

REFORMING THE UNITED NATIONS

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On 24 October 1945, the Charter of the United Nations entered into force. The Organization is thus celebrating its 60th anniversary this year.

The purpose of establishing the United Nations was, to quote the Charter, “to save succeeding generations from the scourge of war”. The Charter lays down purposes and principles, which the members of the Organization pledge to respect.

It goes without saying that every organization needs reforming. In reality, the United Nations has been the subject of continuous reform ever since its establishment. The fact that the Organization was not able to function as intended during the Cold War is one important aspect to be borne in mind. The same goes for the period following the fall of the Berlin Wall. After the initial euphoria, the members of the Organization realized that there were a number of conflicts that had been kept under the carpet during the Cold War and the standoff between East and West. These issues now became a major challenge to the Organization.

But there were also moments when the members of the Organization were able to join hands and come to common understandings on how to act. One such instance was the Millennium Assembly in September 2000 (the Millennium Summit). On that occasion, the General Assembly of the United Nations was able to adopt a resolution, the Millennium Declaration, in which they agreed to a number of goals to be reached by a certain point in time – the Millennium Development Goals (MDGs).¹

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¹ A/RES/55/2. Millennium Development Goals to be achieved by 2015: Halve extreme poverty and hunger; achieve universal primary education; empower women and promote equality between men and women; reduce under-five mortality by two-thirds; reduce maternal mortality by three-quarters; reverse the spread of disease, especially HIV/AIDS and malaria; ensure environmental sustainability; create a global partnership for development, with targets for aid, trade and debt relief.

THE FORK IN THE ROAD

In 2003, however, not least because of the armed attack on Iraq, the United Nations came to a point where it was felt that a more fundamental assessment of the functioning of the Organization was necessary. In his statement before the General Assembly in September 2003, Secretary-General Kofi Annan made his famous reference to “a fork in the road”:

Excellencies, we have come to a fork in the road. This may be a moment no less decisive than 1945 itself, when the United Nations was founded. At that time, a group of far-sighted leaders, led and inspired by President Franklin D. Roosevelt, were determined to make the second half of the twentieth century different from the first half. They saw that the human race had only one world to live in, and that unless it managed its affairs prudently, all human beings may perish. So they drew up rules to govern international behaviour, and founded a network of institutions, with the United Nations at its centre, in which the peoples of the world could work together for the common good. Now we must decide whether it is possible to continue on the basis agreed then, or whether radical changes are needed.²

In November 2003, the Secretary-General appointed a High-level Panel on Threats, Challenges and Change. Its main mandate was to make proposals to strengthen the UN collective security system.

On 1 December 2004, the panel presented its report – “A more secure world: our shared responsibility”.³ The report contained a number of proposals, both related to the MDGs and to the functioning of the Organization and its different organs. In particular, the panel presented two alternative solutions for enlargement of the Security Council.

On 21 March 2005, Secretary-General Kofi Annan presented his own proposal – “In larger freedom: towards development, security and human rights for all” – drawing inspiration, *inter alia*, from the High-level Panel.⁴

² <http://www.un.org/News/Press/docs/2003/sgsm8891.doc.htm>

³ UN doc. A/59/565.

⁴ UN doc. A/59/2005. “In preparing the present report, I have drawn on my eight years’ experience as Secretary-General, on my own conscience and convictions, and on my understanding of the Charter of the United Nations whose principles and purposes it is my duty to promote. I have also drawn inspiration from two wide-rang-

The Secretary-General's proposal generated an intense discussion among the members of the United Nations under the leadership of the President of the General Assembly, H.E. Mr. Jean Ping of Gabon. These deliberations resulted in several versions of a document that would form the basis for a resolution to be adopted by the High-level Plenary Meeting of the General Assembly in September 2005, in part as a follow-up to the outcome of the Millennium Summit.

A version of this document, published on 5 August 2005, was used as a basis for the final negotiations. Several proposals for amendments were made, sometimes far-reaching. One delegation even attempted to delete any reference in the text to the MDGs. Intense negotiations followed.

On 16 September 2005, the General Assembly adopted a resolution representing the final outcome of the High-level Plenary Meeting of the General Assembly, entitled "2005 World Summit Outcome" (hereinafter "the Summit resolution").⁵

To many, this document was a great disappointment. In particular, all references to disarmament that had been elaborated in the previous versions had been deleted. The General Assembly also failed to find a solution to the question of the composition of the Security Council.

But there were also many positive aspects. The references to the MDGs, to the new concept "responsibility to protect" and to the decision to establish a Peacebuilding Commission should be mentioned in particular.

In the following, some of the aspects of the Summit resolution will be discussed with focus mainly on the legal and institutional elements. To cover the whole area is not possible within the limits of a short article.⁶

Apart from some general aspects on the UN Charter and international law, the issues addressed will be the Peacebuilding Commission and the rule of law; terrorism; the composition of the Security Council; responsibility to protect; the use of force; the workings of the Economic and Social Council (ECOSOC);

ing reviews of our global challenges – one from the 16-member High-level Panel on Threats, Challenges and Change, whom I asked to make proposals to strengthen our collective security system (see A/59/565); the other from the 250 experts who undertook the Millennium Project, which required them to produce a plan of action to achieve the Millennium Development Goals by 2015." (para. 4)

⁵ A/RES/60/1.

⁶ The text of the resolution itself is about three times the length of what is intended for present article.

the proposal to establish a Council of Human Rights to replace the present Commission on Human Rights; gender equality and empowerment of women; and Secretariat and management reform.

THE UNITED NATIONS CHARTER AND INTERNATIONAL LAW

Before going into the details, it is important to note that the members of the United Nations start by reaffirming in the Summit resolution their faith in the Organization and their commitment to the purposes and principles of the Charter and international law. These are considered indispensable foundations for a more peaceful, prosperous and just world. The members also reiterate their determination to foster strict respect for them.

Another important aspect is that the Member States reaffirm the United Nations Millennium Declaration. They also reaffirm their common fundamental values, including freedom, equality, solidarity, tolerance, respect for all human rights, respect for nature and shared responsibility, and state that these are essential to international relations.

The members further state in the resolution that they are determined to establish a just and lasting peace all over the world in accordance with the purposes and principles of the UN Charter.

In view of the development of the last few years, it is of particular significance that the members also reaffirm the vital importance of an effective multilateral system in accordance with international law. At the same time they underline the central role of the United Nations. They acknowledge that peace and security, development and human rights – interlinked and mutually reinforcing – are the pillars of the United Nations system and the foundations for collective security and well-being.

From a legal perspective it is important to note the acknowledgement that good governance and the rule of law at the national and international levels are essential for sustained economic growth, sustainable development and the eradication of poverty and hunger.

PEACEBUILDING COMMISSION AND THE RULE OF LAW

The Member States recognize that the world is facing a whole range of threats, often interlinked, that require their urgent, collective and more determined response. A better cooperation among the principal organs of the UN is required. Members are determined to take effective collective measures for the prevention

and removal of threats to the peace and to suppress acts of aggression or other breaches of the peace.

One specific aspect addressed is the needs of countries emerging from conflict. This observation is based on lessons learnt from previous peace operations, as reflected *inter alia* in the report of the Panel on United Nations Peace Operations, the so-called Brahimi report, transmitted by the Secretary-General to the Presidents of the General Assembly and the Security Council in August 2000.⁷ The members of the UN have now decided to establish a Peacebuilding Commission as an intergovernmental advisory body.⁸

To someone who has had the benefit of working within the UN Secretariat it is obvious that all the peacekeeping and peace enforcement missions, including the Blue Helmets and supporting structures, are addressing the symptoms of what is wrong, rather than the wrong itself.

A closer look at any conflict in present-day world would lead to the same conclusion: human rights are violated and there is no proper rule of law system established. It is therefore important, when there has been a conflict, that attention is given to the reconstruction and institution building that is necessary for the country or the region to recover from conflict.

An effort of this kind requires the coordination of all the relevant actors. Best practices must be developed and predictable financing must be ensured. These efforts are of utmost importance to prevent conflict or assist the conflict recovery and prevent that the situation relapses into renewed conflict, as has often been the case in the past.

It is to this end that the Peacebuilding Commission is established. The resolution contains fairly detailed provisions on the composition of the Commission. The intention is that the Commission shall meet in various configurations upon invitation of an Organizational Committee, and a multi-year standing Peacebuilding Fund for post-conflict peacebuilding should also be established.

Further work on this by the General Assembly is necessary, but the resolution provides that the Commission should begin its work no later than 31 December 2005.

In this context it is interesting to note that the members support the idea of establishing a rule law assistance unit within the Secretariat in order to strengthen the United Nations activities to promote the rule of law, including

⁷ UN doc. A/55/305-S/2000/809.

⁸ Para. 97.

technical assistance and capacity building.⁹ A decision on this matter is subject to a report by the Secretary General.

In the view of this author, this is a most important element of the reform. As a matter of fact, legal technical assistance should be one of the main activities of the United Nations and others in the future.

Attempts were made a few years ago to map the activities in this field within the United Nations system. Reference is made to the United Nations website.¹⁰ However, what is lacking is a more general strategy for providing legal technical assistance. In developing such a strategy, the first step should be to chart all the efforts, not only by the United Nations and other intergovernmental organizations, but also by non-governmental organizations and civil society.

An effort should then be made to organize the work in such a manner that countries could be approached and be given technical assistance also in situations where there is no immediate risk for conflict but where the country in question falls short of providing a safe legal environment. Such situations carry the seeds of what might some time in the future develop into a conflict that threatens international peace and security.

It should also be born in mind, and this is recognized in the resolution, that one of the most important factors for development is foreign direct investment. It is therefore necessary to create a reasonably safe legal environment in order to attract such investments. To achieve this in as many countries as possible will be a very important factor for preventing conflict in the future.

TERRORISM

One of the most contentious issues in the United Nations during the past few years has been the question of definition of terrorism. Several conventions have been adopted, sector by sector, to combat this scourge.¹¹ Earlier this year, the General Assembly was able to adopt yet another convention in this field, the International Convention for the Suppression of Acts of Nuclear Terrorism. The treaty was opened signature during the summit in September.¹²

The aim is, however, to negotiate a comprehensive convention against terrorism. As a matter of fact, the text of such a convention was completed in October 2001, except for one crucial provision. The events of 11 September

⁹ Para. 134 (e).

¹⁰ <http://www.un.org/law/technical/technical.htm>

¹¹ For the latest available information, see UN doc. A/60/228.

¹² <http://untreaty.un.org/English/TreatyEvent2005/List.asp>

2001 had brought States together, but in the end they were not able to reach an agreement on the provision containing the definition of terrorism.

The issue was discussed by the High-level Panel, and its report contained a proposal for such a definition.¹³ This proposal was later endorsed by the Secretary-General.¹⁴

In spite of this, in the end, the Member States were not able to agree upon a definition to be included in the Summit resolution. However, the resolution contains a provision where the members strongly condemn terrorism in all its forms and manifestations, committed by whomever, wherever and for whatever purposes, as it constitutes one of the most serious threats to international peace and security.¹⁵ They stressed the need to make every effort to reach an agreement on and conclude a comprehensive convention on international terrorism during the 60th session of the General Assembly.

¹³ UN doc. A/59/565, para. 164: According to the High-level Panel the definition of terrorism should include the following elements:

- (a) Recognition, in the preamble, that State use of force against civilians is regulated by the Geneva Conventions and other instruments, and, if of sufficient scale, constitutes a war crime by the persons concerned or a crime against humanity;
- (b) Restatement that acts under the 12 preceding anti-terrorism conventions are terrorism, and a declaration that they are a crime under international law; and restatement that terrorism in time of armed conflict is prohibited by the Geneva Conventions and Protocols;
- (c) Reference to the definitions contained in the 1999 International Convention for the Suppression of the Financing of Terrorism and Security Council resolution 1566 (2004);
- (d) Description of terrorism as “any action, in addition to actions already specified by the existing conventions on aspects of terrorism, the Geneva Conventions and Security Council resolution 1566 (2004), that is intended to cause death or 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”.

¹⁴ UN doc. A/59/2005: “I endorse fully the High-level Panel’s call for a definition of terrorism, which would make it clear that, in addition to actions already proscribed by existing conventions, any action constitutes terrorism if it is intended to cause death or serious bodily harm to civilians or non-combatants with the purpose of intimidating a population or compelling a Government or an international organization to do or abstain from doing any act. I believe this proposal has clear moral force, and I strongly urge world leaders to unite behind it and to conclude a comprehensive convention on terrorism before the end of the sixtieth session of the General Assembly.” (para. 91)

¹⁵ Para. 81.

In this context it is also important to stress that any effort to combat terrorism must comply with members' obligations under international law, in particular human rights law, refugee law and international humanitarian law, as stated in the resolution.¹⁶

One of the measures that the Security Council has taken in order to combat terrorism is to list individuals and entities on sanctions list. This has put the human rights of such individuals and entities in jeopardy. The matter was highlighted in a recent judgment by the Court of First Instance of the European Communities.¹⁷

This case has brought the forefront the fact that Article 103 of the UN Charter means that the Charter and, consequently, resolutions of the Security Council prevail over national law, including legislation adopted at the regional level. It is therefore necessary for the Security Council, as foreseen in the Summit resolution, to ensure that fair and clear procedures exist for placing individuals and entities on sanctions lists and for removing them, as well as for granting humanitarian exemptions.¹⁸

In the view of this author, when adopting such procedures, the Security Council must see to it that there is a judicial review at the final stage, as required by Article 14 of the International Covenant on Civil and Political Rights and Article 6 of the European Convention on Human Rights and Fundamental Freedoms.

Considering the supremacy of the UN Charter and the decisions by the Security Council it is simply not acceptable that the Council establishes regimes that violate the important human rights elements of the UN Charter and the conventions for the protection of human rights. Furthermore, it is the common view of many experts that to combat terrorism with methods that

¹⁶ Para. 85.

¹⁷ Judgment of the Court of First Instance of the European Communities in cases T-306/01 and T-315/01 of 21 September 2005, Yusuf et Al Barakaat International Foundation / Council and Commission. The case concerned in particular a Swedish national who had been included in a list established in accordance with Security Council resolution 1267 (1999). The effect of this listing was *inter alia* that the person in question was unable to access his bank accounts. The Court of First Instance found that the European Community is competent to order the freezing of individuals' funds in connection with the fight against international terrorism. In so far as they are required by the Security Council of the United Nations, these measures fall for the most part outside the scope of judicial review. They do not infringe the universally recognized fundamental human rights.

¹⁸ Para. 109.

violate human rights would not only violate those rights – it would simply be counterproductive.¹⁹

THE COMPOSITION OF THE SECURITY COUNCIL

As mentioned, one of the most contentious issues during the discussions leading up to the Summit resolution was how to reform the Security Council. Suffice it in this context to say that there were several proposals, in particular one forwarded by Brazil, Germany, India and Japan, all aspiring for permanent seats on the Council. However, Member States were unable to agree.

The Summit resolution contains language to the effect that the members support early reform of the Security Council as an essential element of the overall efforts to reform the UN in order to make it more broadly representative, efficient and transparent. Members commit themselves to continuing their efforts to achieve a decision to this end. The General Assembly is to review progress on the reform by the end of 2005.

It is understandable that many States have difficulties in accepting that the composition of the Council reflects the geopolitical situation 60 years ago. One can therefore expect that the present efforts will have some outcome.

However, more important than changing the composition of the Council is that the Council actually fulfils the role that the UN Charter assigns to it. Member States have conferred on the Security Council, acting on their behalf, primary responsibility for the maintenance of international peace and security.²⁰

This is where the Council sometimes has failed in the past. Unless a reform of the composition of the Council is coupled with a change of attitude, there is actually not much point in the reform.

It is also noteworthy that the Summit resolution does not address the elements that the High-level Panel and the Secretary-General had suggested for consideration in situations where the Council contemplates action. When considering whether to authorize or endorse the use of military force, the Council should in their view come to a common understanding. This would entail a common view on how to weigh the seriousness of the threat; the proper purpose of the proposed military action; whether means short of the use of force might plausibly succeed in stopping the threat; whether the military option is

¹⁹ See for example the Madrid Agenda, containing a comprehensive response to terrorism, available at <http://english.safe-democracy.org/agenda/the-madrid-agenda.html>.

²⁰ Article 24 of the UN Charter.

proportional to the threat at hand; and whether there is a reasonable chance of success.²¹

Even if it would not be advisable to lay down precisely the considerations that the Council must give to any situation in which international peace and security is threatened, it might be useful for the Council to consider how to deal with these matters in some structured manner. Another advantage would be that it would make it easier for the media and the general public to understand the reasoning of the Council and assess whether the Council acts appropriately in any given situation. Obviously, there are lessons to be drawn from what happened in Rwanda in 1994, in Kosovo in 1999 and most recently in Sudan (Darfur).

USE OF FORCE

The Summit resolution also addresses the provisions in the UN Charter on the use of force.²² Member States reiterate their obligation to refrain in their international relations from the threat or use of force in any manner inconsistent with the Charter. Of particular interest is a clear declaration that they are determined to take effective collective measures for the prevention and removal of threats to the peace and for the suppression of acts of aggression or other breaches of the peace. They also indicate the importance of strictly abiding by the Charter and the principles of international law while at the same time stressing their commitments to multilateralism.

This commitment should be self evident. But in view of what has happened over the last few years, it is important to note that Member States now stand united behind this fundamental Charter principle.

It should also be noted that Member States reaffirm that the relevant provisions of the Charter are sufficient to address the full range of threats to international peace and security, and that the Security Council has the authority to mandate coercive action to maintain and restore international peace and security. That statement is an authoritative answer to the question whether it is necessary to amend the Charter because of the new types of threats. It is reassuring that the Charter stands the test.

²¹ UN doc. A/59/2005, para. 126.

²² Paras. 77-80.

RESPONSIBILITY TO PROTECT

One of the most interesting news in the Summit resolution is the part on responsibility to protect. This notion, formerly referred to as humanitarian intervention, was developed by the International Commission on Intervention and State Sovereignty²³ and the High-level Panel. It was also supported by the Secretary-General.²⁴

The Summit resolution clearly provides that each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity.²⁵ The most important element is that the General Assembly now clearly indicates that the international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means to help protect populations from those crimes. Reference is in this context is made to Chapters VI and VIII of the Charter.

The Summit resolution then adds that Member States are prepared to take collective action through the Security Council, in accordance with the Charter and including Chapter VII on a case-by-case basis, should peaceful means be inadequate and the national authorities manifestly fail to protect their populations from the crimes in question. Such action could be taken also in cooperation with the relevant regional organizations.

The Summit resolution contains an indication that the General Assembly should continue consideration of the concept responsibility to protect. It will be interesting to see what further discussions will entail in view of the fact that this is where the Organization has failed in the past – and continues to fail in particular with respect to the situation in Darfur.

THE ECONOMIC AND SOCIAL COUNCIL

One of the UN organs that have had difficulties to effectively perform its functions is the Economic and Social Council (ECOSOC). Attempts have been made in the past to reform this body, but much remains to be done. A particular complication is that there are other actors at the international level with important functions closely related to those of ECOSOC, in particular the Bretton Woods institutions.

²³ <http://www.iciss.ca/pdf/Commission-Report.pdf>

²⁴ UN doc. A/59/2005, para. 135.

²⁵ Paras. 138-140.

In the Summit resolution, the General Assembly reaffirms the role of ECOSOC as a principal body for coordination, policy review, policy dialogue and recommendations on issues of economic and social development. ECOSOC also has a role for the implementation of international development goals agreed at major UN summits and conferences, and in particular the MDGs.

To achieve these goals, the resolution sets out five elements where ECOSOC will focus in the future. The Member States understand also that in order to fully perform these functions, the organization of work, the agenda and the current methods of work of ECOSOC should be adapted.²⁶

A COUNCIL OF HUMAN RIGHTS

Another question of great importance is how to deal with human rights issues within the United Nations. Criticism has been directed against the present Commission on Human Rights because of its composition and because of the fact that States with insufficient human rights records have been elected to the Commission.

²⁶ According to para. 155, the five elements are to:

- (a) Promote global dialogue and partnership on global policies and trends in the economic, social, environmental and humanitarian fields. For this purpose, the Council should serve as a quality platform for high-level engagement among Member States and with the international financial institutions, the private sector and civil society on emerging global trends, policies and action and develop its ability to respond better and more rapidly to developments in the international economic,
- (b) Hold a biennial high-level Development Cooperation Forum to review trends in international development cooperation, including strategies, policies and financing, promote greater coherence among the development activities of different development partners and strengthen the links between the normative and operational work of the United Nations;
- (c) Ensure follow-up of the outcomes of the major United Nations conferences and summits, including the internationally agreed development goals, and hold annual ministerial-level substantive reviews to assess progress, drawing on its functional and regional commissions and other international institutions, in accordance with their respective mandates;
- (d) Support and complement international efforts aimed at addressing humanitarian emergencies, including natural disasters, in order to promote an improved, coordinated response from the United Nations;
- (e) Play a major role in the overall coordination of funds, programmes and agencies, ensuring coherence among them and avoiding duplication of mandates and activities.

In some instances it has been alleged that States have been elected in order to be able to prevent that human rights issues related to themselves or friendly States are raised in the Commission. This has greatly contributed to a negative perception of the Commission in particular in some countries. In many instances the criticism is unfair. However, it is a fact that the authority of the Commission has been cast in doubt.

In his report, Secretary-General Kofi Annan had proposed that the present Commission be replaced with a smaller standing Human Rights Council. He indicated that Member States would need to decide if they wanted the Human Rights Council to be a principal organ of the United Nations or a subsidiary body of the General Assembly. In either case, the members of the Commission would be elected directly by the General Assembly by two thirds majority of members present and voting.

The idea behind this proposal was to accord human rights a more substantive position, corresponding to the primacy of human rights in the UN Charter.

In the document presented on 5 August 2005 by the President of the General Assembly, there were fairly elaborate provisions on the Human Rights Council, designed as a subsidiary organ under the General Assembly. These were, however, deleted from the Summit resolution.

In the Summit resolution Member States resolved to create a Human Rights Council for the purpose of strengthening the UN human rights machinery. The Council will be responsible for promoting universal respect for the protection of all human rights and fundamental freedoms for all, without distinction of any kind and in a fair and equal manner.

To this end, the Council will address situations of violations of human rights and make recommendations. Effective coordination will also be an important element. However, as indicated, the resolution does not contain any elaborate provisions, but a request to the President of the General Assembly to conduct open, transparent and inclusive negotiations, to be completed as soon as possible during the 60th session. The mandate, modalities, functions, size, composition, membership, working methods and procedures of the Council are to be established.

Needless to say, the dilemma that presently exists in relation to the Human Rights Commission will not go away just because the new Council is composed in a different manner and elected by the General Assembly. Political considerations will no doubt be at the forefront also in the future.

Not least because of this, it is important that the Human Rights Council will allow non-governmental organizations and civil society to participate in the meetings in the same manner as has been the case in the Commission.

SECRETARIAT AND MANAGEMENT REFORM

The question of Secretariat and management reform is almost like a mantra in UN history. In many instances the focus on the Secretariat is actually an attempt by Member States to put the blame on the Secretariat where they themselves fail to perform as foreseen by the UN Charter.

Over the last few years, the Secretary-General has made great efforts to streamline and coordinate the work of the Secretariat and, indeed, of the United Nations system. Institutions like the Senior Management Group (for coordination of the work within the Secretariat) and the Chief Executive Board (for coordination of the work within the United Nations system) have been established. The Summit resolution also commends the Secretary-General's previous and ongoing efforts to enhance the effective management of the UN and his commitment to update the Organization.

A most interesting feature in the Summit resolution is therefore that Member States now focus not only on the Secretariat but also on their own responsibilities and emphasize the need "to decide on additional reforms in order to make more efficient use of the financial and human resources available to the Organization and thus better comply with its principles, objectives and mandates".²⁷

One important element in this reform is to make more relevant the work of the General Assembly. After all, this is the body in which all Member States have a seat and a vote. What is striking to an outside observer is that whenever there are major issues to be discussed by the Organization, there is a tendency to convene a conference. This has been done in matters relating to environment, women, social development, racism, etc. While this is commendable as such, it is striking that these matters are not dealt with by the most representative organ of the UN – the General Assembly.

Instead, the General Assembly has a tendency to delve into matters of a more limited importance. It is therefore a sign of health that the General Assembly and other relevant organs will now review all mandates older than five years originating from resolutions of the General Assembly and other organs, a review that will be complementary to the existing periodic reviews of activities.

But, as always, there are measures that can be taken within the Secretariat. The General Assembly requests a proposal on the framework for a one-time staff buyout to improve personnel structure and quality. Furthermore, measures will be taken to improve the UN oversight and management processes. The Secretary-General is requested to submit an independent external evaluation of the United

²⁷ Para. 163.

Nations, including the specialized agencies', auditing and oversight system. Additional measures are to be taken to enhance independence of the oversight structures. An independent oversight advisory committee is foreseen.

A number of other measures will also be taken, in particular in support of a stronger system-wide coherence. Several measures will be taken in this respect.

GENDER EQUALITY AND EMPOWERMENT OF WOMEN

One important element of the Summit resolution is gender equality and empowerment of women.²⁸

As a point of departure, Member States express their conviction that progress for women is progress for all. It is therefore necessary to eliminate gender inequalities in education, in the labour market, with respect to women's right to own and inherit property, with respect to access to productive assets and resources, including land, credit and technology. Furthermore, it is necessary to eliminate all forms of discrimination and violence against women. The protection of women and the girl child during armed conflicts is mentioned in particular.

The Summit resolution also stresses that it is necessary to take further steps within the UN in mainstreaming gender perspectives in the policies and decisions of the Organization.²⁹

The focus on women and gender cannot be emphasized enough. As a matter of fact, this is one of the most important elements for creating a world in which people can live in dignity and with their human rights respected.

There is a direct correlation between the level of development in any country and the level of education of the women in the same country. The future will show that States that do not actively engage in enhancing the rights of women will seriously lag behind in their development in comparison with States that make advances in this work.

CONCLUDING REFLECTIONS

It is fair to conclude that, over the years, the United Nations has served humanity well. But it is obvious that the Organization must do better and needs reforming.

²⁸ The resolution contains several references relating to women (paras. 43, 47, 58, 59, 116, 128 and 134) and to gender (paras. 59, 68, 116, 124, 128, 134, 166 and 169).

²⁹ Para. 166.

In the view of this author, the real need for reform is, however, not so much within the Organization itself as within its Member States.

The most important element in the UN reform is therefore that Member States are honest and take a critical look at their own performance instead of blaming the UN for their own shortcomings. Some of the elements of the Summit resolution indicate that Member States now realize this.

Ideas have been forwarded to create a democratic caucus within the UN. It is true that many Member States are not democracies and fall far short of what is required from a sovereign state in contemporary society. One could thus argue that there is nothing wrong in creating an organized cooperation among States that are democracies.

However, there are problems with this idea. One concerns the question who should decide which States qualify for membership in such a caucus. The other is that it might be counterproductive to exclude some members of the Organization from certain aspects of its work. A much more positive approach would be for States that are democracies to interact with States that are not, in an effort to influence the latter with the strength of their democratic arguments.

There is also another problem, namely the fact that, regretfully, there are democracies that do not fully respect human rights standards and the rule of law. When this occurs, one must question the credibility behind the attempts to create a democratic caucus. In addition, the fact that these States do not live up to the required standards weakens the arguments for those who try to influence the development towards democracy and the rule of law.

It goes without saying that the ability of the UN to efficiently and effectively provide collective security to a large extent depends on the support that the Organization gets from its most powerful member.

During the period leading up to the summit in September, UN reform issues were discussed by a Task Force mandated by the U.S. Congress. The Task Force came up with proposals that in many respects were similar to the Secretary-General's. However, the Task Force focused on the UN from the perspective of American interests and America's international responsibilities. In so doing, the Task Force asserted that there is "nothing exclusive" about the UN as regards American interests and that the UN is "one of the tools" that America, its allies, and other democracies use cooperatively on the basis of shared values.³⁰

Such a statement calls in question the U.S. commitment on a core point, namely the obligations that flow from Article 103 of the UN Charter: "In the

³⁰ http://www.usip.org/un/report/usip_un_forward.pdf

event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.”

This provision is fundamental to the system of collective security and this is why the UN sometimes is exclusive, and must be exclusive, and why the UN Charter must prevail. As a matter of fact, it is in the light of this provision one should read the judgment of the Court of First Instance of the European Communities of 21 September 2005 referred to above.

It goes without saying that Article 103 is of utmost importance in relation to the Security Council, the organ on which Member States have conferred primary responsibility for the maintenance of international peace and security.

Against this background and in particular the questionable conclusions of the U.S. Task Force, it is reassuring that the Summit resolution contains a clear commitment to an effective multilateral system, emphasising the central role of the United Nations.

One of the most important components in an efficient and effective UN is a well functioning Security Council. It is therefore important to find a solution to the question of the composition of the Council. Needless to say, the five permanent members – China, France, the Russian Federation, the United Kingdom and the United States of America – have a special responsibility here, since they are in a position to block any amendment to the UN Charter.

But this matter requires careful consideration. Because of its failure to act in certain situations in the past – Rwanda, Kosovo, Darfur, to mention the obvious examples – the Council’s authority is at stake. As indicated above, changing the Council’s composition will not make a difference in this respect unless the Council demonstrates that it is prepared to take action when it is obvious to a well-informed general public that action by the Council is required.

In this context, it should also be borne in mind that there is a limit to any enlargement. If there are too many members, there is a risk that the Council may not be able to act when required. One must not lose sight of the fact that it is the Council’s duty as laid down in Article 24 of the UN Charter that is paramount.

Therefore, in the view of this author, international peace and security is not served simply by enlarging the Council. A reform of the Council must also be coupled with a change of attitude and a preparedness by its members to consider the interest of maintaining or restoring international peace and security in the interest of all Member States – in other words to see things through a global prism rather than in a narrow national perspective.

In addressing the summit on 14 September 2005, Secretary-General Kofi Annan said:

We must restore confidence in the Organization's integrity, impartiality, and ability to deliver – for the sake of our dedicated staff, and those vulnerable and needy people throughout the world who look to the United Nations for support. It is for their sake, not yours or mine, that this reform agenda matters. It is to save their lives, to protect their rights, to ensure their safety and freedom, that we simply must find effective collective responses to the challenges of our time. I urge you, as world leaders, individually and collectively, to keep working on this reform agenda – to have the patience to persevere, and the vision needed to forge a real consensus.³¹

A successful UN reform must be supported by a solid majority of its Member States. It requires that all members engage and that their leaders demonstrate statesmanship. A particular responsibility rests with States that are in a position to contribute and provide assistance to the UN. The members of the European Union should be mentioned in particular.

But it is obvious that there will be no viable reform of the UN without the support of the U.S. A competent U.S. leadership is therefore just as important today as it was in 1945 when the Organization was founded. To an attentive observer it should also be clear that the U.S. needs the support of the UN just as much as the UN needs the support of the U.S.

This year, we celebrate the centenary of the birth of Dag Hammarskjöld, Secretary-General of the United Nations 1953-1961. The following quotation from a speech that he delivered in 1956 is just as valid today as it was then:

The principles of the Charter are, by far, greater than the Organization in which they are embodied, and the aims which they are to safeguard are holier than the policies of any single nation or people.³²

The world needs the United Nations, and its members therefore have a duty to continue reforming the Organization so that it can fulfil its noble goals.

³¹ <http://www.un.org/apps/sg/sgstats.asp?nid=1669>

³² From a statement before the Security Council on 31 October 1956.