

# The Non-Aligned Movement and the Reform of International Relations

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## I. Introduction

Formally, the Non-Aligned Movement (NAM) came into existence during the first conference of Heads of State or Government of non-aligned countries that took place in Belgrade in September 1961. Representing newly-independent developing countries, the movement and its policies can be directly linked to the decolonisation process with the initial years of political engagement in world affairs characterised by anti-imperialist slogans and the denunciation of colonialism, apartheid, racism and Zionism. Occasionally, one comes across over-complicated theories for being a member of NAM<sup>1</sup>, but in essence membership de-

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<sup>1</sup> See for instance P. Willetts, *The Non-Aligned Movement: The Origins of a Third World Alliance*, 1978. For other more “down to earth” contributions see E. Agaev/ S. Krylov, “Non-Aligned Movement: 116 Nations”, *Int’l Aff.* 52 (2006) 46 et seq.; A. Orlov, “The Non-Aligned Movement: 40 Years Af-

pended upon an empathy for national liberation movements and a dislike for being drawn into one of the alliances that characterised the Cold War stand-off. In this sense, non-alignment meant the rejection of control by the superpowers of the time and the adoption of a foreign policy stance that implied resistance against East–West pressures and solidarity with Third World interests relating to strategic world political and economic issues. Non-alignment in this sense should not be taken too literally though: some members at the time had difficulty in hiding their ideological preferences, and development aid – with the normal strings attached – has the unavoidable tendency to effect changes in allegiances.

As a loose and diverse political grouping of countries comprising populations at different levels of desperation, NAM occasionally lost control over internal divisions and changing objectives<sup>2</sup> during its 45 year history. However, from the initial decolonisation issue, through the rough waters of finding a niche after the watershed changes in world politics in the early 1990s, to the current agenda for a North – South dialogue on issues of common interest, NAM has somehow survived many setbacks to remain an important voice in international relations.<sup>3</sup> Often derided as a relic of the past, it has nevertheless redefined itself during the 1990s to play a more significant role in shaping the major debates of the time. In this context the movement has also refocused its attention on UN reform.

In addressing some of the major issues in this article, it is perhaps sensible to first explain the conceptual and theoretical underpinnings of NAM's endeavours to bring about a different state of affairs.

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ter”, *Int'l Aff.* 48 (2002), 49 et seq.; K. Tassin, “Lift Up Your Head My Brother: Nationalism and the Genesis of the Non-Aligned Movement”, *Journal of Third World Studies* 23 (2006), 147 et seq.

<sup>2</sup> See also J. Graham, “The Non-Aligned Movement after the Havana Summit”, *Journal of International Affairs* 34 (1980), 152 et seq.

<sup>3</sup> In September 2006, when the 14th Non-Aligned Summit took place in Havana, Cuba, the Russian President, Vladimir Putin, with immoderate aspirations, stated that Russia and NAM were “united in responsibility for the world's destination” and the “desire to counteract confrontations and support cooperation”, Statement accessible at <<http://www.cubanoal.cu/ingles/index/html>>. During the 2006 Havana Summit, UN Secretary-General Kofi Annan also described the movement's collective mission as more relevant than ever in view of the growing divide between rich and poor countries, Doc. SG/SM/10636 of 15 September 2006.

## II. Seeking Shelter from the Storm

The Dutch scholar, van Eikema Hommes, once compared the Marxist-Leninist prophecy of the imminent classless communist society where human freedom and self-development secure the happiness of all, to a secularised, eschatological faith in the final liberation of mankind. In this scheme the proletariat assumed the position of the Great Redeemer who will undo man's fall into sin, i.e. the state of alienation brought about by the capitalist exploitation of man.<sup>4</sup> When one reads NAM's 1998 Durban Declaration for the New Millennium, the Redeemer likeness seems to have captured the imagination of NAM too.

Aware of the "dawn of the new millennium" and of the "symbolism of being on a shore where [one could] get the first glimpse of the sun rising over the Indian Ocean", the Heads of State or Government proclaimed the movement's emergence from centuries of oppression and colonialism as the "power of the new millennium" to lead the "invisible people of the world" into "a new age" the "age of the emerging nations, the age of the South, the age of renewal and renaissance, the age of justified hope", despite "vast obstacles deliberately placed" in the movement's way.<sup>5</sup>

To eradicate the evils of the new millennium – aggression, racism, use of force, unfair economic practices, foreign occupation, the twin forces of liberalisation and globalisation, etc. – the challenge is to "fundamentally transform international relations" through a "revolution in waiting" that will bring "delivery to the destitute and deceased, justice to the oppressed, relief to impoverished debtors, equality to women, succour to children, [and] an end to discrimination and foreign occupation."<sup>6</sup>

As in any eschatology worth its salt, the movement's own version internalises the eternal struggle of good versus evil, a simple formula that even the most desperate citizen should understand. On the side of the good there are the "progressive forces of the world", namely the non-aligned countries (naturally), the United Nations, the OAU (now AU), the socialist and the Scandinavian countries, which oppose the

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<sup>4</sup> H.J. van Eikema Hommes, *Major Trends in the History of Legal Philosophy*, 1979, 276.

<sup>5</sup> Department of Foreign Affairs South Africa, *Basic Documents of the XII. Summit Conference of Heads of State or Government of the Non-Aligned Movement*, Durban, 1998, 6, 7.

<sup>6</sup> *Ibid.*, 7, 8.

forces of colonialism, imperialism, neo-colonialism, expansionism and Zionism that sow division among the members of the non-aligned movement and undermine the salvation of their nations<sup>7</sup> (or lead them into temptation!). Although later summit documents adopted more diplomatically veiled allusions to “certain states” or “some powerful members of the international community”, that intervene illegally in the internal affairs of non-aligned countries under various pretexts, or otherwise threaten the political independence, sovereignty and territorial integrity of these countries,<sup>8</sup> the division of the world in a future non-aligned heaven and an unpleasant alternative remains a strong undercurrent in all non-aligned documents, if opposing forces remain unconverted to the “ethical, political and moral strength” of the movement as the “principle forum representing the interests and aspirations of the developing world.”<sup>9</sup>

In aggregating political and economic demands<sup>10</sup> – the twin strategy of the movement – for the final salvation of the destitute nations, the Charter principles of sovereignty, territorial integrity, non-interference and multi-lateralism form the Holy Grail on which reforms in international relations are pursued. In all summit documents these principles assume such prominence and are repeated so often in relation to different subject-matters, that the impression is hardly avoidable that there lurks a deeper motivation for their over-reiteration than a deep-seated political and moral conviction about their relevance for international relations. Exemplary of many similar reiterations in past and more recent documents, is the opening paragraph of the final document of the Kuala Lumpur Summit which reads as follows,

“The Heads of State or Government of the Movement of the Non-Aligned Countries met in Kuala Lumpur ... to address the crucial global issues affecting their peoples with the view to agreeing to a set

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<sup>7</sup> Cf. for instance the *Political Declaration adopted during the 6th Conference of Heads of State or Government of Non-Aligned Countries in Havana*, Cuba, 3-9 September 1979, reprinted in: P Willets, *The Non-Aligned in Havana*, 1981, 78-86.

<sup>8</sup> See for instance *Basic Documents of the XII. Summit No. 5*, see note 5, 14 (Final Document of the XII. Summit, para. 7); *Final Document of the Ministerial Meeting of the Coordinating Bureau of the Non-Aligned Movement*, Putrajaya, Malaysia, 27-30 May 2006, para. 15.

<sup>9</sup> Cf. *Final Document of the XIII. Conference of Heads of State or Government of the Non-Aligned Movement*, Kuala Lumpur, 24-25 February 2003, para. 20.

<sup>10</sup> Cf. Willets, see note 7, 4 et seq.

of actions in the promotion of peace, security, justice, equality, democracy and development, conducive for a multi-lateral system of relations based on the principles of sovereignty, territorial integrity and political independence of States, the rights of peoples to self-determination and non-intervention in matters which are essentially within the jurisdiction of States, in accordance with the Charter of the United Nations and international law.”<sup>11</sup>

On the same occasion, the Kuala Lumpur Declaration on the Revitalisation of the Non-Aligned Movement warned against the emergence of unipolarity and the trend towards unilateralism and called for a strengthening of the multi-lateral process as an “indispensable vehicle in safeguarding the interests of member states of the Movement as well as those of the United Nations.”<sup>12</sup> A particular defensive position is noticeable in the 2004 final document of the ministerial conference that took place in Durban, South Africa. The ministers,

“strongly condemned labeling of countries as good or evil and repressive based on unilateral and unjustified criteria ...[and] all unilateral military actions without proper authorization from the United Nations Security Council, as well as ... threats of military action against the sovereignty, territorial integrity and independence of Member States of the Movement which constitute acts of aggression and blatant violations of the principle of non-intervention and non-interference.”

In the same breath the ministers rejected the so-called “right” of humanitarian intervention, which has no basis in the United Nations Charter or in international law and requested the Movement’s Coordinating Bureau to study and consider the expression “responsibility to protect”<sup>13</sup> and its implications on the basis of the “principles of non-interference and non-intervention as well as the respect for territorial integrity and national sovereignty of States.”<sup>14</sup> In this regard the movement has flatly ignored the right of the African Union (AU) and of its Peace and Security Council to intervene in Member States in the case of

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<sup>11</sup> *Final Document of the Kuala Lumpur Summit*, see note 9, para. 1.

<sup>12</sup> Declaration accessible at <<http://www.un.int/malaysia/NAM/KLdec.html>>.

<sup>13</sup> See Report of the International Commission on Intervention and State Sovereignty, *The Responsibility to Protect*, 2001.

<sup>14</sup> *Final Document of the XIV. Ministerial Conference of the Non-Aligned Movement*, Durban, South Africa 17-19 August 2004, paras 6, 8.

war crimes, crimes against humanity and genocide,<sup>15</sup> and in 2006, the Final Document of the 14th Summit merely stated that the movement will remain “seized of further deliberations in the UN on the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity” bearing in mind principles such as “respect for the sovereignty and territorial integrity of States” and “non-interference in their internal affairs.”<sup>16</sup>

What then could be the deeper motivation for the movement’s anxiety over these matters? One explanation is the vulnerability of the majority of members as heirs to weak state institutions that followed on the demise of colonial rule. The post-colonial abandonment of and stigmatisation of a range of considerations that could co-determine the quality and sustainability of political governance<sup>17</sup> foreclosed the question on the content and substance of political rule that was taking place under the slogan of political self-determination. Ironically this was also the script for the coming into being of states whose sovereignty and political independence were more apparent than real, the beginning of a phase of state-formation that is excellently captured in the following assessment by Clapham,

“The pretence that formally independent states should be treated ‘as if’ they possessed the full attributes of sovereignty, even if they evidently did not in fact do so, was used to cover the cracks in the façade, under the assumption that these cracks would eventually be sealed, and that artificial states would solidify into the real thing.

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<sup>15</sup> Constitutive Act of the African Union 2000, article 4 (h) and (j). See also H. Strydom, “Peace and Security under the African Union”, *South African Yearbook of International Law* 28 (2003), 59 et seq. (70); High-level Panel Report on Threats, Challenges and Change, 2004, Doc. A/59/565 para. 199-203. In 2005 the Executive Council of the African Union adopted a common African position on UN reform proposals (the *Ezulwini* consensus) in which resort to forceful intervention by the African Union in the case of war crimes, crimes against humanity and genocide was confirmed. See Executive Council, 7th Extraordinary Session, 7-8 March 2005, Doc. Ext/Ex.CL/2 (VII) 6.

<sup>16</sup> *Final Document of the 14th Summit Conference of Heads of State or Government of the Non-Aligned Movement*, Havana, Cuba, 11-16 September 2006, Nam 2006/Doc.1/Rev. 3, para. 22.3.

<sup>17</sup> Cf. A/RES/1514 (XV) of 14 December 1960, para. 3; D. Rauschnig, “Das Ende des Treuhandsystems der Vereinten Nationen durch die Staatwerdung der ihm unterstellten Gebiete”, *Jahrbuch für internationales Recht* 12 (1965), 158 et seq. (176 et seq.).

Both superpowers and former colonial powers helped to maintain the states for whose protection they assumed responsibility, by means of diplomatic support, economic aid and, if need be, direct military intervention. These state-supporting activities were condoned and indeed encouraged by Third World international organizations, despite their general condemnation of ‘imperialism’, through the adoption of a doctrine of sovereignty that upheld the power of the government of any particular state, and recognized the right of that government to call on external assistance for its own protection. In the process little attention was given to the domestic structures of the state itself or, in the grossest cases, to the levels of repression and corruption that it embodied.”<sup>18</sup>

The only way in which the sovereignty and political independence deficits could be remedied was to seek refuge in formal claims to the applicable Charter principles and the formation of regional pacts based on reciprocal formal guarantees of non-intervention and recognition of sovereignty and independent statehood. These are the guarantees the non-aligned members cling to, because they sense that the problems weak states generate for themselves and for other members of the international community vastly increase the likelihood in the post Cold War understanding of peace and security that someone else “will seek to intervene in their affairs against their wishes to forcibly fix the problem.”<sup>19</sup> Like all redemptive movements, NAM can only uphold claims to a higher “ethical, political and moral strength”, and to respect for the attributes of statehood, by using moral displacement. Thus, aggression by “some powerful states” is repeatedly mentioned, but not the aggression of some non-aligned governments against their own citizens; the rule of law and democratic practices in international organisations are themes of high importance, but exist only in rudimentary form back home; Israeli atrocities in the occupied territories deserve condemnation in the strongest terms, but the atrocities of the Sudanese government in Darfur disappear under the words of praise for the AU’s achievements (sic) in reinforcing peace (sic) in that country; lack of financial support for developing countries is bemoaned, but the misman-

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<sup>18</sup> C. Clapham, “The Challenge of the State in a Globalised World,” *Development and Change* 5 (2002), 775 et seq. (782). See also R.H. Jackson, *Quasi-States: Sovereignty, International Relations and the Third World*, 1993, 17 et seq. (18).

<sup>19</sup> Cf. F. Fukuyama, *State-Building, Governance and World Order in the 21st Century*, 2004, 96.

agement of national resources by some NAM governments do not make the agenda; arms exporting countries are accused of not taking effective measures to restrict the illicit trade in arms,<sup>20</sup> while no concern is expressed about the deadly concoction of corruption and nepotism in weak states with no institutional capacity to wield a monopoly of force which undermines control over contraband economies and the flow of conventional weapons to sub-state groups<sup>21</sup> and so on. It is against this background that NAM's engagement with reform initiatives in international relations must be read.

### III. Some Main Concerns of the Non-Aligned Movement

#### 1. Disarmament and International Security

To determine where NAM has positioned itself with regard to the issue of disarmament, some historical precursors must be emphasised first. One notion, based on early twentieth century idealism and moralism in international affairs, is the Wilsonian call on guarantees in 1918 that national armaments should be reduced to the lowest point consistent with domestic safety.<sup>22</sup> Article 8 of the League of Nations Covenant codified this notion by determining in para. 1 that the members of the League "recognise that the maintenance of peace requires the reduction of national armaments to the lowest point consistent with national safety and the enforcement by common action of international obligations." In terms of article 8 para. 5 members also undertook "to interchange full and frank information as to the scale of their armaments ... and the condition of such of their industries as are adaptable to warlike purposes."

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<sup>20</sup> See the *Final Document of the 11th Summit of the Heads of State or Government of the Non-Aligned Countries*, Cartagena, Colombia, 18-20 October 1995, 6.

<sup>21</sup> See for instance M. Pugh/ N. Cooper, *War Economies in a Regional Context*, 2004, 19. See also A.D. Rotfeld, "Rethinking the Contemporary Security System", *SIPRI Yearbook* 30 (1999), 1 et seq.; A. Karp, "The Arms Trade Revolution: The Major Impact of Small Arms", in: B. Roberts (ed.), *Weapons Proliferation in the 1990's*, 1995, 7.

<sup>22</sup> See T.N. Dupuy/ G.M. Hammerman (eds), *A Documentary History of Arms Control and Disarmament*, 1973, 78, 79.



By contrast the UN Charter deals with disarmament in more subtle and non-specific terms. Article 11 para. 1 gives the General Assembly the opportunity to “consider the general principles of cooperation in the maintenance of international peace and security, including the principles governing disarmament and the regulation of armaments ...” and to make “recommendations with regard to such principles.” Article 26 makes the Security Council responsible for “plans to be submitted to the Members of the United Nations for the establishment of a system for the regulation of armaments.” Furthermore, the Military Staff Committee, established in terms of Article 47 para. 1 of the Charter, can advise the Security Council on the regulation of armaments and even disarmament.

As a result of the Charter approach, the disarmament debate in the years that followed came to be determined by deliberations in the General Assembly and Security Council where the horrors of a nuclear war after Hiroshima and the political realities of the Cold War stand-off produced little more than protracted debates, endless divisions and exploratory agreements.<sup>23</sup> With the abandonment of the dream of international ownership, control and management in the early 1950s,<sup>24</sup> the international debate moved from general and complete disarmament, the all or nothing approach, to attainable arms control accomplishments. This new phase in disarmament negotiations also provided the prelude to a preference for bilateral treaty arrangements on arms control,<sup>25</sup> both nuclear and conventional, between the superpowers which succeeded in wresting the debate from the multi-lateral process in the General Assembly where the enthusiasm for general and complete disarmament was still high.

This piecemeal approach, dominated by superpower agendas, coupled with the United Nation’s failure to force the pace on negotiations on complete disarmament, led to the first special session of the General

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<sup>23</sup> See for instance R.F. Gorman, *Great Debates at the United Nations: An Encyclopedia of Fifty Key Issues 1945-2000*, 2001, 39.

<sup>24</sup> Dupuy/ Hammerman, see note 22, 294. On international control and management see inter alia A/RES/1 (I) of 24 January 1946 and S/RES/20 (1947) of 10 March 1947.

<sup>25</sup> Topics that became the subject-matter for bilateral arrangements included the Hot Line agreement between the United States and the USSR, 1971; preventing accidents on the high seas, 1972; limiting anti-ballistic missiles – ABM Treaty and SALT I, 1971; preventing nuclear war, 1973; a yield threshold on nuclear tests, 1974; and limiting strategic offensive arms – SALT II, 1979.

Assembly on disarmament in 1978 in an attempt to bring the issue of complete disarmament back into the fold of the multi-lateral process of the UN organs amidst an unabated competitive acquisition of nuclear and conventional armaments. In envisaging a more active role for the UN, the Assembly proposed a revitalisation of the existing machinery and the establishment of “forums appropriately constituted for disarmament deliberations and negotiations with a better representative character.”<sup>26</sup> The deliberative function was assigned to a Disarmament Commission, comprising all UN members and constituted as a subsidiary organ of the General Assembly with the function to make recommendations on all disarmament issues.<sup>27</sup> For the negotiating function a World Disarmament Conference was to be established to function as a single multi-lateral negotiating forum of the international community.<sup>28</sup> The Conference, established in 1979, with a current membership of 66, was instrumental in the negotiations that led to the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction (the so called Chemical Weapons Convention) adopted by the Conference in 1992 and the Comprehensive Nuclear Test Ban Treaty which opened for signature in September 1996, but is not in force yet since not all the 44 Annex II states have ratified it. However, over the last decade the Conference has shown a lack of political resolve to bring about meaningful progress. As is usual with every new session, the 2007 Conference has opened with renewed hope that the stalemate and impasse in multi-lateral negotiations will give way for progress while delegates were reminded by the UN Secretary-General, Ban Ki-moon, that world military spending has now risen to over 1.2 trillion US\$ which represent 2.5 percent of global GDP.<sup>29</sup>

For NAM the return to a multi-lateral process under international supervision is a precondition for dealing with matters relating to disarmament, arms limitation and control and international security. In questioning deterrent scenarios in the post Cold War era, the movement in 1995 declared unequivocally that,

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<sup>26</sup> A/RES/S-10/2 of 30 June 1978, para. 113.

<sup>27</sup> Ibid., paras 113, 118.

<sup>28</sup> Ibid., para. 122.

<sup>29</sup> See “Conference on Disarmament Opens 2007 Session” and “Secretary-General’s Message to the 2007 Session of the Conference on Disarmament” at <<http://www.unog.ch/unog website/disarmament.nsf>>.

“general and complete disarmament under effective international control remains the ultimate objective to be achieved for which a comprehensive, non-discriminatory and balanced approach towards international security should be adopted.”<sup>30</sup>

In terms of this approach the movement pursues the objective of,

“general and complete disarmament ... to be attained within a specific time frame through the elimination of all nuclear arsenals and all other weapons of mass destruction as well as through gradual and balanced reductions of conventional arms”,<sup>31</sup>

and sees the Conference on Disarmament as the “sole multilateral negotiating body on disarmament.”<sup>32</sup>

This basic stance has been a recurring theme at all NAM summits, as are a number of related matters. The first is what the movement considered to be a growing restraint placed on members of the movement by nuclear weapon states to gain access to nuclear material, equipment and technology for peaceful uses of nuclear energy in developing countries.<sup>33</sup> Any fear that such technology transfers may lead to even further proliferation is for the movement a matter that could be addressed through multi-lateral undertakings and control mechanisms. A more realistic assessment though is perhaps contained in an observation made by Hedley Bull some forty five years ago,

“[I]t is not within the competence of a disarmament agreement to restore a world that is innocent of nuclear technology. We must assume that the future, even if it were to include the destruction of existing nuclear explosives, will include the knowledge of how to make them, and the will under the stress of war to do so. The technological environment in which any future war will occur will include nuclear technology as an increasingly commonplace part of it, and many other branches of advanced technology susceptible of military utilization apart.”<sup>34</sup>

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<sup>30</sup> *Basic Documents of the 11th Summit of Heads of State or Government*, see note 20, para. 82. 20

<sup>31</sup> *Ibid.*, para. 83.

<sup>32</sup> *Final Document of the XIII. Ministerial Conference of the Non-Aligned Movement*, Cartagena, 8-9 April 2000, para. 72.

<sup>33</sup> *Basic Documents of the 11th Summit*, see note 30, para. 88; *Basic Documents of the XII. Summit*, see note 5, 48 para. 120; *Final Document of the 14th Conference*, see note 16, para. 94.

<sup>34</sup> H. Bull, *The Control of the Arms Race*, 1961, 98.

The second recurring theme is the creation of what the movement calls “a greater balance in conventional armaments and restraints in production and acquisition of conventional arms, and where necessary, for their progressive and balanced reduction ...”<sup>35</sup>

This is coupled with a call for the lifting of “unilateral and discriminatory measures imposed by some industrialized States to prevent the transfer and acquisition of defence material to Non-Aligned and other countries essential for their self-defence requirements.”<sup>36</sup> During the 2006 Havana Summit this dual strategy of calling for a reduction in conventional arms by industrialised states and facilitating the acquisition of such arms by non-aligned countries was reaffirmed, ostensibly in the interests of international peace and security.<sup>37</sup> That this strategy rather aims at bringing about a greater balance in military power between the industrialised countries and the members of NAM, is perhaps closer to the truth. In fact, during the 1998 Durban Summit, states in various regions of the world were urged to negotiate agreements with a view to “promote greater balance in conventional armaments” and to take into account that regional disarmament initiatives must be mindful “of the special characteristics of each region and enhance the security of every State of the region concerned.”<sup>38</sup> This also explains NAM’s criticism of military alliances, of which it is not part, such as NATO’s New Strategic Concept, because, according to NAM, such alliances “not only set out rationales for the use or threat of use of nuclear weapons, but also maintain unjustifiable concepts on international security based on promoting and developing military alliances and nuclear deterrence policies.”<sup>39</sup>

It is one thing to aim at restoring imbalances in military power, but quite another to believe that a more equal spread in arms manufacturing and acquisition capacity will somehow be more immune to the dark realities of the arms industry; and downright naïve to think that the restoration of a balance of military power by agreement will reduce consumer-dominated interest in new markets and prevent a rush to new alliance formation for strategic purposes.

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<sup>35</sup> *Basic Documents of the 11th Summit*, see note 30, para. 102; *Basic Documents of the XII. Summit*, see note 5, para. 130.

<sup>36</sup> *Basic Documents of the 11th Summit*, see note 30, para. 102.

<sup>37</sup> *Final Document of the 14th Conference*, see note 16, para. 107, 108.

<sup>38</sup> *Basic Documents of the XII. Summit*, see note 5, para. 142.

<sup>39</sup> *Final Document of the 14th Conference*, see note 16, para. 75.

The third theme relates to the growing concern over the illicit transfer, manufacture and circulation of small arms and light weapons (SALW) and their “excessive accumulation and uncontrolled spread in many regions of the world.”<sup>40</sup> International attempts at establishing control mechanisms over illicit transfers and illicit brokers have thus far produced meagre results and even in the case of legal transfers and transactions the majority of states seem to still resist transparency in dealings and inventories.<sup>41</sup> In 2006 the Conference attempt to forge agreement amongst states on the implementation of the UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All its Aspects also ended in disappointment.<sup>42</sup> For NAM the solution lies in ensuring that the supply of SALW be limited to governments or to entities duly authorised by governments and in implementing legal restrictions on illicit transactions.<sup>43</sup>

A first obstacle to this proposal is government involvement in feeding the illicit markets through transfers conducted by governments themselves or by government-sponsored brokers or entities in pursuance of a hidden policy agenda.<sup>44</sup> A second obstacle is the symbiotic relationship between transnational organised crime, internal armed conflicts and weak and corrupt governments of which there is no scarcity in NAM’s own ranks. In understanding what difficulty this creates for the arms control agenda two contemporary perspectives are of particular importance. The first has to do with the way in which a mixture of corruption, nepotism and underdevelopment has “created weak states with neither the legitimacy nor the institutional capacity to wield the monopoly of force required to maintain order, territorial integrity, and peace.”<sup>45</sup> This obviously creates enforcement problems for the arms control initiative over a wide front. The second has to do with the role of economic agendas and the exploitation of lucrative resources in the inception and continuation of internal armed conflict<sup>46</sup> – a deadly con-

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<sup>40</sup> Ibid., para. 109.

<sup>41</sup> Cf. N. Florquin, “The Illicit Trade in Small Arms and Light Weapons”, *IIAS Newsletter* 42 (2006), 10.

<sup>42</sup> See UN Press Release Doc. SG/SM/10558 of 10 July 2006.

<sup>43</sup> *Final Document of the 14th Conference*, see note 16, para. 109.

<sup>44</sup> Florquin, see note 41, 10.

<sup>45</sup> Pugh/ Cooper, see note 21, 19. See also Rotfeld, see note 21.

<sup>46</sup> Pugh/ Cooper, see above. See also P. Collier/ A. Hoeffler, “On Economic Causes of Civil War”, in: T. Sandler/ K. Hartley (eds), *The Economics of Conflict*, Volume 1, 2003, 529.

coction when coupled with the first. While noting that conflicts in Africa, for instance, are increasingly regionalised through cross-border interests and actors, the Stockholm International Peace Research Institute (SIPRI) has noted that,

“A root cause of the conflict developments in Africa is to be found in the weakness of many of its states, which became especially obvious after the cold war. Corruption, the lack of efficient administration, the poor infrastructure and weak national coherence make government both difficult and costly. At the same time several states in sub-Saharan Africa have vast natural resources. The combination of weak states and rich natural resources has resulted in a dangerous structural environment fuelling conflicts throughout the subcontinent. Natural resources have become a cause for war as well as a necessary source of wealth for keeping the conflicts going. ... In several parts of sub-Saharan Africa semi-political actors are fighting for the control of natural resources without any wider political ambitions.”<sup>47 48</sup>

These conditions pose serious obstacles for the control of small arms. While traditionally arms control policies were designed on the assumption that recognised governments representing sovereign states could act as enforcement and control agencies through a system of multi-lateral cooperation, the actors in regional conflicts have the opposite in mind, i.e. to sustain black market operations providing both the incentive and ability to sustain conflict economies and alternative forms of control and regulation. Moreover, the networks that are established under conflict conditions are often carried over into the new political and economic arrangement when a post-conflict settlement and recon-

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<sup>47</sup> M. Sollenberg/ P. Wallenstein/ A. Jato, “Major Armed Conflicts”, *SIPRI Yearbook* 30 (1999), 15 et seq. (24, 25). See also J.C. Owens, “Government Failure in Sub-Saharan Africa: The International Community’s Options”, *Va. J. Int’l L. J.* 44 (2003), 1003 et seq. (1027, 1028).

<sup>48</sup> See also S. Lodgaard, “Small Arms and Internal Conflicts: Disarmament in the Framework of UN Peace Operations”, in: D Bourantonis/ M. Evriviades (eds), *A United Nations for the Twenty-First Century: Peace, Security and Development*, 1996, 259 et seq. (261, 262): “In Southern Africa, Southwest Asia and Central America the relationship between drug trafficking, illicit trade and intra-state violence has become recurrent.”

struction of state and society comes about, making it possible for the same activities to be continued under a more “legitimate” façade.<sup>49</sup>

## 2. United Nations Reform

For NAM the purpose of UN Reform is to make the UN development system more efficient and effective “in its support to developing countries to achieve the internationally agreed development goals.” Consequently, reform efforts “should enhance organisational efficiency and achieve concrete development results”.<sup>50</sup> With this in mind NAM wants reform efforts to be “comprehensive, transparent, inclusive and balanced” and undertaken with due regard to the inter-governmental and universal nature of the organisation so that the “voice of every member state ... be heard and respected ... irrespective of the contributions made to the budget of the organization ...”.<sup>51</sup>

Already in 1998, NAM stressed that “any further efforts regarding United Nations reform should focus on strengthening the role of the Organization in the promotion of development.”<sup>52</sup> This occasion was marked by the Secretary-General’s 1997 seminal report on renewal of the United Nations, containing what was referred to as the “most extensive and far-reaching reforms in the fifty-two year history of the Organization”, with the objective to enable the United Nations to more effectively and efficiently meet the challenges of the new millennium.<sup>53</sup> This was seized upon by the movement during the 1998 summit to stress the need to keep under close inter-governmental oversight and review the implementation of the reform proposals.<sup>54</sup> Although, as indicated, the development issue weighed heavily with the movement, UN institutional reform, whether as a means to an end or an objective in itself, became a standard item on the movement’s agenda in the years that followed. Here, only some of the key issues will be addressed.

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<sup>49</sup> See also N. Cooper, “State Collapse as Business: The Role of Conflict Trade and the Emerging Control Agenda”, *Development and Change* 33 (2002), 941 et seq. (942).

<sup>50</sup> *Final Document of the 14th Conference*, see note 16, para. 38.2

<sup>51</sup> *Ibid.*, para. 38.3.

<sup>52</sup> *Basic Documents of the XII. Summit*, see note 5, 28.

<sup>53</sup> Secretary-General Report *Renewing the United Nations: A Programme for Reform* Doc. A/51/950 of 14 July 1997.

<sup>54</sup> *Basic Documents of the XII. Summit*, see note 5, 28.

### a. The Relationship Between the Principal Organs of the United Nations

One of NAM's main concerns, reiterated at every summit meeting, is what it sees as the continuing encroachment by the Security Council on the functions and powers of the General Assembly and of ECOSOC. By using Article 24 of the UN Charter, which bestows on the Security Council primary responsibility for international peace and security, the movement believes the Security Council attempts to enter areas of norm-setting, legal definitions and the progressive development of international law, "which clearly fall within the functions and powers of the General Assembly and the Economic and Social Council."<sup>55</sup> To put an end to this encroachment, NAM aims at strengthening the oversight role of the General Assembly with regard to Security Council activities as well as the role and authority of the Assembly as the chief deliberative, policy-making and representative organ of the UN in all matters, including those relating to international peace and security.<sup>56</sup>

Relying on the Chapter IV powers of the General Assembly, while expressing grave concern about the inaction of the Security Council in matters involving genocide, crimes against humanity and war crimes, or when otherwise incapacitated by the veto right, NAM has great hopes that the General Assembly, under a swifter and revitalised Uniting for Peace procedure,<sup>57</sup> could assume a more prominent role in matters concerning international peace and security.<sup>58</sup> This high-falutin role assigned to the General Assembly by NAM does not seem to correspond with the reform proposals of the High-level Panel and the Secretary-General, who, in confirming the role of the Assembly as the chief deliberative, policy-making and norm-creating organ of the UN, is less concerned with the Assembly's role in matters concerning international peace and security, than with its diminishing status and credibility because of internal malfunctioning. In the Secretary-General's, In Larger Freedom Report, the following observation is rather instructive,

"In recent years, the number of General Assembly resolutions approved by consensus has increased steadily. That would be good if it reflected a genuine unity of purpose among Member States in responding to global challenges. But unfortunately, consensus ... has

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<sup>55</sup> *Final Document of the 14th Conference*, see note 16, paras 40, 42.

<sup>56</sup> *Ibid.*, paras 43.2, 44.1, 44.2.

<sup>57</sup> See A/RES/377 (V) 1950 of 3 November 1950.

<sup>58</sup> *Final Document of the 14th Conference*, see note 16, para. 44-45.8.



become an end in itself. It is sought first within each regional group and then at the level of the whole. This has not proved an effective way of reconciling the interests of Member States. Rather, it prompts the Assembly to retreat into generalities, abandoning any serious effort to take action. Such real debates as there are tend to focus on process rather than substance and many so-called decisions simply reflect the lowest common denominator of widely different opinions.”<sup>59</sup>

If this state of affairs forces one to contemplate the effect thereof on the swifter action NAM envisages, there is also the following to consider,

“Collective action often fails, sometimes dramatically so. Collective instruments are often hampered by a lack of compliance, erratic monitoring and verification, and weak enforcement. Early warning is only effective when it leads to early action for prevention.

Collective security institutions have proved particularly poor at meeting the challenge posed by large-scale, gross human rights abuses and genocide. This is a normative challenge to the United Nations: the concept of State and international responsibility to protect civilians from the effects of war and human rights abuses has yet to truly overcome the tension between the competing claims of sovereign inviolability and the right to intervene. It is also an operational challenge: the challenge of stopping a Government from killing its own civilians requires considerable military deployment capacity.”<sup>60</sup>

How the General Assembly will overcome these obstacles with a view to playing a more active and effective role in the maintenance of international peace and security, NAM has failed to explain. Moreover, with delinquent states more widely represented in the General Assembly, there is the added risk of inaction when solidarity voting and support get in the way of attempts at enforcing *erga omnes* obligations. Thus, it is perhaps not accidental that the High-level Panel Report has underplayed the role of the General Assembly in future collective security arrangements and has chosen to rather focus on strengthening the deliberative function of the Assembly and to concentrate for that purpose on the focus and structure of the Assembly. The norm-creating

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<sup>59</sup> Doc. A/59/2005 of 21 March 2005, para. 159.

<sup>60</sup> Report of the Secretary-General's High-level Panel on Threats, Challenges and Change, see note 15, paras 35, 36.

capacity of the Assembly, the Report points out, “is often squandered on debates about minutiae or thematic topics outpaced by real-world events;” the Assembly’s relevance is undermined by its “inability to reach closure on issues.” “An unwieldy and static agenda leads to repetitive debates”, and many resolutions are “repetitive, obscure or inapplicable, thus diminishing the credibility of the body.”<sup>61</sup> The question remains whether practices such as these are not perhaps highly useful to those states that seek refuge in general debates and dialogue to prevent scrutiny of their repressive internal policies and questionable foreign relations. Moreover, to discuss is always more convenient than taking action, and monitoring and observing are easy replacements for enforcement action. Another aspect lost in the NAM summit and other documents is the High-level Panel’s reproach that,

“... Successful international actions to battle poverty, fight infectious disease, stop transnational crime, rebuild after civil war, reduce terrorism and halt the spread of dangerous materials, all require capable, responsible States as partners,” and since states “are still the front-line responders to today’s threats” it is their responsibility to enhance their capacity “to exercise their sovereignty responsibly.”<sup>62</sup>

#### **b. Reform of the Security Council**

Security Council reform has surfaced with regular intervals in the past, especially around the issue of UN membership enlargement.<sup>63</sup> The current debate on this issue originated in 1992 when Germany and Japan voiced their desires to become permanent members of the Security Council and NAM vowed to revitalise the Security Council after the Cold War and to play a leading role in making the Council’s membership more representative.<sup>64</sup> This led to the adoption in 1993 of a General Assembly resolution that gave recognition to the “changed international situation and the substantial increase in membership of the United Nations” and the statements made by NAM, followed by a request addressed to the Secretary-General to invite written submissions

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<sup>61</sup> Ibid., para. 241.

<sup>62</sup> Ibid., para. 34.

<sup>63</sup> For an historical overview see D. Bourantonis, *The History and Politics of UN Security Council Reform*, 2005, 12 et seq. See also in this respect I. Winkelmann, “Bringing the Security Council into a new Area”, in: J.A. Frowein/ R. Wolfrum (eds), *Max Planck UNYB 1* (1997), 35 et seq.

<sup>64</sup> Bourantonis, see above, 46.

from Member States “on a possible review of the membership of the Security Council.”<sup>65</sup> The effect of this resolution was that the matter was kept out of the Security Council and away from control by the permanent members.

Since NAM – comprising 118 developing countries – represents almost two-thirds of the UN membership, the proposals that came out of this group can certainly not be ignored. Even though the proposals do not have the force of unanimity of mind, the three issues that have emerged have long been on the reform agenda in one way or another and cannot be avoided forever, namely the increase in the number of the permanent as well as the non-permanent members of the Council, limitations in the scope and use of the veto right, and an improvement in the Council’s working methods.<sup>66</sup> It should also be noted that the issues underlying the proposals of the movement are not the unique products of Non-Aligned thinking, but feature in the individual or collective propositions of many other states. Moreover, if the coalitions of interests on reform of the Security Council are considered, there can be little doubt that no meaningful reform would be possible without the consensus of the permanent five and the Non-Aligned Movement.

As far as the first of the above issues is concerned, the quick fix solution of the industrial states to grant a permanent seat to Germany and Japan was rejected in favour of a total increase in the non-permanent member category from 15 to 26, coupled with a balanced increase in the permanent member category that would include both developed and developing members. Another controversial aspect with regard to the increase in non-permanent members is the proposal that geographical distribution as opposed to contributions – the larger the contribution the larger the interest<sup>67</sup> – should determine membership.<sup>68</sup> On the face of it this proposal does not seem to be aligned with Article 23 para. 1 of the UN Charter which clearly states that in the election of the Council’s non-permanent members, due regard must be “specially paid” to Mem-

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<sup>65</sup> A/RES/47/62 of 11 December 1992, para. 1.

<sup>66</sup> Bourantonis, see note 63, 56. For proposals by other states or groups of states, see *ibid.*, 63 et seq.

<sup>67</sup> On this debate see also Y.Z. Blum, “Proposals for UN Security Council Reform”, *AJIL* 99 (2005), 632 et seq. (634).

<sup>68</sup> Bourantonis, see note 63, 56, 57, 61.

ber State contributions to the maintenance of international peace and security, and “also to equitable geographical distribution.”<sup>69</sup>

On the reform of the veto right, the somewhat reckless proposal by some states to abolish it altogether<sup>70</sup> was short-lived so that the debate has come to focus on its modification and restriction instead. In summary the proposals have in mind a removal of the veto in the case of admission of new members, the appointment of the Secretary-General, provisional measures under Article 40 of the Charter, and measures under Article 50 with regard to the economic problems of developing countries in complying with UN imposed sanctions. Further, a requirement, that for the veto to be exercised two permanent members must vote in its favour; a majority decision in either the Security Council or General Assembly to overrule a veto; and the adoption of procedural measures, which would not require a Charter amendment, to limit the scope of the veto.<sup>71</sup>

The enlargement proposals with regard to the veto and the changes the sponsoring states have foreseen were placed on the agenda in conjunction with requests that veto power reform should be reviewed in tandem with the working methods of the Council. In this regard the demands were about greater transparency in decision-making and improved cooperation between the Council and the whole UN membership with a view to making the Council more accountable to the general membership of the organisation.<sup>72</sup>

The great irony is that progress on the package of reforms, in which NAM played such a large role, was eventually frustrated by the movement’s own obsession with putting up a unified front and avoiding, at

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<sup>69</sup> Blum, see note 67, 636 has observed that the “first criterion, although ostensibly of primary concern, has in fact been discarded, as can readily be ascertained by even a cursory perusal of the list of nonpermanent members elected over the years.”

<sup>70</sup> This call has been made by Colombia, Cuba, Guatemala, Malaysia, New Zealand, Yugoslavia, Libya, Sudan and Yemen. See B. Fassbender, “All Illusions Shattered? Looking Back on a Decade of Failed Attempts to Reform the UN Security Council”, in: A. von Bogdandy/ R. Wolfrum (eds), *Max Planck UNYB* 7 (2003), 183 et seq. (211).

<sup>71</sup> Bourantonis, see note 63, 62; Fassbender, see note 70, 212, 213. See also M. Darrow, “Directions in Security Council Reform”, *Austr. Yb. Int’l L.* 16 (1995), 285 et seq. (304 et seq.).

<sup>72</sup> Bourantonis, see note 63, 62.

all costs, division in its ranks on the elevation of some of its members to the position of permanent members of the Security Council.

The slide towards an inconclusive debate started with the 1997 Razali reform plan, named after the then chairperson of the General Assembly, Ambassador Ismael Razali of Malaysia. This plan, aimed at breaking the deadlock on Security Council reform in the Open-ended Working Group – which has developed into a debating club showing no progress – put forward a three-stage reform initiative. The first step would entail a framework resolution increasing the number of permanent and non-permanent Council members. This would be followed by a second, implementing resolution selecting the new permanent members, and a third resolution formally amending the Charter to bring it into line with the new arrangement.<sup>73</sup> The thinking behind this staged process was that, in the form proposed, only the last resolution would need the Article 108 two-thirds majority of the total number of Assembly members, while the first two could be passed in terms of Article 18 para. 2 of the UN Charter which requires a two-thirds majority of members “present and voting”.

Apart from the dubious legality of the proposal, a number of reservations were voiced about the time schedule for the different stages, the large number by which the enlargement was supposed to take place, and the withholding of the veto in respect of new permanent members. However, outright rejection of the plan came from NAM over the participation of its members in the Security Council, which would have been increased significantly in terms of the plan. At the heart of the resistance was the fear that, since there was no consensus amongst the movement’s members on unified nominations for Security Council seats, nor on permanent membership, individual or group decisions in the movement on the Razali plan could bring discord and divided loyalties to its ranks. The only solution then was to tie the members into a unified rejection of the plan.<sup>74</sup> The result was a cacophony of new proposals and counter-proposals, accusations of backdoor diplomacy, and the formation of new opposing alliances for pushing new draft resolutions onto the diplomatic scene.<sup>75</sup> The fruitless attempts and discussions were brought to an end when the issue of the applicability of Article 108 of the Charter to the Razali resolutions was put to a vote in the

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<sup>73</sup> For a comprehensive discussion of the *Razali* plan and reactions to it see Bourantonis, see note 63, 74 et seq.

<sup>74</sup> *Ibid.*, 77-79.

<sup>75</sup> *Ibid.*, 80 et seq.

General Assembly. In 1998 the Assembly adopted the following resolution,

“*Mindful* of Chapter XVIII of the Charter of the United Nations and of the importance of reaching agreement as referred to in resolution 48/26 of 3 December 1993, [the General Assembly] *determines* not to adopt any resolution or decision on the question of equitable representation on and increase in the membership of the Security Council and related matters, without the affirmative vote of at least two thirds of the Members of the General Assembly.”<sup>76</sup>

With this, the momentum for reform was lost. How it can be regained, if at all, after September 11, 2001 is uncertain. There is the belief that only the United States can re-launch the initiative, but the reorganisation that has taken place since this fateful date has been built on the pursuit of United States security interests with less attention to multi-lateral rules and procedures.<sup>77</sup> In 2002, the Secretary-General of the United Nations made a new attempt at redirecting the process in his agenda for further change in strengthening the United Nations. Making it clear that the need for an effective “multilateral institution ... has never been more acutely felt than in the current era of globalization”, he bemoaned the “stalled process of Security Council reform” and the lack of progress in the Open-ended Working Group which has been at work “for nearly a decade”.<sup>78</sup> Of special significance though, is the statement that, although no UN reform would be complete without Security Council reform,

“it is important to remember that authority derives also from the capacity to take prompt and realistic decisions, and from the will to act on them. A reform process that consisted only of an increase in membership would be unlikely to strengthen the Council in this vital respect.”<sup>79</sup>

This was a clear admonition that an increase in numbers based on geographical distribution as the main criterion in determining the future composition of the Council, the rallying point of the developing world, may not necessarily empower the Council to deal more effectively with modern day security threats. The same message is contained in the seminal High-level Panel Report which has tried to revive the debate on

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<sup>76</sup> A/RES/53/30 of 23 November 1998.

<sup>77</sup> Fassbender, see note 70, 216.

<sup>78</sup> Doc. A/57/387 of 9 September 2002, paras 2, 20.

<sup>79</sup> *Ibid.*, para. 20.

Security Council reform by introducing the two-model distribution of seats representing Africa, Asia and the Pacific, Europe and the Americas.<sup>80</sup> The High-level Panel itself had provided two models. Model A which provides for six new permanent seats with no veto being created, and 13 new two-year term non-permanent seats, divided among the major regional areas. Model B providing for no new permanent seats but creating a new category of eight four-year renewable term seats and eleven two year non permanent (and non-renewable) seats, divided among the major regional areas. Under both models, the Council would be enlarged from fifteen to twenty-four members. With specific reference to Article 23 of the UN Charter, the Report, while accepting that a decision on the enlargement of the Council is now a necessity,<sup>81</sup> wanted any reform to increasingly involve the,

“... decision-making of those who contribute most to the United Nations financially, militarily and diplomatically – specifically in terms of contributions to United Nations assessed budgets, participation in mandated peace operations, contributions to voluntary activities of the United Nations in the areas of security and development, and diplomatic activities in support of United Nations objectives and mandates.”<sup>82</sup>

While reforms should increase the democratic and accountable nature of the Council and developing countries should become part of the decision-making process in the interest of broader representation, such reforms, the Report noted, should not “impair the effectiveness of the Security Council.”<sup>83</sup> If, on a regional basis members are selected for permanent or longer-term seats, the allocation should go to those states in the specific region that are among the top three financial contributors to the regular budget, or the top three voluntary contributors, or the top three troop contributors to United Nations peace-keeping missions.<sup>84</sup> With this in mind the Report recommended a review of the Security Council composition in 2020, including a review of the contributions by permanent and non-permanent members from the perspective of the Council’s ability and effectiveness to respond to the threats of the

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<sup>80</sup> High-level Panel Report, see note 15, 250 et seq. For a detailed analysis of the models put forward by the Panel, cf. Blum, see note 67, 640 et seq.

<sup>81</sup> High-level Panel Report, see note 15, para. 250.

<sup>82</sup> *Ibid.*, para. 249(a).

<sup>83</sup> *Ibid.*, para. 249(c).

<sup>84</sup> *Ibid.*, para. 254.

21st century.<sup>85</sup> What is most significant though, is that the Report rejected any expansion of the veto, and adopted, as a compromise position, the recommendation that the permanent members pledge themselves to limit the use of the veto when vital interests are at stake and to refrain from using it in the case of genocide and large-scale human rights abuses.<sup>86</sup>

During the 2006 summit, NAM, while expressing concern about the lack of progress in the General Assembly on the question of equitable representation and increase in the membership of the Security Council, pointed out that Security Council reform should by no means be limited to the question of membership. Consequently, a number of substantive issues relating to the Council's agenda, working methods and decision-making process were introduced with the stated objective of ensuring that the Council's agenda reflects the needs and interests of both developing and developed countries "in an objective, rational, non-selective and non-arbitrary manner."<sup>87</sup> A first concern raised during the summit in this regard was what NAM considered an overzealous resort to enforcement action under Chapter VII of the Charter by the Security Council, often as an umbrella for addressing matters that do not pose an immediate threat to international peace and security. NAM's position on this is that instead of "excessive and quick use" of Chapter VII measures, the Council must more fully utilise the measures provided for in Chapters VI and VIII of the Charter for the peaceful settlement of disputes, so that Chapter VII is only invoked as a measure of last resort.<sup>88</sup>

Similar sentiments were recorded with regard to Security Council imposed sanctions, which, for non-aligned countries "remain an issue of serious concern."<sup>89</sup> The option of sanctions, it was argued, should only be considered after all peaceful means of settlement under Chapter VI of the Charter have been exhausted and a "thorough consideration undertaken of the short-term and long-term effects of such sanc-

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<sup>85</sup> Ibid., para. 255.

<sup>86</sup> Ibid., para. 256. In rejecting any expansion of the veto the Report cited the veto's important function in reassuring the most powerful members that their interests would be safeguarded and also because there is no practical way of changing the existing members' veto powers.

<sup>87</sup> *Final Document of the 14th Conference*, see note 16, paras 49.1-49.2, 49.6

<sup>88</sup> Ibid., para. 49.3.

<sup>89</sup> Ibid., para. 49.4.



tions.”<sup>90</sup> Not only does the movement want the objectives of a sanctions regime to be better defined and the conditions to be fulfilled by the targeted state clearly spelled out and subjected to periodic review, but the imposition of sanctions should only be considered when there exists a threat to the peace or an act of aggression as opposed to instances of “mere violation of international law, norms or standards.”<sup>91</sup>

What the above concerns about Security Council action fail to appreciate is first the influence of a changed understanding of what constitutes a threat to international peace and security on the choice of means in response to the threat. In the Secretary-General’s Millennium Declaration it was observed that in the wake of the new kind of conflicts since the 1990s, “a new understanding of the concept of security is evolving. Once synonymous with the defence of territory from external attack, the requirements of security today have come to embrace the protection of communities and individuals from internal violence.”<sup>92</sup> Since these circumstances are often found to exist in Member States of NAM, the anxiety over possible Security Council action is understandable. Secondly, in the High-level Panel Report a somewhat different assessment of the situation has been recorded. There it was stated that,

“... with the Council increasingly active and willing to use its powers under Chapter VII ..., the balance between unilateral use of force and collectively authorized force has shifted dramatically. Collectively authorized use of force may not be the rule today, but it is no longer an exception.”<sup>93</sup>

The democratisation of the Security Council, a key component of NAM reform proposals, is not limited to the enlargement of membership, but also entails the curtailment of the use of the veto “with a view to its eventual elimination.”<sup>94</sup> In rejecting the concept of voluntary self-restraint amongst the permanent members as insufficient, NAM argued for,

(1) limiting the use of the veto to action taken in terms of Chapter VII of the Charter;

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<sup>90</sup> Ibid.

<sup>91</sup> Ibid.

<sup>92</sup> Secretary-General of the United Nations, *We the Peoples: The Role of the United Nations in the 21st Century*, 2000, 43, Doc. A/60/L.1 of 15 September 2005.

<sup>93</sup> High-level Panel Report, see note 15, para. 81.

<sup>94</sup> *Final Document of the 14th Conference*, see note 16, para. 49.6.

(2) overruling the veto by a certain majority vote in an enlarged Council; and

(3) overruling the veto by a two-thirds majority in the General Assembly under the Uniting for Peace Resolution, or in terms of a progressive interpretation of Arts 11 and 24 para. 1 of the Charter.<sup>95</sup>

No indication is given on how a progressive interpretation of the said Charter provisions can achieve the result NAM hopes for. Moreover, whatever the position taken by NAM in this regard there are the developments on the long-standing question about the respective powers of the General Assembly and the Security Council in matters concerning international peace and security and the inherent constraints in overruling the veto power to be taken into account.

The struggle of NAM to accumulate more power for the General Assembly in matters concerning international peace and security is partly driven by the illusion that a more representative body will have greater success in overcoming the political divisions and inaction brought about by the harsh realities of a tempestuous world. Furthermore, the NAM position must also be viewed in the context of developments concerning the Uniting for Peace Resolution and its impact on the relationship between the Assembly and the Council, a matter that was legally tested in the well-known *Certain Expense* case<sup>96</sup> during a time when the Cold War standoff was at its apex. But before doing so the ICJ's confirmation in this advisory opinion of the exclusive right of the Security Council to take enforcement action while recognising the power of the Assembly to make recommendations with regard to matters involving international peace and security, as envisaged in Arts 10, 11 and 14 of the Charter, subject to the provisions of Article 12 para. 1, must be attended to.<sup>97</sup> In terms of the latter provision the General Assembly cannot make any recommendations in respect of a dispute or situation with regard to which the Security Council is exercising its functions assigned to it in terms of the Charter.

It stands to reason that depending on the interpretation given to the rather broad formulation "exercising ... functions" the General Assembly could face serious limitations on its recommendatory powers. For

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<sup>95</sup> Ibid.

<sup>96</sup> *Certain Expenses of the United Nations*, ICJ Reports 1962, 151 et seq.

<sup>97</sup> In terms of Article 12 para.1 the General Assembly cannot make any recommendations in respect of a dispute or situation with regard to which the Security Council is exercising its functions assigned to it in terms of the Charter.

instance, if a matter remains on the Council agenda, is debated and discussed without real action being taken with a view to bringing it to finality, will the General Assembly be entitled to make recommendations or should it throughout exercise restraint because the Security Council is “exercising ... functions”? That UN practice on this has followed *ad hoc* arrangements between the General Assembly and the Security Council interspersed with different interpretations of Article 12 para. 1 by the two organs is a consequence one must accept given the uncertainties inherent in the formulation.<sup>98</sup> Recently, in the *Israel Wall* case,<sup>99</sup> the interpretation and scope of Article 12 para. 1 resurfaced in the context of the convening of the General Assembly for the 10th Emergency Special Session under the Uniting for Peace Resolution by means of a special resolution<sup>100</sup> and subsequent events relating to the construction by Israel of a security wall in the Occupied Palestinian Territories.<sup>101</sup> In dealing with past UN practice in regard to Article 12 para.1 the ICJ confirmed that,

“both the General Assembly and the Security Council initially interpreted and applied article 12 to the effect that the Assembly could not make a recommendation on a question concerning the maintenance of international peace and security while the matter remained on the Council’s agenda.”<sup>102</sup>

However, it was also pointed out that this interpretation has evolved in accordance with an, “increasing tendency over time for the General Assembly and Security Council to deal in parallel with the same matter concerning the maintenance of international peace and security”, in a manner that allows for the General Assembly to take a broader view in considering also the humanitarian, social and economic aspects of the situation while the Council tends to focus on aspects that relate more strictly to questions of international peace and security.

With regard to Article 12, the Court then seemed to confirm an earlier opinion of the Legal Council of the UN in response to the evolving

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<sup>98</sup> See for instance K. Hailbronner/ E. Klein, “Functions and Powers”, in: B. Simma et al. (eds), *The Charter of the United Nations: A Commentary*, Volume 1, 2002, 257 et seq. (292, 293).

<sup>99</sup> Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, ICJ Reports 2004, 136 et seq.

<sup>100</sup> A/RES/ES-10/2 of 5 May 1997.

<sup>101</sup> See A/RES/ES-10/13 of 27 October 2003 and A/RES/ES-10/14 of 12 December 2003.

<sup>102</sup> See note 99, 149 (para. 27).

Assembly practice, namely that the phrase “is exercising the functions” should be understood as meaning “is exercising ... the functions at this moment.”<sup>103</sup> The effect of this is, that the scope of Article 12 has now been narrowed down to the extent that the Council can no longer prevent the Assembly from making recommendations by merely retaining a matter on the agenda without taking further action thereon or by preventing action by means of the veto.<sup>104</sup> However, whether the gains scored by the General Assembly in obtaining greater procedural independence over the Security Council will really further the overall ability of the United Nations to maintain international peace and security remains a matter for debate.

Since the Uniting for Peace Resolution clearly envisaged intervention by the General Assembly in the case of inaction by the Security Council<sup>105</sup> because of a lack of unanimity amongst the permanent members of the Council, there is the further question whether the exercise of the veto by a permanent member constitutes the failure to act that will trigger the power of the Assembly to make recommendations for a collective response to a threat to the peace or an act of aggression. It has been observed that this could not be the correct interpretation since the permanent members are legally authorised to exercise the veto and can therefore not be equated with conduct aimed at paralysing the Council.<sup>106</sup> When enforcement action is blocked by means of the veto because the threat is considered not to be one that falls within the ambit of Chapter VII or because a state is wrongly accused of being responsible for a threat to the peace or an act of aggression, the question remains whether the General Assembly has the power to make an independent assessment of the matter to determine whether the Security Council has failed to exercise its primary responsibility in respect to threats to the peace and acts of aggression.

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<sup>103</sup> Ibid.

<sup>104</sup> For a more extensive analysis of these issues see M. Cowling, “The Relationship between the Security Council and the General Assembly with particular reference to the ICJ Advisory Opinion in the ‘Israeli Wall’ Case”, *South African Yearbook of International Law* 30 (2005), 50 et seq.

<sup>105</sup> The opening sentence of A/RES/377 A (V) of 1950, see note 57, reads as follows: “The General Assembly resolves that if the Security Council, because of a lack of unanimity of the permanent members, fails to exercise its primary responsibility for the maintenance of international peace and security ...”.

<sup>106</sup> Hailbronner/ Klein, see note 98, 291.

In the *Israel Wall* case it has been contended that in adopting S/RES/1515 (2003) of 19 November 2003, which endorsed the Roadmap to a Permanent Two-State Solution to the Israeli-Palestinian Conflict, the Security Council continued to exercise its responsibility for the maintenance of international peace and security and that, as a result, the General Assembly was not entitled under the Uniting for Peace Resolution to act in the Council's place in requesting an advisory opinion from the Court. Instead of taking an holistic view of Security Council involvement in the Israeli/Palestinian conflict in answering this contention, the Court instead was led by the inability of the Council to take a decision on the Israeli settlements and the construction of the wall due to the negative vote of a permanent member on certain occasions and the subsequent absence of a discussion on the construction of the wall. On the basis of this assessment the Court concluded that the conditions for the Uniting for Peace Resolution were fulfilled and that the Assembly was entitled to convene and later reconvene the 10th Emergency Special Session.<sup>107</sup> Had the Court taken into account the general nature of the dispute or situation in the Middle East and the Security Council's continuous involvement over time to bring about a settlement between the parties, any action by the General Assembly could in all probability have been blocked by invoking Article 12 para. 1. But, by dividing the dispute up in different phases and then assessing the responses of the Security Council to each one, the Court was able to expose individual instances of inaction. Whether the Court was fully aware of the legal and political consequences of this approach is difficult to say. Where to draw the line, especially in the absence of clear guidelines, must now become a matter for debate, also since the Court's approach,

“lays the foundation for the GA simply to ignore the restraints imposed by article 12(1), and consequently to make recommendations on any matter – irrespective of whether or not the SC is dealing with it. This, in turn, will open the door for the UN to be speaking with two contradictory voices in respect of the same matter – which is clearly undesirable from a process and policy perspective. Indeed, it is quite possible that the request for an advisory opinion on the construction of the wall could have had adverse implications for the peace process set out in terms of the ‘roadmap’. It is submitted that this is a risk that will always be present where the two UN organs

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<sup>107</sup> See note 99, paras 29-31.

... can end up competing with one another over the same dispute at the same time.”<sup>108</sup>

These latest developments certainly create additional opportunities for NAM to experiment with majority representation in the General Assembly with a view to playing a larger role in matters relating to international peace and security. If at all, this might provide only a partial remedy to the inconsistent and ineffective responses of the Security Council in the face of critical issues of peace and security. A far greater challenge than giving the General Assembly a greater say in these matters, is the re-alignment of the United Nations as a whole to take more effective *preventive* action with regard to the sources and accelerators of conflict. What warrants even more consideration in this regard is the use of preventive military force when deemed necessary to maintain or restore international peace and security. This underscores the imperative of a more proactive Security Council which is prepared to take more decisive action, an outcome that is not necessarily linked to a more representative Council.

### c. The Human Rights Council

In April 2006 the United Nation’s Human Rights Council replaced the United Nations Commission on Human Rights.<sup>109</sup> This institutional change came in the wake of the High-level Panel Report’s findings that,

“In recent years, the Commission’s capacity to perform these tasks has been undermined by eroding credibility and professionalism. Standard-setting to reinforce human rights cannot be performed by States that lack a demonstrable commitment to their promotion and protection. We are concerned that in recent years States have sought membership of the Commission not to strengthen human rights but to protect themselves against criticism or to criticize others. The Commission cannot be credible if it is seen to be maintaining double standards in addressing human rights concerns.”<sup>110</sup>

With this concrete institutional change the United Nations resolved to raise the issue of human rights protection to one of the three pillars on which all the work of the UN will be based, alongside economic and social development and peace and security.<sup>111</sup> Whether the newly estab-

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<sup>108</sup> Cowling, see note 104, 78.

<sup>109</sup> See A/RES/60/251 of 15 March 2006, para. 1.

<sup>110</sup> High-level Panel Report, see note 15, 283.

<sup>111</sup> See A/RES/60/251, see note 109, preamble para. 6.

lished Council will avoid the errors of the Commission and ensure “universality, objectivity and non-selectivity in the consideration of human rights issues, and the elimination of double standards and politicization”<sup>112</sup> remains to be seen. For current purposes the involvement of NAM in the affairs of the Council provides enough food for thought.

On 14 November 2006 the Third Committee of the General Assembly (Social, Humanitarian and Cultural) adopted a draft resolution sponsored by Belarus and Uzbekistan, countries known for their human rights violations. The resolution was adopted by 77 states in favour, 63 against and 26 abstentions. The resolution refers to all the major international human rights instruments, as well as the UN Charter and on that basis proclaims in its preamble that,

“All human rights are universal, interdependent and interrelated and must be treated in a fair and equal manner, on the same footing and with the same emphasis, while the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind; ... Politically motivated and biased country-specific resolutions on the situation of human rights severely undermine the principles of objectivity and non-selectivity in the consideration of human rights issues.”<sup>113</sup>

In its operative part the resolution reaffirms that an international dialogue on human rights should be guided by the principles of universality, non-selectivity, impartiality and objectivity and should not be used for political purposes.<sup>114</sup> Secondly, politically motivated and biased country-specific resolutions on the situation of human rights and the selective targeting of individual countries for extraneous considerations and double standards must be avoided.<sup>115</sup> Thirdly, there is a continuing need for unbiased and objective information on the situation of human rights in all countries and the need to present this information in an impartial manner.<sup>116</sup> It is clear from the resolution’s preamble that it takes much of its inspiration from the Human Rights Council’s mandate to undertake a universal periodic review in a manner that ensures universality of coverage and equal treatment of all states and on the es-

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<sup>112</sup> *Ibid.*, preamble para. 9.

<sup>113</sup> Doc. A/C.3/61/L.31 Revision 1 adopted on 14 November 2006 during the 61st session of the Third Committee.

<sup>114</sup> *Ibid.*, para. 3.

<sup>115</sup> *Ibid.*, para. 4.

<sup>116</sup> *Ibid.*, para. 6.

tablishment of an intergovernmental Working Group to develop the modalities of the periodic review mechanism, based on an interactive dialogue and on objective and reliable information.

In the debate that preceded the adoption of the resolution, Belarus, the main sponsor of the resolution, explained that the resolution was the realisation of an idea that was approved at the 14th NAM summit in Cuba in September 2006 and was the spirit of a process that had begun in the spring when the General Assembly created the Human Rights Council. The United States commended the resolution with respect to the elimination of politically motivated or biased country-specific resolutions and referred to Israel which has often been the victim of such resolutions. The United States then also drew attention to the fact that the two main sponsors of the resolution had both been long-term abusers of human rights, and if such countries are to be shielded against investigations, the interests of citizens who hope for reform in such countries will be disregarded. Finland, speaking on behalf of the European Union, pointed out that dialogue and cooperation were successful only if the country concerned is willing to cooperate and open to dialogue. Belarus, Finland argued, was not such a country. Thus, the true intention of the resolution appeared to be to stifle all legitimate expressions of concern about the human rights situation in specific countries. Canada also pointed out that the resolution, which intended to eliminate political motivations for criticising specific countries, is itself politically motivated, since at its root it sought to circumscribe the ability to bring forward serious human rights abuses.

What is also interesting to note is that an earlier draft of the resolution, dated 2 November 2006, contained an operative para. 4 in which the following was stated,

“Stresses the need to ensure that country-specific resolutions on the situation of human rights should be used only in cases of massive violations of human rights related to genocide, ethnic cleansing and crimes against humanity”.<sup>117</sup>

This paragraph was totally removed from the resolution. A week after the 14th November resolution, on the 20 November 2006, Uzbekistan successfully sought a motion in the Third Committee of no action that blocked a draft resolution before the Committee that would have seen the General Assembly express grave concern at serious and con-

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<sup>117</sup> Doc. A/C.3/61/L.31, 61st session of the Third Commission, 2 November 2006, para. 4.



tinuing human rights violations in that country. The blocked draft resolution had its origin in the indiscriminate and disproportionate use of force by government troops to quell demonstrations in Andijan in May 2005 and the subsequent closure of at least 200 NGO's.

The reason given for no action by the Uzbekistan representative was the decision taken by NAM during the September summit to eliminate country-specific resolutions and criticism and similar decisions taken by the AU and the Organisation of the Islamic Conference. The no-action motion was then adopted by a vote of 74 in favour, 69 against and 24 abstentions.

Another great irony is that on the 2 November 2006 another resolution was supported by a large number of non-aligned Member States under the title "promotion of a democratic and equitable international order" in which the international community was called upon to,

"devise ways and means to remove the current obstacles and meet the challenges to the full realization of all human rights and to prevent the continuation of human rights violations resulting there from throughout the world".<sup>118</sup>

This simply does not fit well with the stance taken in the resolution of 14 November 2006.

The resolution of 14 November 2006 is based on a careful and selective revision of the words and phrases used in A/RES/60/251 adopted by the General Assembly by virtue of which the Human Rights Council was established. References to "fair and equal treatment", the enhancement of a "human rights dialogue, international cooperation and understanding among civilizations," "objectivity and non-selectivity" have been given a new spin and linked to the universal periodic review mandate of the Council, as if that was the only mandate given to the Council by the General Assembly. What has conveniently been left out of the equation is operative para. 3 of the General Assembly resolution establishing the Council. This paragraph states clearly that the Council "should address situations of violations of human rights, including gross and systematic violations."

It is perhaps not inconceivable that one of the aims of NAM could have been to predetermine the outcome of the Working Group that must this summer establish the *modus operandi* of the universal periodic review mechanism and thereby the future functioning of the Human Rights Council. The Third Committee is an obvious avenue for

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<sup>118</sup> Ibid., para. 10.

achieving just that. It is the only human rights body in the UN system with universal membership and NAM with its 118 members forms a significant block vote within the Third Committee. Furthermore 59 per cent of the current members of the Human Rights Council are also members of NAM. Thus, it is not merely coincidental that the draft resolution of 14 November 2006 refers in particular to the Human Rights Council's universal periodic review mechanism and to the inter-governmental Working Group that must establish the modalities of the mechanism. The composition of the Working Group will therefore also be of great significance. Further light on this development is shed if one considers some developments within NAM since the beginning of 2006.

On 26 January 2006 the Troika of NAM, comprising South Africa, Malaysia and Cuba, issued a communiqué subsequent to a meeting held near Cape Town. In the communiqué, the Troika underscored the "importance of maintaining and enhancing the cohesion, unity and solidarity among the members of the movement." In addition the members of the Troika expressed "their keen interest about ongoing consultations currently underway in New York pertaining to the operationalisation of the Human Rights Council and, in this context, urged the Non-Aligned Movement member countries to remain actively engaged on this important question with a view to developing a common NAM position thereof."

Furthermore, in the movement's Plan of Action, issued after the Havana Summit in September 2006, one also finds the following significant decision,

"[To] reinforce the presence of the Non-Aligned Movement by advancing its position during the deliberations taking place in the main international fora, particularly the Human Rights Council and the Third Committee of the General Assembly..."<sup>119</sup>

Then in the summit's final document the movement committed itself to support the candidatures of Non-Aligned members in all UN bodies, bearing in mind the ensuing obligation of such countries whose candidatures are successful, to defend, preserve and promote the concerns and interests of the movement.<sup>120</sup> In various parts of the Final Summit document, one comes across references that echo the phrases in the resolution of 14 November 2006. Of particular importance is a refer-

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<sup>119</sup> *Plan of Action of the Non-Aligned Movement (2006-2009) 14th Conference*, see note 16, NAM/2006/Doc.17 para. 235.5.

<sup>120</sup> *Final Document of the 14th Conference*, see note 16, para. 14.13.

ence to the periodic review mechanism of the Human Rights Council, which, according to NAM, should take place on “the basis of the report and information submitted by the state under review.” This, apparently, excludes all other sources of information.<sup>121</sup>

During the 61st session of the General Assembly, Belarus seized the opportunity to debate the issues surrounding the 14th November resolution in the Third Committee by emphasising and supporting the resolution’s objective, namely to achieve the promotion of human rights in every country through an “equitable and mutually respectful dialogue on human rights based on an unbiased analysis of objective data on the human rights situation in a particular country.”<sup>122</sup> In calling on states to support the resolution’s adoption in the General Assembly too, Belarus indicated that the introduction of the resolution could have been done under the agenda item on the reform of the United Nations, since its adoption “would lay the foundation for the qualitative renewal of a major area of United Nations activities: the protection and promotion of human rights.”<sup>123</sup> By contrasting the dialogue approach with country-specific investigations of human rights situations, Belarus then made the following comment,

“We believe that the prestige of the United Nations cannot and should not be used as a means of political pressure on sovereign States under the outlandish pretext of human rights violations. That runs counter to the very nature of our organization. Unfortunately, we note that it is precisely those methods that are being used with regard to the Republic of Belarus.”<sup>124</sup>

In response to the report by the Third Committee on human rights questions, the General Assembly, during its 61st session, *inter alia* adopted two resolutions identical in all salient respects to those of the Third Committee of 2 November and 14 November 2006 respectively and referred to earlier on.<sup>125</sup> However, a few weeks later the Assembly adopted another resolution detailing the Belarus government’s human rights violations and uncooperative attitude towards the Human Rights

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<sup>121</sup> Ibid., para. 54 (b).

<sup>122</sup> Doc. A/61/PV.81 of 19 December 2006, 13, 14.

<sup>123</sup> Ibid, 14.

<sup>124</sup> Ibid., 13.

<sup>125</sup> See A/RES/61/160 and A/RES/61/166 of 19 December 2006.

Council and recommended remedial action with respect to a number of violations.<sup>126</sup>

As a newly established human rights body, the Human Rights Council finds itself at a difficult juncture between setting itself apart from its predecessor, the UN Commission on Human Rights, and ensuring the cooperation of all states in living up to the commitment made at the body's establishment, namely to strengthen the United Nations human rights machinery. That some states, most notably the members of NAM, have seized the opportunity to start building an argument for casting the Council in the role of a mere dialogue facilitator, a kind of discussion forum where greater and lesser human rights abusers can sit together to reflect on their national state of affairs, is not entirely surprising, given the weak language used in A/RES/60/251 with regard to the Council's mandate and the emphasis on dialogue and cooperation. In view of the current precarious situation, it is rather important that the General Assembly, of which the Council is for the time being a subsidiary organ and to which the Council must report, also reconsiders its past selective and muffled responses to the state-sponsored human rights abuses of some of its own members.

#### IV. Economic Development

Apart from maintaining peace and security, which is the primary function of the UN, the organisation has also been given another important mandate, i.e. the creation of higher standards of living and of conditions for economic and social progress and development.<sup>127</sup> The Charter itself sees these conditions as necessary for stability, and for peaceful and friendly relations amongst nations and instructs the organisation to find solutions to international economic and related problems and to promote universal respect for human rights and fundamental freedoms.

The economic development aspirations that followed in the wake of their unstable political independence during the decolonisation rush of the 1960s, caused the new states of Africa and Asia to start pushing economic development issues higher up the agenda of the UN. At about this time bilateral programmes provided by the United States dominated development assistance and a multi-lateral set-up were just about to take root with the establishment in 1956 of the International

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<sup>126</sup> A/RES/61/175 of 19 December 2006.

<sup>127</sup> Article 55 of the UN Charter and Article 3(1).

Finance Corporation (IFC), the International Development Association (IDA) in 1960 and the United Nations Development Programme (UNDP) in 1965.

Of the many reports on economic and social development, one that warrants special attention in the current context is the Report of the Independent Commission on International Development Issues, also known as the Brandt Commission report after the name of its chairman, the former Chancellor of the Federal Republic of Germany, Willy Brandt. This report looked at development issues from the North-South divide and is considered to be one of the most recognised contributions on UN reform in the field of economic development.<sup>128</sup> At the beginning of the 1980s, the report noted, the world community “faces much greater dangers than at any time since the Second World War” and it has become clear “that the world economy is now functioning so badly that it damages both the immediate and the longer-run interests of all nations.”<sup>129</sup>

North-South relations were considered to be the “great social challenge of our time” and the two decades that lie ahead could turn out to be “fateful for mankind” and citizens everywhere “must realize that many global issues will come to a head during this period.”<sup>130</sup> Once again the issue of institutional proliferation, of fragmented and diffused activity, of overlapping responsibilities and organisational rivalries were mentioned and a call made for greater effectiveness and institutional rationalisation and reform.<sup>131</sup> On North-South relations, the report made extensive proposals for the 1980s and 1990s on priority needs, technology and mineral development, reform of the monetary system, development finance, power sharing and an emergency programme for the 1980s to address immediate concerns.<sup>132</sup> For the realisation of these goals the report implored states in both the North and the South to start from a position of solidarity, meaning that,

“Wherever possible, negotiations should look for joint gains, rather than slowly wrestling uncertain ‘concessions’. The starting point has to be some perception of mutual interests in change. In North-South negotiations immediate or short-term reciprocal benefits cannot always be expected, and greater equity will sometimes require

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<sup>128</sup> Cf. J. Müller (ed.), *Reforming the United Nations*, Volume IV (2001), 14.

<sup>129</sup> Report reprinted in Müller, see above, Volume I (1997) under III.9/28, 29.

<sup>130</sup> *Ibid.*, III.9/3.

<sup>131</sup> *Ibid.*, III.9/22, 23.

<sup>132</sup> *Ibid.*, III.9/31 et seq.

non-reciprocity. Mutual interests are often longer-term and overall they need to be supplemented with considerations of forward-looking solidarity which go beyond strict ‘bargaining’. All sides have an interest in a framework which is designed to enlarge their common ground and the dialogue must be structured to allow the participants to perceive their specific mutual interests clearly on each issue. ... At the same time, the mechanism of negotiation should be able to accommodate the principles of universality and joint responsibility.”<sup>133</sup>

Although the Brandt Report was well received and seen as a new beginning it suffered a similar fate as that of other reports and a decade later Brandt himself concluded that,

“North-South relations have undoubtedly not improved – in fact they have deteriorated further. The trend towards unbalanced development has become stronger. ... The “global” negotiations under the auspices of the United Nations have led nowhere. The 1981 North/South Summit in Cancun, which was based on an initiative by our Commission, remained an isolated episode. UNCTAD did not achieve very much either.”<sup>134</sup>

Elsewhere, the fundamental cause of the breakdown in the North-South dialogue was ascribed to a rejection by Western countries of the philosophy that serves as a basis for the dialogue in the beginning. The main element in this change of attitude is that the rich countries became irritated,

“by the way the developing countries have used the United Nations; by their ideological propaganda – accusatory, demanding, anti-liberal – that the Group of 77 with its three-quarters majority iterates in the course of many speeches and resolutions; by the manner in which, on all occasions, Western countries are condemned; in general by the moralizing attitude adopted by governments of poorer countries which are moreover more often than not dictatorial and little burdened by scruple in their domestic policy.”<sup>135</sup>

As a result of this, and still aware of the need to establish a world-wide system of economic and political co-ordination, the rich countries started to move the debate out of the United Nations by using the

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<sup>133</sup> Ibid., III.9/25.

<sup>134</sup> Quoted in Müller, see note 128, 16.

<sup>135</sup> M. Bertrand, “A new North/South Dialogue”, *International Relations* 9 (1987/89), 244 et seq. (247, 246).

global financial institutions and the opportunities offered by the OECD and regional institutions coupled with regular summits between America, Europe and Japan.<sup>136</sup>

Yet another attempt to revitalise the economic development debate and to forge, once again, a new vision and culture of development occurred in the early 1990s when Bhoutros Ghali took over as Secretary-General of the United Nations in 1992.

In the same year Bhoutros-Ghali established a panel of experts to advise on restructuring UN institutions in the social, economic and environmental fields with a view to achieve better integration of UN activities in these fields and to secure more effective and speedy implementation.<sup>137</sup> This took place at a time when the Cold War had come to an end and a better spirit for cooperation in the United Nations started to manifest itself. In 1994 Bhoutros-Ghali's Agenda For Development<sup>138</sup> appeared, which was little more than an overview of previous and current development themes, issues and concerns covered in broad and familiar diplomatic language. If something must be singled out it is the emphasis given to sustainable development in the context of environmental concerns,<sup>139</sup> an issue that was raised under a much broader interpretation of development and which assumed prominence in the Rio Declaration on Environment and Development of 1992, the same year Bhoutros-Ghali took office, and which led to the adoption of Agenda 21, the international community's blueprint and action plan for a global partnership for sustainable development. This took place only five years after the Brundtland Commission Report<sup>140</sup> brought a grim picture of environmental decay and unsustainable economic development to the General Assembly, which, among many things, led to a broadening of the traditional concept of peace and security in international relations to include non-military sources of instability such as

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<sup>136</sup> Ibid., 249.

<sup>137</sup> Müller, see note 128, 47, 48.

<sup>138</sup> Doc. A/48/935 of 6 May 1994.

<sup>139</sup> Ibid., paras 68-93.

<sup>140</sup> World Commission on Environment and Development (*Brundtland Commission*) Report of 20 March 1987 reprinted in: Müller, see note 128, Volume II (1997), III.16/1.

environmental risks that threaten the collective survival of the global community or large parts thereof.<sup>141</sup>

During the 1995 Cartagena summit, NAM made it clear that the Agenda for Development was given high priority by the movement as a “unique opportunity to launch a process of constructive dialogue, aimed at the creation of a genuine partnership on development issues and the revitalization of international cooperation for development”.<sup>142</sup> For the effective implementation of existing international commitments and agreements, the United Nations and its specialised agencies were to assume a key role<sup>143</sup> with the achievement of internationally agreed development goals to be the over-arching framework of the UN.<sup>144</sup>

In this regard NAM associates itself with the statement by the Group of 77,<sup>145</sup> with whom NAM shares a considerable overlap in membership, that the United Nations’ capacity and effectiveness in the field of development ought to be strengthened and that the right to development must be accorded the utmost priority by the United Nations.<sup>146</sup> From this stance the G77 wants the United Nations to take control of development policies by means of which the Bretton Woods institutions, the WTO and other development agencies could be directed towards a more comprehensive approach to development, characterised by predictability, sufficiency, flexibility and sustainability under the oversight role of the United Nations.<sup>147</sup>

By bringing development aid back into the fold of the United Nations’ multi-lateral system, the aim seems to be to establish what is

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<sup>141</sup> See also C. Tinker, “Environmental Security: Finding the Balance”, in: W.A. Knight (ed.), *Adapting the United Nations to a Post-Modern Era*, 2001, 202.

<sup>142</sup> *Final Document of the 11th Summit*, see note 20, para. 216.

<sup>143</sup> *Ibid.*, para. 219.

<sup>144</sup> *Final Document of the 14th Conference*, see note 16, para. 195.

<sup>145</sup> *Ibid.*, para. 194. The Group of 77 was established on 15 June 1964 by seventy-seven developing countries to form the largest intergovernmental organisation of developing states with the aim to provide assistance to the countries of the south to articulate and promote their collective economic interests and negotiating capacity on all major international economic issues.

<sup>146</sup> Statement adopted by the Special Ministerial Meeting of the Group of 77, Putrajaya, Malaysia, 29 May 2006, paras 1, 3 accessible at <<http://www.g77.org/doc/putrajaya.htm>>.

<sup>147</sup> *Ibid.*, para. 13-19.



called “an effective and comprehensive accountability and monitoring mechanism to track the implementation by developed countries of commitments undertaken in the major United Nations conferences and summits in the economic, social and related fields.”<sup>148</sup> In terms of this strategy two objectives are pursued: to ensure greater accountability at the multi-lateral level under a rule-based regime for international economic relations and greater policy latitude for developing countries to determine their own development aims and priorities.<sup>149</sup> This latter objective is also rooted in the Doha Plan of Action adopted in June 2005 when it was decided to,

“work towards a common strategy for securing national policy space for developing countries in all areas particularly in trade, investment, financial and industrial policy, which allow them to adopt the most appropriate measures and actions suitable to their national interests and priorities, and to realize their right to development.”<sup>150</sup>

The emphasis in NAM documents on improving the economic development of developing countries through a United Nations driven multi-lateral system of controls and oversight stands in stark contrast to the scant attention given to regional economic integration, a matter that is of special significance for the African members of NAM. Statements on regional economic integration usually take the form of common-place undertakings to promote and strengthen regional and sub-regional economic integration “on the basis of mutual benefit, complementarities and solidarity among developing countries with a view to facilitating and accelerating the economic growth and development of their economies.”<sup>151</sup>

In 1994 it was observed that the,

“track record of regional cooperation in Africa has been a major cause of concern. Three decades of continued efforts have ended in near bankruptcy, which has given rise to a growing worry about the direction in which the cooperation drive is heading.”<sup>152</sup>

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<sup>148</sup> Ibid., para. 7.

<sup>149</sup> See also *Final Document of the 14th Conference*, see note 16, paras 195, 197, 199.

<sup>150</sup> Doha Plan of Action, South-South Summit, Doha, Qatar 12-16 June 2005, Doc. G-77/SS/2005/2, 3.

<sup>151</sup> Cf. *Final Document of the 14th Conference*, see note 16, para 214.

<sup>152</sup> A. Aly (ed.), *Economic Cooperation in Africa: In Search of Direction*, 1994, 1.

The “three decades of continued efforts” is also littered with a multitude of sub-regional organisations<sup>153</sup> which have emerged in an uncoordinated fashion all over Africa only to produce a myriad of problems and disappointing outcomes. Also, the genesis, growth, decline and stagnation of the regional institution-building efforts on economic integration are well-captured in the following assessment by Gruhn,

“The usual life-cycle of an inter-African organization started with a series of inter-state conferences, which culminated in a charter-signing ceremony attended by heads of states, and the selection of a headquarters site. This was followed by the creation of an organizational bureaucracy, which then generally encountered financial difficulties, bureaucratic disarray, loss of interest by the organization’s members, and decline (and sometimes demise) of the organization. It has become a common observation that many inter-African organizations are merely paper organizations.”<sup>154</sup>

In 2006, the Economic Commission for Africa still recorded lack of substantial progress and mentioned rationalisation of regional economic communities as one of the main challenges confronting Africa in its quest for full economic integration. Although progress has been made in the areas of trade, infrastructure, regional public goods and peace and security, the Commission pointed out that,

“only a fifth of the regional economic communities have achieved their targets for trade among members. Common labour laws, free movement of labour, and rights of residence and establishment have still not been undertaken by most regional economic communities, and most are also lagging on almost all critical elements necessary for the success of an economic union ... Progress in harmonizing tax

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<sup>153</sup> The following sub-regional organisations exist with the common purpose to achieve economic integration in the areas under their jurisdiction: Central Africa: Economic Community of Central African States; Central African Economic and Monetary Community; Economic Community of Great Lakes Countries; East and Southern Africa: Common Market for Eastern and Southern Africa; East African Community; Inter-Government Authority on Development ; Indian Ocean Commission; Southern African Development Community; Southern African Customs Union; West Africa: West African Economic and Monetary Union; Mano River Union; Economic Community of West African States; North Africa: Arab Maghreb Union, replaced by the Community of Sahel-Saharan States.

<sup>154</sup> I.V. Gruhn, *Regionalism Reconsidered: The Economic Commission for Africa*, 1979, 5. See also S. Asante, *The Political Economy of Regionalism in Africa*, 1985, 28.

policies, deregulating financial sectors, liberalizing the capital account, and other areas has been insufficient. Even with sectoral programmes needed to deepen African integration, a third to a half of the regional economic communities acknowledge shortcomings in the effectiveness of their initiatives towards the integration goals.”<sup>155</sup>

Underlying causes for this malaise, according to the Commission, are *inter alia*, overlapping membership in the different organisations, duplication of programmes, institutional inefficiency and ineffectiveness and poor coordination at the continental level.<sup>156</sup>

Whatever vehicle is chosen for economic integration, the process itself as well as its sustainability and successful implementation cannot be separated from finding a solution to the lack of institutional capacity and good governance at the national level. Strong and effective regional institutions are unthinkable without national states that have the capacity and will to work towards the common good at the regional level. This pre-condition is implicit in the Economic Commission for Africa’s assessment of the poor national underpinnings for regional efforts towards economic integration. According to the Commission progress is hampered by weak institutions lacking coordinating capacity within national governments; little translation of economic community goals into national plans; poor implementation of agreed programmes due to a lack of effective integration mechanisms at the national level; weak legislative processes for integration; poor fulfilment of financial obligations to regional organisations, and a poor understanding of economic integration issues amongst the general population.<sup>157</sup>

## V. Conclusion

Members of NAM have three things in common when it comes to self-preservation: a shared understanding of the need to maintain existing borders; inter-state relations based on the rhetoric of political self-determination, state sovereignty, political independence, solidarity and unity; and claims to formal equality in statehood that must be upheld by equally strong claims to the maintenance of multi-lateral relations in the political organs of the UN. Quite often these claims serve to insu-

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<sup>155</sup> United Nations Economic Commission for Africa (ed.), *Assessing Regional Integration in Africa II*, 2006 at xvi et seq., accessible at <[www.uneca.org](http://www.uneca.org)>.

<sup>156</sup> *Ibid.* Chapters 3-5.

<sup>157</sup> Economic Commission for Africa Report, see note 155, 69 et seq.

late Member States against outside scrutiny or to hide unpalatable truths. However, to the extent that there is merit in NAM's concerns in the areas dealt with above, some concluding remarks are warranted.

Firstly, the strong reliance on multi-lateralism as a means of strengthening the weak political and economic position of developing countries fails to take proper account of the direct link between effective multi-lateralism and strong and effective states. As long as some members in a multi-lateral arrangement remain internally weak and dysfunctional, the arrangement itself will be put under strain, becomes exploitable and incapable of securing the strategic interests of the members, individually or collectively. Thus, there is a case to be made out for domestic reform within aberrant Member States first, before institutional reform at the international level will have the desired effects.

Secondly, the unprecedented degree to which the international community and recently created regional institutions are becoming involved in almost every aspect of political and economic governance at the domestic level as well as the strengthening of civil society, is ironically the result of post-colonial states' own double strategy pursued in international fora. In embracing the dominant values of the Westphalian state system to compensate for substantial inequality, weak post-colonial states demanded recognition as *equal* sovereigns through equal membership in the United Nations while, at the same time, they sought economic assistance and other forms of special (*unequal*) treatment for the purpose of which the rules on equal rights and obligations had to be revisited to accommodate a wholly new legal regime on economic rights and duties and development assistance.<sup>158</sup> It is this latter strategy that has over time paved the way for domestic governance issues to become exposed to external inquiry, a process that has assumed a greater urgency in the context of the 21st century's peculiar security dilemmas.

Moreover, the fact that the new demands for substantial reforms in political and economic governance were given form and substance by and through donor institutions and programmes is not a coincidence, but the result of a deliberate decision by donor countries to move the decision-making process away from the "one country one vote" UN system to the Bretton Woods institutions where power is distributed according to economic capability.<sup>159</sup> The reason why NAM countries want to establish UN oversight over donor institutions is to make ma-

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<sup>158</sup> See also G. Sørensen, *Changes in Statehood: The Transformation of International Relations*, 2001, 105.

<sup>159</sup> *Ibid.*, 112.

jority representation work for them. Under current conditions, this is unlikely to happen. Moreover, donor initiatives and programmes have themselves become diversified and are no longer located in either the Bretton Woods institutions or UN development agencies. The European Union, for instance has its own development initiatives with African, Caribbean and Pacific countries in terms of the Cotonou Agreement, China has found new interest in Africa and the countries of the South are creating new platforms for development aid and cooperation. These developments also create opportunities for multi-lateral arrangements, although not necessarily of the kind NAM seeks in the political organs of the UN.

Lastly, there is a notable discrepancy in what NAM countries want with regard to institutional efficiency, democratisation and responsiveness to needs at the international level, and what many of their own governments can provide at the national level. There is a simple truth involved here: what is claimed at one level must also be claimed at the other, simply because there is a symbiotic relationship between the health of national institutions and the health of international institutions. In the Non-Aligned Movement there is a striking absence of leadership with regard to these matters. More often than not there is a tendency to go for the lowest common denominator in matters on good governance and human rights protection. A country whose performance is particularly disappointing both in NAM and in the African Union is South Africa which enjoyed unprecedented international support over decades in ousting an undemocratic and repressive government. It is therefore encouraging that the General Assembly has recently adopted a resolution under the title: *The Rule of Law at the National and International Levels*.<sup>160</sup> In the preamble it is stated that the,

“advancement of the rule of law at the national and international levels is essential for the realization of sustained economic growth, sustainable development, the eradication of poverty and hunger and the protection of all human rights and fundamental freedoms ...”.

This is followed by the statement that the,

“promotion of and respect for the rule of law at the national and international levels, as well as justice and good governance, should guide the activities of the United Nations and of its Member States ...”.

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<sup>160</sup> A/RES/61/39 of 4 December 2006, preamble.

This item is now destined for inclusion in the agenda of the Assembly's 62nd session from whence the sixth committee will facilitate discussions on it. If followed to its logical consequences, this could be one of the more meaningful reform initiatives on the UN agenda.