



AMERICAN BAR ASSOCIATION

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Statement of Kenneth B. Reisenfeld, Chair, American Bar Association Section of International Law, on behalf of the American Bar Association, submitted to the Senate Committee on Foreign Relations, on the subject of United Nations Restructuring. July 21, 2005

Mr. Chairman and Members of the Committee:

On behalf of the American Bar Association and its Section of International Law, I want to commend the Committee for its consideration of an issue critical to the United States and the international community – reform of the United Nations (“U.N.”) – and express our appreciation for this opportunity to express our views. I submit this statement at the behest of Robert J. Grey, President of the American Bar Association.

The U.N. has evolved over the nearly 60 years of its existence, reflecting changing crises and developments in the world. The basic goals articulated in the U.N. Charter, however, including the promotion of international peace and security, respect for human rights and self-determination of peoples, are as essential today as when the Charter was drafted. The U.N. remains the only universal mechanism available for the pursuit of these important goals.

ASSESSED DUES AND LEVERAGE

Like most large institutions, the U.N. and its specialized agencies are not free from fault or failure, and their activities deserve constant scrutiny and ongoing improvements to assure their efficiency and effectiveness. There is broad consensus that reforms are needed at the U.N., and the ABA joins in the call for reform by making several specific recommendations outlined in the second part of this statement.

Before I discuss the substance of U.N. reform, I will comment briefly on the appropriate means by which the United States should advance its reform agenda. The ABA is troubled by pending proposals that would tie the payment of assessed contributions to the enactment of reforms. The ABA strongly opposes any legislation that contemplates using the actual or threatened withholding of dues as leverage to facilitate U.N. reforms.

All Member States are obligated to pay assessed contributions under Article 17 of the U.N. Charter. It would be inconsistent with this legal obligation to condition payment of U.S. assessments on either reform or reorganization at the U.N., or to link payment to restrictions on funding for specific programs.

Unilaterally withholding assessed dues in order to effect changes at the U.N. would establish a bad precedent and undermine the ability of the U.N. to engage in efficient budget planning and operations. Were other countries to follow this example, the damage to U.N. operations could be severe. With no assurance that yearly assessments would be consistently received, the U.N.'s budget would be in constant flux and its ability to carry out essential functions would be held hostage to the demands of individual Member States. The effect would be to guarantee paralysis and failure rather than to create a climate for success at the U.N. The United States should play no role in undermining the effectiveness of the U.N.

Moreover, failing to pay its financial obligations would damage U.S. political credibility and marginalize U.S. influence on the very reforms that it seeks to implement at the U.N. The United States has other legitimate means of promoting desired reforms. Relying upon its longstanding commitment to the promotion of the international rule of law and protection of human rights, the United States should exercise its moral and political leadership to promote a positive reform agenda and work cooperatively with other like-minded member states to implement needed reforms in the U.N. system. Enacting legislation that contemplates the withholding of dues undermines our negotiating position and limits our ability to work toward implementation of reforms that would benefit our national interests and strengthen the institution as a whole.

The timing of U.S. payments is also important. The United States for years has paid its annual assessments to the U.N. and other international organizations in the last quarter of the calendar year in which they are due – a delay of 10 months or more. This practice does not contribute to sound fiscal management at the U.N. The United States should synchronize the payment of its assessments to the U.N. over a multiyear period in order to allow for payment of its dues, in full, at the beginning of each calendar year.

REFORM PRIORITIES

Human Rights Commission

One of the areas where the ABA believes reform is most critical, and in which the United States should actively seek change, is in the operations of U.N. human rights mechanisms.

The United Nations has been a critical force for the advancement of international human rights over the past five decades. The incorporation of fundamental human rights principles in the U.N. Charter and adoption of the Universal Declaration of Human Rights, as well as the U.N.'s role in the creation of many international instruments to promote and protect human rights, have been essential in the development of the human rights norms broadly recognized in the world today. Developing effective procedures in the U.N. to implement human rights protections, however, has been more difficult than developing substantive human rights norms. The U.N. Commission on Human Rights, the principal body tasked with these responsibilities, has both structural and operational flaws that have greatly undermined its ability to accomplish this mission.

In January 2004, the ABA Section of International Law established a blue-ribbon Task Force on Reform of the United Nations Commission on Human Rights, chaired by David Birenbaum, former U.S. Ambassador to the U.N. for U.N. Management and Reform. After 18 months of deliberations, this Task Force produced a detailed report whose

recommendations were adopted by the ABA Board of Governors last month. In reviewing the performance of the Commission and considering needed reforms, the Task Force focused on issues of particular relevance to lawyers, such as the need to reemphasize fundamental human rights; promotion of the rule of law; strengthening the investigative processes of the Commission; and adopting a Code of Conduct committing the members to honor their human rights undertakings and cooperate with the Commission.

On the whole, the Task Force found that the Commission on Human Rights, particularly in recent years, has failed to fulfill its mission to promote and protect human rights. While there are a number of reasons why this is the case, a primary cause is the increasing politicization of the Commission, which has severely compromised the capacity of the Commission to take action in response to serious human rights violations. The Task Force observed: “[p]erhaps the most shameful failure of the Commission in recent years was the refusal last year to adopt a resolution clearly condemning th[e] genocide [in Darfur, Sudan].”

The legitimacy of the Commission has been further undermined by the election of several countries with records, both past and present, of egregious human rights violations. Countries with very poor human rights records (including Sudan, Libya and Cuba) have become members and leaders of the Commission and have prevented exposure and criticism of their own records and those of other human rights abusers.

Notwithstanding its criticism of the Commission, the Task Force recognized that the Commission has done important work in exposing, through its rapporteurs, cases of serious human rights violations. This work is especially important in countries with poor human rights records, which have ratified few human rights treaties and are therefore not subject to oversight by treaty monitoring bodies. It is imperative to retain these functions within an entity in the U.N. system, albeit one that is structured and operated in a way that restores effectiveness, legitimacy, and professionalism to the process.

The ABA believes that reform of the U.N. human rights process must start with the establishment of a new, streamlined Human Rights Council to replace the current, highly-politicized Commission. The ABA agrees with Secretary-General Annan that, for the first time, the protection and promotion of human rights should be established on par institutionally with security and development issues at the U.N. The Council should be a standing body of the U.N., with a substantially smaller membership than the current 53-member Commission, and whose members are elected by a two-thirds majority of the General Assembly. Most importantly, members of the newly formed Council should be drawn from U.N. Member States that have good human rights records and have agreed to adhere to obligations of human rights compliance and cooperation as set forth in a Code of Conduct. No Member State that is subject to actions taken under Chapter VII of the U.N. Charter by the Security Council or under censure of the Human Rights Council itself should be eligible for membership.

The members of the Council should adopt a Code of Conduct affirming their commitment to comply with human rights treaties to which they are a party; to designate persons with substantial human rights expertise to head their delegations; to cooperate with Council initiatives; and to cooperate with the investigative mechanisms of the Council. Serious violations of a member’s obligations under the Code could give rise to the imposition of

sanctions, including removal from membership and disqualification from re-election for at least one term.

The Council should return to the U.N.'s core mandate by assigning special priority to the protection and promotion of fundamental human rights; by establishing a highly professional investigative system, particularly a strong rapporteur process; by rejecting any discriminatory, exclusive agenda items aimed at specific countries, such as Israel; and by focusing world attention on conflicts that may result in ethnic cleansing, genocide, or other mass violations of human rights.

To further improve the operations of the human rights system, the position of the High Commissioner for Human Rights should be strengthened and additional funding should be provided. The relationship between the Council and the High Commissioner also should be redefined in such a way as to provide greater opportunity for the High Commissioner to focus the efforts of the Council. The High Commissioner should issue an annual report on the situation of human rights in the world, and the abuses identified should drive the priorities of the Council. The High Commissioner should also continue to develop initiatives to promote the rule of law in post-conflict and transitional states.

Democracy Caucus And Related Assistance

The United States should adopt and vigorously implement all available means for promoting respect for democracy, human rights and the rule of law within the U.N. system, including by providing strong U.S. support for the emerging Democracy Caucus and the newly established Democracy Fund.

The Democracy Caucus provides a forum to promote democratic principles among Member States and to advance the interests of democratic states within the U.N. system. The Caucus could assist in forging consensus among democracies on the appropriate responses in the U.N. system to egregious violations of human rights. The Caucus could also strengthen the governance and accountability at the U.N. on issues of democracy and human rights by supporting the candidacy of democracies in the U.N.'s constituent regional groups for election to key U.N. bodies. The United States should use its political and financial resources to assist in institutionalizing and strengthening the operations of the Democracy Caucus.

Also key to the promotion of democracy and the rule of law is financial and technical assistance to countries that seek to establish democratic principles and practices but that may lack the capacity to build systems and institutions necessary to accomplish this goal. In September 2004, President Bush proposed the creation of a U.N. Democracy Fund to assist countries seeking to establish or strengthen democratic institutions and to facilitate democratic governance. Secretary-General Annan this month announced the Fund's establishment and the intention of a number of countries to provide initial contributions to the Fund. We applaud the U.S. Government for leading this effort and encourage the provision of robust and ongoing funding to this important initiative.

CONCLUSION

John Foster Dulles once said, “[t]he United Nations was not set up to be reformatory. It was assumed that you would be good before you got in, not that being in would make you good.” The recent history of the U.N. Human Rights Commission, however, raises doubts about the continuing validity of this assumption of good faith and cooperative spirit by those Member States that have repeatedly obstructed the effective investigation and prevention of human rights abuses around the world. Nonetheless, the U.N. should have the institutional capacity to encourage Member States to live up to the ideals embodied in the Charter through effective internal mechanisms and, where necessary, appropriate sanctions. The structures and operations of the U.N.’s own bodies shall serve to promote the ideals of democracy, human rights and the rule of law. The establishment of a reformed Human Rights Council, a strengthened Democracy Caucus and a well-financed Democracy Fund will move the U.N. toward this goal.

We encourage the U.S. Government to support these efforts and to work responsibly and productively toward enactment of other reforms that will strengthen the United Nations while advancing U.S. goals.

Thank you, again, for this opportunity to share our views on this important subject.