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**Security Council Reform: A Requirement of International  
Democracy**

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## (I)

### **The *status quo* of international affairs**

Under the conditions of the present unipolar world order, the United Nations Organization is faced with an *increasing lack of legitimacy* due to basically three interrelated factors:

- (1) a virtually *non-existent separation of powers* within the organization, a condition that, in structural terms, almost resembles the decision-making procedures in a dictatorial system. Especially since the end of the Cold War's bipolar order, the Security Council has been arrogating more and more competencies, in certain cases even circumventing provisions of the UN Charter;<sup>1</sup>
- (2) an almost *systemic arbitrariness* of Security Council action particularly in its resolutions under Chapter VII of the Charter, the adoption of which exclusively depends on the constellation of interests among the five permanent members in a given case, not on considerations related to international security (as stipulated by Art. 39 of the Charter) or the rule of law – a problem that is further exacerbated in the present unipolar environment;
- (3) a factual *policy of double standards* resulting from the lack of (political) checks and balances as well as of legal restraint under the above described circumstances.<sup>2</sup>

Almost all problems of United Nations legitimacy revolve around the Security Council.<sup>3</sup> More specifically, the organization's predicament can be traced back to one basic fact: the Council serving as an outdated instrument of great power rule that essentially reflects the power balance

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<sup>1</sup> This is particularly true in regard to the Council's having created, by means of Chapter VII resolutions, special judicial organs such as the International Criminal Tribunal for the Former Yugoslavia (ICTY) or the International Criminal Tribunal for Rwanda (ICTR). On the legally problematic nature of this practice see the author's *Global Justice or Global Revenge? International Criminal Justice at the Crossroads*. Vienna and New York: Springer, 2003, pp. 166ff.

<sup>2</sup> More than a decade ago, the representative of Malaysia to the UN has very aptly characterized this predicament of the world organization resulting from the structural imbalance in the Security Council: "We have consistently expressed our concern at the tendency among the permanent five to confine much of the work of the Council to themselves, turning deliberations into an exclusive club. We have stressed that collective security at the UN will be undermined if Security Council decisions reflect selectivity and double standards and are not manifestly balanced." ("1994 Conference on Security Council Reform." Ambassador Razali Ismail, Permanent Representative of Malaysia to the United Nations, *Global Policy Forum*, at <http://www.globalpolicy.org/security/conf94/razali.htm>.)

<sup>3</sup> In a rather bleak assessment of the present state of the United Nations system, Ramesh Thakur, former Vice Rector of the United Nations University, has drawn our attention to the "gulf between law and legitimacy" that he considers

of 1945.<sup>4</sup> This predicament becomes even more severe in a situation in which the “old order” provides the framework of (unilateral) action by the only remaining superpower:

- (1) Under these circumstances, the detrimental impact of the veto privilege on international stability is even more felt – because the hegemonial power needs not fear adverse consequences from that privilege’s invocation<sup>5</sup> while the other four permanent members do have to “think twice” before resorting to it.
- (2) More easily than during the Cold War era, the Council, due to the lack of a global balance of power, can be induced either (a) to give a *carte blanche* to its most powerful member (indirectly benefiting also the hegemon’s “lesser allies”) – as was the case with the resolutions related to the Gulf war of 1991 (that were, in fact, “war authorization resolutions” giving the intervening powers full freedom of discretion as to the scope of the military measures applied);<sup>6</sup> or the Council may be induced (b) to legitimize an intrinsically illegal action (carried out in circumvention of the Council) *ex post facto*. This has occurred in the wake of the invasion and occupation of Iraq in 2003 when the Council recognized the two leading occupying powers in Iraq, the US and the UK, as the “Authority.”<sup>7</sup>

All these factors document the basic structural weakness which is at the roots of the United Nations’ acute legitimation crisis at the beginning of the 21<sup>st</sup> century: namely an imbalance of power relations, manifested in the *effective invalidation of democratic procedures* within the only organ of the UN system that is vested with executive power, the Security Council. The veto rule of Art. 27 (3) of the Charter means a *de facto* and *de jure* negation of the basic democratic

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the most serious problem faced by the world organization: “U.N. legitimacy eroding like festering sore.” *The Daily Yomiuri*, Tokyo, 21 May 2007.

<sup>4</sup> For details see the author’s analysis: “The Structure of the Post-War System: The UN Charter as the Embodiment of the ‘Spirit of 1945’,” in: Hans Köchler, *The United Nations and International Democracy. The Quest for UN Reform*. Studies in International Relations, XXII. Vienna: International Progress Organization, 1997, pp. 9-15.

<sup>5</sup> Thomas G. Weiss has rightly pointed to the Security Council’s credibility problem resulting from the overwhelming power of the United States; in his analysis, the focus has “shifted from the question of adequate representation to whether the group can constrain U.S. power.” (“The Illusion of UN Security Council Reform,” in: *The Washington Quarterly*, Autumn 2003, pp. 147-161; p. 147.)

<sup>6</sup> On the problematic nature of such “authorization resolutions” see, *inter alia*, Niels Blokker, “Is the Authorization Authorized? Powers and Practice of the UN Security Council to Authorize the Use of Force by ‘Coalitions of the Able and Willing’,” in: *European Journal of International Law*, Vol. 11 (2000), No. 3, pp. 541-568.

<sup>7</sup> Security Council resolution 1483 (2003) adopted on 22 May 2003. For details see the author’s Memorandum, dated 12 August 2003, in: Hans Köchler (ed.), *The Iraq Crisis and the United Nations. Power Politics vs. the International Rule of Law*. Studies in International Relations, XXVIII. Vienna: International Progress Organization, 2004, pp. 65-71.

principle of the equality of votes – and it also implies, whatever may be said to the contrary,<sup>8</sup> an irreconcilable *normative contradiction* to the principle of equality enshrined, under “Purposes and Principles,” in Art. 2 (1) of the Charter<sup>9</sup> (which speaks of the “sovereign equality of all its Members”).<sup>10</sup> The blunt fact of great power rule cannot be explained away by reference to a supposed “special responsibility” vested in five specifically mentioned countries; their special status, if it ever existed in more than in terms of actual power, has anyway long vanished since the upheavals of the Second World War. The preposterous insistence on the prolongation of such a status has been aptly stated in a recent American commentary on UN reform: “Few things could be more profoundly anachronistic than a body owned and operated by the five victors of a war the ended in the first half of the last century.”<sup>11</sup>

Especially since the fortieth anniversary of the United Nations, repeated calls have been made by experts and diplomats alike, and numerous efforts have been undertaken within the UN system itself, at reforming the outdated procedures of decision-making in the Security Council.<sup>12</sup> However, all the plans outlined as part of several distinct UN reform proposals – those worked out on behalf of the Security Council Summit of 1992, the President of the General Assembly in 1997 (“Razali Plan”)<sup>13</sup>, and the Secretary-General in 2005 (“Report of the High-level Panel on Threats, Challenges and Change”)<sup>14</sup> – carefully avoided the basic issue at stake, namely the *veto*

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<sup>8</sup> See, for instance, C. L. Lim, “The Great Power Balance, the United Nations and What the Framers Intended: In Partial Response to Hans Köchler,” in: *Chinese Journal of International Law*, Vol. 6, No. 2 (2007), pp. 307-328. It is difficult to comprehend how “the existence of the veto power ... is not tantamount to tolerating legal inequality between the UN members,” but is symptomatic of “an inequality of decision-making power which the Framers had intended.” (Par. 24) The author even states that the very veto privilege guarantees the sovereign equality of states: “The veto can, should and was intended to ensure a balance of power that would in turn preserve [sic!] the sovereign equality of all nations.” (Par. 22)

<sup>9</sup> Distinguishing between “relative” equality at the legal and “functional” inequality at the political level does not solve the problem of a normative inconsistency either. See Boutros Boutros-Ghali’s earlier effort in that regard: “Le principe d’égalité des États et les organisations internationales,” in: [Académie de droit international] *Recueil des Cours*, Vol. 100 (1960), II, pp. 30ff.

<sup>10</sup> For details see the author’s treatise: *The Voting Procedure in the United Nations Security Council. Examining a Normative Contradiction and its Consequences on International Relations*. Studies in International Relations, XVII. Vienna: International Progress Organization, 1991.

<sup>11</sup> Tad Daley and David Lionel, “Reinventing the United Nations,” in: *Foreign Service Journal*, Vol. 83, No. 9 (September 2006), pp. 33-39; p. 36.

<sup>12</sup> See the proposals made for the democratization of international relations at the colloquium organized by the International Progress Organization to commemorate the 40<sup>th</sup> anniversary of the foundation of the United Nations (New York City, 31 October 1985): Hans Köchler (ed.), *Democracy in International Relations*. Studies in International Relations, XII. Vienna: International Progress Organization, 1986.

<sup>13</sup> In a lecture he delivered in 1994 in his capacity as Permanent Representative of Malaysia to the United Nations, Ambassador Razali Ismail was more outspoken, not avoiding the crucial issue (unlike three years later as President of the General Assembly). He identified as the main goal of Security Council reform to “prevent the Council from becoming a vehicle for imposing the views of the dominant on the people that are not strong” and unambiguously stated “that veto power has now become untenable and unequal.” (“1994 Conference on Security Council Reform,” loc. cit.)

<sup>14</sup> “A more secure world: our shared responsibility.” *Report of the High-level Panel on Threats, Challenges and Change*. United Nations, General Assembly, Doc. A/59/565, 29 November 2004. – See also the report of Secretary-

*privilege* of the five permanent members. The President of the General Assembly (1996), Diego Freitas do Amaral, brought the dilemma faced by the members to the point, characterizing the subject of UN reform as “[n]ot difficult in theoretical terms, but very difficult in political terms ...,” whereby he referred to the “very national, tough approaches” of the member states.<sup>15</sup>

By not addressing the core problem, the authors of these proposals, bearing in mind (a) the statutory facts and (b) the imperatives of *realpolitik* (which can more specifically be addressed as the “iron laws of power politics”), engaged in a kind of collective denial of reality. Thus, it is left to those who are not bound by institutional “loyalties” and official constraints to identify the thorny issues and eventually overcome the predicament of *realpolitik*. Deliberately overlooking those issues has been one of the main reasons of the collective paralysis that, so far, has made impossible any serious reform effort within the United Nations system.

Indeed, one has to point the finger at the scandalous statutory predicament first: The veto privilege in favour of the permanent members is “protected” by means of a kind of self-referential arrangement that defies all rules of democracy and fair play. According to Art. 108 of the Charter, any amendment to it, including, of course, the provisions of Art. 27 (veto),<sup>16</sup> requires the consent of the permanent members. This amounts, in essence, to what we call the “political *circulus vitiosus*” that has prevented UN reform from the outset. In the veiled wording of Par. 3 of Art. 27, the principle effectively endorses decisions *pro domo* whenever the interests of a permanent member are at stake (whether in regard to Charter reform or “operative” matters to be decided under Chapter VII).<sup>17</sup>

Consequently, all those often elaborate reform proposals were essentially satisfied at *alleviating* the situation, i.e. at curing the symptoms, instead of proposing effective remedies. They *did not* and, because of institutional constraints, *could not* address the basic issue of the lack of legitimacy (particularly of Chapter VII decisions) resulting from the Security Council being an instrument of great power rule. The situation has become even more acute in the present *unipolar* context as was rightly observed by Thomas G. Weiss in his bleak assessment of the ongoing

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General Kofi Annan to the General Assembly: “In larger freedom: towards development, security and human rights for all.” *Report of the Secretary-General*. United Nations, General Assembly, Fifty-ninth session, agenda items 45 and 55, Doc. A/59/2005, 21 March 2005, Par. 170.

<sup>15</sup> Diego Freitas do Amaral, President of the General Assembly, *Prospects for Reform of the Security Council*. Statement presented at a meeting of the NGO Working Group on the Security Council (New York, 16 January 1996), at [www.globalpolicy.org/security/docs/freitas.htm](http://www.globalpolicy.org/security/docs/freitas.htm).

<sup>16</sup> It is to be noted that the “veto” is nowhere directly mentioned in the Charter. The respective provision of Art. 27 addresses it *indirectly* in the form of the euphemistic phrase “including the consenting votes of the permanent members.”

reform debate we referred to earlier.<sup>18</sup> The latest report, for instance, suggested to add one or the other country as permanent member without veto power, to enlarge the overall membership of the Security Council in both categories, permanent and non-permanent, so as to make it more “balanced” and representative of all regions of the globe, etc.<sup>19</sup>

A measure that was again proposed more recently (2007) is to strengthen the other branch of the United Nations system through the establishment of a “UN Parliamentary Assembly” – so as to put a stronger “democratic” counterweight to the intrinsically undemocratic institution of the Security Council.<sup>20</sup> Much earlier, in 1991, the CAMDUN<sup>21</sup> initiative had already suggested “[i]nstituting a UN Second (peoples’) Assembly as a subsidiary organ of the General Assembly under Article 22 [of the UN Charter], representative of the peoples of the United Nations as global inhabitants,”<sup>22</sup> something that would not require Charter amendment. However, this will itself remain an ineffective, if not futile, measure as long as virtually all “legislative” power is vested in the Security Council and nothing is done about Arts. 10-12 of the Charter that actually divest the General Assembly of all legislative powers. An additional organ that, in all matters of decision, has to defer to the Security Council would not change the power equation in any way.

All the proposals that – over more than two decades – have been advanced out of frustration over the dominating, and often paralyzing, role of the Security Council are essentially “cosmetic” or measures of goodwill; because they have to pay consideration to the statutory realities, they do not and cannot address the real issue. This holds even true for the much praised “Uniting for Peace” resolution of the General Assembly that was adopted in connection with the Korea crisis to find a way out of the impasse that resulted from the paralysis of the Security

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<sup>17</sup> The obligation to abstain from voting when a member is party to a dispute does not apply to enforceable decisions under Chapter VII, which means that a permanent member is actually *immune* in its international conduct. See Hans Köchler, *The Voting Procedure in the United Nations Security Council*, Chapter V/b, pp. 29ff.

<sup>18</sup> “The Illusion of UN Security Council Reform,” loc. cit.

<sup>19</sup> For details see “A more secure world: our shared responsibility.” *Report of the High-level Panel on Threats, Challenges and Change*, loc. cit., esp. Paras. 252 and 253. – Cf. also the diagnosis of Thomas G. Weiss, op. cit., p. 159: “Seats at the Security Council table have been the principal focus of reform discussion in New York, but their significance is largely illusory given the centralization of power in Washington.”

<sup>20</sup> Cf. the “Appeal for the establishment of a Parliamentary Assembly at the United Nations” launched by the *Campaign for the Establishment of a United Nations Parliamentary Assembly* (UNPA 2007) at <http://en.unpacampaign.org/appeal/index.php>. For details of the initiative see in particular the web site of the *Committee for a Democratic U.N.* (CDUN) (Germany): <http://www.uno-komitee.de/en/index.php>. – See also George Monbiot, “The best way to give the poor a real voice is through a world parliament.” *The Guardian*, Manchester, UK, 24 April 2007.

<sup>21</sup> “Conferences On A More Democratic United Nations”. – For details see now Antonio E. Paris, “Hans Köchler and the Campaign for a More Democratic United Nations,” in: Fatemah Remedios C. Balbin (ed.), *Hans Köchler Bibliography and Reader*. Manila: Hans Koechler Political and Philosophical Society, 2007, pp. 99-108.

<sup>22</sup> Art. 1.3 of the “Concluding Statement of the Second International Conference On A More Democratic United Nations” published in: Hans Köchler (ed.), *The United Nations and the New World Order. Keynote addresses from the Second International Conference On A More Democratic United Nations*. Studies in International Relations, XVIII. Vienna: International Progress Organization, 1992, p. 50.

Council at the time<sup>23</sup> and that, since then, has been invoked more than once in connection with the Palestinian issue (regrettably with no consequence except having made a moral statement).<sup>24</sup>

In view of this “statutory predicament” we have to adopt a *realistic* approach that tries to reconcile the *ideal* of international democracy with the *realities* of the state-centered international system as it exists today. Bearing in mind the pragmatic necessity of not letting wishful thinking obfuscate the analysis of the *status quo* in international affairs, we have to ask the following question:

If we acknowledge the fact that *effective* Charter reform – one that would meet basic democratic requirements and, therefore, entail the abrogation of the veto provision of Art. 27 (3) – is *impossible* and that a Security Council with democratic voting procedures, thus, could only be created by abolishing the UNO and establishing a novel type of transnational (not merely intergovernmental) organization through a joint effort of a new group of states (that will not be identical with the list of the Allied Powers of World War II), what, then, is a realistic procedure to address the issue of the democratic deficit of the United Nations Organization?

## (II)

### A possible reform alternative?

The alternative proposal we have in mind revolves around the notion of permanent membership in the Security Council. We are, however, well aware that what we outline here is only a blueprint that will need to be worked out in more detail; we are also mindful that the *absence of a balance of power* in global affairs (including intergovernmental relations at the level of the UN) constitutes an additional, and formidable, obstacle to any serious reform effort.<sup>25</sup>

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<sup>23</sup> General Assembly resolution 377A (V) adopted at the 302<sup>nd</sup> plenary meeting on 3 November 1950. – See also L. H. Woolsey, “The ‘Uniting for Peace’ Resolution of the United Nations,” in: *The American Journal of International Law*, Vol. 45 (1951), pp. 129-137.

<sup>24</sup> So far, ten “Emergency Special Sessions” have been convened on the basis of resolution 377A(V), most of them related to the conflict in the Middle East; sessions on Hungary (1956), the question of the Congo (1960), Afghanistan (1980), and Namibia (1981) have also been convened.

<sup>25</sup> For a general assessment of the implications of the unilateral power structure for the international system see the author’s paper: “The Precarious Nature of International Law in the Absence of a Balance of Power,” in: Hans

What we envisage, in essence, is a kind of *transformation* of the concept of permanent membership that would bring the veto provision closer to the democratically more acceptable obligation of seeking democratic consensus and would eventually, at some future stage, make non-permanent membership obsolete. Initially, we have outlined this proposal at the final meeting of the European research network on “The Political Theory of Transnational Democracy” at the University of Cambridge (29 March 1996).<sup>26</sup>

The main principle guiding our considerations at the time was that the veto should be made less of a “dictatorial” tool and come closer to a kind of requirement (or obligation) to integrate all regions of the globe into the decision-making process in the Security Council.<sup>27</sup> The reform measure envisaged by us could make the Council the cornerstone of a future *multipolar* balance of power which alone can be the basis of legitimacy for an intergovernmental organization that is expected to be *universal* and *democratic* at the same time (an ideal which, originally, was proclaimed in the Charter’s Preamble).<sup>28</sup> It goes without saying that any such measure would still imply an amendment to the Charter, i.e. would require the consent of the existing permanent members. In one basic sense, however, it might be more realistic than earlier proposals that concentrated on the “game of names and numbers” (of permanent and non-permanent members): the proposal does not provide granting the veto “privilege” to additional nation states who could be perceived, by the existing permanent members, as competitors in the global game for power and influence over the Council’s decisions.

What does such a paradigm change in terms of permanent membership entail? What specific Charter amendments would be required? The gist of our (admittedly idealistic) proposal can be characterized as follows:

First of all, “permanent membership” will have to be redefined on the basis of regional representation. The concept, thus redefined, would not relate to an individual *country* (nation state), but to a *region*. This new category of permanent membership would imply the representation of a *group* of countries according to specific procedures to be agreed upon among member states. Membership of regions, not of nation states, would indeed be a novel feature of

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Köchler (ed.), *The Use of Force in International Relations. Challenges to Collective Security*. Studies in International Relations, XXIX. Vienna: International Progress Organization, 2006, pp. 11-19.

<sup>26</sup> For details see Hans Köchler, *The United Nations and International Democracy. The Quest for UN Reform. Published on the occasion of the 25<sup>th</sup> anniversary of the foundation of the International Progress Organization*. Studies in International Relations, XXII. Vienna: International Progress Organization, 1997.

<sup>27</sup> Ambassador Razali Ismail of Malaysia had, in his original considerations, something similar in mind: “... what we would have, if some of our ideas are accepted, is a permanent presence of a region or subregion without ‘permanentizing’ one particular country.” (*1994 Conference on Security Council Reform*, loc. cit.)

the international system; it would give concrete shape to the Charter's guiding principle of "equitable geographical distribution" that sets out the participation of non-permanent members in the Council (Art. 23 [1]), thus making it a universal guideline for participation in the work of the Council.

It is obvious that this kind of realignment (or restructuring respectively) of membership will be easier to realize where homogenous regional organizations already exist – as in the cases of the European Union (EU), the Association of Southeast Asian Nations (ASEAN), the African Union (AU), the League of Arab States, or the Organization of the Islamic Conference (OIC). A question that has to be paid attention to in this context will be (a) the overlapping of regions (areas) covered by some of those entities and (b) the different nature of some of those entities' "mission statements" (as regards their political, ethnic, or religious goals, as expressed in their statutes, or a combination of those). Where such structures do not yet exist, Charter reform, as a basic measure, should include a "definition of regions" for the purpose of representation in the Security Council. This will not necessarily entail, at first instance, the creation of partly *supranational* structures such as that of the European Union.<sup>29</sup>

The *rationale* of introducing this new category of permanent membership may be explained by reference to the following doctrinary stipulations and administrative arrangements:

- (a) The membership will be *collective* (whereby this new category will ideally phase out, or make obsolete, the membership of individual states unless otherwise specified);
- (b) Within each region (grouping of states in whichever constitutional form) the seat will *rotate* in alphabetical order and within a set time frame (an arrangement that could be worked out similarly to the procedures applied for the rotating EU presidency and in conformity with each entity's specific structure or according to unified procedures to be defined in a reformed UN Charter);
- (c) Each sitting member will co-ordinate its voting behavior with the members of the group according to the procedures of the respective entity (where such

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<sup>28</sup> The "Peoples of the United Nations," in promulgating the Charter in 1945, had committed themselves "to reaffirm faith ... in the equal rights of men and women and of nations large and small ..."

<sup>29</sup> On the complex interrelation of intergovernmental, transnational and supranational elements in the case of the European Union as the "paradigmatic" regional entity (for which "collective membership" has been contemplated in

regulations exist) or, alternatively, on the basis of unified rules to be written into the Charter (similar to what is alternatively proposed under [b]);

- (d) In cases where a country has *de facto* the “weight” of a region and also geographically can be categorized as one, such a country may have its own permanent seat (which, of course, would require a special Charter provision). As regards the present permanent members, this might, first and foremost, apply to the People’s Republic of China and also to the United States of America, the Russian Federation and the Republic of India (Indian Union). However, such a provision – which may, in doctrinal terms, compromise the key principle of “regionalization” – will have to be carefully considered.

Whatever the technicalities of such a realignment finally may be (should it ever be considered within the United Nations fora), the “regionalization” of Security Council membership would be able to eliminate existing imbalances and definitely put an end to the overrepresentation of the European region (resulting from the permanent membership of the United Kingdom and France both of whom, anyway, are no great powers anymore). A common European seat in the Security Council, which has been contemplated since the 1990s,<sup>30</sup> would fit very well into this more cooperative, less *étatistic*, scheme of international organization.<sup>31</sup>

The devil rests in the detail, however. We must not overlook the enormous challenge posed by the aim of “dividing” the globe according to a balanced regional model. Such a measure will definitely require a kind of *new constitutional consensus* among the present members of the United Nations – lest such a comprehensive and far-reaching reform move would trigger a new and almost insurmountable identity crisis of the organization. Furthermore, such an initiative must not be left to the five permanent members “at whose discretion” and “under whose watch” virtually all reform efforts have failed so far; it should rather be a joint undertaking of the real “international community,” not merely of the traditional “Western allies” (who all too often have hijacked this term [international community] to justify their claim to *represent* the entire mankind).

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the Security Council) see the author’s analysis: “The European Constitution and the Imperatives of Transnational Democracy,” in: *Singapore Yearbook of International Law*, Vol. IX (2005), pp. 87-101.

<sup>30</sup> See, *inter alia*, Dimitris Bourantonis and Konstantinos Magliveras, “The Enlargement of the UN Security Council: Reflections from the Current Debate,” in: *Politics*, Vol. 22 (1), 2002, pp. 24-30; esp. pp. 28f.

<sup>31</sup> On the debate over Security Council reform in connection with reform efforts within the European Union see now also: Daniele Marchesi, *The EU and the Reform of the UN Security Council. Assessing the Impact on CFSP*. Draft version, 6.05.2007, EUSA Conference, Montreal, 17-19 May 2007, at <http://www.unc.edu/euce/eusa2007/papers/marchesi-d-01i.pdf>.

Historical experience teaches us that major constitutional rearrangements of this kind almost never happen in times of peace, but as a consequence of major upheaval (as the emergence of the League of Nations after World War I and of the United Nations Organization after World War II have demonstrated). In defiance of mankind's experience with *realpolitik* and the dicta of political realism, we dare to express the idealistic expectation that the awareness of the crisis brought about by the now obvious failure of *unilateralism* – with the very real danger of global anarchy resulting from it – will make the community of states (including the permanent members of the Security Council) more amenable to such a restructuring and redistribution of executive power within the United Nations than otherwise would be the case. The crisis triggered by the invasion of Iraq<sup>32</sup> and the rather sudden collapse of the project of a “New Middle East”<sup>33</sup> are signs on the wall that are detectible at least to those who are familiar with the history of hegemonial power.

Should the “powers that are” (the nation states) not be able to seize the moment, responding to the concerns of their peoples – and should the organization's “reinvention”<sup>34</sup> by means of redefining the concept of permanent membership (as part of a major project of Charter reform) prove impossible, there will simply be no way to avoid the *refounding* of the United Nations Organization – by means of creating an entirely new normative framework of international organization.<sup>35</sup>

A further procedural measure will have to be considered in such a major restructuring effort as envisaged by us. Ideally, the veto provision itself, albeit in the form of a unanimity requirement among *equal* members (as envisaged in the above reform proposal), should also be transformed into the requirement of what in the UN-newspeak is called a “supermajority”<sup>36</sup> (for instance of three quarters of the total votes of the new “regional” – or more precisely: regionally

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<sup>32</sup> On the legal and political implications of this war of aggression and its ramifications within the global system see the author's documentation: *The Iraq Crisis and the United Nations*, loc. cit.

<sup>33</sup> For details see, *inter alia*, Trudy J. Kuehner, “A New Middle East? A Report of FPRI's History Institute for Teachers,” in: *The Newsletter of FPRI's Marvin Wachman Fund for International Education*, Vol. 10, No. 1 (January 2005), Foreign Policy Research Institute, USA, at <http://www.fpri.org/footnotes/101.200501.kuehner.newmiddleeast.html>.

<sup>34</sup> Tad Daley and David Lionel have emphasized the aspect of “reinvention” and brought the urgency of far-reaching, comprehensive reform to the point: “If humanity wants to avoid some of the cataclysmic scenarios that are all too easy to conjure today, we must try to envision much more dramatic changes in our global public policymaking processes – changes that will bring a much larger transformation in representation, legitimacy, accountability and universality.” (Op. cit., p. 36.)

<sup>35</sup> See also the author's considerations in: “Quo Vadis, United Nations?,” in: *Law Review*, Polytechnic University of the Philippines, College of Law, May 2005, pp. 49-65; esp. Chapter IV, pp. 61 ff.

<sup>36</sup> The term was initially used, albeit in a somewhat different meaning, in the phrasing of voting provisions for the Special Chambers in the Courts of Cambodia (“Khmer Rouge trials”). Cf. Hans Köchler, *Global Justice or Global Revenge?*, pp. 123ff.

defined – permanent members).<sup>37</sup> This provision will be of crucial importance should certain very large states be considered as “regions” in themselves. The actual replacement of *unanimity* by *supermajority* will in itself be the decisive step in the paradigm change from an absolutely posited notion of *sovereignty* to a less absolutist understanding of the state as subject of international law within a *co-operative* framework, something which is indispensable should the *democratization* of international relations ever take hold within the UN system.<sup>38</sup>

If such a large-scale – and admittedly extremely ambitious – reform proposal should ever be undertaken, one will also have to deal with procedural issues *within* each region: namely, *how* a cohesive position on the often highly controversial issues that are on the agenda of the Security Council can realistically be achieved. The inability, so far, of the European Union to develop a cohesive foreign policy (demonstrated, in all its helplessness, to the entire world in the course of the Iraq crisis of 2003) has made us aware of the intricacies of intra-regional co-ordination even where rather advanced mechanisms are in place. Clear and unambiguous procedures will have to be worked out as to *how* instructions are to be given to the rotating representative of a regional grouping in the Council, whereby those regulations may be set either autonomously within each regional entity or according to unified standards to be provided for in the procedural rules of a reformed Security Council. It is absolutely essential that all these “technicalities” be tackled in detail should the great vision of the Security Council as “house of the regions” ever materialize.

Finally, after having outlined our vision of how an “ideal” United Nations Organization – one that conforms to democratic principles – should be structured, we have to give a brief account of our general philosophical approach. It is the philosopher’s task (a) to analyze actual (political) practice and (legal) procedures according to general norms of *legitimacy*, *democracy*, and the *rule of law* and (b) to work out *alternative ideas* for the reform of this practice, i.e. to demonstrate how a system of international relations ought to be structured in order to conform to those principles (norms). Although it is obvious that norms cannot be derived from facts by way of syllogism, philosophy does not satisfy itself with merely acknowledging the *status quo* in a given situation where the *bonum commune*, whether at the domestic or transnational level, is at stake. An exclusively *descriptive* approach cannot set the parameters for political or legal philosophy which always also “measures” reality – whether in the form of *realpolitik* or *positive law* –, by relating it to a canon of *norms* that are, in our particular case, derived from the general

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<sup>37</sup> On a supermajority formula for the Council, phasing out the veto provision, see also Tad Daley and David Lionel, op. cit., p. 36.

<sup>38</sup> Cf. Hans Köchler (ed.), *The United Nations and International Democracy*. Vienna: Jamahir Society for Culture and Philosophy, 1995.

principles of human rights and the concept of human *dignity* (which, as the basic norm underlying human rights, is not only relevant for the legitimacy of the domestic order).<sup>39</sup> This task is almost never paid attention to by the politician or diplomat who is bound by the dictates of *realpolitik* (i.e. power politics in the international realm) and/or his own political interests and executive directives from the political establishment or lobby he belongs to – and particularly so in the framework of the traditional *representative* system of decision-making.<sup>40</sup>

Unless we work out the idea, we have to resign ourselves to the status quo – an option that is not particularly attractive when one considers what is at stake: namely the future of world order<sup>41</sup> as a system – a framework of rules, based on checks and balances – meant to preserve the survival of the human race through something that amounts to more than simple co-ordination, namely co-operation, on the basis of genuine, not merely postulated, equality among all international actors in normative terms.

Only a type of international organization that meets this fundamental requirement can be called *democratic*.

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<sup>39</sup> On the doctrinal aspects of the position of human rights in the international legal order see the author's treatise: "Die Prinzipien des Völkerrechts und die Menschenrechte. Zur Frage der Vereinbarkeit zweier Normensysteme," in: *Zeitschrift für öffentliches Recht und Völkerrecht*, Vol. 32 (1981), pp. 5-28.

<sup>40</sup> On the legitimation deficit of representative democracy see, inter alia, the author's treatise: "La théorie de la représentation. La question de l'idéalisme dans la théorie politique," in: Hans Köchler (ed.), *The Crisis of Representative Democracy*. Frankfurt a.M./Bern/New York: Peter Lang, 1987, pp. 39-61.

<sup>41</sup> On the notion of "world order" in the framework of international relations theory see esp. Hedley Bull, *The Anarchical Society. A Study of Order in World Politics*. Houndmills (UK)/New York: Palgrave, 3<sup>rd</sup> ed. 2002.