

**RESTRUCTURING OF THE UNITED NATIONS
SECURITY COUNCIL—AN INDIAN
PERSPECTIVE**

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MASTER OF PHILOSOPHY*

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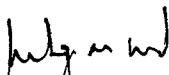
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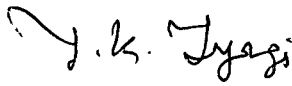
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CERTIFICATE

This is to certify that the M.Phil dissertation entitled "RESTRUCTURING OF THE UNITED NATIONS SECURITY COUNCIL - AN INDIAN PERSPECTIVE" submitted by Mr. Binod Kumar Sahu for the award of the degree of MASTER OF PHILOSOPHY of Jawaharlal Nehru University is his original work. This has not been published or submitted to any other university for any other purpose.


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*Dedicated to
My Parents*

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CHAPTER I
INTRODUCTION

The Security Council of the United Nations is an indispensable but inadequate instrument of international peace and security. Although it occupies a prominent position in the international system, it has not yet reached the mark set for it by the founding fathers of the United Nations. Moreover, it needs restructuring in order to adapt itself to the new imperatives of the international life.

The Charter of the United Nations envisages the "maintenance of international peace and security" as the first purpose of the Organization (Article 1(1)). It prescribes two principal approaches to the achievement of this purpose: settlement of international disputes by peaceful means, and adoption of collective measures for preventing or removing threats to the peace and suppressing acts of aggression or breaches of peace. The regulation of armaments was made a subsidiary approach with emphasis upon achieving the least diversion for armaments of the world's human and economic resources, consistent with the assured maintenance of international peace and security.¹ The primary responsibility for doing these things was placed on the Security Council. Within the Security Council set-up, some Member States were given special status in the form of permanent membership and the right to veto.

1 Richard A. Falk and Saul H. Mendlovitz, eds., Strategy for World order, vol. III, United Nations (New York, 1966), p. 170.

The special status of the five permanent members of the Security Council was based on their war-time cooperation and victory, superior military capability, resources, influence, etc. Another consideration was that once the permanent members were in agreement, an effective action could be taken for the maintenance of international peace and security. Moreover, it was regarded as an assurance that the coercive powers vested in the Security Council would not be abused.² It was expected that permanent members of the Security Council would consult and cooperate with one another and that they would pool their resources and wisdom together for the maintenance of international peace and security. The deal was that those who could bear the burden of international peace and security must have a decisive say in the management of the Security Council's affairs. Thus, in effect, the maintenance of international peace and security was to be a responsibility of a "concert of the permanent members" of the Security Council.

Two things upset this arrangement, however. First, the rapid breakdown of that great powers' consensus which had sustained the Allied efforts during World War II and had created the United Nations during the closing months of the War.³ Second, the advent of the atomic bomb

2 Ibid.

3 Ramesh Thakur, "International peace-keeping, UN Authority and U.S. power", Alternatives (Boulder, USA), vol. 12, 1987, p. 461.

further deepened the mutual mistrust and suspicion.⁴ The Security Council was being deliberately kept away from several conflicts where either of the super powers had a stake. The ideological confrontation of the Cold War crept into the deliberations of the Security Council. The use of veto against the other side's proposals led to the paralysis of the Council. The United States and its allies, in order to neutralise the Soviet veto, invoked a liberal interpretation of Articles 10,11 and 12 of the UN Charter. When they lost majority in the General Assembly, they frequently resorted to veto in the Security Council. Whenever they failed to make use of the Security Council for the fulfillment of their objectives, they resorted to the right of individual and/or collective self-defence under Chapter VIII of the Charter. The great powers failed to maintain an essential harmony of interests. The Council suffered from a lack of unanimity and collegial spirit. The political motivations and diplomatic tactics, not the Organization's constitutional provisions, determined the behaviour of the members of the Security Council.⁵ The resolutions and decisions of the Council were increasingly defied or ignored by those that felt themselves strong enough to do so. Too frequently the Council seemed powerless to generate the support and influence to ensure

4 H.G. Nicholas, The United Nations as a Political Institution (London, 1974), p.88.

5 S.J.R. Bilgrami, International Organization (New Delhi, 1977), p. 77.

that its decisions were respected, even when they were adopted unanimously.⁶

In the absence of agreement between great powers, disputes remained unresolved and conflicts could not be prevented. The great powers took sides in disputes and conflicts, thereby perpetuating discords. There were neither incentives to settle disputes by peaceful methods, nor disincentives to the use of force.⁷ As a result, since the creation of the UN in 1945, over 100 major conflicts around the world left some 20 million people dead.⁸ The Security Council, which was designed to serve as a dependable agency for the international peace, turned into an arena of inaction or conflicting interests and attitudes.

With the virtual end of the East-West conflict, the present day world is left with a new situation and also a new opportunity. We have entered a time of global transition marked by uniquely contradictory trends or what Perez de

6 Report of the Secretary General on the Work of the Organisation, GAOR, Thirty-Seventh Session, Suppl. (A/37/1) (1982), p.1.

7 Rikhi Jaipal, "A New World Order", World Affairs (New Delhi), vol. 29, 1991, p. 29.

8 General Assembly/Security Council, Report of the Secretary General pursuant to the statement adopted by the Summit Meeting of the Security Council on 31 January 1992, "An Agenda for peace: preventive diplomacy, peace-making and peace-keeping", UN Docs.A/47/277, S/24111 (17 June 1992), p.4, para.14.

Cuellar calls, a "unique juxtaposition of promise and perils".⁹ The extinction of the bi-polarity associated with the Cold War has no doubt removed the factor that virtually immobilized international relations over four decades.¹⁰ Now regional and continental associations of States are evolving ways to deepen cooperation and ease some of the contentious characteristics of sovereign and nationalistic rivalries. National boundaries are blurred by advanced communication and global commerce, and by the decisions of States to yield some sovereign prerogatives to larger, common political associations.¹¹

The danger of global conflict has receded, but there is strengthened ability of the super power to preserve the *status quo* as far as its influence is concerned. Post-Cold War developments have cured the Security Council's paralysis, at least for some time, helped in resolving some regional conflicts, hopefully for ever. Various circumstances have induced an unprecedented activity of the Council. From the expansion of the peace-keeping operations to the mandatory and constant monitoring of events endangering international

9. Report of the Secretary General on the Work of the Organization, GAOR, Forty-sixth Session, Suppl.1, (A/46/1) (1991), p.6.

10. Ibid.

11. See n.8, p.3, para.11.

peace and security, the Council has seen its agenda saturated and its capacity to respond at times overwhelmed.¹²

By itself, however, the Security Council does not guarantee a just and lasting peace for the world. One can still see a world with large spots of threatened trouble and incipient conflict. Fierce assertions of nationalism and sovereignty have come up, and the cohesion of States is threatened by brutal ethnic, religious, social, cultural or linguistic strife. Social tranquility is being disturbed on the one hand by new practices of discrimination and exclusion and, on the other, by acts of terrorism seeking to undermine evolution and change through democratic means.¹³

There are constant quantitative as well as qualitative changes in the international community. The United Nations which started with an original membership of 51 States, now has 179 members. The configuration of power has also changed radically. The victorious powers of World War II are no longer in the possession of their original political credentials for special status in the Security Council. Other powers and regions have since emerged. The role and functions

12 Venezuela, General Assembly, Plenary Meetings, Provisional Verbatim Record, Forty-sixth Session, UN Doc.A/46/PV. 68 (23 December 1991), pp. 19-20.

13 See n.8, p.3, para.11.

of the Organization have undergone important changes, and old preoccupations have given way to new.¹⁴

Does the Security Council reflect all these quantitative and qualitative changes in the international life? The prompt answer comes from the Nigerian representative: "The Security Council has been the least responsive... Its structure does not accord with present day reality".¹⁵ The present composition of the Security Council does not reflect either the vastly expanded composition of the General Assembly or the current power configuration in the world.¹⁶ Total membership of the Organization has increased from 113 to 179 since 1963 when the last expansion of the Council's membership took place, from 11 to 15. The number of permanent members remains just five, although the non-permanent membership had been increased and the Organization's membership jumped from the original 51 to the latest 179. Thus, the evolution of the international community finds no reflection in the composition of the Security Council.

It is submitted that small States can play more constructive role in the functioning of the Security Council.

14. Nigeria, n.12, p.37.

15. Ibid., p.38.

16. Times of India (New Delhi), 22 August 1991.

Since their participation in this organ of the United Nations is not fully forthcoming under the present system, some "new institutional measures" should be adopted to encourage their participation.

It is well known that all the major regions of the world do not participate on a permanent basis in the decision-making process of the Security Council -- a situation that seriously affects the chances of wider adherence to the decisions of the Council.

Also, the present structure of the Security Council does not allow democracy and transparency in the decision-making process of this organ. While the increasing trend is to extend support in ushering in pluralism and democracy in individual States, equality and democratic decision-making are absent in the functioning of the Security Council.¹⁷

Sources of threat to the peace are multiplying. Factors threatening world peace and causing international tensions have not been removed completely. While some old contradictions and confrontations have disappeared, new ones have cropped up, rendering our world neither tranquil nor peaceful.¹⁸ But the Council at this moment is not adequately

17 Annual Report, Government of India, Ministry of External Affairs, 1990-91, p. viii.

18 Statement of China, Security Council, Summit meeting, Provisional Verbatim Record, UN Doc.S/PV. 3046 (31 January 1992), p. 87.

equipped to tackle them. Multiplicity of functions demands adequacy of the structure.

The recent revival of the great powers' solidarity has a negative trend also. The Council appears to mark selective targets. The recent practice proves that it acted in haste on certain occasions, while remaining indifferent on others.

The misuse of the Security Council is no less harmful than its non-use. There are serious complaints of misuse of the Council in the recent past. The Council cannot discharge its "primary responsibility" of maintaining international peace and security if it is allowed to be a pawn on the chessboard of the international power game.

Thus, new circumstances demand a fresh look into the structure of the Security Council. As it is rightly observed, the radical turn in the balance of international relations indeed requires an up-dating of the role of the Security Council. A new situation in the world needs new ideas and a new impetus. Since the Council is at the centre of UN efforts to maintain international peace and security, it is important to consider in detail the ways and means to adjust its composition, decision-making, functions, powers and other aspects, so as to make it more reflective of the realities of the new era.

The present dissertation is a study of the above objective. It consists of five chapters. Chapter II

discusses the present composition of the Security Council, analyses the deficiencies therein, discusses the proposed changes in the composition of the Council, and examines the problems and possibilities of such changes. Chapter III deals with the decision-making process of the Security Council. It analyses first some of the major deficiencies of the process and then some of the proposals for reforming that process. Chapter IV focusses on the functions and powers of the Security Council. In this Chapter, the Council's role, responsibilities and powers in the maintenance of international peace and security will be discussed. It will point out deficiencies and moreover, some of the proposed measures to strengthen the role of the Security Council. The last chapter draws some conclusions and takes stock of major suggestions for the restructuring of the Security Council.

CHAPTER II

COMPOSITION

The Security Council is personified in and activated through its Member States. Therefore, its composition or structure is the first vital aspect of the discussion on the restructuring of this body. The "decisions" of the Council are ultimately determined by the very nature and behaviour of the Member States. Also, the effectiveness of this body in the maintenance of international peace and security largely depends on the political will of its members. This chapter deals with the various problems relating to the present composition of the Council and also the various proposals under consideration to address those problems. It includes a brief discussion on the position of India and raises a few questions at the end which need serious consideration for arriving at a fruitful conclusion of the debate.

The number of members of the Security Council was decided at the San Francisco Conference largely on two assumptions. First, the composition of the council should be as small as possible, in order to operate this body expeditiously. Secondly, the Council should include the great powers possessing most of the industrial and military resources of the world, plus a group of other States chosen from the entire membership of the United Nations.

These assumptions were consistent with the fact that the functions assigned to the Security Council would require

quick action in an emergency. A large number of members were not necessary since the General Assembly would provide broad and inclusive representation in the work of the United Nations.¹

I. THE PRESENT POSITION

The size of the Security Council was deliberately made small and it was rigidly specified in the Charter at the figure of eleven -- five permanent members (the Republic of China, France, the USSR, the United Kingdom of Great Britain and Northern Ireland, and the USA) and six non-permanent to be elected by the General Assembly from time to time for a term of two years, on the basis of the criteria of contribution to the maintenance of international peace and security and other purposes of the Organization and equitable geographical representation. A retiring member was not allowed for the immediate re-election.

With the rapid increase in the membership of the UN after 1955, pressure mounted to increase the size of the Council, primarily in order to achieve more equitable geographical representation. The Council became a 15 member body on 1 January 1966, with an increase in non-permanent seats from six to ten, through amendments to Article 23 of

1. Commission to Study the Organization of Peace, Strengthening the United Nations (New York, 1957), p.243.

the Charter, which came into effect on 31 August 1965. In 1971, the Peoples Republic of China replaced the Republic of China from the permanent membership of the Council and the Russian Federation succeeded to the permanent membership of the erstwhile Soviet Union on 21 December 1991. But both the changes have yet to be mentioned in the Charter. Apart from this cosmetic infelicity, the Charter suffers from a number of deficiencies. The following section identifies some of them.

II. DEFICIENCIES

The present "structure" of the Security Council lacks equity and balance for the following reasons:

First, the increase in the UN membership is not reflected in the membership of the Security Council.² The present size of the Council is disproportionate to the size of the Organization.

Secondly, at present, the way the Security Council is structured goes against the basis of equitable and fair representation to the various regions.³ The admission of new members into the United Nations has been almost entirely from Asia, Africa and Latin America, but these regions remain

2 India, General Assembly, Plenary, Provisional Verbatim Record, Forty-sixth Session, UN Doc. A/46/PV.68 (23 December 1991), p.3

3 The Hindu (Madras), 18 February 1992.

underrepresented in the Security Council. This is the case with both the non-permanent and permanent membership of the Council. As the representative of Japan observed, "...with regard to the non-permanent members, the composition of the Security Council deviates from the principle of equitable geographical distribution as stipulated in paragraph 1 of Article 23 of the Charter".⁴

While the UN membership has grown to 179 over the years, the Security Council continues to have just five permanent members.⁵ Neither Africa nor Latin America has any permanent representation in the Council, while Asia is undoubtedly underrepresented.

Thirdly, "small and medium-sized States" do not have adequate representation in the Security Council despite their sensitivity towards security and increased role in international life.

Finally, the actual naming of the five permanent members introduced a static element into the Charter, for it cannot be assumed that the same five will necessarily remain the five great powers. The Charter also does not visualise the possibility and consequences of the disappearance or disintegration of a permanent member of the Security Council.

4 Japan, GAOR, Plenary Meetings, Thirty-fifth Session (1980), vol.III,p.1395, para.72.

5 Times of India (New Delhi), 7 January 1992.

All such problems are rendered more acute by the procedure laid down for the amendment of the Charter which, under Articles 107 and 108, requires the consent of the named five members to any amendment. It is difficult to imagine a permanent member voting itself out of the special status in the UN system.⁶

III. THE DEMAND FOR REAPPRAISAL

The above mentioned deficiencies have convinced many Member States,⁷ including India, of the need for a reappraisal of the composition and membership of the Security Council. At the forty-sixth session of the General Assembly (1991-92), therefore, India's Representative said that, "in order to strengthen the Security Council's primary role in the maintenance of international peace and security; it is felt that the Council's composition should be reviewed with a view to providing for more balanced representation".⁸ Supporting this, the Algerian representative made a demand

6 D.W. Bowett, The Law of International Institutions (London, 1975), p. 26.

7 In the changed circumstances, countries like India, Japan, Brazil, Mexico, Algeria, Nigeria, Egypt, Italy, Venezuela and Zimbabwe have renewed their demands for review of the Security Council's composition and membership.

8 See n. 2.

that "the composition of the Council faithfully and equitably reflects that of the General Assembly".⁹ Undoubtedly, the proponents have a number of justifications.

First, if the activities of the United Nations are based on the principle of the sovereign equality of States and upon the concern on the part of every State for the peace and security of the world at large, it would be logical to presume that an increase in the membership of the world body should be reflected at least in an equitable manner, if not to fully commensurate degree, in the composition of and representation in one of its principal organs, i.e. the Security Council.¹⁰

Secondly, the Security Council ought to be expanded as many nations which were mere colonies at the time of the Council's formation, have now emerged as major powers. Their representation in the Council is, therefore, an absolute necessity to ensure equitable and democratic representation.¹¹

Thirdly, the "imperative need to democratize international relations"¹² can only be successfully

9 Algeria, n. 2, p.28.

10 India, n.4, p.1393, para. 49.

11 Hindustan Times (New Delhi), 15 February 1992.

12 Mexico, n.2, p.13.

accomplished if important organs such as the Security Council are constituted in a manner that is genuinely representative of Member States of the United Nations.

Fourthly, the strengthening of the UN should be based on the recognition that the management of world affairs is a matter of shared responsibility.¹³

Fifthly, an increased participation in the Council will strengthen the "authority" of the world Organization and "prevent" it from being "manipulated" by one State or a group of States.¹⁴

Sixthly, as the Prime minister of India pointed out at the Security Council's First Summit on 31 January 1992, "wider representation in the Security Council is a must if it is to ensure its moral sanction and political effectiveness".¹⁵ A broader representation of some influential middle powers in the Security Council may ensure moderation in the tone of its debates, increased impartiality, and stronger negotiating influence.

Lastly, as the Permanent Representative of India pointed out at the forty-sixth session of the General

12 Mexico, n. 2, p.13.

13 G-15 Countries' Declaration, Caracas, 1991, n.2, p.6.

14 Times of India, 29 September 1991.

15 Security Council, Summit Meeting, Provisional Verbatim Record, S/3046 (31 January 1992), p. 97.

Assembly, "momentous decisions affecting all of us are currently on the anvil of the major policy-making organs, and it is only appropriate that these are taken with a broader and more representative participation of the international community".¹⁶

Unhappily, the response to all these justifications is not necessarily positive. In fact, the call for the review of the Security Council's composition and membership has evoked negative response from many States, especially the Western permanent members. The opponents adduce the following reasons:

First, the Council in order to be effective, must remain a small body. Its small size enables it to deliberate and to take decisions rapidly. In that respect, its present size of fifteen members seems to meet the requirement.¹⁷

Secondly, questions which may ultimately require economic and even military action of gravest nature cannot reasonably be examined in terms of mathematical ratios drawn from the General Assembly.¹⁸

Thirdly, the Charter lays down no arithmetical relationship between the size of the Security Council and the

16 See n.2, p.7.

17 France, n.4, p. 1397, para.92.

18 USA, n.4, p.1406, para.103.

size of the United Nations' membership. The Security Council, by its composition, functions and powers, differs in its very nature from the General Assembly. It cannot be a smaller-scale reproduction of the General Assembly, because there would be a risk that it would lose the very reason for its existence and the undoubted usefulness.¹⁹

Fourthly, the Security Council, as now composed, reflects well the various regions and interest groups within the international community. It can act only where it has the affirmative support of members from Asia, Africa and Latin America, the concurrence of the countries of Western and Eastern Europe.²⁰ All this goes to show that the existing composition of the Council is sufficiently well balanced and responds to the principle of equitable geographical distribution.

Lastly, under Articles 31 and 32 of the Charter, and Rules 37 and 38 of the Provisional Rules of Procedure of the Security Council, every State, whenever so desires, can come and be heard and express its views in the Council as often as it wishes and for as long as it wishes and consequently can play an essential part there.²¹

19 France, n.4, p.1397, para.95.

20 USA, n.4, p.1406, para.104.

21 France, n.4, p.1397, para.97.

Despite the negative response to the idea of expanding the membership of the Security Council, certain concrete proposals have been made.

IV. SPECIFIC PROPOSALS

Proposals for introducing changes in the composition and membership in the Security Council have been made along the following lines: that the total membership of the Council might be increased; that the permanent membership as a concept might be abolished; that the number of permanent members might be increased; that the present number of permanent seats might be redistributed so as to ensure an equitable permanent representation of the Member States in the Council on a regional basis; that additional permanent members without veto right might be admitted into the Council; that a semi-permanent membership might be introduced into the Council; that the number of non-permanent members might be increased; that the criteria for the elected members might be reconsidered and a system of regional representation might be given consideration; and that certain international organizations might be given representation at the Security Council. All these proposals and ideas may be discussed under the following sub-headings:

1. Increase in Size:

At the thirty-fifth session of the General Assembly (1980), India introduced a draft resolution proposing an increase in the Security Council's membership from fifteen to twenty-one.²² Its Representative justified the proposal as a modest one, and claimed that it was designed to strengthen the Council by making it more responsive and relevant to existing realities. He said that "the enlargement of the Council, with additional seats allocated to hitherto inadequately represented regions of the world, would fully meet the needs of equity and would be in conformity with paragraph 1 of Article 23 of the Charter".²³

However, the Indian proposal met stiff opposition on the following grounds:

First, some countries were not reconciled to the view that the proposed revision of the membership of the Security Council or of its representation would "automatically" strengthen the main role of the Council and thus promote the maintenance of international peace and security.

22 GAOR, "Question of Equitable Representation on and Increase in the Membership of the Security Council", UN Doc. A/35/L.34/Rev.1 (3 December 1980), sponsored by Algeria, Bangladesh, Benin, Bhutan, Cuba, Grenada, India, Iraq, Libya, Nepal, Nigeria, Seychelles, Sri Lanka, Tunisia, Cameroon and Zambia.

23 See n.4, p.1395, para.69.



Secondly, a Council of fifteen is less able than a Council of eleven to respond with rapidity and precision to a crisis of international peace and security. Thus, an increase in the membership of the Council without giving a careful thought to the consequences, would have an adverse effect on the efficient functioning of that important organ. This would go against the terms of the Charter to take "prompt and effective action" for the maintenance of international peace and security in complex and swiftly developing circumstances.²⁴

Thirdly, if the membership of the Security Council increases to twenty-one or so, it would mean that a single political group (probably the Group of 77) would by itself command the number of votes required for the Security Council to adopt decisions. As a result, the balance which has existed since 1945 would be disturbed. It could provoke a constitutional crisis which would not only paralyse the Security Council with all that imply for the maintenance of international peace and security, but could also call into question the very basis of the Organization as a whole.²⁵

Fourthly, smaller nations are represented in the General Assembly on the basis of full equality with the great powers.

24 UK, n.4, p. 1402

25 Ibid.

Lastly, the interests of great and small powers in peace and security matters rest fundamentally upon their ability to work together, and that this would not be guaranteed by any increase in the Council's membership.

In reply to the above-mentioned reactions, first, the Indian Representative said: "We are certainly not suggesting an increase in arithmetical proportion to the increase in the membership of the world body, for that case the enlargement should have been up to 30, not 21..."²⁶

Secondly, the participation in decision-making is not the same thing as the participation in the deliberations or making of statements without the right to vote. A State invited under Articles 31 and 32 of the Charter is entitled to participate in the discussion only, not in the voting. Moreover, under Article 31 of the Charter, a member of the United Nations which is not a member of the Security Council does not have a 'right' to be invited. It "may" be invited, and such an invitation depends on the discretion of the Security Council.²⁷ It cannot be claimed as a matter of right.

26 See n. 4, p. 1394, para.60.

27 Hans Kelsen, Law of the United Nations (New York, 1961), p.234.

Thirdly, the representation in the Assembly does not ensure same privileges as the representation in the Council does.

Fourthly, since the great powers have their vested interests in the matter it is unlikely that they will come forward for working together with small powers, with shared responsibility, in the interest of common peace and security.

Finally, the argument that an increase in the Security Council's membership would affect the Council's efficiency and effectiveness, is neither convincing nor acceptable. As India's Representative said: "Let us not be unmindful of the fact that during the long years of east-west confrontation, the Security Council despite its limited size, often remained paralysed".²⁸ South Africa, for instance or Israel for that matter, as the case may be, has been able to flout and defy the decisions of the Security Council, despite the limited size of that body.

It may be recalled that the membership of the Council of the League of Nations rose from eight in 1920 to fifteen in 1936. While the increase in the Council's size reduced somewhat the intimacy of meetings, it did not appreciably increase the amount of time necessary for the conduct of business or the difficulty in obtaining unanimous

28 See n. 2, p.7.

agreement.²⁹ In any case, there are several other UN bodies, with a wider membership than the Security Council, whose performances are unquestionably commendable.³⁰

The Security Council has been capable or incapable of discharging its functions not because of its size but because of the imperatives of international life. At any moment of history the capacity or otherwise of the Council to discharge its functions has been governed by a series of factors involving substantive questions of the interests of the great powers.³¹ It is argued, therefore, that "management fears" should not be allowed to block reforms that would go a long way in strengthening the Council. Reasons of "logistics and management" in matters of international peace and security have to be reconciled to the needs of the present era, where more democratic and transparent conduct of international relations is being stressed.³² Thus, more representative Security Council will be able to discharge its tasks with "enhanced" efficiency and efficacy.

29 Eric Stein, Some Implications of Expanding UN Membership (New York, 1956), p.14

30. Zambia, n. 4, p. 1405.

31 India, n.4, para.66.

32 India, n. 2, pp. 7-8.

2. Abolition of Permanent Membership

At the ninth session of the General Assembly (1954), General Romulo, Chairman of the Philippines' Delegation proposed that consideration be given to the abolition of permanent seats in the Security Council.³³ The main arguments for the abolition of the permanent membership have been advanced along the following lines.

First, the conditions prevalent at the time of designation of the five permanent members of the Security Council can no longer be held the same at the present time.³⁴

Secondly, the permanent membership to selective States was contrary to the principle of the sovereign equality of States (which is enshrined in the Charter itself) and thus represented an unjustified monopoly.³⁵

Lastly, the democratization of the Organization should apply to the democratization of the Security Council also.

33 Francis O. Wilcox and Carl M. Marcy, Proposals for Changes in the United Nations (Washington, D.C. 1955), p. 303.

34 Nigeria, Report of the Ad hoc Committee on the charter of the United Nations, UN Doc. A/10033 (1975), p.68.

35 GAOR, Analytical Study of the Secretary General submitted to the Special Committee on the Charter of the United Nations and on the strengthening of the Role of the Organization, in pursuant to General Assembly resolution 3499 (XXX), UN Doc. A/Ac.182/L.2 (2 February 1976), p.29.

This would mean that no Member State would enjoy any special status and that membership of the Security Council would be for all States on a non-permanent basis.³⁶

Membership of the Council on a non-permanent basis had also been proposed by Cuba and Mexico at the San Francisco Conference, in the form of amendments to the Dumbarton Oaks Proposals, which had been rejected there and then.³⁷

On the other hand, it has been stressed that there is a fundamental validity, necessity and importance of maintaining the permanent membership status of the Big Five. As the primary responsibility for maintaining international peace and security has been conferred on the Security Council, it is essential that the "Powers [States] which were in the best position" to ensure the carrying out of that important task should be "Permanently" represented in the Security Council, a position which imposes upon them special duties and obligations.³⁸

36. GAOR, Analytical Paper of the Secretary General, submitted to the Ad Hoc Committee on the Charter of the United Nations, on observations received from Governments pursuant to General Assembly Resolutions 2696 (XXV), 2968 (XXVII) and 3349 (XXIX), and views expressed at the Twenty-seventh and Twenty-ninth Sessions of the General Assembly, UN Doc. A/Ac.175/L.2, Part-II (2 February 1976), p.100.

37. USA, Department of State, Selected Documents : The UN Conference on International Organization (Washington, 1946), pp.138, 141.

38. See n.35, pp.30-31.

3. Additional Permanent Members with veto Right

At the forty-sixth session of the General Assembly (1991), Venezuela called for a new structure of the Security Council, with "an increase in the permanent members or a restructuring of the composition of the permanent members", so as to reflect today's political and economic realities.³⁹ Italy also favoured an expansion of the Security Council with an increase in the number of both permanent and non-permanent members, which would "not necessarily entail extending the right of veto to all the new permanent members".⁴⁰

The arguments for change are made on the following lines.

First, while it might have been understandable in 1945 to accord permanent membership to the five States mentioned in Article 23 (1) of the Charter, in the light of their war-time cooperation and victory, the situation has now changed to such an extent that the present provision appears out-of-date or inconsistent with the realities of the current international situation.⁴¹ The great powers of the 1940s are not the great powers of the 1990s.

39 See n.2, p. 19.

40 See n.2, p.22.

41 Mexico, n. 2, p.12.

Secondly, in joint efforts of mankind for ensuring peace, not only military capability, but also the economic, scientific, technological and cultural capabilities of a State, could and should be mobilized to play a vital role.⁴² For the Security Council to maintain its influence and authority, therefore, ways must be found to ensure the representation of States (other than the present permanent members) whose resources and influence are of major importance in world affairs.⁴³

Finally, international disputes should not be left to be dealt with exclusively by the major powers. At least one permanent member of the Security Council should be a representative of the Third World and should be on the same footing as the present permanent members are.⁴⁴

There is considerable debate, however, on the criteria that would govern the selection of new permanent members.

42 Japan, GAOR, Report of the Secretary General under General Assembly Resolution 2864 (XXVI) on "Ways and means of enhancing the effectiveness of the Security Council in accordance with the principle and purpose of the character", UN Doc. A/8847 (8 December 8, 1972), p.14.

43 USA, n.36, p.247.

44 Libya, Report of the Secretary General on "Implementation of the Declaration on the Strengthening of International Security", UN Doc.A/31/185 (14 September 1976), p.18. (September 14, 1976), p.18.

Criteria

Nuclear or military capability should not become a decisive factor in any consideration of qualifications for permanent membership of the Security Council, although all the present permanent members are nuclear weapon States. Attention should rather be paid to pertinent factors, such as, a positive attitude towards the universal prohibition of nuclear weapons, acceptance of "compulsory jurisdiction" of the International Court of Justice⁴⁵ (ICJ), and the promotion of human rights. Consideration should also be given to the contribution of a State to the maintenance of peace through "promoting the economic and social development and the scientific, technical and cultural progress of peoples ". Attention should also be paid to other factors, such as, contributions to the goal of world economic development.⁴⁶ The selection of new permanent members could also be made on the basis of such objective criteria as the size of the country's population, its gross national product, and its contribution to the UN budget.⁴⁷

45 Japan, Report of the Secretary General on "need to Consider Suggestions Regarding the Review of the Charter of the United Nations", UN Doc. A/8746 (22 August 1972), p.36.

46 Italy, *ibid.*, p.30.

47 Italy, n.2, p.22.

There is, however, another set of views on the criteria of selection or election of new members. Accordingly, new permanent membership should not be based on military or economic power, but rather on the "principle of geographical representation". Economic power does not necessarily reflect political influence. It may be more realistic to think in terms of the expansion of the permanent membership (for instance, Africa and Latin America) to include representatives from those regions in the world which are at present excluded from the permanent membership they are Africa and Latin America.⁴⁸ The Third World should be represented in the group of Permanent members, and for this purpose there are suggestions that Latin America should be represented by Brazil, Africa by Nigeria, and South Asia by India.

The thirty-seventh Commonwealth Parliamentary Conference, held in New Delhi on 28 September 1991, called for the expansion of UN Security Council by the inclusion of countries like India, Japan and Germany.⁴⁹

Much earlier, there was a proposal for a total of eight permanent seats in the Security Council, to be distributed along the following lines. Africa and Middle-East should be

48 See n. 36, p. 207.

49 See n. 14.

given one "composite" seat, East Asia be represented by China, East Europe by the USSR, Latin America by Brazil or "compositely", North America and non-Spanish speaking States of the Caribbean by the USA, the Pacific by Japan, South and South-East Asia by India, and Western Europe by the EEC (for four States).⁵⁰

Homer A. Jack, an observer at UN Headquarters for a number of NGOS, suggests that the permanent membership should be increased to ten, with England and France replaced by one representative of the European Community and the USA, Russia and China retaining their respective places. Additional permanent members might include Japan, India, Nigeria and Brazil.⁵¹ The move for additional permanent membership with veto right is being opposed by some States on the ground that it would impair still further the principle of sovereign equality.⁵² Another argument is that there are already sufficient States which think of themselves as great powers. Increasing the number of permanent members of the Security Council would only add to the confusion.⁵³

50 Arthur Lall, The Security Council in a Universal United Nations (New York, 1971), p. 34.

51 Homer A. Jack, "The UN Role in the Gulf War: Lessons Learned and a Look to the Future", Review of International Affairs (Belgrade), Vol. XLIII, No. 1003 (1992), p.27.

52 New Zealand, n.34, p.64.

53 Saudi Arabia, n. 36, p.211.

There is also a suggestion to amend the Charter, in order to provide some method for re-determining every ten years who should be a permanent member of the Security Council.⁵⁴

4. Permanent Membership Without Veto

There is a proposal that "an additional category of permanent members, with no veto power, could be considered". Its proponents stress the need for the creation of additional permanent seats without, however, extending the unanimity principle.⁵⁵ It has been reported that the non-aligned countries want to restructure the Security Council by adding five new permanent members without the right of veto - one each from Africa, Asia, Latin America, Western Europe, and Eastern Europe.⁵⁶

Also, there is a proposal to give both "major donors" and "major developing countries" a more permanent voice in the Council's deliberations, by according them permanent but veto-bearing seats. Among its supporters are Germany, Japan, India, Nigeria, and Brazil.⁵⁷

54 Wilcox and Marcy, n. 33, p.305.

55 Philippines, "Suggestions and Proposals Regarding the Charter of the United Nations and the Strengthening of the Role of the Organization", UN Doc. A/AC.182/L.12/Rev.1 (8 March 1977), p.8.

56 Davidson Nicol, The UN Security Council: Towards Greater Effectiveness (New York, 1982), p.14.

57 Edward C. Luck and Toby Trister Gati, "Whose Collective Security?", The Washington Quarterly (Washington), vol. 15, No. 2 (1992), p.47.

5. Semi - Permanent Membership with Veto

A permanent seat could be allowed on a "regional basis" to be occupied by rotation. In order to implement this scheme, the simplest procedure would be to vest three of the present non-permanent members of the Security Council representing the Third World, among whom there should be one representative of an African State, one Asian, and one Latin American, with the same powers as those of the permanent members. The term of office of the States occupying these three seats might be "five" years so as to allow at least some stability and at the same time, a reasonable rotation.⁵⁸

A new class of semi-permanent seats may be created, either by conversion of half the existing non-permanent seats, or by addition of new seats in this category. A semi-permanent seat would be created for each major region of the world, to be held alternatively by the major non-permanent members in the region.⁵⁹ States of each region within the General Assembly shall determine periodically but not at greater intervals than ten years and in accordance with their own procedures, the semi-permanent members of the Security Council. Due regard shall be paid to the member's

58 Mexico, Report of the Secretary General under General Assembly Resolution 2991 (XXVII), on "Ways and Means of enhancing the Effectiveness of the Security Council in accordance with the Principle and Purpose of the Charter", UN Doc. A/9143 (30 November 1973), p.19.

59 Philippines, n. 55.

contribution to the maintenance of international peace and security and to the "other purposes" of the Organization.⁶⁰

Each geographical region should have one or two representatives who, by means of annual rotation, may enjoy the same rights as the permanent members of the Security Council enjoy with regard to the adoption of decisions on substantive issues as long as the system of requiring concordant affirmative votes for the adoption of decisions on such problems is maintained. Accordingly, Japan, India, Brazil, Argentina, Nigeria, Zaire, Federal Republic of Germany (Germany), and Italy might be given semi-permanent membership.⁶¹

Safeguards

Certain safeguards have been suggested to prevent the abuse of special status by new members. Romania, for instance suggested that the rights accorded to permanent members and to the members representing geographical regions, should not be invoked to block the adoption of decisions in the case of conflicts to which those countries are parties.⁶²

60 Philippines, UN. Doc. A/AC.175/L.2 (Part I), 2 July 1973, p.98. For details about the Document, see n.36.

61 Evan Luard, The United Nations: How It Works and What It Does? (London, 1979), p. 28.

62 Romania, n.55.

6. Semi -Permanent Membership Without Veto

Another idea that has repeatedly been discussed of late is the creation of semi-permanent Council members. It has been suggested that every regional group could be given one such seat "without" a right of veto.⁶³ Indeed, this is not an absolutely new idea. In the League's Council, three countries (Brazil, Poland and Spain) were offered semi-permanent status through regular re-election as Intermediate Powers.

7. Non -Permanent Members

(a) Increase Non-permanent Seats

In the draft resolution concerning the "question of equitable representation on and an increase in the membership of the Security Council", introduced at the thirty-fifth session of the General Assembly in 1980, India had proposed that the number of non-permanent members might be increased from ten to sixteen.⁶⁴ They may be elected according to the following pattern -- five from African States; four from Asian States; three from Latin American States; two from West European and other States; one non-permanent seat which may alternate between Latin American States on the one hand, and

63 Rudiger Frhr. Von Wechmar, "The Security Council of the United Nations", Aussen Politik (Hamburg), vol.36, no.3 (1985), p. 225.

64 See n. 22.

West European and other States and East European States, on the other.

(b) **Criteria for Elected Members**

It has been a complaint of some Member States that more stress is given in the present practice, to the criterion of "equitable geographical distribution", while the most important criterion of "contribution to the maintenance of international peace and security and other purposes of the Organization" has been more or less ignored.⁶⁵ Therefore, they argue that some additional informal criteria should be applied within the regional grouping to ensure frequent election as non-permanent members of the Security Council, of members contributing most substantially to the purposes of the Charter.⁶⁶ They suggest that non-permanent members of the Security Council should be elected in accordance with the criteria set forth in Article 23, paragraph 1, of the Charter and therefore due regard should be especially paid, in the first instance, to their contribution to the maintenance of international peace and security and to the other purposes of the Organization.⁶⁷

65 Mexico, n.34, p.58.

66 Philippines, n. 60, p.98.

67 Italy and Spain: "Suggestions and Proposals Regarding the Charter of the United Nations and the Strengthening of the Role of the Organization", UN Doc. A/AC. 182/L.15 (8 March 1977), para. 4.

It may be recalled that India had proposed, in the course of amendments to the Dumbarton Oaks proposals, at the San Francisco Conference, that while electing non-permanent members, the General Assembly should pay due regard to the relative population, industrial and economic capacity, contribution to armed forces, and facilities and assistance which each State undertakes to make available to the Security Council for the maintenance of international peace and security.⁶⁸

On the contrary, it has been pointed out that the election of non-permanent members of the Security Council on the regional basis, tends to produce an imbalance to the disadvantage of smaller States and to imply more or less arbitrary judgments of the fitness of particular members for service in the Council. Therefore, it is better to leave the election of members of the Security Council to consultations within the regional group itself, with each group exercising discretion to ensure that the candidates put forward for membership are able and willing to make a substantial contribution to the Council's work.⁶⁹

8. Regional Representation

There has been a tendency on the part of many members to interpret the term "geographical distribution" as "regional representation", which is actually not the case.

68 See n. 37, p. 140.

69 Canada, n.45, p.11.

Under the geographical distribution system, membership of the Council is distributed among States from a particular geographical area. As the present practice goes: five members from Africa and Asia; one from Europe; two from Latin America; two from Western Europe and "other States".

But, under the newly proposed regional representation system, the regional organizations might select States to represent the regional organization itself or might simply select a delegation to represent and vote on instructions from the regional organization.⁷⁰

A more significant change would be for non-permanent members to become the representatives of their continent, so that they could consult with their own group and express views of that group in the discussions of the Council.⁷¹

At the San Francisco Conference, Egypt had suggested that non-permanent seats should be grouped into nine zones. The General Assembly shall elect one Member State to represent each zone, for a term of three years, three States retiring every year. The Philippines commonwealth had also made a similar proposal which suggested that the General Assembly should elect six representatives to fill the non-permanent seats on the basis of geographical regions, and

70 Wilcox and Marcy, n. 33, p.304.

71 Luard, n. 62, pp. 28-29.

each region to be entitled to one representative. These geographical regions should be (i) North and Central America, (ii) South America (ii) Europe, (iv) Africa, (v) Western Asia and (vi) Western Pacific Community. The General Assembly should identify the countries that should be included in each geographical region.⁷²

The idea of regional groupings within the Organization is based on the rationale that countries directly affected by a dispute could be expected to apply themselves with sufficient vigour to secure settlement of a dispute.⁷³

However, there are inherent weaknesses in the scheme of "regional representation". There may be some States which belong to a given region, but not necessarily to a regional grouping. If it is to be interpreted that any vacancy should always be filled by another member of the same group or region, the consequence would be that some States would always be excluded from obtaining a place in the Council.⁷⁴ On the other hand, some others such as the United Kingdom and the United States, belong to several groupings, and in effect would be over-represented.

72 See n. 37, pp.139 and 142 respectively.

73 Wilcox and Marcy, n. 33, p. 304.

74 L.M. Goodrich and others, Charter of the United Nations:Commentary and Documents (New York, 1969), p. 199.

V. INDIA 'S CASE FOR A PERMANENT MEMBERSHIP

India figures prominently among the prospective candidates for a permanent membership of the Security Council. This is not a matter of surprise, however, Trygve Lie, the first Secretary-General of the UN, had in fact proposed a permanent seat for India in the Security Council. In his own words, "...India's candidacy for permanent membership should be seriously considered".⁷⁵

Thirty years later, the Deputy Prime Minister and Foreign Affairs Minister of Minister of Malta, Guido de Marco, also made a similar call: "If the United Nations Security Council is reconstituted, India should be given a permanent seat".⁷⁶

Daniel Patrick Moynihan, the US Senator from New York and a former US Permanent Representative to the UN, supported India's case for a permanent membership, saying that "India should be made a permanent member of the UN Security Council as it is the 'largest democracy' in the world".⁷⁷

Brent Scowcroft, the National Security Adviser to the US President, also championed the case of India, while responding to a question during an NBC TV interview on the

75 Trygve Lie, In the Cause of Peace (New York, 1954), p.433.

76 Hindustan Times, 15 January 1992.

77 Times of India, 17 January 1992.

Bush Administration's reaction to a suggestion made by Bill Clinton, the Democratic Party's candidate for the US presidential election, 1992, that Japan and Germany should be given permanent membership of the Security Council. He said: "If permanent membership of the United Nations Security Council were to be given to Japan and Germany, the case of India would have to be considered as well".⁷⁸

Mikhail Gorbachev also made an appeal in India's favour. He said: "The great country of India should be represented in the Security Council."⁷⁹

What should weigh in favour of India's eligibility for a permanent membership of the Security Council?

Is it its size of population? Is it its democratic system of government? Is it its level of independence of political judgment? Is it its level of influence among the developing countries? Is it its level of commitment to the purposes and principles of the Charter? Is it its level of commitment to international peace and capacity to face up to the obligations and responsibilities that result from the commitment? Is it the level of commitment to a comprehensive, global and complete disarmament and non-proliferation of nuclear weapons? Is it its impressive record in the contribution to the UN peace-keeping operations? Is it its

78 The Hindu, 13 April 1992.

79 The Pioneer (New Delhi), 10 May 1992.

level of contribution to the working of the Security Council during its transient membership for 1951-52, 1967-68, 1972-73, 1977-78, 1984-85 and 1991-92?

A combination of all the above factors may be taken into account while considering India's case for a permanent membership of the Council. Unfortunately, no serious consideration has so far been given.

VI. PROBLEMS AND POSSIBILITIES

One can argue that a single-member Council would be the most efficient body, since there would be no possibility of confrontation, but it would certainly be the least democratic body. One might also say that the most democratic Council would comprise the entire membership of the United Nations, but it would most probably be the least efficient institution. A sound and satisfactory solution lies somewhere between these two extremes. The Security Council could be so constituted that it responds faster and effectively and in a "representative" fashion corresponding to the overall interests of the membership of the United Nations.

There are two ways of redressing the imbalance in the representation at the Security Council. One is by a redistribution of the existing non-permanent seats among the different regional groups in strict proportion to the number of countries represented by the regional group concerned.

Another is by increasing the number of non-permanent seats and allocating the additional seats to the regional groups in such a manner as to ensure that those hitherto underrepresented do not remain so.

Since the first course of action is impracticable and cannot address the main problem of overall "underrepresentation" of members in the Security Council, the only logical and politically acceptable method may be, the expansion of the membership of the Security Council. But this change may not be a smooth process. The determination of non-permanent seats involves a tricky question of balance between permanent and non-permanent members on the one hand and various regional groupings within the Organization on the other. The permanent members may not favour further accumulation of "cumulative veto" of the non-permanent members since this would reduce their domination and would further complicate the voting procedure. Therefore, they have to be convinced of the logic of an increase in the membership of the Council.

While there is some sort of consensus regarding the increase in the membership of the Council, it is difficult to find out an agreement between the regional groupings with regard to the "regional distribution" of seats. We have yet to evolve an acceptable compromise. membership of the Council, while there is some sort of consensus regarding the

increase in the membership of the Council, it is very difficult to find out an agreement between the regional groupings with regard to the "regional distribution" of seats. We have yet to evolve an acceptable compromise.

The idea of the Security Council's membership purely on a "non-permanent basis" is not acceptable to the permanent members who do not want erosion of their special status in and dominating authority over the Council. Also, the idea of constituting the Council with non-permanent members may not get the support of those middle powers who are vying for permanent membership. From the Council's point of view, this idea is fraught with dangers. The Council without any permanent member would probably lack continuity in its efforts and actions.

The idea of extending permanent membership with the same privileges that the present permanent members enjoy, sounds well since it stems from the principle of "sovereign equality". It finds support from the principle of "equitable geographical representation". But it has a poor chance of acceptability by the permanent members since it would represent a "diminution" of their authority in one way or the other.

Similar problems are associated with the idea of "semi-permanent membership" with veto privilege.

The idea of offering few permanent seats without veto power to the "major donors" and "major developing countries" may find favour with many Member States, including the present permanent members. However, if it is not based on the criteria of "regional distribution" and strict "rotation", it may face stiff opposition from the majority of small States.

One of the acceptable ideas may be the creation of semi-permanent seat for each regional group which remains unrepresented in the Council. The main problem with this idea is that the regional groups may find it difficult to agree on a candidate for a semi-permanent seat. For example, should the candidate of the Asian group be India on the basis of size of its population or Japan on the basis of its financial contribution? Who would represent the Latin American group: Mexico, Brazil or Argentina? Who would represent Africa, Nigeria, Egypt, or Algeria or South Africa? Who would represent the West European and other group: Canada, Italy or Germany? The proponents of the expansion of the composition of the Council have to find answers to these hypothetical questions in order to carry on the debate to a fruitful conclusion.

CHAPTER III

DECISION-MAKING PROCESS

The decision-making process of the Security Council is one of the most controversial aspects of the United Nations system. It is the crux of the whole Security Council system. Not a single action can be taken by this Council, or on its behalf, without a formal decision of its organ. It is the nature of a decision which ultimately determines the fate of the action, backed by it. If a decision is clear, unambiguous and unanimous, the chances of its implementation are bright. If it is unclear, ambiguous, acrimonious, the chances of its implementation are bleak. Moreover, participation in the decision-making reflects prestige and privilege. That is why Third World or developing countries and also some others have been demanding for a "wider diffusion of decision-making power" of the Security Council by involving more States in the decision-making process.

This Chapter focuses on the selective aspects of the decision-making, especially those which have a direct bearing on the question of restructuring of the Security Council.

I. THE PRESENT POSITION

This section deals with the following aspects of the decision-making process: meetings, agenda, participation, consultation and consensus and voting.

The President of the Council convenes a meeting of the Security Council at the request of any member of the Council,

when a dispute or situation is brought to the attention of the Council under Article 35 or Article 11 (3) of the Charter, or if the General Assembly makes recommendations or refers any question to the Council under Article 11 (2) , or if the Secretary—General himself brings to the attention of the Council any matter under Article 99 (Rules 2 and 3 of the Provisional Rules of Procedure of the Security Council). The Council holds regular and periodic meetings, public and private meetings, closed and open meetings. Normally meetings of the Security Council are held at the Headquarters of the United Nations, in New York. Meetings may also be held at such places other than the Headquarters of the Organization, if the Council thinks that it would facilitate its work (Article 28 (3)). The President consults Council members informally and arranges the meetings to suit the wishes of the members of the Council regarding the agenda, date, and venue of the meetings.

The provisional agenda for each ordinary meeting of the Council is drawn up by the Secretary-General, and it is approved by the President (Rule 7). The Council is "seized" of a matter when an item that has been brought to its attention has been formally placed on its agenda.

Not only members of the Council but also any other member of the Organization and even a non-member of the Organization, can participate in the meetings. However, they

have no voting right and their participation is subject to some conditions and limitations (Articles 31 and 32).¹

Once a meeting starts, normally a general debate takes place for two or three days which is followed by a pause, when the process of drafting a resolution and negotiations on its text among members of the Council take place. Indeed, hard bargaining takes place at this stage. Last minute efforts are made to reach compromises or to resolve specific difficulties. The President plays a major role in this exercise. There is no set of rules to guide the President's behind-the -scene-consultations. He may call the permanent members together and then the non-permanent members; he may talk to the Non-aligned members or to the others separately ; and he may have consultations with individual representatives or a group of them. It all depends on the nature of crisis.²

Not all decisions of the Security Council are taken by formal voting. The President may declare that a decision has been taken in the absence of objection from the Members what he interprets to be the consensus.

1 Such a participation is based on invitation from the Council. The Council invites non-members of the Organization if it considers that their interests may be specially affected by its decisions.

2 Davidson Nicol, ed., Paths to Peace : The UN Security Council and Its Presidency (New York, 1981), p. 95.

Consensus symbolizes the convergence of motivations of Council members and represents a qualified or general agreement which is of a political rather than a legal character. The method of consensus-building involves three elements. First, consensus is preceded by consultations among all Council members. Secondly, consensus represents a general agreement. Lastly, the Security Council may approve the formulation of a consensus with or without vote, eschewing the process of public debate on it.³

One of the instances of consensus decision is with regard to the Iranian question⁴. On 29 March 1946, the Council decided unanimously to request the Secretary-General to ascertain at once from the USSR and Iran through their representatives, the existing status of the negotiations between them, and particularly whether or not the reported withdrawal of troops was conditional upon the conclusion of agreements between the two Governments on other subjects, and to report to the Council on 3 April 1946.⁵

3 F.Y. Chai, Consultation and Consensus in the Security Council (New York, 1997), p. 11.

4 The Iranian question arose when the Iranian Government on 19 January 1946, formally complained to the United Nations that the interference of Soviet officials and armed forces in the internal affairs of Iran might lead to international friction. For details, see Senate Subcommittee on the United Nations Charter, Review of the United Nations Charter (Washington, 1955), p.139.

5. See n.3, p.18.

The voting formula under Article 27, paragraphs 2 and 3 of the Charter provides that decisions of the Council on "procedural matters" require nine affirmative votes of its members. Decisions on all "other matters" require nine affirmative votes, including the "concurring" votes of the permanent members. In decisions under Chapter VI and under paragraph 3 of Article 52, a party to a dispute is required to abstain from voting.

The provisions of Article 27 of the Charter which deal with the voting formula of the Security Council, are not free from ambiguities. "Procedural matters" under paragraph 2 are neither defined nor enumerated. The Provisional Rules of Procedure are also silent on this subject. The Charter leaves it to the Council to decide whether a particular matter is procedural or non-procedural, on a case by case basis.

Due to the lack of a clear-cut demarcation between procedural and non-procedural matters, the Council is often faced with the problem of determining into which category a particular matter falls, especially when there is a difference of opinion. This kind of problem is referred to as "preliminary question". There is no Charter principle or rule which may help the Council in deciding a preliminary question. Whenever a difference of opinion arises, the permanent members rely upon the statement of the four

sponsoring powers at San Francisco.⁶ The statement provides that "... the decision regarding the preliminary question as to whether or not such a matter is procedural, must be taken by a vote of seven members [to be read nine now] of the Security Council, including the concurring votes of the permanent members".⁷

There is no uniform practice as to whether a "preliminary question" should be put to vote before the voting on the main proposal or after the main proposal is voted.

When a preliminary question is put to vote, the dissenting permanent member, if so desires, may cast a negative vote, which is known as "veto". The exercise of veto makes the main issue non-procedural. At the subsequent stage of voting on the main issue, the same or any other permanent Member State may cast a second negative vote, which is known as "double veto". This practice indicates that no matter could be considered procedural against the wishes of a permanent member.⁸

A preliminary question may also be decided through a Presidential ruling on the matter. It is suggested that a

6 Leeland M. Goodrich and Others, Charter of The United Nations :Commentary and Documents (New York, 1969), p. 220.

7 Ibid., p.226.

8 D.W. Bowett, The Law of International Institutions (London, 1975), p.28.

double veto can be avoided through the President's ruling that the matter is procedural. His ruling stands, unless overruled by an affirmative vote of nine members of the Council. However, such a ruling has little impact on voting on the main issue if a permanent member is determined to veto it subsequently.⁹

It is the same ambiguity in Article 27 (2) of the Charter which allows the application of veto to decisions by the Council on non-procedural matters. A resolution may be regarded as substantive, rather than procedural, if it proposed to initiate "a chain of events" which might, in the end, require the Council to invoke enforcement measures. Such a chain of events begins when the Council decides to make an investigation, or determines that the time has come to call upon States to settle their differences, or makes recommendations to the parties.¹⁰

Curiously the Charter is vague about the question as to when the veto can be exercised. It does not narrate the

9 Goodrich and Others, n.6, p.227. In the case of Czechoslovak, on 12 March 1948, Chile asked the Security Council to investigate the situation in Czechoslovakia caused by the Soviet intervention. A decision of the Council to establish a subcommittee to carry out an investigation or inquiry, was declared procedural by the President. When his ruling was challenged, it was put to vote. His ruling was upheld but the original proposal was defeated by the negative vote of the Soviet Union.

10 Four Powers' Statement at the San Francisco Conference, quoted by Goodrich and Others, n.6, p. 18.

circumstances under which a permanent member should be considered a "party to a dispute" so as to be ineligible to veto proposals for its peaceful settlement. In practice, permanent members have simply denied that they are "parties" or that there is a "dispute" in which they are involved. Neither the Soviet Union nor the United States, for example, has admitted being a party to any of the wars in the Middle-East. The Soviet Union has maintained that it had no "dispute" with Hungary, Czechoslovakia, or Afghanistan at the very times its armies were involved in those countries, while the United States denied having a dispute with Guatemala when its secret agency, CIA, was orchestrating the overthrow of the Arbenz regime.¹¹

The meaning of the phrase "concurring votes of the permanent members" is subject to varied interpretations. Does it mean the concurring votes by the representatives of "all" the five permanent members, or only the concurring votes cast by the representatives of the five permanent members" present and voting ?¹²

The abstention of a permanent member is not regarded as a "veto". Decisions are taken with the abstention of a

11 Thomas M. Franck, Nation against Nation (New York, (1985), p.163.

12 Hans Kelsen, Law of the United Nations : A Critical Analysis of its Fundamental Problems (New York, 1961), p. 239.

permanent member or more than one member, provided none of them casts a negative vote. An abstention is not a negation. The ICJ acknowledged this fact in its advisory opinion in the Namibia case, observing that "... the proceedings of the Security Council extending over a long period supply abundant evidence that presidential rulings and the position taken by members of the Council, in particular its permanent members, have consistently and uniformly interpreted the practice of voluntary abstention by a permanent member as not constituting a bar to the adoption of resolutions. By abstaining, a member does not signify its objection to the approval of what is being proposed, in order to prevent the adoption of a resolution requiring unanimity of the permanent members. A permanent member has only to cast a negative vote".¹³

II. DEFICIENCIES

One of the complaints is that the Security Council failed to call timely meetings on some situations of crisis in the past. As Arthur Lall, a former Indian Ambassador to the UN, observed : "The Council frequently did decide not to bother with meetings or even consultations, while threats of war pile up on massive violations of the UN Charter otherwise

13. I.C.J. Reports, 1971, p.22.

disrupt peace and Security".¹⁴ There were not even consultations among Member States of the Council on the Middle-East conflict, which erupted on 7 April 1967 between Israel on the one hand, Syria and Egypt and Jordan on the other. It was only after the scene was well set for the war on 24 May that the Council eventually met. In 1971, although the Secretary-General acted virtually under Article 99 of the Charter when he addressed the President of the Council on 20 July on the gravity of the situation in East Pakistan (presently Bangladesh). Still the Council did not meet and the President reportedly said that an open discussion in the Council would have exacerbated the situation.¹⁵

Another complaint emanates from the dissatisfaction of the Third World countries which are resentful of permanent members' privileges and the latter's increasing tendency to "secretly manufacture Council schemes".¹⁶

Indeed, veto remain the prime target of criticism. The unanimity rule tends to be transformed into the rule of liberium veto, according to which no Organizational decision can be reached if any permanent member of the Security Council dissented. The frequent exercise of veto has

14 Arthur Lall, The Security Council in Universal United Nations (New York, 1971), p.8.

15 Ibid., p.6.

16 Times of India (New delhi), 26 October 1991.

frustrated, on many occasions, the adoption of a decision supported by at least nine of the fifteen members of the Security Council, and in most cases the affirmative majority included several of the Permanent Five.

Excessive use of veto by the permanent members has prevented the Council from undertaking timely decisions and effective actions. Indiscriminate use of veto on proposals relating to the regulation of armaments, peaceful settlement of disputes, and enforcement action has rendered the Council ineffective in many situations.¹⁷

III. PROPOSALS

All the above mentioned deficiencies and problems prompted the developing countries, including India, to demand for a democratic, transparent and more effective decision-making in the Security Council. The proposals made in this regard may be discussed under the following headings:

A. Democratic and Transparent Decision-making

The Ministers for Foreign Affairs of the Non-aligned countries, meeting at Accra (Ghana), on 7 September 1991, made a plea that "current efforts at reforms of the UN should include measures designed to make the decision-making process

17 Leeland M. Goodrich, United Nation (New York, 1959), pp.117-118.

of the United Nations, particularly the Security Council, more democratic and transparent".¹⁸ The Minister of State for External Affairs of India, Edurado Falerio, in a seminar at the Academy of Third World Studies, New Delhi on 21 August 1991, said that "the practice of the permanent Security Council members presenting their decisions to others for endorsement should be replaced by greater efforts to involve the developing countries in the decision-making process".¹⁹

The Prime Minister of India, Narasimha Rao, stated at the First Security Council Summit at New York on 31 January 1992 that "At every step, the interpretation of the Charter as well as the actions by the Security Council must flow from the collective will of the international community, and not from the views or predilections of a few".²⁰ According to him, a general consensus must always prevail over a selective group's views. Whether permanent or elected, members should insist on arriving at consensus, scrupulously avoiding the temptation to dictate for quick results. Rightly concluding his plea, Rao said that "what is right and just must become transparent".

18 General Assembly, Plenary Meetings, Provisional Verbatim Record, Forty-sixth Session, UN Doc. A/46/PV.68 (23 December 1991), p.5(a-z).

19 Times of India, 22 August 1991.

20 Security Council, Summit meeting, Provisional Verbatim Record, UN Doc. S/3046 (31 January 1992), p.97.

The following arguments are advanced in favour of the democratization of the decision-making process of the Security Council.

First, when decisions of the Council command across-the-board support from its members, the possibilities of their implementation are considerably increased. Agreement among the major powers must carry with it the support of a majority of Member States if it is to make the desired impact on the world Organization.²¹

Secondly, a strong Security Council is certainly one whose decisions are based upon frank discussion by all its members and are a reflection of the views of all of them.²²

Thirdly, the legitimacy of the Council and the moral authority of the Organization can only be enhanced, if the favourable wind of democratization that is sweeping across the world passes through the UN as well.²³ Boutros-Ghali observed thus: "Democratization at the national level dictates a corresponding process to the global level, it aims at the rule of law For global society it means, the democratization of international relations and the

21 Statement of the Prime Minister, Veiga of Cape Verde, *ibid.*, p.78.

22 *Ibid.*

23 Argument of the Representative of Nigeria, n.18, pp.39-40.

participation of all States in developing new norms of international life."²⁴

However, no concrete measure has been adopted for ensuring a democratic and transparent decision-making in the Security Council.

B. Effective Decision-Making

In order to make the decision-making of the Council more effective, the following proposals are recommended.

First, in order to avoid differences among the members of the Security Council it is proposed that when a crisis-situation or dispute is brought to the attention of the Council without a meeting being requested, the President of the Council should hold informal consultations.²⁵ The rationale underlying this suggestion is that the trend towards greater consultations among all members of the Council is really good since it paves the way for a possible consensus, it avoids public confrontation and argumentation, and it tends to reduce the length of statements in an open Council meeting as well as to avert procedural difficulties.

However, there is a risk that consultation may become a substitute for inaction by the Security Council or even an

24 See n.20, pp.8-9.

25 Proposed by the U.K., GAOR, Report of the Special Committee on the Charter and on the Strengthening of the role of the Organization, Suppl. 33 (A/34/33), 1979, p.88.

excuse for action outside the framework of the Charter. It is feared that institutionalizing the practice of holding consultations may hamper the flexibility in the functioning of the Security Council.

If the consultation process, in which the Council members discuss matters frankly and informally, the resultant effect would be the consolidation of will of all the Council members. If on the other hand, the consultation process is taken as a means of escaping public disagreement and adopting an increasingly expedient and evasive approach, it may in the end reduce the Council to a level of impotence.

A consensus indeed indicates the absence of a major objection. But, at the same time, it may show lack of enthusiasm on the part of the participants. Consensus is preceded by consultation and compromise. At every stage a draft gets watered down a little in an effort to reach unanimous agreement. The result of this may be that sometimes a consensus is not only highly diluted, but also couched in language that lacks clarity and effectiveness.

Secondly, the tendency of prolonged debates in formal Security Council sessions should be avoided. The Council should limit presentations by parties not involved in the controversy so as to avoid the Council becoming a mini-

General Assembly.²⁶

Thirdly, the Council's resolutions should be drafted in unambiguous terms. If the subject of a resolution is, for example, a ceasefire between two warring parties, the Council should make clear whether it is "recommending" a ceasefire or ordering one.²⁷

Lastly, the voting procedure envisaged in Article 27 of the Charter should be restructured. The following proposals are made in this regard.

1. The requirement of unanimity among the permanent members should be abolished or that the permanent members should relinquish their right of veto (negative vote).

The unanimity principle has been opposed since the San Francisco Conference days. Evatt, the Head of Australian delegation, vehemently opposed the absolute unanimity rule. John Foster Dulles, the US representative, pleaded in the General Assembly in August 1947 that "removal of the veto power from the five permanent members is necessary". The then Representative of Argentina, Jose Arce, in 1947, argued that "the United Nations cannot work with the veto power. We support the idea of legal equality of all States". He in fact presented a draft resolution asking the General Assembly

26 Report of the Nineteenth UN of the Next Decade Conference, Peace and Security, the UN and National Interests (Massachusetts, 1984), p. 34.

27 Ibid., pp. 34-35.

to convene a conference of Member States for the purpose of abolishing this privilege.²⁸

The above position is also reflected in the submissions of the Congo, Nigeria and Zambia to the Ad hoc Committee on the Charter of the United Nations in 1973.²⁹

The Representative of Venezuela pointed out at the forty-sixth Session of the General Assembly (1991) that "the Organization will not be strengthened unless an agreement is reached to eliminate the right to veto a right that responded to circumstances and realities that have ceased to exist".³⁰

The elimination of the veto right is advocated on the following grounds:

- i. The veto has created an institutionalized difference between the permanent and non-permanent members of the Security Council and indeed in the entire membership of the United Nations.
- ii. The veto is an "antithesis" of the principle of "sovereign equality" and the democratizations of the UN system as a whole.

28. Quoted by the Representative of Venezuela in the Forty-sixth Session of the General Assembly, See n.17, p.17.

29. Report of the Ad hoc Committee on the Charter of the United Nations, UN Doc. A/10033 (1975), pp. 18, 67, 107 respectively.

30 See n.18, p.13.

- iii. The fate of the world should not be left just in the hands of five permanent members of the Security Council, because their narrow interests are sometimes opposed to the interests and wishes of the vast majority of the peoples of the world.
- iv. The world security is too precious a value to be left to the whims of big powers' manoeuvres.
- v. Total democracy would prevail in the United Nations system without veto.³¹
- vi. The right of veto is undemocratic, monopolistic, and anachronistic.
- vii. The right to veto has been used, in most cases, contrary to the purposes and principles of the Charter.
- viii. The abuse of the right to veto has hampered the effective functioning of the Security Council.

However, the right to veto or unanimity rule is strongly defended by the permanent members, including the Soviet Union, on the following grounds:

- (i) The principle of unanimity among the permanent members of the Security Council provides a guarantee that the Council will not be transformed into the instrument of a particular group of States and used in a manner that violates the United

31. Zambia, n.29.

Nations Charter and damages the vital interests of countries with a different socio-political system.

(ii) The unanimity rule in the Security Council is the foundation of the entire edifice of the United Nations. And without it the Organization would foster not unity but disunity among States. It won't lead to the settlement of disputes and the prevention of conflicts but the intensification of discords and crises in relations between States.

(iii) Without the unanimity rule the United Nations could be used to serve the narrow interests of particular States or groups of States.³²

(iv) The principle of unanimity has often made it possible to avoid hasty decisions which might have had grave consequences.³³

Now, there is the change of regimes in most of the Communist countries. The Soviet Union has disintegrated. And with this the Cold War situation has come to an end.

32. USSR, GAOR, Report of the Secretary General on the "need to Consider Suggestions Regarding the View of the Charter of the United Nations", UN Doc. A/8746 (22 August 1972), pp.49-50.

33. Bylorussia SSR, *ibid.*, p.6.

The new regimes in the former Communist countries have not expressed their latest stand on the principle of unanimity. It is unlikely, however, that a country like the Russian Federation will agree to give up its coveted position in the UN system.

Western Members of the Organization were fed up with the frequent uses of veto by the Soviet Union during the late 1940s and 1950s. Therefore, they were advocating for a restrictive use of the veto. With the Afro-Asian resurgence into the Organization in the 1960s, they lost majority in the General Assembly. They not only took shelter behind the veto but also forcefully defended the retention of this right.

The Indian position was ambivalent so far as the veto system is concerned. V.K. Krishna Menon, the First Representative of India to the UN, made it clear that "I am a convinced believer in the rightness of the much maligned veto as a stabilising factor in the UN".³⁴ In a submission to the "Ad hoc Committee on the Charter of the United Nations", in 1975, India made the following observations:

- (a) The veto system is clearly discriminatory but it was the price that had to be paid for the creation of the United Nations.

34. V.K. Krishna Menon, "My Ten Years at the United Nations", Yojana (New Delhi), 18 October 1970, p.18.

- (b) It is the principal basis for the membership and cooperation of the big powers.
- (c) Without the veto the UN would not have come into being, because the UN was conceived by the big powers as primarily an Organization for maintenance of international peace and security.
- (d) On many occasions the veto system has prevented the Security Council from taking wrong decisions on questions affecting international peace or self-determination. On other occasions, the veto has been exercised to prevent the Security Council from admitting new members or from taking action against States that have persistently violated the Charter.
- (e) If the power of the veto were to be abolished, it is not sure that the world would be in a better situation.
- (f) It is not the rules of voting procedure that change situations for the better, but the will to adhere to the provisions, principles and purposes of the Charter.³⁵

No official stand has been expressed by the Government of India on veto since 1976 (When the Permanent

35. See n.29, p.40.

Representative of India made a statement on veto in the Sixth Committee of the General Assembly, Thirty-first session).

2. If the veto privilege given to the permanent five cannot be dispensed with, the number of beneficiaries of that privilege should be increased. Consideration may be given to the redistribution of the right of veto so that all regions of the world would possess that right. There should be an extension of the right of veto to one or more representatives of the countries of the developing world. Such an extension should be based on the special rules specifying the rotation of countries, the length of period served, and the criteria for exercising the right of veto. Such an extension may also be done on a regional basis, with the General Assembly possibly designating certain non-permanent members from among the countries of the various regional groups which would exercise the right of veto.³⁶ Another alternative for the redistribution of the right of veto on an equitable geographical basis is that, the three current permanent members--one each from Asia, Eastern Europe and America should continue to exercise that right. In addition two representatives from Africa and Latin America should be granted veto right. The

36. GAOR, Analytical Study of the Secretary General, submitted to the Special Committee on the Charter of the United Nations and on the Strengthening of the role of the Organization, pursuant to General Assembly Resolution 3499 (XXX), UN Doc.A/AC.182/L.2 (2 February 1976), p.45.

States of those regions should have the right to determine as to who should have that right at any one time.³⁷

3. Where a veto is exercised by a Permanent member of the Council, two-thirds of the votes of the membership of the Security Council, including affirmative votes of at least two permanent members of the Council, shall overrule the veto so exercised.³⁸

4. When a veto is exercised by a permanent member of the Security Council, the Secretary-General shall convene an emergency meeting of the General Assembly at which the issue giving rise to the exercise of veto shall be debated. If at the conclusion of the debate there is a two-thirds majority vote in favour of the proposal, the veto shall stand overruled.³⁹

5. The application of veto should be restricted. In this regard some member States have submitted the following proposals to the Special Committee on the Charter and on the

37. Proposed by Nigeria and Sierra Leone, GAOR, Report of the Ad hoc Committee on the Charter, UN Doc. A/10033 (1975), pp.67, 78 respectively.

38. Ghana, Report of the Secretary-General, on the "Strengthening of the Role of the United Nations with Regard to the Maintenance and Consolidation of International Peace and Security, the Development of Cooperation among All Nations and the Promotion of the Rules of International Law in Relations between States", UN Doc. A/9695 (16 October 1974), pp.42-43.

39. Ibid.

Strengthening the Role of the Organization":

- (i) A resolution should be adopted enumerating those questions which are to be regarded in the Security Council as procedural in nature.⁴⁰ The term "procedural matters" in Article 27(2) of the Charter should be defined.⁴¹ The permanent members of the Security Council should consult and examine whether there are areas which they could agree to treat as procedural and in which, in accordance with Article 27 (2) of the Charter, they could refrain from using veto.⁴²
- (ii) An agreement should be concluded by the members of the Security Council on the unanimity rule with a view to incorporating it into the rules of procedure of the Council, regarding certain aspects of the functioning of the Security Council.⁴³

40. Proposal submitted by Mexico to the Special Committee on the Charter and on the Strengthening of the Role of the Organization on 10 March 1978. GAOR, Report of the Special Committee on the Charter, Suppl. 33 (A/33/33), 1978, p.19.

41. Proposal made by Colombia, "Suggestions and Proposals Regarding the Charter of the United Nations and the Strengthening of the Role of the Organization", UN Doc. A/AC.182/L.12/Rev.1 (8 March 1977), p.8.

42. Proposal submitted by the U.K., see n.25.

43. Working Paper Co-sponsored by Algeria, Congo, Cyprus, Egypt, El Salvador, Ghana, Iran, Kenya, Nigeria, Romania, Rwanda, Sierra Leone, Tunisia, Yugoslavia and Zambia, GAOR, Thirty-fifth Session, Suppl. 33 (A/35/33), 1980, p.48.

(iii) The Provisional Rules of Procedure of the Council should be amended so as to include that the unanimity rule shall not apply to : (a) all resolutions relating to Chapter VI entitled "Pacific Settlement of Disputes", (b) all resolutions authorizing the establishments of peace-keeping operations with the consent of the parties concerned, (c) all resolutions aiming at "fact-finding", (d) the decision as to whether a given matter is procedural or not, and (e) the decision as to whether a permanent member is a party to the dispute or not.⁴⁴

In sum, any proposal for the abolition of the veto privilege does not have the support of veto-bearing Members. An extension of the right of veto is considered undesirable on the ground that it would further extend the use of veto, leading to a widespread use of veto and would run the risk of further paralysing the work of the Security Council. The demand for a change in the voting formula of the Council goes along with the principle of sovereign equality and democratic decision-making. This type of proposal can be effected only through amendments to the provisions of Article 27 of the Charter. Any amendment of this nature may be rejected by the permanent members. Limiting the use of veto to certain well-

44. Ibid., pp.48-49.

defined areas may enhance the effectiveness of the decision-making process of the Council. But an agreement on the areas that are to remain free from the application of veto, is very difficult.

CHAPTER IV
FUNCTIONS AND POWERS

I. THE PRESENT POSITION

The Security Council has a large number of functions to perform under the Charter of the United Nations. Its primary responsibility, however, is to maintain international peace and security. It is expected to discharge this responsibility in accordance with the Purposes and Principles of the United Nations. These duties are encompassed in Articles 1 (1) and 26 of the Charter. Accordingly, the Council is expected 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. It is also expected to bring about adjustment or settlement of international disputes or situations which might lead to a breach of the peace. The latter duty is to be performed in conformity with the principles of justice and international law. Moreover, the Council is required to formulate, with the assistance of the Military Staff Committee, plans to be submitted to the Member States for the establishment of a system for the regulation of armaments.

Under Article 24 (2) of the Charter the Council is granted with specific powers for the successful discharge of the above duties. These powers are laid down in Chapters VI, VII, VIII and XII. It is not clear from the Charter, however, whether the Council has only these powers or whether it may exercise such other powers, consistent with the Purposes and Principles of the Charter, as are necessary for

it to discharge its responsibilities effectively. This question arose for the first time, with regard to the Iranian question. The Iranian Government on 19 January 1946, formally complained to the United Nations that the interference of the Soviet officials and armed forces in the internal affairs of Iran might lead to international friction. The Security Council discussed the question, but in view of the fact that both parties affirmed their willingness to settle the matter by direct negotiation, the Council adjourned discussion to give them an opportunity to do so. In April, Iran asked the Security Council to drop the item in view of the progress of the negotiations with the Soviet Union. Then a specific constitutional question arose as to whether the Council could retain on its agenda the complaint by Iran against the Soviet Union despite a request by Iran that it be removed. In a memorandum, the then Secretary General, Trygve Lie expressed the view that "the Council could not retain its jurisdiction over the question in the absence of a specific exercise by the Council of its powers under Chapter VI". However, the majority of the Council Members took a much broader view. The representative of Mexico felt that Article 24 "invests the Council with implied powers, wider in scope than the specific powers" enumerated in paragraph 2 of that article.¹

1. Leland M. Goodrich and Others, Charter of the United Nations: Commentary and Documents (New York, 1969), p.204.

The ICJ in its Advisory Opinion in Namibia case on 21 June 1971 observed: "The reference in paragraph 2 of this Article [24] to specific powers of the Security Council under certain chapters of the Charter does not exclude the existence of general powers to discharge the responsibilities conferred in paragraph 1... The only limitations are the fundamental principles and purposes found in chapter I of the Charter".²

Thus, the Council has wide discretion but no arbitrary powers, since it must be guided by the Purposes and Principles of the Organization. In specific terms, as Bentwick and Martin point out, it must respect the sovereignty of Member States, especially in matters which are essentially within their domestic jurisdiction. It must respect the principle of the equal rights and self-determination of peoples. In the settlement of disputes, it must be guided by justice and not by mere political expediency. When force is used, the Council must see that the territorial integrity and political independence of States do not suffer.³

Major functions of the Council may be discussed under the following four headings:

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2. I.C.J. Reports (1971), p.52.
 3. Norman Bentwick and Andrew Martin, Commentary on the Charter of the United Nations (New York, 1969), p.62.

1. Settlement of Disputes

Disputes may be brought to the notice of the Council at the initiative of the General Assembly under Articles 11 and 12, by the Secretary-General under Article 99, by Member States under Article 35 (1), and by Non-member States under Article 35 (2). The non-members are bound, in so doing, to accept in advance and for the purposes of the dispute, the obligations of Pacific settlement provided for in the Charter. Under Article 37(1) a duty is imposed on parties to a dispute likely to endanger international peace and security to submit the dispute to the Council, if they cannot settle it by the traditional means enumerated in Article 33.⁴

The principal basis of activities of the Security Council in the field of the peaceful settlement of disputes is chapter VI of the Charter. Article 34 under this Chapter empowers the Security Council to investigate any dispute or any situation which might lead to international friction or give rise to a dispute, in order to determine whether the continuance of the dispute or situation is likely to endanger the maintenance of international peace and security.

With regard to its agenda item entitled "complaint of armed invasion of Taiwan (Formosa)" in 1950, the Security Council, relying on Article 34 of the Charter, affirmed that

4. D.W. Bowett, The Law of International Institutions (London, 1975), p.31.

its duty to investigate any situation likely to lead to international peace and security and likewise to determine the existence of any threat to peace".⁵

The task of investigating disputes and situations has been performed by the Security Council on various occasions through various means. With regard to the Spanish question (1946), for instance, the Council established a sub-committee and instructed it to examine the evidence and to report to the Council in order to enable the Council itself to determine the nature of the dispute. In the India-Pakistan question (1948) by contrast, the Council established an independent commission for India and Pakistan to investigate the facts pursuant to Article 34 of the Charter. The Commission was composed of representatives of three Members of the United Nations: one member selected by each of the two parties, and the third one designated by the two members so selected. In some other cases also the Council has carried out investigation through a special commission.⁶ When dealing with the situation concerning Western Sahara (1975), the Council requested the Secretary-General to enter into immediate consultations with the parties concerned and to

5. Progress Report by the Secretary-General on "Preparation of the Draft Handbook on the Peaceful Settlement of Disputes between States", Un Doc. A/AC.182/L.68, 12 November, 1990, p.137.

6. For details, *ibid.*

report to the Council on the results of his consultations in order to enable the Council to adopt the appropriate measures. In the present practice, this kind of work is being done through Secretary-General's special envoys. For instance, Benon Sevan acts as the Special Representative of the Secretary-General to investigate Afghan situation Cynis Vance has been appointed as the Secretary-General's Special Envoy to investigate the situation in South Africa on the backdrop of the Boipatong killings in July 1992.

In case the Council establishes a subsidiary organ to carry out an investigation, it reserves the right of making the final determination as to the nature of the dispute or situation, as envisaged in Article 34. The "determination" of the nature of a dispute or situation under this Article is relevant also to the application of Article 37, according to which the Security Council is to decide whether to take appropriate actions if it deems that the continuance of the dispute "is in fact likely to endanger the maintenance of international peace and security".

Besides the function and power of investigation of facts and determination of the gravity of the situation, the Council has the power, under Article 36(1) to recommend appropriate procedures or methods of adjustment to the parties to a dispute. It has also the power under Article 37(2) to recommend such terms of settlement as it may

consider appropriate. Under Article 38 the Council can make recommendations with respect to "any dispute" if all the parties so request. In fact, the Council has recommended "specific settlement terms" to the parties in many cases. In the Corfu Channel case (1947), for instance, it recommended to the United Kingdom and Albania to refer the dispute to the ICJ. On the Palestinian question (1948), it recommended that all the parties concerned take specific measures with a view to the cessation of violence. It established a truce commission to supervise the implementation of these measures.

Two conditions are put on the Security Council's power to recommend appropriate procedures or methods of settlement. First, while making recommendations, the Council should take into consideration any procedures for the settlement of the dispute "which have already been adopted by the parties" (Article 36(2)). Second, it should see that legal disputes should, as a general rule, be referred by the parties to the ICJ (Article 36(3)). However, these limitations are not binding on the Council. The Charter's provision in this regard, is loosely drafted. Nowhere does it mention any difference between disputes -- legal and non-legal. It is left to the judgment of the Council.

The powers of the Council relating to the peaceful settlement of disputes are of independent nature. The Council can exercise them *sua sponte*, on its own initiative,

without having to wait for the submission of the dispute or situation to the Council by one of the parties or by a member state.⁷ This is emphasised by the phrase in Article 33(1) that the Council shall call upon the parties to settle their disputes by peaceful means, "When it deems necessary" and by the language in Article 36 that, "at any stage of a dispute" or situation whose continuance is "likely to endanger international peace and security", the council may recommend appropriate procedures or methods of adjustment.

The Security Council, in performing its functions in the field of settlement of disputes, acts under various Chapters of the Charter and does not always indicate the Chapter under which it is in fact acting. Primarily, the Council exercises the powers contained in Chapter VI of the Charter, using also other functions and powers under Chapter VII, under which the Council is empowered to take preventive or enforcement measures to maintain or restore international peace and security, and Chapter VIII relating to procedures under regional agencies or arrangements.⁸

2. Enforcement Actions

The Council performs certain other functions under Chapter VII, with respect to threats to the peace, breaches

7. Louis B. Sohn, "The Security Council's Role in the Settlement of International Disputes", American Journal of International Law (Washington), vol.78 (1984), p.402.

8. See n.5, pp.136-137.

of the peace and acts of aggression.

Under Article 39 of the Charter, the Council is required to perform a two fold responsibilities: first to determine the existence of a threat to the peace, breach of the peace, or acts of aggression; and secondly, to make recommendations and decide on measures to maintain or restore international peace and security. The word, "shall" used in Article 39 has led some to argue that the Council has a "duty" to make such a determination whenever the circumstances so indicate -- a responsibility which the Council cannot evade. However, there is an opposite view that the Council should not make a determination under Article 39, unless Member States are prepared to apply the additional measures listed in chapter VII.⁹

The Charter does not define a threat to the peace, breach of the peace, or act of aggression. There is also no clear cut distinction between these three things.

The question of what constitutes a "threat to the peace" is determined and decided by the Council in each individual case. In connection with the Spanish question,¹⁰

9. Goodrich and Others, n.1, p.293.

10. The Spanish question arose when Poland in April 1946 called upon the Security Council to take action on the ground that the Franco regime endangered international peace. The Council appointed a Subcommittee to investigate the matter. The Subcommittee found that the Franco government was not an actual threat to international peace but was a potential danger to international peace. For details, see Senate Subcommittee on the United Nations Charter, Review of the United Nations Charter, (Washington, 1955), p.140.

the majority of the Council members considered that the Franco-regime was only a potential threat to the peace. In the Greek frontier incidents case,¹¹ the majority of Council members approved the finding that the kind of support, Albania, Bulgaria and Yugoslavia were giving guerrilla bands operating in Greece, constituted a "threat to the peace". While the Council was holding debate on the Palestine situation, in the United Kingdom stressed that any threat to the peace must be a threat to international peace. The United States, however, contended that internal disorders and incursions by armed bands could also constitute a threat to the peace. In connection with the situation in South Africa, the Western powers were unwilling to consider that the racial policies of South Africa constituted a threat to the peace. In connection with the situation in the Congo the Council adopted a finding that international peace and security were

11. The Greek question arose when Greece in December 1946 asked the Security Council to prevent its neighbours, Albania, Bulgaria and Yugoslavia from assisting insurgents against the Greek government. In August 1947, two resolutions were placed before the Council, one proposed by Australia stating that the situation on the Greek border was a threat to the peace and calling on the four countries concerned to enter into negotiations for a settlement, and another proposed by the United States, characterising the situation a threat to peace, fixing responsibility on Yugoslavia, Albania and Bulgaria and calling on these States to stop aiding the guerrillas. However, both the resolutions were vetoed by the Soviet Union. Ibid., p.139.

threatened.¹² In the recent case of Libya, the Council determined that the failure by the Libyan Government to demonstrate by concrete actions, its renunciation of terrorism and in particular its continued failure to respond fully and effectively to resolution 731 (1992) "Constitutes a threat to international peace and security".¹³

More recently, the Council determined that the situation in Bosnia and Herzegovina and in other parts of the former Socialist Federal Republic of Yugoslavia constitutes "a threat to international peace and security".¹⁴

Another aspect is that the Charter nowhere differentiates between a "threat to the peace" under Article 39, and a dispute or situation, the continuance of which is "likely to endanger the maintenance of international peace and security under Article 34.

The question of what kind of acts could be considered as breaches of the peace, is left to the Council to decide.

12. Goodrich and others, n.1, pp.296-297.

13. Security Council Resolution 748 (1992) of 31 March 1992.

In the Resolution 731 (1992) of 21 January 1992, the Council had urged the Libyan Government immediately to provide a full and effective response to those requests made by UK, USA and France, for assisting them in the apprehension and prosecution of those responsible for the destruction of Pan Am flight 103.

14. Security Council Resolution 757 (1992) of 30 May 1992.

Any resort to armed force may come within the purview of the phrase.¹⁵ With respect to Korea, the Council determined that the armed attack upon the Republic of Korea by forces from North Korea "constitutes a breach of the peace".¹⁶ In connection with Iraq's invasion of Kuwait, the Council determined that there existed "a breach of international peace and security".¹⁷

Goodrich and his associates hold an opinion that "failure" to comply with provisional measures that the Council may call for, should be considered as a breach of the peace. The Council, in fact, in ordering a cease-fire in Palestine, declared that the failure of the parties to comply "would demonstrate a breach of the peace within the meaning of Article 39, requiring immediate consideration with a view to further action under chapter VII."¹⁸

Also, no difference is made between breaches of the peace and acts of aggression. At the San Francisco Conference, many delegations proposed the inclusion of a definition of the term "aggression" in the Charter. But the proposal was rejected on the ground that any definition

15. Goodrich and Others, n.1, p.297.

16. Security Council Resolution 82 (1950) of 25 June 1950.

17. Security Council Resolution 660 (1990) of 2 August 1990.

18. Goodrich and Others, n.1, p.298.

might hamper the Council's freedom of action by establishing standards that might not be easily applied in a particular case.¹⁹ Twenty years later, however, the General Assembly adopted a declaration defining "aggression" (Resolution 3314 (XXIX), 14 December 1974).

The determination of a breach of the peace is less serious a matter than a finding of aggression, in so far as the positions of the parties are concerned, but more serious than a determination of a "threat to the peace" in terms of implications for further Council action.²⁰

If there has been some threatening movement of armed forces or an actual military attack or some action that is likely to lead to the worsening of the situation, the Council may call upon the parties to adopt "provisional measures" with a view to preventing any aggravation of the situation (Article 40). These measures are primarily intended to prevent a threat to the peace leading to an actual breach of peace.

However, the Charter does not enumerate the provisional measures. In practice, the following Provisional measures are identified: calls for the withdrawal of armed forces; calls for the parties to refrain from further military action and acts of violence; calls for a ceasefire; including

19. Ibid.

20. Ibid.

cessation of an armed invasion; demands that the independence, sovereignty and territorial integrity of a country be respected; declarations that elections were null and void; demands for the release of detained personnel of an embassy; demands that the illegal expulsion of elected officials be rescinded and their return to their functions be facilitated; calls for payment of full and adequate compensation for the effects of acts of aggression; calls upon a party to rescind certain measures in an occupied territory; calls upon Member States to cooperate with the United Nations.²¹

By their nature, provisional measures are like "injunctions" that are available in domestic law of a country. They are adopted without prejudicing the rights or position of the parties. Any failure of one or both of the parties to accept and carry out such measures, "shall duly" be taken into account by the Council in determining its subsequent course of action.

The Council may invoke Article 40, providing for provisional measures, before making recommendations or taking decisions under Article 39. It is less clear whether it may do so without first making a determination under Article 39 that a threat to the peace, breaches of peace, or act of

21. Repertoire of the Practice of the Security Council, suppl. 1975-1980, ST/PSCA/1/Add.8, p.396.

aggression exists. The practice of the Security Council provides no clear answer.²²

The Council may adopt certain other measures in order to give effect to its "decisions". Article 41 and 42 of the Charter, refer to them.

Article 41 empowers the Council to apply such measures which may include "complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio and other means of communication, and the severance of diplomatic relations". These measures have been applied in many cases, with a variety of names - economic sanctions, trade embargo, arms embargo, aerial embargo, and diplomatic sanction, etc. In connection with the situation in South Africa, the Council, in 1977, imposed an arms embargo against the apartheid regime.²³ Following Southern Rhodesia's unilateral declaration of independence, the Council in 1966 imposed economic sanctions against the white minority regime of that country.²⁴ These sanctions were terminated in 1979, after the establishment of the majority rule in independent Zimbabwe (new incarnation of Southern Rhodesia). Following Iraq's invasion of Kuwait, the Council

22. Goodrich and others, n.1, p.303.

23. Security Council Resolution 418 (1977) of 4 November 1977. Before this resolution, a voluntary arms embargo was imposed on South Africa under the resolution 181 (1963) of 31 July 1963.

24. Security Council Resolution 232 (1966) of 16 December 1966.

imposed stringent, mandatory economic sanctions against Iraq on 6 August 1990.²⁵ The Council later imposed a naval blockade around Iraq and Kuwait to strengthen the sanctions already imposed²⁶. The sanctions against Iraq are still continuing. Following Libya's non-compliance with Resolution 731 (1992), the Council decided to impose an aerial embargo against Libya. It is in effect since 15 April 1992²⁷. The Council has imposed both economic and diplomatic sanctions against Federal Republic of Yugoslavia (Serbia and Montenegro) due to its failure to take effective measures to fulfil the requirements of Resolution 752 (1992) The sanctions remain in effect since 31 May 1992.²⁸

If the measures provided under Article 41 prove to be inadequate, the Council may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstration, blockade and other operation by air, sea or land forces of Members of United Nations (Article 42). Member States may make available armed forces, and other facilities, including the right of passage necessary for undertaking the

25. Security Council Resolution 661 (1990) of 6 August 1990.

26. Security Council Resolution 665 (1990) of 25 August 1990.

27. Security Council Resolution 748 (1992) of 31 March 1992.

28. Security Council Resolution 757 (1992) of 30 May 1992.

above mentioned actions. Such contributions of Member States are made on the basis of a special agreement or agreements between the Council and Members or a group of Members. Such agreement or agreements shall govern the number and type of forces, their degree of readiness and general location, and the nature of the facilities and assistance to be provided. (Article 43(1) and (2)). The Military Staff Committee, which consists of the Chief of Staff of the Permanent Members, would advise and assist the Council in chalking out plans for the application of armed force. While Member States are obliged to assist the Security Council, there is nothing in the Charter which can compel them to enter into such arrangements. If no agreement exists, then no obligation exists.

Measures envisaged in Article 41 and 42, are collective and binding in nature. They are undertaken to enforce peace, if required. They are supposed to be implemented on the basis of collective efforts. The Council while taking action under Chapter VII, does not mention the Article under which it takes measures. There is no such guideline about sequence of the measures which may be taken by the Security Council.

3. Peace-Keeping

Observer missions and peace-keeping forces are two instruments devised over the years by the Council in the exercise of its mandate under the Charter, although there is

no specific reference to peace-keeping operation in the United Nations charter. They have been interpreted as provisional measures under Article 40.

Peace-keeping is the involvement of U.N. in the field with the consent of all the parties concerned, normally involving the development of United Nations military and/or police personnel, and frequently civilian as well. Peace-keeping is a technique that expands the possibilities for both the prevention of conflict and the making of peace.²⁹ Thirteen peace-keeping operations were undertaken between 1945 and 1987, 13 others since then. An estimated 528,000 military, police and civilian personnel had served under the flag of the United Nations until January 1992.

The peace-keeping task of the Security Council have increased and broadened considerably in recent years. The original role of standing as a buffer between hostile forces has been expanded to encompass among other functions, the maintenance of security and stability within a specific area, as UNIFIL is doing in Southern Lebanon. The monitoring of the election (Namibia, Haiti, Cambodia), the disarmament of insurgence (Nicaragua) the disarming of the warring factions

29. General Assembly/Security Council, Report of the Secretary General pursuant to the Statement adopted by the summit Meeting of the Security Council on 31 January 1992, "An Agenda for Peace: Preventive diplomacy, peace-making and peace-keeping", UN Docs. A/47/277/S/24111 (17 June 1992), p.6.

(Cambodia), holding referendum (Western Sahara) and monitoring human rights situation (El Salvador).

4. Coordination

The Council performs its functions not in isolation. It is assisted by the Secretary General and regional Organizations. Article 99 of the Charter empowers the Secretary General to bring to the attention of the Council any matter which in his opinion may threaten international Peace and Security. The Council may act or may not act on the matter which he may bring to its attention. But his power to bring the matter to attention of the Council is very wide unrestricted and important. The Secretary-General also performs such other functions as entrusted to it him by the Council.

The Charter has also established relations between the Council and regional organizations under its Chapter VIII. The Council is required to encourage the development of pacific settlement of local disputes through regional arrangements (Article 52(3)). The determination of a dispute as local or international is made by the Council. The Council is required, where appropriate, to utilise regional arrangements or agencies for enforcement action under its authority. However, no enforcement action can be taken under regional arrangements or by regional agencies without the authorization of the Security Council (Article 53(1)).

Whether an enforcement action is "appropriate" to be undertaken through a regional agency or not, is ultimately decided by the Council. Regional agencies are required to keep the Council informed of their activities at all time (Article 54). Thus, the relationship between the Security Council and the regional organizations is characterized by cooperation, coordination and subordination.

II. DEFICIENCIES

In too many international disputes, the Council has taken no initiative but has waited often impatiently for somebody to submit the matter to it. In the process, disputes are often allowed to drag on and get so inflamed that they defy solution by the time they are submitted to the Council. Sometimes they are not brought before the Council at all.

It has been found that the Security Council has tended to intervene only after a conflict has broken out and that its intervention was ineffective because it arrived too late.

On some occasions, the Council receives notes from the parties apprising it of a dispute or situation, but not asking it especially to put the item on agenda, or to call a meeting to discuss the matter.³⁰

30. Sohn, n.7, p.403.

The Security Council does not have adequate institutionalised means to maintain an impartial and effective "global watch" over situations of potential or incipient conflicts. At present, the pool of information available to it is grossly inadequate. The Council lacks access to technological means, such as space-based and other technical surveillance systems, and is without field representation commensurate with its needs. It is difficult to visualise as to how the Secretariat of the United Nations can monitor the potential conflict situations from a clearly impartial stand-point.³¹

The Council has no armed force of its own. Special agreements envisaged in Article 43 have not been concluded so far. The institution of Military Staff Committee, which was envisaged in Article 47, has not yet been revitalised.

Because of all these deficiencies, the Council has not been able to take enforcement action under its own supervision in the cases of Korea and Iraq. Since the Council had no mechanism of its own envisaged under Chapter VII, it had to authorise some of the Member States of the UN to use force against North Korea and Iraq. In the case of Korea, the Security Council recommended that the "Members of the United Nations furnish such assistance to the Republic of

31. Report of the Secretary-General on the Work of the Organization, GAOR, Suppl. 1 (A/46/1) (1991), p.9.

Korea as may be necessary to repel the armed attack, to restore international peace and security in area"³². It also recommended that all Members providing military forces and other assistance pursuant to the aforesaid Security Council Resolution, make such forces and other assistance available to a unified command under the United States. It requested further that the United States designate the commander of such forces. The same resolution authorised the use of the U N flag.³³

In the case of Iraq, the Security Council authorised "Member States cooperating with the government of Kuwait... to use all necessary means to uphold and implement Security Council Resolution 660 and all subsequent relevant resolutions and to restore international peace and security in area."³⁴ All states were requested to provide appropriate support for the actions undertaken. This authorisation was not limited as to duration. It was not restricted in terms of destructive means relied upon. And it was not even undertaken with accountability to and guidance from the appropriate organs of the United Nations.³⁵ The Council did not

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32. Security Council Resolution 83 (1950) of 27 June 1950.
 33. Security Council Resolution 84 (1950) of 7 July 1950.
 34. Security Council Resolution 678 (1990) of 29 November 1990.
 35. Bruce Russett and James S. Sutterlin, "The UN in a New World Order", Foreign Affairs (New York) vol.70, no.2 (1991) p.75.

determine the use of armed force necessary for the specified purpose. Nor did it nominate a commander of forces. Also it did not authorise the use of UN flag.

In both cases (Korea and Iraq), the United Nations had no control or influence over the course of military actions, or the precise purposes for which they were exercised. The military operations became identified with the foreign policy goals and efforts of the leading State, i.e. the United States, rather than with the purposes and principles of the United Nations.

All the above-mentioned factors downgrade the image of the Security Council. In addition, there are several other problems.

Peace-keeping operations in particular are facing problems concerning personnel, logistic, safety and financing. Over 800 of the peace-keeping personnels from 43 countries have lost their lives in the service of the United Nations since the beginning of the first peace-keeping operation. The costs of these operations amount to \$ 8.3 billion, till 1992. The unpaid arrears towards them stand at over \$ 800 million.

The Council has authorized so many peace-keeping operations, but has been less successful in resolving the

underlying disputes. It applied pressure against the racist regime, but lacked the capacity to enforce its supposedly binding decisions. It may defuse situations of tension by fact-finding, good offices, or other means of peaceful settlement specified in Article 33 of the Charter, but sometimes lapsed into polemical debate which exacerbated rather than reduced tension. Articles 39, 40 and 41 of the Charter provide a basis for useful action, but the means of military enforcement envisaged in Articles 42-47 for dealing with dangers to world peace are largely inoperative. The Council has failed to establish a world order, in which every State derives its security from the collective strength of the whole. Obviously, there is a need to improve the situation. Certain proposals have been submitted in this regard.

III. PROPOSALS

In order to be effective in the "Maintenance of International Peace and Security" the Council has to update its old structure and to adopt certain new measures, mechanisms etc., in the light of contemporary realities. It has to reorient its role. A number of proposals are forthcoming in this regard. They are analysed below, under the following headings: preventive diplomacy, peace-making, peace-enforcing, and peace-keeping.

1. Preventive Diplomacy

"Preventive Diplomacy" is action to prevent disputes from arising between parties, to prevent existing disputes from escalating into conflicts, and to limit the spread of the latter when they occur.

Preventive diplomacy envisages an "early warning" based on information gathering and informal or formal fact-finding. It also envisages preventive deployment and in some situations, demilitarized zones.

Under preventive diplomacy, the Council has to identify at the earliest possible stage, the disputes or situations that might produce conflicts. Then, it has to try through diplomacy to remove the sources of danger before violence erupts. The identification of potential dangers requires constant monitoring of the global situation. Correct, intime and impartial information is required by the Council to assess the situation. There are many proposals with regard to establishing an "early warning system".

Satellite monitoring may be a mechanism to attain this purpose. The types of monitoring envisaged under this mechanism may include verification of compliance with cease-fire arrangements, surveillance of demilitarised zones, requirement of evidence of border violations or preparations

for aggression, etc.³⁶ Satellite monitoring may be an impressive source of information, but the Organization has no mechanism of its own to carry that out. It has to rely on those Member States who have advanced satellite programmes. Information received from them may not be free from bias.

The Council may authorize the stationing of "UN Ambassadors" in each Member State.³⁷ The proposal for stationing "UN Ambassadors" on permanent basis, in the Member States seems impractical because it may be an expensive endeavour. Moreover, there is no guarantee that such officials would get correct information. They may have to content themselves with newspaper reports.

The idea of standing special rapporteurs as suggested by a specialist, may be immensely useful, if it is put into practice. Under this scheme, the Council would designate a person from its own ranks, to serve as a Rapporteur for each geographical region, and possibly, for one or more sub-regions. The Rapporteur would necessarily come from a non-permanent member and would be designated for a term of two years coinciding with the period of membership of his country in the Security Council. A rapporteur would not represent a region or sub-region to which he belongs. The task off each

36. David Steele, The Reform of the United Nations (London, 1988), p.115.

37. Thomas M. Franck, Nation Against Nation (New York, 1985), p.183.

Rapporteur would include the following: (i) all information relevant to the maintenance of international peace and security in his region would be analysed by the Rapporteur on a continuing basis; and (ii) if he feels that any situation would merit the attention of the Council, he would bring this to the attention of the President and members of the Council for their consideration.³⁸

There might be situations where the Council would need to know the relevant facts but it would be embarrassing for the Secretary-General to present those facts to the Council publicly. In those situations, the mechanism of "Special Rapporteur", provided under Rules 28 and 39 of the Provisional Rules of Procedure of the Security Council may be utilized. The institution of Special Rapporteur may be preferably used for fact-finding in such situations. The office of the Secretary-General may be utilised for good offices, mediation or conciliation.³⁹ An advantage of this would be that the Special Rapporteur would take the political heat associated with presenting the hard facts while leaving the Secretary-General relatively free to engage in diplomatic activity.

38. B.G. Ramacharan, Keeping Faith with the United Nations (New York, 1987), p.95.

39. Ibid, p.96.

Another possibility may be to establish "regional monitoring groups" within the framework of the Security Council. They may be composed of representatives of non-permanent members from each region and representatives of as many States, not members of the Council as might be needed to bring the membership of each group to five. Each regional group in the General Assembly might annually select several States, not members of the Council, for membership on the monitoring group, taking into account the experience of States that have previously served on the Council. Each regional monitoring group would watch events in a particular region and in cooperation with the Secretary-General. It would collect information on any situation likely to endanger international peace. To this end, the group would hold discussions with permanent representatives of the governments directly concerned. If necessary, it would visit the area for further discussion. Should the situation approach a crisis, the regional monitoring group would present a report to the Security Council that would automatically be put on the agenda of the Council. The regional monitoring groups would also report to the Council on a monthly basis.⁴⁰

The proposed regional monitoring groups and their reporting procedure may enable the Council to deal with issues of international peace and security as routine

40. Sohn n.7, p.404.

matters, without imposing on its members the burden of presenting a controversial issue against one another. The Council may be equipped with sufficient background information and well-informed members. This would make quick action both easier and better adapted to the exigencies of the situation. However, this mechanism is not without difficulty. Dissension among the members of such groups may frustrate the purpose of their creation.

An increased use of "fact-finding" may be undertaken in order to obtain knowledge of the facts needed for: (1) the determination, in accordance with Article 34 of the Charter, whether the continuation of the dispute or situation is likely to endanger the maintenance of international peace and security; (2) the determination, in accordance with Article Article 39 of the Charter, of the existence of any threat to the peace, breach of the peace, or acts of aggression; and (3) the consideration of alleged non-compliance with conditions set up in its earlier recommendations or decisions.⁴¹ The Council may perform this activity through sending a fact-finding mission, consisting of some of its members, or qualified experts to the areas concerned. The Council may also use the service of the Secretary-General or

41. Working paper submitted by Czechoslovakia and the German Democratic Republic to the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization, "fact-finding activities by the United Nations in the context of the Maintenance of International Peace and Security", UN Doc. A/AC.182/L.62/Rev.1 (20 January 1990), paragraph 12.

any other member of the Secretariat for this purpose. It may also consider to establish a Permanent Fact-Finding Commission under its own aegis. The sending of a UN fact-finding mission to the territory of any Member State may require the prior consent of that State, subject to the relevant provisions of the Charter. Fact-Finding missions may procure valuable information. But they may not find favourable acceptance among the parties in all circumstances.

The members of the Council may regularly examine the information gathered through both formal and informal means. It may be useful if, at the end of his month of service, the President presents a report to the Council, summarizing its actions with respect to disputes and situations actually dealt with during the month, and apprising the threats involved in some of the disputes and situations called to his attention.⁴²

The greater use of periodic meetings of the Council at the level of the Foreign Ministers of Council members may be useful. The periodic meetings may be used for a general assessment of the international situation and just not the situation arising from any particular event.⁴³ The periodic

42. Sohn, n.7, p.404.

43. Presidential Note on First Periodic Meeting of the Security Council, 1972. See Repertory of practice of the United Nations Organs, Suppl.5, vol.II(1987), p.56.

sessions of the Council at the higher level may provide scope for the exchange of views on the challenges and dangers of the moment and stimulate ideas on how the UN may best serve to steer changes into peaceful course. At the same time, what happens in reality is that the Ministers simply repeat the speeches they might have made in the debate of the General Assembly.

The Council may consider the idea of holding more meetings in the regions where a threat to peace may arise and where the solution of dispute is necessary and urgent. This idea is envisaged in Article 28(3) and has already been put into practice as two of such meetings had been held in the past -- one in Adis Ababa, in 1972, and another in Panama, in 1973. Holding meetings of the Council in the regions of tension may be useful because of the political impact of such meetings on the situation. However, it may make it difficult for the Council to function continuously, since such meetings may be expensive and inconvenient.

After identifying the sources of conflict, the Council may immediately step up diplomatic means to resolve the problem. It may authorise the Secretary-General to hold negotiations with the parties.

Before holding a meeting to consider a critical situation, the President may hold informal consultations with the parties. In the process of consultation the President

should make an appeal to the parties concerned, to refrain from any action which might lead to the deterioration of the dispute, situation or matter, and to take any action which might help to prevent the deterioration of the situation.⁴⁴ It is necessary to prevent the existing dispute from escalating into a conflict and to limit the latter when it occurs. Two measures of precautionary nature have been suggested by Secretary-General Boutros-Ghali: one is preventive deployment and the other is demilitarized zones.

Preventive deployment may take place in conditions of national crisis, at the request of the Government or all parties concerned, or with their consent. In inter-State disputes such deployments could take place when two countries feel that a United Nations presence on both sides of their border can discourage hostilities. In each situation, the mandate and composition of the United Nations presence would need to be carefully devised and be clear to all.⁴⁵

44. Working Paper submitted by Belgium, the FRG, Italy, Japan, New Zealand and Spain to the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization, "Draft Declaration on the Prevention and removal by the United Nations of disputes, situations which may lead to international friction or give rise to a dispute and matters which may threaten the maintenance of peace and security", UN Doc. A/AC.182/L.38/Rev.3 (5 February 1987), paras 6 and 7.

45. See n.29, p.8.

Preventive deployment in Civil War situations would be less effective or non-effective. In such situations, the consent of "all" the parties may be a compelling factor.

Consideration may also be given to the usefulness of demilitarized zones as a form of preventive deployment, with the agreement of parties, of course.

2. Peacemaking

Between the tasks of preventing a conflict and keeping the peace lies the responsibility of bringing hostile parties together to seek an agreement. This function of the Council may be called peacemaking. In order to enhance the peacemaking role of the Council, the following suggestions may be given consideration.

Perez de Cuellar is of the opinion that, if for any reason, the parties to a dispute fail to refer the matter to the ICJ, the process of achieving a fair settlement and thus defusing the international crisis-situation would be facilitated by obtaining the Court's advisory opinion.⁴⁶

Boutros-Ghali suggests that close and continuous consultation between the Secretary-General and the Security Council may be held in order to develop a common strategy for the peaceful settlement of specific disputes. The Secretary-General may be authorized, pursuant to Article 96(2) of the

46. See n.31, pp.10-11.

Charter, to take advantage of the advisory competence of the Court.⁴⁷

David Steele, an expert on UN system, suggests the establishment of a subsidiary organ under the authority of the Security Council to look after the need of peacemaking. This subsidiary organ may be called "permanent commission" of the Security Council. It may call the parties together and make recommendations. It may also be authorised to ask the ICJ for an advisory opinion and to appoint an arbitrator to decide a dispute. The proposed commission may itself act as a mediator in disputes.⁴⁸

3. Peace Enforcing

Despite all efforts at preventing a conflict, breaches of peace may occur. In such situations, the Council has no option but to enforce peace. While enforcing peace under Chapter VII the Council has to be careful of certain principles.

First, all provisions of Chapter VII are of equal importance for carrying out of preventive or enforcement measures envisaged therein. Therefore, all these provisions should be interpreted and implemented in their entirety.

47. See n.29, p.11.

48. Steele, n.36, pp.116-17.

Moreover, a careful thought would have to be given to ensure that the application of Chapter VII measures is not overextended.

Secondly, collective measures undertaken for enforcing peace should be accountable to the Security Council. In dealing with aggression and illegal occupation, the Council should be even handed.

Thirdly, as suggested by Perez de Cuellar, while using force against a violator of peace, the Council has to satisfy itself that the rule of proportionality in the employment of armed forces is observed and that rules of humanitarian law applicable in armed conflicts are complied with.⁴⁹

In the emerging international situation, there may be an increasing demand for the use of collective measures or sanctions under Article 41 of the Charter. Their use, however, may not be free from difficulties.

The first problem with economic sanctions in particular is the adverse effect they may have on third countries. Prime Minister of India, Narasimha Rao pointed out at the First summit of the Security Council on 31 January 1992, that "if the Security Council's actions are to continue to command adherence and support, it must take speedy and parallel

49. See n.31, p.8.

action to address problems arising in a third country from the implementations of its resolutions".⁵⁰

In February 1992, forty UN Member States including India submitted a Working Paper in this regard, to the "Special Committee on the Charter of the United Nations and on the Strengthening of the role of the Organization. The Working Paper points out:

1. that in today's conditions of economic interdependence, the implementation of economic sanctions under Chapter VII of the Charter of the United Nations may place an extremely heavy burden on the economies of third states;
2. that the imposition of sanctions against a State may require the joint efforts of Member States to offer assistance to third States economically affected by the sanctions;
3. that the procedure envisaged in Article 50 for mitigating such special economic problems of the applicant States, remains ineffective due to the lack of institutional measures;

50. Prime Minister of India, Security Council, Summit Meeting, Provisional Verbatim Record, UN Doc. S/PV. 3046 (31 January 1992), p.98.

4. that the institutionalization of mechanisms for responding quickly to requests for assistance is desirable;
5. that it is necessary to elaborate appropriate arrangements for ensuring the provision of such assistance.⁵¹

Secretary-General Boutros-Ghali has suggested that the Security Council should devise a set of measures involving the financial institutions and other components of the United Nations system that can be put in place to insulate States from such difficulties.⁵²

The second problem of sanctions is their effect on innocent civilians living in a State whose Government they cannot change. Perez de Cuellar suggests: "The human effect of sanctions on the population of an offending State, if it lacks the political means to bring about a reversal of the policy that give rise to the offence, will also need to be carefully born in mind".⁵³

51. 'Implementation of the Provisions of the Charter of the United Nations related to Assistance to Third States affected by the Application of Sanctions under Chapter VII of the Charter', UN Doc. A/AC. 182/L. 73/Rev. 1 (18 February 1992).

52. See n. 29, p.12.

53. See n.31, p.8. The Prime Minister of India also made a similar appeal at the First Summit of the Security Council on 31 January 1992. See n.50, p.98.

It has been suggested by Homer A. Jack, an Observer at UN Headquarters for a number of NGOs, that the resolutions calling for sanctions should be drafted to include both monitoring and a process evaluating their effectiveness. A broad cross-section of Member States should be involved in this process, and the monitoring body should not necessarily be limited to members of the Security Council.⁵⁴ Steele suggests for the establishment of a permanent sanctions secretariat.⁵⁵

In order to strengthen the collective measures under Article 42, many suggestions are forthcoming. Some important ones are summarised below:

1. There should be clear rules and principles governing the military activities of the United Nations. Early consideration may be given to the provisions of Article 43 of the Charter regarding special agreements by Member States of the United Nations. The Military Staff Committee should be revised and its membership should include all members of the Security Council, permanent and non-permanent.⁵⁶

54. Homer A. Jack, "The UN Role in the Gulf War: Lessons Learned and a Look to the Future", Review of International Affairs (Belgrade), vol.XLIII, no.1003 (1992), p.27.

55. Steele, n.36, p.121.

56. Philippines, "Suggestions and Proposals regarding the Charter of the United Nations and the Strengthening of the Role of the Organization", UN Doc. A/AC.182/L.12/Rev.1 (8 March 1977), p.11.

2. In order to prevent an aggravation of the situation Secretary-General Boutros Ghali suggests that the Council may consider the utilization of "Peace Enforcement Units" in clearly defined circumstances and with their terms of reference specified in advance. Such units from Member States would be available on call and would consist of troops that have volunteered for such service. They would have to be more heavily armed than peace-keeping forces and would need to undergo extensive preparatory training within their national forces. Deployment and operation of such forces would be under the authorization of the Security Council and would, as in the case of peace-keeping forces, be under the command of the Secretary-General.⁵⁷ Such peace-enforcement units should not be confused with the forces that may eventually be constituted under Article 43 to deal with acts of aggression or with the military personnel which Governments may agree to keep on stand-by for possible contribution to peace-keeping operations.

The establishment of peace-enforcing units has a number of advantages. The Secretary-General can despatch a force to a trouble-spot immediately. The existence of such units

57. See n.29, p.13.

would be a clear-warning to any future breach of the peace or acts of aggression. Such units may deal with the situation in a more impartial way than the peace-keeping units drawn from the national forces of the Member States. These units would be used to guarantee the terms of armistices. They would also be used to rescue operations in a case of a major disaster.

The idea of a "Standing United Nations Force" has been mooted from time to time. In order to make the Council to intervene promptly in the event of breaches of the peace or acts of aggression, Colombia submitted a proposal to the "Special Committee on the Charter...", on March 1977, for the establishment of a "Permanent Force". This Force would be composed of numerically equal contingents from the five permanent members of the Security Council on the one hand, and on the other, from five Member States to be chosen by the General Assembly for a three-year period. A statute would be annexed to the Charter, similar to the statute of the ICJ, specifying the technical and operational conditions.⁵⁸

The Collective Measures Committee established under the Uniting for Peace Resolution (General Assembly Resolution 377(V), 1950) also recommended for the establishment of the UN Stand-by Force.

58. See n.56, pp.10-11. Rajiv Gandhi, the then Prime Minister of India, suggested for the creation of a "rapid deployment force" with a democratic command and control structure. For detail, see The Hindu (Madras), 11 May 1991.

When thinking about UN forces, consideration needs to be given not just to land forces but also to UN naval guards. Such an extensive capacity would be necessary to enforce economic sanctions and protect neutral shipping.⁵⁹

A standing UN force would make possible the idea of "unprotected countries". By having an opportunity to draw upon UN forces for their security, countries would be able to relieve themselves from the burden of heavy defence expenditure. The existence of such force would make, especially small countries, feel much more secure. However, such mechanisms are not free from difficulties. It may not be logistically feasible to raise UN forces of sufficient size to provide a credible deterrent. A good number of countries might well oppose in principle the idea of deploying such forces without the consent of all the parties concerned, foreseeing the possibility that it might open the way to action contrary to their national interests.

4. Peace-Keeping

The basic conditions for the success of peace-keeping operations remain unchanged: a clear and practicable mandate; cooperation of the parties in implementing that mandate; the continuing support of the Security Council; the readiness of Member States to contribute military, police and civilian

59. Robert C. Johansen, "The United Nations after the gulf War: Lessons for Collective Security", World Policy Journal (New York), vol.VIII, no.3, (1991), p.568.

personnel, including specialists required; effective United Nations command at Headquarters and in the field; and adequate financial and logistic support.

The following proposals are made to address the problems of peace-keeping:

1. Boutros Ghali has suggested that stand-by arrangements should be confirmed, as appropriate, through exchange of letters between the Secretariat and Member States, concerning the kind and number of skilled personnel they will be prepared to offer to the United Nations as the needs of new operations. Arrangements should be reviewed and improved for training peace-keeping personnel - civilian, police, or military, using the varied capabilities of Member State Governments and non-governmental organizations and the facilities of the Secretariat. National units should be provided with the support of adequate logistics.⁶⁰

The duty of peace-keeping in areas of danger is not risk-free. Therefore, unarmed personnel should be given protection in the field.

2. Another proposal which is constantly debated in the "Special Committee on Peace-Keeping Operations" is that the Military Staff Committee should be used on a periodic basis as a consultative organ of military expert members of the

60. See n.29, p.15.

Security Council, with the participation of representatives of troop-contributing countries. It should discuss the nature of the military and political situation at locations where United Nations troops are stationed, geographical or other peculiarities of the region, material and technical support, etc.⁶¹

3. In order to mitigate the financing problems of peace-keeping, the following proposals are recommended by Boutros Ghali:

- i. a levy on arms sales that could be related to maintaining an Arms Register by the United Nations;
- ii. a levy on international air travel, which is dependent on the maintenance of peace;
- iii. authorization for the United Nations to borrow from the World Bank and the International Monetary fund -- for peace and development are interdependent;
- iv. general tax exemption for contributions made to the United Nations by foundations, businesses and individuals; and changes in the formula for calculating the scale of assessments for peace-keeping operations;
- v. immediate establishment of a revolving peace-keeping reserve fund of \$ 50 million; and

61. Report of the Special Committee on Peace-Keeping Operations, "Comprehensive Review of the Whole Question of Peace-Keeping Operations in all their Aspects", UN Doc. A/45/330 (12 July 1990), p.17.

- vi. an agreement that one-third of the estimated cost of each new peace-keeping operation is to be appropriated by the General Assembly as soon as the Security Council decides to establish the operation.⁶²

All these proposals with regard to peace-keeping financing are not free from problems. Tax on arms sales would not be acceptable on the ground that it will discriminate between the arms-producing and arms-purchasing countries. Moreover, countries would be reluctant to furnish information about their arms-deals, many of them are shrouded in secrecy.

IV. FORMAL LINK BETWEEN THE SECURITY COUNCIL AND REGIONAL BODIES

Many regional Organizations possess a potential that could be utilized by the Security Council in performing its activities, such as, preventive diplomacy, peacemaking, peace-keeping, and post-conflict peace-building. A regional action in some situations might be more suitable than the direct action of the Council on the ground that regional agencies are generally more familiar with the uniqueness of the situation in terms of location and that a regional action may be swifter in some situations. Moreover, a regional action is preferable as a matter of principle

62. See n.29, pp.20-21.

since decentralization and delegation of powers and cooperation with United Nations' efforts might lighten the burden of the Council.

Two recent examples of cooperation between the Security Council and regional agencies in the prevention of conflicts are the Yugoslavian crisis and the Somalian situation. In the case of the former, the European community is dealing with political reconciliation, while the Council is undertaking peace-keeping operations or maintaining the ceasefire. The Council is in search of a solution to the Civil War in Somalia in cooperation with the regional agencies like the Organization of African Unity and the Arab League.

It has been widely believed that the role of the Council in the maintenance of international peace and security could be strengthened by "tying" regional arrangements more closely to the United Nations system. 'Independent Commission to Study on Disarmament and Security Issues', under the Chairmanship of Olof Palme, recommended in 1982, that there is a need to develop an 'operational connection' between regional security initiatives and the UN

security system.⁶³ In February 1991 the "Special Committee on the Charter..." discussed that there is a need to establish "formal links" between the Security Council and regional Organizations.⁶⁴

However, it is not clear as to whether the present arrangements in the Charter under Articles 52, 53 and 54 fall short of the requirements of establishing a formal link or operational relationship between the Council and regional bodies. Moreover, no concrete institutional measure has been suggested in this regard.

63. Independent Commission for Study on Disarmament and Security Issues, Common Security: A Programme for Disarmament (London, 1982), p.168. At the First Summit of the Security Council, held in New York on 31 January 1992, President Mitterrand of France, President Perez of Venezuela, and Prime Minister Martens of Belgium advocated for an "operational relationship" between the Security Council and the regional bodies. For details see n. 50, pp.19-20, 56 and 69 respectively.

64. UN News Letter (New Delhi), 22 February 1992, p.1.

CHAPTER - V

CONCLUSIONS

Effective maintenance of international peace and security largely depends on the Security Council's ability in shouldering its responsibilities without dereliction, discrimination and double standards. The Council may acquire this ability through enhancing its credibility, relevance and wider acceptability. This objective may be achieved if the Council's structure, procedures, activities and mechanism reflected the needs of the time.

Equity, democracy, accountability and performance are the needs of the hour. Equity demands that the structure and actions of the Security Council be just, correct and reasonable. Democracy requires the fullest consultation, participation and engagement of all States, large and small, in the work of the Organization, if not on an equal basis, at least in an equitable manner. The Council's work should be influenced by the collective will of the international community and not just by a handful of nations whose interests may not always coincide with that of the Council. Accountability requires that the Council should remain answerable to the Member States for its every act of commission or omission. While prescribing norms and standards for national or international conduct, the Security Council should accept those norms for itself. Performance requires that any action of the Security Council, in response to a crisis, may be rapid but not hasty, decisive, but not

unbalanced, and effective but not overreaching itself. The cure should not be worse than the disease.

The above factors are interrelated. It is only an equitable and democratic structure of the Council which may ensure a democratic participation in its functioning. A democratic participation may help the Council in the effective performance of its duty. The determination of the question as to whether the Council is performing its duty properly or not, should not be left to the judgement of the Council alone. No one can be a judge in his own case, and the Security Council should not be an exception. This gives rise to the question on accountability.

Since the existing structure of the Security Council is inadequate to meet the above mentioned objectives, the restructuring of the Council has become a necessity. The restructuring of the composition of the Council entails various alternative proposals. They are made along the following lines. The present size of the Council may be increased. The number of permanent seats with the veto right may be increased. The number of permanent members may be increased without extending them the right to veto. A new category of members -- semi-permanent members -- may be created to give representation to middle powers. There may be three-tier membership of the Security Council. One category may represent the permanent members. Another may

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consist either of some permanent members without veto privilege or of some semi-permanent members, elected on the basis of geographical distribution and rotation. The last category of members may be non-permanent and their present strength may be increased. The number of additional permanent or semi-permanent members, the criteria for their selection, and which country would fall into such criteria are the questions that need to be decided by the Member States of the Organization themselves. So is the case of additional non-permanent seats. Therefore, the Member States should hold wide consultations among themselves to achieve consensus on any of the alternatives which might ensure some degree of equity and balance in the Membership of the Security Council.

The process of democratization should also be applied to two other bodies cooperating with the Security Council in the maintenance of international peace and security. One is the defunct Military Staff Committee and another is the overburdened Secretariat. If, the former is revived into action, it would control all types of military operations undertaken by the Council. Since its action would be a subject of concern for all Member States, it should be democratized. Not just five permanent members of the Council as stipulated in the Charter, but all members of the Council and also troop-contributing countries to any UN military operation, should be represented in this Committee. The



Council only authorizes peace-keeping operations. It is the members of the Secretariat who are real managers of such operations. Eighty per cent of the present staff of the UN Secretariat come from Western member States. Asia, Africa and Latin America are underrepresented in the Secretariat. Therefore, an equitable and democratic participation of the Member States -- large and small, rich and poor -- should be ensured in the management of peace. And it is possible only when the principle of geographical distribution was applied to the composition of the UN Secretariat. India is in fact taking lead in the move for reforming the Secretariat.

Various proposals with regard to the restructuring of the decision-making process in the Security Council are discussed in Chapter III of this study. It is well known that the decision-making process was virtually inoperative during the Cold War due to the frequent application of the veto by the permanent members. With the end of the Cold War, however, the use of veto has substantially decreased. But its use in the future cannot be altogether ruled out as long as the promotion of their national interests is the prime goal of the permanent members. It is also unlikely that the permanent members would renounce their veto right formally or allow any extension of such privilege to any other member of the Council. Moreover, what is the use of extension of the veto right to some other members? It is feared that further proliferation of the veto right would further weaken the

process of decision-making. Moreover, what is the use of veto to a member which is unable to exercise such a privilege. China is a veto-bearing power. It is reported that China had decided to veto the Security Council's decision (Resolution 748 of 31 March 1992) which imposed aerial embargo on Libya. The day before the voting, France, the U.K. and the U.S.A. signaled a clear warning to China that if it expresses its negative vote in the voting on Libya, it would face the consequence. On the day of voting, China abstained. what is the use of giving membership of the Council to those countries which abstain from voting? Abstention is seen as a means of escaping and a sign of weakness. No purpose would be served by making public utterances that the decision-making of the Security Council should be democratic and transparent but abstaining at the time of voting, thus allowing some influential members of the Council to take hasty decisions. A democratic decision-making requires that a permanent member should not wilfully veto a decision of the Council which is backed by a majority of the members. The process of decision-making should be transparent. A minimum of discussion and debate in the formal meetings is essential to enable the public and the media to understand not only the full significance of the decision adopted and the ensuing action, but also the essentials of how the consensus was achieved. Clarity and openness in the decision-making may entice the Member States

to respect the decisions of the Council. An effective decision-making requires that the permanent members should observe utmost restraint in using their veto privilege. A decision should not be vetoed at its "consideration" stage. Veto should be the last resort. The enjoyment of the veto right by the permanent members carries alongwith it corresponding duties. Among other things, the permanent members have a duty to see that their rights in no way hinder the process of decision-making. They should avoid their temptations for adopting for hasty decisions. It is a duty of the non-permanent members also to see that no hasty decision is adopted by the Council. They may not neutralize a negative vote of a permanent member but they can, if they wish, block a hasty decision by applying their "cumulative veto" to such a decision. A decision of the Council on any matter requires a minimum of nine votes of its members. The permanent members have only five votes. How can they be able to pass a hasty decision without four votes of the non-permanent members? This arithmetic indicates the importance of the non-permanent members.

The Security Council should not remain passive until a situation of international friction gives rise to a dispute, and in turn, leads to a belligerency. Therefore, it may be useful if the Council could take measures to prevent disputes, to prevent the disputes from escalating into

conflicts, and to limit the spread of the latter when they occur.

Every crisis presents special difficulties. These difficulties can be dealt with on a case by case basis. But, crises are not the best times to invent the machinery necessary to obtain authoritative answers quickly. Hence, there is a need for an early-warning system. The establishment of an international monitoring agency could monitor political events in vulnerable countries and shed light on conflicts such as border violations. There should be a greater use of the fact-finding capacity by the Security Council. Such fact-findings should be comprehensive, objective and confidential. Moreover, the Council's machinery should be impartial and timely in fact-finding. There should be a proper coordination between the activities of the fact-finding missions so as to avoid any duplicacy or overlapping.

The Council has wide powers at its disposal, but it has no authority to abuse them. In order to check the abuse of powers by the Council, there is a need for establishing its accountability. The Prime Minister of India, P.V. Narasimha Rao, told reporters at the Heathrow Airport during a brief stop-over en route to New York for attending the First Summit of the Security Council: "India firmly believed that the Security Council should have greater accountability to the

General Assembly".¹

The Charter of the United Nations does not mention the word "accountability". However, there are certain provisions from which accountability argument is implied. For instance, Article 24(1) provides that the Members of the Security Council have conferred on the Security Council, primary responsibility for the maintenance of peace and security and have agreed that in carrying out its duties under this responsibility, the Council acts on their behalf. Under the same Article's paragraph 2, the Council is required to act in accordance with the Purposes and Principles of the United Nations. Under paragraph 3 of the same Article, the Council is required to submit annual reports and, when necessary, special reports, to the General Assembly for its consideration.

But, the Charter is silent on the following questions:

1. Whether the phrase "acts on their behalf" implies that the Council's activities are to reflect the wishes of the Member States?
2. What is the mechanism for the determination of the fact that the Council is acting in accordance with the wishes of the Member States?

1. Indian Express (New Delhi), 31 January 1992.

3. What is the mechanism for ensuring that the Council is acting in accordance with the Purposes and Principles of the United Nations?
4. Whether the General Assembly can ask special reports on substantive issues, from the Security Council?
5. Whether the Assembly can deliberate upon the above mentioned reports and make recommendations to the Council on the basis of such deliberations?.

It is the Members of the Organization which constitute the General Assembly and had conferred powers upon the Security Council. It may be logical to suggest that the Council should be accountable to the Member States for its every act of omission or commission, through the General Assembly.

The Assembly may ask from the Security Council substantive reports on major problems of international peace and security, without interfering in the day to day functioning of the Council. The Assembly should also examine effectively the annual reports of the Security Council and to formulate, following the discussion on those reports, specific proposals concerning the practical activities of the Security Council. Another possibility is that the General Assembly, the plenary organ of the Organization, where all Member States are represented, may ask an advisory opinion of

the ICJ, on the constitutionality of an action of the Council, believed to be not in conformity with the Purposes and Principles of the Organization.

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