

SEEKING SEATS, VOTES AND VETOS

Sam Daws

In 1993 the United Nations General Assembly established an Open-Ended Working Group of all member states, to consider Security Council reform. Four years on, momentum has been building towards a reform package, but there are still a number of obstacles. What are the issues central to the current negotiations and the elements of a possible solution?

STATES OFTEN USE ABSTRACT CONCEPTS SUCH as legitimacy, representation, effectiveness and efficiency when arguing why and how the Security Council should be reformed.¹ But the solutions advocated by any individual state invariably entail changes that reflect its perceived national interest. An eventual agreement on Council reform is likely to result from tough political negotiation, not a carefully balanced 'objective' academic solution.

Two main sources of pressure for Council reform, from states in both the industrialised and the developing worlds, dovetailed in the early 1990s. Japan and Germany, which have sought permanent seats to reflect their global economic power, spearheaded pressure from the industrialised world.

Developing states have less leverage as a result of greater cooperation among permanents after the Cold War. In response, they have combined calls for changes in Council working methods and transparency with a desire for enlargement to benefit the South. There is disagreement, however, over the form that enlargement should take.

Some developing countries, especially the larger aspirant permanent members, have argued that additional Southern permanent seats are vital if the inner circle of existing permanent members is to be influenced. Many small and medium-sized states have challenged the legitimacy of permanent seats and the veto, rather than trying to add to their numbers. Instead additional non-permanent seats are sought, with some advocating changes in elections to allow for shared, rotating or *de facto* permanent seats. Most developing countries, however, take a pragmatic approach, evaluating the benefit of proposals for permanent and non-permanent expansion.

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PERMANENT PRIVILEGE?

The permanent five have strongly resisted attempts to question their membership and associated rights. In the context of the German candidacy for a permanent place, a European Union seat is sometimes proposed both to address Germany's claim and to replace France and the UK. The case for these two countries maintaining their seats is nevertheless strong. Firstly, Title V of the Maastricht Treaty, on a common foreign and security policy, does not envisage such collective permanent membership. Secondly, since the end of the Cold

War, Britain and France have contributed significantly to UN sanctioned enforcement – including the Coalition Force against Iraq, the Implementation Force in Bosnia and *Operation Turquoise* – and to a plethora of peace-keeping operations. Both pay their assessed UN dues and neither has vetoed a Council resolution since December 1989. Their joint diplomatic outreach, in part a product of their colonial past, remains an asset to the Council.

There has been an unstated convergence of views of the Working Group that it would be politically unfeasible to change the existing permanent members at this stage, in no small part because they would have to vote for their own abolition. Instead attention has focused on restricting privileges such as the veto, and the permanent members' convention, an informal understanding whereby they are automatically elected to other UN bodies such as the International Court of Justice.



SHARED SEATS

While Japan and Germany are obvious industrialised-world candidates for new permanent seats, the choice of candidates from Africa, Asia and Latin America is less clear. The main developing-country contenders have been India and Indonesia for Asia; Egypt, South Africa and Nigeria for Africa; and Brazil for Latin America.

Of the 'front runners' India's candidature has been vociferously opposed by Pakistan, Brazil's by some Spanish-speaking neighbouring states, and Nigeria by a number of states objecting (mainly in pri-

vate) to the undemocratic nature of the present regime.

What is clear is that the Non-Aligned Movement (NAM) would not support permanent membership for Japan and Germany without comparable seats for the South. There are signs that Africa and, more recently, Latin America and the Caribbean are considering a shared regional permanent seat. Asia would be likely to follow if Africa and Latin America adopted the idea.

Among the issues that would need to be resolved would be how many states would share a seat, for how long they would each occupy it, whether the 'composition' of the seat would be reviewed, and whether it would have the power of veto. The first three issues would probably be left to regions to decide.

Others have suggested increasing only the non-permanent seats on the Council. These proposals have been made for a variety of reasons: as a general rejection of the extension of permanent seats and the veto; as a means to prevent a particular state from becoming a permanent member; and to increase the chances of election to the Council for medium and smaller states.

Apart from the straightforward expansion of numbers of non-permanent members there are two other ideas of particular note. The Italians have advocated the addition of ten new non-permanent seats. For each of these seats three states would rotate - two years on and four years off. These 30 states would still be subject to regular election by the General Assembly.²

Another approach would be to remove the prohibition on the immediate re-election of non-permanent members, but only for new members. In this way a region or the General Assembly could seek to elect a state continuously, producing a *de facto* permanent member, but without the veto.

THE VETO

The permanent members' veto is a powerful symbol. Since its establishment at the San Francisco conference in 1945 which set up the UN, it has frequently been thought to be undemocratic, and it clearly is in the sense that it is the exclusive right of a few states. However, many who criticise the veto fail to question the democratic credentials of the one-state, one-vote procedure of the General Assembly, regardless of whether the population of a state is 1 billion or 40,000.

If the Security Council is an institution designed to maintain international peace and security, its composition and voting procedures can instead be judged primarily in terms of how far it is successful in fulfilling this primary responsibility.

The veto in particular might therefore be better evaluated as a *quid pro quo* privilege amounting to 'payment' for actively doing something - past or present financial or military responsibilities - or as an encouragement not to do something - for a permanent member not to leave the UN system, or not to act outside the constraints of multilateralism and international law. The question then becomes, was and is the *quid pro quo* fair?

Initially it did seem a fair but hard bargain. The sponsoring powers at San Francisco made clear that the veto was non-negotiable, ►

◀ and it was seen by the majority of other states as the price to be paid for the special contribution that the permanent members had made and were expected to make to the maintenance of international peace.

The permanent members argued that the United Nations would only survive if there was great-power unity, and that the veto was simply an assurance that a permanent member would not have to participate in action that it did not support.

With the Cold War, 'great-power' conflict replaced the hoped-for 'great-power' unity. The United Nations did survive, but without the active military contribution of the permanent members through the Military Staff Committee. The context in which the Council was to operate during the Cold War years was very different from that which had been envisaged when the Council voting procedures were first drawn up.

During the first three decades of the UN, the veto was employed mainly by the Soviet Union to defend its interests in what was a *de facto* Western-dominated Council. The expansion of the Council to 15 members in 1966 changed its political composition and 86% of vetoes since then have been cast by the three Western permanent members.

In the 1990s permanent members' cooperation again became a reality, leading to their increased contributions to UN peacekeeping and peace-enforcement operations. Ironically, increased UN activity and intervention drew attention to the Council's working methods and the permanent members' privileges. In a world where cooperation was possible, and national troop contributions to UN military operations entirely voluntary, the *raison d'être* for the veto became less obvious, and its existence as a *quid pro quo* harder to justify. Yet the veto does help retain the participation of the United States, China and perhaps others, in the UN system.

Proposals to restrict the veto for existing and/or new permanent members have taken three forms. The first would limit it to certain types of decisions. At present the veto applies only to non-procedural votes, but since it can be used in a vote on whether a decision is procedural in nature (the 'double veto'), this limitation is not significant.

Proposals have been made that the veto should not apply to the appointment of the Secretary-General, or to the admission of a new member, or that it be used only on decisions under Chapter VII of the Charter - which deals with peace enforcement. It could be difficult to determine which decisions were subject to the veto.

GROUP VETOS

The second means of restricting a veto might be to stipulate that one negative vote by more than one permanent member would be required to defeat a resolution - it could be, say, two, three or four. This would have least effect on the Western permanent members, who have jointly vetoed resolutions on a number of occasions. A third approach is the establishment of an extra voting category for permanent members, so that they are able to vote against a resolution without vetoing it.

Article 27 of the Charter requires at least nine votes for a Council decision; this is its voting majority or 'action threshold'. If seven or more non-permanent members abstain or vote against a resolution it will fail. Raising the threshold in an expanded Council could give developing countries a significant tool.

As the former Secretary-General, Dr Boutros Boutros-Ghali, reflected: 'In this way, an effective "group veto" might be created for the developing world - without placing that veto into the hands of any

single state. By greatly enhancing the strength and importance of the new non-permanent members, raising the threshold for Council action is seen by some as a key element of a new framework balancing the possible addition of Germany and Japan as permanent members with the imperative of making the Council more representative by strengthening the voice of the developing world'.³

COUNCIL SIZE

In theory the Council should be small enough to be efficient, yet representative enough to be legitimate and effective. In practice Council legitimacy stems largely from its actions, not its composition, and efficiency depends on the willingness of members to cooperate, rather than a precise size at which it ceases to be efficient.

Expanding the UN Charter would need a General Assembly resolution to amend the relevant articles. This would have to be adopted by two-thirds of the members of the Assembly and then ratified by two-thirds of the members of the United Nations - presently 124 out of 185 - including all the Security Council permanent members. Ratification by sufficient national governments is likely to take two to three years.

This means that a permanent member might vote against a proposal during the General Assembly vote, but later be persuaded to ratify. This happened in the 1963 expansion when France and the USSR voted against the enlargement of the Council - the other permanent members abstaining - but both subsequently ratified in 1965. The reverse could theoretically occur, with a permanent member voting in favour in the Assembly, but later refusing to ratify, perhaps because of a change in government, or a split between the executive and legislative arms of government.

THINKING AGAIN

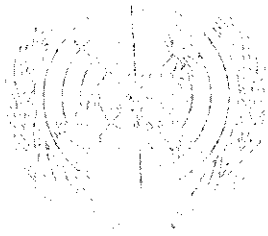
A review clause as part of a reform package would assure states that decisions taken were not irreversible. Such a clause would need to specify how many years after ratification a review would take place, what would be subject to review, and, if there were to be new permanent members whether these would be subject to re-appointment at the review stage, or whether active steps would be required for their status to be altered.

Despite official denials of any linkage, the spectre of UN financing hangs invisibly over the Security Council reform negotiations. Agreement must be reached in the General Assembly by 31 December on the scale of assessment for the UN regular budget for the next three years, and the contribution of existing and aspirant permanent members under the spotlight.

The United States, still heavily in arrears, is seeking to lower its assessed percentage of the UN regular budget from 25% to 20%. Washington has been trying to find ways to meet the deficit this would create. Approaches to China, Korea and others have yet to bear fruit. Japan, which recently significantly cut its overseas development aid budget, is loathe to increase its 15.65% assessment without any progress toward securing a permanent seat.

Approaching an endgame?

Until the start of this year the *Working Group* operated by consensus, reaching agreement only that the Council should be expanded, and that its working practices should continue to be made more transparent. In an attempt to move from debating to negotiating, the Group's two co-Vice Chairmen, Ambassadors Breitenstein of Finland and Jayanama of Thailand, conducted intensive consultations with



A SECURITY COUNCIL PROPOSAL

► An initial decision to increase the Council by five permanent and four non-permanent members. This was to be distributed as follows: Per-

manent members; two from industrialised states and three from developing states, one each from Africa, Asia, and Latin America and the Caribbean. Non-permanent members: one each from Africa, Asia, Eastern Europe, and Latin America and the Caribbean.

► At a later date the General Assembly would designate which states would be elected to permanent membership of the Council. No one state would become a new permanent member until another four had obtained the required majority of a vote of two-thirds of the members of the General Assembly. New permanent members would not be given the veto but would pay the same peace-keeping premium surcharge above their regular budget as the original permanent members.

► An affirmative vote of 15 of the 24 Council members would be required for a Council decision.

► The original permanent members would be urged to limit the use of their veto to Chapter VII of the Charter.

► A review conference would be held ten years after the Charter amendments entered into force.

almost every delegation. They found that a large majority wished to see an expansion in both permanent and non-permanent categories.

In March, the President of the General Assembly, Ambassador Razali of Malaysia, who is *ex officio* Chairman of the Group, put forward a proposed 'solution'. It took the form of a draft resolution of the General Assembly (see box).

This proposal was significant in attempting to break with unanimity and create a momentum for a solution acceptable to two-thirds of the UN membership, including the permanent members. By ignoring the minority that rejected permanent expansion it also moved the debate away from divisions within both the NAM and the Western European and Others Group and drew attention to the more important divisions between the NAM and the permanent five.

Ambassador Razali has been consulting delegations to produce a revised draft framework decision for the 52nd General Assembly. This is likely to take into account the following factors:

● Rotating regional seats

Providing regions with the choice to propose a shared regional permanent seat, either initially or if individual candidates from the region fail to receive two-thirds support in the General Assembly.

● The veto

Some formulation could be found that does not shut the door completely on the veto for new permanent members. One suggestion has been for new permanent members to be given the veto, but to make a voluntary but binding commitment not to use it. Another would give them an interim form of veto, such as a requirement for three or four concurring votes from the new permanent members for a decision.

In addition or in parallel with these suggestions would be the establishment of a working group on the veto to examine all aspects, including the veto power of the original permanent members. This might report after an initial decision to expand the Council. Some

creative ideas are needed on this issue if a proposal acceptable to both the NAM and the permanent five is to be found.

● Size


Assuming that a suitable compromise formulation can be found for the veto, then size is likely to be the key element in a revised proposal. The Northern permanent members favour a Council of 21 at most, leaving little room for an expansion of non-permanent members if there are to be five more permanent members. This would drive a wedge between those developing states that are candidates for permanent membership and the smaller developing states that support them, but also want increased opportunities for election to the Council. Moreover, the *quid pro quo* that would be demanded from the permanent members for a Council of 21, perhaps a more radical pruning of the existing veto, would likely be unacceptable to them.

If a Council of 24 is proposed this would be more likely to gain wider NAM support, but would face uncertainties over acceptance by the permanent five. France, though preferring a lower number, has been conciliatory towards calls for a Council of 24, calculating that this is the price for a successful expansion of both categories of membership. It has also been more willing to consider symbolic restrictions on the existing veto, and that of any new per-

manent members.

France knows that it can afford to be conciliatory in the knowledge that such measures are likely to be opposed by the US, or Russia. China is an unknown quantity but would probably not hold up proceedings. The United States has stated that it would oppose a Council of more than 21 seats.

It would be beneficial for a draft framework decision to propose either 23 or 24 members. It comes down to an assessment of whether it is better to produce a proposal that is likely to gain two-thirds of the votes of the General Assembly, but face possible rejection by one or more of the permanent members at the ratification stage, or to meet more of the demands of certain permanent members but risk rejection of the proposal in the initial General Assembly vote.

Britain may have to decide whether to support a Council of 24, thus making it more likely that Council expansion in both categories can go ahead, but at possible risk to Council efficiency. Alternatively, London could insist on 21, taking the risk that the proposal will not receive a two-thirds majority. This might delay reform to the Council, increasing the chance that Britain's permanent seat will be called into question in the future in the context of further EU political and foreign policy integration. It is hard to evaluate scientifically whether a Council of 21 would be significantly more efficient than a Council of 24. Assuming that other elements are acceptable, such as the 'action threshold', a Council of 24 should be supported. 

1 In 1945 the Security Council had eleven members. Five were permanent: China, France, the UK, the USA and the USSR (from December 1991 the Russian Federation), and six were non-permanent members elected for two years by the General Assembly. On 1 January 1966, the number of non-permanent members was increased to ten. A non-permanent member must wait a year before being eligible for re-election.

2 See Giandominico Picco, 'The UN at Fifty', *The World Today*, Vol. 51, No. 11, 1995.

3 Boutros Boutros-Ghali 'Magisterial Lecture on Security Council Reform', Ministry of Foreign Affairs, Mexico City, Mexico, 4 March 1996.