SHORTER ARTICLES, COMMENTS AND NOTES

SECURITY COUNCIL WORKING METHODS AND PROCEDURE: RECENT DEVELOPMENTS

> The Council should not commit itself to procedures which in practice might prove to be excessively rigid, since each dispute with which the Council has to deal has unique characteristics. Attention has been drawn to the danger that any premature formalization of the procedures of the Council might impede the latter in the discharge of its responsibilities under the Charter.[1]

When on 16 December 1994 the Security Council held a public debate on its working methods and procedure, the Permanent Representative of Brazil summed up the issues in the following words:

> Brazil has consistently advocated the strengthening of the Security Council through the enhancement of its legitimacy and authority before the eyes of the international community. In order to achieve this goal, it should become, not only more representative and effective, but also more transparent and accountable.

Ambassador Sardenberg went on to acknowledge that "there have been noticeable improvements in the working methods of the Council in recent times, incremental progress is being achieved in a flexible manner".[2]

The purpose of this article is to review recent developments in the working methods and procedure of the Security Council.[3] It will first review some basic features of the Council, then describe developments over the last couple of years, and conclude by mentioning the ongoing debate over its future. Apart from working methods and procedure, other important issues are raised in the ongoing debate about the role and "legitimacy" of the Council but are not addressed in this article, for example the limits on the powers and functions of the Security Council,

1. Report of the Secretary General of 18 Sept. 1952 (A/2170, para.102), cited in the General Introduction to the *Repertoire of the Practice of the Security Council 1946–1951* (ST/PSCA/1).

2. S/PV.3483.

3. See *Repertoire*, *supra* n.1, and Adds.1–9, which so far covers the years 1946–1984; Sydney D. Bailey, *The Procedure of the Security Council* (2nd edn, 1989); Herndl, "Reflections on the Role, Functions and Procedures of the Security Council of the United Nations" (1987–VI) 206 Hag. Rec. 293–395; Hague Academy of International Law, *The Development of the Role of the Security Council, Workshop*, The Hague, 21–23 July 1992 (published in 1993); and the relevant sections of the commentaries on the Charter: Kelsen, *The Law of the United Nations* (1950); Goodrich, Hambro and Simons, *Charter of the United Nations* (1969); Cot and Pellet, *La Charte des Nations Unies* (1985); Simma, *The Charter of the United Nations. A Commentary* (1995).

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the possibility of review of Council actions, and the question of Council enlargement.

It is often suggested that the United Nations, and the Security Council in particular, has been one of the beneficiaries of the ending of the Cold War. This is certainly the case in terms of Security Council activity and output. In 1994 there were 160 formal meetings of the Council and 77 resolutions were adopted: the corresponding figures for 1989 were 65 meetings and 20 resolutions. Between August 1990 and May 1995 the Council adopted 325 resolutions, an average of 80 a year, compared with an average of 14 a year over the preceding 44 years. Not only are resolutions more numerous, they are often more significant and complex. And they are by no means the sum total of the Council's activities: for example, in 1994 there were 82 "Presidential statements".[4]

The Security Council is part of the UN system, and part of the wider system of international organisation. Its relations with the other organs and agencies of the United Nations, with the specialised agencies and, increasingly, with regional and other inter-governmental organisations and arrangements, or *ad hoc* coalitions of States, merit deeper study, as does the Council's relationship with each of the other five principal organs of the United Nations. It works very closely indeed with the Secretariat. The Council's relations with the General Assembly have not always been smooth. In the last couple of years there has been some talk of developing the relationship between the Security Council and the Economic and Social Council, possibly building on Article 65 of the Charter. In November 1994 the Security Council terminated the strategic trusteeship agreement with Palau, thus effectively ending the work of the Trusteeship Council.[5] The relationship between the Council and the International Court of Justice is highlighted once again by the *Lockerbie* cases.[6]

Within the United Nations debate about the Council's role and working methods is conducted in a number of different bodies, both in the General Assembly and in the Security Council itself. In the Assembly these include the Charter Committee; working groups on "revitalisation of the General Assembly" and on the Secretary-General's report *An Agenda for Peace*; the general debate and the debate on the annual report of the Council; and the agenda item "Question of equitable representation on and increase in the membership of the Security Council", which covers not only enlargement but also the Council's working methods and procedure, and its relationship with the Assembly. Within the Security Council itself questions concerning the role of the Council have been discussed at the summit meeting of 31 January 1992, and in the consideration of the Secretary General's report *An Agenda for Peace* as well as his *Supplement to an Agenda for*

4. Activity and output are not, of course, measured solely in terms of formal meetings and resolutions: for other statistics see the introduction to *Report of the Security Council to the General Assembly (16 June 1994–15 June 1995)*, (A/50/2) and the table in the Secretary General's *Supplement to an Agenda for Peace* (A/50/60–S/1995/1), which gives comparative figures for 31 Jan. 1988, 31 Jan. 1992 and 16 Dec. 1994.

5. Security Council Res.956(1994) of 10 Nov. 1994.

6. *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya* v. *United Kingdom)* Provisional measures, Order of 14 Apr. 1992, I.C.J. Rep. 1992, 3. The corresponding order in the case against the US is at I.C.J. Rep. 1992, 114.

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Peace.[7] And on 16 December 1994, as mentioned above, the Council debated publicly its working methods and procedure. Finally, as described below, more detailed work has been conducted in the Council's recently established informal working group on documentation and other procedural matters.[8]

A. Distinguishing Features of the Security Council

The Security Council has three principal features that distinguish it from the General Assembly: limited membership; a limited but important field of activity; and the power to impose legal obligations on all members of the United Nations.

Unlike the General Assembly, which is composed of all members of the United Nations, the Security Council is an organ of limited membership. From the original 11 members it was expanded—by Charter amendment adopted in 1963—to 15 at the beginning of 1966. Five are permanent members: China (since 1971 the People's Republic of China), France, the Russian Federation (the continuation of—not the successor to—the Union of Soviet Socialist Republics), the United Kingdom and the United States. The other ten are elected by the General Assembly for a term of two years, and may not be immediately re-elected. The Charter provides that, in the election of the non-permanent members, due regard shall be specially paid to the contribution of members of the United Nations to the maintenance of international peace and security and to the other purposes of the organisation; this consideration is not always given due weight.

Unlike the General Assembly, the Council's functions and powers are limited, with relatively minor exceptions, to the maintenance of international peace and security. The terms of Article 24(1) of the Charter are central to the Council's work, as well as to the current debate about its procedures:

> In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf.

Unlike the General Assembly, decisions of the Security Council are capable of being legally binding on all members of the United Nations. By accepting the Charter they have, in the words of Article 25, agreed "to accept and carry out the decisions of the Security Council in accordance with the present Charter".

7. For the proceedings at the summit meeting see S/PV.3046; for the concluding Presidential statement see S/23500. *An Agenda for Peace* was published as doc. A/47/277–S/24111. For Council follow-up to *An Agenda of Peace* see the Presidential statements of 30 June 1992 (S/24210), 29 Oct. 1992 (S/24728), 30 Nov. 1992 (S/24872), 30 Dec. 1992 (S/25036), 28 Jan. 1993 (S/25184), 26 Feb. 1993 (S/25344), 31 Mar. 1993 (S/25493), 30 Apr. 1993 (S/25696) and 28 May 1993 (S/25859), and Res.868(1993) of 29 Sept. 1993 (on the security of UN operations). The Secretary General issued *Supplement to an Agenda for Peace* (*supra* n.4) on 3 Jan. 1995, which was discussed at a meeting of the Council on 18 and 19 Jan. 1995 (S/PV.3492).

8. The main output of the informal working group, which first met in June 1993 and which now meets most months, may be found in a series of notes by the President of the Security Council (S/26015, S/26176, S/26389, S/26812, S/1994/230, S/1994/898 and S/1995/234). See *Report of the Security Council to the General Assembly (16 June 1993–15 June 1994)*, A/49.2, chap.28. Most of the developments listed at (*a*) to (*l*), *infra* Section B, emerged from the informal working group.

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The Council generally meets at the level of permanent representatives (ambassadors) or (when they are not available) senior members of their missions. But there is an increasing tendency for Ministers for Foreign Affairs and even heads of State or government to attend from time to time.[9] On 31 January 1992 the Council met, for the first time, at the level of heads of State or government. The Secretary-General's *An Agenda for Peace* was the direct outcome of this meeting.

Much has been said about groups within the Council: the five permanent members (P5), the Western permanent members (P3), the non-aligned (often referred to as the non-aligned caucus), and the "non-non-aligned" (those Council members which are neither P5 nor non-aligned) But the variety of the problems facing the Council produces other *ad hoc* groups, some of which may include non-members of the Council (for example, the "Friends of Georgia"). There is something of a myth concerning the dominant role of the five permanent members. Reports of the domination of the Council by the P5, the P3 or the United States (the "P1") are greatly exaggerated. The P5 or P3 co-operate closely on the substance of certain issues, but on others they do not. It may, however, be that the permanent members share certain underlying attitudes, whatever their political positions. Permanent membership may lead to a longer-term view of the Council's health; in a sense the permanent members may display more loyalty to the Council as an institution and a stronger wish to protect its effectiveness: such protectiveness may be seen by others as conservatism (especially on procedural issues).[10]

The Security Council acts in various ways: there are resolutions, statements made on its behalf by the President of the Council, letters from the President (normally addressed to the Secretary-General) and other decisions (generally recorded in official documents). There is a distinction between action by the Council itself, which almost always takes place at a formal public meeting of the Council,[11] and statements on behalf of "the members of the Council", which may issue without a formal meeting—though practice has not always been consistent.

9. There is a distinction between 'periodic meetings" called for in Art.28 of the Charter and meetings at ministerial or head of State or government level held other than pursuant to Art.28. In fact, only one "Art.28 meeting" has taken place (21 Oct. 1970). A meeting at the level of Ministers for Foreign Affairs took place on 26 Sept. 1985 (S/PV.2608). A number of Foreign Ministers attended the meeting on 25 Sept. 1991 (S/PV.3009) at which Res.713 (1991) was adopted. The only summit meeting was that on 31 Jan. 1992. See Bailey, *op. cit. supra* n.3, at pp.35–40; Murti, "Periodic Meetings of the Security Council: Article 28, paragraph 2 of the UN Charter" (1970) Indian J.Int.L. 283–299; and the commentaries mentioned *supra* n.3.

10. See Bailey, *idem*, pp.141–145; Hague *Workshop*, *supra* n.3, at pp.365–374 (Aust), 349–363 (Delon). The fear that the five permanent members may unite to impose their will on the rest is nothing new. It was articulated at San Francisco, leading the five to point out that they would not be able to act by themselves, since "any decisions of the Council would have to include the concurring votes of at least two [now four] non-permanent members": see Bailey, *idem*, pp.108–109.

11. But see Bailey's comment, *idem*: "In the aftermath of the Middle East War of 1967, decisions of the Council were sometimes made by written document only ... this procedure was resorted to in order to avoid having open meetings of the Council." And his 1972 example (*idem*, p.162). Nowadays, decisions of the Council made by written document only are rare and generally relate to minor procedural matters e.g. the decisions in Nov. 1993 and July 1994 to delete certain items from the list of matters of which the Council is seised (see *infra* nn.26 and 27).

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The two most common instruments to issue from the Council are resolutions and "Presidential statements". Resolutions are the best-known, and indeed traditional, Council instrument. A Presidential statement is a statement by the President of the Security Council, usually read out at a public meeting of the Council, each word of which has been agreed in advance by all the members of the Council. Unlike resolutions Presidential statements require consensus: somewhat paradoxically, it may therefore be easier to secure the adoption of a resolution than a statement. The choice between a resolution and a Presidential statement is sometimes a fine one, but resolutions are generally used for formal action and more significant matters. Presidential statements tend to be more ephemeral, and may be used when the Council wishes to comment somewhat less formally on a particular development. But the standing and frequency of Presidential statements are increasing: since the beginning of 1994 they have, like resolutions, been issued in their own documentation series (S/PRST/=). Statements to the press are not normally negotiated by members of the Council; the President is trusted to speak on members' behalf, following discussion in informal consultations on at least the broad outlines. Occasionally, however, a statement to the press will be issued as a Council document in the PRST series, and in such a case its wording will have been agreed by Council members in advance.[12]

B. Procedural Developments

Recent procedural developments within the Council have in large measure been either a consequence of changes in international relations or a reaction to suggestions or criticisms from within or outside the Council, based essentially on calls for greater "transparency" and "accountability" to the United Nations membership at large. Most such suggestions are made in a constructive spirit, though some may come from those who resent the Council and wish to limit its effectiveness.

The most obvious development in recent years has been the reduced use of the veto. Between 1946 and 1990 some 279 vetoes were cast (on average seven a year). Since 31 May 1990 there have been only three. On 11 May 1993 the Russian Federation vetoed a draft resolution submitted by the United Kingdom that would have established a new basis for the financing of the UN Force in Cyprus (UNFICYP).[13] On 2 December 1994 the Russian Federation vetoed a draft resolution, co-sponsored by the non-aligned members of the Council, on transit traffic in former Yugoslavia.[14] Neither veto was of great significance in itself and both were swiftly reversed: in the Cyprus case with the adoption on 27 May 1993 of resolution 831 (1993), which decided that those costs of UNFICYP not covered by voluntary contributions should be treated as expenses of the United Nations under Article 19 of the Charter; and in the Yugoslav case with the adoption on 12 January 1995 of resolution 970 (1995). More significant, perhaps, was the veto cast by the United States on 17 May 1995, blocking a draft resolution which would have confirmed that the expropriation by Israel of 53 hectares of land in East Jerusalem was invalid

12. See e.g. S/1995/3* (terrorist attack at Nordiya, Israel). "Presidential statements" are not aptly named. They are statements by the Security Council, read out by the President. But see the Argentine letter of 2 June 1995 (S/1995/456).
13. S/PV.3211.
14. S/PV.3475.

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and in violation of Security Council resolutions and the Fourth Geneva Convention and called upon Israel to rescind the expropriation orders. The draft resolution secured 14 affirmative votes, but was not adopted owing to the negative vote of the United States.[15] While these three vetoes serve to remind us that the veto still exists, in practice the threat, or even the mere possibility, of a veto may well be more significant than its actual use.

In the past formal meetings of the Council were frequently marked by votes on procedural and non-procedural matters. In recent years votes on procedural matters have become very rare; those that do take place are, so to speak, pre-cooked in informal consultations.[16] In the past there would be frequent votes on the adoption of the agenda: nowadays agendas are always agreed in advance (though not of course formally adopted) in informal consultations. Resolutions are still normally adopted by vote, but most are unanimous. It is now very rare for a draft resolution to be put to the vote and fail: apart from the three vetoed resolutions just mentioned, the only recent example was the vote on 29 June 1993 on a non-aligned draft resolution lifting the arms embargo in respect of the government of Bosnia and Herzegovina, which received only six votes in favour, with nine abstentions.[17]

Much of the real work of Council members takes place away from the glare of publicity in so-called "informal consultations of the whole". At the Council meeting on 16 December 1994 referred to at the beginning of this article the French Permanent Representative, Ambassador Merimee, referred to "a certain uneasiness in relations between the Security Council and the Members of the United Nations" and suggested:

> this uneasiness results in large part from the fact that informal consultations have become the Council's characteristic working method, while public meetings, originally the norm, are increasingly rare and increasingly devoid of content: everyone knows that when the Council goes into public meeting everything has been decided in advance ... informal meetings are not even real Council meetings at all; they have no official existence, and are assigned no number. Yet it is in these meetings that all the Council's work is carried out.

At that same meeting many permanent representatives stressed the importance of informal consultations. Ambassador Cardenas of Argentina referred to informal consultations as "enormously useful". Ambassador Marker of Pakistan noted the view:[18]

> that confidentiality of exchanges is essential for the decision-making process, including the achievement of consensus, and for the effective dispatch of business of the

15. S/PV.3538.

16. One procedural vote that routinely took place until recently was on the invitation to the PLO to participate in a meeting, but even that ceased in Feb. 1994: S/PV.3340.

17. S/PV.3247.

18. S/PV.3483. The importance of informal consultations, away from the glare of publicity, is of course by no means unique to the Security Council. "Informal consultations" of Council members are quite distinct from "private" meetings of the Council, provided for in rr.48–56. On the latter, see Bailey, *op. cit. supra* n.3, at pp.40–43.

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> Security Council. Indeed, much of the new-found effectiveness of the Council can be attributed to the procedure of confidentiality, which provides the climate for free-ranging, sometimes almost uninhibited debates which precede, influence and eventually shape the decisions that finally emerge from the Council's consideration. The informal consultations procedure also possesses the considerable advantage of providing flexibility to delegations during the negotiating process.

The lack of transparency is nevertheless of concern to States not members of the Council that are nonetheless affected by the Council's decisions (if only because of the budgetary implications) and in any event wish to understand or influence developments. There is also the wider public who wish to follow developments within the Council. In short, a balance has to be struck between the effectiveness of the Council in its day-to-day activities, which necessarily requires informality and discretion, and the need for transparency. The means of achieving such balance will vary from issue to issue, and over time, and it is probably unwise to formalise procedures to this end.

Moves in the direction of greater transparency have been considered more consciously and systematically since about 1992/1993. The measures taken so far are for the most part modest in themselves, but together they are significant. They include the following.

(*a*) At the conclusion of the meeting of the Council on 16 December 1994 the Council President stated that it was[19]

> the intention of the Council, as part of its efforts to improve the flow of information and the exchange of ideas between members of the Council and other United Nations Member States, that there should be an increased recourse to open meetings, in particular at an early stage in its consideration of a subject. The Council will decide on a case-by-case basis when to schedule public meetings of this sort.

(*b*) One class of States with a particular interest in Security Council activities is those contributing troops to peace-keeping operations. Considerable efforts have been made to improve consultations between Council members, the Secretariat and troop-contributing countries. In a Presidential statement of 4 November 1994 the Council recognised the need for further enhancement, in a pragmatic and flexible manner, of the arrangements for consultation and exchange of information with troop-contributing countries and set out a non-exhaustive series of procedures to this end.[20] The flow of information from the Secretariat on peace-keeping matters has been improved, in particular by the circulation of an informal "Weekly Digest of Peace-keeping Missions", made available also to non-Council members.

(*c*) *Ad hoc* meetings now take place between the members of the Council and the representatives of one or more other States (particularly high-level visitors). These are sometimes referred to as "Arria-style meetings", since the first such meeting was convened by the former Permanent Representative of Venezuela, Ambassador Diego Arria. There is a clear distinction between such meetings and

19. S/PRST/1994/81.
20. S/PRST/1994/62.

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informal consultations, which are not open to non-Council members. They do not take place in the consultation room, and they may be convened and chaired by any Council member.

(*d*) In October 1994 Council members agreed, at the initiative of the United Kingdom, that the Council Presidency should give informal oral briefings to delegations of non-members of the Council on the broad outlines of informal consultations of the whole. The first such briefing took place on 27 October 1994. The Secretariat invited any permanent mission which wished to be represented to the first of "periodic informal Presidency briefings on the current work of the Security Council". It is for each President for the month to conduct such briefings as he or she wishes; the practice of holding such briefings regularly has continued under subsequent Presidents and may now be considered well established.

(*e*) Since August 1993 the tentative forecast of the programme of work of the Council for the month has been informally made available to all non-members of the Council. The forecast is in simple, non-bureaucratic language such as would not necessarily be appropriate for an official document. Since May 1994 it now includes a list of forthcoming reports by the Secretary-General, as well as the schedule of forthcoming reviews or renewals of mandates on peace-keeping operations and sanctions regimes. The forecast, which is issued in all official languages, has no number, and is issued with a caveat to the effect that inclusion or non-inclusion of a matter in the forecast "carries no implication that it will or will not be taken up during the month: the actual programme of work will be determined by developments and the views of members of the Council".[21]

(*f*) On 28 February 1994 Council members decided that draft resolutions "in blue" (i.e. in near-final form) should be made available to non-members of the Council. As with the circulation of the tentative forecast, practical problems had to be overcome. The Security Council has a dedicated but very small staff, who are already fully stretched.[22]

(*g*) Informal consultations of the whole are now announced in the UN *Journal*, and recently an informal list of subjects has been included (though others are likely to come up unexpectedly). This does not, of course, prevent informal consultations taking place at short notice without being announced in the *Journal*. Similarly, since June 1993 the provisional agendas of Council meetings are included in the *Journal* when they have been approved in advance in informal consultations. The fact that consultations or meetings are included in the *Journal* does not, of course, mean that they will necessarily take place. But these are useful developments for non-members of the Council (and indeed for Council members).

(*h*) Article 24(2) of the Charter provides: "The Security Council shall submit annual and, when necessary, special reports to the General Assembly for its con-

21. S/26176.
22. S/1994/230. On the Security Council staff see S/1995/440.

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sideration." The reporting requirement is considered by some to be an important aspect of the "accountability" of the Council to the Assembly or to the membership at large. It is argued, with considerable insistence, that the annual report should contain more detail and even analysis. It is at present a useful document of record, but, so the argument goes, not necessarily a suitable basis for a debate in the General Assembly on the work of the Security Council. But it is, in practice, simply not feasible for the Council to produce analyses of its actions, including descriptions of the reasons for its resolutions and statements. Each delegation will have its own reasons. A further demand, both impractical and wrong in principle, is that the report should include an account of what transpires in informal consultations. Quite apart from the fact that any such account would be very lengthy and indigestible, it would destroy the informality and make official and formal what are essentially informal discussions. Some improvements have, however, recently been made in the annual report to make it more user-friendly and informative. Related items (for example those relating to the situation in the former Yugoslavia) are grouped together. In the 1993/94 report the introduction was expanded to include statistics concerning the Council's activities, and a brief description of the measures adopted in connection with the ongoing rationalisation of Council documentation and other procedures. Beginning in October 1993, the President of the Council has made a previously agreed statement in the plenary of the General Assembly to introduce the annual report at the start of the Assembly's debate on the report.[23]

(*i*) In an effort to improve transparency in the Council, a conscious effort is now made to ensure that agenda items are descriptive, and where possible "umbrella" items are used, e.g. "The situation in the Republic of Bosnia and Herzegovina". In the past there was a large number of items of the kind "Letter dated ... from the Government of ...". This still happens, but only where it may be difficult to agree upon a substantive description, e.g. the North Korean nuclear question was at one stage dealt with under an item entitled "Notes from the Secretary-General".[24]

(*j*) Under rule 11 of the Provisional Rules of Procedure, the Secretary-General is required to communicate each week to the representatives on the Council "a summary statement of the matters of which the Security Council is seized and of the stage reached in their consideration". Each agenda item is retained on this list until it is disposed of or expressly removed. Only rarely in the past did the Council decide to remove items, and as a result the list has included many items that are most unlikely ever to be taken up again. As part of the efforts to improve the documentation of the Security Council, Council members have on two occasions recently reviewed the list. In November 1993 the Council decided to remove 80 of the approximately 240 items on the list, including all the Cold War matters (such as Berlin, Hungary and Czechoslovakia—both 1948 and 1968) and other *causes célèbres* such as Suez, the Falkland Islands and the 1989 US action in Panama. In the note recording this decision it was stressed that the decision had been taken after extensive consideration and consultation, and that:[25]

23. S/26015.
24. On the titles of agenda items, see Bailey, *op. cit. supra* n.3, at pp.49–50.
25. S/26812.

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> Neither the removal of a matter from the list of matters of which the Security Council is seized nor its retention carries any implication for the substance of the matter. The Council may at any time decide to include any matter in the agenda of a meeting of the Council, whether or not it is included in the list.

A further 25 items were removed in July 1994,[26] and the list now approximates rather more closely to the matters in respect of which the Council is currently exercising its functions—though there are still many items that will almost certainly never be taken up again. On these two recent occasions, removal was not based on any criteria other than the existence of general agreement within the Council that the continued retention of the item served no purpose and that its removal would not provoke any controversy.[27]

(*k*) The procedures of sanctions committees have been made more transparent by the introduction, at the initiative of the United Kingdom, of various new practices, including the increased use of press releases, lists of decisions to be made available to delegations, more information in the annual report of the Council, and more expedited preparation of summary records.[28]

(*l*) Other changes have been made to make the Council's activity more transparent and easier for outsiders to follow: for example, care is now taken when drafting resolutions or statements to avoid, so far as possible, references to unpublished documents. Another improvement has been the publishing of Presidential statements in their own series (PRST) so that they can now be found as easily as resolutions.

C. *Change Within the Council*

In procedural terms change within the Council may take place in one of three ways: by Charter amendment; by amending the Rules of Procedure; or by the development of new working methods or practices not reflected in amendments to the Charter or Rules of Procedure. All recent changes have been in the third category. Further development along these lines is certainly possible, though some proposals are unrealistic.

One suggestion, which has been resisted, is that the informal consultations should be open to non-members of the Council, for example the parties to a dispute. More realistic, perhaps, is that there should be greater use of Arria-style meetings.

There are, in addition, suggestions to revise or at least update the Council's Rules of Procedure.[29] These remain, nearly 50 years after the first meeting of the

26. S/1994/896.

27. Bailey, *op. cit. supra* n.3, at pp.44–49. Earlier attempts to conduct a similar exercise, in the 1970s and 1980s, had got nowhere, partly because the attempt was made to develop criteria, e.g. the fact that an item had not been taken up for a certain period. The Council will probably always be somewhat behind in its "pruning" of the list. But perhaps it will henceforth maintain this recent practice by seeing at least once a year (in, say, June or July) what can be dropped.

28. S/1995/234 and S/1995/438.

29. The Provisional Rules of Procedure of the Security Council were last amended in 1982 (S/96/Rev.7). Since 1950 the only amendments have related to the working languages of the Council. See Bailey, *op. cit. supra* n.3, *passim*; Prandler, "Rules of Procedure of the Security Council", in *Questions of International Law* (Hungarian Branch of the International Law

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Council on 17 January 1946, *Provisional* Rules of Procedure. More important, they remain in some respects rather undeveloped compared with those of many other international organs (and in particular the General Assembly), and in some relatively minor respects they do not correspond to what happens in practice.[30]

It is a commonplace that, within the framework of the Charter, the Council is the master of its own procedure, that it can, and does, depart from its Rules of Procedure whenever it considers it necessary.[31] In one sense this is true, as is probably true of most international organs, but not for the reason sometimes given—the provisional nature of the rules: the position would be the same whether or not the rules were only provisionally adopted and whether or not the word "provisional" remains in their title. And the incantation—that (within the framework of the Charter) the Council is the master of its own procedure—is itself misleading if it suggests that the Council departs lightly from its rules. It does so only rarely, and then with the agreement of all Council members and in a formal and transparent manner. Recent examples were the Council's decisions on 25 August and 16 September 1994, announced at meetings of the Council, to suspend the operation of the rule which provides that the Presidency should be held in turn by the members of the Council in the English alphabetical order of their names: as a result the Presidency was held by Rwanda in December rather than September 1994, a decision taken on both political and practical grounds in the light of the circumstances in Rwanda at the time.[32]

One suggestion would be to revise the Provisional Rules of Procedure at least to the extent of dropping the word "Provisional" and correcting anomalies (see, for example, Bailey's suggestions in the concluding chapter of his book[33] on the Council's procedure), but little benefit would flow from this. Some of those proposing a more extensive "updating" or revision of the rules are, in fact, trying to limit the

Association, 1971), pp.147–178; Kelsen, "Organisation and Procedures of the Security Council of the United Nations" (1946) 59 Harv.L.Rev. 1087–1121; Conforti, "The Legal Effect of Non-Compliance with the Rules of Procedure of the UN General Assembly and Security Council" (1969) 63 A.J.I.L. 479–489.

30. E.g. the rule that communication of the provisional agenda be made at least three days before the meeting, except in urgent circumstances: see Bailey, *op. cit. supra* n.3, at pp.29–32. Some rules are simply ignored e.g. the rule that "periodic meetings" shall be held twice a year (r.4), and rr.10, 53 and 57.

31. See the General Introduction to *Repertoire*, *supra* n.1. In the absence of express provisions in the rules (e.g. Art.76 of the Standing Orders of the Conference of the International Labour Organisation, adopted in 1990 at the 77th ILO Conference), suspension may be by "common accord" or "general agreement" (A/C.2/1102, para.24) or the power to suspend or waive the rules of procedure may be regarded as inherent in the power to adopt the rules, the same majority applying: for the views of the UN Legal Counsel, see (1977) UN Juridical Yearbook 194, and A/32/PV.103. The General Assembly regularly, on the recommendation of the General Committee, suspends certain rules at the beginning of each session; but suspension *ad hoc* may be controversial in particular cases, perhaps not so much in itself as because it unfairly prejudices the interests of a particular State or States: see Blum, *Eroding the United Nations Charter* (1993), p.17.

32. Another rule that in the past was frequently waived with the agreement of all members was that providing that "the interval between meetings shall not exceed fourteen days" (r.1).

33. *Op. cit. supra* n.3.

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use of the veto or to develop further and more formalised moves in the direction of greater transparency or "accountability". Embarking on an exercise to revise the Rules has certain dangers: progress is more likely through incremental and informal adjustments of the kind described at (*a*) to (*l*) in Section B, *supra*.

Finally, there are suggestions to amend the Charter, particularly as regards Council membership and voting. The Assembly's open-ended working group on Council enlargement resumed in 1995, following discussion in the Assembly during autumn 1994 (both in the general debate and under the item on Council enlargement). It is not yet possible to predict what the outcome is likely to be. The main issues are: the optimum number for the Council (weighing effectiveness and representativity); whether there should be additional permanent members and if so which States they should be and whether they should have the veto; whether there should be a new category of "semi-permanent members", and the related question of whether to retain the ban on immediate re-election, which could lead to *de facto* semi-permanent members.

The composition of the Council and decision-making may only be changed through Charter amendment, which requires a decision by the General Assembly and acceptance by two-thirds of the Members of the United Nations, including the five permanent members. Other changes in the Security Council's working methods and procedure are likely to come from within the Council itself, as has been illustrated in this article. That is not to say that such changes will not, as in the past, respond in some degree to the debate outside the Council. Whether such changes should be "institutionalised"—that is, reflected in the Rules of Procedure or at least in Council resolutions or statements—is something of a side issue. What matters is what happens in practice, and it is unlikely that more progress will be made through formal steps than through the kind of gradual and informal development described above. Informal and incremental change is more likely to be effective, and has been more effective, than change through the Rules of Procedure or the formal establishment of new machinery. Change is more likely under pressure of events than through abstract study, whether by the Council or the Assembly. The latter is all too likely to bring out the most impractical, as well as the most conservative opinions, and any consensus reached is liable to be a low common denominator.

D. Conclusion

As indicated at the outset, there is a wider debate about the legitimacy of the Council, a debate which is essentially about political attitudes to the Council. It is an important debate, and not one that is or should be confined to lawyers (or those with extreme views). It goes much wider than the issues discussed in this article, but it is hoped that this description of recent procedural developments indicates that the Council itself is not impervious to change.

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