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# Playing Poker at the U.N.\*

Paul H. Brietzke\*\*

## I. Introduction

The sprawling institutions of the United Nations (“U.N.”)<sup>1</sup> are the major sources of modern international law. These institutions generate a bewildering variety of treaties which are opened for nation-states to sign as well as create reams of international “soft” and customary law.<sup>2</sup> Founded more than sixty years ago,<sup>3</sup> the U.N. sought to reform itself through initiatives that responded to perceived mid-life crises. This reform process came to a head at the September 2005 World Summit. This Article seeks to explain why these initiatives largely failed, and why international law thus remains mostly unchanged. A poker-like model is adapted to explain U.N. processes.<sup>4</sup> The 2005 reform initiatives are then analyzed with the help of this model,<sup>5</sup> paying particular attention to human rights (non-)reforms and (the lack of) progress over implementing the Millennium Development Goals.<sup>6</sup> Assuming that this degree of

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1. See Roger Coate, Transcript, *U.N. World Summit Set to Begin*, WASH. POST, Sept. 14, 2005, 2 PM, <http://www.washingtonpost.com/wp-dyn/content/discussion/2005/08/30/DI2005083001391.html> (last visited Sept. 29, 2007). The U.N. is a “family” of intergovernmental agencies, including the International Labour Organisation, the World Bank, the World Trade Organization, etc. See *id.* Reform must be seen as systemic, “not just tinkering with things in New York.” *Id.*

2. See generally Paul H. Brietzke, *Insurgents in the ‘New’ International Law*, 13 WIS. INT’L L.J. 1 (1995). Although the U.N. is responsible for generating various sources of international law, subsequent implementation and enforcement are much more problematic.

3. The U.N. officially came into existence on October 24, 1945, when the Charter was ratified by a majority of signatories. See History of the United Nations, <http://www.un.org/aboutun/unhistory/> (last visited Oct. 29, 2007).

4. See discussion *infra* notes 13-86 and accompanying text.

5. See discussion *infra* notes 87-220 and accompanying text.

6. See generally *id.* I will follow the precedent set by Professor Philip Alston and reproduce the Millennium Development Goals in the Appendix. See Philip Alston, *Ships*

reform failure is undesirable, at least on balance, some remedies are then discussed.<sup>7</sup>

International law can be defined by its purposes. Four such interrelated definitions will be used in this Article. First and ideally, international law (and the other functions of the U.N.) seeks to enhance security and human dignity/capability. Second, international law seeks to implement a seeming paradox: global governance without a global government able to harmonize, integrate, and enforce laws and policies.<sup>8</sup> Such arrangements create what economists call “collective action problems.”<sup>9</sup> Analogies to the governance without government model can be found in the long history of Islamic or Judaic law and within indigenous groups lacking formal rulers and living by the reciprocal observances of rules.<sup>10</sup>

Third, while the profits from an economic globalization can usually be appropriated by particular corporations or countries, most of the rest of international law seeks to create “public goods”: human rights, peace, development, a healthy environment, etc. These goods belong to everyone, and no one, other than an altruist, wants to bear the costs of pursuing them. Unlike profits from an economic globalization, public goods cannot be appropriated for the pursuer’s sole benefit in the short run. Another set of collective action problems, or “market failures,” arise from the resulting under-supply of these public goods: only altruists will pursue them in the poker games to be described, except when these public goods serve some other game purpose. In other words, everyone wants to win by being a “free rider” who reaps good things paid for by others.<sup>11</sup>

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*Passing in the Night: The Current State of the Human Rights and Development Debate Seen Through the Lens of the Millennium Development Goals*, 27 HUM. RTS. Q. 755 app. (2005).

7. See discussion *infra* notes 221-34 and accompanying text.

8. See JOSEPH E. STIGLITZ, *GLOBALIZATION AND ITS DISCONTENTS* 21 (2002); Paul H. Brietzke, *Globalization, Nationalism, & Human Rights*, 17 FLA. J. INT’L L. 633 (2005); Tony Evans, *International Human Rights Law as Power/Knowledge*, 22 H. RTS. Q. 1046, 1054-55 (2005) (stating that “discipline” as social organization without the need for coercion is “a form of modernist power”); *id.* at 1065 (pessimists quote investment banker Robert Hormats—the “great beauty of globalization is that no one is in control.”). Evan’s opening argument shows his British heritage since it was first used by the poet Mathew Arnold when he was also Headmaster of Rugby School where the sport of loosely-organized mayhem originated. It later formed the ideology of British colonialism in Africa: governance with the fewest resources possible, sometimes called Indirect Rule.

9. See generally Eric A. Posner, *International Law: A Welfarist Approach*, 73 U. CHI. L. REV. 487 (2006); John C. Yoo, *Force Rules: U.N. Reform & Intervention*, 6 CHI. J. INT’L L. 641 (2005).

10. See *Globalization, Nationalism, & Human Rights*, *supra* note 8.

11. See *id.*; Yoo, *supra* note 9; Posner, *supra* note 9 at 520-22. Posner suggests the Rwandan genocide presents an example of this market failure. See *id.* In such a

Finally, international law provides the rules for the poker games that will be described. These games are about access to, and a measure of control over, an interchangeable wealth and power pursued through legal and other processes.<sup>12</sup>

## II. The Game's Afoot

Anyone who analyzes the international law produced by the U.N. necessarily uses an explicit or implicit model, if only to tame the intractability of the material. For example, two game theorists<sup>13</sup> won the 2005 Nobel Prize in Economics for modeling a relatively well-known means of conflict management which grew out of the Cold War. To paraphrase William Blake, I must either create my own model or be dominated by someone else's.<sup>14</sup> However, the reader is promised that taking the time to understand my poker model will yield important insights not readily available in other ways.

Inevitably, under such models sharp competitions must take place within a cooperative framework so that a game does not end in the violent conflict that spawns international anarchy. Building trust and collaborations through small compromises proves the most fruitful path, because one can always punish uncooperative players (perceived defectors) in subsequent rounds of play ("hands" of poker).<sup>15</sup> Briefing the United States ("U.S.") House International Relations Committee, Deputy Secretary-General Mark Malloch Brown argues that U.N. reform "has to be the work of a coalition, and holding that coalition together is

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circumstance, even if all countries would benefit from the termination of the genocide in Rwanda, each country would have been even better off if *other* countries bore the considerable risks and costs of stopping the violence. *See id.* at 521-22. In terms of the poker model, this is like using other people's money to play poker, while keeping any winnings for yourself.

12. *See Globalization, Nationalism, & Human Rights, supra* note 8. The poker model, presented in detail *infra*, has been adapted from this prior work.

13. The American Thomas Schelling and the Israeli Robert Aumann were the deserving recipients. *See* Michael Muskal & Ken Ellingwood, *Two Game Theorists Win the Nobel Prize for Economics*, L.A. TIMES, Oct. 11, 2005, at C1; Editorial, *The Trade Game*, L.A. TIMES, Oct. 13, 2005, at B10 (discussing the relevance of game theory to international negotiations); *War Games*, ECONOMIST, Oct. 15, 2005, at 106 (discussing the work of Thomas Schelling and Robert Aumann, winners of the 2005 Nobel Prize in Economics).

14. *See* William Blake, *Jerusalem: The Emanation of the Giant Albion*, in BLAKE: THE COMPLETE POEMS 648, 676 (W.H. Stevenson ed., Pearson Educ. Ltd. 2007) (1971). In this epic poem, Blake writes: "I must Create a System or be enslav'd by another Man's." *Id.*

15. *See generally Globalization, Nationalism, & Human Rights, supra* note 8; *The Trade Game, supra* note 13 (modeling the Doha round of WTO trade negotiations and recognizing game theorists' belief in the value of cooperation); *War Games, supra* note 13.

the surest way to success.”<sup>16</sup>

Our topic—multidimensional and interrelated disputes and needs occurring in many geographic and subject matter areas at the same time—is far too complex<sup>17</sup> to be modeled as the two-person, one-subject game described *supra*. Likewise, there are few “economies of scale in a [legal] rule specific enough unambiguously to govern a decision; over time, the increasingly-difficult question becomes which of these proliferating specific rules resolves a particular dispute with some degree of flexibility.”<sup>18</sup> This complexity, and the uncertainty it inevitably breeds, are not products of an international anarchy. A more nuanced view of governance is required: a search for fairly stable “rules of the road” rather than an automatic Hobbesian<sup>19</sup> recourse to coercion, which is usually too costly these days for a variety of reasons.

The need for cooperation and coordination during bargaining can often be met, even in the absence of a developed global state, because the truly significant international “players” are few in number. They are five in fact, and they constitute what economists might call a “loose oligopoly”: the U.S., Russia, China, the European Union (“E.U.”), and the U.N. itself.<sup>20</sup> The very existence of the game, described *infra*, shows

16. *United Nations Rhetoric or Reform: Outcome of the High-Level Event: Hearing and Briefing Before the H. Comm. on Int'l Relations*, 109th Cong. 44 (2005) (prepared statement of Mark Malloch Brown, Chief of Staff to the Secretary-General, United Nations) [hereinafter, Brown], available at <http://www.foreignaffairs.house.gov/archives/109/23694.pdf> (last visited Oct. 29, 2007).

17. See Coate, *supra* note 1; Alberto G. Romulo, Phil. Sec'y of Foreign Affairs, Address Before the United Nations General Assembly, U.N. GAOR, 60th Sess., 21st plen. mtg. at 4, U.N. Doc. A/60/PV.21 (Sept. 22, 2005); MARK TAYLOR, *THE MOMENT OF COMPLEXITY: EMERGING NETWORK CULTURE* 3 (2001) (“We are in a moment of unprecedented complexity, when things are changing faster than our ability to comprehend them.”); *id.* at 13-14 (reciting belief that we are far from equilibrium, at the edge of chaos under complexity theory; all significant change occurs in the area lying between too much and too little order).

18. *Globalization, Nationalism, & Human Rights*, *supra* note 8, at 677; see also Werner Z. Hirsch, *Reducing Law's Uncertainty and Complexity*, 21 UCLA L. REV. 1233, 1248-49 (1974); see generally MICHAEL KING & CHRIS THORNHILL, NIKLAS LUHMANN'S THEORY OF POLITICS AND LAW (Palgrave Macmillan 2003) (discussing Luhmann's analyses); NIKLAS LUHMANN, *OBSERVATIONS ON MODERNITY* 27, 67-8 (William Whobrey trans., Stanford University Press 1998); Andrew T. Guzman, *Why LDCs Sign Treaties That Hurt Them: Explaining the Popularity of Bilateral Investment Treaties*, 38 VA. J. INT'L L. 639, 641, 644 (1998); Paul Blustein, *U.S. Free Trade Deals Include Few Muslim Countries*, WASH. POST, Dec. 3, 2004, at E1; *Exclusive*, ECONOMIST, Nov. 20, 2004, at 94.

19. In the sense that Hobbes' state of nature is sometimes evident in global society. He assumed that we would agree to Leviathan under such a SON, but global society is too complex and too democratic in parts for such a consensus to emerge.

20. The latter two act as major players only when members coordinate their communications, power and resources effectively—something the other majors can usually take for granted. Although Congress, for example, occasionally speaks in a different voice from that of the President.

that, unlike a globalized economy or science, politics still recognizes and informally operates through nation-state boundaries that define the “players” and the sovereignty that still proves both inevitable and necessary in international law and international relations. Thus, the game fosters recognition that both the successes and the failures of the U.N. and of its international law are those of interacting nation-states. The game offers some solutions to economists’ “collective action problems,” and to dealing with “public goods” and “free rider” problems that are stimulated by the existence of very high “transaction costs” in international relations. The resulting outcomes are necessarily too complex to be captured by simpler versions of economists’ game theory.<sup>21</sup>

The global relations of the five major players play out against a backdrop of what economists might call a “competitive fringe”: the many countries that are too *relatively* poor and/or powerless to affect outcomes much *overall*. Their role is usually supportive of consensus among some or all of the five major players. This tactic minimizes the antagonizing of major players and perhaps provocation of their retaliation. The tactic also gives the minor players a sense of inclusion in, and a “soft” power through, international law and relations. Some of these many countries have a situational or geographical power with regard to particular issues, a power which forces the majors to take them into account for *some* purposes. For example, Saudi Arabia’s oil and its funding of Islamic fundamentalism in many Muslim countries demands attention from the West.<sup>22</sup>

A helpful extended analogy illustrating this small group behavior leaves one imagining the five majors playing global poker games.<sup>23</sup>

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21. See Michael J. Glennon, *Platonism, Adaptivism, and Illusion in UN Reform*, 6 CHI. J. INT’L L. 613 (2006); Duncan Snidal, *Political Economy and International Institutions*, 16 INT’L REV. L. & ECON. 121, 126-28 (1996); see also JOHN H. JACKSON, *THE JURISPRUDENCE OF GATT AND THE WTO: INSIGHTS ON TREATY LAW AND ECONOMIC RELATIONS* 156 (2000); Richard Nobles & David Schiff, *Introduction*, in NIKLAS LUHMANN, *LAW AS A SOCIAL SYSTEM* 1, 49 (2004) (discussing Luhmann’s ideas); see also discussion *supra* notes 13-17 and accompanying text.

22. See, e.g., Milton Viorst, *Desert Storm*, THE NATION, Sept. 26, 2005, at 31. Viorst writes that Saudi Arabia was a good counter to both Egypt’s Nasser and Iraq’s Saddam, and a surrogate after the Shah of Iran was overthrown. *Id.* But the U.S.’s inability to wean itself off cheap oil and corrupting contacts between U.S. and Saudi elites blinded the U.S. to Saudi nurturing of a militant anti-Westernism, including that of al Qaeda, and the alienation of Saudi Arabia’s own citizens.

23. See JAMES V. KOCH, *INDUSTRIAL ORGANIZATION AND PRICES* 268-69 (1974) (comparing oligopolistic competition to a neighborhood poker game). The ideal analogy to oligopoly would (1) define the number of actors, and (2) account for (a) procedures, (b) asymmetries of, for example, information and understanding of political and economic forces, (c) the ways expectations are conveyed, (d) an uncertainty of outcomes, and (e) the managing of cooperation. See JACKSON, *supra* note 21, at 18, 42, 156

They have played together for so long that each is aware of the past behavioral patterns of the others, although the styles of play from some new player-representatives can disrupt the game.<sup>24</sup> In particular, each player has views about the strengths and weaknesses of its own play and about the reactions other players will have to its own projected actions. Unlike chess, poker is played at speed and player information is seriously incomplete. Players try to fill informational gaps by evaluating opponents' behavior while attempting to conceal the significance of their own: in other words, practicing good diplomacy.<sup>25</sup> In contrast, President Bush telegraphs tactics in his speeches. These anticipated reactions affect the players' actions in turn.

The barriers to becoming a major player are substantial, which is just the way incumbent majors want to keep it. Such conditions hold sway even if other seats around the poker table (up to a total of eight, say, although up to ten can play five-card stud) are filled by temporary players.<sup>26</sup> The range of feasible outcomes from any given "hand" (round of play) is reduced markedly by the particular players' predilections, but the actual outcome is still indeterminate because of unforeseen events which are external to the game and because information is imperfect.<sup>27</sup>

An example will prove useful here. North Korea's nukes offer a valuable illustration. While Russia has been rather inactive, China has bet the most and has the biggest stake in the matter—even rivaling North Korea's stake. Resolving this dispute would greatly enhance Chinese prestige by helping to convert its growing economic power into geopolitical power. China has leverage, controlling thirty percent of

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(discussing problems and consequences associated with complex international agreements); *see also* Snidal, *supra* note 21, at 123-24 (describing regime theory's conception of "international regime" as a tool to describe global political cooperation). The poker game analogy arguably satisfies these criteria.

24. For example, the elections of President Bush or Putin shift the foreign policy of each nation; likewise, Bush's appointment of John Bolton as Ambassador to the U.N. alters the way the game is played. *See* discussion *infra* notes 43-47, 59-66, 118-19 and accompanying text.

25. *See* DAVID SKLANSKY, *THE THEORY OF POKER* 17, 245 (4th ed. 2005); ALBERT H. MOREHEAD & GEOFFREY MOTT-SMITH, *HOYLE'S RULES OF GAMES* 267 (3d rev. ed. 2001); *see also* *Marking the Dealer's Cards*, *ECONOMIST*, Nov. 26, 2005, at 100 (noting Friedrich Hayek saw the economy running on "dispersed bits of incomplete and frequently contradictory knowledge" communicated to everyone through shifts in market prices—or bets in the poker model).

26. Japan and both North and South Korea are examples of players that temporarily claim a seat at the global poker game. *See* discussion *infra* notes 28-31 and accompanying text.

27. In poker, imperfect information is rampant and often includes who has which cards (or which "hole" card(s) if "stud" poker is being played) and what strategy the player will employ. This perfectly illustrates international relations.

North Korea's food and more than seventy percent of its fuel,<sup>28</sup> but China also has the most to lose. The collapse of the North Korean regime would flood China with many stability-endangering refugees. South Korea's style of play has changed from fear to an ambiguous pity for brethren who could never be absorbed economically through reunification.<sup>29</sup> Meanwhile, the strategy of the U.S. is difficult to evaluate. Like China and Russia,<sup>30</sup> North Korea threatens U.S. military dominance *in the region*, and poses a diffuse threat to a valued ally, Japan. Yet Japan seems only mildly concerned. Above all, mutual incomprehension and translation difficulties plague the course of play between the U.S. and North Korea.<sup>31</sup> It is thus difficult to know the outcome from the several hands that have been played. Key questions remain. Who won and lost what? Was some agreement reached and, if so, what are its terms? Does it include a light-water reactor for North Korea?<sup>32</sup> Above all, have global concerns over a nuclear proliferation gotten lost during the heat of play—perhaps because U.N. involvement has been mostly limited to providing food aid to North Korea?

In this model, the poker players are nation-state leaders or their appointees. They play with interchangeable wealth and power belonging to other people: the taxpayers, etc. The players' style of play is consequently less cautious than it would be if players were investing their personal wealth and power in the game.

The playwright David Mamet displays a deep understanding of poker while modeling contemporary American politics.<sup>33</sup> For Mamet,

28. See Charles Krauthammer, Op-Ed., *China's Moment*, WASH. POST, Sept. 23, 2005, at A23, available at <http://www.washingtonpost.com> (select "Search Archives"; search "1987-Current" for "China's Moment") (last visited Nov. 3, 2007).

29. See Philip Bowring, Op-Ed., *Modeling Korean Unification*, INT'L HERALD TRIB., Sept. 27, 2005, at 8.

30. See discussion *infra* notes 64-71 and accompanying text.

31. See Tong Kim, *You Say Okjeryok, I Say Deterrent*, WASH. POST, Sept. 25, 2005, at B1, available at <http://www.washingtonpost.com> (select "Search Archives"; search "1987-Current" for "Okjeryok") (last visited Nov. 3, 2007).

32. See Bowring, *supra* note 29; Joseph Kahn, *North Korea Sets New Demand for Ending Arms Program*, N.Y. TIMES, Sept. 15, 2005, at A8, available at <http://www.nytimes.com> (search "North Korea Sets New Demand for Ending Arms Program") (last visited Nov. 3, 2007); Glenn Kessler, Op-Ed., *What That Accord Really Says*, WASH. POST, Sept. 25, 2005, at B2, available at <http://www.washingtonpost.com> (select "Search Archives"; search "1987-Current" for "What that Accord Really Says") (last visited Nov. 3, 2007); Kim, *supra* note 31, at B1; Krauthammer, *supra* note 28, at A23; *The Deal That Wasn't*, ECONOMIST, Sept. 24, 2005, at 49; *North Korea Rejects UN Food Aid*, Sept. 23, 2005, <http://news.bbc.co.uk/2/hi/asia-pacific/4273844.stm> (last visited Nov. 3, 2007).

33. See David Mamet, Op-Ed., *Poker Party*, L.A. TIMES, Sept. 16, 2005, [http://www.orlok.com/blog/archive\\_listserver/mb-civic/2005-September/013134.html](http://www.orlok.com/blog/archive_listserver/mb-civic/2005-September/013134.html) (last visited Nov. 3, 2007).

the only way to win, to seize the initiative, is to “raise.”<sup>34</sup> However, if you have never raised before, the other players will simply “fold.”<sup>35</sup> On the other hand, an excess of past raises<sup>36</sup> will pique the other players’ suspicions. One or several will likely “call your bluff” by matching or raising your raise(s) and, thus, forcing you to show your cards. But if you do not raise, you will “ante”<sup>37</sup> your life away and go home broke. Mamet concludes that there is no certainty in poker, only likelihood, and “the likelihood is that aggression will prevail.”<sup>38</sup>

Over time, the cards you get in a particular hand, the “luck of the draw,” evens out. Success or failure turns on how well you play all of the hands, or perhaps on how unobtrusively you cheat, although cheaters are shunned or worse. Players can set their own ethical standards. But generally speaking, anything short of cheating—e.g., deviousness or deceit—is acceptable. Partnerships among players are contrary to the spirit of the game, but much like bidders’ rings at auctions, are difficult to detect. The “cards speak for themselves,” and players who have not dropped out before the end of the hand must show theirs, providing information on their style of play to the others.<sup>39</sup> David Sklansky adds:

[R]arely if ever is a particular play always right or always wrong. Your play is affected by the size of the pot [the money-backed chips to be won, lying in the middle of the table], your position [whether you bet relatively early or relatively late during a round], the amount of money they have and you have, the flow of the game, and other, more subtle factors.<sup>40</sup>

A simple game thus becomes quite complex when played by experts. Consider a decision over “bluffing”<sup>41</sup> versus betting a fair hand

34. To “raise” is to bet more than the other players in the current round of betting.

35. To “fold” is to forfeit the hand by leaving the game until the next hand is dealt. By doing this, a player sacrifices a chance to win the pot of money but also avoids risking further outlays of capital toward an eventual loss. Applying this terminology, Mamet argues that folding is the tactic recently employed by the Democratic Party in the U.S. See Mamet, *supra* note 33.

36. Or, to put it another way, a Bushian over-aggressiveness, see discussion *infra* notes 43-45 and accompanying text.

37. An “ante” is the minimum amount required to play in the hand and, depending on the variety of poker played, the amount and number of players affected will vary.

38. Mamet, *supra* note 33. *But see* SKLANSKY, *supra* note 25, at 87, 121, 136 (suggesting a raise should be a rare ploy to obtain information or when you expect greater subsequent improvement in your hand than your opponents will have); *id.* at 133 (“raising is often a better alternative than folding, with calling the worst of the three.”).

39. See SKLANSKY, *supra* note 25, at 137; MOREHEAD & SMITH, *supra* note 25, at 250, 266.

40. SKLANSKY, *supra* note 25, at 172-73.

41. “Bluffing” occurs where a player bets while having little or no chance to win if the player’s bet is “called.”

for value; both plays may be appropriate and it is almost never right to do neither. The decision turns on the players' views of their opponents and the self-image they want to project for the future. They may want to be "caught" bluffing to earn even more money later on a good hand because opponents think they are bluffing again. Those who never bluff, or those who bluff too much, become losers.<sup>42</sup>

As a figurative poker player, the Bush Administration bluffs excessively and in a particular way: acting like a "plunger." Having more wealth and military power than any other player, the U.S. bets high at every opportunity, attempting to drive opponents out of the hand by forcing them to "fold" because they lack the wealth and power consistently to challenge the U.S. These tactics may even push other players out of the entire game. The outcome, regardless of the cards the U.S. holds, is more "pots" won because some opponents will fold even if they have better cards. These pots are smaller, however, because some or many potential bettors have been driven out earlier.

Expert players with adequate resources love a plunger like the U.S. They rely on the plunger to subsidize their lifestyles. Consider Israel and Egypt. They reap huge foreign and especially military aid "pots" even though they have nowhere else to go or other viable modes of play. They even seem to provoke additional bluffs from the U.S., which they will cheerfully "call," by praising American sloppiness: for example, betting heavily on a dubious Mid-East "democracy" while supporting autocrats.<sup>43</sup>

Unless the developing minor players are very skilled, their play is often desperate since they are playing with money provided under tight strictures by the International Monetary Fund ("IMF"), the World Bank ("WB"), etc. Ironically, some of this money originally comes from the U.S. which, in this sense, is playing against itself.

In sum, the Bush Administration plays by a failed, perhaps neoconservative or imperialist, formula. Rather than adjust its play according to the relevant players and the structure of the particular game being played—by analogy the size of the ante and the betting rules—the Administration plows ahead. In contrast, good players are intentionally inconsistent, bluffing randomly and even seeming to blunder on occasion in ways which can often be assembled into a winning strategy later. This

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42. See SKLANSKY, *supra* note 25, at 164, 173-76.

43. For example, the November 2005 Forum for the Future in Bahrain, the conference/centerpiece of Bush's Middle Eastern democracy initiative, collapsed under "Egypt's insistence that Arab governments should have more control over grants from a new [U.S.] fund designed to help indigenous pro-democracy groups." William Fisher, *Forum for the (Distant) Future*, I.P.S., Nov. 28, 2005, <http://ipsnews.net/news.asp?idnews=31213> (last visited Nov. 3, 2007).

is especially effective if it is combined with disparaging, distracting and/or confusing talk.<sup>44</sup> If you are a good player, you know what your opponents think your cards are *and* what your opponents think you think their cards are.<sup>45</sup> The Bush Administration cannot be troubled with such niceties of the game, or even with getting to know their opponents. Simply deem the North Koreans “inscrutable,” for example, and you will likely lose.

Analytically, the most important point is that the major poker players recognize their interdependence, which makes the course of play less fun but more predictable. Economists might call the major players an “oligopolistic interdependence” to reflect the absence of consistent collusion among the majors.<sup>46</sup> Of course, each major wants to “win” each hand for itself, and perhaps each major defines what amounts to a win somewhat differently. But each is keen to avoid the huge costs of monitoring the others’ opportunistic defections from a more formal “cartel.” In other words, interdependence does not necessarily mean stability in the sense of an inherent tendency toward some equilibrium.

But even more important than winning for the majors is to not lose in certain ways: they seek “minimax” solutions while avoiding war or some other painful and costly disasters. Examples of costly disasters include the Zimmermann Telegram that helped spur World War I, and putative weapons of mass destruction (“W.M.D.”) in Twenty-First Century Iraq. Saddam offered a puzzle to the gamers, giving only the most grudging cooperation to U.N. weapons inspectors when he had no W.M.D. Did he want to conceal the humiliating fact that he had nothing to hide<sup>47</sup> - a hubris surpassing even that of Zimbabwe’s Mugabe?

Players recognize that the safest way to avoid disaster while playing to win is to play by “liberal internationalism” rules.<sup>48</sup> Ordinary poker is a zero-sum game: winners benefit only at the expense of losers. But “advanced poker” is played in positive-sum ways. Through cooperation and coordination, all or most major and minor players benefit from a particular game. Over time, the players display an enhanced trust, a

44. From the world of chess, consider Fisher playing against Spassky; or, with a tinge of international relations, consider Premier Khrushchev playing against anyone.

45. See SKLANSKY, *supra* note 25, at 149; *id.* at 152 (“Many aggressive players . . . steal money with bluffs . . . but when they get a decent hand, they wind up losing.”).

46. Posner argues that “regional successes—including NATO, the EU system, and NAFTA . . . are based either on the small number of parties or the dominance of a few large parties.” Posner, *supra* note 9, at 530. Similarly, the dominance of the major players helps explain poker outcomes, but an oligopolistic interdependence among them does not consistently generate the degree of consensus seen in Posner’s “successes.”

47. See SKLANSKY, *supra* note 25, at 252, 257; *The Trade Game*, *supra* note 13, at B10.

48. This term is used for want of a better description of anti-Hobbesian rules of international relations or, in the context of the present model, “advanced poker.”

sense of injustice (particularly but not only as it affects themselves), and even occasional self-denial.<sup>49</sup> This is especially true when a public, “non-rival,” good can be won: your use of it does not interfere with my use.<sup>50</sup> This efficiency of sharing peaks with “network effects”: the more people who act in the same way,<sup>51</sup> the more useful that good becomes for everyone.<sup>52</sup>

Often, inconsistent or incoherent rules emerge as a side-effect of ordinary poker, but over time a relatively integrated body of international law can be built up through the group cooperation of advanced poker. This is something no major player can do by itself. Multinational corporations and other nongovernmental organizations (“NGOs”) like Greenpeace, Amnesty International, and even the Vikings of our time—al-Qaeda<sup>53</sup>—also play advanced poker at its fringes, strengthening global cooperation for their own purposes. Even though processes may have a goal-orientation, rounds (or hands) are usually played in cautious and incremental ways. Effects are occasionally broad and deep over time, but particular outcomes are more frequently halting and may display backsliding by players. Planning or preventative action is usually impossible; as in poker, you must play the cards dealt you under a short time horizon. Cooperation is never perfect: mistakes happen; rebelliousness occurs, especially among states taken for granted because of their long record of cooperation; and major and minor states sometimes prefer national interests over a liberal internationalist consensus.<sup>54</sup>

49. See *The Concrete Savannah*, ECONOMIST, Dec. 24, 2005, at 10 (describing necessity of interdependence among early humans and concluding “humans are hard-wired not for logic but for detecting injustice”).

50. See *The Economics of Sharing*, ECONOMIST, Feb. 5, 2004, at 71 (explaining the benefits of sharing through reference to “open source” technology development and peer-to-peer networks).

51. For example, use Microsoft Windows or act in accord with a particular law.

52. See Snidal, *supra* note 21, at 122-23; *The Concrete Savannah*, *supra* note 49; *The Economics of Sharing*, *supra* note 50, at 51. See also F.M. SCHERER, INDUSTRIAL MARKET STRUCTURE AND ECONOMIC PERFORMANCE 135, 443 (Rand McNally & Co. 1970) (discussing price controls in an oligopolistic market where aggressive actions provoke aggressive reactions, leading to mutual restraint); KOCH, *supra* note 23, at 328 (stating in the course of play, oligopolists “outline spheres of interest” which change over time); ROGER LEROY MILLER, INTERMEDIATE MICROECONOMICS 343-44 (McGraw-Hill Book Co. 1978) (discussing George Stigler’s implicit collusion among oligopolists, because explicit collusion is too costly); *id.* at 352 (citing price wars as evidence of temporary disruption of communication channels among oligopolists); JEFF PERLOFF & KLAAS T. VAN’T VELD, MODERN INDUSTRIAL ORGANIZATION 175 n. 229, 816-17 (2d ed. 1994); Snidal, *supra* note 21, at 122-23 (describing “rational cooperation” theory); *id.* at 133 (discussing need for cooperation and coordination through international bargaining).

53. See Niall Ferguson, *A World Without Power*, FOREIGN POL’Y, July-Aug. 2004, at 23, 38.

54. See SCHERER, *supra* note 52, at 166; MICHAEL WALZER, ARGUING ABOUT WAR

A country can be called a “rogue” if it refuses to follow this liberal internationalism consensus over major issues and for extended periods of time. If a rogue is relatively poor and powerless, it is simply ignored.<sup>55</sup> However, a more powerful rogue gets disciplined by the majors *if* they can reach consensus over how to do so.<sup>56</sup> Almost always, a relatively poor and powerless state is best advised to play a different game or by slightly different means to create a “niche” for itself. The major players will tolerate this conduct because it does not disrupt their overall games.<sup>57</sup> Singapore, for example, has become much richer and somewhat more powerful in specialized ways. Yet the major players tolerate Singapore because, as a city-state, Singapore lacks the capacity to become a major player.<sup>58</sup>

The game totters along, minor rogues notwithstanding, but its continuance is threatened, as are the disasters that liberal internationalism rules are designed to avoid, when a major player becomes a rogue. After all, the last bout of globalization ended when unresolved political tensions among the then-majors and their satraps exploded into World War I. Even sophisticated subsystems may be unable to block the causes of their own destruction.

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167, 170-81 (Yale University Press 2004); Walter Russell Mead, *America's Sticky Power*, FOREIGN POL'Y, Mar.-Apr. 2004, at 46, 51; Shann Turnbull, *Emergence of a Global Brain: For and From World Governance* (Int'l Inst. for Self-Governance, Working Paper), available at <http://ssrn.com/id=637401> (last visited Nov. 3, 2007); see also JACKSON, *supra* note 21, at 33 (discussing the tendency to overlook GATT obligations, especially when these are owed to the poor and powerless); *id.* at 42 (concluding perfection cannot be expected among players with diverse interests); *id.* at 156 (revealing the tactic of erecting barriers which cost your opponents more than they do you); KOCH, *supra* note 23, at 350 (stating information about future states of the market is not free, and therefore, neither are decisions about what to do; most players simply follow the behavior of the major players); *But see Annan Says US Should Support Millennium Development Goals*, REUTERS, Sept. 5, 2004, <http://www.eyeontheun.org> (select “Search” search “Annan Says US Should Support Millennium Development Goals”) (last visited Nov. 3, 2007) (quoting U.N. Secretary-General Kofi Annan sentiment that states must practice “give and take” or “in the end [they] can't be effective” and an effort to achieve “consensus at all costs” creates “191 vetoes”).

55. Consider, for example, Zimbabwe and the resulting human rights crisis there.

56. We see the failure of consensus-driven discipline in the international reaction to Iran's nuclear ambitions or oil-rich Sudan's deplorable human rights record.

57. See KOCH, *supra* note 23, at 350; SCHERER, *supra* note 52, at 10, 209 (revealing that in an oligopolistic market, limited deviations operate to inhibit retaliation); Sebastian Mallaby, Editorial, *Making Globalization Work*, WASH. POST, Feb. 28, 2004, at A17, available at <http://www.washingtonpost.com> (select “Search Archives”; search “1987-Current” for “Making Globalization Work”) (last visited Nov. 3, 2007) (arguing although globalization has survived terrorism and weak international institutions, the growing tensions require attention and commitment from the major players).

58. Contrast the major players' reaction to Singapore with their attention to India, Brazil, Indonesia, Argentina, and South Africa. The majors watch the latter group carefully because they have the capacity to become major players themselves.

The Bush Administration arguably turned the U.S. into a major-player rogue by refusing to make important game moves under liberal internationalism rules<sup>59</sup> and thus distorting the goal-orientation of

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59. For example, the U.N. supported the U.S. in the Korean War, Iraqi War I (1991), the re-installation of Aristide in Haiti (1994), and helped the U.S. settle the Suez Crisis (1956), as well as the Cuban Missile Crisis (1962). See Steven Schlesinger, *The U.N. Under Siege*, MAXIMS NEWS.COM, Mar. 17, 2005, <http://www.maximsnews.com/2005schlesinger17march.htm> (last visited Nov. 3, 2007). Bush the Younger thus came as a shock to foreign leaders familiar with Bush the Elder's and Clinton's, admittedly rather tepid, liberal internationalism. In 2002, John Brady Giesing, a career diplomat resigning over the Younger's foreign policies, ably summarized the changes taking place: "We are straining beyond its limits an international system we built with such toil and treasure, a web of laws, treaties, organizations, and shared values that sets limits to our foes far more effectively than it ever constrained America's ability to defend its interests." Paul H. Brietzke, *September 11 and American Law* (Valparaiso Univ., Working Paper), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=453522](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=453522) (last visited Nov. 3, 2007) (quoting Geising). In rapid succession, the current Bush Administration repudiated the Kyoto Global Warming Treaty, the Nuclear Test-Ban Treaty, and U.S. participation in the International Criminal Court; coercive "agreements" were subsequently wrung from a number of minor players to keep U.S. citizens out of this Court. The U.S. even managed to lose its perennial seat on the U.N. Human Rights Commission, and the invasive U.S.A. PATRIOT Act gave the U.S. a bad name among human rights advocates because it encouraged rights abusers. A common "anti-terrorism" cause was made with dictators in Pakistan, Saudi Arabia and Egypt, while more reliable allies in "old" Europe were ignored. Zbigniew Brzezinski attributes such strange policies to a blind fear that periodically verges on panic. See Robin Wright, *Middle East Democracy Summit Ends in Rancor*, WASH. POST, Nov. 12 2005, 9:38 am, <http://www.washingtonpost.com/wp-dyn/content/article/2005/11/12/AR2005111200464.html> (last visited Nov. 3, 2007) (quoting Brzezinski). See AMY CHUA, *WORLD ON FIRE* 8-9 (Adam Bellow ed., 2003); *September 11*, supra note 59; Ellen Goodman, *A Post-Bush Mind Set*, WASH. POST, Oct. 30, 2004, at A19, available at <http://www.washingtonpost.com> (select "Search Archives"; search "1987-Current" for "A Post-Bush Mind Set").

Having re-invented the doctrine of pre-emption as a kind of anticipatory retaliation, Bush marketed Iraqi War II as if it were a soft drink or toothpaste, adopting "Orwellian flourishes": "in order to be relevant," the U.N. Security Council (that was awaiting reports on W.M.D.s that turned out not to be in Iraq) "must become irrelevant" by allowing "the U.S. to evaluate . . . risk and respond in its sole discretion." Michael Kinsley, Editorial, *Whose Authority?*, WASH. POST, Mar. 21, 2003, at A37, available at <http://www.washingtonpost.com> (select "Search Archives"; search "1987-Current" for "Michael Kinsley" follow to results page "22"). See Jean-Maria Guehenno, Letter to the Editor, *Abuse by Peacekeepers*, N.Y. TIMES, Oct. 29, 2005, available at <http://nytimes.com> (search "Guehenno") (last visited Nov. 3, 2007).

Bush added fuel to foreigners' fires over detention and torture at Guantanamo Bay and Abu Ghraib. Bush shocked even his cynical critics by appointing, without Senate consent, the abrasive John Bolton as U.N. Ambassador, because apparently, Secretary of State Condoleezza Rice did not want Bolton as her Deputy. Bolton is a darling of the neoconservatives who would dissolve the U.N. or, at the least, force Kofi Annan's resignation. Bolton's influence over foreign policy is an increasingly permanent factor in the U.S. He led the U.S. repudiation of several treaties, alienated North Korea and opposed E.U. efforts to curb Iran's nuclear ambitions. He refers to the U.N. as a "rusting hulk," opposes its peacekeeping and humanitarian missions, and denies that the U.S. has a legal obligation to pay U.N. dues. Bush nominated another neoconservative icon, Paul Wolfowitz, as the new WB President. Diplomat and a senior Defense Department

governance without a government. The U.S. uses radically offensive game-moves.<sup>60</sup> For example, Bush feels unable to wait until the next terrorist attack so he is trying to change international law and politics, the “game rules” for purposes of the present model, to enhance U.S. national security. However, Bush now finds himself trying to reach out to a world dismayed by the foreign policy choices of his first term. This more conciliatory and multilateral approach can be seen in his September 2005 speech to the U.N. World Summit.<sup>61</sup>

An inability to understand this global dismay is typified by William Smullen: “It is clear that the American *brand* has been badly damaged. I’m not suggesting we have to change our policy.”<sup>62</sup> The Security Council’s vote failing to support Bush’s Iraqi War II was a moment of defiance, relevance, and global significance. Nonetheless, the moment soon collapsed under concentrated U.S. pressure. In sum, Bush’s

official, Wolfowitz is a major architect of Iraqi War II. See Glenn Kessler & Colum Lynch, *Critic of U.N. Named Envoy*, WASH. POST, Mar. 8, 2005, at A1, available at <http://www.washingtonpost.com> (select “Search Archives”; search “1987-Current” for “Critic of U.N. Named Envoy”) (last visited Nov. 3, 2007); Charles Lane, *Mexicans on Death Row to Get Hearings*, WASH. POST, Mar. 8, 2005, at A2, available at <http://www.washingtonpost.com> (select “Search Archives”; search “1987-Current” for “Mexicans on Death Row Get Hearings”) (last visited Nov. 3, 2007); Charles Lane, *U.S. Quits Pact Used in Capital Cases*, WASH. POST, Mar. 10, 2005, at A1, available at <http://www.washingtonpost.com> (select “Search Archives”; search “1987-Current” for “U.S. Quits Pact Used in Capital Cases”) (last visited Nov. 3, 2007); Colum Lynch, *U.S. Drops Abortion Issue at U.N. Conference*, WASH. POST, Mar. 5, 2005, at A13, available at <http://www.washingtonpost.com> (select “Search Archives”; search “1987-Current” for “U.S. Drops Abortion Issue at U.N. Conference”) (last visited Nov. 3, 2007); Brian McNamara, Editorial, *Undercutting Protections for Americans Abroad*, WASH. POST, Mar. 13, 2005, at B6, available at <http://www.washingtonpost.com> (select “Search Archives”; search “1987-Current” for “Brian McNamara”); Susan E. Rice, Editorial, *Tough Love or Tough Luck?*, WASH. POST, Mar. 8, 2005, at A15, available at <http://www.washingtonpost.com> (select “Search Archives”; search “1987-Current” for “Tough Love or Tough Luck”) (last visited Nov. 3, 2007); Ian Williams, *Real U.N. Reform*, THE NATION, Dec. 27, 2004, 6; *The View From Abroad*, ECONOMIST, Feb. 19, 2005, at 24 (relaying a Special Report on Anti-Americanism). But see *Condi’s Challenge*, ECONOMIST, Jan. 15, 2005, at 42 (“there are signs that the administration is beginning to count the costs of its first-term policy.”). “Neoconservatives see Europeans as ‘a bunch of duplicitous, atheistic wimps, whose moral laxity is leading them to an inevitable and richly deserved doom.’” *The European Dreamers*, ECONOMIST, Dec. 18, 2004, at 78. In sum, the Bush Administration continues to fuel nationalist claims hostile to U.S. interests, and repudiates or ignores key international law principles. But, with some justification, neoconservatives take credit for democracy in the Middle East.

60. See discussion *supra* notes 43-45, 59 and accompanying text.

61. See generally George W. Bush, President of the U.S., Speech to the U.N. World Summit (Sept. 14, 2005), [http://www.unmillenniumproject.org/documents/WS05\\_usa050914eng2-1.pdf](http://www.unmillenniumproject.org/documents/WS05_usa050914eng2-1.pdf) (last visited Feb. 1, 2008).

62. Glenn Kessler & Robin Wright, *Report: U.S. Image in Bad Shape—Hughes Set to Begin Public Diplomacy*, WASH. POST, Sept. 24, 2005, at A16, available at <http://www.washingtonpost.com> (select “Search Archives”; search “1987-Current” for “U.S. Image in Bad Shape”) (last visited Nov. 3, 2007).

bungling comes close to Nixon's thirty-five year-old nightmare of turning the U.S. into a "pitiful, helpless giant" unable to subdue a rag-tag Iraqi insurgency which has no *major* external sources of support.<sup>63</sup> Rather, intellectually-bankrupt tactics seem to involve maneuvers such as driving lightly-armored U.S. vehicles down Iraqi roads to see who shoots or where planted explosives are located.

Russia, under Vladimir Putin, similarly leans toward rogue state status.<sup>64</sup> Putin's purported emulation of Bush's "democracy" and "rule of law" are now muted by a desire to squeeze out any political opposition, to claw back powers Yeltsin devolved to the regions and to

63. Anatol Lieven, *Liberal Hawk Down*, THE NATION, Oct. 25, 2004, at 29, 34, available at <http://www.thenation.com/> (search "Liberal Hawk Down") (last visited Nov. 3, 2007). See Thalif Deen, *Despite Strictures, U.N. Chief Refuses to Yield*, I.P.S., Sept. 7, 2005, <http://www.ipsnews.net/news.asp?idnews=30179> (last visited Nov. 3, 2007); David Ignatius, Editorial, *They're Not Going to Like Us*, WASH. POST, Sept. 23, 2005, available at <http://www.washingtonpost.com> (select "Search Archives"; search "1987-Current" for "They're Not Going to Like Us") (last visited Nov. 3, 2007) (wanting to be loved, Americans assume our deep unpopularity is a "communications problem" to be treated by such things as appointing Karen Hughes or sending more troops to Iraq); Glenn Kessler, *This Year, Bush Takes a Different Tone With the U.N.*, WASH. POST, Sept. 15, 2005, at A08, available at <http://www.washingtonpost.com> (select "Search Archives"; search "1987-Current" for "This Year, Bush Takes") (last visited Nov. 3, 2007); Bennett Roth, *In U.N. Speech, Bush Urges Two-Pronged Fight on Terror*, HOUS. CHRON., Sept. 15, 2005, at 9.

64. Outsiders understand little about Russia. Having exaggerated the extent to which Yeltsin established liberal democracy, they exaggerate the extent of Putin's backpedaling towards authoritarianism. Admittedly, Putin has fought a brutal, human-rights-abusing war against nationalists in Chechnya (a separatist province), justifying this as a move against "terrorism"—the same justification Bush uses in Iraq. Russia's political meddling in Belarus, Georgia, Moldova, Abkashia (a province in Georgia), and Trans-Dniester (a separatist region of Moldova) will almost certainly continue. But the ex-Soviet Muslim "-stans," e.g., Kazakhstan and Kyrgyzstan, are slowly drifting out of the Russian orbit while adopting a variety of anti-democratic practices. The Baltic countries are already in NATO, and the Transcaucasian region is unstable and bloody because local rulers pursue ethnic nationalism claims. See Rachel Denber, *Beyond Ukraine, a Grim Picture*, THE INT'L HERALD TRIB., Dec. 28, 2004, available at [www.hrw.org](http://www.hrw.org) (search "Beyond Ukraine") (last visited Nov. 3, 2007); Jackson Diehl, *Russia's Unchecked Ambitions*, WASH. POST, Dec. 6, 2004, at A21, available at [www.washingtonpost.com](http://www.washingtonpost.com) (select "Search Archives"; search "1987-Current" for "Russia's Unchecked Ambitions") (last visited Nov. 3, 2007); Peter Finn, *Kyrgyzstan Opposition Routed at Polls, Process Faulted*, WASH. POST, Mar. 15, 2005, at A7, available at <http://www.washingtonpost.com> (select "Search Archives"; search "1987-Current" for "Kyrgyzstan Opposition") (last visited Nov. 3, 2007); Charles Krauthammer, *Why Only in Ukraine?*, WASH. POST, Dec. 3, 2004, at A27, available at <http://www.washingtonpost.com> (select "Search Archives"; search "1987-Current" for "Why Only In Ukraine") (last visited Nov. 3, 2007); Michael McFaul, Book Review, *Reform and Retreat*, WASH. POST, Feb. 6, 2005, available at <http://www.washingtonpost.com> (select "Search Archives"; search "1987-Current" for "Reform and Retreat") (last visited Nov. 3, 2007); *Bleak House*, ECONOMIST, Jan. 15, 2005, at 80; *An Empire's Fraying Edge*, ECONOMIST, Feb. 12, 2005, at 21; *Vladimir III*, ECONOMIST, Dec. 11, 2004, at 46.

control the media more tightly. One author, writing for the *Economist*, sees traces of a Leninism in this:

Russian foreign policy is still warped by the phantom pain of its lost empire. The government still has too little regard for private property, too often shows a reflexive distrust of business [having repeatedly snubbed lax IMF and WB policies concerning Russia], and has an inflated idea of the state's proper role in the economy—as recent developments in Russia's energy sector demonstrate. . . .<sup>65</sup>

Many E.U. and U.N. officials are appalled by U.S. and Russian behavior, and a few commentators see Ukraine as the kick off in a new Cold War.<sup>66</sup> Meanwhile, many minor players are seeking cover because they fear the onset of disasters and reallocations of power that such disruptions make more likely in an advanced poker game. These disruptions, in a game where the rule is governance without government, also disrupt relatively settled political and economic expectations. Self-fulfilling prophecies of a lack of cooperation can lead to a potentially dangerous level of instability and to even greater uncertainty and complexity. But the poker games have been running within consensus borders since the end of World War II, and most nation-states have developed buffers against threatened international instabilities. These buffers may prove effective for long periods: perhaps even until Bush and Putin leave office.

The Chinese seem faintly bemused by Bush's and Putin's carryings-on while positioning themselves to take advantage of any future chaos. China is increasingly projecting itself as a global power, spending a great deal on a leaner, meaner, more technologically-adept military.<sup>67</sup> For example, a Chinese-Russian joint military exercise, Peace 2005, was a classical battle set-piece with Russia using the modern equipment China lacks, perhaps to awe the Chinese and to make U.S. dominance in the region seem even more tenuous. A very good poker player, China cozies up to an anxious Russia and Central Asian states. Meanwhile, the U.S. schmoozes India and tries to persuade Japan to become more assertive towards China and Russia. China's insatiable quest for oil and gas has it

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65. *Pickled Ideologues: Bury Lenin*, *ECONOMIST*, Oct. 8, 2005, at 12. See Jim Hoagland, *Can Russia Stem This Tide?*, *WASH. POST*, Oct. 13, 2005, at A23, available at <http://www.washingtonpost.com> (select "Search Archives"; search "1987-Current" for "'Can Russia Stem This Tide'") (last visited Nov. 3, 2007); Andrew Osborn & Anne Penketh, *Putin Stresses Russia is 'Equal' With the E.U. States*, *INDEP.*, Oct. 5, 2005, at 21; *Beyond Siberia*, *ECONOMIST*, Sept. 3, 2005, at 45.

66. See discussion *supra* note 65.

67. See Dieter Farwick, *China is Flexing Its Military Might*, *WORLD SECURITY NETWORK*, [http://www.worldsecuritynetwork.com/showArticle3.cfm?article\\_id=11937](http://www.worldsecuritynetwork.com/showArticle3.cfm?article_id=11937) (last visited Nov. 3, 2007).

competing with India and dealing with countries blacklisted by the U.S. as troublesome: Myanmar, Sudan, and Iran to name a few. Persistent U.S. complaints about Chinese human rights violations, inadequate protections of intellectual property, and overvaluing its currency to boost exports<sup>68</sup> have been met with only lukewarm “cosmetic” Chinese responses.<sup>69</sup> Notwithstanding China’s continuing economic boom, some commentators see China’s “socialist,” or “planned,” market economy as the ultimate contradiction in terms. A consumer choice without political choice is believed to spawn corruption, cronyism, and a growth in the number and scale of public protests.<sup>70</sup> In any event, this “harmonious society”—the new buzzword in China—is under threat from a galloping inequality in the distribution of wealth.<sup>71</sup>

The E.U.’s attempts at achieving a common foreign policy and international law reform policy have only met a modest degree of success. In one article, the *Economist* goes too far in playing down the

68. It should be noted that many of the proceeds stemming from China’s boosted exports buy the U.S. treasury liabilities that finance huge U.S. deficits.

69. See Paul Blustein, *U.S. Urges IMF Crackdown on Currency*, WASH. POST, Sept. 24, 2005, at D01, available at <http://www.washingtonpost.com> (select “Search Archives”; search “1987-Current” for “U.S. Urges IMF Crackdown”) (last visited Nov. 3, 2007); *The Dragon Comes Along*, ECONOMIST, Sept. 3, 2005, at 25.

70. See *The Cauldron Boils*, ECONOMIST, Oct. 1, 2005, at 61.

71. See Antoaneta Bezlova, *Great Leap to Help Rural China*, I.P.S., Oct. 14, 2005, [www.ipsnews.net/news.asp?idnews=30559](http://www.ipsnews.net/news.asp?idnews=30559) (last visited Nov. 3, 2007) (noting the Chinese Public Security Ministry admitted “that there were 74,000 serious protests [in 2004], involving 3.7 million people, up from . . . 58,000 in 2003); *id.* (informing that by October 2005, twenty-three policemen were killed during “riots” while 1,826 were injured); Niall Ferguson, Op-Ed., *The Man-Eater of Asia’s Tigers*, L.A. TIMES, Oct. 3, 2005; Peter Goodwin, *China’s Transformation*, WASH. POST, Nov. 4, 2005, 10:00 am, <http://www.washingtonpost.com/wp-dyn/content/discussion/2005/11/29/DI2005112900326.html> (last visited Feb. 1, 2008) (maintaining China’s economy will stumble at some point given “rickety” banking, water and energy shortages, social instability, the wastage of capital and “white elephants”); Jonathan Watts, *Chinese General Warns of Nuclear Risk to U.S.*, THE GUARDIAN, July 16, 2005, at 17 (informing that in a statement presumably calculated by Government, a Chinese General threatened to “nuke” hundreds of U.S. cities if the U.S. intervened over Taiwan); Edward Cody, *Beijing Pledges to Focus on Income Disparities*, WASH. POST, Oct. 11, 2005, at A12, available at <http://www.washingtonpost.com> (select “Search Archives”; search “1987-Current” for “Edward Cody”; follow to results page “28”) (last visited Nov. 3, 2007) (quoting, with no reference to growing protests, a communiqué stating: “We have to solve the contradictions of the people . . . we have to face . . . the most crucial, direct and unrealistic problems”); *id.* (explaining no countervailing power such as an independent court system will be tolerated, and “the most important thing is to strengthen the ability and leadership of the party.”); *Confucius Did Not Say That The Red China of Two Naïve Guys*, TORONTO STAR, Oct. 16, 2005, 8:19 AM (quoting Shao Ming: “China used to be only one colour—red[, but now it] is many colours”); *The Dragon Comes Along*, *supra* note 69, at 25 (stating Chinese leader Hu will ask Bush to treat China as a “market economy”—thus making the application of U.S. anti-dumping measures more difficult—though the request is unlikely to be granted).

E.U.'s role in international relations and law by likening it to the role of a Greek chorus, commenting or reacting with "horror or praise, . . . but playing no part in the" action.<sup>72</sup> Bush is seen as this play's tragic protagonist, "hurrying to his doom and reckless of the consequences of his actions."<sup>73</sup> Some neoconservative Americans return the favor, seeing E.U. members as too disorganized, "cowardly, cynical and decadent to support America's courageous and idealistic mission. . . ."<sup>74</sup> Admittedly, France is often prickly and seeks to dominate consensus. On the other hand, Blair's Britain was often the outsider of Europe, trying to play poker like Bush. Europe's ideological wounds are slow to heal, and the failure of the new E.U. Constitution in two referenda exposes a legitimation crisis within Europe. In addition to hiving off Britain, Bush managed to divide the E.U. further over Iraq: Italy, Poland and (temporarily) Spain came over to Bush's "coalition of the willing." Despite such disunity on some issues, the E.U. was one of the few parties that backed the World Summit draft document as a whole. In comparison, the U.S. proposed seven hundred amendments to the draft, while Russia, Cuba, Pakistan, Algeria, Iran and others also sought extensive changes.<sup>75</sup>

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72. *Europe's Cassandra Complex*, ECONOMIST, Oct. 29, 2005, at 54 (citing Bob Kagan). Like the E.U., a Greek chorus often supports the "law"—as in Sophocles's *Antigone*. See *id.*

73. *Id.* at 56.

74. *Liberal Hawk Down*, *supra* note 63, at 34.

75. See ANATOL LIEVEN, *AMERICA RIGHT OR WRONG PAGE* (Oxford Univ. Press 2004); Stefania Bianchi, *Amid Budget Spat, E.U. Searches for the Big Picture*, I.P.S., Oct. 25, 2005, [www.ipsnews.net/interna.asp?idnews=30769](http://www.ipsnews.net/interna.asp?idnews=30769) (last visited Nov. 3, 2007) (quoting Alasdair Murray: "all EU countries face similar challenges to their social models such as aging populations, low-wage competition from Asia and high unemployment in some areas"); *id.* (maintaining we must reach a policy consensus before attempting other reforms); Stefania Bianchi, *U.N. Summit Being Written Off Already*, I.P.S., Sept. 21, 2005 (explaining Luis Morago, head of Oxform, Brussels urges European leaders to go further on poverty reduction and arms control); Stephen Castle, *China Says Brussels Does Not Care About Job Losses in Assault on Economic Policy*, THE INDEPENDENT, Oct. 7, 2005 (Chirac stresses the need for an E.U. united front on globalization in "classic Chirac: defining Europe and France as the same thing"); Romulo, *supra* note 17, at 13-14; *To Doha's Rescue*, ECONOMIST, Oct. 15, 2005, at 13 (stating that Peter Mandelson, the European commissioner for trade, "needs approval from national governments if he is to go as far as his American counterpart"); similarly, some negotiating points in the U.S. must be confirmed by congressional enactment or Senate Ratification.

On the E.U. as a major player, see Morton Abramowitz & Heather Hurlburt, Editorial, *Where to Start with Europe*, WASH. POST, Dec. 23, 2004, at A23, available at <http://www.washingtonpost.com> (select "Search Archives"; search "1987-Current" for "Where to Start With Europe") (last visited Feb. 1, 2008) (reviewing TIMOTHY GARTON ASH, *AMERICA, EUROPE, AND THE SURPRISING FUTURE OF THE WEST* (Random House 2004), and T.R. REID, *THE UNITED STATES OF EUROPE* (THE PENGUIN PRESS 2004)); *id.* (noting the Europeans' "bickering and boredom: and anxiety over 'feeling dwarfed by the U.S. hyperpuissance'"); *id.* (Ash shows how disunity is "one of the things we in the West

The European Commission calls the U.N.'s Millennium Development Goals ("MDGs")<sup>76</sup> "the core" of E.U. development policy, the "new . . . consensus" of "a global player."<sup>77</sup> An NGO official notes that the E.U. claims "moral leadership over MDGs," in what we might call an important bet in a major poker game, but E.U. countries must "deliver on their promises" through collective action to be "credible."<sup>78</sup> Arguably, E.U. performance during the Doha Round of WTO negotiations<sup>79</sup> saps its credibility.

The Canadian Louise Frechette, a recently resigned Deputy-General, calls the U.N. the complex center of just about everything since the end of the Cold War—the center of high ambitions and often higher expectations. Outcomes have been both "notable successes and shattering failures" that rarely stem from the U.N. simply walking away from a problem.<sup>80</sup> As adaptable and evolving reflections of the world, the members of the U.N. "family"<sup>81</sup> have an international legal personality without approximating the organs of a world government. These family members can participate in international relations independent of their member nation-states, and can create independent customary international law. But like the E.U., the U.N. is a major player only when adequate power and resources are delegated by members after the requisite consensus is mustered. After which, the U.N. can build its own distinctive power: the ability to legitimate or delegitimize political, social, economic, and even military actions. Lawyers as lawyers, like poker games, organize around this legitimization rubric because, *inter alia*, rules of international law are often created during the course of play. Some argue that such games serve to conceal

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have in common."); *id.* (Ash shows how "building a future in defiance of the other—the Soviet Union in the past, America today, perhaps in Islam or China tomorrow—is neither sustainable nor ennobling."); Editorial, *Backward in China*, WASH. POST, Dec. 20, 2004, at A22, available at <http://www.washingtonpost.com> (select "Search Archives"; search "1987-Current" for "'Backward in China'") (last visited Feb. 1, 2008).

76. See app. *infra*.

77. Stefania Bianchi, *E.U. Urged to Show Its Muscle*, I.P.S., Sept. 14, 2005 (emphasis added).

78. Olivia Ward, *Frechette's U.N. Challenge; World Body Battered Over the Recent Oil-For-Food Scandal Office is Now Hitting Its Stride*, Says Deputy Secretary General, TORONTO STAR, Sept. 24, 2005, at A14. See discussion *infra* note 194 and accompanying text (discussing the E.U.'s behavior over the Doha Round of WTO negotiations).

79. See discussion *infra* notes 207-08 and accompanying text.

80. JEAN-MARIE HENCKAERTS & LOUISE DOSWALD-BECK, CUSTOMARY INTERNATIONAL HUMANITARIAN LAW: RULES xxv, xxxv (Cambridge Univ. Press Vol. I 2005); *Globalization, Nationalism, & Human Rights*, *supra* note 8; Evans, *supra* note 8, at 1054-56; in a 2003 Poll, the U.N.'s "standing" declined in the twenty participating countries. Standing declined in the U.S. because the U.N. did not sanction Iraqi War II, and in the nineteen others because it could not prevent it.

81. The U.N. "family" includes international conferences.

processes of domination, however. Consider the exercise of power “markets,” another game rubric thought legitimate by the U.S., increasingly by China, and tolerated by many developing countries as a necessary evil under strictures imposed by the WTO, the IMF, the WB, etc.<sup>82</sup>

A major function of the U.N. is the *collective* empowerment of the relatively powerless. For example, the U.N. sometimes plays poker hands as a major acting on behalf of minor players by offering a forum where minors’ concerns and arguments can be aired, as well as a solution to some collective action problems. This can be seen in a U.N. representation of the sometimes-diffuse interests of the 118-member Non-Aligned Movement, more powerful during the Cold War and currently led by Malaysia, India, and South Africa. This Movement is frequently ignored by widely-circulated media. Likewise, an even less well-known Group of Seventy-Seven, composed of 134 members and currently chaired by Jamaica, and the Group of Twenty-Four, formed in 1971 to unify developing countries’ positions on monetary policy and development finance, remain invincible to the media. At the other end of the player spectrum, Bush’s neoconservative surrogates, such as Senator Norm Coleman and formerly, Representative Tom DeLay and Representative Henry Hyde, created an existential crisis when they picked up Bush’s cudgels for use against *another* lame duck, Secretary-General Annan, over what amounts to an oil-for-food corruption *sidebar*<sup>83</sup> to the World Summit. This crisis set two of the world’s most impressive “spin machines” into motion, and the forces of liberal internationalism prevailed over the neocons. China, Russia, 105 other states, the E.U., plus the *New York Times*, *Washington Post*, National Public Radio, and the BBC supported the “bold reformer” Annan as the best Secretary-General since Dag Hammarskjold, although some see this as rather faint praise.<sup>84</sup>

Like fairies, paper money or perhaps the Soviet Union, the U.N. would cease to exist, at least as a major player, if people stopped

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82. Editorial, *United Nations to the Rescue (of Itself)*, CHRISTIAN SCI. MONITOR, Sept. 15, 2005, at 8 (U.N.’s “power lies in setting norms of behavior and then using a majority voice to persuade or shame norm-breakers to follow suit”); Ronald Saunders, Editorial, *Small States Need a Stronger U.N.*, CARIBBEAN NET NEWS, Sept. 27, 2005; Martin Walker, *Bush v. Annan: Taming the United Nations*, 22 WORLD POL’Y J. 9 (Spring 2005).

83. See discussion *infra* notes 164-68 and accompanying text.

84. Simon Chesterman, Op-Ed., *Duty Pulls Annan in Two Directions*, INT. HERALD TRIB., Sept. 9, 2005, at 6; Thalif Deen, *Post-Summit Dilemma of Promises and Delivery*, I.P.S., Sept. 27, 2005; Sebastian Mallaby, *Bush’s Missed U.N. Opportunity*, WASH. POST, Sept. 12, 2005, at A19; Schlesinger, *supra* note 59; *Frechette’s U.N. Challenge*, *supra* note 78 (maintaining that the U.N. is looked upon as a necessary, and often most competent partner for players major and minor).

believing in it. This, along with the curbing of funding, seems the tactic attempted by U.S. neoconservatives, but it is wildly unrealistic. The U.N. currently oversees eighteen peacekeeping operations, using eight thousand troops. Would the U.S. want to pay for and pacify these problematic hot spots by itself?<sup>85</sup> Rather, should not the U.S. want to reform U.N. institutions so as to strengthen them for this purpose, out of a national self-interest, so that the U.S. can concentrate on playing poker games with greater pay-offs? But this was *not* to be. Accurately forecasting the outcome from the September 2005 World Summit, Samantha Powers noted that the “U.N.’s imperfections were manifest from its creation. It was built upon . . . obvious contradictions. . . . Whatever they can agree upon [at the Summit] is sure to be disappointing and will be derided.”<sup>86</sup>

### III. Summity

For the U.N., “success never seems to resonate as much as failure.”<sup>87</sup> Failures include disasters in Bosnia, Rwanda and Somalia,<sup>88</sup> U.S. circumvention of the Security Council action over Iraqi War II, sexual abuse by U.N. troops in the Congo and elsewhere, and corruption in the Oil-for-Food program.<sup>89</sup> It might be thought that the U.N. is ineffective because we still face war, injustice, and poverty. Yet so far, we have avoided World War III, in no small measure because of the international law rules governing the parties’ poker games. Moreover, more people now live in countries where freedoms are protected to some extent by law. The U.N. has run elections in ninety countries, peacekeeping operations in sixty, helped resolve 170 regional conflicts, and assisted in the decolonization of eighty countries. Such activities are the primary cause for a forty percent decline in armed conflicts since the end of the Cold War. The U.N. imposes sanctions on member-miscreants, establishes international criminal tribunals and then convinces members to turn over potential defendants. The High Commission for Refugees aided fifty million refugees from war, famine or persecution. The International Atomic Energy Agency<sup>90</sup> searches for W.M.D. and has created security measures for one hundred nuclear

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85. See Samantha Power, *To Save the World From Hell*, LE MONDE DIPLOMATIQUE, Sept. 2005, available at <http://mondediplo.com/2005/09/04reforming> (last visited Nov. 3, 2007). Sixty years ago, Henry Cabot Lodge, Jr. said that the U.N. won’t “bring us to heaven,” but it might “save us from hell.” *Id.*

86. *Id.*

87. Editorial, *Short-Lived Celebration*, L.A. TIMES, Oct. 10, 2005, at 10.

88. See *id.*

89. See discussion *infra* notes 164-68 and accompanying text.

90. Winner of the 2005 Nobel Peace Prize.

facilities in seventy countries. Furthermore, the World Health Organization wiped out smallpox and markedly reduced polio.<sup>91</sup>

Past reform efforts often came after war, and were spurred by the vision and political will of the leaders of particular nation-states. The current round of reform turns this process on its head by trying to create political will internally in order to make the U.N. more effective. The fear is that if some U.N. institutions “under perform,” the U.N. as a whole will be unable to meet new threats and opportunities.<sup>92</sup> Thus, in preparation for the 2005 Summit, Secretary-General Annan named a Panel of High-Level Experts to report on issues of peace and security,<sup>93</sup> while economists led by Jeffrey Sachs considered how the commitments made at the 2000 Millennium Summit could best be implemented.<sup>94</sup> In March 2005, Annan synthesized their key recommendations in his manifesto, *In Larger Freedom*.<sup>95</sup> The Secretary-General deliberately set an ambitious and tightly-packaged agenda, anticipating the watering-down and fragmentation that inevitably results from negotiations, or poker games played, over such an agenda. Pakistan, which merits some of the blame for the eventual reform failures, feared that such a “heavy” agenda would lead to collapse, leaving the Summit with no tangible result.<sup>96</sup> However, this fear was never realized of course because poker, and especially advanced poker, rules are designed to avoid collapse/no-result at almost any cost.

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91. See Chesterman, *supra* note 84; Kathryn Horvat & Pat Shea, Op-Ed., *The U.N.: 60 Years and Still Counting*, SALT LAKE TRIB., Oct. 22, 2005, at AA6; Shashi Tharoor, *In Order to Redeem, the United Nations Must Be Redeemed*, THE LEB. DAILY STAR, Sept. 15, 2005; *U.N. is Faced With New Challenges*, PEOPLE'S DAILY ONLINE, Oct. 24, 2005. *But see* Michael Glennon, *supra* note 21, at 613 (decrease in violence “might have been the result of . . . growing economic integration, stronger alliances, military deterrence, more influential N.G.O.s, the reportage of the mass media . . . or merely a transnational sense of horror over the barbarism of war).

92. Kofi Annan, Secretary-General Urges Reform Process Forward, Speech to the World Summit, (Sept. 15, 2005), [www.un.org/news/press/docs/2005/sgsm10090.doc.htm](http://www.un.org/news/press/docs/2005/sgsm10090.doc.htm) (last visited Nov. 3, 2007).

93. See Guehenno, *supra* note 59 (stating that the U.N. investigated 221 peacekeepers over sexual abuse in the Congo, repatriated eighty-eight soldiers, some of whom are being prosecuted in their home country, and fired ten civilians); Tharoor, *supra* note 91.

94. See generally JEFFREY SACHS, *INVESTING IN DEVELOPMENT: A PRACTICAL PLAN TO ACHIEVE THE MILLENNIUM DEVELOPMENT GOALS* (Earthscan 2004).

95. See The Secretary-General, *Report: In Larger Freedom: Towards Development, Security and Human Rights for All, delivered to the General Assembly*, U.N.Doc. A/59/2005 (March 21, 2005), available at <http://www.un.org/largerfreedom/> (last visited Nov. 3, 2007).

96. Brown, *supra* note 16; Colum Lynch & Glenn Keasler, *U.N. Scales Back Plan of Action*, WASH. POST, Sept. 14, 2005, at A6, available at <http://www.washingtonpost.com> (select “Search Archives”; search “1987-Current” for ““U.N. Scales Back Plan of Action””) (last visited Nov. 3, 2007); Schlesinger, *supra* note 59.

Many echoed Annan over the essential interrelatedness of the development, security (including the suppression of terrorism), and respect for human rights, all to be achieved through U.N. reforms. But the U.S., Russia to a lesser extent, and relatively few minor players persisted in pulling at any snag or frayed edge that emerged when Annan's proposals were put under negotiating stress. In effect, these players chose to play many separate poker games, not of the advanced variety, for narrow, short-term, and sometimes misperceived gains. A U.N. culture of inaction absent consensus enabled these players to shape non-reform outcomes as the economists' "holdouts"—veto groups whose existence is made possible by the extraordinarily high "transaction costs" of U.N. reform. Annan's hope for an idealized grand social contract, stated alternatively, a single, idealized advanced poker game, was dashed: developed countries genuinely working to alleviate Third World poverty in exchange for developing countries' support for the reforms developed countries sought. But Annan was careful not to challenge the permanent members of the Security Council—those with veto power or, roughly, what are referred to as the major poker players here—since their power and consensus is essential to any successful reform.<sup>97</sup> Had the U.S. stood with the other majors, would it have been possible to isolate Russia and eliminate the minor-player holdouts? The logic of poker suggests "yes."

The Summit, "the 900 pound gorilla, . . . the largest in history,"<sup>98</sup> occurred in September 2005 when approximately 170 nation-state leaders gathered for a "once-in-a-generation" opportunity for U.N. reform<sup>99</sup> in New York. Mark Malloch Brown recalls that on the morning the Summit opened, negotiations were "heading off the rails," with 140 passages and twenty-seven issues still left undecided.<sup>100</sup> Annan and the transitional General Assembly Presidents took "a high-risk gamble" by

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97. Edith M. Lederer, *Leaders Fall Short on Larger Goals in Effort to Fight Poverty, Terrorism at U.N. Summit*, ASSOC. PRESS, SEPT. 17, 2005; Monique Chemillier-Gendreau, *The Alternative U.N.*, LE MONDE DIPLOMATIQUE, Sept. 2005, available at <http://mondediplo.com/2005/09/05securitycouncil> (last visited Nov. 3, 2007). The holdout "spoiler countries" variously include the U.S., Russia, Myanmar, Turkmenistan, Belarus, India, Vietnam, Syria, Venezuela, Cuba, Pakistan, Egypt, and Iran. See generally Alan Beattie, *Poorer Nations in the Spotlight for Trade Talks*, FINANCIAL TIMES, Nov. 22, 2005; Nick Wadhams, *General Assembly OKs Compromise Document*, ASSOC. PRESS, SEPT. 13, 2005. The people deserve better than this disingenuous horse trading; there is no evidence of the political will to stop, e.g., another Rwanda. *Id.*

98. Olivia Ward, *U.N. Faces the Fight of its Life*, TORONTO STAR, SEPT. 12, 2005, at A8.

99. *Id.*

100. See *U.N. Summit Leaders to Adopt Weak Document*, ASSOC. PRESS, SEPT. 14, 2005, available at [www.chinadaily.com.cn/english/doc/2005-09/14/content\\_477840.htm](http://www.chinadaily.com.cn/english/doc/2005-09/14/content_477840.htm) (last visited Nov. 3, 2007).

deleting contentious matters from the draft Summit outcome, adopting alternative language they thought could win approval, and submitting a “clean” copy to members who then adopted it quickly.<sup>101</sup> Everyone had to compromise,<sup>102</sup> something the advanced poker model predicts, as it does the narrow limitations on such compromises, which are usually composed of diverse national interests and desires to “win.”

In any event, Annan’s proposals were criticized for ignoring the complexities of a global society and for the impossibility of reform where the major powers refuse to give up their prerogatives. Secretary-General Annan did much to open up U.N. processes to NGOs,<sup>103</sup> arguably in an effort to solidify advanced poker as the dominant international game. But NGOs strongly objected to a lack of control over the Summit agenda as well as the lack of access to closed-door negotiations among nation-states. In contrast, the Helsinki Summit and the Clinton Global Initiative, held just before and just after the U.N. Summit respectively, made room for NGO participation in the “intense dialogue” no longer possible at the U.N. “because of highly ritualistic structures, protocol and conflict avoidance.”<sup>104</sup> The “multi-stakeholder” Helsinki process will go forward under two NGOs, the Celso Furtado Centre in Sao Paolo, Brazil, and the Brookings Institution in Washington, D.C.<sup>105</sup>

NGO officials also came up with specific criticisms of Summit outcomes. For example, one critic objected stating “we wanted a bold agenda to tackle poverty but instead we have a brochure showcasing past commitments” and omitting, e.g., women’s rights issues.<sup>106</sup> Only democratic, “comprehensive, radical and transparent reform of the U.N.

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101. *See id.*

102. *See id.*

103. Among the NGOs Annan tried to open processes to were corporations, as “stakeholders” in civil society.

104. Glenn Kessler, *Clinton Gathers World Leaders*, WASH. POST, Sept. 16, 2005, at A2, available at <http://www.washingtonpost.com> (select “Search Archives”; search “1987-Current” for “Clinton Gathers World Leaders”) (last visited Nov. 3, 2007) (quoting Richard Holbrook, U.N. Ambassador under Clinton). *See also* Sanjay Suri, *Development: NGOs Talk, Governments Listen*, I.P.S., Sept. 7, 2005, [www.ipsnews.net/news.asp?idnews=30160](http://www.ipsnews.net/news.asp?idnews=30160) (last visited Nov. 3, 2007) (reporting the presence of seventy governments and 600 NGOs at Helsinki); Chemillier-Gendreau, *supra* note 97; Coate, *supra* note 1; Maggie Farley, *U.N. Reform Bid Exposes its Woes*, L.A. TIMES, Sept. 14, 2005, at A3.

105. *See* Sanjay Suri, *Development: Straight Talk Expected at Post-Helsinki Roundtables*, I.P.S., Sept. 14, 2005, <http://ipsnews.net/news.asp?idnews=30224> (last visited Nov. 3, 2007).

106. *U.N. Reform Agenda Watered Down*, CNN, Sept. 14, 2005, <http://www.cnn.com/2005/US/09/14/un.reform/index.html> (last visited Nov. 3, 2007). *See discussion infra* notes 108-17 and accompanying text. Oxfam’s 4,000 partner organizations in seventy countries promote dignity and development.

will enable this system to fulfil [sic] its historical role. . . .”<sup>107</sup> The “watered-down” language of the “cleverly-crafted” Summit outcome document shows the U.N. becoming “the biggest talk—but not act—shop in the world.”<sup>108</sup> The Mauritius Ambassador speaks of a “least common denominator” Summit outcome document<sup>109</sup> which, according to at least one political scientist, will not move the world toward promoting human security.<sup>110</sup> There was a leadership vacuum, which is what the poker analogy would lead us to expect. Clare Short finds “depression and mistrust,”<sup>111</sup> which we might see as attitudes making advanced poker less likely. According to Mary Robinson, the U.N. “had its bluff called. . . .”<sup>112</sup> Venezuela’s Foreign Minister objected to the “anti-democratic” negotiation process, especially to the fact that the outcome document had to be approved before it was translated into Spanish.<sup>113</sup> However, one journalist writing for the *Economist* finds the document “not wholly devoid of substance.”<sup>114</sup>

107. Elisa Marincola, *Summit Ignores People’s U.N.*, I.P.S., Sept. 16, 2005, <http://other-news.info/index.php?p=1153> (last visited Nov. 3, 2007) (quoting Antonio Papisca of the University of Padua’s Centre for Human Rights). See also Haider Rizvi, *Anger at Washington Simmers on Eve of U.N. Meet*, I.P.S., Sept. 1, 2005, <http://ipsnews.net/news.asp?idnews=30113> (last visited Nov. 3, 2007).

108. Thalif Deen, *March Toward MDGs Leaving Millions Behind*, I.P.S., Sept. 16, 2005, <http://other-news.info/index.php?p=1153> (last visited Nov. 3, 2007) (quoting Saradha Iyer, of Malaysia’s Third World Network). See Frechette’s *U.N. Challenge*, *supra* note 78 (stating the Summit document is “heavy on rhetoric and light on substance”).

109. Colum Lynch, *U.N. Members Undercut Annan’s Quest for Reform*, WASH. POST, Sept. 13, 2005, at A15, available at <http://www.washingtonpost.com> (select “Search Archives”; search “1987 – Current” for ““U.N. Members Undercut Annan’s”) (last visited Nov. 3, 2007) (quoting Ambassador Jagdish Koonjul). See David Usborn, *U.N.’s Reform Plans Hang in Balance as Vital Summit Begins*, THE INDEP., Sept. 15, 2005, available at <http://news.independent.co.uk/world/politics/article312469.ece> (last visited Nov. 3, 2007) (quoting Mark Malloch Brown) (“we always knew we wouldn’t get the full loaf. We’ve got to start counting slices.”).

110. See Coate, *supra* note 1.

111. Clare Short, Comment, *Depression and Mistrust Prevail at the U.N.*, THE INDEP., Sept. 15, 2005, at 33 (quoting former British Minister Short). See Mary Robinson, *A New Way of Doing the World’s Business*, INT’L HERALD TRIB., Sept. 25, 2005 (stating a leadership vacuum deprived the summit of “backbone”).

112. Robinson, *supra* note 111.

113. Edith Lederer, *Leaders Fall Short of Larger Goals in Effort to Fight Poverty, Terrorism at the U.N. Summit*, ASSOC. PRESS, Sept. 17, 2005 (quoting Minister Rodriguez).

114. *Better Than Nothing*, ECONOMIST, Sept. 17, 2005, at 54. See *March Toward MDGs Leaving Millions Behind*, *supra* note 108 (quoting Jamaica’s Foreign Minister Knight, speaking for the Group of Seventy Seven; the Summit outcome at best “a bag of mixed results”); George Mitchell, Op-Ed., *Don’t Write Off U.N. Reform Just Yet*, INT’L HERALD TRIB., Oct. 11, 2005, available at <http://www.iht.com/articles/2005/10/11/opinion/edmitchell.php> (last visited Nov. 3, 2007) (document “papered over many differences and skirted other issues,” but it “establishes a starting point” and a consensus is building); Nahal Toosi, *Annan Defends Summit’s Accomplishments, Agrees Some*

American neoconservatives are even more critical. For example, Brett Schaefer sees the Summit as another step on the path towards U.N. irrelevance, inefficiency, and more low-priority, costly mandates.<sup>115</sup> John Yoo agrees with this characterization, but goes on to argue that the U.N. reforms will markedly increase transaction costs, thus reducing the U.N.'s ability to solve collective action problems.<sup>116</sup> For Nicholas Kristof, the Summit was history's biggest gathering of "hypocrites," who "preen and boast"; along with the Italians and Japanese, "Americans set a dreadful example."<sup>117</sup>

With some justification, much of the blame for reform failures is attributed to John Bolton, Bush's recess appointment as U.N. Ambassador.<sup>118</sup> The bull in the china shop that stalemated the Summit for most observers, Bolton was regarded by the U.S. neoconservatives as showing that the U.N. emperor had no clothes. At Bolton's request, all references to the International Criminal Court and the Kyoto Protocol were deleted from the outcome document. But he was unsuccessful at deleting all quantitative goals relating to the Millennium Development Initiative. Speaking at the Summit, Bush got to play "good cop" to Bolton's "bad cop," and the consensus was a pleasant surprise over Bush's more conciliatory "moral obligation" to go along with much of the outcome document.<sup>119</sup> Moreover, the poker analogy suggests that

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*Results Were Nixed*, ASSOC. PRESS, Oct. 17, 2005 (stating that while the absence of progress on non-proliferation was a "disgrace," and administrative reforms were mixed, the MDGs were "endorsed," and the Peacebuilding Commission is a valuable creation).

115. See Brett D. Schaefer, *The U.N. Summit Document: At What Cost?*, THE HERITAGE FOUNDATION, Sept. 21, 2005 <http://www.heritage.org/Research/InternationalOrganizations/wm853.cfm> (last visited Nov. 3, 2007).

116. See Yoo, *supra* note 9, at 2.

117. Nicholas D. Kristof, *Meet the Fakers*, N.Y. TIMES, Sept. 13, 2005, at A31.

118. Even the Republican-dominated Senate refused to confirm Bolton to his position. Some saw Bush's recess appointment as the abandonment of a bipartisan foreign policy.

119. See *Anger at Washington Simmers on Eve of U.N. Meet*, *supra* note 107; Barbara Slavin, *Bolton Dives Right in to Effort to Change U.N.*, USA TODAY, Sept. 12, 2005, at A8; Celia Dugger, *U.N. vs. Poverty*, N.Y. TIMES, Sept. 14, 2005, at A10; Maggie Farley & Warren Vieth, *Bush, Annan Tout Role of the U.N.*, L.A. TIMES, Sept. 15, 2005, A13; *Better Than Nothing*, *supra* note 114, at 34. See also Evelyn Leopold, *Fears Grow of Meltdown at Ambitious U.N. Summit*, REUTERS, Sept. 11, 2005, <http://www.alertnet.org/thenews/newsdesk/N11107587.htm> (last visited Nov. 3, 2007) (quoting David Schorr) (Bolton's "overreaching by niggling over small stuff rather than shoring up the major items"); Jonathan Beale, *Strained Relations for U.S. & U.N.*, BBC NEWS, Aug. 8, 2005, <http://news.bbc.co.uk/2/hi/americas/4120088.stm> (last visited Nov. 3, 2007) (informing that the man Bolton replaced at the U.N., Nicholas Burns, had worked hard and collaboratively); Klaus Brinkbaumer & Greg Mascolo, *The Gangs of New York*, SPIEGEL ONLINE, Sept. 26, 2005 (arguing Bolton downgraded "the final document to little more than a meaningless sketchpad of world politics."); Thalif Deen, *U.S.-U.N. Relations May be on a Collision Course*, I.P.S., Aug. 5, 2005 (stating James Paul Bolton is like an atheist appointed as ambassador to the Vatican) ("through threats and blackmail," the

Bolton could not have had so significant an impact on the Summit without disruptions from the Russians and the minor-player holdouts that, like the U.S., were grinding very different axes in an attempt to win short-term games for their own purposes and in distinctive ways.

These reform and non-reform outcomes will be discussed under eight headings: the composition of, and voting arrangements in, the Security Council; U.N. powers of intervention and the new “responsibility to protect” against genocide and war crimes; terrorism, a central concern of the U.S. and the U.K.; a new Peacebuilding Commission, to help nations emerging from conflict; the non-proliferation of W.M.D. as well as ordinary weapons; management and administration within the U.N.; human rights; and (non-) implementation of the MDGs. How all of this will be paid for remains to be seen. Of course, this is a topic of little interest to players totaling up their wins and losses at poker.<sup>120</sup>

#### A. *The Security Council*

The Security Council (“S.C.”) will remain an unreformed “aristocratic” (undemocratic) yet rather “toothless executive” body, which suffers from a “credibility deficit.”<sup>121</sup> For example, fears of a Chinese and/or Russian veto have so far stopped the S.C. from a needed and otherwise-feasible humanitarian intervention in Darfur, Sudan. Many minor players are opposed to reform of the S.C. because they view reform as conducive to marginalizing the General Assembly (“G.A.”)—in what is assumed to be a zero-sum poker game between them. More modest, transaction cost-reducing reforms of the G.A., the minor-players’ bailiwick, were approved by the Summit. These reforms streamline committee structures, speed up deliberations and rationalize the G.A. agenda, despite an apparent preference among members of the G.A. for paralyzing, protracted debates. Poker analyses show why “democratizing” reforms to the S.C., e.g., eliminating permanent

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U.S. tries to bend the U.N. to its will—without breaking it); *see also app. infra.*

120. *Main Divisive Issues Before World U.N. Summit*, REUTERS ALERTNET, Sept. 5, 2005. *See* Julio Godoy, ‘Summit Will Look for the Money’, I.P.S., Sept. 13, 2005, <http://ipsnews.net/interna.asp?idnews=30243> (last visited Nov. 3, 2007) (examining proposals to raise global Tobin taxes on currency speculation, environmentally-hazardous activities, and corporate profits).

121. *See* Chemillier-Gendreau, *supra* note 97, at 32 (claiming S.C. has allowed conflicts to proliferate and intervened arbitrarily); *Despite Strictures, U.N. Chief Refuses to Yield*, *supra* note 63, at 19 (stating the S.C. fails to define its own parameters and responsibilities in, e.g., the Iraq Oil-for-Food program, and is inherently flawed by the lack of democracy—the vetoes of permanent members are a recipe for paralysis and failure). *But see* discussion *infra* note 321-25 and accompanying text.

membership and thus veto powers, went nowhere.<sup>122</sup>

Permanent S.C. members are roughly coextensive with the major poker players. Although the E.U. gets two S.C. “half”-vetoes since Britain and/or France do not always reflect interests of the E.U. as a whole. Denied a S.C. veto, one or more major players could rather easily find another way to wreck any disagreeable game created by many or most minor players through the G.A. Indeed, the failure of many important G.A.<sup>123</sup> resolutions attests to this power. Similarly, creating additional permanent members, with or without a veto, is bound to fail *de facto* because this would increase transaction costs and give mid-level, quasi-major, players a power they cannot currently win by playing games with the other majors. In any event, when Annan recommended the addition of two new permanent members in his *In Greater Freedom*, the existing permanent members were unable to choose the new permanents from among the lobbying aspirants: Japan, India, Germany, Brazil, and South Africa.

As an alternative, Italy, Canada, Pakistan, Mexico, and sixteen other countries proposed ten additional temporary, or rotating, S.C. seats. This is a feasible increase in representation, but it would come at the price of significantly higher transaction costs in the S.C.’s production of public goods. In the end, no formal votes were taken on these reforms, and the Summit’s final document contained an anodyne “commitment” to make the S.C. “more broadly representative, more efficient and transparent.”<sup>124</sup> However, the debate over S.C. seats, what some describe as the Summit’s biggest failure to deal with an issue which had been percolating for a decade, “sucked the oxygen from other issues and divided the member states. . . .”<sup>125</sup> The rule of international law is widely

122. Even Bush and Bolton were uncharacteristically coy about the S.C. reform, perhaps because they knew it was doomed to fail. See Evelyn Leopold, *Fears Grow of Meltdown at Ambitious U.N. Summit*, REUTERS NEWS, Sept. 11, 2005; Louise G. Frechette, Deputy Secretary-General, United Nations, Remarks: ABA Day at the UN, Mar. 29, 2005; Chemimllier-Gendreau, *supra* note 97, at 32; *Making Globalization Work*, *supra* note 57, at 16; Posner, *supra* note 9, at 487-88; *Darfur’s Despair*, ECONOMIST, Oct. 15, 2005, at 47.

123. One state, one vote is the rule of the game in the G.A.

124. Richard Black, *U.N. Reforms Receive Mixed Response*, BBC NEWS, Sept. 17, 2005, <http://news.bbc.co.uk/1/hi/world/americas/4255106.stm> (last visited Nov. 3, 2007). See Mark Turner, *U.N. “Must Never Again be Found Wanting on Genocide”*, FINANCIAL TIMES, Sept. 16, 2005, <http://www.ft.com/home/us> (Search for “U.N. ‘Must Never Again be Found Wanting on Genocide’”) (last visited Feb. 3, 2008); Evelyn Leopold, *Like Fixing the Weather, Council Reform Eludes U.N.*, REUTERS ALERTNET, Sept. 19, 2005; Andrew Teitelbaum, *All We Can Hope is That Things Don’t Get Worse*, I.P.S., Sept. 24, 2005; Yoo, *supra* note 9, at 642-43.

125. Chesterman, *supra* note 84, at 26. See Thalif Deen, *U.N.’s Authority Tested by Perils Ahead*, I.P.S., Dec. 27, 2005, <http://ipsnews.net/print.asp?idnews=31590> (last visited Nov. 3, 2007).

regarded as endangered and thoroughgoing reforms are arguably needed so that the S.C. may better defend it. The S.C. must also become more accountable, transparent and legitimate to counter its image of “the fox guarding the chicken coop,” and adopt more permanent and effective procedures.<sup>126</sup>

### B. Terrorism

A recent study shows “international terrorism” to be the only form of political violence that is on the increase.<sup>127</sup> Political, organizational and technological innovations enable terrorist NGOs to do things which were formerly the province of rogue nation-states—things which render a national self-defense almost impossible and allow terrorist organizations to grab a seat at the poker table and often disrupt the game. For the U.S., Britain, and perhaps some other countries, this justifies an oxymoronic anticipatory retaliation<sup>128</sup> as a game-move. The obvious risk this tactic poses to peace and security<sup>129</sup> seems to be a prime motive behind U.N. attempts to regulate terrorism.

A Convention Against Nuclear Terrorism, based on Russian proposals and criticized for omitting prohibitions on state terrorism, was approved by the G.A. and opened for signature by leaders at the World Summit. It is the latest of *thirteen* anti-terrorism conventions. Still, some think that terrorism is inadequately outlawed by international law, especially those who believe that this inadequacy licenses intervention by one or a few countries. Britain’s Tony Blair thus proposed S.C. Resolution 1624,<sup>130</sup> which passed unanimously during the Summit. Under it, all members must now “prevent incitement” to terrorism, deny safe haven to terrorists, and (a Blair preoccupation) “counter violent extremist ideologies.”<sup>131</sup> But Kumi Naidoo, an NGO official and former

126. James Paul & Celine Nahory, *Theses Toward a Democratic Reform of the U.N. Security Council*, GLOBAL POLICY FORUM, July 13, 2005, <http://www.globalpolicy.org/security/reform/2005/0713theses.htm> (last visited Nov. 3, 2007). See Juan Somavia, *The Humanitarian Responsibilities of the U.N. Security Council*, <http://globalpolicy.org/> (Search for “The Humanitarian Responsibilities of the U.N. Security Council”) (last visited Feb. 3, 2008); Swiss Government, Working Methods of the Security Council (July 2005), available at <http://www.globalpolicy.org/security/reform/2005/06methods.pdf> (last visited Feb. 3, 2008) (relaying seventeen recommendations in a “non paper”).

127. See *Global Violence Has Decreased, U.N. Says*, ASSOC. PRESS, <http://www.stwr.net/content/view/574/37/> (last visited Feb. 3, 2008).

128. See discussion *infra* notes 146–48 and accompanying text.

129. As when misused in Iraqi War II games, for example.

130. S.C. Res. 1624, U.N. Doc. S/RES/1624 (Sept. 14, 2005).

131. *U.N. Security Council Passes Resolutions Related to Terrorism*, JERUSALEM POST INT’L, Sept. 14, 2005, (citing S.C. Res. 1624, ¶ 1, 3, U.N. Doc. S/RES/1624 (Sept. 14, 2005)). See Andrew Grice, *Blair Frustrated as U.N. Fails to Agree on Anti-terror Action*, THE INDEPENDENT, Sept. 15, 2005, <http://news.independent.co.uk.world/>

African National Congress (“ANC”) activist, argues that Resolution 1624 is of “no effect” without a definition of “terrorism” from the Summit G.A.<sup>132</sup> Human Rights Watch and Human Rights First disagree. Oppressive governments can use vague terms such as “prevent” and “incitement” to punish non-violent criticisms,<sup>133</sup> and this author would add that the obligation to “counter . . . ideologies” can be used to similar effect.

The Summit outcome document offered a therapeutic concession to developed countries, especially the U.S. and Britain, by promising to “make all efforts” towards yet another convention and condemning “terrorism in all its forms and manifestations, committed by whomever, wherever and for whatever purposes.”<sup>134</sup> But, as Naidoo notes, Muslim nations scotched any definition of “terrorism” which prohibits attacks on civilians, a definition needed to make the statement in the Summit document operative, for fear that such a definition would de-legitimate,

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politics/article312729.ece (last visited Nov. 3, 2007); Haider Rizvi, *U.N. Treaty Targets Rogue Nukes*, I.P.S., Sept. 13, 2005, <http://ipsnews.net/news.asp?idnews=30256> (last visited Nov. 3, 2007); Yoo, *supra* note 9, at 642-43; *Security Council Meeting at Summit Level Unanimously Adopts Anti-Terror Steps*, Sept. 14, 2005 [hereinafter *Security Council Meeting*], <http://www.un.org/apps/news/story.asp?NewsID=15800&Cr=world&Cr1=summit> (last visited Feb. 3, 2008).

132. Black, *supra* note 124 (quoting Naidoo). The High-Level Panel suggested the following definition of terrorism: “any action, in addition to . . . [those in] existing conventions . . . , the Geneva Conventions and . . . [S.C. Res.] 1566, that is intended to cause death or serious bodily harm to civilians or non-combatants.” *U.N. Treaty Targets Rogue Nukes*, *supra* note 131 (quoting the Panel). On the other hand, Annan argued that “[a]ny action constitutes terrorism if it is intended to cause death or serious bodily harm to civilians or non-combatants with the purpose of intimidating a population or compelling a government or an international organization to do or abstain from doing any act.” Chemillier-Gendreau, *supra* note 97 (quoting Annan). Bolton’s proposed language involved “the targeting and deliberate killing of civilians . . . when the purpose . . . is to intimidate a population or compel a government or international organization [which] cannot be justified on any grounds. . . .” Patrick Goodenough, *U.N. Summit Document Won’t Define Terrorism*, Sept. 14, 2005 (quoting Bolton), <http://www.cnnnews.com/ViewForeignBureaus.asp?Page=%5CForeignBureaus%5Carchive%5C200509%5CFOR20050913a.html> (last visited Nov. 3, 2007). No such definition, or any other, was adopted by the World Summit.

133. See Grice, *supra* note 131; Mithre Sandrasagra, *U.N. Terror Resolution Overly Vague*, HWR Says, I.P.S., Sept. 14, 2005, <http://ipsnews.net/news.asp?idnews=30269> (last visited Nov. 3, 2007); Human Rights First, *Security Council’s Counterterrorism Resolution Open to Abuse By Authoritarian Governments*, [http://www.humanrightsfirst.org/defenders/hrd\\_global/alert092105-res1624.htm](http://www.humanrightsfirst.org/defenders/hrd_global/alert092105-res1624.htm) (last visited Nov. 3, 2007). For Benin’s President, anti-terrorism requires scrupulous respect for state sovereignty, international human rights, and international humanitarian law. At the same time, Romania’s President maintains that anti-terrorism can be “sustained” only by S.C. action. See Steven Schifferes, *World Bank Discovers Inequality*, BBC NEWS, Sept. 20, 2005. But see Sandrasagra, *supra* note 133 (quoting the Danish Prime Minister: “Freedom of speech . . . must never be an excuse for inciting terrorism and fostering hatred”).

134. Black, *supra* note 124.

e.g., Palestinian self-determination efforts and rights to resist occupation. Naidoo adds that some thought the ANC a terrorist organization, and it now governs South Africa. Perhaps unconsciously echoing former President Reagan's view of the Nicaraguan Contras, Naidoo concludes: "one person's terrorist is another person's freedom fighter."<sup>135</sup>

While China and Russia want the U.N. to help coordinate anti-terrorism efforts, the Bush Administration<sup>136</sup> wants a *carte blanche* for unilateral action, using U.N. coordination only for "fringe" issues like money laundering. Placing security above development, Bush has moved further away from multilateral aid, arguably to militarize and funnel aid to allies such as Pakistan and Israel. These are instances of regime rather than developmental support—huge "plunger" bets in pursuit of short-term game payoffs rather than the more profitable, long-term advanced poker that requires a more equitable, broadly-based development. At the same time, few believe in the efficacy of the E.U.'s holier-than-thou rhetoric over development aid either.<sup>137</sup> Most treat it like any other bet in a short-term game because it is not backed by reduction in the E.U. subsidies to European agriculture that leaves most developing countries without access to European agricultural markets.

### C. *Intervention*

The Summit attempted to breathe new life into multilateral actions, in what proved to be an imperfect reform in organizational and nation-state priorities. Perception of collective security threats have changed with W.M.D., terrorism, humanitarian crises, disaster relief, discriminatory ideologies, genocide, and abductions<sup>138</sup> becoming more prominent as threats. Also, complaints are prevalent that multilateral interventions, as they occur now, are often arbitrary. Complaints further come to the affect that S.C. consensus resolutions are frequently too restrictive for a "robust" peacekeeping, and that donor peacekeeping aid usually arrives too late. Nonetheless, U.N. conflict prevention and peacebuilding<sup>139</sup> efforts are becoming more numerous and effective. Operations in East Timor and Sierra Leone ended more or less successfully in 2005, and a recent Rand Corporation study found sixty-six percent of U.N. peacekeeping efforts to be successful. But even if, as

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135. *Id.* (quoting Naidoo). See also *U.N. Set Out to Institute Bold Reforms but Ended Up With Feeble Tweaks*, HOUSTON CHRONICLE, Sept. 15, 2005 [hereinafter *U.N. Set*].

136. If they want to be honest, China and Russia desire the same ends (by different means) as the Bush Administration.

137. See Grice, *supra* note 131; Sanjay Suri, *Political Strings Tie Up U.S. Aid*, I.P.S., Sept. 24, 2005, <http://ipsnews.net/print.asp?idnews=30406> (last visited Nov. 3, 2007).

138. The abduction of aid workers is of particular concern.

139. See discussion *infra* notes 141-45 and accompanying text.

some argue, the true figure is forty percent, this is an achievement since collective peacekeeping did not really exist prior to the 1990's.<sup>140</sup> Summiters sitting as the S.C. passed another Resolution unanimously, Resolution 1625,<sup>141</sup> which is aimed at conflict prevention, especially in Africa. This Resolution calls for preventative diplomacy, regional mediation, an early-warning system for potential conflicts, the promotion of fairness and transparency in elections, and action against the illegal exploitation of resources such as diamonds.<sup>142</sup> Many also see a need to break the worldwide Hobbesian cycle of war—conquest, “empire,” oppression, succession, anarchy, and back to war. This cycle is based on the incentives and capacities for a violent, collective self-help. Examples include the ability to coerce would-be “free riders” and to attract an external support for your cause or to create a unifying distrust of external opposition. These incentives and capacities can often be altered non-violently by, e.g., effective recognition of the right to self-determination.<sup>143</sup>

Romeo Dallaire, the Canadian General who headed U.N. peacekeeping in Rwanda, complains that the “Mogadishu rule,” in effect since the U.S. pulled out of Somalia in 1990, governs. “[T]he sense of responsibility to human beings” loses out “against the self-interested demands imposed by the governments and . . . by their people and structures.”<sup>144</sup> In other words, the initial S.C. decision to play advanced poker over Rwanda was later deserted by players whose support and resources the U.N. needed: players who were not altogether free agents

140. *Global Violence Has Decreased, U.N. Says*, *supra* note 127. See Chemillier-Gendreau, *supra* note 97; Power, *supra* note 85; Gordon Brown & Hilary Benn, *Let's Put On Some Institutional Muscle*, INT'L HERALD TRIB., Oct. 19, 2005 (claiming that in order to deal with natural disasters, the following must be augmented and better coordinated: the emergency jurisdiction of the IMF and the WB, the U.N. Office for Coordination of Humanitarian Affairs, and the U.N. Emergency Revolution Fund); Howard LaFranchi, *A Welcome Surprise: War Waning Globally*, THE CHRISTIAN SCI. MONITOR, Oct. 18, 2005, at A1; Haider Rizvi, *U.N. Blue Helmets Earn Applause—and Censure*, I.P.S., Dec. 30, 2005, <http://ipsnews.net/news.asp?idnews=31623> (last visited Nov. 3, 2007); Yoo, *supra* note 9 (stating humanitarian crises include systematic human rights violations and the collapse of central authority—or hijacking by non-state actors and involve individual liability, as well as collective action problems). Yoo arguably proves the reformers' case when he notes that between the Korean War and Iraqi War I (1991) seventy-five to eighty percent of deaths from violent conflict came from intrastate conflicts that the U.N. Charter drafters did not see as threats to peace. See *id.*

141. S.C. Res. 1625, U.N. Doc. S/RES/1625 (Sept. 14, 2005).

142. *Security Council Meeting*, *supra* note 131.

143. *Globalization, Nationalism, & Human Rights*, *supra* note 8; Paul H. Brietzke, *Self-Determination, or Jurisprudential Confusion: Exacerbating Political Conflict*, 14 WIS. INT'L L.J. 69, 77 (1995).

144. Jeff Fleischer, *Shake Hands With the Devil: An Interview with Romeo Dallaire*, MOTHER JONES, Jan. 2005, available at <http://motherjones.com/news/qa/2005/01/dallaire.html> (last visited Nov. 3, 2007).

since they operated under “domestic” strictures. These deserting players thus reverted to short-term, non-peacekeeping poker games where *perceived* payoffs were greater. Dallaire contrasts Rwanda with the self-interested, ostensibly security-based, intervention in Yugoslavia where people are white—“like us” and living closer to us. He concludes that conflict resolution requires more enlightened and multi-skilled peacekeeper/humanitarians who must be given a firm S.C. mandate to protect the people caught between warring participants.<sup>145</sup>

Interventions by another country, rather than the U.N., are traditionally restricted to self-defense or interventions otherwise permitted under Chapter 7 of the U.N. Charter. Bush’s assertion of a unilateral right of anticipatory retaliation, especially as misplayed during his Iraq poker hands, alerted the world community to the need for legal action. The High-Level Panel thus recommended a five-pronged interpretive loosening of Chapter 7 strictures, an effort Michael Glennon labels “wishful thinking.”<sup>146</sup> When this proposal is combined with the inability of the members of the International Criminal Court to define “aggression,” and with polls which show diverse national interpretations of “peace” and even “development,”<sup>147</sup> Glennon concludes that a “legalist solution” to a profligate use of force is highly improbable.<sup>148</sup>

Nonetheless, Annan, and later the World Summit outcome document, adopted a Canadian initiative: the “responsibility to protect,” through uninhibited action, civilian populations against genocide or war crimes when their governments are “unable or unwilling” to do so.<sup>149</sup>

145. *See id. See* Somavia, *supra* note 126. Humanitarian interventions require “a series of interlocking legal and logistical safeguards – shored up by the political will of countries . . . and operationalized through a coherent U.N. system . . . functioning with NGOs and regional and local governments. A separate convention (or treaty) is needed to protect nongovernmental personnel affiliated with U.N. relief efforts.” *Id. But see Anger at Washington Simmers on Eve of U.N. Meet, supra* note 107 (stating that since the 1990 failure in Somalia, U.N. peacekeeping operations have become more aggressive and less “neutral,” in Haiti for example, resulting in the death of ninety-one peacekeepers in 2004).

146. Glennon, *supra* note 21, at 614. Glennon lists the Panel’s five “criteria of legitimacy”: 1.) is the threat sufficiently serious, 2.) is the purpose proper, 3.) has every nonmilitary option been exhausted, 4.) is the military action proportionate to the threat, and 5.) is there a reasonable chance of success? *See id.* 614–15. For Yoo, these criteria will not forestall the use of self-defense as a pretext for illegality. *See* Yoo, *supra* note 9. Bush must have been irked when, during the World Summit, the new Iranian President called Bush’s anticipatory retaliation a “blatant contradiction to the very foundations of the U.N. and the letter and spirit of its charter.” Tyler Marshall, *Iran Leader’s First U.N. Speech Has a Pretty Clear Target*, L.A. TIMES, Sept. 15, 2005.

147. *See* discussion *infra* note 187-211 and accompanying text.

148. *See* Glennon, *supra* note 21.

149. *See* Black, *supra* note 124. *See* Iraz Hussain, *Is the Glass of U.N. Reforms Half Full?*, DAILY TIMES, Oct. 7, 2005 (stating that between 1827 and 1914, the U.S. intervened in Latin American countries seventy times on “humanitarian”/“duty to

This language was adopted despite assertions that it infringes state sovereignty, fears of endless S.C. debates, and developing countries' fears that this "responsibility" would give major players, especially the U.S., an excuse to intervene. The thoughtful former U.N. High Commissioner for Human Rights and President of Ireland, Mary Robinson, praises this World Summit game move, while adding that it is only the single leg of a stool where the others failed to materialize: human rights improvements, control over trade in small arms (the real W.M.D.), and especially, progress over development; the G-8's "triumphal announcements" came off "looking hollow."<sup>150</sup>

#### D. *Peacebuilding*

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

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protect" grounds; the "principle alone is not sufficient"); *Main Divisive Issues Before the U.N. World Summit*, *supra* note 120.

150. Robinson, *supra* note 111. See U.N. 'Must Never Again be Found Wanting on Genocide', *supra* note 124 (informing that for Zimbabwe's Mugabe, "responsibility to protect" can be a cynical ploy in an aggressive foreign policy); *Rwanda Wants Action, Not Words, on Genocide Prevention*, USA TODAY, Sept. 18, 2005, <http://www.usatoday.com/> (Search for "Rwanda Wants Action, Not Words, on Genocide Prevention") (last visited Feb. 3, 2008) (quoting Rwanda's Foreign Minister Murigande: will the document "lead to lengthy academic or legal debates on what constitutes genocide or crimes against humanity, while people die?"); *id.* (the U.N. has "consistently neglected to learn from its mistakes" in, e.g., Rwanda); Brinkbaumer & Mascolo, *supra* note 119; *Better Than Nothing*, *supra* note 114, at 54. On development and the G8, see discussion *infra* notes 200-202 and accompanying text.

The Bush Administration has moved too slowly over Darfur. A no-fly zone has not been imposed, and there has been no NATO deployment. However, the U.N. is even slower. *Darfur's Despair*, *supra* note 122, at 47; Editorial, *Negotiating With Genocide*, WASH. POST, Oct. 9, 2005, at B6, available at <http://www.washingtonpost.com> (select "Search Archives"; search "1987-Current" for "Negotiating with Genocide") (last visited Nov. 3, 2007); *Main Divisive Issue Before U.N. World Summit*, *supra* note 120. U.S. Ambassador Bolton (plus China, Algeria, and Russia) thus blocked a U.N. envoy from briefing the S.C. about human rights violations in Darfur: action, rather than talk, is required.

map” for Afghan governance.<sup>151</sup>

As an effort which overlaps some U.N. Development Program (“U.N.D.P.”) projects, thirty-nine countries<sup>152</sup> have raised forty-two million dollars to create a new Democracy Fund (“U.N.D.E.F.”). The idea is to fill in the gaps experienced by countries in transit from some type of authoritarianism. The anticipated projects include: the creation of civil societies; the rule of law; political parties; independent courts; a “free press”; trades unions; enhanced monitoring, evaluation, and auditing capacities; more professionalized civil and military establishments; and programs to safeguard the rights of women, children, and minorities. No particular democratic model will be endorsed, no conditionality will be imposed on the aid given, and the Fund will report to the G.A. Both of these reforms look like useful ways to restructure domestic games to make an advanced poker more common and more likely to yield cooperative, positive-sum outcomes.<sup>153</sup>

### *E. Non-Proliferation*

In contrast to the peacebuilding successes described *supra*, Secretary-General Annan noted that the World Summit “could not even agree on a paragraph on non-proliferation and disarmament, and I . . . [find this] a disgrace and a real failure.”<sup>154</sup> Once again, this kind of failure may be described as too many players preoccupied with, perhaps misperceived, short-term gains potentially available from smaller, non-advanced poker games.<sup>155</sup> As things stand, the Nonproliferation Treaty (“NPT”) allows the U.S., Britain, France, China, and Russia to possess nuclear weapons. But the NPT requires these states to disarm. Other state-parties are strictly prohibited from having them. India, Pakistan, and Israel have not signed the NPT, however, and North Korea withdrew from the NPT in 2002. Nuclear-free countries supported the NPT in the

151. See LaFranchi, *supra* note 140; *Global Violence Has Decreased*, U.N. Says, *supra* note 127; Editorial, *Making Peace Work*, L.A. TIMES, Oct. 23, 2005, at M4.

152. Significant contributors include the U.S., India, and Australia.

153. Ayesha Gooneratne, *U.N. Launches New Democracy Fund*, I.P.S., Oct. 12, 2005, <http://ipsnews.net/interna.asp?idnews=30607> (last visited Nov. 3, 2007). See discussion *supra* notes 34-61 and accompanying text; see also discussion *infra* notes 163, 182, 186, 219, 222-34 and accompanying text (discussing the need for an advanced poker). But see also *Middle East Democracy Summit Ends in Rancor*, *supra* note 59. Bush’s Forum for the Future, held in Bahrain, ended without a formal agreement on democracy promotion, Egypt—thought to be dependent on U.S. foreign aid—insisting on Arab governments’ control over which democracy groups receive aid.

154. Nick Wadhams, *General Assembly OKs Compromise Document*, ASSOC. PRESS, Sept. 13, 2005, <http://www.utexas.edu/conferences/africa/ads/1127.html> (last visited Nov. 3, 2007) (quoting Annan).

155. See e.g., discussion *supra* notes 34-61 and accompanying text; discussion *infra* notes 182, 186, 219, 222-234 and accompanying text.

past because of the nuclear “haves” promise to disarm. However, this is being undermined by Bush’s refusal to disarm and other Bush/Bolton actions,<sup>156</sup> Russia,<sup>157</sup> and by actions of others. The most dangerous “other” is Pakistani scientist and black marketeer, A.Q. Khan. Feeling that Muslim countries had their nuclear weapons desires thwarted while Israel and India were given free rein, he facilitated a proliferation by North Korea, a potential proliferation by Iran and Libya, and by who knows where else.<sup>158</sup> He is such a nationalist hero as to be untouchable by the international community so long as he stays in Pakistan.

The reformist heavy lifting in this area was helped along by an NGO. The Nobel Committee awarded the 2005 Peace Prize to the International Atomic Energy Agency (“IAEA”) and its head, Egyptian lawyer Mohamed El Baradei. This Prize was both a slap at the U.S.<sup>159</sup> and a warning that the serious threats posed by Khan, North Korea, Iran, *et al.* can only be met through international cooperation rather than unilateral or collaborative action from within the major players. Particularly innovative and deserving of global support is El Baradei’s new proposal: countries which do not yet have nuclear weapons should forbear producing nuclear fuel for at least ten years. Fuel would be

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156. Xin Benjian, *Who’s Pushing Nuclear Proliferation*, PEOPLE’S DAILY ONLINE, Oct. 27, 2005, [http://english.peopledaily.com.cn/200510/27/eng20051027\\_217234.html](http://english.peopledaily.com.cn/200510/27/eng20051027_217234.html) (last visited Nov. 3, 2007) (stating the forty-four member Nuclear Suppliers Group, which exerts export controls—especially when the importer has not signed the NPT—turned down the U.S. request to offer access to India); *id.* (finding this attempt makes it more difficult for the U.S. to win support from the international community to not supply North Korea and Iran); Colum Lynch, *Bolton Criticizes Bill Withholding U.N. Funds*, WASH. POST, Sept. 28, 2005, at A20 (when asked in Congress why he didn’t strike deals at the Summit for non-proliferation of biological and chemical weapons, Bolton said “We ‘tried very hard’ but were opposed by countries who saw the U.S. rather than rogue states as the prime proliferators”); Jacques Hymans, *Think Again: Nuclear Proliferation*, FOREIGN POLICY, Nov. 2005 (claiming Americans “squander non-proliferation opportunities through a . . . tendency to lecture rather than to listen”).

157. *See, e.g.*, Ted Turner & Stanley Weiss, *Avoiding A Russian Arms Disaster*, WASH. TIMES, Nov. 6, 2005, at B4 (stating half of Russia’s weapons-grade nuclear materials are poorly protected, as are shells of VX and Sarin nerve gas, and the Nunn/Lugar program that has eliminated some Russian nukes continues to be under threat from Congress).

158. Douglas Frantz, *From Patriot to Proliferator*, L.A. TIMES, Sept. 23, 2005. *See* Saunders, *supra* note 82 (in light of the U.N. Charter pledge “to save succeeding generations from the scourge of war,” the U.S.’s “failure to agree on disarmament and nuclear non-proliferation is a woeful foreboding that conflicts will get worse not better”). *But see* Hymans, *supra* note 156 (informing that since the end of the Cold War, more nations have given up nuclear arsenals than have created new ones); *id.* (claiming the nonproliferation regime has not been as successful as advertised, since the vast majority of states simply have no interest in doing what the N.D.T. prohibits).

159. The U.S. had opposed El Baradei’s re-election because of his behavior concerning Iran until it became clear that there was no other suitable candidate. The U.S. later purported to find in his Nobel Prize a warning to Iran.

supplied *and* disposed of by a country already having nukes, with the IAEA as the supplier/disposer of last resort. The IAEA seems to do its best work when given unfettered access,<sup>160</sup> which is not the case in North Korea and Iran, where various nation-state players claim primacy. The IAEA could be understood as claiming a seat at the poker table, helping to guide play in more advanced directions.

The World Summit Draft outcome document asked governments to take action against organized crime, as well as against the proliferation of small arms<sup>161</sup> and land mines. 145 nations have ratified the Landmine [non-proliferation] Treaty, the product of the Campaign that won the 1997 Nobel Peace Prize, and performance under the Treaty has been relatively good. But regrettably, the Pentagon may soon produce two higher-tech landmines.<sup>162</sup> To allow Annan the last word, the “non-proliferation regime” is “unraveling” because “we have allowed posturing to get in the way of results.”<sup>163</sup> Posturing can be understood as a relatively insubstantial poker bet, which is treated as such by the other players.

#### F. Administration—and a Sidebar

Paul Volcker, the head of the Oil-for-Food Investigating Commission, which convinced most U.N. members of the urgency of administrative reform, found that Secretary-General Annan’s “cumulative management performance” fell short of the standard the U.N. “should strive to maintain.”<sup>164</sup> The putative keeper of the better natures at the U.N., Annan continued his attempts to rebuild U.N. legitimacy even at a time when his own political and moral authority was

160. See *Despite Strictures, U.N. Chief Refuses to Yield*, *supra* note 63; David Holley, *Nuclear Chief Offers a Nonproliferation Plan: Promise Them Fuel*, L.A. TIMES, Oct. 6, 2005, at A3; Editorial, *Despite Prize, Nuclear Agency Flawed*, TORONTO STAR, Oct. 12, 2005, at A22; *Nuclear Watchdog Wins Nobel Peace Prize*, INT’L HERALD TRIB., Oct. 7, 2005, available at <http://www.iht.com/articles/2005/10/07/europe/web.1007nobel.php> (last visited Nov. 3, 2007); *Short-Lived Celebration*, *supra* note 87. But see Hymans, *supra* note 156 (claiming while the nonproliferation regime is billed as successful, the fact is that most countries do not want the bomb in question anyway); *id.* (the IAEA regime is “flimsy,” suffering from “ambiguous and erratically enforced rules, a myriad of technical loopholes, and chronic underfunding.”).

161. According to Mary Robinson, small arms are “the real W.M.D.” Robinson, *supra* note 111.

162. Human Rights Watch, *Back in Business?: U.S. Landmine Production and Exports*, Aug. 2005 [hereinafter, *Back in Business*], <http://hrw.org/backgrounders/arms/arms0805.pdf> (last visited Nov. 3, 2007).

163. Hussain, *supra* note 149 (quoting Annan). See Black, *supra* note 124.

164. Bill Berkowitz, *At Sixty, It’s Uneasy Times for the U.N.*, I.P.S., Nov. 10, 2005, available at <http://www.ipsnews.net/news.asp?idnews=30967> (last visited Nov. 3, 2007) (quoting Volcker).

at its weakest. Many problems stem from the U.N. bureaucrats' inbred and cosseted (by diplomatic immunity) existence. Bureaucratic positions are filled by nationality rather than merit in an atmosphere of secrecy and unaccountability. This practice leads to the compromise of many U.N. goals which directly result from a bureaucratic unwillingness or inability to implement them. With the exception of improved security measures, to forestall the recurrence of events like the Baghdad explosion that killed Sergio de Mello and other valued U.N. officials, Annan managed only partial reforms before the World Summit. These earlier reforms nonetheless left U.N. bureaucrats, most of whom have little faith in their seniors, with their morale further damaged. The World Summit thus approved Annan's additional reforms under his claimed goals of improving U.N. integrity, impartiality, and its capacity to deliver. These additional reforms included: an internal ethics office, especially to resolve conflict-of-interest problems; strengthening the Office of Internal Oversight Services, and other auditing programs designed to increase efficiency; a one-time buyout of the least competent U.N. bureaucrats; an independent and external evaluation committee; and increased uniformity over which documents are made public, with a bias towards an increased transparency in the U.N. Secretariat. These were the reforms the U.S. and other major funders of the U.N. wanted, and they were adopted despite minor players' suspicions that they would be used by their advocates, especially the U.S., to control the Secretary-General. Developing countries' worries were well-placed, as budgetary and other major administrative controls are being removed from the G.A. where the developing countries dominate.<sup>165</sup> This looks more like a straight zero-sum, rather than advanced, poker game, with developed U.N.-funding countries able to out-bid developing ones.

As mentioned previously,<sup>166</sup> the Oil-for-Food sidebar provoked shameless exaggeration of the extent of corruption, and of Annan's role in it, in a failed American neoconservative quest for the Secretary-General's head. Neoconservatives embarked upon this sidebar because Annan approved of the S.C.'s denial of permission for Iraqi War II.

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165. Brown, *supra* note 16; Chesterman, *supra* note 84; *U.N.'s Authority Tested by Perils Ahead*, *supra* note 125; Mitchell, *supra* note 114; Mark Turner, *Envoys Fight to Keep Annan's Reform Package on Track*, FINANCIAL TIMES, Sept. 12, 2005, at 7; Nahal Toosi, *Annan Defends Summit's Accomplishments, Agrees Some Results Mixed*, ASSOC. PRESS., Oct. 17, 2005, available at <http://www.columbia.edu/cu/news/clips/2005/10/18/annanAP.pdf> (last visited Nov. 3, 2007); Walker, *supra* note 82; *Frechette's U.N. Challenge*, *supra* note 78; *Key Elements of U.N. Draft Document*, N.Y. TIMES, Sept. 13, 2005; Evelyn Leopold, *U.S. Fears Summit Will Get U.N. Reform, Rights Plan*, REUTERS ALERT NET, Sept. 12, 2005. See also discussion *supra* note 19-20; Mark Turner, *Volcker Set to Call for Reform of U.N. Leadership*, FINANCIAL TIMES, Sept. 5, 2005, at 21.

166. See discussion *supra* note 83 and accompanying text.

Under this sidebar, Iraq was permitted to circumvent the sanctions installed after Iraqi War I by selling oil in order to buy food and medicine. The Reports of the Volcker Commission investigating this sidebar also encouraged the administrative reforms discussed in the preceding paragraph. These Reports fault Annan for seeking administrative review of Oil-for-Food *through the S.C.*, rather than an outside investigation of the scandal, as well as for failing to supervise his son Kojo who profited from the corruption and then proved uncooperative with the Volcker Commission. But U.S., French, British, Russian, and Chinese representatives on the S.C. oversight committee approved the relevant Oil-for-Food transfers while turning a blind eye to abuses. This corruption pales in comparison with that of the U.S. Coalition Provisional Authority in Iraq. Among other things, twelve billion dollars was withdrawn from the N.Y. Federal Reserve as 363 tons of \$100 bills. Eighty percent of another large disbursement could not be accounted for. Fortunately, a neoconservative American attempt to find corruption in U.N. tsunami funds has gone nowhere.<sup>167</sup>

Saddam profited to the extent of \$250-600 million per year from sources including “kickbacks” from Volvo, Siemens, Daimler Chrysler, Coastal Petroleum of Houston, and 2,400 other firms, as well as from the sales of oil smuggled through Jordan, Syria, and Turkey. Neither the kickbacks nor the smuggling was part of the U.N. Oil-for-Food program, and U.S. and British intelligence had to know of the smuggling and of the many diplomatic bags stuffed with cash that moved in the opposite direction because the transactions were impossible to conceal from overflights and satellites. Nevertheless, Annan accepted responsibility for these scandals and the attendant design, auditing and management failures. But having mended his Washington fences with all but the extremists, Annan then received outspoken support from almost all U.N. members. How appropriate that differences among countries impeded supervision and operated to tolerate corruption. What ensued were “unofficial” poker games among some nation-states, individuals, especially Saddam, and corporations shamelessly devoted to the making of money at the expense of dishonoring U.N. ideals and eroding the public’s support for them. No one was in charge (a hallmark of poker)

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167. Doreen Carvajal & Andrew Kramer, *Report on Oil-for-Food Scheme Gives Details of Bribes to Iraq*, N.Y. TIMES, Oct. 28, 2005, at A10; Maggie Farley, *U.N. Oil-for-Food Inquiry Findings Surprised Volcker*, L.A. TIMES, Oct. 28, 2005, at A3; Colum Lynch, *Oil-for-Food Probe: U.N. Needs Overhaul to Stop Fraud*, WASH. POST, Sept. 7, 2005, at A20; Colum Lynch, *U.N. Panel Says 2,400 Firms Paid Bribes to Iraq*, WASH. POST, Oct. 28, 2005, at A16; *Volcker Set to Call for Reform of U.N. Leadership*, *supra* note 165, at 18-19; Walker, *supra* note 82; Ian Williams, *The Sound of Silence: As in Dogs Not Barking*, MAXIMSNEWS, Dec. 30, 2005, <http://www.maximsnews.com/2005ianwilliams30december.htm> (last visited Nov. 3, 2007).

and no one emerged covered in glory.<sup>168</sup>

### G. *Interrelated (?) Human Rights and Development*

In a thoughtful article, Philip Alston argues that development and human rights advocates should pay much more attention to each other's concerns, which are linked by a "virtual tautology": the "U.N. approach of indivisibility"<sup>169</sup> that arguably informs the entire reform effort. Human rights and development advocates should "engage more effectively," share their "imagination and energy," prioritize between themselves, reduce the gap between rhetoric and actual programs that both groups share, and work to increase the capacities of "duty-bearers" to meet obligations, as well as the capacities of "rights-holders" to claim the fruits of these obligations.<sup>170</sup> Mary Robinson calls extreme poverty the most serious form of human rights violation, especially given the ways poor countries use their scarce resources,<sup>171</sup> in no small measure because of strictures imposed by the IMF, the WB, and private foreign investors and lenders. Unfortunately, the poker metaphor predicts Alston's conclusion. Human rights and development advocates are "ships passing in the night."<sup>172</sup> Different players in different games are pursuing different gains in different ways, forestalling what is perhaps Secretary-General Annan's mega-advanced poker of cooperation and coordination in pursuit of security, as well as human rights and development.

Human rights may be "open-ended, contingent and . . . subjective,"<sup>173</sup> but they are much less so than the World Summit's treatment of them. They were *potentially* improved as an ancillary effect of establishing the Peacebuilding Commission and of creating the

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168. See *U.N. Panel Says 2,400 Firms Paid Bribes to Iraq*, *supra* note 167; David Lynch, *Report Details Kickbacks for Iraq*, USA TODAY, Oct. 27, 2005, available at [http://www.usatoday.com/money/world/2005-10-27-oil-for-food\\_x.htm](http://www.usatoday.com/money/world/2005-10-27-oil-for-food_x.htm) (last visited Nov. 3, 2007); Walker, *supra* note 82; *Probe Finds Illicit, Unethical Corrupt Oil-for-Food Operation*, USA TODAY, Sept. 6, 2005, available at [http://usatoday.com/news/world/2005-09-06-oil-for-food\\_x.htm](http://usatoday.com/news/world/2005-09-06-oil-for-food_x.htm) (last visited Nov. 3, 2007). See *Volcker Set to Call for Reform of U.N. Leadership*, *supra* note 165 (quoting Mark Malloch Brown) ("Entrenched interests inside" the U.N., "wish that all of this would go away and that it could settle back into comfortable mediocrity again.").

169. Alston, *supra* note 6, at 784-85. See *Security Council Meeting*, *supra* note 131 (quoting French P.M. de Villepin) (calling for "resolute action" at the World Summit "on everything that fuels terrorism—the inequalities, the persistence of violence, injustices and conflicts, the lack of understanding among cultures," since force "does not address the roots of evil").

170. Alston, *supra* note 6, at 755-56, 770, 790.

171. See *id.* at 786-87 (quoting Robinson).

172. *Id.* at 825.

173. *Id.* at 760.

“responsibility to protect” against genocide or war crimes. On the other hand, human rights were seriously damaged by the lack of progress over non-proliferation and implementation of the MDGs,<sup>174</sup> and slightly injured by the emphasis on terrorism. Secretary-General Annan called for reform of the Human Rights Commission into the “third pillar” of the U.N. because of that Commission’s “declining credibility and professionalism.”<sup>175</sup> The reformed body should operate continuously, rather than the current six weeks per year term that is conducive only to grand but superficial gestures; given more time, effective monitoring of countries’ human rights undertakings would be possible. Moreover, membership in the body should be reserved to countries making real contributions to human rights.<sup>176</sup>

In 2004, the Human Rights Commission refused to act over abuses by China, Iran, Zimbabwe, or Russia in Chechnya. Chaired by Libya, the 2004 Commission had Zimbabwe as a member and re-elected Sudan during its Darfur abuses, having earlier refused to re-elect the U.S.<sup>177</sup> The U.S. re-election failure attracted the enmity of neoconservatives, and the apparent top priority of the Bush Administration during the World Summit was to punish a Commission showing this much independence . . . by destroying it.

The Commission repaid this favor by appointing eight independent human rights experts to aggressively evaluate the rights record of the U.S. over the past five years as part of the Commission’s regular evaluation cycle. Included within the evaluation is the investigation of the *worldwide* treatment of “terrorist” detainees, the U.S.A. PATRIOT Act and the copycat laws it spawns worldwide, the Iraqi tribunal trying Saddam and his colleagues, the death penalty, and other shortcomings. The U.S. has denied admission of the U.N. experts to U.S. prisons in Afghanistan, Iraq, and Guantanamo. The Mickeljohn Civil Liberties Institute at Berkeley documented 180 alleged human rights violations by the U.S. and nineteen alleged violations of human rights duties by the federal government.<sup>178</sup>

174. See app. *infra*.

175. Human Rights Watch, *U.N. Reform Summit Q and A*, Aug. 9, 2005 [hereinafter *Q & A*], <http://hrw.org/english/docs/2005/09/08/global11704.htm> (last visited Nov. 3, 2007) (quoting Annan). See Brown, *supra* note 16; *Security Council Meeting*, *supra* note 131 (quoting deVillepin).

176. See *Q & A*, *supra* note 175 (quoting Annan).

177. This reminds me of Lyndon Johnson’s response to the Nuclear Regulatory Commission: “[Wouldn’t you] rather have him inside the tent pissing out than outside the tent pissing in?” CURT GENTRY, *J. EDGAR HOOVER: THE MAN AND THE SECRETS* 558 (W.W. Norton & Co. 1991).

178. *Back in Business*, *supra* note 162; Thalif Deen, *U.N. Human Rights Body to Scrutinize U.S. Abuses*, I.P.S., Sept. 20, 2005, <http://www.ipsnews.net/news.asp?idnews=30355> (last visited Nov. 3, 2007). LaFranchi, *supra* note 140 (quoting

The World Summit missed an important reform opportunity by referring key decisions about a Human Rights Council, to replace the Commission, to the G.A. for action. This move was supported by Russia, China, Egypt, Pakistan, and some other countries concerned about their human rights record. Only the Summit's doubling of the budget for the Office of the High Commissioner for Human Rights<sup>179</sup> is regarded as adding content to reform, though minimally. It seems clear that opposition to making human rights protections more effective among three of the four major players left the matter all-but-unreformed within the fifth major player. Some criticized the U.S. for trying to remove countries hostile to U.S. interests from the Commission, and for its support of some human rights-abusing regimes; however, an E.U. official called the new Council "a simple name-change."<sup>180</sup> Trying to put a brave face on this non-reform, Mark Malloch Brown said that the new Council offered reform leverage within the G.A. for countries that really care about human rights. Activists' calls for a human rights court like that of the E.U. or for a court combining this function with the International Court of Justice and the International Criminal Court, are unlikely to go anywhere for some time to come.<sup>181</sup>

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The lack of progress on development during the September 2005 World Summit, and the failure to effectively plan implementation of the MDGs in particular, is perhaps the clearest illustration this Article offers of how something like a cooperative/positive-sum advanced poker can give way under the lure of possibly winning smaller gains more quickly in ordinary/zero-sum poker ways. At first glance, this is because of the

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John Norris of the International Crisis Group; finding recent human rights progress through "international actions against high-profile violators like Serbia's Slobodan Milosevic or Liberia's Charles Taylor").

179. The capable Louise Arbour is the current High Commissioner.

180. Evelyn Leopold & Paul Taylor, *U.N. Assembly Approves Weakened Summit Blueprint*, WASH. POST, Sept. 13, 2005, available at <http://www.washingtonpost.com> (quoting Benita Ferrero-Waldner). See Power, *supra* note 85; *U.N. Human Rights Body to Scrutinize U.S. Abuses*, *supra* note 178 (quoting Norman Solomon of the D.C. Institute for Public Accuracy) (the U.S. "is among the most culpable of human rights violators"); *id.* ("A superpower that is striving to remake" the U.N. "in its own image can hardly be expected to submit to institutional scrutiny of its actual human rights record."); Hussain, *supra* note 149; Evelyn Leopold, *U.S. Fears Summit Will Get U.N. Reform Rights Plan*, REUTERS ALERT NET, Sept. 12, 2005; *Anger at Washington Simmers on Eve of U.N. Meet*, *supra* note 107; *Envoys Fight to Keep UN Reform Package on Track*, *supra* note 165.

181. Brown, *supra* note 16; Human Rights Watch, *Key Human Rights Proposals Stymied*, Sept. 13, 2005, <http://hrw.org/English/docs/2005/09/13/global11735.htm> (last visited Nov. 3, 2007).

limited altruism displayed by most developed countries; Canada, Holland, and the Scandinavian countries are worthy exceptions. This altruism is mostly exhausted on the plight of fellow-citizens, rather than on far-away “strangers,” unless the foreigners are victimized by some mediagenic disaster perhaps. Also, middle-income countries like India and Brazil can expect little in the way of increased development aid and are, rather, worried about tougher human rights standards and a dilution of their influence at the U.N. International law thus continues to honor voluntary redistributions by aid “donors,” perhaps through what are called MDG “development compacts,” but almost never creates a legal obligation of redistribution.<sup>182</sup> Such an obligation could be imposed as a matter of developed country status rather than contract, but it would be almost impossible to enforce this obligation under governance without a government, or to determine the relative rights and obligations of middle-income countries.

Unfortunately, this international law and practice of a voluntary and thus limited altruism is badly out of step with a *well-informed* reality. While development is a “public good”—*initially*, a perception which

182. Alston, *supra* note 6, at 777, 786, 825; Posner, *supra* note 9; *Envoys Fight to Keep U.N. Reform Package on Track*, *supra* note 165. For example, an eighty-eight million dollar U.N. appeal concerning starvation caused by drought in Malawi, contemporaneous with the World Summit, attracted no government pledges after three weeks, where one dollar per day would save a life. See *Malawi Appeal Gets ‘Not a Penny’*, BBC NEWS, Sept. 9, 2005, <http://news.bbc.co.uk/2/hi/africa/4228854.stm> (last visited Nov. 3, 2007).

Similarly, the 2005 aid shortfall at the U.N. High Commission for Refugees and the U.N. World Food Program (“WFP”) is \$219 million and \$182 million respectively. See *U.N. Appeals for Greater Food Aid for Refugees*, ASSOC. PRESS, Sept. 14, 2005, available at <http://msnbc.msn.com/id/9339348> (last visited Nov. 3, 2007).

Developed countries spend more in a week to subsidize their own farmers than they spend in a year to help starving children. See *U.N. Warns of Rising Hunger Deaths*, BBC News, Oct. 16, 2005, <http://search.bbc.co.uk/cgi-bin/search/results.pl?scope=all&edition=i&q=UN+warns+of+rising+hunger> (last visited Nov. 3, 2007). The WFP requested bids from the ten largest reinsurance companies in a pilot scheme to insure Ethiopia against drought. See Mark Turner, *U.N. Move to Insure Against Drought*, FINANCIAL TIMES, Oct. 15, 2005 (claiming such insurance is necessary only because of limited altruism, since a global self-insurance by all of us would save much money in terms of reinsurance company profits). In contrast, a proposed insurance fund for foreign investors in Gaza makes sense regardless of altruism since this kind of private-sector insurance is commonly thought essential to investment in developing countries and commonly arranged through a division of the WB. See *What That Accord Really Says*, *supra* note 32. But see Linus Atarah, *World Bank Chief Says Africa is First Priority*, I.P.S., Oct. 24, 2005, <http://www.ipsnews.net/news.asp?idnews=30742> (last visited Nov. 3, 2007) (quoting Wolfowitz) (discussing developed countries “obligation” to help developing countries without describing how the obligation can be enforced); *id.* (“uncomfortable” for developing countries to give up subsidies during Doha negotiations, but this is far less serious than the “daily . . . deprivation” these subsidies generate among “the poorest”).

encourages many developed countries to be “free riders” who reap diffuse benefits without bearing focused costs<sup>183</sup>—development also spawns significant benefits which can be directly appropriated by individuals, NGOs, and developing *as well as* developed countries *in the long run*. Development of course results in more goods and services being produced, traded, and consumed. But development also results in a more tolerant citizenry, a willingness to settle disputes peacefully, a democratic inclination, and the greater energy and happiness that flow from improving living standards. After all, this is the promise of modernism, which is why post-modernism is unpopular in the Third World. People there want to experience extensive material benefits before feeling “alienated” from them. In contrast to the benefits of development, economic stagnation or decline is conducive to frustration, friction and, sometimes, ethnic strife, authoritarianism and a swelling of terrorist ranks.

From this perspective, two central developmental problems remain. Western politics has an overwhelmingly short-term orientation which is ill-suited to development issues, an orientation marked by two- and four-year election cycles in the U.S. Additionally, large gaps in the agendas and priorities among countries result in a shortage of the cooperation essential to sustaining advanced poker.<sup>184</sup> Such gaps spawned what South Africa’s Mbeki termed a “half-hearted, timid, and tepid” World Summit,<sup>185</sup> paralysis and apparent deadlock, as of this writing, in the “suspended” Doha Round of WTO negotiations, and widespread dissatisfaction with the (anti-) developmental behavior of the IMF and the WB. The remedy proposed *infra* is a reinvigoration of the rules of liberal internationalism to further embed a global advanced poker through a mature understanding of our long-term interests and needs.<sup>186</sup>

The MDGs<sup>187</sup> were to be the focus of the September 2005 World Summit, accounting as they did for half of the Summit draft (pre-negotiations) outcome document. Secretary-General Annan observed

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183. At the World Summit, the Presidents of China and Indonesia stressed the importance of a global cooperation, without which development efforts are bound to fail. See U.N. GAOR, 60th Sess., 3d plen. mtg., U.N. Doc. GA/10381 (Sept. 14, 2005) (insisting cooperation with people otherwise excluded from the development process is particularly important to success). See discussion *supra* note 11 and accompanying text.

184. See generally BENJAMIN M. FRIEDMAN, *THE MORAL CONSEQUENCES OF ECONOMIC GROWTH* (Knopf 2005); *Why the Rich Must Get Richer*, *ECONOMIST*, Nov. 12, 2005, at 87.

185. Paul Fray, ‘A Miserable Performance,’ *Mbeki Scolds U.N. Performance*, I.P.S., Sept. 16, 2005, <http://ipsnwes.net.news.asp?idnews=30307> (last visited Nov. 3, 2007) (discussing the lack of resources for the poor to extricate themselves from misery and the related need for developed countries to go beyond traditional definitions of “security”).

186. See discussion *infra* notes 221-34 and accompanying text.

187. See app. *infra*.

that “[n]ations must tear down the walls that separated the developed and developing world,”<sup>188</sup> and Roger Coate speaks of a “system-wide initiative to raise people out of hell-like conditions.”<sup>189</sup> Hellen Tombo and Kevin Watkins discuss the reality of a global inequality: 2.5 billion people currently live on less than two dollars per day, with 1.2 billion of these living at a lower “poverty” level.<sup>190</sup> In 2015, the anticipated end of the MDG process, projections indicate that 800 million will still live in poverty, 380 million more than the relevant MDG Target stipulates. In 2005, we are five years into the twenty-year MDG process, and fifty countries (900 million people) have made little or no progress toward one or more MDG targets. This lag also undermines progress in meeting the other targets. The projected non-attainment of another Target by 2015 means that an additional forty-one million children will die needlessly. A child currently dies every three seconds, a mother dies every minute during childbirth, and 25,000 people die from starvation every day. More than one billion people lack access to a safe water supply, and 2.6 billion lack access to sanitation. Yet, rich countries give half as much development aid, in real terms, as they gave in 1960.<sup>191</sup>

A significant departure from previous approaches to development, the MDGs captured the imagination and energy of international agencies, developing countries, and NGOs. Mobilization of these organizations is sought to generate national reports that describe development priorities<sup>192</sup> and voluntary “development compacts” between a developing country and developed countries. Transparency and a great deal of publicity are thought essential to keeping the countries’ and organizations’ feet to the developmental fire, but coverage of the MDG process by mainstream media has been disappointing so far.<sup>193</sup>

Conflicts over development priorities and techniques emerged soon

188. U.N. GAOR, 60th Sess., 2d plen. mtg., U.N. Doc. GA/10379 (quoting Annan).

189. Coate, *supra* note 1.

190. See *March Toward MDGs Leaving Millions Behind*, *supra* note 108 (referencing Hellen Tombo of the Global Call to Action Against Poverty); Isaac Baker, *Time for a “Decisive Breakthrough, UN Urges*, I.P.S., Sept. 7, 2005, <http://www.ipsnews.net/news.asp?idnews=30168> (last visited Nov. 3, 2007); United Nations Development Programme Bulletin, *More Aid, Pro-Poor Trade Reform, and Long-Term Peace-Building Vital to Ending Extreme Poverty*, Sept. 7, 2005, at E-1-1, available at <http://content.undp.org/go/newsroom/HDR-07092005.en.jsessionid=axbWzt8vXD9?g11n.enc=ISO-8859-1> (last visited Feb. 3, 2008) (quoting Kevin Watkins, a lead author of the 2005 UNDP Human Development Report).

191. See *March Toward MDGs Leaving Millions Behind*, *supra* note 108; Baker, *supra* note 190.

192. Many of the reports already drafted make no reference to human rights.

193. See Alston, *supra* note 6, at 756, 777, 780, 786; Diana Cariboni, *Poverty Missing From the News Agenda*, I.P.S., Nov. 22, 2005, <http://ipsnews.net/news.asp?idnews=31125> (last visited Nov. 3, 2007).

after the consensus, advanced poker, promulgation of the MDGs in 2000. A few countries, led by the U.S., continue to advocate the “free-market model” of “development”<sup>194</sup> that reigned in the 1990’s after the demise of many communist party-states and the erosion of the means to finance “welfare” measures in social democracies.<sup>195</sup> In contrast, many developed and almost all developing countries pursue goals which are ignored *de facto* by markets and their advocates: rather modestly redressing inequalities in favor of the poor and powerless, and forestalling the economic instabilities characteristic of an unregulated capitalism, particularly the “premature” marketization that the IMF and the WB demand from developing countries.<sup>196</sup> The U.S. thus winds up pursuing free trade at the expense of generous development aid (aid supplied subject to conditions which make the relatively small sums less effective), while the E.U. supports relatively generous aid at the expense of a potentially more valuable free trade, especially in agriculture. Russia and China, the other major players, passively support the developmental strategy of the majority, while the WB now speaks of an oxymoronic “market-driven equality.”<sup>197</sup>

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194. The term “development” in reality means the pursuit of economic growth.

195. Family planning was deleted from the MDGs prior to their promulgation to appease American neoconservatives and the Vatican, despite the essential role of population control in attaining MDG targets among the least developed countries.

196. See discussion *supra* notes 194-95 and accompanying text; see discussion *infra* note 197 and accompanying text.

197. See Chemillier-Gendreau, *supra* note 97; Shirin, *World Bank Calls for Market-Driven Equality*, I.P.S., Sept. 20, 2005; Marcela Valente, *Civil Society Forum-A Sham?*, I.P.S., Sept. 9, 2005, <http://www.ipsnews.net/news.asp?idnews=30209> (last visited Nov. 3, 2007); Thalif Deen, *Family Planning Subtracted from MDG Equation*, I.P.S., Sept. 13 2005. There is too little development aid. Adjusted for inflation, it has not increased yet. African countries are dependent on it. Agriculture has been neglected recently, as too much aid is absorbed by consultants from the donor country, and effectiveness is reduced by the overlaps created by a failure to coordinate donors’ programs. See Dugger, *supra* note 119; SACHS, *supra* note 94, at 7; Editorial, *The Foreign Aid Gap*, L.A. TIMES, Sept. 15, 2005, available at <http://www.thedailyjournalonline.com/article.asp?CategoryId=13303&ArticleId=197052> (last visited Nov. 3, 2007). Even the U.S. HIV/AIDS program is bilateral and channels funds according to U.S. strategic interests.

Free trade maximizes output from given inputs, but says nothing about the distribution of that output. See Stephen King, *Free Trade is Not Perfect but It's All We've Got*, THE INDEPENDENT, Sept. 12, 2005, available at <http://news.independent.co.uk/business/comment/article311968.ece> (last visited Nov. 3, 2007). According to the WB’s Wolfowitz, “inequity” most often happens when markets are missing, imperfect or failing. But the MDGs are driven by the idea that lack of development does not flow from a lack of trade, but rather from a lack of capital and geographic, political or technological constraints. See *id.* According to Social Watch, the resulting poverty stems from an inequality of access to income, power, job opportunities, information, social services, and political participation. This amounts to Amartya Sen’s deprivation of basic capabilities, measurable under the Social Watch Index: the proportion of births attended by skilled health personnel, the under-five infant mortality rate (which grows worse in fifty-six countries), and the proportion of children

The World Summit MDG outcome was spotty with an overall lack of progress in solving the collective action problems of development. Optimists' hopes that the MDG process would rejuvenate multilateral behavior were thus dashed.<sup>198</sup> Mary Robinson concludes that the MDGs "now seem set to join the pile of broken pledges that mark the old U.N.'s

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in school through the fifth grade. See Cariboni, *supra* note 190. Martin Ravallion, *Inequality Is Bad for the Poor*, (World Bank Research Paper), available at <http://www.rrojasdatabank.info/wir2006/ravallion.pdf> (last visited Nov. 3, 2007).

Economic growth and trade are distribution-neutral, often inequality-promoting, and thus they have less of the "welfare impact" associated with development. Care must be used in displacing poverty reduction (rather than inequalities reduction as such) programs, lest redistributive policies inhibit growth and create additional economic distortions. "Win-win policies" are the solution, policies that eliminate inhibitions on growth, which also serve to increase inequalities. Examples are, fixing market and government failures, making institutions work better, improved infrastructures, and a better delivery of quality health and education which is more responsive to the needs of the poor. See *id.* Inequality is the root cause of poverty in Latin America. The halving of extreme poverty (MDG Target 1) by 2015 is unlikely in Brazil or Argentina, and attention to poverty occurs only through the election of progressive governments. See *id.* See also Shirin, *supra* note 197 (quoting Rick Rowden) (claiming equality cannot come about through market-based privatization policies or without eliminating a gender-bias); Marwaan Macon-Maskor, *Corruption, Worst Hurdle in Asia-Pacific*, I.P.S., Sept. 23, 2005, at 1 (citing a recent ILO study about the growing "employment gap," "jobless growth" in booming Asian economies that increasingly underfund public health); Anja Tranovich, *Will World Leaders Face the "Pink Collar" Underclass*, I.P.S., Sept. 1, 2005, <http://ipsnews.net/africa/print.asp?idnews=30109> (last visited Nov. 3, 2007) (stating women are more likely to work in the "informal" sector, in the most precarious jobs with the lowest wages). A term growing in popularity is "equity": a move towards equality. It amounts to "empty rhetoric conserving a regressive status quo," without changes in institutions which allocate resources and economic opportunities. *Equity Promotes Efficiency: A Radical Insight From the World Bank—The Economic Times*, TIMES NEWS NETWORK, Sept. 28, 2005, available at <http://amicorecvd.blogspot.com/2005/09/equity-promotes-efficiency-radical.html> (last visited Nov. 3, 2007).

198. Paul Martin and Soraka Lyer of the Third World Network argue that the World Summit shows that world leaders are "isolated from . . . global poverty" and "appear . . . immune" to "mass mobilizations." *March Toward MDGs Leaving Millions Behind*, *supra* note 108. Salil Shetty, the Director of the U.N.'s Millennium Campaign, fears that the 2015 MDG targets will not be met as a whole, "not even in 100 years." *World Must Act to Alleviate Crippling Debt and Rampant Poverty, Leaders Tell U.N. Summit*, U.N. NEWS CENTRE, Sept. 15, 2005, available at <http://www.un.org/apps/news/story.asp?NewsID=15832&Cr=world&Cr1=summit> (last visited Nov. 3, 2007) (stating progress on meeting Target 1, halving poverty, is relatively good but "masks huge disparities across and within countries and regions," and the low or inappropriate quality of aid). This admitted progress on Target 1 is actually small in comparison with the global availability of human, financial, and technical resources. See Baker, *supra* note 190; Hussain, *supra* note 149. Thus, the original purpose of the Summit subordinated to political and security interests. However, the Summit "clearly created stronger support" for developed countries contributing 0.7% of their GNP for development aid, created innovative means of financing, for example, a small tax on airline tickets. The World Summit outcome document did declare that gender equality, HIV/AIDS, and reproductive health must be kept at the top of the global agenda. The Summit also set up an International Financing Facility, to make development aid more predictable and accessible.

history.”<sup>199</sup> The Summit also ratified an earlier move by the wealthy G8 countries, which then received additional ratifications from IMF and WB meetings. After eight years of popular campaigning through rock concerts, etc., the G8 agreed to provide forty to fifty-five billion dollars in debt relief for the twenty poorest countries. This number would go as high as thirty-eight countries, but Kenya for example is deemed to have a “sustainable” debt burden. The G8 action can be regarded as a follow-up on previous advanced poker rounds of winning partial debt forgiveness for the poorest countries, even though such steps violate the IMF’s “uniformity of treatment” rule. Nothing was done about the fair amount of this debt that was used corruptly to finance elite lifestyles in the poorest countries, or about the economists’ “moral hazard” for the future: having past debts forgiven, elites are likely to create new debt and use it inappropriately in the expectation that the new debt will be forgiven as well.<sup>200</sup> Instead of simply forgiving it, the debt could have been converted into supervised programs to finance the pursuit of MDG targets. G8 countries will likely deduct this debt relief from the development aid they otherwise intend to give. A mere one month after the Summit, at a WB meeting, the G8 fell to quarreling, reverted to an ordinary, zero-sum poker, over who pays what, who is eligible for relief, and which conditions will be attached. Belgium, Holland, and Norway fear that the costs of this debt abatement will not be fully funded by the G8, leaving the IMF and the WB with too little income to function.<sup>201</sup> In other words, these international organizations “swapped the risk that poor countries will not repay their loans for the risk that rich countries will not redeem their promises.”<sup>202</sup>

Many in the Third World would find a mixed blessing in the IMF and the WB having too little income to function. Developing countries see their under-representation in these international agencies as diminishing agency significance, and as fueling the need to circumvent them. For example, the G8 are assumed to be more sympathetic, even though developing countries have no formal representation there. Strict IMF and WB policies are seen to curb development and democracy. Politicians and bureaucrats must respond to these organizations’ strictures, rather than to local electorates. An NGO study shows that of

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199. Robinson, *supra* note 111.

200. See Posner, *supra* note 9; *Bad Loans Made Good*, ECONOMIST, Oct. 1, 2005, at 70. The G8 countries are Russia, Britain, France, Germany, the U.S., Japan, Italy and Canada. Philip Thornton, *Rich Nations Finally Give Go-Ahead to Long-Awaited Agreement on Debt Relief*, THE INDEPENDENT, Sept. 27, 2005, available at <http://news.independent.co.uk/business/news/article315145.ece> (last visited Nov. 3, 2007).

201. See *Bad Loans Made Good*, *supra* note 200; Atarah, *supra* note 182.

202. *Bad Loans Made Good*, *supra* note 200, at 70.

the 308 IMF and WB policies imposed on fifty countries, only eleven policies diverged from the “Washington [Reaganite, neoclassical economics] consensus” of strict monetary and fiscal policies, deregulation and privatization, and the premature opening to an international competition of capital, financial, labor, and product markets in developing countries.<sup>203</sup>

Large WB projects in developing countries are bonanzas for multinational corporations and corrupt local politicians, but they do little for the poor other than evict them from subsistence lands. More than seventy percent of WB loans go to as few as twelve middle-income countries: countries that are able to meet their capital needs through private markets. This pattern continued with WB President Wolfowitz recently touting a mega-project to supply electricity to Congo, Malawi, Zimbabwe, and South Africa. This project looms on the horizon despite the consensus that small projects better meet the needs of the poor, especially in water and energy, and especially if the projects are made accountable to their ostensible beneficiaries. Like his predecessor, Wolfowitz paid lip-service to such projects and virtues. A Dutch M.P. notes that parliamentarians must inform themselves and apply extra pressure to countries and the WB so as to keep their games honest.

The story is much the same for the IMF. Asian countries have accumulated huge foreign exchange reserves, in part so they do not have to go begging to the IMF. Argentina defaulted and otherwise took a hard line against the IMF and private creditors, yet this resulted in only a three-month depression. Argentina amounted to a huge loss of IMF influence, a bluff well and truly called on the cut-down-to-size IMF leader of a “creditors’ cartel” of other multilateral creditors, rich countries, and the private sector. The Group of Twenty (“G20”) rich and developing countries describe the need for the IMF to improve governance, strategy, and operations and to reform their quotas which govern particular countries’ capacity to borrow. The IMF seems to understand the need to increase its legitimacy through such reforms, expand developing country influence in the IMF, introduce transparency, and forbear from attaching stability and development endangering conditions to IMF loans.<sup>204</sup> Only the future will tell.

The legally guaranteed separatism of the IMF and the WB, which are accountable *pro rata* to the countries providing loan funds, and of the World Trade Organization (“WTO”), accountable to its 150 members,

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203. Shirin, *World Bank/IMF Losing Relevancy, South Says*, I.P.S., Sept. 23, 2005, <http://www.ipsnews.net/news.asp?idnews=30398> (last visited Nov. 3, 2007); Sanjay Suri, *Straight Talk Expected at Post-Helsinki Roundtables*, I.P.S., Sept. 12, 2005, <http://www.ipsnews.net/news.asp?idnews=30224> (last visited Nov. 3, 2007).

204. See Atarah, *supra* note 182.

means that global development policies are not integrated or coordinated by the Secretary-General, the World Summit, or anyone else. The now suspended Doha Round of the WTO negotiations<sup>205</sup> has regularly been on the brink of collapse since 2003, with too much finger-pointing (insignificant bets, perceived as such) and too little leadership, as the poker metaphor leads us to expect. Doha is the first real chance for developing countries to engage in trade negotiations that *might* enhance their economic growth, reduce their poverty,<sup>206</sup> and perhaps curb some of the market fundamentalisms of the previous Uruguay Round.

Three main “games” were played simultaneously in Doha, some at the final table, and some at side tables: (1) liberalizing farm trade, the most distorted of global trade sectors; (2) liberalizing trade in services, chiefly in the banking, medical, and accounting sub-sectors; and (3) decreasing industrial tariffs, measures which the E.U. in particular is keen for developing countries to implement. These seem to be *negative-sum* poker games: meager winnings by developed countries do not seem to wash their losses, while developing countries saw their betting resources dissipated.

The clearest example of ordinary poker occurs in negotiations over liberalizing trade in services. These negotiations have led to decentralized results, with different countries betting on different deals in what amounts to separate games. A total collapse rather than suspension of the Doha Round would also result in fragmentation with rich countries able to pick off poor ones one-by-one by “betting” more than poor countries can afford to “call” while creating bilateral trade treaties. Advanced poker is structured to avoid such a collapse and thereby keep all the players at the table within the broader Doha “game” geared toward fairer and more broadly acceptable rules, rather than a simple Uruguay Round rush to further liberalizations. However, for the advanced poker game to succeed, the poorer countries must find their way back into the game. The apparent Doha deadline is mid-2007, when President Bush’s “fast track” authority ends. The Senate must determine whether to ratify the Doha agreement until mid-2007, without introducing protectionist amendments that favor particular constituents.<sup>207</sup>

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205. The Doha Round of the WTO negotiations was lodged in quasi-authoritarian Qatar to minimize anti-WTO demonstrations.

206. See *The Farmer's Friend*, *ECONOMIST*, Nov. 5, 2005, at 58; *In the Rough*, *ECONOMIST*, Nov. 5, 2005, at 77.

207. See Chakravarthi Ragavan, *If WTO Negotiations Fail, It Will Not Necessarily Be a Disaster*, I.P.S., Sept. 24, 2005; *In The Rough*, *supra* note 206; *The Trade Game*, *supra* note 15 (using two party, one issue game). The WB estimates the (scaled-back) benefit of a successful Doha Round to developing countries at twenty to thirty billion dollars per year. *But see* Channing Arndt, *The Doha Trade Round and Mozambique* (World Bank

Middle-income countries like Brazil and India refuse to budge on services, and especially on industrial tariffs, the second and third Doha poker games respectively, where they want to protect fragile local industries, absent significant progress on the first Doha poker game, their access to the agricultural markets of developed countries. Annual farm subsidies amount to nineteen billion dollars in the U.S. and seventy-five billion dollars in the E.U. Protectionist Japan hides behind these major players. The farm subsidies are locally-popular barriers, which are difficult for poor, developing, and even middle-income countries to leap over. The U.S. bets significant farm subsidy reductions in an ostensible attempt to break the Doha gaming deadlock, but the E.U., and especially France, refuses to match (or “call”) the U.S.’s bet. The U.S. can thus be said to have “called” the E.U.’s “bluff” over development being a “core” value within E.U. foreign policy. However, it is widely known that Congress is unlikely to underwrite the U.S. Trade Representative’s bet. The 2007 Farm Bill shows that all pretense of reducing subsidies has been abandoned. It is even reported that the thirty-two poorest WTO members have had trouble agreeing on a common Doha position, despite their not being required to make concessions during negotiations.<sup>208</sup>

At the December 2005 Hong Kong Summit, expectations were low that participants could create a meaningful framework agreement for the Doha Round. Philip Bowring gave this Summit a low but not failing grade for achievement because it showed developing countries to be more dedicated trade liberalizers than their developed counterparts.<sup>209</sup> NGOs like Oxfam and Greenpeace were very critical. The behavior of

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Policy Research Working Paper 3717, 2005), available at [http://www-wds.worldbank.org/servlet/WDSContentServer/WDSP/IB/2005/09/15/000016406\\_20050915100216/Rendered/PDF/wps3717.pdf](http://www-wds.worldbank.org/servlet/WDSContentServer/WDSP/IB/2005/09/15/000016406_20050915100216/Rendered/PDF/wps3717.pdf) (last visited Feb. 3, 2008) (informing that one study shows projected benefits and adjustment costs to be relatively small in Mozambique); Joachim Filo & Mark Horridge, *The Doha Round, Poverty and Regional Inequality in Brazil* (World Bank Policy Research Working Paper 3701, 2005), available at [http://www-wds.worldbank.org/servlet/WDSContentServer/WDSP/IB/2005/08/30/000016406\\_20050830162719/Rendered/PDF/wps3701.pdf](http://www-wds.worldbank.org/servlet/WDSContentServer/WDSP/IB/2005/08/30/000016406_20050830162719/Rendered/PDF/wps3701.pdf) (last visited Feb. 3, 2008) (a successful Doha’s “positive but rather small” effects on the structure of poverty and income distribution in Brazil).

208. See Alan Beattie et al., *EU Under Fire as Trade Talks are Halted*, Financial Times, Oct. 20, 2005; Stefania Bianchi, *EU Under Fire Over Doha*, I.P.S., Oct. 20, 2005; Editorial, *French Monkey Business*, Wash. Post, Nov. 3, 2005, at A20; *The Trade Game*, *supra* note 15, at B10. The existing WTO Agreement on Agriculture has Special safeguards provisions (special import restrictions for certain types of “emergencies”) which developing countries would like to prohibit developed countries from using.

209. See Philip Bowring, *Silver Lining in WTO Talks*, INT’L HERALD TRIB., Dec. 19, 2005, at 9. See also Don Lee, *Delegates Eke Out a Trade Deal*, L.A. TIMES, Dec. 19, 2005, at C1 (suggesting that a Hong Kong failure would have damaged WTO credibility while it contends with the proliferation of bilateral trade agreements, growing global economic imbalances, and growing protectionist sentiment in developed countries).

demonstrators, mostly South Korean farmers, was mirrored inside the hall by E.U. representatives. 110 developing countries united in a historic first for the WTO in an effort to make the Round the development round it was supposed to be. Their efforts failed, however, because developed countries gained no meaningful access to the agricultural markets of developing countries. Developed countries agreed to eliminate agricultural export subsidies by 2013, but export subsidies are a small fraction of the total U.S. and E.U. farm subsidies. The agreement would eliminate quotas and tariffs for the fifty least developed countries in 2008, but the U.S. has already said that it will likely exempt textiles and apparel from this abolition.<sup>210</sup>

To provide counterpoint to this Doha/Hong Kong quasi-anarchy, and to round out the picture of multilateral development efforts, the World Summit also called for the reform of the Economic and Social Council ("ECOSOC"). The Summit also implemented the Hyogo Framework to reduce disaster relief response times, improve disaster prevention measures and early warning systems, and secure more food supplies for disasters which are less tied to donors' conditions. The global response to the South Pacific tsunami seemed adequate, with the U.N. playing an important, but far from exclusive role because the U.S., Australia, and a few others doubted U.N. efficiency. But hurricanes in Central and South America, famine in Niger, and the earthquake in Kashmir illustrate donor inattention and "fatigue," as well as a shortage of U.N. resources. Such disasters will negate development efforts in affected countries for many years to come unless creative programs and a great deal of money are forthcoming. The new High-Level Commission for the Legal Empowerment of the Poor, apparently not considered by the World Summit, has Hernando de Soto and Madeline Albright as co-commissioners. It is likely not to be a mere substitute for taking action because de Soto's legally-defined property rights "movement" is increasingly accepted as the best means of transition from an informal economy into a measure of entrepreneurship. There is currently \$9.3 trillion worth of unregistered land and equipment worldwide, which can be levered into additional wealth, security for loans, etc., through registration and the other means that the Commission will consider.<sup>211</sup>

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210. See Gustavo Capdevila, *Service Sector Is Next Battle in Trade War*, I.P.S., Dec. 30, 2005, [http://www.redorbit.com/news/science/347149/challenges\\_20052006\\_service\\_sector\\_is\\_next\\_battle\\_in\\_trade\\_war/](http://www.redorbit.com/news/science/347149/challenges_20052006_service_sector_is_next_battle_in_trade_war/) (last visited Nov. 12, 2007); Lee, *supra* note 209, at C1; Ramesh Jaura, *New 110-Nation Pact Pushes Development as Trade Priority*, I.P.S., Dec. 16, 2005, [http://www.redorbit.com/news/international/332530/wto\\_new\\_110nation\\_pact\\_pushes\\_development\\_as\\_trade\\_priority/index.html](http://www.redorbit.com/news/international/332530/wto_new_110nation_pact_pushes_development_as_trade_priority/index.html) (last visited Nov. 12, 2007) (indicating the fifty least developed countries, thirty-four of which are in Africa, hold 12.5% of world population but account for only 0.5% of world trade).

211. See Alejandro Chaufen, *U.N. Discovers Property Rights*, Wash. Times, Nov. 2,

### H. *The Games Continue*

In the wake of the World Summit, the new G.A. President, Eliasson of Sweden, said members were busy mapping negotiating positions: in effect, structuring new poker games. Members were also busy dealing with matters that take precedence, such as setting up the Peacebuilding Commission and the Human Rights Council that had to be in place by the end of 2005. Members also busied themselves with the drafting of a terrorism convention to be finished by the end of the G.A. session in September 2006. The crucial definition of “terrorism” continues to be contentious. Some members, such as Palestine, continue their efforts to protect the rights of self-determination and of resisting occupation that some opponents see as “terrorism.” In late November, a speech by U.S. Ambassador Bolton gave the U.N. “its usual warning” from the U.S.: “Do what we say or we will send you into oblivion.”<sup>212</sup> Annan commented: “I am not the interpreter of Ambassador Bolton,” and an American reader of the Bolton-ian tea leaves sees the U.S. continuing to seek “multilateral cover for unilateral and illegal U.S. interventions. . . .”<sup>213</sup> As 2005 drew to a close, the U.N. could not approve its 2006-07 budget because of the implicit U.S. threat to withhold funds if members did not enact the “radical” reforms the U.S. sought, especially in administration. Abandoned at the last moment, this threat showed that the U.S. was rather disengaged from the September World Summit that created so much “fudge and mush.” Jeffrey Laurenti attributes this stance to Bush’s “foreign policy schizophrenia,” also termed his “bipolar” isolationism.<sup>214</sup> The Group of Seventy-Seven

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2005. The U.N.’s emergency relief coordinator, Jan Egeland, proposes additional reforms: a central fund, to which the U.S. will not contribute, and other ways to leave relief less “overstretched.” Imogen Foulkes, *U.N. Urges Disaster Response Reform*, BBC NEWS, Nov. 23, 2005.

212. Thalif Deen, *U.S. Ambassador Ups the Ante for Control of the U.N.*, I.P.S., Nov. 23, 2005 (quoting Global Policy Forum’s Jim Paul, who paraphrases Bolton).

213. *Id.* (quoting Annan and Institute for Policy Studies’ Phyllis Bennis respectively). See *General Assembly President Outlines Progress on U.N. World Summit Issues*, U.N. NEWS SERVICE, Nov. 17, 2005, available at <http://www.un.org/news> (follow advanced search link, enter date parameters as after Nov. 16, 2005 and before Nov. 18, 2005, and search term “World Summit Issues”) (last visited Nov. 3, 2007) (quoting and citing Eliasson). The U.S. seeks to dis-empower the G.A. and make Annan’s successors accountable to Washington as “glorified CEOs.” See Thalif Deen, *U.N. Faces New Political Threats From the U.S.*, I.P.S., Nov. 23, 2005, <http://ipsnews.net/news.asp?idnews=31152> (last visited Nov. 12, 2007). Many of the Secretary-General’s top staff has been replaced by active supporters of the U.S.’s agenda, but Annan has nevertheless retained some independence. See *id.* The net effect is more belligerent, but otherwise not very different from, Clinton’s “assertive multilateralism,” where Madeline Albright famously called the U.N. “a tool of American foreign policy.” *Id.*

214. Jeffrey Laurenti, *Schizophrenic Administration Heightens U.S. Isolation*, THE CENTURY FOUND., Dec. 21, 2005, <http://www.tcf.org/list.asp?type=NC&pubid=1172> (last

("G77"), discussed *infra*, refused to rush into decision under threats from U.S. neoconservatives, taking the position that later reforms can be paid for under supplementary budgets. This led Bolton, that comfortable contrarian who reportedly "speak[s] power to truth,"<sup>215</sup> to propose a three-month budget, indicating that the U.S. could and would solve global problems by turning to mechanisms other than the U.N.'s. The U.N. unanimously approved a two-year budget in late December with a spending cap, backed by the U.S., the E.U., and Japan, that expires in six months. Annan interpreted this as those reforms passed by the September World Summit, and the cap petered out.<sup>216</sup>

From the other side, the 132-member G77 developing countries, plus China and a smaller group of repressive regimes which fear being called to account, are holding up work on the Human Rights Council because Bolton wants the Council. The G77 is also protesting a cost-cutting shrinkage in Palestinian programs, and provoking showdowns with the U.N. Secretariat over administrative reforms, as well as over the identity of Secretary-General Annan's successor. Annan will establish a Rule of Law Unit in the Secretariat and order a review of several G.A. committees which he thinks have outlived their usefulness and mandates concerning management and the budget of the U.N. secretariat. Annan believes "misunderstandings" led to the G77 charge that he was engaged in a "grab for power"; it is the U.N. members' "prerogative to decide what should be cut and what should be rejected."<sup>217</sup> Annan then accused the G77 of interference in day-to-day Secretariat operations, and of violating the U.N. Charter by politicizing the Secretariat. The G77 fears that reforms will be funded by transfers from human rights and

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visited Nov. 3, 2007).

215. *Id.*

216. See Thalif Deen, *U.N. Threatened With Budgetary Showdown*, I.P.S., Dec. 21, 2005, <http://ipsnews.net/> (click "Search," enter "Thalif Deen," select year "2005"); Maggie Farley, *U.N. Hit By a Bolt From the Right*, L.A. TIMES, Dec. 23, 2005; Warren Hoge, *Official Says American Delay of U.N. Budget Would Cause Crisis*, N.Y. TIMES, Nov. 30, 2005, at A5; Edith Lederer, *U.S. Stands Alone in the U.N. Budget Demand*, SEATTLE POST-INTELLIGENCER, Dec. 2, 2005; Laurenti, *supra* note 214; Betsy Pisik, *U.S. Budget Plan for U.N. Criticized*, WASH. TIMES, Nov. 30, 2005; Mark Turner, *U.N. Risks Severe Financial Crisis Over Threat to Block Budget*, FINANCIAL TIMES, Dec. 4, 2005; Editorial, *Blocking Reform at the U.N.*, N.Y. TIMES, Dec. 2, 2005; *U.N. Members Approve Two-Year Budget*, CBS NEWS, Dec. 24, 2005.

217. Thalif Deen, *U.N. Chief Denies Making a "Grab for Power"*, I.P.S., Nov. 22, 2005, <http://ipsnews.net/news.asp?idnews=31130> (last visited Nov. 12, 2007). See also Thalif Deen, *Developing Nations Fault U.N. Reform Plan*, I.P.S., Nov. 10, 2005, <http://ipsnews.net/> (click "Search," enter "Thalif Deen," select year "2005"); Thalif Deen, *Move to Shrink Palestinian Programs Spurs Protest*, I.P.S., Nov. 30, 2005, <http://ipsnews.net/news.asp?idnews=31248> (last visited Nov. 12, 2007); Colum Lynch, *Campaigns to Succeed Annan at U.N. Are Underway*, WASH. POST, Nov. 26, 2005, at A22.

development programs. World Health Organization employees threatened a work stoppage to protest reorganization plans, despite threats that this would lead to their termination.<sup>218</sup>

In other words, business, or ordinary poker, continues as usual at the U.N. The lack of public information and advocacy plus the chronic preference for a narrow and short-term self-interest leaves almost everyone, including most World Summiters, unable to see an admittedly complex “big picture.” This picture can usefully be defined as the need for active pursuit of Annan’s interdependent “four pillars” of peace, security, development, and human rights. Pursuit or non-pursuit of these pillars will affect almost everyone in the long run, and a failure to recognize and deal with this fact could reverse the trend toward world civilization. As Tony Blair argued, we need a better understanding of how self-interest and mutual interest are inextricably linked.<sup>219</sup>

Improved cooperation, described here as a commitment to the liberal internationalism rules of a sustained advanced poker, enables the players to draw and bet on simultaneously self- and mutually-interested links among development, trade, security, human rights, environmental protection, migration (a major concern in the U.S. and E.U.), etc. Hurricane Katrina showed Americans that cooperation is needed to reduce feelings of job insecurity and vulnerability to disaster and violence, as well as to deal with corrupt, fragile and/or incompetent governments.

Increasing violence also raises the stakes in the game. The poorer the nation, the more likely a plague of violence will reinforce poverty and the other evils that operate to deny human dignity. Even President Bush spoke of a “moral duty” to recognize interrelatedness and the need to cooperate, admittedly, to pursue his anti-terrorism strategy, during his September 2005 speech to the World Summit. For most other countries, the U.N. is a necessary, often the most competent, partner for the pursuit of vast, interrelated responsibilities. This is why World Summit failures on non-proliferation, human rights and development, and the partial successes concerning intervention and administrative reforms are so tragic. Peacebuilding is the only genuine Summit success, and the paucity of useful proposals concerning terrorism and the composition of the S.C. mean that the lack of progress in these areas is a good thing.

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218. See *U.N. Chief Denies Making a Grab for Power*, *supra* note 217; Andrew Jack, *WHO Staff to Stop Work Over Shake-Up*, I.P.S., Nov. 30, 2005.

219. See *U.N. Reform Bid Exposes Its Woes*, *supra* note 104; M.S. Haq, *President Bush’s Address at the U.N. Has Made the World’s Poor More Hopeful*, THE NATION, Oct. 2, 2005; Frederick Studemann, *Blair to Call for Global Trade Agreement*, FINANCIAL TIMES, Nov. 13, 2005; *Can Its Credibility Be Repaired*, ECONOMIST, Sept. 10, 2005, at 30.

The Summit at least offers a starting point for continued reforms if members can understand Summit failures and develop the will to achieve consensus-by-compromise. As Annan remarks rather optimistically, “reform is a process, not an event.”<sup>220</sup>

#### IV. Remedies?

The once-in-a-generation opportunity for wholesale U.N. reform<sup>221</sup> at the 2005 World Summit mostly failed. What are the prospects for piecemeal reforms in the future? The answer is both “excellent” and “poor.” Governance without a government creates many outcomes “balanced between no longer and not yet,”<sup>222</sup> and a consensus over smaller changes to this unwieldy state of affairs is easy to achieve in theory. However, there is little basis for negotiation, or game-playing, without a fairly large number of significant proposals on the table to trade against each other. Otherwise, with relatively little to lose, major players and coalitions of minor ones easily manipulate (usually veto) new negotiated legal orders or rules which require a strong consensus to take effect, especially by changing the game from advanced to ordinary poker. Reforms are especially unlikely so long as the world’s hegemonic power, the U.S., provokes determined opposition by easily and regularly setting international laws aside whenever its short-term interests are perceived as furthered by such a play. This tactic cannot long endure within a rational international politics; however, along with Europeans, the U.S. benefits the most from a stable and functioning international legal order.<sup>223</sup>

A useful metaphor for discussing feasible smaller reforms is based on the *Fasces* deployed in Republican Rome, as well as in Imperial

220. *U.N. Reform Bid Exposes its Woes*, *supra* note 104 (quoting Annan). See Stefania Bianchi, *E.U. Presents its Plan for the Poor*, I.P.S., Sept. 21, 2005, <http://ipsnews.net/news.asp?idnews=29483> (last visited Nov. 12, 2007); Alston, *supra* note 6, at 826; *What That Accord Really Says*, *supra* note 32; Mitchell, *supra* note 114; *Frechette’s U.N. Challenge*, *supra* note 78.

221. *But see* Robert Samuelson, *Seduced by ‘Reform’*, WASH. POST, June 2, 2004, at A25 (“reform” is “a public relations tool—a convenient label” slapped on “proposals to claim the high moral ground.”); *id.* (self-labeled reformers “aim to stigmatize adversaries as nasty, wrongheaded, selfish or misinformed”). These are tactics widely used at the U.N.

222. OBSERVATIONS ON MODERNITY, *supra* note 18, at 66 (discussing outcomes from a multiplicity of his “subsystems” which are arguably like the U.N. “family”). See also *id.* at 18, 27.

223. See Clare Short, *Depression and Mistrust Prevail at the U.N.*, THE INDEPENDENT, Sept. 16, 2005, at 33; Coate, *supra* note 1. See discussion *supra* note 16 and accompanying text. See also Brinkbaumer & Mascolo, *supra* note 119 (“a morally-oriented international community did not exist before the Asian tsunami of 2004. [A]fter . . . three months of solidarity, everything returned to normal.”).

Rome and Mussolini's Italy. The *Fasces* is a bundle of sticks, with each stick representing an aspect of governance. The sticks are bound together with leather straps and an axe head is inserted at the top to represent coercive capacities. Each member of the U.N. "family" of organizations would have a different *Fasces*, reflecting the different aspects of governance they possess, but none of these *Fasces* have enough of the right kind of sticks to reflect a government. Apart from the S.C.'s, under circumstances that rarely obtain, the axe heads are variously small and dull for each U.N. organ, reflecting modest capacities in the areas of implementation and enforcement. The point is that particular governance reform sticks, and even better axe heads, can be added to particular U.N. *Fasces* without raising the spectre of a global government, and with little observable effect on nation-state sovereignty. For most economists, a world government would create unbearably high agency and enforcement costs. Such costs would likely negate the welfare gains such a government would create.

The steady centralization of nation-state power that followed the 1648 Treaty of Westphalia is now being reversed, as variously predicted by Kant's "Perpetual Peace" (1795), Marx's "withering away of the state" and Bertrand Russell in the 1960's. Sovereign equality has always been implausible, and the Westphalian system of self-help had to be tempered by advanced poker rules and institutions to avert disasters as conflicts grew more deadly over time. National governments increasingly share power with multinational corporations, other NGOs, and globalized markets, as well as with international organizations. Even so, the nation-state remains the only institution with an automatic right of membership in the world community as a "player." Any theoretical loss of an increasingly-theoretical sovereignty due to small U.N. reforms is unlikely to be noticed, much less attributed to small U.N. reforms.<sup>224</sup> Even American neoconservatives are not vigilant in this regard.

Smaller reforms can be described as the constitutionalization of particular practices to further entrench a liberal internationalism, or advanced poker. There are costs to forming each constitutional consensus of course, but fundamental game changes may make a consensus easier to form. Through new treaties, modifying old ones, or

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224. See Coate, *supra* note 1; Peter Drucker, *The Global Economy and the Nation-State*, FOREIGN AFFAIRS, Sept./Oct. 1997; Jessica Mathews, *Power Shift*, FOREIGN AFFAIRS, Jan./Feb. 1997. See Posner, *supra* note 9 (arguing that while the status quo will likely prevail, moderate legal revisions are possible); Yoo, *supra* note 9 (despite the "almost inviolable" U.N. Charter presumption of state sovereignty, states must, except in the case of self-defense, delegate the use of force to the U.N., in "a law enforcement paradigm"). But see Posner, *supra* note 8, at 506-07 (suggesting the collective action problem of decentralized enforcement is often solved through a self-help).

confidently proclaiming new customary international laws—an unwritten constitution—the constitutional goals should be to expand, rather than foreclose, opportunities through broader and more open channels of communication. Information would then flow more widely to players and the public, and rapid global changes could be embodied in legal changes more accurately. Adding escape clauses judiciously, and new means of buffering widely, would reduce tensions among the players.<sup>225</sup>

An excellent article by Joel Trachtman<sup>226</sup> explores the most thoroughly constitutionalized of the U.N. family, the WTO. He finds six constitutional dimensions, which are necessarily interrelated to one another and to WTO members' desires and domestic constitutions. These dimensions include: an *economic* governance of exchanges of value and authority; an *integration* of many, but not all, social values; a *political* reflection of the "cultural and democratic integrity of a group"; a *legal* definition of the scope of legislative, judicial (this author would substitute dispute resolution), and social interaction processes; a *human rights* limitation on nation-state authority; and a *redistribution* founded on social solidarity.<sup>227</sup> I would argue that the combination of WTO structures and members' desires operates to emphasize economic growth at the expense of the functions of human rights, redistributive *labor* and *environmental* constitutions. As reformulated thus, Trachtman's approach arguably serves as a, perhaps too complex, template for the further constitutionalization of other U.N. agencies. Better monitoring techniques and institutions would reduce collective action problems by reducing the opportunism of hidden agendas and ploys, or cheating for purposes of the present model. These improvements, plus substantive means for fleshing out and incentivizing an enlightened, longer-term self-interest, would enhance the cooperation on which an advanced poker depends.

Constitutionalization turns mere voting into an abandonment of the survival of the fittest, into some value system which goes beyond a simple welfare or warfare maximization by and for elites. Under pressures on the U.N., applied through NGO "audits" of various agencies and inevitably partial mobilizations of public opinion, but *not* by the 2005 World Summit that, perhaps inevitably, left the powerful S.C. in its oligarchic place, this value system slowly evolves in democratic

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225. See JACKSON, *supra* note 21, at 120-21, 216, 350, 355, 445-46, 459.

226. Joel Trachtman, *The WTO Constitution: Toward Tertiary Rules for Intertwined Elephants*, (Tufts University, The Fletcher School, 2005), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=815764](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=815764) (last visited Feb. 3, 2008).

227. See *id.* at 3. Trachtman properly treats the WTO as "semi-autonomous," a characterization which requires complex analyses of the rest of the U.N.'s law and of domestic constitutional orders. See *id.*

directions. Inclusion, participation and, less directly, transparency, accountability, and distinctive sources of legitimacy, spawn a growing resistance toward the exclusionary games of ordinary poker. But democratization is only in its infancy at the WTO, the IMF, the WB, etc. Democratic tendencies do not necessarily generate respect for minority rights, and democratic tendencies can also generate unpredictable, incoherent and, as in Serbia, illiberal outcomes.

Despite such potential defects, the popularity as well as the importance of these artifacts of an international democracy suggest that, with creativity and courage, the G.A. could use them to reclaim its place as the most important U.N. body. Democratization faces more opposition than does a “mere” constitutionalization. This opposition stems from major players, perhaps excluding the U.N., that deem unaccountability and poker-like secrecy as essential to pursuing their elaborate schemes. For this reason, the collectively quite powerful minor players and most NGOs support democratization as a partial equalizer for the major players’ wealth and power.<sup>228</sup>

As mentioned previously, the complexity, instability, uncertainty, and incoherence of much of the international law that revolves around the U.N. family does not stem from an international anarchy. Rather, it is characteristic of the governance without government that has been modeled here as outcomes of the leaderless, self-organized ordinary poker games. The players’ interest gets exhausted over who wins and who loses what and when, with little attention being paid to coordination of the outcomes. Integration of the unwieldy and unevenly-developed

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228. See Alston, *supra* note 6, at 790-91; Monique Chemillier-Gendreau, *The Alternative U.N.*, LE MONDE DIPLOMATIQUE, Sept. 2005; Thalif Deen, *U.N.’s Authority Tested By Perils Ahead*, *supra* note 125. See also JACKSON, *supra* note 21, at 216; LUHMANN, *supra* note 21, at 304, 347; WALZER, *supra* note 54, at 180-81; Alston, *supra* note 6, at 811 (discussions of participation which are not tied to a concrete law or policy are “hollow and tokenistic”); Ignatius, *supra* note 63 (quoting the leader of Egypt’s Muslim Brotherhood) (the U.S. wants democracy only as an “artistic decoration,” since truly fair elections would threaten Israeli and U.S. interests); Adrian Karatnycky, *Zigging and Zagging Toward Democracy*, WASH. POST, Nov. 15, 2005, at A21 (arguing that durable domestic democracies maintain the discipline of nonviolent civic action and are led by broadly-based civil coalitions which force splits within the ruling elite and its security forces); Marincola, *supra* note 107 (quoting Antonio Papisca) (“It is impossible to speak of international democracy and democratization without making reference to the institutional spheres in which they can actually be pursued.”); Trachtman, *supra* note 226, at 15-6 (discussing the “democracy deficit” at the international level); *Democracy’s Ten-Year Rut*, ECONOMIST, Oct. 29, 2005, 39-40 (“Latin Americans do not want to go back to their dictatorships but they are still unimpressed with their democracies.”); *id.* (only 26% feel they “are equal before the law—the same number as in 1998”); *id.* (mistrust of political institutions leads Latin Americans frequently to take to the streets); Fisher, *supra* note 43 (explaining the collapse of Bush’s democracy initiative in the Middle East).

international law rules seems more difficult than a constitutionalization and even a democratization. Greater cooperation, more of an advanced poker, is essential, and the World Wide Web offers one model of how this could be accomplished: relatively few rules which almost everyone can support because they permit diverse content, and few nodes but many links which can be “Googled” to solve legal disputes and other problems. John Jackson offers a legal frame for such a model: “plurilateral” agreements, which integrate an economic globalization with environmental concerns, for example.<sup>229</sup> Agreements could also integrate economic globalization with human rights, self-determination with other human rights, etc. With sustained advocacy from NGOs, such agreements could form the base of a pyramid of international law *among the willing*, with increasingly-general integrations emerging at the higher levels of the pyramid. However, this approach is open to the criticism that it reverts to the “a la carte” international law that multilateral agreements are designed to avoid, and it is thus unlikely that such agreements would even generate a customary international law. A fuller integration presumably requires a powerful specialist agency, a Global Law Organization (“GLO”). Akin to a treaty-based WTO, this GLO could manage “trade and tradeoffs” in law, by integrating the diverse values created through a decentralized rule-making,<sup>230</sup> as well as through constitutionalization, democratization, and new checks and balances (if any) as well.

Adapted from Montesquieu, checks and balances are an American and somewhat French curb on the powers of governance, and an alternative to a concentration of powers, for example, the monarch in Parliament under the British model. It can be convincingly argued that almost all U.N. powers are too weak to require additional checks and balances that increase the costs of forming a consensus; things are unlikely to “get out of hand” in the future. This is because a fair number of informal checks and balances already exist: means of settling disputes peaceably; practices that screen out much of the abuse that would otherwise occur, through generalized injunctions of cooperation; and modest restraints on the use of a naked wealth and power. The most notable check would be called “federalism,” if government(s) existed at

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229. See generally JACKSON, *supra* note 21.

230. See *id.* at 412. See also Hirsch, *supra* note 18; Carlos Vasquez, *Trade Sanctions and Human Rights—Past, Present, and Future* 6 J. INT’L. ECON. L. 797, 831 (2003) (suggesting one option by which agreements could permit but not require states to impose trade sanctions for human rights violations). But see Andrew Guzman, *Why LDCs Sign Treaties That Hurt Them: Explaining the Popularity of Bilateral Investment Treaties*, 38 VA. J. INT’L. L. 639, 641, 644 (1998).

the international level.<sup>231</sup>

As players, wealthy multinational corporations, other major NGOs, and nation-states channel and condition the creation of international laws through their game-plays. Probably as a necessary concession to reality, major players can veto many game initiatives. To the extent that nation-state and some NGO policies are indeed devised democratically, this lends an indirect democracy to international processes. A few U.N. reforms spelling out relative competences could reinforce the “subsidiarity” principle that aids in the management of complexity: assign a task to the lowest level of governance that can most efficiently and humanely perform it, given that governance level’s degree of development. Thus, international action should be, and largely is, reserved for those things where various levels of the relevant nation-states cannot or will not act—“externalities” where these states are concerned. Some of these externalities could be tamed by restraining the White House, if possible and necessary, and by a GLO which eliminates multiple legal overlaps. To the extent that the distinction can be drawn, the politics of these externalities is for the members, and the administration that monitors, implements and enforces political decisions of the U.N. family of organizations that has often avoided accountability for its actions in the past. The most sensitive topics here are empowering the poor and creating an, inevitably modest, redistribution on their behalf, especially in developing countries and where the plight of the poor is generated by the global markets beyond the control of most nation-states.<sup>232</sup>

The monitoring, implementation, and the centralization of international political decisions requires the displacement of governance through advanced, as well as ordinary poker games, by an institutionalization which is an extrapolation from the constitutionalization discussed earlier. Many U.N. institutions are thin, unbalanced, and thus incapable of promoting “thicker” human rights and developmental rights and duties, as well as promoting legality and justice generally as solutions to collective action problems.<sup>233</sup> Discussing the

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231. See Trachtman, *supra* note 226, at 16. Something like the GLO I propose could watch for imbalances among values within particular U.N. agencies, and seek to impose “redistribution” and human rights norms as expressions of social solidarity and as advancing a new international civilization.

232. See JACKSON, *supra* note 21, at 454.

233. See *id.* at 275, 411-12, 423; Evans, *supra* note 8, at 1056; Trachtman, *supra* note 226. *But see* Evans, *supra* note 8, at 1062 (calling global “market discipline” a “counter-law” which, I would argue, is nevertheless conditioned heavily by the WTO/IMF/WB legal complex). *But see also* Alston, *supra* note 6, at 791 (decentralization is required to “enhance poor people’s voice”); Glennon, *supra* note 21 (“To reduce state miscreance it is necessary to reduce state power; countervailing decent concerns such as

reasons why customary international humanitarian laws are violated, Abdul Korama describes a mixture of factors: the rules are unknown, known but inadequate, enforcement mechanisms are weak, or law is simply disregarded.<sup>234</sup> These are the factors that must be reformed, requiring stronger institutions to work to reduce the number and seriousness of violations.

Pursuing a piecemeal reform process as described here, we must learn to live with legal and political failures, as we describe them, and expect only small legal evolutions. We have to ask the right questions, use hard-headed analysis rather than a “happy-think,” and quickly take advantage of transcendent and incremental opportunities. Above all, we should recognize that much of what we see as necessary or natural is really a matter of choice or context. For example, dignitary human rights mean different things in different circumstances, and the seemingly-unattainable MDGs may merely give false hope, ignore the effects of the global distribution of wealth and power, be too selective, not go far enough, fail to attract a sufficient legitimacy to be implemented, etc.

## V. Conclusion

This Article is no less complex than the global phenomena it tries to describe—phenomena of an insider’s game like poker. Rather than try to summarize these phenomena here, we should close with brief thoughts about the future. After the 2005 World Summit, “many critics wrote the United Nations off as an institution so deeply flawed that it was beyond salvation.”<sup>235</sup> This Article takes a different, more nuanced view: despite political (or poker-playing) flaws, a creaking bureaucracy, and inadequate resources, the U.N. will play a rather uncertain yet critical role in solving global externalities/collective action problems, especially if piecemeal reforms are aggressively pursued. Discussing international economic law while paraphrasing Heraclites, Andreas Lowenfeld argues that “nothing is permanent except change,”<sup>236</sup> and that most international law of the U.N. is followed most of the time.<sup>237</sup> Philip Alston is right to worry that the “U.N. approach of indivisibility” will become a “tautology”<sup>238</sup> or perhaps a cliché, yet it currently offers a “big picture”

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humanitarianism and state security are simply irrelevant.”).

234. See Monique Chemillier-Gendreau, *The Alternative U.N.*, LE MONDE DIPLOMATIQUE, Sept. 2005; Godoy, *supra* note 120; Posner, *supra* note 9.

235. Alston, *supra* note 6, at 762-65; Glennon, *supra* note 21, at 613; Paul & Nahory, *supra* note 126.

236. Andrew Mack, *Peace on Earth? Increasingly, Yes*, WASH. POST, Dec. 28, 2005, at A21.

237. ANDREAS LOWENFELD, INTERNATIONAL ECONOMIC LAW 43, 148 (Oxford University Press 2003). See *Global Violence Has Decreased*, U.N. SAYS, *supra* note 127.

238. Alston, *supra* note 6, at 784-85.

with which to confront nation-state players busy totaling up their poker winnings and losses.

Will the U.N. create a “networked world? A Global Neighborhood Watch? Managed Globalization?” Are there other facets “to think about and support an integrated response” from voters and policymakers?<sup>239</sup> Through reform, will the U.N. family slowly create freedoms from want and fear, and otherwise preserve our common humanity? Can new collaborative arrangements make better use of everybody’s expertise, and of our other resources, in discovering new opportunities and addressing new threats?<sup>240</sup> Some or all of these futures are plausible, but one thing is clear: to change the U.N., “we must change too.”<sup>241</sup> The most important and difficult change is to stiffen political will at the nation-state level, to resist the temptation to create law through an ordinary poker—in pursuit of unstable, short-term, and sometimes-misperceived gains—by decreasing the incentives to defect from advanced poker—where incentives must be increased.<sup>242</sup>

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239. Anne-Marie Slaughter, *The Shadow World*, WASH. POST, Oct. 30, 2005, at BW6 (reviewing MOISES NAM, *ILLCIT: HOW SMUGGLERS, TRAFFICKERS, AND COPYCATS ARE HIJACKING THE GLOBAL ECONOMY* (Anchor 2006)).

240. Romulo, *supra* note 17. See Alston, *supra* note 6, at 772 (quoting Christian Tormuschat: “If human life and dignity are not protected, the idea of a legal order would collapse”—at least in the liberal tradition). Law-as-ordinary-poker is thus dangerous because it is not biased toward dignity-enhancing outcomes.

241. Tharoor, *supra* note 91.

242. One aspect of law-as-poker is the effect it may have on ethnic or religious identity. Law-as-poker may accelerate the obsolescence of a variety of “traditional” practices, while paying lip-service to diversity, and may render discourse over law irrelevant. Such discourse might be based on John Rawls’s “overlapping consensus,” a consensus ignored because legal content matters much less than game-bets. See generally JOHN RAWLS, *POLITICAL LIBERALISM* (Columbia University Press 2003). Sticking your national neck out by assuming a human rights obligation, for example, is often seen as, and sometimes is, a game-bet devoted to winning something quite different. But see Alston, *supra* note 6, at 809. To give Kofi Annan the last word: “We must find what President Franklin Roosevelt once called ‘the courage to fulfill our roles in an admittedly imperfect world.’” Kathryn Horvat & Pat Shea, *The United Nations, 60 Years and Still Counting*, SALT LAKE TRIB., Oct. 26, 2005.

**APPENDIX: THE MILLENNIUM DEVELOPMENT GOALS  
AND TARGETS**

(Alston, *supra* note 6, at 828-29).

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

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

**Goal 2: Achieve universal primary education**

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

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

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

**Goal 4: Reduce child mortality**

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

**Goal 5: Improve maternal health**

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

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

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

**Goal 7: Ensure environmental sustainability**

- Target 9: Integrate the principles of sustainable development into country policies and programmes and reverse the loss of environmental resources.
- Target 10: Halve, by 2015, the proportion of people without sustainable access to safe drinking water.
- Target 11: By 2020, to have achieved a significant improvement in the lives of at least 100 million slum dwellers.

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

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

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

