

THREE CONCEPTS OF UN REFORM

Introduction

Discussions about reforms of the UN belong to the Organization's permanent characteristics. However, in the UN context the word "reform" is bound to have more than one meaning. This is inevitable in the global organization of 193 sovereign member states pursuing their national and regional interests. The breadth of the UN's mandate and seventy years of experience add to the complexity of discussion.

In its core, reform means improvement. A standard dictionary definition adds the element of »improvement... including by removal or abandonment of imperfections, faults or errors«¹. The quoted definition, while precise, hardly captures the full meaning of the concept of reform of the UN where change and improvement come as a result of a variety of internal and external influences. International institutions tend to reform themselves as a result of both, the evolving needs and new tasks as well as of the changing environment in which they have to work. Examples can be found in all parts of the UN system - from peacekeeping to development assistance and to promotion of human rights.

It is important to understand that the UN was designed to preserve a high degree of institutional stability. The historic experience of its predecessor, the League of Nations guided the founders of the UN to conclude that new world body has to be protected against the vagaries of frequent change. The provisions of the UN Charter regarding amendments are the constitutional expression of this philosophy.²

The reforms of the UN generally have resulted from practice and were mostly accomplished without amendment of the Charter. An immediate and general impression of the changes in the UN system in the past seventy years suggests that changes varied in nature and that each reform has been a process, sometimes a protracted one, not a single transformative event. Their sum, over the seven decades, has been a significant transformation of the UN system, from a deliberating and norm-creating mechanism to an increasingly operational one. Within this process the demand for institutional change has been constant and in most cases satisfied only partially. Sometimes the question of reform was reduced to a single and particularly important question. In the past two and a half decades, for example, much of the discussion has concentrated on the

¹ Concise Oxford Dictionary of Current English (1970), p. 1041.

² Articles 108 and 109 of the UN Charter require the amendment to be ratified by two thirds of the UN member states, including all five permanent members of the Security Council. As the history of the UN showed, these provisions made formal amendment to the UN Charter very difficult. The Charter was amended only three times, in all instances only to expand the number of members of a principal organ of the UN (Security Council and Economic and Social Council). See, The Charter of the United Nations, A Commentary, edited by Bruno Simma, Oxford University Press, 1994, pp 1163 - 1191. Also Y. Blum, Proposals for UN Security Council Reform, AJIL 99 (2005), pp 634 - 637.

question of expansion of the number of members (permanent and non-permanent) of the UN Security Council. However, it would be a simplification to equate the general concept of UN reform with a specific question such as the one related to the composition of the Security Council. The term “reform” goes much beyond this important question and relates to a wide variety of change.

How should a discussion of UN reforms express this variety of change? Is it possible to conceptualize the discussion on UN reforms by pointing out that, in fact, the broad terminology of "reform" covers different ideas and practices that vary in scope and nature? Does the word “reform” cover different concepts? The hypothetical answer is - yes. The approach suggested in this writing is to look at three concepts of UN reform: innovation, adaptation and institutional change. It is hoped that this approach will facilitate a sufficiently comprehensive understanding of the questions of UN reforms as well as further discussion on the subject.

I. Reform as Innovation - Maintenance of International Peace and Security

Over the years, the evolution of UN system and practice in the field of maintenance of international peace and security generated substantial innovation. The authors of the UN Charter have given the idea of collective security a robust legal expression, including, *inter alia*, through the open-ended character of the key provisions of the Charter and by giving unique legal powers to the Security Council. Much of the subsequent UN practice was guided by teleological interpretation of the Charter that has expanded the reach of the Security Council even further. While it is true that during long periods of time the Security Council was paralyzed by the cold war, it is important that in propitious circumstances such as those following the ending of the cold war, much innovation has taken place in peace keeping, in post conflict peace building, in the use of sanctions, in creation of criminal tribunals, in counterterrorism and in addressing the problems of weapons of mass destruction.

The UN Charter gave the Security Council the primary, albeit - as the subsequent history has clarified - not exclusive responsibility for maintenance of international peace and security³. This required flexibility, both in terms of assessment of the nature of disputes and situations as well as with regard to the choice of responses. Article 39 of the Charter wisely reserved a broad authority for the Council to determine the existence of the threats to peace and responses to them. This flexibility invited a teleological interpretation of the Charter from the early years of the UN onwards. The creation of the peacekeeping operations, starting with UNTSO (United Nations Truce Supervision Organization) in 1948 was an early example. The Security Council's capacity to innovate in the domain of peace keeping was developed over the decades, in particular

³ Certain Expenses of the United Nations, Advisory opinion of 20 July, 1962, ICJ Reports, 1962, p. 163.

in the period after the cold war that was characterized by a rapid growth in the number and complexity of these operations.⁴

A recent report, presented by the High-Level Independent Panel on Peace Operations⁵ has offered a comprehensive analysis of the evolution of peace operations in the last fifteen years and included some key explanations. They are worth keeping in mind in the discussion on UN reforms.

Throughout its history, the UN peace operations have attempted to respond to the changing nature of the armed conflicts. The original purpose of peace keeping as an instrument of keeping warring armies apart has given way to a much more complex missions. In our era the conflicts are not only increasingly intra state in nature (as opposed to the prevalent inter state conflicts in the preceding periods) but also increasingly targeted at civilian populations. Moreover, transnational illicit networks trafficking in drugs, weapons, people and money have embedded themselves in many conflicts, feeding on them, and fueling them with funds and weapons.⁶

The UN peacekeeping therefore had to evolve in terms of its size and complexity. The developments of the past years have strengthened the understanding of the need for further change and innovation. The High Level Panel articulated this need by identifying the following "new approaches":

- Conflict prevention and mediation must be brought back to the fore;
- Protection of civilians is a core obligation of the United Nations, but expectations and capability must converge;
- Clarity is needed on the use of force ad in the role of UN peace operations and others in managing armed conflict;
- To sustain peace, political vigilance is needed.⁷

These emphases reflect the nature of the current evolution of UN peace operations and their main characteristics: increasingly important link with political processes, in particular conflict prevention and mediation, as well as with post conflict stabilization; an increasing necessity of protection of civilians and an increasing complexity regarding the use of force by the UN peacekeepers. Innovation is a constant process and a basic feature of peace operations. It is therefore not surprising that one of the most powerful messages

⁴ The most comprehensive UN document about that period of development of peace keeping operations was provided in the Report of the Panel on the United Nations Peace Operations, A/55/305 and S/2000/809 (2000), often cited as the "Brahimi Report" after the Chairman of the Panel, Mr. Lakhdar Brahimi.

⁵ Report of the High-Level Independent Panel on Peace Operations, A/70/95 - S/2015/446 (2015).

⁶ Ibidem, p. 2, para. 11.

⁷ Ibidem, pp. ix-x.

from the quoted report insists on the field driven nature of the UN peace operations and, as a consequence, also in the decision making by the UN Secretariat and the Security Council.⁸

A general and supportive view of the UN peace operations leads to the conclusion that this "flagship UN activity" can only grow and generate additional innovation. However, it is necessary to keep in mind the inherent limitations of the UN peace operations. One of them relates to the availability of resources and the other to sovereignty of member states.

The total budget of all peace operations is already more than four times larger than the rest of Secretariat's combined budget. Ninety percent of UN Secretariat procurement is undertaken for its peace operations. Fifty five percent of the UN Secretariat staff serves in the field mission, more than 80 percent of whom serve in hardship duty stations.⁹ This calls for an increasingly field - focused administrative framework of the organization and for responsible management of resources.

In addition, the organization had to manage the peace operations at the time of economic contraction affecting UN member states. The need for reduction of costs has become even more pressing. The efficiency measures adopted in the last five years have resulted in cost reduction of 17 percent.¹⁰ The improvements achieved with the resourcing of peace operations, in particular at the early phases, have shown that realistic budgets, based on improved pre-planning can solve a significant part of the problem. However, the limited financial resources for the UN peace operations remain a significant constraint to their further evolution.

The other basic constraint stems from the fact that state sovereignty sometimes limits the possibilities of international decision making. The difficulties of deployment in Sudan - Darfur are an example of problems that characterize the relationship between some host countries and the international decision makers.¹¹ The attitude of the host country and its political leaders sometimes represents a serious constraint to the UN peace operations.

A different problem is posed by the misconduct among the peace keepers themselves. The responsibility for prosecution of and punishment for human rights violations, sexual exploitation and abuse committed by the UN peacekeeping personnel remains firmly on the side of contributing states. Innovation by the UN in this area is limited to such measures as improvements in the reporting procedures, acceleration of mission response to the allegations of abuse and dismissal of the UN appointed representatives. Criminal jurisdiction is outside authority of the UN. The UN can only make recommendations to member states contributing

⁸ Ibidem, pp xi-xii.

⁹ Ibidem, para. 288, p. 83.

¹⁰ Ibidem, para. 297, p. 86.

¹¹ Lucia Mouat, The United Nations' Top Job, A close Look At The Work Of The Eight Secretaries-General, 2014, pp. 383-387.

military and other personnel and offer remedial assistance to victims. However, the criminal jurisdiction remains firmly in the hands of states.¹²

Notwithstanding the obvious limitations, peace operations remain a symbol of UN's ability to address the needs of the maintenance of international peace and security through innovative techniques that are subject to constant change and innovation. While this includes "overcoming of shortcoming, faults and errors", clearly a sign of constancy of the process of reform, its basic quality has to be innovation. Without constant innovation peace operations could easily become victims of the changing circumstances.

Unlike Peace operations that represent a clear example of innovation based on a teleological interpretation of the UN Charter, sanctions are firmly based in the Charter itself.¹³ However, in the actual application of this instrument, there have been some innovations.

The number of sanctions regimes imposed under Chapter VII of the UN Charter has grown since 1990. In addition to comprehensive sanctions regimes imposed on Iraq and on the Federal Republic of Yugoslavia (Serbia and Montenegro), the Council developed new techniques of targeted sanctions, mainly in the form of asset freezes, travel bans and arms embargoes. The effects of these regimes vary and the discussion on the wisdom and effectiveness of sanctions, which are often described as a »blunt instrument«, continue. However, in general, one can say that targeted sanctions are more appropriate policy tools than generalized trade embargoes.¹⁴

An important example of innovative and ultimately successful use of targeted sanctions is provided by the Council's actions regarding Libya in the period 1992 -2003. In its resolutions 731 (1992) and 748(1992), the Security Council demanded that Libya comply with the requests from the United States and United Kingdom to transfer two suspects, Libyan citizens, considered responsible for the destruction of Pan Am flight 103 over Lockerbie, Scotland, and UTA flight 772 over Niger, to the investigating authorities. To enforce the demand, the Council imposed a flight ban and an arms embargo on Libya.

This was an important innovation in a number of respects:

First, it clearly defined, under Chapter VII of the UN Charter, an individual act of international terrorism, committed four years earlier (in 1988), as a threat to the peace – i.e. a threat which continued to exist at the time of the Security Council's decision (in 1992).

¹² Report of the High-Level Independent Panel, op. cit., paragraphs 258-271, p. 270.

¹³ Article 41 of the UN Charter.

¹⁴ For a general discussion see David Cortright and George Lopez, Reforming Sanctions in David Malone (ed.) The UN Security Council, From the Cold War to the 21st Century, Lynne Rienner Publishers, 2004, pp. 167 - 181.

Second, the decision entered the sovereign realm of a UN member state by demanding extradition of that state's own nationals, discarding the option of investigation and trial by the sovereign authority of the country of citizenship;

Third, it imposed (carefully targeted) sanctions to obtain a specific legal effect.

More than six years later the Security Council adopted its resolution 1192 (1998), which enabled an innovative legal solution – the handing over of the Libyan suspects to a tribunal to be located in the Netherlands, but consisting of Scottish judges and applying Scottish law. The two suspects were handed over to this tribunal in 1999 and the sanctions were suspended. The judgement reached in 2001 started the final phase of this case leading to the payment of the necessary compensation and termination of sanctions.¹⁵

The quoted case shows that the Security Council was able to use targeted sanctions as an effective instrument that helped to modify the affected country's behavior. Subsequently the Council was prepared to work out a compromise formula on the type of the tribunal necessary for the effective exercise of justice and, finally, for the lifting of sanctions.

The example of Sanctions against Libya gave concrete expression to the broader policy objective defined earlier in 1992 at the (first-ever) summit meeting of the Security Council, which expressed deep concern over acts of international terrorism and emphasized the need to address terrorist acts effectively. This general statement identified terrorism as a threat to the peace. This was an early sign of a new approach to be taken by the UN, which had been dealing with the issue of terrorism mainly as an issue of crime and a matter to be combated by such legal means as international conventions, drafted in the General Assembly that defined particular types of terrorist acts and strengthened the principle "*aut dedere aut judicare*".

The notion that terrorism constitutes a threat to the peace and that the Security Council must find ways of dealing with this threat was expressed in several resolutions in 1998 and 1999, following the bombing of the US Embassies in Kenya and Tanzania (July/August 1998) and the bombing in Moscow in September 1999. In October 1999 the Security Council imposed sanctions against the Taliban regime in Afghanistan¹⁶, thus opting for a specific policy instrument to combat terrorism as a threat to international peace and security. In 2001, two days after the September 11 attacks, the Security Council authorized self defence against those responsible for the attacks¹⁷

¹⁵ Libya challenged this approach by initiating proceedings before the International Court of Justice in 1992. However, ICJ rejected Libya's request for provisional measures (ICJ Reports 1992, p. 126) and - while accepting the jurisdiction in the case (ICJ Reports, 1998, pp. 135-136) - allowed the process under the authority of the Security Council to continue to its conclusion. In 2003, ICJ closed the case without pronouncing itself on the merits.

¹⁶ Res. 1269 (1999)

¹⁷ Res. 1368 (2001). This resolution authorized military action in Afghanistan later in the year 2001.

Two weeks later the Security Council adopted, in its resolution 1373, a comprehensive set of obligations incumbent on all UN member states, requiring their legislative and executive action with a view to preventing and combating terrorism. In terms of substance of these obligations, the resolution brought little new. The duty to make terrorist attacks a criminal offence, the duty to deny support and safe haven to terrorists and the duty to cooperate with other states in the prevention of terrorism had all existed before. The main innovation took place in the procedural realm. The monitoring body - Counterterrorism Committee established by the resolution 1373 - is a new type of Security Council's working body. It is not a sanctions committee, although similar to such committees in its composition and in some methods of work. Over time it has created a system of reporting and web of communications which intensified international cooperation in counterterrorism. This evolution has been in the making at least since 1992 but its actual emergence was due to a single dramatic event, the attack of 11 September 2001.

A similar dynamic, one with even more far reaching legal consequences developed in the area of prosecution of grave breaches of humanitarian law. There the latent idea of the creation of international criminal tribunals had existed at least since the time of the Convention on Prevention and Punishment of the Crime of Genocide (1948). However, it was an event, or series of events – the atrocities in Bosnia and Herzegovina, that turned the page.

The International Criminal Tribunal for Former Yugoslavia, established by resolution 827 (1993) became possible as a result of the failure of the UN (and, before, the European Community), to stop the war and prevent atrocities. The sense of failure and the resulting moral pressure created conditions in which the Security Council agreed to interpret Chapter VII of the Charter in a manner that allowed the creation of the Tribunal. The Council and the Secretary-General, who produced a report¹⁸ which formed the basis for the Council's decision, avoided mentioning any specific article of the Charter, but referred to Chapter VII generally. This detail is significant: the danger of entering the discussion on interpretation of the specific language of the Charter was thus avoided. The Council again used a teleological approach. It followed the broad objective of maintenance of international peace and security and »did not succumb to paralytic textualism«.¹⁹

The election of the judges of ICTY (and later, by resolution 955 (1994), the judges of ICTR) by the General Assembly created a genuine link between these tribunals and the UN as a whole.

The Security Council thus became the driver of an important change that became relevant to the UN system as a whole. The Council's action had a number of further consequences. The revival of the idea of an International Criminal Court with general jurisdiction was probably the most significant among them. The

¹⁸ Report of the Secretary-General Pursuant to Paragraph 2 of the Security Council Resolution 808 (1993), UN Document S/25704 of 3 May 1993.

¹⁹ S.R. Ratner, The Security Council and International Law, in D. Malone (ed.) The Security Council: From the Cold War to the 21st Century, Lynne Rienner Publishers, 2004, p. 596.

creation of ICTY and ICTR energized the resumption of work of the International Law Commission and the General Assembly on the Statute of the International Criminal Court (ICC) that was adopted on 18 July 1998. The UN System became strengthened by the addition of a new judicial body. This was an important reform of the system that added credibility to the declared policy of non-acceptance of impunity for genocide, war crimes and crimes against humanity. The fact that the Statute of ICC obtained the necessary sixty ratifications and entered into force less than four years after its conclusion confirms that the institution was needed and supported by the UN member states.

The initial period of operation of the ICC was not without difficulty. An example of a problem generated by the decisions of the Security Council was the granting of immunity to certain categories of international personnel, beyond the framework of Article 16 of the Statute of ICC.²⁰ However, these decisions were subsequently not renewed and the potential problem of credibility of both the Security Council and the ICC was avoided.

A different type of development took place in 2004/2005. Following strong allegations that acts of genocide had been committed in the region of Darfur in Sudan, the Security Council established a commission of inquiry which concluded in early 2005 that the issue should be referred to the ICC. In its resolution 1593 (2005) the Security Council referred the situation in Darfur to the International Criminal Court. The objections which had earlier motivated the exemptions from ICC's jurisdiction gave way to a more consistent approach: ICC proved to be the most logical forum to consider allegations of grave breaches of humanitarian law. It is realistic to expect that the Security Council and the International Criminal Court will interact in a variety of ways. It appears possible to suggest that ICC has been quick in proving its relevance to issues of maintenance of international peace and security.

The bodies established by the Security Council combine reactive and preventive purposes. Sanctions committees, criminal tribunals and the ICC are essentially reactive in nature and their preventive effect remains in doubt. The counter terrorism committee combines both dimensions. In addition, the Council has established a body with a predominantly preventive function - the committee to deal with weapons of mass destruction (WMDs) - the "1540 Committee".

That committee was established to oversee the implementation of the resolution 1540 (2004) focusing on non-state actors.²¹ The obligation expressed in the Security Council resolution 1540 requires that "...all

²⁰ Article 16 of the ICC provides for the possibility of deferral of investigation or prosecution if the Security Council so decided by a Chapter VII Resolution. However, such deferral must be related to a specific criminal case and expires after twelve months unless renewed by another Chapter VII resolution. In its resolution 1497 (2003), paragraph 7, authorizing the creation of a multinational force in Liberia, the Security Council decided that the officials and military personnel of a contributing state which was not a state party to the Statute of the ICC, shall be under exclusive jurisdiction of that contributing state. This went beyond the scope of Article 16 of the ICC. However, the Security Council did not renew its decision.

²¹ The need to prevent proliferation of WMDs has been on the international agenda for decades and was focused on states: The Nuclear Non-Proliferation Treaty, the Chemical Weapons Convention and the Biological and Toxin

states shall refrain from providing any form of support to non-state actors that attempt to develop, acquire, manufacture, possess, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery." The Committee to oversee the implementation of this obligation - "1540 Committee" has the task to identify the threats of non state actors more accurately. Unlike the Counterterrorism Committee, the 1540 Committee was established only for a limited time, initially for two years. However, the work of the committee was extended several times and is currently authorized to continue until 2021. This innovation is thus gaining a degree of institutional permanence.

The 1540 Committee developed an extensive reporting system and used some of the methods already tested by the Counterterrorism Committee. The reporting obligations, practiced by these two committees, gave a specific expression to the Chapter VII obligations, providing a framework for the exchange of information reaching beyond the scope of earlier Security Council mechanisms.

Two specific questions arise in this context. The first is whether the expanded activity of the Security Council in areas of counter terrorism and WMDs reaches far enough. The dangers of terrorism and proliferation of WMDs are different from geographically defined crisis situations that constitute the main part of the Security Council's work. Further innovations will be required. The Security Council and its powers under Article 39 of the Charter will have to be at the center of any further evolution. In addition, other UN bodies will have to be included. The role of regional arrangements is likely to grow as well.

The second question is whether the Security Council is overstepping its mandate by pursuing a vigorous role required in the area of counterterrorism. A number of critical comments have been made alleging that the Council is acting *ultra vires*. In particular, the critique emphasizes the issue of »quasi-legislative activity« of the Security Council in such areas as international criminal justice and counterterrorism: The Council lacks the representative character necessary for a legislative role,²² it lacks the necessary geographical representativeness, it allows for disproportionately strong influence of the most powerful²³ and its resolutions are not sufficiently clear and precise to serve as substitutes of treaties and laws.²⁴ Another set of criticisms points out that the quasi legislative role of the Security Council undermines the basic law-making requirement in international law – that of consent of states, and, consequently, the principle of sovereign equality of states.²⁵ The third type of argument is based on the concern that the Security Council's resolutions do not pay adequate attention to the requirements of human rights, which could lead to discrepancies between the international regulation and constitutional law of states. Such a danger doesn't exist in the case

Weapons Convention provide the relevant obligations for state parties. Non state actors are deemed to be under the jurisdiction of states.

²² S. Talmon, The Security Council as World Legislator, 99 AJIL 175 (2005), p.179.

²³ K. Harper, Does the United Nations Security Council Have the Competence to Act as Court and Legislature?, 27 NYU J. Int'l L&Pol. 103 (1994), p. 131.

²⁴ Talmon, op. cit., p. 189.

²⁵ Talmon, op. cit., p. 179.

of international treaties which are negotiated among states and subject to ratification and other procedural safeguards.²⁶

Concerns such as these have to be taken into account in the work of the Security Council. On the other hand, threats to peace resulting from terrorism require a response which is not limited either geographically or in time. The Security Council is therefore bound to take measures of a quasi legislative quality. The traditional treaty based approaches can take care of some but not all aspects of international cooperation needed for an effective counterterrorism.²⁷

Moreover, Security Council work and treaty making can complement each other. Security Council's innovation (the establishment of the two ad hoc tribunals) proved to be a decisive trigger which made the conclusion of the ICC Statute possible. This treaty based approach would probably not have succeed without prior action by the Security Council. In the case of counterterrorism the situation is somewhat analogous. The current needs require speed and flexibility to muster an appropriate response. Only the Security Council can provide such a response. However, this does not preclude subsequent treaty making – either at the global level or between groups of states and the establishment of a stronger legal framework for future activities in counterterrorism.

Among the more recent innovations introduced by the Security Council, the Peace Building Commission and its work requires special attention. Post conflict peace building is one of the fundamental tasks of the UN in the area of maintenance of peace and security. While peace keeping was designed for the immediate security and related tasks after or even during an armed conflict, peace building is necessary to make peace sustainable. The difficulty of this task is illustrated by the frequent resurgence of armed conflicts and long periods of instability, violence and lack of economic and social recovery characterizing the years after an armed conflict.

This problem was addressed in Secretary - General's Agenda for Peace in 1992 and in a number of missions on the ground. In 2004, the High Level Panel on Threats, Challenges and Change proposed a single intergovernmental organ dedicated to peace building, empowered to monitor and pay close attention to countries at risk, ensure concerted action by donors, agencies, programs and financial institutions and mobilize financial resources for sustainable peace - a peace building commission.²⁸

This proposal received strong support and the following year the Peace Building Commission was established as a subsidiary organ of the Security Council. The subsequent years demonstrated the complexity of the task, the difficulty of bringing together the "fragmented" elements of the UN system that have to

²⁶ J. Alvarez, Hegemonic International Law Revisited, 97 AJIL 873 (2003), pp. 875-876.

²⁷ P. Szasz, The Security Council Starts Legislating, 96 AJIL 901 (2002), pp. 904-905.

²⁸ A More Secure World: Our Shared responsibility, Report of the Secretary-General's High-Level Panel on Threats, Challenges and Change, United Nations 2004, paragraphs 261 - 265, pp. 83-84.

cooperate in the post conflict peace building and, above all, the inherent sensitivity of making the post conflict peace building activities of international actors a matter of "national ownership" of the host country. A comprehensive review of the post conflict peace building "architecture" was initiated in 2014 and is still in progress. However, some of the main findings of the review conducted by the Advisory Group of Experts were made public at the end of June 2015 and they demonstrate the nature of difficulties involved.²⁹

The key question that arises in this context is how to better help sustaining peace after the period of an intense armed conflict? This requires a long term international engagement and careful international assistance aiming at the "national ownership" of peace. At a time when the armed conflicts are increasingly complex, this task has become more demanding than ever before.³⁰

The Advisory Group pointed out that a key problem for the UN is the fragmented nature of its system, which makes the peace building architecture less effective than it should be. Moreover, according to the Advisory Group, states are part of this problem and have to become part of the solution. The Group emphasized the role of the Security Council in promoting coherence of thinking and action at the intergovernmental level.³¹

This is an extremely difficult task for the Security Council, which is already burdened by the heavy agenda involving a large number of ongoing armed conflicts and, sometimes, by divisions among its members. How can an overworked and internally divided Council improve general coherence of peace building activities of member states and international organizations, programs, funds and agencies? Clearly, an effort for coherence has to be based on a coherent policy approach of the Security Council itself.

An effective peace building activity also requires improved timing and management of operations, effective partnering with regional organizations and other relevant international actors, predictable financing and effective leadership. All these qualities have to be in place over an extended period of time since no post conflict peace building operation can succeed immediately. Slow progress, frequent setbacks and domestic political problems of the countries where peace building operations are taking place are standard features of these operations. Moreover, external actors, among whom the UN is often not the only and sometimes not even the most influential one, have to accept the idea of national ownership of the peace building. Securing national ownership of and national responsibility for peace is the ultimate objective of international efforts for the sustainable peace.³²

This brief overview of some of the most typical innovations carried out by the Security Council shows the nature of change in the UN's effort for the maintenance of international peace and security. The change has

²⁹ The Challenge of Sustaining Peace: Report of the Advisory Group of Experts for the 2015 Review of the United Nations Peacebuilding Architecture, United Nations, 29 June 2015.

³⁰ Ibidem, para. 7. pp 12-13.

³¹ Ibidem, paragraphs 61- 68, pp. 25-27.

³² Ibidem, paragraphs 130-190, pp 48-59.

been remarkable and can be described as reform by innovation. Whether this change was sufficient remains open to discussion. However, there is no doubt that considerable improvement has taken place.

II. Reform as Adaptation - Economic and Social Development

The UN Charter contains extensive provisions on the international economic and social cooperation and on the Economic and Social Council.³³ Solving economic and social problems has been recognized as an important element of peaceful international cooperation and included among the purposes of the UN.³⁴ However, unlike in the field of maintenance of international peace and security, the UN was not given the tools of effective decision making in the field of economic and social development. They belonged, already at the time of creation of the UN, to the IMF and World Bank, and later to GATT, today WTO. This is an important systemic characteristic that could not be changed by recommendations of the Economic and Social Council or by coordination of the specialized agencies. Moreover, all subsequent developments have shown that a robust institutional reform that would strengthen the UN's role in international economic and financial decision making was not possible.

The response of the UN in these circumstances has been and continues to be - adaptation. Can adaptation amount to an effect that could be described as reform of the system? The answer to this question is not as simple as it would seem. The long history of adaptation has developed two important roles for the UN and its programs, funds and agencies. The two areas where adaptability and practical adaptation of the UN amount to reform are financing of development and conceptualization of the key aspects of development policies.

The UN has, from its early days, focused on financing of "growth in the underdeveloped areas". In 1949 President Truman initiated the Expanded Program for Technical Assistance (EPTA), supplemented later by the Special UN fund for Economic Development (SUNFED). In 1965 the two funds merged into the UN Development Program (UNDP).

Development Financing has been a permanent subject of discussion and recommendations of the UN General Assembly and various development conferences. Two recent ones among them have been particularly significant: The Monterrey Conference of 2002 that gave rise to a significant global consensus on the raising of levels of international resources for development and the Addis Ababa conference of July

³³ Chapters IX and X of the UN Charter, Articles 55 - 72.

³⁴ Article 1, paragraph 3 of the UN Charter.

2015 that showed the way towards a complex and innovative system of development financing that supplements the official development assistance with a variety of innovative sources.³⁵

The other important area of UN role has been the conceptualization of development. In 1960s and 1970s the General Assembly adopted two decennial development strategies. These strategies put the needs of the newly independent countries, members of the UN emerging from the process of decolonization, at the center of attention. In the mid 1970s a "New International Economic Order" was proposed as an attempt to change the international economic relations in the direction of redistribution of the benefits of growth.³⁶

However, the effort of the developing world to formulate a workable agenda of international economic restructuring did not and could not succeed. Instead, the instruments of the global market model of development were strengthened. Many countries of the global South ended in the 1980s with adjustment programs imposed by the IMF. Austerity and structural adjustment temporarily prevailed.

The hardship resulting from the adjustment policies led to a reaction in the UN system with the emphasis on ethical aspects and the human dimension of development. The UNICEF work on "adjustment with a human face" and the General Assembly's Declaration on the Right to Development³⁷ are examples of the former. UNDP's human development reports are among the main expressions of the latter.

The demise of the idea of a New International Economic Order and the end of the cold war changed the world. According to some experts, that change created a vacuum that could lead to the collapse of the international development cooperation.³⁸ Whether or not that assessment was correct, the UN system responded to the changed situation in a meaningful way - by convening a number of global conferences on the main aspects of development: environment, human rights, population, women, social development and urbanization.

These conferences have offered a mature and sophisticated response to the question of what constitutes development in the post cold war world. Their importance cannot be overemphasized. Moreover, they provided a solid base for a new initiative launched by the UN Secretary - General, the Millennium Development Goals, proposed in the year 2000. The Millennium Development Goals (MDGs) focused on the reduction of poverty, improvement of basic health and education, including maternal health, and ensuring

³⁵ The discussions on development financing have been particularly intense in the years 2013 - 2015. The UN Secretary-General has reported about these discussions and put them in context: His Synthesis Report on the Post-2015 Sustainable Development Agenda (A/69/700 of 4 December 2014) offers a general approach to the long term development issues of our era and a concise statement of development financing (paragraphs 87 - 118).

³⁶ Declaration on the Establishment of the New International Economic Order, General Assembly Resolution 3201 (S-VI) and Programme of Action, General Assembly resolution 3202 (S-VI); Charter of Economic Rights and Duties of States, General Assembly resolution 32811 (XXIX), all documents adopted in 1974.

³⁷ General Assembly Resolution 41/128 of 4 December 1986.

³⁸ Nitin Desai, The Monterrey Consensus, in Irrelevant or Indispensable, The United Nations in the 21st Century, Paul Heinbecker and Patricia Geoff (eds.) Wilfried Laurier University Press, 2005, p. 44.

environmental sustainability. They were simple and "crisp enough to cope with the attention deficit disorder on development issues in the media and in the higher reaches of government."³⁹

The MDGs gave new impetus to the international development discussion and policy making. They helped the achievement of the "Monterrey consensus" on financing for development (2002) and were used as a set of benchmarks for policy making in the developing world. Countries that succeeded in reaching their own development objectives often quoted MDGs as the key standards for measuring success in development policy making. China and India were most visible among them and several countries of Latin America followed a similar approach of using MDGs as the key point of reference in their own policy making.

It is important to understand the emergence of the MDGs in their historical perspective and in their potential for the future. They were not an arbitrary proposal but a result of distillation of prior UN activities in the fields of economic and social development and a realistic framework for both, national policy making and international development cooperation in the future. They certainly represented an important improvement in the role of the UN relating to economic and social development.

About a decade later further steps were taken. To assess the progress made since 2000 and to propose the agenda for the next fifteen years, a high level panel was appointed by the UN Secretary-General. The Panel submitted its report in 2013 and emphasized that the thirteen years since the proclamation of MDGs "... have seen the fastest reduction of extreme poverty in human history: there are half billion fewer people living below the international poverty line of 1,25 \$ a day." Substantial progress was reported in such areas as reduction of the levels of child mortality and death of malaria.⁴⁰

This assessment was important both from the policy and institutional points of view. It demonstrated the usefulness of adaptation of the UN to the economic and political circumstances of the post cold war era. The global conferences and MDGs offered a meaningful policy orientation without any major restructuring of the UN bodies in the field of economic and social development. In a purely institutional sense, a reform of the UN system was not possible. From a policy perspective it was not necessary, since the adaptation of work of the UN offered a meaningful result.

The question emerging in this situation is necessarily related to further tasks. Three of them have emerged almost automatically. The fourth one will require further discussion.

The first task was to negotiate the next set of development goals for the period 2015 - 2030. That task was successfully accomplished in 2014, when an Open Working Group of the General Assembly produced a set

³⁹ Ibidem.

⁴⁰ A New Global Partnership: Eradicate Poverty and Transform Economies Through Sustainable Development, United Nations Publication, 2013, pp. 1 and 27.

of seventeen "sustainable development goals" (SDGs) for the period 2015-2030.⁴¹ Compared to MDGs, the SDGs are more ambitious and more comprehensive. Moreover, they expanded the notion of sustainability of development beyond the initial scope of environmental protection to the area of social sustainability and inclusiveness of societies, as well as to the strengthening of the rule of law.

The second task relates to the financing for development. The Monterrey consensus of 2002 has to be supplemented by a new, more comprehensive approach. The Secretary General's synthesis report of 2014 summarized the suggested future approach.⁴² In July 2015 the Conference on Financing of Development was convened in Addis Ababa and produced a consensus document, the "Addis Ababa Action Agenda" to serve as the basis for decisions to be taken at the UN Summit in September 2015

The third task relates to the need for improved monitoring of policies. The High Level Panel for the post 2015 Development Agenda called for a substantial improvement in monitoring by an independent and rigorous monitoring system with regular opportunities to report on progress and shortcomings at high political levels.⁴³ The information revolution has generated entirely new possibilities for using the available data for policy making purposes. In addition to better use of statistics and further evolution of development indicators, the implementation of the SDGs should be assisted by the use of the vast quantity of data from social networks, blogs, on line commerce, commercial cell phone messages etc.

The fourth task relates to the question of potential structural change and is closely related to the three prior ones. Does the recent evolution of the UN development work call for a larger institutional reform or will the tradition of adaptation suffice?

This question has been present since the early days of the UN. Over the last decades it has gained additional significance and a sense of urgency. The concept of development has become more comprehensively and systematically defined. The results achieved so far have created new expectations and the question of institutional change has become more pressing. However, the answer is not necessarily in the affirmative.

It is widely recognized that the UN system has several unique strengths: The UN has a unique global legitimacy and a strong convening power for global policy discussions and, at least indirectly, for policy making. Over the years the UN has developed precious expertise and a sense of objectivity that make it a valuable partner and advisor. Its ability to mobilize funds has been proven in a number of situations, in particular at times of natural disasters that created a heavy strain on development capacities of the affected countries. Finally, the UN combines its role in norm creation, standard setting and articulation of development indicators with experienced programming and operational capacity.

⁴¹ Doc. A/68/970.

⁴² Doc. A/69/700, pp 20 - 25.

⁴³ A New Global Partnership...., pp 21 - 23.

At the same time, the UN suffers from a number of well known systemic shortcomings. Among them the fragmented nature of UN programs funds and agencies as well as their frequently overlapping mandates are often criticized. Insecure and unpredictable funding and occasional inadequacy in the efforts to address the development priorities of the program countries are also a subject of critique. The effectiveness of different UN entities varies. UN also does not always provide the necessary "lessons learnt" information showing the effects of its development efforts.

The central question - from the institutional point of view - is how to ensure the highest attainable level of coherence within the system. In 2005 the UN Summit (convened on the occasion of the Organization's 60th Anniversary) authorized the creation of a high level panel on system-wide coherence.⁴⁴ The subsequent discussions generated the policy focus termed "delivering as one" (DaO) which strengthened the coordination and coherence of the UN country teams consisting of the UN programs, funds and agencies working in a given country. This is a necessary and promising approach. The UN development work has to be guided by the needs of "the field". All the functions and institutions should ideally be field driven so as to ensure the relevance to the actual development needs.

Looking at the UN development work from the perspective of the system as a whole, there are several fundamental functions that have to be performed, based on the demands of the UN teams in the field. The most prominent among them is the provision of responsible and sophisticated policy advice to governments. Such advice must be based upon the existing experience gained in the development work in different parts of the world. This, in turn, requires a good analysis of the existing impact of development policies and of specific policy decisions. Monitoring has to be developed to new levels. Collection and disaggregation of data and using new sources of data has become an important priority among the functions of the UN Development system. Developing more sophisticated systems of indicators, targets and techniques of measurement is a function which will necessitate additional investment.

Partnership with actors outside the UN is becoming ever more important. In areas such as public health, in particular in the struggle against HIV/AIDS and malaria various innovative techniques of partnership with NGOs, businesses and private foundations have proven both necessary and effective. In the context of financing for development it has become clear that partnership with private investors and innovative financing are among the most important orientations for the future. Partnership for sustainable development data is necessary to enable the best use of specific expertise and to draw know - how from different institutions from inside and outside the UN.

The question of partnership relates both to the policies and institutions of the UN development system. Development needs already drive many of the necessary partnerships and forms of partnering. However, the

⁴⁴ Panel's Report in UN doc. A/61/583.

fundamental question of adequacy of the institutional setting of the UN and potentially necessary reforms of the UN structures and institutions remains and has to be addressed.

The high level panel on coherence of the UN system rejected the idea of merging all the entities of the UN development system. It is recognized that many individual funds, programs and agencies can be most effective by providing their services individually. At the same time it has to be clear that removal of duplication, clearer delineation of roles and mandates and better coordination and coherence in action are necessary. This is one of the basic needs of the UN system that has existed since the early days of the Organization. The progress made in the context of Delivering as one initiative (DaO) is encouraging and it shows the way forward. This approach will no doubt require further technical refinement, such as the full use of the Standard Operating Procedures and closer cooperation among the UN entities in planning and implementation of plans. It will probably also require further strengthening of the authority and powers of the resident coordinators and further improvement in coherence of the UN country teams.

The UN development system should be field driven. Both the needs as well as the experience gained in the field are essential for an adequate definition of functions and policies pursued at the level of the Organization and for the institutional design of the decision making processes. This should also enable the much needed strengthening of the Economic and Social Council and would justify an increasingly high level participation of member states in the work of the ECOSOC. The ambitious proposals made in the past to replace the ECOSOC with a new principal organ or to transform it along the lines of the Security Council could not succeed. Revising the UN Charter is difficult for constitutional, political and functional reasons. Therefore, a "bottom up approach" seems much more adequate: Strengthening coherence at the field level, making policy-making more complete and sophisticated, developing a wide network of partnerships between the UN development entities and outside actors and strengthening the existing bodies, in particular ECOSOC, seems both realistic and necessary.

This approach, however, does not exclude the possibility to merge the boards of different UN programs funds and agencies or even replacing them with a new role for the ECOSOC itself. However, even if ECOSOC became a board of several or most development entities in the UN system, this would still represent yet another form of adaptation. In matters of economic and social development adaptation appears to be the most adequate concept of reform for the future.

III. Reform as Institutional Change: Human Rights

Promotion of Human rights, the principle of non-discrimination and the right of peoples to self-determination are the main substantive emphases related to human rights in the UN Charter.⁴⁵ The only institutional aspect

⁴⁵ Preamble of the UN Charter, second paragraph; Article 1, paragraph 3 and Article 55 of the UN Charter.

defined in the Charter is the reference to the Commission on Human Rights - to be established as one of the functional commissions of the Economic and Social Council.⁴⁶

These rudimentary provisions served as a point of departure for significant legal and institutional development of the UN. The substantive code of human rights was authoritatively defined by the Universal Declaration of Human Rights on 10 December 1948. This represented a historical achievement and creation of the global human rights platform. The Commission on Human Rights, established in 1946 contributed to the Universal Declaration and subsequently played a significant role in the preparation of the two Covenants on Human Rights and a variety of other human rights instruments. In the first two decades of the UN significant progress was made in building the normative framework for the subsequent UN action in the field of human rights.

The need for a stronger institutional structure to strengthen human rights activities was felt from the early stages of the UN. The ideas to establish an office of the high commissioner for human rights and a human rights council as an additional principal organ of the UN were among the clearest expressions of that need. However, the time for institutional change was not ripe until much later. The intervening decades were characterized by the growth of the number of expert committees established by the human rights treaties and by the growing emphasis on implementation of human rights standards as well as by development of "special procedures" to address specific violations of human rights.

In general, the period since mid 1960s to our era can be described as a four stage development. The first stage, until mid-seventies, was predominantly the time of standard setting and global policy deliberations. The cold war constraints were still determining the scope of UN action. Although the UN has been receiving the complaints about human rights violations in an increasingly organized fashion,⁴⁷ the situation - specific critique was limited to the combat against *apartheid* in South Africa and, later, to the situation in the territories occupied as a result of hostilities in the Middle East.

The situation started to evolve in mid 1970s. One of the earliest and most visible examples was the establishment, in 1975, of the working group to study the violations of human rights in Chile, following the 1973 coup d'etat.⁴⁸ The subsequent years witnessed an unprecedented growth of UN mechanisms for the implementation of human rights, both those established within the Commission on Human Rights as well as those based on international human rights treaties that entered into force in that period. The UN system in the field of human rights was transformed.

⁴⁶ Article 68 of the UN Charter.

⁴⁷ See, for example the resolutions of the Economic and Social Council 1235 (LII) of 1967 and 1503 (XLVIII) of 1970 that defined the procedures, both public and confidential for consideration of communications that reveal systematic patterns of human rights violations.

⁴⁸ Resolution of the Commission on Human Rights 8 (XXXI) of 27 February 1975.

This evolution coincided with an important political development of global significance: The growing importance of human rights as an engine of social and political transformation. Human rights had become ever more strongly accepted by popular movements for change and a global factor of political transformations. This evolution brought about the demise of *apartheid*, the democratic transformations in Latin America, the growing number of democracies around the world and, eventually, the collapse of the Soviet Union and the communist regimes. The global political landscape was radically changed as a result.

The ending of the cold war era was characterized by the growing importance and transformative effect of human rights. This is why it is justified to describe the period between the mid - 1970s and the ending of cold war in the late 1980s as "the age of human rights". Its achievements opened the way to the next, i.e. the third stage of the evolution of human rights system within the UN.

The 40th anniversary of the Universal Declaration of Human Rights in December 1988, while still being held in a cold war environment, already suggested new policy priorities and a changed institutional design of the UN work in the field of human rights. The focus on implementation of human rights was sharpened with the emphasis on the need to "end impunity for human rights violators", an emphasis that was to have a great impact on the human rights work in the subsequent decades. Moreover, the idea to convene a global conference on human rights with the aim to establish a new platform and strengthen the UN institutional system in the field of human rights emerged at the time. Five years later, in 1993, the world conference on human rights met in Vienna. However, the conference met in new circumstances and with new limitations.

The euphoria of the ending of the cold war era was short lived and was quickly overwhelmed by new problems. The wars in the area of former Yugoslavia generated atrocities that shocked the conscience of the mankind. When the World Conference on Human Rights met in Vienna in June 1993, the delegates could understand the limits of their work by simply thinking about the atrocities happening in Bosnia and Herzegovina, merely a few hundred kilometers away from the site of the conference. In one of the bitter ironies of history, the call to end impunity was met by a challenge of hitherto unimaginable dimensions. That situation was exacerbated further the following year by the genocide in Rwanda. The third phase of evolution of the global human rights situation, in the aftermath of the ending of the cold war, was marked by massive atrocities, war crimes, crimes against humanity and genocide. This has had a huge impact on the subsequent institutional evolution within the UN.

The World Conference on Human Rights of 1993 produced a carefully negotiated document, the Vienna Declaration and Program of Action⁴⁹ and paved the way towards creation of the office of the UN High

⁴⁹ World Conference on Human Rights, The Vienna Declaration and Programme of Action, June 1993, UN Publication, DPI/1394-39399-August 1993-20M.

Commissioner for Human Rights.⁵⁰ This could be described as an important institutional step forward. However, it is necessary to understand it in the context of the whole.

Ironically, the Vienna Declaration and Program of Action, the main document resulting from the World Conference, offers the possibility for a succinct assessment of the situation. In the preamble, the document states that the "...spirit of our age and the realities of our time...call upon peoples of the world and States members of the United Nations to rededicate themselves to the global task of promoting and protecting human rights and fundamental freedoms so as to secure full and universal enjoyment of human rights."⁵¹

That statement was a typical expression of the belief at the time and of the inherent optimism of human rights activists. However, the atrocities of 1990s demonstrated that the brutal "realities of our time" clearly prevailed over the optimistic "spirit of our age".

In these circumstances, the newly established office of the High Commissioner for Human Rights⁵² had to address a variety of unexpectedly difficult problems resulting from the armed conflicts in the 1990s. The need for strengthened field presence, not much developed by the human rights segment of the UN at the time and better mainstreaming of human rights into other UN activities represented major challenges. Moreover, these challenges were compounded by the usual bureaucratic difficulties accompanying the creation of a new UN office. It took a long time and dedicated work of a succession of High Commissioners to develop the office to the level envisaged at the time of the World Conference on Human Rights.

In the meantime, the most significant human rights action had moved to the UN Security Council. The creation of ad hoc criminal tribunals for former Yugoslavia in 1994 was the beginning of creation of series of international or mixed, national/international courts and tribunals to try persons responsible for the most heinous and massive crimes committed in our era.⁵³

The innovation of the UN Security Council became a significant element of support to the human rights action of the United Nations. This was both realistic and paradoxical. The scope and the nature of violations of human rights characteristic for the post cold war era clearly demanded engagement of the Security Council, the most powerful body of the UN charged with the "primary responsibility" for the maintenance of international peace and security. Creation of criminal courts and tribunal by the Security Council was also an innovation not specifically envisaged by the UN Charter and not resulting from its strict, textual interpretation. A teleological interpretation was needed.

⁵⁰ Ibidem, para. 18, p. 49.

⁵¹ Ibidem, p. 28.

⁵² General Assembly resolution 48/141.

⁵³ See above, at note 18.

The tragic paradox was that the teleological interpretation of Chapter VII of the UN Charter and consequent establishment of international criminal tribunals came as a result of the inability of the Security Council to muster effective action for prevention or termination of atrocities. It is paradoxical that the most significant institutions for human rights in the post cold war era were created in conditions of the UN's failure to fulfill its task of preventing or stopping wars and maintaining international peace and security by diplomatic and military means.

However, the importance of the institutions built in this tragic era should not be underestimated. As Kofi Annan, the former UN Secretary - General observed, "...In the face of the war crimes, crimes against humanity and genocide, the default position of the international community is now accountability, not impunity".⁵⁴ To the extent this statement reflects the actual change in attitude, the progress made in the period between the ending of the cold war and the beginning of the 21st Century can be judged as having produced a change of historic proportions. International Criminal tribunals and the ICC are an institutional expression of an important evolution at the level of consciousness of the international community as a whole.

The fourth stage of development of the UN human rights system coincides with the developments in the first decade of the current century. The office of the High Commissioner for Human Rights gradually strengthened its role in the UN system.⁵⁵ This was expressed in the strengthening of its advisory functions vis a vis governments, in the growing number of field offices and in other forms of field presence as well as in the strengthened "mainstreaming" of human rights in the UN activities in general. In 2013, the idea of "human rights up front" was proposed by the UN Secretary General as a guiding principle for the work of the UN.

In the early years of the present century, the Commission on Human Rights became gradually perceived as having largely fulfilled its historic mission and had become a victim of an unacceptable level of politicization. Over time the practice of frequent election of the same member states and, in particular, states with poor human rights records, transformed the Commission into a political arena where political confrontations prevailed and the credibility of the Commission became eroded.

As mentioned earlier, the idea of creating a Human Rights Council as one the principal organs of the UN has been occasionally raised in human rights circles since the early days of the UN. Finally, at the time of the 60th Anniversary of the UN in 2005, the situation was ripe for a renewed effort. The Secretary - General included the idea into his report on UN reforms in 2005.⁵⁶ The debate that followed quickly showed that the general idea was accepted by the member states. However, a revision of the UN Charter was not possible.⁵⁷

⁵⁴ K. Annan, *Interventions*, Allen Lane 2012, p. 151.

⁵⁵ See F. D. Gaer, C. L. Broecker, *The United Nations High Commissioner for Human Rights*, Nijhoff 2014.

⁵⁶ Report of the Secretary-General, A/59/2005, paragraphs 181 -183.

⁵⁷ The Secretary-General's report envisaged creation of the Human Rights Council as a principal organ of the UN, within his vision of a "three councils structure" (Security Council, Economic and Social Council and Human Rights Council), *ibidem*, paragraphs 165 and 166.

Therefore, the new Human Rights Council was to become directly linked to the General Assembly. It was also agreed that it should be smaller in size than the Commission on Human Rights and that the Council should meet several times a year so as to allow greater continuity of its work and better attention to the variety of human rights issues around the world.

There were two additional procedural innovations. The first was to establish a universal periodic review of human rights situation in all member states of the UN and to ensure that reviewers - i.e. the members of the Human Rights Council - are reviewed first, in the initial year of their tenure. This idea was adopted with relative ease and has proven useful in practice. It also has an additional effect: already at the time prior to its election to the Human Rights Council, the candidate country has to present its own human rights record, as it is expected to be reviewed by the Council at an early stage.

The second innovation was in the rule that a member of the Human Rights Council can serve two consecutive terms at most. This is expected to increase rotation and prevent the creation of a category of "quasi permanent" members of the Human Rights Council - a political phenomenon that had contributed significantly to the politicization of the Commission of Human Rights.

The Human Rights Council was established in 2006. In the subsequent years it has developed a profile that represents an improvement. However, it is still too early for a judgment as to its actual effect. One of the factors to be taken into account will be the assessment of the quality of policy and leadership resulting from the changes in the system. The Human Rights Council and the High Commissioner are central in the system that includes around fifty special rapporteurs dealing with a variety, mostly thematically defined problems of human rights and a dozen of expert committees established by international human rights treaties. The system is sometimes criticized as unwieldy and requiring "streamlining". It seems logical that the set of treaty monitoring bodies be replaced by a single UN committee to monitor the implementation of all UN standards and to ensure coherent interpretation of these standards and focused policy recommendations.⁵⁸ However, this would require a well coordinated revision of a number of UN treaties with diverse state parties, a task close to impossible at the current stage of development of the UN system.

A more immediate priority relates to the evolution of the role of the High Commissioner for Human Rights. In a system in which the level of mainstreaming of human rights has been raised and where the number of expert groups and special procedures has grown substantially, strategic management becomes a vital necessity.⁵⁹ The setting of policy priorities and the general direction of further development of human rights institutions will be among the main tasks of the future evolution of the UN as a whole. Innovation and adaptation are more likely than further institutional change.

⁵⁸ A discussion on this idea in P. Alston and J. Crawford (eds.), *The Future of the UN Human Rights Treaty Monitoring*, Cambridge, 2000.

⁵⁹ F.D. Gaer and C. L. Broecker, op. cit. pp. 155 -156.

IV. The future of UN reform and UN reforms of the future

Discussions about UN reform are as old as the organization itself and it is certain that they will continue in the future. Reform proposals are likely to vary in content and nature. It is useful to keep in mind the diversity of reform proposals and to understand the basic nature of each among them. In that sense the future proposals are likely to fall within the three categories, i.e. "three concepts" of UN reform: innovation, adaptation or institutional change. A variety of combinations of these basic features is possible.

However, like in the past, a complete overhaul of the organization doesn't appear to be likely. The UN is designed to preserve a high degree of institutional stability. While this may be frustrating for the proponents of different reforms, it has to be understood in the historic and constitutional context in which the UN was established. The 70th Anniversary offers a good reason to do that.

The statesmen who founded the UN had valid historical reasons to value institutional stability with particular care. The experience of the League of Nations, and in particular the lack of permanent participation of the great powers in the security architecture of the League of Nations was a major structural shortcoming. It was understood that a permanent concert of the great powers within the UN was vital for its success and, indeed, for its very survival. Therefore, it was agreed "at the time of creation"⁶⁰ that the Permanent Members of the Security Council should have a decisive say not only with regard to the issues of war and peace, but also with regard to any proposed revision of the UN Charter. This arrangement was seen as a vital guarantee for their continued participation in the UN. As regards the Security Council itself, their permanent status and their veto power were designed as a guarantee against the danger that the UN security Council became a "fair weather" security body, unable to withstand unfavorable international situations and tensions among the main powers. As the developments in the UN history have shown again, the wisdom of the founders of the UN remains valid, irrespective of frustrations, disappointments and critique regarding some of the actions or inactions of the Security Council.

The second guarantee of institutional stability of the UN is enshrined in its most fundamental principle: The organization is based on the sovereign equality of its member states. Sovereignty of states remains the cornerstone of international order and fundamental for the UN. Obviously, state sovereignty is modified through the operation of international law and is softened by globalization. Nevertheless, sovereignty remains fundamental. Without it no international order can exist now or in the foreseeable future. Moreover, the recent economic and financial crisis has once again demonstrated the uncertainties characterizing the global

⁶⁰ For a lively account of the process leading to the establishment of the UN see S. C. Schlesinger, *Act of Creation, The Founding of the United nations*, Westview Press, 2003.

market system and added to the argument in favor of responsible and sophisticated regulation of finance and economy by states and by international, i.e. inter-state organizations. Even in the European Union, the most integrated regional system currently in existence, the importance of nation states has been given additional meaning in the current efforts to overcome the current crisis.

The UN continues to be an important repository of the principle of state sovereignty. Concrete manifestations of sovereign will of UN member states are expressed in daily decision making in all the organs of the UN. Discussions and decisions on UN reforms - innovations, adaptations and institutional changes belong to the exercise of state sovereignty. This makes the discussions of UN reform demanding. The authors of reform proposals must have not only good ideas, but also, and above all, ideas that the UN member states can accept. It is important to understand that the collective exercise of state sovereignty, in an inclusive global organization that has already reached the level of universality generates the international legitimacy that, in turn, makes UN reforms globally significant. All Secretaries-General of the UN have discovered that success of their reform proposals vitally depended on the sovereign will of the UN member states. At the same time, they have helped the member states better to understand the need for specific elements of change. In that way they opened the way to reforms.

An important aspect of today's needs for further reforms was expressed in the reports of the above mentioned panels on peace operations and on post conflict peace building. Both reports emphasized the need for further change - i.e. adaptations, innovations and institutional change to be field driven and aimed at the strengthened coherence of the UN system. While the role of the Security Council will be central, all parts of the UN system, including its funds, programs and agencies active in the field of economic and social development, as well as human rights bodies, will be expected to participate.

The efforts for further strengthening of coherence of the UN system have to be focused on but not limited to the field operations. Delivering as one is important at the global level as well. This will certainly require adaptation and innovation at the level of policy making and a careful design of the needed institutional change.

Each reform is a process, not an event. As the above review has shown, each of the three concepts of reform requires an understanding of the temporal dimension, causal links and ripeness of situations that call for further change. Moreover, each reform, no matter how specific in its substance, has system-wide implications because it adds to changes that transform the system gradually over a longer period of time. It is important for the organization and its leaders to have a clear sense of the needed long term priorities for the system as a whole. Two such areas present themselves with great force today: climate change and migrations.

In the past years the policy discussions around climate change concentrated on the nature of the threat, the pledges to reduce the amounts of green house gas emissions, the needed mitigation of the effects of the global warming and adaptation to the expected climate change as well as on the international mechanisms that would give concrete meaning to the concept of shared, but differentiated responsibility for action. These efforts will culminate with the conference on global warming to take place in Paris at the end of 2015 and will have to continue in the future.

In addition, the UN should encourage a new approach that would put the idea of green growth at the center and demonstrate that green growth is not only logical but also achievable as a long term policy choice. Good practices from around the world need to get more attention and the UN, together with its partners, should be the key driving force of change. The objective should be to convince decision makers in politics as well as in business, that green growth can be achieved without great pain. The convening power and legitimacy of the UN should be used as major assets in globally organized action. This will require from the UN to use its experience to adapt, to innovate and also to engage in the necessary institutional change.

This is a task of system wide importance. Obviously, the programs, funds and agencies, the Economic and Social Council and the General Assembly should be involved. At the same time, the human rights system in the UN will have to develop additional ways to address the problems of human rights arising from climate change. The Security Council should continue and deepen its discussion on the security threats arising from climate change and make its assessment of these threats public. Preventive action requires a clear and competent assessment of security threats, a better awareness about these threats and innovative approaches to reduce the dangers.

The second major priority relates to human migrations. The UN should address the questions of migrations more comprehensively than has been the case so far. Again, a system wide approach is increasingly necessary. Humanitarian assistance to refugees and internally displaced persons will have to be strengthened. The work of the High Commissioner for Refugees will have to be strongly supported and complemented by additional humanitarian assistance to address the dramatically rising needs of refugee populations and the growing numbers of internally displaced people. Partnership with regional organizations and with donor governments will have to be developed further. Human rights bodies will have to address the variety of human rights questions that arise in the context of migrations and exoduses and which supersede the limits of the existing refugee law and the norms of the UN Convention on the Rights of Migrant Workers.

While adaptation in the areas of humanitarian assistance and human rights will be necessary, innovations have to take place in the area of economic and social development. Migrant populations, including refugees and internally displaced persons, possess an important productive potential. Knowledge and skills, wherever they exist, should be recognized and given opportunity. Education and vocational training of young people in

the dire situations of forced migrations should not be neglected. Even investment in manufacturing in areas populated by large refugee populations should be considered as one of the strategies to address the problem

Investment in refugee children, displaced persons and migrants in general is difficult to mobilize. However, it is increasingly necessary, both as a development challenge and as a need to prevent future security risks. The UN should stimulate thinking about a new approach and should, in cooperation with different partners, design appropriate practical solutions.

At the same time, long term and stable solutions to problems have to start with addressing their root causes. This brings us back to the question of maintenance of international peace and security. Establishing peace is the way to creating conditions for the return of refugees and for the post conflict peace building.

Maintenance of international peace and security prevents the refugee flows and mass exoduses and represents the central purpose of the UN. The Security Council with its formidable legal powers and capacity will remain central in the future. Peace making will be an essential task for the UN in the future.

In matters of maintenance of international peace and security there is no substitute for cooperation among the permanent members of the UN Security Council. They continue to bear a special responsibility for the functioning of the international system as a whole. The accumulation of security problems today and, above all, the explosion of the problem of refugees and displaced people - a clear symptom of a dangerous malaise - call for a renewed effort. A global security compact among the permanent members of the UN Security Council is called for. Such a compact would have to address the main security challenges of our time, including a comprehensive approach to the situation in the larger Middle East, the "world's fault line" of today.⁶¹ A global security compact, non-binding, while politically sophisticated and robust, was due but could not materialize at the time after the ending of the cold war. The intervening years have brought additional experience and new crises that add to the urgency of the task. The innovations of the past decades and recent examples of successful cooperation in addressing such complex issues as the nuclear program of Iran should be strong motivating factors for the future efforts in the area of the larger Middle East.

The authors of the Charter of the UN understood that global order requires permanent cooperation among the major powers lest the world descended into chaos. Seventy years later the world should not only understand the importance of their achievement, but also the need to build on that achievement - by innovation where possible, adaptation where necessary and institutional change whenever the new developments require a more solid basis for the future action. END

Ljubljana, 31 August 2015

⁶¹ K. Annan, Interventions, 2012, pp 251-315.