Directions in Security Council Reform

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The important thing in thinking about international affairs is not to make moral judgments or apportion blame but to understand the nature of the forces at work as the foundation for thinking about what, if anything, can be done.

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I. Introduction

Genesis of the United Nations

The United Nations Organization emerged, in an oasis of reason and idealism, from the tragedy and turmoil of the Second World War.[1] It was formally established on 24 October 1945, when its basic constitutive instrument, the UN Charter (the Charter), entered into force.[2] The primary purpose behind the

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** In Finkelstein LS (ed), *Politics in the United Nations System* (1988).

1 Childers E and Urquhart B, *Renewing the United Nations System* (1994), p 11. For discussion on the history and role of the United Nations in international affairs see Riggs RE and Plano JC, *The United Nations: International Organization and World Politics* (1988), pp 1–19; Wood RS (ed), *The Process of International Organization* (1971), pp 1–71; Simma B et al (eds), *The Charter of the United Nations: A Commentary* (1994); Roberts A and Kingsbury B (eds), *United Nations, Divided World: The UN's Roles in International Relations* (1988), pp 1–31; Bailey SD, *The United Nations: A Short Political Guide* (1989); Baehr PR and Gordenker L, *The United Nations in the 1990's* (1992), pp 1–31; Boyd A, *Fifteen Men on a Powder Keg: A History of the UN Security Council* (1971).

2 Roberts and Kingsbury, n 1 above, p 4. Although I have used the term "constitutive instrument" the UN Charter should not be confused with a Constitution in a domestic law sense. On the contrary, it is vital to bear in mind the character of the Charter as something in the nature of an agreement between sovereign States, rather than as a purported basis for global governance under the central authority of the UN. The UN:

> while operating in an evolving world is not itself fundamentally concerned to restructure or replace the system of sovereign states so much as to ameliorate the problems spawned by its imperfections (ibid, pp 3–4).

See also Alston P, "The Security Council and Human Rights: Lessons to be Learned from the Iraq-Kuwait Crisis and its Aftermath" (1992) 13 *Australian Year Book of International Law* 107 at 174: "The role of global 'policeman' was clearly and strongly rejected [*viz* the Security Council, during the San Francisco debates] as being both undesirable and unworkable". However, see also Urquhart B,

formation of the UN was to promote peace and minimise the possibility of the world plunging again into global conflict of the nature and scale just seen.[3]

Structure

Six "principal organs" of the UN were established by the Charter: the General Assembly, the Security Council, the Secretariat, the International Court of Justice (ICJ), the Trusteeship Council, and the Economic and Social Council (ECOSOC).[4] Of the six it is the 15-member Security Council that is vested by UN Member[5] States with primary responsibility for the maintenance of international peace and security,[6] making membership much sought after.

Security Council membership and the "veto" power

The Security Council consists of five permanent members and ten non-permanent members. The so-called "permanent five" (P5), the USA, China, Britain, France and Russia[7] are in a privileged position not only by reason of their permanent presence on the Council,[8] but also by reason of their ability to "veto" any draft resolution on "substantive" matters being considered by the Council.[9]

"Learning from the Gulf" in Bustelo M and Alston P (eds), *Whose New World Order: What Role for the United Nations?* (1991), p 11 at 17: "The United Nations...must be brought to maturity to take that role [of world arbitrator and policeman]".

3 The purposes of the UN are set out in Article 1 of the Charter. Paragraphs 1(1) and (2) refer expressly to the maintenance of international peace and security and strengthening of universal peace. See also White ND, *The United Nations and the Maintenance of International Peace and Security* (1990), pp 3–5.

4 Roberts and Kingsbury, n 1 above, p 5. See Chapters IV, V, X, XIII, XIV and XV of the Charter.

5 Hereafter "Members" with a capital "M" refers to Members of the UN, whereas "members" with a lower case "m" refers to members of the Security Council.

6 The terms of Article 24(1) make it clear that the conferral of primary responsibility for international peace and security by Member States on the Security Council is for the express purpose of ensuring "prompt and effective action by the United Nations", and further. that in carrying out its duties in accordance with this responsibility the Security Council acts "on behalf of" all Member States. See Nicol D, *Paths to Peace: The UN Security Council and its Presidency* (1981), p 3.

7 On 24 December 1991 Russia "slipped into" the seat formerly occupied by the USSR, to a mixed reaction from the UN Membership (Smith MD, "Expanding Permanent Membership in the UN Security Council: Opening a Pandora's Box or Needed Change?" (1993) 12 *Dickinson Journal of International Law* 173 at 188). Smith avers that the remaining P5 members accepted this, although China did so reluctantly, and that the legality of Russia's action was questionable, although pragmatically speaking it did have the effect of providing a simple solution to a potentially complicated problem.

8 Compare non-permanent members who, under Article 23(2) of the Charter, are entitled [on election by the General Assembly according to criteria specified under Article 23(1)] to serve only a two-year term and are not eligible for immediate re-election.

9 Under Article 27(3) decisions on "non-procedural" (or "substantive") matters are made by an affirmative vote of nine members, *including the concurring votes of the five permanent members.* This is the source of the so-called "veto power" of

The victorious allies from the Second World War bestowed permanent membership upon themselves with the intention of ensuring that, in an anticipated atmosphere of enduring great power cooperation, those who had emerged victoriously in war would "remain and rule victoriously in peace".[10] The P5 reserved the veto power to themselves, despite heated objections from smaller and middle powers at San Francisco, as a sort of "safety fuse" in the UN system, to ensure that it would not be possible for the organisation to go to war with one of the great powers under Chapter VII of the Charter by a simple majority vote in the Security Council.[11]

However "the marriage of convenience which resulted in unanimity during the war was terminated after a brief honeymoon in San Francisco...Collective security[12] was subservient to the national interests of the Great Powers, who

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the P5, reflecting a "highly realistic belief that UN action will not be possible if one of the great powers seriously dissents" Roberts A and Kingsbury B, *Presiding Over a Divided World: Changing UN Roles, 1945–1993* (1994), p 18. Their power is strengthened further by the fact that, in the event of a dispute amongst members as to whether a proposal or draft resolution is "procedural" or "substantive", the decision regarding that vital preliminary question itself must be taken by a vote of nine members, *including the concurring votes of the permanent members.* This has been termed the "double veto" power: see Bailey SD, *The Procedure of the UN Security Council*, 2nd ed (1988), ch 5, esp pp 200–24, and Simma, n 1 above, pp 430–69. Power is further enhanced by means of the "hidden veto" or "indirect veto", whereby a permanent member wishing to defeat a proposal without exercising its veto directly may persuade enough members of the Council to abstain so that the proposal fails to secure the requisite number of affirmative votes (Bailey, n 1 above, pp 223–24 and Simma, n 1 above, p 466; the hidden veto can also be used to defeat the P5's wishes, of course, in the event that they fail to persuade at least four other Council members to concur). The measure of voting power does not stop there, however; we will never know for sure how many proposals were never introduced merely because of a *threat* by a permanent member of the use of its veto (Bailey, n 1 above, p 213). See also Caron DD, "The Legitimacy of the Collective Authority of the Security Council" (1993) 87 *American Journal of International Law* 552 at 577–87 for a discussion on the so-called "reverse veto", used by Caron to describe a situation of use or threatened use of the veto to block the Council from terminating or otherwise altering an action that has already been authorised.

10 Harrod J and Schrijver N, *The UN Charter Under Attack* (1988), p 2; Smith, n 7 above, p 173.

11 "But righteousness in victory was not the only factor driving the victors to insist that they should be members of the Security Council in perpetuity, and should forever have a veto. Perhaps it was partly because they foresaw the possibility of changes in the relative power of States that the victors reserved the veto power to themselves" (Commission on Global Governance, *Our Global Neighbourhood* (1995), p 235). See also White, n 3 above, p 5, to similar effect; Roberts and Kingsbury, n 9 above, p 18, fn 10. Clearly the veto, as a matter of *realpolitik*, is responsible in no small measure for continuing "great power" participation in the UN system (Reisman WM, "The Legal Effect of Vetoed Resolutions" (1980) 74 *American Journal of International Law* 904 at 906–07, also Reisman WM, "The Case of the Nonpermanent Vacancy" (1980) 74 *American Journal of International Law* 907 at 913).

12 The term "collective security" normally refers to a system in which each State in the system accepts that the security of one is the concern of all and agrees to join

protected those interests by the power of veto".[13] By contrast the eventual collapse of the Berlin Wall led to an unprecedented atmosphere of P5 cooperation and consensus, facilitating multilateral action under UN auspices in ways never previously contemplated.[14] But the thawing of East/West relations has been a mixed blessing, unleashing pent-up violence and permitting the brutal expressions of historical grievance within States and regions formerly under superpower hegemony,[15] creating a new set of demands and challenges for the Security Council in the so-called "New World Order".[16] With other comparatively recent trends such as decolonisation (contributing to an increase in UN membership from 51 (in 1945) to 185 (today)),[17] the rapid rise of tiger economies in Asia and a shift in the overall global power balance,[18] it is little wonder that the calls for the Security Council to change its composition and practices in order to properly reflect the world of today, rather than the world of 1945, have increased dramatically in recent times.[19]

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in a collective response to aggression (Roberts and Kingsbury, n 9 above, p 38; Falk RA, Kim SS and Mendlovitz SH, *The United Nations and a Just World Order* (1991), pp 144–45). The implementation of this ideal in practice has arguably been "selective" rather than "collective" (see Roberts and Kingsbury, n 9 above, pp 38–39 for a discussion on fundamental flaws relating to collective security in practice, and also Negretto GL, "Kant and the Illusion of Collective Security" (1993) 46(2) *Journal of International Affairs* 509 at 516–22. In contrast to the traditional State-centric ethos, a "human" based concept of international security has been gaining currency in recent times (Commission on Global Governance, n 11 above, pp 80–82, extending the concept to "security of the planet"; Carlsson I, "Roles for the UN in International Security after the Cold War" (1995) 26(1) *Security Dialogue* 7 at 9–11; *An Agenda for Peace*: Report of the Secretary-General, UN Doc A/47/277 (June 1992), pp 8–9).

13 White, n 3 above, p 5.

14 See pp 291–94 below. Compare Childers and Urquhart, n 1 above, p 39.

15 Childers and Urquhart, n 1 above, p 107; Weiss TG, "Intervention: Whither the United Nations?" (1994) 17(1) *Washington Quarterly* 116 at 109; Weiss TG, "The United Nations and Civil Wars" (1994) 17(4) *Washington Quarterly* 139.

16 This was a phrase coined by Mikhail Gorbachev in 1988 (*a propos* post-Cold War superpower cooperation) and was given currency by George Bush during the Gulf War (see Evans G, "The New World Order and the United Nations" in Bustelo and Alston, n 2 above, p 1).

> Just as historians have delighted in pointing out that the Holy Roman Empire of the Middle Ages was neither holy, nor Roman, nor an empire, so too have there been many heard to claim that the new world order is not very new, nor very orderly, and not especially global (ibid, pp 1–2).

Indeed some have suggested that the term "New World Disorder" is apposite (Rollason R, "Implications of the Gulf War for the Third World" in Bustelo and Alston, n 2 above, p 110 at 113; Holmes KR, "New World Disorder: A Critique of the United Nations" (1993) 46(2) *Journal of International Affairs* 323 at 324–25; note also "*Divided states* [rather than 'United Nations'] might be a brutally accurate if uninspiring characterisation", Roberts and Kingsbury, n 9 above, p 29).

17 Boutros-Ghali, B: address to the National Press Club, Canberra, 28 April 1995.

18 Smith, n 7 above, p 1.

19 Background briefing: transcript of interviews with *inter alia* Senator Gareth Evans, Brian Urquhart and Major General Lewis McKenzie, 24 May 1994; Declaration Adopted by the Ministers for Foreign Affairs of the Organization of African Unity at New York on 29 September 1994, UN Doc A/49/479 (29 September 1994);

Framework for reform

On 11 December 1992 the General Assembly requested that Secretary-General Boutros-Ghali invite submissions and report on the "Question of equitable representation on and increase in membership of the Security Council".[20] On 3 December 1993 the General Assembly decided to establish an open-ended working group to consider all aspects of this question, and other matters related to the Security Council.[21] The purpose of this paper is to look at the various proposals that have recently been put in response to GA Res 47/62 and, bearing in mind the practical requirement for consensus decision-making in matters of such significance,[22] to attempt to identify common ground within those proposals as a basis for assessing the likelihood of reform. This paper will focus principally on two matters, expanding Security Council membership and the veto, although a number of procedural issues will be touched on briefly within a suggested framework for reform. Part II of this paper briefly canvasses the functions and powers of the Security Council in their contemporary operation and looks at the case for change. Part III focusses on the positions and attitudes that certain influential States (particularly the P5) and groups of States (particularly the Non-Aligned Movement (NAM))[23] have taken in relation to this debate, a critical exercise in any evaluation of likelihood of reform.[24] On the basis of the positions canvassed in Part III and certain other recent

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Declaration of Rio Group on *inter alia* the Question of Equitable Representation On and Increase In the Membership of the Security Council, UN Doc A/49/422 (22 September 1994); Non-Aligned Movement Position Paper dated 13 February 1995, on Reform of the Security Council (circulated to the Working Group on the Question of Equitable Representation On and Increase in the Membership of the Security Council on 22 February 1995); Evans G, "United Nations: Evans Contributes to Reform Debate" (1993) 2(18) *Insight* 7–8; Resolution Adopted by the General Assembly on the "Question of Equitable Representation On and Increase In the Membership of the Security Council", UN Doc A/RES/47/62 (10 February 1993); Joint Communique from the members of the Summit-level Group for South-South Consultation and Cooperation ("Group of Fifteen"), UN Doc A/49/119 (March 1994).

20 UN Doc A/RES/47/62, n 19 above, (hereinafter GA Res 47/62).

21 GA Res 48/26 (3 December 1993).

22 Wilenski P, "Reforming the United Nations for the Post-Cold War Era" in Bustelo and Alston, n 2 above, p 122 at 124–25; UN Doc A/49/PV.29, GAOR (49th Sess) 13 October 1994, p 12; UN Doc A/49/PV.30, GAOR (49th Sess) 13 October 1994, p 11; Roberts and Kingsbury, n 1 above, pp 205–08. Article 108 of the Charter requires P5 approval to Charter amendments (although not all reform proposals necessitate amendment to the Charter), in addition to a two-thirds majority of the General Assembly. See Chai FY, *Consultation and Consensus in the Security Council* (1971), pp 41–44 for a discussion on the merits and drawbacks of consensus decision-making.

23 NAM is a caucusing group of approximately 100 or so States, many of whom are also G77 members. The desire to influence decisions of the UN and its organs and agencies is now the most important reason for its existence (Riggs and Plano, n 1 above, p 83). For further history see (ibid) pp 79–84 and Finkelstein LS (ed), *Politics in the United Nations System* (1988), pp 20–23. NAM has been referred to by a recent US permanent representative to the UN as "the most important bloc of all" because of its size and effectiveness (Riggs and Plano, n 1 above, p 82).

24 See n 22 above, esp Article 108 of the UN Charter.

geopolitical developments, Part IV concludes that, within the parameters of an international society of sovereign States,[25] a window of opportunity exists for constructive and widely acceptable reform, in an appropriate conceptual framework.

II. Functions and Powers of the Security Council

Charter provisions

The powers the Charter grants to the Council give the P5 significant authority, making membership a vital issue.[26] Although only 15 UN Members sit on the Security Council at any one time, all UN Members are bound by its decisions.[27] As part of its peace-keeping duties,[28] the Council has the power to "investigate any dispute, or any situation which might lead to international friction or give rise to a dispute, in order to determine whether the continuance of the dispute or situation is likely to endanger the maintenance of international peace and security".[29] When a dispute arises, "negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or

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25 And likely to remain so (Roberts and Kingsbury, n 9 above, p 141). Sovereignty is parroted with regularity the world over whenever vital national interests are seen to be threatened by Security Council interference. The term "sovereignty" itself, however, is incapable of precise definition; it has "no fixed content as to be automatically applicable" in a given instance; rather, it is a claim that usually arises in the context of disputes about the existence of certain individual rights, liberties and competences (Koskenniemi M, *From Apology to Utopia: The Structure of International Legal Argument* (1989), pp 206–11). In other words, it is a term conveying little normative content, taking its colour from the context in which it is found. Whatever the term means in a given context, it is widely argued that the issue of State sovereignty is diminishing in importance with the ever increasing interdependence of States (see n 39 below) and emergence of other players in so-called "civil society"—Commission on Global Governance, n 11 above; Schreuer C, "The Waning of the Sovereign State: Towards a New Paradigm for International Law?" (1993) 4 *European Journal of International Law* 447; Weiss TG and Chopra J, "Sovereignty Is No Longer Sacrosanct: Codifying Humanitarian Intervention" (1992) 6 *Ethics and International Affairs* 95; Evans G, "Ensuring Peace: The Future of the United Nations", address to the Australian College of Defence and Strategic Studies, Canberra, 16 March 1995, press release, Minister for Foreign Affairs, 16 March 1995; Carlsson, n 12 above, p 17; *An Agenda for Peace*, n 12 above, p 9; Bell C (ed), *The United Nations and Crisis Management: Six Studies* (1994), p 26.

26 See p 286 esp nn 6 and 9 above.

27 UN Charter, Article 25. A certain degree of non-member participation in Council activities is permitted under the Charter, in specific circumstances (see Articles 31 and 32).

28 No specific authority exists for peacekeeping under the Charter. Dag Hammerskjold referred to the source of authority as "Chapter-6-and-a-half", in other words, the middle ground between Chapter VI (Peaceful Settlement of Disputes) and Chapter VII (Action with Respect to the Peace, Breaches of the Peace, and Acts of Aggression).

29 UN Charter, Article 34.

arrangements, or other peaceful means" are to be used first to settle it,[30] failing which stronger action may be taken to maintain the peace.[31]

Security Council jurisdiction and "international relations"

Critically, it is for the Security Council itself to determine whether any particular situation constitutes a "threat to the peace", and to decide what measures should be taken in accordance with Articles 41 and 42 to maintain or restore international peace and security,[32] irrespective of whether the situation in question is "essentially within the domestic jurisdiction of any State".[33] In the case of the *Decrees on Nationality* the PCIJ stressed that "the question whether a matter is solely within the domestic jurisdiction of the State is a relative question, the answer to which depends on the development of international relations".[34] In the exercise of its broad discretion as to whether a "threat to the peace" exists (and, accordingly, whether "domestic jurisdiction" of any State may be overridden), the Council is required to act *bona fide* and *intra vires*, in accordance with the specific procedural and substantive standards spelt out in Chapter VII of the Charter.[35] The extent to which the Council's discretion is subject to judicial review by the ICJ is not clear.[36] The Council in recent years

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30 UN Charter, Article 33.

31 UN Charter, Articles 39, 40, 41 and 42. Enforcement measures may include the interruption of "economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations" (Article 41), and in the event that these prove inadequate may extend to "such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security" (Article 42).

32 UN Charter, Article 39.

33 UN Charter, Article 2(7):

> Nothing contained in the present Charter shall authorise the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.

Article 2(7) defines the limits of the UN's delegated discretionary powers and consequently is the "touchstone of the Organisation's legitimacy" (Franck TM, "The *Bona Fides* of Power: Security Council and Threats to the Peace" (1993-III) 240 *Hague Academy of International Law, Collected Courses* 189 at 190.

34 *National Decrees Issued in Tunis and Morocco* (1923) PCIJ Ser B, No 4, p 24. See also Simma, n 1 above, pp 141–42; Franck, n 33 above, p 189; Pease K and Forsythe D, "Human Rights, Humanitarian Intervention, and World Politics" (1993) 15(2) *Human Rights Quarterly* 290 at 290 and 293–94; Alston, n 2 above, p 138.

35 Franck, n 33 above, p 191; although the Charter does not formally oblige the Council to act "with due regard for justice and principles of international law"—Alston, n 2 above, p 139 (cf McDonald RStJ, "Changing Relations Between the International Court of Justice and the Security Council of the United Nations" (1993) 31 *Canadian Yearbook of International Law* 3 at 25).

36 This question has arisen tangentially in cases brought in the ICJ by Libya in 1992 and Bosnia-Herzegovina in 1993 (Roberts and Kingsbury, n 9 above, p 55). The Libyan case has been the subject of much controversy (see Reisman WM, "The Constitutional Crisis in the United Nations" (1993) 87 *American Journal of International Law* 83; McWhinney E, "The International Court as Emerging

has developed a very broad interpretation of "threat to the peace" (with consequent narrowing of the "domestic jurisdiction" of States under Article 2(7)).[37] As evidence of this, a Presidential statement following a Summit meeting of the Council on 31 January 1992 declared *inter alia* that:

> The absence of war and military conflicts amongst States does not in itself ensure international peace and security. The non-military sources of instability in the economic, social, humanitarian and ecological fields have become threats to peace and security.[38]

Constitutional Court and the Co-ordinate UN Institutions (Especially the Security Council): Implications of the Aerial Incident at Lockerbie" (1992) 30 *Canadian Yearbook of International Law* 261; McDonald, n 35 above; Herdegen MJ, "The 'Constitutionalization' of the UN Security System" (1994) 27 *Vanderbilt Journal of Transnational Law* 135; Gowland-Debbas V, "The Relationship Between the International Court of Justice and the Security Council in Light of the Lockerbie {*Libya v United States* [1992] ICJ 114; *Libya v United Kingdom* [1992] ICJ 1} Case" (1994) 88 *American Journal of International Law* 643; Evans SS, "The Lockerbie Incident Cases {[1992] ICJ 1; [1992] ICJ 114}: Libyan-Sponsored Terrorism, Judicial Review and the Political Question Doctrine" (1994) 18 *Maryland Journal of International Law and Trade* 21. Franck (n 33 above, p 220) argues that "the majority and dissenting opinions seem to be in agreement that there are such limits [on the Security Council's discretion] and that they cannot be left exclusively to the Security Council to interpret;" cf Bailey, n 9 above, pp 286–87. As a practical matter, Bailey notes that of the few cases that have been referred to the ICJ, none of the Orders made have been enforced by the Security Council under Article 94(2). Therefore political or diplomatic, rather than judicial, resolution seems to have primacy in international relations. See also n 148 below.

37 Haiti is a recent example, where Security Council authority for Chapter VII action (SC Res 940 of 31 July 1994; China and Brazil abstained from the vote) was based on the domestic actions of General Raoul Cedras' dictatorial political regime, rather than any tangible connection with international peace and security—Carlsson, n 12 above, p 10; Freudenschuß H, "Between Unilateralism and Collective Security: Authorizations of the Use of Force by the UN Security Council" (1994) 5 *European Journal of International Law* 492 at 520–21. The authorisation of safe havens and no fly zones in Iraq following the gulf war also took Chapter VII jurisdiction to new limits (Franck, n 33 above, pp 205–06 and 211). Further, prior to UNOSOM (S/RES/794 of 3 December 1992) the "cross border" ramifications of the situation in Somalia were far from clear (Freudenschuß above, pp 512–19; Franck, n 33 above, pp 215–16). Further, the authorisation of sanctions in the Rhodesian and South African cases "may be said to have established the principle that a 'threat to the peace' can be created by the conduct of a Government towards its own citizens which grossly and persistently violates firmly established international law" (Franck, n 33 above, pp 204 and 205–18). See also Alston, n 2 above, p 172, and the French-sponsored SC Res 929 (with 5 abstentions—New Zealand, China, Brazil, Pakistan and Nigeria) authorising use of "all necessary means" to achieve humanitarian objectives in Rwanda (Freudenschuß above, pp 521–27).

38 UN Doc S/23500, Note by the President of the Security Council dated 31 January 1992; see also Sands P, "Enforcing Environmental Security: The Challenges of Compliance with International Obligations" (1993) 46(2) *Journal of International Affairs* 367, and Commission on Global Governance, n 11 above, pp 84–85. But query whether the Council would adopt such a bold statement (impliedly connecting forcible Chapter VII action with "economic, social, humanitarian and ecological" problems) today, in the wake of sobering experiences in Somalia,

Renaissance

In the face of an array of conflicts and crises in an increasingly interdependent world,[39] P5 cooperation has resulted in a "renaissance" in Security Council activity.[40] Not only are the types of actions wide-ranging—from declarations, to economic sanctions, to military deployments and "rapid reaction forces",[41] to war crimes, compensation and boundary tribunals, to election supervision,[42] (limited) preventive diplomacy[43] and a wide range of other peace-keeping, peace-making and peace-building activities[44]—but the reasons for these actions

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Rwanda and the former Yugoslavia. In *Agenda for Peace* (n 12 above, p 7) the Secretary-General cites "poverty, disease, famine, oppression" and the "porous ozone shield" as sources of threat to international peace and security. However in his *Supplement to An Agenda for Peace*, with the bitter recent experiences of Somalia and Bosnia-Herzegovina (and perhaps Iraq, too, ignoring the many misleading sets of assumptions about collective security under the Security Council promulgated in the wake of that conflict, see Alston, n 2 above) the Secretary-General's tone was cautionary—*Supplement to An Agenda for Peace*: Position Paper of the Secretary-General on the Occasion of the 50th Anniversary of the United Nations, UN Doc A/50/60 (3 January 1995), see esp paras 33–37 and 99.

39 The post-Cold War period seems to be one of transition "from the older order of states, dominated by the strong, to a more complex system of multiple participants and multiple poles of influence" (Lyons GM, "A New Collective Security: The United Nations and International Peace" (1994) 17(2) *The Washington Quarterly* 183 at 196. The communications and technological revolution, environmental issues and a highly integrated global economy are clearly key factors in this phenomenon (*An Agenda for Peace,* n 12 above, p 9; Evans G and Grant B, *Australia's Foreign Relations in the World of the 1990's* (1991), p 10; Childers and Urquhart, n 1 above, pp 12–21). How major powers such as the US conceive of their interests in such a system—where "national security has become inseparable from international security" and security itself "becomes connected with a wide range of transnational issues that are economic, social and ethical in nature"—will be critical to the outcome of endeavours for reform of the UN security system (Lyons above, p 197). See also Reisman, n 36 above, p 83; Shenk MD, "The United Nations Security Council Consultation Act: A Proposal for Multilateral Resolution of International Conflict" (1991) 28 *Stanford Journal of International Law* 247 at 249 and 280–01; Sellen KL, "The United Nations Security Council Veto in the New World Order" (1992) 138 *Military Law Review* 187 at 208 and 261; Carlsson, n 12 above, p 8. See further n 138 below.

40 Murphy SD, "The Security Council, Legitimacy, and the Concept of Collective Security After the Cold War" (1994) 32 *Columbia Journal of Transnational Law* 201 at 286; Childers and Urquhart, n 1 above, p 1. Although arguably the term "naissance" would be more apt, given that effective Security Council action was stymied virtually from the UN's inception through to the end of the Cold War (see nn 13–14 above).

41 Williams I, "Allies split as US baulks at footing bill for rapid reaction force", *Weekend Australian* (17–18 June 1995); "US talks on funding for Bosnian force", *Canberra Times* (24 June 1995).

42 The central plank of UNCTAD's mission in Cambodia.

43 Evans G, *Cooperating for Peace: The Global Agenda for the 1990s and Beyond* (1993), p 89.

44 See *An Agenda for Peace,* and *Supplement to An Agenda for Peace*, n 12 above; Evans G, "The UN at 50: The Next 50 Years", press release, Minister for Foreign Affairs, 21 October 1994; Evans G, n 43 above, Parts II–V.

as well. Overt aggression, covert aggression and widespread human rights atrocities[45] are all fair game for enforcement action under Chapter VII.[46]

In terms of its administrative activities, from the beginning of 1990 until mid-1994 the Security Council had almost daily informal consultations,[47] 495 formal meetings, and passed 288 resolutions (mostly in relation to the Gulf War and the situation in former Yugoslavia), compared with 2,903 meetings and 646 resolutions during the entire period from 1946 until the end of 1989.[48] Similar trends can be noted in relation to UN peace-keeping activity[49] and authorisations for the use of force.[50] Notwithstanding a degree of jurisdictional creep by the General Assembly[51] and the recent strategic and operational setbacks in Somalia and the former Yugoslavia,[52] it seems reasonable to predict that the Security Council will continue to play an active and central role in the maintenance of international peace and security in the foreseeable future.[53]

Domestic effect of Security Council action

Under Chapter VII of the Charter, the Security Council may adopt measures to give effect to its decisions and may call upon members of the UN to apply those measures.[54] Member States agree under Article 25 to accept and carry out the decisions of the Council. Furthermore, in the event of a conflict between the

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45 Alston, n 2 above, pp 160–61 and 171. Witness the Security Council's responses in Somalia, Bosnia and Herzegovina and (belatedly) Rwanda (Freudenschuß, n 37 above, p 521).

46 Murphy, n 40 above, at 286.

47 See n 142 below.

48 Commission on Global Governance, n 11 above, p 236. The reasons for this discrepancy are discussed at p 288 above.

49 Ibid, pp 236–37. At the end of 1990 the UN was involved in eight operations with a total of 10,000 troops. At the end of June 1994, 17 operations were being conducted, with more than 70,000 troops, costing about $3 billion on a yearly basis.

50 Ibid, p 137. Between 1945 and 1991, the Security Council authorised the use of force only twice for any purpose other than self-defence (in the US-led defence of South Korea and in the UN mission in the Congo). Between 1991 and mid-1994, by contrast, the use of force under Chapter VII was authorised in five cases—in the Gulf, Somalia, the former Yugoslavia, Rwanda and Haiti.

51 Uniting for Peace Resolution (GA Res 377(v), UN GAOR, 5th Sess, 302d Plen Mtg, UN Doc A/1456 (1950)), although this has not been invoked since Korea. Of more significance has been the General Assembly's narrow construction of the elements of Article 12(1) of the Charter in practice (Bailey, n 9 above, pp 261–65). Article 12(1) provides that "While the Security Council is exercising in respect of any dispute or situation the functions assigned to it in the present Charter, the General Assembly shall not make any recommendation with regard to that dispute or situation unless the Security Council so requests". In its practical application the scope of Article 12(1), while not quite a "dead letter", has been considerably reduced. The result is that the Assembly is only prohibited from making recommendations which "directly and formally" conflict with Security Council resolutions, where the dispute or situation in question is under simultaneous and active consideration by the Council (Simma, n 1 above, pp 249–50 and 256–62).

52 See n 38 above.

53 Commission on Global Governance, n 11 above, p 237.

54 See nn 27–33 and accompanying text above.

obligations of Member States under the Charter and obligations under any international agreement, the Charter obligations prevail.[55] Many countries (including Australia) have enacted domestic legislation to implement Security Council resolutions.[56] Member State compliance with Council mandates can be quite onerous and costly, in terms of the economic burden of sanctions (and their often unpredictable consequences on unintended third parties) and cost of contributing forces and resources to Chapter VII operations, and so on. Further, Security Council resolutions may assist in shaping State practice and generating political, economic and social pressures, with potential normative effect.[57] In certain circumstances they may even have some capacity to influence the development of customary international law, whether on a global, regional or more limited basis.[58] Further, in common law countries it is likely that courts

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55 UN Charter, Article 103. The Lockerbie/Libya case illustrates Article 103 in operation, where the ICJ decided that obligations and sanctions imposed under SC Res 748 of 31 March 1992 "trumped" the terms of the Montreal Convention (1971) upon which Libya had sought to rely (Franck, n 33 above, pp 346–47).

56 See for example *Charter of the United Nations Amendment Act 1993* (C'th of Aust); United Nations Act 1946 (Canada); Emergency Law (Re-Enactment and Repeals) Act 1964 (UK) and the UK United Nations Act; National Emergencies Act (US) and International Emergency Economic Powers Act (US). See further Campbell B, "Some Domestic Legal Dimensions of the Iraq/Kuwait Conflict", International Law Weekend, ANU, Canberra, 10–12 May 1991.

57 So-called "soft" law obligations may be generated (Birnie PW and Boyle AE, *International Law and the Environment* (1992), pp 26–30). The Security Council's resolutions over time in relation to apartheid in South Africa serve as a good example of this (Wellens KC (ed), *Resolutions and Statements of the United Nations Security Council (1946–1992): A Thematic Guide* (1993), pp 205–39). Its actions concerning the illegal regime in Southern Rhodesia during the 1960s and 1970s are another example, culminating in SC Res 460 (21 December 1979), removing the sanctions and other Chapter VII measures that had earlier been applied (Wellens above, pp 122–58).

58 The requirements referred to in the *North Sea Continental Shelf* cases (ICJ Rep 1969) must first be satisfied (see Birnie and Boyle, n 57 above, pp 15–21; Bailey, n 9 above, pp 18–19; Roberts and Kingsbury, n 1 above, pp 177 and 181.

> In the international community, the development of the law is a matter for states. They can act obliquely through their conduct, modifying practice and establishing custom, or intervene directly through the sponsorship or support of innovatory proposals. But this they need to do in a forum, whether within the standing organs of international organisations or agencies (or through multilateral conferences). Ibid, p 177.

The binding nature of Council resolutions (Article 25 of the Charter) may certainly contribute to uniformity of State practice and reinforce *opinio juris*, however the central difficulty lies in the often uncertain or unclear language of resolutions, the product of diplomatic processes and compromise, rendering certainty of the proposed rule difficult to achieve (Franck, n 33 above, p 203). Nonetheless, "cautiously worded recommendations, views expressed over a period of time by a majority of states, and even the refusal to act, as well as action taken, all add up to provide pointers to the legal limits of the use of force by sovereign states and by the UN. And it is from such sources...that the international law governing the use of force by sovereign states will be derived in the future" (Higgins R, *The Development of International Law Through the Political Organs of the United Nations* (1963), p 239). See also Herdegen, n 36 above, p 155. Subject to the satisfaction of the *North Sea* prerequisites, customary rules may significantly

will increasingly require bureaucrats to take Council resolutions (along with the general corpus of international law) into account in a range of administrative decision-making activities.[59] Therefore the domestic impacts of Security Council resolutions need to be measured by more than reference to their direct effects on States against which action under Chapter VI or VII (including armed intervention or sanctions) has been authorised; their impact has the potential to extend to affect the interests and affairs of all Member States to varying degrees, directly or indirectly, in the ways discussed above.

The need for change

Compared with 1945, there are now many compulsions for change beyond the argument for "equitable" representation on the Security Council commensurate with increased UN Membership.

The Security Council is now more effective, in terms of its potential to fulfil its mandate under the Charter, than at any time in the past. Its activities now impact on more peoples and in more ways than ever before. The new and

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constrain State action. In common law countries customary law is capable of being used domestically in the same way that treaties are (ie as a guide in the development of the common law, and as an aid in interpretation where a statutory provision is ambiguous or obscure). See Kirby M, "The Australian Use of International Human Rights Norms: From Bangalore to Balliol—A View from the Antipodes" (1992) *Australian International Law News* 37; Hookey J, "International Law and Administrative Discretion", Administrative Law and Public Administration: Form v Substance, Australian Institute of Administrative Law Forum, Lakeside Hotel, Canberra, 1995); Attorney-General's Department, "Legal Practice Briefing" No 18, 24 April 1995; *Minister of State for Immigration and Ethnic Affairs v Ah Hin Teoh* (1995) 128 ALR 353 (*Teoh*). In civil law (and so-called "monistic") jurisdictions the role played by international law domestically is considerably greater (Harris DJ, *Cases and Materials on International Law*, 3rd ed (1983), pp 55–57 and 60–68).

59 *Teoh* points strongly in this direction; see also *Biljana Plavsic and Ilija Glisic v Minister for Immigration and Ethnic Affairs* (Unreported, Fed Ct of Aust No G935 of 1993) and SC Res 942 of 23 September 1994, imposing sanctions on parts of Bosnia and Herzegovina under Bosnian Serb control, including sanctions against the entry into the territories of Member States of any members of the authorities of such areas. Given that SC Res 942 is binding upon Australia from an international law perspective (see Article 25 of the Charter), it is proper that it be taken into account by the Minister for Immigration and Ethnic Affairs as a relevant consideration in determining certain categories of visa applications. SC Res 942 becomes binding on the Minister under domestic law once incorporated into the Migration Regulations. The Australian Government intends (by executive act and legislation) to counter the effect of *Teoh*, in so far as the High Court held that a ratified but unincorporated treaty can give rise to a "legitimate expectation" that a decision-maker will act in accordance with the treaty's terms ("Rights chief slams bid to skirt Teoh ruling", *The Australian* (17 May 1995), p 2; "Teoh", AIAL Seminar, ANU, 18 May 1995; Ministerial Joint Statement of Foreign Minister the Hon Gareth Evans QC and Attorney-General the Hon Michael Lavarch MP, 10 May 1995; Administrative Decisions (Effect of International Instruments Bill 1995 (C'th)); Allars M, "One Small Step for Legal Doctrine, One Giant Leap for Integrity in Government: Teoh's Case and the Internationalisation of Administrative Law" (1995) 17 *Sydney Law Review* 204 esp at 237–41).

diverse sets of challenges that have arisen in the period of uncertainty following the end of the Cold War require innovative and effective responses. Notwithstanding certain notable setbacks during this period,[60] the Security Council is the only logical candidate to endeavour to meet these challenges;[61] unilateral responses are questionable as a matter of principle,[62] and along with regional solutions are often ill-suited in practical terms for the complex security problems in today's integrated and interdependent world.

Further, with a larger role comes an insistent need for more than formal legitimacy.[63] Peter Wallensteen describes legitimacy as the "lubricant of the system".[64] The Security Council's current unrepresentative character and decision-making practices are the cause of "great disquiet, leading to a crisis of legitimacy".[65] The Council's effectiveness derives in large measure from its legitimacy; as Senator Evans has put it, "[the Security Council's] decisions ultimately depend for their effect on the extent of international support, which will in turn be influenced by the degree to which the Council is perceived to be adequately representative of the overall UN membership and to reflect the realities of global and regional power".[66]

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60 See n 38 above.

61 Partly because it is the only body authorised by the international community of States to act on their behalf in security matters (Article 24(1) of the Charter), but also due to the lack of apparent alternatives. See also Tickell C, "The Role of the Security Council in World Affairs" (1988) 18 *Georgia Journal of International and Comparative Law* 307 at 317. According to Sellen, today's security threats require "unity, coercion and justice" under one central authority (Sellen, n 39 above, p 230).

62 Except, arguably, in limited instances in response to humanitarian emergencies (Pease and Forsythe, n 34 above, p 302).

63 Commission on Global Governance, n 11 above, p 237. "(A) rule, standard or validating ritual gathers force if it is seen to be connected to a network or other rules by an underlying general principle" (Franck TM, "Legitimacy in the International System" (1988) 82 *American Journal of International Law* 705 at 741). The concept of "legitimacy" may be understood "to mean that quality of a rule *which derives from a perception on the part of those to whom it is addressed that it has come into being in accordance with right process*" (ibid, p 706; emphasis in original). In this context a rule's legitimacy consists of "its ability to exert pull to compliance and to command voluntary obedience" (ibid, p 725). See also Alston, n 2 above, pp 112–13; Picco G, "The UN and the Use of Force" (1994) 73(5) *Foreign Affairs* 14 at 17.

64 Wallensteen P, "Representing the World: A Security Council for the 21st Century" (1994) 25(1) *Security Dialogue* 63 at 64.

65 Commission on Global Governance, n 11 above, p 237. Undermining of credibility through perceptions of double standards will continue unless meaningful reform occurs (see Franck TM, *Nation Against Nation: What Happened to the UN Dream and What the US Can Do About It* (1985), pp 224–45; Bashir R, "A Comparison of the United Nations Responses to the Israeli Occupation of Arab Territories and to the Iraqi Occupation of Kuwait" (1993) 24 *Cambrian Law Review* 78; Gross L, "Voting in the Security Council and the PLO" (1976) 70 *American Journal of International Law* 470.

66 Evans, n 43 above, p 116. See also Sellen, n 39 above, pp 188–89; Fromuth PJ, "The Making of a Security Community: The United Nations After the Cold War" (1993) 46(2) *Journal of International Affairs* 359 at 363, and Murphy, n 40 above,

Accordingly modern realities demand that the Security Council's effectiveness and representativeness be enhanced by all practicable means, in order that it may rise to meet the challenges of the day. The alternative, an increasingly unrepresentative Council with an increasingly broad mandate, would have unacceptable consequences and could not endure.[67] It is to specific proposals for reform that I will now turn.

III. Proposals for Reform

Coalitions of interests

In evaluating the content and acceptability of any package of reforms, the focus should be on ensuring that:

(a) each Member State (in particular the P5 and other existing and emerging global powers on whose resources the implementation of Security Council decisions depends) sees enough gain, relative to the alternatives, to remain within the UN's security system;[68] and

(b) potential and actual "blocking" coalitions of interests opposed to the UN security system be prevented from forming, or are acceptably accommodated or otherwise neutralised.[69]

As will be seen shortly, the most likely potential blocking coalitions in the present context would appear to be the P5 and NAM.[70] Meaningful reform cannot occur unless both the P5 and NAM support it.[71] Therefore the Open-ended Working Group[72] and others involved in reforming the Council must ensure that both these groups are acceptably accommodated.[73] This issue will be revisited in Part IV, in the context of a suggested framework for reform.

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pp 248–51 (to similar effect) and Caron DD, "The Legitimacy of the Collective Authority of the Security Council" (1993) 87 *American Journal of International Law* 552 at 558, suggesting five examples of how perceptions of illegitimacy may work against the effectiveness of the Council. See further n 39 above.

67 See discussion at pp 307–10 below.

68 Sibenius JK, "Crafting a Winning Coalition: Negotiating a Regime to Control Global Warming", in World Resource Institute, *Greenhouse Warming: Negotiating a Global Regime* (1991), p 69 at 70. See also Wilenski, n 22 above, p 124: "Reform in intergovernmental bodies requires a coalition of political interests to gain the necessary majorities".

69 Sibenius, n 68 above.

70 See Part IV, at pp 307–10 below.

71 See n 160 below.

72 See n 21 above.

73 See also Childers and Urquhart, n 1 above, p 22:

> The end of the Cold War has brought into sharper relief the immense gulf dividing humankind along North-South lines, as well as changing lines of the divide. The essence of the UN's dilemma is that while the international system needs to be urgently reformed if it is to help bridge that gulf and other great divisions, the existence of the gulf makes those very reforms difficult. Overcoming this impasse is a vital key to the future of the world organisation, as well as to a peaceful and desirable future for humanity.

Composition of Security Council

There is now a near universal consensus amongst Member States that the membership of the Security Council needs to be expanded.[74] Even those States who were publicly opposed to this idea in the past, such as the United Kingdom,[75] have now come around, in the face of overwhelming international demand, to accept the idea of at least a modest expansion.[76] The imperative for this sort of change, as articulated by Member States in their responses to GA Res 47/62,[77] derives in large measure from the need for the Security Council to keep pace with the growth in UN Membership and altered global power dynamics (equitable representation), on the one hand, and the need for it to respond to a wide range of increasingly complex mandates (effectiveness), on the other.[78] The NAM and States from the so-called "South" have tended to emphasise the former imperative,[79] and industrialised "Northern" States (including the P5) the latter.[80] However increasingly it seems appropriate to regard them as two sides of the same coin; P5 dominance in world affairs is not what it used to be, in which circumstances enhanced legitimacy deriving from *inter alia* equitable representation on the Council may earn valuable support for its decisions, enhancing its effectiveness.[81]

(a) Non-permanent seats

The criteria for non-permanent or "rotating" membership are set out in Article 23(1) of the Charter. In summary, they are:

(i) *in the first instance*, contribution to the maintenance of international peace and security and to the other purposes of the UN organisation;

(ii) *and also*, equitable geographical distribution (my emphasis).[82]

In practice, the "effectiveness" limb of Article 23(1) has been largely ignored, leaving seats to be allocated on a regional basis according to an agreed

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74 Commission on Global Governance, n 11 above, p 238; Senate, *Debates*, 5 October 1993, pp 1631ff.

75 Report of Secretary-General on the Question of Equitable Representation On and Increase In the Membership of the Security Council in Response to A/RES/47/62, UN Doc A/48/264 (and Addendas 1–10) (June 1993), pp 90–91. Smith, n 7 above, at 185.

76 UN Doc A/49/PV.31, GAOR (49th Sess) 14 October 1994, pp 3–4, suggesting a "relatively limited expansion" to 19 or 20 members, with Japan and Germany occupying permanent seats.

77 See nn 19 and 20, and also Part II (esp pp 295–96) above.

78 UN Doc A/48/264, n 75 above. The reasons for the increased scope and complexity of the Security Council's mandates are set out in pp 288 and 290–94 above.

79 UN Doc A/49/422, n 19 above; UN Doc A/49/479, n 19 above; UN Doc A/49/119, n 19 above; Non-Aligned Movement Position Paper, n 19 above.

80 UN Doc A/48/264, n 75 above, esp pp 8–10, 18–19, 40–42, 43–44, 52–55, 82–83, and 90–92 (statements of Australia, China, France, Germany, Japan, Russia, United Kingdom and the USA, respectively).

81 See p 297, esp nn 63 and 66 above.

82 UN Charter, Article 23(1).

formula.[83] The present distribution of non-permanent seats, while somewhat favourable to the Western Europe and Others Group (WEOG) and Eastern European groupings,[84] is arguably within the confines of what may be regarded as legitimate.[85] Nonetheless the widespread calls for an increase in this category of membership cannot be ignored.[86]

Australia has conceived a novel proposal pursuant to which the existing regional groupings would be recast in order to take account of contemporary geopolitical realities.[87] Whatever the relative merits of this proposal,[88] the ambitiousness of such fundamental reforms should not be underestimated.[89] A more widely acceptable change would be a modest increase of three to five additional rotating seats, combined with the relaxation of the rigorous requirements of Article 23(2) to admit the possibility of States (subject to the satisfaction of the criteria set out in Article 23(1)) serving consecutive terms.[90] Finally, notwithstanding the manner in which Article 23(1) has been interpreted in practice,[91] clearly Security Council decisions count for little in the absence of

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83 The formula, established under GA Res 1991A (1963), is based on four arbitrary regional groupings: Western Europe and Others (26 members), Eastern Europe (19 members), Africa and Asia (99 members), and Latin America and the Caribbean (34 members). Permanent and non-permanent membership are allocated on a 3–1–1–0 and 2–1–5–2 basis, respectively. As at 31 March 1994, six Member States were not members of any regional group (Department of Foreign Affairs and Trade, "Possible models for enlarging the Security Council" (1994); Excerpts on Membership etc from New Zealand Ministry of Foreign Affairs and Trade, *United Nations Handbook 1994,* pp 18–19 and 59–65; Bailey, n 9 above, pp 141–45). See also Leigh-Phippard H, "Remaking the Security Council: The Options" (1994) 50 *The World Today* 167 at 168.

84 See n 83 above, for a description of the regional groupings.

85 Wallensteen, n 64 above, p 65, ie 20% to WEOG, 10% to Eastern Europe, 50% to Africa and Asia, and 20% to Latin America and the Caribbean.

86 See n 19 above.

87 Department of Foreign Affairs and Trade, n 83 above. The proposed altered groupings and their corresponding percentage representation in the Council are Western Europe (24 States; 17.4% on Council, including 2 permanent members), Central and Eastern Europe (22 States; 8.7%, with 1 permanent member), Middle East and Maghreb (19 States; 8.7%), Africa (43 States; 17.4%), Central Asia and Indian Ocean (17 States; 8.7%), East Asia and Oceania (24 States; 17.4%, with 1 permanent member) and the Americas (35 States; 21.7%, 1 permanent member).

88 Ibid; Clearly this proposal takes better account of contemporary international relations than the four broad post-WWII groups (n 83 refers, where, for example, Eastern Europe is still grouped together and much of the Middle East is in the same category as Asia) although it would still be misleading to call any of the proposed groupings homogenous.

89 "Blocking coalitions" (see n 69 and accompanying text above) may well arise around Middle Eastern, Indian, South American and/or African disenchantment at lack of permanent positions or other perceived inequities *vis-á-vis* the proposed amended groupings, particularly having regard to the benefits accruing to the proponent State (Australia) from being part of the relatively small but powerful "East Asia and Oceania", rather than WEOG (compare nn 83 and 87 above).

90 Non-Aligned Movement Position Paper, n 19 above, p 2. To similar effect, see UN Doc A/49/PV.29, n 22 above, p 19 (Germany); UN Doc A/49/PV.30, n 22 above, pp 11, 18 and 24 (Canada, France and the US).

91 See n 83 and accompanying text above.

the political will and means to implement them.[92] The authority and credibility of the Council would suffer otherwise. On this basis, regard needs to be had to *both* of the criteria in Article 23(1), "equitable geographical representation" *and* "effectiveness", if and (presumably) when expansion of non-permanent membership is ultimately implemented.[93]

(b) Permanent membership

The rationale behind "permanent" membership has its roots in *realpolitik* and a quirk of history.[94] This category of membership is difficult to justify on an objective basis. If world events over the last 50 years demonstrate anything at all, it is that nothing is permanent. Nonetheless the P5 cannot be simply wished away. Article 108 requires unanimous consent of the P5 to any proposed Charter amendment, which alteration of the Security Council's composition would require.[95]

Ultimately the world must find a better basis for constituting its highest organ of governance than permanent membership for a few countries.[96] But that point has not yet been reached.[97] Realistically, the category of permanent membership will have to continue for the time being,[98] along with a modest increase in size in order to enhance its representativeness and legitimacy.[99]

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92 Riggs and Plano, n 1 above, p 82.

93 By contrast, the NAM have suggested a formula based upon "equitable geographical representation" alone (Non-Aligned Movement Position Paper, n 19 above, p 3). Using existing regional groupings, this results in WEOG being allocated only 4 out of a total 26 Security Council seats. It is of course inconceivable that the P5 would agree to such a proposal. Clearly, as a practical matter, it is impossible to ignore States' capacities to contribute to security and the purposes of the UN (measured by their relative political, military and economic power) when considering expansion of the Security Council.

94 See Part I, esp pp 286–87 above.

95 UN Charter, Article 23(1).

96 Commission on Global Governance, n 11 above, p 239.

97 Ibid.

98 Ibid.

99 See p 297, esp nn 63 and 66 above. There is a widely expressed view that expansion of the Council's size will impair its effectiveness (see, for example, Tickell, n 61 above). The weaknesses in this proposition as put are three-fold. Firstly, it fails to take account of the fact that it is permanent member *agreement*, rather than their number, which facilitates effective Council action (Kumar S, "Towards a Stronger and More Democratic United Nations: India's Role" (1993) 30(2) *International Studies* 173 at 182; UN Doc A/48/264, n 75 above, p 47). Certainly a relatively small number *might* increase the *likelihood* of the Council agreeing on a range of issues, however lack of homogeneity amongst the existing P5 has not proved to be a significant barrier to action in recent years (Bailey, n 9 above, p 160; Bell, n 25 above, p 16). Secondly, such a proposition ignores the clear philosophical and functional link between legitimacy and effectiveness (see n 66 above). Finally, and perhaps most importantly, it begs the question "effective for *who*?" Article 24(1) sets up an agency arrangement between the GA and SC, pursuant to which the latter acts on behalf of the former. The majority of the UN membership may understandably not wish for an effective Security Council, if it is perceived to be no more than an elite club of self-serving Northern powers.

There is widespread, although by no means universal, support from States for an increase in permanent membership from five to between eight and ten.[100] Without wishing to impair the Council's effectiveness,[101] it is probable that the eventual outcome will be more like nine or ten than eight; Japan and Germany have each emerged as strong contenders, both in objective terms (having regard to the extent to which they contribute to the security and other objectives of the UN)[102] and in terms of P5 willingness to extend permanent membership to them.[103] However NAM has warned that "any attempt to exclude (it) from any enlargement in the membership[104] would be unacceptable to the movement".[105] Ultimately, therefore, expansion of permanent membership is not likely to be attainable without the inclusion of the African and Latin American regions, and possibly a further representative from the Asian region.[106] Equally clearly, new members should not be vested with the power of veto;[107] there has been a clear convergence of views on the need for such a prohibition,[108] which may in turn have the benefit of increasing pressure on the P5 to refrain from using their veto power, *en route* to its eventual abolition.[109]

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100 See generally UN Doc A/48/264, n 75 above; UN Docs A/49/PV.29, 30 and 31, nn 22 and 76 above; cf Non-Aligned Movement Position Paper, n 19 above, p 2 (advocating a total of 26 States on the Council; the proposed breakdown between permanent and non-permanent members was not specified—see n 104 below).

101 Although as suggested in n 99 above, this risk should not be overstated.

102 Article 24(1) of the Charter. Japan is the second largest fiscal contributor to the UN and is becoming frustrated with its role as "automatic teller machine" (Smith, n 7 above, p 190). "Taxation without representation" is also an issue for Germany; in recent years Germany and Japan both contributed more than China, UK and France to the UN's peacekeeping costs (Wallensteen, n 64 above, p 65). Further their political and economic power, crucial for ensuring that Security Council resolutions will translate into action, lend weight to their candidature. See UN Doc A/49/PV.29, n 22 above, p 18 (Germany) and UN Doc A/49/PV.30, n 22 above, p 15 (Japan).

103 See Article 108 of the Charter.

104 Probably including permanent membership (UN Doc A/49/PV.31, n 76 above, p 19), although the possibility of reaching limited agreement on expansion on the non-permanent category alone, prior to broader reform encompassing permanent membership, has been left open (Non-Aligned Movement Position Paper, n 19 above, p 1).

105 Ibid.

106 Amendment of Article 27(3) would require a two-third's majority of Member States (Article 108), which is unattainable without NAM's agreement. See also UN Doc A/49/PV.29, n 22 above, p 18 (Germany); UN Doc A/49/PV.30, p 24 (US); UN Doc A/48/264, pp 14, 17, 47 and 71 (Brazil, Chile, India and Nigeria); UN Doc A/49/119, n 19 above; UN Doc A/49/422, n 19 above; and UN Doc A/49/479, n 19 above, supporting such a regional expansion. Compare n 104 above.

107 Commission on Global Governance, n 11 above, p 241.

108 Non-Aligned Movement Position Paper, n 19 above, p 6; UN Doc A/49/PV.31, n 76 above, pp 7 and 11 (Ukraine and New Zealand). See also n 106.

109 See further discussion on this issue at pp 304–05 below.

In many respects the new candidates for permanent membership, along with Japan and Germany, suggest themselves.[110] Achieving agreement on fixed and binding criteria would encounter obvious practical difficulties,[111] although capacity to contribute to international peace and security (and the other purposes of the UN) is particularly important in relation to this category of membership.[112] But in any event the inescapable reality is that politics and State practice are more important than the letter of the Charter[113] or any well-meaning set of objective criteria.[114] Accordingly one may expect that the political debate on expansion of permanent seats will be influenced most strongly by "the interests of particular countries", rather than by "formulas".[115]

The Commission on Global Governance has suggested that, given the "realities of power",[116] expansion of membership might be achievable in two stages, commencing with the nomination by the General Assembly of five "standing" or interim permanent members (without the veto) who would serve pending comprehensive review of Council membership (including P5 review) after the turn of the century.[117] As a practical matter, however, it is difficult to see how candidates for the new seats, particularly major powers like Japan and Germany, would find any proposal short of "permanent" membership (without veto) acceptable, given the slim prospects of the P5 (three of whom[118] have slipped markedly from their positions of global power in 1945) agreeing to relinquish their permanent seats in the near future. In these circumstances, there would appear to be little alternative for the time being but to take the retrograde step of a modest representative increase, *en route* to a comprehensive review of this category when geopolitical conditions[119] permit.

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110 Nigeria, Brazil and India figure prominently in many appraisals (Commission on Global Governance, n 11 above, p 240; Leigh-Phippard, n 83 above, p 169; Carlsson, n 12 above, p 8; Wallensteen, n 64 above, at p 69. See also n 106 above.

111 Wallensteen, n 64 above, p 65.

112 See n 147. Financial and peacekeeping contributions, along with military and economic power, and arguably demographic and geographic size (Kumar, n 99 above; cf Reisman WM, "The Case of the Nonpermanent Vacancy", n 11 above, p 912) are relevant factors in objective terms (Wallensteen, n 64 above, pp 64–68; and statements by the US, Japan, Germany, India and Nigeria, see nn 102 and 106 above). France's recent resumption of nuclear testing in the Pacific may be construed as a demonstration of the importance it attaches to military and nuclear capability, in this regard. Recent affirmations by Japan to continue its military contributions to UN peacekeeping are also of interest (UN Doc A/49/PV.30, n 22 above, p 15) as is the ongoing debate in that country *viz* loosening the Constitutional limitations on its military capacity.

113 See, for example, nn 37, 51 above and 130 below.

114 It is easier (though by no means sufficient) to talk in terms of fixed criteria in relation to non-permanent seats, given that the criteria spelt out in Article 23(1) are expressed to relate to this category alone.

115 Wallensteen, n 64 above, p 65.

116 Commission on Global Governance, n 11 above, p 239.

117 Ibid; Carlsson, n 12 above, p 9.

118 That is, Britain, France and Russia.

119 See nn 39 above and 138 below.

Phasing out the use of the veto power

The nature of the veto power is discussed in Part I (especially note 9) above. Its origins are deeply rooted in pragmatism—to secure the participation of the P5 in the UN security system.[120] Notwithstanding insistent demands for the abolition of the veto (a "bully power anachronism"[121] in the modern integrated world of 193 States),[122] the P5 have shown no sign of relinquishing their special voting privileges.[123] The risk of a major power or powers leaving the UN to pursue their security interests on their own, while clearly diminishing with increasing global interdependence,[124] is still a real one.[125] In order that the P5 and newly emerged world powers (and coalitions such as NAM) can be made to see enough gain, relative to "going it alone", to stay within the UN system,[126] a compromise arrangement may be achievable pursuant to which the P5 agree to restrict the use of their veto to circumstances they consider "exceptional and overriding in the context of their national security",[127] or such other formula that might be agreed,[128] *en route* to its eventual abolition.[129] As Roberts and Kingsbury have observed, much has been achieved in the UN's history by changes in practice rather than Charter amendment.[130] With the notable exception of the recent (and perhaps predictable)[131] veto by the US over

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120 Leigh-Phippard, n 83 above, p 169; Tickell, n 61 above, p 312. See also n 11 and accompanying text above.

121 Erskine Childers, quoted in Leigh-Phippard, n 83 above, p 171.

122 See n 108 above.

123 Bailey SD, "The Security Council" in Alston P (ed), *The United Nations and Human Rights: A Critical Appraisal* (1992), p 304 at 324. Abolition of the veto would require amendment of Article 27(3) of the Charter; any such proposal would require the concurrence of the P5 (Article 108).

124 See nn 39 above and 138 below.

125 Wallensteen, n 64 above, p 67.

126 Sibenius, n 68 above, at p 70.

127 Commission on Global Governance, n 11 above, p 241; Carlsson, n 12 above, p 8.

128 Further possibilities include restricting its scope to Chapter VII measures alone (UN Doc A/48/264, n 75 above, p 21), or alternatively agreeing a discrete list of exemptions, such as Chapter VI related measures (UN Doc A/49/PV.29, n 22 above, p 20), or alternatively, or in addition, requiring that it be exercised by a minimum of two permanent members in order to be valid—initiative of Australia, supported by Mexico—(UN Doc A/49/PV.30, n 22 above, p 4 and Weiss, "Intervention...", n 15 above, p 118). See also Sellen's idea of a "double majority" voting system (n 39 above, pp 248–60), and Bailey, n 9 above, p 359.

129 Abolition of the veto should clearly be the ultimate goal; failing this, when existing (relative) harmony in the Council ceases the (unchanged) political machinery will prove to be just as inadequate as during the Cold War (Sellen, n 39 above, p 190).

130 Roberts and Kingsbury, n 9 above, p 54; Blum YZ, *Eroding the United Nations Charter* (1993), pp 239–56. And see Caron, n 66 above, pp 584 and 587: a modified voting system to eliminate the so-called "reverse veto" (see n 9 above) would not require Charter amendment.

131 Caron, n 66 above, p 571: "(T)he one advantage that would be lost (to the US in relinquishing the veto) would be the ability to shield Israel from the Governance of the Council".

Israel,[132] the P5 have been moving towards reduction in veto use in recent years.[133] A formal "concordat" between the P5,[134] or the incorporation of agreed restrictions into the Council's Rules of Procedure,[135] may further increase pressure on the P5 to curtail their use of the veto power. Agreement on the abolition of the veto[136] may eventually be politically possible with further shifts in the global power balance and wider integration of international political, economic and social structures,[137] permitting the P5 to conceptualise their "national" security interests in terms of the wider "human" security interests of the international community.[138]

Procedural reforms

There is widespread acknowledgment among States of the need to increase the transparency of the Security Council's decision-making processes,[139] and increase the level of non-member participation.[140] Today the Council has become a "permanently meeting body", where decisions are often made behind closed doors.[141] Informal consultations will inevitably continue to some degree amongst the P5. Certain benefits of limited use of informal consultations must be acknowledged.[142] However, surely, given the monumental changes in

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132 McCarthy P, "US vetoes resolution on Israeli land grab", *Sydney Morning Herald* (19 May 1995), p 13; "US vetoes draft on Arab land", *Canberra Times* (19 May 1995), p 8; Goodman A, "US Security Council veto sets scene for land grab showdown", *The Australian* (19 May 1995), p 7; McCarthy P, "US vetoes bid to censure Israel", *The Age* (19 May 1995), p 13.

133 The US veto over Israel in May was its first in five years. Russia exercised its veto in December 1994 over the former Yugoslavia ("US vetoes draft on Arab land", *Canberra Times* (19 May 1995)); and on only one other occasion (on a relatively minor issue) since 1990 (Commission on Global Governance, n 11 above, p 241).

134 Commission on Global Governance, ibid.

135 See Bailey, n 9 above, pp 9–17; Kahng TJ, *Law, Politics, and the Security Council* (1964), pp 111–48.

136 Article 108 necessitates P5 unanimity in this; see also Article 27(3).

137 See n 39 above.

138 Keith Sellen (of the Judge Advocate General Corps, US Army) argues that, due to the "integrated" state of the world compared with 1945, "security threats everywhere affect states everywhere. Accordingly, every state that resolves to improve international security thereby enhances its own security as well" (n 39 above, p 261). Indeed one school of thought suggests that "by the second quarter of the 21st century [the US] will have almost certainly have become a second-class power in an increasingly interdependent world dominated by its trade rivals across the Pacific and the Atlantic" (Cox M, "Rethinking the End of the Cold War" (1994) 20 *Review of International Studies* 187 at 191–92). See also the references to "human security" at nn 12 and 39 above.

139 See for example the US statement in UN Doc A/49/PV.30, n 22 above, p 24; China in UN Doc A/48/264, n 75 above, p 19; Non-Aligned Movement Position Paper, n 19 above.

140 Non-Aligned Movement Position Paper, ibid, and references at n 106 above.

141 Wallensteen, n 64 above, p 63. See also Bailey, n 9 above, p 42.

142 Feuerle L, "Informal Consultation: a Mechanism in Security Council Decision-making" (1985) 18 *New York University Journal of International Law and Politics* 267; UN Doc A/49/PV.30, n 22 above, p 24:

international relations and global power since 1945,[143] the time for institutionalised private meetings of that "exclusive club" (the P5) in Manhattan apartments "in an atmosphere of tea, muffins and sympathy"[144] has passed.

The Security Council has already set certain reforms in place, enhancing the flow of information to troop-contributing States on peace-keeping matters, and increasing non-member participation in decision-making procedures.[145]

Further measures to enhance transparency and accountability are possible, including stricter observance and elaboration of the Council's reporting obligations *viz* the General Assembly[146] and more frequent recourse by the Council,[147] where the constraints of time permit, to advisory opinions of the

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> (I)n decision-making, transparency is a good servant but a poor master. Too much will inhibit frank discussion and drive it away from the Council's chambers to settings in which privacy can be assured. That would not serve anyone's interests.

See also Lyons, n 39 above, p 191.

143 See nn 18, 19 and accompanying text, and n 39 above.

144 Compare Tickell, n 61 above, pp 313–14; Darling E, "The Gulf War and the United Nations" in Bustelo and Alston, n 2 above, p 31 at 34. See Commission on Global Governance, n 11 above, p 238; UN Doc A/48/264, n 75 above, p 23 (Columbia).

145 UN Doc S/PRST/1994/22, Statement by the President of the Security Council dated 3 May 1994; UN Doc S/PRST/1994/62, Statement by the President of the Security Council dated 4 November 1994; UN Doc A/49/PV.30, n 22 above, p 24.

146 Article 15 of the UN Charter; Bailey, n 9 above, pp 123–41; Weiss, "Intervention...", n 15 above, p 118; Non-Aligned Movement Position Paper, n 19 above, p 2. Transparency and non-member involvement may be enhanced in other ways such as broader consultation by the permanent members with non-permanent members and with Member States whose interests are affected by a matter before the Council (UN Doc A/48/264, n 75 above, p 9), establishment by the GA of operational guidelines for Chapter VII actions (Weiss, ibid) or a 20-strong "Chapter VII Consultation Committee" of the GA to keep an open line between the Council and the GA (Reisman, n 36 above, p 98), formalised procedures for the SC to request GA recommendations (Non-Aligned Movement Position Paper, n 19 above, p 2) and ensure where practicable that the views of all countries are heard even if a more limited Security Council acts (Weiss, ibid), less use of closed informal Council sessions (UN Doc A/48/264, p 70 (New Zealand)), more effective utilisation of Articles 31 and 44 of the Charter and institution of open planning sessions where possible (ibid), the creation of one or more subsidiary bodies under Article 29 (UN Doc A/48/264, n 75 above, p 92 (US); UN Doc A/48/264 Add.1, n 75 above, p 21, (Sweden)), institutionalising the practice of consultations between the Presidents of the Council and General Assembly (Non-Aligned Movement Position Paper, n 19 above, p 2), provision to GA of the Council's tentative monthly work plan (ibid, p 6), provision to GA of briefings and/or summaries of results of informal consultations (ibid), and increased referral of matters by the Secretary-General under Article 99 (Alston, n 2 above, p 173) or other means of expanding the Secretary-General's role (Falk, Kim and Mendlovitz, n 12 above, p 238).

147 Or perhaps even the Secretary-General or a (regional) non-State actor in specified circumstances (Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization, UN Doc A/47/33 (Supp 33) (1992), pp 9–10; Report to GA of ICJ President, UN Doc A/49/PV.29, n 19 above, p 5).

ICJ.[148] More fundamentally, given the difficulties the Council has had in adapting to the tasks it has assumed in recent years,[149] perhaps the time has arrived for the Council to revisit the basic question of the nature of its role in the nascent post-Cold War world, with a view to formulating a statement of principles to guide it in its endeavours.[150] Reforms of this nature may be implemented through practice alone, rather than Charter amendment. The importance of increased transparency in a newly constituted Security Council cannot be overstated, to enhance both legitimacy and effectiveness.[151]

IV. Conclusion

There is now near universal consensus on the need for reform of the Security Council, and a convergence of views on the course that this might take. Responses of States to GA Res 47/62[152] indicate that a modest increase in representation on the Council, to a maximum number in the order of 23 or 25 or so,[153] may not be an unrealistic outcome in the foreseeable future, until such time as conditions permit more substantial review of the category of "permanent" membership and abolition of the veto. The procedural reforms already set in train by the Council have gone some way towards enhancing the transparency of its processes in the peace-keeping context. Further procedural

148 Non-Aligned Movement Position Paper, n 19 above, p 5; Statement of ICJ President, UN Doc A/49/PV.29, n 22 above, pp 1–5; Franck, n 33 above, p 208. As indicated in n 36 above, the potential or desirability for the ICJ to play a more active "judicial review" role over Council decisions is far more controversial, although arguably some limited scope for review would be desirable (Commission on Global Governance, n 11 above, p 321; Franck, n 33 above, p 220). But note Reisman's reservations: "A court, by itself, is only a college of people. Its powers in any setting derive from a political process, of which it is a part, and which enfranchises it" (n 36 above, p 94). The Commission on Global Governance has recommended the appointment of a "distinguished legal person" as the Council's "independent" legal adviser (ibid, pp 321–22); even more so than the ICJ, it is difficult to see how such a person could truly function independently and objectively and promote accountability in the politically charged arena of the Council's deliberations (cf Reisman, n 36 above, p 94; Kahng, n 135 above, pp 5–6 and 8–24).

149 See n 38 above.

150 This sort of reform might increase pressure on the Council to achieve consistency in practice. Guidelines such as those produced by Secretary-General, Boutros-Ghali (see *Supplement to an Agenda for Peace*, n 38 above) might serve as a useful basis for further efforts in this regard, although broader principles must await a fuller understanding of the complexities of contemporary security dilemmas; mere empty "incantation of general principles" would be of little probative value (Schachter O, "The United Nations and Internal Conflict" in Raman KV, *Dispute Settlement Through the United Nations* (1977), p 301 at 347–48).

151 See p 297, esp nn 63 and 66 above, on the functional relationship between legitimacy and effectiveness.

152 See nn 19, 20 and 100 and accompanying text above.

153 Including both permanent and non-permanent members—see Part III above.

changes across the broad range of the Council's activities should be encouraged,[154] along with continued reduction of veto use by the P5.

Providing that the expansion of the Council includes Southern as well as Northern powers, reforms of the nature suggested above will be unlikely to either drive key players from the system or energise blocking coalitions.[155] Frustrated contenders who are denied permanent seats[156] in an interim expansion might be placated by procedural reforms[157] and a relaxation of the requirements of Article 23(2),[158] along with arrangements for a wider review embracing permanent membership, the veto power and the question of regional representation within an agreed time frame.[159] But critically, neither expansion of membership nor (eventual) removal of veto power is possible without P5 and, effectively, NAM agreement.[160] Therefore the P5 will need to be assured that any changes will not threaten the effectiveness of the Council[161] or pose a significant challenge to their individual "national" interests.[162] The NAM, for its part, will need to be satisfied that the new collective security arrangements will reduce Northern dominance and meet their members' security needs at least as effectively as the existing Security Council.[163] NAM's willingness to contemplate interim reform on the basis of expansion of the "non-permanent" category,[164] alone, is a sign of its good faith and flexibility. Persuading NAM of the practical necessity for Council members to be capable of shouldering a

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154 See pp 305–07 above.

155 See p 298, esp nn 68 and 69 above.

156 The effective functioning of the Council would be impaired to an unacceptable degree if all those who have expressed interest (including Japan, Germany, Brazil, Nigeria and India, in addition to Italy, Indonesia, Pakistan, Canada and any number of regional candidates) were to be accommodated, or if membership were to be based on equitable geographical representation alone—cf n 93 above.

157 See pp 305–07 above.

158 See n 90 above. This would permit non-permanent members to serve consecutive terms.

159 See pp 302–03 above.

160 UN Charter, Article 108: amendment to Articles 23(1) and 27(3) require P5 unanimity and a 2/3 majority of the General Assembly, although of course NAM would not oppose removal of the veto while the Council is dominated by the North. The NAM numbers in excess of 100, out of 185 UN Member States. The NAM have demonstrated solidarity on a great many issues relating to Security Council reform (Non-Aligned Movement Position Paper, n 19 above). Should this pattern of behaviour continue, then a two-third's majority vote in the General Assembly will not be possible without NAM, even allowing for up to 30% of its members "crossing the floor" on any given occasion.

161 Leigh-Phippard, n 83 above, p 171; Sibenius, n 68 above, p 70; Wilenski, n 22 above, p 124; nn 67 and 68 above.

162 Although, again, query the extent to which it is practicable for any one nation (including the US) in the uncertain and integrated state of international relations today to carry out its foreign policy on the basis of a narrow, State-centric conception of "national interest" (cf nn 39 and 138 above).

163 Leigh-Phippard, n 83 above, p 171; Sibenius, n 68 above, p 70; Wilenski, n 22 above, p 124; South Centre, *The United Nations at a Critical Crossroads: Time for the South to Act* (Dar-es-Salaam, October 1990), pp 31–32, cited in Kumar, n 99 above, p 183. See also nn 68 and 69 above.

164 See n 104 above.

significant proportion of the UN's security efforts (without which the Council's resolutions will not translate into action)[165] will represent the P5's chief negotiating challenge. Persuading the P5 that the Council's effectiveness will suffer unless it is made more representative of the needs of peoples from *all* the world's 193 States[166] will represent NAM's.

In order to build on the progress that was achieved at the General Assembly's 48th session,[167] the Open-ended Working Group established under GA Res 48/26[168] will need to find a mechanism for sifting the many ideas and proposals that have been advanced, in order to identify those which can be translated by consensus into reality.[169] The Working Group's experience shows the difficulty of achieving concurrent consensus on all aspects of Security Council reform.[170] While not losing sight of the ultimate objectives of eliminating permanent membership and the veto, the Working Group should immediately channel its efforts into those issues on which consensus is in sight, while continuing to encourage Members to narrow the remaining differences on other aspects.[171]

Finally, a note of caution must be sounded. Notwithstanding encouraging statements from the US on Security Council reform in the General Assembly in October 1994,[172] the mood of the US Congress since their November 1994 elections has been increasingly isolationist.[173] There has been a "clearly evident" lack of enthusiasm in Washington for multilateral action, "in peace and security or anywhere else", since that time.[174] Withdrawal by the US (the last

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165 See nn 6 and 78 above. The outcome when this factor is ignored would be clearly unacceptable to the P5, and would counter the central objective of "prompt and effective" action in security matters (Article 24(1); cf n 93 above).

166 See discussion on legitimacy and effectiveness at pp 297–98 above.

167 UN Doc A/48/264, n 75 above.

168 See n 21 above.

169 UN Doc A/49/PV.30, n 22 above, p 12. See also Roberts and Kingsbury, n 9 above, p 10: "overreaching will result in failure and the disappointment of inflated expectations".

170 UN Doc A/49/PV.31, n 76 above, p 5.

171 Ibid. See also Leigh-Phippard, n 83 above, p 171:

> (S)ince any significant reform may meet with considerable opposition from some or all of the permanent members, the reform process will need to be incremental in order to ensure the confidence of both the permanent membership and the wider UN membership in its utility. Hence, it should begin by focusing on changes that are potentially achievable and which will not seriously undermine current Council practice and procedure.

172 UN Doc A/49/PV.30, n 22 above, pp 23–25. A further positive sign was the outcome of a US Defence Dept review in 1993 which reflected a broad "international" perspective of US national interest (see Lyons, n 39 above, pp 194–95).

173 Evans, n 25 above; "US talks on funding for Bosnian force", *Canberra Times* (24 June 1995), p 8; Williams I, "Allies split as US baulks at footing bill for rapid reaction force", *Weekend Australian* (17–18 June 1995), p 12; Dowden R, "Tame-Cat UN still a bogy to nationalist US Republicans", *Canberra Times* (10 March 1995), p 11; Recent public statements of Jesse Helmes, head of the US Senate Foreign Relations Committee, have been particularly isolationist.

174 Evans, n 25 above.

remaining "superpower" State) to pursue its interests unilaterally, however unrealistic and ill-conceived such an option seems in contemporary international relations,[175] would undoubtedly have a crippling effect on the Security Council's credibility and effectiveness, reducing its available resources and political influence and confining its sphere of operation to those (limited) areas where the US does not have an interest. The other possibility—the new US Congress[176] resisting reform in order to pursue an aggressive and expansive foreign policy agenda through the Council[177]—would be equally unacceptable and unrealistic in the face of new and complex security issues facing the international community, leading to widespread withdrawal of support for Council decisions and critical loss of legitimacy.[178]

It is far from clear that the international community has fully grasped the difficulties it is in and is ready for the hard decisions it will need to make.[179] Present indications are that meaningful reform may well be possible in the near future, however considerable sensitivity to competing interests and evolving domestic political priorities will be required, and the urgency of reformist efforts will need to be increased.[180]

Lastly and most importantly, it is necessary to bear in mind that the special circumstances to which the UN owes its existence are unlikely to be repeated.[181] The Security Council, with all its imperfections, is the only one we have.[182] Those involved in negotiating and implementing change will need to bear in mind that the UN's chief security organ "will be no less—and can be no better—than its Membership makes it in the context of the times".[183] The end of the Cold War has facilitated freedom of international action unknown in recent memory; but as André Gide once observed:

> To free oneself is only the beginning. The real challenge is to live in freedom.[184]

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175 See nn 39 and 138 above.

176 Or conceivably a new Republican administration, in due course.

177 See n 2 above.

178 See p 297, esp nn 63 and 66, for discussion on the link between legitimacy and effectiveness. Admittedly, however, the US-UN relationship confronts the US (as well as other Member States) with difficult questions of balance.

> If the US pursues its objectives through the UN, it risks accusations of dominance, and if it does not it is accused of unilateralism (Roberts and Kingsbury, n 9 above, p 57).

179 Evans, n 25 above.

180 See Roberts and Kingsbury, n 9 above: "The window of opportunity to build patterns of cooperation, or at least acquiescence, among major powers may exist only for a short period" (p 77). The flexibility of the US position, in particular, may well diminish over time if recent events are anything to go by (see n 173 above), particularly should a new administration be voted in, in due course.

181 See p 285, esp n 1 above.

182 See n 61 and accompanying text above.

183 From a speech given by Adlai Stevenson, United States Head of Mission at UN Headquarters, New York, on 26 January 1965, quoted in Leigh-Phippard, n 83 above, p 171. "The UN has only a limited capacity to change the wills of particular states" (Roberts and Kingsbury, n 9 above, p 10. See also Holmes, n 16 above, p 324).

184 In Fromuth, n 66 above, p 366.