.U. as a whole. Denied a S.C. veto, one or more major players could rather easily find another way to wreck any disagreeable (to them) game created by many or most minor players through the G.A. The failure of many important G.A. (one state, one vote) resolutions attest to this power. Similarly, creating additional permanent members, with or without a veto, is bound to fail *de facto*, since this would increase transaction costs and give middle-level players a (quasi-major-player) power they cannot currently win by playing games with the other majors. In any event, the other members were unable to choose two new permanents (a step recommended in Annan’s *In Greater Freedom*) from among the lobbying aspirants: Japan, India, Germany, Brazil, and South Africa (although the African Union wanted two permanent seats from Africa). Alternatively, Italy, Canada, Pakistan, Mexico, and 16 other countries proposed ten additional temporary (rotating) S.C. seats: this is a feasible increase in representativeness, but it would come at the price of significantly higher transaction costs in the S.C.’s production of public goods. In the end, no formal votes were taken on these reforms, and the Summit final document contained an anodyne “commitment” to make the S.C. “more broadly representative, more efficient and transparent.”<sup>83</sup> But the

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<sup>82</sup> Evelyn Leopold, *Fears Grow of Meltdown at Ambitious U.N. Summit*, REUTERS, Sept. 11, 2005, 19:17:19 GMT; Remarks by Louise G. Frechette, Deputy Secretary-General, United Nations, ABA Day at the UN, Mar. 29, 2005; 73, Chemimllier-Gendreau, *supra* note 65; Mallaby, *supra* note 34; Posner, *supra* note 8; *Darfur’s Despair*, THE ECONOMIST, Oct. 15, 2005, 47.

<sup>83</sup> Richard Black, *U.N. Reforms Receive Mixed Response*, BBC News, Sept. 17, 2005, 0730 GMT (quoting the document). See Mark Turner,

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debate over S.C. seats, what some describe as the Summit's biggest failure—to deal with an issue which had been percolating for a decade, “sucked the oxygen from other issues and divided the member states . . . .”<sup>84</sup> Thoroughgoing reforms are arguably needed, so that the S.C. better defends law: the rule of international law is widely regarded as endangered. The S.C. must also become more accountable, transparent, and legitimate—e.g., to counter its image of “the fox guarding the chicken coop”; and it must adopt more permanent and effective procedures.<sup>85</sup>

*Terrorism*

A recent study shows “international terrorism” to be the only form of political violence that is on the increase. Political/organizational/technological innovations enable terrorist NGOs (whether we like this or not) to do things which were formerly the province of rogue nation-states, things which render a national self-defense almost impossible and which make terrorist organizations able to grab a seat at a poker table and often disrupt the game. For the U.S., Britain, and perhaps some other countries, this justifies an oxymoronic anticipatory retaliation (*infra*) as a game-move. The obvious risk this tactic poses to peace and security, when misused in Iraqi War II games for example, seems a prime motive behind U.N. attempts to regulate terrorism. A Convention Against Nuclear Terrorism, based on Russian

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*U.N. “Must Never Again be Found Wanting on Genocide”, FINANCIAL TIMES, Sept. 17, 2005; 112a; Evelyn Leopold, Like Fixing the Weather, Council Reform Eludes U.N., REUTERS ALERTNET, Sept. 19, 2005, 0854 GMT; Andrew Teitelbaum, All We Can Hope is That Things Don't Get Worse, I.P.S., SEPT. 24, 2005, 1418 GMT; Yoo, supra note 8.*

<sup>84</sup> Chesterman, *supra* note 50. See Thalif Deen, *U.N.'s Authority Tested by Perils Ahead*, I.P.S., Dec. 27, 2005.

<sup>85</sup> James Paul & Celine Nahory, *Theses Toward a Democratic Reform of the U.N. Security Council*, GLOBAL POLICY FORUM, July 13, 2005 (downloaded from <[globalpolicy.org](http://globalpolicy.org)>). See Somovia, *supra* note 54; Swiss Government, Working Methods of the Security Council July 2005 (17 recommendations in a “non paper” downloaded from <[globalpolicy.org](http://globalpolicy.org)>).

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proposals and criticized for omitting prohibitions on a state terrorism, was nevertheless approved by the G.A. and opened for signature by leaders at the World Summit. It is the latest of *thirteen* anti-terrorism conventions. Still, some think that terrorism is inadequately outlawed by international law, especially those who believe that this inadequacy licenses intervention by one or a few countries. Britain's Tony Blair thus proposed Security Council Resolution 1624, which passed unanimously during the Summit. Under it, all members must now "prevent incitement" to terrorism, deny safe haven to terrorists, and (a Blair preoccupation) "counter violent extremist ideologies."<sup>86</sup> But Kumi Naidoo, an NGO official and former African National Congress (ANC) activist, argues that 1624 is of "no effect" without a definition of "terrorism" from the Summit G.A.<sup>87</sup> Human Rights Watch and Human Rights First disagree: oppressive governments can use a

<sup>86</sup> *U.N. Security Council Passes Resolutions Related to Terrorism*, JERUSALEM POST INTERNATIONAL Sept. 14, 2005, (quoting S.C. Res. 1624). See Andrew Grice, *Blair Frustrated as U.N. Fails to Agree on Anti-terror Action*, THE INDEPENDENT, Sept. 15, 2005; Lederer, *Global Violence*, *supra* note 54; Haider Rizvi, *U.N. Treaty Targets Rogue Nukes*, IPS, Sept. 13, 2005; Yoo, *supra* note 8; *Security Council Meeting at Summit Level Unanimously Adopts Anti-Terror Steps*, Sept. 14, 2005 (downloaded from <[un.org](http://un.org)>).

<sup>87</sup> Black, *supra* note 85 (quoting Naidoo). The High-Level Panel suggested a terrorism definition: "any action, in addition to ... {those in} existing conventions ..., the Geneva Conventions and ... {S.C. Res.} 1566, that is intended to cause death or serious bodily harm to civilians or non-combatants." Rizvi, *U.N. Treaty*, *supra* note 68 (quoting the Panel). The definition proposed by Annan is: "Any action constitutes terrorism if it is intended to cause death or serious bodily harm to civilians or non-combatants with the purpose of intimidating a population or compelling a government or an international organization to do or abstain from doing any act." Chemillier-Gendreau, *supra* note 65 (quoting Annan). Bolton's proposed language involved "the targeting and deliberate killing of civilians ... when the purpose ..., but its nature or context, is to intimidate a population or compel a government or international organization {which} cannot be justified on any grounds ...." Patrick Goodenough, *U.N. Summit Document Won't Define Terrorism*, Sept. 14, 2005 (quoting Bolton) (downloaded from <[CNSNews.com](http://CNSNews.com)>). No such definition, or any other, was adopted by the World Summit: see *supra* note 79 and accompanying text, *infra*.

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vague “prevent” and “incitement” to punish a non-violent criticism<sup>88</sup>, and I would add that the obligation to “counter ... ideologies” can be used to similar effect.

The Summit outcome document offered a therapeutic concession to developed countries, especially the U.S. and Britain, by promising to “make all efforts” towards yet another convention, and condemning “terrorism in all its forms and manifestations, committed by whomever, wherever and for whatever purposes.”<sup>89</sup> But, as Naidoo notes, Muslim nations scotched any definition of “terrorism” which prohibits attacks on civilians, a definition needed to make the statement in the Summit document operative, for fear that such a definition would delegitimize, e.g., Palestinian self-determination efforts and rights to resist occupation. Naidoo adds that some thought the ANC a terrorist organization, but it now governs South Africa. Perhaps unconsciously echoing former President Reagan’s view of the Nicaraguan Contras, Naidoo concludes: “one person’s terrorist is another person’s freedom fighter.”<sup>90</sup> While China and Russia want the U.N. to help coordinate anti-terrorism efforts, the Bush Administration (much like China and Russia, if they are honest) wants a *carte blanche* for unilateral action—with U.N. coordination only for “fringe” issues like money laundering. Placing security above development, Bush has moved further away from multilateral aid, arguably to militarize and funnel aid to, e.g., Pakistan and Israel. These are instances of regime rather than developmental support, huge “plunger” bets in pursuit of short-term game payoffs, rather than playing the more profitable, long-term ‘advanced poker’ that

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<sup>88</sup> See Grice, *supra* note 86, Mithre Sondrasagn, *U.N. Terror Resolution Overly Vague, HWR Says*, I.P.S., Sept. 14, 2005; Human Rights First, *Security Council’s Counterterrorism Resolution Open to Abuse By Authoritarian Governments*, n.d. (downloaded from <[humanrightsfirst.org](http://humanrightsfirst.org)>). See #41 (for Benin’s President, anti-terrorism requires scrupulous respect for state sovereignty, international human rights, and international humanitarian law); *id.* for Romania’s President, anti-terrorism can be “sustained” only by S.C. action). *But see* Sondrasagra (quoting the Danish Prime Minister): “Freedom of speech ... must never be an excuse for inciting terrorism and fostering hatred.”

<sup>89</sup> Black, *supra* note 83 (quoting the document).

<sup>90</sup> *Id.* (quoting Naidoo). See Hughes, *supra* note \_\_\_; *U.N. Set*, *supra* note 37, *supra*.

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require a more equitable, broadly-based development. At the same time, few believe the E.U.'s holier-than-thou rhetoric over development aid (either).<sup>91</sup> Most treat it like any other bet in a short-term game, because it is not backed by reduction in the E.U. subsidies to European agriculture that leave most developing countries without access to European agricultural markets.

*Intervention*

The Summit attempted to breathe new life into multilateral actions, in what proved to be an imperfect reform in organizational and nation-state priorities. Perception of collective security threats have changed, with W.M.D., terrorism, humanitarian crises, disaster relief, discriminatory ideologies, genocide, and abductions—especially of aid workers, becoming more prominent as threats. Also, complaints are prevalent that such interventions as occur are often arbitrary, that Security Council consensus resolutions are often too restrictive for a “robust” peacekeeping, and that donor peacekeeping aid usually arrives too late. Nonetheless, U.N. conflict prevention (and peacebuilding, *infra*) efforts are becoming more numerous and more effective. Operations in East Timor and Sierra Leone ended more or less successfully in 2005, and a recent Rand Corp. study found 66% of U.N. peacekeeping efforts to be successful. But even if, as some argue, the true figure is 40%, this is an achievement since collective peacekeeping did not really exist prior to the 1990s.<sup>92</sup>

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<sup>91</sup> See Grice, *supra* note 86; Sanjay Suri, *Political Strings Tie Up U.S. Aid*, I.P.S., Sept. 24, 2005.

<sup>92</sup> Lederer, *Global Violence*, *supra* note 54. See Chemillier-Gendreau, *supra* note 65; Power, *supra* note 51; Gordon Brown & Hilary Benn, *Let's Put On Some Institutional Muscle*, INT. HERALD TRIB., Oct. 19, 2005 (to deal with natural disasters, the following must be augmented and better coordinated—the emergency jurisdiction of the IMF and the World Bank, the U.N. Office for Coordination of Humanitarian Affairs, and the U.N. Emergency Revolution Fund); Howard LaFranchi, *A Welcome Surprise: War Waning Globally*, THE CHRISTIAN SCI. MONITOR, Oct. 18, 2005 (read off <[scmonitor.com](http://scmonitor.com)>); Haider Rizvi, *U.N. Blue Helmets Earn Applause—and Censure*, I.P.S., Dec. 30, 2005; Yoo, *supra* note 8 (humanitarian crises include systematic human rights violations and the collapse of central authority—or hijacking by non-state actors and involve individual liability as well as collective action problems). Yoo, *id.*; arguably proves the reformers' case when he notes

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Summiters sitting as the Security Council passed another Resolution unanimously, 1625, which is aimed at conflict prevention (especially in Africa) and calls for preventative diplomacy, regional mediation, an early-warning system for potential conflicts, promoting fairness and transparency in elections, and acting against the illegal exploitation of resources such as diamonds.<sup>93</sup> Many also see a need to break the worldwide ‘Hobbesian’ cycle of war-conquest-‘empire’-oppression-succession-anarchy, and back to war. This cycle is based on the incentives and capacities for a violent, collective self-help: for example, the ability to coerce would-be “free riders” and to attract an external support for your cause—or to create a unifying distrust of external opposition. (These incentives and capacities can often be altered non-violently by, e.g., effective recognition of the right to self-determination).<sup>94</sup>

Romeo Dallaire, the Canadian General who headed U.N. peacekeeping in Rwanda, complains that the “Mogadishu rule” (in effect since the U.S. pulled out of Somalia in 1990) governs: “the sense of responsibility to human beings” loses out “against the self-interested demands imposed by the governments and ... by their peoples and structures.”<sup>95</sup> In other words, the initial S.C. decision to play ‘advanced poker’ over Rwanda was later deserted by players whose support and resources the U.N. needed, players who were not altogether free agents since they operated under ‘domestic’ strictures. These deserting players thus reverted to short-term, non-peacekeeping (poker) games where *perceived* payoffs were greater. Dallaire contrasts Rwanda with the self-interested (ostensibly security-based) intervention in Yugoslavia, where people are white—‘like us’ and living closer to us. He

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that between the Korean War and Iraqi War I (1991) 75-80% of deaths from violent conflict came from intrastate conflicts that the U.N. Charter drafters did not see as threats to peace.

<sup>93</sup> *Security Council Meeting*, *supra* note 86.

<sup>94</sup> Brietzke, *Globalization*, *supra* note 7; Paul Brietzke, *Self-Determination, Self-Determination, or Jurisprudential Confusion Exacerbating Political Conflict*, 14 *WIS. INT. L.J.* 69 (1995) \_\_\_\_\_.

<sup>95</sup> Romeo Dallaire, interviewed by MOTHER JONES (Jan. 2005) (downloaded from <[cbc.ca/news](http://cbc.ca/news)>).

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concludes that conflict resolution requires more enlightened and multi-skilled peacekeeper/humanitarians, who must be given a firm S.C. mandate to protect the people caught between warring participants.<sup>96</sup>

Interventions by another country (rather than the U.N.) are traditionally restricted to self-defense, or interventions otherwise permitted under Chapter 7 of the U.N. Charter. Bush's assertion of a unilateral right of anticipatory retaliation, especially as mis-played during his Iraq poker hands, alerted the world community to the need for legal action. The High-Level Panel thus recommended a five-pronged interpretive loosening of Chapter 7 strictures, an effort Michael Glennon labels "wishful thinking."<sup>97</sup> When this proposal is combined with the inability of the members of the International Criminal Court to define "aggression", and with polls which show diverse national interpretations of "peace" (and even "development", *infra*), Glennon concludes that a "legalist solution" to a profligate use of force is highly improbable.<sup>98</sup>

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<sup>96</sup> *Id.* See Somavia, *supra* note 67. Humanitarian interventions require "a series of interlocking legal and logistical safeguards—shored up by the political will of countries ... and operationalized through a coherent U.N. system ... functioning with NGOs and regional and local governments. A separate convention (treaty) is needed to protect nongovernmental personnel affiliated with U.N. relief efforts, *id.* But see Rizvi, *supra* note 68 (since the 1990 failure in Somalia, U.N. peacekeeping operations have become more aggressive and less "neutral", in Haiti for example, resulting in the death of 91 peacekeepers in 2004).

<sup>97</sup> Michael Glennon, *Idealism That Won't Work* (2005) (SSRN Pap. No. \_\_\_\_). Glennon, *id.* lists the Panel's five "criteria of legitimacy": is the threat sufficiently serious, is the purpose proper, has every nonmilitary option been exhausted, is the military action proportionate to the threat, and is there a reasonable chance of success? For Yoo, *supra* note \_\_\_\_, these criteria will not forestall the use of self-defense as a pretext for illegality. Bush must have been irked when, during the World Summit, the new Iranian President called Bush's anticipatory retaliation a "blatant contradiction to the very foundations of the U.N. and the letter and spirit of its charter." Tyler Marshall, *Iran Leader's First U.N. Speech Has a Pretty Clear Target*, L.A. TIMES, Sept. 15, 2005.

<sup>98</sup> Glennon, *supra* note 19.

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Nonetheless, Annan and, later, the World Summit outcome document, adopted a Canadian (and human rights NGOs') initiative: the "responsibility to protect", through uninhibited action, civilian populations against genocide or war crimes, when their governments are "unable or unwilling" to do so.<sup>99</sup> This language was adopted despite assertions that it infringes state sovereignty, despite fears of endless S.C. debates—as over Rwanda and Darfur, and despite developing countries' (including chronic human rights abusers') fears that this "responsibility" would give major players (especially the U.S.) an excuse to intervene. The thoughtful former U.N. High Commissioner for Human Rights and President of Ireland, Mary Robinson, praises this World Summit (game) move, while adding that it is only the single leg of a stool where the others failed to materialize: human rights improvements, control over trade in small arms ("the real W.M.D.'s"), and especially, progress over development; the G-8's "triumphal announcements" came off "looking hollow."<sup>100</sup>

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<sup>99</sup> Black, *supra* note 83 (quoting the document). See Iraz Hussein, *Is the Glass of U.N. Reforms Half Full?*, (Pakistan) DAILY TIMES, Oct. 7, 2005 (read off <[unwire.org](http://unwire.org)>) (between 1827 and 1914, the U.S. intervened in Latin American countries 70 times on "humanitarian"/'duty to protect' grounds; the "principle alone is not sufficient"); Sanders, *supra* note \_\_\_; Ward, *U.N. Blocks*, *supra* note \_\_\_; *Main Divisive Issues*, *supra* note 80.

<sup>100</sup> Robinson, *supra* note 72. See Mark Turner, *U.N. 'Must Never Again be Found Wanting on Genocide'*, FINANCIAL TIMES, Sept. 15, 2005 (for Zimbabwe's Mugabe, "responsibility to protect" can be a cynical ploy in an aggressive foreign policy); #121 (quoting Rwanda's Foreign Minister Murigande (will the document "lead to lengthy academic or legal debates on what constitutes genocide or crimes against humanity, while people die?")); *id.* (the U.N. has "consistently neglected to learn from its mistakes" in, e.g., Rwanda); Brinkbaumer & Muscala, *supra* note \_\_\_; Ward, *U.N. Backs*, *supra* note 47; *Better Than Nothing*, *supra* note 75. On development and the G8, see notes \_\_\_ and accompanying text, *infra*.

While the Bush Administration has moved too slowly over Darfur, a no-fly zone has not been imposed, and there has been no NATO deployment. But the U.N. is even slower. *Darfur's Despair*, *supra* note 82; *Editorial: Negotiating With Genocide*, WASHINGTON POST, Oct. 9, 2005, B6; *Main Divisive*, *supra* note 80. U.S. Ambassador Bolton (plus China, Algeria, and Russia) thus blocked a U.N. envoy from briefing the

*Peacebuilding*

The (post-conflict) Peacebuilding Commission is an important World Summit reform which generated no reported disagreements during negotiations. Perhaps this is because the Commission formalizes and institutionalizes steps already being pursued by consensus, sometimes as logical extensions of more overt interventions and now to create an in-house expertise and training in mediation and “good offices.” Past efforts show how non-violent interventions by third parties can bridge deep hatreds to build communication and trust among the parties. U.N. mediators have helped free hostages, resolve border and electoral disputes, and forge peace agreements in the Cambodia, El Salvador, and Guatemala of the 1990s. In particular, Lakhdar Brahimi navigated deep ethnic and political divisions while creating the “road map” for Afghan governance.<sup>101</sup>

As an effort which overlaps some U.N. Development Program (U.N.D.P.) projects, \$42 million has been raised from 39 countries—and especially from the U.S., India, and Australia—to create a new Democracy Fund (U.N.D.E.F.). The idea is to fill in the gaps experienced by countries in transit from some kind of authoritarianism. The anticipated projects include: the creation of civil societies; the rule of law; political parties; independent courts; a “free press”; trades unions; enhanced monitoring, evaluation, and auditing capacities; more professionalized civil and military establishments; and programs to safeguard the rights of women, children, and minorities. No particular democratic model will be endorsed, no (IMF- or World Bank-style) conditionality will be imposed on the aid given, and the Fund will report to the General Assembly. Both of these reforms look like useful ways to restructure domestic games, to make an ‘advanced poker’ more

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S.C. about human rights violations in Darfur: action rather than talk is required.

<sup>101</sup> La Franchi, *supra* note \_\_\_; Lederer, *Global Violence*, *supra* note (43); *Editorial: Making Peace Work*, L.A. TIMES, Oct. 23, 2005.

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common and more likely to yield cooperative, positive-sum outcomes.<sup>102</sup>

*Non-Proliferation*

In contrast to the peacebuilding successes described in the last two paragraphs, Secretary-General Annan noted that the World Summit “could not even agree on a paragraph on non-proliferation and disarmament, and I ... {find this} a disgrace and a real failure.”<sup>103</sup> We might see in this the same kind of failure described earlier and later: too many players preoccupied with (perhaps misperceived) short-term gains potentially available from smaller, non-‘advanced poker’ (uncooperative, zero-sum) games.<sup>104</sup> As things stand, the Nonproliferation Treaty (NPT) allows the U.S., Britain, France, China, and Russia to possess nuclear weapons, but requires them to disarm. Other state-parties are strictly prohibited from having them. India, Pakistan, and Israel have not signed the NPT however, and North Korea withdrew from the NPT in 2002. Nuclear-free countries supported the NPT in the past because of the nuclear “haves”’ promise to disarm, but this is being undermined by Bush’s refusal to disarm, by other Bush/Bolton actions<sup>105</sup>, by Russia<sup>106</sup>, and by actions of others. The most

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<sup>102</sup> Ayesha Gooneratne, *U.N. Launches New Democracy Fund*, I.P.S., Oct. 12, 2005. See notes \_\_\_ and accompanying text, *supra* (‘advanced poker’). But see also Robin Wright, *Middle East Democracy Summit Ends in Rancor*, WASHINGTON POST, Nov. 12, 2005 9:38 A.M.: Bush’s Forum for the Future, held in Bahrain, ended without a formal agreement on democracy promotion, Egypt—thought to be dependent on U.S. foreign aid—insisting on Arab governments’ control over which democracy groups receive aid.

<sup>103</sup> Nick Wahams, *General Assembly OKs Compromise Document*, ASK JEEVES, Sept. 13, 2005, 10:10 (downloaded from <[ask.com](http://ask.com)>) (quoting Annan).

<sup>104</sup> See text following note \_\_\_ {51} *supra*; notes \_\_\_ and accompanying text, *infra*.

<sup>105</sup> Xin Benjian, *Who’s Pushing Nuclear Proliferation*, PEOPLE’S DAILY ONLINE, Oct. 27, 2005 (the 44-member Nuclear Suppliers Group, which exerts export controls—especially when the importer has not signed the NPT—turned down the U.S. request to offer access to India); *id.* (this attempt makes it more difficult for the U.S. to win support from the

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dangerous ‘other’ is Pakistani scientist and black marketeer, A.Q. Khan. He facilitated a proliferation by North Korea, a potential proliferation by Iran and Libya, and by who knows where else, feeling that Muslim countries had their nuclear weapons desires thwarted while Israel and India were given free rein.<sup>107</sup> He is such a nationalist hero as to be untouchable by the international community—so long as he stays in Pakistan.

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international community to not supply North Korea and Iran); Hudson, *supra* note \_\_\_ (“The U.S. seeks to reinterpret the NPT as legitimizing the possession of weapons by existing nuclear states, while using it as the justification for confrontation with states accused of proliferation.”); *id.* (countries resent this “do-what-we-say-not-as-we-do” attitude); *id.* (the U.S. proposes to develop new nukes, for use even against non-nuclear states); *id.* (the question arises—“who exactly are we deterring?”); Colum Lynch, *Bolton Criticizes Bill Withholding U.N. Funds*, WASHINGTON POST, Sept. 28, 2005, A20 (asked in Congress why he didn’t strike deals at the Summit for non-proliferation of biological and chemical weapons, Bolton said “We ‘tried very hard’ but were opposed by countries who saw the U.S. rather than rogue states as the prime proliferators); Jacques Hymans, *Think Again: Nuclear Proliferation*, FOREIGN POLICY, Nov. 2005 (read off <[foreignpolicy.com](http://foreignpolicy.com)>) (Americans “squander” non-proliferation opportunities through a ... tendency to lecture rather than to listen.”).

<sup>106</sup> *E.g.*, Ted Turner & Stanley Weiss, *Avoiding A Russian Arms Disaster*, WASHINGTON TIMES, Nov. 6, 2005 (downloaded from <[washingtontimes.com](http://washingtontimes.com)>) (half of Russia’s weapons-grade nuclear materials are poorly protected, as are shells of VX and Sarin nerve gas, and the Nunn/Lugar program that has eliminated some Russian nukes is now under threat from Congress).

<sup>107</sup> Douglas Frantz, *From Patriot to Proliferator*, L.A. TIMES, Sept. 23, 2005. *See* Hudson, *supra* note \_\_\_ (in 1996, the International Court of Justice called for nuclear disarmament obligation to be met); Sanders, *supra* note \_\_\_ (in light of the U.N. Charter pledge ‘to save succeeding generations from the scourge of war’, the U.S. ‘failure to agree on disarmament and nuclear non-proliferation is a woeful foreboding that conflicts will get worse not better.’). *But see* Hyman, *supra* note 105, *supra*. (Since the end of the Cold War, more nations have given up nuclear arsenals than have created new ones); *id.* (the nonproliferation regime has not been as successful as advertised, since the vast majority of states simply has no interest in doing what the N.D.T. prohibits).

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The reformist heavy lifting in this area was helped along by an NGO: the Nobel Committee awarded the 2005 Peace Prize to the International Atomic Energy Agency (IAEA) and its head, Egyptian lawyer Mohamed El Baradei. This Prize was both a slap at the U.S. and a warning that the serious threats posed by Khan, North Korea, Iran, *et al.* can only be met through international cooperation—rather than unilateral or collaborative action from within the major players. (The U.S. had opposed El Baradei’s reelection because of his behavior concerning Iran, until it became clear that there was no other suitable candidate; and the U.S. later purported to find in his Nobel Prize a warning to Iran.)

Particularly innovative and deserving of global support is El Baradei’s new proposal: countries which do not yet have nuclear weapons should forbear producing nuclear fuel for at least ten years. Fuel would be supplied (*and* disposed of later) by a country already having nukes, with the IAEA as the supplier/disposer of last resort. The IAEA seems to do its best work when given unfettered access<sup>108</sup>—which is not the case in North Korea and Iran, where various nation-state players claim primacy. The IAEA could be understood as claiming a seat at the poker table, helping to guide play in more ‘advanced’ (cooperative/positive-sum) directions.

The World Summit Draft outcome document asked governments to take action against organized crime, as well as against the proliferation of small arms—“the real WMD”, according to Mary Robinson<sup>109</sup>—and of land mines. 145 nations have ratified the Landmine [non-proliferation] Treaty, the product of the Campaign that won the 1997 Nobel Peace Prize, and

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<sup>108</sup> Deen, *supra* note 37; David Holley, *Nuclear Chief Offers a Nonproliferation Plan: Promise Them Fuel*, L.A. TIMES, Oct. 6, 2005; *Despite Prize, Nuclear Agency Flawed*, TORONTO STAR, Oct. 12, 2005; *Nuclear Watchdog Wins Nobel Peace Prize*, AP, in INT. HERALD TRIB., Oct. 7, 2005; *Short-Lived Celebration*, *supra* note 53. *But see* Hymans, *supra* note 105 (while the nonproliferation regime is billed as successful, the fact is that most countries do not want the bomb in question anyway); *id.* (the IAEA regime is “flimsy”, suffering from “ambiguous and erratically enforced rules, a myriad of technical loopholes, and chronic underfunding.”).

<sup>109</sup> Robinson, *supra* note 72.

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performance under the Treaty has been relatively good. But regrettably, the Pentagon may soon produce two higher-tech landmines.<sup>110</sup> To allow Annan the last word, the “non-proliferation regime” is “unraveling” because “we have allowed posturing to get in the way of results.”<sup>111</sup> (Posturing can be understood as a relatively insubstantial poker bet, which is treated as such by the other players.)

*Administration—and a Sidebar.*

Paul Volker, the head of the oil-for-food investigating Commission, which convinced most U.N. members of the urgency of administrative reform (sidebar, *infra*), found that Secretary-General Annan’s “cumulative management performance” fell short of the standard the U.N. “should strive to maintain.”<sup>112</sup> The putative keeper of the better natures at the U.N., Annan thus continued his attempts to rebuild U.N. legitimacy, at a time when his own political and moral authority was at its weakest. Many problems stem from the U.N. bureaucrats’ inbred and cosseted (by diplomatic immunity) existence. Bureaucratic positions are filled by nationality rather than merit in an atmosphere of secrecy and unaccountability, and many U.N. goals get compromised by a bureaucratic unwillingness or inability to implement them. Except for improved security measures, to forestall the recurrence of events like the Baghdad explosion that killed Sergio de Mello and other valued U.N. officials, Annan managed only partial reforms before the World Summit. These earlier reforms nonetheless left U.N. bureaucrats—most of whom have little faith in their seniors—with their morale further damaged. The World Summit (thus) approved Annan’s additional reforms, under his claimed goals of improving U.N. integrity, impartiality, and its capacity to deliver: an internal ethics office, especially to resolve conflict-of-interest problems; strengthening the Office of Internal Oversight

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<sup>110</sup> Human Rights Watch, *Back in Business?: U.S. Landmine Production and Exports*, Aug. 2005 (briefing paper, which can be downloaded from <[hrw.org](http://hrw.org)>).

<sup>111</sup> Hussain, *supra* note \_\_ (quoting Annan). See Black, *supra* note 83.

<sup>112</sup> Bill Berkowitz, *At Sixty, It’s Uneasy Times for the U.N.*, I.P.S., Nov. 10, 2005 (quoting Volker).

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Services, and other auditing, etc. programs designed to increase efficiency; a one-time buyout of the least competent U.N. bureaucrats; an independent and external evaluation committee; and increased uniformity over which documents are made public, with a bias towards an increased transparency in the U.N. Secretariat. These were the reforms the U.S. and other major funders of the U.N. wanted, and they were adopted despite minor players' suspicions that they would be used by their advocates, especially the U.S., to control the Secretary General. Developing country worries were well-placed, to the extent that budgetary and other major administrative controls are being removed from the General Assembly that the developing countries dominate.<sup>113</sup> This looked like a straight zero-sum (not an 'advanced') poker game, with developed (U.N.-funding) countries able to out-bid the developing ones.

As mentioned earlier<sup>114</sup>, the oil-for-food sidebar provoked shameless exaggeration of the extent of corruption, and of Annan's role in it, in a failed American neoconservative quest for the Secretary-General's head—because he approved of the S.C.'s denial of permission for Iraqi War II. (Under this sidebar, Iraq was permitted to circumvent the sanctions installed after Iraqi War I, by selling oil in order to buy food and medicine). The Reports of the Volker Commission investigating this sidebar also encouraged the administrative reforms discussed in the last paragraph. These Reports fault Annan for seeking administrative review of oil-for-food *through the S.C.*, rather than an outside investigation of the

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<sup>113</sup> Brown, *supra* note 15; Chesterman, *supra* note 50; Deen, *U.N.'s Authority*, *supra* note 84; Mitchell, *supra* note 75; Mark Turner, *Envoys Fight to Keep U.N. Reform Package on Track*, FINANCIAL TIMES, Sept. 12, 2005 (downloaded off <[ft.com](http://ft.com)>); Nabal Toosi, *Annan Defends Summit's Accomplishments, Agrees Some Results Mixed*, A.P., Oct. 17, 2005, 3:15 P.M. E.D.T. (downloaded from <[newsday.com](http://newsday.com)>); Walker, *supra* note 49; Ward, *Frechette*, *supra* note 47; *Key Elements of U.N. Draft Document*, N.Y. TIMES, Sept. 13, 2005; *U.S. Fears Summit Will Gut U.N. Reform, Rights Plan*, Reuters, Sept. 12, 2005 (downloaded from <[AlertNet.com](http://AlertNet.com)>). See Turner; Volker, *supra* note \_\_\_ (quoting in note 115, *infra*; notes \_\_\_ and accompanying text, *infra* (Group of 77's opposition after the Summit).

<sup>114</sup> See note \_\_\_ and accompanying text, *supra*.

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scandal, and for not supervising his son Kojo—who profited from the corruption and then proved uncooperative with the Volker Commission. But U.S., French, British, Russian, and Chinese representatives on the Security Council oversight committee approved the relevant oil-for-food transfers, while turning a blind eye to abuses. (Russia received one-third of the oil.) This corruption pales in comparison with that of the U.S. Coalition Provisional Authority in Iraq. Among other things, \$12 billion was withdrawn from the N.Y. Federal Reserve as 363 *tons* of \$100 bills. 80% of another large disbursement could not be accounted for. Fortunately, a neoconservative American attempt to find corruption in U.N. tsunami funds, has gone nowhere.<sup>115</sup>

Saddam profited to the extent of \$250-600 million per year, including “kickbacks” from Volvo, Siemens, Daimler Chrysler, Coastal Petroleum of Houston, and 2,400 other firms; and from the sales of oil smuggled through Jordan, Syria, and Turkey. Neither the kickbacks nor the smuggling was part of the U.N. oil-for-food program, and U.S. and British intelligence had to know of the smuggling—impossible to conceal from overflights and satellites—and of the many diplomatic bags stuffed with cash that moved in the opposite direction. Nevertheless, Annan accepted responsibility for these scandals and the attendant design, auditing, and management failures. But having mended his Washington fences with all but the extremists, Annan then got outspoken support from almost all U.N. members. This is appropriate: differences among countries impeded supervision and operated to tolerate corruption. What ensued were ‘unofficial’ poker games among some nation-states, individuals (especially Saddam), and

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<sup>115</sup> Doreen Carvajal and Andrew Kramer, *Report on Oil-for-Food Scheme Gives Details of Bribes to Iraq*, N.Y. TIMES, Oct. 28, 2005; Maggie Farley, *U.N. Oil-for-Food Inquiry Findings Surprised Volker*, L.A. TIMES, Oct. 28, 2005; Colum Lynch, *Oil-for-Food Probe: U.N. Needs Overhaul to Stop Fraud*, WASHINGTON POST, Sept. 7, 2005, A20; Lynch, *U.N. Panel Says 2,400 Firms Paid Bribes to Iraq*, WASHINGTON POST, Oct. 28, 2005, A16; Mark Turner, *Volker Set to Call for Reform of U.N. Leadership*, FINANCIAL TIMES, Sept. 5, 2005, 21; 51; Walker, *supra* note 49; Ian Williams, *The Sound of Silence: As in Dogs Not Barking*, [Maximsnews.com](http://Maximsnews.com), Dec. 30, 2005.

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corporations shamelessly devoted to making of money at the expense of dishonoring U.N. ideals and eroding the public's support for them. No one was in charge (a hallmark of poker) and no one emerged covered in glory.<sup>116</sup>

*Interrelated (?) Human Rights and Development*

In a thoughtful article, Philip Alston argues that development and human rights advocates should pay much more attention to each other's concerns, which are linked by a "virtual tautology": the "U.N. approach of indivisibility"<sup>117</sup> that arguably informs the entire reform effort. Human rights and development advocates should "engage more effectively", share their "imagination and energy", "prioritize" between themselves, reduce the gap between rhetoric and actual programs that both groups share, and work to increase the capacities of "duty-bearers" to meet obligations and of "rights-holders" to claim the fruits of these obligations.<sup>118</sup> Mary Robinson calls extreme poverty the most serious form of human rights violation, especially given the ways poor countries use their scarce resources<sup>119</sup>—in no small measure because of strictures imposed by the IMF, the World Bank, and private foreign investors and lenders. Unfortunately, the poker metaphor predicts Alston's conclusion—human rights and development advocates are "ships passing in the night."<sup>120</sup>

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<sup>116</sup> Lynch, *U.N. Panel*, *supra* note 115; David Lynch, *Report Details Kickbacks for Iraq*, USA TODAY, Oct. 27, 2005, 12:30 A.M.; Walker, *supra* note 49; *Probe Finds Illicit, Unethical Corrupt Oil-for-Food Operation*, USA TODAY, Sept. 6, 2005, 12:55 A.M. See Turner, *Volker*, *supra* note \_\_\_ (quoting Mark Malloch Brown) ("Entrenched interests inside the organization" the U.N., "a wish that all of this would go away and that it could settle back into comfortable mediocrity again.").

<sup>117</sup> Philip Alston, *Ships Passing in the Night: The Current State of the Human Rights and Development Seen Through the Lens of the Millennium Development Goals*, 27 H. RT. Q., 755, 784-85 (2005). See Security Council Meeting, *supra* note 86 (quoting French P.M. deVillepin) (calling for "resolute action" at the World Summit "on everything that fuels terrorism—the inequalities, the persistence of violence, injustices and conflicts, the lack of understanding among cultures," since force "does not address the roots of evil.").

<sup>118</sup> Alston, *supra* note 117, at 755-56, 770, 790.

<sup>119</sup> *Id.* at 786-87 (quoting Robinson).

<sup>120</sup> *Id.* at 825.

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different players in different games are pursuing different gains in different ways, forestalling what is perhaps Secretary-General Annan's mega-'advanced poker' of cooperation and coordination in pursuit of security as well as human rights and development.

Human rights may be "open-ended, contingent and ... subjective,"<sup>121</sup> but they are much less so than the World Summit's treatment of them. They were *potentially* improved as an ancillary effect of establishing the Peacebuilding Commission, and of creating the "responsibility to protect" against genocide or war crimes. On the other hand, human rights were seriously damaged by the lack of progress over non-proliferation and implementation of the Millennium Development Goals (*infra*), and slightly injured by the (slight, it turned out) emphasis on terrorism. Secretary-General Annan had called for reform of the Human Rights Commission into the "third pillar" of the U.N. (along with the General Assembly and the Security Council) because of that Commission's "declining credibility and professionalism."<sup>122</sup> The reformed body should operate continuously, rather than the current six weeks per year term that is conducive only to grand but superficial gestures; given more time, effective monitoring of countries' human rights undertakings would be possible. Also, membership in the body should be reserved to countries making real contributions to human rights.<sup>123</sup>

In 2004, the Human Rights Commission refused to act over abuses by China, Iran or Zimbabwe, or by Russia in Chechnya. Chaired by Libya, the 2004 Commission had Zimbabwe as a member and re-elected Sudan during its Darfur abuses, having earlier refused to re-elect the U.S. (This reminds me of Lyndon Johnson's response to criticism over appointing Admiral Hyman Rickover to the Nuclear Regulatory Commission: "Wouldn't you rather have him inside the tent pissing out than outside the tent pissing in?") This re-election failure of the U.S. attracted the enmity of neoconservatives, and the apparent top priority of the

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<sup>121</sup> *Id.* at 760.

<sup>122</sup> Human Rights Watch, U.N. Reform Q and A (n.d.) (downloaded from <[hrw.org](http://hrw.org)>) (*quoting* Annan) (hereinafter Q & A]. See Brown, *supra* note 15; Q & A; Security Council Meeting, *supra* note 86 (*quoting* deVillepin in note 105, *supra*).

<sup>123</sup> Q & A, *supra* note 122 (*quoting* Annan).

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Bush Administration during the World Summit was to punish a Commission showing this much independence—by destroying it. The Commission repaid this favor by appointing eight independent human rights experts aggressively to evaluate the rights record of the U.S. over the past five years—as part of the Commission’s regular evaluation cycle. Investigated are the *worldwide* treatment of ‘terrorist’ detainees, the U.S.A. PATRIOT Act and the copycat laws it spawns worldwide, the Iraqi tribunal trying Saddam and his colleagues, the death penalty, and other shortcomings. Admission of the U.N. experts to U.S. prisons in Afghanistan, Iraq, and Guantanamo has been denied by the U.S. The Mickeljohn Civil Liberties Institute at Berkeley documented 180 alleged human rights violations by the U.S., and 19 alleged violations of human rights duties by the federal government.<sup>124</sup>

The World Summit missed an important reform opportunity, by referring key decisions about a Human Rights Council (to replace the Commission) to the General Assembly (G.A.) for action. This move was supported by Russia, China, Egypt, Pakistan, and some other countries concerned about their human rights record. Only the Summit’s doubling of the budget for the Office of the High Commissioner for Human Rights (the capable Louise Arbour is the current High Commissioner) is regarded as adding (a minimal) content to reform. It seems clear that opposition to making human rights protections more effective among three of the four major players left the matter all-but-unreformed within the fifth major player. Some criticized the U.S. for trying to remove from the Commission countries hostile to U.S. interests, and for U.S. support of some human rights-abusing

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<sup>124</sup> *supra* note 110; Thalif Deen, *U.N./Human Rights Body to Scrutinize U.S. Abuses*, I.P.S., Sept. 20, 2005. *See* Hughes, *supra* note \_\_ (quoting language from Bush’s World Summit speech which echoes some of Annan’s ideas); La Franchi, *supra* note 101 (quoting John Norris, of the International Crisis Group) (recent human rights progress through “international actions against high-profile violators like Serbia’s Slobodan Milosevic or Liberia’s Charles Taylor); U.N. Envoy Cautions on China Rights, BBC News, Sept. 12, 2005 (Louise Arbour, text accompanying note \_\_, *infra*, concerned about China’s detaining journalists, labor activists, and ethnic minorities, and about the treatment of Tibetans and Muslim neighbors).

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regimes, but an E.U. official called the new Council “a simple name-change.”<sup>125</sup> Trying to put a brave face on this non-reform, Mark Malloch Brown said that the new Council offered reform leverage within the G.A., for countries that really care about human rights. Activists’ calls for a human rights court (like that of the E.U., rather than a Commission or Council), or for a court combining this function with the International Court of Justice and the International Criminal Court, are unlikely to go anywhere for some time to come.<sup>126</sup>

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Lack of progress on development during the September 2005 World Summit, and the failure effectively to plan implementation of the Millennium Development Goals in particular, is perhaps the clearest illustration this article offers of how something like a (cooperative, positive-sum) ‘advanced poker’ can give way under the lure of possibly winning smaller gains more quickly in zero-sum, ordinary poker ways. At first glance, this is because of the limited altruism displayed by most developed countries; Canada, Holland, and the Scandinavian countries are worthy exceptions. This altruism is mostly exhausted on the plight of fellow-citizens rather than on far-away ‘strangers’—unless the foreigners’ are victimized by some mediagenic disaster perhaps. Also, middle-income countries like India and Brazil can expect little in the way of increased development aid and are, rather, worried about tougher human rights standards and a dilution of their influence at the U.N.

<sup>125</sup> Evelyn Leopold & Paul Taylor, *U.N. Assembly Approves Weekend Summit Blueprint*, WASHINGTON POST, Reuters, Sept. 13, 2005, 7:52 P.M. (quoting Benita Ferrero-Waldner). See Power, *supra* note 51; Deen, *U.N. Human Rights*, *supra* note 124; *id.* (quoting Norman Solomon, of the D.C. Institute for Public Accuracy) (the U.S. “is among the most culpable of human rights violators”); *id.* (“A superpower that is striving to remake” the U.N. “in its own image can hardly be expected to submit to institutional scrutiny of its actual human rights record.”); Hussain, *supra* note \_\_; Evelyn Leopold, *U.S. Fears Summit Will Get U.N. Reform Rights Plan*, REUTERS ALERT NET, Sept. 12, 2005, 18:42 GMT; Haider Rizvi, *supra* note 65; Mark Turner, *Envoys Fight to Keep UN Reform Package on Track*, FINANCIAL TIMES, Sept. 12, 2005, 03:00.

<sup>126</sup> Brown, *supra* note 15; Human Rights Watch, *Key Human Rights Proposals Stymied*, Sept. 13, 2005.

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International law thus continues to honor voluntary redistributions (by aid “donors”, perhaps through what are called M.D.G. “development compacts”) but almost never creates a legal obligation of redistribution.<sup>127</sup> Such an obligation could be imposed as a matter of developed country status rather than contract, but it would be almost impossible to enforce this obligation under governance without a government, or to determine the relative rights and obligations of middle-income countries.

Unfortunately, this international law and practice of a voluntary and thus limited altruism is badly out of step with a *well-informed* reality. While development is a “public good”: *initially*, a perception which encourages many developed countries to be “free riders” who reap diffuse benefits without bearing focused

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<sup>127</sup> Alston, *supra* note 117, at 777, 786, 825; Posner, *supra* note 8; Turner, 13. For example, an \$88 million U.N. appeal concerning starvation caused by draught in Malawi, contemporaneous with the World Summit, attracted government pledges after three weeks, where \$1/day would save a life. *Malawi Appeal Gets \_\_\_\_\_*, BBC \_\_\_\_\_.

Similarly, the 2005 aid shortfall at the U.N. High Commission for Refugees and the U.N. World Food Program (WFP) is \$219 million and \$182 million respectively. *African Refugees, \_\_\_\_\_*. Developed countries spend more in a week to subsidize their own farmers than they spend in a year to help starving children. *U.N. Warns \_\_\_\_\_*. The WFP requested bids from the ten largest reinsurance companies, in a pilot scheme to insure Ethiopia against draught. Mark Turner, *U.N. Move to Insure Against Drought*, FINANCIAL TIMES, Oct. 15, 2005, 03:00. (Such insurance is necessary only because of limited altruism, since a global self-insurance by all of us would save much money in terms of reinsurance company profits.) In contrast, a proposed insurance fund for foreign investors in Gaza (Kessler, *supra* note 23) makes sense regardless of altruism, since this kind of private-sector insurance is commonly thought essential to investment in developing countries and commonly arranged through a division of the World Bank. *But see also* Linus Atarak, *World Bank Chief Says Africa is First Priority*, I.P.S., (*quoting* Wolfowitz) (discussing developed countries “obligation” to help developing countries without describing how the obligation can be enforced); *id.* (“uncomfortable” for developing countries to give up subsidies during Doha negotiations, but this is far less serious than the “daily ... deprivation” these subsidies generate among “the poorest.”).

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costs<sup>128</sup>, development also spawns significant benefits which can be directly appropriated by individuals, NGOs, and developing *and* developed countries *in the long run*. Development results in more goods and services being produced, traded, and consumed of course; and also in a greater citizen tolerance, a willingness to settle disputes peacefully (especially if good rules and courts are in place), a democratic inclination, and the greater energy and happiness that flow from improving living standards. After all, this is the promise of modernism, Max Weber's for example, which is why post-modernism is unpopular in the Third World: people there want to experience extensive material benefits before feeling "alienated" from them. (In contrast, economic stagnation or decline is conducive to frustration, friction and, sometimes, ethnic strife, authoritarianism, and a swelling of terrorist ranks.) From this perspective, two central developmental problems remain: Western politics has an overwhelmingly short-term orientation which is ill-suited to development issues, an orientation marked by two- and four-year election cycles in the U.S. for example; and large gaps in the agendas and priorities among countries result in too little of the cooperation essential to a sustained 'advanced poker.'<sup>129</sup> Such gaps spawned what South Africa's Mbeki termed a "half-hearted, timid, and tepid" World Summit<sup>130</sup>, and also paralysis and apparent deadlock (as of this writing) in the Doha Round of WTO negotiations, and widespread dissatisfaction with the (anti-) developmental behavior of the IMF and the World Bank. The remedy proposed later is a reinvigoration of the rules of liberal internationalism, to further

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<sup>128</sup> At the World Summit, the Presidents of China and Indonesia stressed the importance of a global cooperation, without which development efforts are bound to fail. GA/10381. (Cooperation with people otherwise excluded from the development process is particularly important to success. Arndt. *See notes* \_\_\_\_ and accompanying text, *supra*.)

<sup>129</sup> BENJAMIN FRIEDMAN, THE MORAL CONSEQUENCES OF ECONOMIC GROWTH (2005); Shiffer & Hakim, *Why the Rich Must Get Richer*, THE ECONOMIST, Nov. 12, 2005, 87.

<sup>130</sup> South Africa's Mbeki (discussing the lack of resources for the poor to extricate themselves from misery and the related need for developed countries to go beyond traditional definitions of "security.")

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embed a global ‘advanced poker’ through a mature understanding of our long-term interests and needs.<sup>131</sup>

The Millennium Development Goals (M.D.G.s; *see* the Appendix) were to be the focus of the September 2005 World Summit, accounting as they did for half of the Summit draft (pre-negotiations) outcome document. Secretary-General Annan observed that “[n]ations must tear down the walls that separated the developed and developing world,”<sup>132</sup> and Roger Coate speaks of a “system-wide initiative to raise people out of hell-like conditions.”<sup>133</sup> Helen Tombo and Kevin Watkins discuss the reality of a global inequality: 2.5 billion people currently live on less than \$2 per day, with 1.2 billion of these living at a lower “poverty” level.<sup>134</sup> Projections indicate that 800 million will still live in poverty in 2015 (the anticipated end of the M.D.G. process), 380 million more than the relevant M.D.G. Target stipulates. In 2005, we are five years into the twenty year M.D.G. process, and 50 countries (900 million people) already make little or no progress toward one or more M.D.G. targets, a lag which undermines progress in meeting the other targets. The projected non-attainment of another Target by 2015 means that an additional 41 million children will die needlessly; a child currently dies every three seconds, a mother dies every minute during childbirth, and 25,000 people die from starvation every day. More than one billion people lack access to a safe water supply, and 2.6 billion

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<sup>131</sup> *See* notes \_\_\_ and accompanying text, *infra*.

<sup>132</sup> Sixteenth General Assembly Plenary, United Nations General Assembly, *World Leaders at General Assembly Summit Urged to Persevere, Take Bold Steps to Tackle Urgent Challenges, As Lives of Millions Hang in the Balance*, (GA/10379) (quoting Annan).

<sup>133</sup> Coate, *supra* note 1.

<sup>134</sup> Helen Tombo, *Global Call to Action Against Poverty*, \_\_\_\_; Isaac Baker, *Time for a “Decisive Breakthrough, UN Urges*, IPS, Sept. 7, 2005; United Nations Development Programme Bulletin, *More Aid, Pro-Poor Trade Reform, and Long-Term Peace-Building Vital to Ending Extreme Poverty*, MDG, Sept. 7, 2005 (*quoting* Kevin Watkins, a lead author of the 2005 UNDP Human Development Report).

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lack access to sanitation, yet rich countries give half as much development aid (in real terms) as they gave in 1960.<sup>135</sup>

A significant departure from previous approaches to development, the M.D.G.s captured the imagination and energy of international agencies, developing countries, and NGOs. Mobilization of these organizations is sought to generate national reports that describe development priorities—many of the reports already drafted make no reference to human rights—and also voluntary “development compacts” between a developing country and developed countries. Transparency and a great deal of publicity are thought essential to keeping the countries and organizations’ feet to the developmental fire, but coverage of the M.D.G. process by mainstream media has been disappointing so far.<sup>136</sup>

Conflicts over development priorities and techniques emerged soon after the consensus (‘advanced poker’) promulgation of the M.D.G.s in 2000. A few countries, led by the U.S., continue to advocate the “free-market model” of ‘development’ (really, the pursuit of economic growth) that reigned in the 1990s, after the demise of many communist party-states and the erosion of the means to finance “welfare” measures in social democracies. (Family planning was deleted from the M.D.G.s prior to their promulgation, to appease American neoconservatives and the Vatican, despite the essential role of population control in attaining M.D.G. targets among the least developed countries.) In contrast, many developed and almost all developing countries pursue goals which are ignored de facto by markets and their advocates: rather modestly redressing inequalities in favor of the poor and powerless, and forestalling the economic instabilities characteristic of an unregulated capitalism—particularly the “premature” marketization that the IMF and the World Bank demand from developing countries (*infra*). The U.S. thus winds up pursuing free trade at the expense of generous development aid (aid supplied subject to conditions which make the relatively small sums less

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<sup>135</sup> Tombo, *supra* note 134, 124 *supra* note \_\_\_; Baker, *supra* note 134. See Penderio (quoting a WHO official, the shortfall in achieving M.D.G. health targets to date is “staggering.”).

<sup>136</sup> Alston, *supra* note 117, at 756, 777, 780, 786; Diana Cariboni, *Poverty Missing From the News Agenda*, I.P.S., Nov. 22, 2005.

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effective), while the E.U. supports relatively generous aid at the expense of a potentially more valuable free trade—especially in agriculture. Russia and China (the other major players) passively support the developmental strategy of the majority, while the World Bank now speaks of an oxymoronic “market-driven equality.”<sup>137</sup>

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<sup>137</sup> See Chemillier-Gendreau, *The Alternative U.N.*, *supra* note 65; Shirin, *World Bank Calls for Market-Driven Equality*, IPS, Sept. 20, 2005; Marcela Valente, *Civil Society Forum-A Sham?*, IPS, Sept. 9, 2005; Deen, *Family*; Stephen King. There is too little development aid—adjusted for inflation, it has not increased yet. African countries are dependent on it—agriculture has been neglected recently, too much aid is absorbed by consultants from the donor country, and effectiveness is reduced by the overlaps created by a failure to coordinate donors’ programs. Dugger, *supra* note \_\_\_; Sachs at 7; *The Foreign Aid Gap*. Even the U.S. HIV/AIDS program is bilateral and channels funds according to U.S. strategic interests.

Free trade maximizes output from given inputs, but says nothing about the distribution of that output. Stephen King. According to the World Bank’s Wolfowitz, “inequity” most often happens when markets are missing, imperfect or failing. But the M.D.G.s are driven by the idea that lack of development does not flow from a lack of trade, but from a lack of capital and geographic, political or technological constraints, King. According to Social Watch, the resulting poverty stems from an inequality of access to income, power, job opportunities, information, social services, and political participation. This amounts to Amartya Sen’s deprivation of basic capabilities, measurable under the Social Watch Index: the proportion of births attended by skilled health personnel, the under-5 infant mortality rate (which grows worse in 56 countries), and the proportion of children in school through the fifth grade. Cariboni.

Martin Ravallian, *Inequality Is Bad for the Poor*, World Bank Research Paper 4677 (Aug. 2005): Economic growth and trade are distribution-neutral, often inequality-promoting, and thus they have less of the “welfare impact” associated with development. Care must be used in deplating poverty reduction (rather than inequalities reduction as such) programs, lest redistributive policies inhibit growth and create additional economic distortions.” “Win-win policies” are the solution, policies that eliminate inhibitions on growth which are also serve to increase inequalities. E.g.s are, fixing market and government failures, making institutions work better, improved infrastructures, and a better delivery of quality health and education which is more responsive to the

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The World Summit M.D.G. outcome was spotty, but with an overall lack of progress in solving the collective action problems of development. Optimists' hopes that the M.D.G. process would rejuvenate multilateral behavior were thus dashed.<sup>138</sup> Mary Robinson concludes that the M.D.G.s "now seem

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needs of the poor. *Id.* Inequality is the root cause of poverty in Latin America, Osara. The halving of extreme poverty (M.D.G. Target 1) by 2015 is unlikely in Brazil or Argentina, and attention to poverty occurs only through the election of progressive governments, *id.* See *World Bank Calls for Market-Driven Economy*, IPS, Sept. 21, 2005, 03:28 GMT (*quoting* Rick Rowden) (equality cannot come about through market-based privatization policies or without eliminating a gender-bias; Macon-Maskor (citing a recent ILO study about the growing "employment gap", "jobless growth" in 'booming Asian economies that increasingly underfund public health); Tranovich (women are more likely to work in the "informal" sector, in the most precarious jobs with the lowest wages). A term growing in popularity is "equity": a move towards equality. It amounts to "empty rhetoric conserving a regressive status quo", without changes in institutions which allocate resources and economic opportunities. *Equity Promises.*

<sup>138</sup> Paul Martin & Soraka Iyer of the Third World Network argues that the World Summit shows that world leaders are "isolated from ... global poverty" and "appear ... immune" to "mass mobilizations." Deen, *supra* note 69. The Director of the U.N.'s Millennium Campaign, Salil Shetty, fears that the 2015 M.D.G. targets won't be met as a whole, "not even in 100 years." *World Must Act to Alleviate Crippling Debt and Rampant Poverty, Leaders Tell U.N. Summit*, U.N. NEWS CENTRE, Sept. 15, 2005 (Progress on meeting Target 1, halving poverty, is relatively good but "masks huge disparities across and within countries and regions", and the low or inappropriate quality of aid, *id.* This admitted progress on Target 1 is actually small in comparison with the global availability of human, financial, and technical resources. Baker, *supra* note #124 and #128, citing the 2005 UNDP Human Development Report. Hussain, *supra* note \_\_\_: thus was the original purpose of the Summit subordinated to political and security interests. See *NGO* (to the same effect). However, the Summit "clearly created stronger support" for developed countries contributing 0.7% of their GNP for development aid, created innovative means of financing: e.g., a small tax on airline tickets. Deen, *Lost-Sum*. The World Summit outcome document did declare that gender equality, HIV/AIDS, and reproductive health must be kept at the top of the global agenda. Deen, *Giant*. The Summit also set

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set to join the pile of broken pledges that mark the old U.N.'s history."<sup>139</sup> The Summit also ratified an earlier move by the wealthy G8 countries, which then received additional ratifications from International Monetary Fund (IMF) and World Bank (WB) meetings. After eight years of popular campaigning, through rock concerts, etc., the G8 agreed to \$40-55 billion in debt relief for the twenty poorest countries. This number would go as high as 38 countries, but Kenya for example is deemed to have a "sustainable" debt burden. The G8 action can be regarded as a follow-up on previous 'advanced poker' rounds of winning a partial debt forgiveness for the poorest countries, even though such steps violate the IMF's "uniformity of treatment" rule. Nothing was done about the fair amount of this debt that was used corruptly to finance elite lifestyles in the poorest countries, or about the economists' "moral hazard" for the future: having had past debts forgiven, elites are likely to create new debt and use it inappropriately, in the expectation that the new debt will be forgiven as well.<sup>140</sup> Instead of simply forgiving it, the debt could have been (but wasn't) converted into supervised programs to finance the pursuit of M.D.G. targets. G8 countries will likely debit this debt relief from the development aid they otherwise intend to give and, only one month after the Summit, at a WB meeting, they fell to quarreling (reverted to an ordinary, 0-sum poker) over who pays what, who is eligible for relief, and which conditions will be attached. Belgium, Holland, and Norway fear that the costs of this debt abatement will not be fully funded by the G8, leaving the IMF and the WB with too little income to function.<sup>141</sup> In other words, these international organizations

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up an International Financing Facility, to make development aid more predictable and accessible. #24; *2005 World*.

<sup>139</sup> Robinson, *supra* note 72.

<sup>140</sup> Posner, *supra* note 8. See notes #94; #100; #132; *Bad Loans*. The G8 countries are Russia, Britain, France, Germany, the U.S., Japan, Italy and Canada. Philip Thornton, *Rich Nations Finally Give Go-Ahead to Long-Awaited Agreement on Debt Relief*, THE INDEPENDENT, Sept. 27, 2005.

<sup>141</sup> See *supra* note 140; Atara, *supra* note 127.

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“swapped the risk that poor countries will not repay their loans for the risk that rich countries will not redeem their promises.”<sup>142</sup>

Many in the Third World would find a mixed blessing (rather than, say, a disaster) in the IMF and the WB having too little income to function. Developing countries see their under-representation in these international agencies as diminishing agency significance, and as fueling the need to circumvent them through, e.g., the G8 assumed to be more sympathetic—even though developing countries have no formal representation there. Strict IMF and WB policies are seen to curb development and democracy: politicians and bureaucrats must respond to these organizations’ strictures rather than to local electorates. An NGO study shows that, of the 308 IMF and WB policies imposed on fifty countries, only eleven policies diverged from the “Washington [Reaganite, neoclassical economics] consensus” of strict monetary and fiscal policies, deregulation and privatization, and the premature opening to an international competition of capital, financial, labor, and product markets in developing countries.<sup>143</sup>

Large WB projects in developing countries are bonanzas for multinational corporations and corrupt local politicians, but they do little for the poor—other than evict them from subsistence lands. More than 70% of WB loans go to as few as twelve middle-income countries, countries able to meet their capital needs through private markets. This pattern is likely to continue—with WB President Wolfowitz recently touting a mega-project to supply electricity to Congo, Malawi, Zimbabwe, and South Africa—despite the consensus that small projects better meet the needs of the poor, especially in water and energy and especially if the projects are made accountable to their ostensible beneficiaries. Like his predecessor, Wolfowitz pays lip-service to such projects and virtues. A Dutch M.P. notes that parliamentarians must inform themselves and apply extra pressure to countries and the WB—so as to keep their games honest. The story is much the same for the IMF. Asian countries have accumulated huge foreign exchange

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<sup>142</sup> *Bad Loans, supra* note 140.

<sup>143</sup> *World Bank/IMF Losing Relevancy, South Says*, I.P.S., Sept. 23, 2005; Sanjay Suri, *Straight Talk Expected at Post-Helsinki Roundtables*, I.P.S., Sept. 12, 2005 (Schifferes).

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reserves, in part so they don't have to go begging to the IMF. Argentina defaulted and otherwise took a hard line against the IMF and private creditors, yet this resulted in only a three-month depression. Argentina amounted to a huge loss of IMF influence, a bluff well and truly called on the cut-down-to-size IMF leader of a "creditors' cartel" of other multilateral creditors, rich countries, and the private sector. The Group of 20 (G20) rich and developing countries describes the need for the IMF to improve governance, strategy, and operations, and to reform their quotas (which govern particular countries' capacity to borrow.) The IMF seems to understand the need to increase its legitimacy through such reforms, plus expanding developing country influence in the IMF, introducing transparency, and forbearing from attaching stability- and development-endangering conditions to IMF loans.<sup>144</sup> We shall see.

The legally-guaranteed separatism of the IMF and the WB, which are accountable (pro rata) to the countries providing loan funds, and of the World Trade Organization (WTO), accountable to its 148 members, means that global development policies are not integrated or coordinated by the Secretary General, the World Summit, or anyone else. The Doha Round of the WTO negotiations (lodged in quasi-authoritarian Qatar, to minimize anti-WTO demonstrations) has regularly been on the brink of collapse since 2003, with too much finger-pointing (insignificant bets, perceived as such) and too little leadership (as the poker metaphor leads us to expect). Doha is the first real chance for developing countries to engage in trade negotiations that *might* enhance their economic growth, reductions in poverty<sup>145</sup>, and perhaps curb some of the market fundamentalisms of the previous, Uruguay Round.

Three main 'games' are being played separately and together in Doha, inconclusively and over long periods: (1) liberalizing farm trade, the most distorted of global trade sectors; (2) liberalizing trade in services, chiefly in the banking, medical, and accounting sub-sectors; and (3) decreasing industrial tariffs,

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<sup>144</sup> Atara, *supra* note 127; Balls and McGregor; Hart & Pottinger; Lachman; Schifferes, *supra* note \_\_\_; Weisbrodt; *G20 Nations*.

<sup>145</sup> *Farmer's Friend; In the Rough*. See Martinez (as of Oct. 2005, the Doha process is already two years behind schedule).

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measures which the E.U. in particular is keen for developing countries to implement. These seem to be *negative-sum* poker games: meager winnings by developed countries do not seem to wash their losses, while developing countries are hanging in there as of this writing, but with their betting resources dissipated. The clearest example of an ordinary poker occurs in negotiations over liberalizing trade in services. These have led to decentralized results, with different countries betting on different deals in what amounts to separate games. This would also be the outcome from a total collapse of the Doha Round, with rich countries able to pick off poor ones one-by-one (i.e., “bet” more than poor countries can afford to “call”) while creating bilateral trade treaties. ‘Advanced poker’ is structured to avoid such a collapse and thereby stay within the broader Doha “game” geared toward fairer and more broadly acceptable rules (rather than a simple Uruguay Round rush to further liberalizations), if the poorer countries can only find their way back to this ‘advanced poker.’ The apparent Doha deadline is mid-2007, when President Bush’s “fast track” authority ends: *i.e.*, the Senate must vote to ratify the Doha agreement or not until mid-2007, without introducing protectionist amendments that favor particular constituents.<sup>146</sup>

Middle-income countries like Brazil and India refuse to budge on (2) services, and especially on (3) industrial tariffs, where they want to protect fragile local industries, absent significant progress on (1), their access to the agricultural markets of developed countries. Annual farm subsidies amount to \$19 billion in the U.S. and \$75 billion in the E.U. (with protectionist Japan hiding behind these major players), locally-popular barriers which are difficult for agricultural products from poor, developing, and even middle-income countries to leap over. The U.S. bet

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<sup>146</sup> See Ragavan, *In The Rough*, *supra* note \_\_\_; *The Trade Game* (using two party, one issue game, discussed in notes \_\_\_ and accompanying text, *supra*, to model the Doha Round). The WB estimates the (scaled-back) benefit of a successful Doha Round to developing countries at \$20-30 billion per year. *But see also* Arndt, *supra* note \_\_\_ (one study shows projected benefits *and* adjustment costs to be relatively small in Mozambique); Filo & Harridge (a successful Doha’s “positive but rather small” effects on the structure of poverty and income distribution in Brazil).

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significant farm subsidy reductions in an ostensible attempt to break the Doha gaming deadlock, but the E.U. (and especially France) refuses to match (or “call”) the U.S. bet. The U.S. can thus be said to have “called” the E.U.’s “bluff” over development being a “core” value (or source of prestige) within E.U. foreign policy. But it is widely known that Congress is unlikely to underwrite the U.S. Trade Representative’s bet. It is even reported that the 32 poorest WTO members have had trouble agreeing on a common position, despite their not being required to make concessions during negotiations.<sup>147</sup>

At the December 2005 Hong Kong Summit, expectations were low that a meaningful framework agreement for the Doha Round would be created. Philip Bowring gave this Summit a low but not failing grade, since it showed developing countries to be more dedicated trade liberalizers than are their developed counterparts.<sup>148</sup> NGOs like Oxfam and Greenpeace were very critical, and the behavior of demonstrators—mostly South Korean farmers—was mirrored inside the hall by E.U. representatives. 110 developing countries united in a historic first for the WTO, in an effort to make the Round the development round it was supposed to be. Their efforts failed, since no meaningful access to the agricultural markets of developing countries resulted. Developed countries agreed to eliminate agricultural export subsidies by 2013 (by 2006 for cotton), but export subsidies are a small fraction of total U.S./E.U. farm subsidies. Their quotas and tariffs will be done away with in 2008 for the 50 least developed countries, but the U.S. has already said that it will likely exempt

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<sup>147</sup> Beattie, *Poorer*; Bianchi, *E.U. Lender*; *French Monkey* (France has bullied E.U. partners into a “trade cowardice”); *id.* (Does France want the “unilateralist” blame for entrenching poverty?); *Stopped Clock*. See Beattie, *Ct*; *The Trade Game*, *supra* note \_\_. The existing WTO Agreement on Agriculture has Special safeguards provisions (special import restrictions for certain types of “emergencies”) which developing countries would like to prohibit developed countries from using.

<sup>148</sup> Philip Bowring, *Silver Lining in WTO Talks*, INT. HERALD TRIB., Dec. 19, 2005. See Don Lee, *Delegates Eke Out a Trade Deal*, L.A. TIMES, Dec. 19, 2005 (a Hong Kong failure would have damaged WTO credibility while it contends with the proliferation of bilateral trade agreements, growing global economic imbalances, and growing protectionist sentiment in developed countries).

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textiles and apparel from this abolition. Developing countries hope to recover ground lost in Hong Kong by influencing drafting committees and entering into plurilateral negotiations over agreements on agricultural market access—with services as the new battleground of negotiation.<sup>149</sup>

To provide counterpoint to this Doha/Hong Kong quasi-anarchy, and to round out the picture of multilateral development efforts, the World Summit also called for the reform of the Economic and Social Council (ECOSOC), and implementation of the Hyogo Framework to reduce disaster relief response times, improve disaster prevention measures and early warning systems, and secure more food supplies for disasters which are less tied to donors' conditions. The global response to the South Pacific tsunami seemed adequate, with the U.N. playing an important but far from exclusive role because the U.S., Australia, and a few others doubted U.N. efficiency, but hurricanes in Central and South America, famine in Niger, and the earthquake in Kashmir illustrate donor inattention and “fatigue”, and a shortage of U.N. resources. Such disasters will negate development efforts in affected countries for many years to come, unless creative programs and a great deal of money are forthcoming. The new High-Level Commission for the Legal Empowerment of the Poor, apparently not considered by the World Summit, has Hernando de Soto and Madeline Albright as co-Commissioners. It is likely to not be a mere substitute for doing something: de Soto's legally-defined property rights ‘movement’ is increasingly accepted as the best means of transition from an informal economy and into a measure of entrepreneurship. There is currently \$9.3 *trillion* worth of unregistered land and equipment worldwide, which can be levered into additional wealth, security for loans, etc., through registration and the other means that the Commission will consider.<sup>150</sup>

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<sup>149</sup> *Id.*; Gustavo Capdevila, *Back to Work in the WTO, With Empty Hands*, I.P.S., Dec. 30, 2005; Lee, *supra* note 148; Ramesh Jaura, *Historic Union in Hong Kong*, I.P.S., Dec. 16, 2005. *See id.*: (The 50 least developed countries, 34 of which are in Africa, hold 12.5% of world population but account for only 0.5% of world trade).

<sup>150</sup> Chaufen; *U.N. Calls*. The U.N.'s emergency relief coordinator, Jan Egeland, proposes additional reforms: a central fund (to which the U.S.

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*The Games Continue*

In the wake of the World Summit, the new General Assembly (G.A.) President, Eliasson of Sweden, said members were busy mapping negotiating positions (as you might expect, structuring new poker games in effect), and dealing with matters that take precedence: setting up the Peacebuilding Commission and the Human Rights Council that must be in place by the end of 2005[!], and with a terrorism convention to be finished by the end of the current G.A. session in September 2006. The crucial definition of “terrorism” continues to be contentious, with some members continuing their efforts to protect the rights of self-determination and to resist occupation that some opponents see as “terrorism” among, e.g., Palestinians. In late November, a speech by U.S. Ambassador Bolton gave the U.N. “its usual warning” from the U.S.: ‘Do what we say or we will send you into oblivion.’<sup>151</sup> Annan’s comment is “I am not the interpreter of Ambassador Bolton”, and an American reader of the Bolton-ian tea leaves sees the U.S. continuing to seek “multilateral cover for unilateral and illegal U.S. interventions....”<sup>152</sup> As 2005 drew to a

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will not contribute) and other ways to leave relief less “overstretched.” Imogen Foulkes, *U.N. Urges Disaster Response Reform*, BBC NEWS, Nov. 23, 2005, 01:33 GMT.

<sup>151</sup> Thalif Deen, *U.N. Faces New Political Threats From the U.S.*, I.P.S., Nov. 23, 2005 (quoting Global Policy Forum’s Jim Paul, who apparently paraphrases Bolton).

<sup>152</sup> *Id.* (quoting Annan and Institute for Policy Studies’ Phyllis Bennis respectively). See *General Assembly President Outlines Progress on U.N. World Summit Issues*, U.N. NEWS SERVICE, Nov. 17, 2005 (read off <[un.org/news](http://un.org/news)>) (quoting and citing Eliasson). The U.S. seeks to disempower the G.A. and make Annan’s successors accountable to Washington as “glorified CEOs”. Deen, *U.N. Faces*, *supra* note 151 (quoting Bennis and Paul). Many of the Secretary-General’s top staff has been replaced by active supporters of the U.S. agenda, but Annan has retained some independence nonetheless. *Id.* (quoting Bennis). The net effect is more belligerent but otherwise not very different from Clinton’s

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close, the U.N. could not approve its 2006-07 budget because of the implicit U.S. threat to withhold funds if members do not enact the “radical” reforms the U.S. seeks, especially in administration. (The occurred after the U.S. was rather disengaged from the September World Summit that created so much “fudge and mush.”) Jeffrey Laurenti attributes this stance to Bush’s “foreign policy schizophrenia”, also termed his “bipolar” isolationism.<sup>153</sup> The Group of 77, discussed in the next paragraph, refused to rush into decision under threats from U.S. neoconservatives, taking the position that later reforms can be paid for under supplementary budgets. This led Bolton, that comfortable contrarian who reportedly “speak {s} power to truth,”<sup>154</sup> to propose a three-month budget, and that the U.S. could and would solve global problems by turning to mechanisms other than the U.N.’s. A two-year budget was approved unanimously late in December, with a spending cap (backed by the U.S., the E.U., and Japan), that runs out in about six months unless reforms are adopted, reforms which Annan would restrict to those passed by the September World Summit.<sup>155</sup>

From the other side, the 132-member Group of 77 developing countries, plus China, is holding up work on the Human Rights Council (along with a smaller group of repressive regimes which fear being called to account) because Bolton wants

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“assertive multilateralism”, where Madeline Albright famously called the U.N. “a tool of American foreign policy.” *Id.* (quoting Bennis).

<sup>153</sup> Jeffrey Laurenti, *Schizophrenic Administration Heightens U.S. Isolation*, MAXIMS NEWS NETWORK, Dec. 29, 2005.

<sup>154</sup> *Id.*

<sup>155</sup> Thalif Deen, *U.N. Threatened With Budgetary Showdown*, I.P.S., Dec. 21, 2005; Maggie Farley, *U.N. Hit By a Bolt From the Right*, L.A. TIMES, Dec. 23, 2005; Warren Hoge, *Official Says American Delay of U.N. Budget Would Cause Crisis*, N.Y. TIMES, Nov. 30, 2005; Edith Lederer, *U.S. Stands Alone in the U.N. Budget Demand*, SEATTLE POST-INTELLIGENCER, Dec. 2, 2005, 7:03 P.M.; Laurenti, *supra* note 153; Betsy Pisik, *U.S. Budget Plan for U.N. Criticized*, WASHINGTON TIMES, Nov. 30, 2005; Mark Turner, *U.N. Risks Severe Financial Crisis Over Threat to Block Budget*, FINANCIAL TIMES, Dec. 4, 2005; *Editorial: Blocking Reform at the U.N.*, N.Y. TIMES, Dec. 2, 2005; *U.N. Members Approve Two-Year Budget*, CBS NEWS, Dec. 24, 2005 (read off <[CBSNews.com](http://CBSNews.com)>).

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the Council. The G77 is also protesting a cost-cutting shrinkage in Palestinian programs, and provoking showdowns, with the U.N. Secretariat over administrative reforms and over who will be Secretary-General Annan's successor. Annan will establish a Rule of Law Unit in the Secretariat, and order a review of several G.A. committees which he thinks have outlived their usefulness and mandates concerning, e.g., management and the budget of the U.N. secretariat. He thinks "misunderstandings" led to the G77 charge that he was engaged in a "grab for power"; it is the U.N. members' "prerogative to decide what should be cut and what should be rejected."<sup>156</sup> Annan then accused the G77 of interference in day-to-day Secretariat operations, and of violating the U.N. Charter by politicizing the Secretariat. The G77 fears that reforms will be funded by transfers from human rights and development programs. World Health Organization employees threaten a work stoppage to protest reorganization plans, despite threats that this will lead to their being fired.<sup>157</sup>

In other words, business (or ordinary poker) continues as usual at the U.N.: the lack of public information and advocacy, plus the chronic preference for a narrow and short-term self-interest, leaves almost all of us, including most World Summiters, unable to see an admittedly complex "big picture." This picture can usefully be defined as the need for active pursuit of Annan's interdependent "four pillars" of peace, security, development, and human rights. Pursuit or non-pursuit of these pillars will affect almost everyone in the long run, and a failure to recognize and deal with this fact could reverse the trend toward world civilization. As

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<sup>156</sup> Thalif Deen, *U.N. Chief Denies Making a "Grab for Power"*, I.P.S., Nov. 22, 2005. Thalif Deen, *Developing Nations Fault U.N. Reform Plan*, I.P.S., Nov. 10, 2005; Deen, *Move to Shrink Palestinian Programs Spurs Protest*, I.P.S., Nov. 30, 2005; Colum Lynch, *Campaigns to Succeed Annan at U.N. Are Underway*, WASHINGTON POST, Nov. 26, 2005, A22; *U.N. Members Approve*, *supra* note 155.

<sup>157</sup> Deen, *U.N. Chief*, *supra* note 65 (quoting Annan). See Andrew Jack, *WHO Staff to Stop Work Over Shake-Up*, I.P.S., Nov. 30, 2005; Pisik, *supra* note 155.

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Tony Blair argued, we need a better understanding of how self-interest and mutual interest are inextricably linked.<sup>158</sup>

Improved cooperation, described here as a commitment to the liberal internationalism rules of a sustained ‘advanced poker’, enables the players to draw (and bet on) simultaneously self- and mutually-interested links among development, trade, security, human rights, environmental protection, migration (a major concern in the U.S. and E.U.), etc. Hurricane Katrina showed Americans that cooperation is needed to reduce feelings of job insecurity and of vulnerability to disaster and violence; and also to deal with corrupt, fragile and/or incompetent governments. The poorer the nation, the more likely is a plague of violence which reinforces poverty and the other evils that operate to deny a human dignity. Even President Bush spoke of a “moral duty” to recognize interrelatedness and the need to cooperate (admittedly, to pursue his anti-terrorism strategy), during his September 2005 speech to the World Summit. For most other countries, the U.N. is a necessary, often the most competent, partner for the pursuit of vast, interrelated responsibilities. This is why World Summit failures on non-proliferation, human rights, and development, and the partial successes concerning intervention and administrative reforms, are so tragic. Peacebuilding is the only genuine Summit success, and the paucity of useful proposals concerning terrorism and the composition of the Security Council mean that lack of progress in these areas is a good thing. The Summit at least offers a starting point for continued reforms, if members can understand Summit failures and develop the will to achieve consensus-by-compromise. As Annan remarks rather optimistically, “reform is a process, not an event.”<sup>159</sup>

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<sup>158</sup> Farley, *U.N. Reform*, *supra* note 65; M.S. Haq, *President Bush’s Address at the U.N. Has Made the World’s Poor More Hopeful*, THE [BANGLADESH] NEW NATION, Oct. 2, 2005, 11:37 (an excellent article); Frederick Studemann, *Blair to Call for Global Trade Agreement*, FINANCIAL TIMES, Nov. 13, 2005, 22:00; *Can Its Credibility Be Repaired*, THE ECONOMIST, Sept. 10, 2005, at 30. Annan is fond of “pillars”: *cf.* his 3 pillars, note 120, *supra*.

<sup>159</sup> Farley, *U.N. Reform*, *supra* note 65 (*quoting* Annan). See Stefania Bianchi, *E.U. Presents its Plan for the Poor*, I.P.S., Sept. 21, 2005, 03:23

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**REMEDIES?**

The once-in-a-generation opportunity for wholesale U.N. reform<sup>160</sup> at the 2005 World Summit having mostly failed, what are the prospects for piecemeal reforms in the future? The answer is both “excellent” and “poor.” Governance without a government creates many outcomes “balanced between no longer and not yet,”<sup>161</sup> and a consensus over smaller changes to this unwieldy state of affairs is easy to achieve in theory. But there is little basis for negotiation (game-playing) without a fairly large number of significant proposals on the table, to trade off against each other. Otherwise, with relatively little to lose, major players and coalitions of minor ones, easily manipulate (usually veto) new negotiated legal orders (rules which require a strong consensus to take effect), especially by changing the game from ‘advanced’ to ordinary poker—as has been argued. Reforms are especially unlikely so long as the world’s hegemonic power (the U.S.) provokes determined opposition by so easily and regularly setting international laws aside whenever its short-term interests are perceived as advanced by such a play. This tactic cannot long endure within a rational international politics, however: along with Europeans, the U.S. benefits the most from a stable and functioning international legal order.<sup>162</sup>

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GMT; Alston, *supra* note 117, at 826; Holland, *supra* note \_\_; Kessler, *supra* note 23; Mitchell, *supra* note 75; Ward, *Frechette*, *supra* note 47.  
<sup>160</sup> But see Robert Samuelson, *Seduced by ‘Reform’*, WASHINGTON POST, June 2, 2004, A25 (“reform” is “a public relations tool—a convenient label” slapped on “proposals to claim the high moral ground.”); *id.* (self-labeled reformers “aim to stigmatize adversaries as nasty, wrongheaded, selfish or misinformed.”). These are tactics widely used at the U.N.

<sup>161</sup> LUHMANN, OBSERVATIONS, *supra* note 17, at 66 (discussing outcomes from a multiplicity of his “subsystems” which are arguably like the U.N. “family”—note 1 and accompanying text, *supra*). See OBSERVATIONS at 18, 27.

<sup>162</sup> *Clare Short: Depression and Mistrust Prevail at the U.N.*, THE INDEPENDENT, Sept. 16, 2005; (quoting Clare Short); Coate, *supra* note 1. See note 70 and accompanying text, *supra* (Mark Malloch Brown, on the indispensability

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A useful metaphor for discussing feasible smaller reforms is based on the *Fasces* deployed in Republican Rome—and also in Imperial Rome and Mussolini’s Italy (hence “fascism”), alas. The *Fasces* is a bundle of sticks, with each stick representing an aspect of governance. The sticks are bound together with leather straps and an axe head is inserted at the top—to represent coercive capacities. Each member of the U.N. “family” would have a different *Fasces*, reflecting the different aspects of governance they possess, but none of these *Fasces* have enough of the right kind of sticks to reflect a government. Apart from the Security Council’s under circumstances that rarely obtain, the axe heads are variously small and dull for each U.N. organ, reflecting modest capacities in the areas of implementation and enforcement. The point is that particular governance reform sticks, and even better axe heads, can be added to particular U.N. *Fasces* without raising the spectre of a global government, and with little observable effect on nation-state sovereignty. For most economists, a world government would create unbearably high agency costs (given a global heterogeneity of preferences) and enforcement costs. Such costs would likely negate the welfare gains such a government would create.

The steady centralization of nation-state power that followed the 1648 Treaty of Westphalia is now being reversed, as variously predicted by Kant’s “Perpetual Peace” (1795), Marx’s “withering away of the state” and Bertrand Russell in the 1060s. Sovereign equality has always been implausible, and the Westphalian system of self-help had to be tempered by (‘advanced’ poker) rules and institutions, to avert disasters as conflicts grew more deadly over time. National governments increasingly share power with multinational corporations, other NGOs, and globalized markets, as well as with international organizations. Even so, the nation-state remains the only institution with an automatic right of membership in the world community—as a “player.” Any theoretical loss of an increasingly-theoretical sovereignty due to small U.N. reforms is

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of reform coalitions). *See also* Brinkbaumer & Mascolo, *supra* note 79: “a morally-oriented international community did not exist before the Asian tsunami of 2004. {A}fter ... three months of solidarity, everything returned to normal. *Id.*

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unlikely to be noticed, much less attributed to small U.N. reforms.<sup>163</sup> (Even American neoconservatives are not vigilant in this regard.)

Smaller reforms can be described as the constitutionalization of particular practices, to further entrench a liberal internationalism (or ‘advanced’ poker). There are costs to forming each constitutional consensus of course, but fundamental ‘game’ changes may make a consensus easier to form. Through new treaties, modifying old ones, or confidently proclaiming new customary international laws—an unwritten constitution—the constitutional goals should be to expand rather than foreclose opportunities, through broader and more open channels of communication. Information would then flow more widely to players and the public, and rapid global changes could be embodied in legal changes more accurately. Adding escape clauses judiciously, and new means of buffering widely, would reduce tensions among the players.<sup>164</sup> An excellent article by Joel Tractman<sup>165</sup> explores the most thoroughly-constitutionalized of the U.N. family, the World Trade Organization. He finds six constitutional dimensions, which are necessarily interrelated and related to WTO members’ desires and domestic constitutions: an *economic* governance of exchanges of value and authority; an *integration* of many (but not all) social values; a *political* reflection of the “cultural and democratic integrity of a group”; a *legal* definition of the scope of legislative, judicial (I would substitute dispute resolution), and social interaction processes; a *human rights* limitation on nation-state authority; and a *redistribution*

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<sup>163</sup> Coate, *supra* note 1; Peter Drucker, *The Global Economy and the Nation-State*, FOREIGN AFFAIRS, Sept./Oct. 1997 (all FOREIGN AFFAIRS articles are read off <[cfp.org](http://cfp.org)>); Jessica Mathews, *Power Shift*, FOREIGN AFFAIRS, Jan./Feb. 1997. See Posner, *supra* note 8 (while the status quo will likely prevail, moderate legal revisions are possible); Yoo, *supra* note 8 (despite the “almost inviolable” U.N. Charter presumption of state sovereignty, states must—except in the case of self-defense—delegate the use of force to the U.N., in “a law enforcement paradigm”). *But see* Posner: the collective action problem of decentralized enforcement is often solved through a self-help.

<sup>164</sup> See JACKSON, *supra* note 19, at 120-21, 216, 350, 355, 445-46, 459.

<sup>165</sup> Joel Tractman, *The WTO Constitution: Toward Tertiary Rules for Intertwined Elephants* (2005) (S.S.R.N. Paper No. 815764).

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founded on social solidarity.<sup>166</sup> I would argue that the combination of WTO structures and members' desires operates to emphasize economic growth at the expense of the functions of human rights, redistributive/*labor*, and *environmental* constitutions. As reformulated, Tractman's approach arguably serves as a (perhaps too complex) template for the further constitutionalization of other U.N. agencies. Better monitoring techniques/institutions would reduce collective action problems by reducing the opportunism of hidden agendas and ploys (i.e., cheating at poker). This, plus substantive means for fleshing out and incentivizing an enlightened, longer-term self-interest, would enhance the cooperation on which an 'advanced' poker depends.

Constitutionalization turns mere voting into an abandonment of the survival of the fittest, into some value system which goes beyond a simple welfare (or warfare) maximization by and for elites. Under pressures on the U.N.—through NGO “audits” of various agencies and (inevitably partial) mobilizations of public opinion, but *not* by the 2005 World Summit that (perhaps inevitably) left the powerful Security Council in its oligarchic place—this value system slowly evolves in democratic directions. Inclusion, participation and, less directly, transparency, accountability, and distinctive sources of legitimacy, spawn a growing resistance toward the exclusionary games of ordinary poker. But democratization is only in its infancy at the WTO, the IMF, the World Bank, etc. Democratic tendencies do not necessarily generate respect for minority rights (a weaker form of self-determination), and democratic tendencies can also generate unpredictable, incoherent and, as in Serbia, illiberal outcomes. Despite such potential defects, the popularity as well as the importance of these artifacts of an international democracy suggest that, with creativity and courage, the General Assembly could use them to reclaim its place as the most important U.N. body. Democratization faces more opposition than does a 'mere' constitutionalization, from major players (perhaps excluding the U.N.) that deem unaccountability and poker-like secrecy as essential to pursuing their elaborate schemes. For this reason, the

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<sup>166</sup> *Id.* Tractman properly treats the WTO as “semi-autonomous”, a characterization which requires complex analyses of the rest of the U.N. law and of domestic constitutional orders. *Id.*

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collectively quite powerful minor players and most NGOs support democratization as a partial equalizer for the major players' wealth and power.<sup>167</sup>

As mentioned before, the complexity, instability, uncertainty, and incoherence of much of the international law that revolves around the U.N. family does not stem from an international anarchy. Rather, it is characteristic of the governance without government that has been modeled here as outcomes of the leaderless, self-organized "ordinary" poker games. The players' interest gets exhausted over who wins and who loses what and when, with little attention being paid to coordination of the outcomes. Integration of the unwieldy and unevenly-developed international law rules seems more difficult than a constitutionalization and even a democratization. Greater cooperation (more of an 'advanced' poker) is essential, and the World Wide Web offers one model of how this could be

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<sup>167</sup> Alston, *supra* note 117, at 790-1; Monique Chemillier-Gendreau, *The Alternative U.N.*, LE MONDE DIPLOMATIQUE, Sept. 2005; Thalif Deen, *U.N.'s Authority Tested By Perils Ahead*, IPS, Dec. 27, 2005. See JACKSON, *supra* note 19, at 216; LUHMANN, LAW, *supra* note 17, at 304, 347; WALZER, *supra* note 33, at 180-81; Alston, at 811 (discussions of participation which are not tied to a concrete law or policy are, "hollow and tokenistic"); Ignatius, *They're Not*, *supra* note 37 (quoting the leader of Egypt's Muslim Brotherhood) (the U.S. wants democracy only as an "artistic decoration", since truly fair elections would threaten Israeli and U.S. interests); Adrian Karatnycky, *Zigging and Zagging Toward Democracy*, WASHINGTON POST, Nov. 15, 2005, at A21 (durable domestic democracies maintain the discipline of nonviolent civic action and are led by broadly-based civil coalitions which force splits within the ruling elite and its security forces); Marincola, *Summit Ignores*, *supra* note 68 (quoting Antonio Papisca) ("It is impossible to speak of international democracy and democratisation within making reference to the institutional spheres in which they can actually be pursued."); Tractman, *supra* note 165 (discussing the "democracy deficit" at the international level); *Democracy's Ten-Year Rut*, THE ECONOMIST, Oct. 29, 2005, 39-40 ("Latin Americans do not want to go back to their dictatorships but they are still unimpressed with their democracies."); *id.* (only 26% feel they "are equal before the law—the same number as in 1998."); *id.* (mistrust of political institutions leads Latin Americans frequently to take to the streets); note 29, *supra* (collapse of Bush's democracy initiative in the Middle East).

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accomplished: relatively few rules which (almost) everyone can support because they permit diverse content, and few nodes but many links which can be ‘Googled’ to solve legal disputes and other problems. John Jackson offers a legal frame for such a model: “plurilateral” agreements, which integrate an economic globalization with environmental concerns, for example.<sup>168</sup> Agreements could also integrate economic globalization with human rights, self-determination with other human rights, etc. With sustained advocacy from NGOs, such agreements could form the base of a pyramid of international law *among the willing*, with increasingly-general integrations emerging at the higher levels of the pyramid. However, this is open to the criticism that it reverts to the “a la carte” international law that multilateral agreements are designed to avoid, and it is thus unlikely that such agreements would even generate a customary international law. A fuller integration presumably requires a powerful specialist agency, a Global Law Organization. Akin to a treaty-based WTO, this GLO could manage “trade” (and tradeoffs) in law, by integrating the diverse values created through a decentralized rule-making<sup>169</sup>, as well as through constitutionalization, democratization, and new checks and balances (if any) as well.

Adapted from Montesquieu, checks and balances are an American and (somewhat) French curb on the powers of governance, and an alternative to a concentration of powers—the monarch in Parliament under the British model, for example. It can be convincingly argued that (almost all) U.N. powers are too weak to require additional checks and balances that increase the costs of forming a consensus; things are unlikely to “get out of hand” in the future. This is because a fair number of informal checks and balances already exist: means of settling disputes peaceably; practices that screen out much of the abuse that would

<sup>168</sup> See notes \_\_\_ and accompanying text, *supra*.

<sup>169</sup> JACKSON, *supra* note 19, at 412. See Hirsch, *supra* note 17; Carlos Vasquez, *Trade Sanctions and Human Rights—Past, Present, and Future* 6 J. INT’L. ECON. L. 797, 831 (\_\_\_) (agreements could permit but not require states to impose trade sanctions for human rights violations). *But see* Andrew Guzman, *Why LDCs Sign Treaties That Hurt Them: Explaining the Popularity of Bilateral Investment Treaties*, 38 VA. J. INT’L. L. 639, 641, 644 (1998).

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otherwise occur, through generalized injunctions of cooperation (conducive to an ‘advanced’ poker); and (modest) restraints on the use of a naked wealth and power. The most notable check would be called “federalism”, if government(s) existed at the international level.<sup>170</sup>

As ‘players’ wealthy multinational cooperations, other major NGOs, and nation-states, channel and condition the creation of international laws through their game-plays. Probably as a necessary concession to reality, major players can veto many (game-) initiatives. To the extent that nation-state (and some NGO) policies are indeed devised democratically, this lends an indirect democracy to international processes. A few U.N. reforms spelling out relative competences could reinforce the “subsidiarity” principle that aids in the management of complexity: assign a task to the lowest level of governance that can most efficiently and humanely perform it, given that governance level’s degree of development. International action should thus be, and largely is, reserved for those things where various levels of the relevant nation-states cannot or will not act: “externalities”, where these states are concerned. Some of these externalities could be tamed by restraining the White House, if possible and necessary, and by a Global Law Organization (*supra*) which eliminates multiple legal overlaps. To the extent that the distinction can be drawn, the politics of these externalities is for the members, and the administration (the monitoring, implementation, and enforcement of political decisions) is for the U.N. family that has often avoided accountability for its actions in the past. The most sensitive topics here are empowering poor people and creating an (inevitably modest) redistribution on their behalf, especially in developing countries and where the plight of the poor is generated by the global markets beyond the control of most nation-states.<sup>171</sup>

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<sup>170</sup> Tractman, *supra* note 165. *See id.* (something like the GLO I propose could watch for imbalances among values within particular U.N. agencies, and seek to impose “redistribution” and human rights norms as expressions of social solidarity and as advancing a new international civilization). On poker game outcomes as the kind of “noise” that can lead to institutional formation or reformation, *see* TURNER, *supra* note 106, at 103, 127, 137-39, 146-47, 153.

<sup>171</sup> *See* JACKSON, *supra* note 19, at 454.

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The monitoring, implementation, and the more centralized (based less on a self-help) enforcement of international political decisions require the displacement of governance through ‘advanced’ as well as ordinary poker games, by an institutionalization which is an extrapolation from the constitutionalization discussed earlier. Many U.N. institutions are thin, unbalanced, and thus incapable of promoting “thicker” human rights and developmental rights and duties, as well as promoting legality and justice generally—as solutions to collective action problems.<sup>172</sup> Discussing the reasons why customary international humanitarian laws are violated, Abdul Korama describes a mixture of factors: the rules are unknown, known but inadequate, enforcement mechanisms are weak, and law is simply disregarded.<sup>173</sup> These are the factors that reformed and thus stronger institutions must work on to reduce the number and seriousness of violations.

Pursuing a piecemeal reform process such as described here, we must learn to live with legal and political failures—as we describe them—and expect only small legal evolutions. We have to ask the right questions, use hard-headed analysis rather than a “happy-think”, and take quick advantage of transcendent and incremental opportunities. Above all, we should recognize that much of what we see as necessary or natural is really a matter of choice or context. For example, dignitary human rights mean different things in different circumstances, and the seemingly-unattainable Millennium Development Goals may merely give false hope, ignore the effects of the global distribution of wealth

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<sup>172</sup> See *id.* at 275, 411-12, 423; Evans, *supra* note 48, at 1056; Tractman, *supra* note 165. But see Evans, at 1062 (calling global “market discipline” a “counter-law” which, I would argue, is nevertheless conditioned heavily by the WTO/IMF/World Bank legal complex). But see also Alston, *supra* note 117, at 791 (decentralization is required to “enhance poor people’s voice”); Glennon, *supra* note 19 (“To reduce state miscreance it is necessary to reduce state power; countervailing (decent-concerns such as humanitarianism and state security are simply irrelevant.”).

<sup>173</sup> See Monique Chemillier-Gendreau, *The Alternative U.N.*, LE MONDE DIPLOMATIQUE, Sept. 2005; Brown & Benn, *supra* note 92; Godoy, *supra* note 66; Posner, *supra* note 8. Abdul Korama, *Forward*, in Henckaerts & Oswald-Beck, *supra* note \_\_\_\_, at xii.

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and power, be too selective, not go far enough, fail to attract a sufficient legitimacy to be implemented, etc.

**CONCLUSION**

This article is no less complex than the global phenomena it tries to describe, phenomena of an insiders' game—like poker. Rather than try to summarize these phenomena here, we should close with brief thoughts about the future. After the 2005 World Summit, “many critics wrote the United Nations off as an institution so deeply flawed that it was beyond salvation.”<sup>174</sup> This article takes a different, more nuanced view: despite political (or poker-playing) flaws, a creaking bureaucracy, and inadequate resources, the U.N. will play a rather uncertain yet critical role in solving global externalities/collective action problems—especially if piecemeal reforms are aggressively pursued. Discussing international economic law while paraphrasing Heraclites, Andreas Lowenfeld argues that “nothing is permanent except change”<sup>175</sup>, and that most international law of the U.N. is followed most of the time.<sup>176</sup> Philip Alston is right to worry that the “U.N. approach of indivisibility” will become a “tautology”<sup>177</sup> or perhaps a cliché, yet it currently offers a “big picture” with which to confront nation-state players busy totaling up their poker winnings and losses.

Will the U.N. create a “networked world? A Global Neighborhood Watch? Managed Globalization?” Are there other facets “to think about and support an integrated response” from voters and policymakers?<sup>178</sup> Through reform, will the U.N. family slowly create freedoms from want and fear, and otherwise preserve our common humanity? Can new collaborative arrangements

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<sup>174</sup> Alston, *supra* note 117, at 762-65; Glennon, *supra* note 19; Paul & Nahory, *supra* note 85.

<sup>175</sup> Andrew Mack, *Peace on Earth? Increasingly, Yes*, WASHINGTON POST, Dec. 28, 2005, A21.

<sup>176</sup> ANDREAS LOWENFELD, INTERNATIONAL ECONOMIC LAW 43 (\_\_\_\_). See Lederer, *Global Violence*, *supra* note 54; LOWENFELD, *supra* note \_\_\_\_, at 148.

<sup>177</sup> Alston, *supra* note 117, at 784-85.

<sup>178</sup> Anne-Marie Slaughter, *The Shadow World*, WASHINGTON POST, Oct. 30, 2005, BW6 (reviewing MOISS NAM, ILLICIT: HOW SMUGGLERS, TRAFFICKERS, AND COPYCATS ARE HIJACKING THE GLOBAL ECONOMY).

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make better use of everybody's expertise, and of our other resources, in discovering new opportunities and addressing new threats?<sup>179</sup> Some or all of these futures are plausible, but one thing is clear: to change the U.N., "we must change too."<sup>180</sup> The most important and difficult change is to stiffen political will at the nation-state level, to resist the temptation to create law through an ordinary poker—in pursuit of unstable, short-term, and sometimes-misperceived gains—by decreasing the incentives so to defect from 'advanced' poker—where incentives must be increased.<sup>181</sup>

**APPENDIX: THE MILLENNIUM DEVELOPMENT GOALS AND TARGETS** (Alston, *supra* note \_\_\_, at 828-29).

**Goal 1: Eradicate extreme poverty and hunger**

- Target 1: Halve, between 1990 and 2015, the proportion of people whose income is less than one dollar a day.
- Target 2: Halve, between 1990 and 2015, the proportion of people who suffer from hunger.

<sup>179</sup> Romulo, *supra* note \_\_\_. See Alston, *supra* note 117, at 772 (quoting Christian Tormuschat): "If human life and dignity are not protected, the idea of a legal order would collapse" —at least in the liberal tradition. Law-as-ordinary-poker is thus dangerous because it is not biased toward dignity-enhancing outcomes.

<sup>180</sup> Thoroor, *supra* note \_\_\_.

<sup>181</sup> One aspect of law-as-poker is the effect it may have on ethnic or religious identity. Law-as-poker may accelerate the obsolescence of a variety of 'traditional' practices, while paying lip-service to diversity, and may render discourse over law—based on John Rawls's "overlapping consensus" for example—as cheap game-bets no one listens to because legal content does not matter much. See JOHN RAWLS, POLITICAL LIBERALISM (\_\_\_) ("overlapping consensus"). Sticking your national neck out by assuming a human rights obligation, for example, is often seen as, and sometimes is, a game-bet denoted to winning something quite different. *But see* Alston, at 809. To give Kofi Annan the last word: "We must find what President Franklin Roosevelt once called 'the courage to fulfill our roles in an admittedly imperfect world.'" Kathryn Horvat and Pat Shea, *The United Nations, 60 Years and Still Counting*, SALT LAKE TRIB., Oct. 26, 2005.

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**Goal 2: Achieve universal primary education**

- Target 3: Ensure that, by 2015, children everywhere, boys and girls alike, will be able to complete a full course of primary schooling.

**Goal 3: Promote gender equality and empower women**

- Target 4: Eliminate gender disparity in primary and secondary education, preferably by 2005, and to all levels of education no later than 2015.

**Goal 4: Reduce child mortality**

- Target 5: Reduce by two-thirds, between 1990 and 2015, the under-five mortality rate.

**Goal 5: Improve maternal health**

- Target 6: Reduce by three-quarters, between 1990 and 2015, the maternal mortality ratio.

**Goal 6: Combat HIV/AIDS, malaria and other diseases**

- Target 7: Have halted by 2015 and begun to reverse the spread of HIV/AIDS.
- Target 8: Have halted by 2015 and begun to reverse the incidence of malaria and other major diseases.

**Goal 7: Ensure environmental sustainability**

- Target 9: Integrate the principles of sustainable development into country policies and programmes and reverse the loss of environmental resources.
- Target 10: Halve, by 2015, the proportion of people without sustainable access to safe drinking water.

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- Target 11: By 2020, to have achieved a significant improvement in the lives of at least 100 million slum dwellers.

**Goal 8: Develop a Global Partnership for Development**

Some of the indicators listed below will be monitored separately for the Least Developed Countries (LDCs), Africa, landlocked countries and small island developing States.

- Target 12: Develop further an open, rule-based, predictable, non-discriminatory trading and financial system.
- Target 13: Address the Special Needs of the Least Developed Countries.
- Target 14: Address the Special Needs of landlocked countries and small island developing states.
- Target 15: Deal comprehensively with the debt problems of developing countries through national and international measures in order to make debt sustainable in the long term.
- Target 16: In co-operation with developing countries, develop and implement strategies for decent and productive work for youth.
- Target 17: In cooperation with pharmaceutical companies, provide access to affordable, essential drugs in developing countries.
- Target 18: In co-operation with the private sector, make available the benefits of new technologies, especially information and communications.