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**ORGANIZATION OF WORK**

**Joint written statement\* submitted by Europe-Third World Centre, a non-governmental organisations in general consultative status and American Association of Jurists, a non-governmental organisation with special consultative status**

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[29 June 2005]

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\* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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

By publishing his report on the reform of the United Nations, on the 21<sup>st</sup> of March<sup>1</sup>, 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.

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

### **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 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<sup>3</sup>.

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

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

<sup>3</sup> See "Comments and proposals by AAJ and CETIM" on UN reform, proposed by Mr. Kofi Annan (www.cetim.ch).

## **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 Bush in his document “Strategy of national security of the United States of America” presented to the United States Congress on the 20<sup>th</sup> 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<sup>4</sup>.

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.**

## **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) ;

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<sup>4</sup> 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.

- 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 CHR (that tackle practically all subjects and are available the entire year).

It must be added that the CHR can sit in extraordinary sessions in case of emergency! Since 1992, it has sit five times in extraordinary sessions<sup>5</sup>.

A “smaller” Human Rights Council will be easily the object of pressure by the Great Powers, especially 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 CHR, 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 by the Great Powers.

As refers to the **participation of NGOs**, 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 CHR, given that their status is currently supervised by the ECOSOC whereas the future Council would seemingly depend on the General Assembly. Is it necessary to remind that NGOs have no access to the General Assembly, while their participation and the margin of manoeuvre they enjoy at the CHR 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 CHR would be a grave error.

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<sup>5</sup> On the former Yugoslavia (2x), Rwanda, Palestine and Least Timor.

#### **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 States out of the Western Group to put them in the Group “America” that does not exist at present<sup>6</sup>.

It is certain that the Western Group, of a heteroclitic geography<sup>7</sup>, 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<sup>8</sup>! Will it record at the margin regional 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?

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<sup>6</sup> It is remarkable that currently the American continent is represented by the Latin America and Caribbean Group (GRULAC) that excludes the United States and Canada that chose to be in the Western Group.

<sup>7</sup> Apart from the European Union and Scandinavian countries, the United States, Canada, Australia, New Zealand, Israel and Turkey are in it.

<sup>8</sup> 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. In de plus de cent pays. Praising “the promotion of democratic principles and the consolidation of its institutions in the world”, this community held for the first time a “democratic caucus” at the UN General Assembly on the 1<sup>st</sup> November 2004.

## **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”<sup>9</sup>.

**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.

Finally, it seems that the UN human rights mechanisms will ultimately bear the burden of all this shuffling particularly the CHR and the Sub-Commission on Promotion and Protection of Human Rights.

That is why it is very urgent that the Sub-Commission gives one’s opinion on these proposals.

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<sup>9</sup> *Le Monde*, February 4, 2005.