Chapter 6

There is no need to change the composition of the Security Council. It is time for stressing accountability*

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I had the pleasure to begin teaching at the Graduate Institute in Geneva in 1995, sharing with Vera Gowlland the task of providing a general course on public international law to advanced ‘licence’ students in international relations. Since then I have had many occasions to appreciate Vera’s acute vision of international law, her commitment to social values, her modesty and real friendship. One of the fields in which Vera has excelled is the law of the United Nations. My contribution to this volume deals with the existence or not of a need to modify the composition of the Security Council (SC).

The discussion concerning the reform of the SC is as old as the UN itself. Following the end of the Cold War, renewed interest in this perennial topic of international organisation has become apparent. However, a decade of drafts, working groups, open-ended discussions, and so on, has led only to frustration. Indeed, there could not have been any other outcome, despite the enthusiastic participation in this exercise by some delegations, experts and high-level personalities, as evinced from the different campaigns and slogans used to summarize some of the proposals under consideration.

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2 See for example, Olivier Fleurence, La Réforme du Conseil de Sécurité: l’état du débat depuis la fin de la guerre froide, (Brussels: Établissements Émile Bruylant, 2000).

3 In the United Nations Millennium Declaration, States committed themselves “[t]o intensifying [their] efforts to achieve a comprehensive reform of the Security Council in all
Nevertheless, this predictable frustration should not dominate an analysis of the SC’s action (or inaction) over the past two decades, nor cloud a discussion of its role in the future. The endemic of general SC inaction, particularly poignant during the Cold War due to both actual and potential vetoes by the two major superpowers, could very well come to an end, paving the way for a new era of cooperation. If the SC had played a more dominant role on many occasions, some recent SC practices – which raise serious problems from the legal viewpoint – could have been curbed. Some examples of these practices include the general authorisation of States to use force without SC control, legislative and quasi-judicial action by the SC, exceptions from the jurisdiction of the International Criminal Court to satisfy a particular State, and the lack of a SC reaction in response to clear defiance of its own established international administration regime. Other legally problematic practices cannot be charged to the debtor list of the SC itself. This is particularly the case of abusive interpretations of SC resolutions by some States in order to justify evidently wrongful uses of force, as well as the incapacity of the SC to take positive action in response to a number of serious situations because of the position of one or more of its permanent members.

The Report of the Vice-Chairpersons to the President of the General Assembly on the Question of Equitable Representation on and Increase in the Membership of the Security Council of 11 June 2008, states that there is “a common understanding that the Security Council in its current composition does not reflect international reality and thus needs to be adequately rebalanced. Status quo on its aspects”: GA Res. 55/2 (2000), § 30; The UN Secretary-General considered this statement by the General Assembly to reflect “the view, long held by the majority, that a change in the Council’s composition is needed to make it more broadly representative of the international community as a whole, as well as of the geopolitical realities of today, and thereby more legitimate in the eyes of the world”: Report of the Secretary-General, ‘In larger Freedom: towards development, security and human rights for all’, UN doc. A/59/2005 (21 March 2005), p. 42, § 168.

7 This is the case with regard to Kosovo, which will be summarily dealt with infra.