

# THE NATIONAL INTEREST

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# UN-Divided

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Lee Feinstein

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**F**AILED REFORMS. A fight over a controversial nomination for U.S. ambassador to the United Nations. A congressional threat to stop payments to the UN. We have seen this movie before. It played to large audiences during the Clinton years and has made a comeback during the first half of the second Bush Administration.

But an indie film is quietly making its debut. Newt Gingrich signs onto a report mandated by Congress whose principle conclusion is “the firm belief that an effective United Nations is in America’s interest.” George Mitchell, Gingrich’s Democratic co-chairman on the task force, describes the results of the September UN reform summit in New York as “disappointing” and a source of “frustration.” Or there’s this admonition against jumping to conclusions about the failure of the UN to undertake reforms: “While it is easy to blame the UN as an institution for some of the problems we confront today, we must recognize that ultimately it is member states that must take action, and therefore bear responsibility.” Was that John Kerry? No, it was John Bolton in recent testimony before the House International Relations Committee. In the same hearing, Ambassador Bolton relayed the Bush Administration’s opposition to

withholding payments to the UN, which would be required by legislation adopted by the House and sponsored by HIRC Chairman Henry J. Hyde himself.

What’s going on here? The familiar and flawed discourse that has characterized the debate over the United Nations for at least the past 15 years still gets the ink, but a more fundamental shift in America’s approach to international institutions is at work. This change is a response to structural shifts in the geopolitical landscape. It reflects pragmatic adjustments within the Republican Party driven by the realities of five years in power and the search for new ideas within the Democratic Party after five years out of power. The shift encompasses elements of the political Left and Right, and it has the potential to advance this debate beyond the extremes of loving the UN or leaving it.

If you look closely, you will find something approaching an improbable consensus emerging on the question of America’s relationship with the United Nations, something that might be called “UN Plus.” UN Plus is the idea that UN reform is important and necessary but not sufficient to meet the need for the United States and the world to respond collectively to many of today’s most pressing international challenges. This consensus rests on four points: the imperative to prevent or stop atrocities, including genocide; the growing importance of cooperation among democracies to enhance

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the legitimacy and effectiveness of international action; the need for accountable and agile international institutions to address today's transnational challenges and threats; and the inadequacy of existing UN structures to deal effectively with questions involving the use of force.

### *Contingent Sovereignty*

THE NEW consensus about America's relationship to international institutions is driven by a transformation in the nature of sovereignty. This is a genuine revolution resulting from the experience of the genocides of the 1990s and today's transnational threats and challenges, which are radically different from those anticipated at the UN's founding sixty years ago. This transformation has been hastened by a period of self-examination and intellectual ferment stimulated by the Security Council rupture over Iraq in 2003. This will be seen as a watershed as important as the Congress of Vienna, which established what we now refer to as the Westphalian system. For international law, this is nothing short of the redefinition of the formal (if fictional) notion of sovereignty that has obtained for the past 350 years.

The traditional realist approach of the UN as a meeting place of sovereign states is slowly changing to catch up to the reality on the ground. The principles of the formal equality of sovereign states, the inviolability of international borders and the monopoly of force within one's own borders is yielding to state sovereignty that is contingent on the nature and behavior of a regime. The perception that fairness in the international system is somehow measured by the degree to which each country gets an equal say—one country, one vote—is also under challenge.

There are two components to contingent sovereignty. The first is the extent to which a country enjoys sovereign rights

and privileges, which has been described as the principle of *conditional sovereignty*. The second is the standards that may be used to distinguish among sovereign nations; call it *differentiated sovereignty*.

Conditional sovereignty is the notion that sovereignty entails responsibilities as well as rights. The most famous application of this principle has come to be known as the "responsibility to protect." The principle is that a state's first responsibility is to protect those within its borders from atrocities. States that fail to fulfill that responsibility, through acts of either commission or omission, are accountable for their actions. The second element of the responsibility to protect concerns the moral responsibilities of the rest of the world. As Gingrich and Mitchell put it, "In certain circumstances, a government's abnegation of its responsibilities to its own people is so severe that the collective nations' responsibility to take action cannot be denied." In such cases "the principle of nonintervention yields to the international responsibility to protect."<sup>1</sup>

In 2004 these idealist principles were embraced by a UN panel on which Brent Scowcroft, America's most esteemed realist, served as a prominent member. The Gingrich-Mitchell commission, which encompassed a very wide range of political and ideological perspectives, also called on the U.S. government to press for acceptance of the responsibility to protect. To the surprise of many, the summit agreement included clear language to this effect: "Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing, and crimes against humanity. This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary

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<sup>1</sup>International Commission on Intervention and State Sovereignty, *The Responsibility to Protect* (Ottawa, Canada: IRDC, 2001).

means. We accept that responsibility and will act in accordance with it.” Following the summit, John Bolton gave the first explicit statement of support for the “responsibility to protect” by a U.S. official, a long-awaited change in the formal American position.

Linked to the notion of conditional sovereignty is the concept of differentiated sovereignty—the effort to identify legitimate standards by which to distinguish among states based on the nature of their society and their behavior. Such principles are already present throughout the UN system, dating back to the organization’s founding and including the UN Charter itself, as well as the Universal Declaration of Human Rights. Many international agreements also make significant distinctions among nations. The 1968 Nuclear Nonproliferation Treaty, for example, legalized the possession of nuclear weapons at least for a time for five nations, while ruling out the nuclear option for the rest.

During the 1990s, international double standards became increasingly difficult to enact. The United States faced this in 1997 when it was unable to set the terms for the negotiations to ban certain anti-personnel landmines or to set differentiated limits for nuclear weapon states in the unratified Comprehensive Test Ban Treaty a year earlier. The United States also sought unsuccessfully to accord special rights to itself and other members of the Security Council in the Rome Treaty establishing the International Criminal Court.

The pendulum has begun to swing in the other direction in recent years, however, as the flaws of a one-size-fits-all approach have become more apparent. WMD is a case in point. The opening proposition of the non-proliferation system is to treat Tehran as if it were Tokyo. Such a lowest-common-denominator approach is simply not tenable in light of the clandestine programs in both Iran and

North Korea and the threat of catastrophic terrorism that manifested on 9/11.

Recent efforts to address flaws in the non-proliferation system suggest wide acceptance of this principle internationally, even though many states would not trumpet the point. The European Union’s halting negotiations with Iran over its nuclear program, for example, set a much higher bar for Tehran than for other NPT nations, reflecting both the unfree nature of Iranian society today and its past efforts at concealment. The six-party framework agreement concluded in September between the United States, Japan, Russia, South Korea, China and North Korea would require the totalitarian regime in Pyongyang to take steps that would go beyond what is required of other nations, including other nations with nuclear ambitions or even substantial nuclear arsenals.

The flaws in the sovereign equality model have intensified the search for internationally acceptable standards by which to differentiate among regimes in the UN and more broadly. The notion of a “duty to prevent”, for example, posits that closed societies (“governments that lack internal checks on their power”) pose a greater danger than open ones and therefore require earlier and more intense international effort to prevent them from pursuing the nuclear option.<sup>2</sup> Senator Joseph Biden has endorsed this concept and called for international negotiations to formalize it.

### *Stopping Atrocities*

THE UN is an attractive target for the world’s failure to take effective action to prevent mass killing. As the Gingrich-Mitchell report candidly put it, “On stopping geno-

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<sup>2</sup>Lee Feinstein and Anne-Marie Slaughter, “A Duty to Prevent”, *Foreign Affairs* (January/February 2004).

cide, all too often ‘the UN failed’ should actually read ‘members of the United Nations blocked or undermined action by the United Nations.’” But it is also reasonable to judge the UN poorly for the failure of international responses to atrocities. Security Council politics have prevented earlier and strong action in the case of Darfur. Sudan’s rising oil production is a key factor in China’s moves to water down Security Council resolutions condemning Khartoum. France prioritized Security Council referral of suspected war criminals to the International Criminal Court for indictment over resolute action on the ground. Exceeding deference to the perceived pride of the African Union, real and exaggerated, has stiffened resistance to sending in NATO or other foreign reinforcements to the region.

Preventing genocide is an issue where most citizens of democracies would support action. This issue could enable a restructuring of the UN with more resources to get the job done. This would require commitment to a series of actions that have faced resistance until now, such as pre-dedicating armed forces and civilian police from capable states, including the United States, for prompt and voluntary deployment to UN-authorized missions. Also needed is serious, not symbolic, training for the African Union and others to build up a long-term capability to engage in regional peace-keeping. Finally, a genuine commitment to preventing genocide would also inhibit the permanent members of the Security Council from exercising their power to veto resolutions authorizing humanitarian interventions, unless a vital national interest was at stake.

Stopping and preventing atrocities could and should be at the core of what the UN does, but relying on the UN as the exclusive option is unrealistic and, in cases of inaction, immoral. Security Council paralysis or UN incapacity can-

not be an excuse for looking the other way. The choice cannot simply be the UN, U.S. unilateralism or doing nothing. There can and must be other choices.

### *Cooperation Among Democracies*

**P**REVENTING STATES that do not accept the responsibility to protect—many of them non-democracies to boot—from punching above their weight is a priority if the UN is to become more effective and legitimate. Roughly two-thirds of the 191 nations of the UN are now “electoral democracies.” Yet, effective cooperation among the democracies to advance shared goals remains rare. Last September, for example, a familiar dynamic played out in the negotiations over the 35-page “Outcome Document” on UN reform agreed upon by world leaders. A handful of countries, many of them non-democracies, actively worked together to defeat proposals on issues ranging from defining terrorism to the powers of the General Assembly. At the discredited Human Rights Commission in Geneva, many of the governments cited annually by Freedom House as the “worst of the worst” human rights violators have served year after year in an often successful effort to block resolutions that would criticize them. Sudan, which has supported the janjaweed militias responsible for the genocide in Darfur, is serving its second consecutive term, and the Human Rights Commission in 2005 failed to approve a resolution condemning Khartoum by name. This group successfully led the effort in September to block concrete progress on establishing a Human Rights Council to replace the Commission, leaving the future of human rights at the UN in doubt.

The spoilers are more successful than their numbers would indicate because genuine cooperation in the growing ranks of the UN’s democracies has yet to develop. An absence of transatlantic coop-

eration at the UN, dating back to the mid-1990s, is glaring and galling. Both the Clinton and George W. Bush Administrations have supported the establishment of a Democracy Caucus to coordinate action within and across regional and other political blocs at the UN, but neither the United States nor the world's other leading democracies made a determined effort in September to advance the reform agenda, and they continue to work halfheartedly and at cross-purposes.

In revamping to deal with genocide the UN will have to be more streamlined and efficient, and this translates into other areas. Many of the operational agencies, such as the regional economic commissions or the UN Conference on Trade and Development, are subjected to the micromanagement of the UN's 191 nations. They might be more effective if they were freed from oversight. Even the effectiveness of the Department of Peacekeeping Operations would be greatly enhanced if it operated as a more independent program, still answerable to the Security Council. These reforms would improve important aspects of the UN, but not address the UN's fundamental deficiency as a collective security organization.

The Security Council breakdown over Iraq highlighted the mismatch between the idealism of the UN's founding principles and the reality that the UN is weakest where its charter says it is supposed to be central: "preventing the scourge of war." Senator Biden surprised an audience of Democrats recently when he said bluntly, "The United Nations is not capable of ending wars in our times [or] intervening in ways to prevent war most times." He proposes to "reorient . . . the UN to the purpose of stabilizing weak states." In refocusing the UN's role, this is similar to proposals advanced by long-term UN skeptics.<sup>2</sup>

In truth, the UN's flaws as a collective security organization are no greater

today than they have been throughout its history. But in facing current dangers of proliferation, terrorism, state failure and genocide, the costs of UN incapacity, inaction and paralysis are in some cases greater and almost always less acceptable.

Tangible proposals to fill this gap focus on greater cooperation among the world's democracies.<sup>3</sup> Refocusing and strengthening NATO to serve as an international genocide-prevention arm is one approach. Others have called for the establishment of a formal "alliance of democracies" that, unlike NATO, would not be regionally based or organized against a particular threat. Much less practical is a proposed union of democracies and other states who pre-commit to cooperative actions on poverty reduction, counter-terrorism and nonproliferation as a condition of membership.<sup>4</sup> Common to all these alternatives is the search for effective and agile multilateral institutions within which the United States can work cooperatively, effectively and with greater international legitimacy. Competitor institutions are also intended to have an impact on the UN itself. Competition will either spur the UN to do better or marginalize it. Hopefully the former.

The improbable consensus emerging on America's relationship with the United Nations may not unite UN lovers and haters. But it may provide for the rejuvenation of the UN and the development of alternatives when the UN is not enough. □

<sup>2</sup>See Joshua Muravchik, *The Future of the UN* (Washington, DC: AEI Books, 2005). Muravchik calls for suspending the UN's parliamentary pretensions, acknowledging that it lacks law-making authority, and transforming the UN into a debating society instead.

<sup>3</sup>See Ivo Daalder and James Lindsay, "An Alliance of Democracies", *Washington Post*, May 23, 2004.

<sup>4</sup>See James Traub, "The Un-UN", *New York Times Magazine* (September 11, 2005).