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## Restructuring the Security Council

Toby D.J. Mendel\*

The *Charter of the United Nations*<sup>1</sup> was designed during the latter part of World War II and came into force in 1945. Since then, changes have occurred which have dramatically altered the nature of international relations. These changes include the demise of colonialism, the end of the Union of Soviet Socialist Republics with important repercussions for other nations espousing a socialist ideology, and the rise or fall in international prominence of many nations. These changes in the international balance of power and division of political affiliation must be accompanied by practical and structural changes at the United Nations. The current political organization of the United Nations is no longer capable of effectively and equitably regulating international relations.

The core political entity at the United Nations is the Security Council. The Security Council is comprised of five permanent members—the Republic of China, France, the Union of Soviet Socialist Republics (until its demise in 1991), the United Kingdom of Great Britain and Northern Ireland, and the United States of America<sup>2</sup>—and ten non-permanent members elected from the General Assembly for a term of two years. A great deal of power is vested in the Security Council, with special powers accorded to the permanent members. There may well be a need for a small executive group within the United Nations to effectively carry out its mandate. It is less clear, however, that the five states listed above should have permanent membership in this elite club. The arrangement of the Security Council immediately brings two questions to mind. The first is whether the current composition of the Security Council reflects modern international power broking reality? The second is whether there should be any members who sit permanently on such an important body?

### Powers of the Security Council

Article 24 of the *Charter of the United Nations* grants the Security Council “primary responsibility for the maintenance of international peace and security.” Chapter VI of the *Charter* mandates certain powers with respect to pacific settlement of any dispute including the power to call upon the parties to settle,<sup>3</sup> investigate,<sup>4</sup> and recommend appropriate procedures or methods of adjustment.<sup>5</sup> Chapter VII deals with the powers of the Security Council in the face of a threat to the peace, a breach of the peace, or an act of aggression. Article 41 allows the Security Council to impose economic, political, and communication blockades that are binding on the rest of the General Assembly. Article

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42 allows for such military action as is necessary in light of a failure to solve the problem using measures mandated under Article 41. Finally, Article 12 requires the General Assembly not to make any recommendation with respect to any matter being dealt with by the Security Council.<sup>6</sup>

The powers of the Security Council cannot be underestimated. They are analogous to the enforcement powers of the police in most states. The Security Council has the added advantage of being both self-regulating and immune from external disciplinary interference. The conflagration in Iraq, in 1991, indicates how pervasive these powers can be. The standoff between the United States and the Soviet Union has, until recently, substantially prevented the exercise of these powers; it seems unlikely, however, that international politics will, in future, interfere unduly with the extensive powers granted to the Security Council.

Article 27 gives each member of the Security Council one vote and provides that decisions on procedural matters be made by an affirmative vote of at least nine members. All other matters, however, must be affirmed by at least nine members, including the concurring votes of the permanent members.<sup>7</sup> This power is commonly referred to as the right of veto and allows any one of the five permanent members to paralyse any non-procedural proposal. Article 109 gives the permanent members a similar sort of veto over amendments to the *Charter* itself.<sup>8</sup>

This political organization thus concentrates power in the Security Council and then gives five of the 160 members extraordinary veto powers. At face value these powers would seem to operate only negatively, that is, only in a way that would prevent action being taken. In practice, however, the ability to stymie any action also carries enormous negotiating power which may effectively be used to advance policies advocated by a permanent member. The arrangement at the Security Council thus increases the power of the permanent members in respect to decisions and strategies of all the United Nations bodies.

### **Are the Right Nations Permanent Members?**

It is hard to justify the current permanent membership of the United Nations Security Council no matter which criteria are used: gross national product or other economic indicators; population; military prowess; geography, either in terms of size or regional distribution; and/or general international influence. France and the United Kingdom are obvious candidates for exclusion. Japan, Germany, and India have among the most compelling reasons for inclusion. The fate of the Soviet Union's seat is not clear. As of this writing, Russia was 'volunteering' to take over the Soviet Union's role, but it seems clear that they have no right to unilaterally take over a position which members of the United Nations gave to another, quite different, political entity. It seems, however, that some of the remaining permanent members have accepted this arrangement, at least in principle.

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France and the United Kingdom may claim that their colonial influence, still extant despite the demise of colonialism itself, justifies their permanent position since international influence is the main criterion. This argument is flawed for two reasons. Firstly, the fact that both the Francophonie and the Commonwealth grew out of the influence of the colonizing states should not guarantee those states a disproportionate amount of power. Both organizations are run along democratic lines and no longer reflect the inequality present in their genesis. Secondly, such influence is geographically confined and, hence, not an acceptable consideration at the United Nations. Any natural influence deriving from a colonial past should be wielded through post-colonial institutions and not through the United Nations.

### Are Permanent Members Necessary?

Can such a fundamentally undemocratic system be defended? There are those who would argue that international law is no more than an institutionalized law of the jungle and thus it is appropriate that the more powerful have disproportionate representation. If this were strictly true, there would be no need for the United Nations and many current members would never have joined an organization based on such an ideology. A more fundamental criticism of this philosophy is that it runs counter to the whole basis of the *Charter* which is founded in concepts such as equality of nations, respect for national sovereignty, cooperation, peace, and self-determination.<sup>9</sup>

Another defence of the status quo at the United Nations is that while democratic institutions are theoretically desirable and a worthwhile goal, the current reality of international relations and the status of international law preclude a fully democratic international mechanism. This argument posits that the present structure of the United Nations is the best, or at least an acceptable, compromise between the competing forces of democracy and the reality of powerful international interests.

Modern democracies all entail a trade-off between a notionally equal input by all members and the need to function practically. Thus, in Canada, we delegate an impressive array of governing powers to bodies elected once every four or five years. While in power, those elected have far more political power than ordinary citizens, but we accept this as a practical system for running a democracy. Such compromises, however, must be tailored carefully to institutional realities, allow for reasonable group representation, and be subject to controls to prevent abuse. All of these safeguards are lacking with respect to the permanent members of the Security Council.

The *Charter of the United Nations* reflects international concerns in the aftermath of the Second World War. At best, it represents an outlook which, though current at that time, is no longer acceptable. Colonialism was still very much in force. There was a tension between the capitalist and communist blocs and the Allies were intent on developing an international institution capable of preventing the rav-

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ages the world had just experienced. At worst, the *Charter* could be dismissed as being a product primarily of European and North American thinking. In 1945, very few African states were independent, most of Asia was either under colonial administration or politically unsettled, and South America was largely dominated by the United States. At that time, only a small proportion of those developing countries which had attained independence could allocate the level of human and other resources necessary to adequately contribute to the process of international constitution building.

Prevention of war remains an important role of the United Nations and delegation of power to take action on behalf of the United Nations to the Security Council is practical. This requirement cannot justify the concept of permanent membership on the Security Council. The permanent members have been active in many of the wars the United Nations should have been trying to prevent or, at least, to mitigate. Clearly, permanent membership makes it extremely difficult for the United Nations to take an active role in such disputes. In addition, the pervasive influence of the permanent members often discourages members of the General Assembly from being as critical as they might otherwise be, thus reducing attempts to discourage acts of violence through channels normally available to the General Assembly. There is simply no mechanism to prevent abuse of power by permanent members in a conflict of interest situation.

One might argue, as a practical matter, that non-members would be reluctant to participate in Security Council mandated activities to prevent aggression. It is, therefore, necessary to preserve permanent membership of the most powerful nations to ensure their participation in such activities. The one true example of Security Council cooperation in this area, the military operation against Iraq in 1991, exposes the fallacy of this argument: many nations neither within the area directly affected by the conflict nor on the Security Council were represented militarily and it is hard to imagine that mere exclusion from the Security Council would have deterred American enthusiasm.

Permanent membership on the Security Council runs contrary to one of the fundamental principles of the United Nations, the idea of equality.<sup>10</sup> In practice, those states with greater resources will tend to wield a disproportionate amount of power irrespective of the formal structure used. To formally accord them this power, however, seriously undermines the goal of equality and no longer serves the objectives for which the power was originally granted. The potential for abuse of the veto power and its use to further goals other than those for which it was intended have been discussed with respect to acts of aggression above. It would be very difficult to institute controls to prevent misuse of these powers. The ability of permanent members to influence even non-Security Council affairs through their extraordinary power further erodes the principle of equality of members of the United Nations.

The most important reason to abolish permanent members of the Security Council is the profound structural change in international relations that has occurred since the *Charter* was signed. On one hand,

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the tension between the communist bloc and the Western European nations no longer exists. On the other hand, the end of colonialism has brought about a rise in prominence of less developed countries. This has shifted the focus in international relations from an East-West bias to a North-South one. Unfortunately, the composition of the Security Council does not reflect these changes. For example, the developed countries represent approximately twenty per cent of the world's population but occupy eighty per cent of the permanent positions on the Security Council.<sup>11</sup>

Developing nations have often found themselves caught between two superpowers hungry to increase their international influence. While this was not a fortunate position for less wealthy nations to be in, the tension between competing superpowers helped prevent some of the worst abuses. Many developing countries are now worried that, without hindrance from the defunct communist bloc, the United States will be able to pursue its international goals to the detriment of their sovereignty and self-determination. Using its position on the Security Council and its economic and military clout, the United States is now able to 'promote' its values and ideas with less international opposition than ever before. Very few states supported the actions of Iraq in the summer of 1990, but many developing countries were apprehensive of the ease with which the United States was able to achieve its objectives at the Security Council. It is essential that developing nations, who now seriously lack adequate representation on the Security Council, be given a greater say.

### Conclusion

Several profound changes in the international scenario since the signing of the *Charter* militate in favour of abolishing the tremendous concentration of power represented by permanent membership in the Security Council. These changes include the demise of colonialism; the break-up of the Soviet Union and its political, economic and military bloc; and changes in international influence of United Nation member states. Reasons which may have supported permanent Security Council membership in 1945 no longer exist today. Given the commitment of the United Nations to egalitarianism and the lack of a compelling reason to continue an otherwise outdated system, permanent membership in the Security Council should be abolished. If permanent membership is to be retained, it should be brought into line with modern reality. Actual should replace historical international influence as one of the criteria.

In light of the shift in international focus from an East-West to a North-South bias, it may be appropriate to allocate veto powers to regional representatives. Regional affiliations are growing ever stronger and the recent proliferation of states makes regional representation even more practical. Representatives with a veto power could be elected for a certain period of time by regional member states. The concentration of power represented by a veto could be moderated by being subject to one of several control mechanisms. One possibility could be a democratic

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right to remove the veto holder exercisable by the whole United Nations, the Security Council and/or the rest of the representatives from the region in question. This would prevent the state temporarily holding the veto from abusing its extraordinary rights. Such a system would prevent powerful nations or groups of nations from exerting disproportionate influence and guarantee that the Security Council truly represented the whole world. This would represent a significant step toward making the United Nations the egalitarian body it purports to be.

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1. As Signed 1945 and Amended 1965, 1968, and 1973 [hereinafter *Charter*].
2. *Ibid.*, Article 23.
3. *Ibid.*, Article 33.
4. *Ibid.*, Article 34.
5. *Ibid.*, Article 36.
6. *Ibid.* Under Article 10, the General Assembly is mandated to make recommendations regarding such matters as are not covered by Article 12. Apart from specific grants of power relating to special areas of control, such as approval of the budget under Article 17, the General Assembly is limited to making recommendations.
7. *Ibid.*, Article 27.
8. David Luban discusses the general invalidity of an arrangement that both justifies itself and excludes other reasons from undermining it: "[T]he exclusionary reason is called a protected reason: it is a first-order reason surrounded, so to speak, by a second-order protective layer of exclusion." Here, special powers are granted to the permanent members and those very powers prevent any derogation from the special powers. See *Lawyers and Justice* (Princeton: Princeton University Press, 1988) at 119.
9. Not only are these ideas redolent throughout the *Charter*, explicit mention of them is common. Chapter I, dealing with the purposes and principles of the United Nations, proposes that all of these concepts are fundamental to United Nations goals.
10. *Supra*, note 1 Article 2(1).
11. *World Population Prospects 1988*, Population Studies No. 106 (New York: Department of International Economic and Social Affairs, United Nations, 1989).