

*Chaillot Paper*

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June 2005

n° 78

# The European Union and the United Nations

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Partners in effective multilateralism

*Sven Biscop, Francesco Francioni, Kennedy Graham with  
Tânia Felício, Jeffrey Laurenti and Thierry Tardy*

Foreword by Jean-Marie Guéhenno

Edited by Martin Ortega



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**S**oixante ans après la Seconde Guerre mondiale, la nécessité d'adapter le système des Nations unies aux réalités du XXI<sup>e</sup> siècle a été proclamée avec constance et ambition par le Secrétaire général Kofi Annan. Plusieurs groupes de personnalités de haut niveau, mandatés par lui, ont désormais rendu leurs conclusions.

Pour l'Union européenne, engagée collectivement dans la promotion d'un « multilatéralisme efficace », l'enjeu est décisif, alors même que d'autres piliers du système international – le Traité de non-prolifération, le Protocole de Kyoto, le Tribunal pénal international et bien d'autres traités et accords de désarmement – souffrent de lacunes majeures ou sont désormais en crise ouverte.

A la veille de la réunion de New York en septembre 2005, l'Institut a voulu dresser un bilan le plus complet et le plus critique possible des différentes options sur la table. Sous la responsabilité de Martin Ortega, responsable à l'Institut des études sur le Moyen-Orient et le droit international, cinq des meilleurs experts des Nations unies examinent, dans ce Cahier de Chaillot, les possibilités de réformes susceptibles d'être portées par l'Union européenne. S'agissant de l'organisation la plus vaste du monde, l'hypothèse de consensus décisifs entre les Etats membres de l'ONU n'est pas, a priori, le scénario le plus probable, sur des sujets aussi sensibles et conflictuels que la réforme du Conseil de sécurité, la protection de la planète ou le dilemme du droit des peuples face au droit des Etats.

Mais le débat fondamental est avant tout politique. Les Nations unies sont-elles un instrument au service d'un groupe de pays, fussent-ils les plus démocratiques de la planète, avec pour mission première celle d'exclure/contourner/punir les Etats qui ne respecteraient pas les mêmes règles ? Ou doivent-elles au contraire maintenir coûte que coûte une vocation universelle, fondée sur l'inclusion systématique de tous les Etats, y compris les perturbateurs, afin de contraindre chacun au respect minimal des règles collectives du système de sécurité internationale ? Leur objectif majeur est-il de prévenir la prolifération des armes de destruction massive et le terrorisme, ou doivent-elles développer une conception plus large et plus complexe de la paix internationale ? Doivent-elles obéir à une

*logique de discrimination ou d'intégration, se fonder davantage sur les valeurs (démocratiques) ou sur le droit (négocié), adopter une approche plutôt occidentale ou résolument multilatérale pour le renforcement de la sécurité internationale ?*

*Ces questions animent, ouvertement ou en sourdine, l'ensemble des débats sur la réforme des Nations unies à la veille de leur soixantième anniversaire. Parce qu'elles ne sont pas exemptes de considérations idéologiques, elles compliquent encore davantage l'agenda de réformes ambitieuses souhaitées par le Secrétaire général des Nations unies, mais sur lesquelles s'affrontent les intérêts particuliers des Etats. La réforme du Conseil de sécurité fait ainsi l'objet de désaccords majeurs selon que l'on avance plutôt l'argument de la représentativité ou celui de l'efficacité de cette instance. Même du côté de l'Union européenne, qui incarne pourtant plus que tout autre acteur l'esprit et les valeurs collectives du multilatéralisme, les divisions sont profondes sur cette question. Certes, la date du soixantième anniversaire n'est pas une contrainte absolue : mais à trop perdre le momentum et laisser les choses en l'état, le danger existe d'une marginalisation progressive des Nations unies face à d'autres instances moins représentatives, qu'il s'agisse du G8, d'un éventuel club des démocraties, de l'OTAN, de l'Union ou de coalitions ad hoc. Au risque de parcelliser encore davantage la communauté internationale, d'antagoniser les différences au lieu de les réduire, de désunir au lieu de rassembler.*

*Paris, juin 2005*



# Foreword

The European Union and the  
United Nations – Partners in  
effective multilateralism

**Jean-Marie Guéhenno**

**United Nations Under-Secretary-General for Peacekeeping Operations**

In December 2003, the European Union took a significant step towards articulating a vision of its role and responsibility in building a better world. The European Security Strategy, 'A secure Europe in a better world', presents a compelling argument for an international order based on effective multilateralism. It sets out the components of this as a stronger international society, well functioning international institutions and a rule-based international order. And it powerfully reaffirms the EU's commitment to strengthening the United Nations, and to equipping it to fulfil its responsibilities and to act effectively.

The EU as an international institution possesses a unique capacity to realise this commitment across a broad range of dimensions – political, economic, military and social. Most recently, it has developed capacities to support the UN in its efforts to help countries emerge from conflict and make the long and difficult journey to a secure peace. This support is needed. Global peacekeeping demands continue to increase and regional partners can make a vital contribution to international efforts to address the rise in conflict. According to the Stockholm International Peace Research Institute (SIPRI), the total number of UN and UN-sanctioned regional organisations' peace operations under way by the end of 2004 was the highest in the last decade, with the brief exception of 1999. These operations range in scale and complexity to an unprecedented degree, from observer to robust peacekeeping, to complex peacebuilding and long-term institution building.

The current surge has stretched the UN's existing peacekeeping capacities to their limits. Since the beginning of 2004, five complex operations have been either newly mandated and deployed or significantly expanded. UN peacekeeping has grown from some 30,000 uniformed and civilian personnel deployed in 2000 to nearly 80,000 personnel currently deployed in 18 peacekeeping and related field operations led by my department, the

Department for Peacekeeping Operations. To grasp the scale of this activity consider some of the numbers involved: 120,000 troops were rotated in 2004, 580,000 passengers flown and half a million tonnes of freight delivered – all this managed by a headquarters with a ratio of 1 staff member to every 115 in the field.

Regional and international organisations such as the EU, NATO and the AU are also confronting similar challenges in meeting the operational demands of their engagement in peace operations, either UN or UN-sanctioned. The personnel, materiel and logistics requirements to launch and sustain this increased activity weighs at least as heavily on regional organisations, none of which has the long experience and global reach of the UN in peacekeeping. It is not a question of either UN or regional peacekeeping: the issue is how we can best work together in effective multilateralism to advance the cause of peace and global security.

The EU's eight crisis management operations to date have demonstrated the potential and the range of multilateral cooperation in peacekeeping. The EU's first crisis management operation, the 2003 EU Police Mission (EUPM) in Bosnia and Herzegovina represented a transition from the seven-year UN mission in Bosnia and Herzegovina (UNMIBH). In similar fashion, the EU's military Operation *Althea* succeeded the NATO SFOR operation in Bosnia and Herzegovina in December 2004. The EU's commitment to peace and stability in its neighbourhood is further demonstrated in the ongoing police and rule of law operations in the Former Yugoslav Republic of Macedonia and Georgia respectively. The EU's first foray outside Europe, Operation *Artemis* in the Democratic Republic of Congo (DRC) in the summer of 2003, was a rapid military deployment in support of the UN mission in that country, MONUC. Another dimension of EU-UN cooperation within MONUC is the current EU police mission in DRC, EUPOL Kinshasa, which is directed at a specific functional task in the DRC capital. In Iraq, meanwhile, civilian EU and UN missions work alongside each other in support of UN resolutions to assist the Iraqi people rebuild their country.

The 24 September 2003 Joint Declaration on EU-UN cooperation in crisis management provided the framework for regular joint consultation between the two organisations. These have in turn facilitated the EU's drafting of documents that elaborate modalities for provision of military and civilian capabilities to UN peacekeeping. No less important is continued cooperation

between the UN and the European Commission, not just in Kosovo, where the EC leads UNMIK's activities in economic reconstruction, but in providing resources for peacebuilding tasks outside Europe such as in Haiti, DRC and West Africa.

We have, therefore, set out on the journey towards effective multilateralism in international peacekeeping. The question now is how do we chart a steady course to get there? I believe that the starting point – our guiding star, so to speak – is recognition that effective multilateralism builds on *legitimacy*. What this means, as the report of the High Level Panel on Threats, Challenges and Change indicated, is that UN Security Council authorisation should ideally be sought for any operation carried out by regional organisations. This recommendation in fact goes beyond the Charter, which only requires authorisation for forceful action. The international legitimacy that UN Security Council authorisation confers on a peace operation is indivisible, but it is not static. Effective multilateralism requires meaningful and consistent communication between the UN and the regional organisation engaged in a peace operation, a principle reflected in Article 54 of the UN Charter, throughout the course of an operation.

A second, related, principle for effective multilateralism in peacekeeping is a shared commitment to *qualitative standards of peacekeeping*. The quality of the human resources we deploy to missions is essential because the environments in which peacekeeping takes place are difficult and often dangerous, and because the peacekeeping tasks that we are requested to carry out are increasingly complex. With well-trained and interoperable military and civilian personnel we can rise to these challenges. The EU can play a valuable role in helping to raise the quality of international peacekeeping personnel. EU-UN cooperation has already produced results in terms of the elaboration of EU training standards and modules, and participation of UN personnel in EU training courses. Here I believe there is a particular capacity for the EU and its member states to contribute to the spread of international peacekeeping standards by extending military and civilian training courses and initiatives to interested non-EU member states.

Quality extends to personal conduct. The legitimacy of international peacekeeping is directly related to the conduct and actions of the men and women who carry it out. Where individual conduct and actions fail to meet the standards set by the UN, we all fail. UN member states must assert and enforce UN standards of

conduct among their contributing troops and civilian personnel, and the EU can play a useful role in facilitating this effort.

The third step toward effective multilateralism in international peacekeeping is to develop the *capabilities* to respond strongly and swiftly. In terms of military capabilities, the biggest weakness of international peacekeeping today is our lack of depth. The UN's lack of a reserve to react robustly and respond to threats to fragile peace processes in complex environments threatens the progress already accomplished on the ground in our missions. For this reason, the Secretary-General has proposed a 'Strategic Reserve' concept. Under this, the UN would establish a small number of task forces/battalions of forces trained, equipped and available for deployment to a UN operation at short notice. These would be made up of troops from member states, earmarked for that purpose and taken out of their regular duties for rotation periods of up to 12 months to form an element of the Strategic Reserve. Once deployed to a mission, these forces would operate under UN command and control.

There is significant potential for linkage, I believe, between the UN Strategic Reserve and the EU's 'battle group' concept. The 13 battle groups which the EU intends to develop have the potential to contribute substantially to the UN Strategic Reserve capacity, particularly in niche capabilities such as strategic airlift, communications and evacuations. However, the envisaged length of deployment of EU battle groups is very short: the potential, therefore, of EU battle groups to make the transition to Blue Helmets at the end of an EU deployment may merit consideration.

It is important to reiterate that EU military capacity for crisis management is a complement, not a replacement, to member states' national commitments to UN peacekeeping. We would strongly encourage renewed commitment in terms of contribution of uniformed personnel. Today, European representation – once a major element of our global deployment – represents only 6.7 per cent of police, military and observer personnel in UN operations worldwide, and only 2.3 per cent of deployment in Africa. The provision of uniformed personnel to UN peacekeeping by EU member states represents a crucial practical asset, since they are amongst the best trained and prepared in the world. It also sends a powerful message as to the depth of EU member states' commitment to effective multilateralism and their willingness to share the responsibilities, as well as the rewards, of collective security.

We have raised this with the Permanent Missions of EU member states in New York and will continue to do so. At the same time, we welcome the supplementary efforts of the EU institutions to encourage such participation, including through the EU's 'clearing house' function.

One capacity area in which the EU has a unique role to play is in the non-military dimensions of complex peacekeeping. These have expanded exponentially in the last decade and include civilian specialist activity in fields such as police, rule of law and transitional justice, security sector reform, human rights, disarmament, demobilisation and reintegration, civil administration, economic reconstruction and institution building. The EU has gone further than many organisations in targeting capacity building in this broad range of activities. The civilian dimension of peacekeeping represents an important area for cooperation between the UN and the EU in terms of recruiting and swiftly deploying required personnel expertise to international peace operations. One particular aspect of this is potential cooperation in the establishment of a UN Standing Civilian Police Capacity proposed by the Secretary-General in follow-up to a recommendation of the High-Level Panel. A pilot capacity of 25 full-time, field-based police specialists would be set up in the UN to provide assistance with rapid deployment and early mission start-up, with the goal of expanding to 100 based on experience and needs. Active engagement between this capacity and the EU's police capacity, which includes a small Police Unit in the Council of the European Union, would be desirable. Beyond the specific area of police, there is significant opportunity for the UN and EU to work together in developing doctrines and concepts of operation for civilian elements of peacekeeping, particularly in the rule of law, and in working to ensure the integration of development perspectives into post-conflict peacebuilding.

The integration of Europe has been a work in progress for over 50 years. This process has brought peace, stability and wealth to the Continent and offers a symbol for other parts of the world of the potential benefits of regional cooperation. Strong and effective regional bodies could reinforce the pillars of the international system, which is built, as the European Security Strategy asserts, on the fundamental framework of the United Nations and its Charter. Such regional bodies could give real meaning to its Chapter VIII. What the consolidation of regions must not do is put fur-

ther pressures on global fragmenting tendencies along lines of wealth, religion or resources. Effective multilateralism is about uniting diverse countries and peoples, and the organisations that represent them, in common, concrete projects. It is in the pursuit of this that EU-UN cooperation finds its legitimacy and its effectiveness.

In its document outlining the modalities for EU-UN cooperation in military crisis management operations (of June 2004) the EU emphasised that, in order for our two organisations to work better together, we needed in-depth knowledge of each other. To this end, it suggested the potential of the EU Institute for Security Studies to carry out possible supporting work. I would like to commend the Institute for responding with alacrity and initiative to this idea and look forward to its continued work on EU-UN cooperation.

# Introduction

Martin ortega

In a famous speech to the United Nations General Assembly on 23 September 2003, UN Secretary-General Kofi Annan launched a reflection process on the future of the organisation. He pointed out:

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

In order to analyse the challenges that the UN was confronting, as well as the changes needed, the Secretary-General convened three groups of eminent personalities to give their views on (a) the role of civil society in global governance, (b) security threats and UN institutional reform, and (c) development and poverty. The three panels delivered their reports, respectively entitled ‘We the peoples: civil society, the United Nations and global governance’ (June 2004), ‘A more secure world: our shared responsibility’ (December 2004) and ‘Investing in development: a practical plan to achieve the Millennium development goals’ (January 2005). On the basis of those reports, Kofi Annan presented his own recommendations regarding changes in the UN, in the document ‘In larger freedom – towards development, security and human rights for all’, dated 21 March 2005. In June this year, the incumbent president of the General Assembly, following consultations with UN member states,

prepared a draft list of issues drawing from the Secretary-General's document. The member states of the United Nations will examine these and other proposals for UN action and reform during the next General Assembly, which will celebrate the sixtieth anniversary of the organisation, starting in New York in September 2005.

Through a parallel development, the European Union has been defining its role on the global scene in the last couple of years. In 2003 the European Council decided to undertake Operation *Artemis* in the Democratic Republic of Congo, the first EU-led military operation outside the European continent, and tasked Javier Solana to draft a final version of the European Security Strategy in June 2003. On 24 September 2003, the EU and the UN signed a joint declaration on cooperation in civilian and military crisis management, and in December 2003 the European Council adopted the European Security Strategy. In this document, the EU member states declare:

In a world of global threats, global markets and global media, our security and prosperity increasingly depend on an effective multilateral system. The development of a stronger international society, well functioning international institutions and a rule-based international order is our objective . . . The fundamental framework for international relations is the United Nations Charter . . . Strengthening the United Nations, equipping it to fulfil its responsibilities and to act effectively, is a European priority.

In May 2004, the EU – now enlarged to 25 member states – submitted a contribution to the UN High-Level Panel on Threats, Challenges and Change. Finally, the draft Constitutional Treaty, approved in June 2004 and signed on 29 October 2004, described the guiding principles of the EU's foreign and security policy, and affirmed explicitly (Art. III-292) that:

The Union's action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law.



The Union shall seek to develop relations and build partnerships with third countries, and international, regional or global organisations which share the principles referred to in the first subparagraph. It shall promote multilateral solutions to common problems, in particular in the framework of the United Nations.

The EU is therefore committed to working hand in hand with the United Nations. However, although practical EU-UN cooperation on peacekeeping, development assistance and other issues is well on track, the appropriate *synergy* between the EU and the UN regarding UN reform has not been arrived at during the last two years. It can be argued that the EU and its member states have had no impact on the preparatory work for UN reform because this reform is both *too much* and *too soon* for them. Despite fact that there were British and French members of the High-Level Panel, or that the EU presented a fourteen-page contribution to the High-Level Panel, it appears that the Europeans (who pay around 40 per cent of the UN budget) have ‘punched below their weight’ during the preparation of the forthcoming negotiation.

UN reform has been *too much* for the EU and its member states because such reform is an intricate undertaking that encompasses a whole range of complex, intertwined global issues. Despite its historical significance, UN reform has not received sufficient public or political attention in Europe. And it has been *too soon* because the EU is still searching its own international role vis-à-vis its member states, on the one hand, and vis-à-vis other states and actors, on the other. The draft Constitutional Treaty was a valid means for resolving this kind of soul-searching impasse, but the debacle of the French and Dutch referendums casts many doubts on its ratification.

As a matter of fact, UN reform equally is *too much* for other governments across the world – not just Europeans. The ‘far-sighted’ spirit of the UN founding fathers, as Kofi Annan put it, stands in stark contrast to the short-sighted preoccupations of most of the current political leaders. And yet, improving global governance is an urgent need. Extreme poverty, global warming, protection of the environment, respect for human rights and dignity, scarcity of resources, pandemics, conflict resolution, collective security and peacekeeping, as much as non-proliferation of weapons of mass destruction and international terrorism, are global challenges that affect us all and call for immediate, concerted action. Neither a sin-

gle state nor a group of states, however powerful they are, can tackle those challenges alone. As pointed out in the European Security Strategy, multilateral responses are ineluctable and the United Nations must naturally be at the centre of international efforts to deal with global challenges. Reinforcing the United Nations and making it more effective is the only way to advance towards a more secure and peaceful world.

This *Chaillot Paper* offers some ideas on how the EU and its member states can contribute to UN reform. The Institute organised a seminar in Paris under the title ‘The EU and the United Nations: implementing effective multilateralism’ on 21 March 2005. After the seminar, the Institute asked five participants to write on the following subjects: security and development (Sven Biscop), human rights and protection of the environment (Francesco Francioni), peacekeeping (Thierry Tardy), UN Security Council reform (Jeffrey Laurenti), and regional organisations and collective security (Kennedy Graham, who writes with Tânia Felício). A conclusion draws some lessons from the various chapters and suggests that the EU should be more involved in the UN reform process.

This publication is inspired by two main assumptions. First, the United Nations should be utilised not only for fighting against global threats but also for realising global opportunities. As a consequence, UN reform is not solely a ‘defensive’ enterprise (i.e. better protecting ourselves through joint action) but also a ‘creative’ undertaking (i.e. working to attain common goals, such as development, protection of the environment and human rights). Second, the EU and its member states share a balanced vision on global issues, as clearly stated in both the European Security Strategy and the draft Constitutional Treaty. They should be consistent with the principles and values they proclaim and participate more actively in this unique opportunity to reinforce the United Nations.

# Security and development: a positive agenda for a global EU-UN partnership

Sven Biscop

As the High-Level Panel on Threats, Challenges and Change rightly indicated in its substantive report on UN reform, the legitimacy of the collective security system of the UN depends on its ability to address *everybody's* primary concerns.<sup>1</sup> The system cannot function if major concerns of specific countries or of a specific nature are felt to be systematically ignored. The Panel therefore called for a new security consensus and identified six clusters of security threats to be dealt with by the system – later underwritten by Secretary-General Kofi Annan in his March 2005 report:<sup>2</sup>

- economic and social threats, including poverty, infectious diseases and environmental degradation;
- interstate conflict;
- internal conflict, including civil war, genocide and other large-scale atrocities;
- nuclear, radiological, chemical and biological weapons;
- terrorism;
- transnational organised crime.

The Panel and the Secretary-General thus clearly advocate a comprehensive approach, seemingly recognising the links between social and economic, politico-military and other factors; the Panel's report states that the primary objective must be prevention, which begins with development.

Yet, is it really helpful to label all of these challenges as security threats? Although it might raise their importance in the eyes of states, it also blurs the distinctions between policy areas. Poverty or HIV/AIDS are problems of a different nature than terrorism, proliferation or conflict: they do not imply a threat of violence and cannot be tackled by politico-military means. Rather, social, economic and other factors constitute the background to, and the root causes of, specific politico-military threats. The necessarily comprehensive nature of the collective agenda can be

1. The author wishes to thank his colleague Valérie Arnould, research fellow at IRRI-KIIB, for her indispensable contribution, in particular with regard to ECOSOC; Ms. Arnould's research on the topic will be published in IRRI-KIIB's *Egmont Papers*.

2. 'A More Secure World: Our Shared Responsibility'. Report of the High-Level Panel on Threats, Challenges and Change, 2 December 2004. 'In larger freedom – towards development, security and human rights for all'. Report of the Secretary-General for decision by Heads of State and Government in September 2005, 21 March 2005.

expressed in clearer and more positive terms, by way of another concept: *Global Public Goods* (GPG).

### **Understanding the challenge: Global Public Goods**

The concept of Global Public Goods (GPG) emerged in the context of the UN at the end of the 1990s. GPG are usually seen in the context of development, but currently the concept is also being used in more general political terms, as a way of conceptualising the comprehensive approach to global policy issues (e.g. by Joseph Nye).<sup>3</sup> General speaking, *public goods* are characterised by non-rivalry in consumption and non-excludability.<sup>4</sup> Global Public Goods provide benefits that are ‘quasi-universal in terms of countries (covering more than one group of countries), people (accruing to several, preferably all, population groups), and generations (extending to both current and future generations, or at least meeting the needs of current generations without foreclosing development options for future generations)’.<sup>5</sup>

Global Public Goods can be grouped under four broad headings, which can be associated to the UN Secretary-General’s definition of ‘larger freedom’:

- physical security and stability – ‘freedom from fear’;
- political participation and an enforceable legal order that guarantees the human rights and equality of all;
- an open and inclusive economic order that provides for the wealth of everyone – ‘freedom from want’;
- social wellbeing in all of its aspects – access to health services, to education, to a clean environment.

These are the core GPG to which every individual is entitled; in that sense, they are universal public goods.<sup>6</sup> As in the ‘human security’ approach, the individual is the point of reference. GPG are strongly interrelated: ultimately, one cannot be ensured or enjoyed without access to the other; the four categories are therefore equally important. In the words of the Secretary-General: ‘Accordingly, we will not enjoy development without security, we will not enjoy security without development, and we will not enjoy either without respect for human rights.’ Effective global governance means ensuring access to GPG; a system that fails to provide the core GPG lacks legitimacy. Global stability, and therefore the

3. Joseph S. Nye, *The Paradox of American Power: Why the World’s Only Superpower Can’t Go it Alone* (Oxford: Oxford University Press, 2002).

4. Marco Ferroni and Ashoka Mody, ‘Global Incentives for International Public Goods: Introduction and Overview’, in Marco Ferroni and Ashoka Mody (eds), *International Public Goods: Incentives, Measurement and Financing* (Washington, DC: Kluwer Law – World Bank, 2002), p. 6.

5. Inge Kaul, Isabelle Grunberg and Marc A. Stern, *Global Public Goods. International Cooperation in the 21st Century* (Oxford: Oxford University Press – UNDP, 1999), pp. 2-3.

6. GPG are sometimes also defined more strictly as comprising only those public goods which cannot be provided but through international cooperation, thus excluding public goods of which the state is or should be the main provider, such as education or political participation. See e.g. the International Task Force on Global Public Goods, [www.gpg-taskforce.org](http://www.gpg-taskforce.org).

security of all states, depends on the availability of sufficient access to the core GPG.

Rather than terrorism, WMD or other military threats, the most important ‘threat’ is the ever growing gap between haves and have-nots, a gap which can be best expressed in terms of access to the essential GPG. While this gap and the feelings of exclusion, marginalisation and frustration resulting from it certainly do not justify conflict, they do help to explain it, which is a prerequisite for prevention and resolution of conflicts. The gap between haves and have-nots is foremost among the challenges of the globalised world, because it is a threat of a systemic nature, i.e. it results from, and impacts on, the functioning of the global order itself. Unless mechanisms of governance are created or rendered more effective that can alleviate this situation, at a certain level of inequality, the resulting political upheaval, extremisms of all kinds, economic uncertainty and massive migration flows will become uncontrollable. Since it denies access to core GPG to a large share of the world’s population, the status quo is not an option.

Against this background, specific politico-military threats do indeed stand out. They include regions of chronic tension and long-standing disputes and conflicts, failed states and civil wars, proliferation of WMD and excessive militarisation, and terrorism. These challenges directly threaten people, states and regions. They have to be tackled head-on, but as they are symptoms of the ‘dark side of globalisation’, effective global governance and improving access to GPG, must be pursued at the same time as the key to *preventing* such threats. ‘Security is the precondition of development’, the European Security Strategy states, but this works the other way around as well, as indicated by the Secretary-General. Of course, the strength of the causal relationship between, on the one hand, the gap between haves and have-nots in the broadest sense and, on the other, specific politico-military issues, differs from case to case. None the less, in the long term no durable settlement of such issues can be achieved unless the stability of the world system itself is assured.

### **Meeting the challenge: a positive and integrative agenda**

The keyword in a policy based on the notion of GPG is *integration*. Because the core GPG are inextricably linked together, action must

be undertaken simultaneously and in a coordinated fashion by all relevant actors in all fields of external policy, putting to use the various instruments at their disposal, including trade, development, the environment, police, intelligence and legal cooperation, diplomacy and security and defence. As is highlighted in the Secretary-General's report, both the recommendations of the High-Level Panel and the Sachs Report on development<sup>7</sup> thus constitute a single agenda. However, although policies in all of these fields must be integrated under the same overall objective of increasing access to GPG, each should continue to operate according to its own rationale and dynamic. 'Securitisation' (i.e. the instrumentalisation of non-military dimensions of external policy as a function only of 'hard' security concerns) must be avoided, for it ignores the intrinsic importance of the other GPG. Accordingly, rather than all challenges being included under the label of security, issues must not be dealt with as security threats unless they pose an effective threat of violence.

By thus addressing the root causes of conflict, a policy oriented on the core GPG emphasises *structural conflict prevention*. This presents a formidable challenge: it implies dealing with more issues, related to all the core GPG, at an earlier stage, before they become security threats. Effective prevention is much more than mere appeasement: it demands a proactive stance, aiming to change circumstances that induce instability and conflict. Mark Duffield analyses how structural prevention in effect amounts to the 'merging of development and security': '[Development] is no longer concerned with promoting economic growth in the hope that development will follow. Today it is better described as an attempt, preferably through cooperative partnership arrangements, to change whole societies and the behaviour and attitudes of people within them.'<sup>8</sup> In this broad sense, development 'not only leads to the reduction of poverty, more political freedom, and greater affirmation of human rights, but also lays the foundation for more durable peace and security.'<sup>9</sup> In the terms of the European Commission, 'the EU will treat security and development as complementary agendas, with the common aim of creating a secure environment and of breaking the vicious circle of poverty, war, environmental degradation and failing economic, social and political structures.'<sup>10</sup> A policy oriented on GPG should in fact be quite intrusive, which might make it rather contentious with the target countries.<sup>11</sup> But bearing in mind that pursuing GPG is in the mutual interest of all concerned, it is at the same time a very

7. UN Millennium Project 2005, 'Investing in Development. A Practical Plan to Achieve the Millennium Development Goals', 27 January 2005.

8. Mark Duffield, *Global Governance and the New Wars* (London: Zed Books, 2002), p. 42.

9. Roy Culpeper, 'Human Security, Equitable and Sustainable Development: Foundations for Canada's International Policy', NSI Paper on the International Policy Review, Ottawa, The North-South Institute, 2005.

10. 'Policy Coherence for Development. Accelerating Progress towards Attaining the Millennium Development Goals', Commission Communication COM (2005), 134 final, 12 April 2005, p. 10.

11. Agnès Hurwitz and Gordon Peake, 'Strengthening the Security-Development Nexus: Assessing International Policy and Practice Since the 1990s', Conference Report, New York: International Peace Academy, 2004.

positive approach, contrary to other, threat-based strategies. ‘For whom’ rather than ‘against whom’ is the question that would determine policy based on Global Public Goods. The sincere pursuit of GPG will bring greatly enhanced legitimacy. As Nye advises the United States: ‘We gain doubly from such a strategy: from the public goods themselves, and from the way they legitimize our power in the eyes of others.’<sup>12</sup>

As effective action in all policy fields concerned requires the cooperation of a wide range of actors at many different levels, a GPG-oriented policy implies *multilateralism*: an intricate web of states, regimes, treaties and organisations, i.e. multilevel governance, implicating all levels of authority in a coordinated effort to improve people’s access to GPG. States are crucial actors in this respect. Although in the notion of ‘human security’ the individual is taken as point of reference, the state indeed remains a primary partner, for no effective arrangements can be made with weak and failed states. In the words of the Secretary-General: ‘Sovereign states are the basic and indispensable building-blocks of the international system... Therefore, one of the great challenges of the new millennium is to ensure that all states are strong enough to meet the many challenges they face.’ For the EU, this means that third states must therefore be seen as partners for cooperation rather than as mere subjects of EU policies; the aim is to influence rather than to coerce, to use the carrot rather than the stick. There will be cases where the use of force is inevitable, for not all actors are amenable to preventive initiatives. But in the framework of multilateralism, the use of force can only be a measure of last resort mandated by the Security Council. In those cases, the legitimacy acquired through the pursuit of GPG can be capitalised upon.

Both the approaches recommended by the Secretary-General and advocated in the European Security Strategy contain many elements of a strategy based on GPG.<sup>13</sup> Although the notion is not mentioned in the European Security Strategy, its implicit presence is evident: ‘Spreading good governance, supporting social and political reform, dealing with corruption and abuse of power, establishing the rule of law and protecting human rights are the best means of strengthening the international order.’ Likewise, in the objectives of EU external action as formulated in the draft Constitutional Treaty (Art. III-292) additional emphasis is placed on aspects of global governance such as sustainable economic, social and environmental development, the eradication of

12. Op. cit. in note 3, p. 143.

13. Sven Biscop, *The European Security Strategy – A Global Agenda for Positive Power* (Aldershot: Ashgate, 2005).

poverty, the integration of all countries into the world economy and the abolition of trade restrictions. And in one of its recent communications on development, the Commission explicitly mentions the provision of ‘universal public goods’ as a basic factor.<sup>14</sup> Furthermore, since the Iraq crisis and throughout the debate on the reform of the UN, the EU as such has emerged as one of the leading proponents of the revitalisation of the UN. The EU and the UN are thus evident partners for a comprehensive approach to global challenges.

### **Forging integration at the country-specific level: the Peacebuilding Commission**

An important new body to increase coordination between actors and policy fields is the Peacebuilding Commission (PBC), a recommendation of the High-Level Panel included in the Secretary-General’s report. In the post-conflict phase, on a country-by-country basis the PBC would provide a forum for all the actors involved ‘to share information . . . in the interest of greater coherence’: the different UN bodies, the international financial institutions (IFIs), the major bilateral donors and troop contributors, relevant regional actors and the national or transitional government. The PBC should remedy the absence of a body in the UN system to help countries in transition from conflict to lasting peace, and should avoid weak local authorities becoming ‘overwhelmed by a multiplicity of conflicting external demands from well-wishers, as each aid agency and NGO seeks to fit the recipient government into its own programmes and procedures’.<sup>15</sup> The emphasis would be on building strong local institutions.

Contrary to the original recommendations by the High-Level Panel, which also saw a preventive role for the PBC, according to the Secretary-General it should not have an early warning or monitoring function – the post-conflict phase would be its exclusive remit. Yet, structural conflict prevention entails exactly the same problem of coordination between the multitude of multilateral and bilateral actors. The UN has set up mechanisms to address this problem, such as the UN Framework Team for Coordination on Conflict Prevention, which was created in 1995 and on a monthly basis brings together 23 UN actors, including *inter alia* DPA, DPKO, UNDP, UNHCR, FAO, ILO, the World Bank and the

14. ‘Speeding up Progress towards the Millennium Development Goals. The European Union’s Contribution’, COM (2005), 132 final, 12 April 2005.

15. Malcolm Chalmers, *Rescuing the State – Europe’s Next Challenge* (London: The Foreign Policy Centre, 2005), p. 1.



IMF. Building on existing structures, such as the UN Common Country Analyses, and maintaining close contacts with the UN Country Teams in the countries which it addresses, the Framework Team's function is on a country-by-country basis to link up headquarters and agencies in the field, and to channel early warning information and suggestions for preventive action to the appropriate body; it is not itself an implementing body.

This working method seems very similar to that imagined for the PBC. Although the Framework Team would retain its usefulness as a body for intra-UN coordination, the PBC by addressing also structural prevention would enhance the potential for coordination in this field too by bringing the bilateral donors and the regional and local authorities to the table as well. A further argument in favour of extending the PBC's mandate to structural prevention is that in fact the types of actions undertaken in the prevention and post-conflict phases are often the same, notably building strong local institutions able to provide for citizens' access to the core GPG. In the immediate aftermath of war, the focus is indeed on *preventing* the re-eruption of conflict.<sup>16</sup>

The Secretary-General recommends that the PBC, which would be assisted by a Peacebuilding Support Office in the UN Secretariat, should permanently comprise a subset of members of the UNSC and ECOSOC, the leading troop contributors and the main donors to a standing fund for peacebuilding, and the IFIs, while the major bilateral donors/troop contributors and the regional and local authorities would be involved on a country-specific basis. Through its participation, the UNSC would be able to complete the data on which to found its decisions with the social and economic dimension which is now often under-represented. Apparently, in the Secretary-General's view, the PBC on a country-by-country basis would report to the UNSC, i.e. in the immediate post-conflict phase, and, when the UNSC decides no longer to remain seized of the matter, to ECOSOC, i.e. with regard to the longer-term peacebuilding efforts. The Secretary-General stresses that ECOSOC should both 'institutionalize its work in post-conflict management by working with the proposed Peacebuilding Commission' and 'reinforce its links with the Security Council in order to promote structural prevention'. If it were to be added to the tasks of the PBC, structural prevention too would be a matter for reporting to ECOSOC, while the UNSC would be able to seize the matter in the event of a crisis requiring politico-military inter-

16. Javier Niño Pérez, 'EU Instruments for Conflict Prevention', *Working Paper 8* (Madrid: FRIDE, 2005).

vention. In order to make optimal use of the aggregate information it will be able to acquire, the PBC itself should also be able to bring to the attention of the UNSC any situation it judges to require intervention.

In view of its collective political and economic weight, and of the establishment of a CFSP, it is advisable that the EU as such would be among the 'standing members' of the PBC, in addition to a range of individual EU member states, in order to contribute in a coherent way its expertise and assets in many different relevant fields. This concerns *inter alia* development and the military and civilian ESDP missions, including in the field of the rule of law, an area specifically mentioned by the Secretary-General for inclusion in the PBC, as well as in the field of security sector reform, a new area for the EU. An issue meriting particular attention is the exchange of information on specific countries. Like the UN, the EU collects a wide range of country-specific data. The Commission's Conflict Prevention and Crisis Management Unit assesses the conflict indicators in the Country Strategy Papers, for which the Commission Delegations in the field are a vital source of information, and in close cooperation with the Council Secretariat and the Joint Situation Centre provides a watch list of potential crisis states.<sup>17</sup> The watch list is confidential, but in the framework of EU participation in the PBC an arrangement should be found that allows for the complete sharing of all information available, in order to ensure its optimal use. Ideally, joint action plans integrating different actors' programmes for specific countries should eventually be drawn up.

### **Forging integration at the global level: ECOSOC**

ECOSOC would have an important role with regard to the new PBC, but that role risks remaining empty if ECOSOC itself is not rendered more effective. As it is, ECOSOC 'has been too often relegated to the margins of global economic and social governance', as the Secretary-General diplomatically words its current lack of influence.<sup>18</sup>

Similarly to the country-specific level, at the global level as well there is a need for coordination between the wide range of actors and policy fields related to development in the broadest sense, in order to address a number of structural issues. While the UNSC is

17. International Crisis Group, 'EU Crisis Response Capability Revisited', *Europe Report* 160, 2005.

18. For an overview of ECOSOC reform initiatives, see Gert Rosenthal, 'The Economic and Social Council of the United Nations. An Issues Paper', *Occasional Paper* 15 (New York: Friedrich Ebert Foundation, 2005).

responsible for maintaining peace and security – ‘freedom from fear’ – ECOSOC could be the forum that provides coordination of social and economic development. More specifically, as the Secretary-General recommends, and building on the existing annual high-level meetings with the trade and financial institutions, ECOSOC should hold an annual ministerial-level assessment of progress towards the Millennium Development Goals (MDGs). The individual states’ current reporting obligations should then be included in this ECOSOC framework, as well as an assessment of the impact of the policies of the IFIs and other actors on the MDGs, in order to avoid contradictory policy objectives and negative side effects.

ECOSOC has positive experiences with the establishment of country-specific working groups, but as far as structural prevention and post-conflict activities are concerned, this level should be completely transferred to the PBC if this body materialises. ECOSOC should, however, be able to have timely meetings as required, as the Secretary-General advocates, in order to provide coordination in crisis management at a regional or country-specific level in case of crises that are not dealt with by the UNSC, such as famine, epidemics, natural disasters and financial crises. Analogous to the relation between the UNSC and the PBC, once the situation is stabilised ECOSOC could if necessary delegate the issue to the PBC for the country-specific coordination of the required long-term activities.

Both the MDG review mechanism and the crisis management role require an enhanced profile for ECOSOC and its resolutions. Although, unlike the UNSC, ECOSOC cannot have binding powers, its resolutions should be given due attention by all the actors concerned. The ministerial level of the review mechanism should provide for enhanced projection of ECOSOC resolutions, as would a more systematic reporting mechanism on the follow-up given to those resolutions. Finally, ‘an Executive Committee with a regionally balanced composition’, as proposed by the Secretary-General, would enable ECOSOC to interact in a flexible manner with other actors.

### **Human rights and democracy: a missing link?**

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The Secretary-General recommends the creation of a Human Rights Council to replace the Commission on Human Rights on a

par with the UNSC and a reinforced ECOSOC. Three councils would thus deal with the core GPG: the UNSC with ‘freedom from fear’, ECOSOC with ‘freedom from want’ and social wellbeing, and the Human Rights Council with respect to human rights.

Perhaps the question should be asked whether this does not leave the issue of political participation and democratisation unaddressed. The Secretary-General does recommend the creation of a democracy fund to help countries seeking to establish or strengthen their democracy, as well as the forging of a closer link between the good governance work of UNDP and DPA’s Electoral Assistance Programme. And of course building or strengthening democratic structures will be part of the programme in those countries where the PBC is active. There are, however, a large number of states with different degrees of authoritarian government; often repression of legitimate political opposition combined with the unwillingness and/or inability to provide citizens with the core public goods provokes radicalisation and extremism – in many cases, this eventually results in conflict. Such states are mostly very suspicious of external involvement, although a variety of actors attempt to implement programmes for the promotion of human rights and democracy and ‘positive conditionality’, with limited success. Here, too, there is a problem of coordination between actors. The Mediterranean region can serve as an example of both the lack of coordination – the EU and the United States run parallel programmes, for instance – and the lack of success – after 10 years, the Euro-Mediterranean Partnership has not resulted in major progress towards human rights and democracy. One can easily imagine that greater coordination between the different actors involved would at least increase the chances of progress being achieved. This is a very sensitive area for the UN, because Art. 2.7 of the Charter firmly excludes intervention ‘in matters which are essentially within the domestic jurisdiction of any State’. Yet perhaps in this area a UN forum for the sharing of information and the comparative evaluation of strategies for promoting democracy could be envisaged.

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### **The EU contribution**

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The EU has a lot to contribute to ‘the three councils’ in terms of expertise and capabilities. Building on the existing desk-to-desk

dialogue that was established in the framework of the EU-UN Joint Declaration on Cooperation in Crisis Management, membership of the PBC for the EU as such would permit direct contact with the relevant bodies in the EU institutions. The EU has also started to create partnerships with specific programmes and agencies, such as with UNDP (28 June 2004), focusing on governance, conflict prevention and post-conflict reconstruction, with particular attention to countries that emerge from conflict, and with the ILO (19 July 2004), in the field of poverty reduction and improvement of labour conditions in developing countries. These partnerships and contacts can be intensified in the future, through EU-UN cooperation on the priorities identified by the PBC – which will require the necessary manpower to be made available in the EU institutions.

The EU would also have to increase its internal coordination within the different UN bodies where it is represented directly or through its member states. This is particularly true of the UNSC: since the Iraq crisis there has been a greater willingness on the part of the member states holding a seat to have substantial briefings at 25, including on forthcoming debates and draft resolutions, but coherence could be enhanced by aligning the work of the Political and Security Committee more with the agenda of the UNSC, so as to allow for ‘real-time’ interaction between Brussels and delegations in New York. It is often forgotten, however, that EU coordination with regard to the executive boards of the UN specialised agencies is much more limited: only recently have ‘information rounds’ prior to sessions been introduced and then only for the New York-based agencies. In the IFIs as well, as the Commission recommends, the visibility and influence of the EU could be increased if it spoke more often with a single voice.<sup>19</sup> Finally, the EU (and the member states) should also enhance coordination *between* its representations in the different UN and international bodies, agencies and programmes, including the World Bank, the IMF and the WTO – all too often, European delegations to different organisations spread contradictory messages.

Within the EU itself as well, the many different dimensions of external action can still be better aligned. If within the CFSP the integration of the civil and military dimensions is progressing, coordination with trade and development is much less developed. The Commission has recommended ways of increasing coherence,<sup>20</sup> but obviously different EU actors, even within the same pillar, often still follow different approaches. For instance, the Com-

19. ‘Accelerating Progress towards Attaining the Millennium Development Goals – Financing for Development and Aid Effectiveness’, COM(2005), 134 final, 12 April 2005.

20. COM(2005), 134 final, paper 3-6.

mission, in the framework of development, recommends that the EU must seek to avoid increasing political conditionality, while at the same time 'positive conditionality' is the cornerstone of the Neighbourhood Policy. The projected European External Action Service and other provisions of the draft Constitutional Treaty would have been vital for the effective coordination and integration of all dimensions of EU external action. Similarly, coordination between action undertaken by the EU and that by individual member states should be reinforced.

In order to implement an integrated, GPG-oriented approach, the EU would also have to adapt part of its policies. It is all too easily forgotten that although the EU is widely seen as a proponent of multilateralism,<sup>21</sup> in the South the EU's image is often that of an aggressive economic actor, quite the opposite of the 'benign' perception that the EU has of itself. Correcting that image requires an earnest effort on the part of the EU to take into account the South's access to GPG. Through its development policy the EU is already heavily committed to the MDGs, but more fundamental changes in EU policy, notably with regard to trade, will be needed in order to create an economic order that is truly inclusive and to effectively combat poverty. For, as the UN Secretary-General notes: 'At present, developing countries are often denied a level playing field to compete in international trade because rich countries use a variety of tariffs, quotas and subsidies to restrict access to their own markets and shelter their own producers.' The Commission itself states this quite frankly: 'In the long term, what we are talking about is controlling globalization through public policy in the interests of a more just world order.'<sup>22</sup> This will require substantial efforts on the part of the EU, such as opening up its agricultural market and halting the dumping of subsidised agricultural products on the world market. Another aspect is debt relief, also called for by the Secretary-General: debt relief is a way of empowering governments, e.g. in the countries addressed by the PBC; empowerment must of course be linked to accountability. In sum, the EU should consider more seriously the recommendations made in the report 'Investing in development' presented by Jeffrey Sachs in January 2005.

Achieving the long-standing target of 0.7 per cent of gross national income for official development assistance is an important part of this effort, and the EU and its member states should continue along that path. The Commission has indicated that sev-

21. Francisco E. González, 'Mexico's Future International Orientation: The EU as a Model', in Martin Ortega (ed), 'Global views on the European Union', *Chaillot Paper 72* (Paris: EU Institute for Security Studies, November 2004), pp. 55-70.  
22. COM(2005), 132 final, p. 9.

eral alternative sources of financing are under consideration.<sup>23</sup> A very promising option would be the introduction at the European level of the so-called Spahn Tax. This is a variant of the Tobin Tax, the original proposal to impose a tax of 0.1 to 0.5 per cent on all speculative currency transactions. Since it is almost impossible to distinguish speculation from regular transactions, however, the Tobin Tax would have to apply to all transactions and would thus have a paralysing effect on the financial markets. The Spahn variant proposes a more practicable, two-step approach: a general tax of 0.02 per cent, sufficiently low not to disturb the markets, would be imposed on all currency transactions; but if a currency were to move outside certain predetermined borders, a heavy tax of 80 per cent would apply in order to stop speculation and avoid financial crises and the disastrous socio-economic consequences that they entail. The tax would thus bring a double benefit: the general tax would generate an estimated €50 billion, a structural source of funds for reconstruction and development in less developed countries, while the prohibitive 80 per cent tax would have a stabilising effect on the financial markets.<sup>24</sup>

The advantages to be gained through all of these efforts work both ways, for promoting citizens' access to GPG in the South implies firstly raising their standard of living and setting minimal norms for wages and social security, and secondly, closing the wealth gap reduces instability and threats.

## Conclusion

The EU and the UN share the same basic comprehensive approach that integrates security and development, or in other words, that starts from the assumption that the inextricable link between the core GPG should determine policy. In order to truly implement such an integrated approach, however, both organisations will have to continue reforming their institutions and policies – their efforts to that end can and should be mutually reinforcing.

The opportunity offered by the September 2005 summit must be grasped to introduce a number of reforms in the UN system. Even if decisions are not taken on all aspects of the comprehensive set of recommendations by the Secretary-General, progress should still be possible on specific issues, such as notably the PBC, a body which if all participants earnestly commit to it would be

23. COM(2005), 133 final.

24. In 2004 Belgium adopted a law introducing the Spahn Tax conditional upon its adoption by all members of the Euro-zone.

able to make a difference on the ground in the short term. A truly integrated approach requires a revitalised ECOSOC – again, reform should certainly be feasible, but the UN member states should finally decide whether they want ECOSOC to play a role in global governance or not.

The EU, at the same time as supporting the all too necessary reforms of the UN, should make sure that its own house is in order, proceeding with the coordination and integration of the different dimensions of external action and increasing its role within the UN – proving that, in the words of the Commission,<sup>25</sup> it can act as a ‘front-runner’.

More specifically, the EU should promote policies that ensure better access to Global Public Goods (physical security, political participation, development, health services, education and clean environment) for everyone, including trade policies and assistance, in line with the declared principles and values that underpin the EU’s relations with rest of the world.

25. ‘The European Union and the United Nations: The Choice of Multilateralism’, COM(2003), 526 final, 10 September 2003.



# The role of the EU in promoting reform of the UN in the field of human rights and environmental protection

Francesco Francioni<sup>1</sup>

In 2005 the UN is facing the challenge of its most far-reaching reform since its birth in 1945. Diplomatic efforts and attention by the media have focused especially upon the controversial issue of Security Council reform and its enlargement to better reflect the power and responsibilities of UN membership in the twenty-first century. This theme was high on the UN agenda in the 1990s but consensus eluded the General Assembly as to whether to proceed to the simple addition of a certain number of new permanent members or to adopt a more flexible formula involving rotation amongst semi-permanent members on the basis of geographic representation. Less momentous institutional reform is also called for with regard to the ineffective functioning of the Economic and Social Council, the Secretariat structure, peacekeeping and the possible elimination or transformation of obsolete bodies such as the Trusteeship Council and the Military Staff Committee contemplated by Art. 47.<sup>2</sup> The need for UN reform has been dramatically brought to light by a chain of events that have contributed to the marginalisation of the organisation and dealt a blow to multilateralism. Since the decision taken by NATO countries in 1999 to use military force against the Federal Republic of Yugoslavia without Security Council authorisation, more radical forms of ‘unilateralism’, most notably the US-led war against Iraq and the subsequent and continuing occupation of the country, have signalled a marked drifting away from multilateral institutions.

The purpose of this chapter is to discuss the role that the EU can play in responding to the present crisis and in promoting reform of UN law and institutions with respect to two distinct subjects falling within the organisation’s competence: respect of human rights and environmental protection. Paradoxically, these two subjects reveal an inverted order of precedence in the relations between the EU and the UN. Human rights were the early product of the UN and its original commitment to rebuild the basis of civilisation dev-

1. The author wishes to thank Elisa Morgera, EUI Ph.D. candidate, and Federico Lenzerini, Research Fellow, University of Siena, for their valuable comments and suggestions on an earlier draft of this article.

2. See the Report of the High-Level Panel on Threats, Challenges and Change, ‘A More Secure World: Our Shared Responsibility’, 2 December 2004, [www.un.org/securityworld/](http://www.un.org/securityworld/).

astated by the barbarity of the Second World War and the plunging of Europe into the moral abyss of the Holocaust. In the EU, instead, human rights were the late product of a complex process of economic integration, and their formalisation in ad hoc legal instruments – although prepared with intense jurisprudential contribution by the European Court of Justice – did not take place until the 2000 Nice Charter of Rights and the 2004 Constitutional Treaty.<sup>3</sup> On the contrary, environmental protection did not figure in the original UN Charter scheme and it is still mainly entrusted to an institutionally weak ‘programme’ – the UN Environment Programme (UNEP) – while in the EU environmental protection has become entrenched in the principles and purposes of the Union and has become a necessary dimension of all the other policies.

## Human rights

Protection of human rights represents one of the fundamental principles and purposes of the UN. After reaffirming in the Preamble the ‘faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women’, the Charter proclaim at its Art. 1 that one of the purposes of the United Nations, besides the maintenance of peace and of friendly relations among nations, is the promotion and encouragement of ‘... respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion’.<sup>4</sup> The record of the UN in carrying out this commitment, although inspired by a cautious and gradual approach, is impressive. The establishment of the Commission of Human Rights and the adoption in 1948 of the Universal Declaration placed human rights and the safeguarding of the human person at the centre of the UN agenda. Subsequent adoption of binding human rights treaties progressively introduced the revolutionary concept that states have international obligations towards one another with regard to the treatment accorded to their own citizens, thus removing the subject from the traditional ‘shelter’ of domestic jurisdiction/*domaine réservé*. Human rights supervisory bodies composed of independent experts have been established to monitor the implementation of major UN treaties.<sup>5</sup> The International Court of Justice and the UN International Law Commission have both recognised that human rights form an integral part of the

3. Human rights were rather the competence of the Council of Europe with the adoption in 1950 of the European Convention on Human Rights and Fundamental Freedoms (CETS no. 005), which later became the parameter of reference of the European Court of Justice to review the legality of Community acts or of members states’ implementing legislation deemed to violate fundamental rights.

4. See also Art. 55, which, as part of international economic and social cooperation, engages the UN to promote: ‘(c) universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.’

5. Supervisory bodies in the form of human rights committees have been established in connection with: (1) the 1966 *Covenant on Civil and Political Rights* (999 UNTS 171); (2) the 1966 *Covenant on Economic, Social and Cultural Rights* (993 UNTS 3); (3) the 1966 *Convention on the Elimination of All Forms of Racial Discrimination* (660 UNTS 195); (4) the 1979 *Convention on the Elimination of All Forms of Discrimination Against Women* (1249 UNTS 13); (5) the 1984 *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (1465 UNTS 85); and (6) the 1989 *Convention on the Rights of the Child* (1577 UNTS 3). For a review of the UN human rights monitoring system see P. Alston and J. Crawford (eds.), *The Future of Human Rights Treaty Monitoring* (Cambridge: Cambridge University Press, 2000).

general interest of humanity and create obligations that states owe to the *international community as a whole*.<sup>6</sup> These are remarkable results, if one considers the difficulties of the Cold War, the transformation of the international community as a result of decolonisation, and the ongoing controversy as to whether human rights are the ideological imposition of the Western world (in the sense of European and/or American) rather than a sincere concern for the defence of our shared humanity.

So, can we say that the picture looks bright for the future of the UN human rights system? Not quite.

The report issued by the High-Level Panel on Threats, Challenges and Change has already identified one major institutional flaw in the functioning and increasing bureaucratisation of the Commission on Human Rights. The report is correct on this point. It is hardly contestable that, despite the commendable record achieved in the early period of its life, when it pioneered the drafting and adoption of the 'International Bill of Rights',<sup>7</sup> and when it later responded to gross violations of human rights by developing new procedures to deal with individual countries<sup>8</sup> or special 'themes',<sup>9</sup> the main UN body has declined in influence and credibility. The reasons are manifold, but two can be singled out as having special relevance.

The first relates to the loss of the original human rights 'ethos', inspired by leading founding figures such as Franklin D. Roosevelt and René Cassin, and the drift towards a body more concerned with the defence of member states' sovereignty than with the cause of human rights. In recent years, membership of the Commission has included states with very poor human rights record. In 2003, among widespread criticism, Libya was elected to the chair of the Commission, thus showing that geographic representation in the UN was more important than genuine commitment to freedom and human rights. Today, among the 53 members of the Commission we can find countries which are far from having a good human rights record, such as Saudi Arabia and China. But the extreme case is Sudan, a member of the Commission which has been the focus of international attention for possible commission of acts of genocide and which, at any rate, was found to be implicated in atrocities and mass killings by the ad hoc Commission nominated by the UN Secretary-General in 2004.<sup>10</sup> It is no wonder that, given these precedents, the High-Level Panel Report arrived at the following dispirited conclusions:

6. See in particular the judgments of the ICJ in the *Barcelona Traction, Light and Power Company Limited* (ICJ Reports, 1970, pp. 226 ff.) and the recent Advisory Opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territories* (available at <<http://www.icj-cij.org/icjwww/idocket/imwp0/imwpframe.htm>>) built by Israel in the occupied territories.

7. With this expression we commonly refer to the 1948 *Universal Declaration of Human Rights* (G. A. Res. 217 A (III) of 10 December 1948) and the two 1966 UN Covenants on Civil and Political Rights, and on Economic, Social and Cultural Rights (see note 5 above).

8. See especially Resolution 1503-XL VIII of 27 May 1970 of ECOSOC which authorised the Sub-Commission on Prevention of Discrimination and Protection of Minorities (a subsidiary organ of the Commission which has now changed its name to Sub-Commission for the Promotion and Protection of Human Rights) to examine communications received by the Secretary-General alleging violations of human rights of a gravity and scale to reveal the existence of 'gross violations'. Once established the reliable character of the communication, the Sub-Commission would make a report thus opening the way to in-depth investigation by the Commission and possible recommendation and action by ECOSOC and even by the General Assembly. The procedure laid down by Resolution 1503 has been used to denounce gross violations of human rights and to call upon states to put a stop to them *inter alia* in relation to apartheid in South Africa, human rights violations in the Arab territories occupied by Israel, Cambodia, Equatorial Guinea, Chile, Bolivia, El Salvador, Guatemala, Iran and Cuba.

9. The 'thematic approach' involved addressing specific human rights violations which had acquired a systematic character in certain countries, such as, for example, enforced or involuntary disappearances in Latin America during the 1970s and 1980s (see Commission on Human Rights Res. 20(XXXVI) of 1980, extended

the Commission's capacity to perform [its] tasks has been undermined by eroding credibility and professionalism. Standard-setting to reinforce human rights cannot be performed by States that lack a demonstrated commitment to their promotion and protection. We are concerned that in recent years States have sought membership of the Commission not to strengthen human rights but to protect themselves against criticism or to criticize others. The Commission cannot be credible if it is seen to be maintaining double standards in addressing human rights concerns.<sup>11</sup>

The second reason for the declining role of the Commission on Human Rights is the increasing responsibility assumed directly by the Security Council or the General Assembly in relation to specific situations presenting a pattern of serious breaches of human rights and the concomitant rise of prominence of the Office of the High Commissioner for Human Rights. Examples of this trend can be found, as far as the Security Council is concerned, in its direct involvement in Kosovo, by way of Resolution 1244, and later in the Darfur crisis, by way of Resolutions 1564 and 1593, and, as far as the General Assembly is concerned, in its active involvement in the issue of the Israeli construction of the wall in the occupied Arab territories, which led to the 2004 Advisory Opinion by the International Court of Justice.

Against this complex background of shifting patterns of human rights competences, the High-Level Panel Report focused its attention on the reform of the Commission on Human Rights. Section XVII of the Report contains several recommendations in this respect:

- membership of the Commission should be expanded to universal membership;
- all members of the Commission should designate prominent and experienced human rights figures as heads of their delegations;
- an advisory Council or Panel, possibly of 15 independent experts, appointed for their skill and according to geographic representation, should be set up to assist the Commission in addressing country-specific issues, general themes and standard setting and research;
- the role of the High Commissioner should be enhanced to provide the Commission with a yearly world report on human

with Res. 2001/46) or on extrajudicial, summary or arbitrary executions (see Res. 1982/35, extended with Res. 2001/45).

10. The Commission was chaired by Antonio Cassese, professor of international law at the University of Florence and first President of the International Criminal Tribunal for the Former Yugoslavia. It rendered its report on 25 January 2005. See 'Report of the Independent Commission of Inquiry on Darfur to the UN SG, pursuant to SC Resolution 1564 of 18 September 2004' (available at <<http://www.reliefweb.int/library/documents/2005/ici-sud-25feb.pdf>>). The Commission's conclusions and recommendations were endorsed by UNSCR 1593 of 31 March 2005. It is interesting to note that with this Resolution the Security Council has referred the question of atrocities committed in Darfur by Sudanese officials or individuals to the International Criminal Court, although Sudan is not a party to the ICC Statute.

11. Op. cit. in note 2, para. 283.

rights and liaise with the Security Council and other UN bodies to help them effectively monitor human rights compliance in the performance of their functions;

- ▶ finally, ‘in the longer term’, the Commission should be upgraded from the present status of auxiliary organ of ECOSOC to a full Charter body.<sup>12</sup>

The proposals made by the High-Level Panel are quite sensible. They reflect real needs of improvement of a system that has become dangerously detached from both the reality of international society and the original purpose of the Charter. But they do not go far enough. That is why there is room for the EU to consider additional proposals and recommendations as a collective contribution to the UN reform process.

Although the UN Secretary-General, in his March 2005 report, did not endorse all the Panel’s recommendations, they constitute an appropriate basis on which the EU and its member states could elaborate. They could support the following initiatives on UN involvement in human right issues: streamlining, mainstreaming, and entrenching.

### Streamlining

By this term I mean simplification and search for coherence in the present UN system of human rights implementation. Contrary to the principle of ‘indivisibility’ stated in the 1993 Vienna Declaration on human rights, the UN system has become more and more characterised by fragmentation and compartmentalisation. While in Europe the model of the European Convention on Human Rights was at the beginning, and remains today, that of a unitary legal instrument, of a single court and of the gradual inclusion of new rights and freedoms by way of additional protocols,<sup>13</sup> the UN system has followed the path of a multitude of human rights regimes, each with its own implementing mechanism. This has led to a proliferation of supervisory bodies, functioning in isolation one from another. There are today six major supervisory human rights bodies (‘Committees’) serving the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of Racial Discrimination (CERD), the Convention on the Elimination of Discrimi-

12. *Ibid.*, paras. 285-9.

13. There are now 14 additional protocols, some of them concerned with structural reform of the system – such as the well-known Protocol XI abolishing the Commission and reforming the Strasbourg Court (see *Protocol no. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms, restructuring the control machinery established thereby*, CETS No. 155) and Protocol XIV amending the control system of the Convention (see *Protocol no. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention*, CETS no. 194) – but most of them concerned with the enlargement of the catalogue of rights originally recognized in the Convention.

nation Against Women (CEDAW), the Convention Against Torture (CAT), and the Convention on the Rights of the Child (CRC). The tasks of these bodies are to examine periodic reports by state parties, to examine communications and to make general comments concerning relevant points of interpretation of the relevant instruments. The institutional proliferation consequent to this treaty-based approach has not led to more effective implementation and better quality of human rights protection. On the contrary: heavy reliance on periodic reports as a means for human rights monitoring has produced an unmanageable backlog in state reporting and an increasing mass of overdue reports,<sup>14</sup> systematic delay in the committees' consideration of communications and hasty consideration of state reports, with consequent foreclosure of the opportunity for constructive dialogue. State default in the presentation of periodic reports cannot be sanctioned. Indeed, as has been pointed out, the system paradoxically relies to a large extent on state default because, were all states to be punctual in the presentation of their reports, the congestion would be so severe as to bring the system to a halt.<sup>15</sup> This situation is bad enough in terms of detrimental effects of delayed consideration of reports and of communications. But the fragmentation of the monitoring system also produces an artificial segregation of the implementing practice of one supervisory body with respect to the others. This is hard to accept, since in human rights law, rather than the abstract proclamation of a right in the text of a treaty, what is important is the way in which the right is effectively secured in concrete situations, how it is safeguarded against possible abuses of discretionary powers of national authorities, and what actual remedies are available to counteract possible violations.

In this situation, a 'streamlining' proposal by the EU could be based on the following elements:

- The six treaty committees that today monitor and evaluate state practice in the field of human rights, although remaining distinct treaty institutions, could be brought under the same umbrella of a single Human Rights Monitoring Body, whose members would be elected to perform multifunctional duties in relation to different human rights treaties and in close connection with the Commission on Human Rights reformed along the lines suggested by the High-Level Panel Report.
- Reporting procedures should be consolidated in a single

14. For a detailed analysis of this phenomenon, I refer to the comprehensive study *The future of UN Human Rights Treaty Monitoring*, op. cit. in note 5 above.

15. J. Crawford, 'The Human Rights Treaty System: a System in Crisis?', *ibid.*, p. 6.

Human Rights Report, the content and breadth of which would depend upon the number of treaties that the reporting state has adhered to but would take into account the linkages between different types of rights.

- ▶ Communications concerning human rights violations should be addressed to and dealt with by the single Human Rights Monitoring Body on the basis of new and stringent admissibility criteria, following the valuable experience accumulated in Europe with the Human Rights Commission and the Court.
- ▶ The Office of the High Commissioner for Human Rights should be reinforced so as to become the institutional support structure and professional secretariat of the consolidated Human Rights Monitoring Body.
- ▶ Members of the Human Rights Monitoring Body should be individuals with proven experience and professional skills in the field of human rights, chosen from a pool of names formed by lists of three names proposed by each state, in analogy with the procedure followed in the parliamentary assembly of the Council of Europe for the nomination of judges to the European Court of Human Rights, and reflecting equitable geographic distribution.
- ▶ The Human Rights Monitoring Body would be assisted in the performance of its functions by an advisory panel consisting of representatives of NGOs, professional associations active in the field of human rights and civil society.

The above proposals, if properly implemented, (a) would require minimal amendment of human rights treaties and, with some possible adaptation, no amendment whatsoever; (b) would help to overcome the present fragmentation of the UN human rights implementation by creating a single monitoring mechanism where the existing treaty monitoring systems would converge; and (c) would maintain the Advisory Council proposed by the High-Level Panel Report (para. 287) but with a different function and, more important, a different composition. Such composition, rather than being determined by bureaucratic manoeuvring between the SG and the High Commissioner for Human Rights, as suggested in the High-Level Panel Report,<sup>16</sup> ought to reflect the representative NGOs, and professional associations of lawyers, jurists and scholars concerned with human rights. Recognition of the role played by NGOs and civil society in the field of

16. HLP Report, para. 287.

human rights is essential. It is time for the EU to take active steps in this direction, so that the impending reform of the UN Charter becomes an opportunity for their institutional upgrading to the rank of official advisory bodies of the UN Commission on Human Rights. The EU Network of independent experts on fundamental rights/*Reseau UE d'experts indépendants en matière de droits fondamentaux*, set up by the European Commission in 2002 following a request by the European Parliament,<sup>17</sup> is a precedent or even a model that the EU could utilise in view of concrete proposals toward Charter reform.

### Mainstreaming

By this term I mean the reconsideration, evaluation and reorganisation of UN policy-making so that human rights perspectives are systematically incorporated in all policies at different levels of decision, at different stages of development, by all relevant actors and responsible agents. An important advantage of this approach is that human rights concerns are anticipated before adverse impacts occur, rather than being dealt with *ex post facto*, after damage has been done.<sup>18</sup> One of the limits of the UN approach (besides the fragmentation resulting from the plurality of human rights regimes as indicated in the previous section) is the self-contained character of UN human rights policy. The Commission on Human Rights, the supervisory bodies and the Office of the High Commissioner for Human Rights are all involved in the business of interpreting existing human rights instruments, elucidating their scope and implementing their standards to concrete situations. The risk, however, is that in doing so, these organs may find themselves in the position of a fairly isolated industry in the hands of a specialised group of experts with little impact on the policies pursued by the organisation and its agencies. This has led some commentators to speak in somewhat pejorative terms of 'human-rightism/*droit de l'hommisme*'.<sup>19</sup>

Human rights mainstreaming entails the overcoming of this insular view of human rights and a consequent striving for constant integration of human rights standards in the social, economic, scientific, and developmental policies of the organisation in order to forecast problems and anticipate human rights abuses. The Office of the High Commissioner for Human Rights has already started to practice this 'anticipatory' approach at the cog-

17. The Network was set up by the European Commission DG Justice and Home affairs in September 2002. It is composed of 25 members, one for each member state, and its function is to monitor the state of respect and compliance with human rights in the Union and in member states on the basis of the EU Charter of Fundamental Rights. It holds three sessions per year and prepares annual reports as well as thematic studies and opinions on specific issues. The last available report was published in 2004, vol. 1 – Fundamental Rights Series, Luxembourg, Office for Official Publications of the European Communities.

18. For a discussion of the concept of mainstreaming and of its application in the EU, see O. De Schutter, 'Mainstreaming Human Rights in the European Union', in P. Alston and O. De Schutter (eds.), *Monitoring Fundamental Rights in the EU – The Contribution of the Fundamental Rights Agency* (Oxford: Hart Publishing, 2005).

19. A. Pellet, '“Human Rightism” and International Law', *The Italian Ybk of International Law*, 2000, vol. X, pp. 3 ff.



nitive level, through a series of studies assessing the impact on human rights of, *inter alia*, the increasing use of intellectual property rights, transnational corporations and biotechnology.<sup>20</sup> This approach should be encouraged and reinforced. The EU can contribute to the process of human rights mainstreaming in the UN, and its contribution can be all the more effective since it has already moved in this direction in its own legal system. Some initial proposals and recommendations may be summarised as follows:

- (1) Taking as a starting point Art. III 118 of the EU Constitutional Treaty, which mandates the systematic assessment of EU laws and policies in light of the need to avoid racial, sexual and religious discrimination, the Office of the High Commissioner for Human Rights should be entrusted with the task of assessing the impact of major UN initiatives, from transitional administration to peacekeeping, development plans, environmental policies etc, on internationally recognised human rights. In this connection, it is to be noted that the High-Level Panel Report, in advocating an enhanced role of the High Commissioner for Human Rights, does not make any meaningful advance toward anticipatory assessment and human rights mainstreaming as indicated above. It remains faithful to the traditional, yet ineffective model of *ex post facto* reporting and monitoring,<sup>21</sup> whose shortcomings were examined in the preceding section.
- (2) Building upon the Vienna Declaration and programme of action (1993),<sup>22</sup> the EU could recommend that the UN, its specialised agencies and UN bodies, should consider drawing up action plans, within the sphere of their respective competence, identifying steps to be taken in order to the protection of human rights.

It is clear that this strategy is more ambitious than human rights impact assessment, since, unlike the latter, which is aimed at simply ‘avoiding’ an adverse effect on human rights, ‘action plans’ offer an opportunity for positive promotion of human rights. They entail anticipatory reflection on what are the best options to improve human rights and societal values, and they require consultation with civil society and coordination with different stake-holders, thus improving democracy and participation. If these virtues are easily recognisable within national societies, we see no reason why they should not apply to the organs and

20. See ‘The impact of the 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 OHCHR’, due to be submitted to the Commission on Human Rights in March 2005 (see <<http://www.ohchr.org/english/issues/globalization/business/reportbusiness.htm>>).

21. HLP Report, paras. 288 and 289.

22. Adopted by the World Conference on Human Rights, 25 June, 1993, UN doc. A/CONF.157/23, 12 July 1993.

activities of the UN, to improve their channels of communication one with another and with civil society.<sup>23</sup> This is the best way to reinforce their democratic legitimation and deprive the enemies of multilateralism of their recurrent argument that international institutions – and indeed international law – lack a genuine democratic basis.<sup>24</sup>

### Entrenching

Although the protection of human rights is one of the fundamental purposes of the UN, as indicated in the Preamble to the Charter, in Arts. 1(3), 55 and 56, it is clear that, 60 years after its foundation, the Charter system cannot be said to have fulfilled the promise of ensuring respect for human rights worldwide. Outside the 30 or so democracies (say, the OECD members), severe poverty, widespread discrimination and human rights violations continue to prevail. Of course, these problems should be addressed primarily by the concerned states. But it is a limit, and indeed a severe one in an epoch of globalisation, to continue to look at human rights purely in terms of ‘obligations’ undertaken by states in their reciprocal relations. This narrow conception of human rights has led the UN to the present situation where its legal system and the action taken at an administrative and political level by the organisation and its specialised agencies is not informed by a ‘constitutional’ mandate to respect and fulfil human rights. Contrary to what happens in most modern democratic constitutions, where human rights represent one of the fundamental parameters for evaluating *ex ante* the admissibility of a given action and for judging *ex post facto* the legality of legislative and executive action, in the UN no legal mechanism exists for ensuring that the fundamental ‘purposes and principles’ of human rights may translate in precise conditionality or bases for review and possible invalidation of acts of the organisation on human rights grounds. The Security Council and the Secretary-General do not adequately take human rights considerations and human rights records of participating countries in planning and implementing peacekeeping or peace building operations; financial institutions are not subject to statutory mandate to respect and protect human rights, and they resort to purely voluntary mechanisms to avoid disastrous human rights impacts of their operations and consequent international scandal;<sup>25</sup> development policies are not planned and conducted within

23. For a discussion of this issue within the EU, see Commission Communication ‘Toward a reinforced culture of consultation and dialogue – General principles and minimum standards for consultation of interested parties by the Commission’, COM(2002), 704 final, 11 December 2002.

24. The myth of popular sovereignty is being ‘rediscovered’ to attack the multilateral institutions, especially the UN. While this is not a novel idea, since also at the epoch of decolonisation newly independent countries challenged international law in the name of self-determination and non-participation in the ‘writing’ of existing rules, today this intellectual operation finds active epigones in the US. See the work of E. Posner and J. Goldsmith, *The Limits of International Law* (Oxford: Oxford University Press, 2005).

25. See e.g. the World Bank Inspection Panel, a three-member body instituted in 1993 with the purpose of offering an independent forum to private individuals who believe that their interests have been or could be directly jeopardised by a project financed by the World Bank; see <<http://wbln0018.worldbank.org/ipn/ipnweb.nsf/WOverview/overview?opendocument>>

a precise framework of human rights and citizens' rights; not to mention the International Court of Justice, which remains a jurisdiction of purely interstate disputes<sup>26</sup> where the opportunities for human rights adjudication are extremely rare and contingent upon the consent of the interested states.<sup>27</sup>

This situation contrasts sharply with the EU system, where fundamental rights, even in the absence of original treaty provisions, have been recognised as forming part of the general principles of the system applicable to states and to citizens and private persons alike, and forming part of what has been called a 'European public order'. This has led the EU legal system to gradually open up to the necessity of accommodating human rights and fundamental freedoms to the process of market integration in a way that makes it possible for the European Court to review the legality of member states' and the Community's action in light of general human rights parameters.<sup>28</sup> Taking this into account:

- ▶ The EU should seize the opportunity of the impending UN Charter reform to advance a more modern conception of human rights, that is, of a set of objective principles deriving from the international human rights treaties that are to be respected, not only by states but also by the organisation, its organs, its specialised agencies and its programmes, as well as by public and private actors in their respective fields of competence and action.
- ▶ The EU should contribute to greater infusion of human rights consideration in the present system of economic globalisation, especially by supporting the efforts of the UN Sub-Commission on the Promotion and Protection of Human Rights towards the development of norms on the conduct of transnational corporations, which should be translated into national legal standards and applied as part of a modern code of corporate social responsibility.
- ▶ The EU should continue to support the multilateral system of criminal justice established by the International Criminal Court (ICC) in order to combat impunity for grave breaches of human rights and international crimes. To this end, the EU could build upon Council decisions establishing points of contact in member states for the exchange of information concerning the investigation of international crimes as defined in the Statute of the ICC<sup>29</sup> and enhancing cooperation between national authorities in the effective prosecution of international crimes.<sup>30</sup>

26. See Art. 34 of the Statute of the International Court of Justice.

27. It is not by chance, therefore, that some of the most significant contributions given by the International Court of Justice to human rights and humanitarian law have been provided by Advisory Opinions requested by the General Assembly on general points of law. See in particular the Advisory Opinion on 'Legality of the Threat or Use of Nuclear Weapons', 1996 (available at <<http://www.icj-cij.org/icjwww/icasess/iunan/iunanframe.htm>>), and on *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territories* (see note 5 above).

28. One of the most interesting examples in the ECJ human rights jurisprudence is the recent case of *Eugen Schmidberger, Internationale Transporte und Planzüge v Republik Österreich*, Case C-112/00, judgement of 12 June 2003, *EC Reports*, 2003, p. I-05659, where the Court upheld the fundamental right to freedom of expression and of peaceful assembly of a group of environmentalist who had blocked a transalpine road to protest the impact of excessive road traffic on the environment. The fundamental rights laid down in Arts. 10 and 11 of the European Convention on Human Rights were carefully balanced with the competing rights of shipping companies to free movement of goods and ultimately up-held as a legitimate aim to be pursued by the relevant member state.

29. See Decision of 13 June 2002 setting up such European network of contact points, *OJ* no. L 167, 26 June 2002.

30. See Decision of 8 May 2003, in *OJ* no. L 118, 14 May 2003.

## Protection of the environment

By comparison with other threats, such as terrorism, armed conflict and the proliferation of weapons of mass destruction, the High-Level Panel Report devotes scant attention to the deterioration of the natural environment and the reform of global environmental governance. The problem of environmental degradation is treated together with poverty and infectious diseases in less than 6 pages out of a total of 95 of the Report. Among the new initiatives, the Report mentions only global climate change and the entry into force of the Kyoto Protocol, which the Report considers insufficient to meet the challenge of greenhouse gas accumulation, because of both lack of universal support and the limited time span (up to 2012) of pertinent obligations.

As far as institutional reform is concerned, the Report does not put forward any new ideas, as it had done with regard to human rights, and concludes with the rather plain recommendation that '[t]he United Nations Environmental Programme (UNEP), the United Nations Development Programme (UNDP) and the World Bank should work in a more integrated fashion – and in partnership with Governments and outside research institutions – to improve vulnerability assessment and work with the most affected Governments to strengthen their adaptive capacity.'<sup>31</sup>

One could have expected more focused attention on, and wider and more in-depth analysis of, the functional necessities of the UN system of environmental protection and its present shortcomings, as well as a bolder and more creative set of recommendations to improve the overall performance of the system. This is all the more surprising since academic studies and political initiatives to improve the international institutional arrangements for environment and sustainable development have been under way for quite a while.<sup>32</sup>

Given the complexity of the international system of environmental protection, with the multiplicity of treaty regimes and overlapping competences of international institutions within and beyond the UN, it is impossible, within the limits of this paper, to address all the possible aspects of the real or perceived environmental governance deficit of the present system. I will thus concentrate my attention on one particularly important issue that contributes to the ineffectiveness of the overall performance of the multilateral environmental system, i.e. the normative and institu-

31. HLP Report, para. 73.

32. See, among the many contributions, F. Biermann, 'The Emerging Debate on the Need for a World Environmental Organization: A Commentary', *Global Environmental Politics*, 2001, 1(1), pp. 45 ff.; S. Charnowitz, 'A World Environmental Organization', 27 *Columbia J. Env. Law*, 2002, p. 321. In 2004 Francesco Francioni and P. M. Dupuy, at the EUI, Florence, prepared a preliminary feasibility study, commissioned by the French Ministry of Foreign Affairs, for the establishment of a UN environmental organisation or agency. A similar study has been carried out with the support of the French Ministry of Ecology and Sustainable Development and recently published by the Institute du développement et des relations durables internationales, (*Implications of a UNEO for the global architecture of the international environmental governance system*, R. G. Tarasofsky and A. L. Hoare, Chatham House, December 2004).

tional fragmentation of international environmental governance, due to the formation of a multiplicity of environmental regimes, each supported by its own 'institutions' ( Meeting of the Parties, Conference of the Parties, Consultative Meetings, etc.), separate secretariats, separate scientific and technical advisory bodies and compliance mechanisms. If this 'specialisation' is justifiable, or even unavoidable in some cases (one such case is the Antarctic environmental regime, whose specificity needs to be safeguarded in light of the unique political arrangement on which it is rooted)<sup>33</sup> it is clear that from a general point of view more coordination and institutional cohesion of the system as a whole would be desirable. Some crucial problems must be pointed out:

- ▶ Effective multilateralism in the environmental field would require a global forum for discussing and elaborating a global environmental agenda, similar to the global trade agenda that has developed through the WTO. The United Nations Environmental Programme could perform this role. However, political distrust, shortage of funding and competition with other UN programmes and agencies have led to a situation where it is even difficult to list all the environmental actors competing for authority and funds.
- ▶ Effective multilateralism is not compatible with ineffectual enforcement of environmental standards and rules; some environmental protection regimes, such as the Montreal Protocol on the ozone layer and the Kyoto Protocol, are supported by specific non-compliance mechanisms; but these provisions are scattered in different treaties and can hardly provide the basis for well-coordinated enforcement strategy. Effective multilateralism implies participation in international decision-making and compliance procedures of the largest and most representative countries. Due to the proliferation of international environmental regimes, developing countries and small states face severe difficulties in participating in the plethora of, often overlapping, Multilateral Environmental Agreements (MEAs) meetings.
- ▶ The UN should have a pivotal role in building capacity of developing countries to deal with environmental problems. In part, UNEP plays this role in a wide range of environmental initiatives,<sup>34</sup> but it has limited resources and its mandate can also be limited by the competing environmental responsibilities of other UN programmes, such as UNDP, or agencies such as UNESCO, FAO, IMO, the World Bank, and WHO.

33. The Antarctic Treaty, adopted at Washington in 1959 (see 402 *UNTS* 71), serves the purpose of preserving peace in the region through the establishment of a system of multilateral cooperation that has laid to rest the issue of sovereignty claims, including conflicting claims over Antarctica. One of the remarkable results of the Antarctic Treaty System was the adoption in 1991 of the Madrid Protocol, with Annexes (see Protocol on Environmental Protection to the 1959 Antarctic Treaty, 30 *ILM* 1455), which declared Antarctica a 'natural reserve' devoted to peace and science.

34. For a list of such initiatives, see UNEP/GCSS.VIII/5/Add.1 (13 February 2004), Annex.

- ▶ Another adverse consequence of the fragmentation of the present system of environmental governance is the difficulty encountered in developing a constructive interaction between MEAs and the WTO. At present, MEA bodies do not have observer status in relevant WTO committees, and even UNEP is experiencing difficulties in obtaining observer status with the WTO Committee on Trade and Environment.<sup>35</sup> This situation does not help to reconcile free trade commitments under WTO with the requirement of securing compliance with an array of MEAs, many of which are binding upon WTO members as treaties, without, however, acquiring in their aggregate mass the authority of a legitimate public policy capable of counterbalancing specific WTO free trade obligations.
- ▶ Finally, systematic monitoring and warning on the state of the environment needs coordination and integration of data to avoid gaps in knowledge and information collection,<sup>36</sup> but at present such data and information are gathered and processed by individual states, independent international secretariats or NGOs.

How can the EU contribute to the resolution of these problems and to better cohesion of the UN system of environmental governance? There are basically two ways to deal with this problem.

### Consolidation of the UN environmental scheme

The first way is the one suggested in the report issued by the UN Secretary-General in March 2005<sup>37</sup> in which, after recognising the need for a more coherent institutional framework of international environmental governance, the following recommendation is made:

It is now high time to consider a more integrated structure for environmental standard setting, scientific discussion and monitoring treaty compliance. This should be built on existing institutions, such as the United Nations Environmental Programme, as well as the treaty bodies and specialized agencies. Meanwhile, environmental activities at the country level should benefit from improved synergies, on both normative and operational aspects, between the United Nations agencies, making optimal use of their comparative advantages, so that

35. While UNEP has cooperated with WTO in regular sessions of the CTE, status in the CTE Special Session (see 'Existing Forms of Cooperation and Information Exchange between UNEP/MEAS and the WTO', Note of the Secretariat, Doc. TN/TE/S/2, 10 June 2002), it does not appear to have obtained observer in the CTE Special Session which is supposed to carry forward the Doha Declaration mandate on trade and environment.

36. See R.G. Tarasofski and A.L. Hoare, note 35.

37. Kofi Annan, 'In larger freedom – towards development, security and human rights for all', issued 20 March 2005.

we have an integrated approach to sustainable development, in which both halves of that term are given due weight.<sup>38</sup>

As the above citation indicates, the preference of the Secretary-General is for a streamlining and consolidation of the UN environmental efforts by way of building 'on existing institutions'. This route is certainly the easiest one from a technical and political point of view: no new institution would be required and no politically controversial overhauling of the whole system would be undertaken. However, in order to yield a reasonable expectation of improvement of the system, a certain number of functional necessities should be kept in mind.

First, even if UNEP were to remain simply a UN programme as it is today, its funding should become adequate, predictable and stable. It is no mystery to anyone that UNEP has been constantly plagued by scarce resources, a problem that became more acute in the late 1990s with increasing dissatisfaction of major donor countries, such as the United States, and consequent decline in available resources. A response to UNEP's financial structure could be to re-design the funding system by foreseeing assessed contributions by member states in addition to voluntary contributions. This is an option, but, given the scale and level of criticism that UNEP has attracted in the past ten years, it is difficult to imagine that such an option would find political support, especially among the industrialised UN member states.

Second, a revamped UNEP will be possible only to the extent that it is given real authority within the UN system and clear operational capacity with regard to the mounting complexity of the threats to the global environment. However, since its creation, following the 1972 Stockholm conference, the UNEP mandate has been quite limited. It was meant to provide monitoring of environmental developments, serve as a 'clearing house' for environmental information and provide impetus and coordination in the development and implementation of international environmental agreements. UNEP has performed these functions quite well; in some it has actually excelled, as in the Regional Seas programme, and in others it has out-performed its original mandate, as in the sponsoring of a great variety of multilateral conferences, programmes and agreements, ranging from hazardous waste to dangerous chemicals, air pollution, land degradation and water resources management. Today, it seems that it has stretched to its

38. Ibid. para. 212 of the Report under the heading 'Governance of the global environment'.

limit. It is quite doubtful that with the present institutional structure, and with the further inconvenient of a headquarters located in Nairobi, far removed from the main centres of UN agencies and organisations, more authority and operational capacity could be achieved without institutional reform.

Third, an essential condition for improving the effectiveness of UNEP would be a better integration of environmental protection into the socio-economic policies pursued by other UN agencies and programmes. This is what the 2005 Report by the Secretary-General calls 'improved synergies . . . between United Nations agencies, making optimal use of their comparative advantages, so that we have an integrated approach to sustainable development.' To obtain such result, however, it would be necessary to align the two separate UNEP and UNDP 'programmes', through a systematic, institutional division of tasks between the two programmes so as to avoid duplication, competition over financial resources, and ensure joint management of projects, particularly those funded by the Global Environment Facility (GEF). This could be achieved through the negotiation of a Memorandum of Understanding between UNEP and UNDP. Similarly, in its relations with the World Bank, UNEP could have an enhanced role in the management of the GEF funds to support developing countries' efforts in securing compliance with their international environmental obligations, including climate change and biodiversity. However, this move also seems to be problematic, in view of the foreseeable opposition from the World Bank. As has been pointed out, a more realistic option would be that of a 'joint operation of the GEF by the World Bank and UNEP . . . in order for the two organizations to share the responsibility of project selection, appraisal and supervision, in accordance with the respective spheres of expertise.'<sup>39</sup>

As we can see, in spite of its apparent simplicity, the option of improving international environmental governance through the strengthening of UNEP presents important challenges of a financial, legal and political nature. It is our view that the very weak institutional status and the legacy of, not always deserved, distrust on the part of some leading members of the UN, would render it extremely difficult for the EU to gamble on a reinforced UNEP as the new environmental authority in the reformed UN Charter system.

39. See the Study prepared at the EUI under the direction of Professors P. M. Dupuy and F. Francioni entitled 'Options and Modalities for the Improvement of International Environmental Governance through the Establishment of a U.N. Environmental Organization', Florence, December 2004. The section of the study cited in the text was prepared by F. Lenzerini (Ph.D. Siena) and E. Morgera (Ph.D. candidate, EUI).



### A new global environmental organisation

Another option to be considered by the EU in view of strengthening international environmental governance is the creation of a new organisation having general competence in the environmental field. This option, which has been promoted by France in particular<sup>40</sup> and is currently supported by a number of EU member states, can be pursued in two distinct versions. One version would be the creation of a UN Environmental Agency, i.e. an organisation endowed with its own legal personality but placed within the UN; the other version would be the creation of a totally independent world environmental organisation, along the lines of the WTO. These two models have several advantages in common: (1) they would place the current system of international environmental governance on a more stable institutional basis; (2) they would bring under the same institutional umbrella the vast array of multilateral environmental agreements; (3) they would presumably be able to facilitate the acceptance of international environmental standards by developing dialogue among governmental and non-governmental actors; (4) because of the new institutional structure, one may expect that they would be the catalyst for a stronger environmental solidarity and fiduciary spirit among participants, which would foster more coherent action for environmental protection; (5) they could provide a forum for global environmental monitoring and for dispute settlement, a function that is acutely lacking in the present fragmented and decentralised system of environmental protection.<sup>41</sup>

Naturally, in order to create any of these environmental organisations it would be necessary to negotiate a new multilateral treaty. To this end, it would be desirable to involve in the negotiations, besides all the UN members, the most important stakeholders in environmental governance, including the relevant UN agencies and programmes, the main MEA secretariats, the World Bank, the GEF, and representatives from leading environmental NGOs and the private sector. This would certainly not be an easy task. However, since the present UN system clearly presents a deficit of environmental governance and since the United States seems reluctant to engage in a fresh effort to strengthen multilateral cooperation in this field – as it appears from its recalcitrant position with respect to the Kyoto Protocol and the Convention on Biological Diversity – it would seem appropriate for the EU to seize this opportunity for UN reform to take the lead in promoting the

40. See the preliminary studies cited above, notes 35 and 43.

41. This results in having the WTO dispute settlement mechanism being asked to resolve disputes involving the legality of environmental measures having the effect of impacting on free movement of goods and services. See F. Francioni, 'Environment, Human Rights and the Limits of Free Trade', in F. Francioni, *Environment, Human Rights and International Trade* (Oxford: Hart Publishing, 2001), pp. 7 ff.

creation of a new international environmental organisation following one of the two models described above. In addition, the EU could be instrumental in gathering the consensus of developing countries on such reform, building upon its long-standing relationship with the African, Caribbean and Pacific countries, through the once Lomé, now Cotonou cooperation agreements, and with other associated states, with which it has increasingly strengthened environmental cooperation.<sup>42</sup>

## Conclusion

As this paper has tried to demonstrate, the High-Level Panel Report and the subsequent March 2005 Report prepared by the UN Secretary-General do not exhaustively address the present threats and challenges to the international system of human rights protection and environmental governance. The above-mentioned documents focus rather on military security, peacekeeping, use of force and the enhanced role of the Security Council in maintaining world order. But world order and effective multilateralism cannot be divorced from a strong sense of legitimacy and collective recognition that the UN and other international institutions serve the common good of the people. At a time when the excesses of unilateralism and superpower politics are accompanied by increasing annoyance with the encroachment of international law on national sovereignty, and by open attacks on the legitimacy and democratic foundation of international institutions,<sup>43</sup> it is all the more important to strengthen the UN commitment to human rights and environmental protection. These are indeed two essential components of global governance, security, democracy and human welfare, values to which the EU has anchored its constitutional development. The EU should consequently play a leading role in the enhancement of the protection of human rights and the environment during the current efforts to reform the UN Charter.

42. G. Marin Duran and E. Morgera, 'Towards Environmental Integration in EC External Relations? A Comparative Analysis of Selected Association Agreements', *Yearbook of European Environmental Law*, 2005 (forthcoming).

43. I refer particularly to the new 'negationist' wave in the United States that tends to deny the legal value of customary international law within the domestic legal system, thus depriving independent courts of the opportunity of advancing the international rule of law and reducing international law to an infinitely flexible tool meant to accommodate policy decision. See C. A. Bradley and J. L. Goldsmith, 'Customary International Law as Federal Common Law: A Critique of the Modern Position', 110 *Harvard Law Review*, 1997, pp. 815 ff.; P. R. Trimble, 'A revisionist View of Customary International Law', 33 *UCLA Law Review*, 1986, pp. 665 ff.; A. M. Slaughter, 'Good Reasons for Going Around the UN', *New York Times*, 18 March 2003, A33.

# EU-UN cooperation in peacekeeping: a promising relationship in a constrained environment

Thierry Tardy<sup>1</sup>

The relationship between the European Union (EU) and the United Nations (UN) in the field of crisis management has gone through major changes over the last five years. On the UN side, the constraints imposed by the changing and ever-demanding nature of peacekeeping have led the organisation to seek increased support from regional actors, the EU among others. On the European side, the development of the European Security and Defence Policy (ESDP) logically led the EU to revisit its relationship with the UN, both as a legitimising body and as the main peacekeeping implementer. The convergence of these two trends has led to a genuine inter-institutional rapprochement.

Yet this process has taken place in a highly constrained environment. Structurally, even though both the UN and the EU have displayed a will to move forward in their relations, the differences in the organisations' respective agendas, vocations, constituencies and means limit the scope of their cooperation in the field of peace operations. Peacekeeping imposes itself on the UN more than it does on the EU. The UN approach is inspired by an open agenda, while the European policy combines self-interest and the necessity to respond to conscience-shocking situations.

In general, it is the EU rather than the UN that sets the agenda and defines the terms of the UN-EU relationship, which is characterised by a divide between what the UN wants and what the EU is willing to offer. Africa, as a great security-consumer where both the UN and the EU must play a role, illustrates the EU-UN divide as much as it tests cooperation between them. In the shorter term, the EU-UN rapprochement is being confronted with the simultaneous reform processes of the two institutions, which includes a high degree of uncertainty surrounding both the overhaul of the UN and the ratification of the European Constitution.

In this context, the two institutions have achieved a significant amount, in terms of increasing knowledge of respective functioning and activities, institutionalised framework of cooperation and

1. The author would like to thank Eric Berman, Fred Tanner, Erik Windmar and Miriam Fugfugosh for their comments on earlier versions of this paper.

practical cooperation. In relative terms, although the EU is not formally a 'regional arrangement' in the sense of Chapter VIII of the UN Charter, it is the regional organisation that has gone the furthest in its relationship with the UN, and it is also the one that offers the most promising perspectives of cooperation at both the military and civilian levels. The UN welcomes EU efforts and is willing to take advantage of the EU crisis management policy. Yet the UN also aspires to include such a policy as much as possible into its broader framework, and calls for a more direct EU participation in UN-led peace operations.

This paper will look at three facets of the EU-UN relationship in peace operations. It will first look at the nature of the environment and the constraints attached to it. In a second part, it will deal with the achievements of the EU-UN relationship. It will finally address the modalities of their relations, exploring the different scenarios of EU-UN cooperation in the broader field of crisis management.

### **A highly constrained environment**

The question of EU-UN relations in peacekeeping is a multifaceted one, as it comes at the junction of different state actors' policies vis-à-vis an activity – peace operations – which is complex and multidimensional by nature, and approached differently depending on where it is to take place (Europe, Africa, elsewhere), through which framework (UN, regional organisations, coalitions) and for what purpose (mandate, level of force required, etc.).

#### **UN overstretch . . .**

In this context, the UN and the EU are no doubt in a different situation. Through its Security Council, the UN is the legalising and legitimising body for peace operations, and the only organisation that can authorise the use of force in international relations. At the operational level, the UN is by far the international organisation the most involved in peace operations. With 16 missions as at March 2005 and around 67,000 military personnel and civilian police deployed, the UN counts more people in peacekeeping operations than all regional and subregional organisations put together. Such a level of deployment, combined with the increas-

ingly complex nature of its missions, pushes the limits of the UN's operational capacity. Facing overstretch, the UN Secretariat is constantly looking for ways to fill gaps, by reforming itself, as the Brahimi Report on Peace Operations suggested in 2000, and by asking states and regional organisations – as the Secretary-General's report 'In larger freedom' does<sup>2</sup> – to provide the assets that are needed for complex and robust peacekeeping.

It is here that the EU can play an important role. Through ESDP, the EU is developing crisis management capacities that precisely the UN is lacking. The UN faces shortages in troops, but above all in rapid reaction capacity and in what it calls 'enabling assets', such as movement control, intelligence, medical units or logistics, which are less available than infantry battalions. The UN Secretariat recurrently calls on the EU and its member states to provide such resources, and welcomes any EU initiative that strengthens the UN capacity directly or indirectly.<sup>3</sup> In the meantime, there has been concern within the UN that the whole ESDP process would develop to the detriment of the UN inclusive approach as well as of UN peacekeeping needs.

### ... versus EU ambivalence

Faced with this situation, EU member states' policies are ambivalent. On the one hand, the EU and EU member states are strong supporters of the UN, in accordance with the European Security Strategy and the concept of 'effective multilateralism'.<sup>4</sup> EU states are attached to the centrality and legitimising power of the UN Security Council, and the EU as such has gained some political clout within UN bodies<sup>5</sup> beyond the role played by the Commission in economic and development affairs. At the financial level, the EU states' shares of the UN regular and peacekeeping budgets are very high, with respectively 37.75 per cent and 39 per cent.<sup>6</sup>

On the other hand, the strong emphasis that the EU places on its political autonomy leads it to somehow distance itself from the UN. For example, obtaining a UN mandate for ESDP operations does not appear to be a requirement as long as these operations are deployed in Europe, with the consent of the host state, and are of a non coercive or civilian nature. In Europe, the examples are the EU Police Mission in Bosnia and Herzegovina and Operations *Concordia* and *Proxima* in FYROM that were not created by a UNSC reso-

2. See 'In larger freedom – towards development, security and human rights for all', Report of the Secretary-General, United Nations, A/59/2005, 21 March 2005, paras. 111-13, and the section on 'Regional Organizations', paras. 213-15.

3. See Speech by the UN Deputy Secretary-General before the European Parliament, Strasbourg, 29 March 2004, and the Report of the Secretary-General on the Implementation of the recommendations of the Special Committee on Peacekeeping Operations, A/59/608, 15 December 2004, para. 72.

4. See Espen Barth Eide (ed.), 'Effective Multilateralism': *Europe, Regional Security and a Revitalised UN* (London: The Foreign Policy Centre/Global Europe Publications, 2004).

5. See Alexandra Novosseloff, *EU-UN Partnership in Crisis Management: Developments and Prospects* (New York: International Peace Academy, June 2004), pp. 4-6.

6. To be compared with 22 per cent (regular budget) and about 27 per cent (peacekeeping budget) for the United States, and 19.5 per cent for the two budgets for Japan.

lution; outside of Europe, the three civilian operations in Georgia (EUJUST THEMIS), Kinshasa (EUPOL KINSHASA), and Iraq (EUJUST LEX) provide other examples.

Most importantly, while EU member states are major contributors to UN-*mandated* peace operations, they contribute very little to UN-*led* operations. As of March 2005, EU member states accounted for 6.52 per cent of UN troops,<sup>7</sup> a percentage that decreases to 2.24 per cent for UN operations in Africa,<sup>8</sup> the continent where peacekeeping needs are by far the greatest. For well-known political and military reasons with origins in the UN peacekeeping records of the early 1990s, Western states in general have become reluctant to participate in UN-led operations, and have over the last ten years favoured regional organisations (EU and NATO) or coalitions of states for their crisis management activities. Consequently, even if EU representatives are right in saying that EU member states' military capabilities are not 'frozen for ESDP purposes',<sup>9</sup> in practice, the probability that such assets would be deployed in UN operations is likely to remain low and in any case subject to very specific conditions.

This situation concerns the relationship between EU member states and the UN more so than that of the EU, as most EU assets belong to the individual states. However, the general reticence of the European states to place troops under UN command, in addition to their scepticism about the reliability of the UN structure in general, are concerns that are echoed within the EU itself and its politico-military structure, and that both negatively impact the EU-UN relationship. EU rigidity also finds some grounds in the specificity of ESDP operations. The key principle of the EU decision-making autonomy in this field makes subordination to the UN difficult. Any ESDP operation is, in principle, placed under political control and strategic direction of the Political and Security Committee (PSC). It is the involvement of the EU politico-military structure, much more than the commitment of EU member states' troops, which defines a given operation as a European Union operation. It follows that the mere idea that EU member states' assets could simultaneously be part of an EU operation and placed under UN command clashes with ESDP philosophy. Here a distinction has to be made between military and civilian assets, since the readiness of EU member states to include civilian assets as a component of a UN operation is higher than in the military sphere (see the third part of this essay).

7. 4,378 military observers, civilian police and troops from EU member states out of 67,150 as of 31 March 2005; Monthly Summary of Contributions, UN website.

8. 1,148 military observers, civilian police and troops from EU member states out of 51,208 deployed in Africa as of 31 March 2005; Monthly Summary of Contributions, UN website.

9. 'EU-UN Cooperation in Military Crisis Management Operations – Elements of Implementation of the EU-UN Joint Declaration' ESDP Presidency Report, Annex II, European Council, 15 June 2004, para. 4.

This being said, the general absence of European states from UN-led operations has to be checked against their presence in UN-mandated operations. Such a contribution is quite high, from the Balkans to Afghanistan, but with NATO playing the most prominent role. This raises the question of what the most effective channels are to serve the UN Charter's ultimate goal of maintaining international peace and security. For EU member states, there is no doubt that their strong involvement in peace operations is complementary to overall UN efforts. If those operations are EU-led, they should consequently be seen as part of the broader EU-UN picture. For the UN, national or regional contributions to peacekeeping activities are encouraged as long as they are not exclusive of direct contributions to UN-led operations. One concern here is the development of two-speed peace operations, some UN-led, relatively poor, ill-equipped and with weak political backing, and others led by states or regional organisations such as the EU or NATO, which would be politically and militarily better supported. The other concern lies in the rift between Africa on the one hand, where the needs are but would be neglected by the 'rich' organisations, and other places on the other hand, which would better benefit from Western/Northern attention. Given these two sets of concerns, no doubt a test case of EU-UN cooperation in peacekeeping will arise in Africa.

These different elements come as constraints imposed on the EU-UN relationship in the field of peace operations. To summarise, while the UN is in a position to demand that the EU commit itself to supporting UN activities, the EU is constrained by a number of factors which limit its favourable response to UN requests and restrict the scope of its cooperation.

### **Some tangible achievements**

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It is in this constrained environment that the achievements as well as opportunities of EU-UN cooperation in peacekeeping have to be considered. This cooperation was illustrated during the 1990s, in the Balkans in particular, where both the UN and the EU were in one way or another involved in the management of the Yugoslav conflicts. Yet the idea that cooperation on crisis management should be closely looked at and possibly institutionalised came up in earnest in 2000, at a time when the UN was examining the reform

of its peace operations through the Brahimi Report process and the EU was laying the foundations of ESDP.

Initially, though, the idea that the EU and the UN should cooperate in the peacekeeping field was not obvious within the two institutions and their member states. On the UN side, some scepticism was expressed regarding the establishment of channels of communication with regional organisations, which was perceived as placing the UN and these organisations on the same level. Moreover, any move that was seen as giving the EU preferential treatment was not perceived favourably. On the EU side, there was a strong sentiment that the ESDP should be developed without excessive linking to the UN.

### The first steps of the EU-UN dialogue

It is in this context that, after initial talks between the two institutions in the second part of the year 2000,<sup>10</sup> the ESDP Report to the Nice European Council underlined the ‘value of cooperation between the Union and the United Nations... as the Union develops its crisis-management and conflict-prevention capabilities’, and further stated that ‘[t]he efforts made will enable Europeans in particular to respond more effectively and more coherently to requests from leading organisations such as the UN or the OSCE.’<sup>11</sup>

A document was then elaborated in 2001 under the EU Swedish presidency on ‘EU-UN cooperation in conflict prevention and crisis management’.<sup>12</sup> Three issues, ‘conflict prevention’, ‘civilian and military aspects of crisis management’ and ‘particular regional issues’, were identified as themes and areas for EU-UN cooperation. The document also established modalities for meetings at different levels between the two institutions. In the meantime, the Göteborg European Council adopted a document on ‘EU cooperation with international organisations in civilian aspects of crisis management’<sup>13</sup> which defined four guiding principles of the Union’s cooperation with international organisations,<sup>14</sup> as well as putting forward different options of EU civilian participation in crisis management operations led by international organisations.<sup>15</sup>

### The first EU operations: successful tests of EU-UN cooperation

The next important step came in 2003 with the creation of the first ESDP operations: two of them – the EU Police Mission in Bosnia

10. Javier Solana addressed the UN Security Council for the first time on 23 June 2000 (on the Balkans). Some meetings between the UN Secretary-General and the EU troika followed in September and October 2000.

11. Presidency Report on ESDP, Nice European Council, 7-9 December 2000.

12. See ‘EU-UN cooperation in conflict prevention and crisis management’, Annex to the Presidency Conclusions, Göteborg European Council, June 2001.

13. See ‘EU cooperation with international organizations in civilian aspects of crisis management’, Presidency Report on ESDP, Annex V, Göteborg European Council, June 2001.

14. The four principles are ‘added value’, ‘interoperability’, ‘visibility’ and ‘decision-making autonomy’.

15. Communication around the emerging EU-UN relationship was assured through a brochure produced by the office of the Commission in New York (updated in 2004 under the title ‘The Enlarging European Union at the United Nations: Making Multilateralism Matter’) as well as through a dedicated website (<http://europa-eu.un.org>).



and Herzegovina (EUPM) and Operation *Artemis* in the Democratic Republic of Congo (DRC) – constituted real tests for the EU-UN relationship. In the case of Bosnia and Herzegovina, the EU took over the UN International Police Task Force (IPTF), with the objective of ensuring a ‘seamless transition’ from UN to EU responsibility. That was achieved through inter-institutional cooperation in the planning phase, collocation of EU and UN teams in Sarajevo, information-sharing, and double-hatting of Sven Christian Frederiksen, simultaneously IPTF Commissioner and Head of the EUPM Planning Team, and then EUPM Commissioner. Once the EUPM was launched, cooperation between the two organisations was maintained through liaison officers, and the EU established contact on the ground with the International Criminal Tribunal for the Former Yugoslavia and UNHCR. In the meantime, some lessons-learned exercises were conducted on the transition. While overall EU-UN cooperation was assessed positively, one issue that arose was that double-hatting of the head of mission created an additional workload that was difficult to digest. Moreover, the take-over by the EU of an existing mission meant that the EU was not able to shape it as it would have had it created it.

Since the launch of the EU mission, and following the UNSC invitation to the EU to ‘keep it regularly informed, as appropriate, on the activities of EUPM’,<sup>16</sup> reports have been issued by the High Representative for CFSP and sent to the UN Security Council every six months. The first report commends EU-UN cooperation and says that ‘[while] the EUPM is the first experience of cooperation in the field between the UN and EU’, it ‘illustrates that a smooth and efficient transition of responsibility from the UN to EU in a crisis management operation is no longer an aspiration but a concrete component of our cooperation.’<sup>17</sup>

The EU involvement in the DRC was of a fundamentally different nature. In the summer of 2003, the EU conducted its first autonomous military operation in the north-eastern part of the DRC (Ituri, city of Bunia). This occurred at the request of the UN, under a UN mandate, and as a temporary endeavour eventually taken over by a reinforced component of the UN operation (MONUC, Ituri Task Force). EU and UN activities were therefore intimately linked throughout the planning and the deployment of the operation. Operation *Artemis* – officially called Interim Emergency Multinational Force (IEMF) – was formally created by UNSC Resolution 1484 of 30 May 2003 and by the Council Joint

16. Statement by the President of the Security Council, 12 December 2002, S/PRST/2002/33.

17. Letter dated 14 July 2003 from the Secretary-General and High Representative for the CFSP of the EU to the Secretary-General of the UN; annex to the letter dated 17 July 2003 from the Secretary-General of the UN to the President of the Security Council, S/2003/732, 21 July 2003.

Action of 5 June 2003.<sup>18</sup> The Security Council resolution was adopted under Chapter VII of the UN Charter and authorised the member states participating in the force to ‘take all necessary measures to fulfill its mandate’. The Security Council formally created the force, but subcontracted its implementation to the EU, with no subordination of any sort between the two institutions. The Security Council only requested the leadership of the force ‘to report regularly to the Council through the Secretary-General, on the implementation of its mandate’,<sup>19</sup> which Javier Solana did once, in July 2003, by addressing the Security Council.<sup>20</sup> *Artemis* was placed under political control and strategic direction of the PSC, with France, as the framework nation, playing the key role in the planning process as well as in the conduct of the operation.

EU-UN cooperation on *Artemis* was assessed positively by both organisations. Initially, the fact that the operation came as a response by the EU to a request formulated by the UN Secretary-General, which was then endorsed by the Security Council, facilitated the formal creation of the operation. In the pre-deployment phase, the UN deplored the lack of information coming from the EU – in particular on the deployment of the IEMF – which could have caused incidents when the EU force and UN peacekeepers were simultaneously deployed.<sup>21</sup> But overall, communication was established at different levels (New York/Brussels and on the ground) and once *Artemis* had been deployed, cooperation with MONUC proved to be satisfactory. The deployment of the first elements of the Ituri Task Force in mid-August 2003 also led to valuable cooperation between the two forces.

Most importantly, EU cooperation with the UN Secretariat (and with Bangladesh as the main contributor to the Ituri Task Force) to make sure that MONUC could take over in September 2003 as agreed, proved to be successful. This point was of crucial importance, since the UN’s ability to take over *Artemis* constituted the exit strategy for the EU.

Yet EU-UN cooperation was put to the test when EU member states were asked by the UN Secretariat to ‘re-hat’ some of their assets and to make them available to the UN after the departure of *Artemis*. The re-hatting of forces was implemented in East Timor in 1999, where Australia, which acted as the lead nation in the UN-mandated operation INTERFET, agreed to keep some of its troops in the UN-led operation (UNTAET), thus guaranteeing its credi-

18. ‘Council Joint Action 2003/423/CFSP of 5 June 2003 on the EU military operation in the DRC’, *Official Journal of the European Communities*, L 143/50, 11 June 2003.

19. UNSC Resolution 1484 (2003).

20. Intervention by Javier Solana, EU High Representative for the CFSP, public meeting of the UN Security Council, New York, 18 July 2003.

21. See ‘Operation Artemis: The Lessons of the Interim Emergency Multinational Force’, Peacekeeping Best Practices Unit, UN DPKO, New York, October 2004, p. 11.

bility. The ‘East Timor model’ has often been praised by UN representatives,<sup>22</sup> who see in it the opportunity for the UN to benefit from Western states’ key military assets, but who are also anxious to ‘narrow the commitment gap’<sup>23</sup> between the developing and the developed world.

In the case of the DRC, the request to re-hat was dismissed by the Europeans; locally, this jeopardised the credibility of MONUC.<sup>24</sup> But in the context of EU-UN relations, the European stance revealed the limits of cooperation; it showed what the EU and its member states were ready to do (support through a separate operation), but also what they would not do (support within the UN operation). In his address to the Security Council on 18 July 2003, Javier Solana stressed that a reinforced MONUC ‘should have a mandate and rules of engagement similar to those of the European Union force, i.e. a mandate under Chapter VII.’ He continued by saying that this force should have the ‘equipment and military resources necessary to accomplish its mission and implement the mandate and rules of engagement.’ Yet none of the EU states participated in the strengthened UN force that took over *Artemis*.

The EU has remained present in the DRC through a series of initiatives related to civilian crisis management: a programme of strategic support totaling €205 million adopted in 2003, and the creation of a Police Mission in Kinshasa (EUPOL KINSHASA) in December 2004. In so far as EU-UN cooperation is concerned, the EU also decided, in response to UN calls for reinforcing MONUC, to provide it access to the EU Satellite Centre’s capabilities.<sup>25</sup>

All together, these different measures taken by the EU to support the UN in the DRC are to be commended, as they do strengthen overall crisis management efforts. Yet they fall short of a direct strengthening of MONUC *via* the deployment of EU member states’ assets on the ground, which would be most welcomed by the UN.

### Drawing on field cooperation: battle groups, UN-EU Joint Declaration and ‘beauty contest’

Notwithstanding the shortcomings of EU-UN cooperation revealed by Operation *Artemis*, this episode constituted a major breakthrough in relations between the two institutions. It forced them to work together on the ground, and therefore to become bet-

22. See in particular ‘Implementation of the United Nations Millennium Declaration’, Report of the Secretary-General, A/58/323, 2 September 2003, paras. 35-7.

23. *Ibid.*, para. 37.

24. *Op. cit.* in note 21, p. 14.

25. See Presidency Report on ESDP, European Council, Brussels, December 2004.

ter acquainted. At the conceptual level, it led to the elaboration by the EU of the 'battle groups' concept, which should become one of the most visible expressions of EU-UN relations in the future (see below). Likewise, Operation *Artemis* brought institutionalisation of EU-UN cooperation one step further, with the signature on 24 September 2003 of the 'Joint Declaration on UN-EU Cooperation in Crisis Management' by the UN Secretary-General and the EU presidency. The declaration took note of the recent developments in EU-UN cooperation and identified four areas where further cooperation should be explored: *planning, training, communication and best practices*. A 'joint consultative mechanism', named Steering Committee, was established at working level to enhance coordination in these four areas and to follow through with the implementation of the Joint Declaration. In the meantime, the European Commission released an important Communication on EU-UN relations,<sup>26</sup> which offered an in-depth analysis of the EU general posture *vis-à-vis* the UN, in addition to calling for a renewed EU commitment to multilateralism. The Communication also put forward recommendations on how to maximise EU benefits in a wider EU-UN partnership, going far beyond peacekeeping issues.

Since September 2003, the Steering Committee has met twice a year, and points of contact have been established (or developed) at different levels of the two secretariats. Work has been conducted on training standards and modules; UN personnel have participated in EU training courses; and a continued dialogue on planning and EU-UN operational cooperation has taken place, as in the EU-UN exercise of April 2005.

With these different initiatives and achievements, the EU-UN relationship in the field of peacekeeping has gone through major evolutions. What used to be of a rhetorical nature a few years ago has become tangible at both institutional and field levels. Throughout these years, the UN has often tried to involve the EU further than the EU was able or willing to commit. The UN has oscillated between a relative optimism, stemming from the potential of the UN-EU relationship, and concerns, about the EU's rather self-interested peacekeeping policy.

However, despite the differences of approach, the EU-UN relationship has developed further and faster than the relationship between the UN and any other regional organisation. Moreover, this relationship may be seen as a model to be replicated, between the UN and African organisations for example.

26. 'The EU and the UN: The Choice of Multilateralism', Communication from the European Commission, Brussels, 10 September 2003.

In a sense, the UN appeal to the EU is an acknowledgement of its nascent crisis management capacity. This pleases the EU in general terms, but can also be reframed in the broader context of EU-NATO relations, where the EU needs to assert its political and operational capacity, and therefore also in the context of UN-NATO relations. As if he wanted to place the EU and NATO in competition, Kofi Annan acknowledged before the Sub-Committee on Transatlantic Relations in March 2004 that the ‘unrivalled [NATO] capability to deploy rapidly and robustly can have a major impact on the UN’s work for peace and security,’ and further stated that ‘NATO might be employed in a ‘peace enforcement’ role, much as the EU deployed Operation *Artemis* in the Democratic Republic of Congo as a bridging force before the deployment of a UN operation.’<sup>27</sup> This situates the three organisations in a triangular relationship that changes the nature of the EU-UN relationship alone. For the UN, the idea is clearly to develop partnerships with as many organisations as possible, in a non-exclusive way. For the EU, this raises the issue of its ability to perform in the ‘beauty contest’. But for EU member states that are also NATO member states, at stake is also the extent to which NATO should play a role in the crisis management field, and the division of labour between NATO and the EU in this respect.

### EU support beyond peacekeeping: the need for increased coherence

Finally, besides the above-mentioned achievements, the EU may also invoke its role in supporting the UN crisis management policy at other equally important levels.<sup>28</sup> This encompasses several components, ranging from the EU contribution in the broad field of conflict prevention to its multifaceted involvement in the peacebuilding phase.

Taking the case of Africa, in line with the ESDP Action Plan for Africa,<sup>29</sup> the EU role in the strengthening of African peacekeeping capacities, the financing of some components or programmes of peace operations (through the Peace Facility for Africa and through the support of DDR and SSR<sup>30</sup> programmes), the political and technical support to the African Union (in Darfur for example) and ECOWAS,<sup>31</sup> the participation in joint fact-finding missions (as was the case in Burundi in February 2004 with a EU-UN joint fact-finding mission conducted prior to the establish-

27. NATO Parliamentary Assembly, Visit to New York, Monterey and Santa Monica by the Sub-Committee on Transatlantic Relations, March 2004.

28. See on this T. Tardy, ‘L’Union européenne et l’ONU dans la gestion de crise. Opportunités et limites d’une relation déséquilibrée’, *Recherche et documents* n. 32 (Paris: Fondation pour la Recherche stratégique, May 2004), pp. 47-57.

29. See ‘Action Plan for ESDP support to Peace and Security in Africa’, document 10538/4/04 Rev 4, 22 November 2004.

30. ‘Demobilisation, Disarmament and Reintegration’ and ‘Security Sector Reform’.

31. See for example ‘Technical advice on “ECOWAS stand-by units: concept and structures”’, Document of the European Military Staff, Brussels, 29 June 2004.

ment of the UN operation) are all activities that contribute to overall UN crisis management efforts. In his report 'In larger freedom', the UN Secretary-General called for the 'establishment of an interlocking system of peacekeeping capacities that will enable the UN to work with relevant regional organisations in predictable and reliable partnerships.'<sup>32</sup>

In Africa, there is no doubt that such collaboration should go beyond peacekeeping activities. In the broader field of crisis management, the EU and the UN may think, in close cooperation with regional and subregional actors, of a strategic partnership that would take account of their respective capacities and comparative advantages. The potential for EU-UN cooperation is immense in this context, and the EU holistic approach, combining a wide variety of instruments, is a unique comparative advantage. The role of the European Commission is here particularly important. The EU could draw on what the Commission has done in regards to the implementation of the UN Millennium Development Goals.

The EU has displayed a will to move in that direction, reflected by the ESDP Action Plan for Africa and the 'battle group' concept. However, it will also remain vigilant to ensure a certain degree of flexibility and autonomy of action vis-à-vis the UN and other organisations. Overly constraining commitments will therefore be avoided. In any case, if such a comprehensive partnership is to be sought, it will require a much more coherent and coordinated approach from the EU, both in terms of the nature of the policy (combining economic, political and security elements) and of the bodies that would implement it (States, Council Secretariat, Commission).

### **The modalities of EU-UN cooperation**

The work conducted by the two organisations over the last five years, combined with the experience acquired in the recent operations, has led the two secretariats to elaborate a number of scenarios of EU-UN cooperation in peace operations. These scenarios are not all agreed upon by the two institutions and some only reflect their respective aspirations. However, they all revolve around the degree of involvement of the EU in a given crisis management activity (be it UN-led or UN-mandated), and give particular importance to the three following factors: the nature of the crisis management

32. Op. cit. in note 2, para. 112.

activity, i.e. military or civilian; the sequence of EU and UN deployments, taking place simultaneously or subsequently; and the degree of EU and EU member states assets' deployment within a UN operation. Almost all scenarios of EU-UN cooperation are determined by the combination of these three elements, to which one can add the presence or absence of a UN mandate.<sup>33</sup>

Based on these elements, a synthesis of the two organisations' aspirations leads to the identification of six main scenarios.

### Scenario 1: National contributions and the 'clearing house process'

When allowing for a contribution to a UN operation, the EU first considers the provision of national capabilities, both military and civilian. As mentioned earlier, for the time being such contributions are extremely limited, and while they could indeed make a difference for the UN, they would fall short of a real 'EU' contribution.<sup>34</sup> However, the EU also envisages a role in the coordination of national contributions to UN-led operations, through a mechanism called the 'clearing house process'. Such a system would create a 'framework by which member states could, on a voluntary basis, exchange information on their contributions to a given UN operation and, if they so decide, co-ordinate these national contributions'. The system was activated in autumn 2004 following a UN request to strengthen MONUC in the DRC, and led to the decision to make the EU Satellite Centre available to the UN. Following this case, this system could be of particular interest for the coordination of the deployment of 'enabling assets' in UN operations.

### Scenario 2: The 'stand-alone model'

At the other end of the spectrum, the EU could conduct an operation under a UN mandate, at the request of the UN or as an EU initiative, which, once created, would have no link with the UN structure. Operation Althea in Bosnia and Herzegovina provides an example. In this case, the EU may report regularly to the UN Security Council (via the UN Secretary-General),<sup>35</sup> but no other form of communication would be envisaged. The EU would act as a subcontractor of the UN or, put differently, the UN would act (only) as the mandating body of the EU.

33. On the scenarios, see also T. Tardy, 'Limits and Opportunities of UN-EU Relations in Peace Operations: Implications for DPKO', External Study, Peacekeeping Best Practices Unit, DPKO, United Nations, New York, September 2003.

34. 'EU-UN Cooperation in Military Crisis Management Operations – Elements of Implementation of the EU-UN Joint Declaration', Annex II, ESDP Presidency Report, European Council, 15 June 2004, para. 5.

35. As UNSC Resolution 1575 (2004) on Operation *Althea* requests.

Beyond these two options, which do not imply a high level of inter-institutional cooperation, four possibilities of EU-UN cooperation can be identified:

- an EU operation preceding a UN operation;
- an EU operation taking over a UN operation;
- an EU operation deployed simultaneously with a UN operation;
- an EU component of a UN operation.

### Scenario 3: An EU operation preceding a UN operation – the ‘bridging model’

Two of the key challenges that current UN operations are facing are rapid deployment once an operation has been formally created and rapid reaction when the mandate of an operation is jeopardised by incidents taking place on the ground (peacekeepers being taken hostage, activities of spoilers, populations under immediate threat of physical violence, etc.). It is these two types of activities in particular for which the UN has sought EU cooperation and assistance.

Cooperation between the two organisations to palliate the shortages of UN rapid deployment capacity was best illustrated by Operation *Artemis*, which then led to the elaboration of the ‘battle group’ concept. Through what is called the ‘bridging model’, the EU envisages the rapid deployment of an operation – a battle group – at the request of the UN and with the objective of providing ‘the UN with time to mount a new operation or to reorganise an existing one’. For the EU, this option requires a ‘rapid deployment of appropriate military capabilities and agreed duration and end-state’.<sup>36</sup> Such a model implies a ‘subcontracted’ operation, as is the case with Operation *Althea* in Bosnia and Herzegovina. The difference between the two lies in the sequence – since a UN operation takes over in the bridging model – and therefore in the degree of cooperation between the two institutions.

This model corresponds to a new trend in peace operations by which regional organisations (or states) go first to a crisis zone for a limited period of time before the UN takes over for a longer term. In addition to the *Artemis*-MONUC or INTERFET-UNTAET examples, such was the case for the three West African operations in Sierra Leone, Liberia and Ivory Coast (where the UN took over ECOWAS operations), and also in Haiti (UN takeover of a coalition of states) or in Burundi (UN takeover of an African Union

36. ‘EU-UN Cooperation in Military Crisis Management Operations – Elements of Implementation of the EU-UN Joint Declaration’, Annex II, ESDP Presidency Report, European Council, 15 June 2004, para. 9.



operation). In all these cases, the idea is to draw on comparative advantages of different institutions, and to somehow organise the division of labour between the UN and regional organisations.

Indeed, the 'bridging model' offers a series of advantages and meets the aspirations of both the UN and the EU. However, it also raises the issue of the compatibility between EU peacekeeping and UN peacekeeping. EU documents acknowledge that 'the exit strategy from such an operation is the arrival, in time, of a UN force able to take over the EU force deployed and tailored to the mission.'<sup>37</sup> That ability of the UN to take over in good conditions was raised in the DRC. The very fact that the UN becomes part of the exit strategy of the EU is a challenge for the UN. It implies that the UN raises its standards and manages to somehow meet the EU requirements. It also means that the two organisations work together at different levels, outside and during operations, to guarantee a certain degree of compatibility and therefore a smooth transition. Such dialogue falls within the implementation of the Joint Declaration on UN-EU Cooperation and is currently conducted between the Department of Peacekeeping Operations (DPKO) and the EU Council Secretariat in the framework of the Steering Committee.

This model also leads us back to the issue of 're-hatting' EU forces into the UN operation, which is favoured by the UN but contemplated reluctantly within the EU. The decision to 're-hat' will remain a national one, which means that 'EU assets' that would be 're-hatted' could be 're-nationalised' in the UN operation. Short of re-hatting, the EU will anyway have to be ready to install some information-sharing mechanisms with the UN, which is the sine qua non of a smooth transition. Furthermore, as the ability of the UN to take over 'in time' or to deploy a well-tailored operation will never be guaranteed, the two institutions must develop the options by which the EU stays on the ground, in parallel with the UN, and theoretically for a limited period of time. The bridging model is contemplated in the civilian sphere in similar terms, with a focus on police forces. Here, cooperation is addressed by the EU more openly than in the military sphere. The December 2004 ESDP Presidency Report states that 'practical issues such as information-sharing, advanced co-location of EU officials in the UN mission, some possibly double-hatted, and possible re-hatting between UN and EU operations should be taken into due consideration.'<sup>38</sup>

37. *Ibid.*, para. 10.

38. 'EU-UN Cooperation in Civilian Crisis Management', Annex IV to the Annex, ESDP Presidency Report, European Council, 13 December 2004, paras. 16-17.

The bridging model was further explored in the EU-UN exercise conducted in April 2005 (EST 05), which examined the issue of transition between the EU and the UN in three different cases: a UN military operation taking over an EU operation (*Artemis* type); an EU police operation taking over a UN operation (UNIPTF-EUPM type; see scenario 4); and health and medical support. The exercise, which was not a joint EU-UN exercise but EU-led, with the UN being invited to participate, looked at the practical modalities of EU-UN cooperation, drawing on previous operations. A certain number of points were clarified, particularly in relation to the use of battle groups at the request of the UN, as well as issues such as planning, chains of command, rules of engagement, liaison officers or information-sharing.

In so far as the use of the battle groups is concerned, while the UN Secretariat welcomes the EU initiative, UN officials have expressed the wish that the battle groups be possibly placed under UN command, that they be deployed for more than 120 days (for example by deploying two battle groups one after the other), and that they be possibly re-hatted ('blue-hatted') at the end of the transition.<sup>39</sup> In response, the EU might contemplate a deployment of the battle groups in a more flexible way, but the possibility to have EU-labelled military assets put under UN command continues to meet strong reluctance in EU capitals.

#### **Scenario 4: An EU operation taking over a UN operation**

The scenario in which the EU takes over a UN operation was illustrated in the UN handover to the EU Police Mission in Bosnia and Herzegovina, and was also explored in the EU-UN exercise (EST 05) as one of the possible scenarios of EU-UN cooperation. Such an option could be further implemented if the EU had to take over the UN Mission in Kosovo, which may be considered in the short to medium term. Yet, leaving aside this case, the chances that such an option be replicated for a police operation are not very high.

#### **Scenario 5: An EU operation deployed simultaneously with a UN operation – the 'stand-by model'**

While searching for ways to improve its capacity to react rapidly and efficiently to incidents occurring within operations and jeop-

39. Interviews with participants in the exercise.

ardising the security of peacekeepers or the implementation of the mandate, the UN elaborated the concept of a ‘strategic reserve’,<sup>40</sup> that would be ‘on call’ and able to quickly ‘respond to dangerously unfolding circumstances’<sup>41</sup> within UN operations. With the same logic and in the context of the EU-UN relation, the UN Secretariat has put forward the concept of a ‘stand-by model’, that would ‘consist of an ‘over-the-horizon reserve’ or an ‘extraction force’ provided by the EU in support of a UN operation.<sup>42</sup> Through a rapid reaction force deployed in parallel with a given UN operation, the EU would be in a position to support the operation in the case of difficulties encountered on the ground. In a different context, the forces deployed by the United Kingdom in the territorial waters of Sierra Leone following their military intervention in that country in 2000, or the French-led Operation *Licorne* in Ivory Coast, deployed simultaneously with the UNOCI, can be described as ‘over-the-horizon’ forces. They both are/were supposed to, among other things, give the UN the rapid reaction capacity that it is lacking.

EU member states are very sceptical about such an option. EU documents highlight the ‘complicated coordination’ that it would involve, and put forward its limited ‘usability’ as well as the ‘considerable associated risks’ that it would entail.<sup>43</sup> This scenario would indeed combine two levels of difficulty: one coming from the nature of the mandate that would require adequate military capabilities backed by a strong and lasting political commitment; the other stemming from the simultaneity of deployment with the UN that would need further-reaching coordination mechanisms than the ones currently discussed.

Yet EU member states cannot totally rule out such a scenario. Once operational, although not part of their mandate, the battle groups will be formatted for this kind of role. Furthermore, the way Operation *Artemis* was launched showed how rapidly scenarios of EU-UN cooperation can change. As an example, in the event that the UN cannot take over an EU battle group with adequate military capacities (following the ‘bridging model’ scenario), the maintenance of an EU presence simultaneously with the UN might come close to the concept of an ‘over-the-horizon’ force. For the time being, the EU has not yet thoroughly investigated nor evaluated the implications of this option in terms of cooperation with the UN.

40. See Implementation of the recommendations of the Special Committee on Peacekeeping Operations, Report of the Secretary-General, A/59/608, 15 December 2004, paras. 13-18.

41. *Ibid.*, para. 13.

42. *Op. cit.* in note 36, para. 13.

43. *Ibid.*

### Scenario 6: An EU component of a UN operation – the ‘modular approach’

The sixth scenario of a possible EU-UN cooperation is one in which the EU would contribute to a UN operation by providing one component to the operation (called ‘modular approach’ in the EU terminology). This option is very much favoured by the UN, which would like to see the EU committed *within* UN operations and possibly under UN command. Here again, a distinction is to be made between military aspects and civilian aspects of crisis management. In the military sphere, the option of having an EU component within a UN operation is, as seen earlier, not favoured by the EU. However, theoretically, and on the condition that special arrangements would be made regarding the chain of command, EU member states might consider having an ‘EU-labelled’ component in a UN-led operation. This could give the EU some kind of visibility, or even make national contributions more acceptable to recipient countries, as in a way was the case for *Artemis*.<sup>44</sup> Although this is not the most likely scenario given EU concerns vis-à-vis the UN, such an option is not to be excluded in the longer term.

Along with the issue of the re-hatting of EU member states assets in a UN operation, the UN Secretariat also invokes the example of the Multinational Stand-by Force High Readiness Brigade for UN Operations (SHIRBRIG) that was deployed in Ethiopia and Eritrea in 2000-01 before the UN took over. The SHIRBRIG is in general available to the UN as part of the UN Standby Arrangement System (UNSAS) and could inspire the EU in its relation with the UN. In his report ‘In larger freedom’ the UN Secretary-General even talks about memoranda of understanding signed with regional organisations, which would ideally place the ‘conflict prevention or peacekeeping capacity’ of these institutions ‘within the framework of the United Nations Standby Arrangements System’,<sup>45</sup> a proposal that has little chance of meeting EU approval.

In the civilian sphere, things are more open, and the option of having an EU component – police force for example – in a larger UN operation is there better developed and accepted. And although it is made clear that such civilian elements should remain under the EU ‘own chain of command’, they may also report to the UN chain of command.<sup>46</sup> The EU also talks about an ‘integrated and inclusive framework’, as well as about the necessity to define ‘appropriate command arrangements and coordi-

44. Where an EU operation was better accepted by regional states than a French operation would have been.

45. Op. cit. in note 2, para. 213.

46. ‘EU-UN Cooperation in Civilian Crisis Management’, Annex IV to the Annex, ESDP Presidency Report, European Council, 13 December 2004, para. 14.

nation requirements including reporting mechanisms and compatibility of concepts and procedures',<sup>47</sup> which pushes the potential of EU-UN cooperation much further than in the military sphere. EU assistance in the civilian sphere is very much favoured by the UN, in the context of the project of a UN Standing Civilian Police Capacity, but also regarding the provision of civilian experts by the EU.

Finally, along with these main scenarios, the EU could assist the UN (DPKO in particular) at different stages of the launching of an operation (planning and force generation, civilian experts, information, etc.). Looking ahead, together with the necessity to further explore the modalities underlying the above-described scenarios, issues such as information-sharing and the elaboration of a security agreement, the establishment of permanent liaison officers, compatibility of standards and rules of engagement, as well as financing of operations, will all need to be looked at by the two secretariats and the Steering Committee. In these talks, a twofold effort to (a) look at crisis management as a continuum involving conflict prevention, peacekeeping and peacebuilding, and (b) combine military and civilian aspects of crisis management, would allow for a more comprehensive and coherent approach, within both the UN and the EU.

## Conclusion

EU-UN relations in the field of military and civilian crisis management have come a long way since the first contacts of the year 2000. Both organisations have made significant efforts to make this relationship constructive and achievements tangible. However, such a relationship remains characterised by a form of imbalance that stems from the different agendas of the two organisations. The UN has tried to involve the EU as much as possible in peacekeeping activities – in Africa in particular – and is advocating a strong and institutionalised partnership that would not be confined to the subcontracting model and some kind of assistance, but would also allow for direct EU contribution to UN-led operations. While doing this, the UN has always insisted on the complementarity of the two approaches. The EU stance matches other concerns: it acknowledges the need to cooperate at different levels, but favours a more flexible and case-by-case approach, where EU autonomy of

47. *Ibid.*

decision and action would prevail and with no guarantee that the UN needs will ever be met.

In this overall context, much remains to be explored. EU-UN cooperation in crisis management is recent; the evolving environment in which it takes place constantly creates new opportunities or new incentives to move forward, but also new concerns that may slow down the process.

In this respect, two factors will determine the shape the EU-UN relationship in the coming months and years. The first is the outcome of the two processes of the reform of the United Nations on the one hand, the ratification process of the European Constitution on the other. The second is the way the two institutions tackle the security and development challenges with which Africa is confronted.

# What ‘reinforcement’ for the Security Council?

Jeffrey Laurenti

After a decade of ever more sterile debate about ‘reforming’ the Security Council, the Institute has provocatively recast the issue as one of ‘reinforcing’ it. This casts the debate in a decidedly different light, since the explicit question is not simply how to revise the membership and decision-making of this international policy body, but whether tangibly better security may be achieved by putting more strength behind the Council.

Not all actors in the international community will champion a strengthening of this institution. Some fear enhancing the capacity of a distant conclave of the powerful to meddle in their local affairs; others bridle at a supranational institution that may circumscribe the room for manoeuvre of the powerful. Yet ‘reinforcement’ may itself be ambiguous, and its invocation may provide its own invitation to mischief. For reinforcements can come from outside, and if those doing the reinforcing prefer to keep autonomous control of their ‘reinforcement’, the supposed beneficiary may actually become more marginalised and – dare one say – irrelevant.

Indeed, one of the issues about the Council’s future role is whether decision-making and enforcement will migrate once again, as it did for most of the Cold War, to dedicated power centres that find the global mechanisms, and perhaps the global vision, embodied in the Security Council a source of frustration. Pressures in this direction have been building for a decade, manifested in ideologically rooted calls for ad hoc coalitions of the willing, the off-loading of security cooperation to regional groups and unilateral initiatives to maintain international peace and security.

Europeans may have thought that NATO’s decision to go to war over Kosovo was a one-shot circumvention of the UN Security Council, but many in Washington celebrated the September 1998 decision in the North Atlantic Council as a momentous step forward in weaning Europeans away from their fixation on Charter

legalisms. And the Bush administration's war in Iraq was all along – allegedly, of course – a helpful reinforcement to the Security Council to ensure its resolutions would be respected.

### **The UN Security Council and national sovereignty**

It is important, therefore, to begin our discussion by asking what it is that really ails the Council, and to consider remedies accordingly.

As the Bush administration's newly nominated UN representative once remarked, 'the real issue is the legitimacy of the United Nations'. And he was not talking about the representativeness of the Security Council as the legitimacy problem, but rather the claim (or 'pretension') of the international body to rein in the behaviour of its most sovereign member. Even senior officials of the supposedly friendly Clinton administration took pains to describe the UN as just another wrench in the toolkit for implementing its foreign policy goals. Of course, dedicated multilateralists might say that forum-shopping for whatever multilateral fig-leaf will cover what you want to do is better than naked unilateralism, but this may be no more significant than American courts' parsing the distinction between indecency and obscenity.

The United States is not the only country that questions the authority that states (or, as the Charter would have us believe, 'the peoples of the United Nations') have conferred on UN institutions to regulate state behaviour in the domain of security; many others are equally vigilant, and often more consistent, in defence of traditional sovereignty – think of, say, China, Iran or Cuba. But the sovereignists in developing countries imagine there is a structural fix to restrain the Security Council's evolution into meddlesome policeman: just tilt the balance of seats on the Security Council towards the African and Asian groups, and they can curb Western proclivities to enforce 'international' standards on benighted regimes. For these, it is the outsized influence of largely Western power centres in setting the global security agenda that undermines the 'legitimacy' of the Security Council.

To be sure, this complaint reflects a minority view. Unfortunately, the supposed remedy resonates in a UN political system where inclusiveness is seen as the answer to almost any problem (although many voting delegates are able to draw the line at including non-governmental actors). But inclusiveness is a cure for a dif-



ferent disease than what is actually debilitating the Security Council, and applying it in this case risks sending the patient into shock. The incentives for major actors to bypass the system altogether if promiscuous enlargement renders the Council unworkable will be great.

This is not just an American problem. To the extent that Europe continues to emerge as a global leader and agenda-setter, Europeans, too, have an interest in a Security Council that can decide and then implement. They may well inherit a role that has largely been America's for the past six decades, and if so they too will forum-shop or bypass altogether a body that has become unwieldy and immobilised. In that respect Europeans, too, might be cautious about calls for significant expansion of the Security Council.

### **Decision-making and implementation**

For what is it that really ails the Security Council? My diagnosis is that the fundamental disorder lies in the disconnect between decision-making and implementation, and especially between the power to decide and the power resources actually committed to implementation. An ossified membership structure and a crudely weighted voting system are aggravating manifestations of the underlying disorder.

In contrast to the North Atlantic Treaty Organisation, whose leading members were prepared as recently as 1999 to go to war to uphold the 'credibility' of a threat they had collectively issued in its name, the United Nations has not been able to count on its members' concern for Council credibility to back up their votes with action. It is striking that the permanent members of the Council, after a flurry of activity in UN peace operations in the 1990s, have disappeared from them since the UN Protection Force in Bosnia was converted to a NATO operation in 1996.

Initially the allergy to serving under UN command was an American phenomenon (even when Americans ran the UN mission, as in Somalia), but the contagion has spread. Britain and France, which had pioneered major-power leadership of a large-scale UN peace operation in former Yugoslavia, now refuse to put their troops under UN command; even when they have stepped up to reinforce an embattled UN operation, as in Sierra Leone and in Congo and Ivory Coast respectively, they have done so under separate, national command. Today the Council's guarantor powers

have become the absentee landlords of international security, relying on others to supply the troops for missions whose mandates the Five have written.

The reasons why military contingents of the Security Council's permanent members no longer participate in UN peace operations are several, ranging from chauvinist resistance to 'foreign' command and fear of a creeping world government, to concern about unreliable partners and substandard military commanders from developing countries, to military leaders' distaste for the presumed 'peacenik' culture of the United Nations, where the political restraints on robust use of armed force are believed to be exponentially tighter and more paralysing than those set by their civilian national leaders. Many other NATO states have followed the lead of the Western permanent members in keeping a discreet distance from UN peace operations in recent years, leaving countries like Pakistan and Bangladesh, India and Jordan, and Ethiopia and Ghana as the UN's leading troop contributors.

Not surprisingly, the countries still willing to provide troops to UN operations have increasingly clamoured for a share in decision-making on the mandates and goals of the missions their soldiers are implementing – a demand that arose after moralising Western governments that refused to put their own troops on the ground in Sierra Leone wrote aggressive mandates for peacekeepers there, even though the governments sending many of those peacekeepers were intent on keeping them out of someone else's civil war.

Yet for all the troop contributing countries' insistence on having a role in deciding the mandates and objectives of peace operations, they have notably failed to demand that their own regional groups endorse only major troop contributors for their region's seats on the Security Council. In fact, the Western group is the only regional grouping where a candidate country's troop contributions ever emerge as a factor in the campaign for election to the Security Council – and it is noteworthy that, for 2005-2006, even this group is represented by a determined non-performer like Greece and a decidedly virtuous but second-tier contributor like Denmark.

The reality is that troop contributing countries have not sought to challenge the entrenched system of regional group rotation on the Security Council. This suggests the difficulty inherent in making even incremental changes to the procedures governing Security Council membership. Instead, most governments prefer to seek

the Holy Grail of a far-reaching overhaul, hoping that expansion may painlessly satisfy national ambitions and contributors' grievances. To that end, member states have been consumed by a protracted debate in the famously open-ended working group on reform of the Security Council, which has been as long-running a show in New York as any musical on Broadway.

### **The long path to reform**

Though it has not exactly drawn crowds to the galleries of the General Assembly, within a six-block radius of United Nations headquarters and in some interested foreign ministries the debate on Security Council reform is all-consuming. Nothing, it seems, brings out the repressed interior designer in the hearts of diplomats as much as discussion of rearranging the furniture in the Security Council chamber. But this is definitely a political insider's game. The issue inspires yawns among most of the informed public and even in a normally opinionated press.

Moreover, the working group on Security Council reform may be open-ended, but it is not particularly open. It has never solicited the views of non-governmental organisations that regularly interact with the Council, such as the humanitarian relief agencies that sometimes deploy more people to conflict-torn countries than the UN itself does, about the dysfunctions they observe in the Council's structure and changes that could improve its performance. The wider public is totally disengaged, except for narrow networks in a handful of countries where foreign ministries have invested heavily in promoting their own membership – or blocking someone else's – as a matter of national pride.

Security Council reform has, of course, been a battle cry since the Council itself shook off its four decades of Cold War slumber and came to life as a nerve centre of international politics. And the clashes of national ambitions over the dozen years since the Clinton administration's embrace of reform helped launch the open-ended debate in 1993 remain apparently irreconcilable. Indeed, the conventional wisdom among most jaundiced UN observers is that the chances of Security Council revision in the foreseeable future are little better than zero.

That is too despairing a judgment, though bookmakers would probably not lose money by putting odds on continued paralysis.

The Secretary-General clearly wanted the High-Level Panel on global security to address this issue head-on in the hope of breaking the log-jam, and the Panel exceeded the realists' expectations in fashioning an almost compelling case for Security Council reform.

With great delicacy, the Panel hinted at the deformity at the heart of the Council's eroding credibility, along the lines of the critique advanced in this chapter: 'the ability of the five permanent members to keep critical issues of peace and security off the Security Council's agenda'. Given its membership and its avowed intention to come up with a package that could be adopted within a year, the Panel prudently declined to focus on problems that cannot be fixed in 2005. Rather, it moved smartly to spell out the principles that its members agreed should guide Council reform in the near term:

- (1) 'greater involvement . . . by those who contribute most';
- (2) making it 'more representative . . . of the developing world';
- (3) 'not impair the effectiveness of the Security Council' (normally understood as code for keeping the Council relatively small);
- and
- (4) 'increase the democratic and accountable nature of the body'.

The Panel then offered two models for revision, one that flows from the logic of these four criteria (though falling short on criterion 3), and another – inserted after protests from relevant governments – that arguably meets criterion 2 and, perhaps transiently, 1.

The debate, inevitably, has focused on whether more heavy-weight contributors from each region should be added through permanent seats or longer-term elected seats, and the implications of that choice are profound. But with the Panel's far-sighted recommendation for a mandatory revisiting of the Council's composition in 2020, ways may be envisioned to square that circle.

Both alternatives reported by the Panel would expand the number of major contributors to peace and security on the Council. This is not an objective shared by many representatives of small states in the UN, especially in the developing world, who are in adamant denial of the premise that size matters. The size of members' contributions to peace and security (enshrined in Art. 23 but often ignored, especially in African rotation) is not the only such fundamental issue, however. Size also matters in terms of a political body's efficiency, especially a body faced with an exploding

security crisis – and the Panel’s call for enlargement of the Security Council to 24 will seem promiscuous to those governments that have arduously had to build Council coalitions for robust action. They have a major stake in keeping the Council numbers down.

## Membership expansion

A highly motivated group of countries has energetically sought to fashion a plan that wins the required 127 votes for adoption in the General Assembly. This involves delicate compromises and, like many dazzling feats of legislative engineering, bridges across policy gaps that may be built on hazy rather than solid foundations. Four countries have, at the time of writing, submitted a draft ‘framework resolution’ endorsing, in principle, the addition of permanent seats – drawing on the High-Level Panel’s Model A – for a Council of 25. This move suggests the sponsors – Brazil, Germany, India, and Japan – believe they have at last found the formula that can obtain the necessary 127 votes, as required by Art. 108 of the UN Charter.

But, like salmon swimming upstream to spawn, the supporters of this revision must leap a number of other obstacles in their way after the test vote in the Assembly on a framework resolution. The second obstacle is the regional caucuses that would then select the actual names of states to engrave in the UN Charter; the four sponsoring states may not all be guaranteed selection in their region, and unwelcome surprises in the regional caucuses could weaken support for the ultimate Charter amendment. Beyond that, 127 governments – including all five of the 1945 permanent members – must then ratify the Charter amendment.

The Americans have already made clear that the United States will not ratify an amendment that adds to the number of veto-wielding permanent members. This is a problem, not only because both the lead sponsors of the proposal themselves bristle at second-rate permanency, but because a veto for newly permanent African members is specifically *the* condition for Africans’ support of the resolution. African representatives are innately suspicious of power and privilege, and would normally be quick to deflate any pretensions, whether among their own or outsiders, to claim permanent privilege as the entitlement of overweening economic or military power. They have been brought around to supporting per-

manent seats by the lure of African vetoes to block American initiatives, which they believe is the only leverage they will ever have to force increased attention from an indifferent superpower to African security problems. In this they may be wrong: Washington – and probably Europe as well – would almost certainly circumvent UN frameworks if a veto by an objectively impotent African country thwarts the will to act of a hard-won majority of the Security Council. Still, the complete marginalisation of the Security Council would not be ideal for Washington, and Americans will stand firm to save the Security Council from the paralysis of proliferating vetoes. By stating unambiguously that it will accept no revision that provides additional vetoes, the United States has set out one of its red lines.

Another red line is the size of the expansion itself – not only because 25 is in principle too many for Washington, but because any expansion of that magnitude will inevitably make the vote of at least one or two African and Asian members indispensable for approval of any resolution. The regional distribution of seats within the existing 15-member Council allows for the required 9-vote working majority to be formed just from countries in Europe and the Americas. It was precisely such a majority that approved the UN sanctions against Libya in 1992 – a resolution on which every African and Asian member of the Council abstained. The United States has little reason to concede to countries congenitally suspicious of Western values and purposes a choke-hold on resolute action by the Security Council.

The fact is that the United States has no compelling self-interest in promoting any alternative to the existing composition of the Council. The current size of 15 is already on the high end for an effective executive committee, and the existing inner directorate of five may include some occasionally difficult partners but is of a realistic size. Indeed, it can be convenient, on issues where Washington cannot build a majority for its policies, to blame failure on a prospective French or Chinese veto to justify marginalising the Council. America's reigning conservatives might wish to give Japan the permanent seat that France now holds, which the currently chimerical call for a single 'EU' seat might permit, but even they realise that their ideal reform – reducing the number of permanent members, preferably to one – is not achievable. For Washington today, Security Council reform is someone else's problem, and its seeming passivity masks purpose.

The United States is not the only country of weight that is prepared to stonewall a Council revision that is not carefully tailored to meet its practical objections. Another permanent member has also finally tipped its hand on its red line: the apparently intense Chinese opposition to Japan's bid for a permanent seat. It is not clear whether the Chinese government's resistance is genuinely rooted in the historical evasiveness of Japanese officialdom regarding wartime responsibility, their refusal to pay war reparations, and the apparent continuing dominance of Japanese politics by the conservative political class that had launched the war (all of which may factor into the nationalist animosity towards Japan among the Chinese public), or whether it aims simply to raise the price of a deal. But the intensity of public hostility, on view in the April demonstrations in several Chinese cities, may abort any cunning strategy to extort a high price from Tokyo in exchange for acquiescence to a Japanese permanent seat. Of course, Japan is the only candidate country that Americans believe actually deserves a permanent seat based on the merits, given its outsized share of the world economy and UN assessments (both now on a downward trajectory), to say nothing of the 'I owe you'(s) that the Koizumi government has accumulated thanks to its loyal support of Bush administration policies; Beijing's unyielding stance against Japan would drain what little interest Washington can muster in expansion of permanent membership.

### **The European Union and the future of UNSC reform**

In terms of self-interest it does not really matter much to Europeans whether Japan becomes a permanent fixture at the Council table or not – they do not expect Tokyo to relieve them of their current troop or financing burdens. Europeans are famously fragmented, however, on whether adding a permanent seat for the European Union's largest member is desirable. Britain and France have a strong incentive to bring Germany into the Council's inner circle: if left outside, the Germans will surely press for a consolidated EU seat at the expense of separate British and French permanent seats, but if they gain their own permanent seat, the British and French can feel secure in retaining theirs in perpetuity. The prospect of a 'G-3' motor driving EU foreign policy, enshrined by permanency in the UN Security Council, pleases some and dis-

mays others elsewhere in the Union. The normally fractious Italians are uncharacteristically united and feisty in opposing permanency (including Germany). Their views are not shared by every member of the EU, but they have invested notable energy in building alliances with partners in every region to keep Model A from leaving the station. Thus, while American passivity on the Council reform project reflects Washington's lack of passion, Europe's mutually cancelling passions on the subject have produced EU passivity.

The United Nations is notoriously the place where, in defiance of the laws of physics, inertia can develop momentum. Already warning signs of the UN membership's traditional immobilism on this issue are beginning to appear. If the coalition that Japan and Germany have so painstakingly assembled to put them across the top ultimately falters, it will not be for lack of imagination on the part of their diplomats, but because of the inherent contradictions of permanent membership: it is very hard to satisfy all the national ambitions for a permanent place in the inner circle and have a manageable sized Council – much less a Council that is, in the Panel's words, 'democratic and accountable' from the perspective of either the regional groupings or the full UN membership.

The biggest inherent contradiction, of course, is that permanence eliminates a member's incentive to perform – even more in the universe of states than in that of tenured university faculty. We have seen that the states most securely implanted on the Security Council have been the most visible non-contributors of troops to UN peace operations, and there is nothing in the various plans for expansion of permanent membership that would tie their seats to their contribution to security operations. (It is no coincidence that the two permanent members that spent much of the 1990s showily supporting UN peace operations with troops on the ground were the two European members that felt their permanent status, after being shorn of their 1945 empires, was most under attack.) Conversely, a number of major states outside the Permanent Five have viewed contributions of personnel to international security operations as evidence of their global indispensability and of the need to include them in decision-making circles (think of Brazil, Germany, India, Italy and Pakistan). It would be perverse if the unintended consequence of expanding the ranks of permanent members were to be a further shrinkage in the pool of major contributors.



Given these difficulties, if 'Plan A' fails, can – or should – Council reform still be salvaged? Kofi Annan's High-Level Panel offered two recommendations in this arena that could be the key. The first is its insistence that any revision now would be only an interim solution, with a mandatory re-examination in 2020 (a 'sunset' clause could make such a re-examination truly compulsory). Now, '2020' connotes clarity of vision, and we may well see some problems that are today politically untouchable as realistic possibilities for resolution two decades hence. The EU common security and defence policy enshrined in the draft European constitution is at the moment still more speculative than real, but two decades of habit may make separate privileged seats on the Security Council for Britain and France seem quaint and obsolete – even in London and Paris, where by the 2020s the experience of European and global politics of nearly all the diplomats and politicians who will then be in office will have been forged post-Maastricht. If, ideally, the main international disputes are resolved in the next decade or two, the veto power could then be reconsidered, and that decisive contribution of Josef Stalin to the Council's structure might be rationalised. It thus becomes eminently realistic to fix 2020 as the year for making a long-term reform of what really ails the Security Council, and to treat the 2005 measure as a short-time patch.

The second relevant recommendation of the High-Level Panel that could point the way to a 'fallback' reform is the interim structure outlined in Model B – seats reserved for major contributors to peace and security in each region, elected to longer terms (say, four or five years) and eligible for successive re-election. The Panel helpfully offered a list of quantifiable criteria for determining which states in each region might be eligible for these longer-term seats (criteria that would be equally relevant to identifying members that might claim seats without election, so long as they continued as their region's leader).

This model could be further modified to allow a region to fill its new seat for a single 15-year term – the full life-span of the interim arrangement – giving the most uncontestedly important contributors the opportunity to rehearse *de facto* permanency without prejudging the eventual reconfiguration of the Council two decades hence.

The other modification to Model B that would seem desirable, to meet the Panel's own criterion of effectiveness, is to limit the size of the interim Security Council to the 20 that the United States had

signalled in 1997 was the most it could accept. '20 till 2020' can make eminent sense: we would have nearly two decades to see whether a more limited expansion adversely affects the Council's efficient decision-making in a crisis; and the results would help guide agreement on the long-term reform in the 2020s.

What none of the plans floated in the current Security Council debate addresses is the most crucial reinforcement that the international security system needs: concrete commitments of forces callable by the Council in a crisis. This too will clearly have to await the major overhaul of the 2020s, since the current debate has proceeded too far down the road of furniture rearrangement to get back to the basics. But it is not too soon to put out the marker for the 2020 revision: every member state assuming a seat on the Security Council, whether by election or by entitlement based on extraordinary contributions, could (and should) be required during that state's tenure as a member to commit appropriately determined military units to a rapid deployment force capability under the authority of the Council. Only its vote in Council against a proposed deployment would exempt a member's pre-committed contingent from short-term call-up.

Such a linkage of decision-making to implementation, of course, could be accomplished even with the existing Council composition. It would make far more of a dent in what ails the Council than all the furniture renovations in the Council chamber on which various expansion plans are premised. This is the 'reinforcement' that the Security Council most desperately needs. Whatever the short-term 'fix' may be regarding membership that 127 member states can agree on and the existing permanent members will ratify, it is clear that they will not act now on the hard questions of capacity.

Reinforced capacity is an area where a uniting Europe can make a decisive contribution. It can begin immediately by launching the international debate on what military commitments should be required ('from each according to his ability') for Council membership after 2020; after all, ambitious projects easily take 15 years or more in international consensus-building. The EU could consider – and, even more boldly, initiate – creation of an international standing force dedicated to UN peace operations, recruited from within and beyond its borders and financed in part from the UN reimbursements on their deployment. This would provide the United Nations with the kind of visionary leadership that for much

of the twentieth century was associated with the United States, but which the polarised and self-referential politics of America today seem incapable of providing. It is through such concrete reinforcement that an emboldened European Union, in partnership with peoples and states in all the world's regions, can most productively establish its twenty-first century global role.



# Regional organisations and collective security: the role of the European Union

Kennedy Graham with Tânia Felício

The metamorphosis in the nature of regionalism – from its almost exclusively economic and defence dimensions, from the 1940s to the 1980s, towards a comprehensive multi-sectoral movement of the 1990s involving political, cultural, economic and security issues in the broadest contemporary sense – is transforming international organisations as regions develop an integrated skein of mutual interests among member states. But much of this, most particularly in the area of security, has been ad hoc and haphazard. The challenge of the next decade is to replace this improvised, politically selective, resource-skewed approach to regionalism with a more planned, consistent yet flexible, resource-balanced style of regional and global governance which would find the adequate synergy between regional organisations and the United Nations.<sup>1</sup>

For this to occur, a tension within the present security system will need to be resolved. In July 2003 the UN Secretary-General advanced a ‘vision’ of global security based on a future partnership between the UN and regional organisations – one that would be effective, holistic and global in nature, emphasising the concept of legitimacy that can come ‘only from the United Nations’.<sup>2</sup> Progress towards such a ‘regional-global security mechanism’, however, is impeded by the endemic shortcomings of the current system.

In 2005 the debate is under way over how best to respond to this crisis of confidence in collective security. Issues such as reaffirming and refining the rules of the use of force, the rights of self-defence in an age of terrorism and possible WMD proliferation, expansion and reform of the Security Council, and the institutional means of making peace-building and human rights protection more effective – all are on the agenda. Where regional organisations fit into this future scenario remains uncertain. But the debate on their role in partnership with the UN will be carried in the 6th UN-Regional Organisations High-Level Meeting in July, the 60th anniversary summit debate of the General Assembly in September and the third Security Council meeting with regional

1. The contents of this chapter are drawn principally from two recent publications: Kennedy Graham, ‘Towards Effective Multilateralism: The EU and the UN – Partners in Crisis Management’, *Working Paper 13* (Brussels: The European Policy Centre, November 2004); and K. Graham & T. Felício, ‘Regional Security and Global Governance: A Proposal for a Regional-Global Security Mechanism’, *Egmont Paper 4* (Brussels: Academia Press for IRRI-KIIB, January 2005). A longer version of the second paper is also available online at the website of the United Nations University Programme in Comparative Regional Integration Studies, [www.unu.cris](http://www.unu.cris).

2. Kofi Annan declared: ‘I believe we can develop a new vision of global security . . . A vision that draws upon the resources and legitimacy of a network of effective and mutually reinforcing multilateral mechanisms – regional and global – that are flexible and responsive to our rapidly changing and integrating world.’ Secretary-General of the United Nations, Address to 5th UN-Regional Organisations High-Level Meeting, July 2003.

organisations in October. The next six months are thus critical to strengthening the partnership between the UN and regional and other intergovernmental organisations in peace and security.

### **Regionalism under construction: developing a ‘regional-global security mechanism’**

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A structured relationship between the Security Council and regional organisations is fundamental to the success of a future global-regional security mechanism. The development of a ‘regional-global security mechanism’ in the multilateral era is best understood as having comprised three distinct periods: shaping the constitutional relationship (1919-45); building the institutional network (1946-92); and developing a framework for cooperation (1992-2004). The constitutional, institutional and cooperation phases in the development of the mechanism bring us to the present time – a fourth ‘moment of opportunity’.

#### **The constitutional phase**

The fundamental relationship between universalism and regionalism in security doctrine was shaped during the two formative moments of institutional planning – 1919 and 1942-45. The deliberations over the League of Nations and the UN laid the foundations for the present system. In one sense the security arrangement embodied by the League was, to some extent, an essentially regional affair, being wrought in the aftermath of the Great War in Europe and designed to prevent any repetition thereof – with the same approach being applicable to Latin America. Overall, however, regionalism played no significant role in the League’s attempts at conflict resolution and management, ill-fated as they were.

In the early planning for a new world organisation during the Second World War, the issue of ‘security regionalism’ became a matter of dispute. The preliminary outline of an ‘interim UN’ envisaged 26 member states, with an Executive Committee of nine, comprising the Big Four which had ‘policing duties’ (United States, United Kingdom, USSR and China) and five ‘regional representatives’. The regional nature of the Committee, however, was opposed by a majority in the US planning team, and the outline

was dropped. The principle of regionalism was at various times ‘in’ and ‘out’ of subsequent planning, and at the San Francisco Conference of May 1945 the choice between regionalism and universalism proved controversial. Most delegations, led by the Latin American bloc and the Arab states, with support from Britain and its commonwealth and also the USSR, favoured regionalism, but the United States remained steadfastly opposed. The resulting compromise, contained in Chapters VII and VIII of the UN Charter, proved to be critical.

The final provisions agreed upon in the Charter reflect what has been called a ‘mild discouragement’ of regionalism. The Charter allows for regional security arrangements for the maintenance of peace and security as a support to the primary role exercised by the Security Council. Nothing is to preclude the existence of regional agencies for dealing with international peace and security as are appropriate for regional action, provided they are compatible with its purposes and principles. But this was not provided for through any prefabricated mechanism. Instead, the Charter made provision for a vaguely apprehended regionalism, with regional agencies or arrangements encouraged to take initiatives in pacific settlement of disputes but with enforcement only to be undertaken on the authorisation of the Council.

### **The institutional phase**

The forty-year period of the Cold War paralysed the functional operation of the Security Council and thus the development of any regional-global security mechanism. It was during this period, however, that the decolonisation process occurred, accompanied by the growth of regional agencies in virtually all regions of the world. The 1940s saw their establishment in the two regions where the political consciousness of ‘regionalism’ was most developed at that time – Latin America and the Arab world – the most vocal proponents of regional security during the ‘constitutional phase’. This was followed in the 1950s with a burst of unparalleled creativity in regional institution-building in Europe.

The process of regionalisation continued ineluctably through the ensuing three decades. Once the decolonisation process had run its course in Africa and Asia in the 1960s and the Caribbean and the Pacific in the 1970s, supplemented by ‘latecomers’ in the 1980s and the newly independent states of Eastern Europe and

Central Asia in the 1990s, a global network of regional and sub-regional agencies was finally in place.

### The cooperation phase

Concomitantly with the development of the global 'fabric of peace' developed during the 1990s, the UN began to act on the recognition of the potential for greater involvement of regional agencies in a cooperative relationship with the UN in the pursuit of international security. A series of meetings have been held since the mid-1990s designed to develop a strategic partnership between the global body and the regional agencies. It is clear that the UN is serious in seeking to develop a 'regional-global security mechanism' for the twenty-first century. Two phenomena in particular characterise to date the experience in strategic planning for that goal: increased interest from the 'regionals' themselves and the development of a normative framework between them and the UN. Accordingly, five high-level meetings between the UN and regional organisations were convened by the Secretary-General to discuss issues of cooperation in peace and security between 1994 and 2003. These efforts have resulted in a 'Framework of Co-operation' between the UN and regional organisations with guiding principles for collaboration in conflict prevention and peace-building. A sixth meeting is scheduled for July 2005. Important initiatives are under way in preparation for this meeting to strengthen the UN-RO partnership.<sup>3</sup>

Two special meetings with regional organisations have also been held by the Security Council. At the first, in April 2003, only six organisations attended (AU, ECOWAS, EU, LAS, OSCE and OAS) under the theme 'The Security Council and Regional Organizations: Facing New Challenges to International Peace and Security'. The objective of the meeting was to engender an 'interactive dialogue' between the Council and regional organisations, marking perhaps a 'new stage' in international relations, since the current situation then prevailing obliged the Council to identify courses of action that would strengthen international security. The second meeting took place in July 2004 under Romanian presidency, this time with the aim of identifying new methods of cooperation between the UN and regional organisations and developing innovative approaches to conflict resolution and stabilisation processes. This meeting was attended by seven international organ-

3. In preparation for the 6th UN-RO High-Level Meeting, scheduled for July 2005 at the United Nations in New York, six working groups have prepared background papers on six thematic subjects with proposals for adoption by the UN Secretary-General and heads of regional and other intergovernmental organisations. A secretariat has been created within the UN's Department of Political Affairs to ensure sound preparation and effective follow-up on decisions taken. The secretariat is supported by research and advisory services of the UN University's Programme in Comparative Integration Studies (UNU-CRIS).



isations (AU, CIS, EU, LAS, NATO, OSCE and ECOWAS) and a Presidential Statement was produced. The Council concluded that regular dialogue on specific issues between it and regional organisations would bring 'significant added value' to UN-regional cooperation for peace and security, based on 'complementarity and comparative advantage'. A third meeting is planned for October 2005, to build further upon these initiatives and emerge perhaps with a Council resolution that will commence a serious momentum for introducing a viable operational partnership. Thus, the Security Council has rather belatedly – a decade after the Secretary-General took the initiative – begun to develop a relationship with the regional and subregional organisations that is focusing on the range of peace and security challenges – counter-terrorism, conflict prevention and management, and peace-building.

### **Complexities of regionalism**

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The development of the regional-global security mechanism is hampered by an array of complexities. These pertain to uncertainties over the meaning of the central concepts of 'region', 'agency' and 'arrangement'; the structural duplication of regional agencies and other organisations (involving overlapping of membership); contention over the area of application of their functions; and ambiguity over their objectives (involving, *inter alia*, improvised and occasionally competing mandates).

The UN Charter does not define 'region', its framers having decided, after much fruitless effort, against any self-restricting ordinance of that kind. A definition advanced by Egypt during the San Francisco Conference, however, gives as good a conceptual notion as is perhaps necessary:

There shall be considered, as regional arrangements, organisations of a permanent nature, grouping in a given geographical area several countries which, by reason of their proximity, community of interests or cultural, linguistic, historical or spiritual affinities make themselves jointly responsible for the peaceful settlement of any disputes which may arise.

The membership of regional agencies and similar organisations is bewilderingly complex, as an analysis of regional economic com-

missions, regional integration bodies and electoral groupings at the UN reveals. This begs the question of what constitutes a 'region' and indeed, what is a truly meaningful concept of 'region'. It is, in this respect, difficult to posit the most appropriate and authoritative departure-point for gaining clarity over geographical regionality.

The area of application of a regional agency or other international organisation has also become contentious. The phenomenon in recent years of some organisations operating 'out-of-area' in a 'hard security' function has caused some political controversy but the United Nations appears to be willing for the present to recognise such operations as not only legitimate but welcome. This issue is linked to both membership and mandate. It raises first the question of whether it is appropriate, in a constitutional sense, for a 'regional agency' under Chapter VIII to operate outside the national territories of its own regional members.

An analysis of the same organisations also shows overlapping mandates of those that seek to 'partner' with the UN in peace and security, inferred from their statutory objectives. The question of mandate of regional arrangements and agencies is problematic – some pertain to economic issues, some to security and some to broader political and cultural 'identity' purposes. The evolution of regional and other organisations has thus given rise to some unusual developments regarding mandates. Some organisations have experienced 'mandate creep' through force of circumstance, entering the field of peace and security from the vantage point of an economic mandate. Others have taken on what might be called 'mandate crab', ranging laterally across geographic space and extending their focal areas. A few have undertaken 'mandate stray' – effectively exceeding their constitutional authority in certain cases beyond the confines of the UN Charter. There is a need for greater clarity and order in the matter of mandates in the regional-global mechanism for peace and security.

There thus exists a rather confusing admixture of regional and subregional agencies, with different membership, statutory mandates in peace and security, and other organisations with qualitatively different mandates, all assembling together for meetings with the United Nations over the maintenance of international peace and security. This invites institutional confusion; indeed it almost institutionalises that confusion in a divided world.

The international community faces a 'strategic choice' with regard to the relationship between universalism and regionalism.

A partnership has been built up between the United Nations and other international organisations in the name of regionalism but that relationship is complex, informal and constitutionally invertebrate. The choice is between two future courses. The United Nations can continue with 'business-as-usual' in which several score entities partner with it but with little clear sense of common direction. Or it can commence the process of clarifying, and to some extent formalising, the relationship with a view to making it more effective.

### **The potential role of the EU in a future collective security system**

In the above analysis the question arises of where the European Union fits in. In the post-Cold War period – the past decade and a half – the EU has come into existence, initiated moves towards a constitution and a common foreign and security policy, and expressed the intention to become a 'global actor' in international affairs. Such an aspiration is redolent of the centuries-old European dream, resting on the vision of a united continent asserting itself to enlightened effect on the world stage. The manner in which the EU perceives the Iraq and other crises, and the prescriptions it offers for a collective international order, has become a closely watched factor of international politics.

What might be called the first 'strategic policy' of the EU, in particular vis-à-vis the UN and multilateralism, is spelt out in two documents of 2003: the EC Communication 'The European Union and the United Nations: the choice of multilateralism' of 10 September and the European Security Strategy adopted by the European Council three months later. These two documents are proving seminal in the annals of EU foreign policy development. The EU's overarching 'strategic objective' is the strengthening of an international order based on 'effective multilateralism'. The 'fundamental framework' for international relations remains the UN Charter. The challenge accepted by the EU is to help the multilateral system deliver on its key objectives. Two aspects of its contribution to effective multilateralism could, the EU believes, be further developed: its ability to act as a 'front-runner' in developing multilateralism; and its support for capacity-building in other countries and regions.<sup>4</sup>

4. 'The EU should adopt a determined "front-runner" approach to the negotiation and implementation of important UN initiatives in the fields of sustainable development, poverty reduction, and international security, taking a more proactive approach to the development of international instruments and specific EU implementing actions. Moreover, the EU should give renewed impetus to the UN reform'. 'The European Union and the United Nations: the choice of multilateralism', EC Communication COM(2003), 526, 10 September 2003, p. 9.

The EU has moved with speed and determination to implement its policy of 'effective multilateralism'. The relationship between the EU and the United Nations as partners in crisis management is characterised by far-reaching potential yet also by formidable challenges. Four dimensions to the relationship can be discerned: doctrinal, operational, institutional and political. Each needs to be addressed of itself yet all are interrelated, thereby posing a major policy test for EU leaders and officials over the next decade.

### Doctrinal dimension

The interrelated crises of Afghanistan, Iraq, North Korea and Iran have placed strain on a number of cardinal principles of traditional security doctrine contained in the UN Charter. In various ways each one of the contentious policy issues identified earlier has tested the unity of EU policy-making.<sup>5</sup> The major policy split, however, has emerged in the past two years in response to the United States's unilateralist policy over Iraq. The pre-emptive use of force in March 2003, without Security Council authorisation, divided the major member states, particularly France and Germany vis-à-vis the United Kingdom. Of perhaps greatest embarrassment to the EU, the 'unreasonable veto' theory was generated in response to a threatened French (and Russian) veto against Security Council authorisation of force. And the regime change of the Iraqi government (universally recognised at the UN for the previous two decades despite its use of WMDs) was undertaken without any official querying of the legality of such a move.

### Operational dimension

It is often contended that Europe has been slow to develop an operational capability in crisis management. Yet it should be recalled that, only a decade ago at the time of the Balkans crisis, the EU did not even exist as an entity. The EC's capacity to undertake an operational deployment in the Balkans was, inevitably, seriously limited. In the past five years the EU has begun to develop its operational capability, and this is starting to show practical results in the field. Recently the UN has recognised the far-reaching potential of relying on a more active, capable and coherent EU as an operational partner committed to 'effective multilateralism'. The UN Secre-

5. Such as the rules governing the use of force in self-defence versus counter-terrorist pre-emption; the recognition of governments v. regime-change; the principle of P-5 concurrence vs. 'unreasonable vetoes'; the right to possess weaponry vs. 'compulsory WMD disarmament'; and the principle of domestic jurisdiction vs. the 'responsibility to protect'.

tary-General visited EU headquarters in January 2004 and remains constant contact with the EU High Representative for CFSP. Plans for EU-UN cooperation have been thoroughly implemented in the past two years. Effective contact between the two secretariats commenced with DPKO officials on peacekeeping in May 2001. Since April 2002 the UN-DSG has led an annual mission to Brussels. The EU Military Staff has identified UN-DPKO as its UN partner, and the EU Policy Unit has identified UN-DPA (Europe branch). Joint task forces have been established to coordinate interaction over police and military missions, and foster training, with a 'steering committee' now meeting biannually. Liaison offices have been strengthened in New York and Brussels. It is clear that, as far as the UN is concerned, the EU is in business as a 'global actor'.

### **Institutional dimension: the EU as a regional agency?**

The status of international organisations vis-à-vis Chapter VIII remains imprecise and uncertain. This raises the question whether the EU is to be regarded as a regional agency under Chapter VIII of the UN Charter. A number of issues require consideration.

At the 5th UN-RO High-Level Meeting in 2003 some 21 organisations participated, yet only seven were true regional agencies while the rest were subregional, cross-regional or transnational. The manner in which an international organisation is to be designated as a 'Chapter VIII regional agency' has yet to be determined. Two agencies (OAS, OSCE) have proclaimed themselves to be a 'regional agency for the purposes of Chapter VIII of the UN Charter'. For its part, NATO does not see itself as a 'Chapter VIII regional agency' but that believes that it 'acts in the same spirit'.<sup>6</sup> Nor in fact does the EU consider itself to be a Chapter VIII regional arrangement or agency.<sup>7</sup>

The distinction between being a regional agency under Chapter VIII of the UN Charter or not carries little significance at present. Any international organisation, whether subregional (ECOWAS), regional (OAS), cross-regional (NATO) or transnational (Commonwealth), may be called upon by the Security Council for pacific settlement activities and, as appropriate, for enforcement of the Council's decisions, acting under Chapters VI and VII respectively. But as the UN increasingly relies on partner organisations to share in the maintenance of peace and security, the distinction between a regional agency under Chapter VIII and

6. Joop de Hoop Scheffer, NATO Secretary-General, Address to the New Defence Agenda Conference, Brussels, 17 May 2004.

7. See Dr Thierry Tardy, Geneva Centre for Security Policy, 'Limits and Opportunities of UN-EU Relations in Peace Operations: Implications for DPKO', External Study for UN DPKO Best Practices Unit, September 2003, p. 9; also, statements by senior EC officials in Brussels-based seminars.

others acting under Chapters VI and VII may become more important. A future arrangement in which designated 'Chapter VIII regional agencies' represent agreed 'security regions' could be envisaged, whereby such agencies assume an institutional role (for instance, representation and reporting) and an executive role for pacific settlement. Enforcement could be undertaken by either a 'Chapter VIII regional agency' or any other international organisation, as appropriate. The EU might thus act, in its *sui generis* capacity, in peacekeeping under Chapter VI, enforcement under Chapter VII and peace-building under Chapter IX.

### Political dimension

All in all, it seems that the EU is not to be seen as a 'Chapter VIII regional agency' but rather as a *sui generis* organisation – operating on a plane above the nation-state but not yet, and perhaps never, a single supranational entity.<sup>8</sup> The EU lacks the single-minded political coherence of the United States and also the dedicated military capability of the superpower. But its loosely aggregated European citizenry is larger than that of its North American partner, and its combined diplomatic skills and 'soft power' are already formidable and generally welcomed around the world as a potential force for good. To the extent that the UN is moving towards 'soft power' as the principal default mode for crisis management, the EU is taking shape as the single most valuable operational partner of the UN. This development is attracting interest, and even excitement, within the UN itself, as witnessed by the frequency of visits to Brussels by the UN leadership, and also within the wider policy community beyond.

8. '[The EU] is not a State intended to replace existing states, but it is more than any other international organisation. The EU is, in fact, unique. Its Member States have set up common institutions to which they delegate some of their sovereignty so that decisions on specific matters of joint interest can be made democratically at European level. This pooling of sovereignty is also called "European integration".' 'The European Union at a glance', EU website at [http://europa.eu.int/abc/index\\_en.htm](http://europa.eu.int/abc/index_en.htm).

# Conclusion

## UN reform: as necessary as it is difficult

Martin Ortega

The preceding chapters show that there is a lot to be done to improve global governance through the United Nations. The world has changed dramatically since 1945, when this organisation was created, and it is imperative to reach global consensus to modernise the United Nations so that it can make a more decisive contribution to tackling today's challenges. However, looking at the situation in June 2005, one has the impression that the debate on UN reform that will take place during the 60th General Assembly this September will not bear substantial fruit. Some progress is foreseeable in areas such as development and the creation of a Peace Building Commission, but overall the agreed changes in the United Nations will most probably be low-key. The United States government is not willing to exercise any leadership on this front, the EU member states are in disarray, taking care of their own problems, the developing countries are putting forward certain demands that the others deem unacceptable, UN member states are divided on the key issue of Security Council reform, and, in his report 'In larger freedom' (March 2005), the UN Secretary-General has opted for a 'minimalist' approach, trying to attract agreement on a few issues that do not really imply the revamping that the organisation badly needs.

The reform of global order requires a 'constitutional momentum', which, unfortunately, is not present today owing to the prevailing political circumstances. Indeed, such 'constitutional momentum' appears only rarely in history, and is usually linked to serious crises or extraordinary developments. This momentum existed, in particular, after the First and Second World Wars, and led to the creation of the League of Nations and the United Nations respectively. In a different environment, a significant constitutional change in the international order took place at the beginning of the 1990s – although it did not entail formal modification of the UN Charter. The end of the Cold War and Saddam Hussein's aggression against Kuwait triggered an unprecedented

consensus amongst the five UNSC permanent members that led to effective action by the Security Council. For the first time since its creation, this body decided to authorise large (and later, smaller) uses of force, to make substantive pronouncements on certain international conflicts and disputes, and to mandate peacekeeping operations. Also, in a peaceful environment, a regional ‘constitutional momentum’ has existed in Europe in the last few years. It is true that this impetus has stalled after the French and Dutch referendums on the draft European constitution, but nothing excludes a continuation of the European constitutional process under different conditions in the future.

A similar ‘momentum’ is not detectable at global level today. And yet, global threats, risks and challenges call for immediate and concerted action. ‘In a world of global threats, global markets and global media’, to replicate the words of the European Security Strategy, we do not have the proper global institutions. Individual states continue to take the lead in the resolution of the world’s problems. But the main task of governments within states is to advance the interests of their own citizens, not to look after ‘global interests’. When governments decide to cooperate, some global challenges can be tackled; if they choose not to cooperate, those challenges continue to fester on. The ‘reaction gap’ that exists between alarming global problems and the available institutions has been eloquently described by Jean-François Rischard in his book *High noon, 20 global issues, 20 years to solve them*.<sup>1</sup> Rischard, the World Bank’s vice-president for Europe, wrote in 2002:

The most important and urgent global problems . . . have two things in common: They’re getting worse, not better, and the standard strategies for dealing with them are woefully inadequate to the task. The real problem, in other words, is that in our increasingly crowded, interconnected world, we don’t have an effective way of addressing the problems such a world creates. Our difficulties belong to the future, but our means of solving them belong to the past.

The EU and its member states could have an important role in finding imaginative solutions to this undesirable situation. In fact, they have declared that ‘effective multilateralism’, ‘well functioning international institutions and a rule-based international order’, as well as ‘strengthening the United Nations, equipping it

1. Jean-François Rischard, *High noon, 20 global issues, 20 years to solve them* (New York: Basic Books, 2002). This book was also published in French as *20 défis pour la planète, 20 ans pour y faire face* (Arles: Actes Sud, 2003).



to fulfil its responsibilities and to act effectively' are their priorities. However, when it comes to putting into practice these declared objectives, the Europeans are hesitant. As was pointed out in the introduction to this *Chaillot Paper*, UN reform perhaps is both *too much* and *too soon* for the European Union. Governments have not promoted a public debate on UN reform in Europe. This issue has been mainly confined to a technical exchange amongst diplomats and has not received much attention from parliaments and politicians. One cannot find many references to UN reform in the conclusions of EU foreign ministers' meetings or the European Council.

### **Points of agreement and disagreement**

During the preparation of the 60th General Assembly, through permanent contacts in New York, Brussels and elsewhere, the 25 EU member states have indeed reached agreement on a number of issues, but they continue to diverge on others. Let us examine points of agreement and disagreement amongst the Europeans following the check list provided by the President of the UN General Assembly in his first 'draft outcome document', dated 3 June 2005, for the 60th Anniversary High-Level Meeting, where he summarises items at the centre of UN member states' discussions within four clusters: development, peace and security, human rights and the rule of law, and strengthening the United Nations (meaning reform).

The EU members basically agree on the objective of increasing development assistance to 0.5 per cent of GDP by 2009 and 0.7 per cent by 2015. Also, they support initiatives – some of them already mentioned in the UN Secretary-General's report of March 2005 – to alleviate debt, give priority to Africa, fight against AIDS and other infectious diseases, rethink the role of women in development, continue to work for the protection of the environment, and look for additional sources of financing for development.

On the second cluster, the EU members jointly endorse the establishment of a Peace Building Commission, in order to ensure that post-conflict reconstruction efforts in war-torn countries are durable and coordinated. Various UN documents acknowledge the EU contribution to UN peacekeeping and capability building, and more EU-UN cooperation in this field is to be expected. Other

proposals in the peace and security area are also agreeable to the Europeans: enhance the fight against terrorism and WMD proliferation and disarmament, explore and refine targeted sanctions, assign to the Secretary-General better resources to utilise his good offices in international disputes, and recognise the 'responsibility to protect' in the event of genocide or massive violations of human rights, defining criteria for humanitarian intervention.

As regards proposals related to human rights, the EU members support in principle the creation of a Human Rights Council; however, they are divided on whether this new body should be linked to the General Assembly or to the Security Council, whether the creation of such a council should entail UN Charter reform or not, whether a 'peer review mechanism' of respect for human rights in UN member states should be implemented, and what the role of NGOs in the new body should be.

Finally, proposed formal changes in the UN Charter are very modest, and EU members have not yet made up their mind on this aspect. It seems that both the Trusteeship Council and the references to the 'enemy states' in the Charter will be removed, but it is less clear that provisions on the Military Staff Committee will disappear. The UN General Assembly's agenda will be streamlined and the status of ECOSOC will be enhanced, and annual meetings at ministerial level might be planned with European backing. The EU member states would equally support a reinforcement of the UN Secretariat. The most striking source of disagreement amongst Europeans, however, is reform of the Security Council. Even if there is consensus amongst the EU member states on other issues, their lack of a common position on UNSC reform will be perceived as a failure of the EU common foreign and security policy.

In order to make an overall assessment of European attitudes towards UN reform, one should take into account that the various initiatives mentioned so far belong to three different categories: (a) UN member states' action (for instance, increase development aid, measures to fight WMD proliferation and advance WMD disarmament); (b) improve the UN's working methods (for instance, streamlining the General Assembly's agenda and reinforcing the UN Secretariat); and (c) changes in the UN Charter. While the EU member states are united on most of the issues pertaining to categories (a) and (b), they are conspicuously divided on crucial aspects of UN Charter reform.

## Disappointment

Nevertheless, beyond the specific points of agreement and disagreement amongst Europeans, the real question is: will the European input to the negotiations lead to a reform of the United Nations that ‘strengthens’ the organisation and ‘equips it to fulfil its responsibilities and to act effectively’? The answer is a fatalistic ‘no’. Initiatives listed below represent a ‘lowest common denominator’ arrived at before the 60th anniversary summit. This denominator accords poorly with the EU’s ambitious proclamations about effective multilateralism and the global order.

In the absence of American interest – as a result of the current US government’s attitudes towards the UN – the European Union and its member states are not in a position to have a decisive impact on the reform process. And yet, bearing in mind its contribution to the UN and its collective stance and prestige, the EU had the means to exert a positive influence in the forthcoming reform. The EU could have acted as an ‘honest broker’ between a reluctant United States and a Third World majority, could have tried to include democracy and human rights at the centre of UN action, could have introduced protection of the environment as one of the key objectives of the global order, could have insisted on recognition of the role of regional organisations, and ultimately could have engaged most UN members in the creation of a new United Nations with the necessary resources to fulfil its vital missions.

In various degrees, the preceding chapters of this *Chaillot Paper* share the same general sentiment of disappointment vis-à-vis the European role in the current UN reform process. They contain more demands than both the EU and the European governments seem able to take on. Let us summarise their conclusions and claims:

- ▶ *Global Public Goods, development and security.* In his chapter, Sven Biscop affirms that the EU should promote policies that ensure better access to ‘Global Public Goods’ (physical security, political participation, development, health services, education and a clean environment) for everyone. In his view, a ‘positive agenda’ – not just an agenda focused on threats – should inspire the EU’s contribution to UN reform. Bearing in mind the causal link that exists between poor economic, social and cultural conditions and security, he proposes to pay more attention to the Millen-

nium Development Goals, and to give the ECOSOC an 'enhanced profile'. True, the European Union is committed to increasing its assistance to developing countries, to poverty reduction and debt relief, but, as Biscop points out, this commitment has yet to materialise and has to be consistent with the EU's external trade policies.

- ▶ *Human rights and protection of the environment.* Francesco Francioni analyses these two crucial issues and puts forward a series of useful recommendations for the EU and its member states. Regarding human rights, he suggests three lines of action: 'streamlining' of the present UN system of human rights surveillance and implementation; 'mainstreaming', or systematically incorporating human rights in all UN policies and actions; and 'entrenching', i.e. reaffirming the intrinsic value of human rights at a time of globalisation. On the other hand, protection of the environment should be a distinct European priority. Francioni presents two options. Protection of the environment could be ensured globally either through a reform of existing schemes, and most notably the United Nations Environmental Programme, or via the creation of a new, independent global environmental organisation, an option which he slightly favours. Again, all these proposals are more daring than the ideas contained in EU documents and in the UN Secretary-General's report of March 2005 – perhaps excepting the creation of a Human Rights Council.
- ▶ *Peacekeeping.* In his chapter, Thierry Tardy explains how EU-UN cooperation for peacekeeping purposes has been increasing steadily since the year 2000. Although direct participation of European military and civilian personnel in UN-led operations is not very high, the Europeans have an important contribution to make to UN peacekeeping through financing, 'enabling capabilities' and dialogue and cooperation between politico-military authorities in Brussels and New York. Since Operation *Artemis* in summer 2003 and the joint EU-UN declaration of 24 September 2003, the EU has defined a number of scenarios: for instance, the scenario where a EU-led operation receives UNSC authorisation and the 'bridging model' scenario, or a rapidly deployed EU operation that allows the UN to mount an operation of its own. However, as Tardy points out, the problem is that, given the different EU and UN agendas, UN 'demand' does not always find a positive response on the part of the EU.

- ▶ *Security Council reform.* Far from presenting grand proposals, Jeffrey Laurenti adopts a realistic approach, which leads him to conclude that UNSC enlargement is highly unlikely. Opposition to candidates to new permanent members from current permanent members (especially, China vis-à-vis Japan), and from regional powers (for instance, Argentina, Italy, Pakistan – who would oppose Brazil, Germany and India respectively) will make it impossible, in Laurenti’s opinion, to reach the required two-thirds majority, including all permanent members, to approve UN Charter reform. The United States is comfortably watching those neighbourhood disputes, as it is not enthusiastic about UNSC enlargement. Laurenti suggests, thus, that instead of ‘rearranging the furniture in the Security Council chamber’ some more pragmatic measures could be adopted with a view to implementing its decisions effectively and reinforcing the Council’s capabilities. En passant, he points out that, due to divisions within the EU on UNSC reform, ‘Europe’s mutually cancelling passions on the subject have produced EU passivity’.
- ▶ *The EU, regional organisations and collective security.* The last chapter makes a plea for the deeper involvement of regional organisations in collective security. Kennedy Graham (writing with Tânia Felício) suggests that regional organisations have acquired such an important role in conflict prevention and crisis management that the forthcoming reform will encounter the following dilemma: either to continue with ‘business as usual’ or commence the process of formalising the relationship between the UN and regional organisations with a view to making it more effective. The issue is not, however, a formal recognition of the EU as a ‘Chapter VIII regional organisation’, for the EU is actually acting as such an organisation; rather, the issue is whether the EU is ready to lead a debate about the role of regional organisations in collective security.

### Three conclusions

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Three main conclusions can be drawn from the preceding analysis. Firstly, the relations between the EU and the United Nations present a mixed balance sheet. On the one hand, the EU and its member states share a common language and common objectives with the

United Nations. The EU is cooperating with the UN on a whole range of issues: development, human rights, protection of the environment, peacekeeping, etc. This 'commonality' applies to all 25 EU members, including first and foremost the two UNSC permanent members. The same cannot be said of other UNSC permanent members, who are less involved in either respect for human rights or peacekeeping or protection of the environment or all of them. On the other hand, however, the Europeans have not had great influence during the preparation of the debate on UN reform that will take place from September 2005. In other words, while day-to-day EU-UN cooperation is working efficiently, the EU and its member states have failed to seize the symbolic opportunity of the 60th anniversary to define a common vision for the future of the organisation. The Europeans have the ideas and the means; what is lacking is self-confidence, leadership and determination.

Secondly, irrespective of other changes in the UN that can be supported by the Europeans, reform of the Security Council will be the most important issue, both in the public perception and historically. Unfortunately, the EU member states have aligned themselves along global fracture lines instead of trying to define an intra-European consensus. There are at least four European points of view on this issue: (a) Germany has presented its candidature as new permanent member; (b) France and the United Kingdom have supported the 4 + 1 new permanent members option - i.e. Brazil, Germany, India, Japan, plus an African candidate; (c) Italy and Spain - along with other states such as Argentina, Pakistan, Republic of Korea - oppose the prospect of new permanent members; and (d) other EU member states - as well as the European Parliament - believe that the EU's efforts should be targeted at creating a single EU seat in the future.

Although it seems perhaps too late to reach an agreement amongst the Europeans, it is worth trying. The EU and its member states should not reproduce divisions that are present in other continents, but should rather try to find ways to break the deadlock in UNSC reform. Enlargement of this body is needed in order to enhance its perceived legitimacy. If none the less UNSC enlargement is eventually delayed owing to lack of global agreement during the 60th anniversary UN summit, the EU and its member states should start thinking afresh on this issue in the coming years.

Finally, while most of the current recommendations regarding UN reinforcement and reform are laudable, the main problem

continues to be lack of resources, and this is not sufficiently underlined in the present debate. Bearing in mind the broad range of tasks, particularly peacekeeping, that the United Nations has to carry out worldwide, the UN is clearly underfunded. In 2003, for instance, the assessed UN budget for regular activities was US\$1,409 million and the peacekeeping operations budget was \$2,260 million. Since \$1,507 million were unpaid (\$441 million from the regular budget, \$1,066 million from the peacekeeping budget), the UN functioned with \$2,162 million that year.<sup>2</sup> By way of comparison, the 25 EU members combined defence expenditure amounted to \$166.64 billion in 2003 – whereas the United States spent \$404.9 billion. In order to strengthen the United Nations, its human and financial resources must be augmented, and the EU and its member states, which already pay a large share of the UN budget, should be ready to meet this challenge.

2. Data compiled by Klaus Hüfner, Freie Universität Berlin; see [www.globalpolicy.org/finance/tables/sumbudgetand-debt.htm](http://www.globalpolicy.org/finance/tables/sumbudgetand-debt.htm).





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***Abbreviations***

AIDS	Acquired Immune Deficiency Syndrome
AU	African Union
CAT	Convention Against Torture
CEDAW	Convention on the Elimination of Discrimination Against Women
CERD	Convention on the Elimination of Racial Discrimination
CFSP	Common Foreign and Security Policy
CIS	Commonwealth of Independent States
CRC	Convention on the Rights of the Child
DDR	Demobilisation, Disarmament and Reintegration
DPA	Department of Political Affairs
DPKO	Department of Peacekeeping Operations
DRC	Democratic Republic of Congo
DSG	Deputy Secretary-General
ECOSOC	(UN) Economic and Social Council
ECOWAS	Economic Community of West African States
ESDP	European Security and Defence Policy
EU	European Union
EUI	European University Institute
EUPM	EU Police Mission
EUPOL	EU Police Mission
FAO	Food and Agriculture Organisation
FYROM	Former Yugoslav Republic of Macedonia
GDP	Gross Domestic Product
GEF	Global Environment Facility
GPG	Global Public Goods
HIV/AIDS	Human Immunodeficiency Virus/Acquired Immune Deficiency Syndrome
HLP	High-Level Panel
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IEMF	Interim Emergency Multinational Force (Operation <i>Artemis</i> )
IFI	International Financial Institution(s)
ILO	International Labour Organisation
IMF	International Monetary Fund
IMO	International Maritime Organisation
INTERFET	International Force East Timor
IPTF	International Police Task Force
IRRI-KIIB	Institut Royal de Relations Internationales, Bruxelles
LAS	League of Arab States
MDG	Millennium Development Goal
MEA	Multilateral Environmental Agreement
MONUC	UN Mission in the Democratic Republic of Congo

NATO	North Atlantic Treaty Organisation
NGO	Non-Governmental Organisation
OAS	Organisation of American States
OECD	Organisation for Economic Cooperation and Development
OSCE	Organisation for Security and Cooperation in Europe
PBC	Peacebuilding Commission
PSC	Political and Security Committee
RO	Regional Organisation
SFOR	Stabilisation Force
SHIRBRIG	Multinational Stand-by Force High Readiness Brigade for UN Operations
SIPRI	Stockholm International Peace Research Institute
SSR	Security Sector Reform
UN	United Nations
UNDP	UN Development Programme
UNEP	UN Environment Programme
UNESCO	United Nations Educational, Scientific and Cultural Organisation
UNHCR	UN High Commissioner for Refugees (Office of the)
UNMIBH	UN Mission in Bosnia and Herzegovina
UNMIK	UN Interim Administration Mission in Kosovo
UNOCI	UN Operation in Ivory Coast
UNSAS	UN Stand-by Arrangement System
UNSC	UN Security Council
UNTAET	UN Transitional Administration in East Timor
USSR	Union of Soviet Socialist Republics
WHO	World Health Organisation
WMD	Weapons of Mass Destruction
WTO	World Trade Organisation

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This *Chaillot Paper* offers some ideas on how the European Union and its member states can contribute to the reform of the United Nations, a theme that will be high on the agenda during the celebration of the UN's 60th anniversary in autumn 2005. Five experts write on the following subjects: security and development (Sven Biscop), human rights and protection of the environment (Francesco Francioni), peacekeeping (Thierry Tardy), UN Security Council reform (Jeffrey Laurenti) and regional organisations and collective security (Kennedy Graham with Tânia Felício). A conclusion draws some lessons from the various chapters and suggests that the EU should be more involved in the UN reform process.

Relations between the EU and the United Nations present a mixed balance sheet. On the one hand, the EU and its member states share a common language and common objectives with the United Nations. The EU is actively cooperating with the UN on a whole range of issues: development, human rights, protection of the environment and peacekeeping, amongst others. On the other hand, however, the EU and its member states have failed to seize the symbolic opportunity of the 60th anniversary to define a common vision for the future of the organisation. More specifically, instead of negotiating a common position on UN Security Council enlargement – one of the key issues – the Europeans have shown profound divisions.

Foreword by Jean-Marie Guéhenno, United Nations Under-Secretary-General for Peacekeeping Operations.

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