

Bringing the Security Council into a New Era

– Recent Developments in the Discussion on the Reform of the Security Council –

Ingo Winkelmann

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The United Nations is currently undergoing a great deal of change. Its reform is on the international community's agenda¹ and has become a pressing issue for almost all of its 185 Member States². Various reasons have contributed to that. The basic features of the United Nations Charter date back to 1945. Pivotal changes have taken place in the political and economic international landscape since then. The late eighties saw the end of the Cold War. The reform discussion concerns the Organization's main tasks, i.e.³ promoting international peace and security and economic and social development, meeting the financial needs of the Organization and how to improve its institutions.

One of the main *foci* of the reform debate is the reorganization and strengthening of the Security Council (*Council*)⁴. The Council's compo-

¹ The views presented in this article are the author's personal ones. See, for example, B. Urquhart/E. Childers, *A World in Need of Leadership: Tomorrow's United Nations*, 2nd edition 1996; B. Russett, "Ten Balances for Weighing UN Reform Proposals", *PSQ* 111 (1996), 259 et seq.; The Commission on Global Governance, *Our Global Neighbourhood. The Report of the Commission on Global Governance*, 1995; Independent Working Group on the Future of the United Nations, *United Nations in its Second Half-Century: The Report of the Independent Working Group on the Future of the United Nations*, 1995; see also P. Kennedy and B. Russett, "Reforming the United Nations", *Foreign Aff.* 74 (1995), 56 et seq.; A. Tim, *Reforming the UN: Its Economic Role*, 1995; Institute of International Studies, University of California, *Conceptual Framework Project on UN Reform. A Procedural Agenda for the Discussion of United Nations Reform*, 1995; I. Carlsson, "The U.N. at Fifty: A Time to Reform", *Foreign Pol'y* 100 (1995), 3 et seq., (6/7); K. Dicke, "Reform of the United Nations", in: R. Wolfrum (ed.), *United Nations: Law, Policies and Practice*, Vol.2, 1995, 1012 et seq.; E.O. Czempiel, *Die Reform der UNO*, 1994; K. Hufner (ed.), *Die Reform der Vereinten Nationen*, 1994; W. Gordon, *United Nations at the Crossroads of Reform*, 1994.

² Stanley Foundation (ed.), *The United Nations and the Twenty-First Century: The Imperative for Change*, 1996.

³ Cf. C.-A. Fleischhauer, "The United Nations at Fifty", *GYIL* 38 (1995), 9 et seq.

⁴ See e.g. Y. Akashi/B. Boutros-Ghali/T. Eitel/et al., "UN Peacekeeping: Challenging a New Era", *The Brown Journal of World Affairs* 3 (1996), 13 et seq.; East-West Center Honolulu, *Restructuring Options for the UN*

sition and working methods are considered to be outdated and no longer reflecting today's realities. One look at the Charter reinforces this point: Article 23 para. 1 refers to the names of permanent members which no longer correspond to the present holders of these seats⁵. In addition, justifying the small circle of permanent members provided for by the Charter has become ever more difficult. It excludes member states whose global political and economic influence makes them almost natural members of the Council. It lacks a regional balance which would allow other regions besides Europe, North America and Asia (China) to be represented on an equal and permanent basis. Finally, it does not provide sufficient scope for adding non-permanent seats. However, the need for Council reform is not limited to such structural components; it also includes a functional element.

A body that needs to be operational and efficient and cannot therefore be as representative in seize as might be desirable must receive additional legitimization and support, lest it be unable to live up to its increased responsibility for international peace and security in the long term. It must seek to gain support from as many member states as possible. To achieve this goal the Council has an interest in working in a generally transparent and open manner and not shielding itself from the justified scrutiny of individual members or groups of members. Since the Council also depends on member states that are not in the Council, it has a genuine interest in close cooperation with them⁶.

In 1992 the General Assembly (*Assembly*) began to consider concrete reform measures for the Council. Since then it has held intensive, sometimes controversial discussions. The debates have enabled most of the interested states to formulate opinions on this matter. This process has gone almost unnoticed by the public, but is reflected in the third official report presented by the correspondent Assembly Working Group and

Security Council (Conference papers), 1995; B. Russett/B. O'Neill/J. Sutterlin, "Breaking the Security Council Restructuring Logjam", *Global Governance* 2 (1996), 65 et seq.; International Peace Academy (ed.), *Reform of the Security Council*, 1994; W. Hoffmann, *United Nations Security Council Reform and Restructuring*, 1994; J. Ciechanski, "Restructuring of the UN Security Council", *International Peacekeeping* 1 (1994), 413 et seq.; P. Wallensteen, "A Security Council for the 21st Century", *Security Dialogue* 25 (1994), 63 et seq.

⁵ *Republic of China, Union of Soviet Socialist Republics.*

⁶ See J.A. Alvarez, "The Once and Future Security Council", *The Washington Quarterly* 18 (1995), 5 et seq., (13); P. Wilenski, "The Structure of the UN in the Post-Cold War Period", in: A. Roberts/B. Kingsbury, *United Nations. Divided World*, 1993, 437 et seq., (444).

adopted in September 1996⁷. The report, as well as recent official statements made by countries, show that possible solutions and elements for a reform package have emerged that could gain majority support. Thus, an amendment to the Charter is becoming increasingly likely. Any amendment will require the votes of two thirds of the members of the Assembly and all the permanent members of the Council will have to ratify it⁸. The following contribution is an overview of recent developments describing the most probable elements of a new reorganized Council.

I. The Background: Previous Reform Approaches

It is not the first time that the United Nations has been in a situation to reform the Council. The composition of the Council is one of the few areas in which amendments to the Charter have been successfully adopted in the past.

1. 1945–1965

The Security Council originally consisted of a total of eleven members, five of them permanent (*Republic of China, France, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, the United States of America*) and six of them non-permanent. Together with the privileges accorded to the permanent members, this arrangement was the result of long and controversial negotiations at the Founding Conference in *San Francisco* (25 April to 26 June 1945) and at the preceding conferences in *Dumbarton Oaks* (21 August to 9 October 1944) and *Yalta* (February 1945)⁹. The ratio of the general membership

⁷ GAOR, 50th Sess., Suppl. No. 47 (Doc.A/50/47/Rev. 1) of 13 September 1996 and Addendum (Doc.A/50/47/Add.1) of 9 September 1996.

⁸ See Chapter VI; the United States' position is reflected in the Final Report of the United States Commission on Improving the Effectiveness of the United Nations, *Defining Purpose: The U.N. and the Health of Nations*, 1993; see also UNA-USA (ed.), *The Future of the U.S.-U.N. Relationship*, 1996; Council for Foreign Relations (ed.), *American National Interest and the United Nations*, 1996; C.W. Maynes/R.S. Williamson (eds.), *U.S. Foreign Policy and United Nations System*, 1996; B. Rivlin, *UN Reform from the Standpoint of the United States*, 1996.

⁹ H. Weber, "History of the United Nations", in: Wolfrum, see note 1, Vol. 1, 574 et seq.; J. Sutterlin, "The Once and Future Security Council", in: East-West Center Honolulu, see note 4, 2 et seq.; W.G. Grewe, "The

of the United Nations (51) to the membership of the Council (11) was 4.63 to 1, the ratio of potential non-permanent members (46) to available non-permanent seats (6) was 7.66 to 1. The non-permanent seats were allocated to Latin America (two), Western Europe (one), the Commonwealth (one), Eastern Europe (one) and the Middle East (one)¹⁰.

In 1950, following a report by the Ad Hoc Political Committee¹¹, the Assembly recommended that whenever more than one authority claims to be entitled to represent a member state in the United Nations and this question becomes a subject of controversy in the United Nations, the matter should be considered by the Assembly¹². This resolution laid the ground for the expulsion of the representatives of the *Republic of China* 21 years later, which occupied the permanent Chinese seat¹³.

In 1963, on the initiative of a group of forty-four African and Asian States¹⁴, the number of non-permanent members of the Security Council was increased from six to ten¹⁵ by way of an amendment based on Article 108. It was decided that the Council should be enlarged to 15. Decisions on procedural matters would then be made by an affirmative vote of nine members and on other matters by a similar vote including the concurring votes of the five permanent members. The process which led to the amendment was initiated and supported at a number of meetings by regional organizations in Latin America, Africa and Asia. In 1963 the membership of the United Nations had increased to 113 as a result of the decolonization. It was felt that this vastly increased membership of the United Nations was not adequately reflected in the Council¹⁶. In the words of a Mexican scholar: "The only aim of the 1965 amendment was

History of the United Nations", in: B. Simma (ed.), *The Charter of the United Nations. A Commentary*, 1995, 1 et seq.

¹⁰ The allocation dates back to a *gentlemen's agreement* between the *United States* and the *USSR* in 1946, see *United Nations and Specialised Agencies Handbook*, 1965, 3; R. Geiger, "On Article 23", in: Simma, see above, 393 et seq., (396). It does not correspond to the regional groups as they exist today within the United Nations.

¹¹ Doc.A/1578 and Add. 1 as amended by Doc. A/1582.

¹² A/RES/396 (V) of 14 December 1950.

¹³ S.D. Bailey, *Chinese representation in the Security Council and the General Assembly of the United Nations*, 1970.

¹⁴ S.D. Bailey, *The procedure of the Security Council*, 2nd edition, 1988, 119.

¹⁵ A/RES/1991A (XVIII) of 17 December 1963.

¹⁶ L. Sucharipa-Behrmann, "The enlargement of the UN Security Council" *Austrian J. Publ. Intl. Law* 47 (1994), 1 et seq., (4); cf. G. Seidel, "Ist die UN-Charta noch zeitgemäß?", *AVR* 33 (1995), 21 et seq., (34); see also the explanations of vote given by the *USSR* and *France*, Official Records of the 1285th Plenary Mtg., paras. 76 et seq. and 106.

to have fairer representation for the countries of Asia and Africa. Germany was still divided and relatively weak and Japan did not count for much in the world economy ...”¹⁷. Resistance to the amendment largely came from some permanent members and their allies¹⁸. Through the amendment, the ratio of the general membership of the United Nations to the membership of the Council increased to 7.53 to 1 (113 to 15), the ratio of potential non-permanent members to available non-permanent seats to 10.8 to 1 (108 to 10), respectively. The allocation agreement of 1946 was replaced. Now Asian and African States were allocated five, Latin American and Caribbean States two, Eastern European States one, and Western European and other states two non-permanent seats.

Ninety-seven member states (84.6 per cent) voted in favour, 11 against¹⁹ and 4 abstained²⁰. All permanent members except *China* abstained or voted against the increase but later ratified the Charter amendment that came into force on 31 August 1965²¹.

2. 1965–1992

In 1971 the *Republic of China (Taiwan)* left the United Nations, after the Assembly recognised the *People’s Republic of China* as one of the five permanent Council members and decided to expel the representatives of the *Republic of China*²². The *People’s Republic of China* took over its permanent seat in the Security Council without an amendment to Article 23 para. 1²³.

By 1979 the membership of the United Nations had risen to 152. Ten countries, most of them developing countries, proposed²⁴ that Council

¹⁷ M. Scara-Vazquez, “The UN Security Council at Fifty: Midlife Crisis or Terminal Illness?”, *Global Governance* 1 (1995), 285 et seq., (287).

¹⁸ J. Teja, “Expansion of the Security Council and its Consensus Principle”, *NILR* 16 (1969), 349/350; see also J. Delbrück, “Die Vereinten Nationen in der Zeit vom 1.7.1961 bis 30.6.1969”, *JIR* 14 (1969), 345 et seq., (351).

¹⁹ *Bulgaria, Belarus, Cuba, Czechoslovakia, France, Hungary, Mongolia, Poland, Romania, Ukraine, Union of Soviet Socialist Republics.*

²⁰ *Portugal, South Africa, United Kingdom, United States of America.*

²¹ After deposition of the last necessary instrument of ratification of the permanent members.

²² A/RES/2758 (XXVI) of 25 October 1971.

²³ The resolution states in a concise manner: “... the People’s Republic of China is one of the five permanent members of the Security Council” and “... the representatives of Chiang-Kai-shek are expelled from the place which they unlawfully occupy at the United Nations ...”.

membership be increased from 15 to 21²⁵. The ratio of the general membership of the United Nations to the Council membership (152 to 21) would thus have been narrowed down from 7.53 to 7.23 to 1, the ratio of potential non-permanent members to available non-permanent seats (147 to 16) from 10.8 to 9.18 to 1. The intention was to allocate the non-permanent seats as follows: Africa (five), Asia (four), Latin America and the Caribbean (three), Eastern Europe (one), Western Europe and others (two). In 1980, ten more countries, exclusively developing countries, cosponsored the pertinent resolution²⁶ but the necessary majority did not materialize in the Assembly. Until 1992, the resolution was dealt with as a matter of form and postponed year after year²⁷.

In 1991, the President of the *Russian Federation*, *Boris Yeltsin*, informed the Secretary-General²⁸ that the *Russian Federation* would continue the membership of the Union of Soviet Socialist Republics in the United Nations, including the Security Council, and maintain full responsibilities for all the rights and obligations under the Charter, including the financial obligations. Neither the permanent members of the Council nor any member of the Assembly objected²⁹.

²⁴ Doc.A/34/246. Letter of 14 November 1979 from *Algeria, Argentina, Bangladesh, Bhutan, Guyana, India, Maldives, Nepal, Nigeria* and *Sri Lanka*.

²⁵ Draft resolution Doc.A/34/L.57 of 11 December 1979 (and Add. 1 of 14 December 1979) presented by *Algeria, Bangladesh, Bhutan, Cuba, Grenada, Guyana, India, Japan, Maldives, Mauritius, Nepal, Nigeria, Sri Lanka, Syrian Arab Republic*.

²⁶ *Benin, Cuba, Ghana, Grenada, Iraq, Kenya, Libyan Arab Jamahiriya, Seychelles, Tunisia, Cameroon* and *Zambia*: see Doc. A/25/L.34/Rev.2 of 15 December 1980.

²⁷ General Assembly Decisions 35/450 of 17 December 1980, 36/460 of 18 December 1981, 37/450 of 21 December 1982; cf. also E. Kourula/T. Kanninen, "Reforming the Security Council: The International Negotiating Process Within the Context of Calls to Amend the UN Charter to the New Realities of the Post-Cold War Era", *LJIL* 8 (1995), 337 (338).

²⁸ Letter of 24 December 1991, transmitted by the Russian Permanent Representative, *Y. Vorontsov*, to the Secretary-General (verbal note of 24 December 1991). Member States were informed about both texts by verbal note of the Secretary-General 91/733 of 24 December 1991. The texts do not exist as official United Nations documents. In the Council records, the name *Union of Soviet Socialist Republics* (3024th Mtg. of 23 December 1991, Doc.S/PV.3024) was changed into *Russian Federation* (3025th Mtg. of 31 December 1991, Doc.S/PV.3025). No member of the Council made a reference to the aforementioned letters during these meetings or the consultations on 27 December 1991.

3. Conclusions: Pragmatic Attitudes towards Council Membership

Events since 1945 have shown a pragmatic attitude on all sides towards changes in both categories of Council membership. The membership agreed to *de facto* replacements of two permanent members. It also agreed to additional non-permanent members. While the Charter was formally amended in connection with the latter, the wording of Article 23 para. 1 was not adapted with regard to the permanent members and the new factual situation. In both cases, existing resistance by a few members at the time when the changes took place were consecutively overcome or evaporated.

II. The Present Discussion: Moving Closer to Reform

After the political upheavals of the late eighties, the issue of Council reform moved slowly³⁰ to the fore once again, due on the one hand to the apparent willingness of *Japan* and the united *Germany*³¹ to assume greater global

²⁹ Cf. T. Daley, *Russia's "Continuation" of the Soviet Council Membership and Prospective Policies Toward the United Nations*, 1992, 5. See also W. Kühne, *Reform des VN-Sicherheitsrats zum 50jährigen Jubiläum*, 1995, 9; E.-O. Czempiel, "Der Sicherheitsrat — Ruine einer vergangenen Welt?", *VN* 40 (1992), 5/6.

³⁰ Kourula/Kanninen, see note 27, 338.

³¹ See Federal Minister for Foreign Affairs Klaus Kinkel in a first cautious statement before the General Assembly during its 48th General Debate in 1992 ("... if a change in the Council's composition is actually considered we too shall make known our intention to seek a permanent seat ..."), Official Records, Doc.A/47/PV. 8, 59 of 23 September 1992; German reply to the Secretary-General of 30 June 1993 (Doc.A/48/264 of 20 July 1993, 43); see also G. Altenburg, "Deutschland auf dem Prüfstand", *EA* 49 (1994), 693 et seq., (698); H. Heberlein, "Rechtliche Aspekte einer ständigen Mitgliedschaft Deutschlands im UN-Sicherheitsrat", *ZRP* 27 (1994), 358 et seq., (359). The national discussion is reflected by C. Tomuschat, "Deutschland und die Vereinten Nationen", in: K. Kaiser/J. Krause (eds.), *Deutschlands neue Außenpolitik*, 1996, 97 et seq.; T. Eitel, "Am I My Brother's Keeper? A German View on UN Peacekeeping", *The Brown Journal of World Affairs* 3 (1996), 45 et seq., (48); V. Weyel, "Yes, but ... Germany's desire for a permanent seat in the Security Council", in: H. d'Orville (ed.), *Beyond Freedom. Letters to Olesegun Obasanjo*, 1996, 555 et seq.; B. Fassbender, "Wieder kein Platz an der Sonne?", *Die Politische Meinung* 41 (1996), 61 et seq.; M. Schaefer, "Die

responsibility³² and, on the other hand, the readiness of the five permanent members to discuss enlargement of the Council. Following an initiative by *Japan* and 34 developing countries, member states were invited in 1992 to send written comments on a possible review of Council membership to the Secretary-General³³. A total of 79 replies from member states and regional groups³⁴ were received by the Secretary-General and incorporated into his report to the Assembly³⁵. These comments, some of which named *Germany* and *Japan* for the first time as possible new permanent members³⁶, proved that the envisaged expansion of the Council would be of a different quality and significance than the one in 1963/1965. The possibility of new permanent members and the new rights and obligations associated with this status (right of veto, financial obligations) affected a variety of national interests³⁷, which marked the debates that followed.

1. 1993–1994: First Trends. Brainstorming

In response to the Secretary-General's report, the Assembly established with resolution of 3 December 1993 an *Open-ended Working Group on the Question of the Equitable Representation on and Increase in the Membership of the Security Council and other Matters Related to the*

neue Rolle des Sicherheitsrates — Warum soll Deutschland ständiges Mitglied werden?”, in: E. Aderhold et al. (eds.), *Festschrift für Hans Hanisch*, 1994, 191 et seq.; V. Rittberger, *Statusveränderungen im Sicherheitsrat der Vereinten Nationen unter besonderer Berücksichtigung der Aufnahme/Integration Deutschlands als Ständiges Mitglied mit allen Rechten und Pflichten*, DASA-Studie (Zwischenbericht), May 1994; M. Kreile, “Verantwortung und Interesse in der deutschen Außen- und Sicherheitspolitik”, *Aus Pol. & Zeitgesch.* 5 (1996), 3 et seq., (5); K. Kaiser, “Die ständige Mitgliedschaft im Sicherheitsrat”, *EA* 48 (1993), 551 et seq.; W. Wagner, “Der ständige Sitz im Sicherheitsrat”, *EA* 48 (1993), 533 et seq.

³² R. Panda, “Japan, Germany and the UN Security Council”, *J.Int'l Aff.* 48 (1992), 51 et seq.; cf. also G. van Well, “Germany and the United Nations”, in: Wolfrum, see note 1, Vol.1, 558 et seq.

³³ A/RES/47/62 of 11 December 1992.

³⁴ African States, Arab States, Caribbean States.

³⁵ A/RES/48/264 of 29 July 1994 and Add.1, Add.2 and Add.2/Corr.1 and Add. 3-10; see also C. Philipp, “Politik und Sicherheit”, *VN* 41 (1993), 173–175.

³⁶ By *Australia, Ghana, Jordan, Kazakhstan, the Netherlands, Qatar, Romania, United States of America*, *ibid.*

³⁷ Koroula/Kanninen, see note 27, 339.

*Security Council*³⁸ (*Working Group*). In its resolution, the Assembly specified as reasons for the review of the Council “the substantial increase in the membership of the United Nations, especially of developing countries, as well as the changes in international relations”. The resolution also referred to “the need to continue to enhance the efficiency of the Security Council” and “the importance of reaching general agreement”. These elements outlined the key components of the reform contemplated: a.) an expansion in the number of seats to account for increased membership, b.) consideration of changed international conditions (emergence of new political and economic global actors), c.) the safeguarding of the Council’s efficiency (i.e. no inappropriate numerical expansion), d.) indications on the kind of majority vote the reform would require (*general agreement* but not consensus).

The resolution text was the result of negotiations among a group of approximately two dozen member states under the leadership of *Singapore*. The title of the Working Group was a special point of contention. A number of smaller and medium-sized countries led by *the Philippines* and *Malaysia* insisted that “and other matters related to the Security Council” be added. This was to ensure that the reform would not be limited to a mere increase in seats but also aim at improving the Council’s transparency and working methods. Both elements³⁹ — expansion as well as working methods — have since been accepted as two linked components of the Working Group’s mandate.

Between January and September of 1994, the Working Group met 22 times under the chairmanship of the President of the Assembly, Ambassador *S.R. Insanally (Guyana)*, and his two Vice-Chairmen, Ambassador *Wilhelm Breitenstein (Finland)* and Ambassador *Chew Tai Soo (Singapore)*. The discussions were divided into six clusters (equitable representation, other matters, effective and efficient functioning, decision-making, election and terms of office and modalities for bringing changes into effect). Several background papers were prepared by the Secretariat⁴⁰. No conclusions were drawn, however. In the end, the Working Group agreed to present a primarily formal and short (nine paragraphs) first final report⁴¹. In this report, the debate was described as “substantive” and “constructive.”

As far as expansion of the Council was concerned, it was noted that there had been a “convergence of views” and that further discussions were

³⁸ A/RES/48/26 of 3 December 1993.

³⁹ Later called *Cluster I* and *Cluster II* elements.

⁴⁰ Non-papers by the Secretariat of 28 February 1994 and by the Chairman and President of the Assembly of 20 May 1994.

⁴¹ GAOR 48 th Sess., Suppl. No. 47 (Doc.A/48/47).

required⁴². The 48th General Assembly adopted the report in September 1994⁴³. This rather insubstantial and weak⁴⁴ result presented after the Working Group's first year of deliberations is proof of how difficult it was for the Group to get through and systematize the questions at hand. The necessary prudence and will to steer clear of rash decisions marked a starting phase mainly consisting of brainstorming and collecting first comments and views.

2. 1994–1995: Positioning. First Frictions

Between January and September of 1995 the Working Group met 11 times for formal meetings and 21 times for consultations under the chairmanship of the President of the Assembly, Ambassador *Amara Essy (Ivory Coast)*, and his co-chairmen, Ambassador *Wilhelm Breitenstein (Finland)* and Ambassador *Nitya Pibulsonggram (Thailand)*. Based on the General Debate of September/October 1994 and on the Plenary Meetings of November 1994⁴⁵, the Vice-Chairmen prepared internal non-papers on possible reform elements which were now divided into *Cluster I* and *Cluster II elements*. *Cluster I* encompassed: the elements equitable representation on and increase in the membership of the Security Council, permanent membership, non-permanent membership, new categories of membership and alternative proposals for an increase in the present categories, voting procedure in the Security Council, including the veto, periodic reviews. *Cluster II* included: measures taken and practices adopted by the Security Council to enhance its transparency and working methods, institutionalization and review of measures and practices taken up to improve the working methods of the Council, consultations with interested parties, consultations with troop contributors, review of provisional rules of procedure of the Council, improving the work of the sanction committees, enhancing the Council's information-gathering and analysis capability, relationship between the Security Council and other United Nations organs. The non-papers were updated and later reproduced in the form of *observations on Cluster I* and *II*⁴⁶. At the same time, a number of states and groups of states introduced first official reform models (called *working papers* or *submissions*). However, the Working Group seemed divided over

⁴² Ibid., para. 8.

⁴³ General Assembly Decision 48/498 of 14 September 1994.

⁴⁴ Cf. W. Kühne, "Erweiterung und Reform des Sicherheitsrats: Keine weltpolitische Nebensache", *EA* 49 (1994), 685 et seq.

⁴⁵ 49th Sess., Agenda item 33.

⁴⁶ Doc. A/49/965 of 18 September 1995, 4 et seq., 39 et seq., 46 et seq.

the evaluation of these events. For a long time it seemed unlikely that agreement could be reached on a second final report. At the last minute, the Group decided to prepare a second final report that was again rather short (17 paragraphs)⁴⁷ and accept the so-called "observations and assessment of the two Vice-Chairmen" with a compendium as Annex⁴⁸. The report stated that the Working Group had not concluded its discussion of the non-papers. The point was also made that the Vice-Chairmen's observations and assessment had no legal status nor would they prejudice delegations' positions⁴⁹. In its conclusion the report noted agreement as far as the expansion of the Security Council and the review of the working methods were concerned. It also referred to the comprehensive package of both *Clusters* (I and II), to their concurrent proceedings of work and to the fact that progress in one area should not be impeded by lack of progress in the other. Finally, the report also mentioned that important differences continued to exist on key issues and, therefore, further in-depth consideration of these issues would still be required⁵⁰.

The Vice-Chairmen presented their observations and assessment parallel to the Working Group's final report, stating that important progress had been achieved. They took the view that member states must be prepared to move on to the next phase of the work, i.e. actual negotiations. They suggested that the ideas contained in the non-papers be crystallized and differences narrowed⁵¹. Through this approach, they stated, a single negotiating text could in due course emerge⁵². The Annex to the observations and assessment contained 12 working papers that had been presented by states or groups of states during the negotiations⁵³. These official statements, called "submissions", pointed to first positions. As far as their content was concerned, the submissions could be described as follows: nine submissions concentrated primarily on possible expansion models or *Cluster I* issues (*Australia, Informal Group of Small and Medium-sized Countries*⁵⁴, *Belize, Cuba, Italy, Mexico, Movement of Non-Aligned Countries, Nordic Countries*⁵⁵, *Turkey*). Two other submissions did not

47 GAOR 49 th Sess., Suppl. No. 47 (Doc.A/49/47) of 15 September 1995.

48 Doc.A/49/965 of 18 September 1995.

49 Doc.A/49/47 of 15 September 1995, paras. 7 and 11.

50 Ibid, see paras. 13 to 16.

51 Doc.A/49/965 of 18 September 1995, para. 31.

52 Ibid., para. 33 lit.d.

53 Ibid., 51 et seq.

54 *Austria, Belgium, the Czech Republic, Estonia, Hungary, Ireland, Slovenia*. The name "Group of 8" stems from *Portugal's* close links with that group.

55 *Denmark, Finland, Iceland, Norway, Sweden*.

introduce concrete expansion models but suggested objective criteria for (permanent) Council membership (*Indonesia, Singapore*). Two of the submissions also included passages on working methods or *Cluster I* issues (*Nordic Countries, Movement of Non-Aligned Countries*). One submission dealt with the so-called *cascade effect*, i.e. a popular label for a *de facto* large representation ratio of permanent members of the Council in the United Nations System as a whole (*Argentina*).

What was remarkable about these submissions was the weight attributed to *Cluster I* elements. Nine out of twelve, i.e. three quarters of the submissions, approved, or at least did not reject, enlargement of the Council's permanent membership. Some of these submissions had been presented by groups of states representing five (*Nordic Countries*) and 113 members (*Non-Aligned Countries*). Only three states (*Italy, Mexico, Turkey*) clearly opposed the idea of new permanent members. *Mexico*, however, granted a privileged status to Japan and Germany in its model. Together with the submission of the *Informal Group of Small and Medium-sized Countries* that supported permanent seats for Germany and Japan, the Mexican submission was the only one that directly named any countries. With the exception of *Indonesia*, no possible aspirant for a permanent seat on the Council presented a working paper of its own.⁵⁶

The Assembly adopted the final report in December 1995⁵⁷. It recommended that the Working Group "continue its work, taking into account, *inter alia*, the progress achieved and the views expressed during the fiftieth session of the General Assembly, including the Special Commemorative Meeting of the General Assembly on the occasion of the fiftieth anniversary of the United Nations". The next report should include any agreed recommendations⁵⁸. This reference to possible results achieved by the Working Group was an expression of the desire to further advance the work during the fiftieth session⁵⁹. The public, however, took little notice of the second final report and, for that matter, the quite substantial

⁵⁶ Eight states are generally considered to be possible candidates, in alphabetical order: *Brazil, Egypt, Germany, India, Indonesia, Japan, Nigeria, South Africa*. See their positions in E. Mantanele, *The UN Security Council*, 1995, 14 et seq. Throughout the discussions the Secretariat has avoided naming particular states in its documents. On the isolated occasions when this happened (Doc. A/AC. 247/1996/CRP.1 of 11 January 1996, para. 69 refers to "... a number of Member States, including Brazil, Egypt, Germany, India, Japan and Nigeria ..."), countries in opposition to new permanent seats immediately protested.

⁵⁷ General Assembly Decision 49/499 of 18 September 1995.

⁵⁸ Doc.A/49/47 of 15 September 1995, conclusions (para. 17).

⁵⁹ Also Kourula/Kanninen, see note 27, 342.

positions of states contained in the observations and assessment of the Vice-Chairmen.

3. 1995–1996: Crystallization and Concretization

Between October, 1995, and October, 1996, discussions became distinctively more concrete and politically marked. Three developments in particular contributed to this: the fiftieth anniversary of the United Nations in October 1995, the General Debates at the opening of the 50th and the 51st General Assembly, and the third final report presented by the Working Group in September 1996, containing for the first time all possible reform elements.

The United Nations celebrated its fiftieth anniversary from 23 to 25 October 1995 in the presence of numerous heads of state and government. Almost all of the speeches held on that occasion supported institutional reform of the United Nations and its bodies⁶⁰. Despite the symbolic nature of the occasion which only allowed for short addresses, many speakers stressed the importance of Council reform. A small but significant number of member states used the occasion to refer again explicitly to Japan and Germany as possible new permanent members of the Council⁶¹. On 24 October 1995, the Assembly adopted a solemn Declaration on the occasion of the fiftieth anniversary of the United Nations⁶² which stated that the member states and observers of the United Nations “will give to the twenty-first century a United Nations equipped, financed and structured to serve effectively the peoples in whose name it was established”⁶³. It stated further that “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; as important differences on key issues continue to exist, further in-depth

⁶⁰ See the compendium United Nations (ed.), *The UN at 50. Statements by world leaders*, 1996.

⁶¹ *Cambodia, Croatia, France, Kazakhstan, Lithuania, Norway, Panama, Peru, St. Vincent and the Grenadines, Uzbekistan.*

⁶² The Chairman of the Preparatory Committee, Ambassador R. Butler (*Australia*), played a decisive role in making the declaration, which was still being hotly debated as late as the eve of the anniversary, a success; see his statement as contained in the compendium, see note 60, 473.

⁶³ Declaration on the Occasion of the Fiftieth Anniversary of the United Nations, 24 October 1995, A/RES 50/6 of 9 November 1995.

consideration of these issues is required”⁶⁴. Thus several points previously made in the report by the Working Group were reaffirmed at the political level⁶⁵.

The General Debates of the 50th and the 51th General Assembly took place in September and October 1995/1996. They highlighted once again the political trends prevailing among member states⁶⁶. Building upon early support in 1993⁶⁷/1994⁶⁸ for the “natural” candidates Japan and Germany, both countries were able to strengthen their position further throughout the debates in 1995⁶⁹ and 1996⁷⁰. An increasing and accumulating⁷¹ number of member states supported their candidatures in public. None of the other aspirants for permanent membership⁷² were able to come up with remotely comparable results. Some of them even seemed to lose support⁷³. Status quo solutions such as the Italian model⁷⁴ received some attention in the debate, however, often combined with other models and not in their original form. A considerable number of member states referred to them with the proviso that Japan and Germany should receive permanent seats⁷⁵.

⁶⁴ Ibid., para. 14.

⁶⁵ Cf. Doc.A/49/47 of 15 September 1995, para. 13 and 16.

⁶⁶ General Debates take place at the beginning of the official sessions in September/October. They give each member state the opportunity through the head of delegation — usually its President or Foreign Minister — to outline national positions regarding the United Nations and its Agenda.

⁶⁷ In the replies the Secretary-General received during the 48th Session, eight member states referred to *Germany* and *Japan* by name, see Doc. A/48/264 of 20 July and Addenda.

⁶⁸ During the 49th General Debate, 13 member states referred to *Germany* and *Japan* by name.

⁶⁹ During the 50th General Debate, 19 member states referred to *Germany* and *Japan* by name.

⁷⁰ During the 51th General Debate, 31 member states referred to *Germany* and *Japan* by name.

⁷¹ Quite a few countries which referred to names of candidates in one year did not necessarily repeat them in the following year. Also, a number of states preferred to describe a particular country in unambiguous terms without identifying the country’s name. Yet other countries identified their candidates in bilateral meetings, but refrained from doing so openly.

⁷² See the names mentioned in note 56.

⁷³ *Brazil* (1995: 2; 1996: 0), *India* (1995: 3, 1996: 4). Other candidates were not mentioned at all.

⁷⁴ See Chapter IV and the terminology used there.

⁷⁵ 13 out of 27 member states took such a position, GAOR/51/PV. 4 (17

The Working Group further intensified its work between November 1995 and September 1996 with 39 formal and 17 informal meetings under the chairmanship of the President of the Assembly, *Diogo Freitas do Amaral (Portugal)*. In February 1996, Vice-Chairman *Nitya Pibulsonggram* was replaced by Ambassador *Asda Jayanama* (both *Thailand*) following extensive consultations. The negotiations were marked by the even more concrete and pointed opinions put forward by various states. In accordance with a working programme revised in April 1996, the major topics discussed were the composition and size of the Council, the decision-making in the Council, including the veto, working methods and transparency of the Council, as well as other matters. The intensity of these discussions was reflected in a comprehensive third final report which included a detailed summary of discussion. The report was adopted by the Working Group in September 1996 and shortly thereafter by the Assembly⁷⁶. The Assembly once again decided to keep the item on the agenda and to request a report with "any agreed recommendations". The report itself avoided any evaluation of the trends that had become apparent. The Working Group, which had to adopt its report by consensus, merely stated in critical passages that certain proposals "received both support and objection"⁷⁷. Nevertheless, the report was characterized by many as the Working Group's best and most comprehensive report since it started in 1993⁷⁸. An integral part of the report is an *addendum* containing 19 Annexes⁷⁹, among them official working papers on new rotating "non-permanent" seats (*Italy, Ukraine*) and criteria for these seats (*Spain*), as well as on new permanent seats (*African Common Position, Monaco, Australia, Germany, Ukraine, Malaysia, Norway, Belize*), on regional rotating permanent seats (*African Common Position, Belize, Malaysia, Norway*) and on so-called shared seats (*Belize, Egypt* (for the Non-Aligned countries), *Mexico and Uruguay* proposed models limiting the scope and use of the veto. Other working papers dealt with the Security Council's working methods and procedures (*Czech Republic, Argentina and New Zealand*) as well as with periodic review (*Germany*).

Among the twelve official working papers added to the report, some of them new, some of them revised, there was only one that opposed an expansion of both categories of Council seats (*Italy*). Unlike in 1995, this

September 1996) to 30 (10 October 1996).

⁷⁶ General Assembly Decision 50/489 of 16 September 1996.

⁷⁷ Cf. paras. 25, 26, 27; see also the familiar formulas used in paras. 20, 22, 31, 34.

⁷⁸ Among them D. Freitas do Amaral, President of the General Assembly, cf. Press Release GA/9085 of 16 September 1996.

⁷⁹ Doc.A/50/47/Add. 1 of 9 September 1996.

year all the models were an integral part of the final report, which even integrated the submissions of the previous year then contained in the observations and assessment of the Vice-Chairmen⁸⁰. This third final report, consisting of 36 paragraphs, presented concrete proposals. For the most part, it followed the Working Group's working programme and dealt extensively with the following elements considered most essential for the Council reform: transparency and working methods of the Council (III.), size and composition (IV.), decision-making, including the veto (V.), amendments to the Charter (VI.), periodic review of the Charter (VII.).

III. The Council's Transparency and Working Methods

The improvement in the transparency and working methods of the Council's work occupies a prominent place in the Working Group's third final report which noted that there was a "considerable convergence of views"⁸¹. This element is essential to many member states since it opens ways of participation in relevant parts of the Council's work without requesting Council membership. The Working Group refers in its title to this transparency component⁸². Existing proposals are aimed at better *general transparency* (improved information for all member states about the Council's work), better *individual transparency* (enhanced status of member states particularly affected) and better *collective transparency* (improved cooperation with groups of interested member states). The proposals brought forward also indirectly strengthen the Assembly by potentially opening up the Council to any member of the Assembly. In addition, *efforts are underway to strengthen the role of the Assembly* by improving the relationship between the Council and the United Nations' principle organs. Countries that have taken specific and popular official⁸³ initiatives in these areas were *New Zealand, Argentina, Canada* and the *Czech Republic*.

⁸⁰ Ibid., para. 15.

⁸¹ Doc.A/50/47 of 13 September 1996, para. 20.

⁸² "... and other matters related to the Security Council"; see also Chapter II, para. 1.

⁸³ Detailed proposals made during the discussions by other countries such as the *Philippines* were not submitted in the form of *official* working papers.

1. General Transparency: Information for Member States

Full information is considered to be a basic element in improving the transparency of the Council's work. As the report itself notes, the steps taken to this end over the last few years were "largely encouraged by the discussions" of the Working Group⁸⁴. The Secretariat prepared an inventory of the measures already taken by the Council.⁸⁵ Among them were: a new structure for the Council's reports to the Assembly, forecasts of the Council's programme of work, distribution of Council documents, holding of open Council meetings and briefings on the progress of consultations. A large number of member states consider these initiatives as insufficient and have asked for further measures to be adopted. A list of ideas submitted by *Argentina* and *New Zealand* is one of the many concrete and detailed proposals in this context. It comprises the following items: institutionalized daily briefings by the President of the Council, open orientation debates as the norm when the Council commences consideration of an issue, mechanisms to alert member states to "blue"⁸⁶ draft resolutions, institutionalized provision of the envisaged programmes of work and the inclusion of the annotated agenda and expected action by the Council in the official *Journal*. Moreover, it also includes the right of any member of the United Nations to request an urgent meeting of the Council in cases when it feels there is a threat to international peace and security⁸⁷.

Most of the proposed measures would indeed lead to an improved dissemination of information to member states on the Council's actual activities. The logistic burden involved is not really a sufficient counter-argument. The Council might also have to accept that member states may react to information received and try to influence the development of a given situation. General transparency will reach its limits where the Council's ability to decide on the main *focus* of its work is jeopardized. Attempts

⁸⁴ Cf. Doc.A/50/47 of 13 September 1996, para. 20.

⁸⁵ Doc.A/50/47/Add. 1 of 9 September 1996, Annex III.

⁸⁶ Blue draft resolutions are a means of distributing draft resolutions at very little notice during the course of a meeting. On 28 February 1994, the Council adapted the following practice: "Draft resolutions in blue, that is, in provisional form, will be made for collection by non-members of the Council at the time of consultations of the whole of the Council. Draft resolutions published in blue late at night will be made available for collection by non-members of the Council the following day" (Doc. S/1994/230).

⁸⁷ *Argentina/New Zealand*: working paper, Doc.A/50/47/Add. 1 of 9 September 1996, Annex VI (paras. 1, 2, 6 to 9).

to force the Council to deal with certain topics could be regarded as an infringement of its autonomy. They would also fail to lead to any constructive results, since an unwilling Council would most likely react by simply avoiding substantial decisions. Any final outcome will have to prevent such possible shortcomings. Other, innovative proposals presented outside United Nations bodies might be of help⁸⁸.

2. Individual Transparency: Participation by Affected Member States

The *Czech Republic's* proposal that Article 31 be reinterpreted on a teleological basis has become one of the most popular proposals presented to the Working Group since the beginning of its deliberations. The *Czech Republic* proposes that under given circumstances non-members be allowed to participate in informal consultations to which at present only Council members have access. In the Czech view, this could be implemented by a simple change in the Council's rules of procedure⁸⁹.

Article 31 provides that members may participate in Security Council discussions whenever the latter considers that the interests of that member are specially affected. Until now this option has been understood, for historical reasons, to only apply to formal meetings⁹⁰. As the Council has been meeting more and more regularly in closed, so-called *informal consultations* since the mid-sixties⁹¹ and even more so after 1978⁹², formal meetings have become the exception as has the option of participation intended by Article 31. The Council still holds formal meetings. However, they usually merely announce the results of the consultations which took

⁸⁸ Like regional briefings or ad hoc groups to gather information: International Peace Academy, see note 4, 9.

⁸⁹ *Czech Republic*: working paper, Doc. A/50/47/Add. 1 of 9 September 1996, Annex X.

⁹⁰ Cf. R. Dolzer, "On Art. 31", 495 et seq., (502-9), in: Simma, see note 9; L. Feuerle, "Informal Consultations: A Mechanism in Security Council Decision-Making", *N.Y.U.J. Int'l L. & Pol.* 18 (1985), 267 et seq., (301).

⁹¹ Before the 1963/1965, the office of the Council's President's served as a useful and "off-the record" consultation room for the then 11 members of the Council, cf. Russett/O'Neill/Sutterlin, see note 4, 12.

⁹² The completion of a consultation room in 1978 allowed the number of consultations to triple and brought with it the introduction of simultaneous interpretation services, see *Czech Republic*, see note 89, para 8; cf. Feuerle, see note 90, 277; M.-L. Smouts, "Réflexions sur les méthodes de travail du Conseil de Sécurité", *AFDI* 28 (1982), 601 et seq., 611.

place in the *informals*. Thus participation in formal meetings has almost entirely lost significance for the non-members concerned. During June, 1995, and June, 1996, 240 informal consultations were held versus 132 formal meetings⁹³, all of them organized and provided with logistic support (agenda, locations, translation service) by the Secretariat.

The above-mentioned development shows the appropriateness of the Czech proposal, particularly when compared with the situation at the beginning of the United Nations, when formal meetings were the rule⁹⁴. The Charter does not mention different forms of meetings. Yet, the Council's provisional rules of procedure postulate that the Council usually meets in public⁹⁵. The greatest objection heard against a changed, teleological interpretation of Article 31 was stated by the *Czech Republic* itself: "... Some feel, that that presence of a representative of a country under review would inhibit the discussion, that Council members would feel constrained in expressing themselves freely, in short, that the assumed great advantages stemming precisely from the secrecy of informal consultations ... would be lost"⁹⁶.

Article 31 shows, however, that members do not have an unconditional right to participate. They "may" participate, if the Council invites them⁹⁷. There is also leeway for invitations to participate in "first readings" or consultations "off limits" which would take into account the objections raised⁹⁸. In other words: both the essence of the Czech proposal and the need for informal and secret consultations could be preserved in the context of a teleological (re)interpretation of Article 31.

⁹³ See Doc.A/51/2 of 13 November 1996, 17 (Report of the Security Council to the General Assembly).

⁹⁴ Cf. Bailey, see note 14, 40.

⁹⁵ Doc.S/96/Rcv.7 -Rule 48; see recently the French aide-mémoire (Doc. A/49/667=Doc.S/1994/1279) of 11 November 1994 and the letter of *New Zealand* to the President of the Council of 18 November 1994 (Doc. S/1994/1313); the rules also foresee the possibility of "private meetings": Rules 48 (2nd sentence) and 51.

⁹⁶ *Czech Republic*, see note 89, para. 12.

⁹⁷ Others are pleading for a "virtually automatic" participation, see *Canada*. Statement made by Ambassador R. Fowler, Official Records Doc. A/51/PV. 45 of 30 October 1996, 16.

⁹⁸ Cf. *Czech Republic*, note 89, paras. 24, 25.

3. Collective Transparency: Cooperation with Groups of Member States

Another important area of improved transparency is the Council's cooperation with countries which are not members of the Council but provide the contingents of troops necessary for peace-keeping operations decided by the Council.

Article 44 stipulates that the Council shall invite a member, "if the Member so desires, to participate in the decisions of the Security Council concerning the employment of contingents of that Member's armed forces". Article 44 is restricted, however, to peace enforcement operations under Chapter VII and decisions regarding the *first* deployment of a contingent. Moreover, it only applies if armed forces, assistance and facilities have been made available to the Council in accordance with Article 43 para. 1⁹⁹.

Speaking for many, *Canada* has taken up the essence of the concept underlying Articles 43 and 44 and called for "meaningful participation in decision-making by those members whose nationals are in the crossfire of the conflicts over which the Council is deliberating¹⁰⁰". As early as 1995, 33 member states addressed a letter¹⁰¹ to the Council which was discussed thoroughly¹⁰² and answered on 28 March 1996 with a statement by the President of the Council¹⁰³. In the reply, the President of the Council set out the procedures to be followed in the future. Future consultations were to be held as soon as practicable and in good time before decisions were taken on the extension or termination of, or significant changes in, the mandate of a particular peace-keeping operation. Meetings would, unless it proved to be impracticable, be held with any prospective troop contributors, whenever the Council considered establishing a new peace-keeping operation. Ad-hoc meetings could be convened in the event of unforeseen developments in a particular peace-keeping operation. The statement described these and other arrangements as "not exhaustive"¹⁰⁴.

One of the main demands of the major troop-contributing countries has been met by the President chairing meetings with troop-contributing nations and the Council holding consultations with prospective troop-

⁹⁹ Cf. J.A. Frowein, "On Art. 43", 636 et seq., in: Simma, see note 9; B.O. Bryde, "On Art. 44", 640 et seq., *ibid.*

¹⁰⁰ See Ambassador Fowler, see note 97.

¹⁰¹ Letter dated 8 December 1995 (Doc.S/1995/1025).

¹⁰² Official Records Doc. S/PV.3611 of the 3611th Mtg. of 20 December 1996.

¹⁰³ Doc.S/PRST/1996/13 of 28 March 1996.

¹⁰⁴ *Ibid.*, (k).

contributing nations prior to the creation of new operations¹⁰⁵. This practice should establish itself and promises fulfilled. However, Council consultations on policy and mandate and on operational aspects, consultations of the Chairmanship of the Council, formalization of consultations, presence of the host country of an operation, presence of all Council members and other measures are among further-reaching demands which continue to be put forward¹⁰⁶.

Consultations with third countries affected by sanctions imposed on a country are a separate case of cooperation with groups of member states. This is not so much a matter of more transparent Sanctions Committees¹⁰⁷. Rather it refers to better coordination with those states which bear the brunt of sanctions and their implementation. Article 50 even stipulates this as a right of the members affected¹⁰⁸. The observation that Article 50 of the Charter needs more attention¹⁰⁹ is in line with on-going discussions in the *Special Committee of the Charter of the United Nations and on the Strengthening of the Role of the Organisation* on this issue¹¹⁰.

4. Cooperation between the Council and other Bodies, particularly the Assembly

Efforts to improve cooperation between the Council and the Assembly have resulted in proposals particularly aimed at strengthening the latter. Some suggestions listed in the Working Group¹¹¹ report are stricter adherence to the — not uncontroversial¹¹² — authority of the Assembly

¹⁰⁵ Cf. Ambassador Fowler, see note 97.

¹⁰⁶ Cf. Doc.A/50/47/Add. 1 of 9 September 1996, Annex III, 9/10.

¹⁰⁷ *Sanctions Committees* are subsidiary bodies of the Council and chaired by permanent representatives of the Council members. They figure also among demands for more Council transparency: see Doc. A/49/965 of 18 September 1995, 15; see most recently H.-P. Kaul, "Die Sanktionsausschüsse des Sicherheitsrats" VN 44 (1996), 96 et seq.

¹⁰⁸ In conjunction with Article 49 or by applying a general principle of solidarity of states, cf. J. Delbrück, "International Economic Sanctions and Third States", AVR 30 (1992), 86 et seq., (97); see also B.O. Bryde, "On Article 50", 659 et seq., in: Simma, see note 9.

¹⁰⁹ Doc.A/50/47/Add. 1 of 9 September 1996, Annex III, 12 (para. 8); see also Alvarez, see note 6, 14.

¹¹⁰ See Report Doc. A/51/317 of 30 August 1996 and A/RES/50/51 of 11 December 1995 and A/RES/51/208 of 17 December 1996.

¹¹¹ See detailed list in Doc. A/50/47/Add. 1 of 9 September 1996, Annex III, 12.

¹¹² See K. Hailbronner/E. Klein, "On Art. 12", 253 et seq., (257/258), in:

regarding issues relating to international peace and security as enshrined in the Charter¹¹³, the establishment of subsidiary organs (e.g. "Chapter VII Consultation Committees"¹¹⁴) to consider issues affecting international peace and security¹¹⁵ and mechanisms alerting members of emergency meetings of the Council¹¹⁶. The reporting of the Council to the Assembly, in accordance with Articles 15 para. 1 and 24 para. 3 can also be regarded as an area where improvements are needed¹¹⁷. Other efforts are directed towards strengthening the position of the President of the Assembly through regular consultations with the President of the Council, more active roles for both Presidents and a stronger involvement of the President of the Assembly in matters relating to the Council¹¹⁸. All of these and additional issues concerning the revitalization of the Assembly were dealt with during January and July 1996 by another Working Group which included a detailed list of measures in its final report¹¹⁹.

5. Conclusions: Balancing and Implementing Transparency-Related Measures

It has already been mentioned that transparency of the Council is one of the key reform elements¹²⁰. Especially smaller states which rarely or never participate in the work of the Council regard this as a genuine opportunity to become more involved in the Council's work. Proposals such as those made by *Argentina* and *New Zealand* have thus been welcomed by many. At the same time it cannot be ignored that far-reaching steps to establish transparency (consultations, reports, etc.) require time and resources. They are matters of communication rather than of action. Decisions made

Simma, see note 9.

¹¹³ Cf. Articles 10, 11, 12 and 14.

¹¹⁴ See W. Reisman, "The Constitutional Crisis of the United Nations", *AJIL* 87 (1993), 83 et seq., (99); see also Sucharipa-Behrmann, see note 16, 19.

¹¹⁵ Doc.A/50/47/Add. 1 of 9 September 1996, Annex III, 12, para. 6 (b).

¹¹⁶ *Ibid.* lit.e.

¹¹⁷ See the early statement of *Germany* made by Ambassador D. Graf zu Rantzau before the Working Group on 8 April 1994, 2; cf. also recent A/RES/51/L.64 of 13 December 1996.

¹¹⁸ Doc.A/50/47/Add. 1 of 9 September 1996, Annex III, 12, para. 6 lit.c, f.

¹¹⁹ Doc. WGUNS/CRP.12 as contained in the Official Records of the General Assembly, 50th Sess., Suppl. 24 (Doc.A/750/24) of 23 July 1996, Annex II.; see also Doc. WGUNS/CRP.3/Add.1 of 30 January 1996 with further references.

¹²⁰ See Chapter III, introduction.

by the 15 members of the Council already require considerable preparation and consultations. Efforts to include the general membership during preparatory phases would drastically increase the necessary input and, at the same time, limit the Council's ability to react spontaneously. In future the Council will have to harmonize its transparency and ability to act, in keeping with the principle: *as much Council transparency and communication as possible, as much Council flexibility and autonomy as necessary*.

Another aspect, and a still open question, is the issue of the institutionalization and formalization of transparency-related measures which have already been taken or are still to be achieved. Such an approach is favoured i.e. by *Argentina* and *New Zealand*, for example¹²¹. It has received strong support, but also opposition and reservations¹²². Indeed, in order to make the achievements more tangible, at least some of the progress made could be formalized by amendments to the *provisional rules of procedures of the Security Council* or through decisions made by the Assembly, if need be also by joint decisions of the Council and the Assembly. There is no reason why one should not try, after fifty years, to adapt the "provisional" rules of procedure and remove the blemish of being "provisional".

However, the impact of implementing such transparency measures by formal and institutional means may often remain a rather symbolic one. True, transparency is hard to achieve through formal rules. This holds particularly true for the Council and its highly political activities, which are marked by an explicit need for flexibility and political *marge de manoeuvre*. The Council, which is the master of its rules of procedures, will maintain the necessary degree of flexibility regarding its activities. Any decision on formalizing or institutionalizing transparency measures will have to take this into account.

IV. Composition and Size of the Council

By September 1996, member states had before them 18 concrete proposals regarding the new composition and size of the Council. These proposals are contained in the Annexes of the observations and assessment of the Vice-Chairmen of 1995 and the final report of 1996¹²³ and can be divided into three major groups: (1) *status quo solutions* (for the sake of illustration called "zero" models), (2) *parallel enlargement solutions* (called "plus"

¹²¹ *Argentina/New Zealand*, see note 87.

¹²² Doc.A/50/47 of 13 September 1996, para. 20.

¹²³ Doc.A/49/965 of 18 September 1995 and Doc.A/50/47 Add. 1 of 9 September 1996.

models) and (3) *modified parallel enlargement solutions* (called “region” models). Beside these main groupings, some mixed solutions and models (4) can be found. More sophisticated, often not realistic models were discussed by academics, but could not make their way into the political process¹²⁴.

1. Status Quo Solutions: The “Zero” Models

“Zero” models were elaborated by *Italy, Turkey and Mexico*. They differ in detail but not in essence. Due to vigorous promotion¹²⁵, the model presented by *Italy* is the prominent one. The almost identical Turkish model, on the other hand, has been largely ignored during the discussions to date, as have the specific features of the Mexican model.

The three status quo solutions are referred to as “zero models” due to their firm opposition¹²⁶ to any change in the number of permanent Council members as laid down in the Charter in 1945. *Italy* justifies its opposition by arguing that granting new permanent seats only to developed countries would increase the number of economically developed countries

¹²⁴ Cf. the proposals of L. Sohn, J. Schwartzberg and B. Ferencz as reflected by Hoffmann, see note 4, 49 et seq.; see also D. Caron, “The Legitimacy of the Collective Authority of the Security Council”, *AJIL* 87 (1993), 552 et seq., (574) and the references contained in Doc. WGUNS/CRP.3/Add. 5 of 8 August 1996, 96 et seq. (elaborated by E. Luck).

¹²⁵ Not only high-level diplomatic, but also publication activities, see e.g. Comitato Nazionale per la Celebrazione del cinquantesimo anniversario dell’ONU (ed.), *The reform of the Security Council. An Italian Proposal*, 1996 (first edition February 1996: foreword by Minister of Foreign Affairs Susanna Agnelli, second edition October 1996: foreword by Minister of Foreign Affairs Lamberto Dini); by the same editor: *L’ONU: Cinquant’Anni di Attività e Prospettive per il Futuro*, 1996; Istituto per gli Studi di Politica Internazionale (ed.), *Relazioni Internazionali. Numero Speciale: La riforma del Consiglio di sicurezza*, Anno LIX Aprile (1995), reviewed by G. Altenburg, *VN* 43 (1995), 155; A. Tanzi, “Notes on the “Permanent Conference of Revision” of the United Nations Charter at the 50th Anniversary of the Organisation”, *Riv.Dir.Int.* 78 (1995), 733 et seq.; see also Società Italiana per la Organizzazione Internazionale (ed.), *Italy and the United Nations*, 1996; M.J. Inacker, “Italiens verdeckte Eifersucht. Blockade gegen den deutschen Sitz im UN-Sicherheitsrat”, *IP* 52 (1997), 59 et seq.

¹²⁶ Until May 1995, however, the Italian model still considered “the addition of three permanent seats to the Security Council” a “logical remedy”, see *Italy*: revised proposal, Doc.A/49/965, 83.

in the Council which would be neither equitable nor democratic. Moreover, the establishment of new permanent seats would extend a situation of "eternal" privilege to other countries¹²⁷. *Italy* therefore proposes that an expansion of the Council be limited, as in 1965, to non-permanent seats. In addition to the existing non-permanent seats, ten new seats should be added, each being shared by three states so that a total of 30 states would rotate on a biennial basis. The states should be selected by the Assembly using objective criteria¹²⁸ and reviewed every 10 to 15 years. Each of the rotating states must be elected by a two-thirds majority in the Assembly before assuming its seat. The following geographical distribution for the ten new seats is envisaged: Africa and Asia (five), Latin America and Caribbean (two), Western European and other states (two), Eastern Europe (one). Instead of nine votes needed today, the Council would in the future need 15 votes for an affirmative vote¹²⁹.

Just like the Italian one, the Turkish model also proposes ten additional rotating non-permanent seats. Instead of 30 states, however, it suggests that 40 states rotate in accordance with objective criteria, with a revision of the rotation list every 12–16 years. The Turkish model does not indicate whether the ten additional seats are to be assigned exclusively according to objective criteria, or also according to regional criteria¹³⁰. It does, however, propose that the constituencies of the existing regional groups be redesigned¹³¹.

The Mexican model follows the Italian and Turkish ones in so far as it rejects new permanent seats. It differs, however, in proposing four new regular, non-rotating seats plus one seat to be shared by Japan and Germany on a biennial basis¹³². The four new non-permanent seats should be allocated to Africa, Asia, Latin America and the Caribbean as well as Eastern and Western Europe (and others). Eastern and Western Europe would share one seat, alternating every two years.

¹²⁷ *Italy*: working paper, Doc. A/50/47/Add. 1, Annex IX, para. 3.

¹²⁸ Contributions to the maintenance of international peace and security, equitable geographical distribution, specific contributions to peace-keeping operations, participation in voluntary funds for humanitarian activities, economic development and the protection of human rights, etc.

¹²⁹ *Italy*, see note 127, 31/32.

¹³⁰ *Turkey*: position paper, Doc.A/49/965 of 18 September 1995, 110.

¹³¹ This corresponds to an Australian suggestion made in Spring 1995 to increase the regional groups from five to seven (number of members in brackets): Western Europe (24), Central and Eastern Europe (22), Middle East and Maghreb (19), Africa (43), Central Asia and Indian Ocean (17), East Asia and Oceania (25), Americas (35); *ibid.*, 66/67.

¹³² *Mexico*: proposal, *ibid.*, 92.

2. Parallel Enlargement Solutions: The “Plus” Models

Among 14 (15)¹³³ models which favour a parallel enlargement of the Council’s seat categories, seven can be considered as straight “plus” models. These models are in favour of expansion of both membership categories, i.e. additional (“plus”) permanent and non-permanent seats. “Plus” models are based on the traditional membership categories. They generally reject the creation of third in-between categories based on special privileged rotation arrangements. Classical “plus” models are those presented by the *Small and Medium-sized Countries*, *Cuba*, *Monaco*, *Australia* and *Germany*. Other “plus” models have been submitted by *Indonesia*, *Singapore* and the *Movement of Non-Aligned Countries* (although in a rather general form), by *Malaysia*, *Norway*, *Tunisia* (in the context of the *African Common Position*, proposing that regional rotation for the new permanent seats be established), by *Belize* (proposing that new seats be shared among several states at the same time) as well as by *Ukraine* and the *Nordic countries* (which try to combine “plus” models with elements of the “zero” models and therefore, together with a few other proposals, might be called “mixed” models).

a.) The Informal Group of Small and Medium-Sized Countries

Austria, *Belgium*, *the Czech Republic*, *Estonia*, *Hungary*, *Ireland* and *Slovenia*¹³⁴ propose a “plus” model with two to five additional permanent seats. Aspects to be taken into account when selecting new permanent members include global influence, as well as the capacity and willingness to contribute to the maintenance of international peace and security. In addition to Germany and Japan, Africa, Asia and Latin America should also be given permanent seats. The increase in permanent seats should be accompanied by an appropriate increase in non-permanent seats in order to preserve as much as possible a balanced configuration of the Council. This model rejects the establishment of special privileged rotation arrangements for medium-sized countries and considers 20 to 25 an appropriate size for an enlarged Council¹³⁵.

¹³³ *Tunisia* considers its model to be identical with that of the *African Common Position*.

¹³⁴ And *Portugal*, see note 54.

¹³⁵ *Informal Group of Small and Medium-sized Countries*: discussion paper, Doc.A/49/965 of 18 September 1995, 69.

b.) Cuba, Monaco, Australia, Germany

In *Cuba's* view, the increase in the number of permanent and non-permanent members should take place strictly in accordance with the principle of equitable geographic representation. The expansion of the permanent membership should not be reserved exclusively for industrialized countries. The total number of the enlarged Security Council could be 23, including new members from Asia (three), Europe and others (one), Africa (at least two) and Latin America and the Caribbean (two)¹³⁶. *Cuba* does not specify how the proposed new eight seats are to be divided between the two membership categories.

According to the model put forward by *Monaco*, the number of permanent members could be increased from five to ten. The five additional members could be designated, preferably on a regional basis, by the Assembly. At the same time, the number of non-permanent members should be increased from 10 to 15. The additional five non-permanent members, however, would serve for an extended term (between 6 and 12 years)¹³⁷, with the possibility of re-election after their term. Candidates should be capable of making significant contributions to the maintenance of international peace and security. Monaco claims that the advantage of this model would be that it provides an opportunity for five new major powers to have a permanent seat on the Security Council. At the same time, it could offer five other "leading powers", in particular "regional powers", the opportunity to be involved in the Council's work on a long-term basis. Lastly, according to Monaco, the more modest powers would be able to participate in the Council with greater frequency¹³⁸.

Australia has submitted a model with key elements on which Australia sees a considerable convergence of views. These four elements are: 1.) the present five permanent Council members will remain; 2.) for reasons "consistent with the principles of the Charter and with reality", Japan and Germany would be added; 3.) there should be, within the permanent membership, a balance between developed and developing countries, between North and South. Consequently three other permanent members, not from the industrialized North, should be added; 4.) five non-permanent members should be added (Africa and Asia two, Latin America/Caribbean one, Eastern Europe one, Western Europe and Others one). The ratio of 12 to 1 (185 member states to 15 elected Council members)

¹³⁶ *Cuba*: proposal, *ibid.*, 78.

¹³⁷ This idea of an additional "tenured membership" is also mentioned by the International Peace Academy (ed.), see note 4, 4 (five years).

¹³⁸ *Monaco*: working paper, Doc.A/50/47/Add.1 of 9 September 1996, 46.

would be within the expected range of elected representatives nominated by a larger body of sovereign entities as in the Australian governmental system¹³⁹.

The *German* model corresponds for the most part to the Australian one. It considers it a must that the South receives permanent membership¹⁴⁰. Germany supports permanent membership for Africa, Asia, and Latin America and the Caribbean, three seats altogether. At the same time latecomers or newcomers to the United Nations like Japan and Germany, with their contributions to international peace and security and international development, should be eligible for permanent membership in the Security Council, bringing the total membership of the Council to the mid-twenties¹⁴¹.

c.) Singapore, Indonesia, Movement of Non-Aligned Countries

Singapore, Indonesia and the *Movement of Non-Aligned Countries* generally support an increase in the number of permanent and non-permanent seats. *Indonesia* argues that new permanent members would reflect, *inter alia*, the new and emerging constellation of powers, their proven regional and global responsibilities as well as political, economic and demographic realities¹⁴². Both *Indonesia* and *Singapore* stress the need to establish objective selection criteria¹⁴³. The *Movement of Non-Aligned Countries* proposes that the number of Council members be increased to 26, four from Western Europe, three from Eastern Europe, seven each from Africa and Asia, as well as five from Latin America and the Caribbean. Just like *Cuba*, the *Non-Aligned Countries* do not give details as to how these new seats are to be distributed among the existing membership categories, saying, however, that if there is no agreement on other categories of membership, expansion should take place only, for the time being, in the non-permanent category¹⁴⁴.

¹³⁹ *Australia*: working paper, *ibid.*, 51.

¹⁴⁰ *Germany*, Statement made by Ambassador T. Eitel in the Working Group on 23 April 1996, 3.

¹⁴¹ Cf. German statements and speeches held between 1994 and 1996 as compiled in: Permanent Mission of the Federal Republic of Germany to the United Nations (ed.), *Reform of the Security Council. The German Position*, 1996, foreword by Federal Minister for Foreign Affairs Klaus Kinkel.

¹⁴² *Indonesia*: criteria, Doc.A/49/965 of 19 September 1995, 81.

¹⁴³ *Ibid.*, 80; *Singapore*: proposal, *ibid.*, 107.

¹⁴⁴ *Movement of the Non-Aligned Countries*: Cluster I, *ibid.*, 94 and 96.

3. Modified Parallel Enlargement Solutions: The “Region” Models

The “region” models are also aimed at enlarging both membership categories. However, they leave it up to the countries of the regions and their regional groups to allocate permanent seats or to establish appropriate rotation systems. Such models have been brought forward primarily by the *Organization of African Unity, OAU* (especially *Tunisia*), by *Malaysia* and by *Norway*.

a.) African Common Position and Tunisia

The *African Common Position* goes back to the 58th ordinary session of the OAU¹⁴⁵ Council and was presented in August 1993 by *Tanzania* on behalf of the 29 member states of the African Group of States¹⁴⁶. According to this model, the Council’s membership should be enlarged by increasing both permanent and non-permanent seats. Africa should have two permanent seats, with all the privileges attached to permanent membership, and more non-permanent seats¹⁴⁷. With regard to the allocation of permanent seats, the *Organization of African Unity* prepared a position in September 1994¹⁴⁸ which has remained unchanged and has been incorporated as an Annex into the Working Group report. It speaks of “no fewer than two permanent seats with all the privileges attached thereto, as long as the institution of permanent membership remains in force”. It continues along the following lines: The permanent seats allocated to Africa should be assigned to countries on the decision of the Africans themselves, in accordance with a system of rotation based on the criteria of the OAU currently in force and subsequent elements which might subsequently improve those criteria. Eventually, the current permanent members should also be subject to nomination by their respective regions and should be elected by the General Assembly. Such a system would make the Council less subject to the strictly national interests of various members¹⁴⁹.

Tunisia reactivated the *African Common Position* when proposing in February 1996 that so-called permanent regional rotating seats (PRRS)¹⁵⁰

¹⁴⁵ *Cairo*, June 1993.

¹⁴⁶ *African Group of States*: position, Doc. A/48/264/Add. 5 of 30 November 1993, 3.

¹⁴⁷ *Ibid.*, paras. 6, 8.

¹⁴⁸ OAU Doc. NY/OAU/POL 84/Rev.2 of 29 September 1994.

¹⁴⁹ *African Common position*: United Nations Reform, Doc.A/50/47/Add.1 of 9 September 1996, Annex IV, paras. 33 lit.d., 34, 36.

¹⁵⁰ *Tunisia*, statement of Ambassador S. Abdellah before the Working Group

be created. *Tunisia* requests two permanent seats for Africa. These seats would be regional seats, allocated for four to six years by the OAU within a system of rotation based on precise criteria¹⁵¹. *Tunisia* sees in its model a pragmatic approach which would allow financial and economic considerations to be taken into account (admission of Germany and Japan to the Council) while at the same time correcting existing imbalances in the Council¹⁵².

b.) Malaysia, Norway

Malaysia presented its "region" model in February 1996¹⁵³ and continued to develop it in the following months¹⁵⁴. At the centre of the Malaysian proposal is the concept of permanent regional representation, defined as "a form of representation in the Security Council where a number of members represent a specific geographical region¹⁵⁵". According to *Malaysia*, the regions of Asia, Africa and Latin America and the Caribbean require permanent representation. It is also conceivable that the industrialized countries are an identifiable region, incorporating Japan and Germany. *Malaysia* proposes that each developing region be allocated two seats, representing the countries of that region. A regional mechanism would decide on how to allocate the seats. Any country in a region could serve in the permanent seat, taking into account a number of factors¹⁵⁶. Regional permanent members together with other members of the region would share the financial costs of regional representation in the Security Council. *Malaysia* proposes a new overall total of 30 members for the Council¹⁵⁷.

According to the Malaysian proposal, the concept of regional representation would constitute a new form of permanent membership. *Malaysia* argues that the concept of regionalism was recognized as early as 1945, as reflected in the appreciation the Charter shows for regional organiza-

on 28 February 1996, 2.

¹⁵¹ Id., *ibid.*

¹⁵² Id., *ibid.*, statement of 22 April 1996, 2.

¹⁵³ *Malaysia*, statement of Ambassador Razali Ismail of 28 February 1996.

¹⁵⁴ Final version: *Malaysia*: working paper, Doc.A/50/47/Add.1 of 9 September 1996, Annex XVI.

¹⁵⁵ *Ibid.*, para. 6.

¹⁵⁶ Such as peace-keeping, upholding universal values, including human rights, size, population, global involvement and capacity to pay, *ibid.*, para. 9.

¹⁵⁷ Five existing plus eight new permanent, ten existing plus seven new non-permanent members.

tions¹⁵⁸ in Chapter VIII. Regionalism had proven to serve the interests of all states, “including big, small, weak and strong ones”. The concept would also put an end to claims that countries can have permanent rights without accountability to others and the regions they belong to¹⁵⁹.

Norway presented its “region” model to the Working Group in March 1996. It proposed new permanent and non-permanent seats. Of the five new permanent seats, three should go to developing countries in Africa, Asia and Latin America, two should be for industrialized countries. The allocation of new permanent seats to individual countries should take into account a.) the capacity and readiness of member states to contribute to the maintenance of international peace and security and to the other purposes of the United Nations, b.) the need for a more equitable and balanced geographical representation. The regions concerned should be instrumental in finding solutions. The three new permanent seats for developing countries should be allocated on a regionally based rotational system like the African/Tunisian PRRS. Countries in the regions would decide on how their new permanent seats should be filled: by one single country, a few countries on a rotational basis or on another basis the region might choose¹⁶⁰.

The Norwegian model is based on two main elements: on the one hand, the current permanent seats should be maintained and new permanent seats created. This would guarantee that the maintenance of international peace and security will continue to be in the hands of the Council, i.e. be handled in a multilateral body and not elsewhere. On the other hand, each region, in particular the three regions of the South, should be entitled to decide by itself how to use “its” seat.

4. Mixed Solutions and Models

In addition to the above-mentioned three categories of models, there are also a number of proposals which try to combine partly familiar, partly incompatible elements of the different models. All of these models can be classified as *parallel enlargement* rather than *status quo* solutions. Among

¹⁵⁸ Articles 52 to 54; possibilities and limitations of contributions of regional arrangements and agencies to the maintenance of international peace and security are described by R. Wolfrum, “Der Beitrag regionaler Abmachungen zur Friedenssicherung: Möglichkeiten und Grenzen”, *ZaöRV* 53 (1993), 576 et seq., 584 et seq.

¹⁵⁹ *Malaysia*, see note 153, para. 15.

¹⁶⁰ *Norway*: working paper, Doc.A/50/47/Add. 1 of 9 September 1996, Annex XVII, paras. 7–10.

them are the *Nordic* and the *Ukrainian* models, the model of *Belize*, as well as an unofficial *Japanese* model.

a.) Nordic Countries

The *Nordic countries*¹⁶¹ proposed in June 1995 that there should be an increase in the number of both permanent and non-permanent members. Five new seats could be allocated as permanent seats to qualified states. Regional groups should be encouraged to establish equitable systems of rotation for non-permanent members. At the same time, the freedom of regional groups to agree on appropriate rotation systems should not be restricted. Agreement of the respective regional group should be a condition for any privileged frequent rotation. The total size of the Council should be in the low twenties, preferably 23¹⁶². The key reason why the *Nordic countries* wish to reform the Council is the “fundamental objective of strengthening the capacity of the Security Council to discharge the duties assigned to it by the Charter for the maintenance of international peace and security”¹⁶³. The Nordic position represents a mix of elements of the “zero” models (rotation of new “non-permanent” seats), of the “plus” models (new non-permanent *and* new permanent seats), and of the “region” models (emphasis on the role of regions when selecting new members of the Council). With its endorsement of new permanent seats, it stands closer to the “plus” than to the “zero” models.

b.) 2+8 and 2+4 Models

The *Ukraine* calls its model “2+8”¹⁶⁴. It primarily envisages the increase of non-permanent seats by eight and a limited increase in the number of permanent seats by two for states that make an “exceptional contribution” to the work of the United Nations. The Council would thus have a total number of 25 members, among them 13 developing countries. *Ukraine* suggests Germany and Japan for the two new permanent seats. The eight new non-permanent seats should be divided between Asia and Africa (four), Latin America and Caribbean (two), Western Europe and others (one) and Eastern Europe (one). A total of 24 or 32 States would rotate on these new non-permanent seats following criteria agreed on by the mem-

¹⁶¹ See note 55.

¹⁶² *Nordic Countries*: position paper, Doc.A/49/965 of 18 September 1995, 104.

¹⁶³ *Ibid.*

¹⁶⁴ *Ukraine*: working paper, Doc.A/50/47/Add.1 of 9 September 1996, Annex XVIII, para. 8.

ber states. Regional groups should be given the right to determine how many of the non-permanent seats available to a given region would be subject to the rule of more frequent rotation, taking into account the interests of small countries. *Ukraine* considers this conceptual approach to be similar to the approaches suggested by *Italy, Spain* and *Mexico*¹⁶⁵.

Ukraine is attempting to establish a bridge between the “zero” and the “plus” models. Its proposal would ensure that the East European States receive a non-permanent seat on which three to four states would rotate, among them, in all likelihood, *Ukraine* itself. Para. 24 of the Working Group’s final report, which was only added upon the insistence of *Ukraine* and almost prevented the adoption on the report, reflects this motive¹⁶⁶. New permanent seats are to be limited to states with “exceptional contributions to the work of the United Nations” like Germany and Japan. In exchange, developing countries would receive a total of six new non-permanent seats.

An unofficial Japanese model called “2+4” goes back to a proposal made by a Japanese research team in 1996¹⁶⁷. Only *Argentina* made a brief reference to it in the Working Group¹⁶⁸, but the Working Group never really discussed it at any other time. It deserves to be mentioned, however, since it is based on the existing political proposals which have been submitted. The “2+4” model envisages a Council with a total of 24 members. It provides for three new non-permanent seats (one each for Africa, Asia, and Latin America), as well as for six new permanent seats. Two of those, so-called *global* permanent seats, would be assigned to Japan and Germany. Four so-called *regional* permanent seats would be divided between Asia, Africa, Latin America and the Caribbean and Western/Eastern Europe¹⁶⁹. For each of the regional permanent seats no more than three states will be elected, according to criteria still to be determined and for a period of three years. They should not receive the right of veto.

The “2+4” proposal combines elements of the “plus” and the “region” models. It should appeal to the most eligible candidates from the North

¹⁶⁵ *Ibid.*, paras. 6–12.

¹⁶⁶ “The view was expressed that expansion of the Security Council should also take into account the increase in the membership of the United Nations by countries belonging to Eastern Europe in the context of an overall equitable geographical distribution.” (Doc.A/50/47 of 13 September 1996, para. 24).

¹⁶⁷ T. Kunugi/M. Iokibe/T. Shinyo/K. Hashimoto, (PHB Research Institute, Research Division, Tokyo), *Towards a more Effective UN*, 1996.

¹⁶⁸ *Argentina*, Statement made by Ambassador E.J. Cardenas, before the Working Group on 20 May 1996, 3.

¹⁶⁹ Kunugi et al., see note 167, 5 and 26 et seq.

as well as from the South, since it envisages permanent seats for both groups, yet allows differentiations by introducing the criteria “global” and “regional”.

c.) Belize

The proposal made by *Belize* is difficult to categorize. It centres on the idea of so-called *shared seats*. It was first presented to the Working Group in January 1995 and has been revised various times since then. By the term *shared seats*, *Belize* means “a composite or constituency membership where pairs of adjacent states, including trans-aquatic and non-adjacent states that are members of a regional agency certified by the Council, share a seat on equal terms”¹⁷⁰. The important feature would be regional representation¹⁷¹. Both permanent as well as non-permanent members of the Council could share their seats in this way.

In an earlier version, *Belize* favoured an increase by five to eight new permanent members so that each regional group would have at least two permanent members. At the same time, 10 non-permanent seats were to be added. This would have resulted in a total number of 30 to 33 future Council members¹⁷². After several modifications, *Belize* now proposes a total of 20 to 23 members, 9 to 11 of them being non-permanent ones. Permanent members could be selected according to either of the following scenarios: a.) the existing five permanent members plus one representative of each of the five regional groups, with the exception of the Western European Group, as well as two so-called *financial permanent members*, selected on the basis of substantial contributions to the Organization’s budget (excluding the United States of America), or b.) two representatives of each of the five regional groups, among them the existing P5 as well as three financial permanent members (including the United States of America)¹⁷³.

Among the distinguishing features of *Belize’s* model are its originality and flexibility, as demonstrated by categories such as financial permanent membership and shared seats, or by the options with regard to numbers. By trying “to approximate the dictates of democracy and economy/efficiency¹⁷⁴”, however, the model becomes less clear and difficult to implement. Not only have there been (too) many changes to the model, but also

¹⁷⁰ *Belize*: submission, Doc. A/49/965 of 18 September 1995, 75/76.

¹⁷¹ *Ibid.*, 72, para. 3 lit.a.

¹⁷² *Ibid.*, paras. 1, 2.

¹⁷³ *Belize*: working paper, Doc.A/50/47/Add.1 of 9 September 1996, Annex XV, para. 28/29.

¹⁷⁴ *Ibid.*, para. 17.

some of the traditional terms used¹⁷⁵. The ratio between permanent and non-permanent members envisaged by the model seems unrealistic as well¹⁷⁶. These and other factors have contributed to the fact that the shared-seats model is generally considered to have little chance of materializing¹⁷⁷.

5. Pros and Cons

The following *pros* and *cons* of “zero” and the various “plus” models can be identified:

“Zero” models may be attractive to those states which believe they would belong to the group of 30 rotating states (among them are the authors of the model, but other large and medium-sized countries as well¹⁷⁸). They might also be of interest to those countries afraid of regional competitors with chances of acceding to a permanent seat in the Council but lacking regional integration links¹⁷⁹.

However, too many arguments can be made against “zero” models. The argument that the removal of 30 states would lead to improved chances for smaller and medium-sized countries to receive one of the remaining regular non-permanent seats does not stand up to close examination. On the contrary, their chances would decrease¹⁸⁰. “Zero” models, however,

¹⁷⁵ Example: instead of permanent membership, reference is made to “*indefinite*” membership, defined as a membership limited to three or six years.

¹⁷⁶ The second option offered by the model, for example, would yield the following composition: two representatives each of Africa, Latin America, Asia (China, NN), Western Europe (France, UK), Eastern Europe (Russian Federation, NN), plus three financial permanent members (United States, Japan, Germany). There would thus be 13 permanent, but only 10 non-permanent members.

¹⁷⁷ Cf. Sucharipa-Behrmann, see note 16, 9.

¹⁷⁸ *Canada, Spain, Ukraine* and others. See the detailed description of the Spanish position in: Cortes Generales (eds.), *Los nuevos retos y la reforma institucional de las Naciones Unidas*, 1995, 33 et seq. (35), 63 seq.; also M. Ortega Carcelén, “La reforma de la carta de Naciones Unidas: Algunas propuestas institucionales”, *REDI* 43 (1991), 389 et seq.

¹⁷⁹ Example: *Mexico* and *Argentina* (Brazil), *Pakistan* (India). *Italy* is afraid that “if only Germany and Japan become members, a new directorate would be created excluding Rome ... Italy will not even belong to the second league of countries, it will be reduced to what it used to be at the end of the century”: Ambassador P. Fulci, interview with *La Giornale*, 1 April 1996, 13 (translation by the author).

¹⁸⁰ Under “zero” models with no increase in the category of permanent seats

would leave the “monopoly” or “club¹⁸¹” of permanent members which has existed since 1945 untouched. They neither take into account the interests of the underrepresented regions of the South nor the geo-political upheavals of the recent past. Indeed, the creation of seats reserved on a longer-term basis for a selected group of 30 members would create a new category which reduced the regular non-permanent seats to a third-class category. The distance between non-permanent members to the five permanent members of the Council would further increase since it seems likely that closer coordination would be established between permanent and rotating, i.e. *semi-permanent*¹⁸², members. It also seems almost impossible to determine which objective criteria could justify a continuous rotation of 30 member states in view of the 150 non-rotating member states. The result of a list prepared by *Spain* which uses three main criteria¹⁸³ proves this point, albeit unintentionally¹⁸⁴. The supposed allo-

and regular non-permanent seats, but with 10 new rotating seats created for 30 rotating countries, the competition ratios for the remaining member states for 10 regular non-permanent seats would be: 17.2:1 (African/Asian), 13.5:1 (Latin American/Caribbean), 17:1 (Eastern European), 9:1 (Western European and other states). In contrast, under a “plus” model with an increase in both categories, permanent and non-permanent seats (five additional seats each), the competition rates for 15 regular non-permanent seats would be 14:1 (African/Asian), 10.6:1 (Latin American/Caribbean), 10:1 (Eastern European), 7.2:1 (Western European states and others). The ratios show that “plus” models give smaller and medium-sized countries a better chance of being elected to a regular non-permanent seat in the Council. In “zero” models, tough competition would continue to exist.

¹⁸¹ Cf. Kennedy/Russett, see note 1, 62; Hoffmann, see note 4, 41.

¹⁸² The notion of semi-permanent membership has been defined by *Malaysia* as “a third category of members electable for a period of five to six years” (Doc.A/48/264 of 20 July 1993, 60). *Italy* has used the notion of semi-permanent membership for not more than 20 members revolving “in twos” as members of the Council (ibid., 53). Others refer to the concept of semi-permanent seats as “seats to be shared for two-year periods by two or more countries” (Doc. A/AC.247/1996/CRP. 1 of 11 January 1996, para. 88).

¹⁸³ (a) Total personnel assigned to peace-keeping operations, (b) total financial contribution effectively disbursed both to the Organization’s regular budget and to the peace-keeping budget, (c) population as a percentage of the world total: Doc.A/50/47/Add.1 of 9 September 1996, 26. The criteria show what immense problems arise when trying to define objective criteria. The proposed criteria would, for example, punish states which are trying successfully to control population growth. They would also be an incentive to build up a larger armed force than a country

cation of a fixed number of rotating seats to regional groups would unduly qualify objective criteria that were supposed to be valid for all member states throughout all regional groups. In the end, rotation models result in further cementing of *de facto* existing seat privileges of particular states¹⁸⁵. Many other technical and practical questions remain unresolved: to what extent would rotating states participate in the financing of peace-keeping operations? What effect would it have on the three states sharing a rotating seat if one of them failed to be elected by the Assembly? How would the Organization deal with the continual competition among most of its member states, especially the most likely candidates, which would intensify every 10 to 15 years?

The alternative straight “plus” models have the advantage of building upon the familiar and clear categories of permanent and non-permanent membership. They guarantee better representation of countries from the South as well as of countries from the North with global economic and political influence, especially in the category of permanent membership. On the other hand, until now no state from Asia, Africa or Latin America and the Caribbean has been able to consolidate its candidature for a permanent seat. All of those countries considered possible candidates of the South, have received strong opposition but little support, even in their own regions, throughout the discussions¹⁸⁶.

actually needs for defence purposes. By (not) assigning peace-keeping personnel quora for member states, the Secretariat would be in a position to decrease or increase the chances of a member state to qualify for a rotating seat.

¹⁸⁴ *Spain* identifies 38 countries: *Egypt, Ghana, Nigeria, Kenya, Zambia, Zimbabwe, Bangladesh, India, Indonesia, Iran, Japan, Jordan, Malaysia, Nepal, Pakistan, Philippines, Vietnam, Thailand, Argentina, Brazil, Mexico, Uruguay, Poland, Czech Republic, Ukraine, Australia, Austria, Belgium, Canada, Finland, Germany, Ireland, Italy, Netherlands, Norway, Spain, Sweden, Turkey*. 40 per cent of these countries are from the North and could therefore claim four of ten rotating seats. Giving them only three seats would mean giving up the idea of objective criteria for all member states. Other important countries in each region do not figure on the list and would hence continue to campaign for regular non-permanent seats.

¹⁸⁵ Almost all the most frequent non-permanent members of the Security Council in the past would be guaranteed a seat in a rotating system (see list in note 184). Among them *Japan* (has been on the Council eight times), *Brazil* (seven), *Argentina, India* (each six), *Egypt, Canada, Italy, Poland, Colombia* (each five) and others.

¹⁸⁶ See note 73.

Against this background, modified parallel enlargement solutions in form of “region” models and permanent regional rotating seats (PRRS) have become attractive. They seem to offer a pragmatic solution, at least temporarily and as long as no new clear-cut candidates of the South emerge. They are considered particularly suitable for those regions which find it difficult to give one of its countries exclusive permanent status. Since countries of the South are especially likely to base their legitimate claim for a permanent seat on geographical considerations, the regions concerned should be entitled to have a say in the selection for “their” seat. Some welcome the role that regional groups would play in this context as a new and future-oriented approach¹⁸⁷. Those states, however, which for political¹⁸⁸ or factual¹⁸⁹ reasons are less interested in regional stipulations, consider the rotational system to be discriminatory since it would apply only to developing countries but not to the two possible representatives of the developed world. Another argument raised against PRRS is that in Asia and Latin America organizational structures are not as well established as in other regions¹⁹⁰. Neither argument is completely convincing. It could well be argued that aspirants for a permanent seat who base their claims not on global but geographic criteria may become the subject of differentiated and therefore not arbitrary procedures regarding their permanent seat. Lack of support of the broad majority of their neighbours lends additional strength to such an argument. Finally, nothing prevents regions from establishing organizational structures for regional decisions on permanent Council membership. Africa could serve as an example in this respect. The existing five regional groups within the United Nations could also serve as a logistical basis. In the past, endorsements for (non-permanent) Council membership have been decided by or through these groups. Nor are candidatures of Western European states endorsed by the European Union (EU) — even if candidates are EU member states — but by the respective regional group at the United Nations.

Mixed models like the “2+4” one are an interesting option since they provide four permanent seats for each of the regional groups, including a seat shared by Eastern and Western Europe (and others). Regional perma-

¹⁸⁷ See *Malaysia*, note 154, para. 14. Similarly recommendation (2) of the Science for Peace Workshop on the United Nations Reform, in: E. Fawcett/H. Newcombe (eds.), *United Nations Reform*, 1995, 303.

¹⁸⁸ *Italy, Turkey, Mexico* (since the regional approach would lead to new permanent members).

¹⁸⁹ *Brazil, India* (since the regional approach does not provide *exclusively* individual permanent seats).

¹⁹⁰ E.g. *Singapore*, statement before the Working Group on 23 April 1996, 3; *Vietnam*, statement before the Working Group on 27 March 1996, 2.

nent seats established on this base would have to be complemented by two seats for global permanent members. The obvious advantages of this model must be seen against its inability to redress the imbalance that exists in the view of most of the developing countries in the category of permanent membership. The “2+8” model reflects this deficit in particular¹⁹¹.

6. Conclusions: Main Trends and Key Elements

The various models at hand seem confusing only at first sight. Having looked more closely at them, main trends as well as key elements regarding the future composition and size of the Council emerge.

None of the models — with the exception of the “zero” models presented by *Italy, Turkey* and *Mexico* — rejects an increase in the category of permanent seats. All other 15 models submitted, including mixed models, are based on an enlargement of both seat categories, the permanent and the non-permanent. Considering further that the number of member states which have supported the “zero” models during the discussions has been rather limited,¹⁹² while large groups of countries like the *Group of African States* have left no doubt about their preference for (modified) parallel enlargement solutions¹⁹³, a clear trend towards an enlargement in both categories becomes evident. It should also be noted that most of the models in favour of an enlargement in both categories contain, in one form or another, rotation elements. Enlargement in both categories with some rotation elements can be considered the first key element.

¹⁹¹ This became clear during Working Group negotiations in July and September 1996 when *Ukraine* came into conflict with a number of Non-Aligned Countries (*India, Egypt, Cuba* and others).

¹⁹² In addition to *Italy, Turkey* and *Mexico* themselves, other states which have supported their models in the past have been *Malta, San Marino, New Zealand, Pakistan, Lebanon*, and, more recently, *Madagascar, Sierra Leone* and the *Comoros*. The public statements of most of these states, however, contain passages that would allow for a change in their position when appropriate.

¹⁹³ Mention also has to be made in this context of the position of the *Movement of Non-Aligned Countries*, which includes the option of, if not express desire for, an “agreement on other categories of membership” and not only the non-permanent category. An expansion only in the non-permanent category is merely considered to be a fallback position, see note 144.

The second key element and guiding principle of any Council enlargement will be ensuring a balance between North and South¹⁹⁴. Models which fail to take this into account will have no realistic chance of being realized. PRRS could indeed lead to a more equitable balance since they would provide a favourable number of permanent seats for the developing countries while also safeguarding the interests of the North. Of course, other elements in a reform package might also contribute towards achieving the necessary measure of North-South balance (transparent working methods, decision-making procedures, periodic review etc.).

The third key element is the size of the Security Council. Most models envisage a number from the low to the mid twenties, i.e. between 23 and 26 seats. This is discounting the lowest (20/21 seats: *United States, United Kingdom, Russian Federation, Mexico* and others) and highest (30 seats: *Malaysia, Belize* and others) proposed numbers for the future size of the Council. A number in the low/mid twenties gives leeway for an additional three to six non-permanent seats while at the same time allowing an increase in the number of permanent seats.

V. Decision-Making in the Security Council, Including the Veto

The Working Group report dedicates two paragraphs to the issue of decision-making in an enlarged Council¹⁹⁵. The issue involves veto aspects whether new permanent seats are added to the Council or not. The question of a “collective” veto right illustrates that the reach and influence of states and groups of states in the Council is not exclusively linked to an increase in the category of permanent seats but rather to the future decision-making procedures in general¹⁹⁶.

Any enlargement of the Council will therefore have to deal with two questions. First, how to fix the *quora* necessary for “positive” Council action? A decision on this may already reflect the amount of influence granted to individual members or groups of members of the Council. Second, how to deal with the veto *strictu sensu*, i.e. the possibility of casting “negative” votes blocking Council action?

¹⁹⁴ Cf. Doc. A/50/47 of 13 September 1996, para. 26; see also E. Luck, “Peacekeeping Plus: the UN and the international security”, in: E. Luck/G. Lyons, *The United Nations: Fifty years after San Francisco*, 1995, 13 et seq. (39); cf. also Eitel, see note 31, 48.

¹⁹⁵ Doc.A/50/47 of 13 September 1996, paras. 31 and 32.

¹⁹⁶ Russett/Neill/Sutterlin, see note 4, 72; in general Bailey, see note 14.

1. Quora for "Positive" Council Action: "Action Threshold"

Article 27 para. 3 stipulates that an affirmative vote by nine members of the Council is necessary for decisions which are not procedural matters, including the concurring votes of the permanent members. The ratio of nine out of 15 votes means that one more vote than the nominal majority (8 vis-à-vis 7) is required. Taking into account the possibility of a new Council with 25 members, future voting *quora* have been proposed to consist of 13, 14, or 15 votes, respectively¹⁹⁷. These proposals show that the future "threshold" for majority decisions might be significantly higher than in the past. First, the nominal number of members necessary to reach a Council decision will increase proportionally to the increase in the overall number of Council members. Second, proposals requiring a majority of 14 or 15 votes move the *quorum* even further away from the nominal majority¹⁹⁸. Finally, groups of states within an enlarged future Council membership (developing countries in Africa, Asia and Latin America/Caribbean) could gain some type of "collective" veto right which would enable them to prevent positive Council action and decisions at any time. Currently, the "South" merely has six votes in the Council¹⁹⁹. In other words, decisions in the Council do not need the votes of all members representing the South. In an enlarged Council with 25 seats, the South²⁰⁰ is most likely to have at least 13 members. In case of quora of 14 or 15 votes needed for Council decisions, the (12) non-South-members would depend on the cooperation of at least two or three members from the South. At the same time, a unanimous vote of all states of the South could almost alone²⁰¹ enforce decisions in the Council.

The phenomenon of a "collective right of veto" figures as "action threshold" in the reform discussions. Secretary-General *Boutros Boutros-Ghali* addressed the issue in March 1996 as follows: "In this way, an effective "group veto" might be created for the developing world — without placing that veto into the hands of any single state. By greatly enhancing the strength and importance of the new non-permanent members, raising the threshold for Council action is seen by some as a key element of a new framework balancing the possible addition of Germany and Japan

¹⁹⁷ Cf. proposals of *Germany* (13/14 votes, statement by Ambassador G. W. Henze before the Working Group on 23 May 1996, 3), *Italy* (15 votes, see note 127, para. 7 lit.h), *Ukraine* (15 votes, see note 164, para. 13).

¹⁹⁸ Cf. Russett/O'Neill/Sutterlin, see note 4, 76.

¹⁹⁹ Without counting the permanent member *China*.

²⁰⁰ Dito.

²⁰¹ Without any additional vote (*quorum*: 13), one additional vote (*quorum* 14) or two additional votes (*quorum* 15) from the North.

as permanent members with the imperative of making the Council more representative by strengthening the voice of the developing world”²⁰². The report of the Working Group mentions in this respect “... the *de facto* blocking power of developing countries that were non-permanent members of the Council and the number of affirmative votes required for Council decisions ...”²⁰³. It also observed that the final outcome of discussions on these topics would depend on the results of consideration on other issues²⁰⁴. *Ukraine* supports a threshold of 15 votes for approval of a decision in an enlarged Council and speaks in this context of an “effective group veto of the developing countries”²⁰⁵, adding: “... *Ukraine* believes that the international community has an opportunity to limit the permanent members’ use of the veto, especially by increasing the number of non-permanent members ...”²⁰⁶.

2. Casting of “Negative” Votes: Scope and Extension of the Veto

Since the outset, the discussion has been quite inconsistent regarding the question of how to proceed in the future with the veto as stipulated in Article 27 para. 3. Two questions must be raised: a) Will there be any changes to the right of veto the five permanent members presently enjoy (*scope* of the veto); b) Should the veto be given to new permanent members (*extension* of the veto)?

a.) Scope of the Veto

The Working Group report points out that decision-making in the Council, including the question of veto, continues to be an important element in the Group’s discussions²⁰⁷. At the same time the report states that proposals to limit the scope and the use of the veto have been “widely supported”²⁰⁸. This remark reflected in particular a demand by developing, but also by other, countries to abolish the veto, or at least to limit its scope. The *Non-Aligned Countries* refer in this context to “a consistent position

²⁰² Lecture delivered at the Ministry for Foreign Affairs of *Mexico* in *Mexico-City* on 4 March 1996, Press Release SG/SM/5906 of 4 March 1996.

²⁰³ Doc.A/50/47 of 13 September 1996, para. 32.

²⁰⁴ *Ibid.*

²⁰⁵ *Ukraine*, see note 164, para. 13.

²⁰⁶ *Ibid.*, para. 14.

²⁰⁷ Cf. Doc.A/50/47 of 13 September 1996, para. 31.

²⁰⁸ *Ibid.*

contained since the Summit Declaration of Colombo (1976)²⁰⁹. Their criticism seems to be in line with a general unease about the right of veto which has been controversial since 1945 and is considered to be hardly compatible with the principle of the sovereign equality of member states as enshrined in Article 2 para. 1²¹⁰. One could argue that, with the end of the Cold War at the latest, the right of veto became historically obsolete²¹¹.

On the other hand, almost all the states favouring an abolition of the veto recognize that, pursuant to the relevant legal provisions at present, this would only be possible with the consent of the five permanent members²¹². In fact, the permanent members made it quite clear during the discussions that they are not willing to abandon this privilege. One of the arguments in favour is that the veto has recently helped to achieve consensus in the Council²¹³. It draws the large powers closer to the Council and makes its measures more credible and efficacious. At the same time it serves as a "circuit breaker" by reducing tensions between the major powers²¹⁴. Against this background, detailed proposals on at least modifying the veto have been submitted to the Working Group. The proposals try to solve the dilemma²¹⁵ between the existing criticism of the veto and the insistence

²⁰⁹ See *Movement of Non-Aligned Countries*, Doc.A/50/47/Add. 1 of 9 September 1996, Annex VII, para. 7 and 9 lit.d.

²¹⁰ R. Wolfrum, "Voting and Decision-Making", in: Wolfrum, see note 1, Vol.2, 1403; in general T. Schilling, "Die "neue Weltordnung" und die Souveränität der Mitglieder der Vereinten Nationen", *AVR* 33 (1995), 67 et seq., 101 et seq.

²¹¹ Cf. *Ukraine*, Doc.A/50/47/Add. 1 of 9 September 1996, para. 14; *Mexico*, statement by Ambassador M. Tello in the 44th Plenary Mtg., Official Records 29 October 1996, Doc.A/51/PV.44, 16; for a most recent study of the origins of the veto and its future see B. Fassbender, *United Nations Council Reform and the Right of Veto: A Constitutional Perspective*, 1997 (forthcoming).

²¹² Article 108 demands that all permanent member states ratify an amendment to the Charter.

²¹³ T. Bruha, "Security Council", in: Wolfrum, see note 1, Vol.2, 1158 ("driving force with integrating effects in a cooperative process towards consensus, thereby limiting its negative effects").

²¹⁴ *United States of America*, Statement by C. Hume on 23 May 1996, USUN Press Release 74/96, 2; further arguments to the effect that the veto, however unfair its exercise may be, is in the interest of the United Nations can be found in H. Leigh-Phippard, "Remaking the Security Council. The options", *The World Today*, (1994), 167 et seq., (169); see also B. Fassbender, "The Gordian Knot of Security Council Reform", *German Comments* 45 (1997), 55 et seq., (61).

²¹⁵ Cf. Caron, see note 124, 569 ("... the veto is essentially immune from

of the five permanent members that it be retained. Instead of abolishing the veto, the proposals are aimed at rationalizing it. Four types of proposals can be distinguished: (aa.) proposals for a clearer definition of the scope of application of the veto; (bb.) proposals for restricting the scope of application of the veto; (cc.) proposals for restricting the manner in which the veto is used; (dd.) proposals for additional provisions regarding the veto.

aa.) Defining the Scope of Application

According to Article 27 para. 3, concurring votes of the permanent members (veto) are not required in the case of decisions of the Council on procedural matters. Whether or not a decision is to be considered a procedural matter must be decided unanimously by the Council²¹⁶. This has led to the term “double veto”²¹⁷. Some proposals suggest therefore that cases dealing with procedural matters where casting of a veto would not be permissible be listed. Such a codification would help to clarify the scope of the application of the veto. Such proposals can refer back to a precedent in 1949²¹⁸. However, others consider this kind of solution as excessively restrictive, “especially in view of the possibility that there might be future cases arguably falling under that Chapter that the international community and/or the Council might deem require action by the Council²¹⁹.”

bb.) Restricting the Scope of Application

Further-reaching approaches suggest that the scope of application of the veto be restricted. *Egypt* has proposed that the Charter be amended so that, as a first step, the veto power only applies to decisions taken under Chapter VII of the Charter²²⁰. This proposal was submitted on behalf of the *Non-Aligned Countries*. *Mexico* has suggested that Article 27 be amended specifically to this end²²¹.

reform”).

²¹⁶ Examples given by T. Eitel, “Auswirkungen von Erklärungen des Sicherheitsrats auf das nationale Recht”, Sitzungsbericht Q zum 60. Deutschen Juristentag, 1994, 13.

²¹⁷ See Wolfrum, see note 210, 1404.

²¹⁸ A/RES/267 (III) of 14 April 1949 and Annex.

²¹⁹ *Belize*, see note 174, para. 27.

²²⁰ *Egypt*: working paper on behalf of the *Movement of Non-Aligned Countries*, Doc.A/50/47/Add. 1 of 9 September 1996, Annex VII, para. 11; see also Report of the Independent Working Group on the Future of the United Nations, see note 1, 16.

In order to restrict the rule requiring unanimity among the Council's five permanent members regarding the maintenance of international peace and security, *Mexico* has proposed that the authority attributed to the Council in various Charter provisions be curtailed, thereby strengthening the role of the Assembly. The provisions involved are the admission of new states to the membership in the United Nations (Article 4), the suspension of a member of the United Nations from the exercise of rights and privileges of membership and their restoration (Article 5), the expulsion of a member of the United Nations from the Organization (Article 6), the appointment of the Secretary-General (Article 97), and the coming into force of amendments to the Charter (Articles 108 and 109²²²). The curtailment would be realized by deleting the respective references to the Council in all the aforementioned provisions²²³.

cc.) Restricting the Manner in which the Veto Is Used

In a rather general form, the *OAU* has requested that the number of vetoes required "to block action"²²⁴ be increased. Other states have also supported the idea of making the blocking of the adoption of a resolution contingent on at least two (*Italy*²²⁵) or three (*Belize*²²⁶) vetoes by permanent members²²⁷. In a proposal geared towards compromise, *Spain* suggested that a differentiated system of voting quora be established in the Council. According to the Spanish proposal, (a.) procedural matters should be adopted by an absolute majority of votes, (b.) substantive matters not related to Chapter VII should be adopted by a special qualified majority (three fifths or two thirds), without the right of veto and (c.) substantive matters related to Chapter VII should be adopted by the same special qualified majority, but with the possibility of exercising the right of veto²²⁸. This proposal combines reform elements relating to the scope

²²¹ *Mexico*: working paper, *ibid.*, Annex V, 17.

²²² Articles 108 and 109 do not refer to an act of the *organ* Security Council but of its permanent *members* (ratification in accordance with their respective constitutional processes).

²²³ See *Mexico*, see note 221.

²²⁴ *African Common position*, see note 146, para. 33.

²²⁵ *Italy*, see note 127, para. 16.

²²⁶ *Belize*, see note 173, para. 27.

²²⁷ A "collectivised" veto operation: M.J. Thapa, "Renewing the United Nations Security Council: Enhancing Representation and Participation of the World Body", *Pacific Research* 8 (1995), 50/51.

²²⁸ *Spain*: working paper, Doc.A/50/47/Add. 1 of 9 September 1996, Annex 8.

of application with those connected to the manner in which the veto is used.

dd.) Additional Provisions

A different approach is taken by *Uruguay* which has proposed that the veto be viewed in respect of the relationship between the Council and the Assembly. In concrete terms, *Uruguay* proposes that the right of veto be subject to suspension on specific occasions, as defined by a prescribed qualified majority of the Assembly²²⁹. The scope of the exercise of this power by the Assembly would have to be limited by negotiations. The proposal has the advantage of strengthening the Assembly, which is desired by most member states²³⁰. It also revives the concept and problems of Council action controlled by the Assembly as it has been discussed since the *Uniting for Peace Resolution*²³¹.

Brazil has suggested that the permanent Council members be accorded a "neutral" negative vote²³². Permanent members would then have four voting options: affirmation, abstention, rejection or veto. While this proposal is aimed at decreasing further the number of vetoes cast, permanent members might see some advantage in the leeway provided by being able to reject an action without blocking it. At the same time, the possibility of casting a veto, if need be, would remain untouched.

b.) Extension of the Veto

The Working Group report notes "both support and objection" with regard to the possible extension of the veto to possible new permanent members²³³. It also refers to the views of some delegations that an extension of the veto, if agreed, should be done in a non-discriminatory manner. The spectrum of opinions in this area is heterogeneous. The following groups of opinions can be distinguished:

A first group of states rejects in general any extension of the right of veto to new permanent members. Among those are a small number of

²²⁹ *Uruguay*: working paper, *ibid.*, Annex XII.

²³⁰ Cf. Chapter III para. 4.

²³¹ A/RES/377 (V) of 3 November 1950; Schilling, see note 210, 102; W. Kühne, "Krisenstab für das 21. Jahrhundert?", *Der Überblick* 3 (1994), 66 et seq.

²³² *Brazil*, statement made by Ambassador C. Amorim, Official Records, Doc.A/51/PV.44 of 29 October 1996, 8.

²³³ Doc.A/50/47 of 13 September 1996, para. 31.

Western states, but mostly states from the Southern hemisphere²³⁴. A second group argues that all permanent members, old and new, should be treated equally and that, consequently, new permanent members should have the right of veto. This view is mostly shared by those states which claim a permanent seat, but also by states from the South which insist that their future permanent representatives should have the same rights as permanent Council members from the North²³⁵. A third group of states underlines the need for curtailing and rationalizing the existing veto, but remains rather silent on the question of extending the (modified) veto right to new members. Some of the countries already mentioned belong to that group. It is also remarkable that many "region" models do not touch on the question of veto, or, if they do, do so only hesitatingly²³⁶.

The existing permanent members will play a decisive role in this question, for obvious reasons. None of them has so far shown any willingness to negotiate the scope of veto. With regard to the extension of veto, *France*²³⁷ and the *Russian Federation*²³⁸ seem to favour equal treatment of all permanent members. The *United States of America* has made it repeatedly clear that no decision on this issue has been taken²³⁹. The *United Kingdom* and *China* have not addressed the issue of extension²⁴⁰.

²³⁴ Cf. *Mexico*, see note 211; also *Seara-Vazquez*, see note 17, 289.

²³⁵ Cf. *African Common position*, see note 146, para. 33 (c); *Angola*, statement by Ambassador Van-Dunem "Mbinda" in the 49th Plenary Mtg., 1 November 1996, GAOR 51/PV.49, 6.

²³⁶ Cf. the models of *Norway* and *Malaysia*, see notes 154 and 160.

²³⁷ *France*, statement before the Working Group on 4 May 1994, 4.

²³⁸ *Russian Federation*, statement of First Deputy Permanent Representative Sidorov before the Working Group on 4 May 1994, 1; see also G. Moron-zov, "Reform of the UN is possible and even desirable. But not a revision", in: B. Pyadyshev (ed.), *We the Peoples of the United Nations*, 1995, 52 speaks of "... adding Germany, Japan, India or Brazil as well as Nigeria ..." and "... vest them with the same powers ... as those of permanent Security Council members under the Charter".

²³⁹ *United States of America*, see note 214, 3; see also J. Snyder, "UN Security Council Reform: The U.S. Government View", in: East-West Center Honolulu, see note 4.

²⁴⁰ See, however, Foreign Secretary *M. Rifkind*: "... Germany and Japan ... should benefit from an expansion of the permanent members, with the wider rights that entails ..." (UK Press Release 086/95 of 26 September 1995; for *China*, see Zhang Jing, "Reform des UN-Sicherheitsrats", *Beijing Rundschau* 32 (1995), 19 seq.

3. Premises Regarding Changes in the Scope and Extension of the Right of Veto

Given its obvious sensitivity, any decision on an extension of the right of veto will depend to a large measure on decisions in other areas, i.e. will not be decided before the very end of a political negotiation process. The following premises may be important in this context:

- The maintenance of the status quo, i.e. non-extension of the veto to new permanent members would have two consequences: first, it would lead to a different treatment of permanent members, with little if any rational justification. Second, it would reaffirm the legitimacy of the circle of five member states made permanent in 1945, this time by an agreement based on a membership of 185 member states including those who were admitted to the Organization after the last Council reform in 1963. Any further reform of the veto concept in the future would become most unlikely. In other words, the non-extension of the veto would strengthen rather than help to curtail it.
- An extension of the veto will have to take into account that a large majority of member states is unhappy with the way the veto has been handled until now. Modifying its scope would be a popular measure and could help to solve a number of open questions in this context²⁴¹. At the same time, it could represent the beginning of a process of gradual elimination of the veto. Extending the number of potential veto beneficiaries to more than the present few countries would contribute to this end, too, since the veto would lose its elitist and quasi-sanctuary character.
- The consent of all permanent members (P5) is a *conditio sine qua non* for any adaptation of the veto right (Articles 108, 109 para. 2). First cautious steps in the form of a dialogue seem possible without compromising the P5 and their genuine interests. If efforts to convince the P5 of the appropriateness of such an approach failed, other innovative options could be considered, for example legally binding and irrevocable unilateral declarations by new permanent members on how to use a veto given to them. Such declarations might incorporate some of the elements that have been proposed to make the veto more rational.
- Equal treatment of all permanent members is a basic condition. However, it can be argued that the Assembly cannot provide a privilege as sensitive as the veto right on a “*carte blanche*” basis. Possible different

²⁴¹ Cf. Institute of International Studies, University of California, see note 1, 29.

treatment might therefore be conceivable in cases where the Assembly²⁴² cannot identify a possible permanent member beforehand.

VI. Amendments to the Charter: Procedural Aspects

Amendments to the Charter may be considered to be technical and rather secondary elements. However, they are regarded as relevant elements of Council reform and were discussed at length in the Working Group²⁴³. Their importance²⁴⁴ stems from the fact that the procedure to amend the Charter is an inherent element of any reform measure. Amendment procedures determine the necessary majority to adopt an amendment. They might also indicate to what degree individual reform steps require a formal amendment to the Charter.

The Charter provides two procedures for formal amendments. Article 108 stipulates that amendments to the present Charter would come into force after adoption “by a vote of two thirds of the members of the Assembly and ratification by two thirds of the members of the United Nations, including all the permanent members of the Council.

Article 109 para. 2 provides for rather the same²⁴⁵ procedure, but places it in the context of a General Conference of the Members of the United Nations to be convened by the Assembly and the Council pursuant to Article 109 para. 1. Both procedures could be applied in principle for the reform of the Council. However, the fact that the reform of the Council concentrates on composition and working methods of one single body and does not involve an entire review of the present Charter as envisioned in Article 109 suggests that Article 109 is not relevant here. It should also be noted that, since 1955, all attempts to convene such a General Conference have failed²⁴⁶. Article 108 seems therefore preferable, considering that the essential conditions for adoption of a reform — a two thirds majority in the Assembly and ratification by two thirds of its members, including all

²⁴² The consent of all existing permanent members would be an additional necessary element.

²⁴³ See Doc.A/50/47 of 13 September 1996, para. 33.

²⁴⁴ See e.g. Caron, see note 124, 569 et seq.

²⁴⁵ Koroula/Kanninen, see note 27, 343; for differences in details, see M. Schröder, “Amendment to and Review of the Charter”, in: Wolfrum, see note 1, Vol.1, 20 et seq. (21/22).

²⁴⁶ The Committee established by A/RES/992 (X) of 21 November 1955 “... to consider the question of fixing a time and place ... for the Conference ...” concluded its work in 1967 without substantive results, cf. A/RES/2285 (XXII) of 5 December 1967; Seidel, see note 16, 35.

the permanent members of the Council — are not different from those prescribed in Article 109²⁴⁷. The previous Council reform²⁴⁸ and consecutive attempts for a Council reform²⁴⁹ were based on Article 108 too.

Article 108 only needs to be considered in the case of a *formal* amendment to the Charter. There can be little doubt that the procedure prescribed in Article 108 is not necessary for measures which do not explicitly change Charter provisions. The final report of the Working Group states that improvements in the Council's working methods and transparency and its relationship with non-members of the Council and other principal UN organs may come into effect "otherwise"²⁵⁰. One possibility would be to adapt the provisional rules of the Council. Another would be recommendations by the Assembly with subsequent consideration and adoption by the Council. The implementation of individual measures by way of secondary United Nations law would have the advantage that amendments to Charter provisions, which entail a number of obstacles (voting quora, need of ratification etc.) could be avoided. On the other hand, measures implemented in this way would not automatically be compulsory for the Council or could be reversed by the Council at any time. Also, elements of reform models or packages that do not need a formal Charter amendment would need to be identified first²⁵¹. However, in the event that political and legal considerations lead to *both* formal amendments to the Charter and procedural reforms, the necessary steps should take place in a timely and parallel way. This would correspond to the mandate given to the reform Working Group. Politically, it would facilitate achieving a far-reaching reform package. This last aspect is often overlooked²⁵².

²⁴⁷ Article 109 para. 1 would require an additional two-thirds vote of the Assembly and a vote of any nine members of the Council to fix date and place of the General Conference.

²⁴⁸ See Chapter I para. 1.

²⁴⁹ See Chapter I para. 2 and draft Resolution A/34/L.57 of 11 December 1979, para. 1 ("... Decides to adopt, in accordance with Article 108 of the Charter of the United Nations ...").

²⁵⁰ Doc.A/50/47 of 13 September 1996, para. 33.

²⁵¹ Identifying elements which do not need Charter amendments might turn out to be more difficult than it seems. For instance, one could rightly argue that rotation systems for Council membership must be formally laid down in the Charter. Similar questions might arise with regard to new binding institutional links between the Council and the membership or other principal organs, since they may alter the inter-organ balance enshrined in the Charter.

²⁵² Czech plans in summer 1996 to advance their proposal regarding Article 31 and a Colombian Draft Resolution regarding the Report of the Security Council adopted on 17 December 1996 (Doc.A/51/L.64) may

VII. Review of the Charter

The issue of re-examining Charter amendments and related reform measures after a given time is discussed under the heading *periodic review*²⁵³. Like amendments to the Charter, it is a technical but important element which can add a time component to Charter amendments by way of a review after a certain period.

The value of a periodic review is shown in a German proposal for a *Periodic Review Clause* (PERECLA) presented in May/July 1996 and referred to by the report of the Working Group²⁵⁴. The key element of PERECLA is the review, including the possibility of reversion, of decisions made within the framework of a Council reform, such as decisions on new permanent members, but also on any other reform elements. PERECLA would guarantee that new permanent members will not have an irreversible status, but be accountable²⁵⁵ to the general membership. Other members could qualify for permanent membership and replace them at the time of review²⁵⁶. The clause could provide the necessary flexibility to take into account new political and economic realities²⁵⁷. Almost all groups of states involved in the discussion supported such a review element²⁵⁸. The report mentions others that regarded such a provision as unnecessary but states that PERECLA “could be an important element in facilitating the efforts towards reaching final agreement on the issues within the mandate of the Open-ended Working Group”²⁵⁹. Technically, PERECLA could be implemented in the form of an amendment to Article 23 referring to a review process in accordance with Article 108 after a certain period. Periods of 10, 12, 15, 20 or 10–20 years have been mentioned during the discussions, making 15 years a reasonable and justifiable²⁶⁰ compromise. It goes without saying that new permanent mem-

serve as an example that efforts to implement transparency measures in an isolated way rather weaken their potential outcome.

²⁵³ Doc.A/50/47 of 13 September 1996, para. 34.

²⁵⁴ *Ibid.*

²⁵⁵ Accountability as fundamental principle: South Centre (ed.), *Reforming the United Nations. A view from the South*, 1995, 12.

²⁵⁶ This concept is comparable to the idea of *quasi*-permanent membership, cf. Hoffmann, see note 4, 58.

²⁵⁷ *Germany*: working paper, Doc.A/50/47/Add. 1 of 9 September 1996, Annex XIV, 54.

²⁵⁸ *Non-Aligned Countries, Nordic Countries, Organization of African Unity, Informal Group of Small and Medium-sized Countries* and others.

²⁵⁹ Doc.A/50/47 of 13 September 1996, para. 34.

²⁶⁰ 15 years is half the time passed since the last reform came into force

bers would not be entitled to use a possible veto right regarding their own review²⁶¹.

VIII. Time-Scale and “Package” Approach

Predictions regarding a reform time-scale and “package” would be speculative²⁶² and of a merely political nature. Multilateral decision processes are by nature difficult to calculate. However, it should be possible to make certain assumptions.

It will be five years in 1997 since the discussion on how to reform the Council was initiated. In the light of earlier efforts since the late seventies, the discussion has been going on even longer. All member states have had abundant opportunities to state their views and form opinions. Not all of them have presented a concluding statement, but all have contributed to the discussion in one way or the other. The member states were also able to take into account studies and proposals made by non-governmental organizations. The result has been two dozens concrete proposals on how to reform the Council. In other words, all participants have taken advantage of the time available. A look at the reform of the Council in 1963 shows that at that time there was no consensus at the time of decision even after several years of discussions. All this indicates that the transition from discussion to concrete negotiations with a concluding decision is imminent. If the discussions continued, however, the most likely result would be growing scepticism and a diminished chance of realizing reform. This would benefit only those countries which are interested in maintaining the status quo. It would ultimately lead to a failure of the entire reform process since half or fallback-solutions which basically confirm the status quo do not appear to have any chance of being adopted²⁶³.

(1965/1996).

²⁶¹ So explicitly *Germany*, see note 257, para. 8.

²⁶² Cf. Mantanle, see note 56, 51; W. Barton, “Commentary on Recommendations to the Commission on Global Governance”, in: Fawcett/Newcombe, see note 187, 306.

²⁶³ So positions expressed by *France, United Kingdom and United States of America*. Cf. the statements of Ambassador E. Gnehm (in the 46th Plenary Mtg., *Official Records*, Doc.A/51/PV. 46, 17) and B. Richardson (USUN Press release 26-(97) of 11 March 1997) (“... permanent membership for Germany and Japan is a sine qua non ...”). Partial solutions would neither be in line with the principle of effectivity of the (new) Council nor the mandate of the Working Group which refers to “the changes in international relations”, see note 38. The most important of those changes

“Packages” are a well-known and useful procedural instrument in complex multilateral negotiation processes. They help the parties to agree to individual elements on the basis of *do ut des*²⁶⁴. The Working Group report refers explicitly to the “package” approach in regard to Council reform when it stated, that the “... final agreement ... should comprise a *comprehensive package*”²⁶⁵.

The “package” approach has a second dimension, however, which stems from the fact that reform of the Council is only one of five reform areas in which the Assembly has established Working Groups dealing with different reform issues. The four other Groups are the *Ad-hoc-Open-ended Working Group on the Agenda for Development*²⁶⁶ (social and economic development), the *High-level Open-ended Working Group on the Financial Situation of the United Nations*²⁶⁷ (United Nations finances), the *Open-ended High-level Working Group on the Strengthening of the United Nations System*²⁶⁸ (Secretariat, General Assembly and other reform areas) and the *Informal Open-ended Working Group on an Agenda for Peace*²⁶⁹ (international security and peace). Links between the individual Working Groups are obvious. The question of how to make the report of the Security Council to the General Assembly more transparent and useful, for example, is being dealt with by two Working Groups (*Security Council, Strengthening of the United Nations System*). The Working Group on the Security Council refers in its discussions continually to the work of the Working Group on the Financial Situation of the United Nations in relation to financial aspects. Examples of references are: “The possibility should be envisaged of charging the more frequently and regularly rotating members an additional percentage on their financial contributions to peace-keeping operations, equivalent to half the percentage paid by the permanent members for the same purpose. This would greatly help the United Nations to overcome its financial crisis ...” (*Italy*²⁷⁰); “... there should be introduced a new sub-category of financial permanent membership ... This is strongly motivated by the desperate financial emergency presently being undergone by the Organization.” (*Belize*²⁷¹); “Regional permanent members together with other members

is the rise of countries with a new global role.

²⁶⁴ “Balance of interests”: Kennedy/Russett, see note 1, 269.

²⁶⁵ Doc.A/50/47 of 13 September 1996, para. 17.

²⁶⁶ A/RES/49/126 of 19 December 1994.

²⁶⁷ A/RES/49/143 of 23 December 1994.

²⁶⁸ A/RES/49/252 of 14 September 1995.

²⁶⁹ Established informally in 1995.

²⁷⁰ *Italy*, Doc. A/50/47/Add. 1 of 9 September 1996, Annex IX, para. 7 (g).

²⁷¹ *Belize*, *ibid.*, Annex XV, para. 23.

in the region will share the financial costs of regional representation in the Security Council" (*Malaysia*²⁷²); "The lack of tangible progress in the work of the Group has had an adverse effect on the negotiations on all other aspects of the Organization's future activities. The work of the General Assembly working groups on the financial situation of the Organization, ..." (*Ukraine*²⁷³). It seems likely that both dimensions may, in the end, play a not insignificant role in the political decision-making process²⁷⁴. A body coordinating the different packages has not emerged so far²⁷⁵.

IX. Conclusions

At the beginning of 1997, the discussion on the reform of the Security Council has entered an important and probably decisive phase. Without having attracted too much attention from the public, the discussions in the specific United Nations fora have resulted in almost two dozen concrete reform proposals. The most popular among them are now awaiting the necessary²⁷⁶ decision by the member states. More than four fifths of the proposals favour — or at least do not oppose — an increase in both membership categories of the Council, permanent and non-permanent. An enlargement will have to be evenly balanced between the South (developing countries) and the North (developed countries). The North seems to have reached general agreement on its new permanent representatives. The South, however, has not yet decided how its representatives are to be selected and what the configuration of its permanent seats in the Council should be. The question of the future scope of the veto and its extension to new permanent members has not yet been decided, either. None of these decisions is easy. None of them will be made easier by further in-depth considerations nor will full consensus be achieved. However, general agreement on a final agreement can be reached. The agreement will have to comprise a comprehensive package including composition and size, decision-making, including the veto, working methods and transparency and other matters such as amendments to and periodic review of the relevant Charter provisions. If the United Nations wants to enter a new era and meet the challenges which lie ahead, it will require a strengthened

²⁷² *Malaysia*, *ibid.*, Annex XVI, para. 9.

²⁷³ *Ukraine*, *ibid.*, Annex XVIII, para. 1.

²⁷⁴ Cf. Koroula/Kanninen, see note 27, 345.

²⁷⁵ T. Kanninen, *Leadership and reform*, 1995, 44/45 et seq., 251 et seq. stresses the potential key role of the Secretary-General.

²⁷⁶ Stanley Foundation, see note 2, 30.

and reorganized Council. Reform of the Security Council will set a positive precedent for other reform areas. It might become the first comprehensive renewal of a principal organ in the history of the Organization.