

Backdoor Revolution

Modern Working Methods for a more efficient UN Security Council

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In times of deep political division on crisis management, the international community frequently puts the blame on the Security Council. Some take such division as proof of its anachronistic composition; others use it as an argument for the moral obligation for a military intervention without a UN mandate. But do the Council members really exhaust the potential the Charter offers for the global governance of peace and security? Modern, cooperative working methods could greatly enhance its efficiency.

“The UN Security Council is never finished, never perfected, the world body is ever a work in progress.”¹ The UN Security Council reflects the ambivalence of the global order: Legally speaking, it is the most powerful organ of the multilateral governance system. It combines executive, legislative and at times even judicial powers and takes binding decisions for the entire international community. Politically speaking, it often symbolizes the limits of this very same governance system, the missing common denominator between the world powers. This was the case during the Cold War, in the dispute concerning the interventions in Kosovo in 1999 and in Iraq in 2003, and currently in the Syria crisis that has seen far more than 100,000 victims.

If the Security Council is determined and acts creatively, it can be very efficient. During its boom years in the 1990s, it

carried out important contributions to end the proxy wars. It developed the UN peace operations, provided the basis for an international criminal justice system and promoted the normative development of a protection architecture for civilians, thereby revolutionizing the traditional concept of security. On the other hand, its actions often demonstrate a lack of agreement among the veto powers as to what ‘peace and security’ actually comprises in a fast changing world.² Moreover, between real challenges, concrete decisions of the Council and its implementation there often is a considerable gap, for which its members rarely have to take responsibility.

Current record of the UN Security Council: ‘No One’s World’?³

What is the current record of the Council? In 2012, it adopted 53 resolutions, 13 fewer than in the previous year, when the Arab Spring and the authorization of military intervention in Libya and the Ivory Coast dominated the Council’s agenda. More than half of its decisions concerned the African continent (28). Sixty percent of the resolutions included coercive measures under Chapter VII of the UN

¹ Edward C. Luck, *Principal Organs*, in: Thomas G. Weiss/Sam Daws (Eds.), *The Oxford Handbook on the United Nations*, Oxford 2007, p. 653.

² See Bart M.J. Szewczyk, *Variable Multipolarity and U.N. Security Council Reform*, *Harvard International Law Journal*, 53, 2/2013, pp. 452.

³ See Charles A. Kupchan, *No One’s World. The West, the Rising Rest, and the Coming Global Turn*, Oxford 2012.

Charter (32). Twice Russia and China used a veto—on Syria. Apart from three cases, the Council adopted all its resolutions unanimously. The trend in the first half of 2013 is comparable (23 resolutions).⁴ It is fair to say that the Council is usually able to reach a consensus and to take action within the framework of the normal cyclical fluctuations since the boom after the end of the Cold War. Therefore, at first glance, the Security Council is not only the most efficient organ of the UN, but probably of the entire global governance system.

But how relevant are its decisions? The Council reaches its highest efficiency in the context of escalating crises. Its actions, however, are often a consequence of previous inaction. Examples of this are the resolutions on the Democratic Republic of the Congo (DRC) since December 2012 or on the Central African Republic in 2013. The instruments of preventive diplomacy, mediation and peacebuilding under Chapter VI of the Charter are not used often enough, and its archaic working methods barely allow it to make sustainable contributions in more than two crises at once over a longer period of time.

One of last year's success stories was the instrument of political missions, which is more flexible and cost-efficient than the traditional peacekeeping operations. Political missions can fulfill a diverse range of tasks, such as demining, advising governments of countries in transition and supporting the preparation of elections. Despite ongoing criticism against the military intervention in spring 2011, this instrument allowed the deployment of a support mission to Libya in March 2012; and the political mission in Timor-Leste

that had existed since 2006 was completed by the end of 2012. Whether the deployment of an intervention brigade to the DRC and of a peacekeeping mission to Mali in summer 2013 introduce a trend back to robust peacekeeping remains to be seen.

The handling of Yemen, often celebrated as 'third way' between the Syria-blockade and the Libya-intervention, is also considered to be a success story – which is both true and false. The Council remained united and possibly prevented a civil war. It did, however, partly endorse an initiative that guaranteed impunity to the former dictator. The continued presence of his followers significantly hampers current efforts to build democratic structures.

In recent months, the Council's track record on thematic issues, in particular with regard to its protection architecture, has been rather poor. The consequences of the polarizing Libya intervention which was undertaken "for the protection of the civilian population" have had a lasting negative effect. The record is more positive when it comes to progress that has not (yet) entailed any political costs. Guatemala launched a fruitful discussion on the cooperation between the Council and the International Criminal Court (ICC) with a first ever debate in the Council's history on the promotion of rule of law in October 2012. The reality check, however, is still to come, given the difficulties the Council has traditionally had in addressing the issues of the rule of law and accountability.

The biggest lapse in this respect in recent history is the handling of the Syria case. What can the Council do, what can't it do? The Security Council is a forum for political debate, a vessel for political action. It reflects a consensus on the world stage, and thereby promotes its implementation. It can use

⁴ For the statistic see: www.un.org/en/sc/inc/pages/pdf/highlights/2012.pdf.

political niches. But where there is no minimal basic agreement between the five permanent members (P-5), it cannot generate it. As the crisis in Syria began to escalate, China, France, the United Kingdom, Russia and the USA should have made a greater effort to develop, together with other stakeholders, a political strategy out of the crisis. Hence, the dysfunctional nature of the Council stems from the fact that the P-5 insist on playing a predominant role in determining global governance, but due to domestic political challenges and the increasing complexity of modern crises they are either unable or unwilling to deploy sufficient energy and motivation to realize a long-term foreign policy vision. Thus, today the Security Council symbolizes the eroding power of the multilateral governance system to shape events.

What reforms for the Council?

The obvious and most often cited reason for the Council's weaknesses is its composition, which mirrors the power structure of 1945. It is undisputed that the Council must be enlarged and has to become more representative. In the past few years, however, researchers and policy makers have invested an enormous amount of time and energy in attempting to strike through the Gordian knot of Council enlargement. Whether this enlargement would promote peace and security, be it with permanent or temporary seats, without a clear definition of its purpose and responsibility, is doubtful.

The recent record also shows that nowadays the Council is less involved in settling traditional disputes between states than in reducing the influence of (previous) autocrats, protecting children from being recruited as child soldiers or

preventing organized crime from undermining the state structures of entire regions. The architects of 1945 could not anticipate this, but with the UN Charter they shaped a vision that allowed adaptation to history. It secured the Council a history of already nearly 70 years, in contrast to the League of Nations. The notion of a collective security system in the interdependent global village appears even more modern nowadays than it did in 1945. For national sovereignty is challenged by new actors and technology – from rebels to regional organizations, from individual mobility to communication over social media. In a world where borders are blurred, statehood is defined in new terms and technology fundamentally changes the relationships between individuals, countries and continents, multipolarity is no longer a purely geographic term. Therefore, a core challenge for the Council is the method it employs to identify crises, to cooperate with key states and non-state actors, take transparent decisions, implement them and subsequently stand behind them.

History of working methods: scenes and actors

'Forever' versus 'Temporarily'

The authors of the Charter understood the importance of working methods. In article 30, they determined that the Council had to write its rules of procedure. A draft was discussed by the members in their first meeting in January 1946. But they could only agree on provisional rules of procedure. Until today, the P-5 have refused to produce permanent rules. During the first few years this was not problematic, since the Council rarely

met and barely decided anything: in the 1950s it adopted around five resolutions, and until 1990 hardly more than 20 per year. After the fall of the Berlin Wall this drastically changed. The Council now met almost every day, the number of resolutions rose quickly and they had increasingly far-reaching consequences on the international community. This is why, in the 1990s, first calls for better working methods emerged in the context of general reform discussions.⁵

Many demands for more transparency were addressed: from then on, the Council published a meetings agenda and provided more information to non-members. A major impetus came from non-permanent members, the 'Elected Ten' (E-10): In 1992 the Venezuelan Council president Diego Arria invited an eyewitness of the Balkan war and thus created a meeting format with admission for non-state actors that is still important today (Arria Formula). In 1994, New Zealand and Argentina were able to push through the first decisions on the participation of troop contributing countries. In the same year, the Security Council held its first debate about its working methods. On 8 March 2000, against the wishes of some permanent members, the Bangladeshi Council president emphasized the importance of women for peace and security in front of the media, laying the cornerstone for an entire set of rules.⁶ Japan made a key contribution to improving working methods with Notes from the President of the Council in 2006 and 2010.⁷ And in the past year, Portugal and Guatemala put forward courageous proposals concerning accountability and how the

drafting of country resolutions should be managed. But also the P-5, especially France and the UK, have consistently endeavored to improve working methods – not least to defuse demands for enlargement.⁸

The rising amount of meetings and efforts to increase transparency have led to a change to more informal decision-making processes in recent Council history. Negotiations have shifted from consultations to unannounced expert meetings. And the positive, improved communication between the world powers weakened the E-10, as the P-5 discovered that they had a power to determine the process for which the Charter did not give them a veto right. Thus, numerous unwritten rules favoring the P-5 have emerged, and in disputes over working methods, they often coordinate their stances despite important divergences on substance. For example, they distribute the chairmanships of labor-intensive committees among non-permanent members. On the other hand, the P-5 play the leading role in drafting resolutions and often discuss these between each other before sharing them with the Council. Due to strong political dependencies, the E-10 rarely succeed in positioning themselves as a powerful interest group. And without being formalized in writing, all progress and reforms can easily be watered down or abolished.⁹ To assure sustainability there needs to be support and pressure from states outside of the Council.

Initiative of the 'Small Five'

When it nearly came to a vote on Security Council reform at the World

⁵ On the development of working methods: Security Council Report: Special Research Report: Security Council Working Methods – A Work in Progress ?, 30/03/2010, www.securitycouncilreport.org.

⁶ This refers to the resolutions 1325(2000), 1820(2008), 1888(2009), 1960(2010) and 2106(2013).

⁷ UN Doc. S/507/2006 from 19/07/2006 and UN Doc. S/507/2010 from 26.7.2010.

⁸ Dimitris Bouratonis, *The History and Politics of UN Security Council Reform*, London/New York 2005, p. 52.

⁹ For a closer examination, see in Helmut Volger, 'Mehr Transparenz und mehr Beteiligung', *Vereinte Nationen*, 5/2010, p. 195-203, here pp. 202.

Summit in 2005, history held its breath for a moment. Finally, the emergency brake was pulled, as it was feared that along with the most delicate political reform question, other reforms – such as the Peacebuilding Commission or the Human Rights Council – were being endangered. During the frantic negotiations, all contenders of enlargement committed themselves to the improvement of working methods. This commitment made its way into the final document of the summit.¹⁰ The broad support and the realization that small and medium-size states that rarely or never sit in the Council are more interested in its responsible and transparent functioning than in its composition, motivated Costa Rica, Jordan, Liechtenstein, Singapore and Switzerland to form a group under Swiss coordination promoting the improvement of working methods. In 2006, the group, referred to by other UN member states as the “Small Five” (S-5), submitted a first draft resolution to the General Assembly (GA).¹¹ The document contained around 20 pragmatic recommendations on how the Council could improve its methods. These comprised essential questions, such as the relationship of the Council to the General Assembly, the implementation of its decisions, subsidiary bodies, peace operations, accountability and the use of the veto (not the right itself). The Council responded to these proposals by conferring an annual chair to the working group specialized in working methods.¹² Japan, its first president, prepared the above-mentioned Note 507 of the President of the Council, which was inspired by the S-5-draft; a vote was thus not necessary.

Between 2006 and 2011 the S-5 made numerous suggestions in the context of

reform negotiations, or discussed them directly with the members of the Council. They enhanced communication with the presidency, between the E-10 or with specialized think tanks. They facilitated the transfer of know-how between outgoing and incoming members, encouraged a more inclusive process during the preparation of the Annual Report and insisted on the accountability of the Council. Even though they succeeded in casting the S-5 “brand” as an active and successful group without hidden agenda, after six years, the limitations of the pioneer project started to show: The Council barely implemented the Japanese Presidential Note, and none of the small successful steps the S-5 had fought for so hard had any guarantee of sustainability.

Early 2012, after comprehensive consultations, the S-5 submitted a second draft resolution to the General Assembly.¹³ This text contained an update of the recommendations of 2006, and the S-5 invited the Council to report the implementation of its presidential notes and of the S-5 recommendations to the General Assembly. Because of its non-binding character, the resolution did not require a Charter amendment. And with the exception of the invitation to abstain from the right to veto in cases of worst crimes, the content of the recommendations was almost universally approved. Formally, the draft was polarizing because of the question of whether a resolution in the General Assembly was the right way to move the overall reform forward. Despite the assertion that the draft was supposed to be a reform for the ‘Here and Now’, it led to a debate on the enlargement question: Would this resolution promote or hinder the ‘real’ reform?

Arguing that the Security Council is ‘master of its own procedures’, the P-5

¹⁰ UN Doc. A/RES/60/1 from 16/09/2005, para. 154.

¹¹ UN Doc. A/60/L.49 from 17/03/2006.

¹² Informal Working Group on Documentation and Other Procedural Questions.

¹³ UN Doc. /66/L.42 Rev.2 from 03/05/2012.

fought the initiative with all means at their disposal. They provoked a controversial legal opinion by the UN's Legal Department, which demanded a two-third majority for the adoption of the text.¹⁴ Well over 100 States were ready to support the resolution in a vote on 16 May 2012, but the risk of a vitriolic debate about the necessary majority was very high. The S-5 were not looking for a 'David-against-Goliath' confrontation with the P-5, particularly because the cooperation of the P-5 would be vital for the implementation even after an eventual victory in the vote. Because of this, on the day of the vote, the Swiss ambassador presented the content of the text, called upon the General Assembly members to be witnesses of the P-5's promises to improve the working methods given during the negotiations, and then withdrew the text.

The evaluation of the initiative showed that the S-5 did not succeed in clearly separating the reform of working methods from the question of enlargement. In terms of numbers, the Small Five were also 'too small', and finally the time did not seem ripe for more than an ad-hoc external reform of the Council's working methods. The S-5 had reached the objectives that were achievable and made way for a new project.

The 'Accountability, Coherence and Transparency Group' (ACT)

Since January 2013, Switzerland has been building a wider coalition as a

coordinator: The 'Accountability, Coherence and Transparency Group' (ACT). ACT was officially launched at the UN on 2 May 2013 and currently consists of 22 small and medium-size states. They share a belief that there is a need to improve the working methods, independently of the enlargement question.¹⁵ ACT wants to grow by adding a few more African and Asian states. The mission and goals of the group are comparable to those of the previous S-5, four of which are once again on board. The method, however, has been adjusted: The group functions as a platform with teams that work at different speeds and use different means to strive for progress on specific topics. Thanks to the expertise of members there is a new focus on the methodology in the areas of prevention and peacekeeping, but ACT also continues to deal with politically relevant questions such as the rule of law and accountability. The group is seeking a dialogue with the Council members, including with the P-5, among which the UK in particular has shown considerable interest.¹⁶ Since May 2013, ACT has met all presidencies before they have taken office, in order to discuss together aspects of the upcoming agenda that are relevant to methodology. The group has already taken the floor several times – even in the Council – but deliberately does not intervene as a group in the overall reform negotiations. There has been a promising start, but the road ahead is likely to remain rocky. That is why it is important that ten ACT-members are running for non-permanent seats in the Security Council

¹⁴ The UN Office of Legal Affairs has not published this legal opinion. It was however leaked on Colum Lynch's Turtle Bay Blog 'The Brobdingnagians Win Again' on the 16th of May 2012, http://turtlebay.foreign-policy.com/posts/2012/05/16/the_brobdingnagians_win_again.

¹⁵ Chile, Costa Rica, Estonia, Finland, Gabon, Ireland, Jordan, Liechtenstein, Maldives, New Zealand, Norway, Papua- New Guinea, Austria, Peru, Portugal, Saudi-Arabia, Sweden, Switzerland, Slovakia, Tanzania, Hungary and Uruguay.

¹⁶ For more complete information regarding ACT refer to the website of the Permanent Mission of Switzerland to the UN in New York: www.eda.admin.ch/eda/en/home/topics/intorg/un/mis_sny/wormet.html.

in the near future. Already in January 2014 Chile and Saudi-Arabia will be joining the Council. More ACT-members are expected to follow in January 2015. In order to bring about a cultural change in the Council, there needs to be an optimal combination of the work of the E-10, the vectors for change from within, pressure from UN member states as well as a growing awareness by the P-5 that including more actors will ease their burden as they try to meet an increasingly complex responsibility.

More courage for innovation

Technical equipment, knowledge transfer and resources

While the Security Council is mandating peace operations for more than USD 7 billion a year, some of its members are barely equipped with secure email addresses. This may seem trivial but is actually crucial: The members of the highest international body for the maintenance of peace and security must be adequately equipped with the tools necessary to fulfill their important task. These include a secure basic technological equipment, particularly to facilitate confidential internal communication among Council members; a few core rules for the handover between outgoing and incoming Council members, especially with regard to the chairpersonships of the subsidiary bodies; and additional resources in the UN secretariat, so that it can support the members and supply them with daily information from missions and crisis spots. They should also be able to present the necessary reports on time. The introduction in 2010 of regular videoconferences – an initiative by the UK – and the creation of a modernized website of the Council

were quantum leaps in this respect. Additional steps are possible and urgently needed. Relieving the Council members enhances their strength for innovation. Modern working tools can help create a fairer level playing field between those who have always been there and the temporary ‘tourists’.

A ‘New Deal’ between E-10 and P-5

There needs to be a new partnership between elected and permanent members. That the E-10 shoulder the burden of chairing all subsidiary bodies, while the P-5 draft and negotiate almost all resolutions has become self-evident in recent years. This was not always the case, nor does it need to be: In 2005, France did an excellent job of forming and chairing the ‘Children in Armed Conflicts’ specialized working group, and Germany did outstanding work in drafting resolutions on Afghanistan in 2011/2012. A cultural change is needed, insofar as a partnership is in the interest of all members as much as of the organization as a whole. It is incumbent upon the Council to take on the burden of negotiating its division of labor in a fair fashion and if need be to hold a vote about this issue, as is done in most governments and parliaments. This is likely to be a laborious process. The culture of consensus of the past few years is certainly a welcome development, but sometimes it simply leads to a standstill. Moreover, as regards questions of procedure, for which the Charter consciously renounced the right to veto, a vote from time to time would make good sense. The E-10 can realize their potential even better. They owe the General Assembly that elects them a willingness to take responsibility in country situations in order to give new momentum to debates about conflicts that have remained unresolved for many years.

The power of the presidency

Individual personalities can move the world in the Security Council. The largest power to shape things is offered by the monthly presidency. According to the Provisionary Rules of Procedure, the preparation of the monthly program lies entirely at the discretion of the chairperson: Thus, the USA stimulated the cooperation between the most important actors of the multilateral governance system by inviting the World Bank to a discussion about the Great Lakes region in Africa in July 2013. The presidency also determines questions of transparency and participation: For example, in 2008 the Costa Rican Council president succeeded in raising the rate of public meetings by about 30% by consistently opening all non-confidential meetings to the public. The chairperson makes decisions concerning the involvement of affected countries, external expertise and about the speakers list. And even if attempts at innovation sometimes lead to long, drawn-out discussions, it is still worthwhile to put forward useful suggestions and risk a procedural vote. The chairperson is free to determine the meeting format. Where there is a will, there is always an adequate form for exchanges, when necessary with creativity: For example, during the Rwandan genocide in April of 1994, New Zealand's Council president met every morning with members of Doctors without Borders, before briefing the Council about the discussions. And finally, in order to increase the transparency and acceptance of the Council's work, the presidency should include non-members in a substantive discussion of the monthly program of work at the beginning of the month and a critical evaluation should take place at the end. By the same token, it is the duty of member states to avail themselves of the offer to engage in

dialogue with the presidency, in order to make a useful contribution to the opening of the Security Council.

Holistic approach to conflict resolution

One of the most important challenges for the working methods lies in the handling of the complex conflicts of our time. Nowadays, the Council often acts too late, not comprehensively enough, has difficulty managing several conflicts at one time, and to involve internationally available expertise rapidly and optimally. Under article 29, the Charter gives it considerable freedom to improve its instrumental apparatus. In the past, the Council availed itself of this freedom to create the sanction system and numerous working groups. In a next step the Council could, for example, equip its Ad Hoc Working Group on Conflict Prevention and Resolution in Africa with an early warning system. Moreover, the sanction system acts, in accordance with its internal logic, primarily punitively and rarely preventively. Other instruments, for example the Peacebuilding Configurations, lack bite. An approach in which the Council handles country situations in a more holistic way in its subsidiary bodies, combining sticks and carrots, would be worth considering. Such 'country-committees' could also be equipped with mechanisms which promote the permeability for expertise, especially from the affected countries themselves. They would then provide advice to the Council and could monitor the implementation of its decisions, in order to enable the Council to focus more on its strategic tasks.¹⁷

¹⁷ See also Colin Keating, *Reforming the Working Methods of the UN Security Council*, from: Friedrich Ebert Stiftung, *Focus on the UN Security Council*, New York 2011.

No rights without obligations

Originally, the veto was also intended as an emergency brake, so that the world powers would not suddenly confront each other directly in a crisis theater. This is understandable. But based on the Charter's rationale it seems just as logical that it should not be used in situations for which the Council was created in the first place, such as in cases of genocide and crimes against humanity. As France has already stated, the other P-5 should declare their intention to renounce their right to veto in such cases, and their parliaments and civil societies could help lead them in that direction. Furthermore, if the Security Council wants to remain relevant in the coming decades, it has to impose responsibilities upon its members for the rights and privileges that they receive, as well as to hold them accountable if they fail to live up to them.

From cultural change to structural reform?

Back to the crucial question: How can the Council become more representative, more inclusive, more transparent and more efficient 70 years after its creation? A structural reform is without a doubt necessary. This article

has aimed to show that modern working methods are an important element of a change that needs to begin today. They encompass on the one hand transparency towards and the inclusion of other states and actors, and on the other effective crisis management itself. When states become part of supranational organizations with internal break lines and transnational interest groups, the Security Council needs to evolve its instruments and methods to react appropriately to these developments. What is more, even though the Charter was created on the basis of fundamentally different global parameters, it defined a vision that allows the international community to adjust the multilateral governance system step by step. These steps have to bring about technological improvements and address fundamental political issues at the same time. All progress requires a newly defined partnership between the permanent members that increasingly share their burden with others, the elected members that take on leadership responsibilities more frequently, and the non-members that make a transition from being critical observers to responsible actors. This revolutionary cultural change from the within may well turn out to be the decisive step that will lead to the Council's fundamental structural reform.

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