

# Introduction: the new collective security

PETER G. DANCHIN AND HORST FISCHER

Whether viewed as a socio-legal project gently civilizing states away from an older politics of diplomacy, deterrence, self-help and legitimate warfare,<sup>1</sup> or as an institutional project establishing a collective security system premised on the rule of law,<sup>2</sup> the primary purpose of the United Nations today remains the maintenance of international peace and security and the abolition of the “scourge of war.” During the four long decades of the Cold War, the practice of the Security Council was shaped, and often thwarted, by superpower deadlock and the paralysis of veto. In nine major interstate uses of force between 1956 and 1982, the Council played only a marginal role.<sup>3</sup> But with the ebbing of the Cold War in the late 1980s, and with a revitalized Council unanimously condemning

<sup>1</sup> The idea of the function of international law as a “gentle civilizer of national self-interest” is from George F. Kennan, *American Diplomacy 1900–1950* (Chicago: University of Chicago Press, 1985), p. 54. For Koskeniemi, this quote reveals the *cultural* and *non-instrumental* aspects of international law as opposed to *realist* and *institutionalist* views which imagine the law as an “instrument for political purposes.” Martti Koskeniemi, “The Place of Law in Collective Security,” 17 *Michigan Journal of International Law* 455 (1995–1996), p. 489. Thus, “[e]ngaging in the formalism of the legal argument inevitably makes public the normative basis and objectives of one’s actions and assumes the actor’s communal accountability for what it is one is justifying. It is the antithesis of a culture of secrecy, hegemony, dogmatism, and unaccountability.” *Ibid.*, 490. See also Martti Koskeniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870–1960* (Cambridge: Cambridge University Press, 2001).

<sup>2</sup> This notion is well captured by the legal formalism of Hans Kelsen: “By its very nature, collective security is a legal principle, while the balance of power is a principle of political convenience.” Hans Kelsen, *Collective Security Under International Law* (New Jersey: The Law Book Exchange, 1954), p. 42.

<sup>3</sup> For example, Mark A. Weisburd identifies nine conflicts in his analysis: (1) the attack on Egypt by France, the United Kingdom, and Israel in 1956 (the Suez Crisis); (2) Indonesia’s campaign against the Netherlands’ territorial possession of New Guinea in the period 1960–1962 (the West Irian campaign); (3) India’s conquest of the Portuguese colony of Goa in 1961; (4) Somalia’s invasion of Ethiopia in 1975; (5) Tanzania’s conquest of Uganda in 1978; (6) Vietnam’s invasion of Democratic Kampuchea in 1978; (7) the

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Iraq's invasion of Kuwait in August 1990, the possibility of collective security arose anew.

The 1990s thus witnessed major shifts in multilateral efforts to maintain peace and security. Seemingly unnoticed, the permanent five began working together on major issues. The Security Council approved enforcement actions on a non-originalist interpretation of "threats to peace," now read to include humanitarian considerations in principally internal conflicts. Following a modest record of authorizing force and employing sanctions, the Council greatly expanded its use of Chapter VII enforcement measures.<sup>4</sup> And over the grave of the moribund Trusteeship Council, the UN resurrected a series of modern trusteeships in the form of transitional administrations.<sup>5</sup> Bolstered by announcements of the End of History, confidence in the emergence of a "new world order" reached euphoric levels.<sup>6</sup>

Even during this period, however, there were warnings about the dark side of the end of Cold War "stability" and the volatile effects of economic and technological globalization. While security analysts warned of a chaotic world of rogue states and terrorists intent on acquiring weapons of mass destruction, political economists warned of a central paradox: economic globalization does not strengthen the current regime of global *laissez-faire*, but may in fact work to undermine it.<sup>7</sup> These warnings coalesced with a shattering reality when in September 2001 a non-state

Soviet Union's campaign in Afghanistan from 1979 through 1989; (8) Iraq's invasion of Iran in 1980; and (9) Argentina's attack on the United Kingdom's Falkland Islands colony in 1982. See Mark A. Weisburd, "The War in Iraq and the Dilemma of Controlling the International Use of Force," 39 *Texas International Law Journal* 521 (2004), p. 524.

<sup>4</sup> Before 1990, the collective use of force was authorized only twice: first in Korea in 1950 (with the USSR absent from the Council), and second in the Congo in the 1960s. Comprehensive sanctions were also only implemented twice: first against Rhodesia in 1966, and second against South Africa in 1977.

<sup>5</sup> See generally Simon Chesterman, *You, the People: The United Nations, Transitional Administration, and State-Building* (Oxford: Oxford University Press, 2005). Chesterman analyzes the following post-1990 UN transitional administrations: Interim Administration Mission in Kosovo (UNMIK), June 1999 to present; Transitional Administration in East Timor (UNTAET), October 1999 to May 2002; Transition Assistance Group (TAG) in Namibia, April 1989 to March 1990; Transitional Authority in Cambodia (UNTAC), March 1992 to September 1993; and Transitional Administration for Eastern Slavonia, Baranja and Western Sirmium (UNTAES), January 1996 to January 1998.

<sup>6</sup> Francis Fukuyama, *The End of History and the Last Man* (London: Hamish Hamilton, 1992).

<sup>7</sup> See, e.g., John Gray, *False Dawn: The Delusions of Global Capitalism* (New York: New Press, 1998), chs. 1–4 (arguing that global capitalism, as presently constituted, is inherently unstable; that free markets are the creatures of strong states; and that a global free market is not a necessary historical development but a political project that engenders

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group operating from within a failed state appeared to turn the economic and military power of globalization against itself. In an instant, the world's single remaining superpower and the UN collective security regime alike were presented with a moment of simultaneous opportunity and peril.

Perhaps as never before in history, a worldwide consensus emerged following the September 11 attacks for collective action against a perceived global threat. Within a day, the Security Council had adopted a resolution unequivocally condemning the attacks, declaring them a "threat to international peace and security" and recognizing the "inherent right of individual or collective self defense in accordance with the Charter."<sup>8</sup> By the end of the month, the Security Council had unanimously adopted a Chapter VII resolution directed towards combating terrorists and any states which "support, harbor, provide safe haven to, finance, supply weapons to, help recruit, or aid terrorists," and requiring all member states to cooperate in a wide range of areas – from suppressing and financing of terrorism to providing early warning, cooperating in criminal investigations, and exchanging information on possible terrorist acts.<sup>9</sup> Resolution 1373 quickly established a comprehensive legal framework, backed by Chapter VII enforcement power, for states to address the threat of international terrorism through mutual cooperation and coordination of their criminal justice systems.

At the same time, by October the United States had initiated actions against Al-Qaeda terrorist training camps and military installations of the Taliban regime in Afghanistan asserting its "inherent right of individual and collective self-defense." Thus was born the "Bush doctrine" – the

new varieties of nationalism and fundamentalism even as it creates new elites); Amy Chua, *World on Fire: How Exporting Free Market Democracy Breeds Ethnic Hatred and Global Instability* (New York: Random House, 2003), pp. 123–175 (discussing the political consequences of globalization and arguing that the global spread of markets and democracy is a principal, aggravating cause of group hatred and ethnic violence throughout the non-Western world); and Joseph Stiglitz, *Globalization and its Discontents* (New York: W. W. Norton, 2003), pp. 23–52 (arguing that the problem lies not with globalization *per se* but with how it has been managed through international economic institutions which help set the "rules of the game" and suggesting that not only have the WTO, World Bank and IMF served the interests of the more advanced industrialized countries, they have approached globalization from particular narrow mind-sets shaped by a particular vision of the economy and society).

<sup>8</sup> UN S.C. Res. 1368 of September 12, 2001.

<sup>9</sup> UN S.C. Res. 1373 of September 28, 2001. The resolution also provided for the establishment of a new "terrorism committee" of the Security Council, consisting of all members of the Council, to which all member states were required to report within ninety days on the steps they had taken to implement the resolution.

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asserted right of a state to use military force in “self defense” against any state which aids, harbors, or supports international terrorists or terrorist organizations.<sup>10</sup> Such an assertion of vigorous unilateralism posed two dangers, however, to the Charter-based collective security system. First, it suggested that when a state was the victim of a terrorist attack it was entitled to use *military* force in response (whether in the territory of other states or on its own territory) thus encouraging resort to violence rather than legal or other diplomatic measures short of the use of force. Second, it posited responses to international terrorism in an undefined new category beyond the traditional laws of war and peace paradigms thereby shifting the normative legal framework governing the conduct of states’ anti-terrorist activities, a matter with potentially far-reaching consequences for international law.<sup>11</sup>

It is now a matter of history that in March 2003 the US and its allies invaded Iraq, a member state of the United Nations, in order to disarm it and change the regime of Saddam Hussein. In the months leading up to the invasion, a bitter struggle ensued in the Security Council as a “coalition of the willing” sought to justify the use of force on the basis of preexisting resolutions,<sup>12</sup> and a majority of member states – including a clear majority in the Council itself – insisted that, in the absence of express Security Council authorization,<sup>13</sup> the case for war had not been established. As reflected in the 2002 National Security Strategy of the United States,<sup>14</sup> the terrain of struggle was seen to have intensified and

<sup>10</sup> For discussion on how this proposition conflicts with a number of settled principles of international law, see Peter Danchin, “Human Rights: *Jus Ad Bellum*: The New ‘Bush Doctrine’” in *A Global Agenda: Issues Before the General Assembly of the United Nations* (Lanham, MD: UNA and Rowman & Littlefield Publishers), pp. 1, 4–8.

<sup>11</sup> The idea of a “universal humanitarian war” was prefigured in Schmitt’s argument that such a war “becomes a war of annihilation (*Vernichtungskrieg*), a global civil war where the enemy does not have the dignity of a State and resistance will appear as ‘the illegal and immoral resistance of a few delinquents, troublemakers, pirates and gangsters.’” Koskeniemi, *Gentle Civilizer*, p. 434 (citing Carl Schmitt, “Die Wendung zum totalen Staat” in *Positionen und Begriffe in Kampf mit Weimar-Genf-Versailles, 1923–1939* (Berlin: Duncker & Humboldt, 1988 [1940]), p. 43 n. 45).

<sup>12</sup> See, in particular, UN S.C. Res. 678 of November 29, 1990, 687 of April 3, 1991, and 1441 of November 8, 2002.

<sup>13</sup> UN S.C. Res. 1441 of November 8, 2002 declares that breaches must be reported to the Council for assessment, and that it “decides to remain seized of the matter and to take such further steps as may be required for the implementation of the present resolution and to secure peace and security in the area.”

<sup>14</sup> President George W. Bush, “Prevent Our Enemies From Threatening Us, Our Allies, and Our Friends with Weapons of Mass Destruction,” in *National Security Strategy of the United States of America* (September 2002), pp. 13, 15.

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shifted from the question of “preemptive” war in Afghanistan to the question of “preventive” war in Iraq. In this respect, the war was a challenge not merely to multilateral institutions, but to the very idea of international order and collective security: “The war split the Security Council, divided the North Atlantic Treaty Organization (NATO), and prompted the creation of a high-level panel to rethink the very idea of collective security in a world dominated by US military power.”<sup>15</sup>

These developments shook the United Nations and leading capitals around the world. Now visible to all was the tension between two competing visions of world order. On the one hand stood the old ideal of multilateral cooperation and collective security – a form of international politics defined by legal liberalism and premised on the *Grundnorm* of sovereign equality. On the other hand stood the world’s undisputed military and economic superpower projecting an imperial political morality based on a good/evil dichotomy which divided the world into a Great Power patrolling a civilized core of democratic nations against a periphery of rogue states and non-state outlaws.<sup>16</sup>

Unsurprisingly, the stark incompatibility between these two visions prompted calls for reform within the United Nations. These calls encompassed two dimensions of the problem: one normative, the other institutional. First, was the structure of the Charter itself, and the body of international law on which it depends, still the correct framework by which to view and assess new and emerging threats in a post-September 11 world? Second, how could the 1945 UN peace and security architecture be made to work more effectively to respond to new threats and lessen the impetus for powerful states to “go it alone”?

As the post-invasion chaos of the Iraq War unfolded, these questions prompted Kofi Annan to convene in late 2003 a “high-level panel of eminent persons” charged with assessing current threats to peace and security, evaluating existing policies and institutions, and making recommendations for strengthening the UN “so it can provide collective security for all in the twenty-first century.”<sup>17</sup> Having already set in

<sup>15</sup> Simon Chesterman, “Reforming the United Nations: Legitimacy, Effectiveness and Power After Iraq,” 10 *Singapore Yearbook of International Law* 1 (2006), p. 2.

<sup>16</sup> The vernacular of Great Powers and rogue states is from Gerry Simpson, *Great Powers and Outlaw States: Unequal Sovereigns in the International Legal Order* (Cambridge: Cambridge University Press, 2004).

<sup>17</sup> Note by UN Secretary-General, A/59/565, December 2, 2004, para. 3. For the report of the Panel, see High-Level Panel on Threats, Challenges, and Change, *A More Secure*

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motion an ambitious development agenda,<sup>18</sup> this would be followed in March 2005 with the Secretary-General's own *In Larger Freedom* report which joined human rights to the preexisting security and development agendas and, in sweeping and ambitious terms, attempted to establish the agenda for the upcoming sixtieth General Assembly and planned Summit of Heads of State in September 2005.<sup>19</sup> The Summit, in turn, would generate a report which selectively adopted certain proposals of the High-Level Panel and Secretary-General.<sup>20</sup>

This most recent of efforts to vanquish war and power politics through international law and organization is the subject of the chapters of this volume. The overarching questions the authors address are whether there is a compelling argument for a new collective security agenda, whether the eminent ones dreamed the right dreams and saw the right nightmares, and whether normatively and institutionally we are in fact moving towards a new collective security paradigm.

### Structure of the volume

The book is organized in four parts, each part considering a contested element in the UN reform process. Part I addresses the impetus for and likely future success of institutional reform efforts and considers the place of international law in competing conceptions of collective security. Part II interrogates the concept of a "threat" to collective security and asks how such threats are to be addressed (and who decides). This analysis includes the questions of massive and systematic violations of human rights and so-called "nonmilitary" threats in areas such as the environment, disease, and technology. Part III analyzes the collective security innovations and potential limitations of the newly created Peacebuilding Commission and Human Rights Council, and asks how inclusive participation is in these new international institutions. Given

*World: Our Shared Responsibility* (Report of the High-Level Panel on Threats, Challenges, and Change), December 1, 2004, UN Doc A/59/565 (hereinafter High-Level Panel).

<sup>18</sup> See Investing in Development: A Practical Plan to Achieve the Millennium Development Goals (Report of the UN Millennium Project to the Secretary-General), January 17, 2005, online: Millennium Project: [www.unmillenniumproject.org/reports](http://www.unmillenniumproject.org/reports).

<sup>19</sup> Kofi Annan, *In Larger Freedom: Towards Security, Development, and Human Rights for All*, UN Doc. A/59/2005 of March 21, 2005, online: [www.un.org/largerfreedom](http://www.un.org/largerfreedom) (hereinafter *In Larger Freedom*).

<sup>20</sup> 2005 World Summit Outcome document, General Assembly Sixtieth Session, UN Doc. A/Res/60/1 of September 16, 2005, online: <http://un.org/summit2005> (hereinafter World Summit Outcome).

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current and proposed conceptions of collective security, each chapter in this part then addresses the likely responses to urgent issues such as state failure, massive human rights violations, the activities of rogue states and non-state actors as regards terrorism and weapons proliferation, and attempts to hold perpetrators to account for violations of international law. Finally, Part IV concludes by asking how any new collective security regime will relate to and influence developments on the ground as viewed from the perspectives of humanitarian practitioners and actors.

### Law and politics in United Nations reform

In September 2003, following the United States' invasion of Iraq earlier that year, Kofi Annan forcefully addressed the UN General Assembly and argued that the international community had come to a "fork in the road":

This may be a moment no less decisive than 1945 itself, when the United Nations was founded. At that time, a group of far-sighted leaders, led and inspired by President Franklin D. Roosevelt, were determined to make the second half of the twentieth century different from the first half. They saw that the human race had only one world to live in, and that unless it managed its affairs prudently, all human beings may perish. So they drew up rules to govern international behavior, and founded a network of institutions, with the United Nations at its centre, in which the peoples of the world could work together for the common good.

Annan thus suggested that we "face a decisive moment, in particular for the aspiration set out in the Charter to provide collective security for all." While pointing to deep divisions among states on the nature of threats to peace and security and the appropriateness of the use of force, he challenged member states to make the UN more effective.<sup>21</sup>

This is perhaps unsurprising. Major reforms in the international system have been driven historically by crisis, whether the creation of a League of Nations after the First World War or the founding of a United Nations after the Second World War.<sup>22</sup> But what kind of moment was

<sup>21</sup> Kofi Annan, "Secretary-General's Address to the General Assembly" (New York, September 23, 2003), online: [www.un.org/apps/sg/sgstats.asp?nid=517](http://www.un.org/apps/sg/sgstats.asp?nid=517).

<sup>22</sup> Developments in international humanitarian law have often occurred at similar crisis points. The Geneva Conventions of 1949, for example, were signed in the aftermath of the Second World War. In 1977, in the wake of the Vietnam War, the two additional protocols to the Geneva Conventions were added. Also, during the US Civil War, the US War Department instituted the Lieber Code.



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this exactly? What kind of political space, consensus, and will was there among states for major changes to the international security architecture? What is now evident is that, rather than being the kind of moment following a catastrophe of sufficient gravity as to open political space for normative and institutional reformation, this reform cycle has been driven primarily by concerns about the role of the world's single super-power in the organization and, conversely, by US concerns regarding how best to protect and project its strategic and political interests.

To some at least, the post-Iraq invasion period presented the third great opportunity after the creation of the League and UN itself to get the "international order right." Gareth Evans, for example, the former Australian Foreign Minister and himself an eminent one, suggested that if the reform attempts failed this time "we might just be putting the same death sentence on the United Nations as was put upon the League of Nations by the utter failure of political statesmanship in the 1930s."<sup>23</sup> But to others, calls for radical changes were simply unrealistic in the wake of six decades of largely frustrated reform efforts. Professor Edward Luck, for example, has suggested that the organization has survived because of its capacity to make corrections and take on new agendas as the needs and values of its member states shift. It has adopted formal reforms, however, with great reluctance.<sup>24</sup> Furthermore, the Secretary-General's call for reform represented a serious misdiagnosis of the problems facing the UN.<sup>25</sup>

Still for others, especially those in the American foreign policy establishment, the solution was to be found elsewhere in new forms of "competitive multilateralism." Ruth Wedgwood thus argued that if the UN cannot reform, the US should rely more on regional organizations

<sup>23</sup> Gareth Evans, *A Make or Break Year for the UN: Reforming the 60 Year Old*, Lecture at Centre for International Studies, Dublin City University (June 24, 2005).

<sup>24</sup> Edward C. Luck, "How Not to Reform the United Nations," *Global Governance* 11 (2005), pp. 412–13. For Luck, the process "has tested the member states' commitment to the organization and found it to be fundamentally sound, if as shallow and self-serving as ever." Noting that member states continue to entrust the UN to take on more and more peacekeeping, humanitarian, and counter-terrorism missions, Mats Berdal has similarly observed that it is "clear that the [High-Level] Panel report firmly rejects the suggestion that the UN may be facing a fork in the road." See Mats Berdal, "The United Nations at 60: A New San Francisco Moment?," *Survival* 47 (Autumn 2005), pp. 7–31.

<sup>25</sup> For Luck, institutional reform will not address the underlying political difficulties confronting the UN. Expanding Security Council membership to achieve greater legitimacy, for example, would not increase and almost certainly would decrease the Council's effectiveness. Would an enlarged Council have agreed on what action to take in Iraq or other divisive issues? See Luck, "How Not to Reform the United Nations," p. 409.



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that can deliver where the UN cannot or will not. As one example she advocated abandoning the search for consensus with “political thugs” at the UN Commission on Human Rights, and the provision of more US support to regional human rights organizations and groups. In this way, the stark choice between “going it alone or going to the United Nations” could be avoided.<sup>26</sup>

What is clear, however, is that anxiety resulting from US ambivalence over, and indeed outright hostility toward, the UN undergirded many of the calls for change.<sup>27</sup> This is visible in the Secretary-General’s *In Larger Freedom* report which targets Washington overtly by invoking Roosevelt’s “Four Freedoms” and echoing FDR’s call for leaders to have “the courage to fulfill [their] responsibilities in an admittedly imperfect world.”<sup>28</sup> The same sentiment literally bursts out of a controversial speech delivered in mid-2006 by the UN Deputy Secretary-General, Mark Malloch Brown, warning that without US leadership the UN’s ability to respond to the increasing challenges the world is facing was weakened, and vice versa.<sup>29</sup>

<sup>26</sup> See Ruth Wedgwood, “Give the United Nations a Little Competition,” *New York Times*, December 5, 2005. According to Wedgwood, the US should, however, continue to support the UN because it “remains the only all-inclusive political organization around” and because, as a member of the Security Council, “America enjoys prerogatives ... that would be hard to gain again.” See also Ruth Wedgwood, “A Run for the Money: Spin-Offs, Rivals and UN Reform,” *The National Interest* (Winter 2005/06).

<sup>27</sup> At the same time as unilaterally projecting increased military power, the US has repudiated a series of widely supported conventions and has rejected a long list of new treaties. These include the Kyoto Protocol on global warming, the ABM treaty on missile defence and the militarization of space, the Biological Weapons Convention prohibiting developing biological weapons, the Small Arms Convention, and the Land Mines Convention to name only the most prominent, while also seeking to exempt itself from, and indeed actively to undermine, the Rome Statute of the International Criminal Court.

<sup>28</sup> F. D. Roosevelt, “Annual Address to Congress: The ‘Four Freedoms’” (Washington D.C., January 6, 1941), online: [www.fdrlibrary.marist.edu/od4frees.html](http://www.fdrlibrary.marist.edu/od4frees.html). Specifically in its sections on development and security, *In Larger Freedom* adopts Roosevelt’s calls for freedom from want and from fear. It also combines Roosevelt’s two other freedoms (freedom of speech and thought, and of worship) into a broader concept of freedom to live in dignity.

<sup>29</sup> Mark Malloch Brown, “Power and Super-Power: Global Leadership in the Twenty-First Century,” speech delivered at the Century Foundation and Center for American Progress, June 6, 2006. As a result of constant American calls for “management reform,” there is currently “a perception among many otherwise quite moderate countries that anything the US supports must have a secret agenda aimed at either subordinating multilateral processes to Washington’s ends or weakening the institution, and therefore ... should be opposed without any real discussion of whether they make sense or not.”

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What is perhaps more curious, however, is that while the Panel's imagined collective security consensus is justified by the emergence of new threats, its report strongly reaffirms the preexisting multilateral framework and normative structure. It is also important to note that most of the recommendations the Panel *did* make were either substantially watered down through the intergovernmental process, or did not make it at all into the 2005 World Summit Outcome document. This tripartite sequence of idealistic Panel recommendations, policy endorsement or repackaging by the Secretary-General, and political rejection at the World Summit, can be traced in a number of areas.

Both the Panel Report and *In Larger Freedom* discuss in some detail the connections between economic and social issues on the one hand, and security on the other. Under the rubric of "freedom from want," for example, the Secretary-General discusses expansively the Millennium Development Goals (MDGs), the target of 0.7 percent of gross national income for developed states in official development assistance by 2015, and the need for a new round of multilateral trade negotiations. This builds on the Panel's endorsement of the MDGs and its call (at least indirectly) for a reduction in agricultural subsidies by the developed countries.<sup>30</sup> After fierce resistance by the US, the 2005 World Summit Outcome document finally did endorse the MDG goals but set no new commitments toward reaching the 0.7 percent target.

The Panel also looked critically at the role of the UN in ending civil conflicts, and in particular its failure to halt ethnic cleansing and genocide. In order to prevent and minimize future conflicts, the Panel broadly endorsed the use of the International Criminal Court (ICC) by the Security Council, suggested mechanisms to better govern the management of natural resources for countries emerging from or at risk of conflict, and called for better controls on small arms. The Summit Outcome document, however, makes no reference to the ICC, makes no connection between natural resource extraction and conflict, and fails to endorse the arms control recommendations of the Panel.

But perhaps the greatest disappointment of the Summit was its failure to reach agreement on disarmament and non-proliferation of weapons of mass destruction (WMD), despite the unambiguous call from both the Panel and Secretary-General for nuclear-weapons states to honor their obligations under the Non-Proliferation Treaty and to move

<sup>30</sup> High-Level Panel, para. 62.