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# Brief History and Contemporary Practice of Wise Men and/or Groups of Eminent Persons Phenomena

**Jan Klucka**

Institute of International Law and European Law, Faculty of Law, Pavol Jozef Safarik University, Kosice, Slovakia

**Email address:**

[j.klucka@klucka.eu](mailto:j.klucka@klucka.eu)

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**Abstract:** GEPs today represent the geographically wide-spread phenomenon organically linked with the existence and practice of international organizations. International organizations consider such bodies as a useful to analyse the situation of concrete organization and make recommendations to improve it mainly within the sphere of policy or legal order or moreover to formulate recommendations on any matter relating to promotion and maintenance of peace security and stability in the specific region. This contribution do not offer the exhaustive and comprehensive analysis of the phenomena of wise men and/or Groups of eminent persons, but is focusing on the analysis of the historical trends and evolution of GEPs and the comparison of current practice of international organizations to identify a set of similar and different circumstances when they decide to set up GEPs. As members of GEPs usually operate in their individual capacity and did not represent governments, GEPs role is to help to build the institutional structure and/or constituent act of international organization in one region or to strengthen the peace and stability in the other region. The aim of the contribution is to proof that the GEPs do not have asingle (ad hoc) character and are established by different ways. The establishment and functioning of GEPs has a specific historic roots which may be inspired by the centuries' old practice in dispute and conflict resolution respecting the importance of customary traditional conflict resolution mechanism. The current practice of GEPs already shows that it exceeded the area of international organizations and is starting to be used also within the relations of international organization and third countries, within the specific interregional relations, within bilateral relations between states and even within the process of the preparation and ratification of concrete international treaties.

**Keywords:** Groups of Eminent Persons, GEPs, International Organizations, Dispute Settlement, Regionalism, Panel of Wise

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## 1. Introduction

The phenomenon of wise men is not new and has deep historical roots. The history of mankind confirms that members of different communities (regardless of their titles- e.g. families, clans, tribes) have always used the wisdom of its members for mutual benefit. The scope and specificities of their competences have been naturally different and also terminology for their identification reflects different languages and historical origins. The purpose of this article is to consider whether the phenomenon of wise men has "survived" to the present time and, if so, what its specifics are. It should therefore be mentioned at the outset that, at present, the existence and operation of wise men is mainly linked to international organizations, although they are gradually beginning to operate in bilateral relations between

states. All international organizations are during their existence confronted with external changes that it is necessary to respond to for performing their functions properly and to avoid become irrelevant. Among the tools that are used within the process of adaptation to these changes the increasing number of international organizations use independent bodies with consultative and advisory status generally known as Groups of Eminent Persons (hereinafter GEPs). That is the main reason why within current legal writing dealing with different aspects of international organizations is (from time to time) possible to find comments concerning their relevance and activities. Although at the first glance the matter of GEPs does not seem very attractive and inspirational the closer look reveals their undoubtedly relevance from historical point of view and current needs of international organizations. Today is no

generally accepted designation and/or definition of the GEPs.<sup>1</sup> As regards as their definitions one of the simplest states that GEPs: is a group of prominent individuals appointed by an organization to investigate a particular issue<sup>2</sup> while other refers to GEPs as “An unofficial or quasi official advisory group consisting of influential figures from varied backgrounds. Such a group may be employed to advise a state or international organization on a particular problem and disband when its task is completed” [1] and finally: “Since the 1980 the term “eminent persons “has been used to denote group of distinguished and impartial mediators in conflict management especially in international conflicts“.<sup>3</sup> To summarize GEP is group of unofficial or quasi official nature vested with more or less concrete advisory and/or consultative competence determined by international organization. Such group is usually established on *ad hoc* basis by decision of international organization or its member states and they determine also their main task. These groups are regularly composed from public known persons (influential figures, prominent individuals, former top politicians and/or different experts) acting in their personal capacity and not in the name of their governments. An analysis of the circumstances under which international organization usually decided to set up GEPs enables to identify main reason (s) of its establishing while the specific tasks of concrete GEPs are contained in their Terms of Reference. The traditional outcomes of GEPs work obviously represent their final Reports with relevant analysis and/or recommendations for organizations.<sup>4</sup> The practice of organizations confirms the increasing frequency of their occurrence during recent times and the extending of geographic scope of their activities (organizations almost all over the world), the high level and complexity of their reports, as well as the attention and practical application of their recommendations by the relevant bodies of the organizations.

With respect of the influence of external changes on the institutional and legal architecture of international organizations it is to be noted that similarly as other subjects of international law, international organizations are not

established in a legal and factual vacuum and their establishment depends not only on the will of the future member states but also on a set of specific external circumstances. This is especially relevant today within globalised world with its new challenges and problems of global nature. One can therefore share the view that: “in the modern world no organization can serve the people it represents unless it reforms itself to cope with new global challenges”.<sup>5</sup> Also the practice of international organizations confirms that their originally agreed competences do not remain unchanged and under the influence of a set of external or internal factors should be changed and adapted to the new reality. These challenges obviously require the formation and/or formulation of a future policy reflecting external factual and political changes including adaptation of their institutional structure and relevant legal basis, the determination and specification of the new priorities, the preparations of new administrative and judicial procedures, the assesment of financial and material aspects of such process etc. It should be pointed out that also more concrete cases require (from time to time) the activity of GEP. Current practice confirms that GEPs as an external, independent and non state actors can effectively contribute to achieving these goals. This paper does not purport to offer exhaustive comparative and other analysis of this phenomenon. Its author attempted to provide brief overview of GEPs and their relevance mainly within selected universal and regional organizations from different continents. Due to historical peculiarities, special attention was paid to GEPs on the African continent. In the Conclusions the author attempted to abstract and identify some commons features and trends resulting from the existing practice of international organizations relating to the GEPs.<sup>6</sup>

## 2. Advent of the League of Nations

As a first historic example of GEPs should be mentioned Advisory Committee of Jurists appointed on February 1920 by the Council of the League of Nations<sup>7</sup> under the Charmanship of Baron Descamps of Belgium. Its main task has been the preparation of the Report on the establishment of Permanent Court of International Justice (hereinafter PCIJ). This Report (avant projet) was submitted to the Council of August 1920 and after making certain

1 Apart from the notion of Group of Eminent Persons it is used also other designation f. e. Group of Wise Men, Eminent Persons Committee, Groupes d'Eminents Personnalités, la Groupe Sages, Grupo de Personas Eminentes, Council of Elders etc.

2 *Eminent Persons Group*. Available at: [https://en.wikipedia.org/wiki/Eminent\\_Persons\\_Group](https://en.wikipedia.org/wiki/Eminent_Persons_Group), accessed 22 July 2022.

3 *The Intervention and Mediation of Eminent Persons in Conclicts in Nigeria*, p. 3. Available at: <https://eldis.org/document/A71548>, accessed 22 July 2022.

4 As some examples: *Project Europe 2030 (Challenges and Opportunities): a report to the European Council by the Reflection Group on the Future of the EU 2030* (2010); *Common Purpose: Towards a More effective OSCE. Final Report and Recommendations of the Panel of Eminent Persons On Strengthening the Effectiveness of the OSCE* (2005); *We the Peoples: Civil Society, the UN and Global Governance: Report of the Panel of Eminent Persons on UN-Civil Society Relations* (2004); *A New Global Partnership: Eradicate Poverty and Transform Economies through Sustainable Development: The Report of the High-Level Panel of Eminent Persons on the Post-2015 Development Agenda* (2013); *The African Union Panel of the Wise: Strengthening relations with similar regional mechanism* (2012).

5Remarks by Sir Roland Sanders- *Member of Commonwealth Eminent Persons Group to Caribbean Regional Civil Society Consultation*, Guyana June 28, 2011, p. 1.

6 It should be pointed out at the outset the phenomenon of wise men is not new and has deep historical roots. The history of mankind confirms that members of different communities (regardless of their titles- f. e. families, clans, tribes) have always used the wisdom of its members for for mutual benefit. The scope and specificities of their competences have been naturally different and also terminology for their identification reflects different languages and historical origins.

7 Article 14 of the Covenant of the League of Nations gave the Council of the League responsibility for formulating plans for the Permanent Court of International Justice at it remained for the League Council to take necessary action to give effects to Article 14.

amendments and revised draft was submitted to Assembly. In December 1920 the Assembly “adopted a Statute of the Court based on the plans of the Committee and on the Proposal of the Council”.<sup>8</sup> As regards as the status and/or required qualification of the members of Advisory Committee Acting Secretary General informed potential members that: “it has been decided to invite certain distinguished international lawyers to form themselves in a Committee... to prepare plans for the establishment of the Permanent Court of International Justice and to ask you to be a member thereof”.<sup>9</sup> Although the members of Advisory Committee acted ad personam, the seats were equally divided between Great Powers and Secondary Powers and most members had long experience from government service [2].

It would be useful to remind that Advisory Committee of Jurists has been also the principal instigator of the League of Nations within the area of codification of international law. In its Resolution adopted on July 1920 the Committee recommended the continuation of the work began by the first and second Hague Conferences (1899, 1907) in order to promote the development of international jurisdictions as well codification and otherwise developing the law of nations [3]. This Resolution was taken up by the Council of the League of Nations and its Report related to this issue was transmitted to the Assembly. The Assembly considered the recommendation of the Advisory Committee and later started the process (through Committee of Experts for the Progressive Codification of International Law) the preparation of the first Conference for the Codification of International Law in 1930 [4].

During the World War II the discussion among Allied Powers began with respect of a new post-war international legal order and the future of the PCIJ. In 1942 the US Secretary of State and the Foreign Secretary of UK declared themselves in favour of the establishment or re-establishment of an international court after the war. Early in 1943 the British government took the initiative of call the number of experts to London to constitute informal Inter-Allied Committee of Experts (London Committee) to examine this matter. This Committee under the Chairmanship of Sir William Malkin (UK) were attended by the jurists from 11 countries acting ad personam and finished its work by its “Report of Informal Inter-Allied Committee on the Future of the Permanent Court of International Justice” [5]. The main idea of Report emphasized inter alia that the Statute of any new court should be based on the Statute of PCIJ, should have also advisory jurisdiction and that recognition of its jurisdiction should not be compulsory.<sup>10</sup> Taking into

consideration the specificities of the process of creation of UN (1944-1945) the above mentioned Report has not decisive influence on creation of International Court of Justice (ICJ)<sup>11</sup> although: “Following contributions from various quarters including the Report of Informal Inter-Allied Committee of Experts and the proposals for the establishment of a General International Organization adopted on 9 October 1944 at Dumbarton Oaks envisaged an International Court of Justice as a principal organ of the new organization” [2].

The post war practice of the United Nations (hereinafter UN) confirms the existence of different GEPs created for the analysis and recommendations at various topics of UN agenda. The prevailing number of them have had the programmatic and/or thematic nature formulated either more generally or concentrated on a more concrete topic (event). Their number gradually grew mainly during the first fifteen years of the new millennium (2002, 2004, 2011, 2013).

### ***2.1. United Nations Investigation of the Tragic Death of the Secretary General Dag Hammarskjöld***

With respect the first cases one can mention the GEPs appointed by the General Assembly (hereinafter GA) according to its resolution: “An international investigation into the conditions and circumstances resulting in tragic death of Mr. Dag Hammarskjöld and members of the party accompanying him”.<sup>12</sup> Within this resolution GA pointed out that is desirable and necessary that, irrespective of the inquires by Governments and parties concerned: “an investigation of such incidents which concerns the United Nations should be carried out under the authority and auspices of the United Nations.” To comply with this task the GA decided: “to appoint a Commission of five eminent persons to carry out such investigations and request the Commission to report its finding to the President of the General Assembly within three months of its appointment”.<sup>13</sup> The Commission of Eminent Persons prepared Report<sup>14</sup> and GA in its later resolution takes it into account and requested the Secretary General to inform of any new evidence which may come to his attention.<sup>15</sup> The Commission of Eminent Persons fulfilled its mandate through the process of the investigation combined with a fact finding mission in situ.

<sup>11</sup> According the Joint Declaration adopted on 30.10.1943 on the Conference between China, USSR, USA and, UK an idea of establishing a general international organization including international court of justice has been adopted. On April 1945 a meeting of Committee of Jurist representing 44 states has been convened in Washington. This Committee (Washington Committee) was officially entrusted to prepare the draft Statute for the future international court of justice for the need of San Francisco Conference.

<sup>12</sup> An International Investigation into the Conditions and Circumstances Resulting in the Tragic Death of Mr. Dag Hammarskjöld and of Members of the Party Accompanying Him [1961] UNGA 35; (A/RES/1628 (XVI) (26 October 1961)).

<sup>13</sup> The members of the Commission has been appointed on December 1961 by the UN General Assembly.

<sup>14</sup> Report of the Commission of Investigation into the Conditions and Circumstances resulting in the Tragic Death of Mr. Dag Hammarskjöld and of Members of the Party Accompanying Him: annexes (A/5069/Add.1).

<sup>15</sup> Report of the Commission of Investigation into the Conditions and Circumstances resulting in the Tragic Death of Mr. Dag Hammarskjöld and Members of the Party Accompanying Him (A/RES/1759 (XVII)).

<sup>8</sup> *Documents concerning the action taken by the Council of the League of Nations under Article 14 of the Covenant and The adoption by the Assembly of the Statute of the Permanent Court (of International Justice)*, 1921, p. 4. Available at: <https://archive.org/details/documentsconcern00leag/page/n11/mode/2up?view=th eater>, accessed 22 July 2022.

<sup>9</sup> *Memorandum by the Secretary General Submitted at the Second Session of the Council*, note no. 9, p. 6.

<sup>10</sup> *The International Court of Justice: Handbook*, p. 15. Available at: <https://www.icj-cij.org/public/files/publications/handbook-of-the-court-en.pdf>, accessed 22 July 2022.

The above GA Resolution however does not mean the final step in the UN effort to investigate the causes and the circumstances of the tragic aircraft accident of Secretary General Dag Hammarskjöld. For the sake of completeness it should be noted that in 2014 GA adopted next resolution<sup>16</sup> requested Secretary General to appoint the independent panel of experts to examine new informations and its probative value referring to the report of the Commission of Jurists on the Inquiry into the Death of the Dag Hammarskjöld.<sup>17</sup> Secretary General appointed the Independent Panel of Experts on March 2015 to examine and assess to probative value of new informations relating to the deaths of the former Secretary-General and those accompanying them. The result of its work represents the Report of the Independent Panel of Experts where the Panel reviewed and summarized the new informations concerning the different aspects of aircraft accident including new informations about the causes of the death, received from eyewitnesses, concerning an aerial attack or ground attack, sabotage and eventual hijacking received from the Commission and the Secretary General and assessed their probative value. The Panel's ultimate conclusion clarifies that: "the final revelation of the whole truth about the conditions and circumstances resulting in the tragic death of the Dag Hammarskjöld and the members of the party accompanying him would still require the United Nations as a matter of continuity and priority to further critically address remaining information gaps, including the existence of classified material and information held by Member States and their agencies that may shed further light on this fatal event and its probable cause or causes."<sup>18</sup> The Secretary General agreed with this conclusion pointing out that: "further inquiry or investigation would be necessary to finally establish the facts. I therefore urge Member States once again to disclose, declassify or otherwise allow privileged access to information that may have in their possession related to the circumstances and conditions resulting in the death of the passengers of SE-BDY"<sup>19</sup>

<sup>16</sup> General Assembly, on Fifth Committee's Recommendation, Adopts Raft of Texts on 2014-2015 Biennium Budget Appropriations, Common System, Peacekeeping. Available at: <https://press.un.org/en/2014/ga11608.doc.htm>, accessed 22 July 2022.

<sup>17</sup> Commission of Jurists was a private and voluntary body of four renowned international jurists inviting by an enabling committee to principally examine and report whether in their view, evidence now available would justify the United Nations in reopening its inquiry. The result of its work is: "Report of the Commission of Inquiry on whether the evidence now available would justify the United Nations in reopening its inquiry into the Death of Secretary-General Dag Hammarskjöld, pursuant to General Assembly resolution 1759 (XVII) of 26 October 1962. With respect of reopening the UN inquiry the Commission considers that UN: "would be justified in reopening its 1961-62 inquiry for the initial purpose of confirming or refuting, from intercept records, the evidence indicating the descent of the Secretary-General's plane was brought about by some attack of threat. The Commission's investigation have reached a point at which this line of inquiry appears capable of producing a clear answer and it's appropriate that process should now pass into the Hands of the General Assembly.

<sup>18</sup> Letter dated 2 July 2015 from the Secretary-General addressed to the President of the General Assembly (A/70/132), p. 3.

<sup>19</sup> Letter of transmittal: Letter dated 11 June 2015 from the Head of Independent Panel of Experts established pursuant to General Assembly resolution 69/246

## 2.2. United Nations and Transnational Corporations

During the 70s the United Nations decided to analyse through more detailed manner their relations and define their tasks with respect of the transnational corporations (TNCs) as a constantly growing segment of international relations and economic development. The Economic and Social Council adopted in July 1972 Resolution<sup>20</sup> and requested Secretary General to appoint a "group of eminent persons... to study the role of multinational corporations and their impact on the process of development, especially that of developing countries and also their implications for international relations, to formulate conclusions which may be possible be used by Governments in making their sovereign decisions regarding national policy in this respect and to submit the recommendations for appropriate international action".<sup>21</sup> Pending the preparation of the Report GEPs heard testimony from some 50 leading personalities from governments, business, trade unions, public interest groups and universities. In its Report to the Secretary General has been pointed out that: This novel approach proved to be a most useful source of information and valuable medium in which to test ideas. It succeeded in bringing a high degree of public involvement in a subject which is both complex and of direct concern to many individuals and interest groups".<sup>22</sup> As regards as the the outcome of its work the Secretary General appreciated that "The Report of the Group proposes the machinery and programme of work for filling important vacuum at the international level. In doing so the Group has fulfilled a major first step in the continuing involvement of the United Nations in subject whose importance has been widely recognized".<sup>23</sup> The central proposal of the GEPs *vis a vis* United Nations calls "for the continuing involvement in the issue of multinational corporations of the Economic and Social Council assisted by a Commission on multinational corporations specifically designed for this purpose. In addition, the establishment of an information and research centre has been recommended to provide service for the Commission".<sup>24</sup> The main idea of GEPs suggested creation of permanent UN machinery for dealing with the full range of issues relating to the activities of transnational corporations under the auspice of ECOSOC. Within its first resolution adopted after study of this Report The ECOSOC fully recognized the need for the establishment of permanent machinery to deal on a continuing basis with the full range of issues relating to transnational corporations... "decided to establish information and research centre on transnational

addressed to the Secretary General (A/70/132), p. 5.

<sup>20</sup> ECOSOC Resolution 1721 (L III) on 2 July 1972.

<sup>21</sup> The GEPs has been composed from 20 experts and the outcome of this work represents "Report of the Group of Eminent Persons to Study the Impact of Multinational Corporations on Development and on International Relations: The impact of multinational corporations on development and on international relations, 1974, (E/5500/Rev.1, ST/ESA/6), p. 15-50.

<sup>22</sup> *Ibidem*, p. 4.

<sup>23</sup> Footnote no. 25, p. 4.

<sup>24</sup> Footnote no. 25, p. 5.

corporations.<sup>25</sup> The resolution adopted later again confirmed the idea of effective UN machinery and decided to establish: “an intergovernmental Commission on Transnational Corporations as an advisory body to the ECOSOC to assist it dealing with the issue of transnational corporations” and “decided that Information and Research Centre on Transnational Corporation shall conduct its activities under the guidance of the Commission on Transnational Corporations”.<sup>26</sup> One of the main tasks of the Commission was to study the feasibility of producing a comprehensive multilateral United Nations Code of Conduct on Transnational Corporations defining the entirety of relations between governments and TNCs [6]. Whereas the more detailed analysis of this topic is beyond the scope of this paper it is sufficient to note that final session of the Commission took place in 1992 and after abolishing the Research centre the TNCs topic has been integrated into UNCTAD institutional machinery. Although the preparation of the draft of Code of Conduct has been time consuming process and a lot of efforts and energy has been expended to reach this goal due to the different approaches of the participants the Draft of Code has not been successful and the final resolution of ECOSOC only takes note of the results of the consultations on the Draft Code on Conduct on Transnational Corporations.<sup>27</sup>

### 2.3. United Nations and the Civil Society

The beginning of the 21<sup>st</sup> century brought another actual topic resulting in the creation of next UN GEPs. The talk is about different aspects of UN relationship to the civil society actors. It is to be noted that relationship of the UN to civil society entities is as old as the Charter itself especially mentions mainly in the humanitarian and development areas. The interaction between UN and civil society actors explosively grown during the 80s and 90s when relations of the UN to civil society has strengthened and multiplied and when their indispensable contribution in achieving UN goals has been widely recognized [7]. That is why in Millennium Declaration<sup>28</sup> member states decided to give greater opportunities to the private sector, non governmental organizations and civil society to contribute to the realization of the Organization's goals and programmes. Taking into account the experiences gained with the civil society organizations the Secretary General in its Report: “Strengthening of the United Nations: an agenda for further change”<sup>29</sup> underlined that improving United Nations-civil society relations represents an important element of running UN reform and expressed intention to assemble a group of eminent persons representing the variety of perspectives and

experiences to review the past and current practice of UN and recommend suggestions for the future. In February 2003 Secretary General appointed the Panel of Eminent Persons and vested it with the some points mandate comprising reviewing existing guidelines, decisions and practices regarding civil society bodies, their access and participation in the UN deliberation and processes, identification of the best practices in the UN system with a view to identify new and better ways of interaction with NGOs and other civil society organizations, to examine the ways in which participation of civil society actors from developing countries may be facilitated and to examine how the UN Secretariat should be organized to facilitate, manage share experiences and evaluate the UN relationship with civil society. After a broad process of consultations and deliberations conducted with a lot of different subjects during 2003-2004 the Panel of Eminent Persons prepared its final Report: “We the people: civil society United Nations and Global Governance”.<sup>30</sup> According to one of the introductory remarks Report reminded that: “Because of the features of global change civil society organizations could help to the UN do a better job and enlist greater public support. Today's challenges require the UN to be more than just an intergovernmental forum, it must engage others too. Civil society is now vital to the UN than engaging with is now a necessity, not only option.”<sup>31</sup> A relatively detailed evaluation of the set of elements related to the UN relations with civil society has been formulated through the 30 specific proposals for future reform and improvement of this agenda. In such a context the Panel proposed a radically new approach to the UN's relationships with NGOs, framed no longer in terms of NGO input to multilateral decisions but active participation in “multi-constituency dialogues” that would include business, parliamentarians, indigenous peoples and others identified as key players by UN staff. Secretary General commends this Report to the General Assembly and reacted to the proposals by his Report on the Implementation of the Report of the Panel of Eminent Persons on UN-Civil Society Relations.<sup>32</sup> According to both Reports attention has been paid mainly to the existing and presumed forms of participation and involvement of civil society organizations into the work of the some of main bodies of the UN (General Assembly, Security Council, ECOSOC, Secretariat), emphasizing the importance of parliamentarians in the work of UN as well as local authorities and their associations, improving the system of accreditations and/ or establishing a single system of accreditation for different subjects of civil society. It was recommended to set up special working bodies for better management and coordination of activities civil society subjects. The UN 2005 World Summit Outcome<sup>33</sup> expressly calls for strengthened cooperation of

<sup>25</sup> ECOSOC resolution: The impact of transnational corporations on the development process and on international relations (E/RES/1913 (LVII)).

<sup>26</sup> *Ibidem*.

<sup>27</sup> ECOSOC resolution 1993/49 (29 July 1993): Strengthening the role of the Commission on Transnational Corporations.

<sup>28</sup> United Nations Millennium Declaration (A/RES/55/2), p. 30.

<sup>29</sup> Strengthening of the United Nations: an agenda for further change, Report of the Secretary-General (A/57/387).

<sup>30</sup> Strengthening of the United Nations system, Note by the Secretary-General (A/58/817).

<sup>31</sup> *Ibidem*, p. 8-9.

<sup>32</sup> *Ibidem*.

<sup>33</sup> 2005 World Summit Outcome, Resolution adopted by the General Assembly on 16 September 2005 (A/RES/60/1).

UN with national and regional parliament, welcomed the positive contribution of the private sector and civil society mainly in the promotion and implementation of development and human rights programmes in the intergovernmental level and within UN and underlined the important role of local authorities in contributing to the achievement of the internationally agreed goals including the Millennium Development Goals.

#### **2.4. United Nations and International Peace and Security (New Threats and Challenges)**

The beginning of new millennium draws the attention of the UN to its future role in the area of international peace and security. On November 2003 the UN Secretary General announced the creation of the High-Level Panel on Threats, Challenges and Change to international peace and security in the 21<sup>st</sup> century in order to recommend changes allowing to play a key role in ensuring international peace and security through collective action. The Panel consisted of 16 eminent persons and prepared Report: "A more secure world: Our shared responsibility".<sup>34</sup> According to the statement of the Secretary General concerning the mandate of the Panel its goal is: "... to assess current threats to international peace and security, to evaluate how well existing policies and institutions have done addressing those threats and to recommend ways of strengthening the the United Nations to provide collective security in the twenty-first century".<sup>35</sup>

As regards as crucial collective security system issue the Report underlined the idea to reach the new consensus on the future of collective security and on the change that needed in the United Nations to be effective and efficient in providing collective security for twenty-first century. The essence of that new consensus is simple: we all share responsibility for each other's security. The test of that consensus will be concrete action. According to Report new security consensus must start with the understanding that the front-line actors dealing with all threats we face continue to be individual sovereign states, whose role, responsibilities and rights have to be respected according to Charter of the UN. But in the 21<sup>st</sup> century no state can stand wholly alone. Collective strategies, collective institutions and sense of collective responsibility are indispensable.<sup>36</sup> With respect of UN system of collective security Report confirms that Chapter VII of the Charter fully empowers the Security Council to deal with every kind of the threat that states may be confronted and the actual task is not to find alternative to the Security Council but to make it work better. The recommendations of the Report follow the suggestion of the Millennium Declaration where the all states resolved to intensify their efforts "to achieve comprehensive reform of the Security Council in all its aspects".<sup>37</sup> Within such context Report proposes to

Security Council to adopt a set of guidelines in considering whether authorizes or endorse the use of military force. These guidelines should comprise criteria of the seriousness of the threat, proper purpose of military action, military action as proportional mean and military action balance of consequences. The Report recommends that guidelines authorizing the use of force should be embodied in declaratory resolutions of the Security Council and General Assembly as one of the important means for reinforcing the legitimacy of the collective security system.<sup>38</sup> As regards as the composition of the Security Council this change is also needed to make it more broadly representative for international community as whole and its working methods also need to be made more efficient and transparent. Report suggests the increase of the involvement in the decision making of those who contribute most to the United Nations financially, militarily and diplomatically in terms of contribution into budget, mandated peace operation and diplomatic activities in support of the United Nations objective etc. Two models of the distribution of the seats in the Security Council has been recommended as model A and B without any expansion of the veto or any Charter modification of the Security Council existing powers.<sup>39</sup>

The successive humanitarian disasters in Somalia, Bosnia and Herzegovina, Rwanda, Kosovo and Darfur in 90s drew the attention of international community (including the Panel of Eminent Persons) to these tragic events with the aim to propose adequate political and legal measures to ensure effective actions against such humanitarian catastrophes. The Report pointed out that as regards activity of the Security Council it has been neither consistent nor effective as well as too late and too hesitantly. According to Report in cases of humanitarian catastrophes the principle of non-intervention on the internal affairs of states embodied in Article 2. para 7 of the Charter cannot be used to protect genocidal acts or other atrocities, such as large scale violations of international humanitarian law or large-scale ethnic cleansing which should be properly considered as a threat to international security and as such to provoke action by the Security Council. Referring to the responsibility of states to protect their citizens against such atrocities Report stress that if the states are unable or unwilling to do so the responsibility should be taken up by the wider international community

<sup>38</sup> *Ibidem*, points 207-208.

<sup>39</sup> Models A and B both involve a distribution of seats as between four major regional areas, which we identify respectively as "Africa", "Asia and Pacific", "Europe" and "Americas". We see these descriptions as helpful in making and implementing judgements about the composition of the Security Council, but make no recommendation about changing the composition of the current regional groups for general electoral and other United Nations purposes. Model A provides for six new permanent seats, with no veto being created, and three new two-year term non permanent seats, divided among the major regional areas as Model B provides for no new permanent seats but creates a new category of eight four-year renewable-term seats and one new two-year non permanent (and non-renewable) seat, divided among the major regional areas. In both models, having regard to Article 23 of the Charter of the United Nations, a method of encouraging Member States to contribute more to international peace and security would be for the General Assembly, taking into account established practices of regional consultation.

<sup>34</sup> A more secure world: our shared responsibility, Report of the High-level Panel on Threats, Challenges and Change (A/59/565).

<sup>35</sup> *Ibidem*.

<sup>36</sup> *Ibidem*, p. 15.

<sup>37</sup> Footnote no. 35, para. 30.

representing by the Security Council. In these cases it can authorize to use military action to redress catastrophic internal wrongs if it is prepared to declare such situation as a “threat to international peace and security“. The Report finally recommends to create system under “responsibility to protect“ title.<sup>40</sup> Assessing other aspects of the UN security system the Report identified a key institutional gap stating that there is no room explicitly designed to avoid State collapse through of assistance of another states pending their transition period from war to peace and under the auspices of the United Nations. Referring to this finding Report recommended that the Security Council acting under Article 29 of the Charter should establish Peacebuilding Commission to fill this gap.

Some of the Report’s recommendations has been later accepted by the Secretary General within its report: “In Larger freedom: towards development, security and human rights for all“<sup>41</sup> and found its place also into Resolution adopted by the General Assembly on the 2005 World Summit Conference.<sup>42</sup> As regards as the recommendation of the composition of the Security Council and its working methods the heads of states and governments generally supported “...early reform of the Security Council... in order to make it more broadly representative, efficient and transparent and thus to further enhance its effectiveness and legitimacy and implementation of its decisions“. The heads of states and governments supported also the concept of the responsibility to protect populations from genocide, war crimes, ethnic cleaning and crimes against humanity declaring that: “we are prepared to take collective action in a timely and decisive manner through the Security Council in accordance with the Chapter VII on a case-by- case basis.... if the national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity“.<sup>43</sup>

Apart from these reactions the World Summit decided to establish the Peacebuilding Commission as an intergovernmental advisory body recognizing “the need for a dedicated institutional mechanism to address the special needs of countries emerging from conflict towards recovery, reintegration and reconstruction and to assist them in laying the foundation for sustainable development...“. The main purpose of the Peacebuilding Commission is to bring together all relevant actors with relevant resources and to advise and propose integrated strategies for post-conflict peacebuilding and recovery. The operationalizing of this decision of the Summit represents identical resolutions of the General Assembly<sup>44</sup> and Security Council<sup>45</sup> establishing the

Peacebuilding Commission as a subsidiary organ of both the General Assembly (Article 22 of the Charter) and Security Council (Article 29 of the Charter).

### **2.5. United Nations Against Racism, Racial Discrimination, Xenophobia and Related Intolerance**

The World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance took place in Durban in 2001. The final results of its work are Durban Declaration and Programme of Action representing the most comprehensive framework for fighting against racism and related forms of intolerance and discrimination [8]. A broad range of measures aimed at combatting racism in all of its manifestations and underscores the human rights of all groups suffering from racial discrimination are their main contribution into this sensitive topic. Their integral part form a different forms of commitments of governments, intergovernmental organizations, national human institutions and civil society organizations including non-governmental organizations to work together to eradicate racism, racial discrimination and related intolerance. In their complexity the results of Durban World Summit can be qualified as a comprehensive and action oriented map offering a common approach of functional nature to realize the principles of equality and non discrimination for all. A special attention has been paid in the Programme of Action to the process of implementation of adopted commitments. In such sense the Durban Plan of Actions requests the United Nations Commissioner for Human Rights to co-operate with five independent eminent persons (one from each region) appointed by the Secretary General to follow the implementation of the Declaration and Programme of action and to make appropriate recommendations thereon. In accordance with the Commission on Human Rights Resolution<sup>46</sup> the mandate of the Group supposes the assistance of the High Commissioner in the assessment and evaluation of existing international standards and instruments to combat racism, racial discrimination, xenophobia and other related intolerance with a view to preparing complementary standards. It should be pointed out that Group was only one element of the mechanisms established for the effective implementation of the Durban Declaration and Programme of Action. Its work has been closely linked with the General Assembly and the Human Rights Council as well as the other human rights mechanisms namely Committee on the Elimination of the Racial Discrimination. Two other bodies charged with the control of the implementation of the Durban Declaration and Programme of the Action has been created namely Intergovernmental Working Group and the Working Group of Experts on People of African Descent. The collateral existence of these

<sup>40</sup> Footnote No. 36, points 199-203.

<sup>41</sup> In larger freedom: towards development, security and human rights for all, Report of the Secretary-General (A/59/2005).

<sup>42</sup> Footnote No. 40.

<sup>43</sup> With respect of the implementation of the Responsibility to protect this process is analyzed in the next reports of the Secretary General namely: Implementing the responsibility to protect, Report of the Secretary General (A/63/677) and A vital and enduring commitment: implementing the Responsibility to protect, Report of the Secretary General (A/69/981-S/2015/500).

<sup>44</sup> The Peacebuilding Commission, Resolution adopted by the General Assembly

on 20 December 2005 (A/RES/60/180).

<sup>45</sup> Security Council Resolution 1645 (2005) (S/RES/1645).

<sup>46</sup> Commission on Human Rights resolution 2003/30, World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance and the comprehensive implementation of and follow-up to the Durban Declaration and the Programme of Action (Art. 21 b).

bodies with their own mandates as well as specific methods of work raised the need to coordinate their activities and to clarify their mutual relationships due to the potential overlap between their agendas and methods of work.<sup>47</sup> With respect of this problem the Group was later compelled to note that: there is no sufficient clarity with regard to the role and functions of the experts, both individually and as a group, with regard to activities, inputs and advice to other mechanisms and stakeholders, considering that the mandate was included in the Durban Declaration and Programme of Action. The experts said that a proper and efficient monitoring system for assessing the implementation of the Durban Declaration and Programme of Action has not been out of place. Such monitoring will require a lot of substantive and technical work that should include the tailoring of goals for the different regions, based on available data and knowledge of racial and ethnic disparities.<sup>48</sup> Despite above mentioned problems the Group of Experts in 2003 attempted to precise the scope of its mandate confirming that: “it would be not appropriate for them to examine specific issues in detail, make technical recommendations or monitor progress as such work being undertaken by the Intergovernmental Working Group and the Working Group of Experts. Rather the experts agree that would be best placed to identify areas in which urgent attention was needed and mobilize support for following up on the implementation of Durban Declaration and Programme of Action. Mobilization of support should include gathering political support for and promoting the Durban Declaration and Programme of Action among Governments and civil society, as well as drawing attention of the wider public to problems of racism, racial discrimination, xenophobia and related intolerance.”<sup>49</sup>

From above clearly appears that unlike of “traditional“ Groups of Eminent Persons the task of the Independent Eminent Experts’ Group was not a disposable nature (writing the Report on special issue) but to follow the implementation of the Durban Declaration and Programme of Action continuously and during certain period. To comply with this task the Group organized four meetings (2003, 2005, 2014, 2015). The reports of the Group enable to identify main line of its effort. The Group proposed the set of recommendations underlying mainly the importance of education because the access to education is crucial in the struggle against discrimination. Education in this sense constitutes an essential tool of the implementation of the Durban Declaration and Programme of Action by promoting respect and better understanding between communities, tolerance and multiculturalism, the need for elaboration and

implementation of national plans related to the struggle against discrimination, updating international standards in this area etc. The later practice confirmed the central position of the Group’s activity focusing on the mobilization of the support of Governments and international and non-governmental organizations for the implementation Durban Declaration and Programme of Actions as well as alerting the wider public to the manifestation of racism, racial discrimination, xenophobia and related intolerance. Its leading position has been expressly recognized by the resolutions of the General Assembly. According to the resolution 59/177 General Assembly: “emphasis the central role to be played by the group of independent eminent experts on the implementation of Durban Declaration and Programme of Action in mobilizing the necessary political will required for the successful implementation of the Declaration and Programme of Action”.<sup>50</sup> Next GA resolutions again emphasized the importance of the mandate the Group of Independent Eminent Persons on the Implementation of Durban Declaration and Programme of Action especially mobilizing the political will for the successful implementation of the Declaration and the Programme of Action<sup>51</sup> while the newest resolutions only “takes note the mandate of the group of independent eminent experts on the implementation of the Durban Declaration and Programme of action especially in mobilizing the political will necessary for the successful implementation of the Declaration and Program of Action”.<sup>52</sup> Different evaluation of the Group’s activity reflects its decreasing capacity of action and its low real ability to maintain its leading position in the process of mobilization of political will in favour of effective implementation of Durban Declaration and Programme of Action. The GA in its resolution 68/151 therefore requests the Secretary General to revitalize and reactivate the operational activities of the Group of the independent eminent experts<sup>53</sup> and also Human Rights Council resolution request the Secretary General to resuscitate the work of the independent eminent experts and to recommend further initiative and actions.<sup>54</sup> And finally the

<sup>47</sup> Report of the independent eminent experts on the implementation of the Durban Declaration and Programme of Action on their second meeting (E/CN.4/2005/125), p. 5, point 7.

<sup>48</sup> Racism, racial discrimination, xenophobia and related forms of intolerance: follow-up to and implementation of the Durban Declaration and Programme of Action, Report of the independent eminent experts on the implementation of the Durban Declaration and Programme of Action on their third meeting (A/HRC/26/56).

<sup>49</sup> Footnote No. 54, p. 7, para. 16.

<sup>50</sup> Global efforts for the total elimination of racism, racial discrimination, xenophobia and related intolerance and the comprehensive implementation of and follow-up to the Durban Declaration and Programme of Action, Resolution adopted by the General Assembly on 16 December 2005 (A/RES/60/144, point. 36).

<sup>51</sup> Global efforts for the total elimination of racism, racial discrimination, xenophobia and related intolerance and the comprehensive implementation of and follow-up to the Durban Declaration and Programme of Action (A/RES/61/149), pp. 37; (A/RES/62/220), pp. 37; (A/RES/63/242), pp. 37; (A/RES/64/148), pp. 17; (A/RES/65/240), pp. 63.

<sup>52</sup> Global efforts for the total elimination of racism, racial discrimination, xenophobia and related intolerance and the comprehensive implementation of and follow-up to the Durban Declaration and Programme of Action, Resolution adopted by the General Assembly on 19 December 2011 (A/RES/66/144), pp. 63 (Similarly as GA res. A/RES/67/155, pp. 70).

<sup>53</sup> Global efforts for the total elimination of racism, racial discrimination, xenophobia and related intolerance and the comprehensive implementation of and follow-up to the Durban Declaration and Programme of Action, Resolution adopted by the General Assembly on 18 December 2013 (A/RES/68/151), pp. 15.

<sup>54</sup> From rhetoric to reality: a global call for concrete action against racism, racial

most recent GA resolutions from 2015<sup>55</sup> and 2016<sup>56</sup> underlined the role played and still to be played by independent eminent persons experts in mobilizing global political will for concrete action for the total elimination of all the scourges of racism, racial discrimination, xenophobia and related intolerance and reiterates its request to the Secretary General to revitalize and reactivate the operation activities of the group of independent eminent experts.

## 2.6. United Nations and Least Developed Countries

Starting the year 1981 fourth UN global consecutive conferences have focused on the situation of the Least Developed Countries (hereinafter LDCs). First of them took place in Paris 1981 to respond to the special needs of the LDCs, the second UN Conference took place again in Paris in 1990 to continue the focus on the need for special measures for LDCs. Its outcome was embodied in the Paris Declaration and Programme for the LDCs, the third Conference in Brussel in 2001 adopted the Brussels Programme for Action for the decade 2001-2011 and finally fourth LDCs conference on high level has been convened by the GA Resolution<sup>57</sup> in Turkey (2011-Istanbul) to adopt new measures to build sustainable development in the LDCs for the decade 2011-2020. For the need of last conference the Secretary General has appointed Group of Eminent Persons to provide recommendations on international support of measures needed to accelerate development in the 49 LDCs.<sup>58</sup> In his Note Secretary General clarified that: "The purpose of the Group was to build on the lessons on the past decade international support for the LDCs and to recommend a new generation of policy measures in the areas of aid, trade, foreign direct investment, technology transfer, debt relief and adaptation to and mitigation of climate change".<sup>59</sup> With respect of the incoming Fourth UN Conference of LDCs the Report of the Group represented an important contribution to the ongoing intergovernmental consultation leading up to the Istanbul Conference in order to ensure its effective and meaningful outcome. Without going into details it should be noted that the Group main findings refer to the existing gap between the LDCs and the rest of the world. The most

important reasons of this situation comprise the structural disadvantage of LDCs economies, weak human assets (education, health, nutrition etc.) limited physical and institutional infrastructure, dependence on fragile agricultural sectors and a limited range of exports resulting in the continued marginalisation of these countries within the world economy. Least developed countries are "least developed" because they are particularly disadvantaged in terms of their human, physical and institutional infrastructure and therefore face difficulties in creating advantages of opportunities for sustained growth. According to the Group, the future Programme of Action (2011-2020) should focus on reducing the structural gap that still exists between LDCs and other countries. With respect of the recommendations of the Group two main lines can be identified. The first one concerns the LDCs measures and underlined the need to assume greater ownership of their own development trajectory, to increase mobilization of domestic resources, to intensify the fight with corruption and to seek for return of the stolen assets. As regards as international assistance the Group pointed out the idea of global solidarity and its fundamental importance for stimulation of the socio-economic development of LDCs. International support is needed with a strong follow-up and monitoring mechanism to ensure the full implementation of the next Programme of Action. One can therefore conclude that the Group has been tasked with assisting the United Nations system in its efforts to build political will and mobilize global action that later resulted in a Programme of Action for the LDCs. The Group also undertook efforts to raise public awareness on important issues affecting the LDCs in key areas such as trade, investment, technology transfer, official development assistance, building of productive capacities, adaptation to the effects of climate change, and the creation of a stimulus for LDCs to manage the impact of the global financial crisis.

## 3. GEPs and Regional Organizations

The current practice confirms that the existence of GEPs is not confined to the UN because a number of regional organisations have also the experiences with such activities within the context of institutional regionalism. Their main tasks are basically two, namely to prepare reports that would suggest a change in activity or priorities of the concrete organization, environment and the second challenge lies in the changes to the relevant legal and institutional architecture to ensure proper operation of the organization. Depending on the complexity of topic some Reports of GEPs contain the combination of both tasks. Although regional organizations are different with respect of their basic goals and whole orientation the use of GEPs is not limited to the European continent and can be registered also on the African and Asian continent.

### 3.1. The Council of Europe and GEPs

The Council of Europe (hereinafter as CoE) confirms both above mentioned lines of GEPs within regional organization.

discrimination, xenophobia and related intolerance: resolution / adopted by the Human Rights Council (A/HRC/RES/14/16).

<sup>55</sup> A global call for concrete action for the total elimination of racism, racial discrimination, xenophobia and related intolerance and the comprehensive implementation of and follow-up to the Durban Declaration and Programme of Action, Resolution adopted by the General Assembly on 18 December 2014 (A/RES/69/162), point 12.

<sup>56</sup> *Ibidem*.

<sup>57</sup> Implementation of the Brussels Programme of Action for the Least Developed Countries for the Decade 2001-2010, Resolution adopted by the General Assembly on 19 December 2008 (A/RES/63/227).

<sup>58</sup> General Assembly in its resolution Fourth United Nations Conference on the Least Developed Countries of 11 March 2011 (A/RES/65/171) welcomes the establishment of Group by the Secretary General.

<sup>59</sup> Compact for Inclusive Growth and Prosperity, Report of the United Nations Secretary-General's Eminent Persons Group on the Least Developed Countries. Available at: [https://www.un.org/en/conf/ldc/pdf/epg\\_report\\_032811\\_b\\_english\\_w\\_v2.pdf](https://www.un.org/en/conf/ldc/pdf/epg_report_032811_b_english_w_v2.pdf), accessed 22 July 2022.

The first of them has been focused on the problem of long term efficiency of the control mechanism of the European Convention of Human Rights (hereinafter ECHR) [9] with the special emphasis on the adopting of legal and procedural rules able effectively to reduce increased workload of European Court of Human Rights (ECtHR).

### 3.1.1. Long Term Effectiveness of the Convention Control Mechanism

Following adoption of Protocol No. 14 to the ECHR in 2004, the 3<sup>rd</sup> Summit of Heads of State and Government of the Council of Europe member states (Warsaw, 2005) decided to set up a Group of Wise Persons to consider the long-term effectiveness of the ECHR control mechanism, including the initial effects of Protocol No. 14 and the related reform package. The result of its work is Report of the Group of Wise Persons to the Committee of Ministers of the CoE on the Long Term Effectiveness of the ECHR control mechanism.<sup>60</sup> The Report of the Group concentrated on examination of further reforms because the survival of machinery for the judicial protection of human rights and the Court's ability to cope with its workload have seriously come under threat from an "exponential increase" of individual applications which jeopardized the proper function on the Convention's control system. The Group reviewed a number of issues related to the further reforms and *inter alia* concluded that it would be useful to introduce a system under which the national courts could apply to the Court for advisory opinions on legal questions relating to interpretation of the Convention and the protocols thereto, in order to foster dialogue between courts and enhance the Court's 'constitutional' role. Requests for an opinion, which would be submitted only by constitutional courts or courts of last instance, would always be optional and the opinions given by the Court would not be binding. This suggestion has been later transformed into special protocol to the ECHR.<sup>61</sup> The Group also emphasized that it is essential to make the judicial system of the Convention more flexible through of simplified amendment to the Convention authorising the Committee of Ministers to carry out reforms by way of unanimously adopted resolutions (without formal amendment of the Convention). Recognizing the relevance of the Protocol No. 14 Group recommends the setting up special "Judicial Committee" as a judicial filtering body which would be attached to, but separate from the Court for effective filtering of the many inadmissible applications. According to Group a special filtering mechanism have several advantages and may prove an important long-term measure to deal with a number of inadmissible and repetitive cases more effectively. Another issues analysed by the Group concern relations between the Court and the Member States, Advisory

jurisdiction of the Court, Improvement of domestic remedies, the "Pilot Judgment" Procedure in the cases where structural or systemic problems affected large number of people, more use of friendly settlement and mediation etc.<sup>62</sup>

### 3.1.2. Diversity and Freedoms in the 21<sup>st</sup> Century in Europe

In the summer of 2010 the Council of Europe's Secretary General asked the independent "Group of Eminent Persons" to prepare report on the challenges arising from the increasing intolerance and discrimination in the Europe. The Report has a broad scope dealing with a wide variety of elements relating to diversity issues in contemporary Europe and emphasized (as one of its central ideas) that diversity can contribute to the creativity that Europe urgently needs. With respect of this idea Report assesses the seriousness of existing risks to the Council of Europe values posed by rising intolerance, identified their ideological, moral, religious, economic, social and cultural sources and make a series of proposals for "living together" concept within open European societies. The final text of the Report<sup>63</sup> has been presented in July 2011 by the Secretary General of the CoE. To fulfil its mandate the Group started with identification of eight specific risks to the Council of Europe values comprising rising intolerance, rising support for xenophobic and populist parties, discrimination, the presence of population virtually without rights, parallel societies, Islamic extremism, loss of democratic freedoms and a possible clash between religious freedoms and freedom of expression. Against this background Report summarized 17 guiding principles which all policy makers, opinion leaders and civil society activists should keep close at hand. According to the Group these principles should guide Europe's response to the threats to the CoE values. Among these principles one can mention this concerning the obligation to respect the law because all residents on the territory of a state are required to obey its law including majority or minority, citizens or aliens, residents or non-residents and states should apply the law equally to all. All residents are therefore entitled to equal treatment under the law and equal access to educational and employment opportunities. With respect of those of the most vulnerable are persons exposed to illegal abuse or exploitation which are entitled to expect the authorities to make special efforts on their behalf. On the other side the immigrants and people of recent migrant origin are expected to obey the law to learn the official language of the country and to do something useful for their fellow citizens. This obligation however does not oblige the immigrants to renounce their faith, culture or identity and even to renounce his/her membership to the concrete religious, language or other minority. As a general principle the law should protect

<sup>60</sup> Report of the Group of Wise Persons to the Committee of Ministers (CM (2006) 203). Available at: <https://www.statewatch.org/media/documents/news/2006/dec/wcd.coe.pdf>, accessed 22 July 2022.

<sup>61</sup> Protocol No. 16 to the European Convention on Human Rights, October 2, 2013.

<sup>62</sup> For more details: Egli, P. (2008) *Another Step in the Reform of the European Court of Human Rights: The Report of the Group of Wise Persons*. Available at: [https://www.zaoerv.de/68\\_2008/68\\_2008\\_1\\_b\\_155\\_174.pdf](https://www.zaoerv.de/68_2008/68_2008_1_b_155_174.pdf), accessed 22 July 2022.

<sup>63</sup> Living together: Combining diversity and freedom in the 21st-century Europe, Report of the Group of Eminent Persons of the Council of Europe. Available at: <http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806b97c5>, accessed 22 July 2022.

the individual's freedom of choice of its personal and legal status. The Group underlined that among the most important way in which Europeans of different background can be helped to live together are those which on the local level bring members of different groups into close and constructing contact. Only when persons of majority and minorities know each other as individual fellow citizens, colleagues and friends the concept of "live together" could be in practice complied with. In its last part Report envisages 59 proposal for actions to the European institutions and their member states identifying the main forces for changing public attitudes to the diversity issues including educators, mass media, trade unions, civil societies, communities, churches, religious groups, cities and towns etc. With respect of states the Group pointed out the need to put in place effective policy to prevent different kinds of intolerance including programmes for combating discrimination in various fields, training programmes for policy, border guards and other law enforcement authorities, to improve the policy related to hate and intolerance crimes etc. In its entirety the Group's analysis provided a useful basis for further reflection on Europe's future which should involve acting politicians, NGOs, trade union academic, as well as representatives of religious, the media and local authorities from different parts of Europe.

### 3.2. European Union and GEPs

#### 3.2.1. Adaptation of European Institutions on the Incoming Changes

In post war European history have been several examples of different committees of wise men and/or reflection groups which were instituted in order to review the actual institutional and other topics at critical turning points of the EC/EU history and recommend relevant changes.<sup>64</sup> Although not all reports produced immediate results most of them made a profound impression and had a lasting influence to European integration. On December 1978, the Brussels European Council decided (on a proposal from the French President, Valéry Giscard d'Estaing) to ask a committee of three eminent politicians to draw up a series of specific proposals in order to improve the mechanisms and procedures of the Community institutions, particularly with a view to the Community's future enlargement. Its 'Report on the European Institutions'<sup>65</sup> was published in October 1979 and submitted to the Dublin European Council held on 29 and 30 November 1979. Aware of the challenges of further

Community enlargement, the Three Wise Men suggested a series of specific improvements to the way in which each of the Community institutions worked. In particular, the Report welcomed the establishment of the European Council in 1975 and called on it to set itself priorities and work more closely with the other institutions. The Report also called for majority voting to be made standard practice and specified the responsibilities that the Presidency of the Council of Ministers should assume in terms of achieving the priority aims of its programme. It also emphasised the need to strengthen the European Commission's right to propose legislation and capacity for action. The European Commission should be reorganized and endowed with more authority and qualified majority voting should be more widely applied in the Council of Ministers. Accordingly, it proposed that there should be no more than one Commissioner per country and that the President of the Commission should enjoy enhanced powers and authority. They also advocated stepping up cooperation between the Commission and the European Parliament, which had been elected by direct universal suffrage. Finally, the Three Wise Men called for the jointly adopted policies to be applied in a non-uniform manner which took into account the situation of the prospective new Member States. Although the European Council welcomed the Report no actions was taken on its recommendations and despite the moderate and pragmatic nature of the proposals, the suggestions of the Three Wise Men largely remained a dead letter.

#### 3.2.2. European Union and Austrian CRISIS

Another opportunity for setting up the Group of Wise Men within the European Union provided the results of the Austrian parliamentary election in 1999. For the first time in the post war political history of Austria the parliamentary mandates has acquired the Freedom Party (FPÖ) headed by Jorg Haider and together with traditional political parties of Social Democrats and Christian Democrats formed a center-right government in February 2000. At the same time FPÖ was the first far-right party to take power in a EU member state since second world war. The preelection campaign of the FPÖ emphasized the need of antimigration policy, restriction of eastern enlargement of EU, and some other populist ideas. This unusual and extremist member of Austrian governmental coalition sparked a fire of controversy in the EU and resulted in an unprecedented action in the form of *sui generis* sanctions of 14 member states of EU. These have been adopted on 31 January 2000 and according to the statement of Portuguese Council Presidency made "on behalf of 14 Member States" "the governments of the fourteen Member States will not promote or accept any official bilateral contacts at political level with an Austrian government integrating the FPÖ; there will be no support for Austrian candidates seeking positions in international organizations; Austrian Ambassadors in EU capitals will only be received at a technical level." A number of bilateral relations with Austria were subsequently severed. Each of the fourteen states individually interpreted and implemented the

<sup>64</sup> For example: Spaak Report comprises Draft of Economic and Atomic Energy Community (1956), Fouchet Plan dealing with Proposal for a Political Union based on intergovernmental procedure (1961/62), Werner Plan concerning the Proposals for Monetary Union (1970), Tindemans Report An attempt to strengthen the Community (1975), Delors Report-Three Stage Plan for economic and Monetary Union (1989), Dehaene Group-Institutional Ramification of enlargement (1999), Kok Report-Suggestions for economic and employment policy (2004). The list is not exhaustive.

<sup>65</sup> Report on European Institutions Presented by the Committee of Three to the European Council (October 1979). Available at: [http://aei.pitt.edu/999/1/Committee\\_of\\_Three\\_Report\\_1979.pdf](http://aei.pitt.edu/999/1/Committee_of_Three_Report_1979.pdf), accessed 22 July 2022.

bilateral sanctions and these commonly included boycotts of school trips, cultural exchanges and military exercises. It should be pointed out that these sanctions represented more coordinate measures based on the consensus among the fourteen EU members than an official EU actions according to Article 7 of the Treaty of European Union. In this context Portugal's prime minister and the EU Council President had been given a mandate by the Fourteen States to request the President of the European Court of Human Rights to appoint three personalities to draw up report based on thorough investigation of the Austrian Government's attitude to common European values, in particular regarding the rights of minorities, refugees and immigrants as well as the development and political nature of the FPÖ. The Austrian Government later consented to the appointment of the "Council of Wise Men". Such consent of Austria was necessary because official observance of a State by a specific "fact-finding mission" must be consented to by the State in question. Subsequently, the President of the ECtHR in July 2000 appointed the group of "Three Wise Men," and invested them with the double mandate namely to investigate the Austrian Government's obligations on common European values, (in particular in regard to the rights of minorities, refugees and immigrants) and the development of the political nature of the FPÖ. Both parts of the mandate were no longer phrased precisely. In regard to the international framework for determining common European values, the "Three Wise Men" had recourse to treaties in the context of the European Union namely ECHR (1950), the Framework Convention on Protection of National Minorities (1995) and the Convention on the Legal Status of Refugees (1951). In the area of non-binding legal regulations, they took the Declaration against Racism and Xenophobia, jointly adopted in June 1986 by the European Parliament. The final report of "Wise Men's Report" was submitted on September 2000 in Paris.<sup>66</sup> In its substantive part the "Three Wise Men" confirmed that the Austrian Government was acting in the interests of common European values and that the legal situation in Austria in the fields of minority protection, refugee and immigration policy fully met the standards applied in other EU Member States. In many fields, in particular in regard to national minority rights, Austrian standards can be considered superior to those of other EU States. The Wise Men however were of the view that there are grounds for accurately describing the FPÖ, as a right-wing populist party with extremist expressions. The Report criticized FPÖ e.g. for methods of campaigning and for intimidation of political critics via litigation in court. In their recommendations the "Three Wise Men" came to the conclusion that the measures adopted by the Fourteen Member States would have a counterproductive effect if they continued and that they should therefore be discontinued. Finally, they explicitly recommended the introduction of

Procedures for prevention and monitoring to the current sanctions procedure in Article 7 of the EU Treaty in case of grave and persistent violation of the "constitutional principles" of the EU set forth in Article 6 of the EU Treaty. These mechanisms should allow EU to monitor and evaluate the commitment and performance of individual member state with respect to the common European values and through these procedures the Council should follow up, evaluate and take actions concerning the development of specific situation in the EU Country.<sup>67</sup> After a publishing the Report the French EU presidency published Communiqué in which it stated that the EU Fourteen after regarding Report had come to the conclusions that the measures taken by the EU Fourteen were useful. They may now be lifted; the nature of the FPÖ and its uncertain development provide grounds for serious concern. The EU Fourteen are of the view that special vigilance in relation to that party and its influence on the Government must be exercised. They have agreed to exercise such vigilance jointly; it is appropriate, in the framework of the EU to give consideration to how one should proceed, take precautionary measures and make assessments in similar situations. The recommendations in the Report of the Three Wise Men are a useful contribution to such considerations. These phrasing of Communiqué clearly reflects compromise wording not to lift the sanctions against Austria but only to suspend them and accordingly keep Austria under observation as well as the conviction of the majority of the EU Member States to proceed to ending the sanctions regime as something that had now become counterproductive. In this way, the Fourteen, after a total of seven-and-a-half months lifted the sanctions against the Austrian Government on 12 September 2000 but simultaneously reached agreement jointly exercise joint observation of the FPÖ and its activities [10]. According to legal writing these sanctions: "were intended as a moral message expressing the significance of the principle outlined in Article 6 of the Treaty on the EU..." [11].

### 3.2.3. *Project Europe 2030-Challenges and Opportunities*

The twelve Wise Men Group (known as a Reflection Group) was called into being—as the European Union's consultative body—at the Brussels European Council on 14 December 2007 and its report "Project Europe 2030: Challenges and Opportunities"<sup>68</sup> analyses the challenges of Europe is likely to face in 2020–2030.<sup>69</sup> Its mandate has been extremely broad, namely to identify the key issues and development that the Union is likely to face and analyse, how they might be addressed and to help the EU anticipate and

<sup>66</sup> Report by Martti Ahtisaari, Jochen Frowein, Marcelino Oreja (2000). Available at: <http://www2.ohchr.org/english/bodies/hrc/docs/ngos/HOSI-1.pdf>, accessed 22 July 2022.

<sup>67</sup> The existence of such specific pre-sanctions mechanism expressly confirms Article 7 of the Treaty on European Union.

<sup>68</sup> Project Europe 2030 - challenges and opportunities. A report to the European Council by the Reflection Group on the Future of the EU 2030. Available at: <https://www.consilium.europa.eu/en/documents-publications/publications/project-europe-2030-challenges-opportunities/>, accessed 22 July 2022.

<sup>69</sup> Initially the Group was envisaged as a Group of Wise Men by French President N. Sarkozy who in 2007 wanted its mandate to focus on defining Europe's final borders-in what most considered an attempt to block Turkey's efforts to join EU. However Sarkozy's draft of such mandate has been rejected.

meet challenges more effectively in the longer term.<sup>70</sup> Nevertheless this broad mandate of the Group has been at the same time confined to carry out its reflection within the framework set out in the Lisbon treaty and without any attention to the institutional matters, EU enlargement and financial issues. According to the Group the eurozone crisis provided an important warning and confirmed that Europe needs not only short-term management but long term and wide ranging of important and far reaching ideas and projects needed for subsequent development of European Union. Within such a project a Group of Wise Men consisting of independent members has been in a much better position to deal with these questions than a committee of elected politician figures. The final Report of the Group starts with identification of the major problems in Europe comprising: the global economic crisis and its consequences, ageing societies, falling economic competitiveness, climate change, growing dependence on energy sources, a changing international order, and the threats of terrorism, organized crime and nuclear proliferation. Against this background the key challenges for the Group included strengthening and modernising the European model of economic success and social responsibility, enhancing the global competitiveness of the EU, the rule of law, sustainable development as a global objective of European union, global stability, migration, energy and climate protection as well as the fight against global insecurity (international crime and terrorism).

With the eurozone in crisis, emphasis was understandably placed on economic issues, where the group called for better macroeconomic coordination, reform of financial oversight, and—in response to increasing competitiveness of other regions—an overhaul of the European socio-economic model. On the single market, the Report notes the need for liberalization of services and energy supplies, and recommends greater workforce flexibility. The authors of the Report also recognize the changes going on in the international environment, notably concerning the multi-polar world and an increasing differences between internal and external security. Regarding the coordination of EU's external activity, an urgent task is to define longer-term priorities, reinforce the existing instruments and develop new strategies. Also needed are the establishment of a common defense market armament and agreement on a joint budget for military missions. Neighborhood policy should be continued, and as regards admission of new members, the Report recommend that the EU should remain open to all countries meeting the accession criteria and that it keep its obligations to all candidate countries. The Group also calls for the development of a common energy policy. Communication with citizens should be an EU priority and there is a constant need to highlight the concrete benefits of

European integration, which manifest themselves on a daily basis, and to encourage massive turnout at elections to the European Parliament. To achieve these goals European Council will need to strengthen its leadership role in coordination with the Commission and the European Parliament [12]. It should be however reminded that Report has not been original because to the great extent only reiterates major proposals already formulated in similar publications, such as the Lisbon Strategy, the New Europe 2020 Strategy (adopted by the European Council 2010) or the paper "The World in 2025". In this context the report "Project Europe 2030: Challenges and Opportunities" is not a recipe for the EU's problems, but rather a collection of indications which should be taken into consideration when planning the bloc's future actions and/or to discuss within the eventual public debates about the ways and means the EU might employ to meet the challenges which it will be confronted within the horizon 2030.

### 3.3. Organization for Security and Co-Operation in Europe and GEPs

#### 3.3.1. Strengthening the Effectiveness of the OSCE

Organization for Security and Co-Operation in Europe (OSCE) as a largest regional security organization is the next European organization where the Groups of Eminent Persons have been set up for specific tasks [13]. First of them known as Panel of Eminent Persons on Strengthening the Effectiveness of the OSCE has been established by the Decision No. 16/04 of the Ministerial Council of OSCE in 2004.<sup>71</sup> The Mandate of Group recognizes *inter alia* the need to improve the Organization's functioning as well its capabilities for collective action without diminishing its strengths and flexibility. In order to achieve these goals the Group should give new impetus to political dialogue and provide strategic vision for the Organization in the twenty first century as well as to review the effectiveness of the Organization and its bodies. On the basis of its analysis the Group prepared about 70 recommendations on specific measures in order to meet incoming challenges effectively. Referring to this Mandate the Group however has not reviewed global threats and challenges and only briefly assessed the strategic role and position of the OSCE in the European Security network, considered how this role can be more clearly defined and further strengthened and provided recommendation designed to strengthen the long-term effectiveness of the OSCE. It should be noted that the Group main goal was not to produce a comprehensive analysis of European security architecture and its unresolved problems but to produce a meaningful tool for starting structural reform of OSCE. Compared to the other international panel of wise persons that published its finding earlier in 2005 (The High Level Panel of the UN Secretary General) the OSCE Panel focused more on the Organization itself and its internal "revitalization" and less on new challenges and threats to

<sup>70</sup> Unlike of the similar GEPs in other organizations, the GEPs in the EU project (Europe 2030) has been strongly criticized for its conduct pending the preparation of final report. The critical voices related mainly to the lack of clear procedural structure of the Group, its closed door deliberations, absence of the participation and consultation with the EU's citizens and especially young (er) Europeans, elite contributions and the whole atmosphere of secretive deliberations.

<sup>71</sup> Decision No. 16/04 Establishment Of A Panel Of Eminent Persons On Strengthening The Effectiveness Of The OSCE (MC.DEC/16/04).

European security. The Panel thus seems to have produced a Report that may not only stimulate debate but that can even function as an agenda for much needed reform process towards a more effective OSCE in the future. With respect of the OSCE's profile and structure the most interesting recommendation the Panel suggests that the Permanent Council should play a leading role in the adopting of OSCE's political and planning priorities. At the same time it suggests a stronger role of the Secretary General in ensuring the consistency and continuity of OSCE's priorities and clarification its mandate with the emphasis on the operational management and identification long-term strategies and objectives. Other recommendations relate to the strengthening the OSCE's identity and profile, improving consultative and decision-making processes of OSCE, the rules of procedure, the clarification of the role of Chairman, enhancing field operations and operational capacities. The basic idea of these recommendations consisted in the certain formalization of the OSCE structural and institutional architecture *vis a vis* new security challenges. The final Report entitled: "Common Purpose: Towards a More Effective OSCE"<sup>72</sup> has been published on June 2005 but its basic idea has not been unanimously accepted (Russian Federation- welcomed, USA- against).

### **3.3.2. European Security as a Common Project**

Ten years after first Group a next advisory body has been launched within OSCE by: "The OSCE 2015-Troika: Switzerland, Serbia, Germany" known as a "Panel of Eminent Persons on European Security as a Common Project". With respect of the purpose and the role of Panel, members of Troika reminded that consensus on European security as a common project (as reflected in the Charter of Paris on the basis of Helsinki Final Act) has in the meantime eroded and willingness to re-build the trust of European states to the effectiveness of cooperative security gradually lapsed. This crisis of confidence in Europe has been aggravated by the conflict in and around Ukraine. In such a context the Panel has been designed to provide advice on how to (re-) consolidate the European Security as a common project. To achieve this goal some leading lines have been formulated namely: reflect on how re-build trust to enhance peace and security in Europe on the grounds of the Helsinki Final Act and how to ensure effective adherence to the Helsinki Principles among participating states. Next task consists in the exploration of existing possibilities to reconfirm, refine, reinvigorate and complement the elements of co-operative security and within final task the particular role of the OSCE as well as its role in preventing and resolving crisis in the OSCE area including the Ukraine should be analysed. According to intention of Troika two Reports should be produced by the Panel. First Interim Report concentrated in particular on lessons learned by

OSCE from its engagement in Ukraine and Final Report focused on broader issues of the security in Europe and the OSCE area. Both reports should contain recommendations and action point for policy makers, OSCE bodies and participating state.

### **3.3.3. European Security as a Common Project-Back to Diplomacy**

The Final Report of the Panel of Eminent Persons on European Security as a Common Project entitled: "Back to Diplomacy" was published on December 2015.<sup>73</sup> The Report mainly states that the European security is in deep crisis and it grew out of the actions and perceptions of different parties over the last twenty-five years. Although the Europe is not divided as when the Helsinki Final Act was signed today situation in Europe is more uncertain and precarious and there is no commonly accepted status quo. The scene has been set by acts of military force and diplomacy has been ineffective or has been only used to cover military action. The borders changing by force breach the most fundamental principles of the UN Charter and the Helsinki Final Act. Next important root of crisis consists in the different interpretation of European security system by different states (Russia side, West side, States in between) and in the serious failure of mutual communications in the critical moments of the threats endangering co-operative system of European security. It is therefore urgent to reduce the risks of present situation and to put security and co-operation on a more stable basis. Following this factors the principal message of the Report underlined the return of OSCE and states within OSCE area to active diplomatic process (robust diplomacy) designed to replace mutual recrimination with rebuilding mutual trust: not military activity, not propaganda but a process that will explore common European problems carefully, confidentially and systematically and overcomes the crisis. Within the context of such mandate the diplomacy is able to find a solution that strengthens the security of all European Countries and which, for the countries most concerned provides reassurance about their future. The Report's recommendations suggest how such diplomatic process might be organized and what its objectives should be. The Report does not propose new principles or new institutions and pointed out that Helsinki principles remain the only basis for Euro-Atlantic and Eurasian space in which people and nations can live in peace. European states have many agreed principles but they are not always respected, and European states have a number of common institutions which are not (from different reasons) to work effectively.

### **3.3.4. European Security as a Common Project-Lessons Learned for the OSCE from Its Engagement in Ukraine**

Unlike of first Final Report the Interim Report of the

<sup>72</sup> Common Purpose: Towards a More effective OSCE. Final Report and Recommendations of the Panel of Eminent Persons On Strengthening the Effectiveness of the OSCE (2005). Available at: <https://www.osce.org/files/f/documents/2/5/15805.pdf>, accessed 22 July 2022.

<sup>73</sup> Back to Diplomacy, Final Report and Recommendations of the Panel of Eminent Persons on European Security as a Common Project (2015). Available at: <https://www.osce.org/files/f/documents/2/5/205846.pdf>, accessed 22 July 2022.

“Troika“ Panel focuses primarily on operational questions related to the crisis in Ukraine.<sup>74</sup> With respect of the roots of this crisis the Panel underlined that erosion of the consensus in Europe on how the security and cooperation should be realised strongly undermined the idea of invisibility of European security and *inter alia* resulted in the crisis in and around Ukraine. The consequences of the divergent approaches *vis a vis* European security have been clearly manifested during the Ukraine’s crisis, e.g. in the challenges of prevention, in the difficulties to reach agreement to de-escalate the conflict and to implement partial agreements when have reached. The lack of consensus has been apparent also in the operational weakness of OSCE as an organization and in its political leadership. In its operational part the Report draw five lessons and /or recommendations from the OSCE’s engagement in Ukraine. Taking into account the fact that many operational questions are of the political nature the recommendations are modest and not always original and does not reflect the unanimous consent of the Panel’s members. The Panel’s own inability to reach a consensus on all its recommendations is another reflection of the same problem. The recommendations adopted are as follows as:

- 1) The OSCE should regard and reinforce conflict prevention system as a key task and should empower the Secretary General accordingly.
- 2) The leadership of OSCE is essential and it is desirable to develop Troika system and to strength position and ability of Secretary General to take actions both to prevent conflicts and respond rapidly and effectively in a crisis.
- 3) The urgent need of OSCE is to acquire the legal personality because its lack is one of the most visible weakness of the OSCE and the Ukraine crisis fully illustrates the damaging practical consequences of this situation.
- 4) The link between political an operational elements is the key to the effectiveness of OSCE.
- 5) The strengthening capacity of the Secretariat/Conflict prevention Centre both directly and through international partnerships is needed.

### 3.4. African Regionalism and the GEPs

Unlike of the above mentioned examples of GEPs its African practice comprises a number of peculiarities. In particular African Groups do not have a single character and are not established on *ad hoc* basis by the decision of the organization or its member’s reports. They are usually established by the constituent acts of organizations either on the Pan-African and/or on the level of sub-regional organizations. As regards Pan-African level it si worthy to note the Panel of Wise of the African Union, while ECOWAS Council of Wise, SADC Mediation Reference

Group and Panel of Elders and COMESA Committee of Elders have been established on the sub-regional level. The legal basis of African GEPs has therefore a permanent character and the members of GEPs have fixed mandates which carry out pending fixed periods. Taking into account the experiences learned from cooperation between AU Panel of Wise and its counterparts on the regional level the Assembly of Heads of States and Governments in 2013 adopted decision to establish the “Pan-African Network of Wise“ (PanWise) comprising existing panels of wise, and number of other institutions of informal nature as associate members committed to conflict prevention and mediation. The main goal of the PanWise is to strengthen, coordinate and harmonise prevention, early response and peacemaking efforts carried by various actor in Africa under a single umbrella in order to build synergies among all participants. In such a context the PanWise represents an innovative continental system being broad based and representative to promote joint prevention actions, explore new approaches for mediation and provide platform for bringing together the individual and regional efforts for peace and stability in the spirit of Pan-Africanism. The relative density of different panels of wise and/or elder both on the Pan-African and regional level (and in comparison with other continents) has specific historical roots. On the meeting of Panel of Wise in 2014 its member S. Chergui reminded that Panel of Wise: “captured African and international curiosity and imagination because the AU created, at the heart of its-decision making or conflict prevention, management an institution inspired by the centuries’old practice of African elders’centrality in dispute and conflict resolution. By creating the Panel of Wise the AU in many ways recognised the importance of customary, traditional conflict resolution mechanism and roles and continuing relevance of these mechanisms in contemporary Africa“.<sup>75</sup> Also the legal writing confirms that the AU Panel of Wise is: “a contemporary rendition of the traditional institution of the Council of the elders” [14].

#### 3.4.1. Panel of Wise of the African Union

Panel of Wise has been established by the Protocol relating to the establishment of the AU Peace and Security Council of 2002 (PSC).<sup>76</sup> The Council is defined as a collective security and early warning arrangement to facilitate timely and efficient response to conflict and crisis situation in Africa. As its supporting bodies the Protocol enumerates AU Commission, a Panel of Wise, a Continental Warning System, African Standby Force and a Special Fund with their specific tasks. Together with above mentioned bodies the Panel is one of the components (“pillars“) of the African Peace and Security Architecture (APSA) designed to prevent, manage and resolve conflicts in Africa. Due to the general deficiency

<sup>74</sup> Lessons Learned for the OSCE from its Engagement in Ukraine, Interim Report and Recommendations of the Panel of Eminent Persons on European Security as a Common Project (2015). Available at: <https://www.osce.org/files/f/documents/1/0/164561.pdf>, accessed 22 July 2022.

<sup>75</sup> The AU could benefit more from the expertise of its Panel of the Wise if it were organised differently. Available at: <https://issafrica.org/pscreport/addis-insights/new-panel-of-the-wise-has-a-lot-on-its-plate>, accessed 22 July 2022.

<sup>76</sup> Protocol Relating to the Establishment of the Peace and Security Council of the African Union. Available at: <http://www.peaceau.org/uploads/psc-protocol-en.pdf>, accessed 22 July 2022.

of organisational, logistical and operational capacities and the lack of funding the different pillars of the APSA has been operationalized to quiet varying degrees with uneven efficiency of their activities. With respect more concretely about the Panel, the Protocol precises that it will support the Council particularly in the area of conflict prevention and shall advise the Council on all issues pertaining to the promotion and maintenance of peace, security and stability in Africa. Apart from the consultancy the Panel shall undertake such action deemed appropriate to support the efforts of the Council and to pronounce itself on issues relating to the promotion and maintenance of peace, security and stability in Africa. Its mandate is to provide opinions and advices to the Peace and Security Council on issues relevant to conflict prevention, management and resolution of disputes (fact finding missions as an instrument of conflict prevention, promotion of confidence-building measures etc.). The composition of the Panel reflects its specific Pan-African agenda because it is composed of the five highly respected African personalities from various segments of the society who made outstanding contribution to the cause of peace, security and development on the continent. They are selected by the Chairperson of the AU Commission on the basis of regional representation<sup>77</sup> and appointed by the AU Assembly for period of three years. The main Panel's value in the practice will be using moral authority and credibility of their members to persuade African leaders that war not be option for revolving the conflicts and the influence on present and future leaders to acquire new culture of mediation. There are however some problems preventing more active participation of Panel within its mandate in practice. One of them is that is not included in the official AU organizational structure and it is therefore problematic to receive funds from the regular AU budget. As a consequence the Panel completely depends on support from external donors. The Assembly of Heads of State and Government in 2010 decided to expand the Panel's Composition by appointing a group of "Friends of the Panel of Wise" on the same basis as the Panel (one representative for each sub-African region). Since its establishment in 2007 the Panel delivered some thematic reflections on issues relating to conflict prevention and peacebuilding. One of the first represents its Report on election related disputes and violence in Africa with recommendations (2009), second concerns the impunity and reconciliation (2009) and last the women and children in armed conflicts (2010). The practice confirms that these topics were chosen in response to actual crises rather than to pre-empt the eruption of imminent or future crises. As regards as the operational capacity to enter into concrete mediation or peacemaking procedure the Panel has played no major role because AU normally uses its own special envoys, special representatives, ad hoc committees and high level panel for its mediation and peacemaking activities. There are also some other obstacles preventing the more active part of the Panel in concrete mediation and peace

keeping procedures. First of them represents the specific nature of the Panel which is not a standing body with a strong secretariat and as such is not readily available to mediate or undertake peacemaking missions when conflict break out. The second obstacle consists in the composition of the Panel because its members have been (either due to age or busy with other responsibilities) not able to engage actively in intensive mediation or peace making work in different parts of African continent. This lack of its concrete activity cannot be fully replaced by solidarity visits (Egypt and Tunisia) or confidence-solidarity visits (Kenya, Democratic Republic of Congo) having mainly official and formal character. Also the style of the Panel's work (two or three meetings during the year) excludes its more active participation into active mediation or other processes. Due to this nature the Panel remained largely isolated within the APSA and have only minimal contacts with the Council and other segments of APSA. The actual practice also confirms the lack of regular and formalized exchange between the Panel and other bodies of APSA and their insufficient cooperation and coordination. Finally with respect of its visibility there are very limited informations on the activities of the Panel available to the public, resulting in the fact that any public evaluation of its effectiveness is almost impossible. As the continent face a number of violent conflicts and political instabilities the need for an effective Panel of Wise has never been greater. It is believed that AU and PSC should therefore make more effort to make the panel more active and useful component of APSA. For achieving this goal the secretariat of the Panel should be strengthened and the number of meetings (the Panel meets once a year) should increase in order to Panel will become a more effective, autonomous and visible. Nevertheless the Panel of Wise is still in the process on finding its proper position in order to develop its full potential for the maintenance of peace and security in Africa.<sup>78</sup> The legal writing reminds that: "what distinguishes the AU Panel from the UN and EU Panels is fact that it contains normative and operational elements of traditional governance and diplomacy on the continent which contributes *inter alia* to the Panel's *sui generis* diplomatic practice [15]. One of gaps repeatedly raised concerns the effectiveness of the Panel is its weak relations with the regional economic communities (RECs). As outlined above PanWise links AU Panel of Wise with various councils and panels on regional level in order to coordinate and harmonise the work of Panel with similar regional structures and to avoid the duplication of efforts in the area of mediation and peace-making efforts. It is to be noted that AU Panel of Wise and regional panels of wise and similar mechanism are tasked with parallel responsibilities: to prevent and manage conflict, monitor election and mediate disputes. Similarly as in the case of APSA also the regional counterparts of the Panels within PanWise are however uneven in the areas of their practical operationalization and

<sup>77</sup> The members of the Panel are chosen from the North, East, South, West and Central Regions of Continent.

<sup>78</sup> See: Porto, J. G., Ngandu, K. Y. The African Union's Panel of Wise: A concise History. Available at: <https://reliefweb.int/report/world/african-unions-panel-wise-concise-history>, accessed 22 July 2022.

experiences. The ECOWAS Council of Wise has been created in 1999, the COMESA Committee of Elders in 2008, SADC Mediation Reference Group and Panel of Elders in 2010, EAC Panel of Eminent Persons in 2012, ECCAS body is in the process of establishing its structure etc. These mechanisms being in the different stages of its building and implementation process follow different conceptual and practical approaches raising questions about the complementarity of their policies and before PanWise put the immense challenge of their harmonising.

#### **3.4.2. *Ecowas Council of Wise***

The ECOWAS is a regional group of fifteen West African Countries established in 1975. The original objective of organization is promotion of co-operation and integration leading to the establishment of an Economic Union in West Africa. Increasing number of the conflicts in West Africa during last quarter of 20<sup>th</sup> century however pushed the ECOWAS gradually to focus on conflict prevention and its management and to develop regional architecture for peace and security. The idea of a regional mediation structure have taken root in the uniqueness of ECOWAS experiences in its interventions pending 1990s (Liberia, Sierra Leone, Guinea, Guinea Bissau) and the growing importance accorded to preventive diplomacy and mediation as a effective response to the conflicts that had engulfed many member states at the beginning of 2000s. The three stages evolution of the mediation and conflict resolution mechanism in ECOWAS resulted in the adoption of the Protocol relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace Keeping and Security in 1999 (known as 1999 Mechanism).<sup>79</sup> This Protocol laid the foundation for a new era in conflict resolution in West Africa because the objectives of its mechanism cover all aspects of modern conflict resolution, such as conflict prevention, early warning, peace keeping, strengthening of cooperation to tackle joint security problems, humanitarian and relief operations and the establishment of civilian and military peace forces. The bodies established by the mechanism for the purpose of preventive diplomacy and mediation include the Authority of the Heads of State and Government ECOWAS, the Mediation and Security Council and ECOWAS Commission (former Executive Secretariat). The Mechanism likewise established the Council of Wise as supporting body of the Mediation and Security Council. Unlike of Pan-African Panel of Wise the ECOWAS Council of Wise takes the form of a list of eminent personalities who (on behalf of ECOWAS) can use good offices and experiences to play role of mediators, conciliators and facilitators. The list compiled annually by the Commission of ECOWAS comprises eminent persons from various segments of society including women, political, traditional and religious leaders. When

needed these personalities (from 20-35) shall be requested by the president of ECOWAS Commission or Mediation and Security Council to deal with the concrete conflict situation and eventually to resolve existing conflict. The main task of the Council of Wise has practical nature because its members are expected to undertake mediation, conciliation and facilitation efforts on behalf of ECOWAS and to use their experience and goodwill to act as mediators, conciliators and facilitators in the Member States in crisis. This flexible approach relating the personal composition of the Council of Wise is often quoted as having inspired the founders of the Pan-African Panel of Wise. It should be pointed out that limitation of the latter to five may raise concern if the five members will be able to respond adequately to every situation requiring attention or intervention. The regional practice confirms that ECOWAS Council of Wise represents an instrument that has been utilised in various meditation efforts and also in the observation and monitoring legislative and presidential elections. The members of the Council of Wise have been deployed in Liberia, Guinea-Bissau, Niger, Sierra Leone and Togo to seek solutions of conflicts. With respect of latter the Council of Wise observers are usually charged with the task to monitor and evaluate the regularity, transparency and equity of elections. (Guinea in 2015, Niger 2015-2016) eventually combined with fact-finding missions (Ghana and Guinea in 2008). Within the existing disputes Council of Wise takes consultations with the relevant parties and can give advice concerning the facilitation of the establishment of channel of communication between parties engaged in the conflict, carry out fact-finding mission, conduct shuttle diplomacy, adopt confidence building measures, assist and advise mediation teams already engaged in negotiations, formulate recommendation on any matter relating to promotion and maintenance of peace security and stability etc. As effective mediators the eminent persons will rely on their individual qualities and credibility, their reputation and integrity combined with the credibility of any institutions to which they are affiliated and the nature of negotiation process itself. The approach to charge eminent persons as mediators and conciliators in conflicts is particularly appropriate where the parties to the conflict include dispersed non-state armed groups. Similar to other African regions the ECOWAS Council of Wise has faced some challenges concerning the lack of administrative and other staff, financial constraints, absence of dedicated work plan and insufficient feedback from member states. It should be however finally mentioned certain advantages of the regional system of mediation and conflict prevention. The regional African systems are able to respond faster to conflicts and often have more informed and contextual understanding of root causes of particular conflict.

#### **3.5. *ASEAN and GEPs***

The Association of South-East Asian Nations (ASEAN) has been established in 1967 by Asian Declaration adopted by the Foreign Ministers of five countries of South-East Asian Region. Its main goal was supporting regional

<sup>79</sup> Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace- Keeping and Security (1999). Available at: <https://ts-go.com/Amani/wp-content/uploads/2021/04/Protocol-Relating-to-the-Mechanism-for-Conflict-Prevention-Management-Resolution-Peace-Keeping-and-Security-1999.pdf>, accessed 22 July 2022.

cooperation among founding countries and to accelerate their economic growth, social progress and cultural development as well as to promote regional peace and stability. In the time of its establishment the ASEAN has been loose informal grouping without any constitutional document, institutional structure and legal personality. Since its formation ASEAN operated with little formality; its secretariat was established only in 1975. However, with the advent of new global issues ranging from fiercer economic competition to terrorism, health and environmental concerns, it became clear that ASEAN needs Charter to streamline its organisational structure, legalise and strengthen its decision-making process, and review existing institutions such as the ASEAN Summit [16]. Also regional integration in ASEAN has been gradually accelerating and expanding far beyond that envisaged in the ASEAN Declaration of 1967. Over time ASEAN became the most successful regional organization and have made important contribution to the maintenance of peace, security, territorial integrity and national identity of its member states. Similarity as other regional organizations on the other continents ASEAN has been therefore confronted with a number of external challenges including a more complex and dynamic international environment, stiffer economic competition, greater regional interdependence etc. These changes and challenges needed to adapt ASEAN to them by the new institutional and legal framework. Taking into account these factors the ASEAN in 2004 agreed to work towards the development of ASEAN Charter and its member states. The idea of Charter has been approved in the 2005 on the basis of Kuala Lumpur Declaration on the Establishment of the ASEAN Charter. According to the Declaration the Charter should serve as a new legal and institutional framework of ASEAN as well as an inspiration for ASEAN in the years ahead. A number of emerging issues should be embodied in the Charter *inter alia* to streamline organisational structure of ASEAN, legalise and strengthen its decision-making process, review existing institutions such as the ASEAN Summit, strengthen the role of Secretary General and the ASEAN Secretariat, confirm legal personality of “new“ ASEAN etc. For the preparation of the Draft Charter the parties of Declaration decided to establish Eminent Persons Group comprising highly distinguished and respected citizen from ASEAN Member Countries having the mandate to examine and provide practical recommendations on the direction and nature of ASEAN Charter in full respect of the principles, values and objectives of Kuala Lumpur Declaration. The ASEAN Charter has been adopted on the basis of the Report of the Eminent Persons Group<sup>80</sup> at the 13th ASEAN Summit in November 2007 and came into force in December 2008. By acting as a constitutional document, the ASEAN Charter transformed ASEAN from a regional cooperation association to a rules-based organization, with the relevant structure of bodies charged with defined

competences and legal personality as well as its proper symbols (flag, emblem, anthem). Besides conferring the legal personality on ASEAN, the Charter reaffirms and codifies key rules and principles for ASEAN members, outlines the organisational structure of the grouping, and sets out the purposes of ASEAN. With respect of organizational structure Charter established ASEAN Summit of Leaders, three specialized Ministerial-Level Councils, the ASEAN Secretariat and the Secretary General of ASEAN as a decision making bodies. ASEAN dispute settlement mechanism has been established in all fields of ASEAN cooperation including compliance, monitoring and advisory functions. The protection of human rights is relatively new topic embodied among one of the purposes of the ASEAN Charter in order: “to promote and protect human rights and fundamental freedoms with due regards to the rights and responsibilities of the members states of ASEAN“ along with democracy, rule of law and good governance. With respect of ASEAN institutionalization in the area of human rights protection, the ASEAN Intergovernmental Commission on Human Rights has been established in 2009. Unlikely of other regional human rights system the ASEAN area remains alone without regional judicial body for the protection of human rights [17]. Taking into account the specificities of “asian way“ of regionalism one may conclude that external global changes and challenges transformed the original idea of “soft“ association of south asian states into rule based regional organization with own institutional structure able to properly function into changing conditions of the 21<sup>st</sup> century [18].

It is relevant to add that groups of eminent persons have been within the ASEAN established also for analysing the relations and preparing reports between ASEAN and third countries. They have usually mixed composition of members from both sides and analyse their relations during certain periods. Their recommendations in principle follow achieving strategic partnership between ASEAN and concrete country. First of them is ASEAN-Republic of Korea Eminent Persons Group (ASEAN-ROK EPG) established in 2007. Its final Report: “Vision for a Strategic Partnership-Partnership for Real Friendship for Good“ of 2009 reviewed ASEAN-ROK relations of past twenty years, assessed and recommended concrete measures for enhancing future dialogue and elevating their comprehensive cooperation to a level of strategic partnership which should promote peace, stability and prosperity in the region as well as the world at large. Second example of the ASEAN group of eminent persons was established in relation with India. The ASEAN-India Eminent Persons Group (AIEPG) was established in 2011 to review the ASEAN-India Dialogue relations, to explore to widen and deepen existing cooperation towards long term strategic partnership. According the Group the elevation of the existing relations to a strategic partnership presents vast opportunities for stronger cooperation in maintaining peace, security and prosperity in ASEAN and India thus strengthening economic relations between them. The ASEAN- U.S. Eminent Persons Group was established

<sup>80</sup> Report of the Eminent Persons Group on the ASEAN Charter. Available at: <https://asean.org/wp-content/uploads/images/archive/19247.pdf>, accessed 22 July 2022.

in 2011 to review existing dialogue over the past 35 years and explore ways to deepen and widen existing cooperation between ASEAN and USA as well as to recommend measures for elevating the ASEAN-U.S. relationship to a strategic partnership. And finally ASEAN-Russia Eminent Persons Group (AREPG) was established in 2015 to review ASEAN-Russia Dialogue over the past twenty years and to recommend concrete measures and direction to enhance further broaden and deepen ASEAN-Russia Dialogue Partnership for its elevating towards strategic partnership.

#### 4. GEPs Operating Outside International Organizations

The current practice confirms that the scope of activities of GEPs already exceeded the area of international organizations because they are gradually starting to be used also within the relations of international organization and third countries,<sup>81</sup> within the specific interregional relations<sup>82</sup> and even within the process of the preparation and ratification of international treaties. With respect of latter it has to be mentioned that a group comprising eminent personalities and internationally recognized experts has been launched in 2013 to ensure innovative and focused approach to the advance ratification of the Comprehensive Nuclear Test Treaty adopted in 1996 (CTBT). Through the expertise, experience and political standing this Group should support and complement efforts to promote the Treaty's entry into force as well as reinvigorating international endeavours to achieve this goal. The next example of this kind represent Eminent Persons Advisory Group on Small Arms and Light Weapons established in 2000 as independent international body outside the UN framework. Its main goal can be identified as a specific contribution into a global coalition of UN member states and NGOs in favour of a realistic, affordable and effective set of proposal to help to reduce spread of illicit small arms founded on a broad-based, cooperative regulatory approach organising small arms control efforts based on transparency, export controls and an international code of conduct. According to its member S. M. Salim: "The creation of the Group of Eminent Persons composed of personalities with a diverge range of experience at high level leadership and responsibilities, and who come from different parts of the world, presents tremendous opportunity for collectively and vigorously pursuing the goal of controlling small arms".<sup>83</sup>

<sup>81</sup> Groups of ASEAN Eminent Persons assessing and recommending concrete measures for enhancing and future dialogue and elevating comprehensive cooperation to a higher level of strategic partnership of ASEAN with Korean Republic, India, China, USA, Russia.

<sup>82</sup> APEC Eminent Persons Group established in 1992 at Fourth Ministerial Meeting, in Bangkok in September 1992 to "enunciate a vision for trade in the Asia Pacific Region." Its Report published in 1993 contained such a vision and recommends a series of actions to begin its realization. Its main idea was that APEC should be based on "open regionalism" that is reducing economic barriers among members in a way that not discriminate non-members states.

<sup>83</sup> The Role of Small Arms Control Regime in Stemming Small Arms and Light

#### 5. Conclusions

As stated above this article does not purport to offer exhaustive and comprehensive analysis of the phenomena of wise men and/or Groups of eminent persons. Nevertheless one can identify some their common features and trends. GEPs today represent the geographically wide-spread phenomenon organically linked mainly with the existence and practice of international organizations. The density and occurrence of GEPs confirms that international organizations consider such bodies as a useful mechanism to analyse the situation of concrete organization and make recommendations to improve it mainly within the sphere of its future policy and/or structural and legal system. It should be pointed out that closer analysis of the history and current practice of international organizations (either universal or regional) allows identify a set of similar circumstances when they decided to set up GEPs. First of them is the situation when international organization *in status nascendi* needs a qualified advice to help the build its institutional structure and/or constituent act. Next one is more usual situations when international organizations intend adequately reflects to new changes and challenges having potential impact on their existing institutional structure and/or future direction of their policy. In such a case relevant analysis and recommendations concerning the future of the organizations can be elaborated with the "external" advice of independent and qualified GEPs. Within this context it should be noted also narrowly oriented GEPs when their work is concentrated on the drafts of new legal rules of organizations in order to adapt their legal orders to the incoming external or internal challenges.<sup>84</sup> The flexible nature of the GEP agenda confirms the cases when GEPs have been established as a fact finding missions in concrete cases. In such a context the practice of prevailing number of international organizations confirms *ad hoc* (non permanent) nature of the GEP finishing their work since the moment of the adoption of their final reports with recommendations. The members of GEP usually operate in their individual capacity and did not represent governments. As regards as their professional qualifications "they should be best authority in the field and fully familiar with the organization concerned and sufficiently open-minded to suggest changes to update organization where necessary."<sup>85</sup> The temporary nature of the GEPs at the same time prevents their closer ties or even involvement into the institutional structure of the concerned organization. The power to take decisions of relevant body on the establishing of the GEP is obviously not expressly contained into the constitutive acts of organizations and can be generally qualified as a part of its implied powers. The

Weapons Proliferation, Annex to the letter dated 6 November 2000 from the Permanent Representative of Mali to the United Nations addressed to the President of the General Assembly (A/55/631), p. 3.

<sup>84</sup> Legal writing qualifies GEP of above mentioned competences as: "Reform panels" as a sort of public international consultants used to analyze the organization and make recommendation to improve it". See: Blokker, N. and Wessel, R. (2005) Editorial: Updating International Organizations. *International Organizations Law Review*, Vol. 2, No. 1, p. 5.

<sup>85</sup> *Ibidem*, p. 6.

final reports of GEPs and their recommendations are regularly subject of discussion before the relevant bodies of international organizations. Taking into account their usefulness, persuasiveness combined with the wisdom and authority of the GEP members specific recommendations can be more or less followed by the future practice of organization (including relevant amendment of its legal order). Exception which prove the above rules represents the practice of Pan-African and regional African organizations with number of peculiarities. In particular African GEPs do not have a single (ad hoc) character and are not established by the decision of international organization. They are usually established by the constituent acts of organizations either on the Pan-African and/or of sub-regional level. As regards Pan-African level one can mention the Panel of Wise of the African Union while on the regional level have been created e.g. ECOWAS Council of Wise, SADC Mediation Reference Group and Panel of Elders, COMESA Committee of Elders. Their main goal is to strengthen, coordinate and harmonise prevention, early response and peacemaking efforts carried by various actors in Africa in order to build synergies among all participants. In such a context they create broad based regional and subregional network in order to promote joint prevention actions, explore new approaches for mediation and provide platform for bringing together the individual efforts for peace and stability in the spirit of Pan-Africanism. The relative density and complexity of different panels of wise and/or elder both on the Pan-African and regional level (and in comparison with other continents) has specific historical roots inspired by the centuries' old practice of African elders' centrality in dispute and conflict resolution which respect the importance of customary, traditional conflict resolution mechanism and its specific role in contemporary Africa. These groups can take consultations with the relevant parties engaged in the conflict, give advice concerning the facilitation of the establishment of channel of communication, carry out fact-finding mission, conduct shuttle diplomacy, adopt confidence building measures, assist and advise mediation teams already engaged in negotiations, formulate recommendations on any matter relating to promotion and maintenance of peace, security and stability etc. As effective mediators the eminent persons will rely on their individual qualities and credibility, their reputation and integrity combined with the credibility of any institutions to which they are affiliated and the nature of negotiation process itself. Their more or less active involvement in real conflicts distinguishes African GEPs from GEPs operating outside the African continent who do not enter into conflicts.

The current practice at the same time confirms that the scope of activities of GEPs already exceeded the area of international organizations whereas they are starting to be used also within the relations of international organization and third countries,<sup>86</sup> within the specific interregional

<sup>86</sup> Groups of ASEAN Eminent Persons assessing and recommending concrete measures for enhancing and future dialogue and elevating comprehensive

relations<sup>87</sup> and even within the process of the preparation and ratification of international treaties. With respect of latter it has to be mentioned that a group comprising eminent personalities and internationally recognized experts has been launched in 2013 to ensure innovative and focused approach to the advance ratification of the Comprehensive Nuclear Test Treaty adopted in 1996 (CTBT). Through the expertise, experience and political standing this Group should support and complement efforts to promote the Treaty's entry into force as well as reinvigorating international endeavours to achieve this goal. The next example of this kind represent Eminent Persons Advisory Group on Small Arms and Light Weapons established in 2000 as independent international body outside the UN framework. Its main goal can be identified as a specific contribution into a global coalition of UN member states and NGOs in favour of a realistic, affordable and effective set of proposal to help to reduce spread of illicit small arms founded on a broad-based, cooperative regulatory approach organising small arms control efforts based on transparency, export controls and an international code of conduct. According to its member S. M. Salim: "The creation of the Group of Eminent Persons composed of personalities with a diverse range of experience at high level leadership and responsibilities, and who come from different parts of the world, presents tremendous opportunity for collectively and vigorously pursuing the goal of controlling small arms"<sup>88</sup>.

## Abbreviations

CoE	Council of Europe
CTBT	Comprehensive Nuclear Test Ban Treaty adopted in 1996
ECHR	European Convention of Human Rights
GA	General Assembly
GEPs	Groups of Eminent Persons
LDCs	Least Developed Countries
OSCE	Organization for Security and Co-Operation in Europe
PCIJ	Permanent Court of International Justice
PSC	AU Peace and Security Council of 2002
TNCs	Transnational Corporations

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cooperation to a higher level of strategic partnership of ASEAN with Korean Republic, India, China, USA, Russia.

<sup>87</sup> APEC Eminent Persons Group established in 1992 at Fourth Ministerial Meeting, in Bangkok in September 1992 to "enunciate a vision for trade in the Asia Pacific Region." Its Report published in 1993 contained such a vision and recommends a series of actions to begin its realization. Its main idea was that APEC should be based on "open regionalism" that is reducing economic barriers among members in a way that not discriminate non-members states.

<sup>88</sup> Footnote no. 95, p. 3.

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