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# Security Council Reform: Creating a More Representative Body of the Entire U.N. Membership

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# **SECURITY COUNCIL REFORM: CREATING A MORE REPRESENTATIVE BODY OF THE ENTIRE U.N. MEMBERSHIP**

**Amber Fitzgerald†**

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[T]his 15 member Council acts on behalf of a total of [188] Member States of the United Nations. This means that [173] States have placed their security, and possibly their very survival, in the hands of fifteen. This is a solemn and heavy responsibility that each and every member of the Council carries. It is therefore of crucial importance that every decision taken by the Security Council be able to withstand the careful scrutiny of the [173] Member States on whose behalf the Council is expected to act.<sup>1</sup>

## I. INTRODUCTION

According to the United Nations Charter (“Charter”), the Security Council of the United Nations (“Security Council”) is designed to act on behalf of the entire U.N. membership. Article 24 of the Charter provides, “In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council *acts on their behalf.*”<sup>2</sup> Despite this mandate, at the turn of the century, the Security Council remains unrepresentative of the U.N. membership. The Charter also provides that “[t]he Organization is based on the principle of the sovereign equality of all its Member States and equal rights should be afforded to nations large and small.”<sup>3</sup> This fundamental principle of equality for all Member States has never been adopted in practice. The reality is that due to the disparity in power created by the Security Council, Member States are far from being equal.

Several factors contribute to this inequality. Numerically speaking, the current U.N. membership includes 188 Member States from every region of the world, while there are only fifteen Member States on the Security Council.<sup>4</sup> At the time of the signing of the Charter, only eleven of the fifty-one original Member States were on the Security Council. At its formation, therefore, the proportion of Security Council Members to the to-

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<sup>1</sup> U.N. Doc. S/PV.3063, at 54-55 (1992) (statement by Mr. Mumbengegwi, representative of Zimbabwe).

<sup>2</sup> U.N. CHARTER art. 24 (emphasis added).

<sup>3</sup> *Id.* at art. 2.

<sup>4</sup> See <http://www.un.org>. The membership of Tuvalu is currently being reviewed and may increase the overall membership of the U.N. to 189. *See id.*

tal Member States was greater than twenty percent.<sup>5</sup> Today, it is less than eight percent.<sup>6</sup> A second factor causing a lack of representation is the continuing domination of the Security Council by its Permanent Members, a domination collectively aided by the shared power of veto. In addition, all Security Council Members generally act in their own self-interest. Finally, the overall working methods of the Security Council do not allow the participation of pertinent non-Security Council members and their methods lack transparency.

All U.N. Member States and the international community agree on the need to reform the Security Council in order to reflect the modern world structure and to represent all Member States.<sup>7</sup> The difficulty lies in deciding what exact measures need to be implemented to assure the equality, representation, transparency, and effectiveness of the Security Council. The main issues surrounding reform of the Security Council include the following: whether its membership should be expanded and, if so, whether the number of both the non-permanent members and the Permanent Members should be expanded; whether the veto power should be abolished, limited, expanded, or modified; whether the non-members of the Security Council should be afforded greater participation in Security Council decisions; and whether Security Council proceedings should be more transparent. The Open-ended Working Group on the Question of Equi-

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<sup>5</sup> See DOCUMENTS ON REFORM OF THE UNITED NATIONS, 434 (Paul Taylor & Sam Daws eds., Dartmouth Publishing 1997) (citing *Reform of the Security Council: Memorandum Submitted to the President of the U.N. General Assembly*, International Peace Academy and The Stanley Foundation, 20 May 1994) [hereinafter DOCUMENTS ON REFORM].

<sup>6</sup> See *id.* The increase in Member States is a result of the fact that at the time of the signing of the Charter many Members did not exist as sovereign States. Now these States are in the majority. Decolonization and other circumstances led to the independence of newly formed States, which subsequently became Member States of the United Nations. See BASIC FACTS ABOUT THE UNITED NATIONS 293 (U.N. Pub. 1998).

<sup>7</sup> See *Assembly President Opens Debate on Security Council*, U.N. Doc. GA/SM/143 (1999) (statement of the then-President of the General Assembly, Theo-Ben Gurirab):

It goes without saying that all of us agree on the need to reform and enlarge the Security Council in all respects, in order for this vital United Nations organ to reflect the changes of the modern world and be responsive to the wishes of all the United Nations Member States in the spirit of equality and justice.

*Id.*

table Representation on and Increase in the Membership of the Security Council and Other Matters Related to the Security Council ("Working Group") was created in 1993 to address these specific issues and to propose reform measures for the Security Council in general. Yet, in the seven years since its establishment, the Working Group has failed to pass any substantive resolutions.<sup>8</sup>

This article will discuss the problems of the Security Council that have resulted in a lack of representation and equality for U.N. Member States including the domination of the Security Council, with particular attention to domination by the Security Council's Permanent Members. This article will also present possible solutions to these problems. Although many argue that the Security Council is finally doing what it was originally intended to do, the purpose of this paper is not to argue that the Security Council should decrease its activities. The purpose of this paper is to demonstrate that if and when the Security Council decides to act, it must do so according to principles of equality and representation, fundamental ideals of the United Nations. Part II contains a brief overview of the Security Council's background, functions, powers, and procedures. Part III discusses both the existing problems of the Security Council which led to calls for reform, and the obstacles that may block such measures. Part IV provides various suggestions proposed by Member States, regional groups, the Working Group and the author's own proposals. Part V contains a conclusion with a summary of the proposals.

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<sup>8</sup> See *Security Council Reform Should Aim at Enhancing Relevance of the United Nations, Assembly President Says*, U.N. Doc. GA/SM/55/SC.6563 (1998). Five years after its formation the then-President of the General Assembly and also Chairman of the Working Group stated:

While progress has been made in some areas and new ideas and proposals have emerged, at this point there is no compelling evidence to believe that the meetings of the Working Group have yielded a breakthrough in this reform exercise. Moreover, once again the Working Group appeared to be not in a position to submit any agreed recommendations on the substance of this matter to the General Assembly, except that it should continue its work during the next session.

*Assembly Adopts Text on Bosnia and Herzegovina; Takes Up Security Council Reform* U.N. Doc. GA/9688 (1999).

## II. OVERVIEW OF THE SECURITY COUNCIL

An overview of the Security Council is necessary to demonstrate how the Security Council's functions, powers and procedures inherently result in inequality and under-representation of U.N. Member States. The background also illustrates that the manner in which the Security Council was formed created the same problems that have lingered until the present day.

### A. *Background of the Security Council*

In the wake of World War II, the victorious nations, China, France, Great Britain, Russia and the United States ("Five Powers") agreed to form the United Nations to replace the defunct League of Nations.<sup>9</sup> During initial negotiations, one of the main debates centered on how to design a Security Council that would ensure member representation and equality through its composition and voting procedures.<sup>10</sup> Numerous concerns were raised about what appeared to be an overabundance of power given to the Security Council, particularly to its Permanent Members. Smaller States feared that the greater powers would unite and impose their will upon them.<sup>11</sup> The Five Powers counter-argued that they could not act alone because a certain number of the non-Permanent Members would be required to agree to any resolutions.<sup>12</sup> Realizing that the United Nations would not come into existence without meeting the demands of the Five Powers, debates subsided and all other States succumbed to the terms of the Five Powers without having their concerns seriously addressed. With the signing of the U.N. Charter in 1945, the Five Powers became the five Permanent Members of the Security Council, and were bestowed with enormous power.

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<sup>9</sup> See ERNEST VAN DEN HAAG & JOHN P. CONRAD, THE U.N. IN OR OUT? 60 (1987). Besides being the victors of the war, three of these five could not be considered truly powerful. The United Kingdom was economically exhausted. France had numerous internal problems including the recovery from wartime occupation and the Vichy. China was soon engaged in its own civil war. See EDWARD McWHINNEY, UNITED NATIONS LAW MAKING 88 (1984) (discussing in depth the lack of power of these countries).

<sup>10</sup> See DOCUMENTS ON REFORM, *supra* note 5, at 415.

<sup>11</sup> See SYDNEY D. BAILEY & SAM DAWS, THE PROCEDURE OF THE U.N. SECURITY COUNCIL 139 (3d ed., 1998).

<sup>12</sup> See *id.*

In the four decades following the signing of the Charter, the East-West political divide had a crucial impact on the functioning of the Security Council. It was often frustrated by its inability to act quickly and effectively against perceived threats to peace. The collapse of the "Iron Curtain" marked a decline in this East-West tension and resulted in an incredible transformation of the Security Council, thus ending its previous stalemate. No longer paralyzed by superpower vetoes, the Security Council displayed an unprecedented activism in the 1990's, including the assumption of a key role in the Gulf War. Of the fifty-three operations that the Security Council has undertaken since 1948, forty have been initiated between the years of 1988 and 2000.<sup>13</sup> As of February 1, 2000, seventeen operations were under way.<sup>14</sup>

### B. *The Security Council's Functions, Powers and Procedures*

The Security Council is responsible for the maintenance of international peace and security.<sup>15</sup> The Security Council can make recommendations either to individual parties in a dispute or to the General Assembly as a whole. It can also render binding resolutions on any or all U.N. Member States. Member States are obligated to follow these binding resolutions in accordance with the Charter which states that Member States must "accept and carry out" its decisions.<sup>16</sup> No other organ of the United Nations has such binding, mandatory authority.<sup>17</sup>

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<sup>13</sup> See <http://www.un.org/Depts/dpko>.

<sup>14</sup> See <http://www.un.org/Depts/dpko>. (The following are the current operations with each starting date: U.N. Mission in the Central African Republic (MINURCA) (April 1998); U.N. Organization Mission in the Democratic Republic of the Congo (MONUC) (Nov. 1999); U.N. Mission in Sierra Leone (UNAMSIL) (Oct. 1999); U.N. Mission for the Referendum in Western Sahara (MINURSO) (April 1991); U.N. Civilian Police Mission in Haiti (MIPONUH) (Dec. 1997); U.N. Transitional Administration in East Timor (UNTAET) (Oct. 1999); U.N. Military Observer Group in India and Pakistan (UNMOGIP) (Jan. 1949); U.N. Mission of Observers in Tajikistan (UNMOT) (Dec. 1994); U.N. Mission in Bosnia and Herzegovina (UNMIBH) (Dec. 1995); U.N. Mission of Observers in Prevlaka (UNMOP) (Jan. 1996); U.N. Peacekeeping Force in Cyprus (UNFICYP) (March 1964); U.N. Observer Mission in Georgia (UNOMIG) (Aug. 1993); U.N. Interim Administration Mission in Kosovo (UNMIK) (June 1999)).

<sup>15</sup> See U.N. CHARTER art. 24.

<sup>16</sup> See *id.* at art. 25.

<sup>17</sup> BASIC FACTS ABOUT THE UNITED NATIONS, *supra* note 6, at 9.

The Security Council also has the power to investigate any situation that could lead to international friction or dispute.<sup>18</sup> After investigating, the Security Council may determine the existence of any threat to peace and may take measures to resolve the problem. Such measures include provisional measures, non-military orders such as the regulation of armaments, and economic sanctions.<sup>19</sup> If these are insufficient, the Security Council may then order peacekeeping missions or enforcement actions against a State that is threatening the maintenance of peace.<sup>20</sup> These two methods should not be confused.<sup>21</sup> Peacekeeping missions are traditionally carried out with the consent of the disputing parties and peacekeepers are deployed to implement an agreement approved by the parties.<sup>22</sup> With enforcement actions, the Security Council gives Member States the authority to take all necessary means to achieve an objective, and consent of the parties is not required.<sup>23</sup> The Security Council authorized such enforcement actions in the Gulf War, Somalia, Rwanda, Haiti, Bosnia and Herzegovina, and Albania.<sup>24</sup> While the Security Council approved these enforcement operations, a single country or group of countries undertook the actual actions. When these authorizations are rendered, the Security Council normally does not have control over the actions.<sup>25</sup>

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<sup>18</sup> See U.N. CHARTER art. 34.

<sup>19</sup> See *id.* at art. 39.

<sup>20</sup> See U.N. CHARTER art. 42. Article 42 provides:

Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.

<sup>21</sup> See <http://www.un.org/Depts/dpko>.

<sup>22</sup> See *id.*

<sup>23</sup> See *id.* See also John Quigley, *The "Privatization" of Security Council Enforcement Action: A Threat to Multilateralism*, 17 MICH. J. INT'L L. 249 (1996) (discussing the Security Council's resort to "privatization" of armed forces instead of carrying out military actions itself).

<sup>24</sup> See <http://www.un.org/Depts/dpko>.

<sup>25</sup> See generally Burns H. Weston, *Security Council Resolution 678 and Persian Gulf Decision Making: Precarious Legitimacy*, 85 AM. J. INT'L L. 516, 526-27 (1991) (stating that the lack of control by the Council under the Iraq resolution was "not what the U.N. founders and Charter drafters had in mind."); Malvina Halberstam, *The Right to Self-Defense Once the Security Council Takes Action*, 17

Beyond these powers and functions, the general procedures of the Security Council have often been called into controversy. The Charter provides that the Security Council can establish its own rule of procedures.<sup>26</sup> Procedures for voting are one of its most controversial aspects. Any Security Council Member may submit a proposal to be voted upon.<sup>27</sup> U.N. Member States can also submit proposals, but before any vote on such a proposal is considered, a member of the Security Council must request it be considered.<sup>28</sup> All members of the Security Council receive one vote.<sup>29</sup> Passing a resolution requires an affirmative vote of nine Members, including the concurring votes of all Permanent Members. The requirement that all Permanent Members must concur is the source of their veto power.<sup>30</sup>

Abstentions, the “hidden veto,” and absences also effect the voting of the Security Council. Voluntary abstentions are permitted,<sup>31</sup> and Members who are parties to disputes are required to abstain from voting.<sup>32</sup> The “hidden vote” exists in a situation where an insufficient number of Members vote, and the proposal is automatically rejected.<sup>33</sup> When Members can be persuaded to refrain from voting, proposals may be defeated.<sup>34</sup> Absences, either voluntary or involuntary, have also been used to affect outcomes.<sup>35</sup>

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MICH. J. INT'L L. 229 (1996) (discussing whether self-defense is permissible once the Security Council has acted).

<sup>26</sup> See U.N. CHARTER art. 30.

<sup>27</sup> See BAILEY, *supra* note 11, at 221.

<sup>28</sup> See *id.*

<sup>29</sup> See U.N. CHARTER art. 27.

<sup>30</sup> See *id.* In only one instance is the veto power not allowed. In the election of judges to the International Court of Justice, the Security Council vote is to be taken “without any distinction between permanent and non-Permanent Members of the Security Council.” *Id.* at art. 10. See also *Study on the Legal Basis of the veto: letter dated 11 August 1997 from the Under-Secretary-General for General Assembly Affairs and Conference Services Addressed to the Vice-Chairman of the Working Group*, U.N. Doc. A/AC/247/1998/CRP.1 (1998), revised by U.N. Doc. A/52/47/ANNEX12 (1999).

<sup>31</sup> See BAILEY, *supra* note 11, at 250.

<sup>32</sup> See U.N. CHARTER art. 27.

<sup>33</sup> See BAILEY, *supra* note 11, at 249.

<sup>34</sup> See *id.*

<sup>35</sup> See *id.* at 257. The Soviet Union boycotted votes on several occasions. It boycotted five meetings regarding an Iranian complaint in 1946. It also boycotted meetings in protest of the Council failing to replace the representative of Nationalist China with representative of the People’s Republic of China after the Chinese

Although this overview has attempted to present the Security Council's functions, powers and procedures in a neutral way, it is evident from its formation and founding principles that the Security Council does not provide equality or representation to U.N. Member States. Considering these problems and concerns, the need to reform has been pushed to the forefront of the United Nations' agenda.

### III. REFORMING THE SECURITY COUNCIL

#### A. *Renewed Calls to Reform the Security Council*

Dissatisfaction with the Security Council surfaced during its own formation negotiations.<sup>36</sup> The discontent failed to subside and the issue of reformation of the Security Council was finally put on the General Assembly's agenda in 1979. It was not until 1991, however, that the topic was formally discussed.<sup>37</sup> The focus during the 1990's on reforms of the Security Council was partly a result of the significant increases in interventions and authorizations of the use of force.<sup>38</sup> The diminish-

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revolution. The Council passed several resolutions pertaining to Korea, which would have been vetoed by the Soviets if they had not boycotted. *See id.*

<sup>36</sup> *See* U.N. Doc. 881, III/3/46, 12 U.N.C.I.O. Docs. 502, 503-04 (1945); *see also* EVAN LUARD, A HISTORY OF THE UNITED NATIONS 50-51 (1982); RUTH B. RUSSELL & JEANNETTE E. MUTHER, A HISTORY OF THE UNITED NATIONS CHARTER 443-44, 46-54 (1958).

<sup>37</sup> *See* DOCUMENTS ON REFORM, *supra* note 5, at 415. The question of equitable representation on and increase in the membership of the Security Council was included in the agenda of the General Assembly in 1979 at the request of Algeria, Argentina, Bangladesh, Bhuta, Guyana, India, Maldives, Nepal, Nigeria and Sri Lanka. *See* U.N. Doc. A/34/246. This request noted that the membership of the United Nations had increased from 113 at the time of enlargement of the Council in 1963 to 152 in 1979, while the membership of the Council remained at 15. It was not until thirteen years later, in December 1992, that the Assembly adopted a resolution regarding this subject. *See* U.N. Doc. A/50/47, at 2. This resolution proposed by thirty-six developing States and one Eastern European State was passed. In this resolution the General Assembly requested the Secretary General to invite Members States to submit written comments on a possible review of the Security Council's Membership. At the time of this resolution, the U.N. membership had increased to 179. *See id.* In July 1993, the Secretary General submitted a report containing States' comments regarding reform. *See* U.N. Doc. A/48/264, Add. 1, Add. 2, Add. 2/ Corr. 1 & Add. 3-10.

<sup>38</sup> Authorizations of force were used in several countries during the 1990's. *See, e.g.*, SC Res. 678, U.N. SCOR, 45th Sess., 2963d mtg., U.N. Doc. S/RES/678 (1990) (in relation to Kuwait); SC Res. 794, U.N. SCOR, 47th Sess., 3145th mtg., U.N. Doc. S/RES/794 (1992) (in relation to Somalia); SC Res. 816, U.N. SCOR, 48th Sess., 3191st mtg., U.N. Doc. S/RES/816 (1993) (in relation to the protection of

ing of political divisions within the Security Council and increased Security Council activism once again raised great concerns about the possible abuse of power.<sup>39</sup> Many U.N. Member States began to worry that future interventions would affect their own countries. Member States also became increasingly worried about the declining ability of non-members to influence the Security Council.

### *B. Main Problems Causing the Need to Reform*

#### *1. Domination by the Security Council Over the United Nations*

Contrary to the principles of equality and representation, the Security Council and its Permanent Members dominate the U.N., rather than act on its behalf. This domination is a product of the Security Council's exclusive powers, the self-interest of Council Members and the absence of "Check and Balances" to limit the Security Council's power.

##### *a. Security Council's Exclusive Power*

Preliminarily, the Charter provides that if the Security Council is exercising any of its powers, the General Assembly shall *not* make any recommendations with regard to the matter "unless the Security Council so requests."<sup>40</sup> Therefore, if the Security Council wants to take over an issue, all substantive powers are taken from the Assembly. The Security Council has

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Bosnian airspace); SC Res. 836, U.N. SCOR, 48th Sess., 3228th mtg., U.N. Doc. S/RES/836 (1993) (in relation to the protection of Bosnian safe areas); SC Res. 929, U.N. SCOR, 49th Sess., 3392d mtg., U.N. Doc. S/RES/929 (1994) (in relation to Rwanda); and SC Res. 940, U.N. SCOR, 49th Sess., 3413d mtg., U.N. Doc. S/RES/940 (1994) (in relation to Haiti); SC Res. 757, U.N. SCOR, 47th Sess., 3082d mtg., U.N. Doc. S/RES/757 (1992) (in relation to the Federal Republic of Yugoslavia (Serbia and Montenegro)); SC Res. 748, U.N. SCOR, 47th Sess., 3063d mtg., U.N. Doc. S/RES/748 (1992) (in relation to Libya); SC Res. 788, U.N. SCOR, 47th Sess., 3138th mtg., U.N. Doc. S/RES/788 (1992) (in relation to Liberia).

<sup>39</sup> See Lev Voronkov, *International Peace and Security: New Challenges to the U.N. 1-18*, in *THE UNITED NATIONS IN THE NEW WORLD ORDER: THE WORLD ORGANIZATION AT FIFTY* (Dimitris Bourantonis & Jarod Weiner, eds. 1995) (discussing the post-Cold War United Nations); see generally Sean D. Murphy, *The Security Council, Legitimacy, and the Concept of Collective Security After the Cold War*, 32 COLUM. J. TRANSNAT'L L. 201 (1994); see generally Cameron R. Hume, *The United Nations, Iran And Iraq: How Peacemaking Changed* (1994) (discussing Security Council's treatment of Iran and Iraq since 1945).

<sup>40</sup> U.N. CHARTER art. 12.

exclusive power to decide the dispute; and the General Assembly cannot interfere with this decision.<sup>41</sup> A *de facto* amendment was made to the Charter permitting the General Assembly to make recommendations even where the Security Council seized the problem, but these recommendations are in no way binding on the Security Council.

*b. Self-Interest of Council Members*

In some parts of the world, especially in Africa, the Council was seen as a disinterested and immovable body that was only roused to action when conflicts around the world became so brutal and bloody that they could not escape the attention of the selective world media.<sup>42</sup>

Security Council Members normally act, or fail to act, only in accordance with their own self-interest. The Security Council may act, therefore, to the detriment of what may be more beneficial to the international community as a whole. The authorization of the use of force, which is normally made at the request of a particular member, frequently reflects an individual member's own agenda. For example, the United States pushed for a resolution in Haiti mainly because of the large number of Haitians fleeing to its borders seeking asylum, not because there was a threat to international peace or security.

Further, it is probably no coincidence that an unparalleled number of discussions within the Security Council on one single country, Rwanda, occurred at a time when Rwanda was a member of the Security Council, between 1994 and 1995. It adopted more than thirty resolutions and presidential statements concerning Rwanda during this time.<sup>43</sup> In December 1994, Rwanda actually presided over the Security Council. This poses the question of what would have been the Security Council's actions had Rwanda not been a member at that time. France was also accused of acting in its self-interest regarding Rwanda. France gave arms to one side of the conflict throughout the mas-

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<sup>41</sup> See BAILEY, *supra* note 11, at 7.

<sup>42</sup> Assembly Adopts Text on Bosnia and Herzegovina; Takes Up Security Council Reform U.N. Doc. GA/9688 (1999) (Statement by Representative of South Africa).

<sup>43</sup> See A. Peter Mutharika, *The Role of the United Nations Security Council in African Peace Management: Some Proposals*, 17 MICH. J. INT'L L. 537 (1996).

sacres, and it voted on the Security Council in a manner consistent with its support of one faction.<sup>44</sup>

The Security Council Members also continually try to fulfill their own agendas by influencing the decisions of other Security Council Members' decisions with political or economic pressure.<sup>45</sup> For example, the self-interest of the United States was suspicious to many during the Gulf War.<sup>46</sup> Shortly after a vote concerning Iraq, reportedly in retaliation for its negative vote, the United States cut economic aid to Yemen.<sup>47</sup>

The problem of self-interest is also evident when Permanent Members are not willing to abstain from voting when they

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<sup>44</sup> See David D. Caron, *The Legitimacy of the Collective Authority of the Security Council*, 87 AM. J. INT'L L. 552, 562 (1993) (citing Erskine Childers, *Gulf Crisis Lessons for the U.N.*, in 23 BULL. PEACE PROPOSALS 129, 133 (1992)).

<sup>45</sup> The Security Council has been described as "at best a police force of the West and at worst an uncontrolled arm of the American government." DOCUMENTS ON REFORM, *supra* note 5, at 419-31 (Helen Leigh Phippard, Remaking the Security Council: The Options).

<sup>46</sup> Various reports have recounted that the U.S made several promises of rewards or threats of punishment outside the Council meetings to influence the passing of the resolution to use force against Iraq. See David D. Caron, *The Legitimacy of the Collective Authority of the Security Council*, 87 AM. J. INT'L L. 552, 562-3 (1993) (citing Burns H. Weston, *Security Council Resolution 678 and Persian Gulf Decision Making: Precarious Legitimacy*, 85 A.J.I.L. 516, 523-25 (1991) (Professor Weston discusses the promise of financial help to Colombia, Cote d'Ivoire, Ethiopia and Zaire; agreement with the Soviet Union "to help keep Estonia, Latvia, and Lithuania out of the November 1990 Paris summit conference"; and an agreement to end trade sanction against China and to support World Bank loans to China)); "The real problem was that leadership turned into headship, where decisions for the group are arrived at unilaterally by a leader whose overwhelming power ensures that subordinates will have few other options than to comply." *Id.* at 563 (citing Andrew F. Cooper, Richard A. Higgot & Kim R. Nossal, *Bound to Follow? Leadership and Fellowship in the Gulf Conflict*, 106 POL. SCI. Q. 391, 407 (1991); "[T]he process by which Security Council Resolution 678 was won, while perhaps legally correct stricto sensu, confirms how complete the power of the United States over the U.N. policing mechanism had become in the absence of Cold War opposition." *Id.*

<sup>47</sup> See Quigley, *supra* note 23, at 273 (citing Judith Miller, *Kuwaiti Envoy Says Baker Vowed 'No Concessions' to Iraqis*, N.Y. TIMES, Dec. 5, 1990, at A22) (Kuwaiti ambassador to U.S. quoted as saying that Secretary Baker told him U.S. would cut aid to Yemen because of its vote); see also Rick Atkinson & Barton Gellman, *Iraq Trying to Shelter Jets in Iran: U.S. Says*, WASH. POST, Jan. 29, 1991, at A1. (State Department informed Congress it would cut aid to Yemen from a planned \$22 million to under \$3 million. State Department did not deny a published report which stated that after the vote on the Iraq resolution, a U.S. diplomat told Yemen Ambassador Al-Ashtal, "that will be the most expensive vote you will have cast.").

are parties to a dispute. While the U.N. Charter states that, "a party to a *dispute* shall abstain from voting" in decisions under Chapter VI,<sup>48</sup> mandatory abstention does not apply to a "situation which *might* lead to international friction or give rise to a dispute," rather than an actual dispute.<sup>49</sup> Because "dispute" was never defined during the San Francisco conference, Security Council Members have argued that the event was a "situation" and not a "dispute"; or if a dispute did exist, that the member was not a party to it.<sup>50</sup> When this issue was brought before the International Court of Justice (ICJ), it concluded that abstention from voting requires "the prior determination *by the Security Council* that a dispute exists and that certain members of the Security Council are involved as parties to such a dispute."<sup>51</sup> By exercising its veto power, a Permanent Member exercises control over the determination of whether it is or is not involved in the dispute. The obvious result is that if a Permanent Member wants to veto a Security Council action, it will deem itself not to be party to a "dispute."

### c. *Lack of "Checks and Balances"*

Finally, because its decisions are not revisable by any other organ of the U.N., the Security Council can be said to dominate the entire U.N.<sup>52</sup> The ICJ can issue advisory opinions, and the General Assembly can render simultaneous opinions, but these opinions are neither binding nor retroactive. The only "check" on the Security Council's power may occur when it asks for sanctions or troops, and no States respond. This check is highly insufficient because the Security Council Members, in particular the Permanent Members, have sufficient military power to

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<sup>48</sup> U.N. CHARTER art. 27.

<sup>49</sup> Frederic L. Kirgis, *The Security Council's First Fifty Years*, 89 AM. J. INT'L L. 511 (1995).

<sup>50</sup> See *id.* at 506, 511. (citing YEHUDA Z. BLUM, ERODING THE UNITED NATIONS CHARTER 196-98 (1993)).

<sup>51</sup> Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council resolution 276 (1970), 1971 I.C.J. REP. 16, 23 (Advisory Opinion of June 21).

<sup>52</sup> See MOHAMMED BEDJAOUI, THE NEW WORLD ORDER AND THE SECURITY COUNCIL: TESTING THE LEGALITY OF ITS ACTS 35 (1994); see also Jose E. Alvarez, *Judging the Security Council*, 90 AM. J. INT'L L. 1 (1996) (discussing the issue of whether the International Court of Justice should judicially review Security Council decisions).

implement a plan. Greater checks are necessary to prevent infringements on state sovereignty and to balance the power of the Security Council.

## 2. *Veto Power*

The most criticized aspect of the Security Council is the Permanent Members' veto power.<sup>53</sup> The actual use of the veto, however, has declined since the end of the Cold War. The veto was used 194 times between 1946 and 1990, but it was only used nine times in the past decade.<sup>54</sup> Russia has used its veto power 120 times, but only twice in the past decade.<sup>55</sup> The United States has vetoed seventy-two proposals over the years.<sup>56</sup> Britain has used its veto power thirty-two times, France eighteen times, and China only five times.<sup>57</sup> Despite the decline, most Member States continue to oppose the veto power.<sup>58</sup>

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<sup>53</sup> The initial proposal for the veto arose at the request of the Soviet Union. Stalin pushed to have it included in the Charter because he thought the other Security Council Members would continuously out-vote his country's initiatives. See VAN DEN HAAG, *supra* note 9, at 224. The United States demanded the veto power arguing that the Senate would not otherwise consent to U.N. membership. See *id.* A large number of Member States that participated in the San Francisco Conference were against the inclusion of the veto power, but the Five Powers were in unison on their determination to have this right. BAILEY, *supra* note 11, at 139. They assured other States that they would not abuse their veto power, but this proved otherwise. See *id.* Similar to other aspects, when it was clear that without the veto the United Nations would not exist, the other Member States halted their efforts to exclude it. See *id.* at 227. At its first and third sessions, the General Assembly adopted resolutions pleading for the Permanent Members to restrain the use of the veto. In the first two decades of the Security Council, the Soviet Union cast 103 out of 110 vetoes issued. In the following two decades, the United States used its veto power more than other Permanent Members. See also *Study on the Legal Basis of the veto: letter dated 11 August 1997 from the Under-Secretary-General for General Assembly Affairs and Conference Services Addressed to the Vice-Chairman of the Working Group*, U.N. Doc. A/AC/247/1998/CRP.1 (1998), revised by U.N. Doc. A/52/47/ANNEX12 (1999).

<sup>54</sup> BAILEY, *supra* note 11, at 231-38.

<sup>55</sup> See *id.*

<sup>56</sup> See *id.*

<sup>57</sup> See *id.*

<sup>58</sup> See *General Assembly Continues Debate on Security Council Reform With Focus on Changing Veto*, U.N. Doc. GA/9692 (1999). The representative of Slovakia stated that the veto was:

originally designed to foster unity and promote the search for understanding among the great Powers, turned out to be a tool, often misused, either in ideological battles among bitter rivals during the cold war or for narrow

Essentially, if any Permanent Member vetoes a proposal, the Security Council is completely frozen.<sup>59</sup> Further, the Five Powers can free themselves from the governance of the Security Council, the General Assembly and the United Nations as a whole by merely vetoing any proposal made against their interests. As stated above, if the Security Council is considering a problem, aside from issuing non-binding resolutions, the General Assembly may not interfere. Thus, if the General Assembly attempts to address a problem caused by a Permanent Member, the Permanent Member simply has to put the problem on the Security Council's agenda, and the General Assembly is no longer permitted to take further firm action. Permanent Members can also shield allied Member States by using this same technique.

Although much attention is given to the veto, the problem of the reverse veto may prove to be more detrimental. The reverse veto does not block Security Council action, but rather blocks the termination or altering of a resolution that has already been passed.<sup>60</sup> This has more relevance today considering the relative increase in the Security Council's activities in the past decade. For example, after days of bombarding Iraq, several countries sought to establish peace initiatives and bring an end to the attack. Both the United States and the United Kingdom, however, argued that they were authorized to continue using force until a further resolution passed and ended

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political interests. Even now, it could paralyze the Council, rendering it unable to take effective action on behalf of Member States.

*Id.*

Some arguments have been made in favor of retaining the veto. *See id; see, e.g., DOCUMENTS ON REFORM, supra* note 5, at 423-24 (discussing that the loss of the veto would result in influential U.N. Members disinterest in the organization and that the veto allows control over the number of operations the United Nations engages.); *see also* VAN DEN HAAG, *supra* note 9, at 225-27 (1987) (proponents believe that the existence of the United Nations depends on the veto).

<sup>59</sup> Although the General Assembly can surpass a "frozen" Security Council, it rarely does. *See infra* at Section IV.B (discussing the Uniting for Peace Resolution).

<sup>60</sup> *See* Caron, *supra* note 44, at 577. The problem of the reverse veto resulted from the silence in the Charter regarding termination or alterations of previous actions.

their authority. Furthermore, each stated they would veto any such provision.<sup>61</sup>

### 3. *Non-Participation of U.N. Members in Security Council Decisions*

Three provisions in the U.N. Charter and the provisions in the Security Council's own Provisional Rules of Procedure provide for participation by the U.N. Members in the Security Council's decision-making process when they are affected or when they have an interest in the Security Council's actions. Article 31 provides: "Any member of the United Nations which is not a member of the Security Council *may* participate, without vote, in the discussion of any question brought before the Security Council whenever the latter considers that the interests of that Member are specially affected."<sup>62</sup> Article 32 provides that any Member State or non-U.N. Member State that is a party to the dispute "*shall* be invited to participate, without vote, in the discussion relating to the dispute."<sup>63</sup> Article 50 provides that those third party States affected by Security Council actions *shall* have the right to consult the Security Council.<sup>64</sup>

The Security Council's Provisional Rules of Procedure also contain similar provisions giving Member States the right to be heard. Rule 37 provides:

Any Member of the United Nations which is not a member of the Security Council *may* be invited, as a result of a decision of the Security Council, to participate without vote, in the discussion of any question brought before the Security Council when the Secur-

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<sup>61</sup> See Paul Lewis, *U.S. and Britain Assert U.N. Power: They Say They Can Continue Sanctions and the War*, N.Y. TIMES, Feb. 22, 1991, at A4.

<sup>62</sup> See U.N. CHARTER art. 31.

<sup>63</sup> See *id.* at art. 32. Article 32 provides in full: "Any Member of the United Nations which is not a member of the Security Council and any state which is not a Member of the United Nations, if it is a party to a dispute under consideration by the Security Council, shall be invited to participate, without vote, in the discussion relating to the dispute. The Security Council shall lay down such conditions as it deems just for the participation of a state which is not a Member of the United Nations." *Id.*

<sup>64</sup> See *id.* at art. 50. Article 50 provides: "If preventive or enforcement measures against any state are taken by the Security Council, any other state, whether a Member of the United Nations or not, which finds itself confronted with special economic problems arising from the carrying out of those measures shall have the right to consult the Security Council with regard to a solution of those problems." *Id.*

ity Council considers that the interests of that Member are specially affected, or when a Member brings a matter to the attention of the Security Council in accordance with Article 35(1) of the Charter.<sup>65</sup>

The inherent problem with both Article 31 of the Charter and the Security Council's Provisional Rule 37 is that the discretion to allow participation by a Member State lies in the hands of the Security Council itself. Both Article 32 and Article 50, however, seem to create the right of participation when a Member State's interests are affected.

Contrary to these mandates, decisions are frequently made without any input from the countries involved.<sup>66</sup> Resolutions are often taken without involving non-Security Council Members and without hearing outside points of view.<sup>67</sup> Such resolutions include decisions affecting only the domestic affairs of a country. Even when the Security Council hears an argument by a Member State, it typically will have no bearing or impact on the resolution under discussion "which will have been prepared, every 'i' dotted and every 't' crossed, during previous informal consultations."<sup>68</sup>

#### 4. *Lack of Transparency of Security Council Meetings*

Directly linked to the problem of non-participation of U.N. Member States in Security Council decisions is the absence of transparency in the Security Council's meetings. The Council's Provisional Rules provide, "unless it decides otherwise, the Security Council shall meet in public."<sup>69</sup> Apparently, the Security

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<sup>65</sup> Provisional Rules of Procedure of the Security Council, U.N. Doc.S/96/Rev.7 (1996), Rule 37 [hereinafter Rules of Procedure]. See also Rule 38 which provides:

Any Member of the United Nations invited in accordance with the preceding rule, or in application of Article 32 of the Charter, to participate in the discussions of the Security Council may submit proposals and draft resolutions. These proposals and draft resolutions *may* be put to a vote only at the request of a representative on the Security Council.

*Id.* at Rule 38.

<sup>66</sup> See Anthony Aust, *The Procedure and Practice of the Security Council Today, in PEACE KEEPING AND PEACE-BUILDING: THE DEVELOPMENT OF THE ROLE OF THE SECURITY COUNCIL* 366 (Rene-Jean Dupuy, ed. 1993).

<sup>67</sup> See *id.*

<sup>68</sup> *The case for a new interpretation of Article 31 of the Charter of the United Nations: working paper by the Czech Republic*, U.N. Doc. A/AC.247/1996/CRP.13, revised by U.N. Doc. A/52/47 (1998).

<sup>69</sup> Rules of Procedure, *supra* note 65, at Rule 48.

Council has chosen "otherwise" in the majority of its decision-making proceedings.

In the early years, most of the Security Council's meetings were held in public, and verbatim records were maintained, including records on procedural debates and votes.<sup>70</sup> Today the records are scant and offer little indication of the proceedings actually held before a resolution is adopted.<sup>71</sup> Private informal consultations are now the norm.<sup>72</sup> In fact, nearly all the Security Council's work occurs in informal consultations from which Member States are excluded and which only Security Council Members or the Secretariat may attend.<sup>73</sup> It is usually agreed in these consultations that no debate will take place in the official meeting and that no non-Security Council Members will speak.<sup>74</sup> In other words, the official public meetings of the Security Council have generally become "very much a pre-arranged, set-piece affair."<sup>75</sup> Closed consultations are also held by sub-groups of the Security Council, such as the five Permanent Members alone.<sup>76</sup>

The following description provides additional details on the Security Council proceedings in informal consultations:

Probably in order to avoid the recurrence of the difficult public meetings punctuated by procedural disputes which had marked the cold war era, special attention has for several years been

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<sup>70</sup> See Aust, *supra* note 66, at 366.

<sup>71</sup> See *id.*

<sup>72</sup> See *id.* Aust noted the curious fact that a special room was constructed in the 1970's in the vicinity of the actual Security Council Chamber, which is a miniature of the actual chamber and was designed specifically for the informal consultations. See *id.* Previously, the informal meetings took place in the President's office, making them informal but also physically uncomfortable. In 1975, the construction of a separate room was authorized and completed in 1978. Curiously, from 1977 to 1978, the number of informal meetings increased three-fold and the time of the meetings quadrupled. See *id.*; see also Lois Feuerle, *Informal Consultations: A Mechanism in Security Council Decision-Making*, 18 N.Y.U. J. of INT'L L. & POL. 267 (1985).

<sup>73</sup> See Aust, *supra* note 65, at 237. Concerning both the situations which arose in Bosnia-Herzegovina and Libya, the Council met almost entirely in private sessions. See Frederic L. Kirgis, *The Security Council's First Fifty Years*, 89 AM. J. INT'L L. 506, 519 (1995). Also, the Council passed the resolution involving Somalia without any public debate. See Ruth Gordan, *United Nations Intervention in Internal Conflicts: Iraq, Somalia, and Beyond*, 15 MICH. J. INT'L L. 519, 554 (1994).

<sup>74</sup> See Aust, *supra* note 66, at 367.

<sup>75</sup> *Id.*

<sup>76</sup> See Kirgis, *supra* note 49, at 519 (1995).

given to delivering only a finished product at official meetings of the Council. In other words, it is still customary nowadays to wait until all the differences of opinion within the Council have been settled, and a text has been negotiated down to the last comma, before holding an official meeting. The script for such a meeting has always been worked out beforehand in its tiniest details so as to leave no room for surprises. The consequence of this is, inevitably, the declaratory, rigid style of such meetings, at which delegations not members of the Council may be heard reading out their prepared statements before a decision is taken, with members presenting before and after the vote explanations which, of course, do not take into account the arguments put forth during the debate leading up to the vote.<sup>77</sup>

### C. *Obstacles to Reforming the Council*

While the above section provides an overview for a multitude of problems existing in the Security Council as well as a demonstration of the need to reform the Security Council, several obstacles continue to block Security Council reform. These obstacles include procedures to amend the Charter, a majority vote requirement to pass reform measures, and general financial and political realities.

#### 1. *Procedures to Amend the Charter*

Although the drafters of the Charter foresaw that amendments would most likely be necessary in the future and, therefore, included amendment procedures, the actual ability to amend the Charter depends on the Permanent Members of the Security Council.<sup>78</sup> The Charter can only be amended by a two-thirds vote of the General Assembly in addition to ratification by two-thirds of the Security Council (including the Permanent

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<sup>77</sup> Letter dated November, 1994 from the Permanent Representative of France to the United Nations addressed to the Secretary-General, U.N. Doc. A/49/667-S/1994/1279, at 12 (1994).

<sup>78</sup> U.N. CHARTER arts. 108, 109. Article 108 provides:

Amendments to the present Charter shall come into force for all members of the United Nations when they have been adopted by a vote of two-thirds of the members of the General Assembly and ratified in accordance with their respective constitutional processes by two-thirds of the members of the United Nations, including all permanent members of the Council.

Members).<sup>79</sup> Any restructuring through means of amending the Charter, therefore, will ultimately depend on the Security Council and the Permanent Members themselves.<sup>80</sup>

## 2. *Financial and Political Realities*

Simply stated, a few countries in the world have extreme economic and political control over the majority of the smaller nations. While most countries are in favor of reform, it will most likely be an extremely long process, if it occurs at all. It is possible reform measures will never be obtained since the smaller nations will most likely submit to the pressures of the larger powers in the world. Stronger Member States will continue to put political pressure on other Member States in an attempt to halt reforms or to press only for the reforms that they want. Member States may also boycott or withhold funds from the United Nations if they do not agree with reform measures.

Despite all of these obstacles, U.N. Member States are continuing to press for reform. It is certain that reforming the Security Council will remain a high priority on the United Nation's agenda until a solution is found. With that in mind, it is important to set forth those measures that are being considered.

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<sup>79</sup> See *id.* See generally Carolyn L. Willson, *Changing the Charter: The United Nations Prepares for the Twenty-First Century*, 90 AM. J. INT'L L. 115 (1996) (discussing amendment procedures of the U.N. Charter).

<sup>80</sup> In 1998, the General Assembly adopted a resolution requiring a majority of the General Assembly's affirmative votes to invoke any Security Council reform. See *Security Council: Increase in Membership*, U.N. Doc. A/RES/53/30 (1998). This could prove to be a major impediment to reform measures if agreement cannot be reached. The Resolution provides:

The General Assembly . . . mindful of Chapter XVIII of the Charter of the United Nations and of the importance of reaching general agreement as referred to in [a previous resolution], determines not to adopt any resolution or decision on the question of equitable representation on and increase in the membership of the Security Council and related matters, without the affirmative vote of at least two thirds of the Members of the General Assembly.

#### IV. PROPOSALS PRESENTED TO REFORM THE SECURITY COUNCIL

The proposals being discussed are remarkably similar to those rejected over fifty years ago during the formation of the Security Council.<sup>81</sup> This reflects the continued disenchantment with the Security Council and the desire to implement change. This Section provides proposals from Member States, regional groups, the U.N. Working Group, and the author's own proposals. These proposals attempt to increase equality and representation for all U.N. Member States.

Member States have individually made proposals; in addition, various States have joined regional groups to present their ideas uniformly.<sup>82</sup> These groups include the Non-Aligned Movement ("NAM") and the Groups of African, Arab, Asian and Latin States.<sup>83</sup> Due to the overwhelming number of proposals submitted by over 100 Member States either individually or collectively, this Section only provides some examples and is, therefore, not exhaustive of the topic.

The Working Group is also currently formulating proposals. The Working Group, formed in 1993,<sup>84</sup> met for the first time in January 1994<sup>85</sup> and had its mandate extended by the General Assembly at its forty-eighth through fifty-second sessions. Reports on its progress were submitted at each of these sessions. The Working Group appears to be independent and

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<sup>81</sup> See THE ONCE AND FUTURE SECURITY COUNCIL 1 (Bruce Russet, ed., St. Martin's Press 1997).

<sup>82</sup> See, e.g., *Question of equitable Representation on and Increase in the Membership of the Security Council and Related Matters*, U.N. GAOR, 49<sup>th</sup> Sess., Agenda Item 33, U.N. Doc. A/49/965 (1995) (compendium of numerous State's proposals) [hereinafter *Question of Equitable Representation*]; see also U.N. Doc. A/AC. 247/5(a)-(l) (proposals submitted by Argentina, Australia, Austria, Belize, Cuba, Indonesia, Italy, Mexico, Singapore and Turkey).

<sup>83</sup> NAM has 113 members from Africa, Asia, Europe, Latin America and the Caribbean. During the cold war, non-alignment was the answer of the developing world to the policies and rivalries promoted by the then existing superpowers. See <http://www.nonaligned.org/intro.html>. The members of the NAM constitute eighty percent of the U.N. membership. See *General Assembly Continues Debate on Security Council Reform With Focus on Changing Veto* U.N. Doc. GA/9692, *Permanent Membership* (1999) [hereinafter *Debate on Security Council Reform*].

<sup>84</sup> G.A. Res. 48/26, U.N. GAOR, U.N. Doc. A/48/26 (1993), revised by U.N. Doc. A/52/47/Annex I. (1999).

<sup>85</sup> U.N. Doc. A/48/47 (1994) (Working Group's first report).

has conducted bilateral consultations with over 165 countries.<sup>86</sup> Its substantive meetings are open to all U.N. delegations to submit any oral or written proposals.<sup>87</sup> The latest report of the Working Group, released on August 5, 1999, failed to make any firm recommendations.<sup>88</sup> Its only so-called "recommendation" reads as follows:

At its 53rd meeting, on 30 July 1999, the Open-ended Working Group concluded its work for the current session of the General Assembly and decided to recommend that consideration of this item be continued at the fifty-fourth session of the Assembly, building upon the work done during the previous sessions. To that end, the Working Group recommends to the General Assembly that the Working Group should continue its work.<sup>89</sup>

In other words, the Working Group did not make any recommendations.<sup>90</sup> In fact, after seven years the Working Group has only made "general observations" that certain "elements [have] emerged that may prove useful when the Working Group resumes its work."<sup>91</sup>

The following are the five main areas of reform currently being discussed regarding increased representation and equality of Member States in the Security Council: 1) adding additional Permanent Members; 2) increasing the overall Security Council membership; 3) changing the veto power; 4) increasing participation in the decision making process; and 5) increasing transparency.

#### A. Additional Permanent Members

Adding Permanent Members has been proposed several times since the Security Council's formation. Less than twenty

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<sup>86</sup> See <http://www.undp.org/missions/italy/statemen/reform/130397.htm>. See also David Bills, *International Human Rights and Humanitarian Intervention: The Ramifications of Reform on the United Nations' Security Council*, 31 TEX. INT'L L. J. 107, 116-122 (1996) (over viewing some of the Working Group's practices).

<sup>87</sup> See *Question of Equitable Representation*, *supra* note 82.

<sup>88</sup> See *Report of the Open-Ended Working Group on and Increase in the Membership of the Security Council and other Matters Related to the Security Council*, U.N. Doc. A/53/47 (1999) [hereinafter 1999 Working Group Report].

<sup>89</sup> *Id.*

<sup>90</sup> The Working Group made the same "recommendation" in each of its previous reports. See U.N. Doc. A/52/47, U.N. Doc. A/51/47; U.N. Doc. A/50/47; U.N. Doc. A/49/47; U.N. Doc. A/48/47.

<sup>91</sup> 1999 Working Group Report, *supra* note 88, at 5-6.

years after its creation, and again in 1979 suggestions were made to expand the Permanent Membership, but were never implemented.<sup>92</sup> In 1991, the interest resurfaced again with the fall of the Soviet Union and the hopes that its seat would become vacant, but Russia eventually replaced the Soviet Union in that position.

### 1. *Proposals by Member States and Regional Groups*

The majority of States presumably agree on the need to enlarge the Security Council's permanent membership.<sup>93</sup> Previously, the Five Powers strongly resisted any attempt to enlarge this membership, but more recently they have supported the idea.<sup>94</sup> The most widely accepted proposal is to add Japan and/or Germany, which are the second and third largest contributors to the U.N. regular budget.<sup>95</sup> The other potential candidates for permanent seats include Nigeria and Brazil.<sup>96</sup>

A wide variety of other proposals have been made.<sup>97</sup> These include the following: 1) Tenured membership: members could occupy seats for longer than two years; 2) Extended membership: these seats would not be subject to the prohibition against

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<sup>92</sup> See DOCUMENTS ON REFORM, *supra* note 5, at 425.

<sup>93</sup> See, e.g., *Debate on Security Council Reform*, *supra* note 83.

<sup>94</sup> See, e.g., *General Assembly Continues Discussion of Security Council Reform*, U.N. Doc. GA/9689 (1999) (in which the United Kingdom, China, and France expressed such support) [hereinafter *Discussions of Security Council Reform*].

<sup>95</sup> See BAILEY, *supra* note 11, at 387. Japan's contributions to the regular U.N. budget have exceeded the combined amount of four of the five Permanent Members. See THE ONCE AND FUTURE SECURITY COUNCIL, *supra* note 81, at 118 (Ian Hurd, *Security Council Reform: Informal Membership and Practice*). The United States is the largest contributor. *See id.* Japan wants the total membership to increase to 24 including 5 new Permanent Members and 4 new non-permanent members. *See Assembly Adopts Text on Bosnia and Herzegovina; Takes Up Security Council Reform*, U.N. Doc. GA/9688 (1999) (Statement by the U.N. Representative of Japan). *See also generally* Masayuki Tadokoro, *A Japanese View on Restructuring the Security Council*, in THE ONCE AND FUTURE SECURITY COUNCIL, *supra* note 81, at 120-33.

<sup>96</sup> See DOCUMENTS ON REFORM, *supra* note 5, at 425.

<sup>97</sup> *See id.* at 435-36. One author made a curious observation, as he pointed out, at the time the five recognized nuclear-weapon states made up the entire permanent membership of the General Council. At the time of the U.N.'s formation, only the United States had operational nuclear weapons, but throughout the years all of the other Member States also acquired this capability. Thus, powerful states have been equated with states with nuclear capabilities. India and Pakistan have used this argument in attempting to gain permanent seats in the Council. *See id.* at 419.

re-election of consecutive two-year terms; 3) Two stage approach: enlarge the permanent seats by a certain amount at the first stage and at the second stage the specific countries to receive the seats would be announced;<sup>98</sup> 4) Redistribution of the permanent seats: the two obvious choices are to replace France and Great Britain which are no longer economic nor military powers;<sup>99</sup> 5) Replacing seats: creating one single European Union permanent seat to replace Great Britain and France.<sup>100</sup> Other Member States suggest adding permanent seats on the basis of geographical representation.<sup>101</sup> The Group of Arab States want a "full-fledged rotating permanent seat" which would entail that one permanent seat would go to the Arab States on a rotating basis amongst this region.<sup>102</sup> The African States want to be allocated no less than two permanent seats.<sup>103</sup> The African States and Arab States also want new Permanent Members to possess the same prerogatives and powers as the current members.<sup>104</sup> It is clear that most Member States and regional groups favor expanding the permanent membership. The uncertainty of exactly which or how many States will be added remains to be the difficulty.

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<sup>98</sup> See, e.g., *Debate on Security Council Reform*, *supra* note 83 (in which the Slovakia representative condemned such a two stage approach as "methodically wrong").

<sup>99</sup> See DOCUMENTS ON REFORM, *supra* note 5, at 426.

<sup>100</sup> See BAILEY, *supra* note 11, at 386 (citing Rapportuer Renzo Trivelli *Report of the Committee on Foreign Affairs and Security on the role of the Union within the U.N. and the problems of reforming the U.N.* Parl. Doc. (A3-0331/93) (1993)) (proposal by developing countries and the Committee of Foreign Affairs and Security of the European Parliament). The two countries have consistently objected to any proposals that would result in the loss of their seats. See *id.*

<sup>101</sup> See DOCUMENTS ON REFORM, *supra* note 5, at 425.

<sup>102</sup> *Debate on Security Council Reform*, *supra* note 83.

<sup>103</sup> See *Decision of the Assembly of Heads of State and Government of the Organization of African Unity on the Procedures for Rotation of the Two Permanent Seats Claimed by Africa*, transmitted by Senegal, U.N. Doc. A/AC.247/1998/CRP.16 and Corr. 1 (1999), revised by A/52/47 Annex XXIV.

<sup>104</sup> See 1999 Working Group Report, *supra* note 88, Letter dated 29 July 1999 from the Permanent Representative of Algeria transmitting the African position on the question of equitable representation and increase in the membership of the Security Council, pp. 54-55, entitled "Harare Declaration of the Assembly of Heads of State and Government of the Organization of African Unity on the reform of the United Nations Security Council." See also Letter dated 27 January 1998 from the Permanent Representative of Bahrain in his capacity as Chairman of the Group of Arab States for the month of January 1998 addressed to the President of the General Assembly, U.N. Doc. A/AC.247/1998/CRP.2 (1998).

## 2. *Working Group's Proposals*

The Working Group has failed to reach a decisive consensus on the expansion of the permanent membership category of the Security Council. While concluding that the majority of Member States expressed a preference for an increase in permanent seats, the Working Group, rather than making any proposals, has only thus far listed issues in its ongoing conference room paper. Such issues include: "Can we agree whether it is desirable to have an expansion that includes both additional permanent and additional non-Permanent Members?; Can we agree on how any additional permanent seats should be allocated?"<sup>105</sup>

## 3. *Author's Proposals*

There are a few countries that appear to believe that the only yardstick by which progress on this issue can be measured is the achievement of their ambition to become a permanent member of the Council. Their desire to seek a permanent status on the Security Council is not motivated by altruistic or noble sentiments. It is an undisguised grab for power and privilege.<sup>106</sup>

New permanent seats should not be granted to any individual U.N. Member State. In the new millennium, special privileges should not be bestowed on some and denied to others. The addition of any individual Member States as a Permanent Member would only make the Security Council more unrepresentative, unequal, and unresponsive to the concerns of the other countries. The status of Permanent Members should never have been created when the Security Council was formed, and it is inconceivable at this point that the current Permanent Members will ever relinquish their power. Although this author does not support the continued permanent membership of the majority of its current State Members, at this stage, it seems impossible to attempt to revoke any Permanent Member's status.

Besides the countries fighting for a permanent seat, it is unclear why numerous other Member States also accept the

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<sup>105</sup> 1999 Working Group Report, *supra* note 88, at 20-21.

<sup>106</sup> *Debate on Security Council Reform*, *supra* note 83. (Statement of representative Pakistan).

idea of additional individual States' seats. Permanent Member status was strongly opposed at the San Francisco Conference. It was not seriously challenged, however, because it became clear that the Five Powers would reject the Charter completely unless this status was conferred upon them.<sup>107</sup> No doubt exists today, however, that if the Charter were drafted *de novo*, the same Permanent Members would not be chosen.

If new Permanent Members are chosen from a particular country, the same issues will arise in the future as to whether these countries deserve permanent status. For example, when the United Nations was formed, both Germany and Japan were prohibited from joining and were officially deemed to be "enemy states" in the original Charter.<sup>108</sup> Now, they are the prime candidates to receive permanent seats. Future historical and political trends are uncertain. It does not seem prudent to designate permanent seats when it is uncertain whether these countries will later deserve to remain in such a position. This problem would only be exacerbated if the potential new members were given the right to veto.

While many countries support Japan and Germany becoming Permanent Members, this proposal should be rejected. If Germany were selected this would lead to three seats being maintained by Western European countries. If Japan were chosen this would cause more domination by the industrialized nations. France, Great Britain, and the United States want Japan to become a permanent member because they all have strong political ties with Japan, and Japan would most likely vote similarly to them. This is not a solution to provide more equality and representation.

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<sup>107</sup> See Kirgis, *supra* note 49, at 507; see also VAN DEN HAAG, *supra* note 9, at 54-55. The predecessor to the U.N.'s Security Council had similar problems. Originally, the Council of the League was to consist of representatives from the United States, Great Britain, France, Italy, and Japan as Permanent Members and six members selected by the General Assembly. The American seat was never occupied. Germany later also received a permanent member seat. Yet, many other member states sought permanent membership including Brazil, Spain and Poland. Brazil withdrew from the League after the General Assembly refused to amend the Covenant to accommodate more Permanent Members (to appease the smaller nations, the non-membership was expanded to nine seats). See *id.*

<sup>108</sup> Germany, Italy, and, Japan were all later admitted into the U.N. in 1973, 1955 and 1956, respectively.

As already suggested by some regional groups, the ideal approach is to create permanent seats based on regional representation. It is the small and medium sized countries that constitute the overwhelming majority of the United Nations, and it is they who must be given greater representation in the decision-making process of the Security Council. These groups have already been self-proclaimed as the following: African Group, Arab Group, Asian Group and Latin Group. Each of these groups should be afforded one permanent seat. The representative from each group should be selected by an agreement of each region itself and not by the General Assembly. This will provide more equitable representation and equality of U.N. Member States.

#### *B. Increasing Overall Security Council Membership*

The second most debated reform measure involves increasing the overall membership of the Security Council. This has also been a recurrent theme throughout the years. In 1963, forty-four African and Asian States argued that since the U.N. membership had increased to 112 members from the original fifty-one, the membership of the Security Council should also be increased.<sup>109</sup> Despite initial opposition, an amendment to enlarge the Security Council was ratified in 1965, increasing the number of non-Permanent Members from six to ten.<sup>110</sup>

Subsequent to this amendment, several other proposals for expansion were advanced. In 1979, a proposal was made to increase the number of non-Permanent Members to fourteen.<sup>111</sup> In 1980, a group of African, Asian and Latin States proposed the addition of six non-Permanent Members with a majority of fourteen members required to pass a resolution.<sup>112</sup> In 1981, the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization submitted a report recommending an increase in the membership of the Security Council "taking into account the principle of equitable ge-

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<sup>109</sup> See BAILEY, *supra* note 11, at 152.

<sup>110</sup> See EVERYONE'S UNITED NATIONS, 16 (U.N. Publications 10<sup>th</sup> ed. 1986).

<sup>111</sup> See BAILEY, *supra* note 11, at 382.

<sup>112</sup> See *id.*

ographical distribution.”<sup>113</sup> All of these proposals were opposed by the Permanent Members and were never implemented.<sup>114</sup>

### 1. *Proposals by Member States and Regional Groups*

Currently, most Member States agree that the Security Council should be expanded, but there is widespread disagreement on how many additional members should be added. Indecisiveness about the exact number is demonstrated in a paper submitted by Colombia on behalf of numerous other delegations. It states, “[T]he Security Council should be expanded to: a) No more than 20 to 21 members; b) 24 members; c) 23 to 25 members; d) Not less than 26 members; e) Any other option.”<sup>115</sup>

Permanent Members such as the United Kingdom, China, and France now accept the general idea of enlarging the Security Council as long as it does not hinder its efficiency.<sup>116</sup> France has stated that it agrees with the need to expand the non-Permanent Members to between twenty-one and twenty-five seats.<sup>117</sup> The United States supports expansion but has stated that expansion beyond twenty-one Members will be challenged.<sup>118</sup> Russia agrees that the increase should not exceed

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<sup>113</sup> McWHINNEY, *supra* note 9, at 136 (citing U.N. GAOR, special comm., 36<sup>th</sup> Sess., Supp. No. 33, U.N. Doc. A/36/33, (1981)).

<sup>114</sup> With the 1981 proposal, they argued that the Security Council was “very carefully balanced and, in its present form, correctly reflected the international balance of power.” *Id.* This argument is no longer valid.

<sup>115</sup> Conference room paper on the expansion of the Security Council and decision-making in the Security Council, including the veto, submitted by Colombia on behalf of the delegations of Argentina, Canada, Chile, Colombia, Costa Rica, the Dominican Republic, El Salvador, Guatemala, the Islamic Republic of Iran, Italy, Mexico, Pakistan, Panama, the Republic of Korea, San Marino, Singapore, Spain, and Turkey. *Relationship between the Security Council and other Principal organs of the United Nations*, U.N. Doc. A/AC.247/1999/CRP.4 (1999), revised by A/53/47/Annex V (1999).

<sup>116</sup> See *Discussion of Security Council Reform*, *supra* note 94.

<sup>117</sup> See *id.*

<sup>118</sup> See *Debate on Security Council Reform*, *supra* note 83. The United States stated that it agrees with expansion but:

the working group must balance the legitimate desire for greater representation with the equally compelling need to preserve the Council’s ability to react decisively against fast-breaking challenges to international peace and security. We will oppose any expansion that threaten the ability of the Council to carry out its responsibilities under the Charter . . . The gravity of those responsibilities is too great to risk compromising the Council’s ability to meet them.

*Id.*

twenty or twenty-one and has stated that going beyond these numbers would affect the efficiency of the Security Council.<sup>119</sup>

NAM and all of the regional groups have produced their own solutions. NAM supports the increase in membership by no less than eleven new members "based on the principles of equitable geographical distribution and sovereign equality of States."<sup>120</sup> The Asian Group has argued that it deserves special consideration in the composition of an expanded Security Council due to its vast geographical coverage and population.<sup>121</sup> The African Group wants the "composition of the Security Council [to] be democratized to reflect the increase in the number of Member States of the United Nations" and to consist of twenty-six States, allocating five non-permanent seats to African countries "for the benefit of developing countries, and African countries in particular."<sup>122</sup> The Arab Group supports expansion to at least twenty-six Members to ensure the Security Council is "democratized to reflect the increase in the number of States members of the United Nations"<sup>123</sup>

## 2. *Working Group's Proposals*

The Working Group has only made "general observations" regarding expanding the Security Council and has reported that "the number of members of an enlarged Security Council should be from 20 to 26 as a minimum . . . and [t]he scope and modalities of the periodic review of an enlarged Security Coun-

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<sup>119</sup> See *id.*

<sup>120</sup> Letter dated 10 July 1998 transmitted by Egypt in its capacity as coordinator of the Movement of Non-Aligned Countries, U.N. Doc. A/AC.247/1998/CRP.21 (1998).

<sup>121</sup> See *Debate on Security Council Reform*, *supra* note 83

<sup>122</sup> U.N. Doc. A/53/47, Annex XIII, Letter dated 29 July 1999 from the Permanent Representative of Algeria transmitting the African position on the question of equitable representation on and increase in the membership of the Security Council, pp. 54-55, entitled "Harare Declaration of the Assembly of Heads of State and Government of the Organization of African Unity on the reform of the United Nations Security Council."

<sup>123</sup> Letter dated 27 January 1998 from the Permanent Representative of Bahrain in his capacity as Chairman of the Group of Arab States for the month of January 1998 addressed to the President of the General Assembly, U.N. Doc. A/AC.247/1998/CRP.2 (1998); Letter dated 27 January 1998 from the Permanent Representative of Bahrain in his capacity as Chairman of the Group of Arab States for the month of January 1998 addressed to the President of the General Assembly, revised by U.N. Doc. A/52/47 (1998).

cil should be further considered.”<sup>124</sup> Beyond this “general observation” and concluding that the majority of Member States support an increase in non-permanent seats, the Working Group once again has only thus far listed issues.<sup>125</sup>

### 3. Author’s Proposal

The U.N. Member States are, numerically speaking, grossly under-represented in the Security Council. A more equitable representation in the Security Council may be obtained by increasing the number of its Members, taking into account the substantial increase in the membership of the United Nations, especially of developing countries, as well as the changes in international relations. This will not only enhance the credibility of the Security Council and reflect the universal character of the world body, but would modify existing imbalances in the composition of the Security Council.

Apparently, the only obstacle to expanding the Security Council membership is an agreement upon a number. An agreement must take into consideration adequate representation of the Member States and continued effectiveness to act. The Security Council must be sufficiently large to represent the Member States, while remaining small enough to operate with “prompt and effective action” in the maintenance of international peace and security on behalf of the entire U.N. membership.<sup>126</sup>

Similar to the amendment in 1963 to increase membership, the General Assembly should pass an amendment to increase the entire Security Council membership to twenty-five seats. Encompassing the proposal stated above, which would add four new permanent seats on a regional basis to the African, Arab, Asian and Latin Groups, this amendment would increase the overall membership by only ten members. The result would be

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<sup>124</sup> 1999 Working Group Report, *supra* note 88, at 5-6.

<sup>125</sup> *Id.* at 20- 21. These issues include:

Can we agree that every endeavor should be made to explore the possibility of Security Council enlargement?; Can we agree whether it is desirable to have an expansion of additional non-Permanent Members?; Can we agree on what should be the lower/upper numerical limits of expansion, depending on whether expansion will take place in one or two categories?

*Id.*

<sup>126</sup> U.N. CHARTER art. 24.

the continued representation as Permanent Members by China, France, Russia, the United Kingdom, and the United States; new representation by the regional African, Arab, Asian, and Latin Groups; and the remainder of sixteen seats to be divided on the grounds of equitable representation of the different regions of the world.

This proposal will obviously be challenged by the United States and Russia and possibly the United Kingdom. France, however, has stated that it will support an increase of ten members, and China which is normally the silent, passive permanent member will also most likely support this increase. Similar to the situation leading up to the previous amendment on expansion, the U.N. Member States will have to continually pressure the opposing Member States and the Permanent Members into an agreement. Eventually the opposition will probably be subordinated to the majority of Member States' demands.

Changing the time period during which a non-permanent member serves on the Security Council can also provide greater equitable representation of the entire U.N. membership. Instead of serving two-year terms, each non-permanent member should serve a one-year term.

### C. *Veto Proposals*

Proposals regarding the veto can be grouped into three categories: modify the current veto power; narrow the veto to certain categories; or completely abolish the veto. The problem of reforming the veto is intertwined with the issue of increasing the permanent membership of the Security Council. Thus, reforming the veto involves two considerations: the veto power of the existing Permanent Members and the veto power of possible future Permanent Members.

#### 1. *Proposals by Member States and Regional Groups*

While most U.N. Member States agree that the veto power must be reformed in some manner, Permanent Members such as the United States and the Russian Federation adamantly object to any reform of the veto.<sup>127</sup> Russia's representative rejected the claim that the veto almost led to a paralysis of the

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<sup>127</sup> See *Debate on Security Council Reform*, *supra* note 83.

Security Council and stated that the veto is an indispensable tool.<sup>128</sup> The United Kingdom claimed that the voting rights of the existing Permanent Members are fundamental to both the authority of the Security Council and its ability to function effectively, and it would firmly oppose any restrictions on these rights.<sup>129</sup> The other Permanent Members have made similar statements and arguments.

Several groups and States have made proposals and statements contrary to the Permanent Members' opinions.<sup>130</sup> NAM has suggested a two-step restriction process: at present, the use of the veto would be restricted to Chapter VII issues, and, eventually, the veto would be completely abolished.<sup>131</sup> The African Group also wants the exercise of the right of veto to be progressively curtailed until complete abrogation.<sup>132</sup> This Group has also stated that if the veto is not eliminated, then additional Permanent Members should be granted the same privilege.<sup>133</sup> Other proposals submitted on behalf of various countries include limiting the veto power by prohibiting its use in the following instances: gathering information and ascertaining facts; calling on parties to settle disputes by peaceful means; calling

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<sup>128</sup> See *id.*

<sup>129</sup> See *Discussions of Security Council Reform*, *supra* note 94. The United Kingdom also stated that it would exercise its voting rights with restraint and in a manner consistent with Charter obligations. See *id.*

<sup>130</sup> See, e.g., *Proposal on the issue of the veto*, submitted by Chile, dated 26 June 1998, U.N. Doc. A/AC.247/1998/CRP.19 (1998), revised by U.N. Doc. A/52/47/Annex XVII (1998). "The Permanent Members of the Security Council should recognize the concept that their right to veto cannot be eternal and should commit themselves to discussing its abolition. . ."; *Proposals on decision-making in the Security Council and the veto right*, submitted by Germany, dated 21 April 1998: voting rights of the existing Permanent Members, U.N. Doc. A/AC/247/1998/CRP.8, revised by U.N. Doc. A/52/47/Annex XIV (1998); *Proposals on decision-making in the Security Council and the veto right*, submitted by Germany, dated 22 April 1998: voting rights of the existing Permanent Members A/AC.247/1998/CRP.9 (1998) revised by U.N. Doc. A/52/47/Annex XXII (1998).

<sup>131</sup> See *Questions of the Veto: Working paper by Egypt on behalf of the Movement of Non-Aligned Countries*, 20 May 1996 (1996) U.N. Doc. A/AC.247/1996/CRP.9 (1996), revised by U.N. GAOR, 50<sup>th</sup> Sess., supp. 47, U.N. Doc. A/50/47/Add.1/Annex VII (1996). For the past twenty years, NAM has called for review of the veto power and addressed this issue at the numerous of its Summits. See *id.*

<sup>132</sup> *United Nations reforms African Common Position*, 25 April 1996, U.N. Doc. A/AC.247/1996/CRP.6 (1996), revised by U.N. GAOR, 50<sup>th</sup> Sess., Supp. 47, U.N. Doc. A/50/47/Add.1/Annex IV (1996) (extract from Organization of African Unity document NY/OAU/POL/84/94/Rev. 2 (1994)).

<sup>133</sup> See *id.*

on the parties to a conflict to respect human rights and international humanitarian law; mediating and preventing conflicts; and dispatching U.N. observers.<sup>134</sup>

## 2. *Working Group's Proposals*

The Working Group not only failed to make any recommendations concerning the veto, but it also omitted any discussion on the veto in its last report. It merely stated that the question of the veto had to be considered, and proposed the issue, "Can we agree to what extent, if any, the veto should be extended to any additional Permanent Members?"<sup>135</sup>

It is curious to note, however, that the report of 1998 does include the following "suggested improvements":

... the Charter should be amended to restrict vetoes to only Chapter VII issues; a single veto should be insufficient to nullify a proposal if the required majority had voted affirmatively; the right of the veto should be subject to suspension on specific occasions as defined by a qualified majority of the General Assembly; and the list of decisions deemed procedural should be updated.<sup>136</sup>

All of these "suggested improvements" were deleted from the subsequent, current report of the Working Group.

## 3. *Author's Proposals*

Ideally, the veto power should be completely abolished. Empowering only five U.N. Member States with the right to veto contradicts the fundamental principles of equality and representation provided in the Charter and is contrary to the United Nation's ideals. Further, the Permanent Members should no longer be free from the governance of the United Nations. While in recent years the Permanent Members have shown considerable restraint in making recourse to the veto, there are no guarantees that this tendency will continue to the point of being irreversible. Moreover, the simple threat of using

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<sup>134</sup> See *Proposals on decision-making in the Security Council, including the veto, submitted by Australia, Austria, Belgium, Bulgaria, the Czech Republic, Estonia, Hungary, Ireland, Portugal and Slovenia, dated 25 June 1999*, U.N. Doc. A/AC/247/1998/CRP.17 (1998), revised by U.N. Doc. A/52/47/Annex XVI (1998).

<sup>135</sup> 1999 Working Group Report, *supra* note 88, at 20.

<sup>136</sup> *Id.* at 15.

the veto can have a strong impact on the Security Council's proceedings and on the final outcome of its debates.

The obvious "Catch-22" is that the Permanent Members can, and most likely will, veto any proposal to abolish their veto power. A roundabout approach of first attempting to modify or limit the veto power should therefore be taken. This would allow the Permanent Members to take "baby steps" towards finally accepting and deferring to the request of almost all U.N. Member States that the veto be reformed. Initial limitations could include requiring two votes by the Permanent Members to constitute a veto, or limiting use of the veto to Chapter VII issues only.

At a minimum, the General Assembly should adopt a declaration or resolution expressing its attitude towards the veto as a voting instrument in the Security Council, encouraging the curtailment of the veto and requesting, in the event of any veto of a draft resolution that the Permanent Member provide an explanation of its actions. The General Assembly should also suggest that the Permanent Members be allowed to declare that they are casting a negative vote, without having such vote constitute a veto. Finally, the problem of the reverse veto can be easily remedied by placing in the original resolution a time frame or a provision that states that only a majority vote is needed to end an action.

#### *D. Increasing Participation Decision Making Process*

Compared to other areas, agreement on reform measures to allow increased participation in the Security Council's decision-making process is less controversial and agreement has been easier to achieve among U.N. Members. The Working Group has also made relatively important steps in this area.

##### *1. Proposals by Member States and Regional Groups*

Several proposals have been made by Member States. These proposals include the following: the Security Council should hear the views of pertinent non-members of the Security Council when it is considering substantive matters; a non-member should be able to meet with the President of the Security Council when the non-member's interests are affected; the Security Council should fully implement Articles 31, 32 and 50 of

the Charter and Rules 37 and 38 of the Security Council's Provisional Rules of Procedure; the Security Council should consult on a regular and timely basis not only with the countries affected by Security Council decisions, but with concerned regional groups and organizations; the Security Council should invite non-members to its discussions; and the agenda for informal consultations should be circulated.<sup>137</sup>

## 2. *Working Group's Proposals*

The Working Group's proposals are similar to those of the Member States. It has stated that the views of non-members of the Security Council should be heard and consulted more frequently; that the Security Council should not challenge non-members' request to be heard, but should comply with Article 31, 32 and 50 of the Charter and Rules 37 and 38 of the Security Council's Rules; and that the President of the Security Council should promptly meet with the non-members whose interests are urgently affected.<sup>138</sup>

## 3. *Author's Proposals*

No United Nations organ, especially the Council, must become so complex as to preclude a category of State from participation. Wisdom, like democratic rights, should be widely shared. There must be full access to the distilled experiences of the weak, the poor and the small.<sup>139</sup>

Increasing the participation of Member States in the Security Council's decision-making process is yet another way to provide equality and representation of the entire U.N. Membership. The Security Council must consult with Member States whose interests are directly affected before making decisions or passing resolutions that will affect such countries. Mandating direct consultations will not affect the ability of the

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<sup>137</sup> See *Relationship between the Security Council and other Principal organs of the United Nations* U.N. Doc. A/AC.247/1999/CRP.4 (1999), revised by U.N. Doc. A/53/47/Annex V(1999); *United Nations Reforms. African Common Position*, *supra* note 132.

<sup>138</sup> See 1999 Working Group Report, *supra* note 88, at 14.

<sup>139</sup> U.N. Doc. A/AC.247/5 (1995), revised by *Question of Equitable Representation and Increase in the Membership of the Security Council and related Matter*, U.N. GAOR, 49<sup>th</sup> Sess., agenda Item 33, at 71, para. 4, U.N. Doc. A/49/965 (1995) (Report from Belize to the Working Group).

Security Council to act promptly. With the telecommunications technology presently available throughout the world, time efficiency is no longer a pertinent issue in this respect.

The General Assembly should amend Article 31 of the Charter to provide mandatory, rather than discretionary, participation by affected Member States. This would entail changing the language of the Article from "may participate" to "shall participate."<sup>140</sup> Since this is a less controversial area, the Permanent Members most likely will not veto this amendment. The General Assembly could alternatively pass a resolution stating that affected countries should be consulted and have an opportunity to be heard before a Security Council resolution is passed.

A related problem that should be addressed is the insufficiency of consulting with the Member States alone. One of the difficulties of only consulting with Member States is that it automatically gives a reigning government an advantage. In civil strife, the opposition would not have the privilege of attending Security Council consultations. The situation surrounding Rwanda can again be used as an example. During 1994 alone, members of two diametrically different governments represented Rwanda at different times: the Hutu and the Tutsi-lead governments.<sup>141</sup> The Hutu government had originally placed its representative in the Security Council.<sup>142</sup> Later, the Tutsi government replaced that Security Council representative. During the time when resolutions concerning Rwanda were being passed, therefore, the Security Council was consulting with either one side or the other. This probably hindered the process of understanding the complete truth of the then-current events in Rwanda, and affected the path taken by the Security Council. To halt future similar occurrences, the General Assembly should also pass a resolution providing that the Security Council will not only consult with the Member States, but also various representatives within a single State such as Non-Governmental Organizations (NGO's).

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<sup>140</sup> See U.N. CHARTER art. 31.

<sup>141</sup> *The Case for a new interpretation of Article 31 of the Charter of the United Nations, paper by the Czech Republic*, U.N. Doc. A/AC.247/1996/CRP.13 (1996), revised by U.N. GAOR 50<sup>th</sup> Sess., supp. No. 47, Add.1, at 37, U.N. Doc. A/50/47/Add.1/Annex X (1996).

<sup>142</sup> See *id.*

### E. Increasing Transparency

Consensus seemed to have emerged on the need for greater transparency in the Council's work, which would imbue it with greater democracy and accountability . . . It would also encourage the majority of Member States to render their full support and contribute to the work of the Council through more active participation.<sup>143</sup>

#### 1. Proposals by Member States and Regional Groups

Reform proposals pertaining to transparency have been sparse, and debate has been rare by the Member States regional groups. Yet, there is a general consensus that the secrecy of Security Council meetings should be eradicated, and that they should be held in public. Surprisingly, one permanent member has proposed suggestions for greater transparency. France recommended that the Security Council should open its sessions more frequently to all U.N. Members with only certain limitations for timely concerns.<sup>144</sup> The French proposal also included adding two new instances in which the Security Council should meet in public: 1) orientation debates when the Security Council is preparing to begin consideration of an important question; and 2) public exchanges of views between Members of the Security Council.<sup>145</sup>

#### 2. Working Group's Proposals

The Working Group suggested several practices which can increase transparency of the Security Council.<sup>146</sup> Some of these "suggested improvements" include:

- a) The Security Council should conduct its business in a public format open to all member States of the United Nations; . . . c)

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<sup>143</sup> See *Debate on Security Council Reform*, *supra* note 83. "It is imperative that the debate on Security Council reform should conform to the principle of absolute transparency. Transparency was the best way to involve all the Member States and ensure that their ideas would be heard equitably and fairly." (Statement by representative of Qatar). *Id.*

<sup>144</sup> See *Letter dated 9 November 1994 from the Permanent Representative of France to the United Nations addressed to the Secretary-General*, U.N. Doc. A/49/667-S/1994/1279, at 2, 5-6 (1994).

<sup>145</sup> See *id.*

<sup>146</sup> See 1999 Working Group Report, *supra* note 88, at 11-17.

The Security Council should hold substantive orientation debates open to all Member States at the beginning of its consideration of any substantive matter; d) The Security Council should, more often, conduct open debates and orientation discussions on the important items at the ministerial level"; Immediately following meetings between Security Council members, troop-contributing countries, other contributors and the Secretariat, the President should brief interested non-members of the Security Council on the contents of such meetings.<sup>147</sup>

The Working Group, however, also stated that "[w]hen it so decides, the Security Council may meet in private and/or conduct its business in consultations as a whole."<sup>148</sup> Essentially, this nullifies all of the suggested improvements by permitting the Security Council to hold private meetings at its discretion.

### 3. *Author's Proposals*

While the great majority of the Security Council's work is accomplished in private, informal consultations, such consultations are not mentioned in either the U.N. Charter or in the Security Council's Provisional Rules of Procedure. Rule 48 states that meetings "shall" be held in public "unless it decides otherwise."<sup>149</sup> The Security Council itself should delete the wording "unless it decides otherwise" and create an objective standard pertaining to when private meetings can be held. These meetings should only be held in limited circumstances. Previously, the Security Council did most of its work in public meetings and provided verbatim records of these meetings. The Security Council should return to this system. As mentioned above, the resolutions and subsequent actions surrounding Somalia and Bosnia-Herzegovina are considered to be the greatest failures of the Security Council. These were formulated almost entirely in private sessions with only a formal show of hands in public sessions. If the Security Council itself will not change this rule of procedures, then the General Assembly should pass a resolution to require public meetings and to clarify the circumstances in which private meetings may be held.

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<sup>147</sup> *Id.* at 11-14.

<sup>148</sup> *Id.*

<sup>149</sup> Rules of Procedure, *supra* note 65, at Rule 48.

## F. *Other Proposals to Increase Equality and Representation*

### 1. *Shifting Power to the General Assembly*

Beyond the specific proposals discussed above, a means to significantly increase representation and equality of U.N. Member States is to shift power from the Security Council to the General Assembly. The General Assembly is inherently more equitable and representative for several reasons. It is composed of one representative from each Member State, each Member State having one vote.<sup>150</sup> A two-thirds majority is required to pass its resolutions of importance, and all other issues require only a simple majority.<sup>151</sup> No single State has the power to veto any action.<sup>152</sup>

The idea of placing more power with the General Assembly was mentioned at the San Francisco Conference. At the time, the smaller powers throughout the world were concerned that the Security Council would possess unyielding power. Suggestions were made in an attempt to curtail the Security Council's authority. These included associating the General Assembly with the Security Council in terms of its enforcement decisions and giving the General Assembly authority to judge the Security Council's actions.<sup>153</sup> These ideas were found unacceptable by the Five Powers and were rejected.<sup>154</sup> The inherent obstacle of transferring power to the General Assembly is, once again, dependent on the Security Council's acceptance.

Several methods can be utilized to achieve a transfer of power from the Security Council to the General Assembly. First, an attempt can be made to pass amendments to the Charter in accordance with the proposals suggested above. Some amendments concerning the less controversial areas will be easier to pass and the Permanent Members will be less likely to reject them. The Charter has only been amended three times in the past. It was amended in 1965 to increase the size of the Security Council from eleven to fifteen. Two subsequent amendments were passed to expand the Economic and Social

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<sup>150</sup> See *BASIC FACTS ABOUT THE UNITED NATIONS*, *supra* note 17, at 6-7.

<sup>151</sup> See *id.* Resolutions of importance include those concerning peace and security, admission of new Members and budgetary matters. See *id.*

<sup>152</sup> See *id.*

<sup>153</sup> See Kirgis, *supra* note 49, at 508.

<sup>154</sup> See *id.*

Council from eighteen to twenty-seven and later to fifty-four.<sup>155</sup> These amendments were the result of pressure from U.N. Member States complaining that the composition of these two organs did not reflect the entire United Nations.<sup>156</sup> This method of increased pressure can also function today to pass amendments reforming the Security Council.

Second, *de facto* amendments to the Charter can be passed to decrease the Security Council's power and shift it to the Assembly. *De facto* amendments are accomplished through the resolution process.<sup>157</sup> These resolutions are in no way binding under the terms of the Charter. Yet, in the past they have been accepted and adhered to by the Security Council. For example, a *de facto* amendment was made to the Charter permitting the General Assembly to make recommendations despite the fact that the Security Council had seized the problem. The Security Council did not raise objections to this resolution.

The General Assembly has also rendered *de facto* amendments that directly changed the working methods of the Security Council. For example, the General Assembly was able to remove the so-called "double veto" that the Permanent Members once possessed.<sup>158</sup> The double veto occurred when the Security Council was making a preliminary determination as to whether an issue was procedural or substantive. Since the veto cannot be used on purely procedural matters, a permanent member would use its veto declaring the matter to be substantive when, in fact, it was procedural.<sup>159</sup> After it was deemed substantive, the same country could later veto any decision. If that same issue had been deemed procedural, the veto could not have been invoked on the decision.<sup>160</sup> China, the Soviet Union,

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<sup>155</sup> See Willson, *supra* note 79, at 117. (citing GA Res. 1991A (XVIII), U.N. GAOR, 18th Sess., Supp. No. 15, at 21, U.N. Doc. A/55 (1963); GA Res. 2101 (XX), U.N. GAOR, 20th Sess., Supp. No. 14, at 90, U.N. Doc. A/6014 (1965), GA Res. 1991B (XVII), U.N. Doc. GAOR, 18th Sess., Supp. No. 15, at 22, U.N. Doc. A/5515 (1963); GA Res. 2847 (XXVI), U.N. GAOR, 26th Sess., Supp. No. 29, at 67, U.N. Doc. A/8429 (1971)).

<sup>156</sup> See *id.*

<sup>157</sup> See *id.*

<sup>158</sup> Kirgis, *supra* note 49, at 510; see also generally Leo Gross, *The Double Veto and the Four-Power Statement on Voting in the Security Council*, 67 HARV. L. REV. 251 (1953).

<sup>159</sup> See *id.*

<sup>160</sup> See *id.*

the United States and the United Kingdom all favored this double veto.<sup>161</sup> But, in 1949, the Assembly adopted a resolution containing an affirmative list of categories deemed procedural and essentially terminated the double veto.<sup>162</sup> The Security Council accepted the resolution and never used the double veto again.<sup>163</sup> This demonstrates that while the General Assembly's resolutions are not actually binding on the Security Council, the Security Council has accepted and implemented General Assembly resolutions. The Security Council has accepted and most likely will continue to accept other *de facto* amendments.

The General Assembly should, therefore, pass resolutions, as *de facto* amendments or otherwise, related to the specific proposals and other problems discussed above. For example, to address the problem of lack of "checks and balances" the General Assembly should pass a resolution to the effect that the Security Council must take into consideration past ICJ decisions in its future proceedings. This will be more efficient than involving the ICJ while the Security Council is in the process of deciding an issue. If the Security Council must hold its decision-making process to obtain an interlocutory decision, it will be impossible for the Security Council to fulfill its mandate to act with promptness. Further, applying the ICJ's decisions retroactively would not be timely or relevant.

Third, correcting the problem of the Security Council's exclusive power when it has seized a matter can also be accomplished through resolutions. As stated above, the General Assembly can pass resolutions on issues that the Security Council has seized. It should continue to use this method with more frequency to voice the opinion of the entire Assembly, if its opinion does vary from that of the Security Council. Further, the General Assembly should consider passing a resolution to formulate a list of circumstances in which the Security Council is permitted to seize a matter solely, and the situations in which it is prohibited from doing so. In the latter case, the Security Council must act jointly with the General Assembly.

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<sup>161</sup> See *id.* (citing U.N. Doc. 852, III/1/37(1), 11 U.N.C.I.O. Docs. 710, 714 (1945)).

<sup>162</sup> See *id.* (citing U.N. Doc. A/900, at 7 (1949)).

<sup>163</sup> See *id.*

Fourth, although this article discusses action rather than inaction of the Security Council, a means of increasing the power of Assembly in the event of inaction should be mentioned. If the Security Council fails to act, power can be shifted to the General Assembly with the "Uniting for Peace Resolution" (the "Resolution").<sup>164</sup> This Resolution was adopted in 1950 by an overwhelming majority vote of fifty-two to five with two abstentions.<sup>165</sup> This Resolution provides:

If the Security Council, because of lack of unanimity of the permanent members, fails to exercise its primary responsibility for the maintenance of international peace and security in any case where there appears to be a threat to the peace, breach of the peace, or act of aggression, the General Assembly shall consider the matter immediately . . .<sup>166</sup>

This Resolution has seldom been used, but it can be a very effective tool for empowering the Assembly. It effectively transfers Security Council issues to the General Assembly in the event that action is blocked in the Security Council by a veto. The Resolution has been used to address issues surrounding the Suez Crisis, Hungary, Lebanon and Jordan, the Congo, and Israel.<sup>167</sup> The Resolution can also be used to invoke an "emergency special session" of the Assembly to be convened within twenty-four hours. Ten of these sessions have been convened.<sup>168</sup> The legality of the resolution was contested by the Soviet Union, but in 1962 the ICJ ruled that the Resolution was based on a lawful interpretation of the Charter.<sup>169</sup>

The potential value of this Resolution has not been recognized. A past example in which the Resolution could have been

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<sup>164</sup> U.N. Doc. GA/RES/377(V) (1950).

<sup>165</sup> See 1950 U.N. Y.B. 181-195.

<sup>166</sup> U.N. Doc. GA/RES/377(V), (1950). The motive for passing this resolution was the realization that the action in North Korea had only been possible because the Soviet Union was boycotting the Security Council when the Korean War started. See BAILEY, *supra* note 11, at 229.

<sup>167</sup> See BAILEY, *supra* note 11, at 461.

<sup>168</sup> See <http://www.un.org/Overview/Organs/emspss.html>. The sessions were held on the following dates and topics: 1) Nov. 1956, Middle East; 2) Nov. 1956, Hungary; 3) Aug. 1958, Middle East; 4) Sept. 1960, Congo; 5) Sept. 1967, Middle East; 6) Jan. 1980, Afghanistan; 7) July 1980, Palestine; 8) Sept. 1981, Namibia; 9) Jan. 1982, Occupied Arab territories; 10) April 1997, Occupied East Jerusalem and the rest of the Occupied Palestinian Territory.

<sup>169</sup> See VAN DEN HAAG, *supra* note 9, at 64.

used was when the Security Council failed to act in response to the Argentinean-British conflict over the Falklands (Malvinas).<sup>170</sup> A resolution to force an immediate cease-fire and to seek a diplomatic solution failed as a result of vetoes by Great Britain and the United States.<sup>171</sup> According to the Charter, Great Britain, as a party to the dispute, should have been disqualified from voting. The United States representative also stated that if it were possible, it would have changed its veto to an abstention.<sup>172</sup> In this situation, the General Assembly could have invoked the Resolution to force a cease-fire more rapidly. More recently, the General Assembly could have used the Resolution in Kosovo. The Resolution should be used in more situations because it allows the General Assembly and all Member States to actively participate.

The powers created by the U.N. must be shifted away from the Security Council and placed with the General Assembly. This can be accomplished by passing amendments to the Charter, *de facto* amendments, resolutions in general, declarations, and by using already available resolutions with more frequency. With continued and increased pressure from the U.N. Member States, these methods can accomplish Security Council reform.

## 2. *Finalizing Provisional Rules*

The Security Council's lack of adherence to its own Provisional Rules of Procedure must be addressed. Although the Charter was adopted over fifty-five years ago, these rules have never been finalized. The Security Council, therefore, can and does depart from the rules when it deems necessary.<sup>173</sup> The Procedures of the Security Council must be finalized immediately. The term "Provisional" must be deleted, and these procedures must be followed. Finally, any General Assembly resolutions pertaining to the Security Council's working meth-

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<sup>170</sup> Although this is not a recent example, it most clearly demonstrates the blatant abuse of the Security Council's powers.

<sup>171</sup> MCWHINNEY, *supra* note 9, at 220-21.

<sup>172</sup> See *id.* at 221. After the vote the then-representative of the United States, Ambassador Kirkpatrick, stated that she had been requested by her government to make this statement. Apparently the retrieval in position surrounded the impending resignation of the Secretary of State Haig who had consistently favored the British. See *id.*

<sup>173</sup> See Aust, *supra* note 66, at 365.

ods should be incorporated into the rules of procedure rather than making mere "gentlemen's agreements" as is now the norm.

### *3. Time Frame*

Ideally, a specific date, a date of some anniversary, should be set as a deadline for the completion of Security Council reform measures. At one point, the year 2000 had been established as the deadline to accomplish reform. Yet, the year 2000 will come and go before any reforms are invoked. Instead of determining a specific year or date for the completion of Security Council reform, measures should be accomplished in segments. The General Assembly should not wait for all reform issues to be resolved before reforming the Security Council. Rather, it should focus on one issue at a time, resolve it, and take the necessary steps to implement the change. As stated above, increased participation is not as controversial an issue as the others and, therefore, it could be addressed before more controversial issues.

Concerning the Working Group, rather than approving its mandate to continue its work, the General Assembly should create a certain time frame mandating its completion of proposals. This time frame could also include the order of issues to be presented. The Working Group has produced modest progress within the past seven years of its existence. After such a time elapse, the Working Group should be beyond simply stating issues such as "Can we agree that every endeavor should be made to explore the possibility of Security Council enlargement?" The General Assembly, therefore, should not approve the Working Groups' own recommendations that it continue its work.

Through the use of political pressure, amendments, and resolution procedures, the General Assembly must immediately begin to reform the Security Council step-by-step. The General Assembly should create an agenda during the year 2001 that states which issues of reform will be addressed and in which order. Subsequently, starting in the official new millennium, the General Assembly must tackle these issues.

## V. CONCLUSION

Security Council reform would be durable and fruitful only if it fully reflected the principles of sovereign equality of Member States, equitable geographical distribution and democratization. Developing countries must have adequate representation, taking into account the fact that most of the issues under the Council's authority took place in, or were of vital interest to, the developing world.<sup>174</sup>

The United Nations Security Council was created during World War II. Since its creation, both the political and economic climate has changed significantly. The Security Council must reflect on the political realities of the twenty-first century, not that of post-World War II. As the new millennium continues, it is most likely that the activities of the Security Council will continue to increase. Although it has been argued that the Security Council has finally arrived at its intended state, by achieving concerted international action to remedy situations throughout the world, the Security Council has faltered in the manner in which it has approached its activities. The Charter provides that the Security Council's action will be directed for the benefit of the entire membership; not only for a select few, and that equality must be afforded to all Member States. These fundamental principles have been and continue to be ignored, thus resulting in the demands for reform by the vast majority of Member States.

To summarize the specific proposals, the permanent membership of the Security Council should be expanded to include seats for the African, Arab, Asian, and Latin Groups, and the overall membership should be increased to twenty-five members. The result would be the continued inclusion of the Permanent Members China, France, Russia, United Kingdom, and United States; new representation by the regional groups; and a remainder of sixteen seats to be divided on the grounds of equitable representation for the different regions of the world.

Modifications or limitations should be invoked against the veto power, such as requiring a two votes veto or limiting its use to Chapter VII issues, leading to the eventual abolishment of

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<sup>174</sup> *Debate on Security Council Reform*, *supra* note 83 (statement by the Vietnamese representative).

the veto. Furthermore, the General Assembly should amend Article 31 of the Charter to provide mandatory rather than discretionary participation of interested Member States. Pertaining to its private meetings, the Security Council itself should delete the wording "unless it decides otherwise" and create an objective standard describing when private meetings shall be held. If the Security Council itself does not change this procedural rule, the General Assembly should pass a resolution to mandate public meetings.

Beyond these specific proposals, any Security Council reform measures, ultimately, will depend on the General Assembly as a whole and on all the U.N. Member States individually, particularly the Permanent Member's continuous pressure on the Security Council. The majority of the Member States should not act hypocritically by calling for reforms, and at the same time yielding to the desires of the powerful Member States. Unfortunately, the mechanisms installed over fifty years ago bestowed incredible power upon the Security Council, including giving the Permanent Members the right to approve any changes. Thus, the General Assembly must first attempt to pass amendments, and, if unsuccessful, the General Assembly must then pass resolutions, which the Security Council can adopt and in many instances will adopt in practice.

The U.N. and the Security Council cannot continue into the new millennium in their present state. Considering the availability of such great force, the decision to use the powers of the U.N. should not be left to the prerogative of the few Permanent Members. The world has seen an incredible increase in Security Council activities in the 1990's, an increase that will most likely continue. The Security Council's activities should not be permitted to continue in the absence of representation and equality for all U.N. Member States.