

## Commentary by Experts

DOUGLASS CASSEL:

- ¶1 Thank you very much, Ambassador Williamson.  
¶2 Professor Jan Wouters of Leuven University will now take over as moderator and our three independent experts will come to the head table.

JAN WOUTERS:\*

- ¶3 Ladies and gentlemen, after the thoughtful interventions by UN Ambassadors, we now turn to the experts, by which the organizers do not mean to imply at all that there is any lack of expertise with the members of our first panel, but rather that this panel is composed of scholars, fellows and professors who are not representing a state. We are looking forward to interesting commentaries by these experts.  
¶4 It is my pleasure to first give the floor to Lee Feinstein, who is senior fellow in US foreign policy and international law and deputy director of studies at the Council on Foreign Relations.

LEE FEINSTEIN:\*\*

- ¶5 Thank you very much. I expect I am one of the offenders Sir David referred to in his remarks, impugning to the report ideas not intended by some of its members. For that, I apologize in advance.

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¶16 This is the right city in which to address these issues. Arguably, the contemporary debate about humanitarian intervention was launched in Chicago in 1999 by British Prime Minister Tony Blair in a seminal speech to the Chicago Economic Council.<sup>1</sup> In that speech he outlined a doctrine which was the basis for what has come to be known as the “Responsibility to Protect,” a concept subsequently adopted by the High-Level Panel on Threats, Challenges, and Change, which is the subject of our discussion today.

¶17 The High-Level Panel Report is very much in keeping with long-standing US legal policy. It endorses US legal positions on such questions as the inherent right of self-defense, the flexibility in interpreting threats to international peace and security under Article 38 of the UN Charter, and even on what constitutes terrorism. Moreover, the Panel’s themes echo those sounded by the Bush Administration in its National Security Strategy about the nature of the dangers facing the United States and the world today. The report’s recommendations are also consistent with giving greater overall responsibility for global affairs to the Security Council relative to the General Assembly, a position which ought to be welcomed in Washington.

¶18 Beyond that, the report is extremely important in terms of the development of international law. The significance of the report’s findings are amplified by the range of international figures that served on the Panel, including the serving Secretary-General of the Arab League, former foreign ministers of China and Russia, and America’s most esteemed realist, Brent Scowcroft.

¶19 Over time this report will be seen as a watershed in international law. It will mark a shift from the era of the traditional concept of sovereignty to an era of conditional sovereignty. By traditional sovereignty, I refer to such ideas as the formal equality of states and the monopoly of force within borders. This is an audience of international lawyers, so there is no need to review all of the formal elements of sovereignty.

¶20 I would simply add that the importance of the formal equality of states grew in the period between the end of the Cold War until the mid-1990s. This had a significant impact on international politics and negotiations at the time, when fairness in the international system was widely equated with the principles of universality and “one country, one vote.” In the face of the genocides of the 1990s and later the Security Council rupture over Iraq, the older ideas about sovereignty began to yield to newer ideas, in which a state’s sovereign rights are a function of its behavior. The High-Level Panel speaks to these issues very eloquently, even if some of its members may disown these points.

¶21 The first principle of conditional sovereignty is the idea that sovereignty entails rights as well as responsibilities. A government’s first sovereign responsibility is to its people, to protect them from grave harm, atrocities, and crimes against humanity. If a state fails to live up to this primary responsibility, through acts of omission or commission, it cannot expect to enjoy the full benefits of sovereignty. The corollary principle is that when a state fails to live up to this fundamental responsibility, other states have a duty to take action to spotlight, prevent, or stop the oppression. By action I mean everything from diplomacy to economic pressure and, if necessary, the prompt use of force.

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<sup>1</sup> Tony Blair, British Prime Minister, Address at the Chicago Economic Club (Apr. 22, 1999), *available at* [http://www.pbs.org/newshour/bb/international/jan-june99/blair\\_doctrine4-23.html](http://www.pbs.org/newshour/bb/international/jan-june99/blair_doctrine4-23.html).

- ¶12 The idea of conditional or “differentiated” sovereignty is already embedded in the UN Charter and throughout the UN system. The UN Charter, for example, makes distinctions among and between countries. The clearest example is the granting of permanent Security Council seats and vetoes to the victors of World War II. There are many other examples, as well.
- ¶13 Beyond the UN Charter, many international agreements make similar distinctions. The 1968 Nuclear Non-Proliferation Treaty, for example, legalizes the possession of nuclear weapons, at least for a period of time, for five states which exploded nuclear devices before the Treaty was signed, while permanently outlawing the nuclear weapons option for all other nations. By the mid-1990s, however, it became increasingly difficult to negotiate such double standards. Washington first experienced this when it was unable to set the terms of the negotiations on the Ottawa Treaty banning the use and possession of anti-personnel land mines. During the same period the United States unsuccessfully sought special rights for itself and the other members of the Security Council in the Rome Treaty, which established the International Criminal Court. Other nations, understandably, demanded equal treatment for all parties to the treaty in the name of universality and fairness.
- ¶14 The pendulum began to swing in the other direction as a result of the experiences of the past fifteen years: the genocides in Rwanda and Bosnia; the failure of the Security Council to authorize action to avert killings in Kosovo; and the rupture of Iraq in 2003.
- ¶15 Throughout the 1990s, sovereignty was being redefined in an effort to deal with new threats and challenges. The Charter’s phrase “threat to international peace and security” was invoked repeatedly during the 1990s to give legal justification to a range of interventions, establishing examples of state practice that would redefine state sovereignty.
- ¶16 In 1992, for example, state incapacity was determined by the Security Council to be a threat to international peace and security warranting the use of force in Somalia. Later, in the case of Haiti, it was the interruption of an “established democracy,” which was cited in authorizing an intervention to restore the Aristide government.
- ¶17 Security Council resolutions approved after the Kosovo intervention gave after-the-fact legal standing to NATO military action to prevent atrocities. Even after the US-led invasion of Iraq in 2003, the Security Council passed a series of resolutions, most of them unanimously, that gave formal legal standing to the occupation forces and their role in supporting the transition to self-rule.
- ¶18 Statements of leading international figures and scholars have also contributed to the development and broader acceptance of the concept of conditional sovereignty. Tony Blair’s speech was a watershed. He was the first world leader to set forth factors that would warrant humanitarian intervention. He specifically addressed the need to act, even if the Security Council could not or would not, as was the case in Kosovo.<sup>2</sup> In June 2000, UN Secretary-General Kofi Annan gave an important speech in Warsaw at the founding of the Community of Democracies. Annan talked about the importance of democracy as an essential component of what it means to be a member of the United Nations.<sup>3</sup> In 2001, Gareth Evans and Mohammed Sahnoun coined the phrase “Responsibility to Protect.”<sup>4</sup>

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<sup>2</sup> *Id.*

<sup>3</sup> Kofi Annan, United Nations Secretary-General, UN Secretary-General Kofi Annan’s Closing Remarks to the Ministerial (June 27, 2000), *available at*

¶19 In 2003, Annan announced his intention to establish a commission to review challenges to the UN's effectiveness.<sup>5</sup> That became the High-Level Panel, which issued its report in December 2004.

¶20 Having discussed the importance of the Panel's work, let me briefly identify the shortcomings of an otherwise excellent report. The report does not – not surprisingly given the Panel's composition – address the issue of who decides whether or if to use force if the Security Council is deadlocked.

¶21 It also does not extend the principles supporting humanitarian intervention to proliferation issues, and I believe it must. The Responsibility to Protect implies a “Duty to Prevent.”<sup>6</sup> This is the principle that closed societies pursuing weapons of mass destruction pose an especially grave danger, giving rise to a responsibility on the part of the international community to act early and collectively, not necessarily by force, to prevent them from going down the nuclear road.<sup>7</sup>

¶22 The report's recommendations regarding the Human Rights Commission were weak. The Panel recommended that membership on the Human Rights Commission should be universal. That would only compound the Commission's existing credibility problem.

¶23 Finally, the report pays insufficient attention to the importance of democracy within countries, as a hallmark of good international citizenship.

JAN WOUTERS:

¶24 We will pass the floor to Ian Hurd.

IAN HURD:<sup>\*\*\*</sup>

¶25 I as well want to thank you, all of the organizers from all of the organizations, and thank also the distinguished guests. It is an honor to be here, learning from you all.

¶26 I want to pick up on the theme of collective security that has been mentioned by a number of speakers and make what I guess ends up being a rather small point, but one

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[http://www.demcoalition.org/pdf/un\\_secetary\\_gen\\_kofi\\_annan.pdf](http://www.demcoalition.org/pdf/un_secetary_gen_kofi_annan.pdf).

<sup>4</sup> INTERNATIONAL COMMISSION ON INTERVENTION AND STATE SOVEREIGNTY, THE RESPONSIBILITY TO PROTECT (2001), available at <http://www.iciss.ca/>.

<sup>5</sup> Kofi Annan, Secretary-General, United Nations, Address to the General Assembly (Sept. 23, 2003), available at <http://www.un.org/webcast/ga/58/statements/sg2eng030923>.

<sup>6</sup> Lee Feinstein and Anne-Marie Slaughter, *A Duty to Prevent*, FOREIGN AFFAIRS, Jan.-Feb. 2004, at 136-50.

<sup>7</sup> *Id.*

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that I think has implications that need to be made clear here about the Security Council as a collective security organization. I would like to begin by going back to 1945 and then moving forwards to what I think is a tension in many people's interpretation of the Council between the actual law of the Charter and some states' expectations about what the Council's authority should be.

¶27 We could put this in a number of ways. We could categorize it as a tension between the preamble of the Charter and most of its operative paragraphs, or a tension between realism and idealism (but not in the traditional IR sense in those terms of art), or an as distinction between law and aspiration.

¶28 I want to pose this as a tension between a great power compact and a collective security system and use this to argue that many people's expectations for collective security in the Council far outstrip the actual institutionalization of that mechanism.

¶29 How this came to be is an interesting topic for academics. We are always looking for cases where practice goes one way and the law goes the other way and then you have this odd relationship between the two.

¶30 I think that is intriguing but in practical terms the tension is very important because it is the hidden source of a lot of misunderstandings and misplaced critiquing of the Council, not least over the Iraq war in 2003, but also underlying misplaced disagreement over Council reform and about the Council's more general relationship to human rights and to international security.

¶31 So this tension between great power compact and collective security. If you go back to 1945 and you consider the deliberations really between the great powers and the rest, which is essentially what San Francisco turns out to be, you see the great powers working very, very hard to create a security system in which all collective security obligations are subordinate to the veto.

¶32 This is what was negotiated before San Francisco and this is the recurring theme of negotiations between the great powers and everybody else in San Francisco.

¶33 Small states proposed at San Francisco different kinds of ways of reducing the veto or making certain kinds of decisions not subject to the veto and at every point the great powers, sometimes after machinations behind the scenes, came out collectively with one voice and succeeded in defeating any reductions in the veto.

¶34 What the great powers thought they were making in San Francisco was a great power compact: a bargain among themselves with an institution attached to it about how they would run the international system, and specifically at what point in their deliberations over the international system could either the small states have a voice or could the opposition of one of the great powers be enough to kill the collective plan.

¶35 This is a concert of great powers, a great power compact.

¶36 In the Charter, all of the collective obligations on security are placed under the veto so that collective action is possible by the Council but always contingent on the five agreeing.

¶37 There is no automatic institutional mechanism for making collective obligations. There are only mechanisms making collective obligations by the explicit consent of the great powers. This was designed to reduce the chance of conflict among the great powers, and this is the ultimate goal of a compact: to manage international problems so that the possibility of war between the great powers is minimized.

- ¶38 What you have in the Charter reflects this intention. It reflects an adamant opposition to creating a collective security institution.
- ¶39 The absence of collective security in the Charter was not an accident. It was the point of the veto. It is why the veto was important, and in that sense it might be why the Council was important to the whole UN. That was the purpose of the whole Council: to manage relations between the great powers with the legitimizing device of having representatives of the rest present.
- ¶40 The expectation that has developed in many circles is that the Council is the center of a collective security apparatus. Collective security requires two things. It requires the principle of all versus one. And it requires an automatic institutional mechanism for making that work. It must therefore apply to everybody equally. A collective security where they can opt out is not collective security, it is something else.
- ¶41 A real collective security system would have imposed some kind of obligations on the great powers. As it stands now, if the Council fails to pass a resolution, it is hard to see in the Charter any collective obligations on permanent members.
- ¶42 Those who cling to the expectation that the Security Council will implement collective security have a much more expansive view of the Council's authority, original purpose, and operation than is reflected in the Charter.
- ¶43 This is important for understanding the Iraq War debates because a lot of commentary about how the Council performed relative to the Iraq War is premised on this more ambitious way of thinking. This is true not just among the critics of the American action but among many of its defenders.
- ¶44 On both sides you see a shared commitment to the idea that the Council is the linchpin of collective security and that there should be some Council obligations on great powers. The critics of the US argue that the war was illegal because it was not authorized by the Council. Many states took the view that they would support the invasion if it had been authorized by the Council. This puts priority on the procedure of the Council over the substance of the debate.
- ¶45 Similarly, among the defenders of the war you get the same kind of spirit, those who say that the Council failed because it did not enforce its resolutions by authorizing the US action or failed because it simply did not realize the realities of power as distributed in the system are taking the same kind of view. They see the function of the Council as enacting the collective security principle which might well be a nice thing to do but it is not what is in the Charter.
- ¶46 The distinction is important, I think, for a number of reasons.
- ¶47 First, it matters for how you interpret the existence of disagreement in the Council. The collective security view sees disagreement in the Council as a problem that needs to be solved or as an obstacle to the smooth functioning of the Council; in other words, a sign of failure.
- ¶48 The concert view sees great power disagreement as the main reason for having the Council in the first place. The Council was an institution in which great power disagreements could be aired and where great powers could stop collective action whenever they wanted to. (I am treating here the permanent five as each a great power. This convenience masks significant problems, both now and in 1945, which we could talk about.) The concert view sees disagreement among the great powers in the Council

as normal politics. This is what happens in international politics and is proving the need for the Council itself rather than as an aberration or a problem.

¶49 The second reason that it is important not to mistake the Council for a collective security system is that you get a different sense of what is a success and what is a failure of the Council. Inaction is not necessarily a failure of the Council. It may be the Council operating exactly as intended. We can have success and failure on substantive problems, so a failure to resolve a particular crisis may be of concern to us.

¶50 But, I think that needs to be kept distinct from our assessment of success and failure of the Council in its operation as designed in the Charter. In other words, we need to lower our expectations to accurately recognize the powers and limits of the Council. And most generally then, this affects how you think about what to expect.

¶51 We cannot expect the Council to regulate the great powers. That is the key difference between the collective security and the compact images of the Council; when the matter is pushed to its limit, the Council does not regulate great powers. It is instead a hierarchical security system that binds the small states, but only binds the great powers when they consent. It is fundamentally unequal.

¶52 In thinking about the High-Level Panel Report, there is nothing in there that would change this basic structure. That is neither praise nor criticism, but it is worth noting that the ability to protect remains subordinate to the veto and therefore to the great power compact nature of the whole operation.

¶53 So what are we to make then of the behavior of a number of states and the writing of a number of publicists who subscribe to this grander but mistaken expectation of what the council is for? They may be legally unfounded but the Iraq episode shows that they are quite widespread in the system. For that reason their influence must be taken into account when assessing the role of the Council. Some of the more famous critics of the Council over Iraq suggested that the Council failed because it did not support the US action and therefore, that the Council demonstrated its irrelevance.

¶54 I do not want to be mistaken to be saying that the Council is irrelevant because it is not legally binding on great powers. The latter is true, but the former is not. The Iraq episode demonstrated the degree to which a number of states are willing to act on these legally unfounded expectations for collective security. The smart hegemon, the prudent great power, needs to take into account these higher expectations because they will affect how other states react to hegemonic behavior. This is an informal kind of power. It may be an indirect route by which you get to the legally unfounded higher expectations. It is not part of the Charter but it is part of practice.

¶55 So where do we go from here? I suggest two possible paths.

¶56 First, we could decide that we really do want collective security and we are willing to make new international organizations to enact it. This would not be an evolution of the Council; it would be directly counter to what the Council has always been. We may well still want to do it. It would be instructive of course to remember the history of negotiating the Charter in order to appreciate the difficulties in taking that path.

¶57 The other way to go is simply accept what the Charter has created and lower our expectations about what the Council is for. This does not mean abandoning the effort to use the Council to influence great powers but it does mean thinking more about indirect ways of doing so.

¶58 So I am not suggesting that this is in any sense a critique of the Council.

¶59 Rather, if we are interested in a rules-based system, we should pay serious attention to what the rules actually are. What are the legal obligations on the great powers in the Charter? We might be able to rescue the Council from some unrealistic expectations and, therefore, from some unfounded criticism.

¶60 And it gives us a new appreciation, I think, for the informal legitimizing power of these norms percolating below the surface. Thanks.

JAN WOUTERS:

¶61 Ladies and gentlemen, we had interesting reflections and comments from an international law from the political science perspective.

¶62 We are looking forward to the comments of our third panel member, Joshua Muravchik, who is the resident scholar at the American Enterprise Institute and whose recent essay in the case against the United Nations has not gone unnoticed.

JOSHUA MURAVCHIK:\*\*\*\*

¶63 Thank you very much.

¶64 First, especially I would like to express my thanks to Doug Cassel and his assistant Dhana-Marie Branton and the others. I found this to be as well and carefully prepared a conference as I have participated in in some time and it makes it a special pleasure to be here.

¶65 I want to, however, take exception to one point in Doug's setting of the framework this morning. The intellectual framework for our discourse in which he said we are meeting at a time of America's maximum power. I find that unduly pessimistic.

¶66 I think that the High-Level Panel deserves to be saluted for facing up to several of the troubling aspects of the record of the UN and I am going to talk about four in particular.

¶67 The first is the UN's rather notorious bureaucratic inefficiency. This is present in more subtle statements in the section of the report that deals with the Secretariat. When briefing the press, Panel members, without allowing their names to be used, referred to deadwood as a problem for the UN, and the report contains a proposal for a one-time buy-out of the contracts or tenure of this deadwood.

¶68 The second area to which the report faced up boldly was the record of the Commission on Human Rights, which it said has become an embarrassment to the UN, which is amply true. The Commission on Human Rights, as the report noted without

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giving detail, is often filled with members who are that government's most abusive of human rights.

¶69 The Freedom House in its annual survey of freedom provides a side bar that it calls the "worst of the worst." It lists the countries that get the worst possible score for freedom on both of the two scales that Freedom House uses, and there are anywhere from, oh, seven to ten countries out of the 192 in the world with this worst possible rating. Each year, several and as many as half of these "worst of the worst" secure seats for themselves on the Human Rights Commission, and therefore, never come in for criticism.

¶70 And it goes beyond that in the sense of the way regional caucuses function in the kind of mutual back-scratching game so that, as Ambassador Williamson mentioned, even this year we were unable to get an unambiguous resolution on Darfur through the Human Rights Commission. We are not talking about the Security Council or someone having to send troops to do something about it. We are talking merely of a symbolic recognition of the humanitarian tragedy in crimes going on there, and this was defeated in the Human Rights Commission.

¶71 Worst of all, every year for the past several years, the UN Human Rights Commission has adopted a resolution endorsing terrorism as an expression of fulfillment of the purposes of the United Nations.

¶72 The third area in which the High-Level Panel has faced up to some of the UN's failures is in calling for an unambiguous resolution against terrorism. The language that was proposed by the Panel is that terrorism must be condemned clearly and unequivocally. This is a break with forty years of tradition in which the UN has refused to condemn terrorism and indeed has encouraged it and endorsed it, and this proposed language deserves a round of applause.

¶73 Fourth, and most importantly, the report contains the surprisingly blunt criticism, including a surprisingly blunt phrase criticizing "an unwillingness to get serious about preventing deadly violence,"<sup>8</sup> and this underbids its discussion of possible reforms of the Security Council.

¶74 Having tipped my hat to the Panel for facing up to these four important areas of UN failure, I must go on to say, however, that I am underwhelmed by the solutions that it suggests.

¶75 In the first, about the bureaucratic insufficiency. It may be possible to pension off the current supply of deadwood in the UN bureaucracy but that deadwood did not descend miraculously from the sky. It came from somewhere, and there is nothing in here to prevent what will inevitably happen, which is that it will be replaced by a new generation of deadwood. It is not just that the UN had the bad fortune of having to hire a whole bunch of deadbeats; there is something wrong in the system that creates this deadwood. What is wrong? I think, essentially, there are two things.

¶76 One is the world's most elaborate and grotesque system of affirmative action in which people are hired for posts in the UN in large measure based on what countries or regions they come from rather than on their individual qualification. Second, the entire bureaucracy, the entire structure of the UN Secretariat, lacks transparency and lacks accountability, because the UN functions as a kind of proto-world government.

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<sup>8</sup> High-Level Panel on Threats, Challenges, and Change, *A More Secure World: Our Shared Responsibility*, ¶ 39, U.N. Doc. A/59/565 (Dec. 2, 2004).

¶77 It is a government made up of governments. Some of those governments, a fair number, are not democratic governments so there is no popular contingency to which they are answerable. But, even in the case of democratic governments, the UN is so far removed from the publics of the democratic countries that there is almost an impossibility of public scrutiny of what goes on in the UN.

¶78 Do you know how your UN representatives voted this past year? I bet not very many know very much about that.

¶79 The second area is on the Commission on Human Rights. The proposal that has been offered, as Lee Feinstein noted, is to go from the current commission to a commission of universal membership.

¶80 Universal membership means, in effect, the makeup the General Assembly. The Commission on Human Rights could be expanded to include representatives from all member states, or the responsibilities of the Commission on Human Rights could be dropped into the General Assembly. However, elsewhere in the report, you will notice a rather frank admission by the Panel that the General Assembly is itself completely dysfunctional and no longer provides any useful forum.

¶81 The Panel was very short on suggestions about what to do to improve the General Assembly. It had one suggestion, which was to shorten the agenda, which is readily apparent and cuts in exactly the opposite direction of fobbing the responsibilities of the Commission on Human Rights into the General Assembly.

¶82 The second disquieting thing about this proposal of universal membership is perhaps the most disgraceful episode in regard to human rights, which was the so-called World Conference Against Racism in Durban a couple of years ago, which turned into a kind of forum. This World Conference Against Racism was based upon principles of universal membership.

¶83 The third area is the area of anti-terrorism, and on this I am less critical; it would really be a big improvement if the language suggested by the commission is, in fact, adopted by the UN. As some of you know, the General Assembly about seven years ago set and trained a deliberation for the adoption of a general convention against terrorism, and it has been blocked for seven years.

¶84 It is blocked because of the veto persistently exercised by the Organization of the Islamic Conference. The position of the Organization of the Islamic Conference is “we must first define terrorism,” and their argument is that terrorism must be defined by who does it and why, rather than by the nature of the act. The position of the OIC is that terrorism undertaken on behalf of bad causes is bad, but terrorism undertaken on behalf of good causes is good, and it would not accept any convention that did not acknowledge that principle. I think that if the support of Amre Moussa, the General Secretary of the Arab League, suggests that the OIC will now reverse itself, this will be a very useful step forward.

¶85 The fourth area is the most important, and that is on willingness to get serious about the use of deadly force. I think this is the area in which the High-Level Panel has failed most egregiously because what it gives us, it itself fails to get serious about facing up to – about preventing deadly violence.

¶86 Its first proposal is to enlarge the Security Council but the principal failure of the UN to get serious about deadly violence is the paralysis of the Security Council. And

enlarging the Security Council, whether you do it by an Option A or Option B, is a formula for more paralysis.

¶87 Second, it goes out of its way to try to undermine the hopeful development of recent years in the world about people being more willing to take seriously the danger of deadly violence. That is the recent willingness of NATO to see itself play a larger role than a narrow self-defense role, to see itself being willing to undertake missions in defense of the peace outside of the territorial area of the NATO member states. Yet, the High-Level Panel goes out of its way to take a swipe at NATO for doing this and to reassert the authority of the Security Council over any NATO activities.

¶88 And finally, there is the insistence of the Panel that Article 51 is sacrosanct and must not be changed in any way, Article 51 being the article about self-defense.

¶89 I think this goes really to the heart of the problem of the UN and the failure of the Panel to get to that, which is that the UN itself is a kind of social contract roughly analogous to the lock-in idea of the social contract in which in a society and individuals willingly sacrifice some degree of their own autonomy to act in defense of themselves and on behalf of their own interests. They yield that essential authority to a government in exchange for receiving a set of protections that makes their lives more safe and comfortable.

¶90 The UN rests on an analogous social contract in which the states give up some measure of their previously enjoyed autonomy of action to act in defense of themselves or their interest. They give that up in the interest of the overall structure of peace that the UN was intended to create. They give that up because this structure of peace gives them back something of equal or greater worth, that is, something that will ensure their security or work toward ensuring their security.

¶91 The problem is this structure of peace has never come into existence. It is a dead letter. It has been a dead letter from day one, and it is therefore impossible or illogical under the law to say that the states should still regard themselves as having made this sacrifice of autonomy in exchange for nothing. The nothingness of this nothing is underscored inadvertently by the High-Level Panel itself which says, on the whole, “We do not think the Charter should be changed in many places but we have one change: delete Article 47.”

¶92 Article 47 is the linchpin of the entire structure of peace and security that is embedded in the Charter in Chapter VII. Article 47 creates the military general staff that will, in turn, command the UN military forces that are supposed to provide this security.

¶93 Acknowledging that this is all a fiction, the Panel says, “We might as well delete Article 47,” but it puts nothing in its place. The reality is that in the history of the UN, it has fulfilled this goal of responding to a threat to peace by action of the Security Council or to a breach of the peace, rather, two times: in Korea in 1950 and in Kuwait in 1990 and 1991.

¶94 And on both of these occasions, the Security Council did not go through the motions of acting through the procedures set out in the Charter for responses by the UN to threats of the peace, but rather it acted under Article 51. That is, it called on the United States and its friends to undertake an action of collective self-defense. So, to make a stand in defense of the narrow interpretation of Article 51 and its sacrosanct nature without putting something else in place to replace the protections that were implicit in

Article 47 and the accompanying articles is a real failure of responsibility on the part of the Panel.

JAN WOUTERS:

¶95 Thank you. Thank you very much. Ladies and gentlemen we have, I think, a rich variety of comments from experts. I would like to thank our distinguished panel members for the insights they have shared with us.