

# All Illusions Shattered?

## Looking Back on a Decade of Failed Attempts to Reform the UN Security Council

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### I. Introduction

In a September 2002 report, UN Secretary-General Kofi Annan spoke of the “stalled process of Security Council reform”. He stated that after nearly a decade of discussions in the UN “a formula that would allow an increase in Council membership is still eluding Member States”, notwithstanding the fact that “in the eyes of much of the world, the size and composition of the Security Council appear insufficiently representative”.<sup>1</sup> Indeed, today prospects for a comprehensive reform of the Council, which would encompass both the body’s composition and its decision-making process, are dim, and the pressure for such a reform, still strong in the early nineties, has given way to a certain ennui or resignation of the interested governments and NGOs. Was it an illusion to

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<sup>1</sup> See “Strengthening of the United Nations: an agenda for further change”, Doc. A/57/387 of 9 September 2002, para. 20.

believe that the Council could be adapted, in a rational process of discussions and negotiations, to a world so different from that of 1945? And are now “all illusions shattered”, to quote from a song by the American singer Tracy Chapman?<sup>2</sup>

While the need for a “comprehensive reform of the Security Council in all its aspects”, as the UN Millennium Declaration of September 2000 put it,<sup>3</sup> is still generally acknowledged, conflicting views of Member States continue to block a solution:<sup>4</sup>

- All governments appear to support an enlargement of the Council in the category of non-permanent members (which is not to say that there is a consensus on the size of such an enlarged Council, an issue which is discussed under the opposing slogans of “representativeness” on the one hand, and “effectiveness” on the other hand). But while a majority of governments also wishes to increase the number of permanent members, others strongly object to such a change.

- At the end of the nineties, the candidacies of Germany and Japan for permanent membership were almost universally supported. However, among the states favoring more permanent seats there has been disagreement about how the developing countries of Africa, Latin America and Asia should be represented in the category of permanent members. For the time being, the proposal to replace the present British and French permanent seats with a common European (EU) seat (which thus would be shared also by Germany) is unrealistic; neither the United Kingdom nor France are ready to give up their individual seats. The developing regions which are aspiring to permanent representation have so far been unable to decide on the states they want to nominate for permanent membership. The idea of having “rotating permanent members”, i.e. states which would represent a region for a

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<sup>2</sup> T. Chapman, “Paper and Ink”, from the album “Telling Stories” (Elektra Records, 2000).

<sup>3</sup> A/RES/55/2 of 8 September 2000, para. 30.

<sup>4</sup> For a recent summary of the various proposals (which, however, does not identify the states standing behind them), see “Conference room paper submitted by the Bureau of the Working Group on the Principal Elements of Proposals Concerning (a) decision-making in the Security Council, including the veto, (b) expansion of the Security Council, and (c) the periodic review of an enlarged Security Council”. Report of the 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, Doc. A/56/47, Annex IV.

certain number of years, that was advanced to overcome this difficulty, seems to be a *contradictio in adiecto*, and is very controversial. It is not sincerely supported by the most promising aspirants for permanent seats among the developing countries. Allocating permanent seats to regions instead of states is also at variance with the state-centered system of the UN Charter.

- A majority of states wants to abolish or curtail the right of veto of the permanent members (Article 27 para. 3 of the UN Charter), but the present P-5 are unwilling to accept any such diminution of their status. There are also conflicting opinions about the question whether new permanent members should be entitled to the veto (and if so, all of them or only some).

In recent months, this unfortunate situation has been exacerbated by the uncertainty about the future relationship of the United States with the United Nations. Already President Clinton was far from taking the lead in promoting a reform of the Security Council. Pressed by a majority in Congress openly hostile to the United Nations, he instead limited United States support for the organization to narrowly defined measures directly serving American national interests. But now much more is at stake. It is unclear whether the United States, in its fully developed role as the “only superpower”, is at all interested in the existence of a world organization of a type represented by the present United Nations.<sup>5</sup> In any case it is unlikely that the present Bush Administration will advance a major reform of the Security Council.

In the following sections, the original positions of United Nations Member States regarding the composition, size and voting procedure of the Council, as well as their modifications during the discussions that have taken place since 1991 will be outlined.<sup>6</sup> However, it is not always

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<sup>5</sup> For a discussion of United States ambivalence about international law in the post-Cold War era, see N. Krisch, “Weak as Constraint, Strong as Tool: The Place of International Law in U.S. Foreign Policy”, in: D.M. Malone/Y.F. Khong (eds), *Unilateralism and U.S. Foreign Policy: International Perspectives*, 2003, 41 (concluding that the United States “has sought to secure inequality [of states] in international law and to retain the flexibility that had traditionally characterized international rules”). See also M.J. Glennon, “Why the Security Council Failed”, *Foreign Aff.* 82 (2003), 16 et seq. (“there likely will be little impulse to revive the Council”).

<sup>6</sup> The question of working methods and transparency of the work of the Security Council will not be addressed in this article. For an overview of the respective discussions in the early nineties, see I. Winkelmann, “Bringing the Security Council into a New Era”, *Max Planck UNYB* 1 (1997), 35 et

easy to assess the degree of these modifications, and the positions presently taken by governments because, in general, official statements of the last years have been much less detailed than those put forward between 1994 and 1997. Because of the long-lasting deadlock, in many governments questions of Security Council reform have not been thoroughly discussed on a high political level for several years.

## II. The Course of the Debate since 1991

In the UN General Assembly, the question of “equitable representation on and increase in the membership of the Security Council” has been an item on the agenda since 1979. At that time India, supported by a number of other, mainly developing states, asserted that the increase in membership of the United Nations since 1963 — the year in which the number of non-permanent members had been raised from six to ten<sup>7</sup> — had led to an under-representation of non-aligned and developing countries in the Council. It was proposed to expand the non-permanent members from ten to fourteen, and to introduce a new pattern of geographical distribution.<sup>8</sup> Another draft resolution, submitted by Latin

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seq. (III.). For a summary of improvements in the Council’s working methods actually achieved over the past few years, see S.C. Hulton, “Evolving Council Working Methods”, in: D.M. Malone (ed.), *The United Nations Security Council*, 2004 (forthcoming). See also the revised conference room paper submitted by the Bureau of the Working Group on the Working Methods of the Security Council and Transparency of its Work, Doc. A/56/47, Annex V, and the “descriptive index to notes and statements by the President of the Security Council relating to documentation and procedure (June 1993 to August 2002)”, Doc. A/57/382 and S/2002/1000 of 6 September 2002, Annex.

<sup>7</sup> For a brief history of the 1963 amendments to the Charter, see E.C. Luck (ed.), *Reforming the United Nations: Lessons from a History in Progress*, 2003, 7-10, 48. The author reminds his readers of the fact that in 1963, of the five permanent members only China voted for the General Assembly resolution to expand the Security Council, “yet all [permanent members] eventually found it easier to go along with the tide for expansion” and ratified the amendments.

<sup>8</sup> See Draft Resolution Doc. A/34/L.57 and Add.1. Four non-permanent members should come from African States, three from Asian States, and two from Western European and other States; one seat was to alternate between African and Asian States. Compare the 1963 allocation (A/RES/1991 (XVIII) of 17 December 1963):

American states, sought to increase the Council's membership to twenty-one, sixteen of which would be non-permanent members.<sup>9</sup> However, all the permanent members of the Security Council, except China, opposed any expansion;<sup>10</sup> and no substantive discussions on the matter were held until 1991 when, at the 47th Session, eight countries revitalized the debate.<sup>11</sup>

In January 1992, the Security Council met at the level of heads of state and government for the first time in the history of the United Nations. A number of representatives, especially from developing countries, took this occasion to express the view that the structure and the working methods of the main organs of the United Nations should be reviewed after the end of the Cold War. The Prime Minister of Japan, Kiichi Miyazawa, for instance, declared that it is necessary for the United Nations to evolve while adapting to a changing world. "[S]ince the Security Council is at the center of U.N. efforts to maintain international peace and security, it is important to consider thoroughly ways

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*"The General Assembly,*

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3. *Further decides* that the ten non-permanent members of the Security Council shall be elected according to the following pattern:

(a) Five from African and Asian States;

(b) One from Eastern European States;

(c) Two from Latin American States;

(d) Two from Western European and other States".

The original allocation was different. According to a "gentlemen's agreement" concluded between the permanent members in 1946, two of the then six non-permanent seats would be given to Latin America and one each to the British Commonwealth, Western Europe, Eastern Europe, and the Middle East. This arrangement became ineffective in 1955. See R. Geiger, "Comment on Art. 23", in: B. Simma (ed.), *Charter of the United Nations*, 2nd edition, 2002, Vol. I, 437 et seq. (440).

<sup>9</sup> See Draft Resolution Doc. A/34/L.63 and Add.1, amendments to 15-power draft resolution Doc. A/34/L.57 and Add.1. For further documentary references, see UNYB 1979, 435-436.

<sup>10</sup> See P. Wilenski, "The Structure of the UN in the Post-Cold War Period", in: A. Roberts/ B. Kingsbury, *United Nations, Divided World*, 2nd edition, 1993, 437 et seq. (441).

<sup>11</sup> See also M. Bertrand, "The Historical Development of Efforts to Reform the UN", in: Roberts/ Kingsbury, see above, 421-436. Cf. also O. Fleurence, *La réforme du Conseil de sécurité*, 2000.

to adjust its functions, composition, and other aspects so as to make it more reflective of the realities of the new era".<sup>12</sup>

At the summit meeting of the countries of the Non-Aligned Movement in Jakarta in September 1992, the United Nations reform became a major topic. In the meeting's Final Document, the heads of state and government declared, *inter alia*:

"They were of the view that the veto powers which guarantee an exclusive and dominant role for the permanent members of the Council are contrary to the aim of democratizing the United Nations and must, therefore, be reviewed in line with the reform of the United Nations aimed at bringing about greater democratization and transparency in the work of all United Nations bodies. They also called for a review of the membership of the Council with a view to reflecting the increased membership of the United Nations and promoting a more equitable and balanced representation of the members of the United Nations".<sup>13</sup>

During the following months, almost global consent developed according to which the increase in membership of the United Nations, the fundamentally changed international situation after the end of the Cold War, and the new challenges faced by the organization (in areas like development, protection of the environment, and human rights, for instance) required a thorough review of the structure and working methods of the major UN organs, including the Security Council. The permanent members of the Security Council who wanted to avoid a broad review of the Council's functioning and composition, were not able to contain the discussion any longer. The new current of opinion became obvious at the session of the General Assembly in November 1992.<sup>14</sup>

As a result of this debate, the General Assembly adopted on 11 December 1992 Resolution 47/62, entitled "Question of equitable repre-

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<sup>12</sup> Statement at the UN Security Council meeting of 31 January 1992; see Ministry of Foreign Affairs (ed.), *Diplomatic Bluebook 1992 - Japan's Diplomatic Activities*, 399, 401.

<sup>13</sup> Tenth Conference of Heads of State or Government of Non-Aligned Countries, Jakarta, 1-6 September 1992, Final Document, Chapter II: Global Issues. Political and Economic Committees, para. 32, Doc. A/47/675.

<sup>14</sup> See General Assembly, Provisional Verbatim Record of the 69th Plenary Mtg, 23 November 1992, Doc. A/47/PV.69.

sentation on and increase in the membership of the Security Council".<sup>15</sup> The developing countries, in particular, saw this resolution as an expression of the general acknowledgement that the membership of the Security Council must be changed in order to (re)establish equitable representation of all Member States on the Council, and to respond adequately to the "changed international situation" which the document refers to in its preamble. In its operative part, the resolution requested the Secretary-General "to invite Member States to submit ... written comments on a possible review of the membership of the Security Council".

The Secretary-General presented the comments submitted to him in a report dated 20 July 1993, and four addenda to this report.<sup>16</sup> Altogether, seventy-five Member States from all regions replied. The submissions can be regarded as the most comprehensive statement of the original UN Member States' policies with regard to a reform of the Security Council.

At its 48th Session, the General Assembly, on the basis of the report submitted by the Secretary-General, discussed the matter in three plenary meetings during which fifty-seven delegations took the opportunity of communicating their views.<sup>17</sup> The debate led to the consensual adoption of Resolution 48/26 of 3 December 1993, by which the General Assembly decided "to establish an Open-ended Working Group to consider all aspects of the question of an increase in the membership of the Security Council and other matters related to the Council".<sup>18</sup> In the resolution's preamble, the General Assembly recognized as the two

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<sup>15</sup> The draft resolution was sponsored by 37 Latin American, African and Asian states, among them Brazil, Egypt, India, Indonesia, Japan, and Mexico; see Doc. A/47/L.26, A/47/L.26/Rev.1, and A/47/L.26/Rev.1/Add.1.

<sup>16</sup> "Question of Equitable Representation on and Increase in the Membership of the Security Council. Report of the Secretary-General", Doc. A/48/264 and Add.1, Add.2 and Add.2/Corr.1, Add.3 and 4.

<sup>17</sup> General Assembly, 48th Sess.; Provisional Verbatim Records of the 61st, 62nd and 64th Plenary Mtgs, 23 and 24 November 1993. Doc. A/48/PV.61, A/48/PV.62 and A/48/PV.64.

<sup>18</sup> For an analysis of the discussions of the Working Group up until 1998, see B. Fassbender, *UN Security Council Reform and the Right of Veto: A Constitutional Perspective*, 1998, 221-275, and Winkelmann, see note 6. For brief evaluations of the first stage of discussions, see B. Fassbender, "The Gordian Knot of Security Council Reform", *German Comments*, No. 45 (January 1997), 55 et seq., and id., "Reforming the United Nations", *Contemporary Review* 272 (1998), 281 et seq.

primary reasons for the need to review the Council's membership "the substantial increase in the membership of the United Nations, especially of developing countries, as well as the changes in international relations".<sup>19</sup> The mandate of the Working Group was extended by the General Assembly at its 48th through 57th Sessions.<sup>20</sup>

Participation in the Working Group is open to all Member States — an issue which, in the course of the Group's work, has recurrently been raised by delegations whenever the vice chairmen tried to speed up discussions by inviting only certain states to consultations in "closed session".

The broad formulation of the Working Group's mandate in this 1993 Resolution is a reflection of the general view that the issue of increasing the membership of the Security Council can not be looked at in isolation. There were, however, different expectations behind this consensual readiness to also deal with "other matters related to the Council". The industrialized states, generally trying to restrict the reform debate to a few "manageable" items, hoped to be able to fend off claims regarding an increase in membership they regarded as inappropriate by making some concessions concerning the Council's working methods, and its interaction with non-members of the Council, regional groups and troop-contributing countries. The developing countries, on the other hand, wanted to broaden the discussion so that it would include, for instance, the question of how to strengthen the role of the General Assembly and of the ICJ, respectively, *vis-à-vis* the Security Council in the field of international peace and security.

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<sup>19</sup> This decision implied that the Committee on the Charter of the United Nations and the Strengthening of the Role of the Organization, which the General Assembly had established in 1975 and the standing of which had suffered from the fact that in more than 15 years its work had been basically fruitless, was not to become the central forum for addressing questions of Security Council reform. For the Committee's latest report, see Doc. A/57/33, for discussion of the report by the Sixth Committee of the General Assembly Doc. A/57/566 of 11 November 2002.

<sup>20</sup> See GA Decisions A/48/498, GAOR 48th Sess., Suppl. No. 49, Vol. II, 59; A/49/499, GAOR 49th Sess., Suppl. No. 49, Vol. II, 39; A/50/489, GAOR 50th Sess., Suppl. No. 49, Vol. II, 49; A/51/476, GAOR 51st Sess., Suppl. No. 49, Vol. III, 128; A/52/490, GAOR 52nd Sess., Suppl. No. 49, Vol. III, 58; A/53/487, GAOR 53rd Sess., Suppl. No. 49, Vol. III, 58; A/54/488, GAOR 54th Sess., Suppl. No. 49, Vol. III, 78; A/55/503, GAOR 55th Sess., Suppl. No. 49, Vol. III, 93; A/56/477, GAOR 56th Sess., Suppl. No. 40, Vol. III, 98.



The “draft timetable and programme of work for the first round of discussions”<sup>21</sup> in the Open-ended Working Group which delegations agreed upon on 1 March 1994, listed the topics that were viewed as constituting the core of the questions the Group had to consider. The programme organized the topics in two so-called “clusters” which determined the Group’s agenda:

“[I] Equitable representation on and increase in the membership of the Security Council, including regional distribution, categories of membership, numbers, and modalities of selection

[II] Other matters related to the Security Council:

– Relationship of the Security Council with the General Assembly, other bodies and organizations as well as non-members of the Security Council,

– Reform by the Security Council of its working methods and procedures (effective and efficient functioning of the Security Council; decision-making in accordance with the provisions of the Charter; elections and terms of office)

Modalities for bringing changes into effect and consideration of related Charter amendments”.

The Working Group, under the chairmanship of the President of the General Assembly, began its substantive work on 1 March 1994. In the first year, the meetings were generally attended on the ambassadorial level. Since discussions of the Working Group are not open to the public and no official records are kept, the observer mainly must rely on the annual reports submitted by the Group to the General Assembly, press releases of the Member States’ missions and information obtained from members of delegations. Further, there are so-called “non-papers” presented and periodically revised by the vice-chairmen of the Group, which try to summarize and organize the views expressed by Member States, indicate major lines of thought and identify areas of agreement. The “non-papers” are not agreed upon in consultations. For this reason, it is not surprising that some Member States objected to their contents and evaluations.

In September 1994, the Working Group submitted its first report to the General Assembly.<sup>22</sup> On 13 and 14 October 1994, the Assembly

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<sup>21</sup> Blank dated. The documents relating to the work of the Working Group and the statements of delegations of Member States quoted in this article are all on file with the author.

<sup>22</sup> See Doc. A/48/47, GAOR 48th Sess., Suppl. No. 47.

discussed the “question of equitable representation on and increase in the membership of the Security Council and related matters” as agenda item 33. Fifty-seven Member States participated in the debate.<sup>23</sup> In the following years, too, the question was placed on the Assembly’s agenda and discussed by it.<sup>24</sup>

The Special Commemorative Meeting of the General Assembly on the occasion of the fiftieth anniversary of the United Nations in October 1995 provided an opportunity for Member States unanimously to reaffirm at the highest political level their agreement to expand the membership of the Security Council. At this meeting, the heads of state, government and delegation adopted a declaration, the relevant passage of which reads as follows: “The Security Council should, *inter alia*, be expanded and its working methods continue to be reviewed in a way that will further strengthen its capacity and effectiveness, enhance its representative character and improve its working efficiency and transparency”.<sup>25</sup> Similarly, the UN Millennium Declaration, adopted by the heads of state and government on 8 September 2000, said that Member States will intensify their efforts “to achieve a comprehensive reform of the Security Council in all its aspects”.<sup>26</sup>

On 20 March 1997, the President of the General Assembly and chairman of the Group, Ambassador Ismail Razali of Malaysia, presented a paper in the form of a draft resolution.<sup>27</sup> The Razali plan is widely regarded as the culmination of the most productive phase of discussions in the Working Group.<sup>28</sup>

He proposed that in a first stage, the General Assembly should adopt with a simple majority a resolution calling for the Council to be

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<sup>23</sup> See General Assembly, 49th Sess., Provisional Verbatim Records of the 29th to 32nd Plenary Mtgs 13 and 14 October 1994, Docs A/49/PV.29 - A/49/PV.32.

<sup>24</sup> For the latest discussions, see GAOR 57th Sess., Provisional Verbatim Records of the 27th to 32nd Plenary Mtgs, 14-16 October 2002, Doc.A/57/PV.27 - A/57/PV.32.

<sup>25</sup> Declaration on the Occasion of the Fiftieth Anniversary of the UN, A/RES/50/6 of 24 October 1995, para. 14.

<sup>26</sup> See A/RES/55/2 of 8 September 2000, para. 30.

<sup>27</sup> See Doc. A/AC.247/1997/CRP.1 and A/51/47, Annex II.

<sup>28</sup> See I. Winkelmann, “Das Postulat einer stärkeren Beteiligung des Südens am Sicherheitsrat der Vereinten Nationen”, in: J.A. Frowein et al. (eds), *Verhandeln für den Frieden- Liber Amicorum Tono Eitel*, 2003, 229 et seq. (238).

enlarged by five permanent and four non-permanent members. The resolution would allocate the new permanent seats to the “industrialized states” (2) and to the developing states of Africa (1), Asia (1), and Latin America and the Caribbean (1). The new permanent members would not enjoy the right of veto. Of the four new non-permanent seats, one would go to Africa, one to Asia, one to Eastern Europe, and one to Latin America and the Caribbean. In a second stage, specific states would be designated as permanent members by a vote of two-thirds of the members of the General Assembly. A week later, in a third stage, the necessary amendments to the Charter would be adopted by the Assembly in accordance with Article 108 of the UN Charter. Ten years after the entry into force of the amendments, a conference would be convened under Article 109 of the Charter “in order to review the situation created by the entry into force of these amendments”.

However, this attempt to achieve a Council reform in a step-by-step approach (shuffling the stumbling stone of a two-thirds majority of the general membership necessary for a Charter amendment to the very end of the process) was repudiated by the General Assembly on 23 November 1998, when it determined, referring to Chapter XVIII of the UN Charter, “not to adopt any resolution or decision on the question of equitable representation on and increase in the membership of the Security Council and related matters, *without the affirmative vote of at least two thirds of the Members of the General Assembly*”.<sup>29</sup> The primary opposition to the Razali plan came from mid sized states which felt that they would be somewhat disenfranchised under a plan elevating certain large developing countries to permanent member status without reducing the current number of permanent members.<sup>30</sup>

### III. A Summary of Views on the General Structure of the Security Council

In September 1995, the Vice-Chairmen of the Group summarized the state of the debate as follows:

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<sup>29</sup> A/RES/53/30 of 23 November 1998. (Emphasis added). In contrast the second stage resolution proposed by Razali could have been adopted by a two-thirds majority of the General Assembly members “present and voting” (Article 18 para. 2 of the Charter).

<sup>30</sup> See Luck, see note 7, 50.

“Discussions showed that there was agreement in the Open-ended Working Group on the need to strengthen the effectiveness of the Security Council by an increase in its membership in order to reflect more accurately the important international changes that have taken place, including the substantial increase in the membership of the United Nations, especially of developing countries. Discussions further showed that there was agreement on the need to review the Council’s composition, its working methods, and other matters related to its functioning”.<sup>31</sup>

By and large, this statement is still accurate today. Positions on concrete proposals could not be reconciled. Many states, among them the members of the African Group, seek an increase in both permanent and non-permanent membership; they constitute a clear majority.<sup>32</sup> Some delegations (in particular Argentina, Canada, Italy, Libya, Mexico, Pakistan and Turkey) have supported an increase in the non-permanent membership only, while others (like the Republic of Korea and Sweden) propose a reform process in stages, the first stage being an enlargement limited to non-permanent members. However, criteria and modalities for the election of non-permanent members remain to be agreed upon. Proposals aiming at an introduction of new categories or types of Council membership, which had some importance in the early discussions of the Working Group, remain on the agenda but appear to enjoy very limited support. Views are divided on how, if there was to be an expansion in permanent membership, such members should be elected,

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<sup>31</sup> “Observations on and assessment by the Vice-Chairmen of the progress of the work of the Open-ended Working Group during the forty-ninth session of the General Assembly”, Doc. A/AC.247/1 of 15 September 1995, reprinted in: Doc. A/49/965 of 18 September 1995, 5.

<sup>32</sup> According to informal consultations of the vice-chairmen of the Open-ended Working Group with representatives of 165 member states held in early 1997, a “very large majority” of governments supported an increase in both categories of Council members. See Doc. A/51/47 of 8 August 1997, Annex VI. The majority view is shared by Germany. See Permanent Mission of Germany to the UN, “Security Council Reform: Germany’s position” (2002): “Expansion of the non-permanent category only would not represent a genuine reform of the Security Council. Such a one-sided expansion would leave the current balance of power in the Council unaffected. This current balance of power does not reflect today’s realities”. For an explanation of the present official German position, see also G. Pleuger, “Die Reform des Sicherheitsrates der Vereinten Nationen”, in: S. von Schorlemer (ed.), *Praxishandbuch UNO: Die Vereinten Nationen im Lichte globaler Herausforderungen*, 2003, 683 et seq.

and whether formal criteria such as those contained in Article 23 para. 1 of the Charter should guide such an election. In the event that there is agreement on an increase in the permanent membership, an increase only by industrialized countries is widely regarded as unacceptable.

If one takes a general look at the proposals, the question of a reform of the Security Council is first of all a North-South issue. The industrialized states of the Northern hemisphere, which make up four of the five permanent members and to which, according to the 1963 allocation, are assigned three of the ten non-permanent seats (leaving aside the two Latin American seats), acknowledge that the increase in the general membership from 51 in 1945 to 113 in 1963 and 191 in 2002 suggests that the number of Council seats should again be raised.<sup>33</sup>

The Northern industrialized states, however, want to limit an increase in the overall membership of the Security Council since any such increase would necessarily amount to a certain restraint on their influence and, according to the official reasoning, might impede the Council's ability to fulfill its mission speedily and effectively ("efficiency and effectiveness" argument). In particular, the permanent members have been reluctant to say that the Council, in its present composition, is unrepresentative. The developing nations of the Southern hemisphere, on the other hand, tend to promote a stronger increase in the Council's membership in order to improve their representation on the body. The figures most commonly quoted in the discussions of the Working Group seem to be between twenty and twenty-five, the lowest and highest figures being twenty and thirty, respectively.<sup>34</sup> The Movement

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<sup>33</sup> In recent years, Germany has become a particularly vocal supporter of a stronger representation of Southern developing states on the Council. See Winkelmann, see note 28. See also B. Fassbender, "Die prekäre Stellung des Südens im Völkerrecht der Gegenwart", *Politische Studien* 357 (1998), 99 et seq.

<sup>34</sup> For the United States position in the days of the Clinton Administration, see Bureau of International Organization Affairs, Department of State, "US Fact Sheet on UN Security Council Expansion" of 5 January 2000: "The overall size of the Council should be limited to a maximum of 20 or 21, in order to ensure that it will continue to function efficiently". The German Government declared: "A total of 24 seats should strike the necessary balance between enhancing the opportunities for participation and maintaining the efficiency of the Council". See "Germany's Position", see note 32.

of Non-Aligned Countries and the African Group favor a Council of at least twenty-six members.<sup>35</sup>

Of course, this contrasting of North and South holds good only in very general terms because there are numerous differences of opinion within the two “camps”, and overlappings of views which make developed and developing nations find some common ground.

There is, in particular, general agreement about the fact that the number of non-permanent members should be raised,<sup>36</sup> and that the criteria contained in Article 23 para. 1 of the Charter should, by and large, remain valid. In contrast, different opinions exist as to whether additional (and, if so, which) criteria should be applied, and whether the chances of smaller states of being selected for non-permanent membership by their regional groups should be enhanced. Some delegations pointed to the lack of uniformity in the way regional groups select candidates and suggested that the selection procedures could be unified to ensure equality of treatment across regions. Proposals for a new distribution of seats among regional groups, and for a new definition of these groups, usually favor the developing countries and seek to reduce the number of European and Western seats. Other proposals intend to regularize the practice of selecting certain states more often for non-permanent membership. Views have also been expressed in support of, and against, lifting the ban on immediate re-election of non-permanent members (Article 23 para. 2 of the Charter).

## 1. The Question of Permanent Membership

On the part of the Northern industrialized states, there are still severe differences with regard to changes in the Council's permanent membership. The Minister for Foreign Affairs of Singapore quite frankly addressed the crucial points:

“[I]f the new Security Council is really to reflect the current international distribution of power, it should logically entail the relega-

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<sup>35</sup> See Final Document of the Twelfth Ministerial Conference of the Movement of Non-Aligned Countries of 8 April 1997, Doc. NAC/FM/Doc.1/Rev.3, para. 28.

<sup>36</sup> For the German view, which coincides with the Razali plan of 1997 (see text accompanying note 27), see “Germany's position”, see note 32: “We also favour four new non-permanent seats, three for Africa, Asia, Latin America and the Caribbean as well as one for Eastern Europe.”

tion of some from the elite as well as the anointment of others. Even if some were to be so elevated without necessarily displacing others, the expansion of the small group of the select would imply the relative diminution of the status of the current permanent members".<sup>37</sup>

Already the Administration of President George H.W. Bush had favored permanent membership for Japan and Germany, and President Clinton adopted this policy.<sup>38</sup> Pointing to the two states' "record of constructive global influence and their capacity to sustain heavy global responsibilities", the American representative even said in the November 1995 debate of the General Assembly that the United States "enthusiastically endorse[s] the candidacies of Japan and Germany", and that it "could not agree to a Council enlargement that did not result in their permanent membership".<sup>39</sup> The Administration regarded both countries as economically potent Western democracies which it expected substantially to share the burden the United States must carry in the post-Cold War world.<sup>40</sup> In October 2002, the Administration of President George W. Bush affirmed the policy goal of its predecessors ("a reformed Council, with Japan and Germany assuming permanent seats").<sup>41</sup> It remains to be seen whether the recent difference of opinion between the United States and Germany in the question of the war

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<sup>37</sup> Speech by Mr. Wong Kan Seng, Minister for Foreign Affairs of the Republic of Singapore, at the 48th Sess. of the General Assembly, 6 October 1993.

<sup>38</sup> See, e.g., Joint Remarks by President Clinton and Japanese Prime Minister Hosokawa, New York City, N.Y., Federal News Service, 27 September 1993.

<sup>39</sup> Statement by Ambassador Inderfurth, 14 November 1995, General Assembly, 50th Sess., Provisional Verbatim Record of the 58th Plenary Mtg Doc. A/50/PV.58, 5. See also statement by Ambassador Inderfurth in the Open-ended Working Group, 27 March 1996, Press Release of the United States Mission to the United Nations 39-(96) of 27 March 1996, 1.

<sup>40</sup> See United States statement of 30 June 1993, Doc. A/48/264, see note 16, at 92: "[T]he United States supports permanent membership for Japan and Germany as well, *fully recognizing that permanent membership entails assuming an active role in global peace and security activities*". (Emphasis added.)

<sup>41</sup> See statement by Ambassador Siv at the General Assembly of 14 October 2002, Doc. A/57/PV.27, 10. See also Bureau of International Organization Affairs, Department of State, Fact Sheet "United Nations" of 26 November 2002: "The U.S. supports permanent seats on the Security Council for Japan and Germany and a modest further enlargement of the Council to include permanent seats for developing nations from Asia, Africa, and Latin America".

against Iraq will make the Administration change its position.<sup>42</sup> Cautiously, the Clinton Administration declared that it was “prepared to accept three additional permanent seats for developing nations from the regions of Africa, Asia, and Latin America”.<sup>43</sup> However, the United States strictly opposed the idea of granting any developing country the right of veto.

The United Kingdom and France, on the other hand, initially were reluctant to accept the idea of additional permanent seats. It was clear from the beginning that any such addition would give testimony to a relative loss of global power of the United Kingdom and France and might also increase Germany’s regional influence in Europe, thus adding to the “imbalance” that was brought about by Germany’s reunification in 1990. However, in the nineties both states became strong supporters of Germany’s and Japan’s candidatures. They realized that only by supporting Germany they could bring to a stand the increasing demand for a joint European (EU) seat. France later also decided to support India’s aspiration to become a permanent member.<sup>44</sup>

Russia’s and China’s statements on the subject continue not to be very outspoken. Neither state appears really to welcome the prospect of German and Japanese permanent membership. In a more recent Russian pronouncement, Germany and Japan were not mentioned, but India was called “a strong and worthy candidate for permanent membership”.<sup>45</sup>

The People’s Republic of China presents itself as a representative of the developing countries. Repeatedly, China has declared that “at the present time, the main reform task should be the increase, as a priority, of membership of the developing countries in the Council in accordance with the principle of equitable geographical distribution”.<sup>46</sup> It

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<sup>42</sup> For a sceptical view, see T. Eitel, “Partner in den Vereinten Nationen”, *Deutschland* 1 (2003), 40 et seq. (45) (“in the foreseeable future, a German permanent seat will hardly find American support”).

<sup>43</sup> See United States fact sheet of 5 January 2000, see note 34.

<sup>44</sup> See statement by the representative of France, Mr. Levitte, at the General Assembly of 15 October 2002; Doc. A/57/PV.30, 9.

<sup>45</sup> See statement by Mr. Ordzhonikidze, Deputy Foreign Minister of the Russian Federation at the General Assembly, 31 October 2001, Doc. A/56/PV.34, 16-17.

<sup>46</sup> See statement by Mr. Zhang Yishan at the meeting of the Open-ended Working Group, 10 February 2003.



will thus not be easy to win China's support for any improvement in the position of Western capitalist states on the Council.

Since 1992, Japan and Germany increasingly stressed their "willingness" to become permanent members of the Security Council.<sup>47</sup> Germany also favors the inclusion of three developing countries (one Asian, one African, and one Latin American) in the circle of permanent members, a concept that has been described as the "2+3" proposal, and which aims at creating a certain balance between developed and developing countries (or the North and the South) within the permanent membership (six developed countries compared to four developing countries). To make its candidacy even more palatable, Germany also proposed a so-called periodic review clause to be included in Article 23 of the Charter. A review, compulsorily taking place after fifteen years, was said to "guarantee that an increase in both membership categories is not irreversible". "All new permanent and non-permanent seats would be subject to re-examination after a certain period. As far as new permanent members are concerned, their status will be permanent but not eternal. ... The performance and the action of any new permanent member will be taken into account at the moment of review. Any new permanent member could be replaced."<sup>48</sup> However, neither Japan nor Germany pushed hard for a permanent seat in the past decade, and domestic political and public interest in, and support for, that goal remained weak in both countries.

The candidacy of Japan and Germany for a permanent seat is supported to a varying degree. A number of states advocated permanent membership for Japan and Germany only if this membership will not entail the right of veto. Italy turned out to be one of the fiercest oppo-

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<sup>47</sup> See, e.g., speeches of Mr. Morihiro Hosokawa, Prime Minister of Japan, and Mr. Klaus Kinkel, German Minister of Foreign Affairs, before the 48th Sess. of the General Assembly, 27 and 29 September 1993, respectively. See also statement of German Ambassador Eitel, 13 November 1995, General Assembly 50th Sess., Provisional Verbatim Record of the 56th Plenary Mtg., Doc. A/50/PV.56, 24-25.

<sup>48</sup> See "Periodic review clause: working paper by Germany", 3 July 1996, Doc. A/AC.247/1996/CRP.15/Rev.1, reprinted in: "Report of the Open-ended Working Group", Addendum", 9 September 1996, Doc. A/50/47/Add.1, Annex XIV. See also "Germany's position", see note 32: "Periodic review must be an integral part of any reform package and it must be compulsory, i.e. appear automatically on the General Assembly's agenda. Periodic review should apply to the whole reform package. It should occur every 15 years".

nents of new permanent seats. In its view, the “2+3” proposal “would benefit only two or five Members of the United Nations, to the detriment of the remaining”. “The end result would be a small directorate of big countries, making critical decisions on questions that affect us all, but on which we would have no say ...”<sup>49</sup> Italy’s main motive appears to be the country’s status in comparison to that of other European states. A German permanent seat, in addition to those held by the United Kingdom and France, is regarded as evidence of Italy’s decline to a power of secondary rank in Europe.

Whereas Italy first held that “should it be decided to increase the number of permanent members, Italy feels entitled to be one of them”,<sup>50</sup> it later proposed to leave the permanent members at five, and increase the Security Council by adding ten new non-permanent seats reserved for states rotating more frequently than others.<sup>51</sup> These states are to be selected “on the basis of objective criteria” to be determined by the General Assembly. Italy challenges “the political, geopolitical or global — and not merely financial — entitlement” for obtaining the “privilege” of permanent membership.<sup>52</sup>

Smaller countries were generally less disturbed by possible changes within the group of the leading military and economic powers to which they clearly cannot count themselves. By June 1996, about fifty governments of such countries — developing nations as well as industrialized ones — had publicly announced their support for Japan’s and

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<sup>49</sup> Statement by Ambassador Fulci, 13 November 1995, General Assembly 50th Sess., Provisional Verbatim Record of the 56th Plenary Mtg, Doc. A/50/PV.56, 16. For a comprehensive depiction of the Italian position, see Comitato Nazionale per la Celebrazione del Cinquantesimo Anniversario delle Nazioni Unite (ed.), *La Riforma del Consiglio di Sicurezza: Una Proposta Italiana – The Reform of the Security Council: An Italian Proposal*, 1996.

<sup>50</sup> Italian statement of 30 June 1993, Doc. A/48/264, see note 16, 52.

<sup>51</sup> See statement by Ambassador Fulci, see note 49, 17. See also the revised Italian proposal for the enlargement of the Security Council of 15 May 1995, Doc. A/AC.247/5 (g), reprinted in: Doc. A/49/965 of 18 September 1995, 83-91, and the [second] revised proposal presented to the Working Group in May 1996, Doc. A/AC.247/1996/CRP.11 of 12 June 1996, reprinted in: “Report of the Open-ended Working Group”, Addendum, see note note 48, Annex IX.

<sup>52</sup> See statement by Ambassador Sergio Vento at the General Assembly, 15 October 2002, Doc. A/57/PV.29, 21.

Germany's candidacies.<sup>53</sup> Other states were, however, opposing any new permanent seats. Their objections were prominently voiced by Pakistan:

"We believe that any increase in the permanent membership would serve the interests of only a few countries, and would be to the detriment of small and medium sized countries, who constitute an overwhelming majority of the membership of the United Nations. Pakistan remains strongly opposed to the centers of privileges within the UN system. These are anachronistic, anti-democratic, and contrary to the spirit of sovereign equality as enshrined in the UN Charter."<sup>54</sup>

At the beginning of the debate, the Northern industrialized states rather disliked the idea of creating new permanent seats for developing countries. The main argument put forward was the same as that used against anything but a modest increase in the number of non-permanent seats. It is best captured in the two words "efficiency" and "effectiveness". The former is meant to describe the Council's ability to deal swiftly with a situation that falls within its sphere of competence, that is to say, to adopt necessary measures without delay. "Effectiveness" shall characterize the degree to which the Council's decisions are actually implemented. The more "players" there are, so runs the argument, the less efficient and effective the work of the Council will be.

Later, this position changed, particularly in view of the firm position of the African states without which a majority necessary for Charter reform cannot be obtained. The United Kingdom declared to be in favor of "additional seats for Asia, Africa and Latin America and the Caribbean". "As to the nature of those additional seats, we remain open-minded, although the views of the regions themselves will clearly be important."<sup>55</sup> Germany, too, came out in favor of new permanent

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<sup>53</sup> Information provided by the German Mission to the United Nations. See also statements reproduced in Doc. A/48/264 and Addenda, see note 16.

<sup>54</sup> Intervention by Ambassador Kamal before the Open-ended Working Group, 27 March 1996, 2. Similarly the statement by the representative of Pakistan at the General Assembly of 14 October 2002, Doc. A/57/PV.28, 29. See also statement by the representative of Argentina, *ibid.* 20.

<sup>55</sup> Statement by Mr. Manley to the Open-Ended Working Group, 28 March 1996, United Kingdom Mission to the UN, Press Release 023/96 of 28 March 1996, 2.

seats for developing countries. Norway<sup>56</sup> and, in a joint paper of 9 May 1995, Austria, Belgium, the Czech Republic, Estonia, Hungary, Ireland and Slovenia also suggested giving Africa, Asia and Latin America one permanent seat each.<sup>57</sup> Portugal supported one additional seat for Africa and another one for Latin America.<sup>58</sup> Most importantly, the United States announced in July 1997 that it endorsed the proposal of giving three new permanent seats to developing countries. "The regions themselves [i.e., Africa, Latin America, and Asia] ought to decide how these seats will be filled". The Clinton Administration did not take a position on the question of a veto for new permanent members, including Japan and Germany, but declared that it would oppose any solution that would infringe on the prerogatives of the current permanent members.<sup>59</sup>

Besides the question of the veto, it was the inability of the three regions to agree on states that would represent them as permanent members which prevented the emergence of a consensus. The candidacy of Brazil is opposed by Latin American Spanish-speaking countries (in particular Mexico, Argentina and Columbia), and India's claim is strongly rejected by Pakistan. In Africa, the post-*Apartheid* Republic of South Africa and Egypt emerged as strong competitors of Nigeria. Proposals favoring certain types of rotating or "semi-permanent" seats were put forward in order to overcome these difficulties. Apparently there is also some opposition on the part of the francophone African countries against the aspirations of Nigeria, South Africa and Egypt which are all English-speaking.

The views of the developing countries with regard to an increase in the number of permanent seats of the Security Council are also by no means unanimous. Common ground is still reflected by a 1995 statement of the Movement of Non-Aligned Countries which since then has

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<sup>56</sup> Statement by Ambassador Lian to the Open-ended Working Group, 25 March 1996, 3.

<sup>57</sup> Doc. A/AC.247/5 (c), reprinted in: Doc. A/49/965, 68, 69. See also the joint position paper of the Nordic Countries (Denmark, Finland, Iceland, Norway and Sweden) of 14 June 1995, Doc. A/AC.247/5 (j), reprinted in, Doc. A/49/965, 104.

<sup>58</sup> Statement by Portugal to the Open-ended Working Group, 30 January 1995, 3.

<sup>59</sup> See statements by the spokesman of the Department of State of 17 and 18 July 1997; United States Department of State, Daily Press Briefing Nos 108 and 109.

often been repeated: "The non-aligned countries are grossly under-represented in the Council. This under-representation should, therefore, be corrected by enlargement of the Security Council ... The extent, nature and modalities of the expansion of the Security Council should be determined on the basis of the principles of equitable geographical distribution and sovereign equality of states".<sup>60</sup>

However, it is still controversial how exactly these goals shall be achieved. In particular, the question of permanent membership and the veto is highly contentious.

A small number of developing countries wish the category of permanent membership, and the veto power which it entails, to be abolished altogether because of its "undemocratic character". Cuba, for instance, ridiculed the permanent membership as "a quasi-divine right", leaving the members of the United Nations as a whole no opportunity periodically to confirm the P-5 in their status. "The 'right' to initiate warfare, conclude peace, impose sanctions, deploy military forces and so forth is in the hands of those who would use the United Nations, and in particular the Council, for their own, not always legitimate, political ends".<sup>61</sup> A more significant opponent of new permanent members is Mexico.<sup>62</sup>

A larger number of developing countries, however, does not question the existence of permanent members but favors additional permanent seats for the Southern hemisphere. In particular, the Member States of the Organization of African Unity (now African Union), though emphasizing that "[u]ltimately ... all members of the Security Council would be elected according to the principle of equitable geographical representation", adopted this position.<sup>63</sup> The key phrase re-

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<sup>60</sup> Statement of the Movement of Non-Aligned Countries of 13 February 1995, Doc. A/AC.247/5 (i), reprinted in: Doc. A/49/965 of 18 September 1995, 94.

<sup>61</sup> Cuban statement of 29 June 1993, Doc. A/48/264, see note 16, 29 (31-32).

<sup>62</sup> See, e.g., remarks by Ambassador Tello to the Open-ended Working Group, 22 April 1996, 1-2, and statement by the representative of Mexico at the General Assembly, 14 October 2002, Doc. A/57/PV.27, 16.

<sup>63</sup> See "Reformes des Nations Unies: Position Africaine Commune", OAU Doc. NY/OAU/POL/84/94 Rev. 2 of 29 September 1994, paras 31, 33, 34. English translation issued as Doc. A/AC.247/1996/CRP.6 of 25 April 1996, and reprinted in "Report of the Open-ended Working Group", Addendum, see note 48, Annex IV. See also the "Harare Declaration of the Assembly of Heads of State and Government of the OAU on the Reform of

ferred to most often in this context stems from Article 23 para. 1 of the UN Charter, according to which the General Assembly, when electing the ten non-permanent members of the Security Council, shall pay due regard “in the first instance to the contribution of Members of the United Nations to the maintenance of international peace and security and to the other purposes of the Organization, and also to *equitable geographical distribution*”(emphasis added).

The developing countries in question want to extend the scope of application of the latter criterion to the selection of permanent members. In the last analysis, the criterion shall even take precedence over the others mentioned in Article 23. Accordingly, the respective governments point to the fact that presently three of the five permanent members of the Security Council are European states; that Asia, with only one member, is underrepresented; and that Latin America, including the Caribbean region, and Africa are not represented at all. From this they draw the conclusion that additional permanent seats have to be allocated to Asia, Latin America and Africa. This claim is further backed by the explanation that the states of these regions constitute the overwhelming majority of the total membership of the United Nations, and represent the great bulk of the world’s population. On 29 September 1994, the Council of Ministers of the Organization of African Unity unanimously declared Africa to be entitled to two permanent seats, to be occupied on a rotating basis according to criteria to be established by the OAU.<sup>64</sup> The representative of Tunisia, setting forth the African proposal, made it understood that Asia and Latin America should equally get two such seats.<sup>65</sup> The demand was reiterated by the speaker of the African Group in the General Assembly in October 2002.<sup>66</sup>

By way of summary, it may be said that there is wide support for three additional permanent seats for developing states (one for Africa,

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the United Nations Security Council” of 4 June 1997; Doc. A/AC.247/1997/CRP.11 of 27 June 1997.

<sup>64</sup> See “Position Africaine Commune”, see note 63, para. 34. For discussion, see N.M. Mulikita, “Kooperation und Differenz: Die OAU/AU und der Sicherheitsrat”, *Vereinte Nationen* 50 (2002), 44 et seq. (47 et seq.).

<sup>65</sup> See statement by the Permanent Representative of Tunisia, Ambassador Slaheddine Abdellah, to the Open-ended Working Group, 25 March 1996, 1.

<sup>66</sup> See statement by the representative of Ethiopia, Mr. Hussein, on behalf of the African Group of 16 October 2002, Doc. A/57/PV.31, 19.

one for Asia, and one for Latin America and the Caribbean), but no consensus in the three geographic areas on which states should be nominated for permanent membership or how exactly a system of “rotating permanent seats” would work.

The Western states have generally rejected the idea that the criterion of equitable geographical distribution should be decisive for the selection of permanent members, and laid more stress on the contribution of member states to the maintenance of international peace and security and/or the other purposes of the organization.

A number of states, from the developed as well as the developing world, came forward with often lengthy catalogues of criteria which should govern the selection of permanent members or members constituting one of the differently designed groups of “semi-permanent members”. According to most of these proposals, the criteria shall only be applied to new members. Some states, however, want to submit even the present permanent members to them. The governments of India and Nigeria have particularly stressed the importance of the size of population of a given country. They hold the view that the principle of democracy entitles countries with a large population to increased rights of participation in the international sphere.<sup>67</sup> The other criteria listed by India are “size of economy, its resilience and self-sufficiency in terms of raw material supply and markets”, a member-state’s contribution to UN peace-keeping operations with troops and money, and the “future potential” of a state. Germany declared that countries selected to serve as permanent members “should have global influence and demonstrate the capacity and a willingness to contribute to the maintenance of international peace and security”.<sup>68</sup>

However, these efforts to establish common standards for (future) permanent and “semi-permanent” members of the Security Council have met with mixed response. The British Ambassador called them “an academic exercise”.<sup>69</sup> It appears that lately only Tunisia has tried to re-

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<sup>67</sup> See, e.g., Indian statement of 29 June 1993, Doc. A/48/264, see note 16, 46 (48-49). See also the Nigerian statement of 30 June 1993, *ibid.*, 70, 72 (referring to the phrase “We the peoples of the United Nations” in the preamble of the UN Charter as “encapsulat[ing] the notion of peoples, the aggregation of which is the population of the world”).

<sup>68</sup> See Germany’s position, see note 32.

<sup>69</sup> Statement by Ambassador Gomersall at the Open-ended Working Group, 27 May 1994. Similarly the French non-paper of April 1996 “Questions relatives à la composition et à la taille du Conseil de Sécurité”, para. (a).

vitalize the idea when it suggested applying the following “criteria for enlargement”: geographical representation; economic significance and financial contributions to the United Nations; size of population; identities and cultures.<sup>70</sup>

## 2. Proposals Regarding a “Third Category” of Members of the Security Council

The idea of creating a “third category” of members of the Security Council — which would enjoy a “better” status than the non-permanent members but not the privileges of the present permanent ones — has found substantial support during the discussions of the Open-ended Working Group.

The respective proposals are closely linked with the problem of the veto power in that one of their major concerns is to prevent a further proliferation of the veto. Certain “mid-sized” states, realizing that their chances of becoming permanent members are minimal, see a “third category” as a possibility of being represented more often on the Council. Lastly, some governments support the idea because they fear it might not be possible at all to reach agreement on an increase in the permanent membership. In their opinion, the aspirations of the respective states should then, for the sake of the organization, at least be accommodated as far as possible.

According to the different motives, proposals for a “third category” vary. One such category would be established by adding to the present P-5 a group of permanent members without the right of veto. This concept is supported by a number of states, in particular those who regard permanent membership for Japan and Germany as a necessity but, for a variety of reasons, reject the right of veto.

Another “third category”, in addition to the one just mentioned or standing by itself, would be constituted by a group of “regional representatives serving a long term of office”, as the Chilean Government proposed.<sup>71</sup> Similarly, Belize suggested a so-called “indefinite membership” to replace the present category of permanent membership: “Tenure would be indefinite in the sense that it would be of longer duration

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<sup>70</sup> See statement by the representative of Tunisia, Mr. Mejdoub, at the General Assembly of 15 October 2002, Doc. A/57/PV.30, 6.

<sup>71</sup> Statement by Chile, 30 June 1993, Doc. A/48/264, see note 16, 15 (17).



than the two years for regular members. The period could conceivably be five years.”<sup>72</sup>

As mentioned before, the Organization of African Unity has claimed two permanent seats for Africa.<sup>73</sup> The OAU wants Asia and Latin America equally to be endowed with two seats. These seats (“permanent regional rotating seats”) shall rotate among members of the respective regional group, according to criteria established by the region. Although the seats are described as a “privilege of the regions entitled to them”, membership on the Council shall be governed by the rules of the Charter. What is meant by this was made clear in a statement by Tunisia: “The country which occupies that seat will have to enjoy the veto right and would not have to consult with other states of that region before exercising it”.<sup>74</sup> The states shall be designated by the region (for a period of approximately four to six years, with the possibility of immediate re-election) and be elected by the General Assembly, this procedure being not unlike the one presently observed with regard to non-permanent members. Actually, this proposal seems to be based on the idea of lifting the ban on immediate re-election of non-permanent members (Article 23 para. 2 *in fine* of the Charter) as advanced by Germany and other states. It goes beyond that idea in that the normal terms of two years shall be exceeded and the role of the respective regional group be strengthened. The African states see this approach as a first step towards a more far-reaching democratization of the Council: “In time, the present permanent members should also be subject to nomination by their regions and election by the General Assembly”.<sup>75</sup>

A different plan aiming at the creation of a “third category” was based on global rather than on regional considerations. Turkey advanced the idea of “creating ten new seats to be rotated among a specific

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<sup>72</sup> Submission made by the delegation of Belize to the Open-ended Working Group, 15 September 1995, reprinted in: Doc. A/49/965, 71 (74). For a similar proposal (semi-permanent membership, without the right of veto, for two states of each of the five regions, the states rotating every two years), see L.B. Sohn, “Modernizing the Structure and Procedure of the Security Council”, in: R.J. Dupuy (ed.), *The Development of the Security Council: Peace-keeping and Peace-building*, 1993, 385 (388-90).

<sup>73</sup> See *supra* text accompanying note 63 et seq.

<sup>74</sup> Statement of 10 May 1996, 3-4.

<sup>75</sup> “Position Africaine Commune”, see note 63, para. 36; Harare Declaration, see note 63, para. 3.

number of States” which would be determined according to the following criteria: population, geopolitical situation, military capacity, economic potential, “history of working within the Charter”, record of contributions to the maintenance of international peace and security and to the other purposes of the Organization, and equitable geographical distribution.<sup>76</sup> Similar schemes were presented by the Italian and Spanish Governments.<sup>77</sup>

These various proposals have, however, not passed unchallenged, and this, again, for different reasons. India and Mexico rejected the regional rotation schemes as discriminatory because only developing countries shall be submitted to this procedure.<sup>78</sup> India is not inclined to share the seat to which it feels entitled with other states of the region, or to seek their support for obtaining and keeping this seat.

More widely, the idea of creating a new category of permanent members that would lack the right of veto has been criticized. Guatemala, for instance, called this idea “an infringement of the principle of the sovereign equality of States”.<sup>79</sup> According to this view, the introduction of a three-class membership system would only aggravate the present situation in which the prerogatives of the permanent members compromise the equality of states. On the other hand, a “realistic” approach led some states, among them Singapore, to the conclusion that suggestions to introduce a new class of permanent members without the veto are impractical: “No country that is capable of making a contribution as a new permanent member will accept such second class status for long”.<sup>80</sup>

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<sup>76</sup> Statement by Turkey, 28 June 1993, Doc. A/48/264, see note 16, 87 (88).

<sup>77</sup> See [second] Italian proposal of May 1996, see note 51, paras 7 (b) and (e). The Spanish proposals are outlined in a working paper of 28 February 1996, Doc. A/AC.247/1996/CRP.10 of 4 June 1996, reprinted in: “Report of the Open-ended Working Group”, see note 48, Annex VIII.

<sup>78</sup> For India, see statement by Ambassador Shah in the Open-ended Working Group, 27 March 1996. For Mexico, see remarks by Ambassador Tello to the Open-ended Working Group, 22 April 1996, 4.

<sup>79</sup> Statement by Guatemala, 28 June 1993, Doc. A/48/264, see note 16, 44 (45). See also “Permanent Regional Representation: Working Paper by Malaysia”, Doc. A/AC.247/1996/CRP.18, reprinted in: “Report of the Open-ended Working Group”, see note note 48, Annex XVI, para. 11: “Permanent regional members shall exercise all rights similar to other permanent members”.

<sup>80</sup> Speech by the Foreign Minister of Singapore, 6 October 1993, see note 37, 5.

Moreover, Germany declared that if it becomes a permanent member of the Council “this has to be on an equal footing with the other permanent members, without discrimination, i.e. with the same rights and the same obligations”.<sup>81</sup> This view is shared by the governments of other states interested in becoming permanent members.<sup>82</sup> The African states have outrightly rejected the idea of “semi-permanent seats” rotating on a universal basis, as suggested by Turkey and Italy.<sup>83</sup>

Finally, there are concerns that apply to the creation of any of the “third categories” described above. In particular governments of smaller states are afraid that, given certain limits of the overall size of an enlarged Council, the establishment of such a category would impede their chances of entering the Council.<sup>84</sup> Any “third category” might also diminish the position of non-permanent members in the Council because it is likely that links between permanent and semi-permanent members would be closer than those with non-permanent members.

If, therefore, the formal establishment of a “third category” of members of the Security Council is unlikely, a less complicated amendment to the UN Charter could lead to a similar result. Article 23 para. 2 of the Charter provides that “[a] retiring member shall not be eligible for immediate re-election”. A number of states proposed to delete, or to provide for certain exceptions from, this clause.<sup>85</sup> Among these states was Germany which explained that, together with an increased number of seats on the Security Council, such a removal of the ban to re-elect non-permanent members would give to Africa, Asia and

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<sup>81</sup> Statement by Ambassador Henze to the Open-ended Working Group, 17 May 1994, 4. In essence, this position was reiterated in the statements by Ambassador Eitel to the Open-ended Working Group of 25 March 1996, and 23 April 1996, 6 and 9-10, respectively. See also “Germany’s position”, see note 32: “The veto should be exercised with utmost restraint ... Germany holds the view that, in principle, new permanent members should be granted the same powers as the current permanent members.” But see the Razali plan, text accompanying note 27.

<sup>82</sup> See statements to the Open-ended Working Group by the Permanent Representative of India of 27 March 1996, para. 13, and by the Japanese Ambassador Owada of the same day, 6.

<sup>83</sup> See “Position Africaine Commune”, see note 63, para. 37.

<sup>84</sup> See, e.g., Statement by Luxembourg, 12 July 1993, Doc. A/48/264, Add.1, see note 16, 14 (15).

<sup>85</sup> See the statements of Australia, Ecuador, the Netherlands, New Zealand, Norway and Canada, Doc. A/48/264 and Add.1, see note 16, and of Germany, see note 81.

Latin America a full range of options as to which Member State they want to send and for how long to the Security Council as their representative.<sup>86</sup>

The main difference between this proposal to amend Article 23 para. 2 of the Charter and the above-mentioned models of a “third category” membership is that in case of a removal of the ban immediately to re-elect non-permanent members, the respective states would still have to gather the necessary support of their region and, in the second place, the whole United Nations membership every other year. In contrast, the “third category” plans would assure them a continuous or rotating membership on the Council for a longer, or even indefinite, period of time.

A possibility for non-permanent Council members of being re-elected in uninterrupted and indefinite succession was already known to the League of Nations. In 1926, when Germany was about to join the League and become a permanent member of its Council, a number of other states (Poland, Brazil, Spain, China and Persia) also laid claim to a permanent seat. The majority of the members of the League opposed these wishes but was willing to accommodate the aspirations of the states in question by providing for a category of “semi-permanent” membership. Different from the ordinary non-permanent members, the respective states could immediately be re-elected after the end of their three-year term of office. A state which wanted to continue its membership had, however, to apply for a specific declaration of the League Assembly, which had to be passed by a two-thirds majority.<sup>87</sup>

#### IV. The Reform of the Veto Power

The debate among governments about the right of veto resembles very much the one of 1945. Many governments oppose the veto for its violation of the principle of sovereign equality of states.<sup>88</sup> Often the veto is

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<sup>86</sup> Statement by Ambassador Henze of 17 May 1994, see note 81, 2.

<sup>87</sup> See W. Schücking/ H. Wehberg, *Die Satzung des Völkerbundes*, 3rd edition, Vol. I, 1931, 477-479.

<sup>88</sup> According to informal consultations of the vice-chairmen of the Open-ended Working Group with representatives of 165 Member States held in early 1997, a “vast majority” of governments regarded the right of veto as anachronistic and undemocratic. See Doc. A/51/47 of 8 August 1997, Annex VI. The Razali draft resolution, see note 27, said that “an overwhelm-

also said to be inconsistent with a concept of “democracy in the United Nations” although it is doubtful whether such a concept has a firm basis in the United Nations Charter.<sup>89</sup> Radical proposals aim at a total removal of the right of veto from the Charter, whereas more cautious ones suggest certain modifications and limitations. It is interesting to note that Latin American countries figure prominently in both of these groups. A third group, partially overlapping with the first two, contests the extension of the veto power to any new permanent members of the Security Council. Among these states, we find with Australia, Italy, Spain, Sweden and Iceland important members of the Western European and Other States Group.

In comparison, the camp of the supporters of the veto is less densely populated. However, among its protagonists are particularly strong states — the veto’s present beneficiaries and the states aspiring to permanent membership.

An abolition of the right of veto was originally called for by Colombia, Cuba, Guatemala, Malaysia, New Zealand, Yugoslavia, Libya, Sudan and Yemen.<sup>90</sup> Their arguments are basically the same.

The Government of Colombia characterized the veto as “a mechanism of non-cooperation in a system of collective security which necessarily requires cooperation”. The right of veto, Colombia believed, “has lost practically all its *raison d’être*, having become a privilege lacking any proportion”.

“[I]t has become necessary to formulate specific proposals on ways to replace the veto mechanism, either through a qualified majority or by a weighted vote, depending on the type of decision to be taken or, if this is not accepted, through the active participation of other bodies of the United Nations system as appeal mechanisms, particularly through the General Assembly (on the basis of special majorities).”<sup>91</sup>

Malaysia was of the view that “an assessment of utilization of veto power would indicate that the veto is being used in support of partisan

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ing number of Member States consider the use of veto in the Security Council anachronistic and undemocratic, and have called for its elimination”.

<sup>89</sup> See Fassbender, UN Security Council Reform ... , see note 18, 301-305.

<sup>90</sup> See the respective statements in Doc. A/48/264 and Add.1, 2 and 3, see note 16. For Malaysia, see also the working paper referred to in note 79, paras 2, 20-21.

<sup>91</sup> Statement by Colombia, 29 June 1993, Doc. A/48/264, see note 16, 19 (21).

and national interests rather than in defence of issues and principles and in the interest of the international community".<sup>92</sup>

Like the Movement of Non-Aligned Countries, the African states wish the right of veto — an “anti-democratic practice” — eventually to be eliminated. However, in case it is maintained, Africa wants the new permanent members to enjoy the same prerogatives as the present P-5: “No fewer than two permanent seats, with all the privileges — including the veto — attached thereto, should be allocated to Africa.”<sup>93</sup>

In general accordance with this view, quite a number of states have come forward with specific recommendations for restrictions of the veto power or, in more general terms, with a call for a “review” of the present system of voting in the Security Council. The reasons given to support the different proposals are mainly the same as those asserted for an abolition of the veto.

The first of the specific proposals wants to limit the scope of the veto. According to a proposal of the Movement of Non-Aligned Countries<sup>94</sup> and a number of individual submissions, the right of veto should be confined to decisions made under Chapter VII of the United Nations Charter.<sup>95</sup> The second of the specific proposals aims at restricting a single permanent member’s power to prevent the Council from adopting a resolution. A “requirement that, for a veto to become effective, it should be exercised by at least two permanent members”

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<sup>92</sup> Statement by Malaysia, 28 June 1993, Doc. A/48/264, see note 16, 55 (58-59). See also the working paper referred to in note 79, para. 2.

<sup>93</sup> Statement of the representative of Ethiopia, Mr. Hussein, on behalf of the African Group at the General Assembly, 16 October 2002, Doc. A/57/PV.31, 19.

<sup>94</sup> See the Egyptian working paper “The Question of the Veto” of 27 March 1996, Doc. A/AC.247/1996/CRP.9, para. 11, and the NAM Final Document of 1997, see note 35, para. 30 (“The Ministers reaffirmed the Movement’s proposal that the veto should be curtailed, with a view to its elimination, and that the Charter of the United Nations should be amended so that, as a first step, the veto power should only apply to actions taken under Chapter VII of the Charter”).

<sup>95</sup> See the respective statements in Doc. A/48/264 and Add.3, see note 16, 7 and 25. See also the Razali plan of 1997, see note 27, according to which the General Assembly would “decide to discourage use of veto, by urging the original permanent members of the Security Council to limit the exercise of their veto power to actions taken under Chapter VII of the Charter”. For a discussion of other proposals seeking to limit the scope of the veto, see Fassbender, UN Security Council Reform ... , see note 18, 266-268.

was suggested by the OAU and a number of other states.<sup>96</sup> Similar to this is a third proposal which thinks about ways of over-ruling a veto cast by only one permanent member by a majority decision of either the Security Council or the General Assembly.<sup>97</sup>

In more general terms a substantial number of United Nations members has called for a review of the right of veto.<sup>98</sup> These calls confirm Malaysia's dictum that "there is a universal clamour to reform the veto, even if it cannot be eliminated".<sup>99</sup>

Lastly, a third group of states emphasized that any new permanent members of the Security Council should not be awarded the right of veto. Such extension is regarded as furthering an inherently undemocratic privilege which should actually be restricted and eventually abolished in the post-Cold War world.<sup>100</sup>

During the discussions of the Working Group, it was suggested that new permanent members should unilaterally declare their intention to restrict the use of the veto. In view of the position adopted by the present permanent members, it has been proposed that they too should be urged to limit the exercise of their veto power. Other delegations have doubts whether such political declarations would be effective.

Only a handful of countries have defended the veto. Australia, although believing that there are good reasons not to extend the veto to new permanent members, has acknowledged the value it has had so far as a form of "last resort" safeguard to protect the national interests of the strongest players in the system of collective security, "if only to ensure that they have a stronger stake in acting within the system than outside of it".<sup>101</sup> The Foreign Minister of Singapore was one of the few underlining the veto's merits in a more resolute way: "It is neither practical nor even desirable to do away with the veto ... It is a recognition of the hard reality that great powers will not consent to put their

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<sup>96</sup> See "Position Africaine Commune", see note 63, para. 33 (e).

<sup>97</sup> See, e.g., statement by Ukraine, 2 August 1993, Doc. A/48/264, Add.2, see note 16, 6 (8).

<sup>98</sup> See the statements of Honduras, Paraguay, Algeria, Indonesia, Venezuela and the Republic of Korea, Doc. A/48/264 and Add. 1 and 2, see note 16.

<sup>99</sup> See Permanent Regional Representation, see note 79, para. 21.

<sup>100</sup> See "Observations by the Vice-Chairmen of the progress of the work of the Open-ended Working Group during the forty-ninth session of the General Assembly", 15 September 1995, Doc. A/AC.247/1, reprinted in: Doc. A/49/965, 4-17, para. 16.

<sup>101</sup> Statement by Australia, 7 July 1993, Doc. A/48/264, see note 16, 8 (9).

power at the disposal of a sheer majority for the implementation of decisions which they do not agree with. It is a safety valve that prevents the UN from undertaking commitments that it lacks the power to fulfil".<sup>102</sup>

In a statement of March 1996, US Ambassador Inderfurth said:

"The US does not support any abridgement of the right of veto or its scope of application as set forth in Article 27 of the Charter. As a matter of daily practice we seek to use the Council as effectively as possible and thus try vigorously to reduce or minimize conditions which may lead to veto use. These efforts are increasingly successful. There are exceptions, but they are rare and they carry far less risk for the United Nations or the world community, than veto restriction or abolition. It is a fact that the continued existence of the veto has repeatedly avoided a level of disunity or direct confrontation between the major powers, or any one of them and the United Nations, which could subvert a Council action or fatally impair the Council's ability to carry out its duties. We do not take this fact lightly or casually or see it as anachronistic".<sup>103</sup>

The United States also discarded the idea of defining "procedural matters" as referred to in Article 27 para. 2 of the Charter, which some delegations saw as a way of limiting the use of the veto. Apart from a few procedural matters that are clearly indicated as such in the Charter, it is unclear what constitutes a "procedural matter". In accordance with the San Francisco Declaration of the Four Powers,<sup>104</sup> this preliminary decision is made by a qualified majority as provided for in Article 27 para. 3, which means that any permanent member may establish the non-procedural character of a given proposal by use of the veto and then may veto the proposal itself. This method has come to be called

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<sup>102</sup> Speech by the Minister of Foreign Affairs of Singapore, 6 October 1993, see note 37, 6.

<sup>103</sup> Statement by Ambassador Inderfurth, United States Representative for Special Political Affairs, to the Open-ended Working Group, 27 March 1996, United States Mission to the UN, Press Release 39-(96) of 27 March 1996, 2. See also United States fact sheet of 5 January 2000, see note 34, ("We are firmly opposed to changes to the veto held by the current permanent members"), and statement by Ambassador Siv at the General Assembly of 14 October 2002, Doc. A/57/PV.27, 10 ("we will continue to oppose efforts to limit or eliminate the veto").

<sup>104</sup> See Statement by the Delegations of the Four Sponsoring Governments on Voting Procedure in the Security Council, 7 June 1945, para. II.2. For text, see B. Simma et al., "Comment on Art. 27", in: Simma, see note 8, 521-523.



the “double veto”.<sup>105</sup> As in the beginning, the United States thus seeks to secure as much flexibility in the interpretation and practical application of Article 27 as possible.

For years now, this deadlock has not been overcome, and it is unlikely that it will any time soon. The present P-5 insist on preserving their right of veto in its given form. At the same time, the P-5, with the exception of France,<sup>106</sup> do not support new permanent seats for the developing world endowed with that full-fledged right. In particular, they are not willing to accept a scheme like the African plan of “rotating permanent seats” according to which the states enjoying the right of veto would not be known in advance. On the other hand, the Non-Aligned Movement and the African Union have made it clear that they expect the new African, Asian and Latin American permanent members to enjoy the same rights as all the other permanent members, and that they will not agree to any new permanent seats for industrialized states if this condition is not met. The speaker of the African Group at the fifty-seventh session of the General Assembly expressly warned that an expansion of the Council, particularly of the permanent members, will only occur if Africa is included.<sup>107</sup>

## V. Conclusion

It is well known that any amendment to the UN Charter requires a vote of two-thirds of the members of the General Assembly<sup>108</sup> and a ratification by two-thirds of the Member States, including all the permanent members of the Security Council (Arts 108 and 109 of the UN Charter). After almost a decade of discussions about a reform of the Security Council, such a level of agreement does not appear to be any-

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<sup>105</sup> See Simma et al., see note 104, 476 (489-492), and L. Gross, “The Double Veto and the Four-Power Statement on Voting in the Security Council”, *Harv. L. Rev.* 67 (1953), 251 et seq.

<sup>106</sup> See Questions relatives à la composition et à la taille du Conseil de Sécurité (French non-paper of April 1996), para. (f).

<sup>107</sup> See statement of the representative of Ethiopia on behalf of the African Group, Doc. A/57/PV.31, 19.

<sup>108</sup> For explanation, see W. Karl et al., “Comment on Art. 108”, in: Simma, see note 8, Vol. II, 1341 et seq. (1347): “[T]his wording must be taken at face value, which means that the majority has to be calculated on the basis of the total number of members of the General Assembly (and the UN)”.

where in sight. In fact, it seems that today there is less agreement than there was in 1996 or 1997. In the following years, and largely due to a sense of resignation and exhaustion of those involved in the prolonged and apparently fruitless discussions, the famous “momentum for reform”, built up in the nineties, was lost. It is impossible to say whether a draft resolution submitted to the General Assembly by one or several of the governments taking the strongest interest in a Council enlargement (Germany, Japan, India, Brazil) would have succeeded, or whether an initial opposition on the part of certain states, in particular the present permanent members, could have been overcome, as happened in 1963.<sup>109</sup> All we know is that it was not even tried, and that it is unlikely that there will be a similar “window of opportunity” any time soon. The most modest of all Council reforms, a repeat of 1963 with a further increase in the number of non-permanent seats from the current ten to either fifteen or seventeen, about which there was broad agreement in the Open-ended Working Group, was neither supported by the United States, nor by Western European and Other States (which could not expect to get an additional non-permanent seat), nor by the Non-Aligned Movement.

At present, many observers are of the opinion that the general international situation drastically changed in the aftermath of the terrorist attacks of 11 September 2001, and that we are witnessing a fundamental reorganization of the international system characterized by a United States pursuing its national interests, and in particular its security interests, much more resolutely and determinedly than before, and paying less attention to multilateral rules and procedures. If this assessment is correct, the question follows whether in this new international order there will be a meaningful place for the United Nations and the Security Council. Will the internationalist project that began with the League of Nations and was continued with the United Nations of 1945 survive? It has almost been forgotten that this project was promoted by two great American presidents, Woodrow Wilson and F.D. Roosevelt.

At any rate, the only one state which today could launch a United Nations reform initiative with a reasonable chance of succeeding is the United States, but there is clearly a lack of any will in this direction in the present administration. Perhaps a Democratic President elected in 2004 would take a genuine interest in a renewed and effective United Nations as a partner, and not just an instrument, of the United States. Next to the United States, UN reform could also be successfully ad-

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<sup>109</sup> See note 7.

vanced by the European Union, provided that its Member States (including the United Kingdom, France and Germany) truly agreed on a common position.

It has rightly been said that the powers of the Security Council “are a precious, but at the same time precarious trust of the international community, certainly the greatest achievement of the new world order that emerged after the catastrophe of the Second World War”. “Each and every state should be aware of the enormity of the progress that Chapter VII of the Charter embodies compared with the earlier system of unbridled coexistence of national sovereignties.”<sup>110</sup> The Security Council is the principal organ of the international community. It has been entrusted with the task of defending “the interests and values regarded by the same community as being fundamental for the maintenance of its own integrity”.<sup>111</sup> The Council represents a centerpiece of the post-1945 constitution of the international community.<sup>112</sup> If the authority and legitimacy of the Council<sup>113</sup> are seriously impaired by a further delay of its reform as well as a gradual erosion of its powers under Chapter VII of the Charter, this will inevitably have a direct and negative impact on the international constitution as a whole, and hence the edifice of international law which rests upon that constitution. In other words, the price that members of the international community will have to pay for their prolonged neglect of, and indifference to, the future of the Security Council and the international security system built around it, may be much higher than they seem to imagine today. It is true that it is extremely difficult to adapt to the present situation a Charter so closely, and intrinsically, associated with the international power structure of 1945 or, from a somewhat different perspective, with the specific stage of development that the international state system had

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<sup>110</sup> See C. Tomuschat, “Using Force against Iraq”, *Die Friedens-Warte* 73 (1997), 75 et seq. (81).

<sup>111</sup> See P.M. Dupuy, “The Constitutional Dimension of the Charter of the United Nations Revisited”, *Max Planck UNYB* 1 (1997), 1 et seq. (1).

<sup>112</sup> See B. Fassbender, “The United Nations Charter as Constitution of the International Community”, *Colum. J. Transnat’l L.* 36 (1998), 529 et seq. (574-576). See also id., “Quis judicabit? The Security Council, Its Powers and Its Legal Control”, *EJIL* 11 (2000), 219 et seq.

<sup>113</sup> For the notion of legitimacy as applied to the Security Council, see Fassbender, UN Security Council Reform ... , see note 18, 315 et seq., and id., “Uncertain Steps into a Post-Cold War World: The Role and Functioning of the UN Security Council after a Decade of Measures against Iraq”, *EJIL* 13 (2002), 273 et seq. (292-95).

reached at the end of World War II. However, there is no viable alternative to facing that challenge, and to facing it soon. The difficulties of building a new order on the ruins of the UN Charter would certainly be much greater.

“All illusions shattered”? Tracy Chapman’s song continues with the lines: “We’ll destroy ourselves if we can’t agree / How the world turns / Who made the sun / Who owns the sea / The world we know will fall piece by piece”.<sup>114</sup>

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<sup>114</sup> See note 2.