Addressing the 21st Century Threats to International Peace and Security:

The Reform of the UN from a European Perspective

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ÉTUDE

Preface

Créée dans le contexte de la guerre froide pour garantir la paix et la stabilité de l'ordre international, l'Organisation des Nations unies avait vocation à évoluer. Mais le débat sur son avenir tient surtout au sentiment que les institutions et les moyens dont elle dispose ne se sont pas suffisamment adaptés aux évolutions du système international. L'ONU a peu évolué au cours des dernières décennies, ce qui a entraîné un décalage toujours plus manifeste entre les principes qu'elle défend en matière de paix et de respect des droits de l'homme d'une part, et ses capacités effectives d'autre part. Nombre de secrétaires généraux se sont essayés à la réformer au cours des dernières années. Boutros Boutros-Ghali avait déjà établi des agendas d'action pour la paix, le développement et la démocratie dans les années 1990 face à la multiplication des conflits armées dans l'après-guerre froide et des opérations de maintien de la paix de l'ONU dans le monde. Mais l'absence de moyens budgétaires, de forces armées, de convergence stratégique entre Etats membres avait eu raison des résultats attendus.

Pour faire face aux défis de la mondialisation et aux nouvelles menaces, notamment asymétriques, du XXIe siècle et, en conséquence, améliorer la crédibilité et l'efficacité de l'ONU, le secrétaire général en poste depuis fin 1996, Kofi Annan, a annoncé les objectifs d'une vaste réforme. Les enjeux sont de taille et la réforme est ambitieuse, puisqu'elle revisite le concept de « sécurité collective » pour tenir compte des effets de la mondialisation et tirer les leçons de la pratique depuis 1945, notamment après les attentats du 11 Septembre. Partant du postulat que le développement, la sécurité et les droits de l'homme sont intrinsèquement liés, il propose, dans son rapport du 20 mars 2005 intitulé « Dans une liberté plus grande : vers le développement, la sécurité et les droits de l'homme pour tous », de promouvoir plus avant certaines valeurs, dont la défense des droits de l'homme, la promotion de la paix (définition consensuelle de la menace et du terrorisme, légalité des actions coercitives avec la définition d'un cadre juridique du recours à l'usage de la force, protection des droits de l'homme face au génocide, au nettoyage ethnique et aux crimes contre l'humanité), l'aide au développement et l'environnement. Le volet institutionnel prévoit l'élargissement du Conseil de sécurité, la création d'un Conseil des droits de l'homme et d'une Commission de consolidation de la paix ainsi que le renforcement du rôle du secrétaire général. « Dans un monde où les menaces et les opportunités sont communes, il est de l'intérêt de chaque pays de s'attaquer efficacement à chacun de ces défis. La cause d'une liberté plus grande ne peut progresser que si les nations collaborent entre elles; et

l'Organisation des Nations unies ne peut les aider que si elle est transformée en un instrument efficace mis au service de leur objectif commun. »

La question est posée, qui est celle de l'adaptation de l'ONU aux nouveaux défis globaux et au nouveau contexte international à l'aube du XXIᵉ siècle. Comment faire de l'ONU une organisation plus efficace et plus à même de faire face et de répondre aux défis du monde multipolaire ? Quelles doivent être ses missions fondamentales et ses moyens d'action ? Qu'en est-il de son rôle, de son utilité et de sa vocation, dans le monde d'aujourd'hui et pour les années à venir ?

L'étude de Sophie Thomashausen examine en détail les grandes lignes de la réforme de l'ONU : les valeurs (la paix, les droits de l'homme), les domaines d'action (l'aide au développement, l'environnement, la réforme des institutions) ainsi que des outils nécessaires pour la traiter (l'élargissement de la définition de la menace et du terrorisme notamment, le droit international, la légalité du recours à la force). Elle en dissèque les motivations, les objectifs et les implications.

Son originalité tient à son approche comparative des points de vue européen et américain sur l'ensemble des points de la réforme. Elle examine ainsi la capacité et les limites des propositions des « acteurs » américain et européens pour en tirer des conclusions quant à leur conception des questions internationales et des moyens nécessaires pour les régler.

Au-delà des idées reçues, l'auteur montre implicitement dans quelle mesure le processus de « régionalisation » au sein de l'ONU succombe dans les faits à la permanence des intérêts nationaux et à l'ordre établi après la seconde guerre mondiale entre « faibles » et « forts ». Quintessence de l'ordre international, la hiérarchie au sein de l'ONU reste ainsi, pour les réformateurs modérés comme pour ses adversaires les plus fervents, le garant par excellence du degré de puissance au sein du système. D'où le bilan plutôt mitigé de l'auteur, qui souligne les limites de la réforme au regard des ambitions qui la motivaient.

Doit-on alors parler de rendez-vous manqué ? Rien n'est moins sûr. L'Organisation a défini les grands problèmes, s'est attaquée aux questions de fond, a débattu sérieusement et de façon déterminée de la réforme. Elle a mis sur la table des options de réforme institutionnelle, pourtant sensibles puisque relevant des questions de puissance et de statut au plan international. Surtout, l'émergence et la radicalisation des menaces globales et interdépendantes ont minoré le « courant minimaliste américain » favorable à une ONU restreinte et marginale. Le gouvernement américain insiste aujourd'hui sur la nécessité de pousser les réformes institutionnelles et administratives au sein de l'ONU. Les priorités sont désormais claires : le traitement collectif et en amont des menaces, notamment le terrorisme, la prévention et la reconstruction post-conflit, lourdes financièrement et de longue haleine. Il est possible de parler de « l'identification commune des problèmes mondiaux », ceux de la pauvreté de masse, de la dégradation de l'environnement, de

l'insécurité, des catastrophes humanitaires, les divergences portant d'abord et surtout sur les moyens d'une stratégie cohérente et efficace pour y faire face. Enfin, l'ONU, principale enceinte du dialogue multilatéral, garde toute sa pertinence dans un monde complexe, interdépendant et multiple où la gestion collective des menaces et des défis s'impose plus que jamais et où le recours au tout militaire et technologique ne permet pas d'apporter une réponse appropriée aux menaces asymétriques globales.

Si l'inertie n'est plus de mise, les difficultés perdurent cependant. L'enjeu est crucial pour l'Organisation elle-même. Il conviendrait pour l'ONU de ne pas se cantonner dans une phase d'adaptation, sans être encore en mesure d'apporter des réponses concrètes aux enjeux actuels. Les limites de la réforme marquent par là même les limites de l'autonomie de l'Organisation, intergouvernementale par essence, face aux souverainetés et aux agendas nationaux, et donc la limite du courant réformiste favorable à une revitalisation de l'Organisation dans le cadre fixé par la Charte. Elles marquent également le décalage entre l'intergouvernementalisme (un Etat, une voix) et la puissance (prédominance des Etats forts au sein du système et du Conseil de sécurité). Elles sont également un puissant révélateur des inégalités au sein de l'Organisation. Les Etats divergent sur la définition des politiques au niveau international, et encore davantage sur la nature des ressources qu'il conviendrait de mobiliser à cet effet. Les changements dans la configuration des rapports de force économiques et politiques qui résultent de la puissance américaine, de l'émergence de nouveaux pôles de croissance en Asie et de l'élargissement de l'Union européenne ne favorisent pas des stratégies cohérentes dans les différents domaines examinés. L'implication des intérêts nationaux dans les questions internationales ne fait que croître, au lieu de s'amenuiser. L'ONU continue à jouer un rôle important dans la promotion des normes, dans la définition des concepts et dans l'analyse des problématiques qui structurent l'Espace mondial. L'enjeu reste de connaître leur pouvoir structurant, et non marginal, dans la réalisation des objectifs que leur assigne leurs Etats membres. Organisation « régulatrice » par le droit des rapports internationaux et multilatérale par excellence, il est normal qu'elle cristallise autant les attentes, fussent-elles divergentes. Toutefois, si l'ONU se trouve au centre des débats, elle ne peut résumer à elle seule l'ensemble du système international. La poursuite des mécanismes de régulation, même partiels, doit rester un objectif en soi.

En ce sens, la Fondation pour l'innovation politique fait une série de propositions concernant la nécessité de recourir à des forces de maintien de la paix, la possibilité de recourir au chapitre VII face à une attaque terroriste, et l'élargissement de la définition du terrorisme qui permettrait de recourir à la force, le cas échéant.

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SOMMAIRE

In September 2005 over 170 heads of State or government gathered at the United Nations (UN) headquarters in New York for a Summit to debate the most sweeping package of reforms since the UN's inception 60 years ago. Based on the UN Secretary-General Kofi Annan's March 2005 Report[1], the proposed reforms were intended to overhaul the World's primary peace-making body out of its post-World War II model and into the 21st Century. In particular, the proposals contained a comprehensive strategy on how to address the new security threats facing the world today by including such key recommendations as the enlargement of the UN Security Council, a common definition of terrorism, an expansion in the UN's peacekeeping operations by creating a "strategic reserve" of national forces that can be deployed rapidly at the call of the UN, proposals to set up a Peace-Building Commission, and a series of UN institutional reforms to render the UN bureaucracy and institutions more effective, equitable and legitimate in the eyes of the international community.

The Outcome Document agreed to at the Summit was, as largely predicted, a watered-down version of the ambitious reforms originally proposed[2]. In many cases, the compromise solution that kept the Summit negotiations on track substituted concrete goals with broader statements of intention, leaving the details to be debated at the upcoming year-long General Assembly (GA) session. At the same time, however, the degree of consensus achieved on many key issues, including the agreed implementation of the Millennium Declaration Goals (MDG's) and the principle of a responsibility to protect is a remarkable and historical achievement not least because the UN now comprises 191 members, many of which hold vastly differing views.

Even at an EU-level, with 25 Member States sharing a common heritage and belief in democratic values, no consensus was reached on all the reforms proposed by the UN Secretary-General. As a consequence, the EU was not able to show the leadership that it might have liked to throughout the UN reform debate thus far or realistically assert itself as a global player in international affairs..

This study assesses the prospect for reform of the UN's collective security system in light of the ongoing UN legitimacy crisis, the Secretary-General's 2005 Report, "In larger freedom: towards development, security and human rights for all", and the EU's recent attempts to assert a leadership role in international peacekeeping. Part I starts out with a background

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[1] Kofi Annan: "In larger freedom: towards development, security and human rights for all" (21 March 2005).
[2] 2005 World Summit Outcome. Online at: http://www.un.org/summit2005/documents.html

to the case for reform of the UN collective security system and the Secretary-General's rationale for proposing the recommendations in his March 2005 Report. It then examines the perceived threats to international peace and security in the 21st Century and the implications of a broad concept of security for the UN reform process.

Part II, in turn, focuses on the EU position on UN reform. In particular, it provides a brief discussion on the EU's Common Foreign and Security Policy (CFSP) with respect to EU-UN relations and evaluates these in the context of the EU's desire to become a more influential player on the world scene.

The Third Part analyses the key proposals on reforming the UN collective security system in the areas of conflict-prevention, the use of force and post conflict strategies both in light of the UN Secretary-General's Report and the September 2005 Summit. The Final conclusion then briefly summarises some of the areas of success and disappointment in light of the Summit's Outcome Document and concludes with an assessment of the EU's role in preparing for and conducting the negotiations from an EU perspective where its Member States were able to forge a common position.

I.   Reform of the UN Collective Security System

A.   Background to the Current UN Crisis

The end of the Cold-War marked the start of a new world order in which international politics is no longer immobilised by the clash of two superpowers, the world no longer lives under the constant threat of nuclear war and, on a UN level, the Security Council is no longer rendered ineffective in its primary role as guardian of international peace and security by the veto by either the U.S. or U.S.S.R. At the same time, the last 15 years have been characterised by an explosion of new threats on the international scene. Instead of inter-state wars, the collective security mechanism has been confronted with new threats to international security mandating Chapter VII forcible measures in internal situations ranging from civilian repression in Kurdish Iraq, mass starvation and state failure in Somalia, threats to democracy in Haiti and ethnic cleansing in Kosovo to mention but a few.

Lacking consensus on what should constitute a threat and when the UN should have a right, let alone a duty to intervene, the Security Council has often been incapable of properly addressing these threats. Consensus in situations of gross human rights violations has proved especially difficult to forge among Security Council Members, with some States, including the veto-wielding powers of Russia and China vociferously defending the principle of State sovereignty, and a generally unrepresentative Security Council tending to lack the political will to intervene unless one of its other veto-wielding powers or one of their allies is directly affected by the consequences of the crisis, usually in the form of refugee flows. The Security Council's failure to react to the genocide in Rwanda in 1994 is particularly emblematic[3].

The UN body as a whole has also proven ill-equipped, poorly-managed and wholly under-funded to meet the practical challenge of deploying the necessary resources to conflict-torn regions and failing states either prior to conflicts in a preventative capacity, during a conflict as part of a Security Council-authorised peace mission, or post-conflict in a peace-building capacity. In particular, the UN's failure both to prevent the U.S. intervention in Iraq to which most UN Members were vehemently opposed and to address the impending humanitarian crisis in Darfur weakened the UN considerably and further fuelled the critics

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[3] Here, under the Genocide Convention States would have had a duty to try to forestall the large-scale massacres had it amounted to genocide, but in the aftermath of the "failed" intervention in Somalia, the U.S. was wholly unwilling to recognise the genocide as such until it was too late.

of the UN as to the value of this World body. In turn, two major scandals have raised further questions as to the UN's legitimacy. First the revelation that UN peacekeeping troops in the Congo from various troop-contributing Member States were involved in the widespread abuse of young Congolese girls in 2003; and secondly, the oil-for-food scandal that has thus far implicated a number of UN officials in corrupt practices in a program that was meant to ensure that Iraqi civilians were not bearing the brunt of UN sanctions placed on the Saddam Hussein regime throughout the 1990's[4].

In light of the UN's perceived weakness and inability to properly address the emerging 21st Century threats to global security, and particularly in the aftermath of the U.S. invasion of Iraq, the UN Secretary-General re-launched the debate on the future of the UN in his address before the 58th General Assembly meeting in September 2003:

> 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 [US] President Franklin D Roosevelt, were determined to make the second half of the 20th 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 more prudently, all human beings might perish. So they drew up rules to govern international behaviour, and founded a network of institutions, with the United Nations at the 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. And we must not shy away from questions about the adequacy, and effectiveness, of the rules and instruments at our disposal.

The Secretary General subsequently commissioned three expert Panels on i) the role of civil society in global governance[5]; ii) the security threats of the 21st Century and UN institutional reform ("High-Level Panel Report")[6] ; and iii) development and poverty ("Sachs Report")[7] to better assess the challenges confronting the UN and the reforms that would be needed to better address them. Based on the resulting reports the UN Secretary-General then submitted his Report on 21 March of this year on the basis of heads of State were encouraged to revitalise a consensus on the security challenges confronting the world today and convert this consensus into collective action.

Subsequent to the publication of Kofi Annan's Report, the recommendations were debated at the UN General Assembly (GA), and on 3 June GA President and Gambian Ambassador to the UN Jean Ping released the first version of the draft Outcome Document reflecting the

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[4] See the Independent Inquiry Committee in to the United Nations Oil for Food Programme website at: http://www.iic-offp.org/
[5] "We the peoples: civil society, the United Nations and global governance." (June 2004).
[6] UN High-level Panel on Threats, Challenges and Change, titled "A More Secure World: our shared responsibility" (September 2005)
[7] "Investing in Development: a practical plan to achieve the Millennium development goals" (January 2005)

somewhat limited compromises thus far agreed upon by the Member States[8]. Just prior to the Summit, on 24 August, the U.S.'s newly-appointed Ambassador to the UN, John Bolton submitted a comprehensive list of some 750 proposed changes to the Secretary-General's report. Although many of these amendments were minor edits to the wording of the Report, some entailed a clear rejection of the proposals and rendered the negation process of agreeing to a comprehensive Outcome Document for the Summit an even more difficult task[9].

Despite warnings of a complete breakdown of negotiations in early September, a compromise position on many of the recommendations was reached just in time for the Summit[10]. Given the U.S.'s current unilateralist tendencies and its recent appointment of the staunch critic of the UN, John Bolton as the U.S. Ambassador of the UN it initially appeared that only leadership from elsewhere—and in particular the EU—would have been able to steer the Summit to a successful adoption and implementation of the reform proposals. In the immediate run up to the Summit, however, it was the U.S., Britain, and a core grouping of vocal developing countries that determined the Summit's final outcome[11].

The U.S. was forced to soften its approach to the reform and accept the wording it had tried to change of both the Millennium Development Goals and the responsibility of States to protect populations for gross human rights violations. Strong opposition from Russia, China and several developing States, notably Egypt, Algeria and Jamaica to several of the more controversial reform proposals also meant that many of these proposals, such as increasing the powers of the Secretary-General, were considerably watered down.

From an EU perspective, a few of the key points of agreement, particularly in the areas of development and the notion of a responsibility to protect were a success. The outright failure of the EU to even propose a joint position on certain key reform proposals such as the enlargement of the Security Council and the mode of operation of the envisaged Human Rights Council nevertheless weakened the overall EU position and meant that the clout of the EU as a regional grouping was considerably weaker than that of the U.S or individual EU Member States like Britain.

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[8] A revised draft was released on 22 July 2005, though this version once again omitted any mention of the more controversial proposals such as Security Council reform.

[9] "Crunch time for UN reform" *Economist* (August 31 2005).

[10] "General Assembly, following intense last-minute talks, concludes 59th session with approval of draft Outcome Document for world Summit." *GA Press Release 10375* (13 September 2005).

[11] From an EU perspective it should be remembered, however, that while British Prime Minister Tony Blair was representing the EU at the Summit as the current EU Council President, the absence of French President Jacques Chirac for medical reasons and German Chancellor Gerhard Shröder for electoral ones meant that the EU presence was seemingly weakened.

B.   The Case for Reform: "Our Shared Responsibility"

The case for collective security, as expounded in the High-Level Panel and endorsed by the Secretary-General rests on three pillars:

1. Today's threats are borderless, inter-connected, and must be address on national, regional and global levels;
2. No state, no matter however powerful can single-handedly protect itself against today's threats, whether it be infectious diseases or terrorism;
3. It cannot be assumed that every state will be able or willing to meet the responsibility to protect its own citizens.

Given the nature of the present security threats, the rationale for collective action thus rests on the fact that the nature of the security threats confronting the world today can only be tackled collectively by means of a global coordinated strategy that recognises both the inter-connectedness of the threats and the importance of addressing them all simultaneously. Moreover, to do so Member States would together need to forge a consensus on what they perceive to be a threat to international peace and security and, secondly, to commit themselves to implementing a consensus position on the entire package of recommendations proposed by the Secretary General. The Outcome Document of the Summit endorses Kofi Annan's broad approach to security and security consensus as discussed below. Not all the reform proposals were adopted, however, and of those that were, not all were accepted in their entirety.

C.   Towards a New Security Consensus

With respect to forging a new security consensus, the High-Level Panel Report recommended an extensive, all-encompassing and global view of the threats, in which both "hard" military threats and "soft" threats are taken into account. Accordingly, the Report defined a threat as "any large event or process that leads to large-scale death or lessening of life chances and undermines States as the basic unit of the international system." Six clusters of non-hierarchical threats are listed after the definition, all of which were endorsed by the Secretary General in his report:

- Economic and social threats (including poverty, infectious diseases such as HIV/Aids and environmental degradation)
- Inter-State conflict;
- Internal conflict (including civil war and genocide)
- Nuclear, radiological and chemical and biological weapons;
- Terrorism
- Transnational organised crime.

a.   Hard and Soft Threats

The reason for adopting a broad definition of threats to security is twofold. First, it recognises that peace and security cannot be achieved by tackling only the politico-military threats confronting the world today. Long-standing conflicts, WMD proliferation, civil wars, failed states and terrorism are all imminent threats to regions, states, and citizens and must be tackled head on through swift collective action. Without addressing the wider social and economic context in which these threats emerge, however, "hard" threats will never be averted. In particular, the widening gap in wealth and power of developing and developed countries needs to be addressed as part of a collective security strategy. Extreme poverty and its manifest consequences leads to feelings of exclusion, marginalisation, and frustration among the "have nots" in States and regions that are most afflicted by the listed security threats, and in turn become rife breeding grounds for terrorist activity, organised crime, civil strife and destabilising refugee flows. The Panel Report's definition thus encompasses both the imminent military threats, and the more distant root causes of these threats that may become tomorrow's imminent threats if not simultaneously addressed.

The second motive for including "soft threats" in the definition of security threats is to enhance the legitimacy of the collective security system in the eyes of the UN Member States. In its existing form, the UN collective security system and particularly the Security Council tends only to address those threats that the powerful veto-wielding powers—the U.S., United Kingdom, and France—are politically willing to tackle. Some attempts have been made to extent the concept of threats to international security to "soft threats" such as HIV/AIDS, for example when the then U.S. Ambassador to the UN, Richard Holbrooke, secured a Security Council Resolution in July 2000 on the threat of this deadly disease[12]. By ensuring that every State's primary security concern is addressed in the non-hierarchical category of threats, whether it be the rampant spread of HIV/ AIDS in Southern Africa, or the pervasive threat of terrorism in the West, the Panel thus hopes to both formalise the broadened concept of security and lay the foundation for a more equitable collective security system.

While a broad definition of threats to security does highlight the root causes of "hard" threats, and also acknowledges that security concerns differ between States depending on their power, wealth and geography, it may confuse the issue of what policy options are required to address these threats. Grouping both "soft" and "hard" threats in the category of "threats" detracts from the reality that the various clusters of listed threats must be tackled by very different strategies.. That is, while imminent "hard" threats may call for Security Council authorised political or military measures, "soft" threats necessarily entail non-military strategies ranging from social and cultural to economic and legal instruments. One challenge of embracing such a broad concept of security may thus be to ensure that the

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various policies adopted do not undermine each other or result in competition over resources.

The one common factor underlying each cluster of threats is thus the need for a coordinated strategy based first and foremost on cooperation between states, but also on civil society and the private sectors of states individually, regionally and on an international level as Kofi Annan emphasised in his Report. While the "hard" threats entailing violence call for collective action at a Security Council level, the "soft" threats require coordinated development strategies[13] that States can generally not realise alone, and for which coordinated mechanisms are necessary at a donor-level to ensure that bilateral, NGO and UN-agency level work does not overlap and undermine the initiative of assistance in the first place.

It is interesting to note, however, that at an EU-level the broad approach to security only considers "hard" threats to security as actual threats, while "soft" threats are rather acknowledged as the underlying causes of these "hard" threats. While the EU security strategy is very much centred around the same multilateral approach as that outlined in the High-Level Panel Report, it does implicitly recognise the need for different strategies and policy instruments in addressing the threats.

b.   *State Security versus Human Security*

Another noteworthy aspect of the broadened definition of threats to security is the High-Level Panel's implicit recognition of the doctrine of human security[14]. Traditional notions of security, shaped to a large extent by the Cold War, were primarily concerned with a State's ability to protect its sovereignty from external threats[15]. Similarly, the traditional concept of threat related to external threats and not to threats emanating from within states, particularly not "soft" threats such as poverty and infectious diseases that affect the welfare of people within States' borders. Including such "soft" and threats emanating from within States' borders in the concept of security threats thus necessarily recognises the centrality of peoples' rights, interests and needs as well as those of humanity as a whole, which is a central feature of the human security doctrine. As stated in the Human Security Report submitted to Kofi Annan in 2003, by broadening the definition of security to account for both state security and the security of people:

> …security becomes an all-encompassing condition in which individual citizens live in freedom, peace and safety and participate fully in the process of governance. They enjoy the protection of fundamental rights, have access to resources and the basic necessities of life, including health and education, and inhabit an environment that is not injurious to their health and well-being. Eradication of poverty is thus central to ensuring the security of all people, as well as the security of the state.

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[13] See the work of the International Task Force on Global Public Goods at: www.gpgtaskforce.org

[14] See "Human Security Now": Final report to UN Secretary-General Kofi Annan on May 1, 2003.

[15] Frene Ginwala: "Rethinking security: An imperative for Africa?" Based on a presentation at the *parliaments Uniting for African Unity Conference* (Cape Town, June 2002), ibid.

The notion of human security was also present in the UN Secretary-General's Report, the title of which drew directly from Kofi Annan's wish to emphasise the centrality of the lives of people in the UN Charter's purposes, as well as the direct relationship between development, security and human rights.

While human security is a central feature of the objectives of both the High-Level Panel and Secretary General's Report, the recommendations of both Reports nevertheless assert that the "front-line actors" in dealing with the security threats are sovereign States, the rights, responsibilities and respect for which is enshrined in the UN Charter. States are and will remain the indispensable building blocks of the International legal order. But as Kofi Annan recalled, while sovereign States are the central feature of the collective security system, it is their responsibility to ensure the welfare, or *human security* of their citizens. Moreover, when States are fragile and/ or are not fulfilling their responsibilities, it is the role of the international community, both on a regional and global level, and in local partnerships to:

1. help to strengthen state capacity to ensure the development, security, and human rights of its people; and
2. to bear the responsibility of the welfare of a people when it's own government is either unable or unwilling to do so.

Both Reports thus advocated a formal limit to the principle of State sovereignty as traditionally accepted under international law and enshrined in Article 2(7) of the UN Charter[16]. Whereas Article 2(7) exceptionally allows forcible measures as a last resort to be authorised by the Security Council against the territorial integrity of a sovereign State, the Secretary General and High-Level Panel recommendations appear to go one step further by advocating a *responsibility to protect* in terms of both peaceful and more forcible measures to protect the citizens of a failing state or totalitarian regime. Despite initial U.S. reticence to accept a legal duty to intervene in human catastrophe's around the World, and the vehement opposition of many developing countries to any interference in their domestic affairs, the responsibility to protect was endorsed at the Summit. Express mention of human security is also made in the Outcome Document[17].

c.   The Definition of Threats to Security and the Security Council

A final less obvious consequence of promoting such a broad conception of threats to international security is that, if accepted, such a conception would formally widen the jurisdiction of the Security Council (SC). It should be remembered that the SC can only act on matters pertaining to international peace and security, which was traditionally limited to external threats to a State's sovereignty. While the post-Cold War period has seen this UN organ enlarge the scope of the definition, the definition of threats proposed by the

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[16] Article 2(7) of the UN Charter reads: "nothing contained in the present Charter shall authorise the UN to intervene in matters which are essentially in the domestic jurisdiction of any state or shall require Members to submit to such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII".
[17] Outcome Document, para. 143.

Panel entails a formal recognition that the Security Council has not only a right, but a responsibility to be seized by socio-economic matters that are either perceived as imminent threats to security, or as the root causes of threats in the traditional conception.

II. The European Security Strategy: "Towards Effective Multilateralism

> This is a world of new dangers but also of new opportunities. The European Union has the potential to make a major contribution, both in dealing with the threats and in helping realise the opportunities. An active and capable European Union would make an impact on a global scale. In doing so, it would contribute to an effective multilateral system leading to a fairer, safer and more united world[18].

Just as the end of the Cold War propelled the UN into an era of new threats and challenges that require this world body to reform, so too did it create the impetus for change in the then European Community (EC) with respect to elaborating a common foreign policy position at a European level . With the disintegration of the U.S.S.R, the reunification of Germany and the war in the Balkans, the EC was faced with new political and security threats, but had no foreign policy to tackle these changes. In 1991 EC Heads of States thus established the Common Foreign and Security Policy (CFSP) under the auspices of the newly created EU, which came into effect in 1993. In turn, in 1999 a European Security and Defence Policy (ESDP) was created.

A. European Security Strategy

In December 2003 the EU formally adopted the European Security Strategy (ESS) a document that for the first time elaborates upon the long-term foreign policy objectives of the EU as a global actor in international affairs, thereby strengthening the framework set out in the CFSP and ESDP[19]. The document outlines the key threats that Europe is facing— terrorism, WMD proliferation, regional conflicts, state failure, organised crime—and elaborates upon a comprehensive strategy to address the threats and other challenges through politico-military, economic, social, and judicial means. Although the list of actual threats is narrower than that of the High-Level Panel Report, the document includes "soft" threats as part of the challenges confronting the world, and incorporates them in its comprehensive strategy to address the security threats. In particular, it emphasises the importance of development in its security strategy. As stated in the ESS document, Security is a condition for development, but without development the vicious cycle of poverty, insecurity and conflict is likely to continue:

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[18] Javier Solana: "A Secure Europe in a Better World. A European Security Strategy" EU (Brussels, 12 December 2003).

[19] The ESS was first presented by the EU High Representative of the CFSP to the European Council in Thessaloniki on June 2003.

> Security is a precondition of development. Conflict not only destroys infrastructure, including social infrastructure; it also encourages criminality, deters investment and makes normal economic activity impossible. A number of countries and regions are caught in a cycle of conflict, insecurity and poverty.

Like the High-Level Panel Report, the ESS also recognises the importance of collective solutions to international problems and it makes "effective multilateralism" the cornerstone of the EU's foreign policy. It further asserts the UN Charter as the fundamental framework for international relations and a rule-based international order and accordingly determines the key challenge for the EU to help the multilateral system to deliver on its key objectives.

B.   EU-UN Cooperation

In the same year as the ESS was formulated, two other documents were produced that set out the framework for EU-UN cooperation in line with the ESS strategy objectives. First, the Commission Communication on "the European Union and the United Nations: a choice of multilateralism" on 10 September 2003 outlined practical proposals to improve working relations between the UN and the EU in the area of conflict prevention and crisis management[20]. In turn, following operation Artemis, the first EU-led military operation outside the EU that was successfully deployed to the Democratic Republic of the Congo (DRC), a Joint UN/EU Declaration was signed by the UN Secretary-General and the then Council President Silvio Berlusconi to identify ways to strengthen cooperation on planning, training, communication and other civilian areas of conflict management. Subsequent to this Declaration, a joint-consultative or "steering" committee was established in February 2004 to formalise coordination between the EU and UN through regular meetings of staff of both organisations, and in June of that year the European Council adopted a document on EU-UN co-operation in Military Crisis Management Operations Elements to further strengthen the EU-UN partnership in peacekeeping operations.

The Communication is of particular note, as it reinforces the EU's commitment to the UN as the foundation of the international order, as well as its attachment to multilateral solutions for international problems as the defining principle of its external policy. The Communication further recognises that since the start of the CFSP, the EU's influence as a global actor in international affairs has at times fallen short of its economic and political clout because of a lack of a proactive policy, and the EU's inability to consistently find a common position on CFSP issues as was most vociferously evidenced by the Security Council debates on the U.S. invasion of Iraq that left EU Member States bitterly divided. To this end, the Communication recommends three ways in which the EU could contribute more effectively to the work of the UN[21]:

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[20] The European Union and the United Nations: a choice of multilateralism" EC Communication COM(2003) 526, 10 September 2003, p.9.
[21] "EU-UN: Commission calls for UN to renew its commitment to the UN system and multilateralism"

1. The EU should act as a "front-runner" the negotiation and implementation of important UN initiatives in the fields of sustainable development, poverty reduction and international security, taking a more proactive approach to the development of international instruments and specific EU implementing actions.
2. The EU must move towards a more systematic policy of partnership with the UN in the field in areas like human rights and conflict prevention.
3. The EU must ensure a more dynamic, flexible and coherent force in policy debates by better coordinating Member States' positions in the General Assembly and particularly the Security Council.

It must be remembered, however, that the Commission only plays a limited role in CFSP matters, so it is left up to the Member States at the Council level to forge a greater consensus on matters of international peace and security that are discussed in the Security Council. Thus while the Commission plays an active role in the areas of agriculture, trade and development at the UN, and represents the EC in the UN General Assembly[22], the EU is represented by the Council and the individual EU Member States in matters falling within the scope CFSP. To this end the EU has a permanent representation in New York, which is headed by the acting Council President.

The EU nevertheless has the potential to play a significant leadership role at the UN given the combined representative and financial weight of the EU Member States. Taken together, the 25 Member States comprise around one eight of all votes in the GA and account for a third of the Security Council membership and a fifth of the ECOSOC membership[23]. In terms of financial contributions the EU Member States collectively also contribute about 38% of the UN's regular budget and 38% of the UN peacekeeping operations.

C. UN Reform Process

As the EU has made strengthening the UN, and equipping this World body to fulfil its responsibilities and to act effectively at the core of the EU's strategy of promoting multilateral solutions to global problems, it has thus far tried to play a definitive and influential role in the UN reform process. Under the auspices of the Irish Presidency in May 2004, an enlarged EU of 25 Members submitted a contribution to the High-Level Panel on Threats, Challenges and Change. The document contains a common assessment of the threats, and details the role the UN can play in providing a comprehensive and multilateral framework for responding to them. In particular, the contribution supports active prevention and long-term post-conflict reconstruction and State capacity-building

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[22] Since 1974 the EC has also enjoyed a permanent observer status at the General Assembly, privilege which allows it to participate in GA debates although it is prevented from voting : GA Resolution 22308, "Status of the European Economic Community in the General Assembly", 11 October 1974.
[23] "Enlarging the European Union at the United Nations: Making Multilateralism Matter" *European Union* (New York), April 2004, pp. 6-7.

strategies to prevent States from lapsing into conflicts. The document also supports the subsequent Panel recommendations on the use of force, the need for a definition of terrorism, and the concept of a "responsibility to protect". The document nevertheless remains vague as to what UN-institutional reforms should be undertaken, and specifically avoids proffering recommendations with respect to Security Council reform, which largely reflects the disagreement of the EU Member States in this area.

More recently, the EU Parliament voted overwhelmingly in favour of a motion for a resolution supporting Secretary-General's Report[24], after which the Commission adopted its official strategy for the September Summit in June 2005 and in response to UNGA President Ping's Draft Outcome Document[25]. In turn, the Council published the EU's priorities for the 60th General Assembly, which reaffirms the Council's commitment to achieving an ambitious and balanced outcome of the September Summit on negotiations based on the General Secretary's Report. It also restates its commitment to development and meeting the MDGs, as well as the promotion of human rights, democracy, and the rule of law, while listing the following areas as its priorities as far as international peace and security are concerned:

- The establishment of a peace-building Commission;
- Conflict prevention;
- The fight against terrorism;
- The non-proliferation of WMD's; and
- The strengthening of the UN peacekeeping capabilities.

In contrast to the focus on UN reform in the EU's Parliament and Commission, there has been little or no public or national political debate on the matter. Furthermore, after the "no" vote in the French and Dutch election regarding the adoption of the Constitutional Treaty, the project of greater political integration has suffered a setback that has conspicuously hampered the EU's ability to forge consensus on the few outstanding issues where there is disagreement between Member States.

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[24] Armin Laschet "Motion for a Resolution to wind up the debate on statements by the Council and Commission pursuant to Rule 103(2) of the Rules of Procedure on behalf of the Committee on Foreign Affairs on the reform of the United Nations", *European Parliament session document*, B6-0000/2005 (30 May 2005).
[25] "Commission adopts strategy for Successful 2005 UN Summit" *IP/05/738* (Brussels, 15 June 2005).

III. Reforming the UN Collective Security System: the Practical Challenge

Given the broad approach to security espoused by the High-Level Panel on Threats and later endorsed by the UN Secretary-General, the proposed strategies for addressing today's threats are equally broad and comprehensive. They are dealt with in the Secretary-General's Report in four main parts in the thematic areas of development, security, human rights and institutional reform of the UN. As Kofi Annan states in the preface of his Report, however, he has limited the recommendations to those areas where he believes action to be both "vital and achievable" in the coming months, given insufficient political will. No recommendations are thus included with respect to the Bretton Woods institutions—the IMF, World Bank, and WTO—even though the Report has been criticised as being too limited in scope for this omission.

The proposals also reflect the Secretary-General's desire to correct the imbalance in the areas of security, development, and human rights at the UN, both on an institutional level—by revitalising ECOSOC and creating a new Human Rights Council on par with the Security Council, and by emphasising the importance of a comprehensive development strategy and promoting human rights as part of the security agenda. The most controversial recommendations in the Report are nevertheless those that pertain to the use of force and will be dealt with in detail below.

A.   Prevention

> No task is more fundamental to the United Nations than the prevention and resolution of deadly conflict. Prevention, in particular, must be central to all our efforts, from combating poverty and promoting sustainable development; through strengthening national capacities to manage conflict; to directing preventive operational activities, such as the use of goof offices, Security Council missions and preventive deployments[26].

The core strategy in the Secretary General's recommendations was the prevention of security threats and conflicts before they arise. According to Kofi Annan, the main problems with current prevention efforts is firstly the weak and uncoordinated early warning mechanism in place that fails to alert the Security Council of potential threats, and secondly, the inequitable treatment of security threats caused by the widening gap in wealth and power between States such that the perceived threats of the mighty are by

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[26] " In Larger Freedom.," para. 106. Op. cit. ff. 1.

default prioritised. To further the aim of prevention, the Secretary-General recommended preventative strategies on three fronts:

- a comprehensive development strategy to tackle the root causes of conflict;
- the implementation of a more effective and coordinated early warning mechanism that alerts the Security Council as to a threat before it starts to unfold.; and
- targeted preventative measures for each cluster of threats.

a.   Development as Prevention: "Freedom from Want"

The Secretary-General's Report emphasised the promotion of development as the cornerstone of a revised collective security strategy. As stated in the High-Level Panel Report, development serves two main preventive functions:

- It helps combat poverty, infectious disease, and environmental degradation, all of which threaten human security;
- It helps to forestall and reverse state failure by focussing on state capacity building, and thereby preventing civil war, and the perfect conditions of disarray that attract terrorist and organised criminal activity[27].

Kofi Annan's primary development focus was the implementation of the Millennium Development Goals (MDGs), a set of globally-accepted development benchmarks ranging from halving extreme poverty, to ensuring all children access to primary education, to stemming the spread of infectious diseases such as HIV/AIDS by 2015[28].   Building on the findings of the Sachs Development Report, the Secretary-General proposed several strategies to rapidly accelerate the implementation of the MDGs so that they could be met by the target date. In particular, Kofi Annan advocated that the "global partnership for development" between developed and developing countries, as was agreed to at the 2002 International Conference on Financing for Development at Monterrey, Mexico and the World Summit on Sustainable Development in Johannesburg, South Africa be fully implemented[29].

This partnership is based on the mutual responsibility and accountability of both developing and developed countries. That is, the former countries must assume primary responsibility for their own development by adopting strategies to strengthen governance, combat corruption, promote private sector-led growth and maximize domestic resources to fund national development strategies. In turn, the developed countries must support these efforts through increasing development assistance (ODA) to 0.7% of GDP, a successful outcome in the Doha trade round negotiations of the WTO that provides for duty-free and quota-free market access for all exports from the Least Developed Countries, and deeper debt relief. New and innovative sources of finance for development further need to be considered, including the UK recommendation to set up an international Finance Facility (IFF) by the end of 2005.

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[27] "A more secure world: Our shared responsibility," p. 25. Op. Cit. ff. 5.
[28] General Assembly resolution 55/2 (2000)
[29] "In Larger Freedom," para 32. Op. Cit. ff. 1.

Despite the importance placed on the MDG's, Kofi Annan nevertheless emphasised that their achievement be viewed as part of a broader development strategy that addresses not only the poverty concerns of the poorest countries, but also the needs of the middle-income developing countries in terms of both tackling the increasing income gap between rich and poor and addressing human security needs[30].

Irrespective of the perceived importance of development issues, particularly from an EU perspective, achieving consensus on the MDG's in the immediate run up to the Summit seemed tenuous. From a seemingly opposed policy stance, the U.S. pushed for the removal of all reference to the goals in favour of a more vaguely worded "internationally agreed development goals". However, while such a position appeared to be at odds with that of the EU and other States, it actually just varied in emphasis. What the U.S. was essentially arguing was that the emphasis in any agreed development goals should be on developing States taking responsibility for their own development and becoming more market-oriented so that donor countries could more effectively target their contribution to developing countries through market-oriented initiatives such as foreign direct investment instead of outright aid[31]. Confronted by a staunch consensus from many developing countries, and a united EU on the promotion of the MDG's and the importance of including the promise of development aid in any development consensus, the U.S. was forced to weaken its stance and accept a direct reference to the MDG's in the Outcome Document.

Despite the success of reaching a consensus on development issues at the Summit, however, the importance of renewed impetus on the part of Member States is very much required if the broader development goals, and in particular the MDG's are to be met, or at least neared by 2015. As the UN's latest Human Development Report that was published ahead of the September Summit, "unless there is a change of gear, almost all of the goals will be missed by most countries…some of them by epic margins.[32]" As it stands, the necessary commitment to achieving the MDG's is seriously lagging. Moreover, an ongoing disagreement with the U.S. over what poverty targets were agreed in 2000 has only served to further undermine efforts at accelerating implementation[33]. The U.S. opposes the use of numerical aid targets, and in particular, opposes the ODA targets of 0.7% of GDP by 2015.

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[30] Jens Martens: "'In Larger Freedom': The Report of the UN Secretary-General for the Millennium+5 Summit 2005" *Friedrich Ebert Stiftung (FES) Briefing Paper* (April 2005), p. 3.
[31] Instead of the MDG's, which had been agreed upon in 2000, the U.S. originally wanted more emphasis placed on the 2002 "Monterrey Consensus", whichconcluded that developing countries should take more responsibility for their own growth by fighting corruption, improving investment climates, and generally becoming more market-friendly.
[32] Marc Turner, "UN warns poverty goals to be missed." *Financial Times* (8 September 2005).
[33] "Letter from Ambassador Bolton on the Millennium Development Goals." *USUN, Press* (26 August 2005), online at: http://www.globalpolicy.org .

b. *Preventing other Security Threats: "Freedom from Fear"*

Terrorism

While the primary goal of promoting development is to address the security threats of poverty, infectious diseases and environmental degradation on the one hand, and the root causes of violent discontent on the other, the Secretary-General's Report also includes a number of preventative measures specifically targeted at precluding terrorism, WMD proliferation and organised crime. The most controversial of the proposals are those relating to terrorism, not least because of the political controversy surrounding the notion of terrorism itself. To tackle terrorism, the Secretary-General's Report recommends a comprehensive strategy based on five pillars[34]:

- It must aim at dissuading people from resorting to terrorism or supporting it;
- It must deny terrorists access to funds and materials;
- It must deter States from sponsoring terrorism;
- It must develop State capacity to defeat terrorism;
- And it must defend human rights.

The Secretary-General's first proposal was that a comprehensive Terrorism Convention be concluded and that the High-Level Panel's definition of terrorism be accepted. Previous attempts to define terrorism have consistently failed due to the divergent perceptions of what terrorism entails. As the saying goes, "one man's terrorist is another man's freedom fighter," and while some argue that terrorists are networks of actors that must be suppressed at all costs, others support the view that any definition on terrorism must expressly exclude the legitimate struggles of a people for liberation and self-determination.

Many States also support the view that States themselves regularly carry out acts of terrorism against their own people and must also be labelled as terrorists. To counter this obstacle of reaching a consensus on a definition, Kofi Annan advocated the view that "State terrorism" is already addressed in the international legal rules relating to the use of force, including the Geneva Conventions. Accordingly, in the event that States use force against another nation or their own people, the Security Council, in principle, has the authority to take enforcement action against that State to halt any gross violations of human rights. He thus endorsed a definition as the one supplied in the High-Level Report that describes terrorism as "any action, in addition to actions already specified in 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 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.[35]"

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[34] "In Larger Freedom," para 88. Op. Cit. ff. 1.
[35] "A more secure world: Our shared responsibility," paras 163-4.

In addition to a comprehensive Convention on Terrorism, Kofi Annan's Report also adopted the High Level Panel's recommendation that a Convention on Nuclear Terrorism be adopted. This demand has already been met when on 13 April 2005 the GA adopted the International Convention for the Suppression of Acts of Nuclear Terrorism.

Terrorism and Human Rights

At the same time, Kofi Annan stressed the importance of States observing human rights when enforcing anti-terrorist legislation. He also advocated the creation of a special rapporteur to report to the envisaged Commission on Human Rights on the compatibility of counter-terrorism measures with international human rights law. This emphasis on human rights was in direct response to the human rights violations occurring in the U.S. prison camps on Guantanamo Bay as well as the acts of torture committed by U.S. and British soldiers in the Iraqi prison of Abu Ghraib.

Summit Outcome

The Heads of State were unable to find a satisfactory compromise with respect to a definition on terrorism. While the EU and U.S. both supported the High-Level Panel's definition on terrorism, resistance from many developing countries meant that notion of a comprehensive Convention on Terrorism as was agreed to will only condemn terrorism without in fact defining it. The UK Prime Minister and current EU Council President Tony Blair nevertheless succeeded in securing the adoption of a Security Council Resolution calling all countries to ban the incitement of all acts of terrorism. However, while Mr Blair was also acting as EU representative at the Summit, this policy is clearly reflective on the UK's domestic policy where a Bill was recently adopted to ban the incitement of terrorism following the July 7 terrorist attacks in London earlier this year, and was thus not an EU initiative. As regards human rights and terrorism, the Summit Outcome Document makes no express reference to the humane treatment of terror suspects; it just affirms the general responsibility of States to respect the human rights and fundamental freedoms of all people.

Nuclear Proliferation

In addition to proposing measures "to ensure that catastrophic terrorism never becomes a reality", Kofi Annan also urged Member States to both ratify and implement that various International Conventions to the disarmament and non-proliferation of nuclear, chemical and biological weapons. As championed by the UN Secretary-General: "We should focus on creating incentives for states to voluntarily forego the development of domestic uranium enrichment and plutonium separation capacities, while guaranteeing their supply of the fuel necessary to develop peaceful uses." [36]Leaders at the Summit were, however, unable to forge any agreement in the field of nuclear non-proliferation as the ongoing debacle with Iran's assertion of its right to develop nuclear energy underscored. The only reference to Nuclear proliferation in the Outcome Document is thus found in the context of

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[36] "In Larger Freedom," paras. 97-105. Op. Cit. ff. 1.

Convention on suppressing Nuclear terrorism. No other mention is made. Months of behind-the-scene diplomacy with Iranian officials and EU Member State agreement on discouraging nuclear proliferation on an EU-level thus helped little to promote a consensus at the Summit on this front.

c.   The Revitalisation of ECOSOC

The Economic and Social Council (ECOSOC) is the only organ of the UN explicitly mandated to coordinate the activities of specialized agencies and to consult with non-governmental organizations (NGOs) on development issues. As it was not empowered with enforcement powers under the UN Charter, however, it has "all too often [been] relegated to the margins of global economic and social governance" as the Secretary-General diplomatically stated in his Report. In real terms, despite recent efforts to render ECOSOC more effective by, for example, the implementation of a high-level annual meeting with trade and financial institutions, as it stands, this UN body has exercised virtually no influence in the development debate and has played an ineffective role in coordinating preventative strategies over the years.

Kofi Annan thus proposes to revitalise ECOSOC to properly fulfil the role the UN Founders envisaged for it as an organ equal in relevance to the Security Council in the area of development. He advocates that ECOSOC be reformed to:

1. *Effectively assess progress in the UN development Agenda*: For example, ECOSOC could hold ministerial-level assessments of progress, which could be based on peer reviews of progress reports prepared by Member States with support from UN agencies and the regional commissions.

2. *Serve as a high-level development cooperation forum:* Such a forum could fill the current developmental gap by reviewing trends in international development cooperation and assistance, promoting greater coherence among the development activities of the different actors and strengthen the link between the normative and operational work of the UN system.

3. *Provide direction for the efforts of the various intergovernmental bodies in the economic and social area throughout the UN system.* The ECOSOC should convene timely meetings to address threats and crises to development as they occur, and it should promote coordinated responses to them in the process. In doing so, it needs to play a greater role in monitoring the economic and social dimensions of conflicts and of communicating with the Security Council and the proposed Peace-building Commission (PBC) as it does so.

The Outcome Document of the Summit endorses nearly all of the Secretary General's recommendations on rendering ECOSOC more effective and conferring it a greater role in the implementation or the MDG's[37]. Time will only tell whether this Economic and Social

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[37] Ourcome Document, *General Assembly A/60/L* (20 September 2005), paras.155-156.

Council is able to become a primary player in the continuing development debate and actually be able to carry out the indispensable role it has been accorded.

B.   Collective Security: The Use of Force

a.   *The Use of Force and the UN Charter*

The ultimate instrument for countering security threats is recourse to force. Yet, despite the heightened sense of security among many States, the effective use of force is hampered, first, by a lack of a consensus on what security entails and, secondly, by erratic and contested enforcement actions when the use of force is resorted to.

Article 51—A State's Inherent Right to Self-Defence

At present, the public international law rules regulating the use of force, as enshrined in the UN Charter[38], only permit recourse to force in two limited situations. The first exception relates to a State's inherent right to self-defence under Article 51 of the UN Charter. This Article reaffirms a State's right to defend itself through forcible means when it is confronted with an *imminent* armed attack and the Security Council has not yet acted. Since the September 2001 terrorist attacks the U.S. has asserted an extension of this right to self-defence to include a *preemptive* right to strike to forestall a potential future attack, a right that previously only Israel claimed.

While few States contested the U.S.'s right to attack Afghanistan in the aftermath of September 11 given that the Taliban were deliberately allowing Al Qaida members to train on Afghani territory, the United States' subsequent attack on Iraq remains a highly-contested invasion in international relations, irrespective of whether a link was ever found between the Saddam Hussein regime and Al Qaida. Without a consensus thus having been realised as to whether Article 51 of the UN Charter should include a pre-emptive right to self-defence to avert a potential terrorist attack, the Secretary-General has chosen to endorse the High-Level Panel's recommendation[39] that there should be no such extension in terms of a rewording or a reinterpretation of the Article.

Security Council Authorised Interventions: the Need for Consensus and Criteria

The second exception to the prohibition on the use of force relates to the Security Council's right to authorise forcible measures under Chapter VII of the UN Charter to halt a breach of international peace and security if it determines that all other non-forcible measures have either been exhausted or are deemed to be inadequate to address the security threat at issue. The UN's founding fathers primarily envisaged the need for Security Council action under Chapter VII in the event of a cross-border aggression, as was the case when North

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[38] Art. 2(4) of the UN Charter reads: "All nations shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations.

[39] High-Level Panel Report, paragraph 192.

Korea invaded South Korea in 1951, and the Iraqi invasion of Kuwait in 1990. The post-Cold War widening of the scope of threats to international peace and security, particularly with respect to gross human rights violations that occur within the confines of a State's borders, has given rise to numerous situations that challenge this traditional State-centred concept of international law[40].

Until now, there has been no consensus on whether a State's sovereignty may be overridden to allow other States to avert human catastrophe within that State. While international human rights have gained widespread recognition since the 1948 Declaration of Human Rights, the Security Council veto-wielding members China and Russia will not accept any future interventions in States with repressive regimes where this could lead to greater scrutiny of their own human rights records. Moreover, they are supported by many developing States in holding this position.

Given the lack of consensus surrounding the use of force, and particularly the notion of "humanitarian intervention", the Secretary-General again supported the view of the High-Level Panel on the use of force that there should be no revision of the Charter to widen a State's right to recourse to force without a prior Security Council authorisation. As it stands, the Security Council is fully empowered under Chapter VII of the UN Charter to authorise forcible measures to address international security threats[41]. States dissatisfied with the current functioning of the Security Council were thus encouraged to rather focus their energy on transforming the Security Council into a more legitimate and effective organ to fulfil its role as guardian of international peace and security instead of taking action outside the UN collective security framework.

To this end, the Secretary-General advocated a new consensus on the scope of threats to security as discussed in Part I above, and a set of five criteria to regulate the authorisation of force by the Security Council and ensure that any such decision to intervene, particularly in the case of humanitarian interventions, is both legally and morally justifiable. The five proposed criteria that must be considered for an intervention to be authorised are as follows:
- The seriousness of threat;
- the proper purpose;
- last resort;
- proportional means;
- balance of consequences

The Secretary-General recommended that the Security Council adopt a resolution setting out the principles to be applied in decisions relating to the use of force and express its

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[40] Art. 2(7) of the UN Charter reads: "Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially in the domestic jurisdiction of any state of shall require Members to submit to such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII."
[41] High-Level Panel report, paragraph 193.

intention to be guided by them when deciding whether to authorise or mandate the use of force. It should be noted that the EU appears to have placed little emphasis on the adoption of such criteria in a Security Council Resolution, most likely because there was little discussion or agreement amongst EU Members themselves as to the issue.

Summit Outcome

The Outcome Document[42] reaffirmed the primacy of the Security Council as guarantor of international peace and security was reiterated in the Outcome Document. Member States were also able to agree that the existing UN Charter articles governing the use of force sufficiently address the full range of threats to security and thus do not require amendment. However, no mention of criteria to regulate humanitarian interventions were included in the Outcome Document. As all issues relating to the Security Council and its exercise of powers were sidelined for the unforeseeable future, no debate relating to such criteria can be expected for some time.

The possibility of passing a Resolution on clearly defined and agreed criteria may be an area where the EU could exercise some influence on the international scene. This would require EU foreign Ministers or Heads of State to come to a prior consensus as to the criteria at the Council level, and then the acting EU Council President could table a draft Resolution on the criteria and negotiate with other Security Council members to possibly obtain the necessary majority, barring a veto from a Permanent member, to adopt the Resolution.

A Responsibility to Protect

As discussed in Part I, the Secretary-General's Report also advocated a limitation on the principle of state sovereignty by endorsing a "responsibility to protect" individuals within a State, when the latter is either unable or unwilling to do so in the face of genocide, ethnic cleansing or other gross violations of humanitarian law[43]. The final Summit Outcome Document nevertheless forged agreement on the inclusion of such a responsibility to protect[44]. How such a responsibility will be translated into practice, and whether it will change State behaviour in any way, if at all, without clearly agreed to guidelines on the use of force, remains to be seen.

Peacekeeping, Regional Organisations and the Use of Force

A final notable recommendation from an EU perspective is that of the Secretary-General that peacekeeping by regional organisations should play a central role in any UN collective security strategy, but that they require explicit Chapter VII Security Council authorisation to undertake an intervention under Chapter VIII of the UN Charter. While the debate as to whether the EU is actually a regional organisation for the purposes of Chapter VIII peacekeeping continues unresolved, the EU could nevertheless play a key role in leading

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[42] See ff. 2.
[43] High-Level Panel Report, paragraph 203.
[44] Outcome Document, paras. 138-139.

the debate as to the use of regional organisations in carrying out Security-Council authorised interventions in the upcoming months, given that peacekeeping issues were not specifically discussed at the Summit.

While no concrete proposals on peacekeeping were adopted at the Summit, Member States broadly welcomed further developments on the possibility of a standing force for the UN[45]. The Summit Outcome Document also specifically commends the EU and other unnamed regional entities for their efforts in developing such capacities as rapid deployment and standby and bridging arrangements[46]. The area of cooperation with the UN in peacekeeping is a further area where the EU has started to-and can continue to play a vital function in international relations. With the future establishment of the PBC it is also hoped that some of many logistical problems, such as duplication of efforts and coordination of tasks and resources may be alleviated in cases where troops are required in a post-conflict situation.

b.   *Security Council Reform*

One of the most important and controversial reform proposals entails the reform of the composition of the Security Council to render it more legitimate, representative and reflective of today's geopolitical realities. At present, the Security Council is composed of five permanent members, each with a right to a veto, and 10 non-permanent members without a veto. The Secretary-General's Report endorses the principles of reform set out by the High-Level Panel Report and urges Member States to consider one of the two options, Models A or B presented in the Report, or any viable alternative proposal with respect to size and balance that emerges on the basis of either Model.

The first model provides for the creation of six new permanent Member seats without veto power (two for Africa, two for Asia and the Pacific, one for Europe, and one for the Americans) and three new 2-year term non-permanent seats divided among the major regional areas. In turn, model B provides for a new category of eight 4-year seats and one non-renewable 2-year seat. Both options envisage the attribution of 6 seats to each major geographic group and thereby enlarge the Security Council from 15 to 24 members.

While Kofi Annan recommended that Member States should agree to take a decision on the enlargement of the Security Council prior to the September Summit. All attempts at reaching a consensus before the Summit, however, have proved futile. The most likely candidates for a new permanent seat—Germany, Japan, Brazil and India—support the Secretary-General's plea and view it as an indirect backing for their candidacy. At the same time, the African Union has failed to reach a decision as to their two candidates for a permanent seat, while other vocal States, including Italy, Mexico, South Korea and Pakistan support the Model B option and stress the need for international consensus at deciding on a

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[45] Ibid, para. 92.
[46] Ibid, para. 93.

reform. Further hitches include the U.S. express support for Japan's but not Germany's candidacy for a permanent seat on the Council, the main country candidates competing among each other for the Permanent seats, and the EU Member States utterly divided on a suitable Model. The only certain aspect of a possible enlargement was that the current Permanent Five Security Council Members would not be deprived of their veto, and the veto would not be extended to any new permanent members.

Summit

Despite Kofi Annan's assertion that no reform of the UN would be complete without the reform of the Security Council, the issue of Security Council enlargement was removed from the Summit agenda altogether and left to be dealt with at a later date[47]. It remains to be seen whether State representatives at the General Assembly come to an agreement on a suitable model and suitable candidates for en enlargement in the 60th General Assembly session, though any proposal would ultimately have to be agreed to by the veto-wielding permanent five.

C.   Post-Conflict Strategies

Given that previous conflicts and human rights abuses are the main indicators of future conflicts within a State, post-conflict peace-building strategies are an especially important part of any collective security strategy. As stated by the Secretary-General in his Report, however, post-conflict peace-building is one area where the UN collective security instruments are particularly inefficient. Moreover, ill-coordinated and overlapping programmes of NGO's, bilateral donors, and UN agencies that compete for resources in post-conflict societies only serve to undermine each other's efforts and further overwhelm local authorities attempting to sustain a fragile peace.

a.   Peace-Building Commission

To bridge the institutional gap in the UN, the Secretary-General adopted the High-Level Panel proposal that an intergovernmental Peace-Building Commission (PBC) along with a peace-building Support Office within the UN Secretariat be established to act as a central coordinating body for post-conflict strategies and support countries transition from a state of war to one of sustainable peace. The main functions ensilaged for the PBC are thus to:

1. improve UN planning for sustained recovery, focussing on institution and State capacity building;
2. help ensure predictable financing for early recovery activities;
3. improve coordination of the many post-conflict activities of the UN programmes and agencies;
4. provide a forum where the UN; major bilateral donors; troop-contributing States, and relevant regional actors and organisation, the international financial

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[47] The Outcome Document merely mentions that Member States support the reform of the Security Council to render it more broadly representative, efficient and transparent: See Outcome Document para 153.

institutions, and the national or transitional governments of the State in question could share information and coordinate their activities; and

5. periodically review progress towards the various recovery goals.

Unlike the High-Level Panel's recommendation, however, the Secretary-General proposed that the functions of this body be limited to peace-building, and that this body should not perform the functions of an early warning mechanism. Instead Mr Annan recommended that the PBC should be available to advise and support any State with institution-building at the request of that State to reduce the risk of conflict. The PBC should also be in regular communication with the Security Council and ECOSOC in sequence, depending on the phase of the conflict, to improve the efficiency of the UN collectively security mechanism and avoid duplication of information. The PBC could thus act as a link between the Security Council and ECOSOC, reporting to the former body on a country-specific basis in the immediate aftermath of conflicts, and to ECOSOC to coordinate longer term peace-building efforts once the Security Council is no longer seized on a conflict. It is further recommended that the PBC be financed by an envisaged peace-building fund.

Summit Outcome

The establishment of a PBC faced little opposition from world leaders and was given a start date of no later than 31 December 2005[48]. Aside from endorsing the Secretary-General's recommendations as to the composition of the PBC and the fact that it should be a standing body, the modalities of such a body were largely left to the General Assembly to decide upon.

b.   *Democracy, Human Rights and Rule of Law*

To prevent States from lapsing into conflict, the Secretary-General emphasised the importance of promoting democracy, the rule of law and human rights. In particular, he proposed the establishment of a democracy fund to provide assistance to countries seeking to strengthen their democratic institutions, encouraged the ratification of all treaties relating to the protection of civilians, and encouraged the steps to strengthen cooperation with the International Court of Justice, the International Criminal Court and other international war tribunals. More concretely, the Secretary-General supported the creation of a new Human Rights Council to replace the existing Human Rights Commission (HRC).

Human Rights Council

The Secretary-General's solution to the ailing Commission on Human rights was to replace it with a smaller standing Human Rights Council . The existing Human Rights Commission on Human Rights has been become increasingly politicised and ineffective over the years. The fact that such States with dismal human rights records like the Sudan have gained seats on the Human Rights Commission has rendered this body increasingly ineffectual in its unwillingness and inability to even discuss human rights violations in some of the

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[48] Outcome Document, para. 105.

countries where the most serious violations are occurring, let alone to condemn them[49]. In recognition of the need for a Body to monitor, protect and promote Human Rights on the one hand, and the loss of credibility and professionalism of the HRC on the other the UN Secretary-General proposed a complete overhaul of the HRC by a new Human Rights body altogether.

The envisaged Human Rights Council would either be treated on par with the Security Council and ECOSOC as a principal organ of the UN or as a subsidiary body of the UN General Assembly, with its members directly elected by the GA irrespective of its status. Such a requirement of direct election would have prevented the new Members of the envisaged HRC from including those States renowned for the human rights violations they perpetuate. It was also envisaged that the Human Rights Council be a standing body that would operate year-round unlike the existing HRC that only held one six-week session per year. This would ensure that human rights violations could be monitored and scrutinised throughout the year instead of merely being raised, if at all, at the annual session.

The creation of the Human Rights Council was firmly backed by both the U.S and the EU Member States. The final compromise position contained in the Outcome Document of the Summit nevertheless contains a very watered-down version of the original proposals, and omits any details as to the composition, size, membership and working procedures of the Council, where the true disagreement among UN Member States lay as to the creation of this Council lay. In contrast to the recommendations on the PBC, no date was set for when the HRC should come into existence, if at all. The upcoming debates at the 60th GA session will tell whether or not sufficient consensus on the modalities of the HRC can be forged to ensure the establishment of this Council in the upcoming year.

D.   Institutional Reform: The Secretariat

In addition to proposing a catalogue of reforms aimed at creating a new balance of the three global councils—the Security Council, ECOSOC and the envisaged HRC—Kofi Annan's institutional reform proposals aimed at restoring the prestige of the General Assembly as the chief deliberative, policy-making and representative organ[50] and at restructuring the Secretariat to be more accountable and effective, particularly in light of the oil-for-food scandal.

The U.S., EU Member States and other Western States strongly supported the reform of the Secretariat to render it more effective and accountable and favoured the Secretary-General's recommendation of conferring greater executive powers to the UN bureaucracy to improve its decision-making capabilities. The U.S., in particular, made institutional reform of the

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[49]   "UN Reform Summit Q and A" *Human Rights Watch* (8 September 2005). Online at http://hrw.org/english/docs/2005/09/08/global11704_txt.htm .
[50]   "In Larger Freedom", para. 158. Op. Cit. ff. 1.

UN its key priority for the Summit, not least because the Senate is currently reviewing a Congressional Bill tying further U.S. funding contributions to the UN to management reform of this world body[51].In particular, the U.S. pushed strongly for such measures as an enforceable code of ethics for all UN staff, an independent oversight board for the UN Secretariat, increased authority for the position of Secretary General, and continuous review of GA mandates during the negotiations. The Secretary-General had also proposed that the Secretariat have a greater role in setting the priorities for the UN Budget and the mandates, a power traditionally exercised by the General Assembly.

The outcome of the Summit negotiations on management reform once again reflect a lowest-common denominator compromise, with most of the reform proposals having been omitted from the Outcome Document. Developing States, this time headed by Jamaica strongly resisted reform proposals to strengthen the Secretary-General at the expense of the General Assembly. While agreement was reached on employing external auditors and the review of all mandates older than 5 years, proposals to increase the executive powers of the Secretariat were defeated and the U.S. was forced to back down on some of its key priorities for the Summit.

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[51] See: "U.S. Priorities for a stronger, more effective United Nations." *U.S. Department of State: Bureau of International Organization Affairs* (9 September 2005).

IV. CONCLUSION

A. The UN Reform Agenda

As was largely predicted, the UN Summit held on 12-14 September of this year bore littlet. Much of the ambitious reform agenda championed by the UN Secretary-General was reduced to statements of broad principles reflecting the lowest common denominator position of the 191 UN Member States. Most disappointing were the inability of Member States to even consider negotiating the reform of the Security Council, the lack of agreement on the modalities of the proposed HRC, and the refusal by many states to grant the Secretary-General greater executive powers to better equip him in rendering the UN more accountable and effective.

Progress was nevertheless made on several fronts and most notably in the area of development, the priority area of the EU, the creation of the PBC, and the unambiguous acceptance by all governments of a collective international responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity.

B. The EU's Role and Position in the Reform Debate

The performance of the EU in the UN reform debate and Summit negotiations is reflective of its current indecisiveness about its role both in Europe and on the international scene— in the aftermath of the rejection of the EU constitution in two founding Member States, France and the Netherlands, the continued impasse over the next budget the EU and the prospect of an enlarged EU with Turkey as a potential future member, the EU declarations expressing a desire to become a global player on the international scene with "effective multilateralism" at the core of its strategy may be "too much, too soon" for Europe as has been suggested[52] There has been too little debate about the UN Reform process both on an EU-Level, where the issue was barely discussed at the European Council level, and on a national level in parliaments and by politicians.

Despite the elaboration of the EU's foreign policy objectives in the European Security Strategy and subsequent UN-EU policy initiatives, agreement among EU Member States on some of the core UN reforms was still lacking at the start of the Summit, a situation which prevented the EU from being able to negotiate or take the lead in negotiations as a true global player.

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[52] Sven Biscop: " The European Union and the United Nations: Partners in Effective Multilateralism." *Chaillot Papers* (June 2005). Online at: http://www.irri-kiib.be/papers/cc78-cover.pdf

C.   Areas of Agreement and Disagreement

a.   *Development*

It must be said that EU Member States were united in their support for the MDG's and other development recommendations and this was one area where the EU was able to exercise some clout at the Summit by purporting to champion the rights of developing States[53]. Given that the area of development formed the bulk of the recommendations to be agreed upon at the Summit, and the U.S. was initially opposed to adopting the MDG's as outlined in Kofi Annan's Report, the EU can be proud of its efforts in promoting agreement in this area.

b.   *Peace and Security: Peacekeeping and the Use of Force*

EU Member States are also united, in principle, with respect to enhancing EU-UN cooperation and improving EU-UN capabilities in the area of peacekeeping, although discussions of improving UN peacekeeping possibilities was sidelined along with Security Council reform at the World Summit. EU Member States also supported the creation of the Peace-Building Commission, the proposed establishment of which proved to be an uncontested issue at the Summit.

In the area of peace and security, there was also general agreement among EU Members regarding such issues as enhancing the fight against terrorism, WMD proliferation and disarmament, recognising the "responsibility to protect" in the event of gross human rights violations, defining criteria for humanitarian interventions and empowering the Secretary General with better resources and powers to promote the peaceful settlement of disputes.

On the most contentious issue of Security Council reform, however, EU Member States remained utterly divided and are likely to continue to be in the foreseeable future. Similarly, while Member States agreed, in principle, to the creation of a new Human Rights Council, they remained divided on the modalities of this new body and, in particular, they could not agree whether it should be linked to the General Assembly or Security Council, whether a peer review of Member States should be established, and what the role of NGO's in it should be. Whether these points of disagreement should be viewed as a failure of the CFSP or merely reflective of the directional difficulties the EU is currently experiencing is debateable.

What can be concluded, however, is that the reform of the United Nations entered into a slow and difficult *process* that will require continued leadership and consensus building in the short, medium and long term. Although not a member itself of the UN, the EU is in a strong position to influence and direct this reform process given the combined financial

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[53] "The 2005 World Summit is a unique opportunity to show Europe's determination to keep our promises to the developing world and to bring others with us.": Jose Manuel Barroso, President of the European Commission: "UN World Summit 2005: Commission President Barroso challenges others to match European Union's commitments on Development goals." *Brussels IP/05/1126* (12 September 2005)

and economic clout of its 25 members. It may not currently be in the position to do so given the current hiccups the EU is experiencing on a constitutional-level and the relatively recent articulation of the EU's foreign policy goals in its ESS. As the UN reform process is a long and ongoing one, however, it is hoped that the declarations of desire to become a global actor in international affairs expressed in the CFSP are increasingly put into practice.