

Dr. Kerstin Leitner

Restructuring the Security Council – an impossible undertaking?

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1. Rationale for the Reform

When the representatives of 49 governments assembled in San Francisco in 1945 they wanted to form a successor organization to the League of Nations which would be more effective: one which would be capable of maintaining peace through a collective international security system. Devastating wars, like the one which had just ended, genocide, and displacement of millions of people due to political conflicts should belong to the past. Instead nation states should uphold a set of principles of mutual respect and willingness to seek negotiated solutions to any conflict of political interest and refrain from taking recourse to solutions through military aggression. Socio-economic development which would raise the living standards of the world's population was the primary goal, and international cooperation the means to achieve it.

The meeting ended with the formulation of the UN Charter. In it the Security Council was created with the primary task of monitoring the international situation on a continuous basis. In order to do so, the Council was given two tasks: firstly, it should exercise pressure on governments which did not adhere to the principles of the UN Charter, and bring them back into line through a variety of means, e.g. set of economic sanctions. Secondly, the council should establish an international system through which the production and trade of weapons would be controlled. This, it was expected, would reduce the dangers of renewed armed conflicts and it would free economic resources for civilian development.¹

¹ See Chapter V of the UN Charter, especially Art. 24 – 26 and chapter VI und VII.

Yet, since 1945 many wars, genocides and refugee flows of millions of people occurred, which the Security Council was powerless to avoid or to end quickly. Today in the age of economic globalization armed conflicts become ever costlier and interfere brutally with the life of many millions of people. While most governments still wish that the Security Council exercise its role of a peace monitor and enforcer of non-military conflict resolution, we have seen and continue to see instances where the council as a whole does not come to a binding and authoritative decision. What needs to be done to change this situation?

When the Security Council was created, its members represented the peoples of this world. Through their colonial regimes, England and France covered most of Africa and Asia, the Caribbean and the Pacific Island territories. The US, the Soviet Union and China represented the three biggest territorial countries with large populations. They became the 5 permanent members of the Council. Other countries, e.g. in South America, became members on a rotational basis. It was a good approximation at the time of making sure that, on the one hand, all peoples of the world would be represented in the Council and on the other, the number of members would be small enough to allow for collective, swift decision-making.

Whether the members of the founding assembly anticipated the Cold War and decolonisation when they met in San Francisco in 1945, is of no immediate relevance here. It is at the moment also not important to debate whether the Security Council was successful in the discharge of its mandate during the decades 1950 – 1989, it is, however, of immediate importance whether the Security Council after 1989 was able and willing to address the threats to international peace and security “promptly and effectively”, as requested by the Charter.

In the mid-1960s, the members of the UN had undertaken two reform measures of the Council; one which did not change much. The decision was taken to more appropriately reflect the increased number of member states and the geographical distribution of nation states by increasing the number of non-permanent members from 11 to 15 and providing that on procedural matters an affirmative vote of 9 (formerly 7) council members, including all permanent members was required.² A more serious change was the creation of the disarmament machinery separate from the Security Council, which reports directly to the GA. Although the Council was to develop plans for a regulatory system of armaments, in order to limit the deployment of economic and human resources towards the production and distribution of weapons³, the creation of the disarmament bodies effectively took away this task from the Council. Cold War confrontations and the threat of a military conflict with nuclear weapons among two permanent members of the Security Council and the two blocks which they led, was so overpowering, that the initial idea, to engage the Council in armament controls and to keep armament levels to a bare minimum, was lost.

However, following the collapse of the bipolar world in 1989, discussions about the reform of the Security Council resumed, which was reinforced by and through the international conferences which the UN secretary-general convened throughout the 1990s. Although the sum total of the conference outcomes did not amount to a paradigm shift for economic and social development, the realization that about one third of humankind was living in abject poverty or in constant threat to face deteriorating living standards gave strong impetus to a

² See amendments to Art. 23 and 27 adopted in 1963, which came into force in 1965.

³ See Art. 26.

General Assembly resolution in 1993⁴ that all member states needed to be better represented in the Security Council, as the one UN body whose decisions are binding on all member states.

For the determination of representation rights two criteria are used so far: the level of assessed contributions a member state pays to the UN and the economic and social power a country holds. While the first is easy to determine, the second is not that clear and easy to establish. The question therefore is: How to define the socio-economic power of a member state?

While throughout the decades of the Cold War many member states were dissatisfied with the work of the Security Council, today governments and the general public are highly critical of the Security Council and its apparent lack of monitoring effectively international peace and proposing measures which quickly end armed conflicts.

2. What should the reform achieve?

James Paul and Celine Nahory of the Global Policy Forum⁵ have formulated the strategic directions a reform of the Security Council should take. According to them, the Council should in future be

- more representative
- more accountable
- more legitimate
- more democratic
- more transparent
- more effective
- fairer and more even-handed (no 'double standards').⁶

It is interesting to note that in their formulation Paul/Nahory express a view that the Council is already meeting all of these demands, but that it is a question of a greater extent or higher level of these aspects to be realized in the Council's work. And indeed on some of these fronts the Council has undertaken steps to change their way of operating. But the demands are that more has to happen for the Council to be fulfilling effectively its mandate in today's world.

3. Goals of such a reform

We shall continue to live in a world full of conflicting interests. We shall see a growing world population, of which roughly 10 – 15 % continues to live in abject poverty, the availability of natural resources will be shrinking to serve this growing population, especially in terms of water and land resources. This will force all member states to handle potential and actual conflicts in such a way that a fair balance between conflicting interests are achieved and that conflict resolution is no longer sought through military action.

⁴ Resolution A/RES/47/62 re: Question of equitable representation on and increase in the membership of the Security Council (Feb. 1993) and A/RES/48/26 establishing an Open-ended Working Group (Dec. 1993)

⁵ *critical currents* no.4 May 2008 The Quest for Regional Representation, Reforming the United Nations Security Council

⁶ *Ibidem* page 30

The Council was created in 1945 to serve exactly these ends; it has not always been able to satisfy this mandate; hence reforms need to be undertaken to strengthen and enable the Council to discharge its duties successfully.

Of course, the Council might continue to work as it does today and individual member states will seek their own ways and means of achieving the goals originally set out for the UN and the Security Council. The argument here is that peace-building efforts under the authority of the Security Council will carry greater weight and promise of success, even if the burden of concrete action may still rest of the shoulders of individual member states or the alliance of several member states. Marginalizing the Security Council in actual fact means to return to an international system pre-1945 and not advancing to a system which is in line with economic globalization.

4. Ways and means to carry out the reform

There is a tacit agreement among the diplomatic representatives in New York and their governments that the reform of the Council should not necessitate the reformulation of the UN Charter. Reforms should be of a 'technical' nature, such as procedural questions (for which a majority of 9 council members, including all permanent members is required) and/or the composition of the Council, which would be similar to the reform of 1965, which enlarged the Council from 11 to 15 members. This, however, would require an amendment to the UN Charter.

While it is understandable why the parameters of a further reform of the Security Council are limited in scope, they will, however, not suffice for the Council to fulfill its mandate as a global peace promoting body in the 21st century.

5. Mandate and powers of the Security Council

According to the UN Charter art.24 the Security Council was created "in order to ensure prompt and effective action by the United Nations". To this end, member states "confer on the Security Council primary responsibility for the maintenance of international peace and security" (ibid).

In art.26 the Council was mandated to submit "plans to the Members of the United Nations for the establishment of a system for the regulation of armaments."⁷

In pursuit of its mandate the Council is granted "specific powers" which are laid down in chapters VI, VII, VIII and XII of the charter. These powers include investigation of any existing and potential dispute which may present a threat to international peace and security (chapter VI), and may include cases in which a non member of the UN is involved. The ultimate aim of action by the Security Council is a "peaceful settlement of the dispute" (art.38).

In cases which are a breach to international peace or an aggression against a member of the UN, the Council can decide non-military measures, such as economic, civilian and diplomatic

⁷ During the years of the Cold War and faced with the balance of nuclear power between the US and the SU, the Council delegated the negotiations about disarmament to a special committee and machinery. At the beginning of the 21st century the situation begs for a radical review and possible greater direct involvement of the Security Council in establishing an international system that regulate the production and trading of armaments in order to get back to the original idea that the Council should promote the "least diversion for armaments of the world's human and economic resources (art.26).

sanctions. If such measures are considered to be inadequate, the Council can decide “demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations (art. 41 + 42).

6. Reform process and elements of the reform package

If the reforms are to be achieved and to strengthen the responsiveness and effectiveness of the Security Council, political consultations at the level of heads of state and government will be indispensable. Such a gathering would and could give the diplomats the direction and parameters for the scope and extent of reforms which the member states are willing and prepared to support in the near future. An opportunity would arise in 2015 when the results of the Millennium Declaration of September 2000 and the attainment of the MDGs are going to be reviewed. However, a debate of a possible reform process should go beyond what was agreed in 2005.

A package should be proposed by the UN secretariat and a debate should follow according to art.109 of the UN Charter. Such a package should not only contain proposals on how and by how many new members the Council should be enlarged, but it should also clearly spell out which conflicts the Council would handle directly and which ones the Council would delegate to regional authorities. If anything can be learned from the experience of the past 20 – 30 years, then it is the fact that the UN was overextended and did not effectively structure and resource its interventions.⁸ The recent handling of the crises by the Security Council in Libya and Syria show that a slow learning process is taking place. Some would argue that the process is too slow, and that the Council has not reacted promptly in either case. This is not the place to debate the effectiveness of the Council’s interventions. But it is worth recalling that the Council in the case of Libya “delegated” the execution of an armed intervention to NATO, and in the case of Syria is relying on the diplomatic interventions of an envoy appointed by the UN secretary-general. Most notably, however, is that in both cases the Council sought the involvement of the Arab League, as the most authoritative regional grouping, although in either case decisive action was only then possible when all Council members agreed or at least did not object to a specific course of action.⁹

More important, however, is the ambiguities which continue to exist with regard to the Council’s mandate to propose to a member state measures which would be peace-building in nature, but perceived as an undue political intervention in the sovereignty of the member state. In other words, is it perceivable that the Council would agree on a number of consultative and decision-making mechanisms which would permit a country to achieve by its own process a transition from a “dictatorial” to a “democratic” political system?

In the last decades the world at large has come a long way to accept that the protection of human rights is a higher legal principle than national sovereignty, but so far the Council has not reviewed to which extent and how this emerging consensus affects its work and

⁸ After 1989, there were on average 40 -50 armed conflicts going on around the world every year. There on average xxx UN peace-keeping or monitoring missions ongoing. Such extended engagement without forces which are specially trained and retained for such missions it is no wonder that these missions in several instances performed sub-optimally and the occasional misconduct of soldiers serving under UN auspices brought these missions into disrespect.

⁹ Although the armistice in Syria is still fragile as I write this article, it is the diplomatic intervention by Kofi Annan and the signals by all 5 permanent Council members that they would no longer tolerate the violence of the political conflict that brought both sides to refrain from extensive armed actions.

discharge of its mandate. While the Council has accepted reluctantly the principle of the Responsibility to Protect, it has failed so far to determine the scope, extent and procedures under which this principle should be applied in concrete situations. Without a clarification, the permanent members of the Council will never arrive at a unanimous decision; even if and when its intervention is required to avoid armed conflict in cases of a political transformation process. Political transformation should be driven by self-determination, but with minimal negative effects on the life and well being of the civilian population in such a country and its neighbors.

Apart from accepting and further defining the Responsibility to Protect principle, there are four elements which would need to be reformed in order for the Council to be an effective body which can guarantee the maintenance of international peace and security and monitor peaceful political transformation processes.

Representation:

In 1945, the UN was founded in “name of the peoples” of this world. Consequently, the organs the UN should be representative of the peoples. In the GA, people are represented by the government of the country where they live or whose nationality they carry. Today these are 193 member states. The Security Council has the mandate from the GA on their behalf to monitor and to act “promptly and effectively” to avoid or defuse threats to international peace and security. Such threats can occur in any part of the world, and therefore the Security Council should have members who can understand the situation in any part of the world. In 1945, when the Security Council was constituted, the victorious allies of the Second World received permanent seats¹⁰, and other member states were to participate representing other parts of the world, on a rotational basis. No decision by the Council should be accepted unless all permanent members had agreed. The question is now how to translate these powers into a representational system that gives all members of the GA the sense that they are adequately involved in the decision-making process of the Security Council.

One possibility would be to follow the principle of the UN secretariats and to divide the world into several regions, each of which would receive 2 seats in the Security Council, one permanent and one rotating. Each region would determine which country/government would fill the permanent seat and which country would rotate, let’s say on a 3-4 year cycle.

If the world were divided into 8 regions¹¹, this would enlarge the Council only by one additional seat.¹² Therefore a new representational system does not necessarily have to lead to a much enlarged Council.¹³

¹⁰ Two of those, namely Great Britain and France represented at the time through their colonial administrations vast parts of Asia and Africa.

¹¹ For instance, the Americas, Europe, Russia and Central Asia, remaining continental Asia, Oceania, Arab region and Middle East and Sub-Saharan Africa. Individual countries could choose which grouping they want to belong to, in case their geographical grouping is not acceptable to them. There are plenty of precedents in the UN system’s regional set up to show how this problem could be resolved.

¹² Currently there are 15 members, with 5 coming from Europe. There are founding members which have never been member of the Council, e.g. Guatemala. There may be explanations for this, but this makes the situation not acceptable.

¹³ For other suggestions of regional representation see Richard Hartwig in *critical currents* no. 4.

Immediately readers will be doubtful whether the current permanent members will agree to such a change. Skepticism at this stage is understandable, but if such proposals were gaining traction among a majority of member states, the question might pose itself differently. The advantage of such a radical rethinking of the representational system is obvious: countries in their respective region would most likely be much more engaged to mediate in situations of conflict and will engage the rest of the world, when they themselves cannot arrive at a negotiated solution.¹⁴

Criteria for the selection of Council members and the procedures for their election should be the same for all regions. They should be supervised by the UN secretariat and any irregularities should be brought to the attention of the GA and potentially the International Court of Justice, as the highest and independent supervising authority for the UN.

Modalities for taking binding decisions:

Like today, all binding decisions require an affirmative vote of all permanent members and for procedural issues a majority of the Council. However, in future a permanent member should only be able to veto a decision if a draft decision is not in conformity with the letter and spirit of the UN Charter. The final judgment whether a veto is valid, should rest with the legal department of the UN secretariat and ultimately the International Court of Justice.

Such a sharper definition of the reasonability of a veto would forestall that it is cast on the basis of a perceived or real national interest of a permanent member. With other words: the veto power does not necessarily have to be abolished, but casting one should be made transparent and independently judged whether it is justified.

Operational Procedures:

Interestingly enough, it is here that the greatest potential lies for making the Council act more swiftly and reaching effectiveness. Diplomatic representatives of several smaller member states have made proposals regarding the operating procedures of the Council. In addition to these proposals, it would be advisable to strengthen the Council's ability to request a party to a conflict to appear before the Council. It would also be useful to extend the right to make such requests to non-state parties to a conflict. Failure to respond would carry a stiff fine, be it the suspension of voting rights for member states, for NGOs the punishment could be deregistration and possibly a monetary fine. This would reinforce the Council's ability to act according to chapter VI and VII. In addition, the Council should aim for maximum transparency of its sessions, and make them available to a global public via the Internet.¹⁵

Sanctions should not only be imposed when a member state or parties to a conflict are in breach of the international peace, but also when they resist to appear before the Council or do not observe Council recommendations or decisions, as is currently being debated in the case of Syria.

¹⁴ The crisis management in Libya and Syria are showing the first signs of such an arrangement, when the Council insisted to act only on the basis of a demand from the Arab League.

¹⁵ The initiative of the governments of Canada, Norway, Greece, and Liechtenstein to fund an office at Columbia University in New York to document online the work of the security council is a welcome move, but clearly not enough. The website can be accessed under www.securitycouncilreport.org

There is a growing number of international conventions which are ratified by all member states. The Council should request review reports from the respective secretariats of these conventions and reward countries which have implemented the convention in an exemplary way and request those which have major problems with the implementation, to improve their performance. Conventions are means to strengthen the foundation for peaceful development and they attempt to level the international playing field. The Council should therefore monitor the application of these means proactively and seek to strengthen their impact in all member states.

A further element which could be strengthened is the oversight over the work of the Security Council. The GA should establish a review mechanism which would regularly assess the results of the deliberations and decisions by the Council. Members have to be held to the standard of pursuing global and not national interests. Should a member of the Council fail to convince the GA that their representative is acting in the global interest then the GA should demand the regional group to initiate remedial action.

While the primary responsibility to maintain peace internationally and within a country rests with national authorities, the UN were created to initiate appropriate actions which would lead or force a national government to rectify a situation which is threatening to decline into an armed conflict.

International Disarmament:

In order to fulfill its mandate in toto, the Security Council should alternatively deal with concrete conflict situations, and with the establishment of a global control system of armaments.

In concrete conflict situations, the Council should first consider which regional organization may be most suitable to mediate a conflict resolution; such delegation is foreseen in chapter VIII of the Charter. This would allow the Council to deal with select cases, and follow them from the beginning until such a time that peaceful development has been established. Various parts of the UN system should then be answerable to the Security Council and report on the results of their work, be it in the field of peace-keeping, humanitarian assistance or development cooperation. At different times the Council has in the past dealt with all these issues, but the suggestion here is that the Council should do so systematically in each case, which has been brought to its attention and which the Council has accepted to get directly involved.

Having the Council get involved in the establishment of an international armament control system would be a big change from the current situation would be. Even if the disarmament set up in Geneva continues, the Council should give this aspect of its mandate much higher attention. Settling disputes in a non military way will only become the global default mode, if and when weapons are much less easily accessible to conflicting parties outside armed forces. The latter at least are supervised by political authorities. In many recent conflicts we have seen armed parties escaping any effective political control. Although the International Criminal Court was created to deal with crimes committed by such self appointed leaders, who have often terrorized and killed thousands of people, the UN should strengthen ways and means which serve to forestall such brutality and violence. The Security Council has a crucial role to play in this regard.

A huge part of the international trade in armaments is beyond government control. This is a dangerous threat to international peace. While the US government and some European governments have acted independently of each other, and arrested some of the most notorious arms traders, a much more systematic approach via the UN under the auspices of the Security Council is urgently required. Such a control system will not avoid conflicts, but it might help to avoid the atrocities and violence which we have witnessed in many instances, with UN peace-keeping forces often left incapable to control these crimes against humanity and genocides.

In many countries, expenditures for armament have risen in steep curves, thus diverting valuable resources from other efforts needed for human development. We are seeing in some parts of the world again an armament race¹⁶, where we should be seeing a race to overcome poverty, hunger and environmental destruction and the fight against epidemics and other diseases.¹⁷ The Security Council will not and never should be held accountable for such developments, that accountability rests with national governments; but it should be accountable to the GA and the peoples of this world, to show which systems might help to forestall, limit or even end the wasteful use of resources for the uncontrolled production and trade of armaments.

7. How to proceed?

In the final declaration of the Millennium Summit plus 5 which was held in September 2005, a sentence was included to proceed with the reform process of the Security Council. By 2010 no tangible progress had been achieved. Recent events make a reform, however, ever more urgent. Therefore the planned Millennium Summit in 2015 which shall review the progress made in implementing the Millennium Declaration of 2000 and in attaining the MDGs, should have an element or session during the high-level segment of the meeting to review the application of the UN Charter to the demands of maintaining international peace and security and formulate a guide for needed adjustments and further discussions in New York and an ultimate decision by the GA.

The countries currently seeking a permanent seat in the Security Council, namely Germany, Japan, India, Brazil and South Africa should assist the UN secretariat in the preparations of this segment. They may not succeed in obtaining a permanent seat for themselves, but they would certainly gain stature among the 1993 member states if, with an open mind, they would pursue the issue and allow all member states to determine what renewal or reform is doable in 2015.

In particular, Germany and Japan can refer to their experience in the 1950s and show how quickly civilian development can occur when public budgets are free of military expenditure, but there are other countries, too, which can convincingly prove that minimal military budgets free up funding for education, health and environmental protection and conservation. If we want a world free of wars, then we need to rethink how to need to position the UN in today's world. We need a race between countries for accelerated human

¹⁶ See the annual reports of the Stockholm Peace Institute under www.sipri.org The latest available report for 2011 gives revealing facts and figures major armed conflicts, armament production, military expenditure and related aspects.

¹⁷ As agreed in the Millennium Declaration of 2000 and reflected in the MDGs.

development, and not who can with which armament best deter another country from a military aggression.¹⁸

¹⁸ I thank the students, who participated in my seminars between 2006 and 2012 on “The UN in the 21st Century” for their queries, ideas and suggestions. However, the views expressed in this article are all mine.