

United Nations Reform: Success And Failure

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Untuk pertama kali reformasi PBB ditangani secara komprehensif di KTT PBB 14-16 September 2005. KTT ini juga membahas pelaksanaan *Millennium Development Goal's* yang dicanangkan pada KTT Millennium 2000. KTT menghasilkan dokumen akhir yang dinamakan "*2000 World Summit Outcome*" mencakup masalah-masalah utama dan langkah-langkah konkrit tentang reformasi PBB, al.: reformasi di bidang pembangunan, perdamaian dan keamanan kolektif, penggunaan kekuatan, terorisme, pembentukan *Peacebuilding Commission*, tanggung jawab untuk melindungi penduduk dari genosida ("*responsibility to protect*"), kejahatan perang, pembersihan etnis atau *ethnic cleansing* dan kejahatan terhadap kemanusiaan, serta reformasi Majelis Umum PBB, Dewan Keamanan, Dewan Ekonomi dan Sosial, pembentukan Dewan HAM, reformasi Sekretariat dan amandemen Piagam PBB. Keberhasilan ini tidak dapat menutup kekecewaan banyak kalangan anggota PBB, termasuk Indonesia. Kekecewaan tersebut disebabkan oleh kegagalan KTT dalam menyetujui langkah-langkah reformasi yang penting seperti penambahan keanggotaan Dewan Keamanan, komitmen total negara maju untuk mencapai target 0.7 % dari GNP untuk ODA, dan langkah-langkah menuju non-proliferasi senjata pemusnah masal dan perlucutan senjata. Namun kegagalan ini tidak lepas dari realita politik di kancah internasional yang dihadapi oleh PBB.

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World leaders have gathered at the United Nations Headquarters in New York from 14 to 16 September 2005 to consider a comprehensive package of reform of the United Nations proposed by the UN Secretary-General Kofi Annan as contained in his report entitled "In larger freedom: towards development, security and human rights for all"¹. The World Leaders Summit, officially called the High-Level Plenary Meeting of the UN General Assembly also undertook a review of the implementation of the United Nations Millennium Declaration of the year 2000.

Following three weeks of difficult and intensive negotiations, and facing a near collapse, the World Leaders Summit finally adopted the "2000 World Summit Outcome" (hereinafter referred to as the Outcome Document).² The adoption of the Outcome Document was marred with controversy related to the way that it was rammed through the World Leaders Summit. The leaders have failed to realize the ambitious and comprehensive reform package as proposed by Secretary-General Kofi Annan. They failed to reach agreement on the expansion of the Security Council membership, on a total commitment from developed countries to achieve the target of 0.7 per cent of GNP for official development assistance by 2015, and on the issue of non-proliferation of weapons of mass destruction and disarmament. It should be noted, however, that the importance of the reform as presented in the Outcome Document could not be overemphasized, as it embodies not only renewed

Jabatan terakhir dari karirnya sebagai diplomat adalah Duta Besar Perwakilan Tetap RI untuk PBB dan Organisasi Internasional Lainnya di Jenewa pada 2003. Saat ini beliau aktif sebagai *Senior Fellow* di Kantor Konsultan Hukum Ali Budiardjo Nugroho Reksodiputro (ABNR) Jakarta, Pengajar Mata Kuliah Hukum Diplomatik dan Praktek Diplomasi di Fakultas Hukum Universitas Indonesia, Anggota dari *Eminent Persons Group on Small Arms and Light Weapons* dan Ketua Komisi D dari Panel 45 mengenai posisi Indonesia terhadap UN Reform.

¹ UN Document A/59/2005.

² UN Document A/60/L.1.

commitments but also important decisions. Secretary-General Annan stated in this connection that “Obviously, we didn’t get everything we wanted,...” With 191 member States, it is not easy to get an agreement. But we can build on it.”³ The Outcome Document contains five broad themes, i.e. values and principles; development, peace and collective security, human rights and the rule of law; and strengthening the United Nations.

The genesis of the 2005 UN Reform

In his speech to the UN General Assembly in September 2003, Secretary-General Kofi Annan raised an important question. He referred to the Millennium Summit when the international community expressed their vision - a vision of global solidarity and collective security. He stated that recent events had called that consensus in question. He argued that the international community is facing a decisive moment for the United Nations, especially with respect to the realization of the aspiration to provide collective security for all, as enshrined in the UN Charter.

It is evident that Secretary-General Annan’s concern was prompted by events surrounding the failure of the Security Council to agree on the question of whether or not Iraq with its alleged possession of weapons of mass destruction (WMD) poses a threat to international peace. This failure, as we all know, had led to the attack of Iraq by the United States and its coalition without the endorsement of the Security Council – a unilateral action called “pre-emptive war”. The Security Council – and the world for that matter - were, and still are, divided on the question, undermining the effectiveness of the Security Council and in turn, the Charter of

³ The New York Times, 14 September 2005

the United Nations. The central security issue dividing the world is the perception of threat and the appropriateness of the use of force to address those threats.

The Secretary-General however, was not only concerned with the problem of security threats in the traditional sense or the so-called “hard threats”, but also with the new security challenges now being faced by the United Nations, namely new threats to international peace and security - the so-called “soft threats” such as the persistence of extreme poverty, the disparity of income between and within societies the spread of infectious diseases, climate changes and environmental degradation. Facing these challenges, he believes that there is a need for a new vision of collective security. He challenged the members of the UN to make the United Nations effective.

To prepare for the deliberation in the World Leaders Summit in September 2005 which will consider UN reform and review progress made since the Millennium Declaration adopted by the United Nations in 2000, the Secretary-General issued his report launched on 21 March 2005.⁴ The report covers a wide-ranging recommendation on UN reform. In preparing his report, Secretary-General Annan has drawn inspiration from the report of the “High-Level Panel on Threats, Challenges and Change” entitled “A more secure world: Our shared responsibility”, launched on 2 December 2004.⁵ He has also drawn inspiration from the 250 experts who prepared a plan of action to achieve the Millennium Development Goals by 2015.

⁴ *Supra*, p. 1

⁵ UN Document A/59/565

2000 World Summit Outcome

The Outcome Document adopted by the Summit is the result of intense negotiations on the recommendations of the UN Secretary-General contained in his report mentioned above.⁶ Some of the important issues contained in the Outcome Document are as follows:

Development

The World Leaders strongly reiterated their determination to ensure the timely and full realization of the development goals and objectives agreed at major UN conferences and summits, including the Millennium Development Goals (MDG's) agreed at the Millennium Summit in 2000. They also reaffirmed their commitment to eradicate poverty and promote sustained economic growth, sustainable development and global prosperity for all. The Leaders, however, concerned with the slow and uneven progress towards poverty eradication and the realization of other development goals in some regions.⁷ These statements are consistent with the recommendation of the Secretary-General and with the position of Indonesia as stated in a document circulated at the Summit entitled "Position Paper at the High-Level Plenary

⁶ Supra, p.1

⁷ UN Document A/60/L.1, p. 3

Meeting, New York, 14-16 September 2005".⁸ Initially the United States opposed the inclusion of the reference to MDG's in the text, which posed serious problem in the negotiations.

The Leaders also reaffirmed that each country must take primary responsibility for its own development and adopt, by 2006, and implement comprehensive national development strategies to achieve the internationally agreed development goals and objectives, including the MDG's, with the support of the developed countries, including through increased development assistance and the promotion of international trade as an engine for development. They were encouraged by recent commitments to substantial increase in official development assistance and the Organization for Economic Cooperation and Development (OECD) estimate that official development assistance to all developing countries will now increase by around \$ 50 billion a year by 2010.

The Summit welcomed the increased resources that will become available as a result of the establishment of timetable by many developed countries to achieve the target of 0.7 per cent of GNP for official development assistance (ODA) by 2015 and to reach at least 0.5 of GNP for ODA. The words "many developed countries" indicate that there are certain Member States which do not share this commitment, including the United States which tried to retract from their commitment to MDG's and opposed the 0.7 of GNP for ODA and a timetable to achieve the targets. Indonesia is of

⁸ "The position paper at the High-Level Plenary, New York, 14-16 September 2005", prepared by Panel 45, a committee of 45 academics, experts and former diplomats established by President Susilo Bambang Yudhoyono, co-chaired by former Foreign Minister Ali Alatas and former Coordinating Minister for Economics; Dorodjatun Kuntjorojakti.

the view that an increase of ODA should be complemented with an increase in the absorbing capacity of the receiving countries.

The Leaders reaffirmed their commitment to trade liberalization and to ensure that trade plays its full part in promoting growth, employment and development for all. They also pledge to work expeditiously towards implementing the development dimension of the Doha work programme. On education, the Leaders emphasized the critical role of both formal and informal education in the achievement of poverty eradication and other development goals as envisaged in the Millennium Declaration.

Peace and collective security

The world has changed significantly since the United Nations was created in 1945. So have the threats to international peace and security. We no longer face only aggressive war, but also the so-called new threats or the so-called "soft threats" such as poverty, infectious disease and environmental degradation, war and violence within States, the spread and possible use of nuclear, radiological, chemical and biological weapons, terrorism, and international organized crimes. Another new phenomenon of the threats is that they now come from non-State actors as well as States actors, and that they are threats to human security as well as State security. The UN Secretary-General in his report⁹ said that he fully embraced the broad vision that the report of the "High-Level Panel on threats, challenges and change"¹⁰ articulates and its case for a more comprehensive concept of collective security. Indeed, it is essential for the international community to create a new system of collective

⁹ UN Document A/59/2005 p. 24. para 77

¹⁰ *Supra*, p. 3.

security that is comprehensive and that is based on the premise that security, economic development and human freedom are inter-related and indivisible.

The World Leaders endorsed the views of the UN Secretary-General in his report and acknowledge at the Summit that many of today's threats recognize no national boundaries, are interlinked and must be tackled at the global, regional and national levels in accordance with the UN Charter and international law. They therefore reaffirmed their commitment to work towards a security consensus based on the recognition that threats are interlinked, that development, peace and security and human rights are mutually reinforcing, that no State can best protect itself by acting entirely alone and that all States need an effective and efficient collective security system pursuant to the purposes and principles of the Charter.¹¹ The significance of this statement is that the international community is against unilateralism and preventive actions. This is consistent with the position of Indonesia.

It is regrettable that in the face of a strong opposition especially from the United States, the Leaders failed to agree on the wordings of the issue of non-proliferation of weapons of mass destruction and disarmament, especially nuclear disarmament. The deep disagreement on the issue seems to reflect the failure of the NPT Review Conference earlier this year as well as the failure of the Conference on Disarmament in Geneva on its program of work for the last few years.

¹¹ UN Document A/60/L.1, pp. 21-22, para 71 and 72

Use of force under the Charter and collective military action authorized by the Security Council

In dealing with threats to international peace and security, collective security means nothing without the option of the use of force. As one of the two exceptions to Article 2(4) of the UN Charter prohibiting Member States from using or threatening force against each other, Chapter VII of the UN Charter empowers the Security Council (or regional organizations under Chapter VIII) to authorize the use of military force to address “any threat to the peace, breach of the peace, or act of aggression”. Chapter VII of the UN Charter is the very basis of the legitimacy of the use of force.

When there is a common perception of threat – whether a particular situation is indeed posing a threat to a State or a group of States – it will not be difficult to reach an agreement or consensus on the use of force against a State or non-State entity posing the threat. One case in point is the decision of the Security Council to authorize the use of force against the Taliban regime in Afghanistan. It would have been difficult, if not impossible, if there had been no common perception on the threat in question, like when the Security Council in 2003 had to deal with the accusation in the Council that Iraq possessed weapons of mass destruction and therefore posed a threat to international peace and security in. The High-Level Panel states in its report that the maintenance of world peace and security depends importantly on there being a common global understanding, and acceptance, of when the application of force is both legal and legitimate. It says further that “One of these elements being satisfied without the other will always weaken the international legal order – thereby put both State and human security at greater risk.”¹²

¹² UN Document A/59/565., para 184

On the question of the use of force, the Leaders regrettably have settled on very general statements of commitment such as obligation of all Member States to refrain in their international relations from the threat or use of force in any manner inconsistent with the UN Charter. They expressed their determination to take effective collective measures for the prevention and removal of threats to the peace and for the suppression of aggression or other breaches of the peace. They also reiterated the importance of promoting and strengthening the multilateral process and further stress their commitment to multilateralism.¹³ Reiteration of commitment to “effective collective measures” and “multilateralism” is consistent with the principle position of Member States that strongly oppose unilateral actions, including Indonesia.

The Leaders have, however, failed to agree as to how to resolve the problem of different perception of threats referred to above. The Secretary-General in his report recommended that the Security Council adopt a resolution on the use of force that sets out principles for the use of force and expressed its intention to be guided by them when deciding whether to authorize or mandate the use of force, *inter alia* a reaffirmation of the right of the Security Council with respect to the use of force, including those of Article 51 of the UN Charter and the right to use military force, including preventively, to preserve international peace and security. Another principle proposed by the Secretary-General is the need to consider – when contemplating whether to authorize or endorse the use of force – the seriousness of the threat, the proper purpose of the proposed military action, whether means short of use of force might reasonably succeed in stopping the threat, whether the military

¹³ See UN Document A/60/L.1, pp. 77-23

option is proportional to the threat at hand and whether there is a reasonable chance of success.¹⁴ These important principles, if it were adopted by the Leaders, could have facilitated the Security in its effort to agree on a common perception of threat that would ensure the effectiveness of the Security Council and minimize the risk of unilateral action.

The Leader have also failed to agree on whether States have the right to use military force pre-emptively to defend themselves against imminent threats, or whether they have the right to use force preventively to defend themselves against latent or non-imminent threats. Article 51 of the UN Charter empowers a UN Member State or States "under armed attack" to use force in self-defense, "until the Security Council has taken measures to maintain international peace and security". The article further stipulates that measures taken by the State or States exercising the right of self-defense must immediately be reported to the Security Council.

Lately this article has been the subject of scrutiny in light of the fact that there are those who like to give a broader interpretation of its meaning. There are those who take the view that even under the circumstances where the threat is "not imminent", the State under threat has the right to take preventive actions. They believe that to deal with threats such as those committed by a State or a non-State actor with nuclear weapons, it would raise serious risk to their security if they have to wait until the threatened attack is imminent. On this question, the Secretary-General stated that lawyers have long recognized that Article 51 of the Charter covers an imminent attack as well as one that has already happened. In cases where threats are not imminent but latent, the Charter gives

¹⁴ See UN Document A/59/2005, pp. 33 and 58.

full authority to the Security Council (and not individual State or States) to use military force, including preventively to preserve international peace and security.¹⁵ Indeed, unilateral preventive military action in case of a non-imminent threat – as recent history told us – could undermine the legal foundation of peace and security enshrined in the UN Charter and will only adversely affect international peace and security.

Terrorism

The Leaders strongly condemned terrorism “in all forms and manifestations, committed by whomever, wherever and for whatever purposes, as it constitutes one of the most serious threats to international peace and security.”¹⁶ This formulation seems to reflect the lowest common denominator that the Leaders were able to agree. There is no agreement to include the formulation recommended by the Secretary-General in his report which could be interpreted as being directed against the Palestinians fighting for the independence of the Palestinian State.¹⁷ They have also failed to agree on the proposal to exclude the struggle against foreign occupation from any definition of terrorism.

Other important statements of the Leaders include the emphasis on the need to conclude a comprehensive convention on international terrorism during the sixtieth (current) session of the General Assembly. They also expressed support for the early entry

¹⁵ UN Document A/59/2005, p. 33, para 124 and 125.

¹⁶ UN Document A/60/L.1, p. 23.

¹⁷ See UN Document A/59/2005, p. 58.

into force the International Convention for the suppression of Acts of Nuclear Terrorism.

The Leaders also welcomed the Secretary-General's identification of elements of a counter-terrorism strategy and that these elements should be developed by the General Assembly without delay with a view to adopting and implementing a strategy to promote comprehensive, coordinated and consistent responses, at the national, regional and international levels, to counter terrorism.¹⁸ This is a slightly watered-down version of what the UN Secretary-General recommended in his report, i.e. that the Leaders should resolve to implement the comprehensive United Nations counter-terrorism strategy presented by the UN Secretary-General.¹⁹

The Leaders recognized that international cooperation to fight terrorism must be conducted in conformity with international law, in particular human rights law, refugee law and international humanitarian law. They also urged the international community, including the United Nations, to assist States in building national and regional capacity to combat terrorism.

It is regrettable, however, that there is no reference in the Outcome Document to the need to address the root causes of terrorism, an important issue for Indonesia and many other Member States of the United Nations. Efforts to agree on the definition of terrorism which Indonesia considers as important have also failed.

¹⁸ UN Document A/60/L.1, p. 23.

¹⁹ UN Document A/59/2005, p. 58, para 6(d).

Peacebuilding Commission

One of the concrete decisions at the Summit is the establishment of a Peace Building Commission recommended by the Secretary-General. The recommendation has never been a controversial one. The Commission was established to meet the need for a coordinated, coherent and integrated approach to post-conflict peace building and reconciliation with a view to achieving sustainable peace in countries emerging from conflict. The Secretary-General proposed the establishment of the Peace Building Commission since he felt that there was no such institution within the UN system, while the Organization had to face recurrences of conflict and violence after the negotiation of peace agreements. Cases in point are the tragic situation in Angola in 1990 and in Rwanda in 1994.²⁰

The Leaders stated that the Commission should *inter alia* focus attention on the reconstruction and institutional-building efforts necessary for recovery from conflict and support the development of integrated strategies in order to lay the foundation of sustainable development. The Leaders stated further that the Commission should act in all matters on the basis of consensus of its members. They stated further that the Commission should have a standing Organizational Committee responsible for developing its procedures and organizational matters. The Commission is asked by the Leaders to begin its work no later than 31 December 2005.²¹

The Leaders decided that the Commission should report to the General Assembly, instead of to the Security Council and the

²⁰ See UN Document A/59/2005, p.31, para 114.

²¹ See UN Document A/60/L.1, pp. 25 and 26.

Economic and Social Council “in sequence, depending on the phase of the conflict” as recommended by the Secretary-General in his report.²²

Human rights

The Leaders reiterated their commitment “to actively protecting and promoting all human rights, the rule of law and democracy and recognize that they are interlinked and mutually reinforcing and that they belong to the universal and indivisible core values and principles of the United Nations”²³ It is gratifying that they also reaffirmed the fundamental principles adopted and declared by the World Conference on Human Rights held in Vienna in June 1993 that

“all human rights are universal, indivisible, interrelated, interdependent and mutually reinforcing and that all human rights 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, all States, regardless of their political, economic and cultural systems, have the duty to promote and protect all human rights and fundamental freedoms.”²⁴

The Leaders also determined to strengthen the Office of the United Nations High Commissioner for Human Rights so as to enable it to effectively carry out its mandate to respond to the broad range of human rights challenges facing the international

²² UN Document A/59/2005, p. 32, para 116.

²³ UN Document A/60/L.1, p.28, para 119.

²⁴ UN Document A/60/L.1, p. 28, para 121.

community, particularly in the areas of technical assistance and capacity building.²⁵ It should be noted that in expressing their resolve to strengthen the Office of the High Commissioner for Human Rights, the Leaders did not include the obligation of the High Commissioner that in discharging his duty, he should ensure impartiality, objectivity and fairness. This is important since there have been incidences where the High Commissioner did not respect those principles.

Responsibility to protect

Another notable change evolving in the Post Cold War era affecting the interpretation of the principle of sovereignty and non-interference or non-intervention in the internal affairs of Members, concerns the so-called “humanitarian intervention”. In this connection, the UN Secretary-General in his report refers to the report of the High-Level Panel²⁶ which endorses “the emerging norms that there is a collective international responsibility to protect, exercisable by the Security Council authorizing military intervention as a last resort, in the event of genocide and other large-scale killing, ethnic cleansing or serious violations of humanitarian law which sovereign Governments have proved powerless or unwilling to prevent. In this connection, the Secretary-General recommended that the Leaders embrace the “responsibility to protect” as a basis for collective action against genocide, ethnic cleansing and crimes against humanity, agree to act on this responsibility, recognizing that this responsibility first and foremost

²⁵ UN Document A/60/L.1, p. 29, para 124.

²⁶ UN Document A/59/565, p. 66, para 203.

lies with each individual State.²⁷ But if the State is unwilling or unable to protect their citizens, then the responsibility shifts to the international community to use peaceful means to help protect civilian populations. And if this method does not succeed, the Security Council may out of necessity decide to take action under the Charter, including enforcement action.²⁸

It might be easy to be persuaded by the argument that we are witnessing “emerging norms” on the so-called “responsibility to protect”, which is actually a new term for “humanitarian intervention”. However, developing the concept or the “emerging norms” on “responsibility to protect” should be done with caution so as to ensure that the sanctity of the core principles enshrined in the UN Charter will not unjustifiably undermined. In the event where the Government concerned is unable to govern and to function, to control the chaotic situation while genocide or other atrocities continue to be perpetrated, threatening international peace and security, then it is necessary that the Security Council acts and uses force vested to it under Chapter VII of the UN Charter.

On the concept of responsibility to protect, Indonesia considers that there are several issues that require clarification, such as legitimacy, procedures or the process of application, neutrality as well as effectiveness. If responsibility to protect has to be applied against States unwilling or unable to protect their citizens, the use of force must be the last resort.

²⁷ “Responsibility to protect” is a term coined by the International Commission on Intervention and State Sovereignty, Co-chaired by Gareth Evans and Mohamed Shahnoun, in its report issued in September 2001.

²⁸ See UN Document A/59/2005, p. 35, para 135 and p. 59, para 7(b).

As a result of difficult negotiations, the Leaders finally agreed in principle on the concept of responsibility to protect. In the Outcome Document, they stated that each individual State has the responsibility to protect its population from genocide, war crimes, ethnic cleansing and crime against humanity. They stated further “they are prepared to take collective action, in a timely and decisive manner, through the Security Council, on a case by case basis ... should peaceful means be inadequate and national authorities manifestly fail to protect their populations from genocide, war crimes, ethnic cleansing and crimes”. However, they stressed the need for the General Assembly to continue consideration of the concept, bearing in mind the principles of the Charter and international law.²⁹

General Assembly

On the issue of strengthening the General Assembly, the Leaders reaffirmed the central position of the General Assembly as the chief deliberative, policymaking and representative organ of the United Nations. They also welcomed the efforts by the General Assembly to strengthen the role and authority and leadership of the President of the General Assembly.

Security Council

As mentioned earlier, the world has changed since the United Nations was created, especially after the end of the Cold War and the 9/11 terrorist attacks. There are now “soft threats” aside from the “hard threats”. The Security Council is seen to be no longer representative and with the veto rights in the hands of the privileged few, the Council is perceived to be more undemocratic. In addition,

²⁹ See UN Document AS/60/L.1, P. 31, para 138 and para 139.

the Security Council which gained its effectiveness briefly after the end of the Cold War when the Security Council decided to endorse a collective security action against Iraq after it invaded Kuwait becomes once again weaker after it failed to prevent unilateral military action.

The call for the reform of the Security Council gained momentum when the Non-Aligned Movement, as a result of the NAM Jakarta Summit in 1992, stressed the need for reform of the United Nations, including reform of the Security Council. This has led to the establishment in 1993 of an open-ended Working Group that was to work on the Security Council reform. Regrettably, the open-ended working group has failed to produce concrete result. The study and recommendations of the High-Level Panel and reflected in the report of the Secretary-General³⁰ was expected to help the revitalization of the endeavor.

The Secretary-General supports the recommendation of the High-Level Panel and urged Member States to consider two models of expansion of the Security Council, where the seats are distributed among four major regional areas: Africa, Asia and Pacific, Europe and Americas. The regional areas proposed are slightly different from the current regional areas in the United Nations. The fact that the High-Level Panel proposes two models – Model A and Model B – clearly indicates the difficulty that has for years haunted the efforts to find a single formula for the expansion of the membership of the Security Council.

³⁰ UN Document A/59/2005, pp. 42-43 and 60.

Under **Model A**, six new permanent seats without veto right will be created, and three new two-year term non-permanent seats will be added, distributed among four regional areas, as follows:

- Africa : 2 new permanent seats, and 4 two-year seats (non-renewable).
- Asia and Pacific : 2 new permanent seats (in addition to the permanent seat of China), and 3 two-year seats (non-renewable)
- Europe : 1 new permanent seat (in addition to the permanent seats of France, United Kingdom and Russian Federation), and 2 two-year seats (non-renewable).
- Americas : 1 new permanent seat (in addition to the permanent seat of the United States of America), and 4 two-year seats (non-renewable)

Each regional area gets 6 seats, so the membership total of the Security Council will be 24.

Under **Model B**, there are no new permanent seats but there will be a new category of eight four-year renewable-term seats and one new two-year non-permanent (and non-renewable) seat, divided among the regions, as follows :

- Africa : 2 four-year renewable seats, and 4 two-year seats (non-renewable).
- Asia and Pacific : 2 four-year renewable seats, and 3 two-year seats (non-renewable).
- Europe : 2 four-year renewable seats, and 1 two-year seats (non-renewable).
- Americas : 2 four-year renewable seats, and 3 two-year seats (non-renewable)

Each regional area gets 6 seats, so the membership total of the Security Council will be 24.

The proposed expansion of the membership of the Security Council soon became controversy and the subject of heated debate in the series of negotiations conducted by the President of the General Assembly, Ambassador Jean Ping of Gabon. This applies especially to Model A, which proposes 6 new permanent members. The problem is not only on the proposed formula for the expansion, but also on the candidacy to fill the new permanent seats. Four permanent seat aspirants, namely, Brazil, India, Japan and Germany (known as the Group of 4 or G-4) informally circulated a draft resolution on 16 May 2005 on the size and composition of the Security Council which basically adopts Model A, except that G-4 want veto power granted to the new permanent member. They also propose 4 new non-permanent members instead of three as in Model A, to give a non-permanent seat to Eastern European States. The draft was officially circulated on 6 July 2005, co-sponsored by 27 countries, with adjustment on their demand on veto power, i.e. the new permanent members shall not exercise the right of veto until the question of the extension of the right of veto to new permanent members has been decided upon in the framework of the review proposed to be conducted in fifteen years.³¹ The review proposed by G-4 originates from the recommendation by the High-Level Panel.³²

Opposition to the G-4 proposal by G-4 are very strong. China strongly opposed the candidature of Japan, which had been augmented by violent demonstration against Japan in Beijing and other cities earlier this year in protest of the re-writing of the Japanese war history and the visit of the Japanese Prime Minister to

³¹ UN Document A/59/L.64.

³² UN Document A/59/565, p.82, para 255.

the Yasukuni Shrine, culminating in the unilateral cancellation by China of a visit by Vice-Premier Wu Yi of her meeting with the Japanese Prime Minister.³³

United States expressed its support to the candidacy of Japan as a new permanent member of the Security Council without veto power. While on the surface the support of the U.S. could help Japan's candidacy, it was evident that without the United States also supporting the other three in G-4 (Brazil, Germany and India), it was in fact a "kiss of death" to G-4 draft resolution. This impression was confirmed when the U.S. Secretary of State Condoleezza Rice told Foreign Minister Nobutaka Machimura of Japan by phone early June 2005 that Washington could not support Tokyo's plan to submit a resolution to expand the Security Council in June 2005³⁴. And on 13 July 2005, the United States bluntly urged the United Nations to reject the G-4 draft resolution because the draft does not enjoy broad-based support.³⁵ The U.S. also indicated that it will oppose the candidacy of India as a new permanent member of the Security Council.³⁶ And on 4 August 2005, following a meeting with newly appointed U.S. Permanent Representative Ambassador John Bolton, the Chinese Permanent Representative Ambassador

³³ Recently China and South Korea again launched protests against another visit of Prime Minister Koizumi to the shrine. China cancelled a meeting with the Japanese to discuss Japan's candidacy for a permanent seat in the Security Council, intended for cooling down the tension between the two countries.

³⁴ In Opinion, *The Asahi Shimbun*, Tokyo, as appeared in the *Jakarta Post*, 10 June 2005.

³⁵ *The Jakarta Post*, 14 July 2005

³⁶ *The Jakarta Post*, 19 July 2005.

Wang Guangya told the press that the U.S. and China will work together to block the adoption of G-4 draft resolution.³⁷

Pakistan is strongly opposed to India's candidature as a permanent member of the Security Council. Italy has for many years strongly opposed the creation of new permanent seats, and tried to forge a solidarity among like-minded medium-sized countries at the United Nations, known originally as the "coffee club" and now called the "Uniting for Consensus" which include *inter alia* Italy, Pakistan, Canada, Mexico, Argentina, South Korea, Algeria, Spain, Turkey, Colombia, Costa Rica. They circulated a draft resolution of their own on 21 July 2005, proposing a formula similar to Model B (semi-permanent seats), although later they modified their proposal and opted for additional non-permanent seats only. This group and other medium size countries posed serious problem to the efforts by G-4.

Indonesia has taken a very cautious position on G-4 draft resolution and expressed concern on their proposal to rush for an early decision on the draft. Rushing to judgment on such a complex and sensitive issue of expansion of the membership of the Security Council while the house is divided will endanger the UN reform itself and will have a long-term effect on Member States and the Organization.³⁸ This is a procedural position which does not prejudice Indonesia's position on the candidates.

³⁷ The Jakarta Post, 5 August 2005.

³⁸ See Indonesia's Position Paper at the High-Level Plenary Meeting, p. 34, para 111, *supra*, p. 4.

The African Union submitted their draft resolution³⁹ on 13 July 2005, which is also based on Model A, but with the right of veto for new permanent members. There are six African countries which already indicated their desire to be in the permanent seats from Africa, namely South Africa, Nigeria, Egypt, Ghana, Senegal and Libya. The G-4 countries had been working hard with the African countries aimed at finding a common platform and merging the two draft resolutions. This attempt was motivated by the realization that each would not succeed in getting the required 2/3 majority without the support of the other. There are two key differences between the two draft resolutions promoted by the two groups, namely on the right of veto (Africa insists that the new permanent members should be given veto right while G-4 does not for now insist on it), and on the number of additional non-permanent member (Africa insists on two additional non-permanent members for Africa, instead of one as proposed by G-4). At the end, the two groups of States failed to reach an agreement on a common platform.

Strong opposition from key players as mentioned above, have led to the failure in reaching agreement on the expansion of the membership of the Security Council. The insistence of G-4 countries to speed-up the process towards a decision by calling for a debate and adoption of their draft resolution in the General Assembly in June and the election of new members of the Security Council in July had further contributed to this failure.

It was clear even since July 2005 that it would be difficult to expect that the World Leaders Summit in September 2005 will be able to come to a decision as regards the expansion of the Security

³⁹ UN Document A/59/L.67.

Council.⁴⁰ Indeed, this is what really happened. The Leaders failed to agree on the expansion of the membership of the Security Council.

The Leaders could only agree to support early reform of the Security Council to make it more broadly representative, efficient and transparent and thus to further enhance its effectiveness and the legitimacy and implementation of its decisions. They further commit themselves "to continuing their efforts to achieve a decision to this end and request the General Assembly to review progress on the reform set out above by the end of 2005".⁴¹ Reform of the Security Council, especially the expansion of its membership have been one of the central focus of UN reform as proposed by the Secretary-General, driven by the fact that the Security Council has failed to discharge its responsibility in the context of collective security when it was confronted with the issue of Iraq in 2003. The failure of the World Leaders Summit to agree on the expansion of the membership of the Security Council has dealt a serious blow to UN reform.

Economic and Social Council

There is a widespread concern over the marginalization of the Economic and Social Council (ECOSOC) and its role as stipulated in the Charter. Its role has been undermined by *inter alia* the

⁴⁰ The General Assembly in resolution A/RES/53/30 dated 1st December 1998 stresses the importance of reaching a general agreement on the Security Reform and "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 General Assembly."

⁴¹ UN Document A/60/L.1, p. 33.

Bretton Woods institutions and international conferences. Efforts to remedy this problem by holding an annual high-level meeting of ECOSOC with trade and financial institutions such as World Bank, IMF and WTO has not yet yielded the desired result.

In addressing this problem and taking into account the recommendations of the UN Secretary-General, the Leaders expressed the need for a more effective Economic and Social Council as a principal body for coordination, policy review, policy dialogue and recommendation on issues of economic and social development, as well as for the implementation of the international development goals agreed at major United Nations summits and conferences. To this end, the Council should e.g. promote global dialogue and partnership on global policies and trends in the economic, social, environmental and humanitarian fields; hold a biennial high-level Development Cooperation Forum to review the major trends in international development cooperation; ensure follow-up of the outcomes of the major United Nations conferences and summits; support and complement international efforts aimed addressing humanitarian emergencies, and play a major role in the overall coordination of funds, programs and agencies, ensuring coherence among them and avoiding duplication of mandates and activities.⁴²

Human Rights Council

The Commission on Human Rights has long been the subject of criticism from many quarters for its inability to really perform effectively in the promotion and protection of human rights and in the fostering of cooperation in human rights. All sides agree that the

⁴² UN Document A/60/L.1, pp. 33 and 34.

Commission is increasingly being too politicized. The High-Level Panel expressed its concern that in recent years States have sought membership of the Commission not to strengthen human rights but “to protect themselves against criticisms, or to criticize others.” The Panel also states that the Commission cannot be credible if it is seen to be maintaining double standards in addressing human rights concerns.⁴³ It is regrettable that more often than not, it is the developing countries which are usually the target of criticism and pressure from the developed countries, while the strong have all the resources to deflect criticism. This is not to say that all developing countries have good human rights records.

To address these problems and to enhance efforts to promote and protect human rights and fundamental freedoms, the Secretary-General recommended that the Commission on Human Rights be replaced by a smaller Human Rights Council as a principal organ of the United Nations or subsidiary body of the General Assembly, whose members would be elected directly by the General Assembly by a two-thirds majority of members present and voting.

Responding to the recommendation of the Secretary General, and following intensive negotiation, the Leaders “resolve to create a Human Rights Council” and “request the President of the General Assembly to conduct open, transparent and inclusive negotiations, to be completed as soon as possible during the sixtieth session, with the aim of establishing the mandate, modalities, functions, size, composition, membership, working methods and procedures of the Council.”⁴⁴ In this connection, it is important for Indonesia that the mandate of the Council should include provisions which will

⁴³ UN Document A/59/565, p. 89.

⁴⁴ UN Document A/60.L.1, pp. 34-35..

guarantee respect for not only the so-called International Bill of Human Rights, but also the principles and provisions contained in other instruments and documents such as the 1993 Vienna Declaration on Human Rights.

Secretariat

The Leaders agreed on various measures to reform the Secretariat to enhance its performance and effectiveness and to ensure a culture organizational accountability, transparency and integrity. They also recognized the urgent need to substantially improve the United Nations oversight and management processes and insisted on the highest standards of behavior from all United Nations personnel. These reform measures came in the wake of the "oil-for-food" scandal and sexual exploitation and abuse by the United Nations personnel.⁴⁵

Charter of the United Nations

Amendment to the UN Charter has been the subject of discussion and debate since 1970s starting with the establishment of UN Commission on Charter Review proposed by the then Foreign Minister of the Philippines Carlos Romulo. No concrete result has been achieved. Nevertheless, there are now more convergent views on specific anachronistic provisions of the Charter. In this connection, the Leaders agreed to the recommendations of the UN Secretary-General to delete Chapter XII of the Charter on Trusteeship Council and references to the Council in Chapter XII. They also resolved to delete references to "enemy States" in Articles 53, 77 and 107 of the Charter. However, the Leaders did not agree to the recommendation to delete Article 47 on the Military

⁴⁵ See UN Document A/60/L.1, pp. 35-37.

Staff Committee, and instead request the Security Council to consider the composition, mandate and working methods of the Committee.⁴⁶

Conclusion

United Nations at 60 really needs to reform itself and to adapt to the reality of today. On this, the international community agrees. Responding to this imperative, the UN Secretary-General has ventured to come forth with his wide-ranging recommendations on reform. They are ambitious, and reflect an attempt to create a breakthrough on difficult issues like the expansion of the Security Council membership. When those recommendations were submitted to the General Assembly for negotiations, however, they entered into the realm of the real world – a world full of vested interests, double standard and dominance of the mighty. This explains why countries that yearn for a more democratic, transparent and more effective United Nations and fairer rules of the game had to accept some failures at the World Leaders Summit last September 2005. The Leaders failed to agree on the expansion of the Security Council membership, no agreement on the issue of non-proliferation of weapons of mass destruction and disarmament. They have failed to reach agreement on a total commitment from developed countries to achieve the target of 0.7 per cent of GNP for official development assistance by 2015. They also failed to agree on the definition of terrorism.

While these failures have to be recognized, they should not undermine the fact that the World Leaders Summit has managed to gain some successes on other issues, such as the agreement on the

⁴⁶ See UN Document A/60/L.1, p. 40.

establishment of a Peace building Commission, the creation of a Human Rights Council to replace the Commission on Human Rights, and the agreement on the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. These are the achievements of the international community on which they could and should build on, as stated by Secretary-General. After all, reform of the United Nations is a process – and a long one.