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REFORM OF THE SECURITY COUNCIL

by Jonas von Freiesleben

INTRODUCTION

The Security Council is without a doubt the most powerful organ of the United Nations. The Charter has given it primary responsibility for the maintenance of global peace and security and its decisions are binding for all Member States. Its limited geographical balance combined with five exclusive permanent seats that have veto powers, however, makes the Security Council less representative than desired by many Member States – especially emerging ‘middle’ powers – and they are increasingly calling for a restructuring of the Council.

While there is general agreement that the Security Council needs to be reformed, there is extensive disagreement on how, making the issue both extremely divisive and contentious. To many, the reform of the Security Council is a question of its continuing legitimacy. Expansion of the membership could help enhance its authority. A review of the working methods could make it more transparent, and agreeing to limit the use of the veto power in cases of *jus cogens* crimes – or at least explaining a cast veto – could broaden its appeal.¹ To others, reforming the Security Council is mainly about increasing their own power; a seat at the table could potentially translate into greatly increased influence over much of the United Nations system, including the Bretton Woods institutions and the International Court of Justice.

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The failure to achieve Security Council reform would seriously highlight the continued divisiveness in the General Assembly – where most of the debates are taking place – on important key issues, and could even negatively influence other ongoing reform debates.

This chapter explores the attempts that have been made from the UN’s inception to the present to expand the Security Council and change its working methods, with special focus on developments since 2005. It describes the opposing positions of individual Member States and various interest groups, how the debates have fluctuated and further indicates which political roadblocks will have to be overcome for Security Council reform to succeed. Basically, after putting the debate in a historical perspective, four questions are explored: What has transpired in the Security Council reform process so far, why, which Member States have played key roles, and what can we expect in the near future?²

SECURITY COUNCIL REFORM EFFORTS FROM 1945 TO 2003

The Security Council held its first session on 17 January 1946 at the Church House in London. Present were the five permanent members: China, France, the Soviet Union, the United Kingdom, and the United States as well as six non-permanent members chosen on a regional, two-year basis.³

Almost from the beginning of the deliberations, the initial expectations of Great Power unanimity seemed destined to be shattered by the simultaneously evolving Cold War. By the late 1940s the Security Council had turned into a political battleground between the East and West, serving mainly as a highly publicized forum where appeals for justice could be proclaimed, antagonists demonized, and the virtue of one's own cause declared.

Throughout the 1950s and 1960s the membership of the United Nations grew steadily in numbers, and the influx of new members, especially from Africa and Asia, drastically changed the Organization. Attempts to rearrange the composition of the Security Council had previously been rebuffed by the permanent members. However, by 1963 the calls were too loud to ignore, and in 1965, following ratification by the required number of Member States, resolution 1991 A (XVIII) expanded the number of non-permanent seats from six to ten.⁴

The Cold War Ends

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With the end of the Cold War in the late 1980s, the East-West confrontations that had hampered the Security Council for so long slowly ceased. The Soviet Union and the United States both seemed eager to offload some costly proxy wars on the United Nations and the increasing relevance of the Council caused a spark of interest among the membership of the Organization. Suddenly the Security Council was engaged in conflicts around the world, from the war between Iran and Iraq to fighting in Namibia, Angola and Cambodia. Involvement in the Gulf War of 1990-1991 and the total collapse of the Soviet Union continued to add to this momentum.

Before long, Germany and Japan both began advocating for permanent seats for themselves. The two countries had contributed heavily to the Gulf War efforts, and dramatically increased their contributions to the United Nations as a whole.

Simultaneously, public opinion in the two countries began to favor an increased involvement in world affairs. By 1992, Japan and Germany had become, respectively, the second and third largest contributors to the regular budget of the UN.

Other industrialized nations also felt entitled to an increased role in setting international policy. Like Germany and Japan, Italy too had moved well beyond its 1945 status, and by 1992 ranked almost as high a contributor to both the UN regular budget and to its peacekeeping operations.⁵ Initially, Italy clearly considered their country a serious contender for a possible permanent seat. However, with the development of the European Union and the prospects of an eventual common EU foreign policy, the Italians instead opted to intensify their resistance against a permanent seat for Germany and work for increased European integration. Italy feared that German aspirations would create a new power center in Europe, and thus negatively affect the prospects for an effective common EU foreign policy, eventually relegating them to a second tier membership within the European Union.

At first, the United States supported both a German and a Japanese seat. Britain and France were initially hesitant towards adding any new permanent members; but slowly but surely they seemed to realize that the entrance of Germany would be the only way to legitimize their own seats. For this reason, the two countries have progressively increased their support for a permanent seat for Germany in order to ease the pressure from both inside and outside the European Union to relinquish their own seats in favor of common EU seats.

It soon became apparent that talks on Security Council reform had the instant ability to make regional rivalries flare up. Nigeria, Brazil, South Africa, Egypt, Japan, Germany and India saw

themselves as perfect candidates for permanent seats, while their regional rivals were staunchly opposed. Throughout all regions, it seemed that large or powerful countries favored the inclusion of new permanent members - mainly themselves - while their regional rivals preferred adding more non-permanent seats. As a result, the debate quickly created three main blocs.

Italy, Spain, Argentina, Canada, Mexico, South Korea and Pakistan as well as some other countries called for the creation of more non-permanent seats with members to be elected on a regional basis, while fiercely resisting adding any new permanent seats (the countries eventually formed an interest group known as the Coffee-Club, which was later renamed Uniting for Consensus). Overall, the countries part of the Uniting for Consensus, lead perhaps most vocally by Italy and Pakistan, have called for the equality of all Member States, claiming that an addition of permanent seats would violate the principle of sovereign equality and create new centers of power, both within and outside the United Nations. An important argument made by the group has also been based on the so-called 'Cascade Effect.' Briefly, the argument describes the benefits of being permanent members, such as their right to sit on the various boards of the UN system and appoint nationals to senior Secretariat positions, while at the same time questioning whether this "asphyxiating grasp" on the Organization should be extended to new permanent members.⁶

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Germany, Japan, India and Brazil (known later as the Group of Four or G4) and their supporters have consistently argued for the creation of new permanent seats. Germany and Japan based their claims on the grounds that they are major donors. India did so as the world's second largest country in terms of population, with one of the world's largest economies and the third largest contributor of troops to UN peace-keeping missions. Brazil based its case on being the largest country in terms of territory, population and economy in South America. The two latter countries have also increasingly based their claims on their status as leading countries of the 'global south.'

The African group, which represents the African Union (AU) at the UN, decided early on to vehemently call for two permanent seats for Africa with the right of veto. The Africans argue that, although the main part of the work of the Council is concentrated on Africa, it is the only continent not permanently represented (if both South and North America are counted as one continent), and this historical injustice has eschewed the balance of the Council. Currently, the claim is based on the 'Ezulwini-Consensus,' a common position adopted by the members of the AU in 2005 (See Appendix V).⁷ The Consensus calls for two permanent seats; however, contrary to the previous position paper (the 1997 Harare Declaration) the seats would not be rotating within the group. Instead, they would be country-specific and chosen exclusively by the members of the AU. Although on the outside the African group has maintained unity, there has always been a furious internal discussion on who should be allotted permanent seats. At the moment, Egypt, South Africa and Nigeria are among the main contenders for permanent seats, but Ethiopia, Senegal, Algeria, Tanzania have also featured in the discussions.

The Question of Security Council Reform is Tabled in the General Assembly

In any case, in September 1992, India and 35 other Non-Aligned states tabled a draft resolution (later A/RES/47/62), calling for the inclusion in the provisional agenda of the 48th session of the General Assembly, an item entitled *Question of equitable representation on and increase in the membership of the Security Council*. Although India and a number of other countries asked the General Assembly in letter (A/34/246) to include the issue on its agenda as early as 1979, and it was so inscribed on the agenda, the item was actually not considered between 1980 and 1991. However, on 11 December 1992, a new resolution (A/RES/47/62) that was co-sponsored by Japan was passed unanimously by the General Assembly. The resolution officially placed the item on the General Assembly's agenda, where it has

since remained. The resolution called for the membership to submit reform proposals to the Secretariat by the summer of 1993 on ways to reform the Security Council. Although UN publication A/48/264 Add. 1-10, which is a collection of received Member State proposals, revealed that the majority of members supported an expansion, few agreed on the number or type of seats to be added or which countries should fill them.

As a result of the many proposals submitted, the General Assembly subsequently passed resolution A/RES/48/26, which set up an “Open-ended Working Group on the Question of Equitable Representation on and Increase in the Membership of the Security Council and Other Matters related to the Security Council” (more simply known as the Working Group). It provided a formal forum for consultations on reform of both the expansion of the Council (cluster I) and working methods (cluster II).⁸

In the corridors of the United Nations, reform of the working methods of the Security Council began to engage a large group of countries that were more interested in changing the way the Council interacted, both within and with the General Assembly membership, than in the struggle for seats. This was especially true of many small and medium-sized states that did not (and still do not) necessarily want (or have a realistic chance of getting) a permanent seat. They primarily sought easier access to the permanent members of the Council, and they wanted to be able to address the Council in time of need and on specific issues of concern. Troop-contributing countries (TCC), for instance, wanted to better understand how the Council actually reached its decisions. In general, their aspirations followed three major concerns: transparency, accountability and participation.⁹

Furthermore, reforming the working methods can be passed by a simple resolution and does not require a Charter amendment. This fact makes such reforms look less daunting to achieve in the eyes of many delegations. Consequently, discussions on working methods reform - inside as well as outside of the Working Group - were allowed to progress fairly independently of the enlargement debate. On occasion, however, aspirants for permanent seats have tended to treat the issue as competitive to their main goal.

From 1993 onwards, the Security Council Member States launched several initiatives to change the Council's working methods, although they failed to formalize their “Rules of Procedure.” Initiatives included: publicizing the daily work program (S/26015); publishing tentative monthly work schedule (S/26176); making almost final (‘in blue’) draft resolutions available (S/1999/165); providing greater transparency on procedures of the sanctions committee (S/1995/234, S/1995/438, S/1996/54), on peacekeeping operations (S/PRST/1994/22); initiating meetings between Council and troop-contributing countries (S/PRST/1994/22); and launching “Arria-style meetings,” in which a member of the Council could invite experts or representatives of civil society for a discussion without issuing a formal statement. Although these initiatives on working methods seemed to be appreciated by the general membership, the pressure for Security Council expansion continued unabated.¹⁰

In 1997, the President of the General Assembly and chairman of the Working Group, Razali Ismael of Malaysia, put forward an ambitious three-stage reform plan (A/AC.247/1997/crp.1 and A/51/47, Annex II), which provided for the enlargement of the Security Council from 15 to 24 members, including the addition of five new permanent members. Although eventually unsuccessful, this innovative proposal deserves mentioning because its use of an ‘intermediary structure’ inspired later proposals, and its failure had consequences for the reform process that followed.

The direct outcome of the Razali-proposal was resolution A/RES/53/30 passed on 23 November 1998 by the General Assembly. The resolution was a joint victory for the Non-Aligned Movement (NAM) and Italy. It stipulated that any future resolutions on expanding the Security Council would

need at least a two-thirds majority to pass. This requirement is applicable to even minor adjustments and has made decisions on Council expansion extremely difficult ever since.

The Razali-proposal served to entrench already hardened positions, putting a serious damper on reform attempts. Although, the Working Group continued to devote a large number of sessions to the subject, with Member States monotonously arguing for or against new permanent seats, it became increasingly apparent that they would be unable to reach even a minimum common position on enlarging the Security Council.

SECURITY COUNCIL REFORM EFFORTS FROM 2003 TO 2006

In 2003, Secretary-General Kofi Annan flatly told the General Assembly (A/58/PV.7): “I respectfully suggest to you, Excellencies, that in the eyes of your peoples the difficulty of reaching agreement does not excuse your failure to do so. If you want the Council’s decisions to command greater respect, particularly in the developing world, you need to address the issue of its composition with greater urgency.”

With the appointment of the Secretary-General’s *High Level Panel on Threats, Challenges and Change* later that year, Annan sent another strong signal for an increased push for reform. The Panel, consisting of a number of international dignitaries, was asked to analyze and assess future threats to peace and security and to evaluate existing approaches, instruments and mechanisms, including Security Council reform, and was meant as a stimulus for further discussion in time for the 2005 World Summit.¹¹

In December 2004, the Panel released their report *A More Secure World: Our Shared Responsibility* (A/59/565). It included 101 recommendations for change and a ‘grand bargain’ for reform of the Security Council. It proposed two models A and B for enlargement, both of which suggested expanding the Council to 24 members. Model A proposed adding six new permanent seats, but with no veto power, and three new two-year term elected seats. Model B created a new category of eight seats, renewable every four years, and one new two-year non-renewable seat. Apparently the Panel would have preferred not to include the addition of permanent members, but according to one ambassador, the Secretary-General “strong-armed” the panel into including that option out of fear of alienating Germany and Japan in the upcoming summit.

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On 16 February 2005, the Coffee Club (Argentina, Colombia, Mexico, Kenya, Algeria, Italy, Spain, Pakistan and South Korea) adopted a document entitled *Uniting for Consensus*, which subsequently became the name of the group. The document was originally drafted by Italy, and the new name was meant to convey that the group favored a broad negotiated solution.¹² The G4 (Germany, India, Brazil and Japan), on the other hand, argued that significant changes could take place through a vote and that seeking consensus or a broad negotiated solution were just excuses for inaction. However, the Uniting for Consensus group maintained a firm stand on this issue, and they were later joined by Qatar, Turkey, Ghana, Costa Rica, Canada, Morocco, San Marino, United Arab Emirates, Bangladesh, and the representative of the Arab League. The document issued in February 2005 represented a common position on expansion of the Security Council that conformed with Model B as proposed by the High-Level Panel.

In March 2005, the Secretary-General issued *In larger freedom: towards development, security and human rights for all* (A/59/2005), his follow-up report to the High-Level Panel’s report. It endorsed the Panel’s report and recommended the most comprehensive reform proposals and policy agenda of his term,

addressing such issues as financing for development, terrorism, replacing the Human Rights Commission and reform of the Security Council. Annan urged the membership to adopt all of his proposals as a package and reach consensus in time for the 2005 World Summit.

In his report, the Secretary General called on Member States to reach a consensus on expanding the Security Council to 24 members, and recycled the two proposals made by the High-Level Panel. Without specifying which proposal he favored, he asked the Member States to make a decision quickly, stating that, "...this important issue has been discussed for too long. I believe member states should agree to take a decision on it - preferably by consensus, but in any case before the Summit - making use of one or other of the options presented in the report of the High-Level Panel." (A/59/PV.83). Annan's report was greeted by a host of objections from the membership, which immediately began to regroup and position itself for a new power struggle.

Membership Discussions Prior to the World Summit

The scene was now set for serious consultations among Member States, with each interest group searching for support. The G4 (Japan, Germany, India and Brazil) apparently felt confident. In a private meeting with the Secretary-General, on 8 June, they told him that they were convinced, "that in a vote between the two options [non-permanent and permanent] they would get 150 votes."¹³

Rumors of the G4 talking to the Africans, and of a possible looming vote, were rife at the UN at the time and not well received by the group's regional rivals.

The group subsequently put forward a draft resolution (A/59/L.64), which called for an expansion of the Council by adding six permanent seats, the four sponsors and two African states, and four non-permanent seats. The proposal initially granted new permanent members with the right of veto (proposal of 13 May 2005), but in an attempt to secure the support of the current permanent members, the G4 accepted to forego this for at least 15 years.

Pakistan, Italy, Canada, Argentina, Colombia, Costa Rica, Malta, Mexico, South Korea, San Marino, Spain and Turkey, as members of the Uniting for Consensus group, put forward a rival draft proposal in which they suggested a 25-member council with 10 additional two-year rotating seats subject to renewal (A/59/L.68).¹⁴

The African group also came forward with a proposal of their own (A/59/L.67). It built on two sets of position papers - 'the Ezulwini-Consensus' and the 'Sirte-Declaration' - adopted by African leaders in March and July 2005 respectively, and the draft called for the two permanent seats with the right of veto allotted to Africa. Although the African group decided to oppose, in principle, the veto, they strongly felt that it should be extended to all permanent members "so long as it exists," as one ambassador noted.

The G4 now had to sway the African group away from their insistence on the right of veto in order to garner support from the permanent members and the membership in general. "It's up to the African countries, the G4 countries, to talk to each other and see how we might satisfy all these states, and I believe this is a process which is going to continue over the next month and, of course, we're hoping an agreement can be achieved by the end of the year," French Prime Minister Dominique de Villepin said to the press.¹⁵

Rumors of the G4 talking to the Africans, and of a possible looming vote, were rife at the UN at the time and not well received by the group's regional rivals. Among the permanent members, China had announced in April that the issue of expansion was not ripe for consideration, and that in any case, it should be a consensus decision, not one based on a vote. Russia had taken a similar position,¹⁶ while the US chose to support only the addition of Japan as a permanent member, and voiced opposition to a Council larger than 20 members. Unlike the Clinton administration, President George W. Bush

was quite vocal in his opposition to giving a permanent seat to Germany, a position often attributed to Germany's opposition to the US-led war against Iraq in 2003.

By 12 July 2005, the United States had already urged UN members to reject the G4's proposal, saying "improvements in the world body's management and oversight were greater priorities that should be adopted first." Apparently realizing the imminent risk of a vote, US Ambassador John Bolton went even further as he announced in the beginning of August that he had met with the Chinese to coordinate positions.¹⁷ Chinese Ambassador Wang Guangya said they agreed to lobby "our different friends in different parts of the world to defeat the draft resolution introduced by Brazil, Germany, India and Japan."¹⁸

However, the G4 continued to work on the African position. Some UN diplomats noted that the African group was itself ready to split over its own position due to internal arguments over tactics.¹⁹ Apparently, several African representatives had reached some sort of agreement with the G4 late in July, and this prompted the African Union to call for an emergency summit to discuss their common position. It has been suggested that South Africa and Nigeria were especially frustrated by the developments taking place within the group, and sought permission to negotiate the right of veto. Earlier, Nigerian President Olusegun Obasanjo had warned African leaders of the consequences if they did not compromise: "The main issue before us," he said, "is to decide either that Africa will join the rest of the world, or the majority of the rest of the world, in bringing to a conclusion a demand for UN reform, or if Africa will stand on a nonnegotiable position which will certainly frustrate the reform efforts."²⁰

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Reportedly, the 53 states of the African Union subsequently met and voted 90 percent in favor of sticking to the group's original decision of calling for permanent seats with the right of veto. Egypt and several other states, fearing to be left out of the race for a permanent seat, had lobbied the Union membership to oppose any compromise solutions as a way to frustrate South Africa and Nigeria's ambitions. This meant that no compromise solution was found between the African group and the G4, and German diplomats admitted that efforts to find a common position would likely drag on beyond their self-imposed September deadline. They warned that those in opposition to new permanent seats had been using "all the spoiling tactics available to them."²¹

As a result, on 13 September 2005, the proposals of the Uniting for Consensus, the G4 and the African group lapsed without any action having been taken. It had been a close call, but in the end the African insistence on the right of veto and the US and Chinese opposition to Germany and Japan, respectively, had sufficiently obstructed the process to block any concrete results.

The next day the 2005 World Summit opened in New York. Billed as the largest ever gathering of world leaders, the Summit lost what might have been a once-in-a-lifetime opportunity to give reform of the Security Council the push it needed. Instead, as a result of the internal bickering of states little was accomplished on Security Council reform. In the final text of the *World Summit Outcome Document* (A/RES/60/1), the formulations of paragraphs 152, 153 and 154 on Council reform were brief and noncommittal. Asked about the viability of any Council reform in the near future, Pakistan's UN Ambassador Munir Akram replied: "It's on life support."²² During the fall of 2005, it became clear that the patient would not wake up any time soon.

Some commentators have noted that the moment to push for a comprehensive reform package seemed fairly ill-chosen by Kofi Annan. Large reform initiatives on sensitive issues such as Security Council enlargement, they argued, have traditionally been left to Member States, and not the Secretary-General.

In explaining the timing of the Secretary-General's reform push, several analysts believe that Annan was heavily influenced by the negative impact the US-led war in Iraq had had on the image of the UN.²³ The Secretary-General, rather than the membership, had tried to be a catalyst for change, but the effort only succeeded in generating heated dialogue. Some have noted that Annan also seemed to have misunderstood just how deep the divisions between Member States ran on this issue. At the UN "the political ripeness of the issue is not a factor of the length of time it has been under consideration," as UN expert, Dr. Edward Luck has remarked.²⁴

SECURITY COUNCIL REFORM FROM 2006 TO 2008

The events surrounding the World Summit resulted in widespread reform fatigue among many Member States, especially in regard to Security Council expansion. Japan circulated an independent proposal during the winter, but failed to garner any form of support. Instead, attention turned to reform of the working methods of the Council. A group of five smaller countries, Switzerland, Singapore, Jordan, Costa Rica and Liechtenstein, had earlier formed a group known colloquially as the Small Five (S5), and they decided to circulate a non-paper and a few drafts on the issue following the Summit.

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In March 2006, they submitted a draft resolution (A/60/L.49) under the agenda item *Follow up to the Millennium Summit* aimed at achieving a more accountable and transparent Security Council. The draft asked the Council to consult with all Member States on resolutions, and requested that the five permanent members explain every veto to the General Assembly.

This went much further than previous reform proposals from outside the Security Council, which had usually centered on improving communications between the Council and the General Assembly membership. In the ongoing power struggle between the Council and the General Assembly, this was seen by some of the permanent members as a direct infringement of their rights and as an attempt to subdue the Council. Although the General Assembly resolution was non-binding, the sponsors hoped that its adoption would create moral pressure on the Security Council, especially the permanent members to agree to adopt some of the recommendations.

But reactions to the proposal by the veto-wielding Council members were dismissive. At a subsequent debate (A/60/PV.95-96) in the General Assembly all five permanent members responded that any initiative to reform the working methods should come from within the Security Council. British Ambassador Emyr Jones Parry had earlier said of the S5 proposal: "I don't like it. It presumes the General Assembly should tell the Security Council what to do."²⁵ These sentiments were echoed by US, Chinese, French and Russian diplomats.

Interestingly, several Member States competing for a permanent seat also spoke out against the proposal at the General Assembly debate, underlining divisions within the membership between countries focusing on the enlargement debate and those favoring an approach focusing on reforming the working methods of the Council. India and Brazil, for instance, both expressed concerns over shifting focus away from an expansion. In the face of this opposition, the draft proposal was not put to a vote in the General Assembly.

Nonetheless, the proposal led to some greater movement on the issue within the Council. The same year as the S5 draft was launched, the Council decided to revive the once dormant 'Informal Working Group on Documentation and Other Procedural Questions.' Japan was elected to chair the

group for a period of 12 months, and the result was a presidential note (S/2006/507), containing a list of measures aimed at enhancing the efficiency and transparency of the Council, as well as improving its interaction with non-members. The note grew out of an earlier note (S/2006/78) by the President of the Security Council relating to documentation and procedure from 7 February 2006. In 2007 the Council agreed to continue the group, focusing on the practical aspects of the 2006 presidential note, although it is yet to achieve the same level of momentum as in 2006.

In September 2006, Pakistan's President Pervez Musharraf and Italian Prime Minister Romano Prodi hosted a dinner at a New York hotel for some 60 states with opposing views on membership reform. It was a purely noncommittal affair, and was meant to review the potential for a negotiated solution, preferably under the guidance of the President of the General Assembly and chairman of the Working Group, Sheikha Haya Rashed Al Khalifa of Bahrain. To the surprise of many, even Germany, Japan and Brazil attended the dinner.

A couple of months later, in December 2006, Member States once more decided to take up the issue of reform in the General Assembly (A/61/PV.70-75). In a meeting that lasted several days, it clearly signaled that the membership was finally ready to negotiate on Security Council and other reforms again.

In January 2007, Nigerian Ambassador Aminu Bashir Wali made an effort, as chair of the African group, to convince the African Union to change its position and allow for permanent membership without the right of veto. The Ambassador said that such a shift of position would enable Africa to "put our foot in the door first" and that "those who want to see democracy in the UN system are very much unhappy with Africa's position."²⁶ However, the initiative failed to alter the African position, which continued to firmly favor two permanent seats with all rights.

The Working Group Meets Again

Later that month, the President of the General Assembly and chairman of the Working Group, Sheikha Haya Rashed Al Khalifa, circulated a letter to the membership announcing the resumption of discussions on Security Council reform in the Working Group. In her letter, Sheikha Haya established five tracks to help Member States begin consultations: the size of an enlarged Security Council, the categories of membership, the question of regional representation, the question of the veto, the working methods of the Security Council & the relationship between the Security Council and the General Assembly. Subsequently, on 8 February 2007, Sheikha Haya appointed five facilitators in their personal capacities to assist her during the consultation process on the five preceding issues: Ambassador Heraldo Muñoz of Chile, Ambassador Mirjana Mladineo of Croatia, Ambassador Andreas D. Mavroyiannis of Cyprus, Ambassador Frank Majoor of the Netherlands and Ambassador Ali Hachani of Tunisia (A/61/47 SUP).

On the same day, Panama presented an innovative proposal that attracted some attention because of its new approach to re-election leading in some cases to a permanent seat. Its proposal provided for a transition from the Council's current size and membership structure to a future enlarged Council. Initially, the size of the Council would be increased by adding six non-permanent seats. The new members would be given five-year terms, with the right to immediate re-election. Those re-elected four consecutive times would automatically receive permanent seats, but without the right of veto. In the end, no action was taken on this unique "transitional proposal."²⁷

After conducting lengthy consultations with Member States, as well as with different interests groups, the five facilitators submitted their combined report on *Notions on the Way Forward* (A/61/47, SUP-Annex I) on 19 April 2007. In it they outlined four variations of an intermediary arrangement meant to move the process forward:

- “1. Extended seats that could be allocated for the full duration of the intermediary arrangement, including the possibility of recall.
2. Extended seats, which would be for a longer period than the regular two-year term, but with the possibility of re-election. The length of the terms as well as the re-election modalities should be decided in negotiations.
3. Extended seats, which would be for a longer period than the regular two-year term, but without the possibility of re-election. The length of the term should be decided in the negotiations.
4. Non-permanent two-year seats with the possibility of immediate re-election.”

In the assessment of the facilitators, the rationale for engaging in an intermediary model was that at the time none of the major positions that had been advanced so far had seen sufficient acceptance to be implemented.

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Recognizing that neither the African position, nor the G4 or the Uniting for Consensus positions had enough support to pass a General Assembly vote, the facilitator’s report was an attempt to break the impasse and force a new development. The report also pointed out that no matter what arrangement Member States would ultimately prefer, there were two key factors that had to be taken into consideration: the addition of a mandatory review clause and the inclusion of a provision that would prevent medium to large sized states from ‘flip-flopping’ from one non-permanent category to the other, in order to improve the chances for smaller states to be elected to the Council.

The mandatory review mechanism is intended to assess the success of the interim model, while also dealing with questions that could not be solved immediately. These included whether new permanent members should gain the veto power, or whether the veto power should be eliminated altogether or its use simply limited. The length of time before the review would be undertaken was to be determined in negotiations. By making temporary arrangements for membership enlargement, “none of the stakeholders has to give up its original position,” the report stated.

Member States’ interpretations of and reactions to the report, however, greatly varied. Some states were reportedly overwhelmed by the many new views and positions captured in the report, which they felt had not been adequately discussed in previous consultations on the topic. Some Member States expressed a willingness to consider a transitional model, although Germany, India and Brazil cautioned that an approach that would only increase the number of two-year seats could not be seen as more productive as it failed to include the creation of new permanent seats.

Consequently, at the next meeting of the Working Group, the G4 lamented that the report from the facilitators did not indicate that a substantial consensus existed within the membership towards approving an enlargement in both categories of membership: permanent and non-permanent. Germany was particularly vocal in calling for a vote that would help determine where the majority stood, a so-called straw vote. The German ambassador stated that waiting for a consensus would kill Security Council reform and that in a negotiating process those holding the minority position would have to show more flexibility than those in the majority. India noted that there had never been more than one-thirds support for transitional arrangements proposed in the past, some of which also figured in the report, while support for expansion in both categories had at times reached almost two-thirds of the membership.

This had not been reflected, however, in the report of the facilitators. India suggested that a fruitful negotiating text would have taken the majority view and integrated it with the minority positions by adding periodical reviews for new permanent members. The G4 and the United States, supported by

a number of other Member States, insisted that new facilitators be appointed by the Chairman, assigned with presenting a few models integrating most approaches, for the next stage of negotiations. The US reiterated its support for the inclusion of Japan, and perhaps other powers that could take responsibility for keeping international peace, in the permanent member category, but they failed to mention Germany.

The Uniting for Consensus faction, on the other hand, insisted that there had never been a consensus on increasing the membership in both the permanent and non-permanent categories; otherwise Member States would not still be discussing the issue. Pakistan emphasized that there had never been just two options - permanent and non-permanent - on the table for discussion, but several including these: permanent with or without veto, semi-permanent, non-permanent etc. The faction was also very firm in denying any need for the appointment of new facilitators. According to them that would equate to showing mistrust in the five facilitators and their work to date.

The African group reiterated their position asking for two permanent seats with veto power and five non-permanent seats (as per the Ezulwini-Consensus). In their opinion, the veto should be granted to all new permanent members and then removed gradually in a second phase. They asked for further proposals to be elaborated, in particular in regard to the transitional arrangements proposed in the report: what the final objective of an intermediary/transitional arrangement would be and a timeline of, or at least suggestions on, how to reach the final goal. At any rate, the African group stated that a transitional solution envisaging permanent seats and veto power at a later stage, after a review for example, would not be acceptable as they would want to be made part of the power balance in the Security Council as soon as possible.

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In May 2007, Sheika Haya chose to give in to the demands of the G4, and appointed ambassadors Heraldo Muñoz of Chile and Christian Wenaweser of Liechtenstein to conduct consultations with Member States on how to move the process forward on the basis of the report of the five facilitators.

During the summer of 2007, the two new facilitators released their report (A/61/47, SUP-Annex IV). It offered some examples of the type of transitional arrangement that Member States could consider. With regards to the mandatory review clause, the transitional approach assumed as an integral component a mandatory review to take place at a later date to assess and review the viability of any agreed arrangement, and was especially central to those aspects on which Member States would not be able to agree upon in negotiations. In the facilitators' view, the review should also entail a comprehensive assessment of the Security Council's composition and working methods. The report suggested that the issue of veto could be discussed within the framework of the reform of the working methods of the Council, for example in regard to limitations of its use.

As to the reform of the working methods, the report reminded Member States that this would be a reform that could be approached and discussed independently since it would not require a Charter amendment. It also pointed out that the issue of working methods is linked to the review, the veto and the size of the Council, in particular with the aim of guaranteeing increased access for non-members to Security Council decision-making. Finally, the document offered suggestions on how to proceed with the reform. According to the report, delegations had already showed an interest in basing the next step on negotiations, rather than consultations. The two facilitators suggested that negotiations should utilize a text containing all the concrete elements of the negotiable issues highlighted in their report.

In the debate following the report of the two facilitators, the G4 again urged the Chairman to launch a direct negotiation process as the next step, with the aim of reaching a conclusion by the upcoming

62nd General Assembly. For Germany in particular, an intermediary process, as recommended by the facilitators, would be an attractive short-term solution only if such a process would maintain options for future comprehensive reform steps, with a mandatory review as an integral part. Finally, Germany urged the Chairman to set up a group of Member States who could organize the negotiation process and perhaps even draft a concrete proposal that could act as a point of departure for further deliberations. Japan continued to lament the fact that the reports from the different facilitators seemed to omit clear indications of substantial consensus within the membership towards approving an enlargement in both categories of Security Council membership: permanent and non-permanent. India noted that they would show flexibility when a more detailed proposal is on the table. In their view the Membership should move to a text, and perhaps even consider an actual straw poll to identify the biggest hurdles ahead. In the Brazilian statement, the permanent representative remarked that reform must address increased representation in both permanent and non-permanent categories, while taking into special account the representation of the developing world. Furthermore, to move the process forward it would be necessary to establish a format for negotiation, set up a timetable as well as a deadline for the conclusion of the negotiation process.

The African group restated their demand for two permanent seats with all the privileges, including the right of veto and five non-permanent seats (as per the Ezulwini Consensus). In their view, the reports of the facilitators were not fair, as both seemed to suggest that only Africa had to make concessions, while other groups could maintain their positions. Pakistan, as part of the Uniting for Consensus group, once again stated their principled opposition to "...any proposals that directly, or in disguise, seek to create new permanent members." Pakistan pronounced itself ready to explore an agreement based on an intermediate approach as presented by the different groups of facilitators; however, the Pakistani delegate underscored the importance of a general agreement on a framework of negotiations to carry the process forward, with the *Report of the Five Facilitators* together with the complementary report of the two facilitators as a basis. Argentina commented that in their view there should not be a new category of membership in the Security Council.

China noted its support of the proposals of the African group, while underscoring the importance of keeping all options open and not being limited to only the proposals contained in the *Report of the Five Facilitators*, while the United States highlighted their support for the addition of new permanent seats, but also underscored that those Member States in question should have a demonstrated responsible foreign policy.

The Working Group Debates the Report of the Chairman

In early July 2007, and with these debates in mind, the Chairman of the Working Group released a draft version of her progress report, including a concise resolution. In brief, the report summarized the efforts made by the Working Group during the year and made some modest recommendations on how to proceed during the next General Assembly session. By adopting the report and resolution, the General Assembly would have recognized the efforts of the Working Group and formally placed the issue of Security Council reform on the agenda of the 62nd session of the General Assembly.

It became clear that especially Member States in support of adding permanent members to the Council preferred stronger language calling for direct negotiations between countries to be undertaken during the next General Assembly.

However, early on it became apparent that certain Member States were nowhere near satisfied with the work of the Chairman. It became clear that especially Member States in support of adding permanent members to the Council preferred stronger language calling for direct negotiations between countries to be undertaken during the next General Assembly session. On the other hand, Member States favoring the Uniting for Consensus approach urged Sheikha Haya to include a paragraph in her report especially noting the facilitators' reports and suggestions as the basis for any further discussions. In essence, the draft report

engendered a series of heated negotiations on the way forward, vividly demonstrating the continued divisions within the membership. Nonetheless, at this time Member States were still only discussing how the Chairman's report could be changed, not actually discarded. That did not happen until the last phase of negotiations, around 11 September, when a group of 27 Member States submitted an alternative draft resolution (A/61/L.69) in an unexpected effort to push for much stronger language. The draft was apparently drafted by India, and had as its more prominent co-sponsors Brazil, South Africa and Nigeria.

Now, in an effort to advance a united call for permanent membership, the sponsors of the resolution had seemingly come together on a draft resolution that proposed several radical steps to be taken during the following General Assembly session. The proposed elements for negotiations were: expansion in both permanent and non-permanent categories; greater representation of the developing countries; representation of the developed countries and those with transition economies reflective of contemporary world realities; comprehensive improvement in the working methods of the Security Council, including ensuring greater access of island and small states; and provisions for a review.

The inclusion of Nigeria as a co-sponsor of the new draft report led to speculations that they had been promised a second permanent African seat in a deal with a group consisting of India, Brazil and South Africa. The group is usually referred to as IBSA, and has been meeting regularly since the 1990s on development issues; however, this was the first time its name was mentioned in connection with the reform of the Security Council.

The move by the IBSA-countries was by any standard highly extraordinary as it suddenly presented the Working Group with the possibility of employing a vote, rather than their usual consensus method of working. The late submission of the draft seemed to arrive unexpectedly by a large part of the membership and sent considerable shock waves through the Working Group. With only a couple of days left of the 61st session, the group needed to decide on a draft in order to continue its work during the next session. If no agreement could be reached in time the mandate of the Working Group would be terminated. As such, the 'India-proposal' or simply 'L69' resulted in considerable commotion among Member States. Pakistan and India traded insults, setting off a series of highly undiplomatic exchanges, with accusations of waging "guerilla-warfare" against the reform process in general and the Chairman in particular, while other states quickly chimed in on either side of the permanent or non-permanent-only debate. Contributing further to the heated negotiations was widespread confusion about how many votes the proposal would be needed to pass. Pakistan claimed that the proposal would need a two-thirds majority, while especially South Africa and India claimed it required only a simple majority of countries present as it was merely a technical resolution.

The term 'intergovernmental negotiations' seemed to be a sufficiently watered down and undefined term to be acceptable to all sides. It could be interpreted as meaning both direct negotiations on a text, or direct negotiations based on the facilitators' reports...

With only a few hours left of the 61st General Assembly session, the Chairman finally called the discussions to an end and presented the membership with an amended draft report (A/AC.247/2007/L.1/REV.1) that specifically added this new wording: "Decides that the question of equitable representation on and increase in the membership of the Security Council and other matters related to the Security Council should be considered during the 62nd session of the General Assembly, so that further concrete results may be achieved, including through intergovernmental negotiations, building on the progress achieved so far, particularly in the 61st session, as well as the positions and proposals made by all Member States." The text was a compromise between the initial positions that favored direct negotiation as the next step and those that favored negotiations based on the facilitators' reports. The term 'intergovernmental negotiations' seemed to be a sufficiently watered down and undefined term to be acceptable to all sides. It could be interpreted as meaning

both direct negotiations on a text, or direct negotiations based on the facilitators' reports, the latter favoring an intermediary adding only non-permanent seats for the time being.

Thus, the sponsors of L69 were left with only two choices; either accept the new draft report or put their own resolution to a vote in the General Assembly. Faced with an uncertain fate, the sponsors decided to pull their proposal, although "without enthusiasm" as the South African Ambassador remarked, and reluctantly vote for the Chairman's report. The report, with the above changes, was subsequently passed by consensus by the General Assembly effectively extending the mandate of the Working Group for another year (A/61/47).

In hindsight, it seems highly doubtful that the L69-proposal could have survived a vote in the General Assembly. A source close to the development claimed that several smaller Member States,

"Things will not be the same hereafter," as Indian Ambassador Nirupam Sen noted to the General Assembly as they adjourned.

who initially were in favor of the proposal, had planned to abstain from an eventual vote. Indeed a hypothetical claim not easily substantiated, but that the proposal would have struggled to reach even a simple majority is probably fairly certain.

Overall, the emergence of a new player – IBSA – in the reform process initially caused some fears of a new North/South divide. The proposal seemed to invite as many questions as answers. Its total impact, as well as the sustainability of this new grouping, remains to be seen.

Concerning the motives behind L69, some have speculated that the proposal was an attempt to simply 'stir the pot' of the Working Group. According to one Western diplomat, the delegations of India, Brazil and South Africa had throughout the year voiced their frustrations to Chairman Sheikha Haya over the slow process throughout the year, but felt that their concerns had not been adequately addressed. The final straw was apparently omission of new permanent members in the facilitators' reports.⁷ In this context, the L69 could be seen as a sign of the states simply venting their frustration.

This frustration, however, could have led to different outcomes. One source remarked that the states had hoped that the proposal would trigger other states to come forward with their own draft proposals, allowing the membership to have a 'showdown' over their differing views; or the straw poll that the Indian delegation had previously called for. Instead the L69 was left facing Sheikha Haya's draft, and many states did not want to vote against the Chairman, as this could be seen as a serious vote of mistrust. Another possible outcome could have been the termination of the mandate of the Working Group. For some, especially the members of the G4, this would have been a desirable outcome as it could have effectively opened the road to more serious and direct negotiations, in their view, without having to deal with the often cumbersome format of the Working Group.

Nevertheless, in the end, most factions of the Working Group, including IBSA, hailed the result as their victory. And there was indeed something for everyone in the report. Member States calling for an expansion in the permanent category felt that the inclusion of the words "intergovernmental negotiations" in the report signaled a move beyond the Working Group towards actual negotiations on a concrete text. States opposing new permanent members felt that the above term was sufficiently watered down to mean anything, while the inclusion of the words "...building on the progress achieved so far, particularly in the 61st session," meant that any new negotiations would only include the options of non-permanent members in an intermediary approach. Lastly, IBSA hailed the words "intergovernmental negotiations" as a result of their persistent efforts, as well as their draft proposal. "Things will not be the same hereafter," as Indian Ambassador Nirupam Sen noted to the General Assembly as they adjourned (A/61/PV.109).

Later in the fall of 2007, several factions seemed to be meeting again on the issue. While the G4 met informally on a couple of occasions in New York, the IBSA-countries also convened a high-level meeting in South Africa between the leaders of the three states. A joint statement from 17 October 2007 read: “They [India, Brazil, and South Africa] expressed their full support for a genuine reform and expansion of the Security Council, in permanent and non-permanent categories of membership, with greater representation for developing countries in both. They reiterated that inter-governmental negotiations on the issue of Security Council reform must commence forthwith. They agreed to further strengthen cooperation amongst their countries and with other Member States interested in a genuine reform of the Security Council.”²⁸ The initiative sent a signal of continued cooperation in the reform process between the three developing nations.

The 61st General Assembly Session Ends and the 62nd Begins

With the 62nd General Assembly in session and a fresh batch of diplomats to work the New York trenches, ready for the next round of reform battles, the newly-elected President of the General Assembly, Sgrjan Kerim, decided to convene a General Assembly debate (A/62/PV.47-51) in mid-November 2007 on the way forward.

In his opening remarks, the President said that he had been holding informal consultations with all interested parties since the beginning of the current 62nd Assembly session, and noted that in his view countries “have articulated their preparedness, taking into account the progress achieved, to use the current momentum to move forward.” Furthermore, he said the “objective should be to develop a framework, in order to begin intergovernmental negotiations, by identifying and reaching agreement on the various negotiable elements,” while urging Member States to be guided by the Facilitators’ reports as well as their own positions.

Different groupings of states continued to back the well-known reform models, with the main factions as usual being the United for Consensus, lead by Italy and Pakistan, the G4 and the African group.

Moreover he outlined seven basic principles that in his view should guide the process: “1. Security Council reform is an integral part of strengthening the UN; 2. Prudent and principle oriented guidance by the President of the General Assembly is required, though it must be based on a joint venture with Member States in good faith and mutual respect; 3. The way forward ought to be accomplished through an objective and transparent process to first identify the negotiables in order to then move to intergovernmental negotiations; 4. The Open-ended Working Group should carry out consultations on the framework and the modalities for intergovernmental negotiations; 5. Further steps must contain components and notions that will allow the membership to reach a general agreement on all aspects of Security Council reform, in particular on both the composition of the Council and its working methods; 6. The reform of the Security Council must accommodate the interests and concerns of all sides, especially those who are currently underrepresented; and 7. Member States should refrain from steps which could serve to undermine the current momentum and consensus to continue a process with the intention of achieving result oriented solutions.”

Following Kerim’s remarks, almost 90 Member States took the floor delivering statements on their views on the composition of a reformed Security Council and the way towards it. Many indicated their continued frustrations over the slow process, although in general positions did not appear to have changed much since the September debates.

Different groupings of states continued to back the well-known reform models, with the main factions as usual being the Uniting for Consensus, lead by Italy and Pakistan, the G4 and the African group. Interestingly, the IBSA group did not speak, but this was probably due to the fact that their interests were already represented by the above-mentioned blocs.

The discussion also revealed huge differences in opinion on how to move the process forward, that is, how to interpret the results of the last session's Working Group. Although most Member States agreed that the process of working methods reform could continue independently from the enlargement debate, disagreement on how to move the latter track forward continued. The delivered statements clearly showed that there was no consensus on how to understand the term 'intergovernmental negotiations.'

In general though, the Uniting for Consensus group urged the membership to continue to use the Working Group as the main forum, to build upon the facilitators' reports and not to adopt any 'artificial' deadlines. Members of the G4 asked the membership to act as soon as possible in order to use the current momentum. Germany, Brazil and India indicated their willingness to pursue a solution outside the Working Group. Both India and Germany requested a text from President

To jumpstart the development, the Ambassador announced that Germany had decided to organize the formation of an overarching group.

Kerim as a basis for negotiations as well as a set timeframe for negotiations. India stated that they would not be interested in any interim or intermediary model that had been recommended by the different facilitators during the 61st session. A common theme of many of the statements from across the different factions was the desire for a more forceful approach from the President. In particular, many wanted explicit guidance on how to move the process forward.

The debate had been widely anticipated by the membership as an opportunity to follow-up on the previous September's heated discussions, and many Member States had reportedly been anxious to know what plans the President had for moving the process forward. For those reasons, many viewed the debate as a 'make-or-break' moment in the process.

Commentators had noted that President Kerim could either come out with an agenda of his own, illustrating the negotiables and clearly mapping the way ahead for the membership or he could leave the initiative to the membership and let Member States decide where to take the negotiations. According to sources close to the developments, President Kerim chose the latter. Some Member States, especially those calling for permanent seats, had instead wanted a more forceful approach from the President. Other observers noted that some Member States themselves needed to 'stick their neck out' and move the process forward rather than leave it to the President of the General Assembly, who was likely being pushed in opposing directions by the membership. In any case, the debate did not yield any concrete results other than the continued rehashing of well-known arguments.

A month later, on 14 December 2007, President Kerim decided to convene a closed meeting of the Working Group to infuse some momentum in the debate. Clearly, this must have pleased the G4 who had previously called for more action.

In his opening remarks the President announced the formation of a new 'Task-Force on Security Council Reform,' made up of Ambassadors Heraldo Muñoz of Chile, João Manuel Guerra Salgueiro of Portugal and Ismat Jahan of Bangladesh and the President himself.

Finally, President Kerim noted that he planned to convene focused meetings with individual Member States during the months of February, April and June of 2008, although he added, "this timetable is conditioned on progress made in our deliberations and consultations during the periods in between."

Upon taking the floor, Ambassador Thomas Matussek of Germany once more stated his country's firm support of the proposals of the G4. To jumpstart the development, the Ambassador announced that Germany had decided to organize the formation of an overarching group. The group, which had

already held its first meeting on how to get organized, would be open to all Member States and would start work soon “on text elements to be considered for further negotiations in the following six categories: size of the Security Council; categories of Membership; the question of veto; the election procedure for new members; review, and working methods.” Germany expressed hope that the exercise would result in some form of concrete text, and finally added that they would not rule out a solution involving a two-step, or intermediary, approach.

This approach was supported by Japan and Brazil. India added that any solution should further strive to include new permanent members; and the Indian ambassador also noted that future texts could be based upon the Ezulwini-Consensus. Botswana, on behalf of the African Union, reaffirmed the African group’s principled commitment to the Ezulwini-Consensus.

Italy and Pakistan both stated that the aim of the process should be a general agreement based on consensus, not on a vote, and that the Working Group was the only legitimate place for negotiations on Security Council reform. In a pointed reference to the above-noted German initiative, Ambassador Farukh Amil of Pakistan further said that, “we cannot therefore accept any attempt to circumvent or undermine the Working Group. Select gatherings and informal meetings organized by Permanent Missions, is their prerogative, and a practice that is understandable. What is not understandable is that any exclusive, unilateral or self-generated group could be allowed to determine a course of action or make proposals on behalf of the rest of the membership.” The Ambassador urged President Kerim to strongly discourage such moves “as they undermine the process.”

Interestingly, as to reform of the working methods of the Security Council, the UK lauded the work of the Slovakian ambassador in the Informal Working Group on Documentation and Other Procedural Questions, and added that the UK would work for the implementation of a 2006 internal Security Council agreement on reform of its working methods (S/2006/507).

The meeting was the last of the Working Group of the year, and as of 1 March 2008 also the last of the 62nd General Assembly session, which ends in September 2008.

THE FUTURE PROCESS...

There have been many attempts to reform the Security Council since the founding of the United Nations in 1945. Although few have resulted in significant change, all have radically underlined just how intricate and complicated such a process truly is. Furthermore, as has occurred in previous years, reform of the Security Council can refer to several different things: to changing how the Council works, modifying the right of veto or revising the composition of the membership. A look at the current state of negotiations should at least provide some hints of possible future scenarios of the various reform processes.

Within the cluster of working methods, recent developments have given rise to modest optimism. The 2006 presidential note (S/2006/507) solidified previous gains, and gave the Council a concrete starting point for further work on reform. The British statement at the latest meeting of the Working Group clearly demonstrated that there is – at least among some permanent members – a willingness to work towards a more open and transparent Security Council, but the statement also highlighted the inherent opposition from Council members against any interference in how to conduct “their business.” Thus, the key to change lies more with the permanent members of the Council, than with the General Assembly or small interest groups. According to diplomats from the S5 faction, future work of the group will be centered more on inspiring change from within than promoting elaborate General Assembly resolutions.

Nonetheless, small steps have been taken towards change, although it is doubtful that these could lead to modifications in the right of veto. Establishing set rules of procedure might pave the way for some progress along the lines of the presidential note of 2006, but China, Russia and the United States are fervently opposed to any rules that would govern how the Council conducts its dealings. France, the UK and perhaps even a ‘daring’ non-member might be able to spur some development within the Informal Working Group on Documentation and Other Procedural Questions, on further non-binding, but publicly available, regulations. The two European countries do not necessarily want to limit their powers, but they also know that their legitimacy currently rests on increasing the transparency and inclusiveness of their Council dealings. To an extent, this has already happened in regard to sharing information with other members of the European Union; however, they realize that they also have to extend it to all General Assembly members.

The German initiative seems to be spurred on by an increasing notion among the members of the G4 - especially Germany and Japan - that their time to argue for permanent seats may have ended.

The process on working methods within the General Assembly’s ‘Open-ended Working Group’ could gain some momentum if suggestions do not impose conditionality, and in general are kept at a “reasonable level” as seen from a P5 perspective. However, developments could be hampered by Member States vying for permanent seats, if the working methods debate overshadows talks of expansion, which they want to have priority. Work towards more transparency could also be hampered by some Member States that are increasingly disillusioned by the slow process. There seems to be a growing awareness among those Member States that more transparency would not necessarily translate into more involvement in the decision-making procedures of the Council. Paradoxically, some of the measures previously implemented to increase transparency have actually meant that more decisions have been taken in secrecy. For instance, as more public discussions have taken place in the large Security Council chambers, more informal negotiations have been moved to an adjacent closed room. Increasingly, this has tended to focus attention on other ways of influencing the Council. Some states consider the General Assembly’s Fifth Committee (administrative and budgetary), which manages the budget of the United Nations, as the only real way to influence the decision-making of the Security Council. This endeavor, however, stands minimal chances of succeeding, as one former chairman of the Fifth Committee and ambassador of a developing country noted.²⁹

On the debate on the composition of the Council, the process has so far progressed very slowly. Germany is currently exploring some ideas to move the process forward as confirmed by recent press reports. With the launch of the overarching group (or perhaps, more an overarching process) in New York, the Germans clearly signaled that they are ready to pursue some sort of further movement. However, serious obstacles remain. Neither Italy nor Pakistan have taken part in the group (or process), and the two countries continue to argue that a basic framework for negotiations must be agreed upon before any actual drafted text can even be considered. In this regard, diplomats connected to the Uniting for Consensus group doubt that the German efforts are likely to produce any concrete results before the end of 2009.

The German initiative seems to be spurred on by a spreading notion among the members of the G4 - especially Germany and Japan - that their time to argue for permanent seats may have ended. Many commentators believe that the two countries had a better chance of getting permanent seats in the 1990s when the main arguments were based on the size of payments to the UN. Instead, sentiments seem to have moved away from adding more industrialized nations to adding more developing countries as a way to make the Security Council more representative. Among the permanent members of the Council there seems to be quiet satisfaction with this development.

A permanent seat for India is another issue. Ambassador Nirupam Sen has said many times that he sees no added value in a solution that omits the inclusion of new permanent members. Several

sources within the diplomatic community note that India continues to staunchly believe that “time is on their side,” and that they can afford to “wait the process out” in hope of a permanent seat. If India decides to adopt such an all-or-nothing attitude, it could seriously undermine the current negotiations. Deciding to link progress within the expansion-cluster to other unrelated reform issues could have similar consequences. On the other hand, India did show flexibility by abstaining on including the right of veto, and could perhaps be willing to enter in negotiations in the face of the current resistance from the Uniting for Consensus group.

Brazil and South Africa – the other members of IBSA – also seem to have realized the enormous challenges from within their respective continents, although they might be able to garner some support if they can turn the debate into a North/South question.

However, at the moment, that strategy could backfire horrendously for South Africa. Africa is the only regional grouping with a consensus on the question, and South Africa would have to break the African position and move away from the Ezulwini-Consensus to reach a compromise on forfeiting the veto. This presents them with an obvious paradox: how could they argue that they are the African representative if they are not part of the African consensus? At the moment the African position seems solidly in favor of the Ezulwini-Consensus. African leaders even reaffirmed this position at an African Union summit in Ethiopia in early February 2008.

“The AU decision must be a disappointment for Japan, Germany, India and Brazil, who can’t secure a seat in the Council without having Africa on board. The AU’s call to expand the use of the veto [to new permanent members] has no chance of collecting wider support at the UN. It is a self-defeating proposal, and they know it,” Ayca Ariyork, a Senior Associate at the UN Association of USA, said in a recent analysis.³⁰ Talks with African representatives in New York have revealed that opposition continues to be stacked against permanent seats for South Africa, Nigeria or Egypt, and for many smaller and medium-sized states demanding the veto is one way of keeping the countries out. It is therefore doubtful that the group will drop its insistence on the right of veto. And it is equally doubtful that other countries or groupings will negotiate with the Africans without knowing the names of their candidates. A European ambassador even noted that there will be no negotiations without actual names of African candidates, and given the internal African turmoil, names are not immediately forthcoming. In this regard, Africa currently seems to be holding the key to further movement on the expansion debate, although many Member States of the African Union seem reluctant to use it.

For over a decade, Member States have fought a bitter war of attrition and reform fatigue seems widespread, with some ambassadors even hoping to shelve the process if no compromise is found by the end of this session. The road ahead looks indeed very challenging.

¹ *Jus cogens* (Latin for “compelling law”) is a principle in international law. In brief, *jus cogens* refers to crimes generally accepted by the international community of states as unlawful, and from which no derogation is ever permitted. Although, no clearcut definitions exist of what constitutes *jus cogens*, it is generally accepted that the term includes the prohibition of genocide, piracy, slavery, torture, and wars of territorial aggrandizement.

² Please see chapter 2 for a description of the efforts to reform the selection process of the Secretary-General.

³ As the permanent members had not been able to agree on one definitive set of rules of procedure of the Council, the members proceeded with just provisional rules, which have remained almost unchanged since 1945, except for a slight revision in 1982, when the document was updated to include Arabic as an official language. By not agreeing on set rules the P5 arguably gave themselves two advantages: 1. Flexibility in maintaining Council affairs as they see fit. 2. Keeping the rules adequately flowing.

⁴ To add any new members to the Security Council, the Charter of the UN has to be amended. Under Article 108, a Charter revision is a two-stage process: first, two-thirds of the entire General Assembly must approve a resolution to amend the

Charter; then, two-thirds of the Member States, including all of the permanent members of the Security Council, must ratify the amendment within an agreed-upon timeframe.

⁵ Following the Second World War, Germany, Japan and Italy were all named “enemy states” in the UN Charter (Article 53, paragraph 1, 2).

⁶ The ‘Cascade Effect’ was first presented by Argentina in a working paper from 1995 (A/49/965), and later reworked by Costa Rica in 2005 (A/59/856).

⁷ The ‘Ezulwini Consensus’ is available as an appendix or in full at www.centerforunreform.org/system/files/Ezulwini+Consensus.doc

⁸ The Working Group is open to all Member States. The President of the General Assembly is the chairman of the group and presides over the meetings, which usually, but not always, takes place in the first semester of the year. At the end of a General Assembly session the chairman presents a draft status report and a resolution to the membership. The report outlines the progress made during the session and is a publicly available document. If both report and resolution are passed, the item will then be placed on the agenda of the following General Assembly session, and the Working Group can continue its work.

⁹ For further information on the efforts to reform the working methods of the Security Council, please see Security Council Report, *Security Council Transparency, Legitimacy and Effectiveness – Special Research Paper*, 18 October 2007 (No. 3).

¹⁰ UN publication S/2006/78 outlines efforts undertaken by the Council from 1993 to 2005 to reform its working methods.

¹¹ Members included Anand Panyarachun (Thailand - chairman), Robert Badinter (France), João Clemente Baena Soares (Brazil), Gro Harlem Brundtland (Norway), Mary Chinery-Hesse (Ghana), Gareth Evans (Australia), David Hannay (United Kingdom), Enrique Iglesias (Uruguay), Amre Moussa (Egypt), Satish Nambiar (India), Sadako Ogata (Japan), Yevgeny Primakov (Russia), Qian Qichen (China), Nafis Sadik (Pakistan), Salim Ahmed Salim (United Republic of Tanzania), Brent Scowcroft (United States).

¹² The document, *Uniting for Consensus*, is available on the Mission of Mexico to the United Nations’ website at <http://www.un.int/mexico/2005/UNReform-pp.htm>

¹³ James Traub, *The Best Intentions: Kofi Annan and the UN in the Era of American World Power*, Farrar, Straus and Giroux, New York 2006, p. 361.

¹⁴ The draft built to an extent on two previous suggestions; ‘the blue model’ and ‘the green model.’ The models are available on the Global Policy Forum’s website at <http://www.globalpolicy.org/security/reform/cluster1/2005/04greenmodel.pdf> and <http://www.globalpolicy.org/security/reform/cluster1/2005/04bluemodel.pdf>

¹⁵ The statement is available on the French UN Mission’s website at http://www.ambafrance-uk.org/60th-Session-of-the-United-Nations,6340.html?var_recherche=wade

¹⁶ Traub, James, *The Best Intentions: Kofi Annan and the UN in the Era of American World Power*, Farrar, Straus and Giroux, New York 2006, p. 361.

¹⁷ John Bolton arrived in New York on 1 August 2005 as a “recess appointed” Permanent US Representative to the UN. He was appointed by President G. W. Bush, but was never confirmed by the US Senate. For Bolton’s own views on his term at the UN, please see his autobiography, *Surrender is not an Option – Defending America at the United Nations and Abroad*, Threshold Editions, New York, 2007.

¹⁸ Bloomberg News, *Bolton, China Agree to Stop Bid by U.S. Allies for UN Power*, 3 August 2005.

¹⁹ Deutsche Welle, *Last Chance Talks for G4 UN Hopefuls*, 25 July 2005.

²⁰ AP News, *African Leaders Reject Compromise on UN Security Council*, 5 August 2005.

²¹ Deutsche Welle, *Last Chance Talks for G4 UN Hopefuls*, 25 July 2005.

²² Reuters, *Like Fixing the Weather - Council Reform Eludes UN*, 19 September 2005.

²³ Thomas Weiss and Sam Daws (ed), *The Oxford Handbook on the United Nations*, Oxford Uni. Press, Oxford 2007, p. 662.

²⁴ Ibid.

²⁵ Los Angeles Times, *5 Small Nations Propose Reforms for UN - The Group Aims to Make the Giants of the Organization more Accountable and Open*, 10 November 2005.

²⁶ www.ReformtheUN.org, *Five New Tracks for Security Council Reform; Panama Proposes Transitional Model*, 14 February 2007.

²⁷ The proposal is available at <http://www.centerforunreform.org/node/246#footnote1>

²⁸ The statement is available at <http://www.centerforunreform.org/node/287>

²⁹ In the view of a former chairman of the Fifth Committee and ambassador of a developing country noted, the Fifth Committee tends to just ‘rubberstamp’ the decisions of the Council.

³⁰ Article available at <http://www.unausa.org/site/pp.aspx?c=fvKRI8MPJpF&b=3879865&auid=3360414&kntaw5367=99B80F6E0B8246E3A6EACD4E6C94CB82>