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**Yale-UN Oral History**

**Interview with Paul Heinbecker**

**November 8, 2004**

**New York**

**Interviewer: Jean Krasno**

YALE-UNITED NATIONS ORAL HISTORY PROJECT

Paul Heinbecker

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INTERVIEWER-Jean Krasno

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Interview with Paul Heinbecker  
November 8, 2004  
New York City, New York  
Interviewer: Jean Krasno

Jean Krasno.

This is an interview with Ambassador Paul Heinbecker, the former ambassador to the United Nations from Canada. And today's date is November 8, 2004. Just as an introduction, could you tell us a little bit about yourself? Where were you born? Where you went to school? And when you got into the Foreign Service?

Paul Heinbecker.

I was born in Kitchener, Ontario, which is a city that was originally called Berlin, but whose name was changed during WWI because it was bad for business to have your products made in Berlin. So they picked the most patriotic name they could think of at that time from the Canadian perspective, and that was Lord Kitchener. So the name of the city became Kitchener. And I went to a school that changed its name several times. But it's now called Laurier University. It's gone through at least four name changes in my lifetime. Maybe they got the right one now.

Jean Krasno.

And then you went into the Foreign Service?

Paul Heinbecker.

I joined the Foreign Service after football practice one night because it was raining too hard, and it was too cold to walk home. I saw a sign on a bulletin board which said "Foreign Service Exam Tonight." And so I wrote it.

Jean Krasno.

So you decided to stay inside and keep dry. Then you must have some aptitude if you could pass the exam just like that.

Paul Heinbecker.

I must have. I don't know that I had any scholastic aptitude. Then I joined the Foreign Service, and I was posted in Ankara, Stockholm, Paris at the [Organization for Economic Cooperation and Development] OECD, Washington, Bonn, and New York as my final post.

Jean Krasno.

Wow! So you have a lot of experience. And, actually, in very interesting places.

Paul Heinbecker.

Six different posts: twice in the United States. I am not an expert on red states and blue states, but I know more than most foreigners do.

The current joke in Canada is: we understand that a lot of people in the blue states want to migrate to Canada. We would rather they just went to Ohio. Have you seen the map? The one that says "the Unites States of Canada?"

My last post was in New York. It was my first direct exposure to the UN. Before that my work was not particularly multilateral, having served in Ankara, Stockholm, Washington, and Bonn. That was all bilateral. I had served in the OECD also, but during my time in New York, I dealt with the International Criminal Court and with Iraq. Previously while in Ottawa, I also dealt with Kosovo, with Kyoto, with the abortive UN intervention into East Zaire. I also backstopped our UN delegation on the Security Council, where we promoted our Human Security agenda, notably the Responsibility to Protect, the International Criminal Court, the protection of civilians in conflict, etc. Bob Fowler was our Permanent Representative at the time of the sanctions in Angola and he became chairman of the Angola Sanctions Committee, which was really against [União Nacional para a Independência Total de Angola] UNITA.

And, if you are talking about how the Security Council has changed, that was one very significant change.

Jean Krasno.

I wanted to ask you about that. What years were you at the UN itself? What period of time? And then when did you serve on the Council?

Paul Heinbecker.

I was at the UN from August 2000 till December 31, 2003. And I was in the Council from August 2000 till December 2000.

Jean Krasno.

Just for the record, part of what we planned to look at here is what kinds of new tasks has the Council been taking on?

Paul Heinbecker.

This was not a new task. It was just done once. And that made it seem new.

Jean Krasno. Ok, that's interesting.

Paul Heinbecker.

In principle these sanctions committees were committees that were supposed to be monitoring the enforcement of UN Sanctions. But the Committees were basically "sleepy hollows." Nothing ever happened. No one expected anything to happen. But Ambassador Fowler who had served (I am a big fan of what he did) with our version of the Peace Corps in Africa, in CUSO- Canadian Union of Students Overseas. And, he hadn't served in Angola, but he was very, very aware of the Angolan story. And he was very, very upset by what Savimbi was getting away with.

And he wanted to take that on, to the point where he actually went to the CIA and said, "Is this guy still your son of a bitch?" I think that was his, his term. And the CIA said, "Not any more." Fowler needed to know what he was getting into. He took this on, and

he got the sanctions committee to agree to establish an expert panel to look into Angola sanctions enforcement. The panel came back and found several sitting African heads of government were on the take, and several other governments, Bulgarian and Ukrainian governments, if not on the take were at least turning a blind eye to the “blood diamonds” for weapons trade. The Belgian diamond dealers, the Tel Aviv diamond dealers and some others were also. There were a number of places where diamonds were being smuggled.

All were turning a blind eye towards the consequences of the diamond trade, where the diamonds came from, and the bloody consequences of war. The panel found a guy by the name of Victor But who was a Russian from Kazakhstan, who had 28 airline companies, who was delivering weapons into Angola in return for diamonds, blood diamonds. And based on this information, with Fowler's encouragement, the panel named names.

Jean Krasno. He named names.

Paul Heinbecker

Named names, named But, named the president of Togo, Burkina Faso, the Congo for sure. The report named several of the presidents as having taken diamonds in return for favors on the delivery of arms, with credible witnesses. And all of a sudden, that cooperation dried up. And UNITA, some of the senior people, some senior people who survived, attributed their ultimate defeat to the sanctions having dried up their sources of weapons and money. Then subsequently, the UN replicated that approach with regards to Sierra Leone.

Jean Krasno.

I think sanctions on UNITA, were the first time ever there have been sanctions on a non-state actor.

Paul Heinbecker.  
Right.

Jean Krasno.

So that was also new. And Fowler actually made the Council and the sanctions committee really proactive.

Paul Heinbecker.

Right. And then the UN did the same in Sierra Leone, which also targeted a non-state actor [the RUF]. The UN did the same thing in Liberia, targeting a state actor, Charles Taylor [then President of Liberia]. They were doing some of that sort of thing in Congo as well. So it became a very effective technique. I don't know whether it's continuing.

Jean Krasno.

But, it's interesting that they revealed the cooperation among the diamond dealers as well as heads of states.

Paul Heinbecker.

Well, one of the benefits or the leverage the panel had was that the US Congressmen were threatening to introduce legislation on blood diamonds. That was enough of a threat to the diamond industry to induce cooperation. They did not want to have the black eye

of being debated in the US Congress. And they decided that the better course of wisdom was to cooperate. And then you found DeBeers taking the position that there were not going to buy anymore blood diamonds from Angola, insisting on proper certification. Then the Kimberly Process followed by which they established the way of registering diamond production and a diamond treaty to make it more difficult, at least, for the cheating to continue.

Jean Krasno.

That's a significant step.

Paul Heinbecker.

It brought a lot of angst in Antwerp and in other diamond cutting, diamond-polishing, and producing sorts of places.

Jean Krasno.

Now how much of that, do you think, depended on the personality of Ambassador Fowler and how much of it was evolutionary, that stronger enforcement of sanctions was taking place?

Paul Heinbecker.

I would say it was close to a hundred percent dependent on Fowler. There was also a significant NGO who was working in this area and who was embarrassing the diamond companies. But without Fowler's doing the legislative step, and naming names, I don't think it would have worked. I think his courage, and I would say that of the Canadian government which was backing him up, was crucial. How many governments are prepared to criticize the sitting head of state of another country?

Jean Krasno.

Exactly, very few, if any.

Paul Heinbecker.

You don't hear that very often. Or have one of its people do it. And we did it.

Jean Krasno.

Canada and Fowler did it. That was important. That was really important.

Paul Heinbecker.

Right.

Jean Krasno.

Now, do you think it was also made possible because of the end of the Cold War?

Paul Heinbecker.

Well, the end of the Cold War made it possible to separate the United States from South Africa. Savimbi was supported by the South African government, the Botha administration. South Africa provided a place of sanctuary, a place to go to buy military gear and so on. In that respect, the Cold War mattered. Because the United States had supported UNITA. The Russians supported the government, the [Movimento Popular de Libertação de Angola] MPLA.

Ok. I'll tell another story, another war story. The International Criminal Court: the United States was trying to exempt itself from the jurisdiction of the Court, for all United States' personnel and for anybody who worked for the United States government. So basically it was a blanket exemption, which even covered mercenaries. We were against that; we, Canada, were against it. And we and the British -- and the British took more credit than they probably ought to have -- the British had been very strongly advocating openness in the Council's procedures.

Jean Krasno.

The British?

Paul Heinbecker.

The British, less of the closed door stuff. Meetings were rarely open. Remember how when we were kids we used to see the Security Council on TV? Recently, activity in the Security Council has always been happening in a little back room. We were taking the view that transparency was extremely important and so were the British.

Then along comes the International Criminal Court issue, when the United States was trying to achieve this exemption. The British tried to hold the whole discussion behind closed doors, probably not to embarrass the US and themselves. I wrote a letter to UK Ambassador Jeremy Greenstock, requesting that there be a public debate. And he wrote back a letter to the effect that, "most people disagree, that it is not appropriate in this case," or something like that. Nobody challenged him. So I wrote a second letter, this time copying to the entire membership.

Jean Krasno,

At this time were you on the Council?

Paul Heinbecker.

No, we were off Council. But we were insisting now on transparency. So I wrote a letter, the second letter to the president of the Council, copied it to everybody in the UN. If there ever was an issue that required transparency, this was it. When permanent members are looking for exemptions, you know, from provisions that everybody else must abide by, that would be inconsistent with the UN Charter and inconsistent with the rationale for the creation of the Statute of International Criminal Court. So it was a subject that demanded public debate. The [European Union] EU understood. Jeremy wasn't able to withstand the arguments. The British were doing the United States' bidding as they almost always do. And they were trying to close down the discussion so that no one would be embarrassed. And we forced it into the open.

Jean Krasno.

So, that is interesting and this was when Jeremy Greenstock was President of the Council?

Paul Heinbecker.

Right. He was the Council President.

Jean Krasno.

For that month? So that's interesting. The EU was then able to put pressure on him?



Paul Heinbecker.

Ah, everybody else was embarrassed. Jeremy promised a debate after the matter had been voted. We wanted to debate it before they had voted.

I wasn't happy with the outcome; it didn't block the US getting a temporary exemption. They got a renewable exemption.

Jean Krasno.

It was for one year?

Paul Heinbecker.

It was about a year. But then the US invaded Iraq, and it didn't bother bringing the issue back because it was never going to pass.

Jean Krasno.

Way too embarrassing!

Paul Heinbecker.

Yes, that's right.

Jean Krasno.

So they let it go?

Paul Heinbecker.

So they let it go.

Jean Krasno.

And it expired?

Paul Heinbecker.

And it expired. So that was a way to change the Council. How else was the Council changed? In two positive ways I would say because I think it required transparency. A negative way to change the Council was the development of a convention of meetings between Kofi Annan and the P-5. The P-5 became a kind of "inner-council." And the Secretary-General convened them. He conveyed his blessing on this approach.

Jean Krasno.

But weren't meetings of the P-5 going on anyway, all the time?

Paul Heinbecker.

No, it wasn't. No, they occasionally met but it became a kind of a regular meeting with the Secretary-General. The argument was they had to be able to discuss things privately. As Fowler put it in his time, "They were unwilling to discuss things in front of the children." The other ten members were not there.

There is nothing in the Charter that prevents it, but there is certainly another way of interpreting the Charter. And the idea that some countries couldn't be trusted to hear



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these discussions, who were they afraid of? This is really the big guys exercising their exclusive tendencies.

There are no issues which put P-5 legitimately against everybody else. It was preposterous. It's just that the P-5 found it convenient for their own reasons, not to have to explain what they were doing to the other elected members.

I used to say in the Council: "Which elected members are you so afraid of that you can't risk discussing this issue with them present, or do you think we're not mature enough?"

Jean Krasno.

Did you actually say that?

Paul Heinbecker.

Yes.

Jean Krasno.

You said that in Council?

Paul Heinbecker.

Or, "you think we're so persuasive with such powerful arguments?"

Fundamentally these are the five most powerful countries on Earth, more or less, leaving German and Japan aside. It was preposterous that they couldn't discuss or didn't want to discuss this stuff just because they liked the exclusivity of it. It wasn't really that they couldn't trust the rest of us to understand or to cooperate, because you know this is not rocket science we're talking about. This is just a desire to reinforce their special status. The Secretary-General should never have lent himself to that, in our view. We resisted. But I don't think we have beaten it. You know, you can't stop people from meeting. But the Secretary-General's participation conveyed a certain legitimacy that we thought was not right.

Jean Krasno.

Now, one of the things I wanted to ask you is related to international law. And I am wondering whether there has been somewhat of a shift in the Council to take international law into consideration more than it may have in the past. During the Cold War, everything was pretty much reserved to security issues. Now, has there been more of a shift where members take a look at international law more broadly when making a decision?

Paul Heinbecker.

I disagree with that notion.

Jean Krasno.

Ok.

Paul Heinbecker.

I think you can't say it is. During the Cold War, the issue was not so much international law as it was international legalistic interpretations. Right now, one of the few things the Russians have left is a sort of insistence on legalistic interpretations. That's what they were doing all along. And I guess you could argue that all the things that happened were considered more or less, to some extent or another consistent with international law. For example, the Russians never "invaded" Hungary: they were "invited" in.

Jean Krasno.

Oh, I see they needed an explanation, a legal explanation.

Paul Heinbecker.

Legalistic explanation. They argued the "invitation" made it legal. It was legitimate, and it was written, and, therefore, it was true.

Jean Krasno.

But that was a justification.

Paul Heinbecker.

That was just a justification. Everybody took care to make a legal argument for what they were doing. I think you were right that people began to say: "After the Cold War, you know, now the Security Council can work the way the founders wanted it to." And international law probably became of greater priority. But you know, no one condoned the Russian invasion in Afghanistan. The Russians did it. It was not that they got for themselves some kind of invitation. But nobody actually accepted that as being legitimate, and they never accepted it as being legal, either.

Vietnam? Probably the same thing. In other words, the government in South Vietnam "invited" the American participation. In that sense, it was legal. But it was likely, ultimately, not legitimate. Whereas, maybe the legitimate and legal came together after the Cold War.

Jean Krasno.

Ok, interesting.

Paul Heinbecker.

You know. When you were talking about the Gulf War I, the first war against Iraq when it invaded Kuwait. It was a clear-cut case of aggression. Everybody agreed that the response to that was both legal and legitimate. And you began to see that sort of thing happening. The UN began to play increasingly the role of intervener.

In a legal sense, I think the legal arguments became stronger. But at the same time the United States, to my regret, was beginning to take the view that it, as a country, was exceptional. And that the legal arguments didn't actually apply because the US was "bearing an exceptional burden;" it was doing exceptional things, and therefore, wanted exceptional treatment and dispensation. But this exceptionalism was to lead to the American position on the International Criminal Court. There can't be two laws. No Member State can be exempt from the law. Exemption is bad for the law.

And the argument that we made also was that we didn't think that the US should be able to exempt from the law people whom they were sending abroad with guns. We thought that all peacekeepers ought to be subject to the same laws, like everybody else, including the American peacekeepers.

And I personally never believed that the US position was really meant to protect US G.I.s. I am sure that it was in some of the people's minds, but more fundamentally I think it was the Henry Kissinger syndrome over Chile that was what was really motivating people, that is to say, the fear of seeing senior officials dragged in front of a court some place.

Jean Krasno.

That was the US concern?

Paul Heinbecker.

It became evident after the Cold War that there were more and more internal conflicts. And if you are going to save succeeding generations from the scourge of war, you're going to have to intervene. And the UN actually brought itself increasingly to intervene until it had some near catastrophes in places like Sierra Leone. These interventions in civil wars, where you had two or three or four parties, were complex. And the UN just began to get involved. But if you look at Sierra Leone, Central African Republic, East Timor, there were lots of places where the UN got involved. Even in the case of Eastern Zaire and Rwanda after the genocide, there was a kind of UN intervention.

Jean Krasno.

And the Congo now.

Paul Heinbecker.

The Congo now. Some people, me included, think that this should happen in Darfur. There is this readiness, even a disposition to countenance intervention. But it is argued over and disputed over.

Jean Krasno.

Is there more weighted concern about Human Rights violations? Genocide? And that sort of thing?

Paul Heinbecker.

Without question. Another area we tried to bring to the Council's attention was the protections of civilians in armed conflict. It comes as a shock to most people to find out that peace keeping missions never had the mission of protecting people. If you ask Canadians what they thought peacekeepers were doing, they thought they were protecting people. But if you look at the mandates, it wasn't there until actually Canada insisted it be there. I think the first place we got such a mandate, was in Sierra Leone.

Jean Krasno.

To protect people?

Paul Heinbecker.

To protect people. That the commander -- and this is post-Rwanda -- that a commander was instructed, within the limits of his resources, to protect innocent civilians.

If somebody was being murdered on the other side of the Congo, you weren't expected to march across the Congo to stop it. But if it were happening in your area of responsibility, that you could actually do something about it; you were obliged by your orders to do something. And that was new.

Jean Krasno.

Speaking of Sierra Leone, were you in the Council during May 2000?

Paul Heinbecker.

No, that was Bob [Fowler]. I came in August.

Paul Heinbecker.

I went to Sierra Leone with the Security Council at the end of September 2000.

Jean Krasno.

Oh, did the Security Council go to Sierra Leone?

Paul Heinbecker.

Yes. That was another innovation. Because even for countries like the United States, the British, French, Russians -- with the big intelligence services -- even for them it was useful for the permanent representatives to go and see what was going on, to talk to people. And for us it just made it possible to make much sounder decisions, because our understanding was deeper.

Jean Krasno.

Now, recently they announced that the Security Council is going to Nairobi, Kenya to talk about Darfur. They're going to Africa, but they're not going to Chad or Darfur. But when the media listed the times that the Council had gone into the field, they never listed Sierra Leone.

Paul Heinbecker.

No, we went to Sierra Leone; it was the first time I think.

Jean Krasno.

They went to East Timor, and they went to...

Paul Heinbecker.

I think that East Timor is afterwards.

Jean Krasno.

Afterwards.

Paul Heinbecker.

They went also to Kosovo, but that was before me. We went all over Sierra Leone. But we didn't only go to Sierra Leone.

Jean Krasno.

Ok , this is another change.

Paul Heinbecker.

That's another change.

Jean Krasno.

When the Council is willing to go...

Paul Heinbecker.

And see for itself. We went to Sierra Leone. The issue that we were talking about in Sierra Leone was that it was recognized that peace in all of West Africa was at stake. You know, with Sierra Leone, it was basically Charles Taylor of Liberia who was causing a lot of upset. So we went to Sierra Leone; we went to Liberia. And it was very interesting. In Liberia we all sat down with Charles Taylor, all 15 members.

Jean Krasno.

All fifteen.

Paul Heinbecker.

All fifteen. Jeremy Greenstock was the leader on this particular mission. He made excellent use of British colonial instincts. He gave Charles Taylor a real talking to, telling him, "You can't do this." It was really interesting.

I don't know where it came from, but it came out of some deep, recessive British instinct. He was very tough. Jim Cunningham was the US representative. The US had just passed sanctions on Liberia. So he didn't say very much, but it was clear that he was there and was supporting this lecture to Taylor.

And Charles Taylor listened. Then we saw the president of Sierra Leone. We went all over Sierra Leone.

Jean Krasno.

There was still a war there then?

Paul Heinbecker.

We were right up to the territory involved where they could have shot us, if they wanted to. We were flying in a bloody, old Russian helicopter, the kind that kept crashing.

Jean Krasno.

I know, one crashed not too long ago, and every body was killed.

Paul Heinbecker.

There are at least two or three that have crashed.

Jean Krasno.

The MIAs.

Paul Heinbecker.

Yes.

Jean Krasno.

I know, I was in Sierra Leone about a year and a half ago. I was there filming for a documentary and taking MIA helicopters. And the Ukrainians fly them.

Paul Heinbecker.

Yes, that's right. The pilots and crew are Ukrainian. They did a good job for us but it was no fun.

Jean Krasno.

That's actually extremely interesting. Now the Council's agenda is filled with Civil Wars and the Council recognizes instead of being uninformed on the issue, they are going and seeing for themselves.

Paul Heinbecker.

They went also to the Congo.

Jean Krasno.

This leads into the next question. The Security Council in the Charter is to maintain international peace and security. But, is the Council redefining security? Is the whole issue of security changing?

Paul Heinbecker.

Well, not necessarily security but the **threat** to international peace and security. The threats have changed. We now recognize that conflict inside a country is a threat to international peace and security if it's going to result in vast numbers of people being pushed over its borders, if it's going to result in ethnic clashes that could ignite some hostilities someplace outside the country. So if we are thinking, for example, of Hutus and Tutsis in Burundi or their counterparts in Eastern Zaire, and to some extent if they are going to lead to tensions in Uganda or not. If something is happening inside one country, it can very well have ramifications in another, usually, in terms of refugee camps. But there is also the question of illegal arms that threaten international peace and security. I think the definition of what the threat is, has become broad.

If you are getting hot pursuit across borders. That's another threat to international peace and security. If the Rwandans are going across borders chasing people in the Congo then that becomes a question of international peace and security.

Jean Krasno.

Are moral issues taking more of the central role? Moral authority?

Paul Heinbecker.

Human rights, absolutely. We, Canada, sponsored the International Commission on Intervention and State Sovereignty and they produced the report called "The Responsibility to Protect." And I think that has become an important report. There is a lot of resistance to the idea of diminishing sovereignty, especially on the part of poor countries who were colonies in the living memories of their permanent representatives

here and in their governments at home. They don't want to give anybody a pretext for reappearing in their territory again.

So it's not surprising that there has been a lot of resistance. Nevertheless, it's so essential now. People are sovereign. I think there has been some slippage in that over Darfur, partly because of Iraq. The Iraq story has caused problems. The United States has made the idea of intervention suspect. The first justification for Iraq was the Weapons of Mass Destruction. The second justification was terrorism. Neither of those stood up. Then it became a question of the issue of saving Iraqis from the terror of their government. So it was a humanitarian intervention. That makes it possible for people like the Sudanese government to undermine arguments for intervention. They argue with their neighbors not to intervene. And a lot of third world countries who are already suspicious agree with them. You know, "it's supposed to be about humanitarian intervention but it's really about our oil." Or it's about being Muslim.

Jean Krasno.

Ok, and then they have an audience.

Paul Heinbecker.

They have an audience. I think the American attack on Iraq has handed an argument to people like the Sudanese that they might not otherwise have had. And they are using it with the Arabs and with the third world and with other Muslim countries.

Jean Krasno.

So the Council can't get the nine votes.

Paul Heinbecker.

And the Council seizes up because of that; it can't get the nine votes. And you know that because of Iraq the US is suspect in this particular case in the eyes of the Russians and Chinese who not coincidentally have their own interests in nonintervention there as well.

Jean Krasno.

Well, that's true. This is very hypothetical, but would it have made any difference in the US elections in 2004?

Paul Heinbecker.

This particular issue? Darfur?

Jean Krasno.

Yes, Darfur.

Paul Heinbecker.

Darfur, probably, but not very much. There is a view that is paradoxical, that the US election turned out right for UN reform.

Jean Krasno.

In what way?

Paul Heinbecker.



Because any serious reform has to be resolved by Charter amendment. And Charter amendment would have a harder time getting through the Republican Senate. So if in the unlikely event that UN reform is pleasing to the administration, they would have a better chance of persuading the Senate to ratify than a Kerry administration.

Jean Krasno.

That's very interesting.

Paul Heinbecker.

Yes, but the other side of that story is it's more likely that Kerry would have been sympathetic to UN reform and that Bush would not be sympathetic. But if he were sympathetic to the change, if he decided he wanted to do something or he wanted to burnish his multilateral credentials by UN reform, he could probably deliver.

Jean Krasno.

What about weapons, disarmament? Does the Council pay any more attention to looking at certain weapons than before? Weapons of Mass Destruction? Landmines?

Paul Heinbecker.

No, no, not actually any of the above. We tried to get the Kashmir issue into the Council. Here we had India and Pakistan with nuclear arms carrying out low-level war with each other in Kashmir. But the Council wasn't engaged in that issue. That was preposterous. The Indians and Pakistanis basically agreed on one thing and that is that they did not want the Council to be involved.

Jean Krasno.

The Pakistanis as well?

Paul Heinbecker.

That was my impression. Yes. I've never understood for sure why. I guess they thought about avoiding attention to their nuclear programs. But the Council hasn't done anything. The Council currently is doing the same thing, as you can see, on Iran. A major effort is going on to try to persuade the Iranians to freeze their nuclear developments. And if they do, it won't go to the Council. The Council is being used as a kind of a stick.

Jean Krasno.

Oh, because there is a threat of imposing sanctions.

Paul Heinbecker.

Yes, but also, from the realistic point of view, it's very hard to see how you can sanction somebody who hasn't broken a law. The Iranians haven't actually broken any law. They have a right to produce nuclear power. Other people can do it. So if we bring it to the Council, it could turn out to be a pyrrhic victory.

Jean Krasno.

Yes, right, because the Council will say, "well, it's not actually illegal."

Paul Heinbecker.

The UN doesn't want that because the UN believes that what the Iranians are doing is a bad idea, and shouldn't be done. And it doesn't want a technicality of the Non-proliferation Treaty to be used for a decision in the UN that actually says that what the Iranians are doing is not illegal.

Jean Krasno.

So it's risky?

Paul Heinbecker.

It could be argued that this (US) administration is pushing this issue so hard in part they also want to embarrass the UN with it. Now the positive interpretation is that they'd like the UN to take this off their backs and pass sanctions. Because that's an intermediate step to more serious action. I think basically that's right, but there are some people in the administration who might not mind embarrassing the UN, also.

Jean Krasno.

There were the sanctions on Iraq and the role of [United Nations Special Commission] UNSCOM in removing the WMDs. And their only leverage in Iraq was to release the sanctions. You know, "if you cooperate, the sanctions will be lifted." It was frustrating; it was full of problems but in the long run the work of UNSCOM has been a good thing for the UN.



Paul Heinbecker.

Oh, without question.

Jean Krasno.

We had some issues coming out of the Oil-for-Food scandal that was going on. But the sanctions and the inspections were intended to prevent what? The Iraqis from developing WMDs. And guess what! They did it.

Paul Heinbecker.

It worked. UN sanctions did kill a lot of innocent Iraqis and persons, which was one of the problems; that in fact was one of the things that Colin Powell came to office to fix. He wanted to maintain the sanctions and make them less inhumane.

That was the reform that was going on when the US administration kind of shifted gears and decided they wanted to have a war. But there were discussions going on led by Colin Powell on preserving the sanctions, not preserving them in exactly the form they were but preserving their effectiveness. Others in the US, NGOs, governments, and a lot of others were saying: "it's all very well to prevent the weapons being built, but there are a lot of innocent people dying, and surely we can accomplish two goals: not starving people and also demanding their WMDs be destroyed. The French always wanted that. One of the things I found so irritating in this whole Iraq business is the notion of the French as being so unprincipled. The French, I am sure they had their interests.

Jean Krasno.

The UN was distributing goods to the border of central Iraq and handing them over to the Iraqis for distribution within that area, and they didn't really do it.

Paul Heinbecker.

Effectively, the Kurds had controlled the Kurdish area with the support of the international community and the protection of the no-fly zone.

The Iraqis remain a quasi-sovereign government. As for the rest of Iraq, it was agreed – I don't know by whom but I would presume broadly -- that the Iraqis themselves would be the most efficient in delivering the food. They were in charge.

Jean Krasno.

And they believed that they would? Or was it a sovereignty issue?

Paul Heinbecker.

They were a sovereign government; they were in charge; food and medicine had to be distributed. How was the UN going to insist on doing it? Did you want to invade and do that? The Iraqis refused to cooperate. What were we going to do then? Remembering that we had stopped short at the Iraqi border in 1991. And a lot of people thought we should have finished the job then.

Jean Krasno.

At that time?

Paul Heinbecker.

We (Canada) were surprised that it ended as it did and that Saddam was left standing. We were part of the coalition. Perhaps it was the right decision. I am not even saying that it's a wrong decision. I regret that George Bush Senior's explanation of why this is not a good idea, of why going to war was not a good idea, was not heeded by his son.

Jean Krasno.

The other question that I have, which comes up in my international law class, is when a hegemon refuses to act multilaterally, what can you do? And I have said that there are lots of things you can do. Canada can jump in and take a leadership role on an issue that's morally correct, like landmines.

Paul Heinbecker.

Yes, or the Criminal Court.

Jean Krasno.

Or the Criminal Court. And then the US becomes isolated. So, what do you think about that as a premise?

Paul Heinbecker.

Well, it is more than a premise. In fact, I think, it's a kind of standard operating procedure. The US has always been, for years and years, a reluctant multilateral partner. Think about the treaties that haven't been ratified. I mean, treaties often don't even go to the Senate. So we pass the law of the sea treaty; we pass the Convention on Prohibiting All Forms of Discrimination Against Women; we pass the Convention on the Rights of the Child; we pass the Landmines Convention; we pass the International Criminal Court. These are all worth doing on their own merits, whether the US participates or not. None of these things, except Kyoto and arguably some of the nuclear treaties, none of them is

invalidated by the absence of American participation. The way I put it is, "We work with the United States where we can and we work around the United States when we must." And some day, as with the Law of the Sea Treaty, the United States will decide that it is in its own interest and participate. Or in terms of the Landmines Treaty, it decides that most of it is in its interest and it will cooperate with most of the treaty, informally. So, the idea that somehow if the United States is not involved in it, we should forget about it, is not valid because then a lot of stuff wouldn't get done. The rest of the membership thinks it's valid and we're doing it. But some things require US participation if they are to succeed. Take Kyoto, for example. Because the climate is uniquely a common property, the United States needs to be a part of the outcome.

Jean Krasno.

Because its contribution to the problem is 36%. It's huge.

Paul Heinbecker.

That's right. Now if the United States at the same time says "We're not going to follow Kyoto exactly, but we going try to get the same results or something similar," that doesn't invalidate what the others are doing. And at the same time, on landmines there was a preposterous argument that because the United States was not participating, it was somehow not valid. But it was valid. If you are destroying stockpiles of landmines as we have done, vast stockpiles, which otherwise could be used by some unscrupulous person, that was worthwhile.

And the amount of landmine clearance that is taking place is much greater, and those mines would be killing people or maiming people. So, it's worth doing. But we should have done the same thing on small arms. The issue of small arms is much bigger; there're too many sources. It's too difficult, I think.

Jean Krasno.

Now, these kinds of things are not taken up by the Council. Is there any particular reason why they are not taken up by the Council?

Paul Heinbecker.

The Council is not in the treaty-making business because it's only the 15 countries. Treaties have to be agreed to by the vast membership. The Council is not the cabinet of the UN. Some people think it is. Especially people who come from the parliamentary system. People think that the General Assembly is the legislature or the Parliament and the Council is the Cabinet, and Kofi Annan is the President or the Prime Minister. None of the above is true.

Jean Krasno.

Right. And then they get frustrated that it doesn't work the way they think. The Security Council creates law, but it's *ad hoc* law.

Paul Heinbecker.

That's right, not through treaties, but by decision. The counter-terrorism resolution right after 9/11 was a decision. The terrorists were proscribed from using financial systems and countries were prohibited from giving terrorists safe haven. Those were decisions that were legally binding under international law.

Jean Krasno.

Yes. That brings me to another question. Now, I don't know what you call it. But some people have been calling it legislation to a certain extent. When the Council is saying that every member state has to do a particular task and then has to report back.

Paul Heinbecker.

That all depends on the definition of legislation.

Jean Krasno.

Yes, but it is a new thing. In what way is it new?

Paul Heinbecker.

It's not new. I don't think it is the case that these are the only decisions that the Security Council has ever made that asks all countries to do something and report back. To prescribe something. Sanctions, those are decisions; they were legally binding.

Jean Krasno.

But in that sense they weren't required to report back to the Council.

Paul Heinbecker

No, this is more intrusive, although sanctions committees of the Council were expected to monitor the implementation of Council decisions.

Jean Krasno.

Yes. This is more intrusive.

Paul Heinbecker.

There were decisions that were legally binding, on all members. And sanctions are the obvious ones. And there may have been other things, but sanctions, for sure.

So in that sense it's not new. But in the sense it is directing behavior; I guess you can say that it is requiring changes in domestic legislation.

Jean Krasno.

That's it. That's I guess what I am getting at, because with the terrorist legislation to a certain extent they do have to change, at least, the process by which they do domestic issues, monitoring borders, looking at bank accounts.

Paul Heinbecker.

We (Canada) have done a lot of things as a consequence of Council decisions.

Jean Krasno.

You have?

Paul Heinbecker.

Yes, to bring ourselves into compliance. For example, with the Criminal Court, to put it the other way around, when we expressed our dismay that the United States would be given an exemption. We didn't think it was a legal decision of the Council. We thought it

was illegal or at least extra-legal. Because the Council didn't have authority to exempt the United States. Action was taken under Chapter VII but there was no issue of international peace and security involved. The only time the Council can act under Chapter VII, which is where it becomes mandatory, is when there is a threat to international peace and security. So either UN peacekeeping, as was the issue, was a threat to peace and security or the International Criminal Court was a threat to international peace and security, both of which propositions were nonsense.

Therefore as both were preposterous, the test for Chapter VII was not met and therefore the Council was acting illegally. That's new, too.

Jean Krasno.

That's new. Very interesting, that's very interesting. We're getting into really great issues. I guess the last question is: the Security Council is meeting more frequently now. How frequently are they meeting? Why are they doing that?

Paul Heinbecker.

I don't know how frequently they're meeting these days, but it's orders of magnitude more frequently than it was in the past. It used to be sort of once a week or once a month. Now it's basically daily and sometimes two or three times a day depending on what's going on. It doesn't make them more effective, necessarily. It does make them busier.

Jean Krasno.

When you were on the Council what was the pattern? Were you having to run over there every day?

Paul Heinbecker:

It was everyday, including weekends, late nights. I think what's new about that is that people believe the Council ought to be engaged in the major issues of the day. Whereas it may not have been the case in the Cold War, where engaging the Council led to some kind of deadlock. Now there is an expectation that the Council will do something.

Jean Krasno.

Ok. There is an expectation that has changed.

Paul Heinbecker.

We met day and night when the Intifada II broke out. Sharon had gone to the Temple Mount with all kinds of policemen present. Palestinians protested and were shot. The Council met and we condemned the Israeli action. The United States abstained, and everybody else voted in favor.

Jean Krasno.

So they didn't veto that one?

Paul Heinbecker.

They didn't veto that one. That was a case where people were kept being killed. There were more and more funerals, more and more protests, and more and more people getting killed. At each funeral there was more violence. So we met practically around the clock.

But there was an expectation that the Council should take note and try to affect a situation on the ground.

You should talk to David Malone. He was here. People who served twice give you a better sense of some of the things that have changed, I think.

Jean Krasno.

David was deputy?

Paul Heinbecker.

David was deputy in 1991. He was a deputy when Louise [Frechette] arrived. He is back in Canada.

Jean Krasno.

But, if the Council is meeting on an issue, what does that give to the international community? Maybe they don't make any decision, but they are meeting on the issue. What does that offer?

Paul Heinbecker.

It offers the possibility that something will happen. That's good and a bad thing. If you are a victim of something, or if you are provoking somebody, people in Srebrenica, people in Bosnia, people in Rwanda may well have had an expectation that the Council, because it was engaged, would do something. And when it didn't do anything, they were betrayed and abandoned. Those lessons I think have been learned. It's hard, but it was learned in Sierra Leone, and in East Timor. To my mind, the UN absent a Russian veto, would have approved action in Kosovo.

Jean Krasno.

Because later the reverse took place in the Council. Later there was a proposal introduced into the Council to condemn the [NATO] action, which lost.

Paul Heinbecker.

That's right; it lost 12 to 3. And there is no doubt in my mind in retrospect that if the issue had been taken to the General Assembly, it would have passed 150 to 30 or something like that, to support an action in Kosovo, to save the Kosovars.

Jean Krasno.

Oh, to support action?

Paul Heinbecker.

Yes, whereas in the Iraq case the opposite was going to happen.

Jean Krasno.

I have been doing some research on "Uniting for Peace." People tend to think that no one uses "Uniting for Peace" anymore. But, in fact, it does get used periodically. But the question has come up on Kosovo: Why not on Kosovo?

Paul Heinbecker.

You are asking absolutely the right person. As it happens, Canada had the chair of the Security Council in February 1999.

Jean Krasno.

Oh, Ok, so right before?

Paul Heinbecker.

Right before. And we raised the issue of the "Uniting for Peace resolution" informally three times. We were warned off each time that we raised it, we should not bring this to the Assembly. In the first instance, we came to the conclusion that there were no doubts the Russians would veto in the Council. And if the Russians did then the Chinese would likely follow suit. They wouldn't do it on their own, but they would follow suit. It didn't matter; all it took was one.

And there were a number of NATO countries, who were barely satisfied with the "connect the dots" legal positions they had taken. All of the prior UN Security Council resolutions were taken as a kind of expression of intent to act, a bit like in Iraq. The NATO members were able to sort of hold their noses and act. If this, then that, and the other happens, then it is Ok to act.

Jean Krasno.

Now, were you thinking about the Genocide Convention or what were you thinking about when you were talking about "connecting the dots?"

Paul Heinbecker.

No, well, it was the Security Council had passed a number of resolutions threatening dire consequences if Serbs did anything. But it was always presumed, and it was the case, that the decision to act would have to be made by the Council itself.

We (Canada) were taking the view that the Council had basically expressed itself which probably under strict interpretation of international law was a dubious proposition.

But in the circumstances, then we thought we might go for a Uniting for Peace resolution. But we didn't do that. There were two reasons: one was we thought that the Yugoslavs, who were founding members of the Non-Alignment Movement, probably had enough chits out there or enough sympathy that it could have taken time and we might have got a watered-down resolution.

Meanwhile people were dying. So, did we really want to go to the General Assembly for the sake of legal propriety? On the day before the bombing began by NATO -- You can look it up in the UNHCR annals -- there were 490,000 displaced people inside Kosovo, and refugees across the border. The total was about 490,000 before NATO acted.

Jean Krasno.

It was already a crisis.

Paul Heinbecker.

There was already a crisis, and you don't have to be a Talleyrand to figure out that action in the General Assembly would take a long time.



That would have given the Serbs a lot more time to be carrying out ethnic cleansing. So, we thought in the circumstances, that was not a good thing. There was another angle which people have lost sight of and that is the P-5 didn't want it. None of the P5 wanted a "Uniting for Peace resolution." Because none of them wants to deprecate the value of a veto. So, if the Russians had vetoed and we had gone to the General Assembly and gotten the Uniting for Peace resolution, it would have diminished the value of the veto of all veto holders because the lesson would have been: you may think you have the veto, but if you use it, it can be gotten around. None of them really wanted that. They all like the power of having a veto.

Jean Krasno.

Yes, and because in order actually to justify using Uniting for Peace, you have to show that the Council is unable to act.

Paul Heinbecker.

Unable to act.

Jean Krasno.

And there really has to be a veto to show that they are unable to act.

Paul Heinbecker.

A better legal argument may have been that even in the absence of a veto, lack of the engagement of the Council meant the Council was unable to act.

Jean Krasno.

You mean that using the veto is an action?

Paul Heinbecker.

Yes. The Council had effectively shown it could not act by virtue of not acting.

Jean Krasno.

But in 1956 in the Suez crisis, you were dealing with French and the British vetoing things, so that was considered "unable to act."

Paul Heinbecker.

The other thing they have all taken care to do ever since was always to add the line that says that an issue remains on the Council agenda. That keeps the "unwashed" from debating the issue in the General Assembly.

Jean Krasno

"The Council will remain seized of the matter."

Paul Heinbecker.

That's right. That is so the General Assembly cannot take it up legally. And get around the big powers that way.

Jean Krasno

Canada is a member of NATO. So, this is a question for you. When NATO was created, it was created as a regional organization, right?

Paul Heinbecker.  
Right.

Jean Krasno.

And it was created with the understanding that under Article 52 of the Charter they can take up a regional matter first, but if they are going to use force, then they need to clear that with the Security Council; something like that.

But the thing was that NATO, logically, if it were going to take action, would never have to get the authority of the Security Council because Russia had a veto on the Security Council. And NATO was created to defend Europe from the Soviet Union. So, don't we have a little problem with international law?

Paul Heinbecker.

No, because under Article 51 the right to self-defense is absolute. You then have to inform the Council, but you don't have to ask the Council's permission to act in self-defense. The NATO Charter is a self-defense agreement. It's a cooperative treaty; everybody comes; "all for one and one for all." We will all come to the aid of somebody who is attacked or threatened to be attacked.

Jean Krasno

Thank you, So it's possible in self-defense.

Paul Heinbecker.

Kosovo was a clear-cut humanitarian case. You've got people arguing the damndest things. Because the American administration was afraid that the Congress wouldn't support action unless it was perceived to be in US interest, you start getting these arguments about how this was somehow in the US strategic interest. But it never was, it never was.

But it was said that way in order to be able to argue, "well we wouldn't act unless it was in our strategic interest." But it wasn't. Milosovic was no Hitler; he wasn't going to be marauding across Europe.

Jean Krasno

There were no diamonds.

Paul Heinbecker.

There were no diamonds, there were no riches; there was no choke point at which international trade was going to be stopped. There was no strategic reason

The Serb action was going to further destabilize the Balkans. That was a peace and security argument, but the place has been unstable lots of times in the past without the

international community responding by intervening. Some have argued that there was a strategic interest to see that NATO didn't disintegrate. NATO had to act because ethnic cleansing was happening on NATO's border. And if it didn't act on this issue, when would it act?

That's about as close as you can come to a strategic interest or national interest argument. Beyond that, the cause was Serb brutality.

Jean Krasno

I was trying to answer to some of the legal questions. I totally think that it was strategically correct, and in terms of humanitarian issues, correct. But then everybody argues the legal aspects of it. I was saying, though: "NATO never was under the authority of the Security Council, because how could it ever act?" But you say, that in terms of self-defense, it always had its own right to act.

Paul Heinbecker.

Right, right.

Jean Krasno

So, was the NATO action in Kosovo legal?

Paul Heinbecker.

We always said it was.

Jean Krasno

It was legal, why?

Paul Heinbecker.

Because of the "connect the dots" position. That's the Canadian position.

Jean Krasno

That's because of the previous resolutions?

Paul Heinbecker.

The previous resolutions would effectively have authorized it.

Jean Krasno

So not referring back to the Genocide Convention. That we need to uphold the Genocide Convention that was not part of the argument?

Paul Heinbecker.

No, no. The Genocide Convention proved that making a finding of genocide was too difficult. We can't even prove genocide to anybody's satisfaction in Darfur, which is much worse. The Genocide Convention is necessary, but it's very difficult to operationalize.

Jean Krasno

To reach that level of proof. So what about crimes against humanity?

Paul Heinbecker.

It's not part of the Genocide Convention. It is part of the International Criminal Court, which is the test now. But the International Criminal Court doesn't direct people to invade. It's just holds them accountable.

Jean Krasno

It's just a court.

Paul Heinbecker.

That's right, to hold people accountable.

Jean Krasno

So, do we need a new treaty?

Paul Heinbecker.

No, you need a new understanding. That's what the High Level Panel is trying to do. You need a new understanding of the limits and meaning of sovereignty.

Jean Krasno

All right.

Paul Heinbecker.

If you take the view as the Commission [on the Responsibility to Protect] did, that the most sacred and fundamental duty of a state is to protect its citizens, and if it can't or won't, then that responsibility devolves to the international community. That's what they were trying to argue. So if a government is brutalizing its people, or people are otherwise being brutalized and the government can't or won't stop it, like in Congo, then the international community has a responsibility to act.

Jean Krasno

It has the responsibility. I thought that language, "the responsibility to protect" was really good language, indeed.

Paul Heinbecker.

I would have liked to see "the right to be protected." Not "right to intervene" because that is just a license for all the old colonial powers to act, but a right to be protected.

Jean Krasno

Right. As a human right, the right to be protected. But as far as the international community is concerned it assumes the responsibility to protect, and the right to be protected.

Paul Heinbecker.

I guess you can argue that. We may already have a right to be protected.

Jean Krasno.

But there is no international law on crimes against humanity. I mean other than the Court. But then the Court only takes that specific case which is after the fact.

Paul Heinbecker.

I think you can argue that crimes against humanity would meet the test of violating international peace and security. The Security Council exists to preserve international peace and security. If crimes against humanity are taking place, then, ipso facto, peace and security has not been maintained.

Jean Krasno.

Well, I have run out of the questions that I had written down here. We could probably go on talking about this, but I think it's actually been really, really enlightening. For me, I think it's been a really, really interesting conversation.

Paul Heinbecker.

Well, I have to write a book one of these days. I am going to write book. And I am not going to write a memoir. I have a title. It's called *Canada, the United States, and the Gathering Danger*. Or maybe just *Canada and the Gathering Danger*. It's open who the danger is.

Jean Krasno.

Thank you so much for agreeing to be interviewed.



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