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NOTES AND COMMENTS

SECURITY, SOLIDARITY, AND SOVEREIGNTY: THE GRAND THEMES OF UN REFORM

By Anne-Marie Slaughter

The report of the United Nations secretary-general’s High-Level Panel on Threats, Challenges and Change is entitled “A More Secure World: Our Shared Responsibility.” It contains 101 recommendations. The panel focused equally on the military and nonmilitary dimensions of collective security, turning first to the “challenge of prevention,” then to the use of force, and finally to institutional reform within the United Nations. In March 2005, the secretary-general issued his own report responding to the high-level panel’s report. His report is entitled “In Larger Freedom,” and contains forty-one action items for decision by heads of state or government. The report’s focal points are the “triangle” of development, security, and human rights, which the secretary-general presents as “freedom from want,” “freedom from fear,” and “freedom to live in dignity.” In September 2005, the heads of state of 191 countries will gather at the sixth annual meeting of the General Assembly to decide what is to be done.

The agenda is enormous; the occasion momentous; and the timing propitious. Both the Cold War and the “post-Cold War era,” the chaotic and often murky decade of both triumphalism and fierce ethnic conflict, are past. The world faces a host of new or newly felt threats, from nuclear terrorism to global pandemics, and many countries, including the largest powers, are acutely aware of the need to update and enhance our collective capacity to meet them. Will the assembled leaders tinker at the margins of reform? Or will they lay down a new foundation for a more secure world?

The high-level panel offers a blueprint for profound change, through nothing less than a reconception of security, solidarity, and even sovereignty. First, it proposes that the United Nations, an organization founded on a commitment to the protection of state security, must now subordinate state security to human security. From the perspective of human security, death, whether it be from violence or disease, is equally to be feared. The principal difference is that death from disease is much more likely for the vast majority of the world’s population.

Second, human security redefines solidarity. As human beings, we all seek to live our lives in dignity, free from fear and from want. We need not be guaranteed prosperity, but at least the health and education necessary to strive for it. We cannot be guaranteed long lives, but at least that our government will not try to murder us and will do its utmost to prevent our fellow citizens from doing so. We should not be guaranteed equal esteem of our fellow human beings, but at least equal respect, the promise that neither politicians nor ethnic or religious leaders can declare any group, class, or nation less than human.

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Third, this conception of solidarity, in turn, redefines sovereignty. More precisely, an effort to implement this conception of sovereignty through an institution like the United Nations requires a quite radical rethinking of sovereignty. International lawyers have paid a great deal of attention to the high-level panel’s endorsement of a “responsibility to protect” and rightly so. But the panel goes much further than this version of sovereignty as responsibility adopted by the International Commission on Intervention and State Sovereignty (ICISS). It asserts that all signatories of the UN Charter accept a responsibility both to protect their own citizens and to meet their international obligations to their fellow nations. Failure to fulfill these responsibilities can legitimately subject them to sanction. In a word, membership in the United Nations is no longer a validation of sovereign status and a shield against unwanted meddling in a state’s domestic jurisdiction. It is rather the right and capacity to participate in the United Nations itself, working in concert with other nations to sit in judgment of and take action against threats to human security whenever and wherever they arise.

As noted in the conclusion to this essay, these grand themes flow comfortably above the sausage making of actual UN reform. The high-level panel and the secretary-general have each taken great pains to emphasize both the value and the feasibility of many very concrete steps, such as reforming the Human Rights Commission, adopting a common definition of genocide, instituting better internal oversight mechanisms, finding ways to realize the Millennium Development Goals, and achieving greater representation of the full membership. Nevertheless, the panel has actually written an extraordinary document, one that opens the door to rethinking not only the United Nations but also some fundamental assumptions of the international legal system for the twenty-first century. At least in the pages of a distinguished journal such as this one, the full implications of its report merit a moment’s reflection.

Part I of this essay provides an overview of the principal recommendations in the high-level panel report. Part II explores the panel’s expanded conception of sovereignty, from state security to human security. Part III moves from security to solidarity, tracing the way the panel’s vision of solidarity functions as a fundamental substantive value and a procedural constraint. Finally, Part IV addresses the relationship between sovereignty and solidarity, arguing that the panel’s vision of sovereignty as autonomy and, instead, has suggested confronting states with a direct choice of accepting conditional sovereignty in return for the kind of effective collective action that has become indispensable to performing a sovereign’s basic obligations to its own people.

I. AN OVERVIEW OF THE HIGH-LEVEL PANEL REPORT

According to the high-level panel, “The central challenge for the twenty-first century is to fashion a new and broader understanding . . . of what collective security means—and of all the responsibilities, commitments, strategies and institutions that come with it if a collective security system is to be effective, efficient, and equitable.” In other words, the panel panel is seeking less than revising the 1945 consensus underlying the UN Charter itself. As envisioned in the Charter, the United Nations is a collective security system designed to save the world above all from “the scourge of war.”

The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty (2001), available at http://www.ocs.utoronto.ca/icsiss/report-en.asp [hereinafter ICSISS Report]. The ICSISS began from the premise that “the mandate and capacity of international institutions have not kept pace with international needs or modern expectations.” Id. at 5, para. 1.11. More specifically, the ICSISS asserted that the international defense over military protection for humanitarian purposes flowed from a “crystal gap” between the immense and unavoidable reality of mass human suffering and the existing rules and mechanisms for managing world order. At the same time, it noted widening gaps between the explicit language of the Charter regarding noninterference in the domestic affairs of member nations and actual state practice as it has evolved since 1945. It praises the “responsibility to protect” as an “emerging principle” of customary international law—not yet existing as law but already supported by both state practice and a wide variety of legal views. Id. at 15-16, paras. 2.24-2.27.

Panel Report, supra note 1, at 11. See also I. UN CHARTER art. 2.7.2.

Panel Report, supra note 1, at 25, paras. 2.23 & 2.24.

Id. at 40, para. 164 (emphasis omitted).

Rudi Anson, Speech to the General Assembly, UN Doc. A/ENDV/7, at 3-4 (Sept. 23, 2000).

Panel Report, supra note 1, at 57, para. 203.

Id.

M. Reicher, supra note 1, at 57, para. 292.

This language comes from the Report of the Secretary-General, supra note 2, annex at 98, para. 6(b).

To tackle this monumental task, the panel chose to divide its work into multiple sections. It first considered the range of threats the world faces today. Importantly, it considered threats to people as well as to states, generating a holistic view of security that understands state security and human security to be fundamentally intertwined. The list of security challenges included poverty; infectious disease; environmental degradation; conflict between and within states; nuclear, radiological, biological, and chemical weapons; transnational organized crime; and terrorism. Regarding that last threat, the panel offered an explicit definition of terror, an important and belated conclusion to a war in which many countries report being engaged. It rejected once and for all the claim that political ends justify terror means, or that “one man’s terrorist is another man’s freedom fighter.” Instead, the panel enshrined a norm of civilian inviolability alongside the Charter’s prohibition on interstate aggression. It defines terrorism as “any action . . . intended to cause or aid 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.” The panel then turned to the use of force, a tool that remains central even under a broader conception of security, weighing the use of military force to end or prevent war, keep peace, and rebuild countries in the wake of conflict. While most of the recommendations in this section pertain to policy and structure, the panel also made two important conceptual contributions. First, it recognized that the Security Council may authorize preventive war—war against a nonmilitary, nonproximate threat—but that individual countries may not invoke a right to prevent war under Article 51. This is a huge step, responding to Secretary-General Kofi Annan’s exhortation to all UN members to consider the “early authorization of coercive measures.” The panel tracks of a tremendous potential expansion of the circumstances in which the international community can decide to use force to maintain or preserve international peace and security, as long as the decision is genuinely multilateral.

Second, the panel endorsed the “responsibility to protect”—the idea that the international community has a right and a duty to intervene in states that cannot or will not protect the human rights of their people against genocide and other large-scale killing, ethnic cleansing or serious violations of international humanitarian law. The panel imagines that this duty can legitimate a range of interventions, from prevention, to military force, to postconflict reconstruction. As with preventive war, the panel says that “a collective international responsibility to protect” is “exercisable by the Security Council authorizing military intervention as a last resort.” It could be read to imply some wiggle room, however, by noting that “[t]he Security Council so far has been neither very consistent nor very effective in dealing with these cases, very often acting too late, too hesitantly or not at all.” It is unclear whether the panel meant to suggest that different standards be employed to determine the legitimacy and legality of preventive wars and humanitarian interventions. This issue is likely split by the General Assembly in multiple directions but must be decided in order to create an effective collective security regime. Intentional or not, the difference highlights the importance of the panel’s recommendations—and the secretary-general’s urging—that the Security Council reach an understanding “on the use of force that sets out principles for the use of force and expresses its intention to be guided by them when deciding whether to authorize or mandate the use of force.”
The final section of the report describes how the United Nations must change to meet the challenges of a new century. These threats require the United Nations to take a more active role in preventing and resolving conflicts, promoting peace and security, protecting human rights, and ensuring sustainable development. The report calls for a more effective and efficient UN system, with stronger legal and political frameworks, better resource allocation, and greater participation from all Member States.

The report also highlights the importance of human rights and the need for the United Nations to play a leading role in promoting and protecting them. It calls for a renewed commitment to the Universal Declaration of Human Rights and the other international human rights instruments.

Finally, the report stresses the need for the United Nations to address the root causes of conflict, such as poverty, inequality, and injustice. It calls for a more inclusive and participatory approach to decision-making, and for greater investment in peacebuilding and development.

In conclusion, the report provides a roadmap for the United Nations to play a more effective and proactive role in shaping the future of our world. It challenges the UN to step up to the challenge and deliver on its mandate, ensuring a safer, more peaceful, and more prosperous world for all.

The report concludes with a call to action, urging Member States to support the recommendations and work together to build a more just and equitable world.
year. But at present, communicable diseases are killing fourteen times that number of people annually.23 If human security is our aim, why on earth should we privilege the saving of lives from violence over the saving of lives from disease? Both are equally preventable; indeed, given human nature, preventing disease is likely to be easier than fighting war.

But why should human security be a matter of collective security? When a state faces attack from another state, it naturally inportunes still other states for help. An alliance seeks to match the bell and capabilities of would-be attackers with pledged defenders; a collective security system seeks to prevent attacks through collective deterrence. Why do states need the help of their fellow states to ensure the security of their own citizens?

The panel's answer is the mantra of our world: 'We live in an interdependent world.' The report is replete with passages like the following: "Today, more than ever before, threats are interrelated and a threat to one is a threat to all. The mutual vulnerability of weak and strong has never been clearer.24 Or, "No State, no matter how powerful, can by its own efforts alone make itself invulnerable to today's threats."

For citizens of developed countries, this rhetoric encapsulates what I have called the 'ineffectiveness challenge': the shift of threat toward the state's international domain. This challenge is already taking on an interdependent character, as is evident from the speech of President Bush in which he said that "we cannot govern from the White House." But for citizens of developing countries, this rhetoric encapsulates what I have called the 'ineffectiveness challenge': the shift of threat toward the state's domestic domain. This challenge is already taking on an interdependent character, as is evident from the speech of Prime Minister Tony Blair in which he said that "we cannot govern from the Prime Minister's Office."
In the world of the twenty-first century, the international community does have to be concerned about nightmare scenarios combining terrorists, weapons of mass destruction and irresponsible States, and much more besides, which may conceivably justify the use of force, but not just reactively but proactively and in a more proactive way.

The panel further concluded without hesitation that the Security Council could act legally in such circumstances, and that it "may well need to be prepared to be much more proactive on these issues, taking more decisive action earlier, than it has been in the past." Contrast this language with the panel's treatment of the inherent right of self-defense under Article 51. The panel declined to support any "rewriting or reinterpretation" of Article 51, concluding that "if there are good arguments for preventive military action, with good evidence to support them, they should be put to the Security Council, which can authorize such action if it chooses to do so." Thus, the panel recognized that it could well be necessary for the Security Council to authorize military action in a case like Iraq, just as it concluded that the Security Council could well have to authorize military action to prevent genocide or crimes against humanity. But in both cases, the trade-off for expanded substantive jurisdiction is a tighter hold than ever on multilateral process.

In another finely tuned balancing act, the panel sought to moderate its emphasis on proactive measures and prevention with a kind of "reasonableness test" for the use of force. It recommends that the Security Council adopt "a set of agreed guidelines, going directly not whether force can legally be used but whether, as a matter of good conscience and good sense, it should be." The guidelines it proposes would require the Council always to address "five basic criteria of legitimacy": seriousness of threat, proper purpose, last resort, proportional means, and balance of consequences.

Issues of legality versus legitimacy have rolled the international law community ever since the Kosovo commission declared that the NATO intervention in Kosovo was "illegal but legitimate." That intervention, of course, bypassed the Security Council, although a subsequent resolution effectively endorsed the action. Given this precedent, much subsequent discussion of legality and legitimacy has assumed that legitimacy can sometimes be a substitute for legality; that even when a use of force is formally illegal, in that it neither amounts to self-defense under Article 51 nor was authorized by the Security Council, it can nevertheless be justified if it is legitimate in the eyes of world public opinion.

This is not the place to rehash the pros and cons of this debate. The important point is that the high-level panel has moved the goalpost. It assumes that the criteria of legitimacy will be applied by the Security Council itself, thereby assuming legality. The question thus becomes not whether it is illegal but legitimate, but rather whether it is legal and legitimate. The legitimacy inquiry becomes a second filter on the use of force; the Security Council must only establish the presence of a breach of the peace, threat to the peace, or act of aggression under Article 39, but also must determine that the use of force in response would satisfy the five criteria of legitimacy.

This approach, as some commentators have already decried, sounds like a recipe for further inaction by the Council, giving members five new criteria to argue about while Rome, or Banda, or Darfur, burns. In the context of a report urging reform and prompt and effective action by the UN organs, why on earth would the panel create what appears to be an additional brake on Security Council decisions? The answer lies in the substantial expansion of Security Council jurisdiction that the panel achieves in other parts of the report. The new security consensus it advocates for, and that it will be necessary to substantiate an expanded global solidarity, solidarity among humans as the underpinning of action by their governments. This solidarity is both a moral and an instrumental value: human security is the birthright of humans everywhere and threats to human security cannot be confined within the borders of any one nation.

If solidarity as a value justifies UN action, preferably early and preventive action, on disease, hunger, illiteracy, environmental degradation, internal conflict, systematic human rights violations, weapons proliferation, and terrorism in addition to traditional interstate aggression, then it is natural in my opinion, that this high-level panel insists that such action be endorsed through the Security Council and that the Security Council exercise extra caution when deciding on the most drastic action. That same solidarity requires that states deciding on action be required to evaluate the consequences of that action through others' eyes; that they bear the issuances of state actions debated from multiple perspectives; that they be required to confront evidence contrary to their own. Solidarity thus functions as both a value and a constraint.

IV. SOVEREIGNTY REDEFINED

The most powerful and profound part of the high-level panel report is a brief section entitled "Sovereignty and Responsibility." In two scant paragraphs the panel redeline sovereignty itself for all UN member states. These paragraphs accomplish a tectonic shift, reinterpreting the very act of signing the Charter in ways that will create a new legal and diplomatic discourse about member states' obligations to their own people and to one another.

"In signing the Charter of the United Nations," the panel writes, "States not only benefit from the privileges of sovereignty but also accept its responsibilities." These responsibilities include both "the obligation of a State to protect the welfare of its own peoples" and its obligation to "meet its obligations to the wider international community." These responsibilities are facts of contemporary life, in contrast to "[w]hatever perceptions may have prevailed when the Westphalian system first gave rise to the notion of State sovereignty;" and it sees, in its redelineation of sovereignty to signing the Charter and in positing a state's responsibility to protect its own people, the high-level panel was borrowing directly from the ICJCS. In September 1999, Secretary-General Annan called on the international community to "reach consensus—not only on the principle that massive and systematic violations of human rights must be checked, wherever they take place, but also on ways of deciding what action is necessary, and when, and by whom." In response, the Canadian government, together with a group of major foundations, established the ICJS, headed by former Australian foreign minister Gareth Evans and special adviser to the UN secretary-general Mohamed Sahnoun and composed of a distinguished global group of diplomats, politicians, scholars, and nongovernmental activists. In December 2001, the ICJS issued an important and influential report, "The Responsibility to Protect." The ICJS sought to change the core meaning of UN membership from "the formal symbol of independent sovereign statehood and thus the seal of acceptance into the community of nations," to "recognition of a state as a responsible member of the community of nations."
Nations are free to choose whether or not to sign the Charter; if they do, however, they must accept the "responsibilities of membership" flowing from their signature. According to the ICSS, "There is no transfer or dilution of state sovereignty. But there is a necessary re-characterization involved: from sovereignty as control to sovereignty as responsibility in both internal functions and external duties." Internally, a government has the responsibility to respect the dignity and basic rights of its citizens; externally, it has the responsibility to respect the sovereignty of other states.

The high-level panel took several steps further than the ICSS. First, it makes clear that states themselves have an instrumental rather than an intrinsic value. "The Charter of the United Nations," the panel writes, "seeks to protect all States, not because they are intrinsically good but because they are necessary to achieve the dignity, justice, worth and safety of all human beings. Here human security trumps state security; sovereignty attaches to a state as a means of ensuring the security of its citizens. From this starting point, sovereignty is missed, in the sense of failure to fulfill this responsibility, could become sovereignty desired.

Second, the panel argues that a state has a duty not only to protect its own peoples, but also to "meet its obligations to the wider international community." In this conception, the United Nations itself, by dint of the obligations of membership, becomes a guarantor of "international obligations," writing into law the obligations to which these obligations will often be a matter of capacity building, but direct enforcement is also an option.

These twin responsibilities spell nothing less than conditional sovereignty, although the panel itself did not and politically could not use that term. Sovereignty in the state of nature, e.g., outside the UN system, may still mean some Westphalian ideal of absolute autonomy. But for the 191 member states, membership is no longer simply validation and protection of their sovereignty status. The Charter itself becomes a change agent, providing a collective instrument for holding all members to their word. If this reading seems far-fetched, consider the following recommendation from a group of leading European policy thinkers asked to consider how the European Union should respond to the high-level panel report. They urged the Union to "promote the Relegation to Protect," while also reaffirming the sovereignty debate to cover a principle of both enhancing effective and legitimate sovereignty of weak states (through international assistance), and conditioning sovereignty on state behavior.

The European Union, itself, of course, in post-Westphalian world anyway, EU members can only be EU members if they accept stringent conditions concerning democratic govern- ment, respect for human rights, the rule of law, and market capitalism. All EU members commit themselves to meeting these standards and work collectively both to enable and to enforce the compliance of their fellow members. But the European Union is a Union, governed by a set of treaties ensuring ample benefits in return for meeting these obligations. Why should UN member states agree to a concept of conditional sovereignty?

The best answer to this question has been advanced by Kal Raustiala, building on the work of Abram and Antonia Chaves. Raustiala argues that the transformation of sovereignty is only keep- ing up with the transformation of "both the international system and state-society relations . . .

by events of the twentieth century. Sovereignty itself refers to the "supreme authority and control over policy" within any delimited political space. To exercise such authority and control in a world that has become so interconnected that people, politics, and pathogen are virtually able to disregard borders requires institutionalized cooperation and intervention. Thus, Raustiala claims, international institutions "actually serve as means to reassert sovereignty. This vision of organizations such as the United Nations as sovereignty-strengthening institutions finds its roots into Chayes and Chayes's concept of "the new sovereignty," which they defined as the right and the capacity to participate in the international institutions that allow their members, working together, to accomplish ends that individual governments could once accomplish alone. Writing in 1995, Chayes and Chayes already saw that the international system itself had moved beyond interdependence. It had become a "tightly woven fabric of international agree- ments, organizations, and institutions that shape [states'] relations with each other and penetrate deep into their internal economics and politics."

In this context, where the defining features of the international system are connection rather than separation, interaction rather than isolation, and institutions rather than free space, sovereign as autonomy makes no sense. However paradoxical it sounds, the measure of a state's capacity to assert an independent unit within the international system—the condition that "sover- eignty" purports both to grant and to describe—depends on the breadth and depth of its links to other states.

For states that want to be good citizen in the international system, weak and strong alike; for governments likely to be rewarded by their people for harvesting the gains that interna- tional cooperation can bring; for leaders committed to using their power consistently with the purposes of the Charter, the high-level panel's conception of sovereignty as responsibility will simply rally current realities and strengthen the power and authority of the United Nations to surmount twenty-first century challenges. But for states that have only recently gained their sovereignty as independent actors in the international system and prize it as a shield against collective pressure; for governments that care not for the welfare of their people; for leaders committed above all to their personal aggrandizement, sovereignty as responsibility may well sound like a ruse for reading Article 2(7) out of the Charter.

Legally, however, the panel could argue that a government's signature of the Charter itself avows that the basic "dignity, justice, worth and safety of its citizens" are no longer "essentially within its [domestic jurisdiction]," but only as a first resort. The Charter institutes a vast system of complementarity, whereby governments have the first responsibility toward their citizens and certain groups. Room for intervention as long as they fulfill their most fundamental obligations. But if, in the case of the United Nations acting through the institutions of the United Nations, they forsee the exclusivity of their domestic jurisdiction. Similarly, the "new security consensus" recommended by the high-level panel recognizes that each UN member's security rests in the capacity and commitment of its fellow members to live up to their international obligations.

So much to code. But so much to gain. This is the basic bargain proposed by the high-level panel. It recognizes the Charter as a far more demanding instrument than the one it has be- come over the decades since 1945. But it outlines a genuine collective effort to meet the full spectru- m of threats menacing men, women, and children around the globe, from the microbes
poisoning drinking water for over 2 billion people worldwide, to the terrorism plagues the nuclear destruction of a global city. To dissolve the deep divisions between military security and civil society, between state security and human security, will require a true internationalism, pre- sk, and committed United Nations. It will require a new diplomacy, a new willingness to speak and accept unpleasant truths. Tyrants cannot expect fellow UN members to look the other way in the face of gross and systematic human rights violations, but neither can great powers expect to be able to ignore their international obligations without notice and consequences.

For all countries, the vision of the United Nations glimmering in the high-level panel report could be the answer to what John Ikenberry describes as the “Westphalian flaw.” He points out that the two guarantors of order in the Westphalian system, a balance of power internationally and a monopoly on force domestically, have been inverted. Today, he argues, the United States has a “quasi-monopoly on the use of force” internationally and states are subject to “growing legitimate international authority” over what goes on within their borders. The result is the profound destabilization of international order itself, as envisioned and guaranteed by a Westphalian conception of sovereignty. 10

Consider, then, a collective security system in which the United States married its vast military power to the peace-enforcing, peace-stabilizing, and peace-building capacity of many other nations; in which the United States once again sought to prevent other states from arming against it by undertaking a set of commitments about the purposes for which and the procedures by which it would use its military might. 11 At the same time, consider a collective security system that would have both the authority and the power to address threats where they begin and where they breed, by offering clean water and insisting on clean government; by creating opportunities for individuals and penalties for criminals regardless of class, race, religion, ethnicity, or high office; by insisting that the rule of law internationally rest on the rule of law domestically. That is the hope and the promise of “A More Secure World.”

V. CONCLUSION

The grand themes of the high-level panel report highlighted here animate, but will not dictate, the actual process of UN reform. The policies of Security Council expansion, the reform of the Human Rights Commission, the adoption of a common definition of terrorism, a common commitment to donate 0.7 percent of gross domestic product to aid, and, above all, the profound internal management reforms will all grab the headlines. The high-level panel and particularly the secretary-general have repeatedly insisted that Security Council reform should not stagnate the entire process. Yet the security consensus, the vision of global solidarity, and the redefinition of sovereignty outlined above suggest that Security Council reform cannot, or at least should not, be simply another piece of a larger puzzle.

Notwithstanding the rhetoric of formal equality and the one-state, one-vote system in the General Assembly, the current United Nations institutionalizes inequality based on power. The


This strategy would emulate U.S. foreign policy following World War II when, as John Ikenberry has argued, the United States set limits on its power to create and preserve a viable international system. G. John Ikenberry, After Victory: Institutions, Norms, and the Rebuilding of Order after Major Wars (2001). Ikenberry argues that postwar states might ideally want to tie other states down to fixed and predictable policy orientations and leave themselves institutionally unencumbered. But is seeking the institutional commitment of less powerful states—keeping them in the postwar order—the leading state has to offer them something in return: some measure of credible and institutionalized restraint on its own exercise of power. The type of order that emerges after great war hinges on the ability of states to restrain power institutionally and bind themselves to long-term commitments.

Ibid, Preface, at xi, xi.