

Reform of the United Nations – September 23, 2005

By Cindy Buys

This year, the United Nations celebrates its 60th anniversary. As with any anniversary, the United Nations's 60th anniversary has been a time for reflection: a time to assess what the United Nations has done well and what it has not done so well.

In the fall of 2003, U.N. Secretary General Kofi Annan used this upcoming anniversary as an opportunity to challenge the Members of the U.N. to find ways to make the organization more effective. He convened a high-level panel of eminent persons to create a shared comprehensive plan as to how to proceed with respect to the critical issues facing the U.N. That panel became known as the High-Level Panel on Threats, Challenges and Change. The Secretary General tasked the High-Level Panel with three challenges: (1) assessing current threats to international peace and security; (2) evaluating how existing policies and institutions have done in addressing those threats; and (3) making recommendations for strengthening the U.N. so it can provide collective security for all in the 21st century.

The High-Level Panel issued its report and recommendations in December 2004. Its recommendations included:

- (1) Adoption of a broader, more comprehensive concept of collective security which recognizes that the interconnectedness of contemporary threats to security such as terrorism, civil war, and poverty.
- (2) Increasing preventive efforts to prevent threats from emerging rather than responding to threats after the fact.
- (3) Adopting clearer criteria for the use of force, including reaching an agreement on the definition of terrorism.
- (4) Reforming the institutions of the U.N., including expansion of membership in the Security Council from 15 members to 24 members.
- (5) Creating a new intergovernmental body to be known as the Peacebuilding Commission to deal with post-conflict peacebuilding.

(6) Reforming the Human Rights Commission.

While the High-Level Panel was carrying out its work, calls for reform of the United Nations' bodies and procedures grew in light of the developing oil-for-food scandal in Iraq and the sex scandals involving U.N. peacekeepers in Africa. Kofi Annan responded to all of these developments with his own report in March 2005, entitled "In Larger Freedom." The Member States of the United Nations then took both those reports and recommendations and began discussing what aspects of reform they could agree upon. The negotiations were to be finalized at the World Summit of Heads of State held at the U.N. Headquarters in New York from September 14-16, 2005.

On the eve of the summit, the negotiators issued a Draft Outcome Document outlining the results of their negotiations. The Document reaffirmed the commitment of the Members to the U.N. Millennium Development Goals, including the eradication of extreme poverty and hunger, achievement of universal primary education by 2015, increasing resources to combat HIV/AIDS, reducing infant mortality; promoting gender equality, and ensuring environmental sustainability. However, much of the final language of the Draft Outcome Document is vague and aspirational rather than containing concrete commitments for reform. Negotiators were unable to reach any agreement with respect to reform of the Security Council or agreement on a definition of terrorism.

Despite the overall lack of agreement on many of the proposed reforms, there were a few concrete commitments that did emerge from the summit. First, the Members endorsed the creation of a "standing Police Capacity to provide coherent effective and responsive start-up capability for the policing component of the UN peacekeeping missions and to assist existing missions."

Second, the Member States also decided to establish a Peacebuilding Commission as an intergovernmental body to bring together all relevant

actors to marshal resources and to advise on and propose integrated strategies for post-conflict peacebuilding and recovery. The Peacebuilding Commission is to begin its work no later than 31 December 2005. The Members further requested that the Secretary General establish a Peacebuilding Fund for post-conflict peacebuilding to be funded by voluntary contributions and a peacebuilding support staff. Similarly, the Members agreed to establish a Democracy Fund, also to be funded by voluntary contributions.

Third, the Members resolved to strengthen the Office of the U.N. High Commissioner for Human Rights by doubling its budget over the next five years and requiring more regular and streamlined communication between that office and other U.N. bodies, such as the U.N. Security Council.

Fourth, the Members resolved to create a new Human Rights Council, which would become one of the principal organs of the U.N. alongside the Security Council and the General Assembly. This elevation of human rights issues is certainly welcome, but the negotiators' failure to agree on any details is disappointing. The current Human Rights Commission only meets six weeks of the year and has 53 members who are selected based on geographic representation. Six weeks has proven to be an inadequate amount of time to deal with human rights crises that occur year-round. And selection of members based solely on geographic representation without taking into account the human rights records of those members has led to a decrease in the effectiveness and credibility of the Human Rights Commission. As a result, Secretary General Kofi Annan had recommended the creation of a smaller, standing body. Unfortunately, the Members provided no guidance as to the size or membership of the new Human Rights Council, instead leaving those issues to be resolved at a later date by the General Assembly.

Overall, the results of the summit are disappointing to those who wished for more broad-based and concrete reforms to address perceived inefficiencies and

failures of the U.N. system. However, the agreements that were reached are a step in the right direction. Perhaps the momentum created by the summit will carry the organization forward one small step at a time toward a more effi-

cient and effective future.

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International Practitioner's Deskbook Series: *Joint Ventures in the International Arena*, Darrell Prescott and Salli A. Swartz, Eds. (ABA SILP 2003)

Reviewed by: Christopher Scott Maravilla

Joint Ventures in the International Arena is the second in the American Bar Association's International Law Section's International Practitioner's Deskbook Series which aims to publish practitioner oriented guides on frequently arising issues in international practice. These books also serve as the textbooks for the International Practitioner's Workshop Series at the Section's annual meeting. Darrell Prescott, at the time of publication, was chair of the Section of International Law Publications Board and a partner at Coudert Brothers, and Salli A. Swartz was editor of the Section-published International Law News and a partner at Phillips, Giraud, Naud & Swartz in Paris. Joint Ventures is divided into six chapters each individually written by prominent practitioners in the area of cross border transactions. The book concludes with an Appendix comprised of: (A) Checklist for Joint Venture Agreements, (B) Sample Joint Venture Agreement, (C) Sample Corporate Joint Venture Agreement, (D) Sample Real Estate Joint Venture Agreement, and (E) a sample Agreement of Formation and Activities of Joint Venture in the Form of a Limited Liability Partnership. It concludes with an entire chapter dedicated to practical issues and guidance on international joint ventures including discussions on doing business in Europe, Argentina, Brazil, Chile, and China. Some of the topics addressed in this chapter are choosing a partner, getting into the country (i.e. obtaining work permits, choice of local counsel, and banking issues), operating the joint venture, and

ending the joint venture when necessary.

The overview chapter provides a working definition of a joint venture and discusses the most frequently raised legal issues in executing one. A joint venture or "strategic alliance" is defined herein as "a joint undertaking by two existing businesses in which they share risk (that is, loss and liabilities), profits, and control and/or management." The author also provides an alternative definition, far looser than her own, that a joint venture is "a business established by two or more parties to achieve a specific purpose. The business should share resources and not merely be a monetary investment. . . . A joint venture does not necessarily mean a jointly managed company. Either or both parties may form the management." More recently, there have been variations in the structure of joint ventures including reciprocal or "cross" ventures, multiparty joint ventures, "truncated" joint ventures, forward integration, backward integration, and multi-stage joint ventures. Generally, a new entity such as a corporation or limited liability partnership is formed to conduct the actual business of the joint venture. The new entity will enter into agreements with the joint venturers for intellectual property, capital in the form of loans, and distribution and sale agreements for the products manufactured by the new entity. These agreements are typically attached to the master agreement as exhibits. This chapter also raises the legal and business issues associated with forming a joint venture. The form of entity that the joint venture will

take is important for tax planning and local law may also impact the form of the entity. The financing must also be determined. The term of the joint venture should take "exit strategies" into consideration in the event the project is unsuccessful. Often the term is either arbitrary in years or left indefinite but there are strategic goals such as profitability and performance set in which if not met the joint venture will terminate. Finally, transfer of ownership interests must be addressed in the final agreement. Some of the types of restrictions used are rights of first refusal, right of first offer, drag-along rights, tag-along rights, Russian roulette, and options/forced sales.

Chapter 2 deals with joint venture governance. A high percentage of joint ventures fail partly because it is difficult to control a foreign joint venture in practical terms. Even if clauses are written into the agreement to insure control, the local partner may not abide by them, and litigation can be protracted and sour the relationship. The author of this chapter emphasizes the importance of choosing a partner wisely. This chapter goes on to discuss majority and minority ownership of the joint venture's corporate entity. Finally, the author concludes with practical advice on how to resolve deadlocks including discussions with higher level authority figures and even a buy-out agreement.

Chapter 3 addresses the tax considerations in the United States when forming an international joint venture. The common goals of structuring the transaction in light of United States tax considerations are to reduce the overall