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REFORM OF THE UNITED NATIONS

According to Mr. Kofi Annan, UN Secretary-General, in his report "In larger freedom: towards development, security and human rights for all"

COMMENTS AND PROPOSALS BY :

AMERICAN ASSOCIATION OF JURISTS (AAJ)
AND
EUROPE – THIRD WORLD CENTRE (CETIM)

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A. INTRODUCTION

By publishing his report on the reform of the United Nations, on the 21st of March[1], the UN Secretary-General Kofi Annan caused quite a stir. Entitled 'In Larger Freedom: towards development, security and human rights for all' the document starts impressively, however, the contents hardly live up to the title's promise.

In fact, although the Secretary-General wishes to undertake a complete reform of the United Nations system, a careful reading of his report shows that his proposals do not address any of the UN's fundamental problems.

The proposals concerning the enlargement of the Security Council amount to mere cosmetic measures and do nothing to further its democratization.

Regarding his vision for development, Kofi Annan fails to mention the triumvirate of the IMF/WTO/World Bank that dictates the economic policies of member states, the consequences of which undermine state sovereignty and are catastrophic for the majority of humanity.

Finally, it seems that the UN human rights mechanisms will ultimately bear the burden of all this shuffling.

Moreover, the ratification process for these proposals is difficult questionable, given how the Secretary-General is pressing member states to adopt his proposals as rapidly as possible so that he can submit them to heads of state when they meet in New York in September at the follow-up meeting to the Millennium Summit. Now, given the issues, it is necessary that the people debate the reform proposals and that the reforms not remain the exclusive preserve of the diplomats.

Of course, it is widely acknowledged that the United Nations is in need of reform[2]. Nevertheless, it seems to us that the proposed reforms are inadequate.

Before analyzing the Secretary-General's proposals and suggesting others for the reform of the United Nations, an overview of the current situation of the Security Council is necessary.

B. ASESSMENT OF THE SITUATION

On the 26th June 1945 representatives of 51 States adopted the United Nations Charter. On 24th October that same year, the UN was founded. Between these two dates, during the month of August, the United States, one of the main drafters of the Charter and founders of the organization, dropped an atomic bomb upon Hiroshima and another upon Nagasaki. These crimes are amongst the most atrocious in History because they were not military necessary, as recognized later by Eisenhower. They destroyed civil population knowingly. Survivors have suffered important consequences due to radioactivity's effects, many of them died some years later after terrible agony.

The UN's double face is drawn from now on: on the one hand the speech, on the other the practice, which runs usually counter to the speech.

[1] 'In Larger Freedom: towards development, security and human rights for all' (A/59/2005).

[2] 'ONU: droits pour tous ou loi du plus fort? Regards militants sur les Nations Unies' ed. CETIM, January 2005.

Contradictions between the speech and the practice are not alien to the Charter or to the Organization. The preamble and several articles proclaim a set of principles and rights of universal range, while the part that tackles the organization's functioning is the denial of such principles and establishes the planetary domination of Great Powers that came out victorious from the Second World War.

Among the UN's organs, the Security Council gathers together the most important part of the institution's power as it is entrusted of maintaining peace and security in the world, the main purpose of the UN. As "executive" organ, its deviations and malfunctions affect the whole system of the United Nations, thus tarnishing its image in front of the public opinion. This is the reason why we will concentrate on the Security Council's functioning in this assessment of the situation.

The Security Council

The hegemony of Big Powers that came out victorious from the Second World War is reflected on the functioning of the Security Council, a body thought for a bipolar world in the context of the cold war.

Chapters V, VI and VII of the United Nations Charter deal with the composition and functions of the Security Council. According to article 23 of the Charter, the Council consists of five permanent members: China, France, the Soviet Union, the United Kingdom, and the United States, and ten non-permanent members. Permanent members enjoy a right of **veto** or, to be more precise, each decision is submitted to the rule of **unanimity** of the five permanent members, which is necessary to adopt fundamental decisions of the Council (article 27.3 of the Charter)[3]. Article 25 establishes the compulsory character for all States of decisions adopted by the Security Council. Finally Chapters VI and VII of the Charter set the Council's mechanisms of action in order to comply with its mission of "primary responsibility for the maintenance of international peace and security"…as stated in article 24.

These norms, when giving a special and privileged status to five member states, run counter to a fundamental principle that is set also in article 2 of the Charter: the **sovereign equality** of all member states of the United Nations.

1. The coup d'Etat in the Security Council's bosom

The split of the Soviet Union (USSR) at the end of 1991 transformed the bipolar world, leaving aside non-aligned countries, into a unipolar world. The disintegration of the USSR rendered obsolete article 23.1 of the Charter, where the USSR appeared as a permanent member of the Security Council and article 27.3 relating to affirmative vote (named right of veto) of the Security Council's five permanent members. Once the USSR had disappeared, the principle of unanimity of the five permanent members became impossible to apply.

That was the historic, politic and legal moment to put an end to the Yalta agreements of 1945, that shared out the world among the five powers, particularly between the USA and the

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[3] According to article 27.3, a Security Council resolution, that does not tackle procedural matters, needs the **affirmative** vote of its five permanent members. This is the interpretation given by the five Great Powers (who had always the last word regarding the Charter's drafting) during the preparatory works of the San Francisco Conference in 1945. Meanwhile, after 1946, they modified *de facto* the article and resolutions that tackled fundamental issues were adopted despite the abstention of a permanent member. See Georges Day, *Le droit de veto dans l'Organisation des Nations Unies,* Ed. Pedone, Paris, 1952, pp. 117 and foll.

USSR, to the detriment of the sovereignty and self-determination of other States of the planet.

But this was not done this way. On the contrary on the 24th December 1991, Boris Eltsin addressed a letter to the Secretary-General of the UN, Pérez de Cuéllar, to let him know that Russia, with the support of the Community of Independent States (the former members of the Soviet Union), was taking the place of the USSR, with all the rights and duties, in the Security Council as well as in all other United Nations institutions.

That was a real coup d'Etat in the United Nation's bosom. By accepting that Russia took the place of the USSR, article 4 of the Charter relating to adhesion procedure to the United Nations was violated[4] as well as General Assembly resolution of 1947 (A/C.1/212) that prohibits the application of the principle of State Succession to the condition of member of the UN. The right procedure has been applied in other similar cases. For instance, after the disintegration of the Federal Republic of Yugoslavia and the division of Czechoslovakia, successor States applied for their admission to the UN and were admitted by the General Assembly. On the contrary, Russia took the place of the USSR at the UN **de facto** and, what is worse, at the Security Council with all rights and privileges inherent to the condition of permanent member, without notice, nor consultation, nor resolution by the General Assembly or the Security Council. The only document that exists as a basis for the presence of the Russian Federation at the Security Council is the letter by B. Eltsin of 24th December 1991 addressed to the UN Secretary-General.

2. The sliding of the Security Council towards illegality

In December 1991, the western Big Powers, led by the United States, considered that with the **coup d'Etat** in the bosom of the Security Council, they had full rein to put the Council completely into their service and violate international law in its name, to create new institutions, change the existent ones and modify in a regressive manner the international norms according to their interests.

Since then, one can consider that the Security Council resolutions adopted under article 27.3 of the Charter lack legitimacy. The object of such resolutions is consequently also marked with this illegitimacy.

Moreover, the Council has adopted many resolutions in the context of Chapter VII of the Charter (threats to peace) by using it arbitrarily to exceed the powers conferred by the Charter within this specific field ("the specific powers granted to the Council…" states article 24.2).

This is about, for instance, creating (invoking abusively Chapter VII of the Charter) "ad hoc" courts for the former Yugoslavia and Rwanda. However creating international tribunals are not among powers of the Security Council.

Resolution 687, adopted in April 1991 at the end of the Gulf War, lets Security Council to claim for it powers of international justice-maker, exceeding in the field of competence of the International Court of Justice, the United Nations judicial organ. In fact, in this resolution, the Security Council condemned Iraq to pay compensations and set the amounts and conditions.

Afterwards there has been a real avalanche of illegitimate resolutions by the Security Council, arbitrary and contrary to international law, leading, as a consequence, to the configuration of a *de facto* worldwide government, a government that gather normative, executive and judicial

[4] At that time the Soviet Union was represented by Ukraine, Belarus and the USSR which was also a permanent member of the Security Council.

functions just like any dictatorship in the Third World which are –with very good reason-stigmatised.

Here there are the most recent Security Council resolutions that have these features:

Resolutions 1368 and 1373 of 12 and 28 September 2001, adopted in the scope of Chapter VII of the Charter, deal with legitimate self-defence ("inherent right of individual or collective self-defence in accordance with the Charter") in order to try to give an international juridical legitimacy to the bombings of Afghanistan. This has no sense at all, because legitimate self-defence is the immediate response to an aggressor, in order to put an end to the aggression where it is taking place. Attacking later and somewhere else a territory that presumably is the aggressors' operations base is, at best, an armed attack in reprisal, if not a pure and simple aggression, forbidden by international law.

Resolution 1422 of July 2002, renewed in 2003 by **resolution 1487**. By this resolution, the Security Council orders the International Criminal Court to refrain, for twelve months, from investigating the charges against residents of States that are not a party to the Treaty of Rome (Statute of the International Criminal Court), as the United States, for acts or omissions for which they could be charged in the context of missions authorized by the UN. By voting resolutions 1422 and 1487, the Security Council has not interpreted article 16 of Statute of the International Criminal Court but violated it. Therefore, it has violated the treaty of Rome, as have member states of the Council that are bound by the treaty.

The process of degradation of the international system has made a qualitative leap with the aggression against Iraq in March 2003. The aggressor states have mocked international law and war norms, that is to say humanitarian international law. Nor the Security Council, nor the Secretary-General, nor the General Assembly did what they could have done to try to stop the aggression. On the contrary, on the 22nd May 2003, the Security Council adopted, by unanimity of the 14 member States present (Syria was absent), **resolution 1483**. This last one **grants to occupant States in Iraq the control of economy and the political future in Iraq in violation of the 3rd section of Title III (occupied territories) of the 4th Geneva Convention[5].**

Decisions of the Security Council is illegitimate because they come from a body that was constituted in violation of the principle of sovereign equality of all States. They are doubly illegal cause: 1) after 1991 the composition of the Council do not correspond to what established the UN Charter, and 2) almost all decisions adopted afterwards by this instance outrage the fundamental principles of international law in force.

C. COMMENTS ON THE SECRETARY-GENERAL'S REPORT ON THE REFORM OF THE UN

I. Proposals of the Secretary-General regarding the Security Council

The Secretary-General is rather tender with the Security Council, if compared with his criticisms towards the General Assembly and the Commission on Human Rights ("loss of prestige", "pulverization of credibility", "drop of level of competence", etc.) though the good

[5] See the joint written statement of the AAJ and CETIM submitted to the 61st session of the Commission on Human Rights (E/CN.4/2005/NGO/279).

democratic functioning of the Security Council is basic for peace and security of the whole humanity. On the other hand, Mr. Kofi Annan does not propose anything to democratise this instance, because creating new permanent offices or not will not change anything at all.

In fact, Mr. Annan avoids carefully to propose the abolition of the "right of veto" at the Security Council, given that thanks to this twist the five permanent members do as they please in the bosom of the UN. What would be the use of increasing the number of members at the Security Council (cf. par. 170), if the five continue to block issues that bother them? The Security Council will not be more "representative" than it is today because the right of veto will remain and thus, one cannot talk decently of the UN's democratisation nor of its good functioning.

Secretary-General does not tackle this matter and does not consider at all the **possibility** to eliminate the statute of permanent members, even though it is contrary to the principle of equality of all States.

Secretary-General does not tackle either the issue of legitimacy of decisions made by the Security Council, though the last ones run usually counter to the Charter.

II. Institutionalisation of the preventive war

In paragraphs 122 to 126 of his Report (*Use of force*), Secretary-General proposes to institutionalise the doctrine of preventive war formulated by President Bust in his document "Strategy of national security of the United States of America" presented to the United States Congress on the 20th September 2002.

Thus, the Secretary-General makes an abusive interpretation of article 51 of the Charter, contradicts himself and affirms some obvious lies : "Imminent threats are fully covered by article 51 [of the Charter] which safeguards the inherent right of sovereign States to defend **themselves against armed attacks**" (par. 124 and emphasis added). Precisely, article 51 talks of **self-defence** when a State suffers an **armed attack** and does not talk of **imminent threats**. "Where threats are not imminent but latent, the Charter gives full authority to the Security Council to use military force, including preventively, to preserve international peace and security." (par. 125 and emphasis added). Some jurists talk of a right to a **legitimate anticipated defence**, which would derive from article 51 of the UN Charter. But **preventive measures** must not be confused with a **real threat of attack** and **legitimate defence** what involves use of military means against a present aggressor[6].

Lastly contrary to what the Secretary-General says, in the case of a threat to peace, chapter VII of the Charter does not recommend directly the use of armed force. It proposes gradual provisory measures, and only if those are proved to be inadequate the Council can take action such as demonstrations, blockade measures and other operations carried out by air, sea, or land forces of members of the United Nations (art. 42).

It is evident that in no cases, according to the wording and the spirit of the United Nations Charter, the Security Council can take the initiative to cause a war.

[6] Olivier CORTEN Professor of international law and François DUBUISSON, Assistant Professor. Université Libre de Bruxelles, Centre de droit international et de sociologie appliquée au droit international . « Opération 'liberté immuable': une extension abusive du concept de légitime défense », in *Revue Générale de Droit International Publique (RGDIP)*, T. 106, N° 1, Paris, April 2002.

III. Proposals of the Secretary-General on the Commission of Human Rights (HRC)

Secretary-General proposes to "replace the Commission on Human Rights with a standing Human Rights Council composed of a smaller number of members" and adds that "those elected to the Council should undertake to abide by the highest human rights standards" (par. 183 and emphasis added).

Why to create a standing Human Rights Council that would sit the entire year, while there is a well-established distribution of tasks among:

- the High-Commissioner (that works permanently and can intervene at any time) ;
- the treaty bodies (Committees that sit twice a year to examine reports submitted by States Parties and some of them to receive complaints) ;
- the Sub-Commission on Promotion and Protection of Human Rights (that sits once a year to carry out many studies) ;
- the special procedures of the HRC (that tackle practically all subjects and are available the entire year).

It must be added that the HRC can sit in extraordinary sessions in case of emergency! Since 1992, it has sit five times in extraordinary sessions[7].

A "smaller" Human Rights Council will be easily the object of pressure by the United States.

As regards members of the future Human Rights Council, the Secretary-General suggests on the other hand "those elected to the Council should undertake to abide by the highest human rights standards". The first question that one can pose is who is going to judge the candidates' abilities? Are they going to be appointed by the so-called « democratic », models regarding the respect of human rights, led by the United States? The broadening of criteria will suffer necessarily from arbitrariness. This future Council will simply add selectivity to arbitrariness…

As regards the future Council's mandate, Mr. Annan has specified a little more his ideas at the HRC, during his visit in Geneva last April 7. According to him, the main task of the future Council would be to "evaluate the way in which all States implement their duties regarding human rights". However, this task is developed by the treaty bodies, composed of experts, entrusted with verifying the implementation of the ratified conventions by the signatory States.

The Secretary-General proposes also that the High Commissioner on Human Rights play "a more active role in the deliberations of the Security Council" (par. 144). Even though his intention is commendable, the intervention of the High Commissioner at the Security Council could open the way to instrumentalisation of human rights. In fact, the High Commissioner will not have the right to vote and his/her position will not be used but by the superpowers according to their interests, as seen in the case of Iraq and the pseudo "arms of mass destruction".

As refers to the **participation of NGOs** (or of the « civil society » to use the terminology in fashion), it is mentioned only marginally. It is, however, a central issue. It is far from certain that NGOs will have in the future Council the same opportunities as in the HRC, given that their status is currently supervised by the ECOSOC (the HRC and its subsidiary body) whereas the future Council would seemingly depend on the General Assembly. Is it necessary

[7] On the former Yugoslavia (2x), Rwanda, Palestine and Least Timor.

to remind that NGOs have no access to the General Assembly, while their participation and the margin of manoeuvre they enjoy at the HRC are unique in the UN system? Furthermore, the HRC competes with the General Assembly with, for instance this year, five thousand participants (governmental and non-governmental representatives) and approximately a hundred ministers that came from all over the world.

The Secretary-General's proposals do not bring any improvement to the functioning of the UN Human Rights mechanisms; on the contrary they put them at stake, because they do not count on the existent mechanisms. Even though some might be seduced by the Secretary-General's proposals, we think that, despite its faults and imperfections, suppressing the HRC would be a grave error.

IV. ECOSOC – CNUCED

On social and development matters, Mr. Annan is satisfied by making good promises, largely repeated in worldwide summits after three decades, such as the fight against poverty, financing for development, the attribution of 0,7 % of the budget of rich countries to official development assistance, etc. He continues to praise the "merits" and "role" of the private sector and states that the main task of governments is to create the "conditions for greater private investment". He does not practically elaborate on the IMF nor the World Bank, whose great power and non-democratic functioning is well-known, but only to "encourage" them to reinforce the developing countries' participation. He does not say anything either about the WTO that, since its creation, has left the UNCTAD apart.

V. Regional Groups

The Secretary-General keeps silent about the future of regional groups, established, however, to grant an "equitable geographic distribution" and to give a certain universal character to decisions made. He reduces them to four *de facto* in his proposals to increase the Security Council (see Box 5, page 43). Thus the Eastern Europe Group disappears. He also takes the United Stats out of the Western Group to put them in the Group "America" that does not exist at present[8].

It is certain that the Western Group, of a heteroclite geography[9], is about to take in the Eastern Europe Group. It is, already, evident that new members of the European Union and candidate countries are systematically aligned to the position of the European Union or that of the United States.
If one follows the geography of the world, what is logical and puts an end to ideological and political grouping, Canada should be in the new group "America"; Australia, New Zealand, Israel and Turkey in the "Asia and Pacific" Group.

In practice, this issue seems to be even more difficult if one refers to the new "Community of democracies", already selected by the United States[10]! Will it record at the margin regional

[8] It is remarkable that currently the American continent is represented by the Latin America and Caribean Group (GRULAC) that excludes the United States and Canada that chose to be in the Western Group.
[9] Apart from the European Union and Scandinavian countries, the United States, Canada, Australia, New Zealand, Israel and Turkey are in it.
[10] Called under the impulsion of the United States, the first meeting of the "Community of democracies" was held in Warsaw on the 27th June 2000. Organized by Chile, South Korea, the United States, India, Mali and the Czech Republic, it led to the "Warsaw Declaration" signed by 106 States. Its second meeting took place in Seoul in November 2002 and the third one recently in Santiago de Chile, on the 28th April 2005 with more than 100 participating countries. n de plus de cent pays. Praising "the promotion of democratic principles and the

groups soon? Which is the margin of manoeuvre that will be left then to the international community in front of the dictates of the United States?

VI. Conclusion

The tendency of the reforms proposed by the Secretary-General is toward preserving and reinforcing the dominance of the great powers – led by the United States – over the UN system. Paragraph 169 of the report could not be more explicit: "The Security Council must be broadly representative of the realities of power in today's world… a) [the reforms of the Security Council should], in honouring Article 23 of the Charter, increase the decision-making of those who contribute most to the United Nations financially, militarily, and diplomatically (emphasis added)".

In view of the current balance of power, heavily tilted in favor of the United States, transnational corporations, and neo-liberal economic policies, we entertain serious reserves regarding the proposed reforms, and, under the circumstances, we doubt that they will at all constitute progress for the peoples of the world and for democracy in general.

It seems that, above all, the Secretary-General wants to support the United States' plan "to reacquire control over the system"[11].

The proposals of the Secretary-General are completely at odds with what the UN urgently needs: absolute respect for the goals and principles of the Charter, profound democratic reforms, independence from the great powers and from the power of the transnational economy, objectivity, impartiality, and non-selectivity in action.

A reform aiming to re-establish the role of the United Nations in the service of peace and human development should follow the opposite direction from what is proposed. When it comes to adopting decisions, small countries, which do not have projects for world hegemony and which, unlike the permanent members of the Security Council, do not partake in the arms trade on a global scale, should be accorded the same rights and the same participation as the great powers.

In our opinion, it is necessary to review the functioning of the UN, which, as indicated in the preamble of the Charter, is a system based on the association of states and not of peoples: states are too often represented by governments that represent the interests of an elite minority at the expense of the will of their peoples. As long as the UN bodies are not fully democratized, all attempts at reform will be merely a perpetuation of the principle that might is right.

D. AAJ AND CETIM PROPOSALS

As we already have emphasized, it is difficult to imagine the outcome of a positive reform of UN in the current balance-of-power context, a context which is anything but favorable to the interests of the peoples of the world. The same is true of the abolition of the veto right, for this gesture will not, in and of itself, bring about the hoped for results without any of the other safe-guards mentioned in this document. Furthermore, such a reform will come about only

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consolidation of its institutions in the world", this community held for the first time a "democratic caucus" at the UN General Assembly on the 1st November 2004.

[11] *Le Monde*, February 4, 2005.

with widespread support of powerful social, citizen and grass roots movements and with a modification of the balance of power on a larger scale than that of merely the United Nations. At the same time, it is essential that these movements make this question their own, for international law and international institutions remain crucial elements in a global strategy to build an alternative to the hegemony of unbridled, anti-democratic and militaristic capitalism. It is also worthwhile proposing suggestions for such reform with a view to effectively enlisting it in the service of peoples, of human rights promotion, of equality and of peace. The following are some AAJ and CETIM proposals.

I. The Security Council is currently lacking in legitimacy and acts in breach of the law, as we have pointed out at the Chapter B (Overview of the Situation).

Therefore it should be thoroughly reformed:

a) to increase the number of members to 24, six per region (Africa, Asia/Pacific, Europe, and America) with fair regional distribution and periodic rotation of all members;
b) to abolish the unanimity principle of the five permanent members, or "veto right", for the reasons stated in Point A and in the last section of the conclusion (see Chapter C-VI);
c) to abolish the permanent-member system for the reasons exposed in the Point A and in the last section of the conclusion (see Chapter C-VI);
d) to require that decisions be approved by a double majority, a minimum of twenty member-state votes representing two-thirds of the world's population, in order to assure that decisions reflect both a genuine democratic majority and the participation of every region;
e) to provide that, in case of a deadlock over a Security Council decision owing to a failure to obtain the required majorities, the Security Council, by a simple majority vote, could decide to send the question to the General Assembly, which would then decide it on the basis of the double majority of two-thirds of the votes and two-thirds of the world's population.

This last proposal to send the question to the General Assembly in case of a Security Council deadlock is based on the Charter and has significant precedents:

a) the Security Council may call for special sessions of the General Assembly (art. 20 of the Charter);
b) the General Assembly may "discuss any questions relating to the maintenance of international peace and security brought before it by any part of the United Nations…" (articles 11, § 2, 34 and 35 of the United Nations Charter);
c) the General Assembly may "recommend measures for the peaceful adjustment of any situation…" (article 14);
d) on 3 November 1950, the General Assembly adopted Resolution 377 (V) "Uniting for peace", commonly known as the "Dean Acheson Resolution", in which it is established that when certain conditions are met (Security Council deadlock, decision to convene the General Assembly, etc.), the General Assembly "will immediately examine the question in order to make the appropriate recommendations to Member States on the collective measures to adopt…"; the General Assembly used this "Acheson proceeding" on several occasions and at various times: military intervention in Egypt (1956), in Hungary (1956), in Lebanon (1958), during the Indo-Pakistani conflict (1971), in Jordan (1980), in Afghanistan (1980), in Namibia (1981), in Bosnia-Herzegovina (1992), etc.; in the case of Egypt (Israeli aggression and Franco-English invasion), the General Assembly created a 6,000-man peacekeeping force that stayed on the ground for several years.

This last proposal goes a long way toward reinforcing, in practice, General Assembly prerogatives, which is highly desirable.

There would need to be a **monitoring of the legality of Security Council decisions.** The question of who should exercise such control over the legality of Security Council decisions, and how, offers ample food for thought for legal experts, including those sitting in the International Court of Justice. This Court would be the most appropriate body to exercise such a control.

II. The Human Rights Commission (HRC)

One could imagine, as the Secretary-General proposes, granting to the HRC the status of a primary UN body (art. 7 of the Charter), such as that enjoyed by the Economic and Social Council (ECOSOC), with the same characteristics: it would be composed of member states and elected by the General Assembly, with an equitable geographical and sub-regional distribution of seats and a periodic rotation of its members.

Contrary to the suggestion of the Secretary-General, we should oppose a reduction in the number of the members of the future body and favor, rather, an increase to 72: 18 for each of the four regions (Africa, Asia/Pacific, Europe and America).

The Participation of NGO's must be maintained under the same conditions as in the current HRC.

As for the formal condemnation of member states that violate human rights, this remains a thorny question. This task, incumbent upon the HRC and the HRSC since 1967[12], has had as a "collateral effect" the transformation of the HRC into a battle field for the quarrels of member states that then manipulate the Commission and discredit its work before international public opinion. This has been called the "politicizing" of the Commission.
In the absence of objective criteria, the prevailing principle is that might makes right: those managing to negotiate alliances avoid a condemnation, whereas others abusively request "technical cooperation" from the High Commissioner for Human Rights in order to avoid one.

An essential responsibility of the HRC should remain establishing international standards and assuring, by virtue of its make up, that these standards are given an internationally accepted composition.

One might add here that, contrary to what some have suggested, it would be ill advised to replace the HRC with a body excluding member state participation. Moreover, is it necessary – or even possible – to do without member states? In the present system, any new standard must be submitted to the approval of the member states, which must then implement it at the national level. In this regard, it would be suitable to keep the present system, which, again, allows for the participation of member states at every level of the drafting of international texts.

The aforesaid, should, of course be accompanied by an enhancement and reinforcement of the treaty bodies, among other things, equipping with complaint mechanisms (optional protocols) the two instruments which still are without them: the Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child[13]. And this, in turn, should be

[12] Resolutions 8 et 9 (XXIII) of the HRC and 1235 (XLII) of ECOSOC, 1967, and 1503 (XLVIII) of ECOSOC, 1970.
[13] The five instruments having such mechanisms are: 1) International Covenant on Civil and Political Rights, 2) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 3) International

accompanied by the reinforcement of the independent role of the Office of the United Nations High Commissioner for Human Rights, which remains weak by virtue of a budget that depends primarily upon voluntary contributions[14].

As regards the **Sub-Commission for the Promotion and Protection of Human Rights**, the prerogatives of this body should be reinforced, as, in recent years, it has been more and more subjected to pressure from member states seeking to muzzle it. For example, the Sub-Commission must ask the HRC for permission to undertake a study on any given topic, and for the past five years it has no longer been allowed to adopt resolutions on the situation in member states[15]. And, of course, the principle of independence of its members must be respected.

III. <u>The ECOSOC</u>

The role of the ECOSOC regarding economic and social questions needs to be made effective in practice, in conformity with the Charter, and clearly reinforced. Following the example of the HRC, we should increase the number of the ECOSOC members to 72, 18 per region, with an appropriate sub-regional representation.

The role of UNCTAD must also be reinforced, and there must be a total reform of the three financial institutions (WTO, IMF and World Bank). It is intolerable that these institutions are not subject to any democratic control. They need to be democratized and subjected to the oversight of the General Assembly and of the ECOSOC. Their actions should correspond to the needs of the populations of the earth and to the spirit of the United Nations Charter.

IV. <u>General Assembly</u>

As for the General Assembly, its role should be reinforced and enhanced, as already emphasized. Democratization could be undertaken by incorporating into member state delegations, with or without voting rights, members of parliament, of professional associations, of academic milieux and of other sectors of society, in conformity with Art. 9§2 of the Charter. Professor Benedetto Conforti has suggested this, calling for “a struggle for the spread of the democratization of the international organizations”[16].

Convention on the Elimination of All Forms of Racial Discrimination and 5) International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, to be in force the 1st of July 2003.

[14] The financing of two-thirds of the budget for the High Commissioner’s Office by voluntary contributions from governments, non-governmental organizations, foundations and other private donors makes it inevitably vulnerable to pressure from these sources. It should be financed out the regular UN budget.

[15] See decision 2000/109 of the HRC.

[16] *Recueil des Cours de l’Académie de Droit International de La Haye,* 1988, (V, T. 212).