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REPORT OF THE INTERNATIONAL CONFERENCE "THE EU, THE US AND THE REFORM OF THE UNITED NATIONS CHARTER: CHALLENGES AND PERSPECTIVES

Rapporteurs: Raffaello Matarazzo and Emanuele Rebasti

Report of the international conference on "The EU, the US and the Reform of the United Nations Charter: Challenges and Perspectives" European University Institute
Florence, October 21–22, 2005

IAI0543

ISTITUTO AFFARI INTERNAZIONALI

REPORT OF THE INTERNATIONAL CONFERENCE
"THE EU, THE US AND THE REFORM OF THE UNITED NATIONS CHARTER: CHALLENGES AND PERSPECTIVES" [1]

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Introduction

In the aftermath of the UN world Summit held in New York on September 14 – 16, 2005, the Istituto Affari Internazionali (IAI) of Rome together with the European Commission (Rome Office), the European University Institute (EUI) in Florence and the United Nations Interregional Crime and Justice Research Institute (UNICRI), organised an international conference in Florence. The conference, supported by the Compagnia di San Paolo of Turin, the US Embassy in Rome and the Istituto Italo Latino Americano (IILA), was attended by experts, scholars, and officials from around the world and provided an assessment of the UN New York Summit and of the Summit's *Outcome Document* (A/60/L.1). The conference outlined, in particular, the role played by the EU and the US at the Summit, and more generally the transatlantic approach to the UN reform process. Moreover, the participants tried to draw the future perspectives of the UN reform, the main problems in the field, and the strategic sectors where the efforts of the international community are providing results.

1. The EU contribution to the UN Reform

The high profile role played by the EU at the Summit. The participants shared the view that the New York Summit was one of the most important occasions in which the EU has shown its emerging external voice. With the exception of the UN Security Council (UNSC) reform, the EU's high profile action emerged in the cohesion and in the leadership shown on the main issues of the agenda. More than exhibiting their cohesion during the Summit, the EU member States succeeded in putting their political weight to the service of a proactive attitude all through the process, in the pursuit of some clear objectives. If the Summit reached also positive outcomes, some participants stressed, it is mainly due to the persistent initiative of the EU delegation in supporting the UN Secretary General (UNSG), in being open to the developing countries instances, in trying to persuade the other like minded countries.

The "hesitating" profile of the US action in New York. Some participants emphasized that while asking for a major overhaul of the multilateral institutions the

[1] The Conference was organized with the support of the Compagnia di San Paolo (Turin), the Istituto Italo Latino Americano (IILA), the United Nations Interregional Crime and Justice Research Institute (UNICRI), and the US Embassy in Italy.

[2] Raffaello Matarazzo, Research Fellow at the Istituto Affari Internazionali (IAI), drafted paragraphs 1 to 3. Emanuele Rebasti, Phd candidate at the European University Institute (EUI), drafted paragraphs 4 to 6. Paragrafph 7 is part of the report of the fifth Session of the Florence Conference: "International Terrorism and Governmental Structures", UNICRI, Turin, December 2005.

US exhibited coolness about the Summit during all the preparatory phase. This facilitated the EU being at the front line of the negotiation. In the final months before the Summit, someone stressed, the US finally sought to get some results out of the summit in areas other than its original priority of UN management reform. With the US intervening late in the multilateral process, the EU attempted to facilitate the dialogue and compromises of the US with the developing countries on a wide range of issues.

The EU successfull strategic line. Facing the US approach at the Summit, a participant underlined that the EU was positioned as the bridge building player. On the most important issues, the EU occupied the middle of the negotiating ground, and tactically succeeded with its positive initiatives on development and trade, with its emphasis on the better use of civilian means of conflict management, its firm stand on human rights (HR) and its proactive attitude on the institutional reforms. The EU positioning was the result of the continuous joint-efforts both in Brussels and in New York. A crucial element was the intense effort to persuade other countries of the need for cooperating with the EU to achieve results at the Summit. Nevertheless, the participants agreed that the EU good performance contrasts with the critical internal European environment, particularly concerning foreign affairs, after the negative referenda on the Constitution.

The EU contribution in the different reform areas. The participants in the symposium showed a general appreciation for the the Summit outcomes in the **development** area, although it was considered that they are not as ambitious in all aspects as the EU would have wanted. The reaffirmation and the aknowledgement of the Millenium Development Goals as a galvanising framework for development efforts will allow the EU to move forward in implementing these important targets. A participant, in particular, underlined that the EU is the leading actor in the field of development assistance. During the Summit preparations, the EU led the efforts to push for the longstanding target of 0.7% of GNP to be provided in development assistance by 2015. The EU have also set an intermediate goal of 0.56% by 2010, and it provide some 43 billion per year in ODA. This will increase the European contribution by another 20 billion per year over the next five years. At least 50% of this contribution goes to Africa. Strictly linked with the development issues, has been the Summit's debate on the international **trade.** As a participant stressed**,** the EU worked for an ambitious outcome on trade at the New York Summit, especially with respect to immediate duty free and quota free market access for all exports of the least developed countries. Being the world's biggest provider of trade related assistance to help developing countries fully exploit market access opportunities, during the negotiation the EU tried to endorse more efforts on trade capacity building. The participants, moreover, emphasized that the endorsement by the Summit of the principle of the **responsibility to protect** populations from atrocities is clearly a major success, redefining sovereignty as a positive concept putting human beings at the core of security concerns. The definition of this new principle, strongly supported by the EU, should enhance the credibility of the international community and the UN's means to act in the face of genocide, war crimes, ethnic cleansing and crimes against humanity. The EU, was considered at least, played an important role also in reaching the decision to establish a **Peacebuilding Commission** for post-conflict reconstruction by 2005, and

in fostering the promotion of a HR Council replacing the discredited HR Commission by 2006, in line with the traditional European commitment to HR.

As a participant pointed out, UN policies and institutions are slowly acquiring a new profile, and the EU is at the heart of this process. But the UN system does not look well equipped to deal with the new Millennium's challenges. Probably, in the changing world political environment, the reform will keep unfolding for quite a long period of time in complex negotiations. The outcome will be somewhere in between a decisively improved system of multilateral world governance and a continuing obsolete and ineffective one. At this crossroad, a participant stressed, the EU can make the difference. Because of its transnational origin, its recent role, the positive acceptance of its position both by the developing countries and its traditional partners, the EU is in a position to shape the next steps of the reform process and stability. The successful implementation of this process will depend on developments on the international power scene, but also on the EU's willingness and ability to take on the challenge.

The historical reasons for the EU's commitment to UN reform. Most participants agreed that the New York Summit confirmed the EU's commitment to the UN and to the multilateral institutions. In fact, since the end of the Second World War, European action in the international scene is based on the principle – not always honoured - that collective institutions and actions achieve better results in terms of peace, democracy and prosperity rather than national institutions and actions. A number of participants stressed that multilateralism is the distinctive feature of the EU presence in the world, and the UN, as the major multilateral organization, is at the core of the EU's external action. Today the EU is the UN's biggest financial supporter, providing 38% of the UN's regular budget, and with the additional voluntary contribution of the Brussels institutions, the EU accounts for around 50% of the financing of the UN funds and programmes. Therefore the EU has a strong interest in improving the UN's performance, such as in reforming its policies and institutional bodies.

The New York Summit: a step in a process. According to a participant, the key word to evaluate the New York UN Summit is *adaptation*. The Summit, in fact, must be considered as a chain in a process, and not as a one-time opportunity. The Summit's conclusions are the result of a two year diplomatic build up which reached its "peak" in New York, and that opens the gate to further negotiations. In this sense, a participant stressed, to rule out the Summit as a failure or as a "non event" would be a mistake, because it was a relevant step in the UN reforming process.

The conference's debate underlined that the *World Summit Outcome*, more than a political platform for an overall reform of the UN, is an 'action plan' that the member states should follow in the future. The majority of the reform proposals advanced in the *Outcome* could enter into force via an internal procedure (like, for example, General Assembly resolutions) and do not need a formal revision of the UN Charter and subsequent ratification by the member states.

The transatlantic aspect of the main Summit's achievements. A participant pointed out that the New York Summit did not seize the opportunity set out by the UNSG to agree upon an overall reform of the UN. Nevertheless, the Summit attained important achievements particularly on the issues of transatlantic agreement, such as: the decision to establish a Peace Building Commission for post-conflict reconstruction by

2005; the decision to start to work on the creation of a HR Council replacing the discredited HR Commission by 2006; the decision to share the responsibility for protecting populations from genocide and other serious international crimes, enshrining the right of the international community to break national sovereignty (the so called "responsibility to protect"). Nevertheless, the Summit did not reach an agreement on enlargement of the UNSC, on disarmament and non proliferation, or on the definition of international terrorism. Finally, in areas like development, trade and environment, the achievements have been meagre but nonetheless sufficient to give impetus to the reform on the basis of new agreed principles. The judgement of "failure" expressed with respect to the Summit, must consider the public opinion expectation of some highly visible Summit decisions in specific areas. Stronger reforming signals in the sector of "security" or in "power sharing in the UN" - through the enlargement of the Security Council - would have partially satisfied such kinds of expectations. However, this does not mean that agreements in less visible areas are less relevant in the UN reform balance sheet.

2. The New York Summit –The European Union and the New Global Governance

Looking for a new conceptual framework. A participant pointed out that the extended reform process of the United Nations consolidated the concept that the central role of the Organization must be reaffirmed as the essential condition for the fulfillment of its functions in the maintenance of international peace and security, the promotion of economic and social development and the eradication of hunger and poverty. At the same time, it was stressed that the UN should continue to adapt to the current international context in order to face new challenges efficiently. From this point of view, a focal point is that the result of the process of reform reflects and responds to the diverse perspectives, concerns and interest of all Member States.

A speaker underlined that the report presented by UNSG Kofi Annan in March 2005, *In Larger Freedom*, proposed a reform of the international constitutional framework that links together development, human rights and security. In addition, it proposed far reaching reforms of the UN as the custodian organization of international peace and security. The document attempted to establish a coherent and comprehensive proposal for the difficult practical and doctrinal issues the organization had to face throughout the 1990s in the context of complex peacekeeping operations, humanitarian interventions, pro-democracy and development initiatives.

The UN facing the new threats. Someone recalled that the world scenario presents threats of a diverse nature that demand that the UN set an agenda of priorities that contemplates the necessities and interests of them all. For this purpose, a participant underlined, it is necessary that the UN focus its efforts on the promotion of universal and effective disarmament, the fight against terrorism, the proliferation of weapons of mass destruction, hunger, extreme poverty and the inequality of nations, as well as the avoidance of the spread of endemic or contagious diseases and environmental degradation. This new agenda should contain the diverse approaches of Member States regarding the main international problems and the existing relationship between conflicts and their underlying causes. Following the end of the bipolar order the UN has been increasingly called upon to intervene in intra-state conflicts, as part of

peacekeeping and peacebuilding missions, to engage in the reform of state institutions, and even in reform of transitional administrations.

Beyond the traditional understandings. According to one participant, however, this new role was not uncontroversial, because it required both new organizational capacities as well as modification of traditional understandings of the international order and of the tasks with which the world organization could be legitimately charged. He recalled that the gap between the actual practice and the traditional understanding of the UN mission was bound to engender an intense debate – inside and outside of the world organization. In the 1990's, this debate focused on democracy, its connections with development and peace and the organization's role in bringing them about. It was nurtured by contributions produced in think tanks, academia, and other international institutions. In the post-Cold War era, doctrines regarding democratization, security and development converged, and discourses on ways of achieving prosperity and peace shifted their focus from economic factors to the quality of state institutions and their compatibility with the existing international regimes.

New guiding concepts: "Good governance". A participant recalled that the World Bank played a central role in elaborating the new "post Washington consensus", focused on "good governance" and the new role the international institutions had to play. "Good governance" comprised efficiency in public service, rule of law, an effective judiciary, respect for human rights, freedom of the press and the existence of pluralistic institutions. In 1997, UNSG Kofi Annan had adopted "good governance" as the framework within which the United Nations organized and operationalised its activities in the field of democracy, development and peace. The same participant underlined that the "Good governance" was quickly becoming the guiding concept for UN initiatives and was considered both as the realization of democracy in actual practice and as a universally valid method of government, aimed at optimising the performance of state institutions. To that extent, public management techniques are held to be useful and applicable to all countries, regardless of local differences, as they offer standardized technical solutions to an array of different problems, spanning from development to human rights and the preservation of international peace.

"Shared responsibility". The participants shared the view that the *Millennium Declaration* adopted by the General Assembly in the year 2000, constituted a new context for discussing the UN role in the future. According to a speaker, here one could already find some of the fundamental elements set forth in the later Annan report *In Larger Freedom*, as the notion of "shared responsibility" and a people centered approach to international politics. The *Millennium Declaration* garnered consensus on a set of guiding principles for states and international organizations' action, such as freedom, equality, solidarity, tolerance, respect for nature and shared responsibility. The latter, in particular, was identified as a very important concept, which became, one year later, the central organizing idea or the new international regime and collective security system used by the UNSG. A participant pointed out that by the time of the 2002 Conference on Financing Development the themes of state's responsibility and good governance had converged in what has become known as the "Monterrey consensus". In this framework, "responsibility" was specifically identified as the decisive factor for development. On this point, a number of participants agreed that the

primary responsibility for economic and social development deals with, therefore, each state government. Like international peace and democracy, development results from the implementation of good governance practices. Developing countries are expected to mobilize domestic financial resources and to attract international business by establishing a stable and predictable investment climate. In addition, a participant underlined that they have to fight corruption, enhance respect for property rights, pursue sound macro-economic policies, secure fiscal sustainability, strengthen domestic financial sector. Two years later, the document prepared by the High Level Panel on Threats, Challenges and Change – *A More Secure World: our shared responsibility* - charged by the UNSG to devise proposals for a new security order, reinforced the people-centered approach of the Millenium Declaration. It also extended the notion of "responsibility" to make it not only a key factor for development but also the central organizing concept for the new century's collective security system. The report broadened significantly the notion of what has to be considered as an international threat and included both threats to states and threats to populations.

The linkage between the notion of "sovereignty" and "responsibility". A participant stressed that the most significant conceptual shift occurred through the linking of the notions of sovereignty with that of responsibility. Responsibility is not only a virtue to be promoted to achieve international security; it is also a condition necessary to exercise full sovereignty. For the High Level Panel States are means, not ends per se. The "responsibility to protect" populations from atrocities and gross human rights violations shared between states and international institutions, becomes the new organizing concept for the new international security system. A number of participants shared the view that when states are unable or unwilling to perform these functions, the international community must intervene, even with the use of force when necessary.

Kofi Annan's organizing concept of "larger freedom". A participant emphasized that in the proposal put before the Summit in *In Larger Freedom*, the UNSG harks back to the notion of "the peoples" of the UN Charter Preamble. He elaborates and develops the notion of "larger freedom" making it the organizing concept for his holistic conception of the reform of the international regime and the UN. Thus, while the UN remains an organization of sovereign States, the UN's main goal is to "make people everywhere more secure, more prosperous and better able to enjoy their fundamental human rights" . According to the same participant, the concept of "larger freedom" has, for Kofi Annan, three pillars: "freedom from want, freedom from fear, and freedom to live in dignity". These aspects are inseparably linked and must be addressed together. In order to reflect at the executive level the interlinked nature of the three aspects of "larger freedom", and to enhance system coherence, the UNSG proposed the creation of a Human Rights Council designed, as noted, to replace the Commission on Human Rights.

3. The reform of the UN Security Council

The participants in the symposium shared the view that the relevance of the UNSC will depend increasingly on its capacity to give effective responses to new security threats, such as those that derive from the massive and flagrant violations of

human rights and of humanitarian law, international terrorism, the proliferation of weapons of mass destruction, as well as the traditional cases of aggression and the use of force between States or internal conflicts that affect peace and security. Some participants underlined that the enhanced intensity of the current tasks performed by this body has required an equal adaptation to the nature of new conflicts, challenges and threats that have characterized the international scene since the early 1990's. This process of adjustment to the new world context is still unfinished and, with the participation and contribution of all member States, should result in an even more effective UNSC.

A holistic approach. Most participants agreed that the question of UNSC reform is strictly linked with the whole reform of the UN, including renovation of the Organization, strengthening the collective security system and multilateralism, revitalization of the General Assembly, enhancing the efficiency of the UNSC, and ensuring further coordination between the main bodies. In order to respond to the changes in the global scenario, the objective of the reform of the UNSC should be a Council more transparent in its working methods, more equitably representative in its composition, more democratic in its decision making process and more accountable to the rest of the membership. Therefore, a number of participants pointed out, the reform of the UNSC should not be reduced to the mere increase in its composition.

September's Summit debate. A number of participants underlined that at the New York Summit there was no breakthrough on UNSC reform, despite the flurry of activities in the previous months, particularly after the presentation of the G4 draft resolution in May 2005[3]. The G4 was unable to reach an agreement on a compromise text with the African Union[4], so they decided not to put their draft resolution to a vote. During the first part of 2005, the debate on UNSC reform was quite difficult. The proposal to establish new permanent members and the decision to impose tight deadlines on the UN membership were very controversial, deepened tensions in all regional groups and risked diverting attention away from the other dossiers of the more comprehensive UN reform. A participant, in particular, stressed that no real negotiation was ever undertaken between the G4 and the Uniting for Consensus movement[5]. Moreover, a number of participants agreed that the Millennium Summit limited itself to advocating an "early" reform and a review of the state of play at the end of the year. In the meantime the competing draft resolutions outlining different formats for an enlarged UNSC have expired. A participant stressed that much as it is too early to tell, the substantial lack of interest in the reform on the US side, coupled with the bitter divisions affecting each and every regional grouping over who and how should represent it on a 24/25 Council, seem to conjuring up to a "no – contest" verdict over the possible new configuration of the UNSC. Within this framework, a participant pointed out that if the overall outcome of the Millennium Summit was – in the words of

[3] See: "UN General Assembly. Fifty-ninth session, Agenda item 53. Question of equitable representation on and increase in the membership of the Security Council and related matters." A/59/L.64, July 6, 2005
[4] See: African Union , "Draft Sirte Declaration on the Reform of the United Nations", General Assembly/AU/Draft Decl 2 (V). July 5, 2005
[5] See: Uniting for Consensus, "Draft Resolution on Security Council Reform", attached to the letter of the Permanent Representative of Italy to the United Nations, n. 2698, New York, July 8, 2005

the US Senator George Mitchell – a "halting start" for the UN reform, a no-win situation at the General Assembly could be a "starting halt" for the UNSC.

According to most participants, the lesson to be drawn from the events of the months before the Summit, is that a UNSC reform of this magnitude and political relevance cannot be imposed against the will of significant sectors of the General Assembly. Looking at the statements of the leaders at the Summit it seems that that lesson has been well understood. A number of participants underlined that to really enhance the credibility and legitimacy, and thereby the effectiveness, of the UNSC, a broad consensus is needed, since its reform has a "quasi-constitutional" nature and will be crucial for the future of the UN. On the contrary, decisions taken by narrow majorities would severely undermine the Council, negatively affect its decisions and their implementation, and ultimately endanger the UN.

More permanent members in the Security Council? A participant stressed that the increase of permanent members of the UNSC is divisive by definition, as it establishes different categories of member States. The presence of the current five permanent member States (P5) – which could be considered the Founding Fathers of the organization - was established at the end of a very destructive war, when just a few countries were indeed in full control of the international system. If the UN were to be founded today, a different arrangement would probably be decided. This is not a reason to call into question the status of the P5, but, at the same time it could be a mistake to replicate this outdated approach, which fractures the UN membership, today in a completely different and much more complex scenario. In this context, widening the permanent circle to the few who seek special status, no matter how worthy their candidacies, would make the UNSC less accountable for its conduct, more remote from the membership and less representative of the UN constituencies.

The veto power. A number of participants recalled that after more than ten years of deliberations, substantive progress has not been achieved with respect to questions concerning the veto and the increase in membership**.** This was also reflected by the prevailing difficulties that could not be overcome to reach a decision in time before the 2005 World Summit. By this point of view, a participant pointed out that the creation of new permanent seats enjoining the privilege of veto, following the model of 1945, would perpetuate inequalities of the past. The increase of permanent members would deepen the present imbalance in the composition of the UNSC, would erode the system of collective security enshrined in the UN Charter and would limit the right of every member State to elect and be elected to participate in that system. Proposals to increase the category of permanent members were considered notwithstanding that this constitutes a refutation of the principle of sovereign equality of all Members of the United Nations.

The regional balances. Most participants shared the view that the increase in the category of non-permanent members would respond effectively to the need to maintain regional balances. Non-permanent members should continue to be elected according to the criteria set out in art. 23 paragraph 1 of the Charter: their contribution to the maintenance of international peace and security and the principle of equitable geographical distribution. It would be for the regional groups to decide the allocation of the new non-permanent seats created as a consequence of the Council reform. The

reform of the UNSC is a "package deal" and should be achieved through a "general agreement" on all aspects of the question and other related matters, including increasing in the membership, decision-making, periodic review, working methods and transparency. Increasing membership and the veto are closely linked, a participant suggested, since it is clear that it is not possible to make a decision on the enlargement of an organ of the political importance of the UNSC without a previous agreement on the decision-making process of this body.

Toward a step-by-step approach. Most participants agreed that the 2005 Summit clearly exposed that transferring the discussions to a political and higher level, without previous consensus on the fundamental matters (enlargement and veto) could potentially create divisions and devastate the efforts and progress so far reached by the members States within the framework of the Assembly. It is also evident, according to a number of participants, that the best way to move forward is not by deviating from the normal course of the consensus mechanism, but seeking a comprehensive and interlinked agreement through a gradual and step-by-step approach. Within this framework, it cannot be denied that a vote on a draft not resulting from a real consensus or a "bottom up" process may divide and consequently weaken the UN. Some participants pointed out that all options should be discussed on the basis of equality. UNSC reform entails creative thinking and a negotiation process that formally has not yet been finished. However, advances had been achieved by the Assembly in the discussions of the different clusters of the reform, where different sets of proposals have been identified with the shared goal of reaching a more efficient, legitimate and transparent Council. Efforts should be made to achieve a general agreement on this key issue, taking into account the need to avoid voting and pressures. The process of tabling resolutions that took place this year, someone stressed, created a very negative atmosphere and affected the whole process of reform. A new approach, including a new format for negotiations, could be envisaged and agreed by all, including the main member States and the regional groups.

A European seat in the Security Council. According to one speaker, in order to give a fresh start to the debate on UNSC reform, it is essential that the EU members acknowledge two points: that a more representative UNSC need not be larger, and that "more Europe" in the UNSC need not entail more European (semi permanent members). A 15 strong UNSC is already a sub-optimal set-up: if EU members want more effective multilateralism, they should be consistent and demand that the UNSC not grow in members. They should in fact know by now, that moving from 15 to 25 is no recipe for effective decision making. Furthermore, someone sugested that the EU members should take a bold unilateral move. Currently, European membership on the UNSC amounts to 1/3 of the entire body: 2 permanent and 3 elected. How credible and consistent is this, for a bloc of 500-odd million people in a world of more than 6 billion people? On top of that, the 3 elected members are chosen from 2 "regional caucuses": Western Europe (2 members), and Eastern Europe, (1 member), that hardly reflect the realities of post-cold war Europe. The enlarged EU already encompasses most of what once was "Eastern" European countries, either as full members or as candidates. In the OSCE, for instance, such a distinction has disappeared. So why not, a participant pointed out, come forward with a common position proposing that "Europe" take only one seat, alongside those of France and Britain. Such a seat could be occupied on a

rotational basis: every two years a single European "caucus" would "nominate" its representative. The two residual seats could well be redistributed across the other continental "caucuses". This, another participant convened, would not only help rebalance global representation on the UNSC. It would also demonstrate that the EU is serious about effective multilateralism and legitimacy, so much so that it is also ready to "sacrifice" the potential majority that it essentially shares in the college with the Americas. This could help also to dispel the mistrust that especially African countries feel vis-à-vis a Western dominated UNSC, and arguably make also other reforms possible. A number of participants considered that such an opening could have beneficial effects also on the EU prospect. On the one hand, someone stressed, it would not in fact threaten the status of France or the UK. On the other, it would put some much needed pressure on them: if all European countries agreed on a single country representing them, with a seat of informal political mandate, and reporting back to them (in New York and, possibly, in Brussels too), it would become increasingly difficult for the two European permanent members to diverge from positions whose formulation they have been involved in. A less numerous but more cohesive European presence on the UNSC would, according to a number of participants, be a positive sum-game for all. It would not require any change in the UN Charter nor in the EU treaties. It, moreover, could happen with, or without the EU Constitution. It could strengthen the UN reform process, and could be effective also in terms of European "public diplomacy".

A would be shared approach to the UNSC reform. In the last part of the session the common view was expressed that the recent 2005 World Summit and the preparatory works and consultations offered a special opportunity to make an objective analysis of the functioning of the UN after 60 years, and to exchange views on innovative and brave measures – both at the normative and at the institutional levels – that are needed to adapt the UN to the challenges that the new Millennium brings. The Outcome Document adopted by the High Level Plenary Session, a participant stressed, includes commitments to further works, reviews, analysis and implementation.

The assembled participants agreed on the need of a reform that is on target and perdurable, and that leads to a revitalized, modern and effective multilateralism serving common goal of promoting the rule of law, the respect for HR, peace and development. To that end, consultations should be continued and intensified in order to arrive at a compromise and a legitimate solution for all members of the Organization, including the consideration of alternative reform projects that might be more innovative, lasting and democratic.

As it is recognized in the Outcome Document, the member States have to keep on working towards a security consensus on major threats and challenges based on the recognition that many threats are interlinked, that development, peace, security and HR are mutually reinforcing, and that no State can best protect itself by acting entirely alone.

In conclusion, a participant considered that the international security conceptually has to be approached from a multidimensional perspective and one needs to keep in mind the needs of States in terms of their security, stability, development, social progress and regional balance. Moreover, this approach has to embrace democratic values, respect, promotion of HR, sovereign equality of States, and respect for national sovereignty. These values and the cooperation among States to put them

into practice must therefore be considered in a new system of collective security, giving appropriate answers to current and future security risks.

4. Human Rights

The need to reform the UN system of HR protection. Although the UN has played a fundamental role in providing the international community with a universal human rights framework, it has increasingly shown itself to be incapable of guaranteeing an effective implementation of HR standards at the global level. The reasons for such a failure were addressed in the first part of the session. In particular, a participant took the experience of the successful European model of HR protection as a touchstone to highlight the flaws which affect the current UN system of safeguards.

?? *Institutional fragmentation*. While in Europe the model of the European Convention of Human Rights is that of a unitary legal instrument, of a single court and of the progressive inclusion of new rights and freedom by way of additional protocols, the UN has followed the path of a multitude of human rights regimes, each endowed with its own implementing mechanism. Seven major supervisory bodies work in isolation from each other in order to examine periodic reports by State parties on the implementation of the seven major UN conventions on HR.[6] This institutional proliferation has not resulted in more effective human rights protection. On the one hand, implementation by way of periodic reporting has not proved effective: reports are always late, there is no time for their adequate consideration and above all there are no sanctions for States which do not abide by obligation of periodic reporting. On the other hand, the fragmentation of the monitoring systems produces an artificial segregation of the implementing procedures despite the proclaimed indivisibility and universality of HR in the 1993 Vienna Declaration.

?? *Self-contained character of UN human right policy*. The UN system of HR protection works only *ex post facto*: it is conceived to assess whether or not a violation of human rights has occurred. There is no *ex ante* consideration of HR aspects in the development of other policies of the organisation, and specifically in the fields of trade, investment or finance. Admittedly, the Office of the High Commissioner of Human Rights has promoted an anticipatory approach to human rights protection by undertaking a series of studies to assess the impact on human rights of, *inter alia*, the increasing use of intellectual property rights, the activities of transnational corporations and biotechnology[7]. However, this experience remains limited and confined to the cognitive level. Here again the European experience could provide a useful example. In

[6] The International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of Racial Discrimination, the Convention on the Elimination of Discrimination against Women, the Convention Against Torture and the Convention on the Right of the Child, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

[7] See "The impact of Agreement on Trade-Related Aspects of Intellectual Property Rights on Human Rights. Report of the High Commissioner", UN doc. E/CN.4/Sub.2/2001/13 of 27 June 2001; High Commissioner's Expert Group on Human Rights and Biotechnology, 2002, "Conclusions", available at http://www.unhchr.ch/biotech/conclusions.htm; "The Responsibilities of Transnational Corporations and Related Business Enterprises with regard to Human Rights. Report of the High Commissioner to the Commission on Human Rights"

the EU the mainstreaming of human rights, that is the inclusion of the HR dimension in all policies, has already become a reality.

?? *Lack of a "constitutional" dimension in the UN HR discourse*. Although the protection of HR is one of the fundamental purposes entrusted to the UN by the Charter, the protection and promotion of HR have been so far conceived in terms of obligations undertaken by States in their reciprocal relations and not as an integral part of the "constitutional mandate" which shall inform the action of UN organs and Specialised Agencies. In the UN no legal mechanism exists for ensuring that the fundamental principles of HR protection may translate in precise conditionality or as the basis for review of acts of the organisation. As a consequence, the UNSC and the UNSG do not adequately take human rights considerations into account when planning or implementing peace keeping or peace building operations; UN financial institutions are not subjected to a statutory mandate to respect and protect human rights and resort to purely voluntary commitments[8]; development policies are not planned nor conducted within a precise framework of human rights. This situation contrasts sharply with the EU systems where fundamental rights, even in the absence of original treaty provisions, have been recognized as forming part of the general principles of the system, and as such applicable to states, supranational institutions and private citizens alike. Thus the EU could provide a good example of a greater and deeper infusion of human rights considerations in the overall action of the organisation.

?? *Loss of credibility of the existing bodies*. In line with what was acknowledged by the UNSG and the High Level Panel in their reports – participants emphasized that the structural weakness of the UN HR protection system (e.g. the lack of compulsory and binding means of HR enforcement) has been exacerbated by political misbehaviour which compromised credibility and professionalism of the existing HR bodies. The most striking example is provided by the Commission on Human Rights whose membership includes States with a record of HR abuses which take advantage of their position to shield themselves from the criticism addressed to them by other members of the international community.

An occasion lost at the World Summit? The participants in the conference discussed at length whether the World Summit provided convincing remedies to the obstacles which have so far affected the functioning of the UN and treaty-based systems of HR protection.

The common view was expressed that, despite the fact that the Outcome Document contains some general statements on the universal and indivisible character of HR[9] and on the need to mainstream human rights throughout the UN system[10], very few tangible commitments have been made in that direction. A paradigmatic example is provided by the paragraph on the effectiveness of human rights treaty bodies where it underlines the need to streamline the different reporting procedures: while according to the August Draft the streamlining of the reporting procedures should have aimed at

[8] See, for instance, the World Bank Inspection Panel, a body established in 1993 by the World Bank with the purpose of offering an independent forum to private individuals who allege violations of their rights or interests as a consequence of the implementation of a project financed by the Bank.
[9] See "2005 World Summit Outcome", UN Doc. A/60/L.1 of 20 September 2005, para. 121, 122.
[10] *Ibidem*, para.126.

enabling the treaty bodies to function as a *unified system*, in the Outcome Document this objective was finally dropped[11].

However two key issues particularly attracted the attention of the participants to the symposium: the proposal to establish a new HR Council and the formal recognition of the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity.

The proposed HR Council. In the process which has led to the World Summit different proposals were made to reform the existing and much discredited Commission on HR.

In its report, the UNSG expressed the view that the Commission on HR should be replaced with a smaller, standing and hierarchically superior HR Council, which should directly interact with the other principal organs of the UN and in particular with the UNSC[12]. For the UNSG the creation of a Council would accord human rights a more authoritative position, corresponding to the primacy of HR in the UN Charter. In addition, a restricted membership composed of States which undertake to abide to the highest human right standard would guarantee the effectiveness of the new body and the coherence of the UN multilateral system. As a participant pointed out, the coherence of the system would require that any discussion on the criteria for membership in the new HR Council should move from the basic principle according to which those who are not ready to abide by the rules that a body is about to produce should not be allowed to serve in that body. Thus, it would be unacceptable to have as HR Council members States that are not ready to welcome the Special Rapporteurs or to abide by the HR Conventions they have freely accepted.

On the contrary the High Level**:** Panel on Challenges and Threats suggested that the Commission's membership should be extended to universal membership. At the heart of the Panel's proposal was the view that any attempt to restrict participation to some category of States would inevitably lead to divisive and possibly self-defeating discussions on membership criteria. Moreover a very small body entirely composed of "squeaky-clean" States, fully observant of human rights, would not actually be a very effective or widely accepted body. In this regard, a participant stressed the danger of "hijacking" the process of reform. It has already happened in UN history that reforms that are supposed to make institutions more effective, but not necessarily more popular among the vast majority of UN members, eventually undermined the credibility of the reformed bodies and failed their goal. The participant maintained that a similar danger may threaten the current process of reform if some states will insist in creating a nice western looking system of HR protection which may lack credibility in the UN in general.

The Outcome Document of the World Summit endorses the idea of establishing a HR Council but fails in providing any detail on the mandate, modalities, functions, size, composition, or membership of the new Council and its relationship with the existing organs [13]; the definition of these elements is left to further negotiations in the General Assembly. As many participants stressed, such a result does not allow an evaluation of the new organ at the present stage but nonetheless raises concerns both as

[11] *Ibidem*, para. 125.
[12] See "In Larger Freedom: Towards Development, Security and Human Rights for All. Report of the Secretary General". UN Doc. A/59/2005 of 21 march 2005, para. 181 and ff.
[13] See "2005 World Summit Outcome", UN Doc. A/60/L.1 of 20 September 2005, para. 160.

to the difficulties to reach an agreement and as to the quality of the possible final political compromise. In particular, it was deemed disappointing that no reference is made to the powers of the new organ and specifically to the possibility it should have to address directly its recommendations to the UNSC. Moreover, the fact that nothing is said about the fate of the existing Commission on HR, nor about the relationship between the new HR Council and other existing organs which deal with HR protection, has led some participants to express the concern that the suggested reform, rather than streamlining and entrenching HR in the UN's action and simplifying the procedures for their implementation, could eventually lead towards further fragmentation, multiplication of institutions and therefore affect the effectiveness of HR protection even more.

Responsibility to protect. As already underlined, the participants in the symposium showed a general appreciation for the inclusion of the much debated concept of "responsibility to protect" in the Outcome Document. They conveyed however varying degrees of enthusiasm about the content of the norm. Some participants expressed the view that responsibility to protect should be regarded as one of the major achievements of the World Summit. The absence of any enforcement mechanism in the Genocide Convention has so far represented one of the most serious flaws of the international system of HR protection: the new concept could help in filling the gap by providing a basis for action in case of violations of the Convention. Such a conclusion was however questioned by another participant, who recalled that genocide has, for several years, been considered by the UNSC as a threat to peace and member States have been mandated to take enforcement action under chapter VII of the UN Charter. The same speaker underlined that the content and the implementing procedures of responsibility to protect have been watered down during the negotiations which led to the World Summit. He recalled that in the final document the intervention of the UNSC is subordinated to more strict requirements than those originally proposed[14], that nothing is said about the possibility of unilateral intervention by States in case of paralysis or unwillingness to intervene by the UNSC and that the proposed exhortation to the permanent members to refrain from using the veto power in cases of genocide, ethnic cleansing, war crimes and crimes against humanity was eventually deleted. Thus, beyond the rhetoric of the concept the outcome document would severely restrict the scope of the principle of "humanitarian intervention" to the case of collective action taken through – and according to the discretion of – the Security Council. It was maintained that such a limitation ends up producing contradictory results. If a State has the responsibility to protect its own citizens on its territory, it should also be allowed to intervene unilaterally to protect them when abroad. Similarly, it is striking that the references to the role of the International Criminal Court contained in the UNSG and High Level Panel reports were finally dropped: the responsibility to protect should also include the duty to assure that those who are responsible for gross violations of HR are

[14] Compare the wording of current para. 139 "we *are prepared to take* collective action, in a timely and decisive manner, through the Security Council, *in accordance with the Charter, including Chapter VII*, on a *case-by-case basis* (…) should peaceful means be inadequate and *national authorities are manifestly failing* to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity" with the wording of the August Draft: "we *recognize our shared responsibility* to take collective action through the Security Council *under Chapter VII of the Charter* (…) should peaceful means be inadequate and *individual States are unable or unwilling* to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity"

tried before an international tribunal if the territorial State is not able or not willing to prosecute them.

As another participant pointed out, a real progress in the field of responsibility to protect would have been a true reform of the UN which had tackled the problem of the paralysis of the UNSC when the protection of fundamental and shared values is at stake. The UN system is a paradoxical system which recognises the protection and fulfilment of HR as fundamental values, but whose institutional machinery allows that such fundamental values may be frustrated by the prohibition of force and respect for sovereignty, without providing any other alternative.

The role of the EU in the promotion of HR and democracy at the international level represented a second major focus of interest. A participant provocatively raised doubts as to the competence of the EU to deal with human rights and democracy. He stressed that despite the growing recognition of the role HR play in the EU internal legal order, Opinion 2/94 of the Court of Justice of the European Communities which excludes a Community competence in human rights protection still holds good. As a matter of fact, it is one thing to *apply* HR in the field of competence; quite another to *have competence* for HR. The legal point leads to a political one: what could be the credibility of an Organisation which urges third States to ratify HR treaty and has ratified none? Moreover, even if the EU were competent, it can be questioned whether it would really represent a factor of democracy and whether it could improve the protection of HR at the international level. The transfer of competence from democratic States to an organisation which admittedly suffers from a "democratic deficit", cannot be considered a factor of regional democracy. Similarly, the interposition of an autonomous subject of international law to which member States have transferred competence, may indeed reduce the remedies available to individuals which have suffered violations of their HR from the exercise of those competence (see, in particular, the ECHR case law).

This opinion was firmly criticized by all the audience. On the one hand it was stressed that if the Union's action in the HR field is internally limited, especially when it comes to the set of legal tools the EC can use towards its member States, externally there are no such limitations. As a consequence, human rights can be, and indeed are, legitimately mainstreamed in the whole range of EC/EU external policies. On the other hand a number of participants stressed that the existence and effectiveness of EU HR external policy is a matter of evidence and cannot be questioned by formal arguments of a legal nature. The EUs enlargement policy has been very effective in securing better human rights in a huge range of Countries all the way through central and eastern Europe and now Turkey.

The EU HR policy and the UN. The real question to be addressed is how important the UN is as a forum for the European HR external policy. Practice seems to suggest that it is not very important. A participant argued that the substance of EU HR policy largely happens outside the UN system, through unilateral/bilateral action. In particular he referred to bilateral or regional arrangements (e.g. Cotonou Convention with ACP Countries) where the EU has reserved the very well known right to impose sanctions on its partners for gross HR violations (so called "negative conditionality") and to its leading role as a sponsor of HR projects all over the world. It was submitted that these tools are considered more suitable to meet the main needs of the EU HR policy, namely

the effectiveness of funding policy, intra-pillar coherence, mainstreaming of HR in the various aspects of external action and setting of HR policy priorities.

But it would be a mistake to think of the EU and UN HR policies in terms of complete separation. Resolutions of UN HR Commission or Reports of HR Special Rapporteurs are often used by the EU in its bilateral or regional dealings with other Countries to set the standard of HR protection. However, the EU uses part of its political and economic power to promote the diffusion of and the compliance with UN HR standards. As a participant pointed out, there is no contradiction in the fact that the EU and its member states often use the norm-setting ability of the UN and then proceed on their own to apply them. This is exactly what every member of the UN is meant to do: it would be really much more contradictory if the EU imposed its own criteria and standards of HR protection around the world.

Divergent enthusiasm on democracy promotion at the global level. An American participant was struck by the fact that in a debate on HR, only one speaker out of four mentioned the word "democracy". Clearly much divergence exists in terms of enthusiasm if not policy between the EU and the US on the question of promotion of democracy at the global level. Democracy promotion was one of the core aims of the US Administration during the pre-summit negotiations and the endorsement of a Democracy Fund in the Outcome Document was perceived as a success of American diplomacy[15]. On the contrary, the European position on the point has been much more detached. The reasons for such a different attitude are certainly complex. Some speakers stressed that the difference is partly due to a certain distrust of American "good intentions", sometimes perceived as a veil to extend American political influence. But it is also undoubtable that the notion of "democracy" is still politically and legally problematic. A participant pointed out that while there is a large agreement on the content of basic HR, there are still difficulties in defining a generally accepted notion of democracy. This is also reflected in the Outcome Document. As a matter of fact while para. 121 clearly characterizes HR as universal and equally applicable irrespective of cultural and regional differences, para. 135 makes clear that there is no a single model of democracy but a plurality of democracies exist that, while sharing common features, present also significant regional differences.

A participant recalled that in this field, just like in the debate on the membership requirements for the new HR Council, the risk of establishing a western-looking institution is real. But such a consideration, and the caution it implies, should not lead us to put into question values which are already universally recognized and whose promotion is mandated by the international community as a whole.

5. The EU, Global Economic Governance and Development

The Global Economic Governance: structure and challenges. In the present system of global economic governance (GEG) the UN and its economic institutions are only

[15] See for instance "US Priorities for a Stronger, More Effective United Nations", US Secretary of State informative material available at www.state.gov. See also the Verbatim of the Press Release by N. Burns, Under Secretary of State for Political Affairs and K. Silverberger, Assistant Secretary of State for International Organizations on the UN Summit Declaration, September the 13th, 2005, equally available at www.state.gov.

one – and likely not the most important – of the decision making *fora* where economic and development issues are dealt with. Global trade is now ruled within the framework of the World Trade Organization (WTO), which has acquired a quasi universal membership. Global frameworks coexist with more than 230 regional free trade agreement and with the growing role played by private governance. It is important to stress that all of these different levels of economic governance are very dynamically interrelated. For instance, the WTO refers to the IMF agreement and incorporates to some extent the WIPO agreements. Similarly, there is a very dynamic interrelation between regional and bilateral agreements and the WTO – e.g. the failure of the 2003 WTO Cancun conference led to the conclusion of dozens of bilateral free trade agreements and, conversely, a number of bilateral agreements incorporate and strengthen WTO obligations.

The multilayered character of economic governance raises the problem of the possible conflicts among the different decision-making levels and prompts us to consider whether there is a need for a more centralized form of economic government. The participants to the symposium unanimously contested the idea that economic governance by a single institution (such as a hypothetical Economic and Social Security Council) would be something necessary or even desirable. On the one hand, the feared juxtaposition between the WTO and UN has today ceased to have much significance, precisely because the WTO has become the UN of World Trade and the two organizations have almost the same composition. On the other hand it seems unlikely that the WTO will ever become part of the UN system[16]. Even though "global economic governance" in the WTO remains one-sidedly producer-driven and its democratic legitimacy is strongly contested, its role in rule-making and dispute settlement continues to be supported by most trading countries as a more effective "governance mechanism" if compared with UN institutions.

Of course this does not mean that the current system of GEG does not have to face major challenges. As someone recalled, a fundamental problem of GEG remains the appropriateness of "policy-linkages" between economic governance and other relevant policy objectives such as human rights and environmental protection. Economists contest the effectiveness of linking policies aiming at different goals and underlines that if there are two objectives, then generally two distinct policies will help governments to attain them both to the best advantages. But in political terms, the lack of policy linkages between economic and social and environmental themes is at the core of the criticism directed at international economic governance by civil society; it remains therefore debated to what extent economic institutions should seek the inclusion in their policies of non-trade issues and whether such inclusion should take the form of an institutional linkage with the relevant UN Agencies. In the case of the WTO, a participant underlined that normative devices already exist to let environmental, human and social rights enter the system. He recalled that the WTO agreements includes very broad exceptions for unilateral action to protect public order and that the concept of "public order" comprises – at least in European jurisprudence – also the reference to core human rights, including labour rights. He further underlined that a more effective inclusion of social and environmental themes in WTO negotiations is harshly contested by developing countries themselves which fear that these themes could hide the protectionists interests of economic powers (see the

[16] See "The Future of the WTO. Report by the Consultative Board to the Director-General", 2004, at 79: "The WTO is not part of the United Nations , nor should it be so".

reaction of developing countries to the proposal that the US advanced at the WTO Singapore ministerial conference to include labour issues in the Doha Round negotiations).

China as a global opportunity. A participant recalled that getting China in the WTO was a fundamental step towards effective multilateral economic governance. China and its huge margin of economic growth has now entered a system of commonly agreed rules informed by the principle of the rule of law. Of course there are some transitional problems. But the transitional problems on textiles largely arose from the protectionism imposed so far by the US and the EU which led to enormous distortions in the world textile market. For instance Mauritius became a major exporter of textiles because it was an ACP country and was able to build on the duty free and free access quota to the European common market a very effective textile industry which is now facing a dramatic crisis. With the disappearance of the multi-fibre agreement, these distortions will finally be removed. In the short and medium term some safeguard need to be taken to mitigate the unavoidable transitional costs but in the long term the process will lead to a better world trading system for everyone.

Lessons to be learnt from multilateral trade governance. Imperfect as it is, the current system of multilateral trade governance has proved to be rather effective. The reasons for this success were identified by one speaker in two key elements: 1) the role played by the rule of law and judicial settlement of disputes in multilateral trade institutions and 2) a strategic transatlantic leadership.

Rule of law and judicial settlement of disputes are a distinguishing feature of only few institutions at the global level, starting exactly from the WTO. The rule of law and judicial settlement provide the security and the predictability that traders and other market participants need in order to operate and assure the evolution and adaptation of the multilateral system. In Mercosur, NAFTA, the EU and the WTO the judicial branch has gained – not always without resistance by member states – an increasing influence on the political branch. The jurisprudence of resident jurisdictions progressively develops the existing conventional rules and may influence the agenda and direction of intergovernmental negotiations.

Cooperation between Europe and US has been the second important factor of success of the WTO. According to a speaker, the question should be raised why there is not the same strategic transatlantic leadership in the UN and whether such a tool could help to make the UN a more effective institution. However, this view was not shared by all the audience. A participant found that the EU and US influence over the WTO was overestimated. Indeed, there used to be a period in which EU and US leadership could fix everything in the WTO but this time is definitively over. Nowadays, countries like Brazil and India are playing a full role and the G20 is a very powerful body. Thus the EU-US leadership should be replaced by a dialogue between the main developing countries with trade interests and the main industrialized countries.

The need for EU formal membership in international fora. These considerations led the conference to reflect on the role that the EU can play in the current process of reform.

A participant stressed that the most important achievement of the EC integration process has not been economic growth but 50 years of democratic peace and rule of law

in Europe. This is a historical lesson that the WTO is already trying to put into practice. For instance, the protocol for the accession of China to the Organization contains far-reaching obligations to introduce comprehensive legislative reforms, to grant individual rights to trade, to establish independent Courts: here the WTO has promoted open market, the rule of law, and individual freedoms.

The same cannot be said for the UN. The state-centered UN agencies have proven incapable of supplying global public goods like democratic peace, rule of law and respect of HR.

According to a speaker, a formal EU membership would help the UN to build on the European experience an individual-oriented system, informed by the rule of law and by the respect of HR. He further underlined that not only is EU membership politically and legally possible in international law (reference was made to the other cases of EC membership in an international organization) but it is also mandated under EU law since many treaty objectives of the Community cannot be integrally realized without full membership in worldwide organizations.

This position was questioned by several participants. To start with, someone criticized the assumption that EC performs much better than UN on human rights protection. It was recalled that one of the worst periods for HR in Europe was the time of the Bosnian war. In that context the UN failed miserably, but somebody else failed miserably too, that is the EU. In fact the two failed for the same reason: they failed because the Europeans were divided among themselves, the European were collectively divided from the Americans and it was impossible to agree on effective action for a long time.

This led others to reflect on the relationship between institutional reform and policies reform. It was stressed that it is dangerous to focus the attention on institutional matters to the detriment of any considerations of policy. As a discussant observed, it is true that the formal position of the EU within the WTO is absolutely crucial, but if the EU manages to disagree fundamentally within itself about what to do on specific trade issue (e.g. current internal debate on the reform of agricultural policy), the single seat is completely worthless and indeed it can be an impediment to the Doha Round settlement. Thus the idea that an institutional provision for EU participation will solve any problem is illusory.

Other commentators warned against any attempt to underestimate the political and legal obstacles to EU membership in the UN. The simpler route – which is in the terms of the existing Charter – would entail abolishing the 25 member States of the EU and establishing a sovereign Union… but it is clear that this solution is merely hypothetical. Any other alternative would require a reform of the provisions of the Charter which deal with membership in the organization. Such a reform, however, would require a political bargaining whose results cannot be predicted. In particular, there would be the risk of opening the door to a number of other intergovernmental entities whose effectiveness and commitment to multilateralism can be heavily questioned.

The World Summit and the Environment: the starting point … The last part of the session was devoted to assessing the outcomes of the World Summit in the field of environmental protection. A participant pointed out that in this domain negotiations did not start on the right foot simply because the starting point – the existing commitments and policy tools – was quite disappointing. For instance Millennium Development

Goals number 7, the millennium development goal (MDG) which focuses specifically on environmental sustainability, was weakly drafted as opposed to other MDG in terms of measurable indicators on which progress can be effectively assessed. Also on the ground of implementation, progress on MDG 7 targets has been mixed if not very difficult. This already points to the fact that the urgency of the problems of environmental protection was not fully reflected in the framework of the MDGs which, as is well-known, has guided the work of the UN for the last decade and will continue to do so for the next ten years. Moreover the environmental community has stressed that environmental protection is crucial for the achievement of any development goal and could not just be considered as an autonomous objective. Thus the issue of mainstreaming the environment beyond MDG 7 was one of the questions awaiting a reply from the World Summit.

However, in the two Reports of the High Level Panel and of the UNSG environmental issues were for the first time injected into the security dialogue and the question of environmental degradation was directly taken into account when discussing the strategies to reduce poverty and to fight infectious diseases. Particular attention was then paid to specific themes such as climate change, biodiversity and desertification but both the report still lacked a comprehensive approach on environmental issues.

This is where another report was actually key in broadening the perception of environmental issues in the Summit Process: the Millennium Ecosystem Assessment (MES). The MES, which came out at the same time as the UNSG Report, made it clear for the first time on the grounds of global scientific evidence that none of our efforts in reducing poverty, eradicating hunger and in pursuing all the other development objectives could really be achieved without stopping and reversing environmental degradation. The MES addressed the environmental concerns with an individual-centered approach: it introduced the concept of "ecosystem services", that is the benefits people obtain from ecosystems for their human wellbeing. As a participant pointed out, the new concept admittedly helps in understanding the economic and development value of ecosystems and therefore in mainstreaming environmental issues in other policies but it also raises problems of "pricing" and "privatization" of environmental goods.

… and the outcomes of the World Summit. In the light of the starting point and of the pre-summit negotiations, the outcomes of the Summit in the field of environment was positively evaluated.

In substantive terms, the Outcome Document does not introduce new commitments nor reinforce existing ones: the final text is mainly a restatement of principles already affirmed elsewhere. However significant progress is made in recognising environmental priorities with respect to the pre-summit negotiations. For instance, the number of environmental issues which are taken into consideration in the Outcome Document is more than doubled with respect to the June Draft and the term "sustainable development" is more widely used. Moreover, it is strategically important that all the existing commitments have been reaffirmed as part of the development agenda which will likely lead the multilateral efforts in the next decade.

In the field of international environmental governance, mild progress has to be acknowledged. The proposals advanced by some states and by the EC to thoroughly reform the UN framework for environmental governance were not endorsed in the Outcome Document which simply referred to the commitment to "explore the

possibility of a more coherent institutional framework …, including a more integrated structure, building on existing institutions and internationally agreed instruments"[17]. As mild as it may be, such a statement shows that the institutional reform of environmental governance is no longer a theme debated in the community of environmentalists only but it is rather an item on the agenda of UN reform.

Finally, para 22 (a) of the Outcome Document introduces the commitment to adopt by 2006 comprehensive national development strategies to achieve the internationally agreed development goals, including the Millennium Development Goals. Although it is not specified that environment protection should be integrated in such national development strategies, the text as a whole implies that environmental concerns are indivisible from general development policies. Thus each Country should learn from the lessons of the Millennium Ecosystem Assessment, and pursue actively the mainstreaming of environmental issues in their development policies.

A final word was spent on the role of the EU. A participant stressed that the Union has already been a forerunner in many environmental fora and the hope is that it will keep doing it for all the issues that did not reach the expected outcome at the Summit, like climate change. Moreover, the EU should ensure an effective integration of environmental issues in its external relations according to internationally agreed standards and in a more coherent way than the one followed so far.

6. Unilateralism, Multilateralism and New Institutions

While the previous sessions of the symposium were devoted to assessing whether the current process of UN reform is satisfactorily responding to the new challenges of the international community, the last session aimed at introducing a new perspective. As a matter of fact the question was raised whether the flaws of the UN system were so serious and the possibility of success of the reform so scarce as to require other avenues to be taken into consideration. Thus the participants were invited to discuss possible alternatives to the United Nations; alternative ways of enhancing multilateralism or also possible ways of providing global governance through unilateral institutions.

The debate began by analysing the new context in which multilateral institutions and in particular the UN have to operate and moved on from that to assessing whether the new threats, the new participants and the promotion of common values at the international level could be effectively accommodated in the existing multilateral framework or rather require the designing of new institutions. Finally the role of unilateralism in the present system was discussed.

The challenges for the UN multilateral system: new threats… It was recognized by all the participants that today's most significant international threats were not present or not so relevant in the days of the creation of the UN. This is for instance the case of the so-called "non passport" issues, issues without nationality such as global warming, international terrorism or poverty. As a participant pointed out, in these cases there is no addressee to send a message or a resolution to call for action, simply because the territorial States have no or only limited control over what is happening. Thus to be

[17] See "2005 World Summit Outcome", UN Doc. A/60/L.1 of 20 September 2005, para. 169.

effectively addressed they require a fundamental change in the structure and in the working methods of the Organization. Again, while the UN was designed and equipped – at least according to the text of the Charter – to cope with powerful and potentially aggressive States, today the opposite problem arises, that is the need to face the failure or the weakening of sovereign States which are no more able to secure the basic rights and satisfy the primary needs of their populations.

…system coherence in promoting common values… A number of participants also underlined that the current UN system suffers from a severe problem of system coherence, especially when it comes to the protection of universally recognized values such as HR. As some participants stressed, the fact that a notorious HR violator may sit in a body which is entrusted to promote the respect of HR is contradictory and undermines not only the effectiveness of the body at stake but also the legitimacy of the institution as a whole. However, the reactions to the proposal to qualify the membership in the newly established HR Council (see *supra*) casts doubt on the possibility to promote a better and more coherent protection of HR in the UN system. A participant observed that States often perceive the possibility to put forward their candidature for membership in HR bodies as an inalienable right, no matter how bad their HR records or how unified the international community is in thinking that a State is an irresponsible player. Thus, it can be legitimately questioned if a universal institution in which a number of undemocratic countries with an alarming HR record still hold a disproportionate influence is really the most effective tool to promote democracy and HR at the global level.

…new actors. A participant pointed out that States are no longer the only relevant players at the international level. New actors have emerged which influence the functioning of the international multilateral system. In particular, the speaker declared himself to be surprised by the few references made during the symposium to civil society. Still, civil society has played and still plays a central role in most of the UN success stories, starting from the very inclusion of the HR dimension in San Francisco 60 years ago to the recent establishment of the International Criminal Court. What's more, a number of UN initiatives and institutions simply would not work without the consistent and continuous support of civil society. And civil society participation has steadily increased in the last decade.

It is therefore surprising that the relationship with civil society has been basically neglected in the current process of reform. On the plan of the substance of the proposals endorsed in the Outcome Document, the paragraph devoted to civil society[18] is striking more for what it does not say than for what it does. In particular it does not recall the role civil society plays in peace-building and in security matters (in this sense it is far behind the existing informal practices of civil society/UN relationship) and it fails in stressing the specific prominent role played in the HR and environmental domain where sets of new participatory devices have been introduced formally and informally and have made the traditional participatory mechanisms redundant (art.71 of the Charter). The gap is all the more surprising if we recall that a little more than an year ago a substantive report was delivered by another "High Level Panel" appointed by the UNSG with the mandate to suggest reforms of the UN-civil society relationship

[18] See "2005 World Summit Outcome", UN Doc. A/60/L.1 of 20 September 2005, para. 172.

and that the panel put forward a number of concrete proposals[19]. The participant therefore concluded that a concrete danger exists that the non-governmental *acquis* will be jeopardized – not strengthened - by the on-going negotiations.

On the plan of the method adopted during the process of reform, it was recalled that civil society had been actively engaged in the negotiations which led to the World Summit; in particular, two days of informal interactive meetings were scheduled in the summer works of the General Assembly for dialogue with civil society and the President of the General Assembly underlined the importance to continue the dialogue with NGOs as actors "which could bring the realities of the field into the discussions" also in the aftermath of the summit. While these developments have to be welcomed, the speaker also wondered whether another negotiating model would have been possible. In particular he referred to the system of prep-coms/open intergovernmental conference which was followed in the great summits of the early nineties and in the process leading to the establishment of the International Criminal Court and he underlined that transparent and inclusive negotiation techniques have often provided more far-reaching results than the traditional close intergovernmental bargaining.

Some participants expressed concerns about the possibility for NGOs to play a greater role in the UN decision making processes. They stressed that since civil society generally lacks transparency and democratic representation it is doubtful whether its increased participation could really enhance UN legitimacy. However, it was observed that to neglect the issue of civil society participation means to neglect an emerging parameter of international governmental organizations' accountability and a new dimension of multilateralism at the international level.

New institutions for new challenges? Given the difficulty that the UN experiences in facing the challenges of the post-modern international society and in reforming itself, the participants wondered whether other and more effective avenues could be taken into consideration to provide multilateral global governance. In particular, the attention was focussed on the role that can be played by coalitions of well-committed States which share and actively promote a common set of values, such as the US-led Community of Democracies. The participants shared the view that such groupings of State can prove useful to advance with greater strength the promotion of common values in multilateral fora or to achieve objectives which are beyond the reach of the UN. However they also unanimously rejected the idea that these coalitions should develop alternative policies and thereby should aim at replacing the central role of the UN. The choice of universalism has relevant costs in terms of effectiveness, promptness and coherence of action but it is nonetheless mandated by the awareness that global problems require global solutions and that in the structure of the current international society there is no room for self-contained groups of "virtuous" States. As one participant recalled, would it be possible to organize the governance of the world in such a way that China cannot be accommodated? Others underlined that an effective promotion of HR necessarily requires the involvement of those States which are considered to be HR violators. Finally someone stressed that any value-oriented coalition of States would not be qualified to deal with the whole array of issues which have international relevance (e.g. trade, environment, peace and security have little to do with democracy).

[19] See "We the People: civil society, the United Nations and global governance – Report of the Panel of Eminent Persons on United Nations-Civil Society Relations", UN Doc. A/58/817

In conclusion, the importance of inter-state cooperation through universal multilateral institutions, and notably the UN, was stressed as the only way for sovereign States to regain efficiency and control over the issues that globalization has moved out of their reach.

The US position on the point was discussed by participants. The current US Administration has often underlined that the proposed Community of Democracies is not meant to substitute the UN but to supplement the UN action by advancing proposals with the force of the legitimacy that comes with democratic Countries.

However the US commitment to multilateralism through the UN is qualified by the need to undertake some major changes in the policy of the Organization so as to meet the challenges of the contemporary world. To start with, the UN should promote a "transformational diplomacy" focussed on building the institutions and conditions which are necessary for democracy and the rule of law to flourish. This is the reason of the strong support that the US demonstrated for the establishment of a UN Democracy Fund which will finance governments and NGOs engaged in projects of "civil society building"[20]. Secondly, regional organizations should be strengthened and empowered with the capacity they need to deal autonomously with regional threats. Finally, communities of interests like the Community of Democracies should be encouraged for the leading role they can play in orienting the policy of the UN and balancing the disproportionate influence which undemocratic Countries have so far exerted in the Organization.

In commenting on the US position, a participant stressed that all the measures proposed to strengthen the UN did not provide for an increased role of the organization on the international scene but were in fact aimed at empowering other entities (local government and civil society; regional organizations; communities of interests). This puts in question the real commitment of the Super Power towards the enhancement of multilateralism through the UN.

The unilateral alternative. The debate moved on to consider unilateralism as a way to provide global governance. From the very beginning, the need for a pragmatic approach to multilateralism was invoked by a number of participants. Multilateralism and unilateralism are methods of transacting international business, they are not religions. The supporters of multilateralism should not rely exclusively on ideological and a priori justifications to further their cause but they should speak the language of power politics and national interest. As a participant pointed out, if the UN is portrayed as a sort of "Gulliver scenario" for the US, in which the powerful giant is tied down by endless small treads, it simply will not work. Like Gulliver, the US will break the treads. The only way in which the US can be accommodated within the UN system is the way it was accommodated in 1945, that is by convincing it that its interests can be better served by what is done in the UN.

The Darfur crisis is a good example of how a pragmatic approach can prove useful to multilateralism. In that case the need to react to a tremendously serious situation led the United States to accept the deferral of the Darfur case to the International Criminal Court irrespective of the strong opposition that they had until then expressed to any formal endorsement of the jurisdiction of the Court.

[20] See "2005 World Summit Outcome", UN Doc. A/60/L.1 of 20 September 2005, para. 136

The trade off of unilateralism: the Iraq case. A pragmatic approach to multilateralism does not exclude a priori the recourse to unilateral action but requires that the consequences of the unilateral behaviour are carefully taken into consideration when assessing the best way to pursue national interest.

A participant questioned whether such an approach was followed in the case of the Iraq war. The decision of the Bush Administration to ignore the opposition of the UNSC had and is still having a relevant impact first and foremost on American national interests, American domestic society and indeed on the quality of American democracy.

The speaker pointed out that the system of alliances and international institutions, which the US contributed to build up, represents in many respects an organic part of the American constitutional system. When during the Second World War and the Cold War the system of checks and balances provided for in the American Constitution was eroded by the natural accumulation of powers in the executive, the set of US international engagements represented an important form of external control. This is not to say that the US has always deferred to international institutions but that in no case has it shown the current ideological commitment to ignore their role. In the case of the Iraq war, the US administration supported the view that, as a matter of principle, the UN was illegitimate and had no right to pass a judgment on what America was doing. This approach contributed in loosening the restraints on the executive power and, in conclusion, in opening the door to abuses. As a commentator has observed, in the past few years the United States has gone from being a Country that officially does not abuse prisoners in its custody to one that officially does.

More generally, another participant pointed out that there is a swinging 30% of American public opinion that views military force used overseas as legitimate if endorsed by the UN, maybe by other multilateral bodies. Even in the run up to the Iraq War, the poll showed that if the UNSC had endorsed the war, than the public support for the military intervention would have been close to 90% as opposed to the 55 – 60% support which was actually registered. Thus the unilateral choice seems a costly one, even from the point of view of internal politics.

An easy objection to this line of reasoning is simply that the world has become too dangerous. It would be naïve to accept multilateral restraint or to dwell on democratic niceties when facing an unrestrained terrorist enemy with a genocidal ideology who has been actively seeking nuclear and chemical weapons to kill on a mass scale. Even if we were to admit that that this was the case of Iraq in 2003, it is difficult to maintain that the war was the only effective solution to the Iraqi threats and in particular that it was more effective than the UN inspection processes would have been. The US is now in a quagmire; the war is having damaging consequences on their international reputation, on their soft and hard power and in short on the possibility to pursue effectively their international goals.

Thus, the speaker maintained that even from a realist perspective, it would have been better for the US to have deferred to the UN on Iraq. The speaker supported the view that in the case at hand a mix of an exceptional US military pressure within the framework of multilateral restraints in the UNSC could have worked. There were inspectors in Iraq who were accepted by the Iraqi regime only because US troops were massing at the Iraqi borders. Clearly some degree of unilateral impulse – we could call it leadership – was helpful. But if the US default position had then been to defer to the

UNSC, those inspectors could have discovered what we have now discovered at a much higher cost.

Unilateralism as a way to enhance the multilateral system. The remarks on the role of US unilateral action in providing impulse to international institutions in the early phases of the Iraq case led the conference to reflect on the complex relationship between unilateralism and multilateralism. It was underlined that under specific circumstances unilateralism can enhance the functioning of the multilateral system rather than jeopardizing it.

To start with, unilateral initiatives may prove useful to overcome the deadlocks of multilateral institutions. For instance, the US decision to unilaterally define as "genocide" what was happening in Darfur had the effect of shifting the focus from the endless legalistic debate over the definition of Sudanese conduct to the measures which could be taken at the international level to promote peace and security in the region. Of course, the situation was finally deferred by the UNSC to the International Criminal Court: the case of Darfur is therefore a good example of how unilateralism and multilateralism can be usefully combined in promoting a superior interest of the international community.

Secondly, some speakers underlined that unilateral behaviour is a major factor of change of the international legal order. Many reforms of international law, even radical reforms, had occurred by way of unilateral action. Unilateral behaviour in the form of breach of an existing rule of international law may represent the first step in the process which leads to the establishment of a new norm. From a political perspective, it may be used to set the agenda of reform of a multilateral institution.

The problem however is to define the conditions under which unilateralism may be an effective and legitimate policy for improving multilateralism. A participant referred to the creation of the WTO as a success story to be taken as an example. He recalled that the dissatisfaction with the power-oriented GATT mechanism of dispute settlement led the United States to introduce an internal procedure administered by independent administration Courts to assess the violation of international trade rules by third countries (section 301 of the US Trade Act). The international response to this unilateral threat was the establishment of the WTO and the reform of the existing mechanism of dispute settlement according to the principles of the rule of law. In short, the participant underlined that it is possible to overcome unilateralism only through multilateral rules which have more legitimacy. In the case at hand, more legitimacy was provided by the establishment of a compulsory dispute settlement system with two level of independent judgment.

Another participant stressed that for unilateral action to make an important contribution to the reform of the multilateral system it is necessary that the acting State (or States) acts in the framework of a coherent strategy leading to institutional reforms. Unfortunately, this is not always the case. For instance in the case of Kosovo, NATO Countries undertook unilateral action but failed to represent it as a part of a necessary reform process aimed at vindicating and achieving the UN principles in case of paralysis of the UNSC; rather they stressed the specificity of the circumstances and – in the aftermath of the intervention – reaffirmed their allegiances to the existing institutions.

The participants concluded by saying that if the institutions are not able to reform themselves, someone else – namely the group of States the most committed to

an effective multilateral system – will do it. If we look at unilateralism in this perspective, there is a lot of room for democracy and well-intended activists to bring about true reform.

Conclusion. The debate among the assembled participants led to the conclusion that the time has not yet come to think of alternatives to the UN. No matter how determined and powerful, a single State or group of squeaky-clean States cannot face the threats and challenges of a global world alone. Multilateralism is mandated by the need for an effective global governance but also – as a participant argued – by the (still rudimentary) system of checks and balances it provides against the abuses of national executive powers.

For many, respect – and maybe with the exception of the field of global economic governance – the UN remains a viable and irreplaceable institution. In this regard, the first and foremost achievement of the World Summit is precisely the fact that all the members of the UN have restated the central role of the Organization in providing global governance and have committed themselves to strengthening its effectiveness. In particular the US has described the UN as "essential" and reaffirmed its commitment to continue to support the Organisation.

Of course reforms are necessary. And of course problems arise when it comes to gather consensus on the merits of the proposals. The different sessions of the symposium have shown how far we are from reaching a satisfactory agreement on a lot of issues despite the urgency of the threats which have to be faced. Thus the success of the ambitious plan of reform outlined by the Outcome Document (*inter alia* reform of the UNSC, establishment of a HR Council whose features remain to be defined, establishment of a Peace-Building Commission, implementation of the new "responsibility to protect", etc.) remains far from being granted.

However, the UN has already proved to be an extremely adaptable institution. The use made by the UNSC of Chapter VII of the Charter, the jurisprudence of the International Court of Justice on the value of the abstention of permanent members[21], the resolution "Uniting for Peace" adopted by the General Assembly in 1950[22], are clear examples of how the Organization is able to use its existing normative resources to respond to new circumstances in the absence of agreed reform. In such a case – as we have seen – unilateral action by individual member states, or by a group of qualified member states, aimed at furthering the basic values enshrined in the UN Charter may play a role in advancing the justifications for effective multilateralism.

As a matter of conclusion, we should not be too severe when pointing at the failures of the UN and at its unrealized promises. As a participant wisely pointed out we should always recall that the UN Charter is not only a treaty but first and foremost a project for perpetual peace that can be fulfilled only in the long term.

7. International Terrorism and Governamental Structures (Coordinated by the UNICRI)

[21] See International Court of Justice, "Legal Consequences for States of the Continued Presence of South Africa in Namibia notwithstanding Security Council Resolution n°276(1970)" Advisory Opinion of 21 June 1971

[22] See UN Doc. A/RES/377 (V) adopted on the 3rd of November 1950

History, root causes and perspectives. A recurring sentiment expressed throughout the course of the discussion was the need to make a clear analysis of the history of today's type of terrorism, to discern the diverse factors that have caused the phenomenon to surface and spread throughout the globe and to understand the divergent perspectives in all global quarters. In sum, a majority of participants expressed the view that an understanding of these factors is indispensible to the international community's process of formulating an effective response to international terrorism.

The word terrorism was originally invented in 1795, in connection with the French revolutionaries who executed their enemies - and suppressed opposition - with the guillotine. However, the concept of terrorism took greater hold during the 1870s in Russia, when revolutionaries began to practice it. It was a means for weaker or smaller forces, without the kind of funds or numbers at the disposal of larger countries, to wage war - an easier option for those unable to fight an orthodox struggle. Today through the globalisation of trade and communications the terrorism has become veritably international in terms of potential harm, loss of life and destruction of property. A participant very clearly made the distinction between the 'tactical' terrorism of the I.R.A., Hezbollah and E.T.A. witnessed mainly in the 1960's, 70's and 80's and the new type of 'strategic' terrorism witnessed over the past ten years or so. This strategic terrorism is being waged on a global level threatening international peace and the security of all nations. Thus, participants noted, in terms of a State's responsibility to protect its citizens, the effort against terrorism needs to be coordinated and internationally orientated.

Participants pointed out that extremist terrorist groups like Al-Qaeda have an ideology loaded with religious overtones and a stated cosmic objective of forming a world-governing Islamic Caliphate, however material (social, political, economic) factors create the conditions that spawn potential supporters of extremism. The collapse of the Soviet Union and globalisation has led to a highly competitive integrated global economy, some of the side effects of which are increasing global economic inequality (the proportions of which were described in the 2003 UN Human Development Programme Report as "grotesque") and the wide marginalisation of many people around the world.[23] It was noted on a number of occasions throughout the discussion that marginalisation, poverty and a lack of hope for the future are some of the root causes behind the extremism and the terrorism we are witnessing today. It was stated by a number of discussion members that without a preventive approach that deals with the culture of extremism and xenophobia, without effectively engaging in social, political and economic issues, international terrorism will continue.

The reasons behind, and the consequences of, the linkage made in the West between Islam and international terrorism were analysed. Al-Qaeda welcomes this linkage as it feeds into an "Islam versus the West" dichotomy. Participants noted that with this in mind, Al-Qaeda and other extremist terrorist groups have continually attempted to rally marginalized Muslims to their radical agenda by playing off political tensions that exist between the Muslim world and the West over long-standing political debates such as Palestine and Israel or more recent issues like the war in Iraq. Though extremist terrorist groups have been unsuccessful in their aim of 'rising up' Muslim masses against Western States and their allies, many in the Muslim world feel that the

[23] www.undp.org/hdr2003

majority of citizens in Western countries continue to link international terrorism with Islam instead of explicitly making the distinction between extremist groups and the vast majority of peaceful Islamic peoples. The observation was made that such a linkage is counterproductive and prevents an open and coordinated Islamic-Western response to the common threat of international terrorism. Furthermore it was noted that this linkage is perceived by many Muslims in Europe to be the main cause of a rise in prejudice against them since the inception of the "war on terror". Some members returned to the point that a legitimacy deficit before and since the Iraq invasion of 2003, violations of Iraqis HR in prisons there, reports of similar violations in Afghanistan, in Camp X-Ray in Guantanamo, reports in the world media of the US policy of extraordinary rendition to countries violating human rights in the name of the "war on terror", feed into international terrorism.

The discussion noted the very real need for cooperation between Muslim and Western nations with respect to taking a preventive approach toward the roots of terrorism. In Arab countries it was stated that there needs to be more political, social and economic programmes implemented to combat extremism and the causes of terrorism along with the necessary implementation of security measures. Some members made the point that access to national democratic political forums reduces marginalization and its associated negative tendencies toward extremism and violence. However, in the case of politicisation of terrorist extremist groups, a number of participants expressed their pessimism regarding the probability in the near future of such groups adopting a political wing signalling a willingness to engage politically (like Hezbollah, the I.R.A. or E.T.A.). Even if they did adopt any such political wing, this should only be accepted as an act of transition some commentators noted. The armed element would have to disappear. The I.R.A transition into politics has seen its infrastructure transformed to serve as the hub of a criminal organisation, albeit localised. In the case of international 'strategic' terrorists, it is not just the elimination of these groups but dismantling their infrastructure that are key security objectives.

The view was expressed that today's type of terrorism has international parameters and yet the international response thus far has been characterised by a lack of multilateralism. One expert remarked that purely from an economic point of view, thus far the "war on terror" does not seem be cost effective and that, because of a reluctance to look seriously at the causes of terrorism, precious time has been lost in the long-term aim of eradicating international terrorism and support for it.

The lack of a definition of "terrorism". French, Czech and Polish Resistance movements during World War II - all of which were backed by Britain's Special Operations Executive - were dubbed 'terrorists' by the Germans, because of their activities - ambushing, destroying bridges and railway tracks, and killing German officials. This raises one of the problems of how to define terrorism. To the Germans, these acts were experienced as 'terrorism', but to the British, and to those carrying out the acts, they were justifiable tactics of war. Since then acts that some countries experience as terrorism are not considered terrorism by the groups responsible for them.

It was noted repeatedly that a prerequisite to providing a legal framework for prosecuting terrorist acts is a common definition of terrorism. An internationally accepted definition of terrorism is urgently needed. It is a complicated issue that presents real political challenges but the absence of such a definition has had an

undermining effect on international efforts to tackle this threat to humanity. Since 2001, the UNSC has adopted general legislative measures against terrorism – with serious legal consequences – without defining it, giving rise to assertions of universal jurisdiction over terrorism.[24] A non-binding UNSC definition of late 2004[25] fails to remedy the serious difficulties caused by the lack of an operative definition in UNSC practice. Some issues regarding such a definition are recognition of the right to self-determination (including armed struggle), the role of armed forces and legitimate struggle against foreign occupation. There was general agreement between discussion members that the delay in producing an internationally acceptable definition of terrorism is due more to political causes and was more of a political problem rather than a result of technical legal issues between States.

More than one member made the point that there seems to be a real reluctance by some States to define violence for political reasons. The failure of States to agree on the definition of terrorism is a symptom of such reluctance, one member pointed out. A call was made by a few participants for the convocation of a UN conference to deal with the current political delay in defining international terrorism. It was accepted by the majority of those involved in the discussion that a subjective imagination is helpful when trying to understand the causes of terrorism but there is a danger of this subjective imagination muddying the waters when it comes to defining international terrorism. Certainly there is a need to be honest about history but there is also a need to be objective about the crime of terrorism. Some members highlighted the point that the most important part of the negotiation of a Comprehensive Convention on Terrorism is the question of a definition. It was clearly expressed by all that any definition of terrorism, in order to be credible and legally effective in international law, had to be agreed upon within the framework of the UN, despite the failure of member countries to do so thus far.

Approaches to combating terrorism and the role of regional organisations. Terrorism does not happen in a vacuum, but rather occurs for reasons of economic degradation, as well as social and political alienation. Many participants stressed the importance of a preventive approach to tackling international terrorism. The 7th of July 2005 in London bombings beg many profound questions over and above security breaches on the London Bus or Underground. The fact that second generation British citizens, fully integrated into society, chose to explode themselves at rush hour, in order to inflict maximum casualties among their fellow citizens, is significant and worrying. This terrorist crime, therefore, deserves serious intellectual scrutiny.

In order to formulate an effective long-term response to today's international (suicide) terrorism we need to fully understand the phenomenon, its root causes and the reasons that motivate young people to support such violence and extremism. The need to define terrorism as a crime and avoid using imprecise labels such as "Islamic terrorist" or satisfy ourselves with expressions like 'one man's terrorist is another's freedom fighter' was expressed as an important step in forming an effective long-term

[24] On September 28, 2001, the UNSC unanimously adopted resolution 1373 under Chapter VII of the UN Charter. This resolution established a body of legally binding obligations on all UN member States. It defined the common core of the new international campaign to deal with international terrorists, their organizations, and those who support them, but problematically in the absence of a specific definition of the crime of terrorism.

[25] UNSCR 1540. Adopted at 4956th meeting, 28 April 2004.

approach to combating a crime that indiscriminately threatens all people. Of course States and the international community as a whole need to fight terrorism; attacks like those that occurred in London cannot be tolerated, but security measures alone cannot contain terrorism - a comprehensive strategy dealing with the causes that feed into extremism is the key to solving the problem in the long-term.

Terrorism is transnational because it cannot be satisfactorily addressed by any State acting alone. The admission that counter-terrorism policy requires the cooperation of other States is a reflection of the changing nature of terrorism itself as well as the consequences of globalisation. Yet governments continue to vigorously defend areas of sovereignty that are disappearing. In areas like global finance, global competition, technological innovation (including the absence of global regulation of the Internet, genetic engineering, food safety etc.), illicit trafficking of CBRN (chemical, biological, radiological, nuclear) weapons and materials, the threat of high-tech international terrorism and the use of weapons of mass destruction, climate change, etc. the sovereignty of national governments alone cannot deal with the plethora of real and hypothetical challenges.

It was generally agreed that the UN, with its global membership, is the ideal forum and that the UN Charter provides the most legitimate framework for the international community to formulate a collective counter-terrorist policy. However, some made the point that State reluctance to sacrifice jealously guarded elements of sovereignty to the UN structure precludes full cooperation of States in fighting terrorism on any comprehensive multilateral basis. According to many members this unwillingness of States to fully cooperate remains the main obstacle to the formulation of a coherent, normative and operational international response to international terrorism at the United Nations.

Due to the shortcomings of the international community it was indicated that a course of future action regarding security might be more effectively undertaken at a regional level. The point was made by many participants that closer attention should be paid to the possibilities of an increasing role for regional organizations in the fight against international terrorism.

Many participants emphasized the point that regional organisations may offer States a more attractive and effective operational forum than the United Nations owing to the fact that the issues discussed in such organisations are "closer to home" and more States have more of a say in the decision-making process of these organisations. There now exist many forms of institutionalised regional cooperation and organization structures in Europe, the Americas, Asia, Africa, and the Pacific, some of which are supposed to interact with the UN in one way or another, as envisaged in Article 52 of the Charter. Some participants stated that national governments are naturally more inclined to these organisations. Thus, for example, because legislation providing for greater information sharing between Member States within a regional organisation like the EU, Commonwealth of Independent States (CIS), Organization of American States (OAS), Organization of African Union (OAU) or the Association of South East Asian Nations (ASEAN) would have more region-specific interests and more regionally-based input involved in the drafting process, it would be likely to meet less national resistance, speeding up the process of adopting important new counter-terrorist legislation, thereby saving time and perhaps lives.

Participants widely agreed that building a political consensus toward an internationally acceptable common definition of terrorism may be easier to initiate in a

regional context. Following the September 11, 2001 attacks on the United States, the European Council concluded at an extraordinary meeting on 21 September 2001 that a European definition of terrorism was necessary. The European Justice and Home Affairs Council meeting held in Brussels on 6-7 December, 2001, reached a political agreement on a definition that was formally adopted by the European Council on 13 June, 2002. Though this definition was a political tool - leaving as it did sufficient diplomatic room for disagreements - it has come to form the basis of a 'solidarity clause' in the European Constitution. According to this clause the EU and Member States shall act jointly in a spirit of solidarity in the case of a Member State being the subject of a terrorist attack.[26] The UNSC has encouraged States to unilaterally define terrorism in national laws, while permitting wide and divergent definitions. In the absence of an internationally agreed definition on terrorism, regional cooperation such as this should be utilized as an interim model for other regional organizations to find regional consensus until international consensus on the matter is settled.

Regional organizations offer a forum where States can forge a common counter-terrorist policy and produce an operative definition of terrorism in a multilateral atmosphere, thereby increasing levels of support and legitimacy. Obviously a UN Convention on Terrorism that includes a definition is the ideal but at present in the absence of such a definition experts asserted that a regional-based approach is most advisable. One expert commented that the UN needed to be more of a normative body and less of an operational one; suggesting that regional organizations could 'manage' the terrorism threat in their areas of interest under the overall normative guidance of the UNSC.

Current lack of cooperative legislative instruments and tools. Stepped up intelligence sharing, improved legal conventions and increased law enforcement cooperation between States were issues that were returned to throughout the course of the discussion. Many participants questioned whether the existing inter State cooperative legal instruments are adequate to fight global terrorism. The general view taken by those present was that the existing legal conventions and instruments pertaining to cooperative tools between States necessary to effectively fight terrorism remain insufficient.

Though we have seen great increases in the levels of intelligence sharing and law enforcement cooperation within the EU over the past four years, Members of the EU have significant national legal restraints on their ability to share information. Different levels of optimism and pessimism about the prospects for 'real' intelligence sharing were expressed. It was noted by some experts that even among allies, jealousy persists and States are reluctant to share vital intelligence. Less pessimistic participants noted the surge in sharing of information between States since 11 September 2001 as highly significant. Notwithstanding this however, some made the point that institutional (UN) meetings will not produce a solution to solve the problem of State reluctance in the area of sharing information/intelligence even though it was recognized by all participants that law enforcement cooperation and sharing of intelligence are key to fighting international terrorism.

The issue of safeguarding HR while introducing necessary anti-terrorist legislation was raised. By not upholding fundamental HR, anti-terrorism legislation can

[26] Chapter II, Title V ("Specific provisions relating to the common security and foreign policy"), Article I-43 and I-41 of The Treaty establishing a Constitution for Europe, signed in Rome 29 October 2004.

sometimes lower the standard of the rule of law - the cornerstone of democratic societies and institutions – and can downgrade individual freedoms; those freedoms that States are fighting international terrorism to protect. The point was expressed that the fight against terrorism is not only relevant with regards to human life and property. HR principles and international HR norms need to be upheld.

There have been positive outcomes in certain areas of new anti-terrorism legislation however. In the area of financing terrorism there have been important successes. The legal measures that have been created to deal with the financial support of terrorist activities are also applicable to other areas of international crime such as transnational organized crime.

The observation and relevance of the internal and external linkage of aspects of security was expressed by a number of experts. The fight against terrorism and organized crime is at the heart of maintaining international peace and security both outside and inside the EU. Promoting the rule of law externally is essential to reinforce the area of freedom, stability, security and justice internally. The discussion closed with the point being made that increased cooperation between independent and efficient judiciaries and effective police forces functioning in partnership with their regional colleagues are vital to ensure terrorist and criminal suspects are not beyond the rule of law.

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