

## CHANGE AT THE UN: WILL THE HIGH-LEVEL PANEL REPORT MAKE A DIFFERENCE?

### Notes from the President

The Society celebrated its 99th birthday—January 12, 2005—with a Tillar House program on the Report of UN Secretary General Annan's High-Level Panel on Threats, Challenges and Change.<sup>1</sup> The discussion left me with the impression that the United Nations will remain at the center of international lawmaking for the foreseeable future, but the Report raises further questions for international lawyers.

The High-Level Panel, composed of former Foreign Ministers and other senior diplomats from countries representing most of the world's leading powers, set out to address "threats" to world security. They concluded that these threats today can be grouped into six "clusters" beginning with economic and social dangers (in the form of growing poverty, with its predictable consequences, diseases and environmental harms) and extending through problems more widely discussed of late such as terrorism and control of the use of force in inter-State and internal conflicts. The fact that the Panel was able to reach consensus about these threats was somewhat surpris-

ing, given the differing perceptions about what the "threats" to the world today are.

It was significant that the Panel reached unanimous agreement to define terrorism as any act, in addition to those covered by existing conventions on aspects of terrorism, "intended to cause death or serious bodily harm to civilians or non-combatants, when the purpose of such an act, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or to abstain from doing any act." (see ASIL Executive Council member comment on this definition on p. 6).

The Report also addresses the issue of preventive use of military force, including its use to neutralize a threat that is not within the traditional "imminent" or "proximate" categories. The Panel argues that such action can be lawful, but only if authorized by the Security Council; and it goes on to suggest five "basic criteria of legitimacy" that should guide such decisions: seriousness of threat, proper purpose, last resort, proportional means and balance of consequences.

Although the Report focuses on the broad concept of threats, it has been received largely as a proposed blueprint for a series of quite specific structural reforms at the United Nations. The most publicized of these is the suggestion that the Security Council be expanded (adding either additional permanent members without a veto and further term-limited members, or alternatively only the latter). Other suggestions call for the creation of a "Peacebuilding Commission" and drastic reform of the Commission on Human Rights. In addition, the Report suggests Security Council imprimatur become the sole international legal determinant of proper use of force.

Programs and reports urging UN reforms of one sort or another fill several bookshelves, and most of them have been comprehensively ignored. Will this one be



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## KIRBY AND GURRY JOIN GINSBURG AND SCOWCROFT IN ADDRESSING 99<sup>TH</sup> ANNUAL MEETING

### Roundtables to Feature Foreign Legal Advisers and Five Original WTO Appellate Body Members

Joining Supreme Court Justice **Ruth Bader Ginsburg** and General **Brent Scowcroft** on the program for this year's Annual Meeting (*ASIL Newsletter*, November/December 2004, p. 5) will be: Justice **Michael Kirby**, High Court of Australia, delivering the Grotius Lecture; **Francis Gurry**, Deputy Director General, World Intellectual Property Organization, and Roundtables featuring former Foreign

Legal Advisers and five original members of the WTO Appellate Body who will discuss their institution publicly as a group for the first time.

Complete and up-to-date information on all 99<sup>th</sup> Annual Meeting sessions and activities is available online at [www.asil.org/events/AM05program.html](http://www.asil.org/events/AM05program.html). You may also register for the meeting online at [www.asil.org/events/annualmeeting.html](http://www.asil.org/events/annualmeeting.html).

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# ASIL AND GROWING ATTENTION TO TRANSNATIONAL LAW

## Executive Director's Report

Reviewing the Society's 99<sup>th</sup> anniversary, ASIL President **Jim Carter** and I took part in the Annual Meeting of the Association of American Law Schools in San



Francisco on January 7, 2005. We were joined by AALS President **Gerald Torres** to discuss "Transnational Law: What Is It? How Does it Differ from International and Comparative Law?" In my opening remarks to this panel I noted the efforts presently underway to form an International Association of Law Schools, and Professor Torres noted the need for building awareness of other legal cultures and traditions. These observations affirm the observation made by Judge **Thomas Buergenthal** in the commencement address he gave at the George Washington University Law School in Washington, DC, on May 23, 2004. In this address he noted that:

"Today the dividing line between international law and national law is becoming ever more blurred. The practice of law you are entering is no longer all local or national; it is increasingly more transnational or global in character, and this is regardless of what you plan to do with your law degree. Globalization is not only transforming the world's economies, it is also transforming the practice of law. It places new demands on our profession, and provides it with added challenges and opportunities."

What role might ASIL play in addressing this need? Does the notion of transnational law encroach on areas that are properly the

concern of international law? Perhaps, but that may not be the point. The point may be that ASIL members should continue efforts to encourage expanding awareness of bodies of law that affect the practice and development of law domestically. At the same time, ASIL members should continue their efforts to understand the changes and forces that now affect international law. The upcoming ASIL Annual Meeting, for example, will provide a good opportunity for such reflections. To make the connections between the international and national, and to understand the interactions between them, seems one strong way of countering the skepticism I am told is increasing among students who are interested in international law.

To explore the possibilities where there are ambiguities seems an area where lawyers can make a particularly important contribution, so the work of ASIL members could in some way serve as evidence of the vitality and relevance of international law. The opinions of members, such as those provided in this Newsletter on terrorism by members of the ASIL Executive Council, are a small example of how collegial exchange and interaction could add to the collective understanding of an issue.

In an effort to raise the profile of international law in decision-making and public discourse, the Society has worked to enhance its own profile as an organization of scholarly and informed individuals whose views can and should contribute to the use of law in solving some of the problems in the world today. We have done this by reaching out to segments of the policy community that have previously had only infrequent contact with international law. In keeping with ASIL practice and tradition, our programs draw on the knowledge, experience, and scholarship of members; the Society is fortunate to have a dedicated

membership willing to give time and other contributions to support these efforts.

An offshoot of ASIL outreach programs has been the development of the electronic information bulletins, *International Law In Brief* and *ASIL Insights*. Previously available by individual sign-up, all ASIL members will now receive a compilation of such materials that appear over a two week period. Named *IL.post*, this new bulletin is intended to provide members with a thumbnail listing and easy access to the information produced by *International Law In Brief*, *ASIL Insights*, and elsewhere within the Society. ASIL President Jim Carter has indicated that a high priority for him is to equip ASIL members to serve the outreach and networking role in their professional communities that will ultimately create broader awareness both of international law and of the work and members of the American Society of International Law. *IL.post* is one more way we strive to fulfill this goal.

Charlotte Ku

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## THE INDIAN OCEAN TSUNAMI AND INTERNATIONAL LAW

Following the Indian Ocean tsunami, the ASIL gathered the relevant international law resources concerning international disasters and relief efforts. You can find this material—[Resources On International Law, Humanitarian Assistance, and Natural Disaster Relief](http://www.asil.org/inthenews/timelytopics.html)—in the Timely Topics section of the ASIL website ([www.asil.org/inthenews/timelytopics.html](http://www.asil.org/inthenews/timelytopics.html)), which includes an *ASIL Insight* on the topic by Professor **David P. Fidler**, Indiana University School of Law, Bloomington.

## MEMBERS TO RECEIVE IL.post IN 2005

*IL.post* is a new e-mail news service available only to ASIL members. If you are a member and the Society has your e-mail address—the case for 92% of you—you should have received your first copy in February. *IL.post* is a single-screen bulletin with links to recent *ASIL Insights*, selected *Developments in International Law* drawn from *International Law In Brief* and other sources, and listings of upcoming ASIL events. “This material is uniquely ASIL and its value high,” said ASIL president **Jim Carter**. “Getting more of it into your hands, in an accessible yet non-intrusive way, is critical and I think *IL.post* does this well.”

*IL.post* will be sent every few weeks to all members—but you can always and easily “opt out” should you prefer not to receive it. Just follow the link at the bottom of the screen. Please contact Daniel Vickers, ASIL Webmaster, with comments and reactions: [webmaster@asil.org](mailto:webmaster@asil.org).

## ASIL AT INDIA’S 2nd INTERNATIONAL LAW CONFERENCE

In November 2004, ASIL president **James Carter**, Executive Council member **Susan Karamanian**, and former Council member **Ved Nanda** represented the Society at the Second International Law Conference sponsored by the Indian Society of International Law. This trip was Carter’s second as part of an ASIL Centennial effort to establish relationships with sister societies around the world. He earlier traveled to China and met with the Chinese Society of International Law.

Noting that “sports are a subject of popular passion, hence of disputes,” Carter spoke in New Delhi on The Law of International Sports Disputes. He drew on his experience with the Court of Arbitration for Sport, “sometimes referred to as the ‘Supreme Court of World Sport,’ [which] is not a government entity. Instead, it is an NGO to which private or quasi-public sports federations and individuals have adhered voluntarily.” You can find his complete address at [www.asil.org/Centennial/2006centennialevents.html](http://www.asil.org/Centennial/2006centennialevents.html).



ASIL president Jim Carter (2nd from right) with Indian Society of International Law hosts at the conference’s opening ceremony. To his right is Shri Bhairon Singh Shekhawat, Vice President of India.

## THE UN PANEL REPORT AND CONDITIONAL SOVEREIGNTY

Lee Feinstein\*

The dispute at the Security Council over Iraq was a body blow to the United Nations. But was it fatal? Our colleague, Michael Glennon, recently declared in a brilliant lead article in *Foreign Affairs* that the rupture of the UN Security Council in March 2003 made it “clear that the grand attempt to subject the use of force to the rule of law had failed.”

Yet, Glennon may have spoken too soon. In truth, efforts to redefine the rules of the road for the use of force have been building since the mid-1990s and thanks, in part, to a compelling report mandated by Secretary General Kofi Annan, the Iraq War may well come to be seen not as the end of the effort to subject the use of force to the rule of law, but as a turning point toward an acceptance of new rules.

Against all expectation, the Secretary General’s “High-Level Panel on Threats, Challenge and Change,” released a report in December that makes major advances in broad areas of UN relevance and reform. Short on practical recommendations, the report nonetheless addresses the jugular issue of the use of force in a

world in which threats transcend borders, and action to prevent mass killing cannot stop at the international boundary.

The report, titled “A More Secure World: Our Shared Responsibility,” gives its stamp of approval to several important developments in international law. Most important, the panel puts its weight behind the principle that state sovereignty implies rights as well as responsibilities. States that are unable or unwilling to protect their own citizens may no longer hide behind a wall of sovereignty. Equally, the rest of the international community has an obligation to take action to prevent mass killings and genocide, even if doing so requires intervention across state boundaries.

Of course, these ideas have been churning for many years. Yet, the high-level panel’s endorsement gives this once-controversial principle an aura of UN approval for the first time, and signals a major shift in international attitudes. The members of the high-level panel span the ideological spectrum from strict constructionist to liberal internationalist. Amre Moussa, Secretary General of the Arab League, Qian Qichen, former vice premier and minister

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### Notes from the President

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different? That will depend largely on whether the U.S. Government concludes that some of the proposals make sense, as I hope it will do.

The program on our birthday, part of our Roundtable series with the Council on Foreign Relations on “Old Rules, New Threats,” featured stimulating presentations by Professor Stephen J. Stedman of Stanford University, who was Research Director for the High-Level Panel, and Professor Ruth Wedgwood of Johns Hopkins University. I came away wondering, however, about three matters that the Report did not address at length. The first of these is the role of international law and its importance in addressing threats to international security. The Report could

have been strengthened by an enlarged discussion of this topic explaining how central international law is to all of the defined threats, not just to collective security and the use of force.

The second element that might have been explored more thoroughly is the role of the Security Council generally in international lawmaking. It is not and cannot be a supreme global legislature, and the interaction of state actors outside the Security Council ultimately must be reconciled with what seems to be new ambitions for that body. Third, as Wedgwood noted, the Report could have benefited from “more than a footnote” on the need for transparency, accountability and honest book-keeping at the UN, which could include

strengthening the Office of Internal Oversight Services and formulating a comprehensive code of conduct for UN staff.

All in all, the Report presents a menu of disparate suggestions, some of which probably will be turned into something and others of which may remain on the drawing board. Perhaps it is too ambitious to ask that a document such as this speak more directly to lawyers, but there is room for elaboration of the legal underpinnings of the legal elements of threats to security in areas other than use of force. It will be interesting to watch developments as the international community works through the process of comment and discussion at important UN meetings this year.

James H. Carter

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*Perhaps it is too ambitious to ask that a document such as this speak more directly to lawyers, but there is room for elaboration of the legal underpinnings of the legal elements of threats to security in areas other than use of force.*

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<sup>1</sup> The Report, titled “A More Secure World: Our Shared Responsibility,” is on line at: [www.un.org/secureworld/report.pdf](http://www.un.org/secureworld/report.pdf). This issue of the newsletter also contains a guest column on the Report by Lee Feinstein, Deputy Director, Studies, of the Council on Foreign Relations, and ASIL Executive Council member reactions to the proposed definition of terrorism. For an excellent overview of the Report, please see the *ASIL Insight*, “International Law and the Report of the High-level U.N. Panel on Threats, Challenges, and Change” (December 2004), by Professor Frederic L. Kirgis.

## ASIL HERITAGE CIRCLE LAUNCHED; NINE CHARTER MEMBERS INCLUDE SOCIETY IN THEIR ESTATE PLANS

The Society has announced the creation of the ASIL Heritage Circle, its new planned giving group. Nine colleagues helped launch the Circle by including the organization in their estate plans and becoming Charter Members. The Heritage Circle serves and recognizes

ASIL members who name the Society as a beneficiary in their will, retirement plan, or life insurance policy, or use other estate gifts to support the Society, such as one of several kinds of trusts.

Former ASIL president **William D. Rogers** chairs the Heritage Circle. "Reflecting on what I have gained as a member . . . I realized how indebted I am to the organization and

how important its work truly is," said Rogers. "Giving back through a planned gift affords each one of us a way to create a fitting and lasting legacy of gratitude."

Heritage Circle gifts are added to the Society's endowment, which was established last year and supports the organization's education program. Gifts of \$25,000 or more may support a designated program. Heritage Circle members receive gift planning information and news about the endowment and Society programs. Members also receive the benefit of knowing how much their gift means to the future of the ASIL.

"We were honored that our members had decided

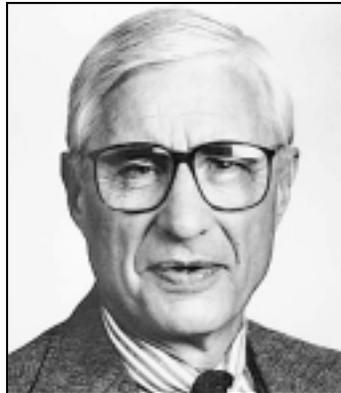
to provide for the Society through their estates," said Executive Director **Charlotte Ku**. "Such gifts are among the most meaningful we receive; the long-term support can mean a tremendous difference to how we do our work in the future."

For more information about the Heritage Circle, visit [www.asil.org/aboutasil/asilheritagecircle.html](http://www.asil.org/aboutasil/asilheritagecircle.html) on the ASIL website or contact Rick LaRue at 202.939.6000 or [rlarue@asil.org](mailto:rlarue@asil.org).

### Heritage Circle Charter Members

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James G. Apple	Lichtenstein
Charles N. Brower	H.C.L. Merillat
James H. Carter	William D. Rogers
Sarah Whitcraft	Oscar Schachter*
deFord*	John R. Stevenson*
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\* granted posthumously.



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## COUNCIL COMMENT: DEFINING TERRORISM

In its report of December 2004, The UN High-Level Panel on Threats, Challenges, and Change proposed a definition for terrorism (at ¶164(d)). This definition and related points from the report appear in the box below. Reactions to this definition from members of the ASIL Executive Council follow.

The UN High-Level Panel defines (describes) terrorism as:

. . . ‘any action, in addition to actions already specified by the existing conventions on aspects of terrorism, the Geneva Conventions and Security Council resolution 1566 (2004), that is intended to cause death or serious bodily harm to civilians or non-combatants, when the purpose of such an act, by its nature or context, is to intimidate a population or to compel a government or an international organization to do or to abstain from doing any act.’

Other points of note were offered at ¶160 and ¶163:

- ¶160: it is not necessary to include in the definition “States’ use of armed forces against civilians.”
- ¶160: “. . . there is nothing in the fact of occupation that justifies the targeting and killing of civilians.”
- ¶163: “. . . there is particular value in achieving a consensus definition within the General Assembly, given its unique legitimacy in normative terms . . .”

The complete report can be found at: [www.un.org/secureworld/report.pdf](http://www.un.org/secureworld/report.pdf).

Freedom-fighting status is no more a justification for using violence against civilians than is a government’s claim that its national security is seriously threatened. The Panel defines terrorism by the nature of the act itself rather than the identity of the perpetrators or the nature of their cause. But why limit the harm to bodily harm? Why not simply say “serious harm,” which will include serious mental or psychological injury, which may be the intended choice of intimidation? Furthermore, how wide does the population that is the intended target of intimidation need to be before a particular act is designated as a terrorist act? If the General Assembly were to adopt the Panel’s definition by consensus or by an overwhelming majority, even without leading to “a comprehensive convention on terrorism” as the Panel calls for, the definition will likely be regarded as authoritative,

hence making collective action against terrorism more likely.

### Adeno Addis

Tulane University School of Law

One of the most important aspects of the proposed definition for terrorism is the statement in paragraph 160 of the report that “there is nothing in the fact of occupation that justifies the targeting and killing of civilians” and that civilian attacks “must be condemned clearly and unequivocally by all.” This reflects a profound rejection by the General Assembly of well-worn PLO arguments that terrorism occurring within “Palestinian occupied territories” is deserving of special dispensation. Such a categorical rejection by the General Assembly of the “occupied territory” defense will fortify Mahmoud Abbas’ attempts to make good on

his June 2003 promise at the Aqaba Summit that Palestinians will be “full partners in the international war against terrorism.”

### Roger Alford

Pepperdine University School of Law

ICJ Judge Rosalyn Higgins suggested in 1997 that “(t)errorism’ is a term without legal significance.” The High-Level Panel sought to change that by providing a clear, absolute definition and should be commended for moving the debate forward. I concur with the Panel’s assessment that there already exist sufficient international law rules governing the violence of states and that not designating such violence as terrorism normatively coheres. However, in today’s world, much as the European Court of Human Rights once said of the term “torture,” “terrorism” carries a special stigma. Ambitious new efforts are planned to combat it. Will the same be true for “extra-judicial executions” or “crimes against humanity?” With the world focused on terrorism, no other category gets the same attention. Hence, there may be a high cost for excluding state conduct from the definition.

### Karima Evan Bennoune

Rutgers, The State University of New Jersey Center for Law and Justice

The proposed definition is problematic in a number of areas. For example, it risks confusing terrorism with breaches of the Geneva Conventions (war crimes and grave breaches) and implies that acts undertaken in the course of armed conflict would be regulated by a comprehensive terrorist convention rather than by international humanitarian law. It frequently rests on mistaken predicates of law, e.g., that all uses of force by States against civilians are regulated by the Geneva Conventions, or that scale is relevant to the determination of war crimes. Neither is correct. The implicit exclusion, for no apparent reason, of acts against property and infrastructure is a significant omission. In the light of these and other shortcomings, I am not persuaded that the proposed definition advances the debate in any way.

### Daniel L. Bethlehem

Lauterpacht Research Centre for International Law, University of Cambridge

## Council Comment: Defining Terrorism

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The proposed definition rightly emphasizes that terrorism involves actions intended to kill or gravely harm civilians and non-combatants. But the specificity of the proposed definition is undermined by its insistence that this new definition is “in addition to actions already specified” as terrorism in the numerous existing anti-terrorism conventions, in the Geneva Conventions, and in U.N.S.C. Resolution 1566. Adding another definition without eliminating any of the older, sometimes conflicting ones may have little useful legal value. Nonetheless, as the High-Level panel notes, there may be independent normative value in offering a new definition that can be adopted by the

Much of the opposition to defining terrorism rests on the claim that groups fighting for self-determination must be free to attack non-combatants. The irony is that nearly all conduct covered by this claim is already criminal under international law. The 1977 Geneva Protocol I makes targeting civilians a war crime, even in the context of armed struggles against alien occupation and colonial and racist regimes. By making it terrorism as well, the new definition would serve mainly to trigger additional enforcement mechanisms. It is welcome and long overdue.

**Douglass A. Cassel**  
Northwestern University School of Law

ing,” but also creating suffering among the members of a civilian population. This narrow description should not be substituted for but added to, in order not to weaken the definition but to make it more precise. On the whole, I find this definition based on a sound perception of the issue and well balanced in its consideration of the main elements, both legal and political.

**Pierre-Marie Dupuy**  
European University Institute

I’m not sure whether the Panel’s view that “lack of agreement on a clear and well-known definition undermines the normative and moral stance against terrorism” is an important insight into the power of language or a feeble cry from the priesthood for a new liturgy to hold a divided church together. In any event, to draft a definition of terrorism in advance of the Convention to which it relates is to shoot in the dark. A definition for the purposes of a convention that creates a crime of terrorism is not necessarily suitable for a convention on extradition or the disclosure of information on suspected terrorist bank accounts, for example.

**Vaughan Lowe**  
All Souls College, Oxford University

The Panel invokes the Rome Statute of the International Criminal Court, which offers guidance on defining terrorism and its criminal character only indirectly through prosecution of certain serious war crimes and crimes against humanity. The ICTY has defined “the crime of terror against the civilian population” as a war crime in the *Galic* judgment. The Panel’s definition for terrorism (Par. 164(d)) may take center stage in anticipated efforts to amend the Rome Statute at the 2009 Review Conference to include a separate actionable crime of terrorism. Due to the sensitive information associated with terrorism investigations, the United States may press, in the alternative, for more effective national prosecutions under the 12 existing anti-terrorism conventions. But if it remains a non-party to the ICC, American influence may recede.

**David J. Scheffer**  
The George Washington University  
Law School

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***“The Panel defines terrorism by the nature of the act itself rather than the identity of the perpetrators or the nature of their cause.”***

– ADENO ADDIS

***“[T]o draft a definition of terrorism in advance of the Convention to which it relates is to shoot in the dark.”***

– VAUGHAN LOWE

***“[T]here may be a high cost for excluding state conduct from the definition.”***

– KARIMA BENNOUNE

General Assembly. In any case, given the numerous abuses committed by states in the name of fighting terrorism, its new definition should be accompanied by a clear statement that all international and state action to prevent or punish terrorism must be in conformity with core principles of international humanitarian and human rights law.

**Rosa Ehrenreich Brooks**  
University of Virginia School of Law

I agree that it is legally not necessary to include in the definition “States’ use of armed forces against civilians”. Nevertheless, one could think that it is still worthwhile to recall the rule, in connection with the Geneva Conventions, due to its crucial importance (and this is precisely what is very well and strongly done under sub-paragraph 164(a) of the Report). As to the definition of terrorism, I find that the term “intimidate” under 164(d) is perhaps not strong enough. Terrorism involves not only being “intimidat-

## The UN Panel Report and Conditional Sovereignty

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for foreign affairs of China, and Gareth Evans, former foreign minister of Australia who is now president of the International Crisis Group, all served as members of the panel, which issued a consensus report. The alignment of their views behind the notion of conditional sovereignty may well be seen as a watershed.

Another significant development in international law is the report's position on terrorism. The panel called on states to conclude a comprehensive convention on terrorism, which has been blocked for years by politically charged disagreement over the definition of terrorism, with clear overtones of the Israeli-Palestinian conflict. Yet, the diverse members of the panel faced up to the issue squarely, rejecting the use of terrorist tactics for any purpose, including foreign occupation, and forthrightly stating there "is nothing in the fact of occupation that justifies the targeting and killing of civilians."

The panel also missed some important opportunities. It failed to address the issue of international action when the Security Council is deadlocked, as it was over Kosovo. The report of the Commission on Intervention and State Sovereignty found in 2001 that international action without formal Security Council approval could be legal if necessary to prevent mass killings or genocide—essentially an exception for genuine international emergencies. The high-level panel chose to sidestep this question, focusing instead on how to build consensus among Security Council members in the hopes of making it less likely that the Security Council would deadlock.

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*The members of the high-level panel span the ideological spectrum from strict constructionist to liberal internationalist. . . . The alignment of their views behind the notion of conditional sovereignty may well be seen as a watershed.*

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The panel also missed the chance to discuss international responses to the growing risk of catastrophic terrorism. The panel made important suggestions for tightening the nuclear nonproliferation treaty, including making intrusive inspection—the standard encompassed in the Additional Protocol—the universal standard. But the panel failed to pursue the logic of Kofi Annan's 2003 speech before the UN General Assembly in which he challenged the international community to consider when and under what circumstances early, collective preventive action, including diplomacy, pressure and, if necessary, force, might be necessary to prevent dangerous weapons from falling into the wrong hands.

Of the report's more than 100 specific reform recommendations, the most significant may be the proposal to create a peace building commission to apply the resources of the United Nations to the costly and complex task of rebuilding after conflict. The international focus

presently remains on military intervention to keep or enforce the peace. But international attention and effort has flagged for the equally important and longer-term effort needed to maintain the peace after an intervention.

By far, the weakest recommendation of the panel concerns the unsavory composition of the Human Rights Commission. The panel pointed to the damage done to the UN's broader reputation by the regular presence of significant numbers of major human rights violators on the Commission. Every year about half of Freedom House's "worst of the worst" are nominated to serve on the Commission. The report could have recommended that the regional groupings that nominate countries to the Commission exclude major rights violators from consideration. Instead, the panel proposed universalizing membership on the Human Rights Commission, a proposal which, if adopted, would only compound the problem.

Limitations aside, the high-level panel's report represents a serious and sober effort by the UN to look at itself in the wake of the Security Council breakdown over Iraq. It is a hopeful step for those of us who favor collective action to self help.

*\*Lee Feinstein is Deputy Director, Studies, at the Council on Foreign Relations, and Co-Chair of the CFR-ASIL Roundtables on Old Rules, New Threats.*

## CENTENNIAL REGIONAL MEETING, CHICAGO: REFORMING THE UN

The first ASIL Centennial Regional Meeting was held in Chicago, January 24-25, 2005, on *Reforming the United Nations*. The 4<sup>th</sup> annual Transatlantic Dialogue, co-sponsored by the law schools of Northwestern University and the Catholic University of Leuven, focused on the High-Level Panel's recommendations to restrict "preventive" use of force, except where authorized by the UN, and to endorse UN-sponsored military intervention to protect populations victimized by mass atrocities. Broad questions of international law and policy were examined, as were the cases of Iraq, Rwanda and Darfur.

While the Panel report appears generally to oppose unilateral use of force against non-imminent threats, keynote speaker Sir **David Hannay**, British member of the High-Level Panel and former Permanent Representative of the UK to the United Nations, suggested a close reading of paragraph 190, which recommends that arguments for preventive use of force be put to the Security Council. If the Council declines to act, it adds, there will still be "time to pursue other strategies, including persuasion, negotiation, deterrence and containment—and to visit again the military option." It does not explicitly state, however, who is to "visit again" the military option—the Council or the threatened State. This diplomatic ambiguity may be intended to encourage collective control of preventive force without purporting to straight-jacket the superpower.

*Douglass A. Cassel  
Northwestern University School of Law*

## CENTENNIAL CORNER

### Request for Ideas: “100 Ways International Law Affects You”

The Society's plans for its Centennial celebration in 2006 include a project identifying the top 100 ways in which international law makes a concrete difference in the daily lives of people. From monitoring systems that detect impending natural disasters—a front-page issue in the wake of December's tsunami—to flying safely the shortest distance to a foreign destination, to inspection systems that ensure food safety, to preventing the spread of avian flu, to buying stock on foreign securities exchanges, all of these topics and more are fair game for this project.

The 100 Ways Committee solicits your input in identifying specific areas where international law's impact on people may be found. How does international law affect people at home, work, or play? How does it affect communications, travel, health and safety, or business opportunities? How is its

impact most tangibly felt when it advances or protects important individual rights? Although some areas of international law may yield more ways than others, none are excluded from our thinking *a priori*, and we would like to have examples from a wide range of substantive areas and cutting across international institutions.

Three pieces of information are needed for each suggestion, per the following example:

Suggestion format: Ways International Law Affects You

**Way:** enabling you to fly the shortest, most direct route to international destinations.

**How:** by international agreement permitting overflights of sovereign airspace.

**Instrument:** Chicago Convention (the Chicago International Civil Aviation Convention of 1944).

To make your suggestion/s, please go to [www.asil.org/centennial/100Ways.html](http://www.asil.org/centennial/100Ways.html) on the ASIL website, which will prompt you with the above form, or you may send an e-mail using this format to the committee chair, **Lucinda Low**, [llo@milchev.com](mailto:llo@milchev.com), or to **Rick LaRue** at Tillar House, [rlarue@asil.org](mailto:rlarue@asil.org). Please put “100 Ways” in the subject line.

Suggestions will be collected through June 30, 2005. Early submissions will help prompt later ones or suggest particular areas to investigate, so we encourage your prompt involvement. Watch this space, your e-mail, and the ASIL website for progress reports on the list's development and examples of the top contending Ways.

Serving with Ms. Low on the 100 Ways Committee are: **James Bacchus, Hannah Buxbaum, Douglass Cassel, Dorinda Dallmeyer, Allison Danner, Edison Dick, and David Martin.**



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## CALL FOR APPLICATIONS

2005 ACUNS/ASIL Summer Workshop on  
International Organization Studies  
Waterloo, Ontario, Canada 24 July to 6 August 2005  
**THE MILLENNIUM DEVELOPMENT GOALS:  
PROGRESSING TOWARDS A JUST FUTURE**



### PROGRAM STRUCTURE

The Academic Council on the United Nations System (ACUNS) and the American Society of International Law (ASIL) are pleased to sponsor the fifteenth Summer Workshop on International Organization Studies. Contingent upon funding, the workshop will run from 24 July until 6 August; and is being arranged with the cooperation of the International Jurists Organisation.

The workshop is designed specifically for junior international relations and law school faculty, advanced graduate students, post-doctoral scholars, lawyers and practitioners from civil society groups, policy staff from international organizations, human rights and development advocates, and others who might be included at similar levels of activities.

The purposes of the workshop are, first, to encourage new directions in the analysis of international organization(s) and related legal studies; second, to establish and strengthen contacts between international relations and legal scholars and United Nations practitioners; and third, to stimulate advanced research and teaching in these subjects.

The academic program of the workshop will be led by two co-directors with specific expertise as academics and/or practitioners in the fields of international politics, political economy, development and international law. Each workshop participant selected will be assigned to one co-director, and will develop their research project under her/his guidance.

### PROGRAM THEMES

The theme of the fifteenth ACUNS/ASIL workshop is the Millennium Development Goals, and in

particular the role and importance of the MDGs as clear and measurable indicators of progress towards a more just global order. Set within the broader context of the Millennium Declaration, the MDGs might be said to provide a visible test of the seriousness of the commitments accepted by 189 national delegations – including 147 heads of state or government – at the Millennium Summit in September 2000.

Each year since then, the UN Secretary-General has issued an annual report on progress (available at [www.un.org/millenniumgoals](http://www.un.org/millenniumgoals)). So far at least, the record of achievement has been weak. The MDGs have been used by some states to help shape their development plans, and by international agencies to provide a focus for coordination of their activities; but compared to what is required, only limited material and financial resources and political energy has been invested by developing and developed states in making good on these commitments.

2005 marks the first five-year review period for the Millennium Declaration and for the MDGs. In his 2004 review of the implementation of the Declaration and MDGs, Secretary-General Annan noted that “the window of opportunity is rapidly narrowing and the political will remains largely absent.” The five-year review, in this case, “provides potentially the last realistic opportunity to take the necessary steps” needed to accelerate efforts to meet the MDG targets by the established deadline of 2015.

Set within this context, some of the topics and questions that participants might consider examining for the 2005 ACUNS/ASIL Summer Workshop include: what progress has been made, and at what rate, towards the MDG targets? Are the MDGs appropriate and useful as indicators of progress and as targets, or should they be revised? What frameworks or avenues exist

to encourage and foster better, faster progress? What contributions could be made by actors other than states e.g. private sector corporations, non-governmental organizations, multilateral institutions, and individuals? What major impediments yet remain for developed countries to mobilize the resources needed to meet their commitments, and how – if at all – should these countries be held accountable for falling short? What are the wider implications of failing to achieve substantial progress towards the MDGs?

Participants will be encouraged to address political, legal, economic, social, development and other approaches to these issues (whether supportive or critical); and to examine the relationships between the Declaration and the MDGs, states’ policies and practices, and the existing structures, mechanisms and operations of the UN and its related agencies and organizations. Research papers can attempt to offer ideas on how the UN and its member states, and other actors, might take concrete measures to improve upon their capacity and will to accomplish real, measurable progress towards improving the lives of people in urgent need to help around the world, and in so doing advance the effort to develop a more just global future for all.

### PARTICIPANTS

Participants will be selected by a joint ACUNS/ASIL committee. Those selected will be expected to submit a ten-page draft of a research or policy paper to an assigned workshop director in advance of the workshop. The research or policy paper must be original work prepared by the participant, not material that has been undertaken for other projects or

presentations.

Directors will make suggestions about additional readings, data, or arguments in order for participants to bring a more polished version of their paper to the workshop, to be distributed in advance of their presentations. Participants also will submit an abstract (2-3 pages maximum) prior to the workshop, and will be required to make an oral presentation during the workshop. The working language of the workshop is English.

It is hoped that the workshop will provide valuable guidance in the final development of a dissertation, publication or policy piece. Selected participants receive the following: economy class round-trip airfare between the participant's location and the workshop; lodging and conference

meals; access to computing, library and athletic facilities where available.

The workshop is designed to promote collegial exchange and networking in an intense two-week program. Participants are expected to take part fully in all aspects of the workshop program. For this reason, participants are requested not to be accompanied by spouses, children or other dependents. A participant must obtain prior approval of ACUNS for family members to accompany him/her. Approval will be given only for extraordinary circumstances at the complete discretion of ACUNS.

**APPLICATION PROCEDURE**

International relations and legal scholars and practitioners from institutions in all countries are encouraged to apply. Applicants must submit an application form, four copies of a brief (3-

4 pages typewritten) research proposal and a full curriculum vitae. Independent evaluation is critical for the selection committee: applicants therefore should arrange to have two letters of recommendation sent directly to the address listed below.

Completed applications must be received no later than **Friday, March 11, 2005**. Participants will be selected on a competitive basis. Application forms are available on the ACUNS website, or from:

**ACUNS/ASIL Summer Workshop,  
ACUNS, Wilfrid Laurier University,  
Waterloo, Ontario, N2L 3C5,  
Canada.  
Tel: (519) 884.0710 ext. 2766;  
Website: www.acuns.wlu.ca;  
E-mail: acuns@wlu.ca.**

**2005 ACUNS/ASIL Summer Workshop on International Organization Studies  
Waterloo, Ontario, Canada 24 July to 6 August 2005  
THE MILLENNIUM DEVELOPMENT GOALS: PROGRESSING TOWARDS A JUST FUTURE**

Prefix (Please Circle One):      Mr.      Mrs.      Ms.      Dr.      Prof.

First Name: \_\_\_\_\_ Last Name: \_\_\_\_\_

Office Address: \_\_\_\_\_ Home Address: \_\_\_\_\_  
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Office Fax: \_\_\_\_\_ Home Fax: \_\_\_\_\_

E-mail: \_\_\_\_\_

Organizational Affiliation: \_\_\_\_\_

Proposal Title: \_\_\_\_\_  
 \_\_\_\_\_

Professional Category: <ul style="list-style-type: none"> <li>Academic</li> <li>Legal</li> <li>NGO</li> <li>Practitioner</li> <li>Other _____</li> </ul>	<p style="text-align: center;"><b>OPTIONAL:</b></p> Age: _____ Male Female Nationality: _____
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Please indicate how you heard about the program:  
 ACUNS Web site    ASIL    Foreign Affairs Ad  
 ACUNS Newsletter    IJO    Word of Mouth

**Please return application form with your completed dossier.  
Due: Friday, March 11, 2005 to:**

ACUNS/ASIL Summer Workshop  
ACUNS Wilfrid Laurier University, 75 University Ave. W., Waterloo, ON N2L 3C5 Canada  
Tel: 519.884.0710, ext. 2766 Fax: 519.884.5097



## TWENTY-ONE MEMBERS BECAME PATRONS IN 2004

In an extraordinary show of support, 21 members became Patrons in 2004. Fifteen did so in just the last three months of the year. Eighteen members took advantage of a special 2004 offer to count their Second Century Campaign gift toward their \$10,000 Patron's commitment. The new Patrons are listed below.

"The response was terrific," said ASIL President **Jim Carter**. "The generosity of our Patrons is a boon to the new ASIL endowment created last year and we are indebted to each one of them."

Forty-eight colleagues became Patrons during the Second Century campaign, and 24 have now done so in the two years since. There are currently 88 ASIL Patrons. All Patrons are listed in the front matter of every issue of the *AJIL*. To learn more about the program, please contact Rick LaRue at 202.939.6000 or [rlarue@asil.org](mailto:rlarue@asil.org).

### New Patrons in 2004

- |                               |                           |
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| George H. Aldrich             | Robert MacCrate           |
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| James G. Apple                | Andre Newburg             |
| Richard B. Bilder             | Nancy L. Perkins          |
| Thomas Buerghenthal           | Lucy F. Reed              |
| Hugo & Susana Caminos         | Abby Cohen Smutny         |
| Charles H. Camp               | Barbara Stark             |
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### COMING SOON IN:

- The American Journal of International Law*
- An agora on the Israeli Security Barrier
- International Legal Materials*
- The Caspian Sea Convention, and Developments in Most Favored Nation treatment
- ASIL Newsletter*
- The 2004 Annual Report

### About the ASIL

January-February 2005

The ASIL is a nonpartisan membership association dedicated to advancing the study and use of international law.

ASIL Newsletter (ISSN 1049-7803) is published five times a year in January-February, March-April, May-July, August-October, and November-December for \$60/year for U.S. subscribers/\$80 outside U.S./no additional cost to members.

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Postmaster send address changes to ASIL Newsletter, 2223 Massachusetts Avenue, NW, Washington, DC 20008-2864; Tel. 202-939-6000; Fax 202-797-7133; <http://www.asil.org>

News of members, meetings and events is welcome.

ASIL Newsletter reserves the right to edit any materials submitted.

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## DENG AND COHEN WIN GRAWEMEYER AWARD

**R**oberta Cohen, a senior fellow at the Brookings Institution, and **Francis Deng**, a research professor at Johns Hopkins University's Nitze School of Advanced International Studies, have won the 2005 Grawemeyer Award for Ideas Improving World Order. The \$200,000 University of Louisville honor was granted for their work on guidelines for protecting and aiding internally displaced persons. As part of their project, the ASIL co-published two books with the Brookings Institution Project on Internal Displacement: [Guiding Principles on Internal Displacement: Annotations](#) (2000), and [The Guiding Principles on Internal Displacement and the Law of the South Caucasus: Georgia, Armenia, Azerbaijan](#) (2003).

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