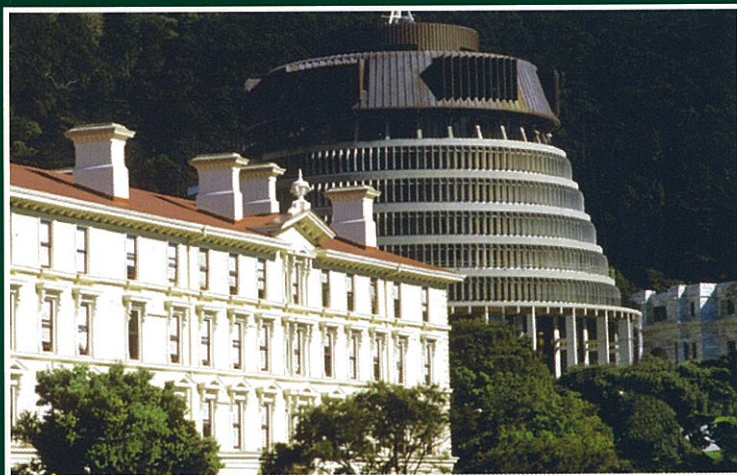


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SPECIAL CONFERENCE ISSUE
17TH ANNUAL ANZSIL CONFERENCE: THE FUTURE OF
MULTILATERALISM IN A PLURAL WORLD

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*Te Whare Wānanga
o te Ūpoko o te Ika a Māui*



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PROSPECTS FOR THE MULTILATERAL SECURITY SYSTEM

*Colin Keating**

In this address, Colin Keating provides an overview, from a practitioner's perspective, of the multilateral security framework and examines the prospects for multilateralism.

I Introduction

Now is a good time to examine the prospects for multilateralism and to ask whether we can look forward to real change in the way that peace and security is maintained.

This address begins with a look back to 1945 and the multilateral security framework that was established at the end of the Second World War. It then presents some current statistics. Next, it asks why multilateralism matters to Australia and New Zealand. It then reviews why multilateralism has become so important in recent times. Finally, it provides some thoughts about the huge challenges facing the multilateral security framework and some reflections about the future.

II The 1945 Multilateral Security Framework and its Recent Evolution

This distinguished audience does not need a detailed analysis of the legal framework created in 1945 for the maintenance of international peace and security. Perhaps it is enough to simply recall the radical nature of the decision taken in 1945 when the United Nations Charter was adopted. For the first time since the emergence of the sovereign nation state, a multilateral political decision-making body was created which could bind a sovereign state without its consent. More radically still, the Security Council was empowered to take such a decision by majority vote. This huge change in international law was subject to one important qualification. Five states, the so-called "permanent five" (P5), were granted the exceptional right that decisions could not be imposed on them without their consent. This has come to be known as "the veto". But perhaps it is better understood as a legal formula that allows those five states, when they choose, to continue to enjoy the pre-1945 law which favoured consent and sovereignty.¹ All other states after 1945 moved into a

* Executive Director, Security Council Report, Columbia University New York.

¹ China, France, the Russian Federation, the United Kingdom and the United States, see Charter of the United Nations, art 23.

new world where they could be subject to legally binding decisions arrived at without their consent – or even without their knowledge.

As is well known, with only a few exceptions, the Cold War condemned the security elements in this ambitious new architecture to the freezer for most of the next forty years.

When the Cold War came to an end, there was a surge of optimism and activism and some even more radical developments in international law emerged in the 1990s. The threshold for intervention by the Security Council was dramatically widened. The procedural question of what constitutes a matter of international peace and security was stretched from the original understanding – that it applied only to conflicts between sovereign states – to include internal conflicts and even civil wars.² Significantly, the scope for Security Council action was expanded to cover the actions of individuals. This has been applied to peace spoilers,³ financiers of internal conflict,⁴ members of non-state armed factions⁵ and terrorists.⁶ The second development was substantive. The Security Council began using its powers to bind all states by imposing substantive international legal obligations. These have included requirements for the enactment of very specific legislation, reporting obligations and accountability.⁷ Finally, the Council launched onto entirely new territory with the creation of tribunals designed to hold individuals criminally liable for various defined crimes.⁸

There is still controversy about some of this evolution of international law. It has also resurrected the controversy – in which Australia and New Zealand were leaders in 1945 – about the relevance and justice of the veto.

III Statistics

Let us start with some statistics. There are currently 36 countries being addressed by the Security Council.⁹ That represents almost 20 per cent of the membership of the United Nations

2 Ibid, art 39. Boutros Boutros-Ghali *An Agenda for Peace* A/47/277 (1992).

3 SC Res 1237, S/RES/1237 (1999) (imposed targeted measure on members of the National Union for the Total Independence of Angola).

4 SC Res 1596, S/RES/1596 (2005) (expanded the sanctions regime in the Democratic Republic of the Congo).

5 SC Res 1333, S/RES/1333 (2000) (imposed sanctions on Usama Bin Laden and those associated with him).

6 SC Res 1267, S/RES/1267 (1999).

7 SC Res 1373, S/RES/1373 (2001).

8 SC Res 827, S/RES/827 (1993) (established the International Criminal Tribunal for the former Yugoslavia); SC Res 955, S/RES/955 (1994) (established the International Criminal Tribunal for Rwanda).

9 See the Security Council Report <www.securitycouncilreport.org>.

(UN). By any definition, when 20 per cent of the members of the international community are under discussion in the Security Council, there is a serious problem. The Stockholm International Peace Research Institute (SIPRI) has just reported that global military expenditure increased by 4 per cent in 2008 and 45 per cent over the past decade.¹⁰ It has now reached \$1,464 billion. Another key statistic is the number of peacekeeping operations now in the field to address these risks. There are currently 15 UN peacekeeping operations involving 113,000 deployed personnel – soldiers, civilians and police.¹¹ The estimated budget for the coming year is US\$8.2 billion – four times larger than the budget for the rest of the UN. In addition, there are 27 UN Special Political Missions addressing situations which have not yet broken into open conflict and are therefore not on the Security Council agenda.

When we speak of multilateral security responses this includes the deployments of forces by multilateral coalitions at the regional level most of which are being conducted under Security Council oversight and in close coordination with parallel UN operations. These include the African Union operation in Somalia, the NATO deployment in Kosovo and its International Security Assistance Force (ISAF) operation in Afghanistan, the regional deployments in Timor and Solomon Islands and, recently, various European Union (EU) led operations in Chad and the Democratic Republic of the Congo.

Research suggests that the number of people being killed in armed conflict has begun to reduce.¹² However, there are questions about the sustainability of this trend – not least because there are questions about the sustainability of the peacekeeping and peace building efforts which are keeping the overall level of violent conflict contained.

IV Other Elements of the Multilateral Security Framework

It is important to note that the multilateral security efforts undertaken by coalitions regionally, whether by the North Atlantic Treaty Organisation (NATO), the African Union (AU), the EU or others, are recognised in Chapter VIII of the UN Charter. There is now a wide consensus that multilateral action on peace and security is best undertaken not as a competition between UN action and regional or coalition action, but by both working together and enhancing the available synergies, resources and legitimacy.

A further dimension of the multilateral security framework is now recognised as well. In the late 1990s Secretary-General Kofi Annan focused discussion on the practical reality that security could

10 Stockholm International Peace Research Institute *SIPRI Yearbook 2009* (Oxford University Press, Oxford, 2009).

11 United Nations Department of Peacekeeping Operations "United Nations Peacekeeping Operations" (Background Note, 31 May 2009) <www.un.org>.

12 Human Security Centre *Human Security Report 2005: War and Peace in the 21st Century* (Oxford University Press, New York, 2005).

not be maintained without also addressing the root causes of conflict including poverty and lack of economic development, and that neither security nor development could be achieved without good governance and respect for human rights.¹³ These 3 pillars of security, good governance and economic development are increasingly being included in the work of multilateral partners. They are also now reflected in "post conflict peace building".¹⁴ In 2006, a new UN organ, the Peacebuilding Commission, was established to harmonise multilateral efforts on the political, social, economic governance and security reforms needed to sustain peace.¹⁵ It reports to both the Security Council and the General Assembly.

Another key element of the security architecture is multilateral disarmament negotiation. Weapons of mass destruction have been a major focus in the foreign policies of Australia and New Zealand for over 30 years. They have been the source of some deep differences between the two countries – especially over the exclusion of nuclear weapons from ports.¹⁶ But there have also been points of strong common ground, including joint action against nuclear testing,¹⁷ the elimination of chemical weapons,¹⁸ and the use of international law – in particular, two key cases relating to nuclear weapons before the International Court of Justice.¹⁹

In 1945, the UN Charter specifically mandated the Security Council to take the lead in disarmament and produce concrete plans for arms control.²⁰ The Charter recognised the huge opportunity cost involved in weapons programmes that would divert resources away from economic and social development. However, the Security Council became mired in Cold War politics and conspicuously failed to deliver on this task.

Multilateral mechanisms eventually emerged in Geneva which produced a variety of new pieces of international law including treaties relating to nuclear tests,²¹ weapons in outer space,²² chemical

13 Kofi Annan "The Fifth Nelson Mandela Annual Lecture" (Johannesburg, South Africa, 2007).

14 United Nations Peacebuilding Commission "Mandate of the Peacebuilding Commission" United Nations <www.un.org>.

15 *The Peacebuilding Commission* GA Res 60/180, A/RES/60/180 (2005); SC Res 1645, S/RES/1645 (2005).

16 "Lange's Impact on NZ and the World" *BBC News* (14 August 2005) <<http://news.bbc.co.uk>>.

17 *Nuclear Tests (Australia v France) (Judgment)* [1974] ICJ Rep 253; *Nuclear Tests (New Zealand v France) (Judgment)* [1974] ICJ Rep 457.

18 The Australia Group "The Australia Group: An Introduction" (2009) <www.australiagroup.net>.

19 *Nuclear Tests (Australia v France)*, above n 17; *Nuclear Tests (New Zealand v France)*, above n 17.

20 Charter of the United Nations, art 26.

21 Comprehensive Nuclear-Test-Ban Treaty (opened for signature 10 September 1996, not yet in force).

22 Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (opened for signature 27 January 1967, entered into force 10 October 1967).

weapons²³ and biological weapons.²⁴ But many key disarmament issues remained intractable at the global multilateral level. These included not only the basic nuclear issues but also wider issues of verification and issues with weapons like land mines, cluster munitions and small arms.

Ironically, the end of the Cold War did not improve the prospects for security through multilateral disarmament. On the contrary, in the 1990s, the Committee on Disarmament went into its worst period. For over a decade it was not even able to reach agreement on a programme of work. This may have been part of a wider trend by large powers and particularly the United States to scorn multilateral negotiation. But it is important to note that in June 2010 in Geneva the Obama administration came with a fresh approach and an ambitious but very fragile agreement was reached on a programme of work for 2009.²⁵

V *Why does Multilateralism Matter to Australia and New Zealand?*

I think the answer is clear – and it has very important legal dimensions. First, Australia and New Zealand discovered relatively quickly after 1945 that many of the issues of concern to their people were increasingly being determined by multilateral negotiations in New York, Geneva or other global capitals. Law was being created multilaterally that would determine the rules for trade access and protection of natural resources, the law governing sale or transport of goods, environmental protection frameworks, rules for the conservation and protection of wildlife, policy governing the safety of aircraft and ships, the passage of hazardous wastes through nearby ocean space, the protection of the rights of their indigenous peoples and many other key elements of public policy. In all these areas, and many others, rules were being progressively locked into frameworks of international law. This meant that countries like Australia and New Zealand would eventually find, across much of the spectrum of public policy, that their legislative options would be constrained. In practice, they would become "law takers" since their scope to trade or work outside the multilaterally agreed rules would be seriously constrained.

The New Zealand Law Commission, in its 1996 study entitled "A New Zealand Guide to International Law and its Sources", concluded that more than 133 statutes of the New Zealand Parliament were constrained in whole or part by rules of international law – most of them drawn up in multilateral forums.²⁶ That number has surely grown significantly in the intervening 13 years.

23 Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (opened for signature 13 January 1993, entered into force 29 April 1997).

24 Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction (opened for signature 10 April 1972, entered into force 26 March 1975).

25 United Nations Conference on Disarmament *Draft Decision for the Establishment of a Programme of Work for the 2009 Session* CD/1863 (2009).

26 Law Commission *A New Zealand Guide to International Law and its Sources* (NZLC R34, 1996).

The second part of the answer is that both Australia and New Zealand found that they were extremely good at multilateral diplomacy and negotiation. It was a format that enabled them to play to their strengths and offset the size disadvantage which so often hampers the bilateral negotiator. They were good at building pragmatic alliances with states which shared a common concern and at building interest groups across traditional boundaries. The "Coastal States Group" in the Law of the Sea negotiations comes to mind as does the "Cairns Group" in the Uruguay Round of World Trade Organization negotiations. They developed skills in bridge-building and finding common ground that often elude larger powers. They built up credibility as tough but effective brokers of solutions. True, Australia went through a period in the late 1990s and early 2000s in which it put aside its multilateral clothes in favour of what has been called a "Deputy Sheriff" role. But the Rudd Government seems to be making a determined effort to recover. Its bid for election to the Security Council in 2012 will be the key test of its success.

A small sample of the major multilateral successes that Australia and New Zealand have achieved includes:

- (a) the 200 mile EEZ – with valuable new rights to fisheries and other resources;²⁷
- (b) the extended continental shelf regime giving control over mineral resources;²⁸
- (c) the success of the world trade negotiations in the Uruguay Round– creating a rules based framework for trade with innovative binding dispute settlement mechanisms;²⁹
- (d) the Antarctic fisheries convention – which opened and conserved a valuable new southern fishery;³⁰
- (e) the High seas fishery rules, agreed in 1995;³¹
- (f) the prohibition of drift net fishing both regionally,³² and in the UN General Assembly;³³

27 United Nations Convention on Law of the Sea (opened for signature 10 December 1982, entered into force 16 November 1994), part V.

28 Ibid, part VI.

29 World Trade Organization "Understanding the WTO – The Uruguay Round" (2009) World Trade Organization <www.wto.org>.

30 Convention on the Conservation of Antarctic Marine Living Resources (opened for signature 5 May 1980, entered into force 7 April 1982).

31 Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (opened for signature 4 December 1995, entered into force 11 December 2001); A/CONF 164/37 (1995).

32 Convention for the Prohibition of Fishing with Long Drift Nets in the South Pacific (opened for signature 24 November 1989, entered into force 17 May 1991).

- (g) leadership in the Antarctic Treaty guaranteeing both security and environmental objectives;³⁴
- (h) leadership in the UN Security Council in 1993/1994;
- (i) successful initiatives in the UN General Assembly to protect peacekeepers and other UN personnel by authorising universal criminal jurisdiction over attackers;³⁵
- (j) leadership in the UN to establish a new legal framework to protect persons with disabilities – the Disabilities Convention;³⁶
- (k) a successful resolution in 2007 in the UN against the death penalty involving brokering a delicate coalition of both western and non-aligned countries;³⁷

VI *Why have Multilateral Solutions become an Essential Dimension in Most Conflicts?*

The practical reality of the globalised interdependent world has been driven home very acutely over the past six months; first, with the rapid and complete spread of the financial crisis from the United States to the furthest corners of the world and, secondly, with the H1N1 swine flu epidemic becoming a global pandemic.³⁸

The old aphorism that all politics is local may still be true. But it is equally true that the effect of bad political decisions taken locally even in small or remote countries can very quickly produce waves that are felt globally. One need only think of four cases currently in the news: Fiji, Zimbabwe, Myanmar and North Korea.

The global impact is due in part to an irreversible change in technology and knowledge. The reach of the international media and digital information has also played a major role. News about events crosses borders instantaneously and the newly strong voices of public opinion and the NGO community have also played a key role. The spread of international trade and finance and the mobility of people, ideas and culture across borders has connected peoples and their problems and

33 *Large-Scale Pelagic Driftnet Fishing and its Impact on the Living Marine Resources of the World's Oceans and Seas* GA Res 44/225, A/RES/44/225 (1989).

34 The Antarctic Treaty (opened for signature 1 December 1959, entered into force 23 June 1961).

35 *Convention on the Safety of United Nations and Associated Personnel* GA Res 49/59, A/Res/49/59 (1994).

36 *Convention on the Rights of Persons with Disabilities* (opened for signature 30 March 2007, entered into force 3 May 2008).

37 *Moratorium on the Use of the Death Penalty* GA Res 62/149, A/RES/62/149 (2007).

38 United Nations "World Facing Global A(H1N1) Flu Pandemic, Announces UN Health Agency" *United Nations News Centre* (11 June 2009) <www.un.org>.

created a demand for interconnected solutions to deal with these complex interconnections. This, in turn, has increased the interest of governments around the world in responses that are multilateral in character.

Few, if any, of the current complex security issues can be resolved by unilateral action, national initiatives, leadership by a single country or bilateral diplomacy. In almost all cases there is a need to address the root causes of conflict, not just the symptoms. For reasons of cost as well as legitimacy a wide coalition of international partners and a legal umbrella such as a Security Council resolution are the options most preferred – even by the great powers.

It is worth recalling that even the arch exponent of unilateralism, United States President George W Bush, when confronted in his second term of office with the consequences of military overstretch and shrinking US power, turned back to collective security options under international law through the United Nations Security Council.³⁹ This trend began as early as 2003 and was not limited to regions where new problems were emerging, but significantly, also occurred in places where new efforts were seen to be required to confront terrorism such as Afghanistan and Iraq.⁴⁰

Less often do we hear the maxim once common in United States conservative circles that the best course in a war, especially an internal conflict, is to let the parties fight it out. The risks to the wider international community arising from the cross-border implications of violent conflict are now better understood and there is growing concern about such conflicts becoming new breeding grounds for extremists.

The G20 meeting in London on 2 April 2009 has reinforced the fact that solutions to the financial crisis will have to be broad based and inclusive and can only be sustained with a new multilateral regulatory architecture.⁴¹

Although there has been a renewed recognition of the need for a multilateral dimension to problem solving, the instinct for national initiatives has not disappeared nor are national leadership initiatives unimportant. A fully integrated approach in which all the multilateral, regional and national tools of diplomacy are harnessed together is a healthy and necessary element in addressing peace and security issues whether large or small. When there is a synergy between multilateral and

39 George W Bush "Address to the United Nations General Assembly" (United Nations Headquarters, New York, 23 September 2008).

40 SC Res 1617, S/RES/1617 (2005) (significantly broadened the mandate of the Committee and the Monitoring Team on Sanctions established by resolution 1267); SC Res 1401, S/RES/1401 (2002) (established United Nations Assistance Mission in Afghanistan); SC Res 1483, S/RES/1483 (2003) (approved UN humanitarian role in Iraq).

41 Group of Twenty "Global plan for recovery and reform: the Communiqué from the London Summit" (2009) London Summit <www.londonsummit.gov.uk>.

bilateral outcomes, political leaders are more likely to get popular support for whatever is decided in multilateral forums.

VII Current Problems Facing Multilateralism

Almost 20 years ago, the end of the Cold War and the election to the White House of Bill Clinton – a liberal with multilateral inclinations – raised hopes around the world that a new era was at hand. At the time there was a sense that, at last, the potential of the 1945 system of collective security, centred on the United Nations and the Security Council, would finally be realised. This vision was not simply an act of faith in the legal framework of the Charter and the untested machinery of multilateral institutions. There was also a sense among many hard-headed practitioners that collective security as envisaged in 1945 would now work because it was buttressed by the leadership of the sole remaining superpower and enjoyed active support from the other major powers who appeared willing to blend collective action with and through their bilateral and regional diplomacy. The United Kingdom and France responded quickly and commendably intensified their commitment to and resources for multilateral solutions. More cautiously, but on the whole co-operatively, China and Russia supported the steady expansion of multilateral decision-making. The collective 1991 response to the invasion of Kuwait suggested that a much brighter future lay ahead.⁴²

This optimism was dashed in the mid-1990s with a succession of failures. Bosnia, Rwanda and Somalia still haunt the international security system. It is important to be clear – these were not only failures of the United Nations as an institution. They were failures of policy and political will at the national level by many of the players involved and, most importantly, by the major powers.

But the failures of the 1990s were not only related to specific conflict situations, they were also systematic and extended to thematic multilateral issues as well. For example, all disarmament negotiations in Geneva were effectively blocked by one or more of the major powers. Further, collective action against climate change was rejected by some essential participants – and it is worth remembering that for many island countries climate change is not an environmental issue. It is an existential security threat.

In the late 1990s a succession of equally grave failures occurred on issues which the great powers had deliberately decided to manage through direct initiatives or regional diplomacy – essentially outside the United Nations. This period saw:

- the neglect of Afghanistan and its collapse into the hands of the Taliban;
- the growth of radical Islamic terrorist forces and their emergence as a dangerous global security threat;

42 SC Res 661, S/RES/661 (1990) (imposed sanctions on Iraq following the invasion of Kuwait); SC Res 678, S/RES/678 (1990) (authorised the use of military force against Iraq).

- the failure of nuclear non-proliferation with nuclear tests by India and Pakistan, proliferation by the Khan network to Libya, North Korea, Iran, Syria and elsewhere, as well as the persistent failure to address proliferation activities by Israel;
- the descent of much of Africa into horrific internal conflicts;
- the failure to build genuine multilateral solutions to situations such as Kosovo – which resulted in unilateral NATO bombing and Georgia – which resulted in a unilateral Russian intervention; and
- the demise of two critical negotiations personally managed by President Clinton himself – the Israel/Syria negotiations and the Camp David negotiations with the Palestinians.

So the international security architecture barely limped into the 21st century. The Millennium Summit,⁴³ which attempted to broker an historic reform of international legal structures, was unable to achieve the necessary momentum.

Nevertheless, during this period, the United Nations did manage to achieve some minor but important successes in multilateral security. These included the responses to conflict in Timor Leste,⁴⁴ Sierra Leone,⁴⁵ Liberia⁴⁶ and the Democratic Republic of Congo.⁴⁷ However multilateralism also suffered a number of further setbacks - not least the "Oil for Food" scandal - where the UN was unjustly blamed for decisions which were really under the control of the major powers.

Ultimately, four negative developments have dominated the challenges to multilateralism in the last decade. The first – and the one with perhaps the most enduring consequences – way beyond Iraq itself, was the misguided and mishandled United States war in Iraq. Unilateralism, incompetence, horrific civilian casualties, grave and systematic abuses of prisoners and breaches of the law of war combined to undermine United States' respect and credibility. A harsh philosophy that insisted that "you are with us or against us" left many friends of the United States embittered and the Security Council in a parlous state. But equally significant in the long term was the bursting of the invincible single superpower bubble. Friends were surprised and enemies emboldened when it became clear

43 *United Nations Millennium Declaration* GA Res 55/2, A/RES/55/2 (2000).

44 See Security Council Report "Publications on Timor-Leste" <www.securitycouncilreport.org>.

45 SC Res 1270, S/RES/1270 (1999) (established United Nations Mission in Sierra Leone); Security Council Report "Publications on Sierra Leone" <www.securitycouncilreport.org>.

46 SC Res 1509, S/RES/1509 (2003) (established United Nations Mission in Liberia); Security Council Report "Publications on Liberia" <www.securitycouncilreport.org>.

47 SC Res 1279, S/RES/1279 (1999) (restructured UN personnel by establishing United Nations Organisation Mission in the Democratic Republic of the Congo); Security Council Report "Publications on the Democratic Republic of the Congo" <www.securitycouncilreport.org>.

just how limited the real military capacity of the United States was when confronted with rag tag but determined opponents applying asymmetrical warfare techniques. Despite talk of military options being "on the table" in other contexts, it became progressively clear that even the United States was already seriously over-extended. This had an impact on situations such as Darfur when Khartoum judged that tough talk from Washington was just talk and perhaps similar conclusions were also drawn in Tehran and Pyongyang.

The second key development was the 2001 attack on New York and Washington DC by Al Qaeda. This underlined graphically that non-state actors are critical players in the security equation. Previously it had been assumed that only states would present a global security threat. But 9/11 underlined that a new extended period of grave security risk was now at hand. The impacts in Pakistan are all too apparent.

Unfortunately, September 11 was also an opportunity for change that was squandered. Preferring its narrow unilateralist model, the United States failed to capitalise on the universal outpouring of support and lost perhaps the first and only real opportunity since 1945 to rebuild the collective security architecture and adapt multilateralism to meet the threats and realities of the 21st century. The residual lesson has been learned – the new threat from non-state actors cannot be addressed effectively by unilateral national initiatives or operations. A fully integrated approach with multilateral dimensions is essential.

The third key development was the failure to pursue peace in the Middle East. Probably, after the failure of President Clinton's efforts with Israel, Syria and the Palestinians,⁴⁸ a break was called for. But instead of a strategic pause, the Bush Administration decided that it simply did not want to be in the business of peacemaking.⁴⁹ The other major powers and big players like the EU, worried about their relations with the Americans, chose not to challenge this approach. The result was that for almost seven years there was little real pressure on the protagonists and instead a touching but misguided insistence on elections. New, intransigent players emerged on both sides to fill the vacuum caused by lack of meaningful progress in peace negotiations. A whole new paradigm of violence emerged consuming Lebanon,⁵⁰ the West Bank, parts of Israel and most recently Gaza.⁵¹

48 Martin Indyk *Innocent Abroad An Intimate Account of American Peace Diplomacy in the Middle East* (Simon and Schuster, New York, 2009).

49 George W Bush said that "there's no Nobel Peace Prize to be had here", quoted in Indyk, above n 48, at 379. "We don't do diplomacy," one of Bush's senior aides boasted to me at the time, "[w]e do policy!" Ibid, at 380.

50 See for example Security Council Report "Lebanon/Israel" (Update Report No 5, 20 July 2006) <www.securitycouncilreport.org>.

51 Security Council Report "Israel/Palestine: Gaza" (Update Report No 3, 26 January 2009) <www.securitycouncilreport.org>.

This situation produced an even more polarised electorate in Israel. The Obama Administration has re-engaged but the task is now much harder than it was a decade ago.

The fourth development is the emergence of an unwritten, unspoken, but very real, coalition of states determined to challenge the legitimacy of and even frustrate the 1945 security system wherever possible. The seeds of this coalition have existed for a long time. In part, it reflects a rejection of the exceptional arrangement created for the P5 in the UN Charter. Newly emerging powers resent the fact that five countries can operate under the pre-1945 sovereignty and consent rules and block decisions they do not like. The evolution of Security Council powers in the 1990s, described above, only heightened these anxieties. This campaign against the P5 became stronger and more widely supported after the invasion of Iraq. From 2003, it took on the character of a campaign to contain the United States by subverting its capacity to use an important tool – its power in the United Nations and other multilateral forums. Ironically, many of the leaders of this group included countries which the Bush Administration saw as important bilateral friends or allies in their "war on terror" such as Egypt, Pakistan, India, South Africa and Brazil. They are supported by many other key players in Africa, Asia and the Middle East. Significantly, Russia and China also threw their weight behind these efforts – perhaps seeing an opportunity to degrade United States power while it was in a constrained position. On issues from Darfur⁵² to Myanmar,⁵³ from Iran⁵⁴ to North Korea,⁵⁵ from Zimbabwe⁵⁶ to Kosovo,⁵⁷ from human rights⁵⁸ to terrorism and UN reform,⁵⁹ United States leadership and initiatives (and to a lesser extent United Kingdom and French initiatives) were regularly blocked.

VIII Where are we Today?

In 2009, the multilateral system devised more than 60 years ago is still working, but it is creaking ominously. The combination of failures and missed opportunities since the end of the Cold

52 Security Council Report "Sudan" (October 2008) <www.securitycouncilreport.org>.

53 Security Council Report "Myanmar" (Update Report No 3, 19 September 2007) <www.securitycouncilreport.org>.

54 Security Council Report "Iran" (December 2006) <www.securitycouncilreport.org>.

55 Security Council Report "DPRK (North Korea)" (Update Report No 1, 8 April 2009) <www.securitycouncilreport.org>.

56 Security Council Report "Zimbabwe" (Update Report No 1, 9 July 2008) <www.securitycouncilreport.org>.

57 Security Council Report "Kosovo" (July 2008) <www.securitycouncilreport.org>.

58 Agency France Press "China blocks rights council consensus" (2007) *The Australian* <www.theaustralian.news.com.au>.

59 Colum Lynch "UN Members Undercut Annan's Quest for Reform" *The Washington Post* (Washington, 13 September 2005) <www.washingtonpost.com>.

War has only compounded the problem. Needs and expectations have expanded but capacity, effectiveness and legitimacy have not kept pace.

On the positive side of the ledger are the lessons that were learned from Bosnia and Rwanda. Peacekeeping has been greatly revamped.⁶⁰ Further reforms are needed but many of the weaknesses identified in the 1990s have been addressed although not completely cured. Personnel deployed by the UN now exceed 113,000. Member states are collectively meeting costs for multilateral collective security of over US\$8 billion per year. That is no small achievement when it comes at the same time as large military deployments under non-UN auspices.

Previous problems of UN doctrine,⁶¹ which left peacekeepers standing helplessly while civilians were massacred, are being addressed by the Security Council under its thematic work on "Protection of Civilians".⁶² Similarly Council decisions now routinely include requirements for peace operations to address the issues of children⁶³ and women in armed conflict.⁶⁴ These often introduce new elements into international law because they are binding in the context of the situation in question. Council decisions also often include requirements for demobilisation and disarmament of combatants,⁶⁵ reform of dysfunctional security sectors,⁶⁶ and the capacity to assist in reforming governance and human rights implementation.⁶⁷ In 2005 the World Summit, while no more successful than the 2000 Summit in terms of reforming multilateral structures, left two very significant legacies. The first was a doubling of the resources available for the High Commissioner

60 *Report of the Panel on United Nations Peacekeeping Operations* A/55/305 (2000).

61 Ingvar Carlsson *Report of the Independent Inquiry into Activities of the United Nations During the 1994 Genocide in Rwanda* S/1999/1257 (1999).

62 Security Council Report "Protection of Civilians" (Cross-Cutting Report No 2, 14 October 2008) <www.securitycouncilreport.org>.

63 Security Council Report "Children and Armed Conflict" (Cross-Cutting Report No 1, 15 April 2009) <www.securitycouncilreport.org>; Security Council Report "Children and Armed Conflict" (Cross-Cutting Report No. 1, 4 February 2008) <www.securitycouncilreport.org>.

64 SC Res 1325, S/RES/1325 (2000).

65 United Nations Department of Peacekeeping Operations "Disarmament, Demobilization and Reintegration of Ex-Combatants in a Peacekeeping Environment: Principles and Guidelines" (Lessons Learned Unit, New York, 2000).

66 *Statement By the President of the Security Council* S/PRST/2007/3; Security Council Report "Publications on Security Sector Reform" <www.securitycouncilreport.org>.

67 See for example SC Res 1746, S/RES/1746 (2007).

on Human Rights.⁶⁸ The second was the approval of the doctrine of "Responsibility to Protect",⁶⁹ a commitment to early action to prevent or if necessary forcefully halt genocide, crimes against humanity, ethnic cleansing and war crimes.

In specific country situations, there have been significant multilateral successes. Nepal is an important one in our region.⁷⁰ There has been a commendable recommitment to Timor Leste after two slip-ups with dreadful consequences.⁷¹ In Liberia, a fragile peace has been sustained.⁷² In Lebanon, although the Security Council was lamentably slow in acting in 2006,⁷³ the UN peacekeeping effort has been successful and the UN has provided an innovative new mechanism in the form of the International Tribunal to investigate and try those responsible for a range of terrorist acts.⁷⁴ A further positive development is the growth of innovative multilateral tools allowing international law to be employed in recent years in the area of individual personal responsibility for criminal acts.⁷⁵

But the negative side is equally clear. The statistics which I cited at the outset show that effectively 20 per cent of the community of nations are in conflict situations. That is surely a terrible indicator of the current global security pathology. It seems obvious that the 1945 architecture is not coping. In part, the system is not coping because the 5 permanent members of the Council resist modernising the traditional working methods of the Security Council. The determined blockage of the Security Council and misuse of the Human Rights Council, as part of a strategy of attrition against the US and former colonial powers and the veto – both actual and threatened – is also part of the problem.

68 *Budget Committee Takes Up Financing Estimates For Implementing 2005 World Summit Reforms* GA/AB/3714 (2005).

69 GA Res 60/1 at [138]-[139], A/RES/60/1 (2005) (adopted the Responsibility to Protect); SC Res 1674 at [4], S/RES/1674 (2006) (reaffirmed [138]-[139] of the 2005 World Summit Outcome Document).

70 Security Council Report "Publications on Nepal" <www.securitycouncilreport.org>.

71 *Timor Leste At Peace, President Tells Security Council A Year After Surviving Attempts On His, Prime Minister's Lives: Secretary-General Highlights Post-Crisis Elections, Smooth Transfer Of Power* SC/9598 (2009).

72 *Special Report of the Secretary-General on the United Nations Mission in Liberia* S/2009/299 (2009) (Latest Report of the Secretary-General highlighting the continued peace in Liberia).

73 Australian National Broadcasting Network "UN Lebanon Resolution 'Progressing Slowly'" *Australian Broadcasting Network* (Australia, 12 August 2006) <www.abc.net.au>.

74 Edoardo Greppi "The Evolution of Individual Criminal Responsibility Under International Law" (1999) 835 IRRC 531 at 553 <www.icrc.org>.

75 Edoardo Greppi "The Evolution of Individual Criminal Responsibility Under International Law" (1999) 835 IRRC 531 at 553; Rome Statute of the International Criminal Court (opened for signature 17 July 1998, entered into force 1 July 2002).

At the human level – which is ultimately the most important level – the losers in this cynical game over the past 20 years are the large numbers of civilians who have died in conflicts that might have been prevented or stopped if the multilateral system had been effectively upgraded to meet the needs of the 21st century

When people ask about the prospects for reform of the Security Council they assume that the important issue is adding new permanent members. My response to that is simply: "Why would you add to the permanent membership of the Council, a group which is even more conservative than the current P5 and most of whom are dedicated to blockage of Council efforts to address problems created by leaders like Robert Mugabe?" There is no doubt that the Council needs reform – but repeating and extending one of the mistakes of 1945 should not be one of them. I fear that we will have to live with the P5 for a while longer since they also have a veto over change and are not yet prepared to concede changes to their exceptional legal status.

This does not preclude a new approach – one that recognises that the world has changed and that effective multilateralism in the 21st century needs to be more inclusive. It is possible to develop a new privileged role for emerging powers – those with the resources to make a positive difference and the capacity to sabotage effective multilateral action if they feel alienated. But such a formula does not need to go so far as giving them either the veto or permanent status. In the span of human history nothing is permanent, especially in this era of rapid technological and economic change.

A new category could be established to recognise the twenty or so countries that currently have a claim to a global leadership role in terms of size of economy, population, military capacity and contribution to peacemaking and peacekeeping. This group might resemble, but not necessarily be the same as, the G20 that was assembled in London in March to address the financial crisis. Membership in this group would be temporary and would have to be renewed every 10 or 20 years. From this Group a fixed number of new Council members would be elected for an extended term – perhaps five years. Therefore they would not be permanent but would have enhanced status and would be accountable to the wider membership because of the need to be elected. Critically, there should be no new vetoes. The current provisions for election of 10 standard elected members of the Council should continue – to keep them all honest.

The prospects for change are far from assured. Some like Japan and Germany may be ready to accept half a cake rather than continue with the status quo. India however remains strongly opposed to the exceptional status granted to the P5 in 1945 and insists it should have the same status.

Whatever changes are made to the membership, however, if Council members keep on operating with the same culture that grew out of 1945 then improvement will be very marginal indeed. In my view, what is even more necessary than reform of membership is:

- reform to the Council working methods;

- a real and visible integration of multilateral and bilateral diplomacy – getting effective synergies from both; and
- a recognition by all Council members that the growth in the demands for multilateral solutions means a real need to resource their multilateral diplomacy accordingly (far too many countries come to the Council unprepared and with too little commitment of manpower and money to play the role that is necessary).

IX Challenges for Australia and New Zealand

Australia and New Zealand are very good at multilateralism. They have shown that it is an efficient and effective way to secure national objectives. I believe that it is possible to make the multilateral security system work much better for Australia and New Zealand – to simply stop responding to tired agendas and reallocate multilateral resources to newly prioritised areas.

Options in the area of security might include the following:

- Australia and New Zealand playing a much more substantial role in the multilateral dimensions of specific security issues. Afghanistan comes to mind immediately. It is possible to do this in a way which reflects and supports the inputs being made by the two countries in the field and, significantly, it can also provide a real opportunity for synergy with bilateral objectives.
- Australia and New Zealand integrating thinking in Wellington and Canberra with missions in New York and Kabul and properly resource a specific project on how to improve and change for the better the impact of the multilateral architecture on our overall efforts in Afghanistan.
- This same methodology could be applied to Timor Leste and in time other similar situations.
- Australia and New Zealand could make the practical commonsense reform of Council working methods a key priority issue – with a view to reaping the benefits when the two countries follow each other on the Council in the near future. This may include developing a joint initiative on the veto – perhaps focusing on an initial and reasonable expectation of the P5 that they would issue a declaration (as opposed to a Charter amendment) that they would never repeat the Rwanda experience and block a Security Council decision to use force to prevent or halt a genocide. This policy should be fully integrated into bilateral diplomacy as well.
- The countries could take a leading interest in the second generation process of peacekeeping reform which has commenced this year – with a longer term view to renewed engagement in peacekeeping once other current commitments can be phased down.

- Finally, building on the great work which Australia has been doing on "Responsibility to Protect", the two countries could forge, outside the UN, a small multilateral group of nations involving joint foreign and defence policy personnel to design realistic doctrine, management, planning and oversight arrangements against the day that the UN has again to confront and use force to prevent a Rwanda or Srebrenica type situation. The goal should be to develop a workable initiative which could then be shifted into UN strategy and planning.

X Conclusion

I wish I could paint an optimistic picture about the prospects for a new and dynamic chapter in multilateralism. But, sadly, history and a hard-headed analysis of recent events suggest that while there is some room for optimism, the prospect for significant improvement is murky. I hasten to add, however, that I am not suggesting that the prospects for resolving major peace and security issues through bilateral diplomacy or direct national initiatives are better.

To the contrary, I think we have now entered an era in which most major international issues – and certainly those of concern to Australia and New Zealand – can only be resolved effectively through multilateral mechanisms. However, the agenda is heavy – there are so many real urgent problems. The financial crisis will take priority in terms of available energy for structural reform. And the fiscal problems affecting most governments are a major constraint in their own right.

But history also shows that hard times often generate fresh thinking, better focus and commitment to creating a better world. I think we have an opportunity to be part of that if we want to take up the challenge.

