CHAPTER SIX

CERTAIN OTHER PERSPECTIVES FOR A REFORM OF THE UNITED NATIONS SECURITY COUNCIL

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1. Introduction

On Monday, 8 November 2010, President Barack Obama, speaking before the Indian Parliament in New Delhi, announced that the United States would back India’s campaign for a permanent seat on an expanded United Nations Security Council. The President said: “The just and sustainable international order that America seeks includes a United Nations that is efficient, effective, credible and legitimate (...) That is why I can say today, in the years ahead, I look forward to a reformed U.N. Security Council that includes India as a permanent member”. One can imagine that, if the President had been on an official visit to Brazil, Japan, South Africa or Germany, he could have used exactly same words thus creating expectations for those countries.

During the last four decades, the reform of the United Nations Security Council has been the subject of numerous debates and proposals, both in official bodies of the United Nations and in non-governmental and academic circles. Discussion papers and multiple proposals on this issue have been published worldwide. Perhaps the most surprising thing to emerge from analysis of those debates and the conclusions and proposals for a reform is that nearly all aspects of the Council’s reform seem to be confined to the question of the Council’s composition. This major issue may be a simple one: is there a need to increase the membership of the Security Council? The difficulty, however, lies in giving this aspiration concrete form.

Membership of the Security Council though is only one, and to some perhaps the most important aspect of a possible reform. The de facto review and the constant improvement of the working methods of the Council, and its relationship with the General Assembly, are some of the other aspects of the reform that are less in the limelight in the usual debates. Most of these ‘lesser’ reforms proceed from the insight gained by the direct actors – i.e. the members, both permanent and non-permanent of the Council – based on their daily experience of the working of this principal organ entrusted with the maintenance of international peace and security. It is sometimes surprising that reforms are accepted without major challenges as regards their conformity with the United Nations Charter. The same goes for conformity of the de facto reforms with the Rules of Procedure of the Security Council. These Rules
have in any event continued to be ‘provisional’ for the last sixty-six years. They can, therefore, be changed and adapted at random by the members of the Council, although I know of no particular case when a formal change to these Rules has taken place. In a first section I will therefore discuss certain aspects of the changing of the working methods of the Council. The question of membership of the Council will be dealt with in the second section.

2. Changing the Working Methods of the Security Council

This section will briefly address certain aspects of the Council’s working methods that have largely contributed to making the Council either more efficient or more transparent, i.e. the prior consultations leading to decision-making, the practice of the presidential statements, and the relationships between the Security Council and the General Assembly.

2.1. The Prior Consultations

It is obvious that the decision making process in all institutions, organisations or other bodies with multiple membership should be preceded by genuine and intensive consultations among their members or participants. This is a prerequisite for an enduring and successful outcome of any decision or action. This is also applicable to the Security Council whose members cannot but work in team in the search for viable solutions to issues and disputes through resolutions. Ideally, the consultations will start between the permanent members in order to ensure their support for any draft text of a future resolution. A consensus among the permanent members is a strong incentive for non permanent members to go along with a draft in the knowledge that it will not be vetoed, thereby leading to either a unanimous vote, a consensus or, at the very least, the requisite nine votes for the valid adoption of a resolution. Alternatively, a recalcitrant or hesitant permanent member may be induced to go along with a draft or at least abstain if consultations seem to indicate that the position adopted by this member means that it is isolated. By and large, the pattern of prior consultations will vary depending on the change in data and situations specific to any issue before the Council.

In the early years of the United Nations it was normal practice for the Security Council to hold a public debate in the Council’s chamber around the so called ‘horse shoe table’. This debate is not necessarily restricted to Members of the Security Council. Article 31 of the Charter of the United Nations states that “[a]ny Member of the United Nations which is not a member of the Security Council may participate, without a vote, in the discussion of any question brought before the Security Council whenever the latter considers that the interests of that Member are specially affected”. It is interesting to note that rule 37 of the still Provisional Rules of Procedure of the Security Council repeats article 31 of the Charter, but adds the words “or when a Member brings