

Issues Before the UN's High-Level Panel—

The Use of Force

March 1-2, 2004

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Arden Conference Center
Harriman, New York

The Challenges

On November 4, 2003, the United Nations Secretary-General Kofi Annan announced the creation of a High-Level Panel on Threats, Challenges, and Change to assess the principal threats to international peace and security in the 21st century and to recommend changes to improve the effectiveness of international institutions like the United Nations in responding to those threats. The panel consists of 16 eminent international figures and is scheduled to release its report in December 2004. The Stanley Foundation and the United Nations Foundation, working in partnership, have convened groups of prominent scholars and practitioners to sharpen the issues for the secretary-general's panel. On March 1-2, 2004, the two foundations brought together experts at the Arden Conference Center in Harriman, New York, to focus on the use of force and self-defense in the post-9/11 context.

While there is a general awareness in the United Nations of the need for collective response in the face of terrorists whose sectarian militancy spurs them to spectacular destruction, there is deep division about what shape this response should take. What is the critical threshold for military force? Can preemption be exercised responsibly to counter would-be terrorists? Is it a viable strategy for disarming potentially adversarial "rogue" states? What are the consequences on the international system of the strategy's misuse? Does the United Nations' role in authorizing the use of force need to be revised or reaffirmed?

A rare window of opportunity has opened for meaningful discourse on the use of force. The Iraq debate represented a moment of contention and disunity that all sides would like to avoid repeating. Of all the issues the high-level panel will confront, few are as consequential for the international rule of law as the question of when states may take up arms against other nations. Now that President Bush had challenged the United Nations to demonstrate its relevance, the United States has a special responsibility to contribute to, if not lead, a constructive discussion of this question.

A Use of Force Agenda for the High-Level Panel

Threat perception matters. Participants agreed that a focus on threat perception would help lay the foundation for a productive debate on the use of force. Iraq was cited as a threat that states viewed with differing degrees of alarm. As one participant commented, "For those of us in Europe, Iraq looked like a regional problem. We didn't feel immediately threatened." Without a common understanding on what constitutes a threat, broad agreement on a military response will be hard to achieve. Another participant said, "If we don't agree on a problem, we can't agree on the solution."

Participants agreed that much of the world community does not regard the threat of terrorism and weapons of mass destruction (WMD) with the same alarm that the United States does. As a result, the notion that the United States is "protecting the world from chaos" is regarded skeptically by other nations. On the other hand, if the high-level panel could lay out a process by which member states could harmonize threat perceptions and offer mutual support and assistance, this would represent a major contribution.

A framework is needed for defining self-defense. One participant sketched a three-tiered framework to analyze the right to self-defense in light of the situations that warrant armed response. This analysis suggested that any expansion of the circumstances justifying self-defense will place a higher burden of proof on a state to show justification or seek authorization for the steps that it takes to “defend” itself.

First and most obvious, classical *self-defense* involves response to an armed attack that has been launched against one. Such cases do not need international sanction beyond the provision for the right of self-defense in Article 51 of the UN Charter.

The second level is *preemptive use of force*—military action in anticipation of what is believed to be an impending attack. While preemptive action is often accepted as falling within classical self-defense, a state mounting a preemptive strike bears a burden of proof that the attack it faced was indeed real and imminent. From a standpoint of accountability, that state could eventually submit to some kind of judgment (if only political) if subsequent events showed that there was no such immediate threat.

Preventive defense is the rubric for threats that lie just over the horizon. In addition to the question of imminence, preventive defense raises the issue of the magnitude of the threat. In other words, some perils—such as those associated with WMD—may be sufficiently dire to warrant action well before they are imminent.

Actions in this category, agreed most participants, carry a particular onus for obtaining multilateral support and authorization that a state needn’t seek if it is really under actual or imminent attack. Indeed the UN Charter’s Chapter VII provisions for collective action against “threats to peace” seem crafted precisely to provide for just such gathering storms; the Security Council’s Iraq resolutions, for example, seemed to point in this direction. Even though the council could not reach consensus on whether force was justified against Iraq in early 2003, its resolutions clearly demanded a verifiable end to Iraq’s WMD programs and held out the possibility of armed intervention. If the high-level panel at least discussed what threats might justify preventive defense, this could be a significant step toward building consensus on 21st century security threats.

The traditional steps on the path to the use of force should be kept in perspective. One participant noted that the UN Charter shows a presumptive series of steps that are to be taken in responding to threats. Indeed, the structure of the Charter itself walks through a sequence of actions in relation to disputes and threats to peace—determination, nonmilitary pressure, judicial settlement, and in the most dire cases, the use of force. Such a checklist reinforces the principle that forcible action should be a last resort. But at the same time, a conflict-averse insistence on exhausting these various options can at times bog down international deliberations and serve as an obstacle to timely and effective action against a genuine and growing threat.

A similar issue arose in the humanitarian intervention debate regarding the imperative to try other means short of military force. Any extended deliberation over peaceful means could, in that context, cost human lives if discussions linger on measures that clearly would not stop the bloodshed. The Responsibility to Protect Commission thus arrived at the standard that “every

nonmilitary option...has been explored, with reasonable grounds for believing lesser measures would not have succeeded.”¹ This principle could be applied more broadly to the use of force debate: all of the tools provided in the UN Charter should be considered with the recognition that some may not be appropriate.

Interpret rather than amend the Charter. The group agreed on the desirability of reinterpreting the UN Charter, rather than rewriting it, in order to make it more sensitive to today’s realities. While some saw the logic in reexamining the foundations of the Charter, most felt that such an exercise would “open a Pandora’s box.” In response to the charge that the UN norms have amounted to nothing more than “paper rules,” one individual argued that the United Nations’ weaknesses have been unfairly overemphasized following last fall’s debate on Iraq. “The UN Charter paradigm is not in ruins. It is the best set of international regulations anywhere and serves a purpose.”

There is a central UN role for dealing with failed and failing states. The lack of sound and basic governance in many countries is a major risk factor for many if not all of the 21st century security threats. If the high-level panel is looking for issues with leverage on problems and their prevention, at or near the top of their list should be failing states, which conference participants defined as “states with no ability to produce public goods.” Many of the world’s most destructive forces operate in the shadows where the rule of law does not extend. In Afghanistan, for example, the dominance of a fanatic militant movement gave Osama bin Laden a perverse sort of protection. While the idea of using the existing UN Trusteeship Council was soundly rejected as a political impossibility, the group agreed that some sort of new or revised instrument, organization, and approach to rehabilitate “ghost states” was necessary. Such a mechanism would be useful to depoliticize the current practice of “just having one superpower pick up the pieces.”

Work with the Bush administration to draw useful lessons from Iraq. Emphasis was placed on the need to develop an approach and vocabulary for approaching the current US administration about the lessons of recent experience. Afghanistan and Iraq provide valuable opportunities for institutional growth at both the international and national levels. It was underscored that anticipating and managing potential disagreements could lay an important foundation for change. One participant stressed the importance of engaging the Bush administration to help them “learn in a process without embarrassment.”

Regional organizations are useful for what they can become, not what they are. Participants agreed that the best way to approach the use of regional organizations was “not to look at their historical record, but rather their long-term potential.” However, there was no consensus about the current benefits of regional organizations. Many argued that regional organizations were inherently weak due to the lack of definition, an absence of standards and quality control, poor track records, and typically the dominance of a regional hegemon. One individual warned that “to rely on a regional organization that does not have the existing capabilities seriously risks delegitimizing that organization and the broader international community.” Another noted that

¹International Commission on Intervention and State Sovereignty, *The Responsibility to Protect*, (Ottawa: International Development Research Centre, 2001), p. XII.

these “houses built on sand” lack both interest and legitimacy, and often found crises dropped on their plates by default at the United Nations. Despite these concerns, others pointed to the episodic success of organizations such as the European Union and the Economic Community of West African States in understanding local dynamics better than the United Nations Security Council, as well as their ability and interest in acting more rapidly.

The value of functional organizations was also highlighted by participants, particularly those bodies set up to drive intergovernmental cooperation on current threats such as the Counter-Terrorism Committee. Such thematic bodies can help keep important issues on the international agenda without their being tied too closely to particular cases or crises.

Take the “duty to prevent” concept being presented by some analysts as a challenge to develop new and more effective approaches. The group agreed that the panel would have to recognize the nexus between WMD and terrorism as a key threat. In this context, the usefulness of American analysts Anne-Marie Slaughter and Lee Feinstein’s “duty to prevent” paradigm was discussed.² Some felt this approach conceded too much to the US administration and its view that nuclear weapons in the hands of some friendly states pose no threat and that WMD are not inherently problematic or destabilizing.

A number of participants stood by the traditional approach of the Non-Proliferation Treaty to stigmatize the weapons and call on the original five nuclear weapons states to cut their arsenals. Some practical problems of the existing nonproliferation regimes, however, were raised. While the NPT and its monitoring body, the International Atomic Energy Agency, focus on the nuclear facilities of the treaty’s non-weapons states, for instance, they missed the black market in technology over which senior Pakistani government scientist A. Q. Khan presided. But whatever one’s view of the existing system or the duty to prevent, the high-level panel should look for more effective ways to address the threat from WMD.

Conclusion

The secretary-general’s High-Level Panel on Threats, Challenges, and Change has a unique opportunity to enhance the international community’s understanding of the complex issues surrounding the use of force in a post-9/11 world. The time is ripe to interpret and apply the principles of the UN Charter to today’s threats. For more than 50 years, the Charter has guided the conduct of states and provided an avenue for collective security. The drafters of the Charter understood that the document and organization would need to evolve to respond to new global challenges. The newest set of challenges will require yet another step in the ongoing process to improve the body’s ability to serve as the indispensable organization.

² See Anne-Marie Slaughter and Lee Feinstein, “A Duty to Prevent,” *Foreign Affairs*, January/February 2004.

Participants

Chair

Richard H. Stanley, President, The Stanley Foundation

Rapporteur

Michael Pan, Senior Policy Analyst for National Security and International Policy, Center for American Progress

Participants

Zeeshan Amin, Research Officer, Department of Political Affairs, United Nations

Raul Benitez-Manaut, Professor, The National University of Mexico; Visiting Scholar, Center for Hemispheric Defense Studies, National Defense University

Raghida Dergham, Senior Diplomatic Correspondent, Al-Hayat/LBC; Political Analyst, NBC and MSNBC

Yasser El Naggar, Counsellor, Permanent Mission of the Arab Republic of Egypt to the United Nations

Tom J. Farer, Dean, Graduate School of International Studies, and Director, Center for China-United States Cooperation, University of Denver

Benjamin A. Gilman, President, The Gilman Group

Michael J. Glennon, Professor of International Law, The Fletcher School of Law and Diplomacy, Tufts University

José Antonio Guevara, Latin American and Caribbean Coordinator, Coalition for the International Criminal Court; Coordinator, Human Rights Program, Universidad Iberoamericana, Mexico

Paul Heinbecker, Distinguished Research Fellow, Centre for International Governance Innovation, and Director, Centre for Global Relations, Governance and Policy, Wilfrid Laurier University, Canada

Jeffrey Laurenti, Senior Advisor, United Nations Foundation

Corine Lesnes, UN Correspondent, *Le Monde*

Vijay K. Nambiar, Permanent Representative of India to the United Nations

William L. Nash, Senior Fellow and Director, Center for Preventive Action, Council on Foreign Relations

Jay M. Parker, Professor of Politics and International Affairs and Director, International Relations Program, Department of Social Sciences, United States Military Academy

Gunter Pleuger, Permanent Representative of Germany to the United Nations

Gwyn Prins, Alliance Research Professor, London School of Economics and Columbia University

David J. Scheffer, Visiting Professor of Law, Georgetown University Law Center

David Shorr, Program Officer, The Stanley Foundation

Marcello Spatafora, Permanent Representative of Italy to the United Nations

Paul R. Williams, Professor of Law and International Relations, Washington College of Law, American University

Observer

Minh-Thu Pham, Research Assistant, United Nations Foundation

The Stanley Foundation Staff

Susan R. Moore, Conference Management Associate

Affiliations are listed for identification purposes only. Participants attended as individuals rather than as representatives of their governments or organizations

The Stanley Foundation

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The Stanley Foundation
209 Iowa Avenue
Muscatine, IA 52761 USA
563-264-1500
563-264-0864 fax
info@stanleyfoundation.org

United Nations Foundation

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United Nations Foundation
1225 Connecticut Avenue, NW, 4th Floor
Washington, DC 20036
202-887-9040
202-887-9021 fax
info@unfoundation.org
Web site: www.unfoundation.org