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The proliferation of weapons of mass destruction (WMD) into the hands of rogue dictators and terrorists has brought a sea change in strategic international relations, and is accelerating the necessity of public international law to protect humanity. Traditional balances of power have little force left to deter WMD. Major powers must seriously revamp and proactively exploit public international law, and, to that end, bolster multilateral institutions to marshal an action plan to leash this unacceptable risk.

Leadership is needed on three levels: 1) promote a new mission for public international law to address WMD; 2) muster a broad-based coalition of nation-states pursuing a legally sanctioned process via the United Nations; and 3) upgrade the still-rudimentary Rules of Procedure at the Security Council.

There is a simple enhancement to public international law that would greatly aid this task. The fact-finding "working party" investigative process, which was developed and is being used effectively by GATT and its successor, WTO, to resolve international trade disputes can be adopted by the Security Council as a fact-finding vehicle to deal with threatening WMD situations. Thereafter, any nation fearing such terror weapons could petition the Security Council and be assured a working party will be convened to investigate and impose sanctions or, if necessary, military force.

> "The significant problems we face cannot be resolved at the same level of thinking we were at when we created them."
>
> — Albert Einstein

The proliferation of weapons of mass destruction (WMD) has permanently changed the strategic relationship among nation-states. Such proliferation has reached dangerous levels. Uncontrollable rogue dictatorships and violent "non-state actors" (typically called terrorists, such as Al Qaeda) are gaining access to and are threatening further proliferation of WMD (these rogue dictatorships and violent non-state actors are referred to herein as "Rogues-and-Terrorists"). Rogues-and-Terrorists with WMD put civilization at full jeopardy. The sole superpower, our own United States, faces a compelling imperative to counter this immense risk.

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And, as the superpower pursues its efforts to cope with WMD in the hands of Rogues-and-Terrorists, the international legal process will play an accelerating and vital role. Public international law needs to evolve in vital ways and the procedural rules of the Security Council must be revised to enable the UN to function as an effective vehicle to abate this risk.

The superpower and many great nations are now engaged in a War against Terrorism. This war will be directed mostly toward, and from, the Muslim World. It must succeed; but it can only succeed if the great nations act in collaboration and wage a rational proactive war governed by principles of public international law. This article offers a new procedural rule for adoption at the Security Council, which — it is submitted — is required for any rational war to be so prosecuted.

Pubic international law is becoming more proactive and, as such, is using enforcement mechanisms. All law must follow classic principles of due process in applying enforcement mechanisms. So, too, public international law.

WMD, Grim Reapers of History

All humanity is vulnerable. Any use of WMD will inflict massive injury, principally upon innocent civilians. By their nature WMD are indiscriminate as to their targets. Moreover, by design, such weapons achieve maximum effect when inflicting injury upon innocents. These are weapons of terror.

The great powers are familiar to a fault with WMD. These weapons had been stockpiled by the major nations especially since the advent of the Cold War — ostensibly for defensive retaliation. And, in reaction, a series of treaties were structured over the past century to proscribe WMD in varying, but limited, degrees of enforcement. These treaties, which had limited impact due to their voluntary character, achieve less and less as WMD proliferate into the hands of Rogues and Terrorists.

Prior to 2003, proactive proscription of, and the ferreting out of, WMD was accorded little attention and was left to the province of voluntary treaties constituting an arcane branch of public international law. But post-2001, a new dynamic was arising wherein WMD have begun to be confronted proactively, first by the superpower, and ultimately by civilization. Credit is due to the Bush administration for initiating an aggressive priority to leash WMD. But we led off in the wrong direction, without a corrective compass.

WMD are categorized as chemical, biological, nuclear and radiological.

Chemical Weapons

The first major use of chemical weapons in modern times came when Germany launched a large-scale poison gas attack against French troops on the battlefield of Ypres in 1915 on the Western Front. Allies responded with their own chemical weapons.[2] These weapons were used in massive quantity by both sides. All civilization reacted with horror, both during and especially after the Great War, to such cruel and unusual weapons (even if affecting only uniformed soldiers). Such universal revulsion led to the first treaty outlawing chemical warfare.

The 1925 Geneva Protocol prohibits "the use in war of asphyxiating, poisonous or other gases, and of bacteriological methods of warfare," But it didn't prohibit the manufacturing and stockpiling of these weapons.[3] The Chemical Weapons Convention of 1993 bans the development, production and possession of chemical weapons

(without any mechanism for enforcement).[4] Chemical agents are classified according to the symptoms they cause, such as blistering and nerve damage.[5]

The delivery systems can be as rudimentary as simple skin contact, inhalation, or eye contact.[6] Water and food contamination are also possible. Then there is the simple delivery system of opening a container full of harmful chemicals in a crowded area, such as a city subway.[7]

Such weapons are attractive to terrorist groups because they are easily accessible, generally made from parts that are legal and inexpensive. As a result, many military and terrorism experts believe there will be an increasing trend toward the use of such weapons. There are reports that the Al Qaeda terror network has tried to make chemical weapons. Russia and the United States have known stockpiles of sarin. It is also thought that India, South Korea, and Syria, among others, have supplies of various nerve agents.

As with WMD generally, chemical weapons are proscribed only by voluntary treaty with virtually no reach to Rogues-and-Terrorists.

Biological Weapons

Often referred to as germ warfare, biological weapons, have not yet been used in any major military event, as have chemical weapons. But, like chemical weapons, these are readily and cheaply attainable.

At the top of the Center for Disease Control and Prevention's list of biological weapons considered most likely to be used in an attack are anthrax, botulinum toxin, plague, ricin, smallpox, tularemia, and viral hemorrhagic fevers.[8]

Biological weapons can be easily spread by aerosol into the air and inhaled. They can also be put into food or into water supplies. Many will cause harm if they merely contact human skin. Biological weapons are expected to be used in the next act of Rogues-and-Terrorists. Russia is known to have stockpiles of various biological weapons. The United States manipulates some substances in laboratories, such as anthrax. North Korea and Syria are nations thought to possess biological weapons.

Again, the treaties designed and structured since World War II to proscribe germ warfare are voluntary and lack an international enforcement mechanism.

Nuclear Weapons

Nuclear weapons produce devastating and long-term effects on human and animal life, as well as on the environment. The locus of the blast force is immense; and deadly radiation is spread extensively — principally by the prevailing winds. These are the worst of the WMD.

But they are the hardest to manufacture because the critical elements — plutonium and/or highly enriched uranium — are scarce and very expensive. The United States dropped one atomic bomb each on Hiroshima and Nagasaki in 1945, bringing an end to World War II. The Soviet Union became the next country to develop atomic weapons, igniting an arms race and a global interest in nuclear fission devices.

Following the development of nuclear fission and the atomic bomb (measured in kilotons of TNT), nuclear fusion and the hydrogen bomb was let loose (measured in megatons), first by the United States and then by Russia. Soon all the Permanent Members of the Security Council possessed arsenals of nuclear weapons.

A battery of bilateral and multilateral treaties were designed to limit the spread of nuclear weapons. And there are competent monitoring agencies operating under the

aegis of the UN.[9] Notwithstanding such treaties, proliferation continued. Notably, four nations were long known to have ignored their non-proliferation obligations: South Africa, Israel, India, and Pakistan. (South Africa has since abolished its nuclear arsenal). North Korea has announced itself as the next nuclear power; and Iran is suspected to be close behind. Pakistan announced in 2004 that it has discovered a black market for rogue proliferation of nuclear weapons centered in its own country. And Al Qaeda has been trying to gain access to nuclear weapons.

Global stockpiles of weapons grade material can be found in a number of countries. According to a report issued by the Center for Contemporary Conflict, the research institute of the Naval Postgraduate School's Department of National Security Affairs, there are approximately 450 tons of military — and civilian — separated plutonium, and over 17,000 tons of highly enriched uranium (HEU). While most of this material can be found within the borders of the five nuclear weapon states, with the overwhelming majority in the United States and Russia, there are also stocks of plutonium in Belgium, Germany, India, Israel, Japan, and Switzerland. Additionally, there are over 2,000 kilograms of HEU used or stored in research reactors in forty-three countries, often in sufficient quantities to make a nuclear weapon.[10] According to *Jane's Intelligence Digest,* from 1992 to 2002, there have been no less than one hundred seventy-five known attempts by terrorists or criminals attempting to acquire or smuggle radioactive substances.[11]

Nuclear weapons are typically deliverable by ballistic missiles and by long-range bombers. But, again, accessibility has reached the point where these weapons can now be sized to enable delivery in a truck. Indeed, Russia has admitted having "lost" dozens of suitcase-sized nuclear bombs. One bomb can devastate an entire city, causing many hundreds of thousands of casualties by the blast effect alone. Similar casualties would result from radiation over a wide swath downwind.

During the Cold War, there were over 30,000 nuclear warheads in the world's nuclear arsenal, yet decades of arms control negotiations have greatly reduced the number of nuclear weapons around the world. Many reports state that number is now closer to 10,000. Most notably, the United States' Nunn-Lugar Cooperative Threat Reduction program (since 1991) has deactivated a massive arsenal in the former USSR.[12] Such well-focused progress is welcomed. But Nunn-Lugar is underfunded and many Russian nuclear weapon engineers are unemployed.

The International Atomic Energy Agency (set up under the Nuclear Non-Proliferation Treaty) is well-manned and striving in places like Iran to detect the transformation of nuclear fuel into weapons grade plutonium. But such inspectors were recently ousted by North Korea. Moreover, they were too late in India and Pakistan. And they are not in Israel.

At the end of the day, the proliferation of nuclear weapons is the greatest danger to humanity. Notably, there are significant terms within the Nuclear Non-Proliferation Treaty (NNPT) for inspection and intervention by the International Atomic Energy Agency (IAEA) if non-nuclear powers develop nuclear weapons. But such a treaty scheme is very near the same as all the other voluntary treaties in that no enforcement of its terms has ever been implemented. Notably Israel, India, and Pakistan developed those weapons in the last decade without any long-term counter-enforcement by the Superpower or by the UN. And when North Korea was caught red-handed by way of military intelligence and by the IAEA (on site), North Korea simply withdrew from the NNPT.

The Security Council could and should consider increasing the enforceability of

the NNPT by establishing a new principle of international law that ordains the NNPT to be universally enforceable against all non-nuclear nations (and all non-state actors); and, as such, be enforceable — again — by the Security Council. This is one decision point that should be advanced by the Superpower or by other world leaders. And any enforcement provisions must include sound legal due process as part of the package.

Radiological Weapons

Radiological weapons, or radiological dispersal devices, are thought by many to be the likely choice for terrorists, as they are technically simpler, with components more readily available, handled, and transported. Unlike nuclear weapons, they are not thermonuclear and do not involve a massive blast effect. They use conventional explosives to spread radioactive material, such as cesium-137, iridium-192 or cobalt-60, which would contaminate people, equipment, facilities, land, food, and water.

A "dirty bomb" can kill or injure people by exposing them to radioactive materials. Atomic experts say the explosion of a dirty bomb containing one kilogram of plutonium in the center of Munich, Germany, would make wide areas unusable and could ultimately lead to 120 cancer cases attributable to the blast. And that section of the city would be uninhabitable for a prolonged period.

Virtually every country has the materials to make them. Insecure nuclear facilities throughout the world compound the problem. In February 2003, the Department of Homeland Security (DHS) announced that while construction of a Radiological Dispersal Devices (RDD)/ Dirty Bomb is well within the group's capabilities, "Al Qaeda operatives also may attempt to launch conventional attacks against the U.S. nuclear/chemical-industrial infrastructure to cause contamination, disruption, and terror. Based on information, nuclear power plants and industrial chemical plants remain viable targets."[13]

This menacing weaponry is not the subject of a treaty scheme. But again, the voluntary character of these treaties have little meaning and prospective impetus in the face of the new era of Rogues-and-Terrorists with proliferating WMD.

A First Step Taken Against WMD

Two leading powers of the Western world, the United States and United Kingdom, teamed up in 2001 to embark upon a War Against Terrorism; and by 2003 that war set its highest priority as taking proactive steps to disarm Rogues-or-Terrorists possessing WMD. For the first time, an aggressive and optional war was launched to spike an arsenal of WMD that was believed to exist within Iraq.

The Invasion of Iraq is a banner event in the War Against Terrorism:

- This is the first step in a new geopolitical era of proactive action by great powers to leash WMD in the hands of Rogues-and-Terrorists.
- This action will constitute a precedent — both as to its seeming purpose and its seeming failures.
- The failures of the invasion, especially the occupation of Iraq, reveal the limitation of any power, even a superpower, in seeking to occupy a major country with major cultural, especially religious, differences.

- The portending withdrawal of the superpower from Iraq is being orchestrated to appear to involve the UN and the processes of public international law; and hence profile the moral posture of multilateralism — albeit *ex post facto*.
- While most of the world believed that Iraq did possess WMD, most thought that the threat was much overstated, and the absence of serious arsenals of WMD is a major embarrassment for the Superpower.
- A vacuum in international hegemony is appearing because the superpower is seen to possess less power than it was brandishing before the UN and elsewhere; that vacuum, like all vacuums, will be soon filled.
- The instances of terror continue to appear all over the globe (and in all cases there is believed to be a Muslim and/or Al Qaeda connection); and all evidence points to the exacerbation of extreme terrorists who are at polarity to the Western World.
- The next action to be initiated by the great powers (to leash WMD in the hands of Rogues-and-Terrorists) can be expected to be orchestrated with greater attention to the UN and other multinational modalities developed over the last half century.
- Some geopolitical leader is likely to take up the suggestion being made herein — that new rules of procedure are needed at the Security Council so as to make the prosecution of the War against Terrorism be seen to incorporate basic principles of due process of law.

• ***The War Against Terrorism is transforming public international law.*** The course of history has shifted by reason of the strategic gamble in Iraq. A long-term hot war is getting underway, the so-called War Against Terrorism. Public international law should be, and likely will be, much involved in bringing rational management to this War Against Terrorism. Such a body of law will evolve from being once-wholly reactive, arcane, and limited — lacking any institutional enforcement mechanism, to become a more proactive, more prominent, yet still-limited body of law with an emergent enforcement mechanism. International law will cease to be only the concern of scholars and will move to the forefront of international collaborations and confrontations.

• ***New procedural rules are needed.*** As we assess the best means to lessen the risk of WMD in the hands of Rogues-and-Terrorists, the bias should favor the rule of law. Voluntary treaties are ineffective. The Security Council is endowed by the Charter of the UN with full authority to act proactively and effectively. Yet any action by the Security Council would entail the delegation of military authority to those great powers that dare to stand up to those Rogues-and-Terrorists possessing WMD. The superpower is a likely leader of a multilateral task force. But to date the United States has been asserting its primacy and going it alone.

Some compromise is necessary whereby the superpower provides such leadership while at the same time respecting basic rules of due process. Facts must be gathered to determine the degree of force to be used. Accountability and proportionality must be respected. And force must truly be a last resort.

Throughout history monarchs have been made to share power. So, too, today

with the superpower. The superpower continues in a proactive commitment to press the War Against Terrorism, on the one hand; while that same scene will inexorably pressure the superpower, on the other hand, to suffer the establishment of a rational process of the exercise of international military enforcement (under the aegis of public international law). At the moment, the only vehicle in public international law capable of marrying of the power of the superpower (on the one hand), and the modality of due process of law (on the other), is the UN.[14]

Public International Law

Public international law is not a commonly used body of law. Private lawyers do not use it in court; and national opinion leaders have had little reason to master it. It is comprised of three major elements:

- treaties between nations, which, over time, are becoming increasingly multilateral;
- international organizations, ranging from regional, such as the EU and the OAS, to global, such the United Nations; and
- customary principles of national conduct in international affairs.

Public international law has certain limitations. Most notably, there is no supra-national lawgiver; nor is there an institutionalized policing force. The absence of an institutionalized police force has caused public international law to be seen as having little significance. But we believe an enforcement mechanism is evolving to a limited, but important, degree; and such change will be brought about by the need for civilization to counter the mounting threat of WMD.

History

Public international law has dealt mainly with bilateral treaties and international custom between and among nations. Today, public international law is more broadly grounded upon multilateral treaties and international organizations that are structured to be in harmony with the UN. Future public international law can be expected to evolve accordingly. A likely next step for public international law will involve a tasking of the UN (or some other multilateral agency) to serve proactively to counter the risk to civilization caused by WMD in the hands of Rogues-and-Terrorists. A likely first step will be modalities to interdict international trade in WMD; and, as such, begin to be institutionally empowered as a first form of international police.

Once the step is taken to empower an international agency with institutionalized police power to limit international trade in WMD, then a new geopolitical recognition will come to public international law. Such a multilateral process, according leadership posture by default to the superpower, will become institutionalized and mature by imposing classic rules of procedure and transparency — as a check and balance — upon the superpower.

- ***Growth of public international law during the Cold War.*** Public international law has been growing steadily and broadly, notably post-1945, upon the advent of 1) nuclear weapons, 2) two rival superpowers and 3) the United Nations.

The Cold War constituted an era in which public international law encountered its first bi-polar period. The two superpowers, the United States and U.S.S.R., set the

scene. Compliance with treaties (and with the limited role of international agencies) was seen as largely voluntary. And treaty-based law, whose enforcement was voluntary, was not seen as comparable to national laws.

The UN was the first international agency to have the promise of international policing power. And, from time to time, the UN functioned as an international policing agency. The first and the largest was the use of the UN flag in the Korean War of the early 1950s. Soon thereafter, other police roles evolved in Middle East encounters between Israel and its Arab neighbors. Over the decades of the Cold War, many police actions have been ordained by the Security Council (and per force, with the concurrence of the Permanent Members of the Security Council). Moreover, in regard to basic processes of international administration, the UN became a basic normative vehicle and clearing house for public international law. Its orbit has increased steadily, and on a broad scale, especially throughout the Cold War in realms that were viewed to be non-controversial by the rival superpowers.[15] Significantly, in those cases of strategic controversy between the then-two superpowers, and cases where serious strategic horse-trading was at hand, public international law tended to grow by way of multilateral treaties (fashioned by those rival superpowers).

But the most grim feature of the Cold War was the nuclear arms race. That nuclear arms race left a devil's legacy of WMD. Both superpowers established arsenals of nuclear weapons that could annihilate civilization. Public international law responded to this threat by increasing its scope and role; but such accomplishments were puny in comparison to the risk posed by nuclear weapons. The treaty realm that grew out of the Cold War is the most significant in history; but such treaties, already inherently weak, soon became obsolete as WMD proliferated into the hands of Rogues-and-Terrorists.

- ***First nuclear confrontation of the Cold War and aftermath.*** Following the Cuban Missile Crisis of 1962, serious negotiation ensued between the two superpowers over WMD, starting with nuclear weapons. Within a few decades, a fabric of treaties was fashioned, ranging from nuclear non-proliferation, anti-missile limitation, to treaties designed to bring chemical and biological weapons under control.[16]

During the Cold War, the two superpowers set the agenda and set the pace for growth of public international law. They kept the UN on a short halter. Yet, over time, the two superpowers found that their best interests were well served by the steady and broad growth of public international law.

- ***Post–Cold War evolutions in public international law.*** Since the end of the Cold War the rate of growth of public international law has increased significantly and meaningfully. There are three notable examples in the last decade: 1) world trade through a full regulatory scheme assuring free trade; 2) human rights through new international criminal laws; and 3) an advisory Opinion of the World Court that established new principles of public international law that severely limit the legality of WMD.

First, the World Trade Organization (WTO) is and will be the governing authority as to most state-related issues of world trade; and world trade, in turn, is an accelerating global force.[17]

Second, a series of *ad hoc* international courts of criminal justice sprang into being, most significantly for Bosnia and Rwanda as part of the universal recognition of basic human rights.[18] Crime, if horrific, is now a proper subject of international coalescence via public international criminal law. International criminals were and

are being prosecuted at The Hague. Then international criminal legal protection of human rights has been permanently institutionalized. The 1998 Rome Statute created the Permanent International Criminal Court (PICC)[19] which will prosecute any and all horrific crimes that, in times past, had been committed by dictators and terrorists.

Third, although ignored in the capitols of the Permanent Members of the Security Council, the World Court issued a watershed judgment on use or threat of use of WMD in 1996. That Advisory Opinion was prompted from the rank and file of the General Assembly, which had pursued a rarely used charter-granted power, petitioning the World Court for an Advisory Opinion on the legality of the possession of nuclear weapons. In response, the World Court ruled WMD to be "generally contrary to the rules of international law applicable in armed conflict. [t]here exists an obligation to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control."[20]

• ***Interdicting international trade in WMD.*** Serious attention is warranted by the major national powers to establish a rationalized institutionalized process to address this new risk of WMD in the hands of Rogues-and-Terrorists. The initiation of the War against Terrorism was the first catalyst. And the errant exercise of unilateralism of the superpower in Iraq is a second; and it much accelerates the manifest destiny that international invasions to leash WMD can only be carried out rationally and multilaterally, with a rational set of legal procedures.

• ***A Paradigm Shift In Public International Law.*** Many of the standing principles of public international law have become obsolete by reason of the proliferation of WMD in the hands of Rogues-and-Terrorists. Until now, strategic interface between nation-states had been based upon the dual concepts of reciprocity and deterrence, and, as a corollary, the concept of balance of power. But Rogues-and-Terrorists with WMD are not deterrable, and they are inapposite to the concept of reciprocity.

• ***New constructs to effect new modes of compliance.*** Over time, public international law has enjoyed remarkable respect and compliance. But going forward, compliance with public international law by Rogues-and-Terrorists will only occur by use (or threat of use) of major multilateral military power — sanctioned by the UN or by other international organizations. A sea change.

Clearly, a new paradigm is at hand. Many new concepts must come forward if public international law is to meet the challenge at hand.[21]

• ***A Proposal for leashing WMD.*** In the view of the legal profession, the current state of public international law is well positioned — with only a simple augmentation of the Rules of the Security Council — to serve as a centrally focused modality for leashing WMD in the hands of Rogues-and-Terrorists.

Unavoidably, in the case of Rogues-and-Terrorists, the use of force will be necessary. This is a new convention in the traditions of public international law. The force to be used could be major; and the stakes will be very high. One hopes force need only be applied in a limited fashion to incent a rogue state or terrorist group to submit to a prior-standing legal process of transparent inspection. Following such due process, that rogue or terrorist will be accorded an opportunity to explain why it has resorted to possessing WMD. And, serendipitously, the international community may find a handy rectifying remedy that will persuade the object Rogue-or-Terrorist that it is no longer in their interest to continue to so hold these WMD.

But, as in Iraq, if the Rogue-or-Terrorist is obdurate, then strong remedy, including multilateral force, must be applied — starting with "enforced inspections." With the stakes high, the established rules of international procedure need to be augmented so as to incorporate pre-set, basic and classically respected principles of legal due process.

• ***New rules for due process procedures.*** Military force has rarely been used to enforce public international law and it has not been institutionalized; hence there is insufficient procedural precedent for corollary development of classic *a priori* modes of procedural due process that are traditionally interposed by domestic legal systems before legitimized force can be applied. The one international organization that is empowered to use force is the Security Council. Hence that legal entity needs to become procedurally equipped to that end

The absence of sound procedural rules tempted the Superpower to proceed unilaterally, as if it were an 18th Century monarch — sole advocate, sole prosecutor, sole presenter of evidence, sole finder of fact, sole judge of guilt, sole setter of verdict for regime change, and finally, sole executioner thereof by military invasion — all in one.[22] The Security Council would have been well served if there had been standing *a priori* procedural rules institutionalizing basic division of quasi-judicial roles and responsibilities, so that no one nation could serve as prosecutor, judge and executioner — all in its own cause.

Most proposals for revision of the structure of the Security Council have been directed toward the elimination of the veto power of the Permanent Members. This proposal is limited to the most extreme risk to civilization: the possession of WMD by Rogues-and-Terrorists. And, to repeat, the task of adding a time-tested rule change (paralleling most domestic *a priori* legal modalities) to the Security Council is simple enough.[23]

• ***Reasons for the Growth of Public International Law.*** Absent the proliferation of WMD and the War Against Terrorism, public international law was enjoying an ever growing and increasing role in the world. Globalization is real and is accelerating. Interchange across national boundaries compels attention by all peoples, all nations, and all institutions.

• ***Human rights.*** We have mentioned above, the dramatic evolution in international mechanisms to protect the individual against horrific crimes.[24] But the realm of human rights should be brought to strong focus herein. Beginning with the establishment of the UN in 1945, there has been irreversibly steady growth in the realm of human rights, which has increased respect for public international law.

Human rights now enjoy wide universal respect and protection, for example in the European Community (EU), each nation provides serious protection in their respective domestic laws; second, the EU Court of Human Rights serves as an appellate court in the event a domestic law does not provide a worthy level of judicial protection; third, the International Bill of Rights provides a standard for all peoples.[25]

In part as a result of the Holocaust individual rights became the proper province of public international law. Human rights are now seen as the province of both domestic law and public international law. The principles first enunciated at the end of the 18th century in emergent constitutions of US and France, that "all men are created equal" and, as such, are entitled, by virtue of their innate human dignity, to the basic "right to life, liberty and the pursuit of happiness," moved beyond its ori-

gins in nation-based law into the realm of public international law, by the end of the twentieth century. These human rights are protected on the individual human level, as a new international-based respect for the dignity of humanity.[26]

• ***A complement to national self-defense.*** Two geopolitical forces are converging; one old, one new. The obligation of a nation to defend its citizens and the emergent force of universal respect for human rights. Upon the advent of WMD any exercise of national self-defense by a great power could affect the human rights of all of civilization. By definition and design these are mass weapons that will unavoidably affect innocent civilians of an adversary and innocent civilians of a neutral.

But the convergence becomes even greater when a great power undertakes to achieve self-defense against a rogue or a terrorist who is vastly more prone to use WMD. Such risk of use puts human rights at intense jeopardy. The initiating great power should anticipate that its likelihood of success is greatly enhanced to the extent it is part of a multilateral effort to leash WMD. And any multilateral effort will involve significant process of public international law; and that process likewise intones the obligations of all nations to respect human rights of the innocent.

Unilateral Military Action, A Breach of Public International Law

The UN Charter prohibits unilateral military action. There are many provisions in the Charter of the United Nations that make the obvious point that aggressive invasion of one nation by another is forbidden. Article 2, Sections (2) directs that "international disputes shall be settled by peaceful means." And Article 2, Section (3) proscribes "the threat or use of force against . . . any state."[27] And notably, Article 2(3) has been cited by the International Court of Justice "as a preemptory norm of international law, from which States may not derogate."[28]

The use of an invading force to achieve regime change can *only* be justified as expressly provided under the Charter.

The superpower briefly argued that it was acting in self-defense, but under the express terms of Article 51: "Nothing in the present Charter shall impair the inherent right of individual or collective self-defense *if an armed attack occurs against a member of the United Nations*" (emphasis added). The failure to find WMD impales U.S. rhetoric. The U.S. now says that getting rid of Saddam Hussein justifies the invasion.[29]

The UN Charter is an integral component of the "supreme law of the land."[30] Hence, the United States is violating its own Constitution by reason of its unsanctioned invasion of Iraq. This is a new encounter in our domestic law. There is no precedent.

Plainly, the threat of WMD in the hands Rogues-and-Terrorists cannot be resolved by one nation acting alone, even the Superpower.

Historical Turning Point

World leaders are focused upon WMD. For better or worse, civilization, and its modes of institutional governance, is at another historic turning point.

The human slaughter of two World Wars culminated in August 1945 with the first atomic bomb and the UN came into being. October 1962 was a turning point when the two superpowers of the Cold War were close to a nuclear exchange in Cuba. In consequence, nuclear test bans and nuclear non-proliferation treaties began the long

and important process toward strategic arms reductions. 1989, when the Cold War ended, was another turning point. Signal advances in public international law followed in the 1990s as highlighted above. 9/11 was a turning point. Thereafter, the United States initiated a proactive action plan to counter WMD in the hands of Rogues-and-Terrorists.

Post 2001, the superpower began to think and act proactively. And at first blush, the turning point was seen to be troubling to the rule of law. Unilateralism was clearly the preferred course of the superpower, instead of the multilateralism. But then came the setbacks of 2004; and "the stone that was rejected become the corner stone." A major metamorphosis is underway. The superpower has embraced the validity and necessity of multilateralism through the vehicle of the United Nations to plan, structure, and implement self-government for Iraq and thereby accelerate its own retreat with honor. Yet, in addition, specialized international intuitions could be put in place so as to accelerate and empower a specialized program of the leashing of WMD in the hands of Rogues and Terrorists. At least, such view is the rational view. Turning points are often utilized — and as often squandered.

• ***A crucial opportunity***. At prior turning points, civilization did not respond with sufficient international controls over WMD. We mustn't miss this one.

The prospects of success in controlling WMD will be enhanced by a combination of multilateral leadership in collaboration with the United States and prompt improvements in the procedures available under public international law to facilitate proactive plans to leash WMD. Elemental revision to the Provisional Rules of Procedure the Security Council is a critical and helpful step.[31]

The task at hand is daunting. Most terror-bent Rogues-and-Terrorists are located within the Muslim World. None of these nations is a democracy (as Western nations comprehend the term). And Pan-Arabism is waxing.[32]

• ***Human Rights and National Self-Defense.*** Prior to the advent of proliferating WMD, national self-defense and international human rights were seen to be separate and discrete branches of the law. Moreover, the recognition of human rights as the proper province of public international law has arisen only in our lifetime. Conversely, national self-defense is the oldest branch of public international law. The newest and the oldest are merging into a more integrated body of law.

For the first time, in Iraq, an international war was announced on the dual *causa belli* of self-defense and respect for human rights. At least, that is the claim by the Bush Administration when the basis of the first claim fell through. Moreover, these two principles, of national defense and human rights, are being joined, as the United States structures a "mantra of retreat" from Iraq.

• ***New events, new legal evolutions.*** The right to life is the most fundamental of human rights. This generation of humanity is coming to the increasing sense that basic principles of justice are indivisible. An important precept of fundamental justice is the maxim: If no one nation or region is safe from annihilation and/or massive injury, then no people anywhere are safe from annihilation and/or massive injury. Basic human rights of innocent civilians and basic principles of national self-defense clearly overlap and are complementing and supporting one another.

The premier human right, the right to life, is to be protected against massive infliction of injury by Rogues-or-Terrorists gone amuck. This point was a major feature to the World Court Decision of 1996,[34] which ruled that WMD are illegal because, by design, they inflict death upon massive numbers of citizens of neutral

nations and innocent civilians of the object nation. Use of WMD will result in massively more damage to innocent people than to military forces.

Central Role for Public International Law In Controlling WMD

Major international treaties have been designed to control WMD. Nuclear weapons, which pose the greatest risk to humanity, became the subject of intense and prolonged bilateral negotiations in the 1960s followed by multilateral negotiation. The Limited Test Ban Treaty (LTBT) (1963: US, UK, and USSR); The Threshold Test Ban Treaty (TTBT) (US and the USSR; signed, 1974, ratified, 1990); The Peaceful Nuclear Explosions Treaty (PNET) (1976: US and the USSR); and The Comprehensive Nuclear Test Ban Treaty (CTBT) (signed, 1996 by 161 States, ratified by 76 States). These treaties are integral with The Nuclear Non-Proliferation Treaty of 1968 (NNPT). In 1995, the Treaty was extended indefinitely. (A total of 188 parties have joined the Treaty, including the five nuclear-weapon States; and more countries have ratified the NNPT than any other arms limitation and disarmament agreement, a testament to the Treaty's significance.) The Treaty establishes a safeguards system under the responsibility of the International Atomic Energy Agency (IAEA).

Although there is no treaty outlawing nuclear weapons, the 1996 the World Court responded to a rare, but pointed, request by the General Assembly of the United Nations for an Advisory Ruling on the threat or use of nuclear weapons. That ruling proclaimed several legal limits on any usage, except in national extremis.[35] This World Court decision will gain more attention as it gains broader promulgation and as public international law is seen to gain importance. The so-called P-5 nations have generally dismissed the thrust of this decision by reason of it being an advisory opinion. But as these P-5 nations reach a consensus as to the controlling of WMD in the hands of Rogues-and-Terrorists, they can be expected to see more merit therein.

Following upon the progress in proscribing the proliferation of nuclear weapons, further treaties proscribed chemical and biological weapons Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction (Paris, 1993). Biological And Toxic Weapons Convention (1972 BWC). To cope with non-enforcement, a 1999 draft agreement was formulated to set up a strict and reliable inspections regime for biological weapons, signed by 140 nations, but rejected by the incoming Bush administration.

This collection of treaties constitutes an impressive achievement by the international community. But these classic voluntary treaties will no longer serve as a principal remedy for the dangers posed by WMD.

One helpful step might be the formation of a multilateral working party of nations to study modes and means of making this multifold of treaties become generally and generically enforceable.

• ***Multilateral action plans.*** The world has seen a full century of treaties designed to proscribe WMD via a merely-voluntary system of public international law. These are best termed as reactive treaties with very little bight. Still, the World Court, at the end of that century, saw those treaties as constituting clear and convincing evidence of an evolved general consensus of the international community to generally outlaw WMD, primarily because of their non-proportionality and their massive threat to innocent civilians and to neutrals.[36]

Notwithstanding the prolonged and productive evolution, such treaty law is suddenly largely made obsolete by the waxing rage of the terrorists and by the rogue character of states like North Korea, as they gain access to WMD. Treaties are non-

entities to them. There is no benefit to world survival to prove, *ex post facto,* that their use of nuclear weapons was illegal. WMD demand an international capability to intervene proactively and preemptively whenever there is probable cause to fear imminent risk.

Absent war of self defense, military force will never be sanctioned legally - under any broadly respected body of law - without a clear process established, *a priori*, for both the occasion and the mode of such use. And all bodies of law establish normative principles of procedural due process so as to assure a rational usage of such force and a general appreciation of such rational prescriptions.

If force is to be used by any Member of the UN, it must be used consistently with the established international charters, such as the UN Charter; and that Charter establishes the Security Council as the vehicle therefor.[37]

• ***The central role of the United Nations and its Security Council.*** The United Nations and its Security Council have evolved into the major and recognized point of international interface.[38] The Security Council possesses nearly all the muscle of the UN. The Security Council can and has authorized major historic military actions. There are fifteen members, of which five are Permanent Members. A majority of nine members can authorize any and every sort of major or minor action. The only limitation on the Security Council is the embedded veto of the five Permanent Members.

It would be a small step for the Security Council to establish itself as the legal entity to routinely respond to a petition for inspecting and ferreting out WMD held by a dictatorship or by radical terrorists hosted by a dictatorship.

A claim based upon *bona fide* suspicion of WMD in the hands of Rogues-or-Terrorists need not be an all-or-nothing procedure. War should not be launched out of fear; nor, in counterpoint, should we fear employing conventional military force to control WMD if based upon sound fact-finding. The international legal process can be seized of the discrete and well-defined task of gathering and assessing evidence. The procedural rules of the Security Council need be revised very little — so as to set up a clear division between the task of fact-finding on WMD, and the task of advocacy.

Any Member of the UN should be able to petition the Security Council to investigate the possession of WMD by any dictatorship or by any organized radical terrorist group. Upon such petition, the Security Council would appoint a working party of, for example, five Member Nations to oversee the investigation of the risk, acting as a team. During such investigation the Security Council would freeze the *status quo* upon both the petitioner and the alleged possessor of WMD. And that team would employ the expert professionals of the IAEA.

All nations serving on the Security Council would be assured that a measured and effective legal process would be pursued. Nations would no longer be pressed, maladroitly, to grant the Superpower power to invade another state merely upon self-asserted "probable cause" without sound institutionalized procedural due process. Such initial request would trigger a standing procedural process designed to discover facts and to impose a standstill upon the object state. Being a procedural matter, the Permanent Members would not hold veto power over setting this process in place;[39] however, basic international posturing would require some degree of accord from the P-5.[40]

Thus, military might and responsibility, and legal right and responsibility, would be combined and integrated beneficially.

• ***WTO and GATT.*** The WTO became the direct successor to GATT in 1995. GATT, and now the WTO, use a dispute settlement process that is applicable when a dispute requires a specialized jury of nation states that provide representatives who are competent both i) in fact assessment in the issue under dispute and ii) experienced public officials who can understand the diplomatic priorities of the affected parties.

Working Parties

For over forty years the working party mode of dispute settlement has grown and gained currency at GATT, and now at the WTO. Nearly all disputes are resolved and, when required to be resolved by vote of the full membership of the GATT/WTO, typically enjoy near unanimous voting in the Plenary Authority. These working parties are comprised of nation states and include the two protagonists to the dispute. The working parties probe the underlining facts and facilitate negotiations between the affected parties. If negotiation and mediation fail, the working party reports to the Plenary Authority (the full membership) of WTO. The Plenary Authority will then take responsibility of the dispute. Significantly, most disputes are resolved based upon a unanimous decision of the Plenary Authority.

That paradigm could be readily rejigged to fit into the pressing need for the Security Council to refashion its Provisional Rules of Procedure in respect to WMD held by Rogues-and-Terrorists.

Empowered Working Parties

Of course, the resolution of conflicts between nations, where one nation is a rogue dictatorship possessing WMD, will require more than mere legal process. And, to that end, it should be stressed that the endemic constitution of such state-based working parties is more than a group of individuals, and, *a fortiori,* more than a mere grouping of employees of the UN. These participants would be representatives of Member States. While the legal process organizes the vehicle; this new vehicle for dispute resolution and fact-finding brings a posture of its own — bringing multiple resources into play. Working parties are a quasi-legal construct that enhances dispute resolution.

For example, if a working party is formed to address WMD in North Korea, it might include representatives of x) North Korea, y) affected neighbors such as Japan, Russia, China and/or South Korea; and z) and the Superpower, plus more neutral states, drawn from other parts of the globe.

Further (as noted above), that working party would be augmented by an expert staff, including experts of the IAEA. This investigative body would pursue and elicit the basic truth as to WMD as promptly as is possible.

Such working party will report back to its convening authority, the Security Council. If the working party reports that a rogue dictator or terrorist is a threat to peace, the Security Council may authorize military or other substantive response. Such authorization would be the legal response under public international law and bear the imprimatur of the entire globe. With that end in mind, the object Rogues-or-Terrorists are likely to be amenable to a peaceful resolution of the dispute.

Any possessor of WMD would typically posture that such WMD is for “mere defense” against WMD in the hands of a prospective adversary. In response to such posturing, neighboring states should be encouraged to enter into a phased reduction

of their WMD. Simply put, negotiations will be real if the prospect of a final implementation of working party process is real and is transparent.

Positing rule changes at the Security Council

This Article offers a compact and elemental set of improvements to the procedural rules of the Security Council so as to bring its processes up to speed with the nature of the strategic responsibilities in this era of WMD. Draft wording is offered for comment below.

Proposed Revision to Provisional Rules of Procedure of the Security Council

Mindful of the responsibilities under Chapter VI for pacific settlement of disputes;
And mindful that the proliferation of Weapons of Mass Destruction impose immediate pressures to respond to threats to peace arising from possessors of these WMD;
And Mindful that past resolutions of the Security Council calling for the elimination of WMD, being held by a state in breach of international peace, were openly flouted by that state;
And Mindful that Permanent Members sought to gain sanction to effect regime change of that state for the purpose of ridding it of WMD;
And Mindful that such issues and such pursuit of legal sanction would be facilitated if procedural rules and institutional due process of fact-finding had been in place;
And Mindful of the general recognition under basic principles of law that no party or petitioner should be judge in its own case or petition;
And Mindful that any petition for sanction to employ military means to abate risks caused by proliferation of WMD must point to previous exhaustion, as mandated by the Charter, genuine means to achieve a pacific means of dispute resolution;
And Mindful of the success achieved under the GATT, and its successor organization WTO, to resolve disputes between nation states employing the process termed "working party investigation," including the its fundamental concepts of due process of law while employing multiple means of achieving voluntary resolution of serious disputes;
And Mindful that decisions to sanction the use of military force to abate risks arising from the proliferation of WMD should employ procedural due processes of fact-finding;
And Mindful of the recent accelerated proliferation of WMD in the hands of dictatorships and non-state actors (often termed terrorists) and the abiding fear of the most threatening WMD, namely, nuclear or radiological weapons — with inexorable massive injury to innocent civilization;
NOW THEREFORE, the following amendment is adopted to the Provisional Rules of Procedure of the Security Council.

RULE 6A

In the event a Member of the UN petitions to the Security Council for investigation of the presence of nuclear and/or radiological weapons in the hands of a dictatorship or a non-state actor, the Secretary-General, believing that the petition is based upon reasonable suspicion or probable cause, shall promptly form a working party of five (or more) states that shall include the petitioner and the object party, plus three (or more) other states that are recognized for their experience with nuclear or radiological weapons. Such working party shall investigate the alleged possession and the underlying motivations. Serious effort shall be exerted to achieve a peaceful resolution of any underlying motivations, coupled with an abatement of the risk being investigated. The working party shall report to the Council within six months. During such period (or any exten-

sion thereof) and in support of the procedures contemplated, the Council shall impose a *status quo ante* upon the object state. During the period of investigation such working party shall have all powers of investigation typical for law enforcement authorities and courts of competent jurisdiction, including, without limitation, the resources and expertise of the International Atomic Energy Agency. The working party may request augmentation of its investigative powers as need be.

Had there been standing rules to institutionalize procedural due process, the Security Council would have established an "Iraq Working Party" with the task to ferret out and to assess the evidence of WMD, as alleged by the United States. Further, that Working Party would have included the United States and Iraq, plus non-parties to the dispute. Other nations would be assigned; and such multi-state grouping would be seen by the balance of humanity as having sufficient breadth of sensitivity and expertise. The Iraq Working Party would have been served by a strong staff seconded from among IAEA experts (of the very sort that conducted the inspections that were cut short by the March 2003 invasion).

The establishment of this working party process would have revealed, in the case of Iraq, the absence of WMD; and accordingly, a painful and costly war, in blood, treasure and the humiliation of the superpower would have been avoided.

Working parties would be empowered by the Security Council, as per its current rules, to establish sub-bodies; and would be empowered to enter upon the territory of the suspected Rogues-and-Terrorists and search for WMD — with powers typically attendant to fact-finders in a criminal context, including the power of subpoena.[41] And if necessary, that working party can be augmented by a military force to be mustered and assigned by the Security Council.[42]

Conclusion

There is much to be done in the international community to control WMD under the leadership of the superpower. All shades of the political spectrum must offer new ideas. Humanity must face up to the imminence and immensity of this risk. The first ideas pursued by the superpower in Iraq were inadequate, primarily because the Bush administration acted unilaterally. We must change its way of thinking.

For better of worse, the superpower has set the War Against Terror in motion. And in that task, multilateralism, coupled with the rule of law, is infinitely superior to unilateralism — and a so-dominated international realm, fermenting under the lion's paw. There is no time to waste. But, while there is frightful imminence as Rogues-and-Terrorists wax extreme; the evolution of law, especially public international law, can be glacial. Strong, effective and proactive, determined leadership must come from the legal profession and opinion leaders to muster the resources of civilization to abate this frightful risk.

Notes

The author has been assisted in preparing this article by Patrick H. Murninghan, Senior Research Associate, The Lighthouse Investment Group.

1. Further stumbling occurred when the Superpower alleged that Iraq had been an instigator of 9/11. The press has begun to feel misled by the Bush administration. See Ombudsman Okrent in *New York Times*, May 30, 2004.
2. By the end of the war, chemical warfare had inflicted over 1 million casualties, of

which around 90,000 were fatal. Hydrogen cyanide and carbon monoxide were used by the Germans to murder millions of people in extermination camps during World War II. During the Vietnam War, the United States used tear gas and several types of defoliants, including Agent Orange.

3. About 40 countries ratified the protocol.
4. More than 140 nations subscribed thereto; nonetheless, a number of nations are believed to have these weapons.
5. These include mustard gas, sarin (GB), VX, soman (GD) and tabun. Other forms of chemical agents include: blood agents, including cyanide, arsine, cyanogens chloride and hydrogen chloride; choking agents, including chlorine, diphosgene and phosgene; other nerve agents; and vesicants, such as distilled mustard, ethyldichloroarsine, mustard-lewisite mixture and forms of nitrogen mustard.There are also "harassing agents," such as riot control chemicals and vomiting agents.
6. Chemicals can also be deployed via commercial handheld agricultural sprayers, crop dusters, spray tanks on aircraft or ships, via munitions delivered in gravity bombs, or in warheads on ballistic or cruise missiles.
7. A religious sect sought to inflict massive casualties in the Tokyo subway using sarin gas.
8. Category B weapons are second-highest priority to the CDC, because they are fairly easy to disseminate, and they cause moderate amounts of disease and low fatality rates. But these weapons require specific public health action such as improved diagnostic and detection systems. These agents include: Q fever, brucellosis, glanders, ricin, Enterotoxin B, viral encephalitis, food safety threats, water safety threats, meliodosis, psittacosis and typhus fever. Category C weapons, described by the CDC as "emerging infectious disease threats," are fairly easy to obtain, produce, and disseminate and can produce high rates of disease and mortality. These include the Nipah virus and Hantavirus.
9. The International Atomic Energy Agency ("IAEA") will be of increasing importance especially if the recommendations offered herein are taken on board.
10. See Jack Boureston and Charles Mahaffey, "Al Qaeda and Mass Casualty Terrorism: Assessing the Threat," *Strategic Insights* (October 2003). *Strategic Insights* is an online publication of the Center for Contemporary Conflict, Naval Postgraduate School, U.S. Navy, http://www.ccc.nps.navy.mil/si/index.asp.
11. See "Nuclear Contraband on Sale," *Jane's Intelligence Digest*, June 30, 2003.
12. A stunning 6,032 nuclear warheads have been destroyed, along with 491 ballistic missiles, 438 ballistic missile silos, 101 bombers, 365 submarine-launched missiles, 408 submarine missile launchers, and 25 strategic missile submarines. It has sealed 194 nuclear test tunnels.
13. "Al Qaeda Chemical, Biological, Radiological, and Nuclear Threat And Basic Countermeasures," National Infrastructure Protection Center, February 12, 2003. 13. "Transportation Security: Post-September 11th Initiatives and Long-Term Challenges," GAO-03-616T, April 2003.
14. Perhaps the Superpower will want to establish another vehicle of international administration to counter the risks of WMD; there might be internal political or other reasons to set up a specialized international entity with features that are customized to the task. But such institution must also adopt basic principles of due process.
15. There are a host of non-controversial realms of service rendered to the international community that are provided by a host of international organizations that are affiliated with the United Nations.
16. Cf. Section 9.1.
17. The WTO was established on the basis of the Marrakesh Agreement (which marked the end of the Uruguay Round), which was signed on April 15, 1994 and entered into force on January 1, 1995. The WTO took over the role of the de facto organization GATT (General Agreement on Tariffs and Trade); and GATT had been an ever-growing force of pubic international law governing the setting of international trade tariffs since 1947.
18. Security Council Resolution 827, to establish the ad hoc International Criminal Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law in the Territory of the former Yugoslavia since 1991, May 27,

1993 (ICTY). Security Council Resolution 955 (1994), on Genocide in Rwanda.

19. United Nations, *Treaty Collection* (Doc. A/CONF.183/9).
20. Advisory Opinion of ICJ *On the Legality of the Use or Threat of Use of Nuclear Weapons* (July 8, 1996) ICJ Opinions 1996.
21. It is important to note that procedural votes of the Society council, such as to amend its rules of procedure, will not require the affirmative votes of the P-5; instead the normative nine votes are required, out of the fifteen Members of the Security Council. Charter, Article 27 (2).
22. In hindsight, any court in the land, or elsewhere, would judge such process to be beyond even the Star Chamber Courts and Bills of Attainder.
23. Such proposed new rule is offered in this paper.
24. This is a court of secondary jurisdiction, in that it will defer jurisdiction if domestic criminal courts take their classic role of primary legal jurisdiction against such crime. And any crime that is recognized internationally will, *a fortiori,* constitute a crime under domestic criminal law, absent unusual issues of territoriality.
25. The "International Declaration of Human Rights" is also referred to as the "International Bill of Rights." In 1996 the UN General Assembly adopted the international covenant on Civil and Political Rights, 999 UNTS 171; the International Covenant on Economic, Social and Cultural Rights, 1966, 993 UNTS 3. These instruments together with the Universal Declaration of Human Rights, GA Res. 217A 1948, and the human rights provision of the UN Charter, comprise what is known as the "International Bill of Human Rights."
26. See L. Sohn, *New International Law: Protection of the Rights of the Individual Rather Than States*, 32 Am. U. L. Rev. 1 (1982).
27. "Article II, Sec. 3. All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice are not endangered. Sec. 4. All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations."
28. *Nicaragua v United States*, [1986] ICJ Reports 14, at para. 190.
29. There is a lurking truth to this rebuttal retort. In hindsight, the human right atrocities in Iraq rank as another infliction of injury and destruction on innocent parties — in massive measure.
30. The UN Charter (having been ratified by the US Senate pursuant to Article II, Sec. 2, of the US Constitution) constitutes the "Supreme Law of the Land" (as per Article VI, Sec. 2).
31. Again, a proposal for basic improvement of legal procedures at the Security Council is suggested here.
32. Muslim nations evidence multiple distinctions from our Western norm. The Muslim and the Christian Worlds have little means of bridging their cultural gap quickly. Moreover, the polarity between these two worlds appears to be growing. And the perception of the United States in the Muslim world has reached extreme lows following the Iraq invasion.
33. Such a merger of the dual tasks of abating risks to international peace and protecting human rights is occurring in Bosnia and in Rwanda with serious and precedent-setting commitment by the international community. In Bosnia, the international community, with UN sanction, intervened militarily to prevent further genocide against the Bosnian Muslims (and to prosecute such genocide as that already taken place). And in Rwanda, the international community failing to intervene in time to stop massive genocide established a court of criminal justice on an *ad hoc* basis to prosecute and convict those perpetrating such horrific crime.
34. See 20 above.
35. Ibid.
36. Ibid.
37. There are other Charters under which force may be sanctioned. These are the Charter of the OAS, the EU and NATO. Each such charter establishes processes for the use of military force.
38. As noted earlier, it is impossible to predict the scenarios that will unfold as the superpower strives to cope with WMD. Two are obvious: 1) enhancing certain

procedures at the UN, and strengthening the role of the Security Council; or 2) unilateral action by the United States, distinct from the UN. The Security Council offers the most promise because it can be readily reshaped procedurally to the task at hand. Setting up an entire new international organization with military powers entails too much delay.

39. Article 27 of UN Charter.
40. This Article focuses upon the legal issues as distinguished from the predominately political and policy considerations. Hence, the issue of the embedded veto structures for the P-5 is not treated herein. Yet, the advances recommended here are likely to lessen those occasions when a Permanent Member is prompted to exercise its veto.
41. The modalities for enforcing international-based subpoenas are a worthy subject for an article.
42. This article acknowledges that some Rogues-and-Terrorists may cast themselves against the investigative process being promoted in this article, however well-sanctioned and effective. But such obduracy would be a voluntary act, rejecting the due process being offered. Such obduracy in the face of clear due process of law would prompt the world community to buttress the inspection process with a military dimension.