

THE NEED FOR EQUITABLE REPRESENTATION ON
AND INCREASE IN THE MEMBERSHIP OF THE
UNITED NATIONS SECURITY COUNCIL

by

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ABSTRACT

The United Nations is composed of six principal organs. These are the General Assembly, the Security Council, the Economic and Social Council, the International Court of Justice, the Secretariat, and the Trusteeship Council. But, as the organ conferred with the primary responsibility for the maintenance of international peace and security, amongst other vital functions, the Security Council is without doubt the most important organ of the United Nations.

At the San Francisco Conference which led to the establishment of the U.N., it was agreed that the Security Council shall consist of 11 members, 5 permanent and 6 non-permanent. In recognition of the fact that peace could not be maintained without the cooperation of the Major Powers (China, U.S.S.R., U.S.A., U.K., and France) the 5 Major Powers became Permanent Members of the Security Council. Additionally, decisions of the Council on substantive matters was subject to the concurring votes, so called veto right, of all five Permanent Members.

Between 1945 and 1963, membership of the United Nations increased from 51 to 113. Thus, the Security Council was increased from 11 to 15, by the creation of 4 more non-permanent seats. Since 1963, U.N. membership has increased from 113 to 185 with most of the new members coming from Africa and Asia.

The present distribution of permanent seats does not reflect the increased representation from Africa, Latin America, and Asia, nor the emergence of economic giants such as Japan and Germany, the second and third largest contributors to the U.N. regular budget. Furthermore, the abuse of the veto has led to a call for an elimination or a limitation of the veto.

In addressing these problems, I divided the U.N. into four time periods: the pre-U.N., the San Francisco Conference, Security Council practice from 1945 to 1990, and post cold-war practice, 1991 till present. In examining each period I relied on

official documents including the Dumbarton Oaks Proposals, the San Francisco Conference Papers, and Repertory of Security Council Practice.

My conclusion is that there should be an increase in the permanent and non-permanent seats of the Security Council to make it more representative, and that while the veto needs to be preserved, there is a need to limit the scope of the veto.

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DEDICATION

I will like to dedicate this paper to Zetha and Afolarin, my wife and son respectively, for their support, patience, for believing in me, and loving me unconditionally. Also to my Mother, Bola Adeleke, without whom I shudder to think of where I would be by now. I am indeed extremely lucky to have all of you in my life.

I. Introduction

The Security Council consists of five permanent members and ten non-permanent members, five of which are elected each year by the General Assembly for a term of two years. China,¹ France, the Russian Federation,² the United Kingdom, and the U.S.A are the permanent members.³ Pursuant to Article 24 of the UN Charter, the members of the UN have conferred on the Security Council the primary responsibility for the maintenance of international peace and security. The functions of the Council fall under two main headings: pacific settlement of disputes;⁴ and enforcement action with respect to threats to the peace, breaches of the peace, and acts of aggression.⁵

The provisions relating to the Security Council in the United Nations Charter in 1997 do not look very different from those in the Charter of 1945. Between 1945 and 1963, the U.N. General Assembly grew from 51 to 112 States. In recognition of the increase in membership and particularly in response to demands by the new members for an expansion of the Security Council, Articles 23 and 27 were amended in 1965 to increase the membership of the Security Council from its original eleven members to its present fifteen, with a corresponding change from seven to nine affirmative votes for the adoption of resolutions.⁶

No other changes were made to the voting procedures of the Security Council

¹ The People's Republic of China replaced Nationalist China at the United Nations on 25 October 1971, GA/RES/2758(XXVI).

² The Russian Federation informed the U.N. on 24 December 1991 that the membership of the Soviet Union in the Security Council and all other U.N. organs was being continued by it, and that the Russian Federation will remain responsible in full for all the rights and obligations of the former Soviet Union, see United Nations Hand Book, 1992, p. 59.

³ U.N. Charter, Article 23.

⁴ U.N. Charter, Ch. VI, Articles 33-38.

⁵ U.N. Charter, Ch. VII, Articles 39-51

⁶ GA Res. 1991(XVIII)A and B, 17 December 1963. Although the resolution was passed by the General Assembly in 1963, it did not take effect until 1965 after the required number of countries --75-- including all the security council permanent members, had ratified the resolution.

which grants the five permanent members veto power over substantive matters.⁷ In the same vein, Article 109 was amended in 1968 to increase from seven to nine the number of votes in the Security Council needed to complement a two-thirds vote in the General Assembly for the convening of a Charter review conference.⁸

Surprisingly, while the Security Council has retained its 1945 look, except for the minor changes noted above, the General Assembly and the world in general could hardly be said to be what they were in 1945 when the United Nations came into existence.⁹ Since the creation of the United Nations Security Council more than five decades ago, the global economic and political situation has been transformed. Aided by postwar reconstruction efforts, Germany and Japan have become stable democracies and are among the world's leading economic powers, and belong to the list of the top three donors to the annual budget of the United Nations.¹⁰

Nations with growing economies and increasing political influence have emerged in Asia, the Near East, Africa and Latin America. Since 1960, when the General Assembly adopted the Declaration on the Granting of Independence to Colonial Countries and Peoples,¹¹ some sixty former colonial Territories, inhabited by more than 180 million people, have attained independence and joined the United Nations. Membership of the United Nations has increased sharply from 51 at its inception in 1945 to 185 today. With all these changes, it is no surprise that in recent times, there have been numerous calls from Member States that "the many

⁷ U.N. Charter, Art. 27. The word "veto" as used in this paper refers to a negative vote of a permanent member which has the effect of preventing the adoption of a proposal (on non-procedural issues) that has received the necessary number of affirmative votes.

⁸ GA Res. 2101 (XX), Dec. 20, 1965.

⁹ It must be acknowledged that there has been other amendments to the Charter besides those dealing with the Security Council. In fact, the resolution expanding the Security Council also increased membership of the Economic and Social Council from 18 to 27. GA Res. 1991(XVIII)B, 17 Dec., 1963.

¹⁰ U.N. Doc. ST/ADM/SER.B/512; *see also* "Setting the Record Straight: Some Facts about the U.N." [<http://www.un.org/News/facts/setting.htm>]. August 1997.

¹¹ GA Res. 1514 (XV), 1960.

changes that have taken place in our international relations demand to be reflected in the structures of an international organization"¹² such as the United Nations.

The focus of this paper is to examine the role of the Security Council in the maintenance of world peace and security in the post cold war era, and to examine in what ways the Security Council should be reformed to best carry out its duties in the next century. Immediately some questions come to mind: Do the political and socio-economic conditions which informed the composition of the Security Council in 1945 still remain relevant or valid today? If not, does the Security Council as presently constituted, reflect the prevailing world situation? Do the five permanent members along with ten rotating member States constitute a representative, legitimate or authoritative voice for a U.N. membership of 185?

What are the challenges facing the Security Council today and how different are they from the challenges of the cold war era? Is reform an essential prerequisite for the effectiveness of the Security Council in the maintenance of international peace and security as mandated under the Charter? How could reform be carried out in a way that strengthens, rather than weakens, the capacity of the Security Council to discharge its duties in accordance with the Charter?

Is the concept of the veto and permanent membership consistent with the United Nations' principle of sovereign equality of nations or with the spirit of the General Assembly resolution for the elimination of colonialism?¹³ Should the veto be eliminated, limited, or modified? Should the number of permanent members and/or non-permanent members be increased? If so, by how many? Is there a need to have other categories of membership in the Security Council, such as semi-permanent members with no veto rights?

¹² A typical example of the call for an expansion of the Security Council can be found in the Address by Robert Mugabe, President of the Republic of Zimbabwe to the General Assembly, on the fiftieth anniversary of the United Nations, (1995), U.N. Doc. A/50/PV. 40, p. 5.

¹³ GA Res. 1514 (XV), 1960.

The author will attempt to answer these questions by exploring the changing role of the Security Council, in light of the global socio-economic and geopolitical changes, the possibilities for restructuring the Security Council, and the implications reform would have for the United Nations. The essential starting point for an analysis of the Security Council, particularly an examination of its functions and powers, should be an understanding and a review of certain key political and normative assumptions upon which the United Nations itself was founded. Failure to clarify these assumptions and be seized of the goals of the United Nations could lead to contradictory analysis and unpredictable or unreliable proposals for a change in the Security Council as presently constituted.

To this end, the first chapter will be devoted to identifying the fundamental principles and assumptions that served as the basis of the United Nations in 1945, with particular emphasis on how these assumptions influenced or shaped the composition, functions, and distribution of power on the Security Council. This will be followed by a review of United Nations practice to see if it reflects these principles. Then, an attempt will be made to see if the assumptions of 1945 are still relevant today, and if not, how should the United Nations be reformed to fulfill its primary goal of maintaining international peace and security in the post cold war era.

It must be emphasized that the title of this thesis¹⁴ is somewhat misleading, to the extent that it suggests that it will address solely the question of the need for expanding membership of the Security Council and no more. On the contrary, this thesis tracks the current debate at the United Nations under the same topic which is not limited to numerical questions, but also other issues --particularly, the veto--regarding the working methods of the Security Council.

Furthermore, a substantial portion of the suggestions and analysis in the

¹⁴ The Need for Increase in the Membership of the Security Council.

paper derives from the official position of the permanent members and other leading contenders for membership on the Security Council. The reason being that by blending previous U.N. practice with the official position of the major powers, one can come up with realistic, achievable suggestions, rather than engage in idealistic academic analysis.

Although attempts have been made to secure the official position of all the permanent members of the Security Council, however the fact is that some of them, especially the United States, have expressed their positions regarding the proposed reform of the Security Council more than others, hence some countries may have their views referred to more often than others. Although one Permanent Member may veto any proposed reform, depending on what kind of reform it is, nothing written here is meant to suggest that the view of one Permanent Member is more valuable than any other.

At this point, it is important to note that the fact that a permanent member with veto power over a proposed Charter amendment has expressed opposition to the expansion of the Security Council does not mean that any expansion is doomed. One example which proves this point was the first time the Charter was amended to expand both the Security Council and the Economic and Social Council in 1963. When the resolution was put to a vote at the General Assembly, of the five permanent members only China voted in favor of expanding the Security Council. Both the U.S. and the U.K. abstained, and France and the Soviet Union voted against the resolution.¹⁵ However the Soviet Union was the first, of the permanent members, to ratify the amendment.¹⁶

¹⁵ The vote was 97 to 11, with 4 abstentions, *see* Hearings Before the Committee on Foreign Relations, U.S. Senate, 89th. Congress 1st. Sess, p. 2, April 28 and 29, 1965.

¹⁶ *Id.*, at 6. As of April 1965 when the 1963 Charter amendments came before the U.S. Senate as part of the ratification process, 63 nations out of the required 76 had ratified the resolution. The Soviet Union was, at that time, the only permanent member of the Security Council that had ratified the resolution.

II. What are the principles and assumptions underlying the U.N. and the Security Council?

(a) Fundamental Principles of 1945¹⁷

Human beings by nature are social animals and seek to bind together with others, sometimes for altruistic reasons, and at other times for purely selfish reasons. While human beings are as different as the flowers in a garden, one common thread that unites all of us is the survival instinct. Thus the most pervasive concern of people in banding together, whether at the family level, the tribal level, the national or the international level, has been to enhance their survival.

Human beings seek an answer to the question of how they, either individually or as a member of an organized group, can create a situation in which their survival will not be threatened by war. This has meant peoples concentration on the maintenance of international peace and security, and explains why, in modern times, there has been a litany of attempts to create international organizations able to prevent war.¹⁸

However, it was not until after the First World War that it was possible to create a world-wide organization dedicated to this great purpose. The primary goal for creating the League of Nations was the maintenance of international peace.¹⁹

¹⁷ It must be noted that the purpose of writing this thesis is to examine the Security Council and not the United Nations as a whole. Consequently, the paper does not pretend nor is it designed to be a good source for a thorough or an in depth examination of the genesis of the United Nations. To borrow the words of Geoffrey L. Goodwin, *Britain and the United Nations*, (1957) p.1, "only the main threads in the tangled skein of negotiations leading up to the San Francisco Conference can be unraveled here," and only in so far as they have any bearing on the Powers, Functions, and Structure of the Security Council will they be examined here [hereinafter Goodwin]. For a comprehensive and authoritative analysis of the Genesis of the United Nations including an exhaustive analysis of the different negotiations and meetings leading to the establishment of the United Nations, see Goodrich, L. M., Hambro E., and Simons, A. P., *Charter of the United Nations, Commentary and Documents*, (1969) [hereinafter Goodrich, Hambro, and Simons].

¹⁸ For a comprehensive list of previous attempts to create an international organization for the maintenance of peace, including peace documents from 264 B.C. to 1947, see J. Eugene Harley, *Documentary Textbook on the United Nations* (1947). See also, Amry Vandenbosch & Willard Hogan, *The United Nations-- Background, Organization, Functions, Activities* (1952), pp. 23-43 [hereinafter Vandenbosch & Hogan].

¹⁹ Id., at p. 77.

And although the League had failed in achieving the goal of maintaining international peace and security, the idea of an international organization dedicated to the prevention of war and promotion of peace was not abandoned. In fact, the inability of the League of Nations to prevent the second world war, and the untold hardship which the war brought only made the international community more eager for better ways to achieve the goal of maintaining international peace and security. Thus efforts were underway to create the United Nations prior to the end of the second world war.

Consequently, the Charter of the United Nations signed at San Francisco on June 26, 1945, was without any doubt a product of the Second World War, and was designed with an eye to avoid what was perceived to be the limitations of its predecessor, the League of Nations, a limitation which was considered as being partly responsible for the Second World War. The limitations of the League were identified as: the unanimity rule;²⁰ the absence of any obligation on its members to intervene with force to repress violence until war had actually broken out;²¹ the Covenant's emphasis on *reduction* of armaments;²² the decentralized character of sanctions which allowed each member to decide for itself whether to put them into

²⁰ Article 5 of the Covenant provided that, except for procedural matters, "decisions at any meeting of the Assembly or of the Council shall require the agreement of all the Members of the League represented at the meeting."

²¹ League Covenant Article 16 spelled out sanctions to be imposed "should any Member of the League resort to war in disregard of its covenants which mandates settlement of disputes by arbitration, judicial settlement, or inquiry." Although it alludes to the possibility of using military power, it does not say explicitly whether such military power shall be used to wage war against the aggressor. Rather, Covenant Article 16(2) stated that the military power shall be used to "protect the covenants of the League." In fact, the Covenant provides for no military action to prevent war or threats to the peace. In contrast, Charter Article 1(1) provides for "collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace." Furthermore, Articles 39 and 42, on the power of the Security Council, provides that rather than wait for war to break out before resorting to military power, the use of military power by the U.N. may be triggered by the "existence of any threat to the peace or breach of the peace..."

²² Compare Covenant Article 8 with Charter Article 26.

force;²³ and the muted emphasis on economic and social cooperation.²⁴

However, this is not to suggest that the United Nations Charter had nothing in common with the League Covenant. The two documents are similar in many respects. Broadly speaking, the Charter and the Covenant express similar aims;²⁵ in each case the basis of association is the sovereign equality of member states;²⁶ and the institutional framework, such as the Economic and Social Council,²⁷ and the Security Council follows much the same pattern. However, it must be stated that while in both the League and the U.N., the functions of the Security Council are similar, the distribution of power is quite different.²⁸

But, the United Nations is not just a refashioned League of Nations; nor could it have been. The framers of the Charter deliberately wanted to remedy, rather than repeat, what they identified as the mistakes of the League. Of primary importance to the framers was the fact that the Covenant contains no provision for collective military action to *prevent* war, or to *repel* aggression.²⁹ Thus they conceived of a United Nations with the necessary authority not only to prevent aggression, but also to respond collectively and decisively to any threat to

²³ Shaw, *International Law, The United Nations and the Settlement of Disputes*, p. 639 [hereinafter Shaw].

²⁴ Goodwin, *supra* note 17, p. 16. Also compare Article 23 of the Covenant with Charter Articles 61-66 which spells out in greater detail the functions and powers of the ECOSOC.

²⁵ The Preamble of the Covenant states that the aim of the Contracting Parties was to "promote international cooperation and to achieve international peace and security", while Article 1(1) of the Charter states the purpose of the U.N. is "to maintain international peace and security..."

²⁶ Although there is no "sovereign equality" language in the Covenant as it appears in Article 2(1) of the Charter, Article 1 of the Covenant dealing with Membership and Withdrawal does not ascribe any status to a country based on its resources. When read along with Covenant Article 5 on Voting on the League Council, the sovereign equality of all members become quite obvious.

²⁷ Compare Covenant Article 23 with Charter Article 61.

²⁸ The significant differences are in the procedures for becoming permanent members of the Security Council and the voting procedures of the Council. Whereas, with the approval of the majority of the Assembly, additional permanent members may be named to the Council pursuant to Article 4(2) of the Covenant, additional permanent members may be named only through amendment of the Charter.

²⁹ League Article 15(7) on Pacific Settlement of Disputes provides a *unilateral* response to acts of aggression that has not led to armed conflict, unlike Charter Article 37, which provides that the Security Council may recommend such terms of settlement as it may deem appropriate. Furthermore, Charter Article 42 provides that even threats to peace may be met with collective military action.

international peace and security.³⁰

Unlike the League Covenant, which relies on pacific settlement of disputes and emphasized the goal of reduction of arms, the United Nations Charter takes a much more pragmatic approach, laying more emphasis on the use of force not solely to fight war but also to repel threats to the peace and aiming, not at the *reduction* of armament, but at its *regulation*.³¹

At the end of World War I, the League of Nations was established largely on the initiative of Woodrow Wilson and his concept of collective security.³² The Wilsonian ideal of collective security had actually been put into practice before the League of Nations came into existence. In his war message to Congress,³³ Wilson not only conceded that "armed neutrality of the United States was ineffective" he also believed that "to bring the Government of the German Empire to terms and end the war... will involve the utmost practicable cooperation in counsel and action with the governments now at war with Germany."³⁴

Focusing on the post war era, he added that "Our object now, as then, is to vindicate the principles of peace and justice in the life of the world as against selfish and autocratic power and to set up amongst the really free and self-governed peoples of the world such a concert of purpose and of actions as will henceforth ensure the

³⁰ See U.N. Charter Articles 1(1), 39-41.

³¹ Compare Covenant Article 8 which provides that "the maintenance of peace reduction of armaments to the lowest point consistent with national safety" to Charter article 26 which provides "for the establishment of a system for the regulation of armaments" as a means of establishing and maintaining international peace and security.

³² In his "Fourteen Points" address delivered to Congress on 8 January, 1918, President Wilson identified 14 points which must serve as the foundation of the then proposed League of Nations. Second on the list was the need for "international action for the enforcement of international covenants." In his conclusion, President Wilson stated that, "Unless this principle be made its foundation, no part of the structure of international justice can stand." [<http://www.lib.byu/~rdh/wwi/1918/14points.html>]. This language is quite similar to the "enforcement by common action of international obligations" which appears in the preamble to the League Covenant.

³³ Woodrow Wilson, *War Messages*, 65th Cong., 1st Sess. Senate Doc. No. 5, Serial No. 7264, Washington D.C., 2 April, 1917.

³⁴ Id.

observance of those principles."³⁵ In the same vein, on January 5th, 1918, the British Prime Minister, in a meeting with delegates of the Trades Unions, identified as one of the war aims of his government "to seek by the creation of some international organization to limit the burden of armaments and diminish the danger of war."³⁶

Three days thereafter, on January 8, Wilson, in an address to the joint session of the Congress, identified fourteen points which he believed the "only possible program" to achieve world peace. Second and fourth on the list was a call for "... international action for the enforcement of international covenants" and "adequate guarantees given that national armaments will be reduced to the lowest point consistent with domestic safety" respectively.³⁷ It therefore was no surprise that the Covenant which emerged after the war was long on pacific settlement of disputes and rather short on enforcement action, in particular preemptive military action to prevent threats to international peace and security from leading to war.

In spite of the limitations of the League, particularly the absence of the United States from the organization, leaving the League fatally weak,³⁸ it was a tribute to the idea of the League, the idea of collective security, that almost from the beginning of World War II serious thought was given to establishing an international organization to keep the peace once the war ended. Although the U.N. did not come into existence until after the war, the fundamental principles of the Charter had been enunciated in public statements well before the San Francisco Conference.

In their Declaration of Principles of August 1941, known as the Atlantic Charter, President Roosevelt and Prime Minister Churchill expressed their hope "to see established a peace which will afford to all nations the means of dwelling in

³⁵ Id.

³⁶ See Walters, F. P., *A History of the League of Nations*, Vol. I, 1952, p. 20 [hereinafter Walters].

³⁷ President Wilson's Fourteen Points. [<http://www.lib.byu.edu/~rdh/wwi/1918/14points.h>].

³⁸ Goodrich, Hambro, and Simons, *supra* note 17, p. 2.

safety within their own boundaries, and which will afford assurance that all men in all lands may live out their lives in freedom from fear and want."³⁹ A constructive purpose for the future international organization was also foreshadowed in the fifth clause of the Atlantic Charter, which declared that two statesmen desired to bring about the fullest collaboration between all nations in the economic field with the object of securing, for all, improved labor standards, economic advancement and social security.

However, while the framers of the Charter embraced the Covenant idea of collective security, they deliberately avoided the League's preference for pacifism to the exclusion of use of force to restore peace. Experience must have taught them that a better way to maintain international peace and security was to be prepared to use collective power, not only to wage war against an aggressor, but also to prevent war. As to the structure of the Organization, Sir Charles Webster has observed that all three Powers --U.S.A., Britain, and Soviet Union--

"... Envisaged an Assembly and a Council composed of the Great Powers and some smaller states chosen in the same manner as in the Covenant. All agreed that the responsibility for the maintenance of international peace and security should be placed on the Council, and that the members of the Organization should confer on it adequate powers for this purpose; that these should not be shared with the Assembly, and that a unanimous vote in the Council should not be required for their exercise."⁴⁰

The concept of the new international organization began to crystallize in the minds of the Allied leaders toward the end of 1943. On 30 October of that year, the Chinese Ambassador in Moscow, together with the Foreign Secretaries of the United Kingdom, the United States and the Soviet Union, signed a joint Declaration of Four Nations on General Security, commonly referred to as the Moscow Declaration, in which the four powers stated *inter alia*:

That their united action, pledged for the prosecution of the war against their respective

³⁹ H. Doc. 358/77C1/1941.

⁴⁰ Webster, *Making of the Charter*, pp. 26-27 [hereinafter Webster].

enemies, will be continued for the organization and maintenance of peace and security.⁴¹

Furthermore, the signatories expressed the view that they "recognize the necessity of establishing at the earliest practicable date a general international organization, based on the principle of the sovereign equality of all peace-loving states, and open to membership by all such states, large and small, for the maintenance of international peace and security."⁴² The Connally resolution approved by the United States Senate on November 5, 1943, five days after the Moscow Declaration, repeated these principles word for word.⁴³

Thus, it can be seen that the general character and nature of the United Nations were laid down at the very outset, years before the San Francisco Conference. The United Nations, as it was envisaged and finally established, is: (1) a voluntary organization of peace-loving states based on (2) the principle of sovereign equality of (3) large and small states (4) for the maintenance of international peace and security,⁴⁴ and the Security Council shall be responsible for the maintenance of international peace and security. Member states are to retain their sovereignty and are legally equal.⁴⁵

⁴¹ U.S. Department of State Bulletin, Vol. IX, No. 228 (6 Nov. 1943). For the full text of the Moscow Declaration, see Goodrich L. M., and Hambro, E., *Charter of the United Nations: Commentary and Documents* (Boston, World Peace Foundation, 1949) pp. 571-72 [hereinafter Goodrich and Hambro].

⁴² Francis Wilcox and Carl Marcy, *Proposals for Changes in the U.N.*, p. 52. [hereinafter Wilcox and Marcy]. For full text of the Declaration, see U. S. Department of State Bulletin, Vol. 9 (Nov. 6, 1943), pp. 308-09.

⁴³ Id., citing S. Res. 192, 78 Cong. 1 sess.

⁴⁴ See U.S. Dept., of State Bulletin, Vol. IX, No. 308, for the full text of the Moscow Declaration which expressed the same view.

⁴⁵ Although U.N. Charter Art. 2 lists seven Principles of the U.N., I have mentioned here the four most relevant to my thesis.

(b) **Fundamental Assumptions Underlying the U.N. in 1945**

Distinct from the fundamental principles of the United Nations, as expressed in the Charter,⁴⁶ are what might be described as fundamental assumptions. The fundamental assumptions which underlie the U.N. are numerous and can be deduced from the numerous conferences, declarations, and debates leading to the signing of the Charter.⁴⁷ These assumptions had, and continue to have, a profound effect on the nature and structure of the organization created at the San Francisco Conference, and only by understanding these assumptions may one appreciate the distribution of power in the Security Council and other main organs such as the Economic and Social Council.

For the purpose of this thesis, however, the following fundamental assumptions are considered relevant: (1) that the wartime cooperation of the Major Powers would continue into the reasonably foreseeable future;⁴⁸ (2) future wars would imperil the world no more than past wars;⁴⁹ and, (3) the balance of economic

⁴⁶ U.N. Charter, Ch. I, Articles. 1 and 2.

⁴⁷ Maurice Waters, *The United Nations: International Organization & Administration*, (1967), p. 6, [hereinafter Waters].

⁴⁸ U.S. Dept., of State Bulletin, Vol. IX, No. 228 (6 Nov., 1943). For the full text of the Moscow Declaration, see Goodrich and Hambro, *supra* note 41, pp. 571-72. For a contrary opinion, see *infra* note 601, p. 216, where former Secretary General Dag Hammarskjöld stated that: "Contrary to misconceptions ... it was never contemplated at San Francisco that ... the Great Powers would always act in unity..."

⁴⁹ As noted earlier, on the issue of disarmament, the Charter expressed preference for "regulation of armaments" as opposed to the League's preference for the "reduction of armaments." Furthermore, the drafters of the Charter accorded a fairly low priority for a system of regulating armaments, linking any reduction of armaments with the conclusion of agreements under Article 43 of the Charter for supplying the Security Council with armed forces. See Goodrich, Hambro and Simons, *supra* note 17 p. 213. However, with the failure of the major powers to agree on the principles governing such forces, the collective security system envisaged in the Charter could not be brought into effect, and could thus not provide the framework within which a system for the regulation of armaments could operate, *id.*, p. 213, n. 68 and 69. The principal reason the United Nations became so urgently involved with this matter in the first year of its existence was the explosion of the atomic bomb and the United States decision to seek at once an international agreement to control this new force. As a result, the General Assembly at its very first session established the United Nations Atomic Energy Commission. See GA Res. 1(I), January 24, 1946. It has been observed that, had the delegates at San Francisco known "we were entering the age of atomic warfare, they would have seen to it that the Charter dealt more positively with the problems thus raised." *Statement of Foster Dulles, Secretary of State*, in testimony on Review of the United Nations Charter, before the Senate Committee on Foreign Relations, (January 18, 1954), 83rd Cong., 2 sess. part 1, p. 33 [hereinafter Foster's Testimony].

and political power would remain unchanged in the foreseeable future.⁵⁰

The history of the United Nations has shown that every one of these assumptions has proven to be partially or wholly erroneous. For over four decades the great powers engaged in a cold war which threatened, rather than promoted, the fundamental principle of international peace and security.⁵¹ The proliferation and development of nuclear weapons and other weapons of mass destruction led to the realization, or conclusion, that future full scale war⁵² would be more destructive than previous wars, and could mark the end of civilization as we know it. In addition, the balance of economic and political power has changed significantly.

On the other hand, the assumption that the wartime cooperation of the Major Powers would continue was partially realized, because in all of the history of the United Nations, there have only been two instances of direct inter-Super Power

⁵⁰ Wilcox and Marcy, *supra* note 42, p. 55.

⁵¹ In his testimony before the Senate Foreign Relations Committee, then Secretary of State Foster Dulles, identified the east-west rivalry which led to the abuse of the veto power in the Security Council as "the greatest weakness of the United Nations" and the primary reason "the Security Council has been unable to discharge its primary responsibility for the maintenance of international peace and security." Foster's Testimony, *supra* note 49, p. 5.

⁵² The author defines "full-scale war" as a war in which nuclear, biological, chemical, and other instruments of mass destruction are deployed. The fact that none of the nuclear Powers have a decisive first strike capability would mean that no country could win such a war. For a similar opinion, see the Fourth Annual Report of the Secretary General, General Assembly Official Records, Doc. A/930. *See also, infra* note 601, p. 219, where Dag Hammarskjöld wrote: "A new world war, conducted with the means now available, would bring the world only to destruction. No one system or ideology could prevail afterwards, because there would be neither victors nor vanquished. There would be complete chaos."

conflict brought before the Security Council.⁵³ Thus, the permanent members have "cooperated" in avoiding inter-Major Power clashes which pose far more threat to international peace and security than any other conflict involving non-Super Power states.

Had all these developments been considered in 1945, the Charter which emerged from the San Francisco Conference may have been significantly different. Perhaps Article 23(1) on the permanent membership in the Security Council would have looked more like its' predecessor in the League,⁵⁴ which made it possible for deserving nations to become permanent members without an amendment of the Covenant. Also the (post Charter) realization that future full scale war⁵⁵ is "unwinable" might have meant a Charter with more emphasis not only at the regulation of armaments, but the elimination of biological and chemical weapons of mass destruction. In the words of Secretary of State Foster Dulles:⁵⁶

"As one who was at San Francisco in the spring of 1945, I can say with confidence that had the delegates at San Francisco known we were entering the age of atomic warfare, they would have seen to it that the Charter dealt more positively with the problems thus raised."

This is not to suggest that all the delegates at San Francisco were totally unaware of the destructive power of the atomic bomb. It has been observed that "A

⁵³ Between 1946 to 1989, the Security Council passed 682 resolutions, and there were 279 vetoes cast in all. See, Anjali V. P., *The U.N. Veto in World Affairs*, (1991), pp. 491 -514 [hereinafter Anjali]. Only 2 of these resolutions involved direct inter-super-power conflict: Resolution 135 (1960) of 27 May 1960 regarding "Relations between the Great Powers" which was meant to reduce tensions and to create an atmosphere conducive to negotiations. The facts were that on May 1, 1960, a United States Air Force military plane of the U-2 type penetrated into the USSR space and was subsequently brought down by Soviet missiles. Following which the Soviet Union complained of aggressive acts against the US was discussed by the Security Council. The second incident was the complaint of armed invasion of Taiwan (Formosa) leveled against the United States by China. On August 24, 1950, the Chinese government informed the Security Council of the movement of the US Seventh fleet towards the Straits of Taiwan and the arrival of U.S. Air Force in Taiwan. The Chinese government considered both actions acts of aggression in violation of the Charter. On 29 Sept., 1950, the Security Council adopted Resolution 87 (1950) in which it invited the representatives of the Chinese government to provide more information regarding the alleged United States aggression against Taiwan (Formosa).

⁵⁴ League-Covenant, Art. 4 states: "... With the approval of the majority of the Assembly, the Council may name additional Members of the League whose Representatives shall always be members of the Council..."

⁵⁵ *Supra* note 51 and accompanying text.

⁵⁶ Foster's Testimony, *supra* note 49, p. 7.

few of the delegates knew of the existence of the atomic bomb," but what was missing was the "realization of what its power implied for the United Nations, and of the demand it would eventually make on national leaders for arms control."⁵⁷ In fact, when at its 17th plenary meeting on January 24, 1946, the General Assembly adopted a resolution establishing the Atomic Energy Commission it described the main function of the commission as "... to deal with the problems raised by the *discovery of atomic energy and other related matters.*"⁵⁸ (emphasis supplied)

Regardless of the validity of the fundamental principles of the Charter or the assumptions that guided those who drafted it, the United Nations did not "collapse like a house of cards within two years after its adoption,"⁵⁹ nor has it proved effective in preventing aggression. In spite of all the shortcomings, an impartial observer would agree that by providing a forum for airing grievances between nations, the United Nations has been instrumental in resolving many conflicts.

Now that these fundamental assumptions have been found for the most part to have been unwarranted and overly optimistic, the question arises: What are the new assumptions upon which the United Nations ought to be based, and what, if any, changes should be made in the United Nations in light of the fact that the assumptions underlying it in 1945 may no longer apply.

(c) **Fundamental Assumptions Underlying the Security Council in 1945**

Just as the United Nations, as a whole, was founded on certain assumptions and principles, so also was the Security Council. Although the underlying principles of the United Nations and the Security Council are similar, it is important nonetheless to state the principles on which the Security Council was established.

⁵⁷ Duppy Hammerman, *A Documentary History of Arms Control and Disarmament*, (1973), p. 283.

⁵⁸ U.N. Doc. A/65, p. 9.

⁵⁹ Francis Wilcox and Carl Marcy, *supra* note 42, p. 57, *citing* Statement by Ely Culbertson, *The Charter of the United Nations*, Hearings before the Senate Committee on Foreign Relations, 79 Cong. 1 sess., p. 416.

The full effectiveness of the Security Council as the primary instrument of peace enforcement was based on two conditions, or assumptions, neither of which materialized: (1) the availability to the Security Council of military forces and facilities under the terms of agreements to be concluded between the Council and Members; and, (2) the effective cooperation of the permanent members of the Council in dealing with threats to peace, breaches of the peace, and acts of aggression.

In an attempt to realize the first assumption, that of a United Nations Armed Forces, one of the first acts of the Security Council in 1946 was to request the Military Staff Committee to examine and report on the question of military agreements under Article 43 of the Charter. Following the Assembly's recommendation in December, 1946,⁶⁰ that the placing of armed forces at the disposal of the Council be accelerated, the Security Council on February 13, 1947, directed the Military Staff Committee to prepare a report on the modalities for the formation of a stand by United Nations armed forces. The report which the Committee submitted contained forty-one articles.⁶¹

Of the forty-one articles contained in the Report, twenty-five were agreed to by all members of the Committee; however, agreement on the crucial remaining sixteen articles was not possible. The sixteen articles were the important ones since they dealt with matters, not adequately covered by the Charter, which had to be decided if agreements under Article 43 were to be reached.⁶² Even at this very early stage of the United Nations the rift between the United States and the Soviet Union was quite apparent.

The chief disagreements were between the Soviet Union and the other

⁶⁰ GA Res. 41(I), December 14, 1946.

⁶¹ U.N. Security Council, *Official Records*, Second Year, (1947), Special Suppl. No. 1, "Report of the Military Staff Committee."

⁶² Leland M. Goodrich, *The United Nations*, (1960), p. 164 [hereinafter Goodrich L. M.].

permanent members, though this division did not hold on all issues. The Soviet Union held fundamentally different views from the United States and to a somewhat lesser extent from those of the other permanent members on the all-important questions of the size and composition of the armed forces to be contributed by permanent members; the provision of bases; the location of the forces when not in action; the time of withdrawal of forces; and the manner of logistical support.⁶³

Since the governments of the superpowers were not able to resolve their political differences, the deadlock over principles governing the military agreements made it impossible to realize the lofty goal of providing a standing military force and facilities for the use of the Security Council.

With the failure of the major powers to agree on the principles governing such forces,⁶⁴ the collective security system envisaged in the Charter could not be brought into effect and could thus not provide the framework within which a system for the regulation of armaments and the maintenance of international peace and security could operate.

At this early stage of the United Nations it was clear that the effectiveness of the United Nations which had been based on the idea of bringing the superpowers together, had to give way to the objective of keeping them peacefully apart. As some observers have stated, the task of the United Nations came to be defined as "that of keeping the great powers *out* of situations which may threaten the the peace, not that of drawing them *in* ."⁶⁵

⁶³ For more detailed consideration of the differences, see Leland M. Goodrich and Anne P. Simmons, *The United Nations and the Maintenance of International Peace and Security* (Washington: The Brookings Institution, 1955), pp. 398-405.

⁶⁴ For in depth analysis of the disagreement, see Goodrich, Hambro & Simons, *supra* note 17, commentary on Charter Article 43, pp. 317-325.

⁶⁵ Inis L. Claude, Jr., *The Changing United Nations*, (1968), p. 32.

III. The History of the Veto

The provisions set out in the United Nations Charter are to a large extent based upon the terms of the Covenant of the League of Nations as amended in the light of experience.⁶⁶ Accordingly, in order to be able better to understand the background of the United Nations system a brief summary of the voting procedures provided for within the League for solving disputes is necessary.⁶⁷ At this point, two significant issues deserve mentioning. In the first instance, there was no distinct separation of powers between the League Assembly and the Council. Thus, the two bodies may be seized of the same issue concurrently,⁶⁸ unlike the Charter which makes a distinction between issues that may be addressed by the Assembly and the Security Council.

Furthermore, Article 5 of the Covenant declared that "...decisions at any meeting of the Assembly or of the Council shall require the agreement of *all the Members* of the League represented at the meeting." Consequently, no distinction was made regarding the votes of the Permanent Members from that of Non-Permanent Members of the League Council. In sharp contrast to Article 5 of the League Covenant, which assigns the same weight to the vote of each member of the League Council, Article 27(3) of the U.N. Charter distinguishes between the votes of permanent members and non-permanent members of the Security Council by providing that:

"Decisions of the Security Council on all other matters shall be made by an affirmative vote of nine members including the concurring votes of the permanent members; provided that, in decisions under Chapter VI, and under paragraph 3 of Article 52, a party to a dispute shall abstain from voting."

⁶⁶ Shaw, *supra* note 23, p. 639.

⁶⁷ Goodrich and Simons, *The United Nations and the Maintenance of International Peace and Security, Dispute Settlement through the United Nations*, (1955).

⁶⁸ Covenant Article 3 provides that "The Assembly may deal at its meeting with any matter within the sphere of action of the League or affecting the peace of the world." Article 4 dealing with the power of the Council repeats the same sentence, except that it substitutes Council for Assembly. In contrast, Charter Article 12 states that "While the Security Council is exercising in respect of any dispute ...functions assigned to it... the Assembly shall not make any recommendation with regard to that dispute or situation unless the Security Council so requests."

The distinction between the votes of non-permanent members as against that of permanent members in making decisions on non-procedural issues is referred to as the veto. In comparison to previous similar international organizations based on the concept of sovereign equality of member States, the idea of the veto power conferred on the permanent members of the Security Council was a novel one, at least as far as its application in an international organization is concerned.⁶⁹

Thus, beginning from the time the idea of the United Nations and the Security Council was first considered, the question of the composition, function, and voting procedure of the Security Council has continued to generate intense debate. In fact, so intense was the debate even amongst the Sponsoring Powers⁷⁰ and France⁷¹ that Chapter VI, Section C of the Dumbarton Oaks proposals,⁷² which now appears under Chapter V of the Charter has no provision corresponding to Article 27 of the

⁶⁹ Statement by Mr. Arria, Member of Venezuelan Mission to the U.N. citing Lord Esher's 1947 letter to *The Times* of London, on the question of the origin of the veto, U.N. Doc. A/46/PV. 68, 23 December 1991, p. 18.

⁷⁰ The term "Sponsoring Powers" as used in this paper refers to the five permanent members of the Security Council. Although France had not participated in drafting the Dumbarton Oaks proposals and neither was France mentioned in the letter of invitation to the San Francisco Conference, it was nonetheless given the position of a Major Power both at the Conference and on the Security Council. For the text of the "Yalta Agreement" which also contains the letter of invitation to the Conference, see U.S. Department of State, Press Release No. 239, March 24, 1997.

⁷¹ Although France did not participate in the preliminary negotiations leading to the San Francisco Conference, the four Sponsoring Powers however agreed to confer on France the same status as that enjoyed by them. Thus at the Conference, a French amendment to add France to the four countries to whom Ch. XII of the Dumbarton Oaks Proposals (now Ch. VII) confers the primary responsibility for the maintenance of international peace and security was adopted by acclamation at Committee III. See, Doc. 1095, III/3 June 19; U.N.C.I.O. *Selected Documents*, U.S. Department of State Publication 2490, Conference Series, 83, p. 771, (1946) [hereinafter *Selected Documents*]. For an example of France playing the role of a Major Power at the Conference, see the "Statement by the Delegations of the Four Sponsoring Governments on the Voting Procedure in the Security Council" in response to the 23 questions submitted by the invited States at the Conference, Doc. 852, June 8 1945, III/1/B [hereinafter *Joint Statement*]. The "Statement" specifically mentioned that the "Delegation of France associates itself completely with the ...four sponsoring governments."

⁷² The Dumbarton Oaks Proposals were preceded by the Atlantic Charter of 14 August, 1941 signed by Roosevelt and Churchill; the Declaration by the "United Nations" of 1 January, 1942 with 26 signatories and adhered to by additional 21 countries; and, by the "Moscow Declaration on General Security" which "recognized the necessity of establishing ... an international organization... for the maintenance of international peace and security." The Moscow Declaration was signed by representatives of the Soviet Union, U.S.A., China, and the United Kingdom. For text of the Dumbarton Oaks proposals, see *Selected Documents*, p. 87. For the preliminary negotiations leading to the Dumbarton Oaks Conference, see Goodrich, Hambro, and Simons, *supra* n. 16, pp. 1-22.

Charter, but merely a note stating that "The question of voting procedure in the Security Council is still under consideration."

At the Dumbarton Oaks Conference, the problem was not whether the four sponsoring powers should have the veto. Rather, the problem was what limits, if any, should be placed on the exercise of the veto.⁷³ The main disagreement was on whether parties to a dispute should abstain from voting on procedural issues.⁷⁴ A Department of State account of the conversations regarding the veto at Dumbarton Oaks was summarized as follows:⁷⁵ "The British came with the view that the votes of any parties to a dispute should not be taken into account. The American position was that a permanent member, like a non-permanent member should not vote in connection with a dispute to which it is was a party. The Soviet representatives held the contrary view."

Another point of disagreement was the question of the "double veto"⁷⁶ that is, whether the vote to determine if an issue is procedural or non-procedural is itself subject to the veto. Again, on this question, the Soviets maintained that such a vote should be subject to the veto contrary to the American and British view." Yet another area of disagreement was the demand by the Soviets that "the sixteen Soviet Republics should be included among the original members of the organization."⁷⁷ No agreement was reached on this issue nor on the other two issues

⁷³ Amy Vandebosch and Willard Hogan, *supra* note 18, p. 80.

⁷⁴ *Id.*

⁷⁵ *Postwar Foreign Policy Preparation*, U.S. Department of State Publication 3580, General Foreign Policy Series 15, 1950, p. 317.

⁷⁶ Double Veto as used in this paper refers to the power of a permanent member of the Security Council to veto the procedural character of a resolution and then the resolution itself. As the Australian representative has said, through the device of the double veto, a "permanent member ... can say, not only, 'I can veto the decision of the Council,' but 'I can determine the question which I will veto.'" See Security Council, Official Records, First Year: First Series, No. 2, 49th Meeting, p. 425. Another observer has described double veto as the *je te baptise carpe* method, alluding to "the story of the monk who desired to eat meat on Good Friday and proceeded to baptise it as fish in order to quiet his conscience." See, Jimenez de Arechega, E., *Voting and the Handling of Disputes in the Security Council*, p. 3, (1950) [hereinafter Eduardo Arechega].

⁷⁷ See Vandebosch & Hogan, *supra* note 18, p. 80.

regarding voting in the Security Council. There was however no question concerning the general requirement of unanimity of the permanent members in reaching decisions on non-procedural issues.⁷⁸

In February 1945, Prime Minister Churchill, President Roosevelt, and Marshall Stalin met at Yalta in the Crimea to discuss further the voting procedure of the Security Council.⁷⁹ According to delegates at the Yalta meeting,⁸⁰ the first preoccupation of the governments of Great Britain, the United States, and the U.S.S.R. was not whether they should have the veto power, but on whether other countries ought to enjoy this privilege. In this regard, Mr. Churchill was said to be concerned⁸¹ with the prevention of further aggression by Germany and Japan, which he believed could only be achieved through the continued association of the United States, Great Britain, and Russia.

At meetings with President Roosevelt, Mr. Churchill was quoted to have emphasized⁸² the importance of re-creating a strong France, for according to him, '...the prospect of having no strong country on the map between England and Russia was not attractive'. It was also stated that although Churchill expressed doubts about the wisdom of including China he however did not oppose the American desire to do so.⁸³

Agreements on the questions concerning the veto were finally resolved at the Yalta meeting, hence it is called the "Yalta voting formula." At this meeting, the

⁷⁸ It must be noted that although at the Dumbarton Oaks meeting, the Soviets pushed for an expansive view of the power of the veto, the veto idea was not initiated by the Soviets. In later years, the Soviets recalled that the veto was initiated by the President Roosevelt, it was quickly supported by the United Kingdom and only then was it endorsed by the Soviet Union based on the belief that the unanimity of the great powers, as a principle, would contribute to the maintenance of peace by the United Nations. See General Assembly, Provisional Verbatim Record, 68th Meeting, A/46/PV. 68, 23 December 1991, pp. 17-18.

⁷⁹ *A Decade of American Foreign Policy, Basic Documents, 1941-1949*, Senate Document No. 123, 81st Congress, 1st Session, pp. 27-28.

⁸⁰ Goodwin, *supra* note 17, p. 7.

⁸¹ *Id.*

⁸² *Id.*, see also Churchill, *Onward to Victory* (London, Cassell, 1944), p. 36.

⁸³ *Id.*

Soviet Union accepted the American and British formula for voting in the Security Council,⁸⁴ that decisions on procedural matters would be made by affirmative votes of seven members including the concurring votes of the permanent members, except that in decisions in the pacific settlement of disputes a party to the dispute shall abstain from voting.⁸⁵

However, the Soviet Union insisted firmly that the requirement of concurrence of the permanent members should apply to the preliminary question⁸⁶ whether a decision was on a procedural or non-procedural matter.⁸⁷ Also at the Yalta meeting, it was decided a United Nations conference on the proposed world organization shall be convened in the United States to review the Dumbarton Oaks proposals as supplemented by the Yalta voting formula,⁸⁸ and that the United States and Britain would support the Soviet proposal to admit to original membership the two Soviet Socialist Republics of Ukraine and Byelorussia.⁸⁹

At the San Francisco Conference which followed the Yalta meeting, the idea of the veto generated intense debate.⁹⁰ Twenty-three questions on it were submitted by delegates of the invited States to those of the sponsoring governments, and many proposals for its amendment were made.⁹¹ This wasn't unexpected considering that prior to the San Francisco Conference, unanimity had been the normal practice in

⁸⁴ Reportedly, it took "a direct appeal to Marshall Stalin in Moscow ... before agreement was reached that the veto would not apply to a decision to consider and discuss a dispute or situation." For detailed commentary, see Goodrich, Hambro, and Simons, *supra* note 17, p. 217.

⁸⁵ For the text of the Yalta Agreement, see U.S. Dept., of State Press Release 239, March 24, 1947.

⁸⁶ The term "preliminary question" as used in this paper refers to the occasion when the Security Council has to determine whether an issue under consideration is procedural within the meaning of Article 27(2).

⁸⁷ See Goodrich, Hambro, and Simon, *supra* note 17, p. 217. It appears that at San Francisco, the Soviet Union still insisted on the idea of the "double veto" which was reflected in the joint Statement issued by the Sponsoring Powers and France to the questionnaire on the exercise of the veto submitted by the invited States. See also Joint Statement, *supra* note 71, part II, para. 1.

⁸⁸ Id.

⁸⁹ See Vandebosch & Hogan, *supra* note 18, p. 81.

⁹⁰ U.N.C.I.O., vol. 11, pp. 309-10, 694-8.

⁹¹ U.N.C.I.O., vol. 11, pp. 694-8. These included a proposal (not accepted) that 'all decisions involving the use of armed force to maintain the peace' should be taken by four-fifths of the permanent members and three-quarters of the non-permanent members.

traditional diplomacy.⁹²

But at the time of the San Francisco Conference the world was still reeling from what was considered to be the main reason for the failure of the League of Nations to prevent a second world war: the unanimity requirement.⁹³ Nonetheless, the idea of substituting for the rule of complete unanimity of the League Council, a system of qualified majority voting in the Security Council,⁹⁴ was not well received by the delegates at the San Francisco Conference.

It is not necessary to repeat here, in detail, the arguments which were used in 1945 to justify or oppose the Yalta formula. However, it is important to note that at the San Francisco Conference, if there was one issue on which the sponsoring powers and France were united, one which they deemed non-negotiable and an absolute minimum for the establishment of the United Nations, it was the veto power conferred on the permanent members of the Security Council.⁹⁵ Although it is not intended to include a complete list of statements by the governments of the sponsoring powers in support of the veto in this paper, some of them bear to be mentioned here, because they shed light on the understanding of the delegates at San Francisco regarding the exercise of the veto.

As part of his agenda for post-war security organization, President Roosevelt asserted that:

The hope of a peaceful and advancing world will rest upon the willingness and ability of the peace-loving nations, large and small, bearing responsibilities commensurate with their individual capacities, to work together for the maintenance of peace and security.⁹⁶

Thereafter, in an address to the United States Congress, delivered on January 6, 1945, President Roosevelt insisted that:

⁹² Compare League Covenant Article 5(1) with Charter Article 27(3).

⁹³ The sponsoring powers criticized how the unanimity requirement was interpreted by the League Council, blaming it for the inability of the League Council to resolve disputes brought before it. See Joint Statement, *supra* note 71, para. 6.

⁹⁴ *Id.*, at para. 7.

⁹⁵ See *infra* note 93-103.

⁹⁶ The United States and the Peace, Part I, p. 11, June 15, 1944.

We cannot deny that power is a factor in world politics any more than we can deny its existence as a factor in national politics. But in a democratic world, as in a democratic nation, power must be linked with responsibility, and obliged to defend and justify itself within the framework of the general good.⁹⁷

In the same vein, the Secretary of State for Dominion Affairs of the United Kingdom, in his address delivered before the House of Lords, October 11, 1944 on the Dumbarton Oaks proposals said of the veto:

It places the responsibility of international security foursquare on the shoulders of the nations best able to bear it.⁹⁸

Similarly, the British Prime Minister, Winston Churchill in another speech delivered February 27, 1945 in the House of Commons stated:

It is on the great Powers that the chief burden of maintaining peace and security will fall.⁹⁹

At the San Francisco conference, the Soviet Foreign Minister speaking on behalf of his Delegation at the tenth meeting of Committee 1 of Commission III,¹⁰⁰ referring to the special position of the permanent members of the Security Council, stated:

"... this (the special position) corresponds to the responsibilities and duties that would be imposed upon them."¹⁰¹

While, the representative of China stated that "Starting from the premise that everyone desired to make the Security Council a strong and effective organ, there was no choice but to support the rule of unanimity as essential for its strength and effectiveness. The alternative was a voting system which, though it might be more perfect, could in a given moment, weaken the Council in its efforts to act promptly

⁹⁷ Towards the Peace, Department of States publication 2298, p. 30.

⁹⁸ British Speeches of the Day, Vol. II, no. 11, p. 45, Nov., 1944.

⁹⁹ British Speeches of the Day, Vol. III, no. 3, p. 171, Mar. 1945.

¹⁰⁰ The Conference was divided into four commissions and twelve committees. Commission III was charged with reviewing, considering amendments, and making recommendations on the Dumbarton Oaks proposal as supplemented by the Yalta formula on matters relating to the Security Council. Commission III was divided into four committees as follows: committee III/1 deliberated on Structure and Procedure of the Security Council which was Chapter VI, Sections A, C, D, and pertinent parts of Section B; committee III/2 deliberated on Peaceful Settlement, Chapter VIII, Section A; committee III/3 reviewed Enforcement Arrangements, which was Chapter VIII, Section B, and Chapter XII; and, committee III/4 reviewed Regional Arrangements which was Chapter VIII, Section C of the Dumbarton Oaks Proposals. See Selected Documents, *supra* note 71, pp. 733-735.

¹⁰¹ U.N.C.I.O, Doc. 459, p. 1.

and effectively."¹⁰²

The representative of the Soviet Union expressed hope that "the agreement on a joint interpretation would facilitate the creation of a truly effective and efficient international organization for the maintenance of peace. The Security Council and the other organs of the Organization would be able to solve successfully the questions which would be raised in the future if the Organization possessed the chief condition for its success, unity within itself and, primarily, unity among the Great Powers."¹⁰³

The representative of the United States pointed out that the "Great Powers could preserve the peace of the world if united," and warned that "they could not do so if dissension were sowed among them." He then asked if the delegates could face the public opinion at home if they reported that they had killed the veto but had also killed the Charter.¹⁰⁴ In defense of the veto, the United States Secretary of State, stated that "the veto was not a question of privileges, but of using the present distribution of military and industrial power in the world for the maintenance of peace."¹⁰⁵

Finally, in their unanimous response to questions on the scope of the veto, the sponsoring powers stated that:

... the four sponsoring governments agreed on the Yalta formula and have presented it to this Conference as *essential if* an International Organization is to be created through which all peace-loving nations can effectively discharge their common responsibilities for the maintenance of international peace and security. (emphasis supplied).¹⁰⁶

According to one of the Delegates, in the end the invited States "were presented with the dilemma of having a Charter with the veto or no Charter at all."¹⁰⁷

¹⁰² U.N.C.I.O, Doc. 922, III/1/44, June 12, 1945, p. 5.

¹⁰³ U.N.C.I.O, Doc. 936, III/1/45, June 12, 1945, p.4.

¹⁰⁴ U.N.C.I.O, Doc. 956, III/1/47, June 13, 1945, p. 8.

¹⁰⁵ Secretary of State Stettinus' broadcast on 29 May, 1945; see Anjali, *supra* note 53, p. 13.

¹⁰⁶ Joint Statement, *supra* note 71.

¹⁰⁷ Comments by Peruvian Delegate at the 5th meeting of Commission III on June 20, expressing his objection to the veto, U.N.C.I.O., Doc. 1150, June 22.

Reluctantly they chose the former,¹⁰⁸ which contrary to the egalitarian ideals of the League Council, substituted a system of qualified majority voting (the veto) in the Security Council for the rule of complete unanimity of the League Council.¹⁰⁹

There were a number of reasons why majority of the invited States eventually decided to accept the veto, and one of the reasons could be glimpsed from the comment of the Delegate of Norway when in presenting the final report of Committee III/3 on enforcement arrangements, he said:

"Apart from differences of opinion with regard to emphasis and approach, there has been and is... general agreement as to the paramount importance of the Security Council being placed in a position to act quickly and effectively. On this score I am sure the Committee has had in mind the bitter experience of the last 30 years. ... Even now when we feel a tremendous relief at the war in Europe being over, we cannot forget for one moment that on the authority and ability of the Security Council to act with all possible dispatch and forcefulness may very well depend, at some future date, the security, the peace, and the very existence of the freedom and justice loving nations of the world."¹¹⁰

Similarly, the Netherlands Delegation while acknowledging that it may be "necessary to invest certain powers with special rights if a new organization for the maintenance of international peace and security is to be established at all" considers it regrettable nonetheless, because according to him the "...system legalizes the mastery of might which in international relations, when peace prevailed, has been universally deemed to be reprehensible."¹¹¹

Yet other delegates, faced with the inflexible attitude of the Great Powers on the issue of the veto, accepted the Yalta formula in light of provisions for future

¹⁰⁸ To show his reluctance in acceding to the veto clause, the Representative of India at Committee III moved that in the Rapporteur's report the following passage should be added: "It should be stressed that during the debate the representatives of the sponsoring powers made it clear that they were neither prepared to accept any modification to the Yalta formula nor to agree to a more liberal interpretation thereof than that contained in their joint declaration of June 7, 1945, and that any unfavorable action of the Committee on the voting formula would imperil the whole work of the Conference. It was on this understanding that many delegations voted for or abstained from voting against the Yalta Formula." Selected Documents, *supra* note 71, p. 819. The Australian Delegate argued that while he was "reluctantly prepared to accept the veto" in enforcement actions... he objects to the application of the veto to pacific settlement of disputes. *Id.*, p. 802.

¹⁰⁹ See Joint Statement, *supra* note 71, para. 7; and, Selected Documents, *supra* note 71, p. 753.

¹¹⁰ U.N.C.I.O., Doc. 943, June 13.

¹¹¹ U.N.C.I.O., Doc. 1150, June 22; and, Selected Documents, *supra* note 71, p. 811.

Charter amendment, especially the provision regarding a Charter review conference to be convened in 10 years.¹¹² As an apparent concession to this group of Delegates, provision was made for a General Conference to review the Charter, if so requested by two-thirds of the members of the General Assembly and by any seven members of the Security Council;¹¹³ and that if such a conference were not held by the Assembly's tenth session, only a simple, instead of a two-thirds, majority of the Assembly would be required to convene it.¹¹⁴ However, any attempt to amend the Charter is subject to the unanimous vote of the major powers, thus making virtually impossible any future amendment which dilutes the power of any of the major powers.

In presenting the Charter to the U.S. Senate for its ratification, Secretary of State Stettinus, noted that the five permanent Members of the Security Council were selected because they "possess most of the industrial and military resources of the world. They will have to bear the principal responsibility for maintaining peace in the foreseeable future, a fact recognized by provisions of membership."¹¹⁵

But, the Sponsoring Powers realized that they would need the other countries, particularly the medium powers, in maintaining international peace and security. Thus, to assuage the fears of the medium and smaller powers of

¹¹² The Peruvian Delegate cited the Fish-Armstrong amendment which insures the meeting of the General Assembly after 10 years to review the Charter as reason for voting for the veto. *Id.*, p. 813. Similarly, the Indian Delegation expressed the hope that in 10 years, the veto would be reviewed anew. *Id.*, p. 820.

¹¹³ Charter Article 109(1).

¹¹⁴ Charter Article 109(3).

¹¹⁵ Hearings before the Senate Committee on Foreign Relations, United Nations Senate, the Charter of the United Nations, 79 Cong. 1 sess., p. 211.

domination by the Sponsoring Powers,¹¹⁶ the Yalta formula requires at least the concurring vote of at least two¹¹⁷ of the non-permanent members for decisions on substantive issues.

The fear of domination of the non-permanent Members of the Security Council by the Sponsoring Powers has not come to pass however, rather the Council has been preoccupied with bringing about agreement among the major powers. In fact, the Security Council deemed the issue of relations between the permanent members so crucial that when in 1960 the Council could not adopt a resolution regarding the complaint of threat to universal peace brought by the U.S.S.R. against the U.S.,¹¹⁸ the Council nonetheless adopted a resolution appropriately entitled "Question of Relations Between the Great Powers" urging the Governments of France, USSR, the U.K. and U.S.A. to resume discussions so as to reduce international tension.¹¹⁹

Thus, when viewed in the context of one of the problems the veto was designed to prevent, that is a direct military conflict between any of the major powers, it could be said that the veto has achieved its goal. Equally true is the fact that the goal of the U.K., U.S.A., and U.S.S.R. in insisting on the veto has been and continues to be achieved. As observed by a French jurist, G. Day, "...the veto was tantamount to an insurance proviso: for Churchill, against any attempt being made

¹¹⁶ To prevent their domination by the Sponsoring Powers, the medium States proposed a number of amendments to the Dumbarton Oaks Proposals all of which failed to be adopted when put to the vote. For example, India proposed that at the end of a 10 year period, the Yalta formula be reviewed *de nouveau* without prejudice and without commitments either of one kind or another. See Selected Documents, *supra* note 71, p. 820; Canada proposed that states which were called on to contribute men and arms for collective action have a seat on the Council, *id.*, p. 782; and, Australia proposed an amendment drawing a clear distinction between Chapter VI Council actions to which the veto is inapplicable, and Chapter VII actions of the Council which is subject to the veto, *id.*, p. 802-03.

¹¹⁷ Following a 1965 amendment enlarging the Council from 11 to 15, the number of votes required for non-procedural decisions was increased from 7 to 9, thus the 5 permanent members need 4 additional votes of non permanent members for decisions on non-procedural issues.

¹¹⁸ Draft Resolution S/3995, 2 May, 1958, and S/4409/Rev.1 26 July 1960, both submitted by the U.S. was vetoed by the USSR.

¹¹⁹ S.C. Res. 135, 27 May 1960, para. 4.

on the integrity of the British Empire; for Stalin, against isolation; and for Roosevelt, against isolationism".¹²⁰

(a) **Is there a need for Veto with respect to Enforcement Measures**

The need for the veto with respect to Ch. VII enforcement measures was based on the argument that the unity of the Major Powers was basic to the creation of a peaceful world, and that if this were broken to a point where one of them was threatened with sanctions by the others, the whole organization would very probably brake down.¹²¹ It was further recognized that no Great Power was prepared to have a decision on the use of military force, or even an economic sanctions, imposed against its will when it would have to assume the obligation of helping to make such a decision effective.¹²²

At San Francisco, the idea of making the veto applicable to enforcement action was not challenged, even by States which were staunchly opposed to the basic concept of veto, such as Australia.¹²³ And while the invited States expressed fear that the veto power would be used to protect the *individual interest* of a single Power at the expense of the interests of other States,¹²⁴ the debate was silent on the possibility of the *proxy veto* which occurs where a permanent member consistently

¹²⁰ Georges Fischer, *France and the Proposed Revision of the U.N. Charter*, (1956) p. 23, citing G. Day, *Le Droit de Veto*, (Paris, 1952) p. 46. In this regard, Falkland Islands would be an example of Churchill's hopes, while for the Soviet Union, the ability to delay the admission of new member States favorable to Western interests prevented its isolation in the General Assembly. Finally, but for the veto, the isolationists in the U.S. Congress who defeated the League Covenant would have used the same argument to defeat the Charter.

¹²¹ See Joint Statement, *supra* note 71. See also, *The United Nations in International Politics, Edited by Leon Gordenker*, (1971), pp. 60-105.

¹²² In response to a questionnaire submitted by the invited States on the limits of the veto, the Sponsoring Powers and France emphasized that "In view of the primary responsibilities of the permanent members, they could not be expected, in the present condition of the world, to assume the obligation to act in so serious a matter as the maintenance of international peace and security in consequence of a decision in which they had not concurred." See Joint Statement, *supra* note 71, para. 9.

¹²³ Speaking against the application of the veto to pacific settlement of disputes, the Australian Delegate at the San Francisco Conference stated: "It is understandable that unanimity may reasonably be required when the Council has to make a decision to use force, since the permanent members of the Council will be expected to take a prominent part in the application of force." See *Selected Documents*, *supra* note 71, p. 802.

¹²⁴ Edgar McInnis, *Revision of the United Nations Charter: A Canadian View*, (1956), p. 16.

vetoed any resolution considered adverse to the interests of a proxy state involved in a dispute.¹²⁵ One can only speculate as to why this happened: either they defined the *individual interest* of a state narrowly or being diplomats, they realize that proxy veto is a reality of international politics and it is futile fighting it or attempting to prevent it.

At any rate, the problem has been broadened by the fact that there is no clear cut distinction between actions under Chapter VI (peaceful settlement of disputes) from which a party to a dispute shall abstain from voting, and decisions under enforcement action Chapter VII which a party to the dispute may exercise its veto. But, even if clear lines were to be drawn distinguishing between Ch. VI and Ch. VII, this still will not eliminate the problem associated with *proxy veto*, because the State exercising the veto is not a party to the dispute and therefore could not be prevented from casting a veto. The only solution is a consensus driven decision making process at the Security Council, based on the search for justice and fair play over and above the protection of surrogate states.

Although the end of the cold war has ushered a new era of cooperation and consensus among the major powers, the abuse of the veto by permanent members of the Security Council has not disappeared, even though it has been substantially reduced.¹²⁶ For instance, the United States has in recent times cast two *proxy vetoes*¹²⁷

¹²⁵ See Selected Documents, *supra* note 71, pp. 734-799.

¹²⁶ Compared to 279 vetoes cast between 1946 and 1990, an average of 6 vetoes per year, there has only been 4 vetoes since 1991 (two, by the United States on draft resolution on Israel, S.C. Doc. S/1997/241; another one by the U.S. to prevent the re-appointment of Bhutros Bhutros-Ghali as Secretary General; and one by China to prevent the adoption of draft resolution regarding the situation in Guatemala, S.C. Doc. S/1996/1045 and Add. 1 and 2) an average of less than 1 per year. For full text of the 279 vetoed draft resolutions between 1946 and 1990, see Anjali, *supra* note 53, p. 469.

¹²⁷ Draft resolution S/1997/199 sponsored by France, Portugal, Sweden, and the United Kingdom which "Calls upon the the Israeli authorities to refrain from all actions or measures, including settlement activities, which alters the facts on the ground ...and have negative implications for the Middle East Peace Process;" was vetoed by the United States at the 3747th meeting of the Council held on 7 March, 1997. Thereafter, another draft resolution S/1997/241 sponsored by Egypt and Qatar which "Demands that Israel immediately cease construction ...in East Jerusalem, as well as all other Israeli settlement activities in the occupied territories;" was vetoed by the United States at the 3756th meeting of the Council held on 21 March, 1997.

thereby preventing the adoption of two resolutions, one of which demanded that Israel cease construction of new settlements in the occupied territories and in East Jerusalem. However, less than six months following the two proxy vetoes mentioned above, U.S. Secretary of State, Madeline Albright called on the Israeli government to freeze construction in the occupied territories.

It, therefore, does appear that the only purpose served by *proxy veto* is to prevent certain countries from being called to account for their actions, in violation of the Charter, before the international community. Such exercise of the veto can only serve to erode the confidence of other countries in the U.N., and does not help the cause of maintaining international peace and security.

(b) **Has Article 27(3) prevented the abuse or exercise of the veto with respect to the Pacific Settlement of Disputes**

The exercise of the veto privilege is not limited to situations when the Security Council is discharging its duty under Ch. VII-- enforcement measures. In fact, because an overwhelming number of disputes or situations considered were brought by Members under Article 35, paragraph 1,¹²⁸ the exercise of the veto is more prevalent under Ch. VI. Although the disputes or situations may all be brought under Article 35(1), they may however be divided into two distinct categories based on the parties involved in the dispute.

The first category consist of disputes involving a permanent member and a non-permanent member. The other category is comprised of disputes either amongst permanent members or amongst non-permanent members. For the purpose of this paper, the emphasis is to review the exercise of the veto in the first category of cases, with the aim of determining whether such exercise of the veto is consistent with relevant provisions of the Charter.

The last sentence of Article 27, paragraph 3, of the Charter provides a duty of

¹²⁸ For a list of disputes brought under Article 35(1), see Eduardo Arechega, *supra* note 76, p. 47.

abstention for a "party to a dispute." It says: "In decisions under Chapter VI, and under paragraph 3 of Article 52, a party to a dispute shall abstain from voting." This proviso embodies a general principle of law, that no one should be both part and judge in its own case, however there has not been a consensus on when the proviso applies. The first problem is that the disqualification from voting established in the second portion of paragraph 3 of Article 27 refers only to "disputes" and not to parties to "situations" which do not have the character of a dispute.

Thus the Security Council has to decide (either by consensus or by voting) whether a certain question is a dispute or a situation. But the Charter is silent on whether the vote on the preliminary question whether the issue brought before the Security Council is a dispute or a situation is itself a substantive issue or procedural issue. If the former, then the decision on the preliminary question may be vetoed, whereas if the latter, the veto would be inapplicable.

At the Yalta meeting and subsequently at San Francisco, the Soviet Union maintained that the preliminary question should be subject to the veto. In the joint Statement¹²⁹ by the Sponsoring Powers and France regarding the scope of the veto, the permanent members agreed with the Soviet position that the preliminary question is itself a substantive issue. Although attempts were made at San Francisco to specify the differences between a dispute and a situation, such attempts met with no success. In fact, in their joint Statement at San Francisco, the permanent members expressed doubts that "there will arise in the future any matters of great importance on which a decision will have to be made as to whether a procedural vote would apply."¹³⁰

The process of bringing an issue for consideration by the Security Council is

¹²⁹ The words "joint Statement," "joint declaration," "San Francisco Statement," and "Four-Power Declaration" as used in this paper refers to the same document, containing the response of the Sponsoring Powers and France to the questionnaire on the exercise of the veto submitted by delegates of the invited States. See Joint Statement, *supra* note 71.

¹³⁰ *Id.*, part II, para. 2.

initiated through the submission of a letter either to the Secretary General or the President of the Security Council by the interested party. Although, there is no rule which specifies the form or content of the letter requesting Security Council involvement, in general it consists of 6 essential parts:¹³¹

- (1) The Question
- (2) The Party Requesting Security Council Action
- (3) The States Involved
- (4) The Charter Articles Invoked as Basis for Submission
- (5) Short Summary of Question
- (6) Action Requested of the Security Council

For the purpose of this paper, the focus is on the last three. What should determine whether an issue brought before the Security Council would be treated as procedural or non-procedural. If the party requesting Security Council action invokes Ch. VI as basis for submission, and seeks Ch. VI action, should that be sufficient basis for the issue to be considered under Ch. VI. If the answer is in the affirmative, it still leaves another question unanswered, that is, whether the issue is actually a dispute or a situation?

Is an issue a dispute if the party requesting Security Council involvement classifies it as such, or may the Security Council classify an issue as a dispute or a situation regardless of how it was defined in the letter requesting Security Council action. No sooner had the Security Council began to meet than it had to deal with this question. As would be seen shortly, the failure to make the necessary clarification at San Francisco has led to inconsistent, albeit arbitrary, interpretation of when an issue is a dispute or a situation.

¹³¹ See United Nations Security Council, *Repertory of Practice* (1946-50), pp. 404-409 [hereinafter *Repertory* 1946-51].

(i) The Iranian Question

At the 3rd meeting on 28 January 1946, in connection with the Iranian question, the Security Council considered the letter dated 19 January 1946 from the representative of Iran which charged that "there had been interferences by USSR officials and armed forces in Iran's internal affairs, constituting violations of the Tripartite Treaty of Alliance ..." ¹³² and described the Iranian question as "a situation ...which may lead to international friction." ¹³³ (emphasis supplied) After the States directly concerned had been heard, the President (Australia) stated:

"May I indicate at this stage to the representative of the USSR delegation that... If the Council should accept the view that there is a *dispute*, then under the terms of paragraph 3 of Article 27, since the Soviet Union is named as the other party to the dispute, it will not be possible for the representative of the Soviet Union to exercise a vote during the consideration of this particular debate, in any of the decisions referred to in that paragraph. This does not apply, of course, to decisions on procedure or matters under paragraph 2 of Article 27."

Although, in the letter requesting Security Council action, the Iranian delegate had characterized the issue as a *situation*, a characterization which could have been grounds for the Soviet Union to object to the President's comments that the Soviet Union may not vote on the *dispute*, no such objection was raised. Neither was the President's decision to reclassify the issue as a *dispute* rather than a *situation* without any preliminary vote to determine whether the issue should be so redesignated objected to by the representative of the Soviet Union. Thus, on 30 January, 1946, the Security Council adopted a unanimous ¹³⁴ resolution regarding the Iranian question. ¹³⁵ Essentially, the resolution "Request the parties to inform the Council of any results achieved in their negotiations" as agreed upon by both

¹³² Wellens, K. C., Resolutions and Statements of the United Nations Security Council, (1946-1989), p. 237, [hereinafter Wellens].

¹³³ S/1, O.R., 1st series, Suppl. No. 1, pp. 16-17. See Repertory 1946-51, *supra* note 131, p. 167.

¹³⁴ That the resolution was adopted unanimously does not mean that the Soviet Union abstained from voting as required by Article 27(3), because every party to a dispute may participate in the Council debates, and Article 27(3) only prohibits voting, not participating in debate. However, subsequent behavior of the Soviet Union regarding the Iranian issue, by abstaining from subsequent meetings at which the Iranian question was considered, suggests that the Soviet Union believed issues raised by the Iranian question are disputes and that Security Council action was pursuant to Ch. VI, thus making the veto inapplicable.

¹³⁵ S.C. Res. 2, 30 January 1946; for text of Resolution, see Wellens, *supra* note 132, p. 237.

parties.

At the 27th meeting of the Security Council on 27 March 1946, in connection with the Iranian Question, the representative of the USSR stated that he could not participate in or attend meetings of the Security Council at which there was discussion of the substance of the question. He then submitted a proposal to postpone consideration of the item until April 10 1946, which was not adopted, having failed to obtain the affirmative votes of 7 members.¹³⁶ He then left the Council Chamber promising not to attend subsequent meetings at which the item was discussed because the "decision of the Council to retain the issue on its agenda was contrary to the Charter..."¹³⁷

Thus, on April 4, 1946, when a subsequent resolution¹³⁸ was adopted on the Iranian question which provided that the Secretary General report to the Security Council "any developments which may retard or threaten to retard the prompt withdrawal of USSR troops from Iran..." the Soviet Union was absent. It was also absent on 8 May, 1946 when another unanimous resolution¹³⁹ on the Iranian question was adopted by the Security Council.

(ii) **The Greek Question**

In September of 1946 when the Security Council considered the issue of the withdrawal of British troops from Greece, a somewhat different result was reached even though both the Iranian and the Greek Question had rather similar characteristics. In the Iranian Question, the government of Iran was seeking the withdrawal of Soviet troops from Iran.

Similarly, in the Greek Question, the government of Greece was seeking the withdrawal of British troops from its territory. Although the Iranian government

¹³⁶ Repertory 1946-51, *supra* note 131, Cases 190-192, pp. 175; 27th meeting, p. 56.

¹³⁷ Repertory 1946-51, *supra* note 131, Cases 190-192, pp. 176.

¹³⁸ S.C. Res. 3, 4 April, 1946; for text of Resolution, *see* Wellens, *supra* note 132, p. 238.

¹³⁹ S.C. Res. 5, 8 May, 1946; for text of Resolution, *see* Wellens, *supra* note 132, p. 238-239.

described the issue as "*a situation ...which may lead to international friction*" the Greek Question was described as¹⁴⁰ "*... the situation which has arisen in Greece*" by the presence of British troops. There was one difference however: the Greek Question was initiated by a letter from the representative of the Soviet Union,¹⁴¹ which was not directly involved in the issue, although going by the Charter, this difference should not have had any effect on the decision of the Security Council.

However, at the 7th meeting of the Security Council on 4 February, 1946, barely 2-weeks after the President (Australia) had redesignated the Iranian Question as a dispute and not as a situation as stated by the Iranian government without any recourse to a preliminary vote, as a result of which the Soviet Union was advised that being a party to the dispute it could not vote, a draft resolution regarding the Greek Question was put to the vote by the President (who at this time was still from Australia).¹⁴² The draft resolution submitted by Egypt was similar in context to that adopted two weeks prior on the Iranian question regarding the withdrawal of Soviet troops from Iran, except of course that this time it was a demand for the withdrawal of British troops from Greece.

However, it also contained the phrase "appreciating that the presence of British troops in Greece, in the present circumstances, does not constitute a threat to international peace and security,"¹⁴³ a phrase which the Soviet Union considered objectionable. The representative of the USSR stated that he would vote against the draft resolution, and obviously relying on the fact that two weeks earlier the voting on the Iranian resolution was pursuant to Article 27(3), he added: "... since the Council is going to vote in conformity with Article 27 ...in particular with paragraph

¹⁴⁰ O.R., 1st year, 1st series, Suppl. No. 1, pp. 73-74; see also Repertory 1946-51, Case 116, p. 167.

¹⁴¹ Initiated by letter by USSR representative on 21 January, 1946. Subsequently another letter making the same charges was sent to the Security Council by the representative of the Ukrainian Soviet Socialist Republic, S/137, 24 August, 1946, see Anjali, *supra* note 53, p. 77.

¹⁴² Repertory 1946-51, *supra* note 131, Case 116, p. 167.

¹⁴³ Id., Case 116, p. 168.

3,"¹⁴⁴ his negative vote precluded the possibility of the adoption of the draft resolution.

Prior to voting however, the representative of the Netherlands inquired¹⁴⁵ whether "the parties to the dispute vote in this matter," to which the President replied that "The Council has not declared the matter to be a dispute, and at such time as the Council declares any situation to be a question of dispute, it in that way brings into operation Article 27 of the Charter." Again, the preliminary question whether the issue was a dispute or not was not put to the vote, even though the President asked the representative of the Netherlands if he desired to have the preliminary question put to a vote, to which he replied that he would not request a vote.¹⁴⁶

Nonetheless, the representative of the Soviet Union maintained that the voting on the draft resolution should be guided by Article 27, paragraph 3. The President thereupon asked the Council to vote on the question whether the draft resolution was a procedural matter.¹⁴⁷ Having secured the majority of the votes, and over the objections of the Soviet Union, the President ruled¹⁴⁸ that the Greek Question was "not a question of dispute and ... is therefore a procedural matter" which brings it under paragraph 2 of Article 27, to which the veto is inapplicable. Curiously, the President did not explain why Article 27(2) was applicable to the Greek issue, whereas Article 27(3) was applicable to the Iranian issue. Much more

¹⁴⁴ Id.

¹⁴⁵ Id.

¹⁴⁶ Id.

¹⁴⁷ It is not known why the President put the question as "... whether the draft resolution was a procedural matter." The question was ambiguous because it doesn't shed any light on the more important questions raised by the comments of the Soviet delegate which was (1) whether the process of voting on a draft resolution is a procedural matter, and (2) if the vote to determine whether an issue is a dispute or a situation is a procedural matter.

¹⁴⁸ The Soviet Union representative voted against the Egyptian draft resolution regarding the Greek Question because it contained the phrase "appreciating that the presence of of British troops in Greece, does not constitute a threat to international peace and security." See, Repertory 1946-51, *supra* note 131, p.168.

significant was the fact that the vote on the preliminary question was considered procedural, hence the negative vote of the Soviet Union was not considered a veto.

At the tenth meeting of the Council on 6 February 1946, the President of the Council summed up the views of the members in the following statement: "I feel we should take note of the declarations made before the Security Council by the representatives of the Soviet Union, the United Kingdom, and Greece, ... in regard to the question of the presence of British troops in Greece, as recorded in the proceedings of the Council, and consider the matter as closed."¹⁴⁹ The statement was found satisfactory and the Greek question was considered closed.

Nonetheless, at this meeting different views¹⁵⁰ were expressed regarding the procedure for determining whether an issue brought before the Security Council should be treated as a dispute or a situation. The representative of Netherlands maintained that the fact that "the matter is raised under Chapter VI" means that "Article 27, paragraph 3" is applicable. The representative of Egypt while agreeing with the Netherlands' position recalled the "claim of the representative of the USSR that the "situation in Greece constituted a threat to international peace and security," and therefore concluding that since in submitting the Greek Question to the Security Council, the Soviet Union had used a language which tracks the provisions of Article 34 and 35, the proposed Security Council proposal falls under Ch. VI pacific settlement of disputes. The Brazilian Delegate was of the same opinion,¹⁵¹ making the observation that "the letter from the delegation of the USSR was based on Article 35, and Article 35 comes under Ch. VI." Eventually the issue

¹⁴⁹ GA Doc. A/65, 30 June 1946, p. 5.

¹⁵⁰ For details of the different views expressed at this meeting, see *Repertory 1946-51, supra* note 131, p.168.

¹⁵¹ 10th meeting : pp. 171-173; *id.*

was left unresolved.¹⁵²

(iii) **The Syrian and Lebanese Question**

As with any issue left unresolved, it was bound to crop up again as it did at the 19th meeting of the Security Council on 14 February 1946, in connection with the Syrian and Lebanese question. By a letter¹⁵³ dated 4 February 1946, the representatives of Syria and Lebanon brought to the attention of the Security Council *under Article 34*, the presence of French and British troops in Syria and Lebanon which they contended, constituted a grave infringement of the sovereignty of the two States Members of the United Nations. In bringing the *dispute* to the attention of the Council, the Syrian and Lebanese delegations requested the Council to recommend the total and simultaneous evacuation of the foreign troops from the territories of Syria and Lebanon.

In opening the meeting, the President (Australia) observed that: "As members of the Security Council are aware, the proviso at the end of Article 27, paragraph 3... applies when a dispute is being considered by the Security Council. Frequently, however, the question whether a dispute exists cannot be given an automatic answer. The Security Council itself will, if necessary, have to decide this question."¹⁵⁴ Although in agreement with the suggestion that such a decision ought to be made by the Security Council, the Egyptian representative observed that:¹⁵⁵

"If it were left to one of the permanent members to decide whether the matter concerned is a situation or a dispute, he might come forward at any time and say: it is a solution. If it is not a question of procedure, he would have the right to vote to decide that it is a situation and in so doing it would

¹⁵² Eventually, the Greek Question was brought up again at the request of a letter dated 24 August, 1946 (S/137) from the representative of the Ukrainian Soviet Socialist Republic. After four meetings (67th - 70th) at which two draft resolutions failed to be adopted, the Council finally adopted Resolution 12 of 10 December 1946 and Resolution 15 of 19 December 1946 which established a Commission of Investigation to conduct investigation and report to the Security Council. For text of vetoed draft resolutions, see Anjali, *supra* note 53, pp. 78-85. For text of adopted resolutions regarding the Greek Question, see, Wellens, *supra* note 132, pp. 15-18.

¹⁵³ S/5; see also Anjali, *supra* note 53, p. 345.

¹⁵⁴ Repertory 1946-51, *supra* note 131, Case 117, p. 168. Prior to this meeting, the practice seems to have favored leaving the determination of the question whether an issue is a dispute or a situation to the sound judgment of the President.

¹⁵⁵ Id.

make of Article 27, paragraph 3 a dead letter, just as though the veto could be applied in every case. If it were permissible to for the permanent members of the Council to say that a matter was a situation even when everybody considered that it was not, and if we held that it was not a question of procedure, we would give the permanent members of the Council the right of veto for all questions in which they might wish to use it. This is contrary to all the texts and to the spirit of the Charter, to all that we have said and to all the decisions that we have taken together."

In response, the representative of the USSR stated that:¹⁵⁶ "... the question as to whether a particular case is a dispute or a situation is a question of substance and not of procedure... Therefore, such a matter must be decided not on the basis of Article 27, paragraph 2, which deals with procedural matters, but on the basis of Article 27, paragraph 3, which deals with the settlement of matters of a non-procedural character." The representative of Mexico was of the opinion that the Council did not have to decide whether a question was a dispute, maintaining that the "question has to be decided by the party bringing the matter to the Council."

Although attempts were made to put the Egyptian motion to vote, the representative of the Netherlands moved a motion that no vote be taken "at this stage in the proceedings" and the motion was adopted.¹⁵⁷ Although the question was again left unresolved, both the representatives of the French and the British voluntarily abstained from voting on the Syrian-Lebanese Question.¹⁵⁸

Unlike previous occasions however, the question was referred to the Committee of Experts which was at that time drafting the provisional rules of procedure for the Council.¹⁵⁹ In explaining why he was abstaining from voting, the representative of the United Kingdom stated: "... But I do it without prejudice on this occasion and await the final decisions of the experts on procedure to guide

¹⁵⁶ Id.

¹⁵⁷ Id., p. 169; 19th meeting, p. 281.

¹⁵⁸ 23rd meeting, pp. 363-364; *see*, Repertory 1946-51, *supra* note 131, p. 169.

¹⁵⁹ Repertory 1946-51, *supra* note 131, p. 168.

future meetings."¹⁶⁰

(iv) The Spanish Question

By letter¹⁶¹ dated 8 and 9 April 1946, the Polish representative under Articles 34 and 35 of the Charter requested the Council to place on its agenda the situation arising from the Franco Government in Spain, which has caused international friction and endangered international peace and security.¹⁶² At the 34th meeting on 17 April, the Polish representative proposed that the Security Council should declare the existence and activities of the Franco regime in Spain had led to international friction and endangered international peace and security and, under Articles 39 and 41 of the Charter, should call upon all Members of the United Nations which maintains diplomatic relations with the Franco Government to sever such relations immediately.¹⁶³

At the 39th meeting held on 29 April 1946, a revised draft resolution submitted by Poland, Australia, and France was adopted by ten votes, with the Soviet Union abstaining.¹⁶⁴ It authorized the Security Council to appoint a Sub-Committee of five¹⁶⁵ "to make further studies in order to determine whether the situation in Spain has led to international friction and does endanger international peace and security, and if it so finds, then to determine what practical measures the United Nations may take." There was no question raised regarding whether the vote on the draft resolution was procedural or non-procedural.

At this point, in the Security Council the idea that establishing a Sub-

¹⁶⁰ Id., at p. 169. Curiously the committee of experts did not provide any solution to this problem. Shortly thereafter, the Security Council adopted rule 40 of the provisional rules of procedure based on the committee of experts recommendation. Rule 40 provides that: "Voting in the Security Council shall be in accordance with the relevant Articles of the Charter and of the Statute of the International Court of Justice." See Repertory of Practice of United Nations Organs, Vol. I, Supp. 1, (1958) p. 270.

¹⁶¹ S/34, 9 April 1946.

¹⁶² Anjali, *supra* note 53, p. 447. See also the Report of the Secretary General on the Work of the Organization, Doc. A/65 (30 June 1946), p. 5, [hereinafter 1946 Secretary Report].

¹⁶³ 1946 Secretary Report, *supra* note 162, p. 5.

¹⁶⁴ S.C. Res. 4, 29 April 1946; see Wellens, *supra* note 132, p. 12.

¹⁶⁵ The Sub-Committee of five was composed of Australia (Chairman), Brazil, China, France and Poland. See, Repertory 1946-51, *supra* note 131, p. 169.

Committee was based on Article 29 of the Charter, and therefore not subject to the unanimity requirement was not challenged.¹⁶⁶ After nineteen meetings, the Subcommittee completed its investigations and submitted a report on 31 May, 1946.¹⁶⁷ Significantly, the Sub-Committee concluded in paragraph 31(a) and (b) of its report that:

(a) "... the activities of the Franco regime do not at present constitute an existing threat to the peace within the meaning of Article 39 of the Charter and therefore the Security Council has no jurisdiction to direct or to authorize enforcement measures under Article 40 or 42, nevertheless such activities do constitute a situation which is a potential menace to international peace and security and which therefore is a situation 'likely to endanger the maintenance of international peace and security' within the meaning of Article 34 of the Charter," and,

(b) The Security Council is therefore empowered by Article 36, paragraph 1 to recommend appropriate procedures or methods of adjustment in order to improve the situation in (a) above."¹⁶⁸

At the 44th meeting of the Council, the representative of the Soviet Union objected to the paragraphs 31(a) and (b) of the Sub-Committee report. Following deliberations on the Sub-Committee report, the representative of Australia submitted a draft resolution for the adoption of the report. Relying on paragraph 31(b) of the Sub-Committee report, the draft resolution urged the Security Council to recommend to the General Assembly that "... unless the Franco regime is withdrawn ... a resolution be passed by the General Assembly recommending that diplomatic relations with the Franco regime be terminated forthwith by each Member of the United Nations."¹⁶⁹ However, prior to voting, the Soviet Union representative expressed objections to the draft resolution, which could be summarized thus:¹⁷⁰

(1) The conclusion by the Sub-Committee that the situation in Spain did not constitute a threat to the peace was erroneous;

¹⁶⁶ For the comments of the representative of the United States regarding the power of the Security Council to establish Sub-Committee, see U.N. Doc. A/65, p. 6.

¹⁶⁷ For full text of the conclusions and recommendations of the Sub-Committee report, see 1946 Secretary Report, *supra* note 162, p. 6.

¹⁶⁸ *Id.*, para. 31(a) and (b).

¹⁶⁹ Anjali, *supra* note 53, p. 452.

¹⁷⁰ *Id.* See also 1946 Secretary Report, *supra* note 162, p. 6 (The two negative votes were that of the Soviet Union and Poland).

(2) Even if (1) is correct, the Security Council as the primary organ charged with the maintenance of international peace and security, is the competent organ to take appropriate action in response to any situation or dispute which threatens international peace and security;

(3) By referring the Spanish question to the General Assembly for necessary action, the sponsors of the draft resolution confuses the functions of the Security Council and the General Assembly; and,

(4) The beginning of the last paragraph of the resolution contained the statement that retaining the Spanish question on the agenda of the Security Council did not affect the rights of the General Assembly to examine the question was in violation of Charter Article 12.

When the draft resolution was put to the vote, it received 9 affirmative votes and 2 negative votes.¹⁷¹ The President (Mexico) stated that the draft had been carried. The representative of the Soviet Union objected to the President's ruling arguing that the vote was on a non-procedural issue and his negative vote, being that of a Permanent Member of the Council should have prevented the adoption of the draft resolution. A vote was taken on the President's ruling that the draft resolution was of a procedural character. The result was 8 affirmative votes, 2 negative votes (France and the Soviet Union), and 1 abstention (Poland).

In accordance with part II, paragraph 2 of the joint Statement, the ruling was defeated due to the negative votes of 2 Permanent Members. The significance of this vote was that it established for the first time in the Security Council the concept of the double veto, that is the question whether an issue is procedural or not is itself subject to the unanimity rule. At this stage however, the establishment of a Subcommittee by the Council was considered a procedural decision to which the veto is inapplicable.

(v) **The Corfu Channel Question**

By a letter dated 10 January 1947¹⁷² addressed to the Secretary-General, the representatives of the United Kingdom forwarded copies of an exchange of notes between the Governments of the United Kingdom and the People's Republic of Albania regarding an incident in the Corfu Channel in which two British warships had been damaged by mines on 22 October, 1946. The United Kingdom requested the

¹⁷¹ 1946 Secretary Report, *supra* note 162, p. 7.

¹⁷² S/247, 10 January 1947.

Secretary General to bring this question as a *dispute* to the attention of the Security Council under *Article 35* of the Charter. (all emphasis supplied)

At the 114th meeting of the Security Council held on 27 February 1947, in connection with the Corfu Channel question, the Council voted upon a draft resolution,¹⁷³ submitted by the representative of Australia calling for the appointment of a sub-committee to "examine all the available facts of the case as disclosed by such evidence." Before the vote was taken the representative of the United Kingdom stated:¹⁷⁴

"As a party to this dispute, I am deprived of my vote under Article 27, paragraph 3, of the Charter when it is a matter of a decision under Chapter VI. I presume, though, that the vote which we are going to take is a purely procedural one and that I can exercise my vote. Is that the case?" The representative of the USSR was of the opinion¹⁷⁵ that a decision ensuing from the Australian draft resolution would be "a decision about an investigation" which was not a procedural matter.

The Soviet Union representative maintained that although the decision was on a non-procedural matter, he would not vote against the motion to consider it a procedural matter since he did not wish to "hinder the adoption of the decision to establish a sub-committee." The representative of the United States considered that the draft resolution fell under Article 29 of the Charter which provides that: "The Security Council may establish such subsidiary organs as it deems necessary for the performance of its functions."

The President (Belgium) ruled that: "In so far as it sanctions an exception to the voting order, Article 27, paragraph 3, must, where applicable, be interpreted strictly; it cannot be stretched to cover cases which are not mentioned in Chapter VI

¹⁷³ S.C. Res. 19, 27 February, 1947, para. 1; *see also* Wellens, *supra* note 132, p. 25.

¹⁷⁴ Repertory 1946-51, *supra* note 131, Case 118, p. 169.

¹⁷⁵ *Id.*

of the Charter." He then concluded that "If we study the various Articles of Chapter VI we shall see that the *establishment of a sub-committee, such as that proposed* by the Australian resolution, *is not amongst the decisions and recommendations mentioned* in that Chapter."¹⁷⁶ Consequently, the representative of the United Kingdom cast his vote, and the resolution was adopted with 8 votes in favor, and 3 abstentions (Syria, USSR, and Poland).

(vi) **The Czechoslovak Question**

However, events took a different turn in 1948, when the Security Council considered the Czechoslovak Question. Just as in 1946, when the United Kingdom invoked Article 35 as basis for Security Council action in the Corfu Channel incident, the representative of Chile¹⁷⁷ relied on Article 35(1) as basis for Security Council action. But there were two important points which distinguish the two issues. The first one which is less crucial is that in the letter initiating Security Council action Chile used the word *situation* to describe the event in Czechoslovakia, whereas the United Kingdom used the word *dispute* in describing the Corfu Channel Incident.¹⁷⁸

Of much more importance was the fact that the Chilean letter¹⁷⁹ initiating Security Council deliberation was based on the communication of 10 March 1948 between Papenek (who was then the former permanent representative of Czechoslovakia) and members of the Security Council in which he had alleged that "the political independence of Czechoslovakia had been violated by the threat of the use of force by the Soviet Union and that this situation endangered the maintenance of international peace and security and should be brought to the

¹⁷⁶ For texts of relevant statements, see, 114th meeting: President (Belgium), p. 426; Australia, p. 431; Colombia, pp. 428-429; Syria, pp. 429-430; USSR, pp. 425-428; United Kingdom, p. 425; and, United States, pp. 430-431.

¹⁷⁷ See S/694, 12 March, 1948 for text of Chilean letter requesting Security Action involvement.

¹⁷⁸ This difference in the choice of either word is not determinative, in light of the fact that although the Iranian government chose the word *situation* to describe the Iranian Question, the Security Council nonetheless classified it as a dispute and treated it accordingly.

¹⁷⁹ See S/694, 12 March, 1948 for text of Chilean letter requesting Security Action involvement.

attention of the Security Council."

However, before the Security Council could meet to consider any draft resolution regarding the Czechoslovakia issue, a new Czech representative had in a letter to the Secretary General dated 8 April, 1948 expressed the opinion that "...the discussion of internal matters before the Security Council contradicted the provisions of the Charter."¹⁸⁰ Four days after this letter was received, on 12 April 1948, the Security Council met to consider the Czechoslovakia Question.

In an attempt to establish a sub-committee for the Czechoslovak Question, the representatives of Chile and Argentina submitted a draft resolution¹⁸¹ similar in language and purpose to Resolution 19 of 1947 (which established a sub-committee for the Corfu Channel a year earlier). At the meeting, the Soviet representative not only protested the inclusion in the Security Council agenda of the Chilean proposal, but also stated that the discussion of the Chilean proposal (the draft resolution) would constitute gross interference in the internal affairs of Czechoslovakia and would violate Article 2, paragraph 7, of the United Nations Charter.¹⁸² The draft resolution was not put to the vote at this meeting.

Thereafter, at the 303rd Council meeting on 24 May 1948, the Chilean-Argentine resolution was put to the vote. The representative of the Soviet Union argued that the draft resolution concerned the substance of the question and that if there was any difference of opinion on this point, the Council should first decide the preliminary question whether the resolution was procedural or substantive.¹⁸³ The United States representative expressed the view that part II of the joint Statement concerning a vote to decide whether a matter was procedural could not apply to matters that were clearly procedural.¹⁸⁴

¹⁸⁰ S/718, 8 April 1948; *see also* Anjali, *supra* note 53, p. 68.

¹⁸¹ For text of the draft resolution, *see* Anjali, *supra* note 53, p. 69.

¹⁸² *Id.*, p. 68.

¹⁸³ *Id.*, p. 69.

¹⁸⁴ *Id.*

Since the ensuing discussion failed to produce a consensus on the answer to the preliminary question, at the urging of the Soviet Union, the preliminary question was put to the vote thus: "Is the vote that we shall take upon the draft resolution, to be considered as a matter of procedure?"¹⁸⁵ There were 8 votes in favor, 2 against (one vote being that of a permanent member) and 1 abstention.

The President of the Council (France) stated that "since he represented one of the Permanent Members, he could not disregard the joint declaration of the Sponsoring Powers to which France had associated itself."¹⁸⁶ According to the final paragraph of the joint Statement, "the decision regarding the preliminary question as to whether or not ...a matter is procedural must be taken by a vote of seven members of the Security Council, including the concurring votes of the permanent members."¹⁸⁷

Since a Permanent Member had voted against the proposal, he interpreted the decision as a vote to regard the draft resolution as a matter of substance. Representatives of Argentina, Belgium, Canada, and Colombia challenged the President's ruling, and it was put to the vote as provided for by Rule 30 of the Provisional Rules of Procedure of the Security Council. There were 6 votes to annul the presidential ruling; 2 votes against (Ukrainian SSR and USSR); and 3 abstentions (France, United States, and United Kingdom).

The president's ruling was upheld thereby extending the exercise of *double veto* at the Security Council (the validity of which was established during voting on the Spanish question) to cover issues that had hitherto been considered procedural.

¹⁸⁵ Id.

¹⁸⁶ Id., p.70.

¹⁸⁷ Vandebosch & Hogan, *supra* note 18, p. 400.

This practice has continued till today in spite of attempts¹⁸⁸ to distinguish between procedural and non-procedural issues so as to eliminate the arbitrary nature of Security Council decisions on whether an issue before it is procedural or not.

Two of these attempts came in quick succession, 1949 and 1950. The first attempt was at the second part of its third session, when the General Assembly recommended to the Security Council that a number of issues be considered procedural for voting purposes.¹⁸⁹ Among the issues identified were: (1) Establishment of procedures for the hearing of disputes or situations; (2) Overruling of the ruling of the President on a point of order; (3) Establishment of such subsidiary organs as the Security Council deems necessary for the performance of its functions; and (4) Steps incidental to the establishment of a subsidiary organ.

Another attempt to curb the scope of the veto was made in 1950 when the General Assembly adopted the "Uniting for Peace" Resolution.¹⁹⁰ By this resolution, the General Assembly established, among other subsidiary Organs, "a Peace Observation Commission ... which could observe and report on the situation in any area where there exists international tension the continuance of which is likely to endanger the maintenance of international peace and security."¹⁹¹ The goal of the General Assembly in adopting the Uniting for Peace Resolution was reflected in its preamble where the Assembly stated: "*Conscious* that failure of the Security

¹⁸⁸ Attempts to include the veto include GA Res. 267 (III) 14 April, 1949 regarding the problem of voting in the Security Council; The Resolution of the General Assembly Establishing An Interim Committee, November 13, 1947, *The United States and the United Nations: Report by the President to the Congress for the Year 1947*, U.S. Dept., of State Publication 3024, International Organization and Conference Series III, 1, pp. 159-162; The Vandenberg Resolution, Senate Resolution 239, 80th Congress, 2d Session, June 11, 1948, in which the United States committed itself to pursue at the U.N. a policy of removing "the veto from all questions involving pacific settlement of international disputes and situations, and from the admission of new members;" and, The General Assembly Uniting for Peace Resolution, November 2, 1950, *United Nations Bulletin*, Vol. IX, No. 10, Nov. 15, 1950, pp. 508-509 [hereinafter Uniting for Peace Resolution].

¹⁸⁹ For the full text of the resolution, see General Assembly Resolution 267 (III); and, Official Records of the Third Session of the General Assembly, Part II, 5 April-18 May 1949 Resolutions, p. 7).

¹⁹⁰ Uniting For Peace Resolution 1991(A), *supra* note 185, Part A, November 2, 1950.

¹⁹¹ *Id.*, Part B, para. 3.

Council to discharge its responsibilities ... does not relieve Member states of their obligations or of the United Nations of its responsibility under the Charter to maintain international peace and security.”¹⁹²

In adopting the resolution, the General Assembly was guided by the limitation placed on its power by the Charter, and acknowledged this limitation¹⁹³ and the fact that the Charter confers on the Security Council the primary responsibility for the maintenance of international peace and security. Thus, the resolution was for the most part symbolic, limiting as it did the functions of the General Assembly to making *recommendations* to the Security Council rather than taking enforcement actions. It therefore did not nor could it have curbed the scope of the veto at the Council as the following section amply demonstrates.

(c) **Has Article 27(3) prevented the abuse / exercise of the veto by a Permanent Members involved in a dispute with a non-permanent member (NPM)**

The most flagrant abuse of the veto is when a permanent member who is a party to a dispute exercises its veto during the pacific settlement of the dispute in question, in violation of the Charter provision to the contrary.¹⁹⁴ It is not only regrettable but virtually inconceivable why any state would or should be able to prevent the Security Council from embarking on efforts aimed at conciliation and mediation of a dispute which may threaten peace and security. This type of abuse of the veto cuts across all Permanent Members of the Council with the notable exception of China as the following instances amply demonstrate.

At the 555th meeting of the Security Council, the representative of Egypt in support of his contention that the representatives of France, the Netherlands, Turkey, the U.K., and the U.S. having submitted protests to the Egyptian Government regarding the Suez Canal issue should abstain from voting on a draft

¹⁹² Id., at preamble.

¹⁹³ Id., Part B and C.

¹⁹⁴ For the relevant text, see Article 27(3).

resolution on the issue stated: "This fundamental and Charter wise principle -- namely, that no State shall be judge and party-- should apply and command our respect in all cases, whether there are two or more parties to a question... We believe that an elementary principle of justice requires that a party to a dispute should not be a judge of it, and that it is this great principle which inspired the provision in Article 27 of the Charter that a party to a dispute should abstain from voting."¹⁹⁵

If there is any area more deserving of review in the on-going debate to reform the Security Council, it is the practice of the Security Council which permits a permanent member to veto a draft resolution in a dispute between that permanent member and a non-permanent member of the General Assembly, particularly when the Council is acting under Ch. VI.

This procedure not only makes mockery of the Security Council debates between the parties involved in the dispute, which often precedes the draft resolution, but goes against the very basic concept of fair hearing: that one may not be a judge and jury in its own case. In this case, a permanent member is either the complainant, the prosecutor, the jury, and the judge or the defendant, the jury, and the judge. As the following instances demonstrates,¹⁹⁶

Nonetheless, Security Council practice is replete with the exercise of a veto by a party to a dispute in violation of both the text and the spirit of Article 27, paragraph 3. In fact, with the notable exception of China, all of the permanent members have exercised their veto power in disputes in which they are directly involved as the following examples demonstrate.

¹⁹⁵ S/2298/Rev.1, 558th meeting: pp. 2-3; S/2322; Repertory (1946-51), *supra* note 131, p. 170.

¹⁹⁶ The instances cited in this paper is solely for illustrative purpose only, it is not a comprehensive list of the exercise of the veto power by a party in dispute.

1. Disputes between a NPM and the Soviet Union

In early January 1980, following the invasion of Afghanistan by members of armed forces of the Soviet Union, the Security Council met at the request of 52 states to consider the "situation in Afghanistan and its implications as a threat to international peace and security."¹⁹⁷ At the 2185th Council meeting, the "representative of the U.S.S.R. objected to the consideration in the Security Council of the so-called question of the Situation in Afghanistan on the grounds that it would be tantamount to intervention on the part of the United Nations in questions relating exclusively to the domestic competence of the people and Government of that country."¹⁹⁸ At a subsequent meeting held on 7 January 1980, a draft resolution¹⁹⁹ submitted by Bangladesh, Jamaica, the Niger, the Philippines, Tunisia, and Zambia was vetoed by the U.S.S.R.

In explaining his country's opposition to the draft resolution, the representative of the Soviet Union stated that "none of those who had initiated raising the 'Afghanistan question' had been able to refute the clear facts of armed intervention in the internal affairs of Afghanistan by international imperialism and reaction."²⁰⁰ Speaking on the provision of the draft resolution for the withdrawal of foreign troops from Afghanistan, the Soviet representative stated that "it was in essence aimed at undermining the security of the Afghan State and at opening the way for the restoration in Afghanistan of the old regime which had been overthrown by the people."²⁰¹

A little over a decade before the Soviet veto of draft resolution regarding the Afghanistan Question, the Soviet representative had vetoed a draft resolution²⁰² regarding the *situation* which arose out of the Czechoslovakia Socialist Republic.

¹⁹⁷ S/13724, S/3724/Add.1 and 2, 3 January, 1980.

¹⁹⁸ Anjali, *supra* note 53, p. 229.

¹⁹⁹ S/13729, 7 January 1980.

²⁰⁰ Anjali, *supra* note 53, p. 230.

²⁰¹ S/13729, 7 January 1980, para. 4.

²⁰² S/8761 Add.1, 22-23 August, 1968; see Anjali, *supra* note 53, p. 71.

The matter had been brought to the attention of the Security Council by the representatives of Canada, Denmark, France, Paraguay, the United Kingdom, and the United States requesting the Council to "consider the serious situation that had arisen in the Czechoslovakia Socialist Republic."²⁰³

At the meeting held on 21 August 1968, the Soviet representative opposed not only the inclusion of the item in the agenda, but even the convening of the Council on the grounds that events in Czechoslovakia were an internal affair.²⁰⁴ At the 1443rd meeting of the Security Council held on 22-23 August 1968, the draft resolution submitted by 7 other countries including the France, the United States and the United Kingdom was vetoed by the Soviet Union.

2. Dispute between a NPM and by France

On 28 January 1976, the Head of State of Comoros informed²⁰⁵ the President of the Security Council that the French Government intended to organize a referendum in the island of Mayotte on 8 February and 11 April 1976. The letter stated however that Mayotte was an integral part of the Comorian State, which the United Nations had admitted to membership on 12 November 1975. In view of that flagrant aggression, Comoros requested an urgent meeting of the Security Council.

At the 1,888th meeting of the Council, a draft resolution²⁰⁶ submitted by 5 member States (none of which was a permanent member) which "Calls upon the Government of France to desist from proceeding with the holding of the referendum in Mayotte"²⁰⁷ was vetoed by France and the referendum took place as scheduled. Although nothing had been done at the Security Council regarding the Mayotte issue, apparently because of a possible veto by France, the General Assembly has since been involved in the issue.

²⁰³ S/8758, letter of 21 August, 1968.

²⁰⁴ Anjali, *supra* note 53, p. 71.

²⁰⁵ S/11953, letter of 28 January 1976.

²⁰⁶ S/11967, 6 February, 1976; for text of the draft resolution, *see* Anjali, *supra* note 53, pp. 131-132.

²⁰⁷ S/11967, 6 February, 1976, para. 2.

First, at the request of Madagascar,²⁰⁸ the "Question of the Comorian island of Mayotte" was included as agenda item 35 of the General Assembly for the thirty-first session in 1976, and it has since remained on the agenda of the Assembly.²⁰⁹ Second, at the thirty-first session, the Assembly condemned and considered null and void the referendums organized in Mayotte by the Government of France and called upon "France to withdraw immediately from the island."²¹⁰

At its forty-ninth session,²¹¹ the General Assembly reaffirmed the sovereignty of the Islamic Republic of the Comoros over the island of Mayotte; invited the Government of France to honor the commitments entered into prior to the referendum on self-determination of the Comoro Archipelago of 22 December 1974 concerning respect for the unity and territorial integrity of the Comoros; requested the Secretary General of the United Nations to maintain continuous contact with the Secretary General of the Organization of the African Unity (OAU) with regard to the Question of the Comorian island of Mayotte; and, also requested the Secretary General to report on the matter to the Assembly at its fiftieth session.²¹²

3. Dispute between a NPM and the United Kingdom

On April 2, 1982, the United Kingdom informed the Security Council of the invasion of the Falklands Island by Argentine armed forces. Resolution 502 was adopted on April 3, demanding "an immediate withdrawal of all Argentine forces from the Falklands Islands (Islas Malvinas)."²¹³ Following the escalation of hostilities

²⁰⁸ Doc. A/31/241.

²⁰⁹ At its thirty-second to forty-eight sessions, the General Assembly continued its consideration of the Question of the Comorian island of Mayotte. *See* GA Res. 32/7, Decision 33/435, Resolutions 34/69, 35/43, 36/105, 37/65, 38/13, 39/48, 40/62, 41/30, 42/17, 43/14, 44/9, 45/11, 46/9, 47/9, and 48/56. *See also* GA Res. 49/18.

²¹⁰ GA Res. 31/4.

²¹¹ For references for the forty-ninth session, *see* Report of the Secretary General: A/49/584; Draft Resolution: A/49/L.38 and Add.1; Res. 49/18; and Plenary meeting: A/49/PV.69.

²¹² GA Res. 49/18. As requested by the resolution, the the Secretary General submitted a report on the issue at the fiftieth session. The full text of the report appears in Doc. A/50/779 of 22 November, 1995.

²¹³ S.C. Res. 502, 3 April, 1982, para. 2., (Adopted by 10 votes to 1 (Panama), with 4 abstentions (China, Poland, Spain, Union of Soviet Socialist Republic)).

between Argentina and the United Kingdom on the Falkland Islands, at the 2373rd meeting of the Security Council a draft resolution²¹⁴ submitted by Panama and Spain, requesting "the parties to the dispute to cease fire immediately in the region of the Falkland Islands (Islas Malvinas) and to initiate, simultaneously with the cease fire, the implementation of resolutions 502 (1982) and 505 (1982) in their entirety" was vetoed by the United Kingdom and the United States.

In explaining his country's veto, the representative of the United Kingdom "recalled that at the beginning of the debate, his delegation had circulated informally to delegations, the *appropriate language* which could have been supported by the United Kingdom." (emphasis supplied) However, because the draft resolution under consideration had failed to meet the criteria laid down by the U.K., that is a call for "direct and inseparable link between the cease-fire and an immediate and total withdrawal of Argentine forces within a fixed time limit" the draft resolution was vetoed by the United Kingdom.²¹⁵

In this case, a party to a dispute may veto a draft resolution aimed at the pacific settlement of the dispute, whereas at best, the other party may only vote against such a draft resolution. Thus, an earlier Security Council resolution demanding "an immediate withdrawal of all Argentine forces from the Falklands (Islas Malvinas)"²¹⁶ which was voted for by the United Kingdom representative could not be vetoed by the Argentine representative.²¹⁷

²¹⁴ S/15156/Rev.2, 4th June, 1982.

²¹⁵ See Anjali, *supra* note 53, p. 359.

²¹⁶ S.C. Res. 502, 3 April 1982, para. 1.

²¹⁷ At the General Assembly level, the item entitled "Question of the Falkland Islands (Malvinas)" was included in the agenda of the thirty-seventh session of the General Assembly, in 1982, at the request of 20 Member States (A/37/193). The General Assembly considered the question at its thirty-seventh to forty-eighth sessions. See GA Res. 37/9, 38/12, 39/6, 40/21, 41/40, 42/19, and 43/25; and Decisions 38/405, 39/404, 40/410, 41/414, 42/410, 43/409, 44/406, 45/424, 46/406, 47/408, and 48/408. At its forty-ninth session, the Assembly decided to defer consideration of the agenda item and to include it in the provisional agenda of the fiftieth session. See Decision 49/408, Plenary meeting A/49/PV.29, 30, 31, 32, and 50.

4. Disputes between a NPM and the United States

On 25 October 1983, the representative of Grenada requested a meeting²¹⁸ of the Security Council to consider "the invasion of the the Republic of Grenada by United States troops." At the 2491st meeting of the Security Council, a draft resolution submitted by by Guyana, Nicaragua, and Zimbabwe calling for "an immediate cessation of the armed intervention and the immediate withdrawal of the foreign troops from Grenada"²¹⁹ was vetoed by the United States. The United States representative stated that "the prohibitions against the use of force in the United Nations Charter were contextual, not absolute."²²⁰

Similarly, in December of 1989, the representative of Nicaragua requested a meeting of the Security Council to consider the situation following "the invasion of the Republic of Panama by the United States." Specifically, the Nicaraguan govt., charged that members of the armed forces of the United States surrounded and searched the residence of the Ambassador of Nicaragua in the Republic of Panama.²²¹

At the 2902nd meeting of the Security Council, a draft resolution submitted by Algeria, Colombia, Ethiopia, Malaysia, Nepal, Senegal and Yugoslavia which "strongly deplores the intervention in Panama" as a "flagrant violation of international law and of the independence, sovereignty and territorial integrity of States" was vetoed by France, the United Kingdom and the United States.²²² Another draft resolution regarding the unauthorized search of the residence of the Nicaraguan Ambassador in Panama by United States troops was also vetoed by the United States.²²³

Perhaps the most disturbing of this category of veto, that is, one directly involving a permanent member of the Security Council is the case involving

²¹⁸ S/16067, 25 October 1983.

²¹⁹ S/16077/Rev.1, 27 October, 1983, para. 4.

²²⁰ Anjali, *supra* note 53, p. 379.

²²¹ S/21034, 20 December, 1989.

²²² S/21048, 23 December, 1989, para. 1; *see* Anjali, *supra* note 53, p. 382.

²²³ S/21084, 17 January, 1990.

Nicaragua and the United States. This is important because it involves not only the refusal to honor the judgment of the International Court of Justice, but also the prevention of a draft resolution which "calls for full compliance with the Judgment of the International Court of Justice" against the United States.

By a letter addressed to the President of the Security Council, the Minister of External Relations of Nicaragua charged that the military exercises, including air, naval and land maneuvers, which he stated, the Government of the United States had announced it would conduct jointly with Honduras under the name "Halcon Vista" from October 7-9, 1981 represented a threat to international peace and security, and a special threat to Nicaragua.²²⁴ On April 2, 1982, at the 23347th meeting of the Security Council, a draft resolution appealing "to all Member States to refrain from the direct, indirect, overt or covert use of force against any country of Central America and the Caribbean" was vetoed by the United States.²²⁵

At a subsequent meeting of the Security Council held on 4 April, 1984, a draft resolution "Noting with great concern the foreign military presence from outside the region, the carrying out of overt and covert actions, and the the use of neighboring territories for mounting destabilizing actions that have served to heighten tensions in the region and hinder the peace efforts of the Contadora Group,"²²⁶ and "Calls on all States to refrain from carrying out, supporting or promoting any type of military action against any State of the region as well as any other action that hinders the peace objectives of the Contadora Group"²²⁷ was vetoed by the United States. In explaining his country's negative vote, the United States representative stated that the draft resolution under consideration was seriously flawed as it lacked balance and fairness. He added that, in an area rent by violence, it

²²⁴ S/14710, letter dated 25 September, 1981.

²²⁵ For draft resolution submitted by Guyana and Panama, see S/14941, para. 3.

²²⁶ For the preamble of draft resolution submitted by Nicaragua, see S/16463.

²²⁷ Id., at para. 4 (The *Contadora Group* consists of Colombia, Mexico, Panama, and Venezuela).

expressed concern about only one kind of violence against only one target.²²⁸

Frustrated by the United States' exercise of its veto power at the Security Council, the Nicaraguan government took its case before the International Court of Justice charging the United States with, amongst others, conducting military and paramilitary activities in and against Nicaragua. On 26 November, 1984, the ICJ handed down its final Judgment on 27 June, 1986 ruling in favor of the Government of Nicaragua.²²⁹ Almost immediately, the United States announced its decision not to abide by the Judgment of the ICJ, contrary to Charter provisions which makes the ICJ the principal judicial organ of the United Nations and that each Member undertakes to comply with the decision of the Court in any case to which it was a party.²³⁰

Another draft resolution which "*Makes* an urgent and solemn call for full compliance with the Judgment of the International Court of Justice of 27 June 1986 in the case of Military and Paramilitary Activities in and against Nicaragua"²³¹ was vetoed by the United States because it believed that "the draft resolution would not have contributed to the achievement of a peaceful and just settlement of the situation in Central America within *the framework of international law and the Charter of the United Nations.*"²³² (emphasis supplied)

Yet another draft resolution which "*Urgently calls* for full and immediate compliance with the Judgment of the International Court of Justice of 27 June 1986

²²⁸ See Anjali, *supra* note 53, p. 368.

²²⁹ Military and Paramilitary Activities in and against Nicaragua, I.C.J. Reports, pp. 14 - 112; S/18221.

²³⁰ Incidentally, one of the amendments proposed at the San Francisco conference was to confer on the Security Council the power to enforce the execution of final decisions of the Permanent Court of International Justice. However, the Major Powers had the foresight not to be placed in violation of the Charter, thus the amendment was defeated at the Committee level. See U.N.C.I.O Doc. 1050, June 17, 1945.

²³¹ S/18250, para. 2 (draft resolution submitted by the Congo, Madagascar, Trinidad and Tobago, and the United Arab Emirates, at the 2704th meeting of the Security Council held on 31 July, 1986).

²³² See Anjali, *supra* note 53, p. 370.

in the case of Military and Paramilitary Activities in and against Nicaragua²³³ was again vetoed by the United States. On this occasion however, the United States representative, in explaining his country's negative vote took aim at the ICJ itself, maintaining that the Court had neither the competence nor jurisdiction to decide the case.²³⁴ It is important to note that the United States Government had earlier, in the proceedings before the ICJ, argued the jurisdictional issues before the Court and lost, yet it relied on the same argument to defend its non-compliance with the ICJ judgment.

(d) Possible solution to abuse of Charter Article 27, paragraph 3

From the preceding, it is obvious that the current practice at the Security Council in the application of Charter Article 27, paragraph 3, leaves much to be desired. While the debate for a reform of the Security Council rages on, one more area that deserves attention is how to give life to the underlying principle of 27(3), that, while the Council is engaged in the pacific settlement of disputes, no state shall be a judge and jury in its own case.

There appears to be three ways to solve the problems posed by limitations inherent in 27(3). The first is to amend the Charter, making it more specific in defining what constitutes a "dispute," and, when a permanent member directly involved in the dispute has to abstain from voting on a draft resolution. The second will be to amend the rules of procedure of the Security Council, again stating in much more specific terms, when a permanent member has to abstain from voting on draft resolutions regarding a dispute involving the permanent member. The third approach will be for the General Assembly to consider independently any dispute on which the Security Council could not adopt a resolution due to the

²³³ For text of draft resolution submitted by the Congo, Madagascar, Trinidad and Tobago, and the United Arab Emirates, at the 2718th meeting of the Security Council held on 28 October, 1986, see S/18428, para. 1.

²³⁴ See Anjali, *supra* note 53, p. 371.

violation of 27(3).

Although all three proposed solutions share the same aim: to eliminate the loophole in article 27, paragraph 3, the third one could be achieved relatively more easily than the others. The first proposal, through an amendment to the Charter, is subject to the veto provisions of article 108. The second requires the votes of at least 9 votes of the 15-member Security Council,²³⁵ but because of the *group dynamics*²³⁶ in the Council, voting in the Council often reflects the interests of the permanent members more so than at the General Assembly. The third approach is consistent with relevant Charter provisions, supported by precedent, and relatively easier to achieve.

The power of the General Assembly to consider and make recommendations regarding any question which threatens international peace and security is limited in two respects. One, the Assembly shall not make any recommendations with regard to a dispute or situation when the Security Council is exercising its function as the primary organ for the maintenance of international peace and security in respect of the dispute or situation.²³⁷ Two, the Assembly may only make recommendations regarding the peaceful adjustment of disputes,²³⁸ as opposed to enforcement actions which is reserved exclusively for the Security Council.²³⁹

Based on the following Charter provisions, the Assembly has maintained, since the inception of the United Nations, the right to consider issues that could not be resolved by the Security Council. It started on 20 September 1946 when at the 70th meeting of the Security Council, the U.S. sponsored draft resolution to appoint a commission to investigate the Greek question was vetoed by the Soviet Union.²⁴⁰

²³⁵ Charter article 27(2).

²³⁶ See *infra* notes 341 and 343.

²³⁷ Charter article 12.

²³⁸ Charter articles 14 and 35.

²³⁹ Compare Ch. VI of the Charter with Ch. VII.

²⁴⁰ See Anjali *supra* note 53, pp. 77-79.

Subsequently, the Council finally agreed to establish a Commission of Investigation²⁴¹ concerning the Greek Question. However, the Commission reports could not be adopted because of the Soviet veto,²⁴² prompting other members of the Security Council to suggest²⁴³ that in the event the Council could not reach a decision, the Assembly should be allowed to consider the issue.

However, a draft resolution²⁴⁴ submitted by the United States which "*Requests* the the General Assembly to consider the dispute between Greece ... Albania, Yugoslavia, and Bulgaria ... and to make any recommendations with regard to the dispute" and "*Instructs* the Secretary-General to place all records and documents in the case at the disposal of the General Assembly," was vetoed by the Soviet Union.

Although, the legality of the attempt by the Assembly to consider the Greek question was questioned by the Soviet Union, it is worth noting that at the same meeting, following an amendment²⁴⁵ to the draft resolution (S/552) the Council adopted resolution 34 transferring the Greek Question to the General Assembly. In recent times, the Assembly has continued the practice of including a question on its agenda, and adopting what it deems to be the appropriate resolutions in cases where the Security Council has been unable to adequately address the issue due to the veto. Two instances deserve to be mentioned here.

The first was the Question of the Comorian island of Mayotte.²⁴⁶ The issue was first considered by the Security Council at its 1888th meeting on 6 February 1976.

²⁴¹ S.C. Res. 15 (1946) of 19 December 1946.

²⁴² See draft resolution S/471 of 19 August 1947 vetoed by the Soviet Union. See also Anjali, *supra* note 53, pp. 83-84.

²⁴³ See Repertory of Practice, *supra* 128, p. 47 (for record of 202nd meeting of the Security Council). See also, Anjali *supra* note 53, p. 85.

²⁴⁴ Draft resolution S/552, 202nd meeting, 15 September 1947, paras. 1 and 2.

²⁴⁵ The earlier draft resolution contained a reference to Article 12 of the Charter as basis for the proposed Security Council action transferring the Greek Question to the Assembly. However, Resolution 34 (1947) of 15 September 1947 makes no reference to the Charter. It simply states what the Council had decided to do. For the text of the vetoed draft resolution and the adopted resolution, see Wellens, *supra* note 132, p. 17; and, Anjali, *supra* note 53, p. 85.

²⁴⁶ Agenda item 57, Fifty-first regular session of the General Assembly, see Doc. A/51/100, p. 75.

But the draft resolution²⁴⁷ calling on France enter into immediate negotiations with the Government of the Comoros for the purpose of safeguarding the unity and territorial integrity of he State of Comoros was vetoed by France. Thereafter, the item was included in the agenda of the thirty-first session of the General Assembly in 1976 at the request of Madagascar.²⁴⁸ At that session, the Assembly adopted a resolution²⁴⁹ regarding the Question of the island of Comoros. The Assembly resolution condemned and considered null and void the referendums of 8 February and 11 April organized in Mayotte by the Government of France and called upon France to withdraw immediately from the island.²⁵⁰

At its thirty-second to forty-eight sessions, the General Assembly continued its consideration of this item.²⁵¹ At its forty-ninth session,²⁵² the Assembly adopted a resolution²⁵³ in which it reaffirmed the sovereignty of the Islamic Federal Republic of the Comoros over the island of Mayotte; invited the Government of France to honor the commitments entered into prior to the referendum on the self-determination of the Comoro Archipelago of 22 December 1974 concerning respect for the unity and territorial integrity of the Comoros; called for the translation into practice of the wish expressed by the President of the French Republic to seek a just solution to the question of Mayotte; and requested the Secretary-General to report on the matter to the Assembly at its fiftieth session.

At its fiftieth session, the Secretary-General submitted the report²⁵⁴ requested in resolution 49/18. One might have expected that France would have ignored the

²⁴⁷ See draft resolution S/11967 of 6 February 1976.

²⁴⁸ A/31/241.

²⁴⁹ GA Res. 31/4.

²⁵⁰ Id.

²⁵¹ GA Resolutions. 32/7, 34/69, 35/43, 36/105, 37/65, 38/13, 39/48, 40/62, 41/30, 42/17, 43/14, 44/9, 45/11, 46/9, 47/9, 48/56, and decision 33/435.

²⁵² For references for the forty-ninth session (agenda item 36), *see* Report of the Secretary-General: A/49/584; Draft resolution: A/49/L.38 and Add.1; and Plenary meeting: A/49/PV.69.

²⁵³ GA Res. 49/18.

²⁵⁴ A/50/779.

resolution 49/18, because General Assembly resolutions are recommendatory in nature and therefore may be ignored since it may not be enforced by military action. However, the Secretary-General report requested by resolution 49/18 contained not only a response by the Government of France to cooperate with the Assembly in finding a just solution to the Mayotte Question, but also a commitment to "...continue a constructive dialogue, at the highest level, with the Islamic Federal republic of the Comoros" towards the eventual resolution of the problem.²⁵⁵

Another occasion when the Assembly decided to act following the inability of the Council to condemn an action due to the veto of permanent members was in April 1986, when the United States government conducted an aerial and naval military attack against the Socialist People's Libya Arab Jamahiriya (Libya). At the 2682nd meeting of the Security Council held on 21 April 1986, a revised draft resolution²⁵⁶ which condemns the armed attack by the United States was vetoed by the U.S.A., France, and Britain.

At the request of the Libyan government, the issue of the U.S. raids on Libya was included in the agenda of the forty-first session of the General Assembly.²⁵⁷ At that session, the Assembly adopted a resolution,²⁵⁸ similar to the one vetoed at the Security Council, which condemned the military attack perpetrated by the U.S. against Libya on April 15, 1986; and, called upon the U.S. to refrain from the threat or use of force in the settlement of disputes with the Libyan Arab Jamahiriya. It then went a step further, to affirm the right of the Libyan Government to receive appropriate compensation for the material and human losses inflicted upon it. Since then, the General Assembly has retained the Libyan Question, presently item 51, on its agenda.²⁵⁹

²⁵⁵ See Doc. A/50/779, para. 5.

²⁵⁶ See, draft resolution S/18016/Rev.1, para. 1; *see also*, Anjali, *supra* note 53, p. 269.

²⁵⁷ A/41/241.

²⁵⁸ GA Res. 41/38.

²⁵⁹ See decisions 42/457, 43/417, 44/417, 45/429, 46/436, 47/463, 48/435, 49/444, 50/422, and A/50/PV.94.

If General Assembly resolutions are recommendatory and may not be enforced by military action, one may then ask, what is the value of such resolutions. The response of the Government of France to resolution 49/18 proves that the fact that Assembly resolutions are recommendatory in nature does not mean they are empty rhetoric after all.²⁶⁰ Because such resolutions express the views of majority of the Assembly, they are a powerful political and diplomatic tool for the resolution of conflicts which threaten international peace and security. No country, regardless of its power, likes to be seen as disregarding the view of the majority. Thus, Assembly resolutions constitute one more means of influencing the behavior of countries. Therefore, the Assembly needs to continue the practice of acting in situations where the Council has been unable to act due to the veto.

²⁶⁰ For an exhaustive analysis of the effect of Assembly resolutions, see J. Castaneda, *Legal Effects of United Nations Resolutions*, (Columbia University Press) 1969.

IV. Proposals to limit the scope of the veto

The preceding is an attempt to identify two major problems with the interpretation of Article 27, paragraph 3. These are (1) how to determine what is a dispute and, (2) whether a proposed Security Council action is to be regarded as procedural or non-procedural. Resolving both problems will to a large extent reduce, if not eliminate, the abuse of the veto particularly in the pacific settlement of disputes involving a permanent member. To do this, three documents need further examination: (1) Article 27(3); (2) Part II of the joint Statement; and, (3) summary of relevant comments from Security Council debates.

At San Francisco, although 23 questions regarding the exercise of the veto were submitted by the invited States to the Sponsoring Powers and France, the entire Part I of the joint Statement was "for the most part in general terms."²⁶¹ Commenting on the joint Statement, the Australian delegate stated that " ...the interpretation given in the sponsoring government's joint Statement is not based on any consistent principle. In some respects it is unduly narrow; in others, perhaps surprisingly wide."²⁶² However, the Sponsoring Powers and France did provide a much more specific answer to question 19²⁶³ which appears below:

Q. 19: In case a decision has to be taken as to whether a certain point is a procedural matter, is that preliminary question to be considered in itself as a procedural matter or is the veto applicable to such preliminary question? Part II of the joint Statement²⁶⁴ was devoted exclusively to responding to Q. 19 thus:

1. In the opinion of the delegations of the sponsoring governments, the *draft Charter itself contains an indication of the application of the voting procedures to the various functions of the Council*. [emphasis supplied]

2. In this case, it will be unlikely that there will arise in the future any matters of great importance on which a decision will have to be made as to whether a procedural vote would apply. Should, however, such a matter arise, the decision regarding the preliminary question as to whether or

²⁶¹ U.N.C.I.O., Doc. 1149, III/4 June 22; *see also* Selected Documents, *supra* note 71, p. 803.

²⁶² *Id.*

²⁶³ *Id.*, p. 750; and, U.N.C.I.O., Doc. 855, III/1/B June 8;

²⁶⁴ Doc. 852, III/1/B June 8; *see also* Selected Documents, *supra* note 71, p. 754.

not such a matter is procedural must be taken by a vote of seven members of the Security Council, including the concurring votes of the permanent members.

In light of the joint Statement, especially paragraph 1, in order to determine the procedural or non-procedural character of a given question, the Charter has to be analyzed, in order to see whether there is an indication of the applicable voting procedure, even before the test vote referred to in Part II, paragraph 2 of the joint Statement. This suggestion is consistent with the introductory part of paragraph 2, which states that: "In this case, it will be unlikely that there will arise in the future any matters of great importance on which a decision will have to be made as to whether a procedural vote would apply. Should, however, such a matter arise..."²⁶⁵

Relying on such a reading of the joint Statement, the representative of Canada at the 300th meeting of the Security Council stated: "As the provision of the Charter in this case is specific and clear, the Four-Power Declaration ... is therefore irrelevant."²⁶⁶ And the United States representative said: "Part II, paragraph 2, of the Four-Power Statement was to be used only as stated therein, in cases where the Charter itself did not provide an indication as to whether a given decision was procedural."²⁶⁷ The delegate of France said: "The United Kingdom representative ... expressed the opinion that the final provision of the San Francisco Declaration must be interpreted as applying to doubtful cases, and that interpretation would seem to accord with the text of the last part of the Declaration."²⁶⁸

The logical conclusion that flows from such an analysis of the joint Statement is that the Charter is the primary and ultimate authority upon which all judgment

²⁶⁵ Id.

²⁶⁶ Security Council, Official Records, Third Year, No. 71, 300th Meeting, p. 40. Although the statement is correct, it was too broad, because it suggests that the joint Statement is irrelevant if the Charter is clear on the issue. Since this conclusion relies on para. 1, Part II of the joint Statement, it would have been much more correct to state that that in such a case, only para. 1, Part II of the joint Statement applies, rather than say the joint Statement is irrelevant. For comments in agreement with this interpretation, see *infra* notes 232-233.

²⁶⁷ Id., No. 63, pp. 24-5.

²⁶⁸ Id., No. 73, p. 20.

concerning the procedural or non-procedural nature must be based, and to this end the Charter will be analyzed in its entirety to determine what issues are specifically identified by the Charter as procedural. The Charter employs the heading "Procedure" in Chapters IV, V, X and XIII and thereby gives a clear indication both of the specific instances and of the type of subjects which it considers to be of a procedural nature.²⁶⁹

According to the text of the Charter, all decisions of the Council which fall under those headings require a procedural vote. This includes not only decisions which the Security Council may be called to take under Articles 28, 29, 30, 31 and 32, but also decisions under Article 20. For our analysis, Article 29 which provides that: "The Security Council may establish such subsidiary organs as it deems necessary for the performance of its functions" deserves more analysis.

If the decision to establish subsidiary organs is deemed procedural by the Charter, it follows therefore that all the ancillary decisions which are previous and instrumental to the establishment of such organs should also be treated as procedural. It has been observed that "Such a right would be nullified if, while recognizing the procedural nature of the decision itself, the same character were denied to all those secondary ... decisions ... which are indispensable to following up the resolution and carrying it into practice."²⁷⁰

Thus, if the establishment of a subsidiary organ under Article 29 is a procedural matter, so should be the appointment of its members, the interpretation of its terms of reference, and the approval of its rules of procedure. This is consistent with Part I, paragraph 2 of the joint Statement in which the Sponsoring Powers and France stated that: "...the Council will, by a vote of any seven of its members, ...

²⁶⁹ In support of this conclusion, see Bruno Simma, et al., *The Charter of the United Nations, A Commentary*, (1994), [hereinafter Bruno Simma] where he states that: "Systematically, Art. 29 is part of the procedural framework established by Arts. 28 to 32. Id., at p. 482. See also, Eduardo Arechega, *supra* note 76, p. 6.

²⁷⁰ See, Eduardo Arechega, *supra* note 76, p. 7.

establish such bodies or agencies as it may deem necessary for the performance of its functions..."²⁷¹ But, what about the terms of reference of the subsidiary organ. Is it also a procedural matter?

According to some commentators,²⁷² while the power of the Security Council to create a subsidiary organ is broad, the power to transfer such assignments, as it deems fit, to a subsidiary organ is limited by the Charter. Thus, "the authority claimed by the Security Council in exercising powers outside Article 34 and in performing good offices cannot originate solely from Art. 29..."²⁷³ In other words, "...the approval of the *terms of reference* of such subsidiary organs would require the unanimity of the permanent members if the subsidiary organ were given authority to take steps which if taken by the Security Council, would be subject to the veto."²⁷⁴

The method adopted by the Security Council in establishing a subsidiary organ deemed necessary for the performance of its duties does not lend itself to easy or bright line analysis (as Table I below shows) so as to determine whether the decision is to be considered procedural or not.²⁷⁵

²⁷¹ See Joint Statement, *supra* note 71.

²⁷² See Bruno Simma, *supra* note 269, p. 482.

²⁷³ *Id.*

²⁷⁴ Eduardo Arechega, *supra* note 76, p. 7.

²⁷⁵ On the question of distinction between "procedural matters" and "all other matters" see the U.N. Repertory of Practice, Suppl. No. 1, Articles 1-54, 1954, where it is stated that: "Whether the decision was procedural is deemed to have been established in those instances where a proposal obtained seven or more votes, with one or more permanent members casting a negative vote... Rejection by the Council in such circumstances indicates the non-procedural character of the decision." In addition, "Whether the decision was procedural is established where there has been an express decision by vote of the Council that the matter is procedural or non-procedural." *Id.*, at p. 271.

Table I²⁷⁶**i. Subsidiary organs proposed under Article 29 but not established**

Indonesian Question (I)	16th meeting, 11 February 1946	2Y; 0N;9A
Indonesian Question (I)	18th meeting, 13 February 1946	3Y;0N;8A
Greek Frontier Incident	70th meeting, 20 September 1946	8Y;2N;1A... VETO
Greek Question	177th meeting, 6 August 1947	9Y;2N;0A... VETO
Indonesian Question (II)	194th meeting, 25 August 1947	7Y;2A... VETO
China	501st meeting, 12 September 1950	7Y;1A;2A ... VETO

ii. Subsidiary organs established under Article 29

Greek Frontier Incident	87th meeting, 19 December 1946	Comm. of Investigation
Greek Frontier Incident	123rd meeting, 28 March 1947	Comm. of Investigation
Indonesian Question (I)	193rd meeting, 22 August 1947	Consular Comm. at Batavia
Indonesian Question (II)	194th meeting, 25 August 1947	Committee of Good Offices
Indonesian Question	406th meeting, 28 January 1949	U.N. Comm. for Indonesia
India-Pakistan	230th meeting, 20 January 1948	Comm. for India & Pakistan.

iii. Subsidiary organs proposed under Art. 29 but **considered under Art. 34**

Spanish Question	37th meeting, 18 April 1946	Draft resolution not put to the vote
Spanish Question	39th meeting, 29 April 1946	Established a committee of 5 with very narrow term of reference, unlike subsequent subsidiary organs.
Corfu Channel	111th meeting, 24 February 1947	Draft resolution not put to the vote
Corfu Channel	114th meeting, 27 February 1947	Committee of 5 with narrow term of reference
Czechoslovakia	303rd meeting, 24 May 1948	9Y;2N;0A....Proposed Committee of 3 VETO ed.

At the 35th meeting on 18 April 1946 when the idea of creating a subsidiary organ was first discussed at the Council, the representative of Australia based on his proposal for the creation of a sub-committee of five to "make inquiries ... and to determine whether the situation in Spain endangered international peace."²⁷⁷ At the 37th meeting, he submitted a revised text to "cut out the idea of a formal investigation under Article 34 of the Charter so as to enable the proposed body to be brought in under Article 29 as a subsidiary body..."²⁷⁸

Discussion regarding the establishment of the subsidiary organ then focused

²⁷⁶ See Repertory 1946-51, *supra* note 131, pp. 181-208.

²⁷⁷ For text of proposal, *see* 35th meeting: pp. 197-198.

²⁷⁸ 37th meeting: pp. 215-217.

on the legitimate scope of the work of the sub-committee. The representative of Australia made the observation that some representatives considered "that the sub-committee should not and could not itself make a finding ... or make recommendations ... but should present the facts so that the Council itself could decide and make its own decision on the facts as ascertained by the sub-committee."²⁷⁹ The representative of the United States felt that the sub-committee in its report to the Council "should provide us with the facts ascertained by it, so that the Security Council itself may make its own determination, based upon those facts."

Numerous other representatives spoke regarding the scope of work of the sub-committee.²⁸⁰ In the end, the Council adopted a resolution at its 39th meeting establishing a sub-committee to "examine the statements made before the Security Council concerning Spain, to receive further statements and documents, and to conduct inquiries as it may deem necessary, and to report to the Security Council before the end of May."²⁸¹ During the debate preceding the adoption of the resolution which established the sub-committee, it was agreed upon that the scope of work of the sub-committee should not include: recommending any practical measures which the Council should take, nor was it to conduct an investigation.²⁸²

Thereafter, at the 114th meeting on 27 February 1947, the Council established a sub-committee in connection with the Corfu Channel question. Although the sub-

²⁷⁹ Id.

²⁸⁰ For texts of relevant statements see: 37th meeting: Australia, pp. 216-217, 229-230; Brazil, p. 235; Mexico, p. 233; France, pp. 226-227, 234-236; Netherlands, pp. 224-225, 230-231, 236, 237; Poland, pp. 227-233, 235; USSR, pp. 219-234, 236; United Kingdom, pp. 231-232, 235; United States, pp. 217-219.

²⁸¹ 39th meeting: pp. 244-245; resolution adopted on 29 April 1946, with 10 votes in favor, none against, 1 abstention.

²⁸² France had suggested that the sub-committee's term of reference should include "to report on practical measures....," however at the urging of the Australian representative that that would mean "in effect the committee would make the decision instead of the Council" the idea was dropped. Id.

committee was established based on Article 29 of the Charter,²⁸³ on this occasion, the term of reference of the sub-committee was broadened to include conducting investigation and making recommendations. The broadening of the committee's term of reference was objected to by the representative of the USSR stating that: "Decisions cease to be decisions of a procedural nature from the moment the Council begins to take a decision regarding investigation..."²⁸⁴ he nonetheless agreed not to oppose the setting up of a sub-committee should "the majority of the members of the Council consider it essential to take a decision regarding supplementary investigation of the facts."²⁸⁵

While the establishment of the two preceding sub-committees may lead to the conclusion that the precedent has been set regarding the acceptable scope of work of a sub-committee which may be established under Article 29²⁸⁶ without requiring the unanimity of the five permanent members, subsequent attempts²⁸⁷ (see Table I above) to establish sub-committees with the same terms of reference as the previous ones, proved that previous decisions on the issue established no precedent binding on the members.

An examination of Security Council practice in establishing sub-committees, indicates that such sub-committees are no longer considered under Article 29 of the

²⁸³ In support of the resolution the representative of the United States stated: "To adopt the view which has been expressed by the representative of the Soviet Union would mean that the Council could never, without the consent of every one of the five permanent members, set up any agency for the conduct of its business. I think that is, in fact, contrary to Article 29 of the Charter..." 114th meeting: pp. 427, 431.

²⁸⁴ 114th meeting: pp. 426, 427.

²⁸⁵ 114th meeting: p. 428.

²⁸⁶ The reference to the 2 sub-committees is not to suggest that only 2 sub-committees had been established prior to the Czechoslovak question in 1948. In fact, another sub-committee was established to investigate the Greek question at the 87th. meeting on 19 December 1946. However, the sub-committee was established under Article 34 of the Charter and it was understood that such a decision is subject to the veto. On the other hand, the sub-committee for the Spanish and the Corfu Channel were established under Article 29 of the Charter.

²⁸⁷ The attempt to establish a committee to investigate the Czechoslovak question was vetoed by the USSR because according to him, the sub-committee would conduct investigations. 288th meeting, p. 23, 29 April 1948.

Charter. In its place has been substituted Article 35 as the basis for the establishment of a sub-committee, thereby expanding the scope of the veto.²⁸⁸ As the call for a review of the veto gathers momentum, another area which may prove useful in limiting the scope of the veto, is to define with some specificity the terms of reference of a subsidiary organ which the Council could establish under Article 29 of the Charter. This can be achieved without an amendment to the Charter, thereby avoiding running the risk of being vetoed by a permanent member.

The absence of a well defined terms of reference of subsidiary organs established under Article 29 of the Charter by the Security Council has led to the abuse of the veto by permanent members who resort to the "term of reference" excuse to explain their veto of a proposed sub-committee. The case of the Greek question offers a clear example of this abuse. At first when the proposal to establish a sub-committee of seven to investigate the issue was put to the vote at the Security Council, the representative of the Soviet Union citing the terms of reference of the proposed sub-committee as being too broad, vetoed the resolution.²⁸⁹

However, the Soviet Union supported a subsequent resolution on the Greek question which "established a Commission of Investigation ... to be composed of a representative of each of the members of the Security Council..."²⁹⁰ which is a clear indication that the Soviet veto of the previous draft resolution was based not on the terms of reference of the commission of investigation, but on its composition, an issue which should be procedural.

In fact, at the 87th meeting of the Council, when the subsidiary organ for the Greek frontier question was established after its composition had been increased from 5 to 11, consisting of members of the Security Council, the representative of

²⁸⁸ Draft resolutions to establish a committee to investigate the India-Pakistani question was vetoed, 773rd meeting: paragraphs 124-126.

²⁸⁹ Repertory 1946-51, *supra* note 131, p. 182.

²⁹⁰ S.C. Res. 15, 19 December 1946; *see also* Wellens, *supra* note 132, p. 15.

Poland drew attention to "... the danger of creating a precedent, in that the Council would never be able to set up a commission composed of less than 11 members" warning that such a development "would not be conducive to the future efficiency of the Council."²⁹¹ Security Council practice regarding the composition of subsidiary organs eventually proved the Polish representative's comments right.

It turned out that most of the subsidiary organs established between the period 1946-50 (see Table I) under Article 29 were composed of representatives of all the members of the Council,²⁹² whereas members of subsidiary organs established under Article 34 were fewer in number. Secondly, one would expect that the terms of reference of Article 34-type subsidiary bodies to be broader in scope than those established under Article 29, after all the former may be subject to the veto. At least, that was the Soviet argument against the establishment of a subsidiary organ regarding the Czechoslovak question. On the contrary, the terms of reference of Article 29 subsidiary organs were on the average broader in scope than those of Article 34. Defining the scope of subsidiary organs established under Article 29 and that under Article 34 is necessary to eliminate the inconsistency and arbitrary nature of Security Council decisions on the establishment of subsidiary organs.

(a) **May the concept of the Double Veto be Justified Based on Part II, paragraph 2 of the San Francisco Statement?**

Since Part II, paragraph 2 of the joint Statement has been relied upon, particularly by the Soviet Union, to justify its veto of a number of draft resolutions and the preliminary question, there has been an attempt to examine the legal status of the joint Statement to determine whether it could be relied upon in interpreting the Charter. Two views have emerged regarding the legal status of the joint Statement.

²⁹¹ For text of statement, see 87th meeting, 19 December 1946, p. 680.

²⁹² Compare Commission of Investigation concerning Greek Frontier Incidents: Representatives of each of the members of the Security Council as it was constituted in 1947, 87th meeting: pp. 700-701; with Committee of 5 regarding the Spanish question, 39th meeting, pp. 244-245.

It has been observed that the joint Statement constitutes "... the only guide which the Security Council will have in its future operations ...certainly ... probative of the intention of the parties to the voting agreement ... part of the 'travaux préparatoires' of Article 27 ... the officially issued interpretive statement ... it remains the sole guide to future action by the Council in so far as determining the voting procedures applicable to the decisions it must make under its manifold functions."²⁹³

But, this view is not confirmed by the action taken at San Francisco in connection with the Statement, nor by the contentions made in the Security Council. The San Francisco Statement was submitted by the delegations of the four Sponsoring Governments to Subcommittee III/1/B of the Conference on 8 June 1945. Thereafter Sub-Committee III/1/B submitted it to Committee III/1 taking "no responsibility for the statement, nor for the legal interpretations given therein." At its 19th meeting, Committee III/1 upon the proposal of Australia decided "to pass, without formal action on the report of Sub-Committee III/1/B" to the next item of business.²⁹⁴ So, "the document was not in any sense endorsed either by the Sub-Committee, by Committee III/1, or by Commission III. It was merely incorporated in the records and made an annex to the Rapporteur's report."²⁹⁵

The legal status of the San Francisco Statement has also been examined against customary international law, as codified in the Vienna Convention of the

²⁹³ Statement by Wellington Koo, Hearings Before the Committee on Foreign Relations, United States Senate, the Charter of the United Nations, July 9-13, 1945 (Washington, U. S. Government Printing Office, 1945), pp. 283-4.

²⁹⁴ See U.N.C.I.O., Documents 883 and 956.

²⁹⁵ Selected Documents, *supra* note 71, p. 802, (Comment by Australian Delegate during debate on the joint Statement).

Law of Treaties (VCLT) of 1969.²⁹⁶ In the view of the commentators,²⁹⁷ when viewed against against customary international law, as codified in Art. 31(2)(b) VCLT, the Declaration does not even form part of the context of the treaty which it is obligatory to consider for any interpretation, since the document was not accepted by the other contracting parties as a document referring to the treaty. The Declaration is thus only a supplementary means of interpretation according to Art. 32 of the Convention.²⁹⁸

At the 49th and again at the 202nd meeting, the Australian representative recalled what happened at San Francisco and pointed out that the joint Statement "does not bind this Council. It does not bind the United Nations."²⁹⁹ This challenge to the legal effect and general validity of the San Francisco Statement as an authoritative interpretation of the Charter has been answered by the representative of the Soviet Union with the admission that the Statement "does not bind any countries other than the five permanent members of the Security Council ... the agreement binds only the five Powers which agreed to that document."³⁰⁰

If the joint Statement is at the most, an understanding or agreement among the five permanent members, it therefore cannot overrule or contradict the Charter,

²⁹⁶ Although technically, the VCLT which came into existence in 1969 could not be applied retroactively (see Art. 4 VCLT), it is often quoted with the proviso that it is an expression of customary international law, and with the further proviso that this customary law also refers to a treaty establishing an international organization within the meaning of Article 5 VCLT. It is then asserted that since the United Nations is an international organization, the VCLT, being a product of a U.N. conference, offers persuasive evidence of how to interpret the practice of the U.N., and in particular the legal status of the San Francisco Statement. For an authoritative analysis of the the relevance of the VCLT to the joint Statement, see Bruno Simma, *supra* note 269, p. 95, and p. 435.

²⁹⁷ Przetacznik, F., 'The Double Veto in the Security Council of the United Nations: A new Appraisal', (1980), pp. 153, 162-163 *et seq.* For additional references, see Eduardo Arechaga, *supra* note 76, p. 10; and, Bruno Simma, *supra* note 269, p. 435.

²⁹⁸ Bruno Simma, *supra* note 269, p. 435-36.

²⁹⁹ Security Council, Official Records, First Year: First Series, No. 2, 49th Meeting, pp. 416 and 425; Security Council, Official Records, Second Year, No. 89, p. 2400. Reservations as to the binding force of the San Francisco Statement for the United Nations as a whole was also made by Argentina (Security Council, Official Records, Third Year, No. 63, p. 26 and Security Council, Official Records, Third Year, No. 71, 300th meeting, p. 38); Canada (*Id.*, p. 40); Syria (Security Council, Official Records, Third Year, No. 73, p. 4); Belgium (*Id.*, p. 23); and, Colombia (*Id.*). See on the contrary, Ukraine, (*Id.*, p. 3).

³⁰⁰ *Id.*, Third Year, No. 73, p. 4.

nor could it be used to avoid the obligations contained in the Charter. As the Canadian representative has said in the Security Council: "If the Four-Power Declaration is regarded by the permanent Members as in some sense constituting an international agreement, then surely the obligations, under the Charter, of the permanent members of the Security Council shall, as stated in Article 103, prevail over any obligations assumed under the Four-Power Declaration or any other international agreement."³⁰¹

From the above, it seems that the consensus is that the joint Statement does not constitute the authoritative interpretation of the Charter. However, this doesn't mean that it is irrelevant to interpreting the Charter. To the extent that it doesn't contradict the expressed provisions of the Charter, it is useful in any attempt to resolve issues that are not specifically addressed by the Charter. For the purpose of this section, such an issue would be the determination of the preliminary question.

If the joint Statement is to be relied upon in interpreting the Charter, it "must be interpreted as a whole, giving the same force to its different contentions. This is particularly necessary in view of the fact that it was the result of a compromise, and its final part establishing the substantive nature of the preliminary question was accepted by some parties as consideration for the acceptance by others of the procedural nature of certain subjects."³⁰² The preliminary decision, or Part II, paragraph 2, of the San Francisco Statement, therefore, cannot be applied to those matters termed as procedural in Part I of the same document.

As the United States representative in the Council said: "it would be a misuse of the Four-Power Statement to resort to the preliminary determination under Part II, paragraph 2 for the express purpose of evading the provisions of Part I of the same statement. To hold otherwise is to make ridiculous Part I."³⁰³ Following in the

³⁰¹ Security Council, Official Records, Third Year, No. 71, 300th Meeting, pp. 40-41.

³⁰² For arguments in support of this view, see Eduardo Arechaga, *supra* note 76, p. 10.

³⁰³ Security Council, Official Records, Third Year, No. 63, 300th Meeting, p. 25.

same vein was the United Kingdom representative who added: "It seems to my Government that it is impossible to take one part of the San Francisco Declaration to cancel another part ... I do not admit that this paragraph 2 of chapter I can be rendered absolutely null and void by what I consider to be a misuse of the powers given in the last paragraph of the San Francisco Declaration."³⁰⁴

In conclusion, the power granted by Part II, paragraph 2, of the joint Statement can only be exercised with the qualifications and conditions which derive from the Charter or from the joint Statement as a whole. These limitations are three: (a) Occasion -- the preliminary vote, which was assumed to be a rare occurrence, can only be applied when there is a reasonable doubt of the nature of the question; (b) Method -- before recourse to such a vote all efforts should be made to analyze the Charter in order to unravel the answer which the joint Statement says is contained in the Charter for most questions, especially those of great importance; and, (c) Content -- by the preliminary vote, it should be impossible to classify as non-procedural what is procedural under the Charter and/or the San Francisco Statement.

In light of Part I, paragraph 2, of the joint Statement which states that the "Council will, by a vote of any seven of its members, adopt or alter its rules of procedure; ... establish such bodies or agencies as it may deem necessary for the performance of its functions;..." the rules of procedure of the Security Council ought to be amended so that the President's ruling on the preliminary question may not be subject to the veto, provided that there is no indication in the Charter that the issue in question is clearly procedural or otherwise.

³⁰⁴ Id., No. 71, pp. 38-39.

(b) Whether the Rules of Procedure of the Security Council is compatible with the concept of double veto

Article 30 of the Charter provides that: "The Security Council shall adopt its own rules of procedure, including the method of selecting its President." After considerable deliberations by the Preparatory Commission of the United Nations on whether they should recommend provisional rules of procedure or whether they should be formulated *ab initio* by the Council, the Commission recommended a set of rules, called Provisional Rules of Procedure.³⁰⁵ The rules have been described as "a compromise between those who desired more comprehensive rules and those who considered that the whole subject should be left to the Security Council."³⁰⁶

At the 1st meeting on 17 January 1946, the Council considered the provisional rules of procedure recommended by the Preparatory Commission and first adopted provisional rule 9, providing a method of selecting a President. Following the selection of the representative of Australia as President, the Council provisionally adopted without change the remaining provisional rules of procedure as recommended by the Preparatory Commission.³⁰⁷ At the same meeting, the Council established a Committee of Experts composed of one expert for each member of the Council to examine and report on these rules of procedure.³⁰⁸

Starting from the 23rd meeting on 16 February 1946 when the Committee of Experts submitted its report on the provisional rules of procedure, and at subsequent meetings, the Security Council considered and adopted the rules of procedure. In the process, some of the rules provisionally adopted at the first meeting remained the

³⁰⁵ For the full text of the rules recommended by the Preparatory Commission, see O.R., 1st year, 1st series, Suppl. No. 1, pp. 3-6. For the full text of the Provisional Rules of Procedure in its final wording as of Dec. 1982, see U.N. Doc. S/96/Rev. 7 (1982).

³⁰⁶ Repertory 1946-51, *supra* note 131, p. 7. For a summary of the different reactions from Member States to the idea of drafting a rules of procedure, see Bruno Simma, *supra* note 269, p. 488.

³⁰⁷ S/28.

³⁰⁸ Id., 1st. meeting, p. 11.

same, while some were amended.³⁰⁹ During the debate at the Security Council regarding the report of the Committee of Experts, there emerged differences of opinion concerning, amongst other things,, the provisions on voting and the exercise of the veto power.³¹⁰ The relevant rules of procedure are:

Rule 30

If a representative raises a point of order, the President shall immediately state his ruling. If it is challenged, the President shall submit his ruling to the Security Council for immediate decision and it shall stand unless overruled.

Rule 40

Voting in the Security Council shall be in accordance with the relevant Articles of the Charter and of the Statute of the International Court of Justice.

Significantly, the representative of the Soviet Union suggested that there should be an enumerated list of questions to which the veto power was held to apply including an explicit ruling on double-veto.³¹¹ Based on the recommendation of the Committee of Experts report "... to postpone the further study of this question" on rule 40 "and to recommend the retention for the time being of rule 19³¹² of the provisional rules of procedure" the Council did not act on the suggestion made by the Soviet Union, preferring to accept the recommendation contained in the report.

³⁰⁹ For a list of amendments proposed by the Committee of Experts, the subsequent Council debates and adoption of additional rules, see S/29, S/6, S/35, S/57, S/71, S/88; O.R., 1st year, 1 series, Suppl. No. 2, pp. 1-8, 15-30, 39-40, 41-43.

31st meeting: pp. 100-118 (adoption of rules 1-23 and Annex A).

41st meeting: pp. 253-267 (adoption of rules 24-54).

42nd meeting: pp. 271-277 (adoption of rules 55-57).

44th meeting: pp. 310-311 (adoption of additional rules 21-22).

48th meeting: p. 382 (adoption of additional rule 20).

138th meeting: pp. 949-952 (adoption of rule 61).

197th meeting: pp. 2256-2266 and 222nd meeting; p. 2771 (adoption of revised rules 58 and 60).

468th meeting: pp. 9-11 (adoption of amendment to rule 13).

³¹⁰ See Repertory 1946-51, *supra* note 131, p. 50 (Soviet demand for a detail procedure to determine when veto may apply); pp. 32-38 (different interpretations of rule 30). The Committee of Expert's report acknowledged the controversy surrounding the rules regarding the voting procedure by stating that: "In the view of certain members of the Committee" rule 40 "should contain detailed provisions covering both the mechanics of the vote and the majorities by which the various decisions of the Council should be taken..." Id.

³¹¹ Id., p. 50.

³¹² Rule 19 of the Provisional Rule of Procedure later became present day rule 40 without any change in text or form. Id.

The power to draft, adopt, and amend the rules of procedure is based on the provisions of Charter Article 30. Both the text of the Charter and Security Council practice has established the procedural nature of Article 30,³¹³ hence the general rule contained in Article 27, paragraph 2 applies, with the result that decisions on future amendments to the rules of procedure is not subject to the veto. Furthermore, Part I, paragraph 2, of the joint Statement also considered the adoption and amendments of rules of procedure as procedural. In light of the foregoing, may the rules of procedure be relied on to resolve the problem of double veto or the preliminary question? If so, what are the Charter limitations on the extent to which the rules of procedure may be used to curb the double veto.

The practice by the Security Council of subjecting the preliminary question to a veto was not based on the Charter, but on Part II, paragraph 2, of the San Francisco Statement. The practice began at the 49th meeting of the Council on the Spanish Question when the President's ruling that a resolution had been passed notwithstanding the negative vote of a permanent member was challenged by the Soviet Union representative.³¹⁴

When the President's ruling was put to the vote, there were 8 votes in favor of the ruling, 2 against (France and U.S.S.R) and 1 abstention. The President thereupon declared: "The conclusion that I draw is that ... whether a question is one of procedure or substance ... may only be decided with the concurring votes of the five permanent members."³¹⁵ Since that interpretation of the vote on the challenge to the President's ruling, the exercise of the double veto has become an acceptable practice at the Security Council, based on Part II, paragraph 2, of the joint

³¹³ Conforti, B., 'The legal Effect of Non-Compliance with Rules of Procedure in the U.N. General Assembly and Security Council', 63 Am. J. Int'l L. (1969), p. 479, n. 2.

³¹⁴ 49th meeting: pp. 420-422.

³¹⁵ Id.

Statement.³¹⁶

Recent developments has led to the realization that the San Francisco Statement is not an authoritative interpretation of the Charter provisions, nor is it legally binding on the invited states. Although as an agreement among the five permanent members, it is binding on them, any obligation emanating from the joint Statement is subsidiary to the obligations on the permanent members and indeed all members of the United Nations by the Charter. Thus, there seems to be no basis to continue to rely on the joint Statement in support of the double veto.

If the majority of non-permanent members of the Security Council have the political will to amend the rules of procedure, in particular rule 30, to specify the number of votes required to overrule the President's ruling on the preliminary question, then the double veto may finally be eliminated from Security Council practice. The new rule 30 will then read thus:

Rule 30

If a representative raises a point of order, the President shall immediately state his ruling. If it is challenged, the President shall submit his ruling to the Security Council for immediate decision and it shall stand unless overruled *by votes of no less than nine members*. (Proposed addition is italicized).

By relying on an amendment of the rules of procedure, rather than an amendment of the Charter, the proposal will not be subject to the possibility of being vetoed by any permanent member, while at the same time achieving the goal of excluding the application of the veto to the preliminary question.

³¹⁶ For instances of attempt and actual exercise of double veto during the year 1946-51, see 202nd meeting: p. 2400 (Greek Question) 15 September, 1947; 288th. meeting, (Czechoslovak Question), 29 May 1948; 114th meeting: p. 430-432 (Corfu Channel Question).

(c) **May the letter requesting Security Council involvement serve as a means to limit the scope of the veto**

As observed earlier, the characterization of an issue as either a dispute or situation by the party requesting Security Council involvement does not determine how the Council proceeds on the issue. While the Council is by Charter Article 30 the master of its procedure, it nonetheless has to lay down sufficient rules of procedure so that prospective parties before it may be well-informed as to how issues brought before it will be addressed by the Council. At the very least, this will make the hearings less unfair and somewhat less unpredictable.

Granted that bright line rules³¹⁷ are very difficult especially at an hearing conducted in a forum where political considerations often (and expectedly so) outweighs legal concerns, there is a need for the Council to assign some value to the letter initiating Council involvement in an issue. The aim should be for the Council to examine issues first and foremost either under Charter Articles or its well established practices that would not trigger the likelihood of a veto.

Consequently, if in the letter by a party requesting Council involvement, both the Article invoked and the action requested is under Chapter VI, and is solely pacific in nature, decisions of the Council on such a case ought to be in accordance with Article 27, paragraph 2, as opposed to paragraph 3. On no occasion, should the Council subject to the veto a decision to initiate conciliation between two parties.³¹⁸

Also, decisions of the Security Council to recommend under Article 36 of the Charter appropriate procedures or methods of adjustment of dispute brought under

³¹⁷ Although bright line rules are difficult to draw, it helps nonetheless to have a non-exhaustive list of issues which shall be deemed procedural for the purpose of voting. The first attempt in this regard was the General Assembly Resolution on "The problem of voting in the Security Council" which was adopted at the 195th plenary meeting. GA Res. 267(III), 14 April 1949. Attached to its appendix was a list of decisions which the Assembly urged the Council to deem procedural. *Id.*, see appendix.

³¹⁸ Speaking at San Francisco in opposition to the application of the veto to pacific settlement, the representative of Australia stated: "It is our view that, conciliation or peaceful means of settling of a dispute, should be regarded not as a power of the Council but as the duty of the Council because by such means the dispute may be composed and the use of force may be prevented." *See* Selected Documents, *supra* note 71, p. 802.

Article 33 should not be subject to the veto, because at the San Francisco Conference, it was understood by the delegates that such recommendation "possessed no obligatory effect for the parties."³¹⁹ At San Francisco, in the course of discussion on an amendment offered to what is now Article 36 of the Charter, the Delegates of the United Kingdom and the United States "gave assurance that such a recommendation of the Security Council possessed no obligatory effect for the parties."³²⁰

But at the same Conference, the Sponsoring Powers and France in their joint Statement extends the veto to "the decision to make recommendations ... or to call upon parties to a dispute to fulfill their obligations."³²¹ While the two statements appear contradictory, it appears they may be reconciled if one considers that the statement of the Delegates of the United Kingdom and the United States of June 16, was meant to be an amendment of the joint Statement of June 7, limiting the veto only to recommendations which carry obligatory effect on the parties.

This interpretation is consistent with the fact that the basic and indisputable foundation of the principle of unanimity of the permanent members is that no one of them should be obliged to contribute to enforcement measures against its will. While this reasoning may be applicable to enforcement actions by the Council, it could not justify the application of the veto to recommendations which carry no obligatory effect.

In their joint Statement, the Sponsoring Powers and France presented as reason for extending the veto to the pacific settlement of disputes, the "chain of events" theory stating that while no permanent member may prevent an issue from being brought before the Council, "Beyond this point, decisions and actions by the

³¹⁹ Yearbook of the United Nations, *Special Edition*, U.N. 50th. Anniversary 1945-1995, p. 21.

³²⁰ Doc. 1017, June 16, Report of Rapporteur of Committee III/2 to Commission III; *See* Selected Documents, *supra* note 71, p. 759.

³²¹ Joint Statement, *supra* note 71, Part I, para. 5.

Security Council may well have major political consequences and may even initiate a *chain of events* which might, in the end, require the Council ... to invoke measures of enforcement" under Chapter VII.³²²

The underlying reasoning is that it is necessary to make the veto applicable at the conciliatory stage, in order that a permanent member may stop the action of the Council at an earlier stage well before the use of force becomes inevitable. As it was characterized in San Francisco, "it is like saying we are not willing to go to the doctor unless we are prepared to go to an undertaker."³²³ While this theory is the correct legal interpretation of the joint Statement, it totally disregards the subsequent statement of June 16 by the Delegations of the U.K., and the U.S.A. Of much more importance is the fact that it is not in accordance with the Charter.

In the Dumbarton Oaks Proposals, there was a direct transition from the process of conciliation of Section A of Chapter VIII (now Chapter VI of the Charter) to enforcement action under Section B of the same Chapter (present Chapter VII of the Charter). From the wording of the proposals, "a mandatory duty would have rested upon the Security Council to decide whether or not the failure to settle a dispute according to the Council's recommendations constituted a 'threat to the maintenance of international peace and security,' and to take measures consequently if the answer were in the affirmative."³²⁴

Consequently, according to the Dumbarton Oaks Proposals, the Security Council could not make recommendations which carries no obligatory effect on the

³²² Id., para. 4.

³²³ Francis O. Wilcox, "The Yalta Voting Formula," *American Political Science Review*, Vol. XXXIX, No. 5 (October 1945), p. 949. For another criticism of this theory at San Francisco by Mr. Evatt, see U.N.C.I.O. Documents, Vol. XI, pp. 125-127, 309, 439.

³²⁴ Chapter VIII, Section B, para. 1 of the Dumbarton Oaks Proposals provides that: "Should the Security Council deem that a failure to settle a dispute in accordance with procedures indicated in para. 3 of Section A, or in accordance with its recommendations made under para. 5 of Section A, constitutes a threat to the maintenance of international peace and security, it should take any measures necessary for the maintenance of international peace and security in accordance with the purposes and principles of the Organization.

parties. It may therefore be a wise decision to grant the permanent members veto power even over such recommendations, since such recommendations could actually trigger a chain of events which may lead to enforcement action.

However, there is no reference in the Charter to the effect that a failure to settle a dispute according to the Council's recommendations may constitute a threat to the peace. The Charter does not place the Security Council in the position of having to determine whether there has been a failure to settle a dispute according to its recommendations. Rather than the somewhat subjective test for determining a threat to the peace contained in the Dumbarton Oaks Proposals, the Charter adopts an objective test not connected with any previous Council recommendations on any dispute or situation.³²⁵

Under the Charter, as it now stands, any permanent member may stop a proposed action of the Council under Chapter VII, Article 39 simply by refusing to find that a threat to peace exists, even if recommendations under Chapter VI have been adopted and not complied with by one of the parties. At the Conference, China proposed an amendment which will link the failure to comply with Council recommendation with a subsequent finding of threat to peace, however it was not adopted because the delegates believed that such a link could reduce the great latitude left to the Council to determine threat to peace, and thereby diminish its effectiveness.³²⁶ Consequently, the "chain of events" which was based on the Dumbarton Oaks Proposals disappeared at the time the Charter was adopted with the amendments noted above which makes a clear distinction between pacific settlement and enforcement action of the Security Council.

In recognition of this fact, Senator Burton speaking at the hearings on ratification of the Charter said: "Those two steps under 37" (Chapter VI, Pacific

³²⁵ Compare text of Chapter VIII, Section B, para. 1 of the Dumbarton Oaks Proposals with Charter Article 39.

³²⁶ Selected Documents, *supra* note 71, p. 764; and, U.N.C.I.O. Doc. 881, III/3 June 10.

Settlement of Disputes) "and under 39" (Chapter VII, Enforcement Actions) " are separate and therefore ... it would appear to me that there would be ample meeting of the needs of the situation if that were decided by a majority vote rather than by veto power ... because it does not necessarily lead to the use of force, but only leads to the use of force in the sense it comes under Article 39, which is the veto power."³²⁷

³²⁷ Hearings Before the Committee on Foreign Relations, United States Senate, the Charter of the United Nations, July 9-13, 1945 (Washington, U. S. Government Printing Office, 1945), pp. 283-4.

V. **Potential effects of Proposals³²⁸ to limit scope of the veto on future practice of the Security Council**

From the foregoing, it appears that the purpose of proposals to limit the scope of the veto is to exclude certain actions of the Security Council from the unanimity rule of Article 27, paragraph 3, and instead apply the simple majority rule of Article 27, paragraph 2. The actions which will be affected can be summarized thus:

(i) Pacific settlement of disputes that is limited to Council recommendations, under Article 36, to the parties to engage in conciliatory talks or to negotiate;

(ii) Establishment of subsidiary organ under Article 29, with limited terms of reference; and,

(iii) The determination of the preliminary question whether an issue under consideration is procedural or non-procedural (the double veto question).

To determine the likely effects of the adoption of the above limitations on the scope of the veto in the future practice of the Council, it may be desirable to consider whether it would have made any difference on Security Council practice had these limitations been imposed since the inception of the Council. Underlying the call for a limit on the veto and the identification of the issues to which the veto should be inapplicable, is a belief (either rightly or wrongly) that a substantial number of vetoes are exercised regarding those issues, and also the suggestion that by eliminating the veto on those issues, the abuse of the veto will be substantially reduced.

Is it true that the issues (that is, the proposed veto-free issues) constitute a substantial evidence of abuse of the veto. If so, then the available data on the practice of the Security Council should reveal that the number of vetoes cast regarding those issues to be quite substantial. Consequently, the elimination of such a loop hole will go a long way in reducing the incidence of veto abuse.

³²⁸ The proposal to make the veto inapplicable to the appointment of the Secretary-General is not included in this chapter because such a proposal would require an amendment to the Charter and is itself subject to the veto requirement of Article 27, para. 2. The proposals considered here are consistent with proposals contained in the interim report of the Open-ended Working Group on the Question of Equitable Representation on and Increase in the Membership of the Security Council, presented to the General Assembly. U.N. Doc. A/49/965, 18 September 1995, pp. 43-44.

The table below (Table II) shows the total number of vetoes cast between 1946-1997, and the number of resolutions passed during the same period. While Table III shows the distribution of the resolutions and vetoes on a select number of issues.

TABLE II

MB...vetoes on Membership Issues.

M.E...vetoes on Middle East Issues (includes Suez Canal, and Libya).

S.A...vetoes on South Africa (includes Namibia, Rhodesia, Angola, and Mozambique).

S.G...vetoes on Appointment of the Secretary General.

<u>Year</u>	<u>Resolutions Passed</u> ³²⁹	<u>Number of Vetoes</u> ³³⁰	<u>MB</u>	<u>M.E</u>	<u>S.A</u>	<u>S.G.</u>
1946	15	13	03	--	--	--
1947	22	14	07	--	--	--
1948	29	07	03	--	--	--
1949	12	14	09	--	--	--
1950	11	04	--	--	--	01
1951	07	--	--	--	--	--
1952	02	08	06	--	--	--
1953	05	01	--	--	--	01
1954	02	04	--	02	--	--
1955	05	18	18	--	--	--
1956	11	06	--	05	--	--
1957	05	03	02	--	--	--
1958	05	10	03	02	--	--
1959	01	--	--	--	--	--
1960	28	05	01	--	--	--
1961	10	07	01	01	--	--
1962	07	01	--	--	--	--
1963	08	02	--	01	01	--
1964	14	02	--	01	--	--
1965	20	--	--	--	--	--

³²⁹ Total number of Resolutions adopted per year from the period 1946-1973 was obtained from Wellens. For the period 1974-1989, the number of Resolutions per year was obtained at the U.N. gopher site [gopher://gopher.undp.undp.org/11/undocs/scd/scouncils/s89]. While the number of Resolutions per year from 1990-1997 was obtained from the U.N. home page at [http://www.un.org/plweb-cgi/since.cgi?dbname=scre s&for year=1997].

³³⁰ The number of vetoes per year from 1946-1990 on Membership, Middle-East, South-Africa, and the appointment of the Secretary-General was obtained from Anjali, *supra* note 53, pp. 467-486. For the period 1991-1997, the number of vetoes was obtained from the U.N. Press Release SC/6311 of 10 January 1997 regarding Chinese veto of draft resolution S/1997/18 on Guatemala; Press Release SC/6345 of 21 March 1997 regarding U.S. veto of draft resolution S/1997/241 on the situation in the occupied Arab territories; Press Release SC/6335 of 7 March 1997 regarding U.S. veto of draft resolution S/1997/199 on the re-appointment of Secretary General Bhutros Bhutros-Ghali for a second term. For text of the fourth veto cast since 1990, see United States Department of State: Voting Practices in the United Nations 1995, *Report to Congress Submitted Pursuant to Public Law, 101-167* (March 31, 1996), p. 4, 120 [hereinafter Voting Practices in the U.N.].

<u>Year</u>	<u>Resolutions Passed</u>	<u>Number of Vetoes</u>	<u>MB</u>	<u>M.E</u>	<u>S.A</u>	<u>S.G.</u>
1966	13	01	--	01	--	--
1967	12	--	--	--	--	--
1968	18	01	--	--	--	--
1969	13	--	--	--	--	--
1970	16	03	--	--	03	--
1971	16	10	--	--	01	07
1972	17	08	01	03	03	--
1973	20	04	--	01	02	--
1974	22	04	--	--	03	--
1975	18	08	04	01	03	--
1976	18	10	02	03	03	01
1977	20	09	--	--	09	--
1978	21	--	--	--	--	--
1979	18	02	--	--	--	--
1980	23	03	--	02	--	--
1981	15	46	--	--	13	33
1982	29	09	--	06	--	--
1983	17	03	--	01	--	--
1984	14	03	--	02	--	--
1985	21	06	--	02	04	--
1986	13	12	--	06	04	--
1987	13	04	--	--	04	--
1988	20	07	--	05	02	--
1989	20	08	--	06	--	--
1990	37	--	--	--	--	--

##---End of the Cold War ---##

1991	42	--	--	--	--	--
1992	74	--	--	--	--	--
1993	93	--	--	--	--	--
1994	76	--	--	--	--	--
1995	67	01	--	01	--	--
1996	57	01	--	--	--	01
1997	37	02	--	01	--	--
<u>Total</u>	<u>1,118</u>	<u>283</u>	<u>59</u>	<u>53</u>	<u>50</u>	<u>44</u>

TABLE III³³¹ ... Distribution of Resolutions & Vetoes on Select No. of Issues (1946-1997)

For detail explanation of abbreviations which appears in table below, please go to the end of the table on the next page.

<u>Issue</u>	<u>No. of Resolutions</u>	<u>No. of Vetoes</u>	<u>Prob.</u>
I. Political Questions & Situations			
<u>Europe</u>			
The Greek Question	6	6	3
The Corfu Channel	2	1	1
The Situation in Hungary	1	1	
The Czechoslovak Question	0	3	1
<u>Africa</u>			
The Question of South Africa	17	0	
Question of Apartheid in S. Africa	4	0	
Situation in Southern Rhodesia	21	11	
The Question of Namibia	26	22	
Complaint against S. Africa by Angola	12	3	
The Situation in S. Africa	3	15	
Situation in the Republic of Congo	6	6	
<u>Asia</u>			
Complaint by Malaysia	0	1	1
Complaint of Bombing by the U.S. Air Forces of the Territory of China	1	1	1
The Korean Airliner Incident	1	1	1
Situation in the India-Pakistan Subcontinent (Bangladesh)	2	3	
The India-Pakistan Question (Kashmir & Jammu)	16	2	2
<u>Latin American States</u>			
The Panama Canal Question	0	1	1
The Question of Guatemala	1	1	*332

³³¹ The total number of vetoes on the different issues was obtained from Anjali, *supra* note 53, pp. 467-486. The figure for number of Resolutions per issue was obtained from Wellens, *supra* note 132.

³³² Under current proposals, it is doubtful whether vote on this draft resolution (S/3236 Rev.1, 20 June 1954, 675th meeting) would have been under Article 27(2). Although, the draft resolution "Refers the complaint ... to the Organization of American States" thus emphasizing its conciliatory and recommendatory nature, it however "calls for the immediate termination of any action likely to cause further bloodshed" an issue which goes beyond the conciliatory limitation placed on the Council when engaged in pacific settlement. For full text of draft resolution, *see* Anjali, *supra* note 53, p. 355.

<u>Issue</u>	<u>No. of Resolutions</u>	<u>No. of Vetoes</u>	<u>Prob.</u>
<u>Arab States</u>			
U.S. raids on Tripoli & Benghazi	0	3	1
The Situation in the Middle East	21	42	
Downing of Two Libyan Aircraft by U.S.	0	3	* ³³³
<u>Disputes involving U.S. and U.S.S.R.</u>			
Complaint by the USSR (RB-47 Incident)	1	2	1... * ³³⁴
<u>Sub-Total of Vetoes on Political Questions</u>		<u>128</u>	Min: 13 Max: 16
<u>Total No. of Vetoes on Political Questions</u>		<u>163</u>	Min: 13 Max: 16
<u>II. Membership</u>	92	59	
<u>III. Appointment of the Secretary General</u>	07	44	
<u>IV. Other Issues</u>	878	17	
<u>Total No. on all Questions</u>	1.118	283	

Prob refers to number of draft resolutions which would have been adopted but for a veto.

Min refers to number of vetoed draft resolutions which would have been adopted had the new Proposals been implemented since 1946.

Max the maximum number of vetoed draft resolutions which would have been adopted had the new Proposals been implemented since 1946.

* refers to draft resolutions which is a combination of pacific settlement (calling for negotiations) and Chapter VII enforcement-type language such as a call for withdrawal of armed forces. Even under current proposals, it is doubtful whether draft resolutions which combine Ch. VI and VII would not trigger Article 27, paragraph 3 voting requirements.

³³³ The draft resolution (S/20378, 11 January 1989, 2841st meeting) "Calls upon the United States and the Libyan Arab Jamahiriya to co-operate with the Secretary-General in an effort to bring about a peaceful settlement of the differences existing between the two countries" thus emphasizing its pacific nature, it also contains a paragraph calling "... upon the United States to suspend its military maneuvers off the Libyan coast..." (paragraphs 4, and 2 respectively). The call to suspend military activities may, arguably, be considered one that goes beyond pacific settlement. See Anjali, *supra* note 53, p. 272 for text of draft resolution.

³³⁴ Two draft resolutions were vetoed regarding this issue. The first draft resolution (S/4409/Rev.1, 26 July 1960, 883rd meeting) would not have been vetoed had current proposals been in place. Basically, it "Recommends to the Governments of the Soviet Union and the United States to undertake to resolve their differences..." through negotiations. However the second draft resolution of the same day (S/4411) noted that as a result of the shooting incident which led to the complaint, two members of the U.S. Air Force are allegedly in the custody of Soviet authorities, and asked that the International Committee of the Red Cross be "permitted to fulfill the humanitarian tasks ... with respect to the members of the crew." This may be considered to be beyond the scope of pacific settlement which does not trigger Article 27, para. 3. For text of both draft resolutions, *id.*, pp. 391-392.

Based on an examination of Security Council practice from 1946 to 1997, as reflected in Table III above, had the proposed limitations on the scope of the veto being in place since 1946, the number of vetoes on political questions would have been reduced by between 13 and 16, out of a total of 163 vetoes cast in that category. Obviously, this is far from a substantial reduction in the exercise of the veto.

All the remaining draft resolutions would have been subject to the veto because they go beyond the acceptable scope of recommendations for pacific settlement of disputes which the Council may embark upon without fulfilling the unanimity requirement of Article 27, paragraph 3. For instance, almost all the draft resolutions (with the exception of probably 2, see Table III) regarding African States and the Middle East recite Chapter VII as basis for the proposed decision.³³⁵ Under current proposals, draft resolutions taking under the Charter provisions on enforcement actions would be subject to the veto.

All the other draft resolutions would still have been subject to the veto even under current proposal because they include "enforcement-type" language such as a call "...for immediate cessation of hostilities;"³³⁶ "Immediate withdrawal of armed personnel;"³³⁷ "Immediate and unconditional withdrawal of Armed Forces;"³³⁸ and, "... to release immediately people held as hostages..."³³⁹ All this goes beyond a recommendation for negotiation which will make the draft resolutions subject to the veto under current proposals.

³³⁵ For text of vetoed draft resolutions on African States and the Middle East, *id.*, pp. 165-201.

³³⁶ See draft resolution (S/5033, 18 December 1961, 988th meeting) para. 1 regarding complaint by Portugal against India's military incursion into Goa; draft resolution (S/10423, 5 December 1971, 1607th meeting, para. 1) which calls "upon the Governments of India and Pakistan ... for an immediate cease-fire and withdrawal of their armed forces..."; and, draft resolution (S/13027, 15 January 1979, 2112th meeting, para. 2) regarding the situation in Kampuchea (Cambodia).

³³⁷ See draft resolution (S/10416, 4 December 1971, 1606th meeting, para. 2) on the situation in the India-Pakistan Sub-Continent (Bangladesh). See also draft resolutions on Goa, India-Pakistan, and Cambodia. *Id.*

³³⁸ See draft resolution (S/13729, 7 January 1980, 2190th meeting, para. 4) which "Calls for the immediate and unconditional withdrawal of all foreign troops from Afghanistan..."

³³⁹ See draft resolution (S/13735, 13 January 1980, 2191st meeting) on the Hostage Issue between the United States and the Islamic Republic of Iran.

In speculating about how the adoption of the current proposals will affect the exercise of the veto in the Security Council, it is important to identify the distribution of the vetoes among different issues. By identifying the issues with a disproportionate number of vetoes, one may then be able to ask the question whether the issues(s) have remained the same, grown worse, or resolved and whether the end of the cold-war has changed the dynamics involved in those issues. Going by available statistics (see Table II), of the 283 vetoes cast since 1946, 4 issues combined have been responsible for more than half of those vetoes:

Table IV

<u>Issue</u>	<u>No. of Vetoes</u>
Membership	59
Middle East	53
South Africa	50
Secretary-General	44

As observed earlier on, under current proposals to limit the scope of the veto, of the 103 draft resolutions vetoed on issues regarding South Africa and Middle East, only 2 (see Table III) will probably not be subject to the veto. In addition, an overwhelming majority of draft resolutions regarding South Africa was on the issue of colonialism and apartheid, two issues which has been resolved. In fact, since 1989 there has not been a veto on the South-African sub-region.

Having examined how the proposed limitations on the veto would have affected the exercise of the veto during the cold war period, a period marked by east-west hostilities which substantially affected the workings of the Council, we may then consider what effect, if any, the proposals may have on the workings of the Security Council in the post cold-war era. Again, the question is whether there has been an increase or decrease in the exercise of the veto, since the end of the cold war, and whether the trend (be it a decrease or increase) is likely to continue.

Available data on Security Council practice shows that, there has been an

increase in the number of resolutions passed since the end of the cold-war, while at the same time there has been a remarkable reduction in the exercise of the veto power. As the table below shows (Table V), between 1946 and 1990, there were 279 vetoes cast at the Security Council, and 672 resolutions passed. In contrast, between 1991 and 1997, a total of 446 resolutions were adopted by the Security Council and the number of vetoes for the period dropped to 4, a comparatively low number.

Table V

<u>Year</u>	<u>No. of Resolutions</u>	<u>No. of Vetoes</u>
1946-1990	672	279
1991-1997	446	4

From the above (Table IV), it appears that the trend since the end of the cold-war has been towards a decrease in the number of vetoes, and a corresponding increase in the number of resolutions. Is the trend likely to continue?

Determining whether the trend in the Security Council will continue depends on so many issues, some of which are beyond the scope of this paper. However, one important indicator worth examining is the voting practice in the General Assembly, after all members of the Security Council are drawn from the General Assembly. During the 50th session of the General Assembly (1995), the Assembly adopted 282 resolutions, 76.6 percent (216) of which were adopted by consensus. In 1994, 77.4% of Assembly resolutions were adopted by consensus, and the figure for 1993 was 77.2%.³⁴⁰

In 1995, the General Assembly adopted 76.6% of its resolutions by consensus, as opposed to an average of 98.5%³⁴¹ of resolutions adopted by the Security Council for the same year. Although, 76.8% is less than 98.5%, this does not imply that the trend in the Security Council voting practice since 1990 is likely to decrease. If anything, it is likely to continue for certain reasons. First, it has been noted that

³⁴⁰ Voting Practices in the U.N., *supra* note 330, p. 1.

³⁴¹ *Id.*, p. 156.

group dynamics in the Security Council, whose 15 members frequently consult closely on issues before resolutions are presented for adoption, are quite different from those in the General Assembly.³⁴²

Furthermore, due to the fact that certain decisions may be vetoed at the Security Council and the fact that during deliberations preceding the submission of a draft resolution to the vote, members already have an idea of whether there is enough votes for adoption of a particular draft resolution, it is quite possible that some non-permanent members rather than "waste" their vote would either abstain or vote with the "majority." At the same time, permanent members have shown considerable restraint in exercising their veto power, particularly since 1990, hence rather than veto a draft resolution, the tendency has been to abstain from voting. Thus, on 3 occasions in 1995, China abstained from voting, while the Soviet Union abstained 5 times. None of the non-permanent members abstained.³⁴³

Perhaps this and other reasons explain why voting practice of non-permanent members at the Assembly seem to differ from their practice at the Security Council as the table below (Table VI) shows.

Table VI Historical comparison of coincidence of votes of members of the Security Council in 1995 with the votes of the United States in the General Assembly & the Security Council³⁴⁴

COUNTRY	SECURITY COUNCIL	GENERAL ASSEMBLY....		GENERAL ASSEMBLY....			
	1995	1995	1994	1993	1992	1991	1990
Argentina	98.5%	68.8%	67.9%	53.8%	44.4%	41.0%	12.5%
Botswana	98.5	46.1	40.3	28.6	23.9	20.9	17.9
Czech Rep.	98.5	77.4	78.8	70.0	61.9	63.0	46.3
France	98.5	76.9	75.8	71.1	63.8	70.6	76.7
Germany	98.5	76.9	77.8	74.4	63.8	71.4	69.1
Honduras	98.5	45.7	45.1	28.6	28.8	23.9	19.2

³⁴² Id.

³⁴³ Id.

³⁴⁴ Id., pp. 9, 31-35, 156. The United States is chosen for the comparison, because it has a high incidence of voting coincidences with NATO member States, a group which has 3 permanent seats and 2 non-permanent seats at the Security Council.

COUNTRY	SECURITY COUNCIL	GENERAL ASSEMBLY....		GENERAL ASSEMBLY....			
	1995	1995	1994	1993	1992	1991	1990
Indonesia	98.5	33.3	31.5	18.9	20.6	12.5	14.6
Italy	98.5	74.2	79.2	73.7	63.8	66.0	65.5
Nigeria	98.5	31.4	37.5	26.5	24.2	19.4	15.9
Oman	98.5	35.2	38.0	29.1	23.7	19.4	16.7
Rwanda	98.5	53.2	60.0	30.2	26.5	25.0	13.9
United Kingdom	98.5	85.1	84.4	80.0	73.6	79.6	81.8
China	98.4	21.5	22.8	10.6	16.4	16.4	16.3
Russia	98.4	73.6	66.7	68.6	59.6	41.9	16.7

In light of the above (Table VI), the fact that over 75% of resolutions adopted at the General Assembly since the end of the cold war has been by consensus is a good indication that the trend witnessed in the Security Council during the same period (that is a substantial reduction in number of vetoes coupled with an increase in the number of resolutions adopted) is likely to continue.

Considering the fact that an overwhelming number of resolutions adopted both at the General Assembly and Security Council are arrived at by consensus, and that the implementation of the proposals to limit the scope of the veto would have minimal impact on the exercise of the veto at the Security Council, is there a need to limit the veto? Exactly what should be the focus of the advocates for a reform of the Security Council? Are there issues more deserving of the attention of those interested in reforming the Security Council or the United Nations at large?

One issue that deserves more attention is the realignment of *blocs* at the General Assembly since the end of the cold-war. Based on the voting record between 1990 and 1995, there seems to have been a change from the East-West voting practice of the cold-war era to a North-South voting practice, pitching the poor south against the rich-north. The effect of this shift is already showing up in voting practice at the General Assembly and if the "group dynamics" effect on Security Council voting practice (see Table VI) is any indication, the South may become marginalized at the Security Council.

The existing arrangement for distribution of seats at the Security Council appears in Table VII below.

Table VII

	<u>W. EUROPE</u>	<u>E. EUROPE</u>	<u>AFRICA & ASIA</u>	<u>LATIN AMERICA & THE CARIBBEAN</u>
GEN. ASS.	27	20	102	33
SEC. COUNCIL				
PERM. MBR. ³⁴⁵	3	1	1	--
NON PERM MBR. ³⁴⁶	2	1	5	2

Due to the realignment of voting *blocs*³⁴⁷ --see Table VIII through XII below³⁴⁸ -- at the General Assembly following the end of the cold-war, 2 groups (W. Europe and E. Europe) now have enough votes (7) to prevent the adoption of any draft resolution by the Council. With 2 more votes and an abstention by China, the 2 groups have enough votes to adopt any draft resolution, thus effectively dispensing with the need for the votes of the other groups.

Table VIII Historical comparison of coincidence of votes of select East European States with the votes of the United States in the General Assembly

COUNTRY	1995	1994	1993	1992	1991	1990
Albania	69.5%	77.8%	80.8%	36.8%	55.0%	14.8%
Azerbaijan	52.0	48.0	35.0	34.0	*	*
Belarus	61.4	56.9	37.8	34.0	41.7	16.9
Bosnia-Herzegovina	67.3	58.6	34.8	19.4	*	*
Croatia	75.0	71.1	84.0	78.9	*	*
Hungary	83.1	79.6	71.1	61.4	56.8	42.2
Kazakstan	60.3	60.0	46.2	38.3	*	*
Lithuania	81.0	81.0	68.6	54.5	56.5	*
Poland	77.4	78.4	68.4	58.1	61.7	48.7
COUNTRY	1995	1994	1993	1992	1991	1990
Tajikistan	91.3	62.0	30.8	19.0	*	*
Ukraine	59.6	63.3	41.3	35.1	31.6	16.7

³⁴⁵ Charter Article 23, para. 1.

³⁴⁶ GA Res. 1991 (XVIII) A.

³⁴⁷ Regarding the change in voting pattern in particular among East European countries, the U.S. Dept., of State report on voting practices in the U.N. for 1995 contains the observation that voting coincidence between the United States and the East European States has steadily increased to an average of 73.9% following "the liberation of these countries from communist domination..." See, Voting Practices in the U.N., *supra* note 330, p. 2.

³⁴⁸ *Id.*, pp. 31-35.

Table IX Historical comparison of coincidence of votes of select African States with the votes of the United States in the General Assembly

COUNTRY	1995	1994	1993	1992	1991	1990
Algeria	32.8	31.3	23.1	18.5	12.3	13.6
Cameroon	38.6	39.0	31.3	21.4	19.7	18.2
Cote d'Ivoire	40.0	44.8	27.1	24.5	31.0	18.9
Egypt	33.3	34.8	22.9	25.0	19.4	16.3
Ghana	32.8	30.9	20.5	18.9	16.1	14.6
Nigeria	31.4	37.5	26.5	24.2	19.4	15.9
South Africa	47.4	41.7	*	*	*	*

Table X Historical comparison of coincidence of votes of select Asian States with the votes of the United States in the General Assembly

COUNTRY	1995	1994	1993	1992	1991	1990
Cambodia	48.3	49.2	29.4	*	20.7	*
China	21.5	22.8	10.6	16.4	16.4	16.3
D.P.R. of Korea	8.7	9.1	7.8	12.9	15.5	*
India	17.2	16.1	15.7	18.5	17.5	13.0
Indonesia	33.3	31.5	18.9	20.6	12.5	14.6
Japan	75.4	78.4	65.8	53.7	61.7	58.3
Pakistan	28.4	32.4	26.3	21.7	17.6	18.5
Republic of Korea	64.3	55.9	44.2	36.2	35.3	*

Table XI Historical comparison of coincidence of votes of select Latin American & Caribbean States with the votes of the United States in the General Assembly

COUNTRY	1995	1994	1993	1992	1991	1990
Argentina	68.8	67.9	53.8	44.4	41.0	12.5
Brazil	41.1	39.1	28.0	22.7	22.7	14.9
Chile	45.0	46.4	33.9	28.4	25.0	16.5
Colombia	38.7	35.3	25.0	22.7	22.7	14.8
Mexico	41.6	33.3	28.3	20.3	20.6	15.2
Peru	46.6	45.5	31.5	26.9	24.6	15.4

Table XII Historical comparison of coincidence of votes of select NATO member States with the votes of the United States in the General Assembly

COUNTRY	1995	1994	1993	1992	1991	1990
Belgium	76.6	77.8	72.5	63.8	70.0	67.2
Canada	73.5	74.5	66.7	60.0	69.9	60.0
Denmark	72.1	75.0	67.5	56.5	61.2	50.0
France	76.9	75.8	71.1	63.8	70.6	76.7
Germany	76.9	77.8	74.4	63.8	71.4	69.1
United Kingdom	85.1	84.4	80.0	73.6	79.6	81.8

* Not yet a U.N. member.

The voting coincidence from 1990 to 1995 (Table VIII - XII) when compared with voting coincidence at the General Assembly for the 18th, 17th and 16th plenary session (see Table XIII below) reveals a shift towards support for the West European group (which includes U.S. and Canada) especially among members of the former Soviet bloc.

Table XIII Historical comparison of votes of different groups or blocs on a select number of issues with the votes of the United States in the General Assembly³⁴⁹

<u>BLOC / GROUP</u>	<u>1963</u>	<u>1962</u>	<u>1961</u>
AFRICA	42.4%	43.4%	43.1%
LATIN AMERICA	53.5	63.4	73.1
W. EUROPE	51.3	74.5	76.9
NEAR EAST & S. ASIA	43.9	51.9	44.5
SOVIET BLOC	17.3	25.0	11.6

While it may be difficult to predict, with any degree of precision, the full effect of this shift (compare Tables VIII and XIII) on the workings of the Security Council, it is very likely that the presence of 3 factors in addition to this new era of friendship between the West and the former Soviet *bloc* may render the African, Asian, and Latin American votes (particularly the African votes) less decisive in adopting draft resolutions as it was during the cold-war.³⁵⁰

³⁴⁹ Hearings before the Senate Committee on Foreign Relations, United States Senate, the Charter of the United Nations, 89 Cong. 1 sess., (April 28-29 1965), pp. 63-103. The comparison in Table XIII was based on a select number of resolutions, for 1963 (23 issues), 1962 (29 issues) and 1961 (43 issues).

³⁵⁰ As presently constituted, (see Table VII) if the West and East European Groups with combined votes of 7 are united, they can prevent the adoption of any draft resolution at the Council. Furthermore, with 2 more votes, they can determine which draft resolution is adopted, when voting is under Article 27, para. 2.

The first factor is that unlike the African *bloc*, member States of the former Soviet *bloc* (which includes Soviet Russia) possess nuclear technology. Second, the renewed interest in disarmament amongst the rich industrialized countries which dominate the Security Council and the ability of the former Soviet *bloc* to contribute to disarmament and prevent the proliferation of weapons of mass destruction has the potential to boost the value of East-West cooperation even at the Security Council, while reducing the value of the West-South relationship. Finally, both the former Soviet *bloc* and the South have something in common-- the need for capital to develop their economies.

However, if the second factor is true, then the West is more likely to divert more investment capital to the former Soviet *bloc* to achieve two goals: (1), well managed capital investments contribute to stable government which in turn is better suited to address the problem of disarmament and proliferation of weapons; and, (2), increased investments in the former Soviet *bloc* is likely to strengthen the East-West cooperation not only at the General Assembly, but also at the Security Council. If this occurs, it may be advisable for developing countries especially those in Africa to focus their collective effort not so much at the Security Council, but the Economic and Social Council, which at present may be more relevant to their developmental needs.

Building on his predecessor's commitment to the link between peace and development, Secretary General Kofi Annan in his address to the Group of 77 and China, stressed that development will remain priority of a reformed, and restructured United Nations adding that: "One of the principal lessons of the past 50 years has been that peace cannot be built in societies burdened by extreme poverty, human degradation and political oppression. Lack of development has been the one of the root causes of instability and civil strife in the post-cold war period. If we are

to have effective peace-building, we must recognize the urgent need to encourage sustained economic and social growth throughout the developing world."³⁵¹

The President of Brazil in his speech to mark the fiftieth anniversary of the U.N., declared "... the search for decent standards of living for all peoples and for each individual human being ... is therefore at the core of the international debate,"³⁵² while at the same forum the President of Mozambique identified "Development as the twin sister of peace."³⁵³

In the same vein, the Chilean President stated: "... the immediate concern to maintain peace and security should not prevent us from recognizing and attacking the root causes of conflicts. Poverty, inequality between individuals and between nations ... are today as important in creating conflict as is military proliferation or ideological confrontation --if not more so."³⁵⁴ Thus, the ECOSOC may actually be more relevant to the developing countries. than membership in the Security Council.

³⁵¹ Secretary-General Kofi Annan's address to the Group of 77 and China, U.N. Press Release, SG/SM/6148, 20 January, 1997.

³⁵² Official Records of the General Assembly, Fiftieth Session, Plenary Meetings, 37th meeting, p. 14.

³⁵³ Official Records of the General Assembly, Fiftieth Session, Plenary Meetings, 40th meeting, p. 17.

³⁵⁴ Official Records of the General Assembly, Forty-Ninth Session, Plenary Meetings, 7th meeting, p. 37.

VI. The Veto and Admission of New Members

Since its inception in 1945, membership in the United Nations has been a primary goal of all nations based on the belief that their national interests can better be served by joining the Organization. Even Switzerland, which has a long standing history of refraining from joining any international organization, has recently expressed the desire to pursue full membership in the United Nations as an objective of its foreign policy.³⁵⁵

The United Nations, comprising of various organs actively involved in diverse areas of human endeavor, offer nations, especially newly emerging nations,³⁵⁶ economic, social, and educational benefits; a measure of security; wider political influence, and the prestige which results from universal diplomatic recognition. It is therefore not surprising that it has grown more than three fold since its inception, increasing from 51 members in 1945 to 185 in 1997.

Entry to the United Nations is however dependent on recommendation by the Security Council, a substantive matter subject to veto by a Permanent Member, followed by a decision (two-thirds vote) of the General Assembly.³⁵⁷ The power of a permanent member to veto a membership application has been under intense criticism since the inception of the U.N. In fact, one of the proposals pushed most vigorously at the Assembly during the first five years of the U.N. was the elimination of the veto in the matter of admission of new Members.³⁵⁸

It has often been suggested by leading advocates for a limit on the veto, that

³⁵⁵ Address by Secretary of Switzerland at the General Assembly, U.N. Doc. A/50/PV.35, p. 29. At present, Switzerland maintains an observer status at the United Nations.

³⁵⁶ For the comments of the representative of Macronesia, *see* U.N. Doc. A/50/PV.38, p. 5; Papua New Guinea, *id.*, p. 26; Samoa, *id.*, p. 29; New Zealand, U.N. Doc. A/50/PV.59, p. 25; and, for Switzerland, *see* , U.N. Doc. A/50/PV.35, p. 29.

³⁵⁷ *See* Charter Articles 4(2), 18(2), and 27(3).

³⁵⁸ U.N. General Assembly, Report of the Special Committee on Admission of New Members, pp. 2-3.

the admission of new members is not an issue which should be subject to the veto.³⁵⁹ And, in support of this position, they point at the astronomical growth of membership of the U.N. from 51 to 185, and therefore conclude that the reasons for the exercise of the veto to membership issues no longer apply in this post cold-war era.³⁶⁰

At this point, it is important to note that while the debate on the veto and membership has, so far, been limited to the question of the procedure for rejecting or approving applications for membership, equally important is the related issue of representation which has thus far not received much desired attention. Problems regarding representation arises where a member State undergoes a political development such that two competing factions emerge each claiming to be the legitimate representative of the country.

In that case, the United Nations has to decide which of the two or three competing factions is the legitimate authority and may therefore send representatives to the U.N. Two prominent examples of questions regarding representation are: (1) the question of Chinese representation; and, (2) the representation of the former Yugoslav Republic of Macedonia.³⁶¹ This paper will attempt to examine the two aspects of the question of veto and membership: the application process, and the question of representation.

1. The Membership Application Question

Essentially, the argument for eliminating the veto from decisions on application for membership lies in the assumption that: (1) membership in the United Nations has almost reached its limit, and (2) determination of future

³⁵⁹ Majority of proposals submitted to the OeWG for a limit on the veto seek to eliminate the veto from membership application. For instance, see, the proposal by Australia, U.N. Doc. A/46/PV.68, p. 16; Venezuela, *id.*, p. 16, 19; the African common position, A/AC.247/1996/CRP.6, para. 33(e); and, the interim report of the OeWG, U.N. Doc. A/49/965, p. 9, para. 13.

³⁶⁰ *Id.*

³⁶¹ See *infra* note 331, on the issue of representation of the former Yugoslav Republic of Macedonia following its dissolution.

applications for membership in the U.N., will not affect the interests of any of the permanent members in the same way that prompted the exercise of the veto on membership applications a record 59 times out of a total of 279 vetoes from the period 1945-1990.³⁶²

History bears out the fallacy of the assumption that membership has almost reached its limit. By 1965, when membership had risen to 114, U.S. Secretary of State, Dean Rusk in response to a question by Senator Fulbright on possible future additional members in the United Nations was a little hesitant, suggesting a figure of "at least 10 or 12 along the way" but also adding that, in 1945, "when the United Nations instructed an architect to design the plans for the present headquarters of the United Nations, he was instructed to prepare the building for 60 members with the possibility of expansion to 75."³⁶³

To determine whether to exempt the membership question from the veto, it is necessary to review past exercise of vetoes on membership questions, and examine why the Charter made membership application subject to veto in the first place. Only then could one begin to question the relevance of the veto to the admission of new members. First, what are the trends in the international community regarding the concept of sovereignty. Is the trend towards the disintegration or integration of States. If the latter, the problems regarding membership is likely to be a rarity since the integration of States is often a product of consensus among the State parties to an integration.³⁶⁴ On the other hand,

³⁶² Anjali, *supra* note 53, pp. 491-514.

³⁶³ United Nations Charter Amendments, *Hearings Before the Committee on Foreign Relations*, United States Senate, 89th Cong. 1 sess., p. 14, Washington D.C., April 28, 1965.

³⁶⁴ For instance, Syria withdrew in 1958 to unite with Egypt as the United Arab Republic, but resumed its independent status and separate membership of the U.N. in 1961. Similarly, Tanganyika and Zanzibar became members of the U.N. in 1961 and 1963 respectively. After 1964 they continued as a single member, the United Republic of Tanganyika and Zanzibar, which later became the United Republic of Tanzania. United Nations Yearbook, (1993), p. 16. And, the Federal Republic of Germany and the German Democratic Republic were admitted to membership in the U.N. on 18 September 1973. Through the accession of the GDR to the FRG, effective from 3 October 1990, the two German States have united to form one sovereign State. [<http://www.un.org/Overview/unmember.html>]

disintegration of States is often the end result of bitter conflict, sometimes civil war, thus making U.N. membership application from the break-up more difficult to resolve, especially when the separation is anything but amicable.³⁶⁵

Admission of new Members to the United Nations was made subject to the veto because of significant differences between the United States and the Soviet Union.³⁶⁶ At the initial stage of the formation of the United Nations, the United States had favored the sole power of the General Assembly to admit new members.³⁶⁷ However, the Soviet Union feared that the General Assembly would most likely be dominated by the United States, because the original fifty-one members were predominantly from Western Europe and Latin America, regions that are more sympathetic to the United States. To maintain the balance of power in the General Assembly, the Soviet Union proposed the admission of sixteen Soviet Republics as original members.³⁶⁸

The United States rejected the Soviet proposal for the admission of the sixteen Soviet Republics. Eventually, it agreed to the admission of two of the constituent republics of the Soviet Union-- the Ukraine and Byelorussia.³⁶⁹ In the process of dealing with the Soviet proposal, the United States recognized that if the Security Council was empowered to recommend admission of applicants, future Soviet-sponsored membership could be defeated by the veto.

The U.S. therefore abandoned its earlier position on the question of the veto and membership application, and endorsed the Soviet position that membership application should be subject to the veto. Consequently, the Soviet proposal was

³⁶⁵ By GA Res. 47/1 of 1992, the Assembly considered that the Federal Republic of Yugoslavia (Serbia and Montenegro) could not continue automatically the membership of the U.N. Both countries then applied for membership, and were subsequently admitted on 19 January 1993. *Id.* Also, but for the end of the cold war, it would have been virtually impossible for the 11 countries which emerged following the disintegration of the former Soviet Union to be admitted to the United Nations.

³⁶⁶ See Vandebosch and Hogan, *supra* note 18, p. 80; and, Bruno Simma, *supra* note 269, p. 10, para. 40.

³⁶⁷ Bruno Simma, *supra* note 269, pp. 10-12.

³⁶⁸ *Id.*

³⁶⁹ *Id.*, p. 10, para. 40.

incorporated in the Dumbarton Oaks Proposals which, in Chapter V(B) (2), provided that the General Assembly should be empowered to admit new Members to the Organization upon recommendation by the Security Council.

Subsequently, at the Yalta Conference, the voting formula which makes the unanimity rule of the big Powers applicable to Security Council recommendations for admission of new Members was agreed upon. At its 15th meeting, Committee I of the Committee II of San Francisco Conference approved the following text: "The admission of any State to membership in the United Nations will be effected by a decision of the General Assembly upon the recommendation of the Security Council."³⁷⁰ The final version was incorporated in the United Nations Charter as Article 4, paragraph 1, which reads:

"Membership in the United Nations is open to all peace-loving States that accept the obligations contained in the Charter and, in the judgment of the Organization are able to carry out these obligations; and,

paragraph 2, reads:

The admission of any such State to membership in the United Nations will be effected by a decision of the General Assembly upon the recommendation of the Security Council."

As Security Council practice would later demonstrate, the exercise of the veto on admission of new Members has been a tool to protect the national interests of the Major Powers. The Soviets have used it to prevent the selective admission of States with links to the West while denying membership to Soviet sponsors. Thus, the Soviets vetoed the admission of Austria,³⁷¹ Portugal, Italy, Ireland, Finland, Ceylon, and, Transjordan,³⁷² not because the Soviet Union was against the admission of

³⁷⁰ U.N.C.I.O. Doc. 1094, II/I/40.

³⁷¹ Draft Resolution submitted by Australia (S/336, 21 August 1947, 190th meeting of the Security Council) vetoed by the Soviet Union.

³⁷² Draft Resolution of 13 September 1949, at the 443rd meeting of the Security Council, submitted by Argentina for the admissions of Portugal (S/1331), Finland (S/1334), Transjordan(S/1332), Italy (S/1333) Ireland (S/1335), Austria (S/1336), and, Ceylon (S/1337) vetoed by the Soviet Union. The Soviet Union explained that "it was not going to be pressured by the discriminatory policies of the Western States towards the admission of Albania, Romania, Mongolia, Bulgaria, and Hungary." For detail analysis of the exercise of veto regarding membership and the reasons given by the vetoing state, see Anjali, *supra* note 53.

these countries, but because the Soviet Union favored a "package deal" which would have simultaneously admitted Albania, Romania, Hungary, Bulgaria, and the Mongolian People's Republic.³⁷³

Similarly, in 1955, China vetoed the admission of Mongolia because "China maintained that in 1947 Mongolian troops had invaded China, at a point called the Peitashan, hence it doubted the peace-loving nature of Outer Mongolia."³⁷⁴ The United States vetoed the admission of Angola because in the opinion of the United States, Angola "did not meet the requirements for membership set forth in Article 4 of the Charter, because of the continuing presence and apparent influence of Cuban troops" on the Angolan territory.³⁷⁵

In response to the Soviet Union's veto of the Austrian application, and in particular the Soviet position that future applications would have to be decided as a "package deal" (which, essentially conditions admission of an applicant on the simultaneous admission of Soviet sponsored applications) the General Assembly adopted a resolution in 1947 requesting the International Court of Justice for an advisory Opinion on the question:

"Whether a Member of the United Nations which is called upon, in virtue of Article 4 of the Charter, to pronounce itself by its vote, either in the Security Council or in the General Assembly, on the admission of a State to membership in the United Nations, juridically entitled to make its consent to the admission dependent on conditions not expressly provided by paragraph I of the said Article? In particular, can such a Member, while it recognizes the conditions set forth in that provision to be fulfilled by the State concerned, subject its affirmative vote to the additional condition that other States be admitted to membership in the United Nations together with that State?"³⁷⁶

The majority opinion (by 9 votes to 6) of the Court was that: "A Member State

³⁷³ Draft Resolution of 7 December 1952, at the 573rd. meeting of the Security Council, the Soviet Union submitted draft resolutions (S/2449) for the admission of Albania, Romania, Hungary, Bulgaria, and the People's Republic of Mongolia, and 13 other countries, including Italy. However, only Italy received the support of the four other Major Powers, leading the Soviet Union to veto the admission of Italy and condition such admission upon the admission of its sponsors.

³⁷⁴ See Anjali, *supra* note 53, p. 26; Draft Resolution (S/3502) of 13 December 1952 by Brazil and New Zealand for the admission of 18 new Members including Mongolia.

³⁷⁵ *Id.*, p. 34 (for explanation by the United States of its veto of Angolan application); *see also*, Draft Resolution of 23 June 1976 (S/12110).

³⁷⁶ U.N. Doc. A/471; A/PV.118 (17 November, 1947).

of the United Nations, called upon, by virtue of Article 4 of the Charter, to pronounce itself by its vote, either in the Security Council or in the General Assembly on the admission of a State to membership in the United Nations, is not juridically entitled to make its consent to the admission dependent on conditions not provided by paragraph I of the said Article."³⁷⁷ The Court rejected the Soviet argument that the question put must be regarded as a political one and that for this reason, it falls outside the jurisdiction of the Court.³⁷⁸

On the contrary, the Court reasoned that the question of interpreting a treaty provision, in this case, Article 4 of the Charter, is a purely legal one which is clearly within its jurisdiction.³⁷⁹ However, en route to this decision, the majority recognized the inherently political nature of the admission of State(s) to membership in the United Nations, by acknowledging that "Article 4 does not forbid a State from taking into account... relevant political factor in consideration of conditions for admission of new members."³⁸⁰

Some dissenting judges however adopted an expansive interpretation of what constitutes relevant *political factors* which a State may consider before rejecting or accepting membership application. The dissent held that, a Member called upon to pronounce itself by its vote (either in the Security Council or the General Assembly) on the admission of a State that possesses the qualifications specified in paragraph I is participating in a *political decision*. (emphasis mine) Therefore, such a State is legally entitled to make its consent to the admission contingent on any political considerations that seem to it relevant and must act in

³⁷⁷ Advisory Opinion of the International Court of Justice, May 28 1948, I.C.J. Reports of Judgments, Advisory Opinions and Orders, May 28 1948, pp. 57-115.

³⁷⁸ Id., at 61.

³⁷⁹ Id.

³⁸⁰ Id., at 63.

good faith.³⁸¹

Following the I.C.J. Opinion, the United States Senate passed the Vandenberg Resolution supporting the President's decision to seek, within the United Nations, "Voluntary agreement to remove the veto ... from the admission of new members."³⁸² Shortly afterwards, the General Assembly passed a resolution recommending that votes of the Council on admission be viewed as procedural, and therefore be considered as having been adopted if approved by any seven members of the Council.³⁸³ However, the resolution was symbolic at best, because it was a recommendation to the Security Council and therefore not binding on any permanent member of the Council.

In an attempt to make the resolution mandatory, the Argentine representative made the suggestion that the provisions in Article 4(2) to the effect that admission is to be effected "by a decision of the General Assembly upon the recommendation of the Security Council," can be interpreted to mean that the General Assembly is the only body that can make a decision on membership. In support of this proposal, he argued that the Assembly was entitled to interpret the provisions of the Charter dealing with its own powers, just as had other organs of the United Nations.³⁸⁴ At the request of the representative of Argentina, the Assembly asked the I.C.J. for advisory Opinion on the competence of the Assembly

³⁸¹ Id., Joint Dissenting Opinion of Judges Basidevant, Winiarski, Sir Arnold McNair, and Read, at. 92. The difference between the majority and the dissenting opinion is that while the majority prefers the *objective test* for determining what constitutes *relevant political factors* the dissent favors a *subjective test* which focus on what a State considers to be relevant.

³⁸² U.S. Senate Resolution 239, 80th Congress, 2d Session, June 11, 1948, para. 1.

³⁸³ GA Res. 267 (III), April 14, 1949. It must be noted that prior to the adoption of this Res. 267, the Assembly, including the permanent members, had reached a consensus to support the United States proposal that the veto should not be used in connection with "decisions with respect to admission of States to membership in the United Nations, pursuant to Article 4, paragraph 2 of the Charter. U.N. General Assembly, Second Session, United States Proposals on the Veto Question, Doc. A/AC.18/41 Mar. 10, 1948.

³⁸⁴ U.N. General Assembly, Fourth Session, Ad Hoc Political Committee, Admissions of New Members: Argentina: Draft Resolution, Doc. A/AC.31/L.18 (Oct. 31, 1949).

in the matter of admissions.³⁸⁵

Any doubt as to the validity of the Argentine position was laid to rest when the Court delivered its advisory Opinion. By a vote of 12 to 2, the Court stated that it:

"...is of the opinion that the admission of a State to membership in the United Nations, pursuant to paragraph 2 of Article 4 of the Charter, cannot be effected by a decision of the General Assembly when the Security Council has made no recommendation for admission, by reason of the candidate failing to obtain the requisite majority or of the negative vote of a permanent Member upon a resolution so to recommend."³⁸⁶

During the cold war, a substantial number of vetoes cast was in respect to membership application, fueling in the process the call for a limit to the veto. Of the 283 vetoes cast in the Security Council thus far, that is from 1946 to September, 1997, 59 applied to membership applications.³⁸⁷ However, it is important to note that an overwhelming majority of the vetoes (55) occurred between 1945 and 1970 during the height of the cold war. Since 1970, the veto has only been exercised four times with respect to membership application, and the last time a membership application was vetoed was the United States' veto of the membership application of South Vietnam in 1976. The application was sponsored by the Soviet Union, France, and China.³⁸⁸

In light of this development, would the proposed elimination of the veto as to membership application translate to a real limitation on the powers of the Security Council, or would it just remain a symbolic gesture, considering the high probability that the exercise of the veto to membership application will eventually

³⁸⁵ Id.

³⁸⁶ International Court of Justice, Reports of Judgments, Advisory Opinions and Orders (1950), pp. 4-11.

³⁸⁷ Anjali, *supra* note 53, p. 467.

³⁸⁸ S/12226, (15 November 1976) 1972nd. meeting of the Security Council. Membership Application of Socialist Republic of Vietnam sponsored by China, France, Soviet Union and others was vetoed by the United States. A previous application by South Vietnam sponsored by the Soviet Union and China was also vetoed by the United States (30 September, 1975) S/11832.

become obsolete through non-use?

Additionally, as the debate on the issue of limiting the veto continues, it may be necessary to consider whether the Organization has benefited in any way from the application of the veto to membership questions, such that it will be to the advantage of the U.N. to continue with the existing practice. For instance, what might have happened to the U.N. if Vietnam and Angola had been admitted to the United Nations over the objection of the United States; Italy admitted over the objection of the Soviet Union; and, Mongolia admitted in spite of China's objection.

2. The Question of Chinese Representation

Closely related to the membership question is the issue of representation. The question of Chinese representation revolved around whether the representative of Nationalist China should continue to represent China, as it has done since the inception of the U.N., or whether the Nationalist's delegates should be replaced by delegates of the Chinese Communists at the Security Council.

The root of the problem can be traced to the Sino-Japanese war which started when the Japanese invaded the Manchurian cities on the night of 18, September 1931 and set up a puppet government, so-called "Manchukuo", in the occupied cities in total disregard of the wishes of the local community.³⁸⁹ The Sino-Japanese war,³⁹⁰ which ended with Japan's unconditional surrender on 14 August, 1945, was accompanied by two events which would later jeopardize lasting post-war cooperation among the Major Powers.

First, was the fact that the Soviet army, which was an ally of the Chinese in

³⁸⁹ China and the United Nations, *Report of a Study Group set up by the China Institute of International Affairs*, p. 7 (1959). Published for the Carnegie Endowment for International Peace, citing Lord Lytton's report to the League of Nations on the situation in Manchuria.

³⁹⁰ For arguments in support of the proposition that the League's failure to curtail Japanese aggression against China led to the Second World War, see Henry L. Stimson and McGeorge Bundy, *On Active Service in Peace and War* (New York: Harper & Bros., 1948), pp. 220; Winston S. Churchill, *The Second World War: The Gathering Storm* (Boston: Houghton Mifflin Company, 1948), p. 88.

the war against Japan, was in complete control of Northeast China, as well as having at its disposal the arms and military equipment of Japan's powerful Kwantung Army which had just surrendered to the Russians. And second, although the Chinese Communists had fought on the side of the Chinese Nationalists against Japan, they --the Communists-- had formulated a post-war policy which was to be carried out in three stages, resulting in the overthrow of the Nationalist government.³⁹¹

Following the overthrow of the Nationalist government, the Chinese Communist party established, on 1 October 1949, the Central People's Government of the People's Republic of China in Peking, to which the Soviet Union accorded recognition two days later.³⁹² Subsequently, the Nationalist government, which had been driven off the mainland to Taiwan (Formosa) by the Communists, established its seat in Taipei on 8 December 1949.³⁹³ The problem however was that the Nationalist government which had represented China at the San Francisco Conference and represented China at the U.N. since its inception, continued to represent China at the Security Council, even after it has ceased to exercise control over a substantial portion of the Chinese territory, the mainland.

Thus, in early January 1951, the new regime began its attempt to replace the Chinese Nationalist delegation in the United Nations. At the 459th meeting of the Security Council on 10 January 1951, the Soviet representative, for the first time, raised the question of Chinese representation and challenged the right of the representative of Nationalist China, Dr. Tingfu F. Tsiang to represent China.³⁹⁴

The Soviet representative informed the Council that his government

³⁹¹ *Documents on the Problem of the Chinese Communist Party*, published in Chungking 1944 by the Supreme National Defense Council.

³⁹² For details, see *China and the United Nations*, p. 16.

³⁹³ *Id.*

³⁹⁴ U.N. Security Council, *Repertory of Practice*, (1946-51), Representation and Credentials (rules 13-17) Case 19, p. 15.

supported the position taken by the Government of the People's Republic of China in considering that "the Kuomintang delegation" was illegal and in demanding its expulsion from the Council.³⁹⁵ On 13 January, the Soviet proposal was put to the vote in the Security Council and it was rejected by a vote of 3 in favor, 6 against, and 2 abstentions.³⁹⁶

Thereupon, the Soviet representative, Mr. Y. A. Malik, walked out of the Security Council, stating that the USSR would not return until "the representative of the Kuomintang group... has been removed..." and that the USSR would not recognize decisions of the Security Council adopted with the participation of the delegate of Nationalist China.³⁹⁷ So important was this issue to the Soviets, that they boycotted the U.N. for seven-months, from January 13 to July 31 1950.

Upon its return to the U.N., the Soviets continued in its attempt to have the delegates of the Chinese Communists represent China on the Security Council. At the 480th meeting of the Security Council on August 1, 1950, the Soviet representative, attempted to remove the representatives of the Chinese Nationalists from the Security Council, by ruling that "the representatives of the Kuomintang group seated in the Security Council does not represent China and cannot therefore take part in the meetings of the Security Council."³⁹⁸

The ruling was challenged by the British representative in the Security Council, and was subsequently defeated when put to the vote.³⁹⁹ The issue was finally "resolved" in 1971 when the General Assembly adopted a resolution⁴⁰⁰ by which it recognized the Government of the People's Republic of China as the lawful representative of China.

³⁹⁵ S/1443, 459th meeting : p. 3.

³⁹⁶ Official Records of the meetings of the Security Council, 461st meeting: p. 9.

³⁹⁷ Id.

³⁹⁸ U.N. Security Council, *Repertory of Practice*, (1946-51) p. 16.

³⁹⁹ Official Record of the meeting of the Security Council, 480th meeting: p. 9 The President's ruling was put to the vote and overruled by 3 votes in favor and 8 against.

⁴⁰⁰ GA Res. 2758 (XXVI), 25 October, 1971.

The aforementioned General Assembly resolution, however, did not bring closure to the question of Chinese representation. The question of "Taiwan's representation remained on the agenda of the General Assembly until the forty-eighth session (1993) when the General Committees of the Assembly finally decided to remove the issue from the agenda."⁴⁰¹ However, the issue of Taiwan's representation has continued to be brought up under a different agenda item entitled: "Implementation of the Resolutions of the United Nations."⁴⁰²

In July of 1996, the European parliament passed a resolution on "Taiwan's role in international organizations" which advocates Taiwan's participation in some international organizations.⁴⁰³ Also, during the general debate of the fifty-first session of the General Assembly on agenda item 48 (Strengthening of the United Nations System) the permanent representative of the Solomon Islands, claiming to be speaking on behalf of the Republic of China in Taiwan (ROC), requested the Assembly to consider the ROC's interest to "... enlarge its already sizable contribution to the developing world and to protect the rights of its 21.4 million people through the Organization."⁴⁰⁴

During the same session, 16 countries submitted a proposal to the United Nations concerning the "representation of the Republic of China (ROC) within the Organization,"⁴⁰⁵ recommending amongst others, that the General Assembly establish "an ad hoc committee to consider how the ROC could enhance its

⁴⁰¹ See, Letter dated 16 October 1996 from the Permanent Representative of China to the U.N., A/51/526, para. 6 [hereinafter Chinese Letter to the U.N.].

⁴⁰² See for instance agenda item 54 of the fifty-first regular session of the General Assembly, A/51/100/Add.2, p. 13. This item was included in the agenda of the thirty-seventh session of the General Assembly, in 1982, at the request of Cyprus (A/37/245), it has remained on the agenda since then. See decisions 37/457, 38/459, 39/465, 40/470, 41/470, 42/402, 43/421, 44/458, 45/454, 46/444, 48/438, 50/457, and Doc. A/51/100, p. 4, 74. However, debates on this item has not been limited to the question of Cyprus. See also debates on agenda item 48 (Strengthening of the United Nations System) of the fifty-first session, in particular U.N. Doc. A/51/781.

⁴⁰³ See, Doc. A/51/526, p. 3, para. 5.

⁴⁰⁴ U.N. Doc. A/51/781, page 1 [hereinafter Solomon Island's letter].

⁴⁰⁵ A/51/223.

contribution to the international community through the United Nations System."⁴⁰⁶

On 18 September 1996, the permanent representative of the Solomon Islands, speaking in support of the 16-nation proposal, made a statement before the General Committee of the fifty-first session requesting the inclusion of an agenda item in the fifty-second session, that would "permit a debate on how the ROC, committed to reunification with the PRC, could in the interim increase its contribution to the international community through the work of the United Nations."⁴⁰⁷

The 16-nation proposal drew sharp protest from the government of the PRC, and was criticized in a statement issued by the Ministry of Foreign Affairs (sic) of the ROC. In a letter addressed to the U.N. Secretary General, the permanent representative of the PRC, commented that at the general debate of the fifty-first session of the General Assembly, "representatives of a very small number of countries ... openly brought up the question of the so-called Taiwan's representation at the U.N. and advocated 'two Chinas', 'one China, one Taiwan' and 'one country, two seats' in their statements."⁴⁰⁸

The letter considered as "untenable and absurd,"⁴⁰⁹ the argument for Taiwan's representation at the U.N. based on the model of "parallel representation" similar to that which allowed East and West Germany on one hand, and North and South Korea on the other hand to become members of the U.N.⁴¹⁰ In the same letter, the Chinese government also charged the European parliament of attempting to

⁴⁰⁶ Id., *see also*, Solomon Island's letter, *supra* note 404, p. 1.

⁴⁰⁷ A/51/863, p. 2. The attempt to include in the agenda of the Assembly an item concerning the "Question of Representation of Taiwan" has so far been unsuccessful.

⁴⁰⁸ Chinese Letter to the U.N., *supra* note 401, para. 1.

⁴⁰⁹ Id., para. 3.

⁴¹⁰ Id., para. 3. The statement by the representative of the PRC emphasized the fact that whereas the division of Korea in to North and South Korea, and the division of Germany in to East and West Germany were "brought about by international agreements at the end of the Second World war," the same could not be said for the question of PRC and ROC, and therefore the "parallel representation" argument is inapplicable to the attempt by the ROC to become a member of the U.N. Id.

"deliberately undermine the friendly relations between China and Europe, when in July 1996 it passed a resolution on "Taiwan's role in international organizations."⁴¹¹

In conclusion, the government of the PRC advised the "small number of countries not to be hoodwinked by the attempt of the Taiwan authorities, to strictly observe ... resolution 2758 (XXVI) and ... to stop interfering in China's internal affairs." Otherwise, the letter continued, "they [the small number of countries] will find themselves in an awkward position in the international community while enjoying no benefit whatsoever themselves."⁴¹²

On 24 July 1996, the Ministry of Foreign Affairs (sic) of the ROC issued a statement criticizing the 16-nation proposal. Contrary to the observation in the letter by the PRC protesting the 16-nation proposal, that Taiwan has never been a sovereign State and could therefore not join the U.N.,⁴¹³ the statement by the ROC maintained that "Since its establishment in 1912, the ROC has always been a sovereign State" adding that, "Although the territory under the ROC's jurisdiction diminished as a result of civil war in mainland China which led to its relocation to Taiwan in 1949, the ROC's statehood was never interrupted."⁴¹⁴

Furthermore, the statement challenged the letter by the PRC that the adoption of General Assembly resolution 2758 (XVII) on 25 October 1971 "clearly and unequivocally recognizes that the representatives of the government of the PRC are the only lawful representatives of China to the United Nations,"⁴¹⁵ arguing that resolution 2758 (XVII) "... did not, in any way, constitute a complete solution to the issue of China's representation resulting from China's division in 1949."⁴¹⁶

Because the ROC is not a member of the U.N., its response could not be

⁴¹¹ Id., p. 3, para. 5.

⁴¹² Id., p. 3, para. 6.

⁴¹³ Id., In support of this position, the government of the PRC cited article 4 of the Charter which provides that "only sovereign States are entitled to seek membership in the United Nations."

⁴¹⁴ A/51/781, annex.

⁴¹⁵ A/51/526, pp. 2-3, para. 2.

⁴¹⁶ A/51/781, annex.

circulated as a document of the General Assembly, unlike the letter of 18 October 1996 by the PRC to the U.N., through the Secretary General, protesting the 16-nation proposal. Nonetheless, in response to the letter by the representative of the PRC to the Secretary General protesting the 16-nation proposal, the representative of the Solomon Islands wrote a letter to the Secretary General expressing support for the 16-nation proposal, and seized the opportunity to recirculate the statement issued by the "Ministry of Foreign Affairs" of the ROC by attaching the full text of the statement as an annex to his letter.⁴¹⁷

As expected, this action by the government of Solomon Islands, in particular the recirculation of the statement issued by the "Ministry of Foreign Affairs" of the ROC elicited a scathing response from the PRC. On 30 January 1997, the permanent representative of the PRC wrote a letter addressed to the Secretary General, stating that "There is only one China in the world... Taiwan is but a province of China, and has never been a sovereign State" and that "attempts by the Taiwan authorities to join the United Nations are in the final analysis aimed at splitting China, creating two Chinas, one China, one Taiwan, and the independence of Taiwan."⁴¹⁸ Further, the PRC maintained that "Support by any country or individual for the secessionist activities of the Taiwan authorities constitute an obstacle to the *peaceful* reunification of China and is therefore bound to meet with *strong opposition from the Government and people of China* ..." ⁴¹⁹ (emphasis supplied)

In the same vein, the government of the PRC, which to its credit has the second lowest number of vetoes, considered the question of Taiwan's recognition by any State so important that it vetoed a draft Security Council resolution to deploy military observers to Guatemala.⁴²⁰ In explaining the veto, the Chinese

⁴¹⁷ See, A/51/781, pp. 3-4.

⁴¹⁸ See Letter dated 30 January 1997 from the Permanent Representative of China to the United Nations addressed to the Secretary General, U.N. Doc. A/52/69, p. 1, paragraphs 1 and 2.

⁴¹⁹ Id.

⁴²⁰ See U.N. Doc. S/1996/1045 and Adds. 1 and 2, 10 January 1997.

representative accused the Guatemalan Government of providing Taiwan authorities with a venue for secessionist activities against China by inviting Taiwan to the signing ceremony of the peace agreement in Guatemala in total disregard of China's warnings.⁴²¹

Even in the absence of any debate on the question of Taiwan's representation at the U.N., the Chinese government has never wavered in expressing the view at the U.N. that "There is only China in the world, and Taiwan is an inalienable part of Chinese territory. The Government of the People's Republic of China is China's legal Government and its sole representative in the United Nations."⁴²²

From the foregoing, there seems to be little doubt about how important the issue of Taiwan's attempt to seek membership in the United Nations is to the PRC. In fact, the PRC has recently warned that "Should the Taiwan authorities, bent on having their way, continue to carry out activities aimed at splitting China, there are bound to be *tensions in the Taiwan Straits*, posing a threat to peace, stability and development in the Asia-Pacific region and the world as a whole."⁴²³ (italics mine)

It is therefore highly unlikely that the PRC will not veto any proposed amendment to the Charter which excludes the veto from Security Council decision on application for membership in the U.N, thus reducing an examination of any such proposal to mere academic exercise. In fact, it could be said that any attempt to eliminate the veto from the determination of membership application would suffer the same fate which the government of the PRC maintains await "the

⁴²¹ Security Council Press Release, SC/6311, 3730th Meeting 10 January 1997. Eventually, at its 3732nd meeting on 20 January 1997, the Security Council adopted resolution 1094 (S/Res/1094) which amongst others, "... authorized, for a three-month period, the attachment to the United Nations Mission for the Verification of Human Rights and of Compliance with the Comprehensive Agreement on Human Rights in Guatemala (MINUGUA), of a group of 155 military observers and requisite medical personnel for the purposes of verification of the agreement on the definitive cease fire..." Id., para. 1. Having made its point, China did not object to the adoption of resolution 1094.

⁴²² *Official Records of the General Assembly, Fiftieth Session, Plenary Meeting, 39th. meeting, (24 October, 1995)*, p. 10.

⁴²³ U.N. Doc. A/51/526, p. 2, para. 4.

intransigent attempt of the Taiwan authorities to split the motherland." It is "doomed to fail."⁴²⁴

In conclusion, the idea that membership in the U.N. has somehow reached its maximum, does not answer the question whether the veto should be inapplicable to a Security Council decision on membership application in the U.N. Rather, a more relevant question is whether there exists today, conditions which could lead to the break up of some States and a subsequent application by the breakaway State(s) for membership in the United Nations? And, much more importantly, in such a case, would any of the permanent Members consider it in its national interest to deny membership in the United Nations to such a new state failing which it might consider withdrawing from the U.N? The ROC is a case in point, and looming in the background is the question of Chechnya.

⁴²⁴ A/52/69, p. 2, para. 4.

VII. The Security Council

(a) Functions and Power of the Security Council

Pursuant to Article 24 of the UN Charter, the members of the UN have conferred on the Security Council the primary responsibility for the maintenance of international peace and security. The functions of the Council fall under two main headings: pacific settlement of disputes;⁴²⁵ and enforcement action with respect to threats to the peace, breaches of the peace, and acts of aggression.⁴²⁶

Upon a determination of a threat to peace, Article 39 lays down the responsibility of the Council in responding to a threat to the peace in what appears to be mandatory language:

'The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations or decide what measures shall be taken in accordance with Articles 41 and 42 to maintain or restore international peace and security.'

The responsibilities of the Council under this article are twofold: (1) to determine the existence of a threat to the peace, breach of the peace, or acts of act of aggression; and, (2) to make recommendations and decide on measures to maintain international peace and security.

Notwithstanding the implications of the terms of Article 39 and the statements of some Member States on various occasions that the Council is under a duty to make a determination under Article 39, whenever any aggression occurs,⁴²⁷ the wide margin of discretion the Council enjoys in carrying out its responsibilities and the practice of the Security Council over nearly half a century make it clear that the Council is not under any *legal* obligation to decide whether a given situation

⁴²⁵ U.N. Charter, ch. VI, Articles 33-38.

⁴²⁶ U.N. Charter, ch. VII, Articles 39-51.

⁴²⁷ Although Article 39 states that the Security Council shall determine the existence of a threat to the peace, breach of the peace, or act of aggression, the east-west rivalry of the cold-war incapacitated the Council in making such a determination. Even when the Assembly drew the Council's attention to situations which it deemed a "threat to the peace" the Council did not accept the Assembly's characterization of the situations. See for example General Assembly resolution on South West Africa: GA Res. 1899(XVIII), Nov. 13, 1963 and 2074(XX), Dec. 17, 1965; on South Africa: GA Res. 2054(XX), Dec. 15, 1965; on Rhodesia: GA Res. 2022(XX), Nov. 5, 1965; on the Portuguese territories: GA Res. 1742(XVI), Jan. 30, 1963.

falls within the terms of Article 39, or to take any enforcement action or make recommendations when it in fact has made such a determination.⁴²⁸

The existence of the veto power and the requirement that action on substantive questions cannot be undertaken without the affirmative votes of nine of the fifteen Members of the Council is another clear indication that the Council is not legally required to make any assessment or take any action with regard to any situation, outbreak of hostilities or even flagrant act of aggression.⁴²⁹ The Security Council is not bound by any definition or formula as to what constitutes a threat to or breach of the peace or act of aggression.⁴³⁰

During the San Francisco Conference, the question of the limits of the Council's discretion in making determinations under Article 39 and taking preventive or remedial enforcement measures was the subject of considerable discussion.⁴³¹ In a statement by the Rapporteur of the Committee of the San Francisco Conference which dealt with the role and powers of the Security Council,

⁴²⁸ See H. Nelsen, *The Law of the United Nations* (1951), pp. 733-737. See also Schachter, *International Law in Theory and Practice*, at p. 391.

⁴²⁹ This has not prevented the Assembly from attempting to take action on what will qualify as substantive issues. The frustration with the Council's failure or inability to make a finding of threat to peace even where the Assembly one exists, led the Assembly to pass the Uniting For Peace resolution, GA Res. 377(V), Nov. 3, 1950, in which the Assembly asserted its authority to recommend collective measures in the event of a breach of the peace or act of aggression whenever the Council failed to exercise its primary responsibility because of disagreement among the permanent members. Thus, for example, the Assembly made a finding of aggression in the case of Communist Chinese military intervention in Korea after the Council found itself unable to act. GA Res. 498(V), Feb. 1, 1951.

⁴³⁰ T.D. Gill, *Legal and some Political Limitations on the Power of the U.N. Security Council to Exercise its Enforcement Powers Under Chapter VII of the Charter*, Netherlands Yearbook of International Law, Vol. XXVI (1995), pp. 33-138, who makes a compelling argument for a need for limits on the enforcement powers of the U.N. Security Council, [hereinafter T. D. Gill]. At the San Francisco conference, a number of amendments were proposed to limit the very wide discretion which, in the Dumbarton Oaks proposals, is left to the Council in determining the existence of a threat to the peace and what action, if any, to take, and to make more precise the Council's obligations. The Committee set aside all the proposed amendments. See Selected Documents, *supra* note 71, p. 763.

⁴³¹ U.N.C.I.O., Vol. 12, pp. 502-514 and 578 et seq., wherein proposed amendments and comments by various States regarding Chapter VIII, Section B of the Dumbarton Oaks Proposals by the Four Sponsoring Powers are contained. Chapter VIII, Section B of the Dumbarton Oaks Proposals corresponds to the present Chapter VII of the Charter. Art. 44 of the Charter was added to the Charter at the behest of various medium and small States to ensure their participation in Council decisions affecting the utilization of their armed forces. In this respect, see, U.N.C.I.O. Vol. 12, p. 303, p. 316.

the powers and discretion of the Council were characterized as follows:

'Wide freedom of judgment is left [to the Council] as regards the moment it may choose to intervene and the means to be applied, with the sole reserve that it should act "in accordance with the purposes of the Organization". It is for the Council to determine the danger of aggression or act of aggression ... following which it has its recourse to recommendations, or coercive measures.'⁴³²

The above statement fairly sums up the outcome of the San Francisco Conference with regard to the scope of the Council's discretion to make determinations relating to the provisions of Article 39 and to take --or abstain from taking-- any action it deems necessary or expedient to maintain or restore the peace. The sole limitation aside from those contained in Article 27 relating to the necessary number of votes and the veto power of the Permanent Members relating to decisions on substantive questions, is that the Council's actions must be 'in accordance with the Purposes of the Organization.'

(b) What constitutes "Threat to Peace"

In its practice since 1945, the Security Council has exercised its discretion in determining what poses a threat to the peace in a wide variety of situations.⁴³³ The unilateral declaration of independence by Rhodesia,⁴³⁴ and the internal racial policies of South Africa,⁴³⁵ were considered, after initial hesitation and resistance by some members of the Council, to constitute threats to the peace. More recently the Council has determined, *inter alia*, that Libya's alleged support for State sponsored terrorism and the refusal to hand over persons suspected of involvement in the

⁴³² U.N.C.I.O. Vol. 12, p. 572 (Statement of Rapporteur M. Joseph Paul Boncours at the opening meeting of the committee entrusted with the drafting of the enforcement provisions of the Charter).

⁴³³ Attempts were made in San Francisco to distinguish between cases of threats to the peace in which case it was proposed that the Council would have latitude to judge whether it should or should not apply enforcement measures, and the cases involving actual breach of the peace or act of aggression, in which Council should be obliged to take enforcement actions. The Committee however believed that although the amendment "had the merit of clarity," it might actually endanger the Council's free discretion as proposed in the text of Dumbarton Oaks. See Selected Documents, *supra* note 71, p. 764.

⁴³⁴ S.C. Res. 232, (16 December 1966).

⁴³⁵ S.C. Res. 418, (4 November 1977).

destruction of a Pan-Am airliner over Lockerbie, Scotland,⁴³⁶ the breakdown of governmental authority and widespread loss of life and humanitarian situation in Somalia,⁴³⁷ and the internal situation in Haiti and resulting massive flow of refugees to surrounding States,⁴³⁸ are examples of situations constituting threats to the peace requiring the implementation of enforcement measures.

While it is true that the Council's demonstrations in some of these situations in particular those relating to Somalia and Haiti, were carefully conditioned on the existence of 'special circumstances' and were not to be seen as constituting precedents, it is equally true that the Council's discretion to determine the existence of a threat to the peace is virtually unlimited. The Council has the power to characterize situations relating to internal disturbances, human rights violations, civil conflicts or (conceivably) the acquisition by a State of nuclear or other weapons of mass destruction, as threats to the peace.

Even the refusal of a government or opposition group to accept the results of an election can be deemed to constitute a threat to the peace -- at least where it involves the outbreak of hostilities between contending factions or causes some aggravation of international tension, significant refugee flows or other (potential) cross-border effects.⁴³⁹ Needless to say that this has far reaching implications for State sovereignty and has been the principal reason much of the criticism directed at the way in which some perceive the Council to have exceeded its authority in recent

⁴³⁶ S.C. Res. 748, (31 March 1992).

⁴³⁷ S.C. Res. 794, (3 December 1992).

⁴³⁸ S.C. Res. 841, (16 June 1993). The sanctions against Haiti were terminated by S.C. Res. 944 (29 September 1994). In addition to the instances named as examples of situations constituting a threat to the peace in this paragraph, the Council has also determined that a threat to the peace exists in the former Yugoslavia, in Liberia and in Angola.

⁴³⁹ Theodor Meron, *International Criminalization of Internal Atrocities*, 89 Am. J. Int'l L. 554 (1993). See also, James Crawford, *The ILC adopts a Statute for an International Criminal Court*, 89 Am. J. Int'l L. 554, (1993) (arguing that what is needed is a uniform and definite corpus of international law that can be applied apolitically to internal atrocities everywhere, and that recognizes the role of states in vindication of such law).

decisions.⁴⁴⁰

Sanctions have also been imposed in relation to the situation in Somalia,⁴⁴¹ against Libya,⁴⁴² following its refusal to surrender two individuals suspected of involvement in the destruction of a Pan-Am airliner over Lockerbie, Scotland in 1988, while an arms embargo has also even imposed upon Liberia,⁴⁴³ and Angola,⁴⁴⁴ in reaction to the continuing civil conflict in those countries.

(c) **Pacific Settlement & Collective Security Enforcement Action**

Chapter VII of the Charter entitled 'Action with Respect to Threats to the Peace, Breaches of the Peace and Acts of Aggression,' embodies the Charter Collective Security System in conjunction with Art. 24 of the Charter which confers primary responsibility for the maintenance of international peace and security upon the Security Council. Chapter VI of the Charter grants the Council wide powers of preventive diplomacy and peaceful settlement, including traditional consensual peacekeeping.

Chapter VI is related to the second of the purposes stated in Art. 1(1) of the Charter, viz., the peaceful settlement of disputes, while Chapter VII relates to the first of the stated purposes of the Organization referred to in Art. 1(1), namely the maintenance of international peace and security through the taking of effective collective measures 'for the prevention and removal of threats to the peace, and for the suppression of acts of aggression and other breaches of the peace.' While the two

⁴⁴⁰ For comments on the desirability of a power of 'judicial review' by the Court of Council decisions, see T.M. Franck, 'The Powers of Appreciation: Who is the Ultimate Guardian of UN Legality?', 86 Am. J. Int'l L. (1992) p. 519 et seq.; B. Graefrath, 'Leave to the Court What Belongs to the Court: The Libyan Case', 4 EJIL (1993) p. 184 et seq.; UN Checks and Balances, 'The Roles of the ICJ and the Security Council', remarks made by T.M. Franck and T.D. Gill at the 1993 Joint Conference of the American Society of International Law and the Nederlandse Vereniging voor International Recht at the Hague, 23 July 1993, *Contemporary International Law Issues: Opportunities at a time of Momentous Change* (1994) pp. 280-286.

⁴⁴¹ S.C. Res. 733, (23 January 1992).

⁴⁴² S.C. Res. 746, (31 March 1992) and S.C. Res. 883 (11 November 1993).

⁴⁴³ S.C. Res. 788, (19 November 1992).

⁴⁴⁴ S.C. Res. 864, (15 September 1993).

functions are clearly related, they are nevertheless generally considered to be distinct and subject to different legal regimes. The exercise of functions under Chapter VI is governed by general international law. Enforcement measures under Chapter VII are governed by the Purposes and Principles of the Organization.⁴⁴⁵

Article 42 of the Charter provides for the Security Council to take such action by military forces as may be necessary to maintain or restore international peace and security. Such action may be taken if the Council considers that non-military measures under Article 41 would be inadequate or have proved to be inadequate. Such military measures may include demonstrations, blockades and other operations by the armed forces of Members of the United Nations.

The coercive element involved in enforcement operations in general and military enforcement operations in particular, is the essential distinction between these and other UN activities in which military personnel or forces are employed, such as peacekeeping, humanitarian assistance and relief, or preventive diplomacy. The latter are characterized by an element of consent in their deployment, by the observance of impartiality and by restrictions in the use of force to a strictly defensive or protective response to an immediate threat.⁴⁴⁶

None of these characteristics apply to military enforcement measures, which are neither consensual nor impartial in nature, and which involve the use of armed force in a coercive capacity at varying levels of intensity, depending upon the nature and scope of the Council's mandate and the type of objective to be achieved. In short, military enforcement measures are traditional military operations carried out within a specific context, the Charter collective security system, for the specific purpose of compelling the target State(s) or entity to comply with the directions of

⁴⁴⁵ See T.D. Gill, *supra* note 430, p. 64.

⁴⁴⁶ See, D. W. Bowett, *United Nations Forces* (1964) p. 267-268; N. D. White, *Keeping the Peace* (1993) pp. 199-206; and, the ICJ's judgment in *Certain Expenses*, ICJ Rep. (1962) p. 151 et seq., especially at pp. 170-171, 175-177.

the Security Council.⁴⁴⁷

The statement that the Council is not bound by legal considerations in exercising its discretion under Article 39, and that the legal rights of States may be infringed upon or suspended by the Council in the application of collective enforcement measures is borne by the Charter and by the *travaux préparatoires* of the Charter, as well as by authoritative writers on the subject.⁴⁴⁸ Article 1(1) of the Charter is of particular relevance in this respect and merits quotation in full:

'Art. 1. The purposes of the United Nations are:

(1) To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and

(2) to bring about by peaceful means and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace.'

This dichotomy in the functions of the Council could be characterized thus: Article 1(1) recognizes two paths to be followed in achieving international peace and security. One is the path to collective measures; the other is that of peaceful settlement or accommodation. It is significant that, at San Francisco, the major powers refused to accept an amendment to the Dumbarton Oaks Proposals requiring that collective measures be taken in accordance with international law and justice, on the grounds that this would tie the hands of the Security Council to an undesirable extent and that, in any case, the object of collective measures was to prevent or suppress the use of armed force, and not to achieve a settlement.⁴⁴⁹

However, they were willing to accept an amendment to the Dumbarton Oaks text providing that adjustment or settlement of international disputes should be "in conformity with the principles of international law and justice." It was intended

⁴⁴⁷ Id.

⁴⁴⁸ T.D. Gill, *supra* note 430, p. 65.

⁴⁴⁹ For the comments of the French Delegate at San Francisco, to the effect that the need for swift action to repel attack makes it imperative that the Council not be unnecessarily constrained, *see*, Selected Documents, *supra* note 71, p. 789.

thereby to provide a safeguard against the settlement of any dispute or the accommodation of any situation by the sacrifice of rights of small nations in the interest of a doubtful peace, as has been done at Munich in 1938.⁴⁵⁰

In carrying out its functions in the context of the peaceful settlement of disputes or adjustment of disputes the Council is subject to the constraints of 'international law and justice', that is to say it has no powers to override or restrict the rights of States under international law. In particular, it has no power to impose the means of settlement on any State or other entity involved in the dispute. Its powers are recommendatory and therefore not capable in themselves of creating legal obligations.

In exercising its authority to bring about a settlement of a dispute, the Council is specifically limited by the principles of international law and justice. Arts. 33, 36, 37 and 38 emphasize the recommendatory nature of the Council's powers in finding a settlement and the principle of free choice of means and relevance of international law to the terms of a settlement, even if the Council chooses to actively pursue a particular means of settlement of a dispute.

⁴⁵⁰ L.M. Goodrich, E. Hambro and A.P. Simons, *supra* note 17, p. 16. See also U.N.C.I.O., Vol. 6, pp. 452-453 (remarks by the President of the Commission M. Henri Rolin of Belgium). For texts of the proposed amendments see *id.*, p. 534 et seq. For the speeches of the delegates both for and against amending Art. 1 to include a reference to international law and justice in relation to the carrying out of collective enforcement measures and the voting record on the proposals see *id.*, pp. 1-23. It should be noted this was one of the most intensively debated provisions of the Charter and that the final voting regarding the inclusion of the proposed amendment resulted in an even split amongst the delegates (with 21 in favor, and 21 against, see p. 23). This was far short of the of the necessary two-thirds majority necessary for the adoption of the amendment. This should not disguise the fact, however, that there was in fact a majority in favor of inserting such amendment. Earlier votes in Committee 1 (charged with preparatory work on the Preamble, Purposes and Principles) had resulted in slight (19 for, 15 against) and larger (19 for, 12 against) majorities in favor of similar amendments. *Id.*, p. 12. Based on this earlier result, the matter was then brought before the full Commission (Commission I General Provisions). After numerous debates on this issue, a compromise was reached, with the Sponsoring Powers giving way in accepting the strengthening of the text of Article 1 by agreeing to the inclusion of the phrase 'in conformity with the principles of justice and international law' in relation to the peaceful settlement of disputes, while the smaller States in favor of the amendments gave up to their opposition to the original text of the Sponsoring Powers relating to collective measures 'for the prevention or removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace' when it became clear that the major powers would not give way on this issue and they could not achieve the necessary majority.

Article 39 specifically restricts the Council in its power to take binding measures to those contained in Articles 41 and 42, i.e., in the context of collective security measures for the maintenance or restoration of peace and not to measures aimed at providing a solution to controversies or settlement of disputes. Art. 40 gives the Council the power to take provisional measures, which under certain circumstances can be binding. But these measures, clearly by the text of Art. 40 may not prejudice the rights of or impose the terms of settlement upon the parties concerned.

In contrast, when the Council is acting in the context of maintaining or restoring international peace and security, particularly in the determination whether a threat to the peace exists, or a breach of the peace has occurred, and is deciding which measures are necessary to remove the threat or restore the situation it is not bound by legal considerations and, clearly, any enforcement measures it may decide upon will necessarily affect the rights of the transgressing State, as well as the rights of the third States.

These rights do not disappear, since the Council cannot impose a permanent settlement of a dispute or allocation of rights on any State, but they do come into abeyance to the degree and for as long as the Council determines is necessary to remove the threat, or restore the peace. This raises the question as to which legal limitations, if any, apply to the Council in the execution of its responsibilities as the collective security organ of the United Nations.⁴⁵¹

⁴⁵¹ For comments on the desirability of a power of 'judicial review' by the Court of Council decisions, See T.M. Franck, 'The Powers of Appreciation: Who is the Ultimate Guardian of UN Legality?', 86 Am. J. Int'l L. 519 (1992); B. Graefrath, 'Leave to the Court What Belongs to the Court: The Libyan Case', 4 EJIL (1993) p. 184 et seq.; U.N. Checks and Balances, 'The Roles of the ICJ and the Security Council', remarks made by T.M. Franck and T.D. Gill at the 1993 Joint Conference of the American Society of International Law and the Nederlandse Vereniging voor International Recht at the Hague, 23 July 1993, *Contemporary International Law Issues: Opportunities at a time of Momentous Change* (1994) pp. 280-286.

VIII. Is there a need to expand the Security Council

In order to answer the question whether there is a need to expand the Security Council, one needs to address three issues: (1) what are the challenges facing the world community today; (2) are these challenges different from those of 1945; (3) would an expansion of the Council be an obstacle or would it enable the U.N. to better address these new challenges.

On the occasion of the 50th anniversary of the U.N., former Secretary General Bhutros Bhutros-Ghali identified "globalization and fragmentation" as the "two great opposing forces which will confront the world in the twenty-first century." According to him, globalization will generate a number of problems including threats to the environment; growth of transnational crime; while the new global telecommunications revolution would threaten our concept of sovereignty. On the other hand, fragmentation can breed fanaticism, isolationism, separatism and the proliferation of civil war.⁴⁵²

Previously, in his Agenda for Peace, the former Secretary General identified areas for action which, "taken together, and carried out with the backing of all Members, offer a coherent contribution towards securing peace in the spirit of the Charter." This includes "Initiatives ... on the environment and sustainable development, on population, on the eradication of disease, on disarmament, and on the growth of international law."⁴⁵³

Since its establishment, the U.N. has sought to meet the various challenges to international peace and security. However, threats in the modern era differ from those that existed prior to the Second World War. While inter-State wars have become infrequent, there has been an increase in intra-State conflicts especially since the end of the cold war. It has actually being suggested that the fact that "some of the

⁴⁵² GA, 50th Sess., 35th plenary meeting, (22 Oct., 1995); and, U.N. Doc. A/50/PV.35, p.2.

⁴⁵³ Report of the Secretary General, *An Agenda for Peace, Preventive diplomacy, peacemaking, and peace-keeping*, U.N. Doc. A/47/277 - S/24111, (17 June, 1992), para. 22.

proxy wars fueled by the cold-war remains unresolved seems to have contributed to an outbreak of war in Africa."⁴⁵⁴ The figures on U.N. peacekeeping actions bear out this fact.

Of the five peace-keeping operations that existed in early 1988, four related to inter-state wars and only one (20 percent of the total) to an intra-State conflict. However, of the 21 operations established since then, only 8 are related to inter-state wars, whereas 13 (62 per cent) have related to intra-State conflicts, though some of them, especially those in the former Yugoslavia, have some inter-State dimensions also. Of the 11 operations established since January 1992, all but 2 (82 per cent) relate to intra-State conflicts.⁴⁵⁵ Equally significant is that unlike the Nuremberg and Tokyo trials in which the defendants were charged with inter-state criminal activities, defendants (scheduled to appear) before the International Tribunal for War Crimes in former Yugoslavia and Rwanda are being charged for intra-State criminal activities.

The challenges posed by the shift from inter-state conflict to an intra-State one will be discussed in another chapter dealing with what criteria should be adopted in selecting new permanent members, however at this point the writer would like to observe that the increase in intra-State warfare and the attendant multi-faceted crises associated with such conflicts, has led to more emphasis on conflict avoidance mechanisms such as preventive diplomacy and other confidence-building measures in the United Nations⁴⁵⁶. In the words of Secretary General Kofi Annan, "The United Nations of the twenty-first century must become increasingly a focus of preventive measures."⁴⁵⁷

The central role that preventive diplomacy would play in the post cold war

⁴⁵⁴ Supplement to "*An Agenda for Peace*," U.N. Doc. A/50/60 -S/1995/1, para. 10.

⁴⁵⁵ Id. at para. 11.

⁴⁵⁶ Id.

⁴⁵⁷ The Secretary General, *Statement to the Special Meeting of the General Assembly on Reform*, para. 110 (16 July, 1997). [<http://www.un.org/reform/track2/focus.htm#ENV>].

era was underscored by the fact that at the first post cold war meeting held by the Security Council at the level of Heads of State and Government on 31 January 1992, among other decisions, the then Secretary General was invited to prepare an "analysis and recommendations on ways of strengthening and making more efficient within the framework and provisions of the Charter the capacity of the United Nations for preventive diplomacy, for peacekeeping and for peace-making."⁴⁵⁸ The Agenda for Peace prepared by the Secretary general in response to this request has continued to play a crucial role in shaping the U.N. agenda.

In addition to increase in intra-State conflict, the second factor which threatens international peace and security is the proliferation of weapons of mass destruction. Just as inter-state conflicts have undergone changes, post cold war disarmament efforts now have to contend with two new factors. One is the fact that compared to 1945, more nations now have stockpiles of and/or the technology to develop weapons of mass destruction, and more importantly is the rise of non-state actors be they terrorists or fringe groups bent on wreaking destruction on innocent civilians and disrupting civil life in the process.

The "emergence of new dangers and actors has added new urgency to the tasks that the United Nations is called upon to play in the area of disarmament."⁴⁵⁹ Some of the new actors include "regional warlords, criminal syndicates and various terrorist groups who have in recent years become involved in trading with and acquisition of weapons of mass destruction."⁴⁶⁰

Although considerable progress has been made and important steps are being taken towards the reduction of biological and chemical weapons of mass destruction

⁴⁵⁸ U.N. Doc. S/23500. Five months later, in June 1992, the Secretary General submitted his report entitled "An Agenda for Peace," A/47/277-S/24111.

⁴⁵⁹ The Secretary General, *Statement to the Special Meeting of the General Assembly on Reform*," para. 124. [<http://www.un.org/reform/track2/focus.htm#ENV>].

⁴⁶⁰ Id.

through a variety of conventions,⁴⁶¹ the non-state actors are neither parties to the convention nor could world opinion prevail on them not to deploy these weapons should they have the means to produce it. In light of the incident in Japan where terrorists unleashed nerve gas in the subway and poisoned thousands, it is no surprise that "disarmament has become a central issue on the global agenda."⁴⁶² At their Summit on 31 January 1992, the members of the Security Council underscored their interest in and concern for disarmament, arms control and non-proliferation, with special reference to weapons of mass destruction.

Finally, the twin problems of environmental degradation and sustainable development have emerged as new challenges facing the world community. The environment, like peace, the economy, and democracy, permeates all aspects of development and has an impact on countries at all levels of development. "In the developing world, ecological pressure threatens to undermine long-term development. Among many countries in transition, decades of disregard for the environment have left large areas poisoned and unable to sustain economic activity in the long term. Among the wealthiest nations, consumption patterns are depleting world resources in ways that jeopardize the future of world development."⁴⁶³

While some of the issues raised by the need to preserve the environment are regional, such as the dispute between Canada and the U.S. on Pacific salmon fishing, others, such as the atmosphere and the oceans are global and demand urgent

⁴⁶¹ According to the Secretary General, the momentum towards nuclear disarmament has increased significantly with the signing of the Comprehensive Nuclear Test Ban Treaty and its endorsement by the General Assembly; the indefinite extension of the Nuclear Non-Proliferation Treaty (NPT); the establishment of the African Nuclear-Weapon-Free Zone. Other positive developments have been the entry into force of the Chemical Weapons Convention and the strengthening of the prohibition against biological weapons. *Id.* at para. 123. Another example is the 1993 Convention on the Prohibition of the Development, Stockpiling and Use of Chemical Weapons and on their Destruction Chemical Weapons Convention (CWC).

⁴⁶² *Id.* at para. 122.

⁴⁶³ Report of the Secretary-General, "*An Agenda for Development*," U.N. Doc. A/48/935, May 6 1994, para. 68.

multilateral action. Also deserving of international attention are cases in which certain resources belong to one country but in the interest of bio-diversity the international community demands a say in the management of those resources. A recent example is the decision by the international community to continue the ban on trade in elephant tusk. In such a case, the individual states are entitled to international cooperation for the preservation of the common legacy.

The above by no means captures all the new challenges facing the international community. Added to the list would be the "spreading of transnational networks of crime, terrorism, and drug trafficking"⁴⁶⁴ to name a few. In a sense, the challenges facing the world community today bear a striking resemblance to those of 1945. The challenges have taken on a different tone, new elements have been added, thus there is a need to develop more ways to meet post cold war challenges. But, would an expansion of the Security Council be helpful in meeting the challenges or would it be a hindrance.

The fact that membership in the General Assembly has grown from 114 in 1965 when the Security Council was last expanded, to a record 185 in 1997 is sufficient reason to expand the Security Council so as to be more representative. Furthermore, the "Security Council, after decades of stalemate, is now at the center of international efforts to maintain international peace and security."⁴⁶⁵ If "Council decisions are to be effective and endure, it follows that agreement among the permanent members must have the deeper support of the other members of the Council and the membership increased more widely."⁴⁶⁶

Of the three new threats to international peace and security none could be successfully addressed without cooperation at the multinational level. While

⁴⁶⁴ Secretary General's speech to the General Assembly on Reform, 16 July, 1997, para. 68. [<http://www.un.org/reform/track2/focus.htm#ENV>].

⁴⁶⁵ Id., para. 105.

⁴⁶⁶ Agenda for Peace, U.N. Doc. A/47/277 - S/24111, (17 June, 1992), para. 78.

environmental degradation may be local, its consequences are not always so constrained. Granted that drinking-water contamination may be local in effect, transborder industrial pollution often has regional effects, and damage to the ozone layer is global. There is, therefore, a need for multilateral response to address the problem of environmental degradation. The question of the environment and sustainable development, and the increase in intra-State conflicts all could be better addressed at the United Nations than at a local level.

According to a Yale University report,⁴⁶⁷ "with the end of the cold war, civic, ethnic, and territorial disputes have altered the nature of threats to security." Remarking that "no state by itself will be able to provide broad security for its people, the report concludes that, "Even the wealthiest and most powerful need to share the burden of common security and the responsibilities of bequeathing a better --or even a tolerable-- future to the next generations." In the same vein, it has been observed that "Modern threats challenge States and people indiscriminately. No one is immune from the effects of transnational crime, terrorism and trafficking in narcotics and nuclear materials. These problems do not respect national boundaries; States and societies cannot solve them individually. Indeed, interdependence benefits each State individually and sustains the whole."⁴⁶⁸

In the words of President Clinton, "We cannot free our own neighborhoods from drug-related crime without the help of countries where the drugs are produced. We cannot track down terrorists without assistance from other Governments. We cannot prosper or preserve our environment unless sustainable development is a reality for all nations. And our [U.S.] vigilance alone cannot keep

⁴⁶⁷ See, United Nations Studies at Yale University, "The United Nations in its Second Half-Century" 1997. [<http://www.clark.net/stimson/summary.htm>]. For similar observations, see, Russett Bruce et al, *The Once and Future Security Council*, (St. Martin's Press) 1997.

⁴⁶⁸ Address by President of the Republic of Latvia at the 50th. session of the General Assembly, A/50/PV. 36, p. 19, (22 Oct., 1995).

nuclear weapons stored half a world away from falling into the wrong hands."⁴⁶⁹

As the global community embarks on preventive diplomacy such as humanitarian or development related economic aid aimed at reducing the incidence of intra-State conflicts, some States would be called upon to provide financial assistance and/or in-kind support. It is submitted that it is crucial that States with the means and who have demonstrated a willingness and the capability to contribute, and have consistently been relied upon to contribute significantly to the maintenance of international peace and security be given a place on the Security Council.

(a) **The Need for an increase in Permanent Membership**

That the world has witnessed major economic and power shifts since 1945 is to state the obvious. It is sometimes said that, if the council is to reflect the current realities of power, other States should have permanent membership as well as the present Five or instead of some of them. The Charter provision on amendments, make the latter a fairy tale, as no permanent member is likely to vote itself out of the privileged position of permanent membership of the Security Council.⁴⁷⁰ The former, however, is quite possible and it is the possible rather than the impossible that will be examined here. There are two distinct aspects of the question of increase in the permanent membership of the Security Council, and these should be kept separate.

First, are there any States, in addition to the Five, whose contribution to the purposes of the United Nations is such that their full participation in the work of the Security Council is always needed? The Charter Article 23(3) was deliberately drafted so as to prevent continuous membership, with the exception of the

⁴⁶⁹ President Clinton's Address to the 50th. session of the General Assembly, U.N. Doc. A/50/PV. 35, p. 4.

⁴⁷⁰ U.N. Charter Art. 108 provides that any amendment of the Charter is subject to the veto of any of the five permanent members, thus making any reduction or removal of any permanent member of the Security Council subject to the approval or no-opposition of such action.

permanent members, by making a retiring State ineligible for immediate re-election. *Almost continuous* membership could be achieved, however, if a regional group were willing to support a particular candidate after its year of ineligibility, thus securing membership for two years out of three; but fully continuous membership would necessitate a revision of the Charter.⁴⁷¹

The second aspect concerns the veto, or rule of unanimity. Are there any States, in addition to the Five, whose interests are consistently such that they should have the right to prevent the Council from reaching substantive decisions or the Members from amending the Charter, by casting a negative vote? If the answer is 'yes', then, again, revision of the Charter would be needed. The most considered case for enlarging the Council is based upon the profound shifts in power since 1945, as well as the emergence of new structures of power. The Security Council is dominated by nuclear-wielding powers and rich industrialized nations of the North, which brings up the question whether only military and economic power should determine the capacity to make decisions in the Security Council.

In spite of the domination of the Security Council by the nuclear Powers, they, acting alone, cannot adequately prevent contemporary problems of nuclear proliferation.⁴⁷² The potential for massive destruction which awaits the human race in the event of a nuclear war, demands that the Security Council play a crucial role in the monitoring and enforcement of any nuclear Non-proliferation treaty. Further, the attempt to stop the horizontal proliferation of nuclear weapons, as it has been called, poses special problems for the non-nuclear states which are being asked to renounce the nuclear option and therefore seek assurances of protection in the event of nuclear threat or attack.

⁴⁷¹ *Report of the President's Commission for the observance of the twenty-fifth anniversary of the United Nations*, Washington D.C., Government Printing Office, 1971, p. 44; and, Evan Luard, *The United Nations in a New Era*, London, Fabian Society, 1972, p. 16.

⁴⁷² President Bill Clinton's address to the General Assembly, 50th. sess. A/50/PV. 35, 22 Oct., 1995, p. 4.

It is the writer's view that decisions on ways to reduce or prevent nuclear proliferation, including asking non nuclear states to renounce their rights to develop nuclear capability, is so important that it requires the participation of all interested parties⁴⁷³ or must at the very least, enjoy the support of all countries concerned. A decision made by a more representative and democratic Security Council has a much better chance of being acceptable to the United Nations at large, rather than one made by a minority chosen on the basis of the geo-politics of 1945.

If it is true, as some maintain, that the Council does not operate under democratic principles but on sheer power politics,⁴⁷⁴ then there is the need to recognize that power is not static; on the contrary, power is dynamic. Nations can move up and down on the power ladder, and there are some that can no longer, in fairness, claim their current preeminent position as permanent members of the Security Council.⁴⁷⁵

Power can no longer be confined to individual nation-states. Power is increasingly reflected in the strength of the region. If the major task of governments --big and small-- in the post cold-war era is the search for economic prosperity, then the emergence of regional economic groups such as APEC, NAFTA, COMASUR, clearly indicates that regionalism is an imperative that can no longer be ignored. There is no better way to reflect the growing importance, influence and power of regional groups than for equitable geographic representation of all the regions of the world in the Security Council.

⁴⁷³ Surprisingly, it is countries with nuclear capability (India and Pakistan for example) that are against conventions such as the Comprehensive Chemical Weapons Test Ban Treaty, and not non-nuclear possessing countries.

⁴⁷⁴ Ambassador Nugroho Wisnumurti, Permanent Representative of Indonesia to the U.N., "*The Security Council and the Future of the United Nations*," speech at the Institute of International Studies, University of California, Berkeley. [<http://globetrotter.berkeley.edu/un/wisnumurt1>. January 30, 1996].

⁴⁷⁵ Id.

(b) The need for an increase in Non-Permanent Membership

The Charter specifies that one of the criteria in the election of non-permanent members of the Council is "equitable geographical distribution." It is significant that the word *distribution* is used rather than *representation*,, thus, the non-permanent seats are to be shared equitably among the regions.⁴⁷⁶

Under Article 24 of the United Nations Charter, the Security Council acts on behalf of all U.N. Member States and therefore should be accountable to them in fulfilling its responsibility for the maintenance of international peace and security. Issues handled by the Security Council have a direct bearing on the interests of all countries, particularly those of the countries concerned and in the relevant regions. It is the "general desire and request of the entire membership that necessary measures be taken to make the Council's actions and decisions better reflect the collective will of Member States and better safeguard their interests, particularly those of the developing countries, which make up an overwhelming majority of United Nations membership."⁴⁷⁷

As presently constituted, the five permanent members of the Security Council all belong to the northern hemisphere, all five are nuclear powers, three of them are economically developed, while the other two are rapidly approaching industrialized status. To expand the permanent seat category by additional five seats, with two of the new seats going to the northern hemisphere would not be equitable or democratic. Rather than correct the existing imbalance, such a solution would aggravate it.⁴⁷⁸

⁴⁷⁶ It has been observed that because the Charter does not say that the members are to serve as *representatives* of a region or bloc, it would be expected that when it comes to casting a vote, a member will act on its own responsibility and not in accordance with a decision reached in private and in advance by some outside caucus. Nonetheless, no regional group has entirely avoided giving the impression of having at one time or another gone beyond what is proper in this regard. See, Bailey, S. D., *Voting in the Security Council*, (1969), p. 11.

⁴⁷⁷ Statement by the Chinese delegation at the General Assembly, 50th. sess., 59th. plenary meeting, A/50/PV. 59, (14 November, 1995), p. 9.

⁴⁷⁸ Italian delegate's introductory remarks to the OeWG, A/49/965, (15 May, 1995), p. 83.

The second reason for increasing the non-permanent category is that restricting the proposed increase to the permanent category will significantly dilute the influence of the non-permanent members. Presently, decisions of the Security Council on substantive issues requires an affirmative vote of 9 members (three-fifths of membership in the Security Council) including the affirmative votes of all the 5 permanent members.

At the San Francisco Conference, one of the arguments by the Sponsoring Powers in support of the veto was that even when the permanent members are united in making a substantive decision, they still require the additional votes of at least 2 non permanent members. In 1965, the additional votes of non permanent members required for the Council to decide on substantive matters was increased from 2 to 4, thereby increasing their influence on the Council.

However, if the proposed expansion was limited to the permanent category, the effect would be that 5 more permanent seats would be created, bringing the total membership to 20. The number of affirmative votes to decide on substantive matters would be moved from 9 to 12.⁴⁷⁹ Thus 10 permanent members acting together would require only 2 more votes from the non-permanent members to decide on substantive issues.

Finally, if one of the principal reasons for expanding membership of the Security Council is to take account of the increased membership of the General Assembly, then an increase of 5 permanent seats fails short of addressing the concern of the 73 additional members who have joined the United Nations since 1963 when the resolution expanding the Council was passed.⁴⁸⁰

⁴⁷⁹ The author assumes that the United Nations would continue to apply the "three-fifth" factor as required number of votes to decide substantive issues. At its inception, affirmative vote of 7 was required out of a total membership of 11. Although 7 is approximately 3/5th of 11, when the Council membership was increased to 15 in 1965, the number of affirmative votes was increased from 7 to 9 which is exactly 3/5th. of 15.

⁴⁸⁰ When the General Assembly passed 1991 (XVIII)A on 17th. Dec., 1963, there were 112 members. Today, the number has risen to 185, an increase of 73.

In 1945, there were 46 members competing for 4 non-permanent seats or to put it another way, on the average for every non permanent seat there were less than 12 States competing for it.⁴⁸¹ In 1965, when the amendment increasing non-permanent membership was ratified there were 9 non-permanent seats for 109 members, that is less than 11 members compete for one non-permanent seat. This was a slight improvement over the situation at the inception of the Security Council.

Today, for every non-permanent seat there is on the average 18 states in competition for it. If increase is limited to the permanent seat category and 5 permanent seats are created, the ratio of the number of states competing for one of the 10 non-permanent seats will decrease from 18 to 17.5. This change is so intangible, it will hardly lead to the goal of increasing the opportunity for other states to serve as non-permanent members of the Security Council. In contrast, an increase of 5 seats in both the permanent and non-permanent category will bring the ratio to what it was in 1945, less than 12 states to one non-permanent seat.

As at 1996, a total of 77 countries have never served on the Security Council, 44 others have been able to serve only once, 57 have served two or more terms,⁴⁸² including a few other states who have served more than six terms.⁴⁸³ If the Security Council is to wield the political and moral authority needed for its decisions to be effectively implemented, its composition cannot be perceived by the general

⁴⁸¹ The use of mathematical ratios in this paper is not to suggest that there is a direct correlation between the ratio of members to a seat and electability. It is used solely to put the issue in mathematical context, to paint a picture of electability under ideal condition. As we shall see later in this chapter, while mathematical ratio and statistical modeling may be a useful tool in predicting the outcome of events in other spheres of life, they have such predictive value in international politics, especially in the election of non-permanent members of the Security Council.

⁴⁸² See Italian proposal for the enlargement of the Security Council, A/AC.247/5 (g); and, A/49/965, pp. 90-91. As at the time of the Italian proposal, 79 countries had never served on the Council. Subsequently, Guinea-Bissau and Republic of Korea were elected to the Security Council for the 1996-1997 term, thereby reducing the number of states who have never served to 77. For details of the elections, see A/50/PV.53 (8 November, 1995).

⁴⁸³ Japan has been elected to the Security Council more than any other country a record 8 times, while Brazil follows with 7 terms on the Council, see A/AC.247/1996/CRP.4.

membership as imbalanced either in geographic terms or in terms of participation by industrialized and developing countries. If post cold-war United Nations is to fulfill the promise of creating a true global partnership for peace, the organ responsible for safeguarding international peace and security must be perceived as equitable, both in its permanent and in its non-permanent membership.⁴⁸⁴

An increase in the permanent membership of the Security Council limited to industrialized countries would not only aggravate present imbalances in regional terms, but would fail to acknowledge the increasing role played by developing countries in promoting peace and enhancing security. International relations have undergone significant changes in the past five decades, with the emergence of new political and economic Powers with a global reach. An increase in the Council's membership that fails to deal with these realities cannot be called a reform. A reform that fails to contemplate developing countries as permanent members cannot be called equitable.⁴⁸⁵

⁴⁸⁴ Brazilian delegates comment at the General Assembly, A/50/PV .59 p. 14.

⁴⁸⁵ Id.

IX. Previous and Current Attempts to Reform the Security Council⁴⁸⁶

The "Question of Equitable Representation on and Increase in the membership of the Security Council" was first included in the agenda for the thirty-fourth session of the General Assembly in 1979, at the request of Nigeria, Argentina, Bhutan, Guyana, Maldives, Nepal, and Sri Lanka.⁴⁸⁷

At that session, the Assembly decided to include the item in the provisional agenda of its thirty-fifth session and to transmit to that session the draft resolution submitted at the thirty-fourth session and related documents.⁴⁸⁸ However, the East-West rivalry of the cold war era prevented any meaningful discussion of the issue. Thus, at the thirty-fifth session and subsequent sessions, the General Assembly persistently decided to defer consideration of the item.⁴⁸⁹

As the Security Council has become a more active and effective institution with the passing of the cold-war, questions about its procedures and representativeness have become more acute. In 1992, the General Assembly passed a resolution⁴⁹⁰ to place on its agenda for the forty-eight session the "Question of equitable representation on and increase in the membership of the Security Council," and invited member states to submit written comments.

At its forty-seventh session, the General Assembly requested the Secretary General to invite Member States to submit, not later than 30 June 1993, written comments on a possible review of the membership of the Security Council; and also requested the Secretary General to submit to the Assembly at its forty-eight session a report containing comments made by Member States on the subject.⁴⁹¹ More than

⁴⁸⁶ There has always been interest in reforming the Security Council dating back to the San Francisco Conference. However, the author has chosen the first time the issue of the reform of the Security Council was included on the Agenda of the General Assembly as the starting point for this overview.

⁴⁸⁷ GA Decision 34/431, *Question of Equitable Representation on and increase in the membership of the Security Council*.

⁴⁸⁸ Id.

⁴⁸⁹ See Decisions 35/453, 36/460, 37/450, 39/455, 40/460, 41/469, 42/459, 44/460, and 46/418.

⁴⁹⁰ A/RES/47/62) of 11 December 1992.

⁴⁹¹ Res. 47/62.

100 states responded. In July 1993, as required by resolution 47/62, the Secretary General issued a report containing comments made by Member States on the subject⁴⁹²

At its forth-eight session, the General Assembly decided to establish an Open-ended Working Group (OeWG) to consider all aspects of the "Question of increase in membership of the Security Council, and other matters related to the Security Council; and requested the Working Group to submit a report on the progress of its work to the Assembly before the end of its forty-eight session."⁴⁹³ In September 1994, the Working Group submitted an interim report on the progress of work.⁴⁹⁴ The General Assembly decided that the Working Group should continue its work and submit a report to the Assembly before the forty-ninth session.⁴⁹⁵ Accordingly, the Working Group continued its work during 1995 and thereafter.

(a) The Mandate of the OeWG --Cluster I and II

The mandate of the Open-ended Working Group (OeWG) on the reform of the Security Council is defined in GA-Res. 48/26 of 3 December 1993 as follows: "To consider all aspects of the Security Council, and other matters related to the Security Council." The resolution recognized, *inter alia*, "the need to review the membership of the Security Council and related matters in view of the substantial increase in the membership of the United Nations, especially of developing countries, as well as the changes in international relations."

But their responses vary widely, and the Working Group charged by the General Assembly Resolution (A/RES/48/26) of 3 December 1993 with studying these recommendations has been unable to produce a final report. However, the OeWG has submitted interim reports on proposals for reform of the Security

⁴⁹² A/48/264 and Add. 1, 2 and Add. 2/Corr. 1 and Add. 3-10.

⁴⁹³ GA Res. 48/26.

⁴⁹⁴ U.N. Doc. A/48/47.

⁴⁹⁵ Decision 48/498.

Council submitted by member States. In its interim report to the General Assembly,⁴⁹⁶ the Working Group reiterated that its goal is to explore ways of reforming the Security Council in a manner which “strengthens its capacity and effectiveness, enhances its representative character and improves its working efficiency.” It further states that based on this mandate, its reform efforts are aimed at achieving a comprehensive and genuine reform, at the same time, of so-called Cluster II (“other matters related to the Security Council”) and Cluster I (“increase in the membership of the Security Council”) issues.

(b) Overview of the Working Group Interim Report⁴⁹⁷

1. On the Expansion of the Security Council

There appears to be a consensus among member States “on the need to strengthen the effectiveness of the Security Council by an increase in its membership, to reflect more accurately the important international changes that have taken place”⁴⁹⁸ since 1945. There was broad support for increase both in the permanent and non-permanent categories.⁴⁹⁹ It was recognized that the principles of sovereign equality of all Members of the United Nations and equitable representation as well as the concepts of transparency, legitimacy, effectiveness and efficiency should guide the work on the reform of the Security Council.

The composition and size of the Security Council

The proposals for the composition and size of a reformed Security council fall into three categories: First, there was broad support for an increase in both permanent and non-permanent membership. Second, a number of delegations expressed support for expansion only in the non-permanent category. Finally, others mentioned the idea of a quasi permanent or rotational permanent membership

⁴⁹⁶ U.N. Doc. A/49/965, pp. 4-17.

⁴⁹⁷ The material which appears in the overview of the OeWG interim report is contained in U.N. Doc. A/49/965, pp. 4-17.

⁴⁹⁸ Id., para. 3, at 5.

⁴⁹⁹ Id., at pp. 5 - 8.

category. Proposals regarding the size of the expanded Security Council ranged from 20 to 26.

2. On Permanent Membership

Principles governing the possible expansion of permanent seats

Most delegations favored the expansion of the permanent membership category, however they differ on the principle on which such an expansion should be based. A number of delegations, particularly from the developing countries, emphasized that the principle of equitable geographical distribution should be the basis for any expansion. On the other hand, delegations from the developed countries sought representation for those states (Japan and Germany) whose present world positions reflect global shifts that have taken place since 1945 in economic and political influence and power, and in the capacity to share global responsibility for the maintenance of international peace and security. For both delegations, an increase in the permanent membership would strengthen the United Nations and increase its legitimacy through bringing the Organization closer to present-day realities.

Other delegations argued for a means to allow small States to participate more often on the Security Council by creating a seat for small States. Yet many others expressed strong opposition to an increase limited to the permanent seat category for the reason that it would favor the big States and in the process exacerbate the disparity already existing in the Security Council. For those delegations, if an agreement could not be reached on the permanent seat category, expansion should be limited only to the non-permanent category.

The German delegation expressed the need for a periodic review of permanent members. While many delegations embraced the periodic review proposal, some preferred to subject the existing category of permanent members and

the new permanent members to a periodic review. Because it is unlikely that any of the current five permanent members would support such a dilution of its power, the consensus seems to be that the periodic review clause, to determine whether a member should continue to enjoy the status of a permanent member, should be applicable only to the new permanent members.

Criteria for selection of new permanent members

Some members suggested a range of criteria for the selection of new permanent members including: those contained in Article 23, paragraph 1 of the Charter, which are applicable at present only to the selection of non-permanent members; adequate representation for developing countries; population size; size of economy and future potential; willingness to contribute to, and consistency in support for, peace-keeping and to the U.N., including to voluntary funds and programs.

Modalities of the selection of possible new permanent members

There are two views regarding how the new permanent members should be selected. Some delegations favored a global approach whereby the General Assembly would choose the new permanent members, possibly on the basis of an agreed formula for regional distribution. Others believed that the primary responsibility for selection should lie with regional groups, with the possible need for endorsement by the General Assembly.

3. On Non-permanent Membership

Principles governing the possible expansion of non-permanent seat

There was strong support for enlarging the non-permanent membership of the Council, on the basis of the need to ensure equitable geographical representation. A number of delegations referred to the increase in membership of the United Nations since the last expansion in 1965 as sufficient reason for an increase in this category. Some maintained that an enlargement of the membership

in this category provides better opportunities for more States to serve on the Council thereby contributing to further democratization of the United Nations.

Criteria for the selection of new non-permanent members

Equitable geographic representation was emphasized as a criterion for selection of new non-permanent members, followed by the contribution of Members to the maintenance of international peace and security. A few delegations expressed their concern that the present arrangement has not effectively ensured that all U.N. Members have an equal opportunity to serve on the Council. It was therefore suggested that to correct this imbalance, the representation of Asia, Africa, and Latin America should be enhanced on the Council.

Possible changes in the modalities for the election of non-permanent members

A number of delegates challenged the current arrangement for selecting non-permanent members arguing that the opportunities for U.N. Members to serve on the Council are not equal; and, that some larger States are frequently re-elected to the Council whilst a number of other U.N. Members have never served on it. To address this problem, the Italian delegate proposed a formula which would divide the General Assembly into three groups for the purpose of electing non-permanent members.

The first group would consist of the current five permanent members. The second group would consist of thirty States to be selected on the basis of Article 23, paragraph 1. This group would share 10 non-permanent seats amongst them, hence each Member of the group would be guaranteed a two year term on the Council every six years. The final group would consist of the remaining Members of the U.N. (which presently stands at 150) who would share additional 10 non-permanent seats.

4. **On the voting procedure of the Security Council**

A large number of delegations proposed that the veto be limited in some form or another.⁵⁰⁰ Proposed restrictions included: removing the use of the veto from decisions concerning the admission of new U.N. Member States; the decisions of the Council under Chapter VI; decisions relating to provisional measures under Articles 40 and 50 of the Charter; and, the recommendation for the appointment of the Secretary-General. Majority of the delegations supported the exercise of the veto only for decisions taken under Chapter VII of the Charter.

There was no agreement on whether to extend the veto to new permanent Members of the Security Council.⁵⁰¹ Those who supported the granting of the veto to new permanent members argued against the creation of a new category of second-class permanent members. In this respect, they pointed out that since all permanent members would have the same obligations, they should have the same privileges. Moreover, they argued that the present imbalance in the Council would only be partially redressed if new permanent members were denied the right of the veto.

Delegations who opposed granting the veto to the new permanent members regarded such extension as furthering an inherently undemocratic privilege which should actually be restricted and eventually abolished in the post-Cold War world. They felt that any extension of the right of the veto would be contrary to the principle of the sovereign equality of States and the spirit of cooperation in the collective security system. There were also proposals for a reform of the Security Council's working methods and procedures.⁵⁰²

⁵⁰⁰ Id., at 9.

⁵⁰¹ Id., at 10.

⁵⁰² U.N. Doc. A/AC. 247/4 (b).

X. **Recommendations regarding the expansion of the Security Council**

Based on an overview of the interim report of the Open-ended Working Group, an expansion of the Security Council will have to address, amongst others, four main issues:

Composition and size of the Security Council;
Extension of the veto to new permanent members;
A need for a Periodic Review Clause; and,
The problem of regional rivalry.

(a) **On the composition and size of the expanded Security Council**

The main issues regarding the composition and size of an expanded Security Council are whether increase should be limited to: the permanent category; the non-permanent category; or both. Of the different proposals presented to the OeWG concerning this issue, two will be examined in this paper. The two proposals consist of the Italian and the German proposals, both of which represents the different views shared by majority of the Member States.

Both the Italian and the German proposals agree on two things: that the present membership of the Security Council is in need of expansion, "if only to reflect the steady rise in membership of the United Nations."⁵⁰³ They both cite the increase in the membership of the General Assembly from 51 in 1946 to 113 in 1965 when the Council was last enlarged, to the current figure of 185.

Both proposals also agree on the need to make the Council more democratic, and more representative so as to enhance the legitimacy of its decisions.⁵⁰⁴ However, the two proposals differ on the question of how to achieve the goal of a more representative Council. First, the Italian proposal questions the effectiveness of the present method of selecting non-permanent members because it favors "several large countries ... who tend to compete for a Security Council seat much more

⁵⁰³ U.N. Doc. A/49/965, para. 1, p. 83. See also, German Ambassador's speech to the OeWG, 23 April 1996, p. 3. [<http://www.undp.org/missions/germany/state/230496.html>].

⁵⁰⁴ U.N. Doc. A/49/965, para. 12, p. 86.

frequently, thus elbowing out the smaller countries,"⁵⁰⁵ thereby reducing the opportunities for smaller countries to serve on the Security Council. In an attempt to "redress this chronic situation and provide for a greater and more regular involvement of the many, not of the few, in the Security Council," the Italian proposal contains a formula on which future enlargement of the Council should be based.

Under this formula, there would be no expansion of the permanent seat category because, amongst other reasons, all the current five permanent members belong to the northern hemisphere, and to add two permanent seats for two countries which also belong to the northern hemisphere "would not be equitable or democratic."⁵⁰⁶ Although the proposal considers the fact that "one logical remedy" to the inequity brought about by the domination of the Security Council by the northern hemisphere "might be to add three permanent seats to the Security Council, one for each of the three geographic areas presently under represented (Asia, Africa, and Latin America)," it however concludes that because "there would be the objective difficulty of selecting the countries that should represent the three regions"⁵⁰⁷ and consequently such a remedy is bound to fail.⁵⁰⁸

Based on the preceding observations, the proposal calls for an expansion of the Security Council by adding 8 to 10 new non-permanent seats. Each of these seats would rotate among 3 States, making a total of 24 to 30 States who would rotate these new seats, and would be ineligible to contest for the remaining 10 non-permanent seats. Under the proposal, the allocation of seats on the Security Council could be illustrated thus:

⁵⁰⁵ Id., para. 5, p. 83.

⁵⁰⁶ Id., para. 2.

⁵⁰⁷ Id., para. 3.

⁵⁰⁸ See Statement by the Permanent Representative of Italy to the OeWG, 22 April 1996. [<http://www.undp.org/missions/italy/state/230496.html>].

<u>Type of Seat</u>	<u>Number of Seats</u>	<u>Number of Countries</u>
Permanent	5	5
Non-Permanent (Category 1)	8 - 10	24 - 30
Non-Permanent (Category 2)	10	150 - 156

Consequently, each of these 24 to 30 States are guaranteed to serve one term every six years. According to the proposal, one of the advantages of this method would be that "Smaller countries would be given a more fair chance of being elected to a non-permanent seat by removing and shielding them from the unequal competition of the larger ones in each regional group."⁵⁰⁹

This proposal has subsequently been revised by providing for the creation of 10 additional semi-permanent category. The 10 additional seats will be rotated among 30 other states⁵¹⁰ to be selected, on the principle of equitable geographical representation, and ability to contribute to the goals of the United Nations. However, the Italian proposal relied far more on equitable geographical representation than on the ability to contribute to the goals of the United Nations.

This is in sharp contrast with the relevant Charter provision on election of non-permanent members of the Security Council, which emphasized that "...due regard be specially paid, in the *first instance* to the contribution of Members... to the maintenance of international peace and security and to the other purposes of the Organization, *and also* to equitable geographic distribution." (italics supplied).⁵¹¹

On the other end, there is the German proposal which favors an expansion of both the non-permanent and permanent seat category. The German proposal considers as unacceptable the fact that all current permanent members are nuclear powers, and emphasized the need for views and interests of the non-nuclear world to be represented on the Security Council. It then calls for permanent seats for Germany, Japan, one seat each for Africa, Latin America, and Asia, and the addition

⁵⁰⁹ *Supra* note 293, para. 13(a), p. 87.

⁵¹⁰ Turkey proposed 40-countries; Mexico proposed 20-40; and Italy proposed 30-countries, id.

⁵¹¹ U.N. Charter, Article 23 (1).

of five more non-permanent seats in order to maintain the ability of the non-permanent seats when voting as a *bloc* to prevent the adoption of any draft resolution (the so called quasi veto).⁵¹² Under the German proposal, the composition of the Security Council would look like the table below:

<u>Type of Seat</u>	<u>Number of Seats</u>	<u>Number of Countries</u>
Permanent	10	10
Non-Permanent	15	175

If the goal of any expansion of the Security Council is to make it more representative, democratic, and to reflect the changes that have taken place in the world since the U.N. came into existence, which of the two proposals (German and Italian) for the enlargement of the Security Council "provides better opportunities for more States to serve on the Council, in accordance with equitable geographical distribution"; "contributes to further democratization of the United Nations and its principal organs,"⁵¹³ and in the long run provides an appreciable opportunity for other member states to serve on the Security Council.

Working on the assumption that in a perfectly representative Council, a member once elected to the Security Council serves a term and is not re-elected until all other members have served a term, the table below shows that the German proposal seems to increase, at least statistically, the chances of a country serving on the Security Council. Although, the politics of membership of the Security Council does not lend itself to such simple analysis, as the following table shows, such statistical analysis is not altogether irrelevant in considering the advantages of one proposal over another, especially where one proposal claims as an advantage an increase in the opportunities for small States to be elected to the Security Council.

⁵¹² Statement by Permanent Representative of Germany to the U.N. to the OeWG, 23 April 1996.

⁵¹³ Report of the Open-Ended Working Group to the General Assembly, (18 September 1995), A/49/965; A/AC.247/1, Cluster I, § IV. A, para. 9.

<u>Current</u>	<u>German Proposal</u>	<u>Italian Proposal</u>
10 seats to 180 members	15 seats to 175 members	10 seats to 150 members
1:18	1:11.06	1:15
One term out of 36 years.	One term out of 22 years.	One term out of 30 years.

By removing 30 large countries from the current pool of 180 countries who contest for 10 non-permanent seats, the Italian proposal aims at increasing the chances for the smaller States to be elected to the Security Council. However, by assuming that the removal of the 30 large States will in itself be sufficient to improve the opportunities for the small States to participate in the Security Council, the Italian proposal ignores the fact that when the 30 large States are removed from the pool of 180, there would emerge yet another group of comparatively large States who would now enjoy the advantage of being elected to the Council more so than the small States.

At first, it appears that one advantage of the Italian proposal is that it will allow a group of countries --the select 30-- to rotate more frequently on the Security Council. However, if this was all that was needed to solve the perceived imbalance of power on the Security Council, there would be no need for the debate on expansion because under the present arrangement, some countries are already able to rotate more easily than others.⁵¹⁴ Ironically, the Italian position is that the present system which permits some countries to rotate more frequently than others is unacceptable,⁵¹⁵ however the adoption of the Italian proposal would institutionalize this practice.

The Italian proposal also provides that Member States who belong to the group of 30 States "might be asked to make an increased contribution to peace-keeping operations" a responsibility which derives from their "frequent presence on

⁵¹⁴ See Appendix- I.

⁵¹⁵ Statement by Ambassador Tono Eitel, Permanent representative of Germany to the United Nations, to *The Open-Ended Working Group on the Question of Equitable Representation on the Security Council*, (23 April 1996) [<http://www.undp.org/missions/germany/state/230496.html>].

the Council."⁵¹⁶ It then concludes that "The permanent members could see their present burden for peace-keeping operations reduced, since it could be shared not with 2 or 5 additional members, but with 24 - 30 more frequently rotating countries."⁵¹⁷

But, if under the present system the large countries, which would constitute the bulk of the group of 30, already serve on the Security Council more frequently than others without having to be assessed a higher portion of the cost of peace-keeping operations, why would they now support the Italian proposal which increases their financial obligations without an appreciable increase in their opportunity to serve on the Security Council.

While it is desirable for small States to have their views represented at the Security Council, none of the current proposals before the OeWG can adequately address the question of the limited opportunity for small States to be elected to the Security Council. Any proposal which fails to create a seat exclusively for small States and prohibits the re-election of members from the group until all the members have served a term, will prove futile in addressing the problem of the participation of small States on the Security Council.

In addition to determining which proposal is more likely to contribute to the goal of a more democratic Security Council, an important consideration is which proposal is most likely to receive the necessary two thirds vote of the General Assembly, including the concurring votes of the current five permanent members of the Security Council, and consequently be adopted by the U.N. The importance of the views of the permanent members regarding any attempt to expand the Security Council can not be overemphasized. In the first instance, any expansion of the Council can only be achieved through an amendment to the Charter, and secondly,

⁵¹⁶ U.N. Doc. A/49/965, p. 86, para. 12(e).

⁵¹⁷ Id., p. 87, para. 13(c).

an amendment to the Charter is subject to the veto of any permanent member.⁵¹⁸

Although there have been calls for a statement by the permanent members regarding the proposed expansion of the Council,⁵¹⁹ there has not been a joint statement similar to the one issued at San Francisco on the question of the scope of the veto.⁵²⁰ However, all the permanent members have expressed their individual views on the issue of expanding the Council. Russia supports the creation of 5 more permanent seats adding that the Council should be given more responsibility.⁵²¹

China also supports an expansion but cautions that the Council should not be a board of directors, and therefore consideration should be given to the South as opposed to basing an expansion solely on economic position.⁵²² France endorses the candidacies of Japan, Germany, and large states from the South.⁵²³ Similarly, the U.K. supports the inclusion of Germany and Japan as permanent members of the Council, and suggests that the total number after expansion should be pegged at no more than 21.⁵²⁴

The United States has not only endorsed the candidacies of Germany and Japan, but has also maintained that it "... could not support any expansion that does not include the inclusion of Germany and Japan as permanent members."⁵²⁵ In recent times, the United States has expressed support for 3 additional seats to be divided equally amongst Latin America, Asia, and Africa.⁵²⁶

⁵¹⁸ U.N. Charter Article 27(3) and 108.

⁵¹⁹ Comment by the Representative of Ukraine at the debate on the Question of Increase in Membership of the Security Council, U.N. Press Release, GA/9145, p. 2.

⁵²⁰ See U.N.C.I.O. Doc. 852, June 8.

⁵²¹ U.N. Doc. A/50/PV.38, p. 18. *See also*, U.N. Press Release, GA/9146, p. 7.

⁵²² U.N. Doc. A/50/PV.59, pp. 9-10. *See also*, U.N. Press Release, GA/9146, p. 6.

⁵²³ U.N. Doc. A/50/PV.37, p. 7.

⁵²⁴ U.N. Press Release, GA/9147, p. 6.

⁵²⁵ U.N. Press Release, GA/9147, p. 6.

⁵²⁶ Paul Knox, *UN a divisive reform issue; Canada opposed to extending power*, The Globe and Mail, (Vancouver edn.), Saturday, July 19 1997, at A12.

A number of States, including Brazil,⁵²⁷ Germany,⁵²⁸ India,⁵²⁹ Ireland,⁵³⁰ Japan⁵³¹ and Nigeria,⁵³² have expressed their willingness to accept the responsibilities as new permanent members, if the Security Council was to be expanded. Furthermore, the candidacies of both Japan and Germany have received by far the widest support among the entire General Assembly.⁵³³ Also, the candidacies of Brazil⁵³⁴ and India⁵³⁵ have been endorsed by a number of countries, although considerably less than the support for Japan and Germany.

In the same vein, the interim report of the OeWG notes that the consensus in the General Assembly is that "one of the most important of the international changes since the establishment of the U.N. is the emergence of two major economic powers" and that based on this development, the two economic giants, Japan and Germany, "should join the Security Council as permanent members."⁵³⁶

The report however added that "The model that would most simply meet the legitimate aspirations of the largest States presently excluded from permanent membership of the Security Council would involve the creation of 5 new permanent membership seats"⁵³⁷ to be distributed according to the German proposal. Thus, as far as the size and composition of the expanded Council is concerned, the German proposal which calls for an increase in both the permanent

⁵²⁷ U.N. Doc. A/50/PV.59, pp. 14-15.

⁵²⁸ See Statement by Permanent Representative of Germany to the OeWG, 23 April 1996, p. 2. [<http://www.undp.org/missions/germany/state/230496.html>].

⁵²⁹ U.N. Press Release, GA/9147, p. 6.

⁵³⁰ U.N. Press Release, GA/9146, p. 4.

⁵³¹ U.N. Doc. A/49/PV.7, p. 14. *See also*, A/50/PV. 35, pp. 27-28.

⁵³² Paper prepared by the U.N. Secretariat on the views expressed by member states during the forty-ninth session of the General Assembly, A/AC.247/3, (6 January 1995).

⁵³³ See comments by Portugal, A/49/PV.7, p. 20; Norway, A/50/PV.35, p.25; Netherlands, A/50/PV. 59, p. 9; among others.

⁵³⁴ See comments by Portugal, A/49/PV.7, p. 20; Ecuador, A/50/PV.59, p.2; and Venezuela, A/50/PV.59, p. 1.

⁵³⁵ See comments by Lao, U.N. Press Release GA/9146, p. 2; Bhutan A/50/PV.40, p. 62; and, Mauritius, A/50/PV.40, p. 36.

⁵³⁶ A/49/965, p. 27.

⁵³⁷ A/49/965, p. 27-28.

and non-permanent seat category is more likely to be adopted by the General Assembly.

In addition to the 5 permanent members who have to vote in favor of (or at least not object to) any expansion of the Council, the proposed expansion also has to satisfy regional *blocs* especially those with sufficient number to prevent the adoption of any amendment to the Charter. As presently constituted, the distribution of permanent seats on the Security Council among the different groups which make up the General Assembly could be represented thus:⁵³⁸

	<u>W. Europe</u>	<u>E. Europe</u>	<u>Africa</u>	<u>Asia</u>	<u>Latin America & the Caribbean</u>
# of States	(27)	(20)	(53)	(49)	(33)
# of Perm. Seats	(3)	(1)	(0)	(1)	(0)

As at 1 March 1995, three Member States (Israel, Estonia & Palau) were not members of any regional group.⁵³⁹

From the above, it seems obvious that the views of the Africa-Asia group or the views of the Non-Aligned Movement which together make up a majority of the membership of the U.N., (see above table) would have to be considered if any expansion of the Security Council is to become a reality. In 1994, the African common position was that Africa "should be allocated no fewer than two permanent seats with all the privileges attached thereto, as long as the institution of permanent membership remains in force."⁵⁴⁰

Subsequent comments by the Non-Aligned Movement (which includes all African countries) have come short of demanding a specific number of seats for Africa. Rather, the emphasis has been on the need to "address the imbalance caused by the under-representation of the Non-Aligned Movement in the Security

⁵³⁸ U.N. Doc. A/49/965, p. 66.

⁵³⁹ See A/AC.247/1996/CRP.4, annex, p. 36.

⁵⁴⁰ A/AC.247/1996/CRP.6, para. 34.

Council.”⁵⁴¹ Considering the fact that any amendment could be vetoed by one of the 5 permanent members, a reasonable middle ground would be to allocate at least one seat each to Africa, Asia, and Latin America, in addition to Germany, Japan, and the creation of additional 5 non-permanent seats. Thus the distribution of permanent seats among the various groups, after the expansion, would look like the table below.

	<u>W. Europe</u>	<u>E. Europe</u>	<u>Africa</u>	<u>Asia</u>	<u>Latin America & the Caribbean</u>
# of States	(27)	(20)	(53)	(49)	(33)
# of Perm. Seats	(4)	(1)	(1)	(2)	(1)

(b) The problem of regional rivalry with respect to the selection of new Permanent Members.

At the beginning of the debate on Security Council reform, the emphasis was on general terms such as how to make the Council more democratic and more representative. However, as some countries declare their intention to serve on an expanded Security Council as permanent members and as the consensus appears to support the creation of 5 new permanent seats to be distributed equally among Japan, Germany, Asia, Latin America and the Caribbean, and Africa, emphasis has shifted to more specific terms, especially how the representatives of the three developing countries should be chosen. There has also been an attempt to deny permanent seats to both Japan and Germany.

(1) Europe: Italy and Germany

In 1991, at the beginning of the debate on the question of increase in the membership of the Security council, Italy spoke in favor of “an expansion of the Security Council with an increase in the number of both *permanent and non-permanent* members”, based on what it defines as “such objective criteria as the size of the country’s population, its gross national product, and its contribution to

⁵⁴¹ A/AC.247/5 (i), 13 February 1995. Gabon has recently retreated from the demand for two permanent seats for Africa, to just one seat for Africa. U.N. Press Release, GA/9121, 8 October 1996, p. 6. Angola has also called for one permanent seat for each region. See, U.N. Doc. A/50/PV.36, p. 8.

the United Nations Budget."⁵⁴² (*italics supplied*) At that time, Italy had been elected as a non-permanent member of the Security Council a record four times, more than any other country in Europe.⁵⁴³ As at today, it has served five terms on the Security Council, more than any country in Europe, with Germany and Poland coming close with four and four and half term on the Council respectively.⁵⁴⁴ In addition, Italy is the sixth largest contributor to the U.N. regular budget, responsible for 5.1% share of the budget, more than two permanent members: China and Russia.⁵⁴⁵

Based on the above, Italy may have assumed that its candidacy for a permanent seat in the expanded Council would most likely receive enough support at the General Assembly to make it a reality. However, the debate has since taking a different turn and not only has the candidacies of Germany and Japan received a wide support, it appears that Italy may be left with contesting for a non-permanent position, while Germany is conferred with a permanent seat. Consequently, in 1995, Italy argued that since four of the five permanent Members are economically developed countries, "to add two new permanent seats only for two developed countries, which also belonged to the northern hemisphere, would not be equitable or democratic," adding that "a more equitable solution for all would be to increase non-permanent seats only, as was the case with the reform of 1965."⁵⁴⁶

In support of this position, Italy (joined by Mexico, Turkey, and Belize) argued that Cluster I of the terms of reference of the OeWG does not mandate an increase in permanent membership, and that accordingly, an increase in the non-permanent

⁵⁴² General Assembly, Provisional Verbatim Record of the 68th. meeting, (23 December, 1991), A/46/PV. 68, p. 22.

⁵⁴³ U.N. Doc. A/51/100, Annex IV, pp. 252-253.

⁵⁴⁴ Here, the raw figures paint a misleading picture. Granted that Italy had been elected more than Germany and Poland, both countries have Members of the United Nations longer than Germany. Poland has been a Member since 1945, Italy became a Member in 1956 while Germany joined in 1974. Thus on the average, Italy has been elected to the Council once every 8 years, Poland once every 11.5 years, while Germany has been elected about once every 6 years.

⁵⁴⁵ U.N.D.P.I. Report DPI/1851 of September 1996.

⁵⁴⁶ Official Records of the General Assembly, (14 September, 1995) Forty Ninth Session, A/AC. 247/5 (g); and, A/49/965 p. 83.

category would satisfy the mandate of both Cluster I and II.⁵⁴⁷ On the other hand, Germany, citing the same terms of reference of the OeWG, maintains that "fulfilling the mandate of Cluster I requires an increase in both the permanent and the non-permanent category of membership, and any other result would be incomplete as it would ignore the realities and changes in international relations as mentioned in Res. 48/26."⁵⁴⁸

Thus as the debate shifted from how many new seats should be established to the criteria for selecting the new permanent members, two proposals have emerged regarding the criteria for selecting the new permanent members. The first proposal, by Italy, dispenses with the need to create new permanent seats. Rather, it favors the creation of a new category of seats which could be described as semi-permanent seats, which would rotate among a group of 30 large States.

This proposal has received support from Mexico, Pakistan, Belize, Turkey, and a few other countries have expressed support for it as a fall back position, should there be no agreement on the creation of new permanent seats.⁵⁴⁹ Nonetheless, it has failed to receive substantial support from the General Assembly, since majority of the Assembly Members favor the creation of at least 5 new permanent seats. Thus, as far as the regional rivalry between Germany and Italy is concerned, it seems to have been resolved at least in so far as the expansion of the Security Council is concerned.

⁵⁴⁷ Statement by Permanent Representative of Italy to the OeWG, October 29, 1996. [<http://www.undp.org/missions/italy/state/230496.html>].

⁵⁴⁸ Permanent Mission of Germany to the United Nations, *Germany: Working Paper* (28 June 1996) to the Working Group on the Security Council. For details of German proposal, see, U.N. Doc. A/50/47, Annex XIV. [<http://www.undp.org/missions/germany/state/280696.html>].

⁵⁴⁹ Notable among this group is Canada, U.N. Press Release, GA/9146, p. 6; Philippines, id., p. 3; and the Movement of Non-Aligned Countries, A/AC.247/5 (i), para. 5.

(2) **Africa: Egypt, Nigeria, and South Africa**

Of all African countries, Nigeria is the only country to have put itself forward as a candidate for the proposed permanent seat for Africa. With a population estimated to be over 100 million, it is Africa's most populous country. It is one of the two African countries (Zambia being the other one) to have been elected to the Security Council three times, coming behind Egypt which has served four and half terms as a non-permanent member.⁵⁵⁰

In addition, Nigeria also has a long history of leading the demand for a reform of the Security Council. In fact of the 7 countries who first succeeded in including the issue of increase in Security Council membership on the agenda of the the General Assembly in 1979,⁵⁵¹ it is the only African country in the group. All this may have served Nigeria well in its bid for a permanent seat, however in recent times, Nigeria's status in the international community has been seriously weakened by its poor human rights record.

It started when the current military dictatorship annulled the results of the 1993 presidential elections, jailed the apparent winner of the elections, Moshood Abiola in mid-1994, and reached its highest when the government ignored world opinion and executed Ken Saro-Wiwa and eight other minority rights activists in November, 1995. Following the execution of Saro-Wiwa and the other minority rights activists despite appeals by Commonwealth Ministers at a meeting in Auckland, New Zealand, South Africa and Zimbabwe led a campaign for the expulsion of Nigeria from the Commonwealth.

However, the multinational body opted for a suspension. South Africa and Zimbabwe had also called for the imposition of sanctions on the government,

⁵⁵⁰ U.N. Doc. A/51/100, Annex IV, pp. 250-255. Here again, it must be noted that Egypt joined the U.N. as an original member in 1945, unlike Nigeria and Zambia, that joined in 1960 and 1964 respectively.

⁵⁵¹ GA Decision 34/431; and, U.N. Doc. A/34/246. This item was included in the agenda for the thirty-fourth session of the General Assembly in 1979 at the request of Nigeria, Argentina, Bhutan, Guyana, Maldives, Nepal, and Sri Lanka.

although the Commonwealth has so far failed to heed that call. Thus, it is no surprise that Nigeria's candidacy has not been endorsed by any country. On the other hand, South Africa combines a democratic political system with the most powerful economy in Africa.⁵⁵² Although, it has never been elected to the Security Council, South Africa continues to be mentioned by many diplomats, alongside Nigeria, as possible candidates for Africa's permanent seat.⁵⁵³

As stated earlier on, Egypt is not just an original member of the United Nations, it leads the remaining African countries in the number of terms it has served as a non-permanent member of the Council. However, the election of non-permanent members for Africa could not be equated with that of a permanent member for Africa. As an Arab country, it is virtually inconceivable that Egypt could garner enough support from the Sub-Saharan African countries so as to fill the permanent seat for Africa.

Thus, rather than declare its candidacy for a permanent seat, Egypt has been emphasizing its regional responsibility and arguing against the creation of new permanent seats. Speaking before the Open-ended Working Group, Mr. Elaraby, the Egyptian representative stated that while he supports the creation of addition of permanent seats for both the developed and developing countries, he believed that "This will be achieved only through the addition of a number of developing States ... based on the role they have played at the regional and international levels."⁵⁵⁴ He then added, "... Egypt's role, inter alia in the Arab, African, Middle Eastern and Non-Aligned frameworks, ... qualify it to shoulder its responsibilities in a new Security Council with an increased membership and balance representation of all regions."⁵⁵⁵ After highlighting reasons which qualifies Egypt to serve on an expanded Security

⁵⁵² The World Bank Annual Report, *World Development Report 1995*, pp. 162-205 [hereinafter World Bank Report].

⁵⁵³ See for example, Inter Press Service Bulletin, 23-SEP-97 LAGOS, (Sep. 22) IPS.

⁵⁵⁴ U.N. Doc. A/50/PV.58, p. 13.

⁵⁵⁵ Id.

Council, the representative of Egypt then came up with a proposal regarding the criteria for selecting the permanent representative of Africa.

The Egyptian proposal, on this question, is different from the Italian proposal in one respect. It supports the creation of two new permanent seats for Germany and Japan. However, on the question of how to fill the permanent seat for Africa, Asia, and Latin America, it borrows from the semi-permanent idea of Italy by calling for the establishment of "New rotating seats for regional groups."⁵⁵⁶ In support of this proposal, the representative of Egypt cited what he termed "two obstacles that are not easily surmountable. The first relates to the negative effects on the work of the Council that would result from increasing the number of Members with the right of the veto; ... The second concerns the many difficulties that stand in the way of third-world States that would be given permanent seats in the Council, especially in view of the diversity of situations, characteristics and political circumstances in Asia, Africa, and Latin America."⁵⁵⁷

Although the Egyptian representative claimed to be speaking on behalf of the Non-Alligned Movement,⁵⁵⁸ the proposal has been endorsed by only one other African country, Tunisia.⁵⁵⁹ Furthermore, contrary to the Egyptian proposal for a semi-permanent seat for Africa, the African common position regarding this issue is that "Africa rejects both the concept of a third category of so-called 'semi-permanent members' and the proposal for a pool of some 20 countries from which actors would be recruited on a regional basis."⁵⁶⁰ Other African countries including Zimbabwe, Angola and Nigeria have spoken against the "creation of a new category of semi-

⁵⁵⁶ U.N. Press Release, GA/9146, 30 October 1996, p. 6.

⁵⁵⁷ U.N. Doc. A/50/PV.59, p. 13. See also, U.N. Press Release, GA/8995, 58th Plenary Meeting, 14 November 1995, p. 5.

⁵⁵⁸ Id.

⁵⁵⁹ See the comments of the Tunisian Representative, Slaheddine Abdellah, at the forty-sixth Plenary Meeting of the General Assembly, 30 October 1996. U.N. Press Release, GA/9147, p. 3.

⁵⁶⁰ Extract from Organization of African Unity document NY/OAU/POL/84/94/Rev.2 of 29 September 1994. Also previously issued as A/AC.247/1996/CRP.6, para. 37.

permanent membership," adding that "the modalities of that representation should be left with Africa itself"⁵⁶¹ rather than imposed on it from outside.

(3) **Latin America & the Caribbean: Brazil and Mexico**

The leading contender and the only country to have declared its candidacy for the Latin American & the Caribbean permanent seat is Brazil.⁵⁶² Its population of 156 million ranks it as the most populous country in the Latin American region,⁵⁶³ it is one of the 51 original members of the U.N., and has served 7 terms as a non-permanent member of the Security Council.⁵⁶⁴ No other country in the Latin American hemisphere or indeed in the entire General Assembly has served as many terms as Brazil, with the exception of Japan which has also served 7 terms.⁵⁶⁵

However, the selection of a permanent representative for the region is far from over. In a region in which Spanish is the dominant language, Brazil remains the only Portuguese speaking country. Thus, if it succeeds in its bid for a permanent seat, Brazil would represent a constituency that is predominantly Spanish-speaking. In fact, before Brazil declared its candidacy for a permanent seat, Portugal had expressed support for permanent seat for Japan, Germany, and Brazil.⁵⁶⁶

Perhaps the "language factor" and the advantages that come with being a permanent member explains why Brazil's candidacy has not received much support from the Latin American hemisphere, and is actually being opposed by Mexico and Belize. In addition to Portugal, Brazil's candidacy has been endorsed by Ecuador,⁵⁶⁷ and Venezuela.⁵⁶⁸ Even Chile, from the same region, has endorsed the idea of permanent seats for Japan and Germany, but has so far remained silent on Brazil's

⁵⁶¹ See the comments of the representatives of Angola and Nigeria at the forty-ninth Plenary Meeting of the General Assembly on 1 November 1996. U.N. Press Release, GA/9151, pp. 3-4.

⁵⁶² See U.N. Doc. A/50/PV.59, pp. 14-15.

⁵⁶³ See The World Bank Annual Report, *World Development Report 1995*, pp. 162-205.

⁵⁶⁴ U.N. Doc. A/51/100, Annex IV, pp. 250-255.

⁵⁶⁵ Id.

⁵⁶⁶ U.N. Doc. A/49/PV.7, p. 20.

⁵⁶⁷ U.N. Doc. A/50/PV.59, p. 2.

⁵⁶⁸ U.N. Doc. A/50/PV.59, p. 21.

bid for a permanent seat. In fact, relying on the same argument first advanced by Italy, and embraced by Egypt, both Mexico and Belize are opposed to the creation of new permanent seats, and favored instead the creation of a rotational semi-permanent seat category for the regions.⁵⁶⁹

Speaking on behalf of the thirteen nation Caribbean Community (CARICOM),⁵⁷⁰ a group of which Brazil must have its support if Brazil's candidacy is to become a reality, the representative of Guyana stated that "As small States in the international community, we attach the highest importance to democracy and equity not only in our own internal affairs but also in our international relations. We will therefore be concerned to see that these principles are taken fully into account in the reform of the Council."⁵⁷¹ Maintaining that there can be no compromise on their right to serve on the Council, the representative then concluded: "Our sense of equity does not make it easy for us to contemplate additional permanent members, particularly from any one region."⁵⁷²

The representative of Mexico, citing its Italian colleague, referred to the idea of establishing 5 more permanent seats as the "quick fix" approach, describing it as "the most discriminatory of all formulas proposed."⁵⁷³ He went on to challenge why the Council should have four permanent seats from one geographical group, and concluded by calling for an increase only of the non-permanent seat category.⁵⁷⁴

In order to assuage the fears expressed by majority of the countries in the

⁵⁶⁹ Working paper submitted by Belize to the OeWG, A/AC.247/1996/CRP.4, 3 July 1996, pp. 56-68. *See also*, Mexico's opinion on the Agenda Item 47 at the forty-fourth Plenary Meeting of the General Assembly, U.N. Press Release, GA/9145, 29 October 1996, p. 5.

⁵⁷⁰ The 13 countries which make up the CARICOM are: Antigua and Barbuda, Bahamas, Barbados, Belize, the Commonwealth of Dominica, Grenada, Guyana, Jamaica, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, and Trinidad and Tobago. U.N. Doc. A/50/PV.58, p. 1.

⁵⁷¹ U.N. Doc. A/50/PV.58, p. 2.

⁵⁷² *Id.*

⁵⁷³ U.N. Press Release, GA/9145, forty-fourth Plenary Meeting, 29 October 1996, p. 5.

⁵⁷⁴ *Id.*

group regarding the need to abolish or limit the veto,⁵⁷⁵ Brazil has expressed support not only for the idea of limiting the veto to Council actions under Chapter VII, but has once expressed its support for the idea of not extending the veto to the new permanent members.⁵⁷⁶ Thus far however, there appears no consensus among the Latin America and the Caribbean group on the question of which country should be chosen to represent the group as a permanent member at the Security Council.

(4) Asia: India and Pakistan⁵⁷⁷

Of all the regional rivalries between countries, that between India and Pakistan would rank among the most delicate, and not surprisingly it has engaged the attention of both the Security Council and the General Assembly for almost as long as the United Nations has been in existence. Beginning from 1 January 1948, when the dispute between the two over the territories of Kashmir and Jammu was first brought before the Security Council by India, the "India-Pakistan Question" has remained unresolved ever since, in spite of numerous attempts by the Council.⁵⁷⁸

The disputed territories between the two countries has led to the establishment of, among others, a United Nations Commission for India and Pakistan,⁵⁷⁹ a United Nations Representative for India and Pakistan,⁵⁸⁰ and two

⁵⁷⁵ On the question of limiting or abolishing the veto, see the comments of Venezuela, A/46/PV.68, p. 16, 19; Ecuador, A/50/PV.59, p. 2; Belize, A/49/965, p. 72; Brazil U.N. Press Release GA/9145, p. 3; Colombia, id., p. 6; and Uruguay, GA/9146, p. 3.

⁵⁷⁶ U.N. Doc. A/46/PV.68, p. 33. In recent times however, because the leading contenders for a permanent seat on the Council (Japan and Germany) and the common position of the African countries (the largest group in the Assembly) has remained that the veto should be extended to the new permanent members, Brazil has retreated somewhat from its earlier position of not extending the veto to the new permanent members to a criticism of the veto and a call for its limitation. Compare for example U.N. Doc. A/46/PV.68, p. 3 to GA/9145, p. 3.

⁵⁷⁷ Since Japan's candidacy for a permanent seat is not based on regional representation, and no country in Asia has mounted a direct challenge to Japan's bid for a permanent seat on the Council, the discussion on regional rivalry in Asia does not include Japan.

⁵⁷⁸ S/646, and Corr.1, O.R., 3rd year, Suppl. for Nov. 1948, pp. 67-87; S/636, 226th meeting: p. 4. The Security Council also considered the India-Pakistan Question at the 226nd-232nd, 234th-237th, 239th-246th, 250th-257th, 246th-266th, 269th, 284th-287th, 289th, 290th, 304th, 305th, 311th, 312th, 315th, 382nd, 399th, 457th, 458th, 463rd-471st, 532nd-540th, 543rd, 546th and 566th meetings between 6 January 1948 and 31 December 1951.

⁵⁷⁹ S/654, O.R., 3rd year, Suppl. for Nov. 1948, pp. 64-65.

⁵⁸⁰ 470th meeting, 14 March 1950, p. 4.

peacekeeping operations: The United Nations India-Pakistan Observation Mission which lasted about 6-months from September 1965 to March 1966; and the longest running U.N. peacekeeping operation ever, The United Nations Military Observer Group in India and Pakistan (UNMOGIP) which has remained in existence since it was established in January 1949.⁵⁸¹

Against this background, the different positions taken by India and Pakistan on the question of increase in the permanent seat of the Security Council is to say the least understandable. Even before India declared its intention to bid for Asia's permanent seat,⁵⁸² a number of countries had made remarks endorsing Japan, Germany, and what was termed "some large States from the South."⁵⁸³ Considering that India is the world's largest democracy, it was obvious that as far as Asia is concerned, India would most likely satisfy the "large State" requirement, before Pakistan. In fact, as early as October 1995, a year before India declared its candidacy for a permanent seat, both Bhutan and Mauritius had expressed their support for India as a permanent member of an expanded Security Council.⁵⁸⁴

On the other hand, the then Prime Minister of Pakistan, Mrs Benazir Bhutto, has spoken against the addition of new permanent seats, stating that: "The Security Council needs enlargement, but not in its permanent membership."⁵⁸⁵ Subsequently, the representative of Pakistan has stressed the need for an increase in the membership of the Security Council not for the large States but "in particular for the large number of small and medium-sized States that have joined the United Nations"⁵⁸⁶ Citing the "Council's failure to implement its resolutions on ... Kashmir

⁵⁸¹ S/726, O.R., 3rd year, Suppl. for April 1948, p. 12.

⁵⁸² Speaking in favor of expanding the Security Council, the representative of India declared, "Under any objectively applied criteria for the expansion of permanent members, India would be the 'obvious candidate.'" U.N. Press Release, GA/9146 45th Plenary Meeting, 30 October 1996, p. 3.

⁵⁸³ See the comments of France, A/50/PV.37, p. 7; Bhutan, A/50/PV.40, p. 62; and Cambodia, id., p. 47.

⁵⁸⁴ Comment by representative of Bhutan, A/50/PV.40, p. 62; and, Mauritius, id., p. 36. Lao has since endorsed India's candidacy. GA/9146, p. 2.

⁵⁸⁵ U.N. Doc. A/50/PV.39, p. 24.

⁵⁸⁶ U.N. Doc. A/50/PV.58, p. 22.

and Jammu" he added that "Instead of a new world order supervised by the Security Council, we are faced with a number of disputes and conflicts raging across the globe and with a Security Council that has not been able to implement its own resolutions, or has done so in a selective manner."⁵⁸⁷

Arguing against any increase in the permanent seats, the representative of Pakistan remarked that "Such an expansion would merely serve to accommodate the interests of only a few countries and alienate the smaller and medium-sized countries, which constitute an overwhelming majority of the General Assembly."⁵⁸⁸ There is at present no consensus, among Asian countries, on the question of whether to create additional permanent seats, nor on the question of whether the seats should rotate among different countries in the region (the semi-permanent seat idea) or whether a particular country should be represent the region.

For instance, Indonesia supports the expansion of the Council to make it more representative,⁵⁸⁹ it however opposes the idea of rotating a semi-permanent seat among select countries in a region, arguing that "The concept of regionalism would deprive the General Assembly of its jurisdiction to elect members and might sharpen existing regional animosities."⁵⁹⁰ On the contrary, it favors the selection of countries from the developing countries to fill the new permanent seats based on the same criteria used to select Japan and Germany, that is, contributions to the Organization's objectives.⁵⁹¹

The Philippines has stated that should there be no agreement on an expansion of the permanent seat category, any increase should be limited to the non-permanent category.⁵⁹² Singapore has noted that the "proposal for regional

⁵⁸⁷ Id., p. 21.

⁵⁸⁸ Id., p. 22.

⁵⁸⁹ A/50/PV.59, p. 8.

⁵⁹⁰ The comments of the Indonesian representative at the forty-sixth meeting of the General Assembly. U.N. Press Release, GA/9147, 30 October 1966, p. 7.

⁵⁹¹ Id.

⁵⁹² U.N. Press Release, GA/9146, p. 3.

rotational permanent representation might work successfully in Africa, but not in any other region" adding that "In Asia, the practice could exacerbate regional tensions."⁵⁹³ Like the Philippines, Singapore shares the opinion that increase be limited to the non-permanent seat category, if no agreement could be reached on how to increase the permanent seat group.⁵⁹⁴

Similarly, the Republic of Korea supports Council expansion, but cautions that care should be taken not to bestow eternal privileges or irreversible status on a few Member States. Consequently, South Korea supports "the expansion of the non-permanent seats and does not believe that balanced or complete reform required an increase in the number of permanent seats."⁵⁹⁵ Undoubtedly, selecting a permanent member for Asia may prove to be more difficult than any other regional group.

(c) Possible solution to the problem of regional rivalry with respect to the selection of a permanent member for each region

The problems of regional rivalry will forever remain an issue to contend with in the relations between States either at the regional level, at the international level, and whether the forum is in the field of sports or politics. However, unlike sports where there will always another day, often sooner rather than later, when the issue will be revisited, in politics and especially on the question of electing a permanent member to represent a region at the Security Council, such decisions take on an air of finality.

It is therefore not surprising that some countries, having recognized that an increase in the permanent membership may not be to their favor, while it favors their regional rival, have maintained a steady drumbeat in opposition to any expansion in the permanent membership, preferring instead an increase in the non-permanent seat category. As was brilliantly put by the representative of the Republic

⁵⁹³ The comments of the representative of Singapore at the forty-sixth meeting of the General Assembly. U.N. Press Release, GA/9147, 30 October 1966, p. 4.

⁵⁹⁴ Id.

⁵⁹⁵ GA/9146, 30 October 1966, p. 4.

of Korea "care should be taken not to bestow *eternal privileges or irreversible status* on a few Member States."⁵⁹⁶ (emphasis supplied)

The two main issues underlying the opposition to an increase in the permanent seat group are the veto and the fact that it will be eternal or irreversible. After all, regional rivalry has not prevented Brazil from being elected to the Council 7 times, more than any country in the Latin America and the Caribbean group. The record in Asia is not any different, Japan, India, Pakistan have each served 7, 6, and 5 terms respectively on the Security Council. The same goes for Africa.

While it may be argued that the reason these large countries, such as Brazil, Japan, India, Nigeria and Egypt, have served more terms on the Council than other countries in their region is due in large part to regional rivalry, the difference however is that in this case, rivalry is being used at least by some of them not to secure a permanent seat for their region, but to deny their region a permanent seat thereby reducing their region's sphere of influence at the Security Council.

The solution to the twin problems of the veto and eternal privilege could be found in limiting the scope of the veto, and the adoption of a periodic review process for the new permanent members.

(1) The Periodic Review Clause (PRC)

One of the complaints about the Security Council as presently constituted is that is that it no longer reflects the current geo-political distribution of power, because, in the word of the Vice-President of Peru, "the world which gave rise to the present structure of the Security Council no longer exists."⁵⁹⁷ In fact, the continued presence of both France and Britain had been called to question by a former

⁵⁹⁶ Id.

⁵⁹⁷ Address by the Vice-President of the Republic of Peru at the General Assembly, *Official Records of the General Assembly, fiftieth session, 40th Plenary Meeting, 24 October 1995*, p. 33. See also the address by the President of Zimbabwe at the General Assembly, U.N. Doc. A/50/PV.40, pp. 40, 59.

president of the Security Council.⁵⁹⁸

In view of the high probability that as the world continues to change, there are bound to be shifts in the distribution of power and influence, and with the objective of avoiding some of the criticism leveled at the the current Security Council particularly that it does not reflect the prevailing global distribution of economic power and influence, it is necessary to allow for a periodic review of the additional permanent members at some fixed time in the future.

While it may be desirable to make the proposed periodic review applicable to all the permanent members, the provisions of Article 108⁵⁹⁹ makes that virtually impossible, because none of the current permanent members is likely to agree to a proposal that may eventually lead to its being denied a permanent seat in the future. Nonetheless, by subjecting the new permanent members to periodic review, the Charter would guarantee that an increase in the permanent membership is not irreversible. The idea of a periodic review enjoys the support of a substantial number of the Members, thus it is likely to become a reality only if it is part of a comprehensive package leading to an increase in both the permanent and non-permanent seat on the Council.⁶⁰⁰

Although, this may suggest two kinds of permanent members, leading contenders for permanent membership --specifically Japan and Germany⁶⁰¹-- recognize the significant difference in the political discourse of 1945 and that of 1997,

⁵⁹⁸ Ambassador Nugroho Wisnumurti, Permanent Representative of Indonesia to the United Nations, *The Security Council and the Future of the United Nations*, January 30 1996. Address delivered at the Institute of International Studies, University of California, Berkeley. [<http://globetrotter.berkeley.edu/UN/wisnumurti2.html>].

⁵⁹⁹ Article 108 of the Charter reads: "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 the permanent members of the Security Council.*" (italics supplied).

⁶⁰⁰ U.N. Doc. A/49/965 of 18 September 1995. (Nordic Countries and the Movement of Non-Alligned Countries have expressed support for a periodic review clause). *See also* U.N.Doc. A/50/47, Annex XIV, stating the German official position in support of the periodic review clause.

⁶⁰¹ *Id.*

and consider the possibility of being denied permanent status in the future a small price to pay for an immediate permanent seat.

Periodic review will ensure that an increase in permanent membership is not irreversible as all new permanent member seats will be subject to re-examination after a certain period. Thus, new permanent members will enjoy a permanent --but not eternal-- status. The advantages include accountability. New permanent members will be accountable to the General Assembly as their performance and actions will be taken into account at the moment of review.

A periodic review will allow the membership to re-examine the composition of the Council against the background of possible new political and economic realities. Consequently, the continuing ability of the new group of permanent members to continue to perform the crucial role expected of a permanent member will determine continued permanent membership as opposed to reliance on previous ability which may have no bearing to the prevailing global distribution of influence. Although this is similar to Article 4 of the League of Nations,⁶⁰² which permits the election of members from the General Assembly as permanent members of the League Council, it is different in one crucial respect: the new permanent members will be *permanent* but not eternal because the new permanent members will be subject to review every 10 or 15-years.⁶⁰³

Of course, the periodic clause is not a panacea for the problems of eternal privilege. However, proponents of the periodic review clause have so far, either failed to agree on or address other issues without which the PRC will be rendered ineffective in preventing a re-enactment, in the non-distant future, of the problems

⁶⁰² Article 4 of the League of Nations states in relevant part: "[W]ith the approval of the majority of the Assembly, the Council may name additional Members of the League whose representatives shall always be members of the Council; the Council, with like approval may increase the number of Members of the League to be selected by the Assembly for representation on the Council."

⁶⁰³ The number of years between each periodic review would have to be agreed upon at the same time that the Security Council should be increased, however it should not be so short that it resembles nothing more than a pseudo permanent seat.

which led to the current debate on the need to increase the size of the Council so as to make it more representative. These issues include the relationship between the PRC and the veto, and the need for a specific number of years between each review.

On the question of the veto, there is at present no consensus on whether to extend the veto privilege to the new permanent members. However, in the event that the veto is extended to the new permanent members, it should not be applicable to decisions of the General Assembly regarding the issue of whether a new permanent member should continue to retain its permanent status on the Security Council. The Charter should be amended such that the implementation of the PRC, and the determination of all questions relative to the PRC shall lie exclusively with the General Assembly and not the Security Council. Similarly, efforts must be made not to subject the PRC to Charter article 108, because the ratification requirement of article 108 takes such a long time, which will invariably frustrate the achievement of the goals of the PRC.⁶⁰⁴

There is still the question of how many years should lapse between each periodic review, and other ancillary issues including what criteria will be used to determine whether a new permanent member continues to retain its permanent status after the review, and whether the review be determined by the votes of the region the member represents or the entire General Assembly. In the case of Japan and Germany, since they are technically not representing their regional group, would they need to be nominated by their regional group for another 10, or 15 year term? Should the review be based solely on votes of the General Assembly, or on objective factors such as the economic and political power then possessed by the permanent member under review?

Regarding the number of years between a periodic review, it should be long

⁶⁰⁴ For instance, it took 2 years for the GA Res. 1991A(XVIII) of 1963 increasing the composition of the Security Council to be ratified by the required number of States.

enough so that at least it could actually be called permanent, but not forever, so that it is anything but eternal. Speaking on the question of proposed reform of the Security Council, the Permanent Representative of New Zealand to the U.N., has observed that "the veto is not the only problem in decision-making. Continuity is also part of the problem. The fact that a country is present in the Security Council year after year can be more important in terms of its influence on decision-making than the fact that it has got the veto."⁶⁰⁵

According to him, "Our experience has been that certainly the first six months and perhaps even the first year, a member of the Security Council has great difficulty," concluding that "to be a really effective Security Council member, one is going to have quite a learning curve and that needs to be borne in mind."⁶⁰⁶ The observation regarding the veto is quite significant in light of the fact that since 1991, the number of vetoes has been greatly reduced, coupled with the fact that any reform of the Security Council will most likely limit the scope of the veto. In order to satisfy the "learning curve" requirement and the fear of "eternal privilege" a period of 10 years before each periodic review is worth considering.

What criteria should determine whether a new permanent member retains its seat following a periodic review, and should the periodic review be subject to the veto? Consistent with the demand for a more democratic Security Council, it is necessary to democratize the periodic review process, rather than leave the determination of the criteria for retaining a permanent seat or the decision to embark on a periodic review to a committee or to the veto. In fact, the votes of the members of the Assembly is a better reflection of whether a member has satisfied the necessary criteria to retain its permanent seat and the decision to conduct a periodic review should be mandated by the Charter, and not subject to simple

⁶⁰⁵ Ambassador Colin Keating, Head of the New Zealand Mission to the U.N., *Conference on Security Council Reform*, (1996), Global Policy Forum. [<http://www.globalpolicy.org/sec18CK.html>].

⁶⁰⁶ Id.

majority of the votes of the Assembly, and most importantly, not subject to the veto.

The periodic review approach can be implemented by amending present Article 23 and 18 of the Charter to read:

Art. 23

- (1) -same
- (2) - same
- (3) - Each member of the Security Council shall have one representative.
- (4) - Each permanent member, with the exception of the original permanent members, shall be subject to a periodic review to determine whether to remain on the Security Council.
- (5) The review process in paragraph 4 shall be compulsory and will take place after 10 years from the date the members become new permanent members of the Security Council.
- (5) The adoption or implementation of the periodic review result shall not be subject to or contingent on the ratification or affirmative votes of the permanent members.

Art. 18

- (1) -same.
- (2) - same, however in place of "and budgetary questions" substitute the following: the periodic review of new permanent members, and budgetary questions.

Finally, the issue of how each of the proposed permanent members for Asia, Africa, and Latin America and the Caribbean will be selected has to be considered. In addressing this issue, it has to be recognized that once the new permanent seat is stripped of the feared eternal, irreversible status, the issue is not likely to remain as contentious as it has been for some time now. To achieve this, the Assembly should adopt the same time tested method which has been used to elect non-permanent members. By res. 1991A(XVIII) of 1963, the Assembly adopted, and submitted for ratification by state members of the UN, amendments to the Charter provisions relating to membership of the Security Council.⁶⁰⁷

The General Assembly also decided that the ten non-permanent members should be elected according to the following pattern: five from African and Asian states; one from Eastern European states; two from Latin American and Caribbean states; two from Western European and Other states.⁶⁰⁸ The practice has been that

⁶⁰⁷ Charter Articles 23 and 27.

⁶⁰⁸ GA Res. 1991A (XVIII) of 17 December 1963, para. 3.

each group will meet and endorse the required number of candidates to fill the available number of non-permanent seats. And although the lack of regional endorsement does not prevent a member from participating as a candidate in the elections, as did the Republic of Benin, Ghana, Tunisia, and Mexico during the elections for the 1996-1997 term, winning without regional endorsement is almost impossible.⁶⁰⁹ There is no reason why this practice should not be continued in electing the new permanent members for each region to the Council.

(2) The advantages of equitable geographical representation over regional representation

Although most of the call for the reform of membership of the Security is premised on the need for equitable representation of the Council,⁶¹⁰ it is somewhat surprising that the very procedure used in the election of the non-permanent members of the Council, a procedure which was designed to ensure equitable geographical representation on the Council has not received the attention that it deserves regarding the selection of the new permanent members for each region. Rather, there has been an attempt to substitute for the concept of equitable geographical distribution mandated by Charter Article 23, paragraph 1 by a system of regional representation.

In fact, long before the idea of last expansion of the Council in 1963, it has been suggested that the Council might be reconstituted along regional lines by projecting regional organizations into the universal machinery of the United

⁶⁰⁹ At the election for the 1996-1997 term, Chile, which was endorsed by the Latin American and Caribbean group, received 168 of 169 valid ballots, leaving Mexico with 1 vote which was in all likelihood cast by the representative of Mexico. Similarly Ghana and Tunisia received 1 vote each. Although the two countries, Egypt and Guinea-Bissau, endorsed by Africa received enough votes 159, and 128 respectively to be elected to the Council, surprisingly the Republic of Benin received 60 votes, which was less than the 118 required to be elected. U.N. Doc. A/50/PV.53, 8 November 1995, pp. 1-4.

⁶¹⁰ See for instance remarks by France, U.N. Doc. A/50/PV.37, p. 7; The Non-Aligned Movement, A/AC.247/1996/CRP.4, p. 15; Egypt, A/50/PV.58, p. 13; China, A/50/PV.59, pp. 9-10; and the Soviet Union, A/50/PV.35, p. 18.

Nations.⁶¹¹ One proponent of such a development has noted that, "If the Security Council were to consist of representatives from North America, India, China, the Soviet Union, Western Europe, Eastern Europe, Latin America, Africa, the Middle East, and Southeast Asia, it could provide an institution capable of arriving at decisions binding on, and supported by, the peoples of the world."⁶¹²

Since the on-going debate on the need for increase in the membership of the Council started, the concept of regional representation or rotational representation has been suggested by a number of countries including the United States, Italy, Egypt, Japan, Pakistan, and Estonia.⁶¹³ In actual practice however, just as the non-permanent members have always been considered as representing-- in some respects at least-- the principal geographic regions of the world,⁶¹⁴ so also would the new permanent members be considered as representing the regional seat they occupy. This fact can not be lost on the new permanent member considering the fact that it would eventually be subject to a periodic review.

In conclusion, the idea of equitable geographical representation means that while the endorsement of the region is necessary for a viable candidacy, it is not sufficient because the candidate still must obtain the votes of member States from outside its region or group. Thus, if the Latin America and the Caribbean group decide to put forward Cuba to fill the permanent seat of the group shortly after the foiled bay of pigs invasion in 1963, such nomination by itself would not be sufficient to secure Cuba a permanent seat, since it would have to seek the support

⁶¹¹ Robert D. Hayton, "Thoughts on a Role for the Inter-American Regional Group in the Community of Nations," *Proceedings of the American Society of International Law at its Forty-eighth Annual Meeting*, April 22-24, 1954 (1954), p.64.

⁶¹² R. W. G. Mackay, Comments on "Expanding the United Nations Community," *Annals of the American Academy of Political and Social Science*, Vol. 296 (November 1954), p. 102. Both Brazil and Italy have spoken in opposition to the idea of 'regional representation' instead of "equitable geographical representation" in the selection of new permanent members, "We are the United Nations, not the United Regions."

⁶¹³ For remarks by the U.S., see GA/9147, p. 7; Japan, id., at 3; Egypt, GA/9146, p. 1; and, Estonia, U.N. Doc. A/50/PV.35, p. 14.

⁶¹⁴ GA Res. 1991A (XVIII) of 17 December 1963, para. 3.

of countries outside its region. Similarly, Africa's nomination of Libya will not be sufficient to secure a permanent seat on the Security Council for Libya.

On the contrary, if the system of regional representation were adopted, the Assembly would play no role whatsoever in the two preceding scenarios, since the only requirement would be that the member receive the endorsement of its regional group. The problem with this procedure is that it may polarize debates and voting in the Council thus grossly undermining the effectiveness of the Council. Furthermore, because the Council acts on behalf of the entire United Nations, it is important that the members enjoy a support beyond their individual regional group, lest the United Nations becomes what the permanent representative of Brazil to the U.N. has called the United Regions, as against the United Nations.⁶¹⁵

Similarly, while expressing his preference for equitable geographical representation as opposed to regional representation, the representative of Indonesia stated that, "The concept of regionalism" that is regional representation "would deprive the General Assembly of its jurisdiction to elect members which might sharpen regional animosities."⁶¹⁶

This does not mean that the regional groups have no place in the U.N. In fact, the entire Chapter VIII of the Charter, Articles 52 to 54 is devoted to the idea of regional arrangements. This, in addition to the idea of equitable geographical representation is sufficient to give voice to the different regional groups at the U.N. in general and the Security Council in particular. Projecting regional organizations or groups to the Security Council is not likely to improve its efficiency. On the contrary, it is likely to affect it adversely.

⁶¹⁵ Ambassador Francesco Paolo Fulci, Statement by the Permanent Representative of Italy to the U.N., (New York, October 29, 1996) *On Item 47: "The Question of Equitable Representation On and Increase In the Membership of the Security Council,"* citing the Ambassador of Brazil to the U.N.

⁶¹⁶ GA/9147, 30 October 1996, p. 7.

XI.

CONCLUDING REMARKS

The foregoing examination of Security Council practice, and the United Nations in general, is an attempt to answer the questions raised by the need for an equitable representation on and increase in the membership of the Security Council. Essentially, this includes the need for: (1) an increase in both the permanent and non-permanent membership of the Security Council; (2) the elimination or limitation of the veto; and, (3) measures to enhance the transparency and working methods of the Security Council.

The United Nations began in 1945 with 51 original members, and an 11 member Security Council. By 1963, membership in the General Assembly had increased to 113. Consequently, membership in the Security Council was increased by 4 to 15 to, in the words of an observer, "modernize the ... obsolete apportionment of seats on the Council"⁶¹⁷ and bring it in line with the increase in membership. Since the last expansion of the Security Council in 1963, membership in the General Assembly has increased from 113 to 185. Thus, the need for the an increase in the membership of the Council to reflect the realities of the contemporary world of international relations, rather than continue to perpetuate what obtained 50 years ago is exceedingly urgent.

The political implications of changes in the membership of the Security Council might be very far-reaching leading some countries holding privileged positions in the Security Council to resist change or to see change as a dilution of their powers. However, because of the political and moral authority needed for Security Council decisions to be effectively implemented, its composition cannot be perceived by the general membership as imbalanced either in geographic terms or in terms of participation by industrialized and developing countries.

The United Nations today includes a much larger number of independent,

⁶¹⁷ Hearings before the Committee on Foreign Relations, U.S. Senate, Executive A, 89th Congress, 1st Session, April 28 and 29, 1995, *Statement by Secretary of State, Dean Rusk*, p. 13.

sovereign States than when it began. In such a context, the United Nations cannot afford to be seen as exclusivist or incomplete, either in appearance or in outlook. In particular, an adequate presence of developing countries on the Security Council is both desirable and necessary on the basis of an overwhelming political criterion: the nations of the world must feel that their stake in global peace and prosperity is factored into United Nations' decision-making.⁶¹⁸

If the Security Council is to wield the political and moral authority needed for its decisions to be effectively implemented, its composition cannot be perceived by the general membership as imbalanced either in geographic terms or in terms of participation by industrialized and developing countries. "If post cold-war United Nations is to fulfill the promise of creating a true global partnership for peace, the organ responsible for safeguarding international peace and security must be perceived as equitable, both in its permanent and in its non-permanent membership."⁶¹⁹

In the words of the permanent representative of Brazil to the United Nations:

"An increase in the permanent membership of the Security Council limited to industrialized countries would not only aggravate present imbalances in regional terms, but would fail to acknowledge the increasing role played by developing countries in promoting peace and enhancing security. International relations have undergone significant changes in the past five decades, with the emergence of new political and economic Powers with a global reach. An increase in the Council's membership that fails to deal with these realities cannot be called a reform. A reform that fails to contemplate developing countries as permanent members cannot be called equitable."⁶²⁰

Restructuring the Security Council is necessary and urgent if it is to maintain its usefulness and influence as a mechanism for preserving peace. The world which gave rise to the present structure of the Security Council no longer exists. The world order emerging from the Second World War has been overtaken by events. Accordingly, the Council should, in order to be effective, adapt itself to the reality and challenges of the present and the future, and should include representatives of

⁶¹⁸ A/50/PV.40, p. 45.

⁶¹⁹ A/50/PV.59, p. 14.

⁶²⁰ Id.

the present world order. The rapid growth in the number of independent States and the emergence of new Powers in the political and economic sphere should be taken into account in the composition of the Security Council.⁶²¹

There is a need to increase the number of permanent seats (two to five additional permanent seats). Global influence, capacity and willingness to contribute to the maintenance of international peace and security in particular through peace-keeping operations and the assumption of an additional financial burden (peace-keeping operations budget) should be taken into account in selecting new permanent members.

In addition to Germany and Japan, already perceived by many as candidates suitable for permanent seats, Africa, Asia, and Latin America also deserve a permanent seat each. The increase in permanent seats should be accompanied by an appropriate increase in non-permanent membership in order to preserve as much as possible a balanced configuration of the Security Council. The current criteria for selecting non-permanent members⁶²² should be maintained.

Since the San Francisco Conference, the question of the veto has always generated intense debate . In fact, one of the proposals pushed most vigorously at the Assembly during the first five years of the U.N. was the limitation of the veto, especially in the matter of admission of new Members.⁶²³ Over the years, there has

⁶²¹ A/50/PV.40, p. 33.

⁶²² Charter Article 23, para. 1.

⁶²³ U.N. General Assembly, Report of the Special Committee on Admission of New Members, pp. 2-3.

been a steady attempt to limit the veto.⁶²⁴ While the reasons⁶²⁵ for including the veto in the Charter in 1945 are still relevant, there is a need to define more clearly its extent of the veto, and efforts should be made to limit it to enforcement action taken under Ch. VII.

There seems to be three ways to resolve problems concerning the veto: (1) is through an amendment to the Charter; (2) by an amendment to the rules of procedure of the Council; and, (3) by the joint effort of the permanent members to refrain from exercising the veto with regard to certain issues. The first method, through an amendment to the Charter, is subject to a veto. It would therefore have to be acceptable to the present permanent members of the Security Council for it to become a reality. The second could be achieved without a veto, however, it may not be realistic to wrest power from the permanent members as it could rob the U.N. of the much needed support of the permanent members. The third method which relies more on consensus may actually prove more effective, and, more importantly, achievable in the attempt to limit the veto.

A permanent member may not easily be persuaded to ratify an amendment to the Charter which forever limits its veto power. However, permanent members may be persuaded to agree among themselves not to exercise the veto with respect to certain issues. Generally, over a long period of time, Security Council practice has a way of taking on the appearance of a "gentleman's agreement" which members

⁶²⁴ See for instance, GA Res. 40(1) of 13 December 1946, urging the permanent members to ensure that the exercise of the veto privilege does not impede the Security Council in reaching decisions promptly; Res. 117(11) of 21 November 1947; Res. 267 (III) of 14 April 1949 on The problem of voting in the Security Council; Res. 296K (IV) of 2 November 1949; and, the "Uniting for Peace" resolution: GA Res. 377(V), November 3, 1950, which notes in its preamble that it was conscious of the failure of the Council to discharge its responsibilities for the maintenance of international peace and security.

⁶²⁵ In presenting the Charter to the U.S. Senate for its ratification, Secretary of State Stettinus, noted that the five permanent Members of the Security Council were selected because they "possess most of the industrial and military resources of the world. They will have to bear the principal responsibility for maintaining peace in the foreseeable future, a fact recognized by provisions of membership." Charter of the United Nations, Hearings before the Senate Committee on Foreign Relations, 79 Cong. 1 sess., p. 211.

rarely go against. No less a figure than former Secretary General Bhutros Bhutros-Ghali has expressed the need for consensus as a means of addressing the veto problem.

In the Agenda for Peace, Bhutros Bhutros-Ghali proposed that "a genuine sense of consensus deriving from shared interests must govern its work, not the threat of the veto or the power of any group of nations."⁶²⁶ Expanding on the need for consensus, the Secretary General then added that if the Council's decisions are to be effective and endure: "[A]greement among the permanent members must have the deeper support of the other members of the Council."⁶²⁷ It is noteworthy that in the 7 years since the end of the cold war, the exercise of the veto has diminished drastically to an average of less than one a year.

Some years ago, in his Seventh Annual Report to the United Nations, former Secretary General Dag Hammarskjöld reminded us that the members of the United Nations may have equal votes, but they are far from having equal influence, stating that:

"The criticism of 'one nation, one vote,' irrespective of size or strength, as constituting an obstacle to arriving at just and representative solutions, tends to exaggerate the problem. The General Assembly is not a parliament of elected individual members; it is a diplomatic meeting in which the delegates of member states represent governmental policies, and these policies are subject to all the influences that would prevail in international life in any case."⁶²⁸

In spite of all one might say against the veto, the reality is that the abolition of the veto might increase, not diminish, international tensions and the danger of war, since the majority might then be tempted to vote an action against a recalcitrant superpower. The technique of arriving at political decisions by counting votes without regard for power is a democratic luxury that the world may not be able to

⁶²⁶ Agenda for Peace, Report of the Secretary General to the General Assembly, U.N. Doc. A/47/277-S/24111, 17 June 1992, para. 78.

⁶²⁷ Id.

⁶²⁸ See Public Papers of the Secretaries-General of the United Nations: *Trygve Lie*, Volume I, 1946-1953, (Columbia University Press, 1969), p. 465, and U.N. Doc. A/2141/Add. 1. See also, Statement by Secretary of State, Dean Rusk, citing Dag Hammarskjöld, at the Hearings before the Committee on Foreign Relations, U.S. Senate, Executive A, 89th Congress, 1st Session, April 28 and 29, 1965, p. 20.

afford, particularly in a nuclear age.

While the "...principle of 'majoritarian' rule does make sense in a homogeneous political context, the same could hardly be said for the United Nations, consisting of countries with conflicting cultures and interests including different political ideologies. In such a case, negotiating with the opponent rather than outvoting him may be the wiser method of settling differences."⁶²⁹ Debate has a place and "majoritarian" rule has a role, and a place in an International Organization, but when world peace is seriously threatened, public debate is no substitute for private negotiation.

With the cold war behind us, the changes in the global economy, the pervasive influence of the information age with its potential to reshape international relations and redefine contemporary notions of sovereignty,⁶³⁰ and the pursuit of economic prosperity will replace the quest for military superiority as the dominant goal of the vast majority of countries. In the economic field, we have already started to witness global change in economic policies.

According to the 1995 World Bank annual report, "The embrace of market-based development by many developing and former centrally planned economies, the opening of international markets, and great advances in the ease with which goods, capital, and ideas flow around the world are bringing new opportunities, as well as risks, to billions of people."⁶³¹ The report adds that "In 1978, about a third of the world's work force lived in countries with centrally planned economies, while another third lived in countries weakly linked to trade and investment." But, that if

⁶²⁹ John G. Stoessinger, *The United Nations & the Superpowers*, China, Russia, & America (1977) p. 20.

⁶³⁰ The domination or monopoly of the mass media, which dictatorial regimes consider a measure of their sovereignty will soon become obsolete with the proliferation of the internet. In the words of the former Secretary General Bhutros Bhutros-Ghali, "The time of absolute and exclusive sovereignty ... has passed; its theory was never matched by reality." *Supra* note 384, para. 17.

⁶³¹ *Supra* note 483, p. 1. The risk refers not to military risk, but to the view that the global employment market is a zero sum game, and consequently job gains in the South can only be attained by a simultaneous job loss in the North.

recent trends continue, "by the year 2000, fewer than 10 percent of workers may be living in such countries, largely disconnected from world markets."⁶³²

On the military front, the end of the cold war has ushered in a new era of reduction in military expenditure. In his *Agenda for Development*, former Secretary General Bhutros Bhutros-Ghali estimated that, "Worldwide, between 1987 and 1992, a cumulative peace dividend of \$500 billion was realized; \$425 billion in industrial and transitional countries and \$75 billion in developing countries."⁶³³ If the arms race proved anything, it is that none of the superpowers could ever possess a decisive massive surprise attack capability over the other, and much more importantly, that a hungry citizenry is a worse threat to peace and stability than an opposing army.

In the search for economic prosperity, the overt hostility of the arms race will be replaced by, at least, an atmosphere of mutual tolerance, and more co-operation especially in the economic field. Increased economic co-operation in itself may not guarantee international peace and security. But, it has been observed that, "The lack of development contributes to international tension and to perceived need for military power, which in turn heightens tensions. Societies caught in this cycle find it difficult to avoid involvement in confrontation, conflict or all-out warfare."⁶³⁴ Thus, economic co-operation and increased development, contribute positively to the achievement of one of the goals of the U.N., the maintenance of international peace and security.

As the emphasis shifts from military domination to economic affluence, we are likely to see reduced reliance on the exercise of the veto. In fact, of the 283 vetoes

⁶³² Id.

⁶³³ Report of the Secretary-General, *Agenda for Development*, Doc. A/48/935, para. 31, 6 May 1994.

⁶³⁴ Id., para. 18.

cast so far, none was on an economic issue.⁶³⁵ In the end, the self imposed restraint in the exercise of the veto, which we have witnessed since 1990, will most likely continue, and the use of the veto may eventually fall into desuetude. In any event, the veto will no doubt continue to be valued for its political symbolism if for no other reason.

⁶³⁵ Although this assertion is true, it is also true that sometimes political decisions such as the decision to embark on "desert storm" has economic undertones (oil). So, in a way, we have not reached El-Dorado yet, but we have moved further away from the ideological rivalry of the cold war era.

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