

Sixth Committee (Legal): Changing the UN Charter to Reform the Security Council



JPHMUN 2011 Background Guide



1. Introduction

As a precondition for an expanded diplomatic-preventive role and more effective field operations, there is a consensus developing among member states of the United Nations that general institutional reforms are needed. These reforms include the proposals that the UN must get members to pay or find alternative sources of funding for global security and other efforts; that the bureaucracy and operations personnel must be held to ever higher standards of efficiency and accountability for expenses; and, most dramatically, that the Security Council must be made more legitimate by expanding its membership and making its deliberations more transparent.¹ However, on the question of Security Council reform there are many intense disagreements among member states about the particular reform proposals.

The sixth committee of the General Assembly considers legal questions, such as those surrounding the new International Criminal Court and other issues of international law. An important legal-political issue before the Sixth Committee is this question of reforming the United Nations Charter so that the Security Council (SC) would function with more legitimacy. Since the 1960s, during the Cold War era, an ongoing discussion has been taking place (formally and informally) about the reform of Security Council membership and voting, and as to how much secrecy is appropriate in its deliberations.²

2. The Security Council

The Security Council is one of the main organs of the UN and remains the most influential because it is the only organ that can pass binding decisions on all UN members. There are fifteen members where five have permanent member status (China, France, Russia, the United States, and the United Kingdom) and are known as the P-5 and the other ten serve a two year term. The P-5 countries have veto power, which is a negative vote cast in the Council by one of the permanent members that effectively defeats a decision. The Council's primary responsibility is the maintenance of international peace and security. As such, when a complaint concerning a threat to peace is presented to the SC, it is expected to facilitate a resolution to the conflict.³ This mandate has led the SC in the past to issue cease-fire directives, economic sanctions, and in response to the Suez Crisis of 1956, the Council created the first peacekeeping forces. Under the UN Charter, the functions and powers of the Security Council are:

- “-To maintain international peace and security in accordance with the principles and purposes of the United Nations;
- To investigate any dispute or situation which might lead to international friction;
 - To recommend methods of adjusting such disputes or the terms of settlement;
 - To formulate plans for the establishment of a system to regulate armaments;
 - To determine the existence of a threat to the peace or act of aggression and to recommend what action should be taken;
 - To call on Members to apply economic sanctions and other measures not involving the use of force to prevent or stop aggression;
 - To take military action against an aggressor;
 - To recommend the admission of new Members;
 - To exercise the trusteeship functions of the United Nations in “strategic areas”;
 - To recommend to the General Assembly the appointment of the Secretary-General and, together with the Assembly, to elect the Judges of the International Court of Justice.”⁴

Besides responsibilities for the maintenance of international peace and security, the Security Council must ratify any changes to the UN charter, including any changes that affect the size or powers of the Council. This effectively gives the P-5 countries a veto on the ratification process. However, the existence of the veto was part of the bargain that gave the UN more teeth than its predecessor, the League of Nations. The League was ineffective because it did not include some of the most powerful countries including the United States as these countries feared that joining would limit their sovereignty. By creating the P-5 status, the great powers were guaranteed to maintain their status and were thus more likely to work within the UN structure. As well, such status was given with the expectation that the P-5 would take a leading role in ensuring international peace.⁵

While the distribution of power between member states has changed since 1945, the Security Council has been slow to change. Significant developments have occurred in the world since then, most notably with the emergence of new independent states in the wake of decolonization, which led to an expansion in the ranks of developing states. One of the major criticisms of the Security Council and the veto structure is that there is more weight given to developed over developing countries. China is the only developing, as well as Asian, country among the permanent members. With the end of the Cold War in 1991 following the collapse of the Soviet Union, the United Nations, and especially the Security Council, adopted an activist agenda about peace, security, human rights violations, sustainable development, and international criminal law. Under these circumstances, issues about reforming the Security Council have become rather urgent, especially for Latin American, African, and Asian states that have felt that they have been excluded from permanent membership and veto status. This criticism that the Security Council disproportionately represents developed countries is echoed by some developed countries.⁶

Thus there is an emerging consensus among the member states of the UN that more permanent seats should be added to the Council. In doing so, assignments should be added to deal with the overrepresentation of European states and the non-representation of some major world powers. For example, Japan and Germany contribute more monetary dues to the UN than does Russia, France, and the United Kingdom and so they argue that they should be able to play a more significant role on the Security Council.

3. Divisions and Agreement over Reforms Regarding Membership and the Veto

Should the Security Council's permanent membership be expanded and diversified geographically to accord more with representative principles? Should voting be changed to eliminate what many consider to be the "elitist and anti-democratic bias" of the veto power?

Bringing about Security Council reform is especially difficult because of the widespread disagreement among member states about what should be done. For example, the G-77 (which actually consists of 125 developing nations) is one of the principal advocates for change, but its members do not agree on what changes should be carried out. Islamic countries disagree about which of their own should become a possible permanent representative of the Islamic Conference. Competitors for such a position include Indonesia, Nigeria, or Iran. Meanwhile, Turkey, Jamaica, Iran, and Egypt advocate rotational representation to members representing particular regions. Indonesia favours abolishing the veto. Colombia, Libya, and Iran propose limiting the exercise of the veto.

This disagreement is not limited to the developing world as it exists as well among developed countries. Neither France nor the United Kingdom want to give up their permanent and veto status and share a seat with other European states in order to create a permanent European Union seat. When it comes to increasing the number of permanent seats, Italy is strongly opposed to Germany receiving one. The United States does not mind talk of reform however it will not take a position concerning the veto until structural changes are agreed to. Such structural changes that the United States is willing to entertain include permanent seats for Germany and Japan. The United States "is prepared to accept three additional permanent seats for developing nations from the regions of Africa, Asia, and Latin America; favours regional groups deciding if the seat is allocated to their region would be filled on a rotating basis or held by a single nation; is willing to consider reasonable proposals for an expanded Council that would result in a slightly larger number of seats than twenty-one, providing that the new composition would contribute to a more effective Council and be based on broad UN consensus, including the principal regional states."⁷

Agreements on what action should be taken can and does cross the developing-developed divide. Pakistan, Mexico, Italy, Argentina, Bangladesh, Malaysia and over twenty other states oppose expansion involving new permanent members. Pakistan of course opposes any proposal that would give India a new significant role, just as India would do the same in regards to Pakistan. Another group is the S-5 which includes Costa Rica, Jordan, Liechtenstein, Singapore, and Switzerland. There is also a group, known as the G4, which includes Germany, Brazil, India, and Japan. The G4 states consider themselves deserving of four new permanent member seats, and they advocate two new permanent seats for African nations as well.⁸

There are many intense disagreements on the more particular question of the veto power (defined above in section 2). Some of the different positions that countries have taken are that:

- new permanent members should not be given a veto at all;
- new permanent members should be given a veto power but they cannot use it in all cases. Thus, it should only be applied to Chapter VII questions that include the use of force and other forms of coercion to uphold the Chapter);
- new permanent members should receive veto power that is equal to the current P-5;
- and new permanent members should not receive the veto power and that there should be no veto for any member.

4. Legitimacy and Effectiveness

One of the challenges facing increasing the Security Council to accommodate all of the different interests is that the effectiveness and efficiency of the Council may suffer. Though greater geographical representation may increase the democratic legitimacy of the Council, it is important to maintain a small enough Council so that efficiency in decision-making does not suffer unduly. This is especially important during times of crisis. Consider the following two proposals for changing the membership of the Security Council. These two are only a sample of the many proposals that have been generated through the UN's history.

The *first proposal* was put forward in the 1960s. It suggested that there should be a forty-five-member Security Council, with no member having a veto. Five of these members would be maxipowers (or something like superpowers), fifteen would be major powers, eleven middle powers, eight minor powers, and six ministates.

The *second proposal* was articulated by Brazil in 1992 and variations of it continue to be actively discussed by UN member states. Brazil recommended that the Security Council membership be increased to twenty-one members and that the Council should not exceed twenty-five members. Permanent member seats without the veto should be given to Japan, Germany, India, Brazil, Nigeria, Egypt, and perhaps other regional powers. Some of the variations on this proposal include establishing one European seat, and eliminating the veto for the current P-5 members or at least getting their agreement not to exercise the veto for a time period or over certain issues.

Representativeness

Both of these proposals regarding changes in membership would result in a more representative and legitimate Security Council in the eyes of the 192 states that make up the United Nations Organization. Of course they would not placate every member state, and that is part of the challenge for ratifying any proposed changes. For the first proposal, this approach is a maximalist one that requires radical change in the structure and functioning of the Security Council. The second proposal is a minimalist, incrementalist reform approach that would result in the further evolution of the Security Council. The current P-5 would not lose any essential power from the implementation of the second proposal, though China might lose some of its power relative to India.

Efficiency

Clearly, increasing the size of the Security Council to forty-five members or more would detrimentally affect the speed of its deliberations. As well, the quality of the Council's deliberations--and hence overall effectiveness--would also suffer, for it is unlikely that any of the five "maxipowers" without a veto would participate in any issue vitally affecting its core national interests. Indeed, removing the veto from the greatest powers, such as the US and China, would likely result in their withdrawal from the Security Council and then the United Nations in due course. Even for the minimalist proposal, which is the second proposal, some would argue that it could be unfavorable to effective decision-making, especially during times of crises, for the smaller increase in membership would require more time and effort to build consensus and arrive at a majority decision.

Clarity and Openness

Another issue that is linked to questions of structural reform of the Security Council for greater legitimacy and efficiency (or at least, no major loss in efficiency) is the demand by many states that Council deliberations be no longer conducted irregularly behind closed doors in informal consultations without formal records.⁹ Many want all Council deliberations to be public and recorded--hence less "elitist" and more "democratic." Others are concerned that such

mandatory public diplomacy would be too rigid to deal with fundamental questions of peace and security, especially when the core interests of the major powers are involved.

5. Recent Developments

In 2003, Secretary-General Kofi Anan created the High-level Panel on Threats, Challenges, and Change to analyze problems that the UN faces and how they could be overcome. A year later, the Panel published its report, entitled *A More Secure Future: Our Shared Responsibility*. It proposed that the Security Council membership should be expanded to better reflect the UN member states as a whole, especially in regards to the developing world. However, the report did not advocate an expanded veto. *A More Secure Future* placed more emphasis on funding for Security Council missions, because one of the largest problems facing the Council is that although it may pass a resolution, there may not be the adequate funds for carrying the resolution through. Thus, the Panel argued that in honouring Article 23 of the UN Charter, the Council should allow for increased decision-making by those who contribute the most to the United Nations financially, militarily, and diplomatically.¹⁰

The Panel came up with two models, Model A and Model B. Both models involve a distribution of seats among four major regions, namely Africa, Asia and the Pacific, Europe, and the Americas. Model A provided for six new permanent seats without a veto, and three new two-year term non-permanent and non-renewable seats divided among the major regional areas:

<i>Regional Area</i>	<i>Number of States</i>	<i>Permanent Seats (old P-5)</i>	<i>Proposed new permanent seats</i>	<i>Proposed two-year seats</i>	<i>Total</i>
Africa	53	0	2	4	6
Asia and the Pacific	56	1	2	3	6
Europe	47	3	1	4	6
Americas	35	1	1	4	6
Total (Model A)	191	5	6	13	24

11

Model B took a different approach as it does not call for new permanent seats but creates a new category of eight four-year renewable-term seats and eleven new two-year non-permanent and non-renewable seats. These are divided among the major regional areas as follows:

<i>Regional Area</i>	<i>Number of States</i>	<i>Permanent Seats (old P-5)</i>	<i>Proposed four-year renewable seats</i>	<i>Proposed two-year seats</i>	<i>Total</i>
Africa	53	0	2	4	6
Asia and the Pacific	56	1	2	3	6
Europe	47	3	2	1	6
Americas	35	1	2	3	6
Total (Model A)	191	5	8	11	24

12

The report is worth reading as there are a number of excellent recommendations, which cannot be covered here. The last thing that we will note is that the Panel recommended that any

JPHMUN 2011

reform that is carried out should not be considered permanent and the report suggested that future reviews of the Security Council and the distribution of seats should be scheduled for a future time to account for future changes in the distribution of power among UN member states.¹³

Subsequently, there have been other reform proposals. One group, known as the S-5, has been working to get the voices heard of smaller states. The S-5 includes Costa Rica, Jordan, Liechtenstein, Singapore, and Switzerland and in 2006, it introduced a draft resolution to the General Assembly. This resolution had a number of suggestions including one that recommended that the Security Council engage in more informal and interactive discussion with the General Assembly regarding its annual report and that the Council, as per Article 24 of the UN Charter, should submit more special subject-oriented reports for the General Assembly to consider. In terms of the veto, the S-5 feel that the P-5 members should have to explain their reasons for doing so at the time the relevant draft resolution is rejected and that the objection should be circulated to all UN member states. The S-5 argued as well that all UN members should be consulted when it comes to reforming the seat structure of the Council.¹⁴

One of the interesting things about the S-5's proposals is that they are focused on what can be done without reforming the seat distribution. This more pragmatic approach could prove to provide the international community with change sooner instead of waiting for countries to come to an agreement on who gets a seat on the Security Council. The S-5 also works with the Non-Aligned Movement, or the G77.

In 2010, a new stage in Security Council reform has developed as Ambassador Zahir Tanin of Afghanistan has been overseeing negotiations on the Council's reform. This led to the first ever negotiation text on reforming the Council in May, 2010. Ambassador Tanin has claimed that his work is objective and that it presents a workable structure. Although the text deals with five key issues (categories of membership, the veto question, regional representation, the size of an enlarged Council, and the Council's working methods and the relationship with the General Assembly, it has not built a consensus following yet.¹⁵

At the Sixty-Fifth General Assembly, Security Council Reform debated the issue of reform but a variety of views persisted and so no conclusion was reached. Many of the countries that spoke were small states who believe that reform proposals should include seats for medium and small states; such as the "Uniting for Consensus" approach.¹⁶ This approach is one that seeks to build a consensus so that the final reform will be acceptable to all members. It is also supported by countries motivated by regional concerns. For instance, Italy would rather see an EU seat instead of a new permanent seat for Germany. Other countries, like Iran, argued that the veto needs to be eliminated, and still others argued that the number of non-permanent seats should be increased first as it would be more achievable goal in light of the international community's divisiveness on the issue of permanent seats.¹⁷

In January, 2011 Ambassador Tanin presented a new paper which had an overview of the positions of all member states.¹⁸ While this is admirable progress, the negotiation process continues.

6. Conclusion

Given all of these dilemmas and difficulties, the debate continues about Charter reform to change Security Council membership, the veto, and its lack of full transparency. What does the country you represent propose about the issue of Security Council Reform? How can an equitable solution be reached?

7. Questions to Consider for Resolutions

- Should the veto continue to exist?
- What should the seat distribution be on the Security Council? For instance, consider how many permanent members, non-permanent members, et cetera there should be.
- How can equitable representation for the developing world be ensured?
- Should regional interests and organizations be represented? For instance, with organizations such as the European Union or the African Union taking a larger role in peacekeeping and international diplomacy, should this be accounted for?
- How can the Security Council become more transparent and efficient?

8. Further Research

To get documents (especially The UN Charter), please go to the UN site (www.un.org); to get your country's viewpoint, go to the "Members" link of the UN site, www.un.org/overview/unmember.htm Choose your country from the list and go to their website. There is also an independent non-profit organization known as Reform the UN which has a detailed section recent development in regards to Security Council. (<http://www.reformtheun.org>). Media outlets like that CBC, BBC, and the New York Times are also excellent sources of news articles.

End Notes

¹ W. Andy Knight and Joseph Masciulli, "Conclusion: Rethinking Instead of Tinkering," in W. Andy Knight, ed., *Adapting the United Nations* (London: Macmillan, 2000), p. 420.

² United Nations. *55th Session of the General Assembly*. United Nations Department of Public Information. 11 Jan 2011 <<http://www.un.org/ga/55>>.

³ United Nations Security Council. *UN Security Council Background*. United Nations Department of Public Information. 11 Jan 2011 <http://www.un.org/Docs/sc/unsc_background.html>.

⁴ United Nations Security Council. *UN Security Council Functions and Powers*. United Nations Department of Public Information. 11 Jan 2011 <http://www.un.org/Docs/sc/unsc_functions.html>.

⁵ High-level Panel on Threats, Challenges, and Change. *A More Secure World: Our Shared Responsibility*. United Nations Department of Public Information. 2004. 11 Jan. 2011 <http://www.un.org/secureworld/report2.pdf>.

⁶ For an excellent, advanced in-depth treatment of this subject, see Karen Mingst and Margaret Karns, *The United Nations in a Post-Cold War Era*, 2nd ed. (Boulder, Colorado: Westview Press, 2000), 202.

⁷ The United States of America's Mission to the UN. *Security Council Reform Fact Sheet*. 11 Jan 2011 <www.un.int/usa>.

⁸ UN News Centre. *'Real' Talks on Council Reform May Begin this Year, Assembly President Says*. United Nations Department of Public Information. 17 Jan. 2011 <http://www.un.org/apps/ews/story.asp?NewsID=37291&Cr=reform&Cr1=>.

⁹ Karen Minst and Margaret Karns, *The United Nations in a Post-Cold War Era*, 2nd ed., p. 205

¹⁰ High-level Panel on Threats, Challenges, and Change. *A More Secure World: Our Shared Responsibility*. United Nations Department of Public Information. 2004. 11 Jan. 2011 <http://www.un.org/secureworld/report2.pdf>.

¹¹ Ibid.

¹² Ibid.

¹³ Ibid.

¹⁴ United Nations. *Improving the Working Methods of the Security Council*. Draft Resolution A/60/L.49. United Nations Department of Public Information. 17 Mar. 2006. 11 Jan. 2011 <http://www.un.org>.

¹⁵ Reform the UN. *Security Council Reform: New Draft Text Expected*. Reform the UN. 16 Sept. 2010. 11 Jan. 2010 http://www.reformtheun.org/index.php?option=com_content&view=article&id=494:security-council-reform-new-draft-text-expected&catid=449:security-council-reform&Itemid=281.

¹⁶ United Nations. *Concluding Annual Debate on Security Council Reform, General Assembly Delegations Express Competing Views on Best Way Forward*. United Nations Department of Public Information. 12 Nov. 2010. 24 Jan. 2011 <http://www.un.org?News?Press?docs?2010?ga11023.htm>.

¹⁷ Ibid.

¹⁸ UN News Centre. *'Real' Talks on Council Reform May Begin this Year, Assembly President Says*. United Nations Department of Public Information. 17 Jan. 2011 <http://www.un.org/apps/ews/story.asp?NewsID=37291&Cr-reform&Cr1=>.