



په ملگرو ملتوکی
د افغانستان اسلامي جمهوریت
دایمی نمایندگی - نیویارک

نماینده گی دایمی
جمهوری اسلامی افغانستان
در ملل متحد - نیویارک

Permanent Mission of the Islamic
Republic of Afghanistan to the
United Nations

13 March 2009

Excellency,

In strict conformity with the Work Plan elaborated by the President of the General Assembly and embraced by Member States during our successful 19 February launch of the Intergovernmental Negotiations on Security Council reform, I am herewith providing guidance to Member States on the path to decisive progress. Following our productive 4 and 5 March exchange on categories of membership, Member States on 16 March will address the question of the veto, the next of the five key issues as enumerated in GA Decision 62/557. During the sixty-first session of the General Assembly, the membership addressed Security Council reform along such lines, be it at an entirely different stage of the process and in an entirely different forum. Given our common purpose to, in an open process, build on rather than repeat, inter alia, the outcome of that previous exercise, let me for your convenience recite this outcome as far as the question of the veto is concerned, through a literal and integral excerpt from document A/61/47, defined in subparagraph iii of paragraph e of Decision 62/557 as part of the basis for the Intergovernmental Negotiations:

"The question of the veto

Given the sui generis character of the veto, the extent of Member States' flexibility and the scope of possible veto reform were explored through extensive bilateral consultations with a cross-regional sample incorporating small, medium-sized and large States, States having items on the agenda of the Security Council and the States currently holding the veto. Member States addressed the issue on two levels: ideal and attainable reform. The veto was criticized on various grounds by a significant majority of Member States, many of which also relayed a perception that its elimination is not realistic at this stage. Trends regarding the veto included the restriction of its use, prevention of its extension, resignation from its reform at this stage and extension of it to all permanent members so long as it exists.

In terms of restricting the veto, suggestions included limiting the instances where it can be used (for example to exclude instances such as genocide, war crimes and crimes against humanity), establishing criteria for when and in which situations the veto can be used, formalizing explanations for the use of veto, limiting the scope of



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application of the veto (either restricting it to Chapter VII decisions or disallowing its use in Chapter VI decisions), restricting its use to only vital issues, barring the veto where a permanent member is a party to a conflict, changing its weight (for example requiring two negative votes to reject a draft resolution), overruling it and placing a cap on the total number of negative votes that can be cast by a permanent member.

Member States considered that extension of the veto presupposes agreement on the addition of new permanent members. Permanent members themselves did not rule out extending the veto, depending on the number of prospective new permanent members and which those would be. Their position ranged from offering qualified support to the draft resolution of the Group of Four (G-4) to being ready to add one or two new members to the group of five permanent members (P-5) and extending the veto to a representative from a region currently without it.

Among States in support of expansion in permanent and non-permanent members, three tendencies were identifiable: (a) the veto is a tool for inaction that does not contribute to the effectiveness of the Council and should not be extended to new permanent members; (b) extension of the veto, in principle, accompanied by a commitment not to use it until a future review; and (c) automatic extension of the veto to new permanent members. The second option gathered the most support, inter alia, because it was also expressed as a fallback position by many States supporting options one and three. For those supporting extension of the veto at this stage, the second option would provide future prospect to that end, while for those supporting non-extension of the veto the second option would satisfy their position now without pre-empting the eventual settlement of the issue.

The general perception of the permanent members regarding the veto, despite nuances regarding certain aspects of the issue, is that the veto is at the core and is the sustaining force of the system of collective security. It is considered to be inherently different from other elements discussed in the reform process as it is the result of a political understanding that pre-dates the Charter and thus could not be reformed by the wider membership. Its reform could only be governed by the same historical rationale that initially brought it into being as a tool of restricting the scope of the collective security system according to their major policy considerations.

Permanent members recognized that the wider membership had concerns regarding the veto but did not consider that it was misused; rather, they insisted that the veto is exercised with restraint. However, they did not exclude the prospect of finding ways among themselves to appease those concerns, including, for most of them, through: (a) a voluntary commitment in this respect; or (b) an oral understanding that



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permanent members would agree to a non-legally binding statement once the reform process has been agreed upon.

Despite nuances, permanent members alluded to the limits of what could be agreed vis-à-vis the veto. The abolition or modification of the veto would not be ratifiable through a Charter amendment. This includes legally binding regulation of the veto or General Assembly guidelines on how to exercise it. The involvement of the Assembly in matters falling within what permanent members consider to be exclusive competence of the Security Council is not amenable, nor is explanation of the use of veto before the Assembly (the P-5 consider that the two organs stand on an equal footing). Most permanent members based their acceptance of enlargement and other reform of the Council on preserving the essence of their veto power.

The limited span between what the current holders of the veto could accept and what the wider membership is seeking prompted Member States to contemplate the option of bypassing substantial veto reform at this stage while maintaining strong preference for the veto to be explicitly included on the agenda of a possible future review. The latter requires further exploration, as there does not seem to be across-the-board agreement on it. The assessment of the facilitators is that, although desirable for the majority of Member States, veto reform alone might not be the single factor that will seal or break the reform deal at this stage, provided that the rest of the reform package will be substantial.

States that have thus far insisted on new permanent members obtaining the same rights and privileges as the incumbents, including the veto, were frequently mentioned as key to the process of Security Council reform. Such States, when consulted, reiterated their official collective position but appeared to be willing to consider alternatives on condition that those would be concrete and sufficiently attractive. While these States did not rule out the prospect of a provisional solution, it was quite clear that no definitive views could be provided by them on this level of consultation at this stage.

Member States which addressed the use of the veto as a source of non-action on the part of the United Nations expressed varying views on whether and how this could be remedied. The mechanism created through General Assembly resolution 377 (V) of 3 November 1950 was accepted as an alternative by some but deemed either ineffective and/or undesirable by others. No concrete suggestions were suggested on how the Assembly might exercise a subsidiary role in those instances where the primary responsibility of the Security Council for the maintenance of international peace and security is not exercised because of a veto. Member States did, however, stress that the Assembly should do more to fully exercise its competencies under Articles 10 to 12 of



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the Charter, including by examining matters of peace and security, and calling on the Council to take relevant action. This could exhort the Council to take action on a situation, provide the viewpoint of the wider membership to the Council on a particular issue and contain the veto through input that would deter its use. The awareness by the Council of the pronouncement of the Assembly on a certain issue would make it difficult for the Council to subsequently ignore the collective will of the international community and be silent on account of a veto.

In the above consultations it transpired that one pragmatic option concerning veto reform at this stage is the possibility of a pledge by the permanent members to exercise the veto with restraint. While this would not amount to a legally binding measure, some Member States have indicated that this would have an impact in practical terms. It was reasoned that indirect limitation/regulation of the veto and the influence of permanent members could be achieved to some degree through the cumulative impact of reform. It was also suggested that enlargement itself amounts to a de facto limitation of the power of the veto because permanent members will constitute less than 25 per cent of the Security Council and the responsibility to block action through veto will be substantially heavier. As the veto is viewed as synonymous with the influence, of the permanent five members, it is particularly pertinent to note that the enhanced presence and voting might of members other than the permanent five is believed by many to limit the influence of permanent members on decision-making, including decision-making that is exclusively power balance-driven. Lastly, it was suggested that the power stemming from possession of the veto (implicit veto) would diminish if the Council operated in a manner that allowed for less pressure to be exerted on non-permanent members."

The above excerpt from document A/61/47 should of course also be read in conjunction with, in particular, the new inputs and reaffirmed views as contained in document A/62/47, similarly defined in subparagraph iii of paragraph e of Decision 62/557 as part of the basis for the Intergovernmental Negotiations. Through his Work Plan, the President of the General Assembly has exhorted Member States to flesh out the substantive underpinning of the meetings, defined in subparagraphs i and iii of paragraph e of Decision 62/557, and to show the necessary flexibility. Accordingly, on 4 and 5 March, Member States with regard to the key issue under discussion clarified their original position where necessary and not seldom demonstrated flexibility on it, including through new proposals.

This way, Member States are injecting new life blood into the negotiations. For my part, as Chair of the Intergovernmental Negotiations, I will continue to promote the interactive nature of our meetings, just as I did on 4 and 5 March. Member States will



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thus again be given the opportunity to intervene twice, this time by means of a list of speakers, so they can react to and reciprocate the flexibility shown by their peers, but are also again urged to be concise and to limit their interventions to no longer than three minutes. I remain confident that the good faith and mutual respect in full display over the course of our negotiations hitherto will take us very far very fast.

Please accept, Excellency, the assurances of my highest consideration,

Zahir Tanin

Permanent Representative of the Islamic Republic of Afghanistan to the United Nations

Chair of the Intergovernmental Negotiations on the question of equitable representation and increase in the membership of the Security Council and other matters related to the Council