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LECTURE

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A NEW U.N. FOR A NEW CENTURY

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There are heads of state or of government from 191 nations in New York this week. It is the sixtieth anniversary of the negotiation and the adoption of the United Nations Charter. This sixtieth anniversary summit was billed as essentially another San Francisco Convention, as a time of sweeping reform.

The Secretary General called for a High-Level Panel to consider reform almost two years ago, when he stood and declared, after the war in Iraq, that the United Nations had come to a “fork in the road” and that it was time to decide how to adapt the institution to not the world of 1945 but the world of 2005.¹ Now, right now, we are seeing the fruition of that effort.

There was one article about the U.N. in *The New York Times* today, and that was not on the front page; it was quite buried.² I didn’t have a chance to read the *Post*, but if I had, I’m willing to bet there was a lot about the traffic, but probably nothing about what is actually taking place at the U.N. So at least for the people of the United States, this is a long way from San Francisco.

More generally, I think no one, no matter how hard they would prefer to let hope triumph over expectation, thinks that this summit will come anything close to adopting the kind of reform platform that is needed. I hope I am proved wrong, but I am willing to stake my reputation that I will not be.

So what I would like to do this afternoon is to talk about the three most important reforms that were proposed by the High-Level Panel and then by

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1. Kofi Annan, *In Annan and Chirac’s Words: ‘Fork in the Road’ and ‘Call a Summit,’* N.Y. Times, Sept. 24, 2003, at A13.

2. See David E. Sanger & Warren Hoge, *Bush Thanks World Leaders and Takes Conciliatory Tone,* N.Y. Times, Sept. 15, 2005, at A10.

the Secretary General himself. It was a long process, which I won't take you through, but I will distill the three reforms that I think were most important and that are now still on the agenda. Then I will talk about what I think will actually happen, not only as a result of this two-week period when no one can go anywhere in New York, but also in the coming months. I will conclude by talking about three alternative ideas that are not currently on the table but that I think could be, and in any event, since I have you as a captive audience, should be, if I were running the reform process right now.

Let me start with the argument for why we need to reform the United Nations. To begin with, we are sixty years on. That doesn't take a lot of elaboration. We face a whole host of threats, and many of them are new threats. The idea of a terrorist with a weapon of mass destruction could have been contemplated in 1945, but no one was actively worried. That, in itself, is just an example of a whole category of threats now posed by non-state actors. We read about this ad infinitum: that today a small group of people can threaten the security of an entire people in a way that once only a state could.³

So the first thing to think about is that when the framers of the U.N. Charter came together in 1945, they were thinking about a world in which the chief threat to international security came from one nation invading another, which meant that as long as you didn't have an army mobilized on your borders you were probably okay. So that's what the Security Council was set up to counter.

Now, of course, all of you, who live in New York, or like me, who come in and out of New York, are just as worried about a small band of people anywhere in the world possibly bringing an ordinary bomb, or of course something far more lethal, into this city. That is one set of challenges.

The other set of challenges comes from incompetence or ineptitude of a government itself. We have just seen a dramatic example of this danger with our own government's response, or lack of response, to Hurricane Katrina. But more generally, thousands, indeed millions, of people could die due to the failure of a health authority in Thailand to identify a case of bird flu fast enough, or to establish the necessary quarantine, or, as in the case of China, to admit that there is bird flu and that it in fact has crossed the border to infect people. I could tell you exactly the same story with respect to a terrorist cell in Khirgistan, or in terms of environmental disasters that we face, or indeed the threat even of an economic meltdown. In all these cases, our ability to meet these threats depends on the competence, the capacity, and the integrity not of international institutions, but of national governments all around the world.

In sum, we are facing a world of radically different threats with machinery invented in 1945, which is why we need reform.

3. See, e.g., Stephen E. Flynn & Lawrence M. Wein, Op-Ed., *Think Inside the Box*, N.Y. Times, Nov. 29, 2005, at A27 (describing "the possibility that a ship, truck or train will one day import a 40-foot cargo container in which terrorists have hidden a dirty bomb or nuclear weapon" as "Americans[']s . . . gravest cross-border threat").

The three most important proposals that were on the agenda for major U.N. reform are:

- The addition of human security to state security when we talk about global security or international peace and security.⁴
- The adoption of a “responsibility to protect,” meaning that all governments who are members of the United Nations have a responsibility to protect their own citizens; and if they fail in that responsibility, the international community has the collective right to intervene.⁵
- And third, the proposal to reform the Security Council.⁶

So let me go through each in turn.

1. State Security and Human Security. As I have just said, in 1945, when the founders of the U.N. talked about having five Permanent Members of the Security Council—Russia, China, Britain, France, and the United States—and talked about the Security Council as a whole being responsible for international peace and security, they were talking about state security. They were not worried about what would happen if a government or one ethnic group decided to massacre hundreds of thousands of fellow citizens. They worried only about what happened if one state invaded another.

Human security is, of course, the security of each individual from death or violence, not the state worrying about its own existence as a state, but the actual security of each individual within a state. From this perspective—of human security—it really doesn’t matter if you die from a bullet or you die from AIDS or you die from hunger. What matters is that you die.

So if we start thinking about security in the way we think about security domestically, then, all of a sudden, the roster of threats or challenges that we have to confront is much bigger than terrorism, even terrorism with weapons of mass destruction. Protection from the ravages of a predictable—and predicted—Category Five hurricane matters just as much as does protection from terrorism or violent conquest. And, surprise, surprise, the vast majority of the world’s nations think that threats like pandemic disease—not just AIDS but much more basic diseases that we have wiped out in the developing world—or poverty so extreme and debt loads so heavy that governments cannot even provide the basic infrastructure of security, health, and education to allow their citizens a way of improving their individual livelihood are much more important for the majority of the world’s people than are terrorism or weapons of mass destruction, which are the security priorities for the developed world.

So what the High-Level Panel recommended and what the Secretary General endorsed was what the Secretary General called “a larger

4. See United Nations, *A More Secure World: Our Shared Responsibility: Report of the Secretary-General’s High-level Panel on Threats, Challenges and Change 1-3* (2004), available at <http://www.un.org/secureworld/report2.pdf> (2004) [hereinafter United Nations, *A More Secure World*].

5. See *id.* at 65-66.

6. See *id.* at 81.

freedom.”⁷ He chose his terms carefully, speaking not of security, but of the freedom of nations and the freedom of individuals. He actually went back to our own Franklin Roosevelt, who outlined the four freedoms we were fighting for in World War II, and talked about not only freedom from violence and freedom from fear, but also freedom from want. He offered a much more integrated concept of security that would not say that terrorism is not important and that nuclear weapons or weapons of mass destruction generally are not important—of course they are important—but that they are part of a much bigger set of challenges, and we must address those challenges globally.⁸ When we talk about security—“we” meaning the world’s nations—we have to take account of what the entire community thinks about as threats to its security.

2. *A Responsibility to Protect.* From a pure international law point of view, and actually from a theory point of view, the responsibility to protect is the most important shift in the definition of sovereignty, in my view, since the Treaty of Westphalia of 1648, for the very simple reason that what it says is: “If you are a sovereign state and you are a member of the United Nations”—and virtually all sovereign states are—“then sovereignty doesn’t mean you can do whatever you like with your own people as long as you don’t harm a fellow sovereign; it doesn’t mean you have the right to act independently on the world stage and no one can interfere with what you do.”

Instead, the responsibility to protect means a kind of conditional sovereignty. It says, “I am a sovereign state, but by signing the U.N. Charter I agree that I have a fundamental duty to protect my own citizens from grave and systematic human rights violations,” meaning crimes against humanity, genocide, or systematic and widespread killing.

That is not very surprising in terms of human rights law—all nations around the world have signed on to various human rights treaties that require them to honor the human rights of their citizens—but putting it into the U.N. Charter has a different significance. It says, “You don’t have an absolute right of nonintervention. You have a right of nonintervention only as long as you are not yourself inflicting serious and systematic human rights abuses on your own citizens.” So in other words, the international community would have had not only the right but the responsibility to intervene in Rwanda, to intervene in Cambodia, to intervene in Darfur today.

If used wrongly, it is a loaded gun, and many critics see it as just a license for more imperialism. I would say we are at a place in the world where we must be able as an international community to respond to the kinds of massive atrocities we have witnessed over the last decade.

3. *Security Council Reform.* There is a simple way to think about this: The Security Council right now, in the words of one pundit whom I will not

7. Kofi Annan, *An Aspiration to a Larger Freedom*, *Fin. Times*, Mar. 21, 2005, at 17.

8. See United Nations, *A More Secure World*, *supra* note 5, at vii.

name, consists of two nineteenth-century powers, two twentieth-century powers, and one twenty-first-century power.

If that's not appalling even today, let's think about it in 2020. Let's imagine the Security Council without India, without Brazil, without any African country, purporting to be in charge of global security. Yes, China is a member of the Security Council, but that is the only twenty-first-century power. It will not represent anything like the majority of the world's people, and it also won't represent the economic and increasingly political centers of power in the developing world. So from the perspective of 2020, if the U.N. Security Council looks like it does today, the U.N. will not be relevant to the majority of the world's nations.

And indeed, when you put the case that way to diplomats in the U.N., they say, "Absolutely." But then it's like the old joke in Maine: "You just can't get there from here." You know, "Absolutely we need to change it, but who should we add? You want to add India; Pakistan says 'no.' You want to add Brazil; Mexico and Argentina say 'absolutely no way.' You want to add Germany; the United States says 'no way.' You want to add Japan; China says 'no way.' It's not going to happen, but it should."

If it doesn't, if we don't find a way to reform the Security Council to make it both a more representative and more effective body, then I think we are consigning the U.N. to irrelevance, at least on the issues it is supposed to handle now.

So that is my distillation of hundreds of pages of reports and articles about U.N. reform: state security and human security, responsibility to protect, and reforming the Security Council.

Now I want to turn to what I think is going to happen in the next two weeks, and as I said, really in the next year, because you are going to see an ongoing process.

The one thing I think you can be certain of is that everybody is going to leave New York agreeing to a whole host of further committees and further efforts. When in doubt turn to the dean's stock in trade: Refer things to a committee.

I don't think there is going to be Security Council reform. The "gang of four"—Brazil, India, Japan, and Germany—tried to get on. They basically tried to buy their way on in various ways. They failed. They now are mostly disgruntled.

And there isn't enough support for Plan B. This was a plan proposed by the High-Level Panel for an expansion of the Security Council that would not add more Permanent Members, but that would expand the number of rotating non-permanent members in a way that would effectively guarantee permanent representation of a gang of four and regular representation of a number of other developing and developed countries.⁹ I do not see the political will for that, above all on the part of the United States. The votes aren't there, and I'm not sure the will is.

9. See United Nations, *A More Secure World*, *supra* note 5, ¶ 253.

I don't think we are going to see a responsibility to protect adopted. That, as I said, is something that the Secretary General has put himself behind. This is, in part, because he was the director of peacekeeping during Rwanda and he feels that the world should have done something and that we must put ourselves in a legal position to be able to do something. There are too many states who see this as deeply worrying and, with the existing power imbalances in the world, will not sign on. So I don't think we are going to see that formally adopted. As an idea and as something that is already being endorsed, I would say in twenty years we will see it, but I wouldn't say we will see it now.

We will see a recommitment to the Millennium Development Goals. The Millennium Development Goals commit, among other things, to halve poverty by 2015 and to double global education.¹⁰ They offer an ambitious blueprint for global development.

And we might see, in return for a recommitment to the millennium goals and further efforts actually to achieve them, some progress on a definition of terrorism and the abolition of the Human Rights Commission, which is something the United States very much wants. Under the existing system, as you will remember, the United States failed to secure election to the Human Rights Commission a couple of years ago while Libya was chair.¹¹ Such a result does not do a lot for the U.N.'s credibility worldwide, something that Secretary General Annan has acknowledged.

Reform of the Human Rights Commission is very important for the United States. Thus you may see a bargain where the Human Rights Commission is abolished—no one may be able to agree on what to put in its place, but I think we will get agreement that it should not continue—in return for, possibly, a definition of terrorism, or efforts toward one, and work on development that recognizes state and human security, although without the kind of fanfare and the embrace of human security that I think is necessary to underpin real reform. I hope I am wrong.

So now let me talk about what I would do if I were sitting across town and faced no political obstacles, what I think we could try, what I think we still could try even as this summit comes to an end. Let me offer three ideas:

- One would be to reconfigure the U.N. in such a way that it works much more closely with the kind of trans-governmental networks that I have written about in my book.¹² I will flesh that out.
- Second would be to strengthen the caucus of democracies within the U.N. There is a fledgling caucus of democracies and there is a Community of Democracies. It is an institution that was created under President Clinton in Warsaw. It has had summits in Seoul and

10. U.N. Millennium Development Goals, <http://www.un.org/millenniumgoals/> (last visited Mar. 13, 2006).

11. See Barry James, *Libya to Head Rights Panel Despite U.S. Opposition*, N.Y. Times, Jan. 21, 2003, at A3.

12. Anne-Marie Slaughter, *A New World Order* (2004).

in India. You could build on that to strengthen a caucus of democracies within the U.N. that could be far more representative than the Security Council is now. I will talk about that.

- The third idea is one that I am actually stealing from Senator Joseph Biden, who I heard propose this in Washington a week ago. It is really the boldest idea of all. He suggested that we, the world, should come together in 2005 and recognize that the U.N. and the Bretton Woods institutions should focus overwhelmingly on development, that in fact we should recognize that the U.N. is not set up to actually be the global policeman in the twenty-first century. When the U.N. was created, the idea was that there would be a standing army, or the equivalent. We are so far from that. And yet, so much of what the U.N. can and does do so well speaks directly to the development goals that are, as I said, far more important to the majority of the world's people and the majority of the world's nations than are more traditional security concerns.

Let me spend a few moments on each of these ideas.

1. *Connecting U.N. Institutions to Government Networks.* I will resist giving you a three-minute summary of my book—you should all rush out and buy it of course, and if I summarize it you may feel less compelled to do that. But still, the overall argument in the book is that just as corporations are now organized in horizontal networks worldwide—if you read the business literature ten years back, what you see is that it is all about moving from hierarchy to network—so too are nongovernmental organizations organized in global networks. The global environmental movement, the global anti-land-mines movement, the global human rights movement—these are all networks of national organizations, just as, in turn, criminals are organized in terms of global networks. I highly recommend a book just about to come out, called *Illicit*, by Moises Naim,¹³ who edits *Foreign Policy*, on global criminal networks. It is not fun reading, but as future lawyers I strongly recommend that you read it.

Criminals, corporations, civic groups are all organized in networks. My argument, very simply, is that states—or rather governments—are too, increasingly so. In other words, there is an entire infrastructure of global governance that is not at the U.N. or at the World Bank or at the International Monetary Fund or at the World Trade Organization. It is the networks of antitrust officials, of police officials, prosecutors, financial regulators, intelligence operatives, militaries, judges, and even, although lagging behind, legislators.

One place to see this—and I will use this as my example of how you could work in the U.N.—is in health. If you have an outbreak of SARS or of bird flu, you need the World Health Organization; that is very important. But the World Health Organization in the end is only as strong and as

13. Moisés Naím, *Illicit: How Smugglers, Traffickers, and Copycats Are Highjacking the Global Economy* (2005).

effective as the health ministers and the public health capacity in all the different countries. So what you have to have is extraordinary communication between our own health authorities—between the Centers for Disease Control in Atlanta and our other public health authorities—and the public health authorities worldwide. They need to be working together all the time, to strengthen each other's capacity, to share information, to cooperate on specific problems, to share best practices. They are already doing this to some extent, but a lot of it is more haphazard than we would like.

So reimagine the U.N. Start by thinking of it as a peace-building commission or a democracy-building commission or a health agency, all the separate agencies or organizations that are now part of the larger U.N. system or offices within the U.N. itself. Don't think of these agencies or institutions as some kind of prototype world government—which is, of course, the classic black helicopters view of many too many people in this country. Instead, think of each agency or institution as a very important central node in a (I don't want to say a “vast network,” it sounds too much like a vast conspiracy) global network of national government officials who are experts in public health, or organizing elections, or post-conflict reconstruction, who are working hard together and sharing their expertise and capacity to tackle a specific problem.

Indeed, think of this network the way we might have wanted to think of a network linking FEMA with the state and county authorities all working together in the aftermath of Katrina if things had actually worked right. Just as a working network of federal officials and state and local officials provides real central expertise linked to strong and effective state and local capacity around the entire country, so does a global government network link central expertise—in the U.N. or other international institutions with national government officials in ways that permit maximum coordination, cooperation, and global assistance. So reinvent the way we think of the U.N., cut back on the bureaucracy, and link the various authorities in the U.N. to their regional and national counterparts instead of building up independent international capacity.

Moreover, add legislators to the mix. Why should we only have permanent representatives at the U.N.? Why couldn't you ask Senator William Frist, Speaker Dennis Hastert, and their counterparts from around the world to come together at the U.N. periodically as well, sharing their expertise with one another and with central U.N. officials?

2. *The Democracy Caucus.* I want to be very clear that I am not advocating a community of democracies in lieu of the U.N. That is, in fact, the cherished dream of a certain small group in Washington. They would be quite happy to dynamite the U.N. and start over with a community of democracies.

The problem with that vision is that we—the United States—would be the only member of that community. There is no other democracy in the

world that is prepared to leave the U.N. and come in with us in an alternative group.

However, a caucus of democracies within the U.N. is a very different thing. One of the reasons the U.N. is as hamstrung as it is and has the problems that it does is the power of the regional blocs. So why did Libya get elected head of the Human Rights Commission? Because it was horse trading with other countries in the African bloc, and there were lots of internal politics, and that's the way the votes go.

If we had a caucus of democracies that served as an alternative forum, then when the machinery of the Security Council or other U.N. agencies got completely jammed up, you could go and see if you could get an agreed solution in the caucus of democracies. At the very least, you would put a lot of pressure on other parts of the institution to work better. At a minimum, the possibility of even bringing an issue to the democracy caucus to get support could help break some of the current bureaucratic logjams.

At a maximum, you could actually start creating a lot of incentives to put some more power in the hands of a group of democracies. And I don't mean just developed country democracies. Again, think about the four countries that want to be on the Security Council—there's Germany and Japan, but there's also India and Brazil. Those are democracies that would be leaders in a caucus of democracies. There are many other developing country democracies—Botswana, Mexico, South Korea, to name just three—who also have a voice.

It is, I think, possibly the best we are going to do on Security Council reform. So I would propose pushing this idea, while at the same time making sure that it does not become an alternative to the U.N. itself.

3. Focus on Development. And finally, Senator Biden's suggestion. Now, on the one hand, you could say, "Wait a minute. Yes, human security is important, development is critically important, the threats that imperil the lives of the majority of the world's people should be addressed. But let's not forget traditional security. Let's not forget terrorism. Let's not forget states still being able to invade others, even if recently the chief example of that phenomenon has been the U.S. invading other states. But clearly, weapons of mass destruction—states developing weapons of mass destruction—are real and frightening threats."

And I absolutely accept that they are. So you can't just write them out of the agenda. You can't just decide that they are not going to be an issue when we talk about global security. You've got to keep these traditional security issues. As a practical matter, I think that they will continue to be the primary province of the Security Council.

But think about the suggestion for a moment. Think about a world in which you said, "This global security system in terms of traditional security is not working. The United States is not obeying. Other countries are not stepping up to the plate as much as they need to. You have a Security Council that passed countless resolutions against Saddam Hussein and no one ever paid any attention. So we are going to start over on that

dimension. We are going to actually start over and see if we can come up with a global institution that works. But we have the United Nations, and it is an extraordinary repository of expertise, of commitment, and of legitimacy as a genuinely global forum, and we are going to turn it, together with the Bretton Woods institutions, toward building countries, strengthening countries, addressing human security needs.”

It would be much less politically controversial. It would be the U.N. that the majority of the world’s countries actually want; and arguably it would be a more effective United Nations than the one we actually have or, I fear, the one we are going to get if this process continues.

The world has previously only found the will to organize itself globally, institutionally, after a global cataclysm, after World War I with the League, flawed and failed as it was, and after World War II when we created the United Nations. I don’t think we should wait for World War III—or as some would say, World War IV, if you think the Cold War was World War III. We have had Rwanda, we have had the tsunami, we have had Iraq, we have had Kosovo, we have right now Darfur and global terrorist networks growing apace. What more do we need?