Revised Co-Chairs' Elements Paper on Convergences and Divergences on the question of equitable representation on and increase in the membership of the Security Council and related matters

Introduction

In the Declaration on the Commemoration of the Seventy-fifth Anniversary of the United Nations (A/RES/75/1 of 21 September 2020), the Heads of State and Government representing the peoples of the world, reiterated a call for reforms of the three principal organs of the United Nations and committed *"to instill new life in the discussions on the reform of the Security Council".* In the United Nations Secretary General Report on "Our Common Agenda" it was indicated, among other things, that *"After decades of debate, the majority of Member States now acknowledge that the Security Council could be made more representative of the twenty-first century, such as through enlargement, including better representation for Africa, as well as more systematic arrangements for more voices at the table*". This also indicates the renewed urgency for the continuation of the intergovernmental negotiations.

During the GA 76th session, the intergovernmental negotiations on Security Council reform (IGN) has built on the informal meetings held during its seventy-fifth session, as reflected in the letter dated 27 December 2021 from the Co-Chairs, and on the "*Co-Chairs' Elements Paper on Convergences and Divergences on the question of equitable representation on and increase in the membership of the Security Council and related matters*" circulated on 29 April 2021, as well as the positions of and proposals made by Member States, reflected in the text and its annex circulated on 31 July 2015 (known as the "Framework Document"), as stipulated by Decision 75/569 of 22 June 2021.

During the IGN GA76 the Co-Chairs convened five meetings: 8-9 February, focused on the process and the cluster on regional representation; 8-9 March, focused on the clusters on categories of membership and the question of the veto; 16-17 March, focused on the clusters on the size of an enlarged Security Council and its working methods, as well as the relationship between the General Assembly and the Security Council; 20-21 April, dedicated to a discussion on the status of IGN documents; and 12-13 May to reflect on the progress made and on the present document.

The discussion proved that the reform of the Security Council remains the core interest of Member States. The active and high-level participation of more than 80 delegations, including Groups of States and Member States, helped moved the IGN process forward and to chart progress by identifying further convergences and articulating more clearly the outstanding divergences.

Within the IGN process, there are several major Groups, representing a set of positions regarding the reform of the Security Council, including but not limited to: the African Group, the Arab Group, Benelux, CARICOM, the Group of 4, the L69 Group, the Nordic Group, and the Uniting for Consensus Group.

"The World Summit Outcome Document of 2005" adopted by GA Resolution A/RES/60/1 reaffirmed Member States' commitment to strengthen the United Nations, with a view to enhancing its authority and efficiency, as well as its capacity to address effectively, and in accordance with the purposes and principles of the Charter. It supports in this context an early reform of the Security Council as an essential element of the overall effort to reform the United Nations to make it more broadly representative, efficient and transparent and thus to further enhance its effectiveness and the legitimacy and implementation of its decisions.

On 15 September 2008, the General Assembly adopted Decision 62/557 on the "Question of equitable representation on and increase in the membership of the Security Council and related matters", which stipulates: *"To commence intergovernmental negotiations on Security Council reform in informal plenary of the General Assembly during the sixty- third session of the General Assembly, but not later than 28 February 2009, based on proposals by Member States, in good faith, with mutual respect and in an open, inclusive and transparent manner, on the question of equitable representation on and increase in the membership of the Security Council and other matters related to the Council, seeking a solution that can garner the widest possible political acceptance by Member States".*

Decision 62/557 also mentions that IGN should refer to five key issues: categories of membership; the question of the veto; regional representation; size of an enlarged Security Council and working methods of the Council; and the relationship between the Council and the General Assembly.

The IGN officially started in early 2009 and has continued since then in informal plenary of the General Assembly. Throughout the years of the IGN deliberations several documents have been produced by the previous Co-Chairs and submitted for consideration by Member States to help inform the IGN's future work, including the Framework Document of 2015, the "Elements of Convergence" circulated on 12 July 2016, the "Elements of Commonality and Issues for Further Consideration" circulated on 27 June 2017, the "Revised Elements of Commonality and Issues for Further Consideration" circulated on 14 June 2018, as well as the "Revised Elements of Commonality and Issues for Further Consideration" as circulated on 7 June 2019. Since IGN GA72 session, efforts have been made by the subsequent Co-Chairs to advance the work of the IGN. As a result there are now two documents referred to in the last roll-over decision (Decision 75/569 of 22 June 2021) - the Framework Document of 2015 and the "Co-Chairs' Elements Paper on Convergences and

Divergences on the question of equitable representation on and increase in the membership of the Security Council and related matters" circulated on 29 April 2021.

This Elements Paper builds on the "Co-Chairs' Elements Paper on Convergences and Divergences on the question of equitable representation on and increase in the membership of the Security Council and related matters" of 29 April 2021 and reflects the Co-Chairs' understanding of and views on the current state of the IGN process following the comments and remarks heard from Groups of States and Member States during the IGN GA 76th session.

I. Elements of General Convergence and Divergence

Convergences

1) The reform of the United Nations Security Council is in the interest of Member States and the United Nations system as a whole.

2) The reform of the Security Council is a Member States driven process.

3) The reform of the Security Council shall ensure an inclusive, transparent, efficient, effective, and accountable functioning of the Council.

4) The principle of democracy remains an important principle in Member States' efforts to reform the Council and needs to be further discussed.

5) The objective of reform is to make the Council more "broadly representative, efficient and transparent and thus to enhance its effectiveness and the legitimacy and implementation of its decisions", as stipulated by "the World Summit Outcome Document" of 2005.

6) There is a growing general agreement on the need for the increased representation of developing countries and small- and medium-sized states, including Small Island Developing States (SIDS).

7) There is a wider recognition and broader support by Member States for the legitimate aspiration of the African countries to play their rightful role on the global stage, including through an increased presence in the Security Council, as reflected in the Ezulwini Consensus and the Sirte Declaration adopted by the African Union in 2005. Redressing the historical injustice against Africa is viewed as a priority.

8) To improve the prospects for early reform, a continued, substantive, and enhanced engagement is of utmost importance.

9) Although expressing different views on substance, Member States are driving the IGN process forward together, in accordance with the usual practices and procedures of the General Assembly, and agree that the IGN process is the legitimate and most appropriate platform to pursue Security Council reform.

10) All five clusters are strongly interlinked and therefore negotiations should be based on the principle: "nothing is agreed until everything is agreed".

11) The IGN process should build on the work done in previous years, so that convergence will increase gradually, seeking solutions that garner the widest possible political acceptance by Member States, as mentioned in Decision 62/557.

Divergences

1) Taking into account article 23(1) of the UN Charter, the degree to which Member States' contributions to the maintenance of peace and security should be reflected in the duration of their presence in the Security Council remains to be further explored.

2) Although a large variety of opinions on the Security Council's reform persist, particularly in relation to the following three clusters: categories of membership; the question of the veto; and regional representation, many member states express a need to progress in the debate over these three clusters.

3) In seeking to improve the working practice of the IGN, some delegations call for exploring ways of enhancing its institutional memory and working methods, including through webcast, record-keeping and applying the GA rules of procedure, while other delegations wish to continue the IGN's work in informal plenary as mentioned in Decision 62/557.

4) There are repeated calls by a number of delegations, in particular the L.69 Group, the Benelux Group, the Group of 4, and the Nordic Group, to introduce a single consolidated document with attributions based on which the IGN negotiations should continue, while a number of delegations, in particular the Uniting for Consensus Group, the African Group, and the Arab Group, advocate for the need to agree on the principles of the reform before proceeding to negotiations based on a text.

5) A number of delegations, in particular the Uniting for Consensus Group, stress that only periodic elections of the members of the Security Council can guarantee the full accountability of the Security Council to the General Assembly.

II.   Clusters

1. Relationship between the Security Council and the General Assembly

Convergences

1) The General Assembly is the main deliberative, policymaking and representative organ of the United Nations, the only UN body with universal representation.

2) The relationship between the Security Council and the General Assembly should be mutually reinforcing and complementary, in accordance with and with full respect for their

respective functions, authority, powers, and competencies as enshrined in the Charter, including in respect to matters related to international peace and security. In this regard, it is important to:

2.1 Ensure increased cooperation, coordination and the exchange of information among the Presidents of the Security Council and of the General Assembly and also with the Secretariat of the United Nations, in particular the Secretary-General,

2.2 Continue and institutionalize the practice of regular meetings between the President of the Security Council and the President of the General Assembly,

2.3 Strengthen the cooperation and communication between the Security Council and the General Assembly, in particular through the early submission by the Security Council of annual reports of a more comprehensive and substantive nature, and through a timely, informed and meaningful discussion in the General Assembly of the annual report of the Council and of special reports to the General Assembly, in full implementation of the relevant provisions of the Charter[1],

2.4 Improve the participation in and access to the work of the Security Council and its subsidiary organs for all members of the General Assembly, to enhance the Council's accountability to the membership and increase the transparency of its work, in particular through:

2.4.1 Continuing to hold open sessions, open briefings, open debates, informal interactive dialogues, Arria-formula meetings, and regular as well as substantive wrap-up meetings by the presidency[2],

2.4.2 Continuing the progress in the selection and appointment process of the Secretary-General as an example of cooperation between the Security Council and the General Assembly,

2.4.3 Further enhancing consultations between the Security Council and troop- and police-contributing countries throughout all phases of Council-mandated peacekeeping operations, in line with the relevant provisions of the Charter [3],

2.4.4 Increasing interaction between the Council and the subsidiary bodies of the General Assembly, including the Peacebuilding Commission, in line with the relevant provisions of the Charter[4],

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[1] Inter alia, Articles 15(1) and 24(3) of the UN Charter, and taking into account GA resolutions 51/193 and 59/313.
[2] In line with, inter alia, the Presidential Statement S/PRST/1994/81 of 16 December 1994.
[3] Inter alia, Article 31 of the UN Charter.
[4] Inter alia, Article 96 of the UN Charter.

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2.4.5   Further enhancing the Council's interaction with specially affected Member States, in line with relevant provisions of the Charter[5],

2.4.6   Further strengthening cooperation with regional and sub-regional organizations and arrangements, inter alia the African Union's Peace and Security Council[6],

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3) Deliberations of the Ad Hoc Working Group on the Revitalization of the Work of the General Assembly (AHWG), including resolution 75/325 of 10 September 2021 and all other previous resolutions adopted by consensus relating to the GA revitalization, should be taken into consideration in discussions on this key issue.

Divergences

1) Further ways to enhance the accountability of an enlarged Security Council to the UN membership and to increase the transparency of the Security Council's work in relation to the General Assembly continue to be explored.

2. Size of an enlarged Security Council and the Working Methods of the Council

Convergences

1) There is a shared agreement among Member States that the Security Council needs to be enlarged in order to be more representative of the current membership and reflective of the realities of the contemporary world.

2) The reform of the Security Council should lead to an expansion of the Security Council, and therefore, certain areas of working methods need to be addressed as a result of expansion, with a view to increasing the transparency, effectiveness, functionality, and accountability of an enlarged Council.

<u>Size of an enlarged Security Council</u>

3) An enlarged Security Council should consist of a total of members in the mid-20s, within an overall range of 21-27 seats, with the exact number to emerge from the discussion of Member States on the key issues of "categories of membership" and "regional representation", and with the total size ensuring a balance between the representativeness and effectiveness of an enlarged Council[7].

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[5] Inter alia, Articles 31 and 32 of the UN Charter.
[6] In line with, inter alia, Chapter 8 of the UN Charter.
[7] This would, at a minimum, entail amendments to Article 23 (1) and 23 (2) of the UN Charter.

<u>Working methods of the Security Council</u>

4) There is a need to regularly review the working methods of an enlarged Security Council and to adjust them as appropriate.

5) Majority required for decision-making: the number of affirmative votes required should be in line with the current practice[8], with the exact number of votes required to emerge from the discussions of Member States on the key issues of "categories of membership", "regional representation" and "the question of veto"[9].

6) In addition to the ongoing efforts of the Security Council towards keeping its working methods under consideration in its regular work, with a view to ensuring their effective and consistent implementation, including of Note 507, the Security Council should be invited to consider the following measures in light of the increase in its membership:

6.1 Adapting its working methods to ensure transparent, efficient, effective and accountable functioning of the Council,

6.2 Adapting and reviewing the working methods of its subsidiary organs with a view to enhancing transparency, consistency, and clarity,

6.3 Ensuring the full participation of all members of the Security Council in its work, with a special emphasis on encouraging greater participation of non-permanent members, including the opportunity to serve as penholders and to hold the presidency of the enlarged Security Council at least once during their tenure. However, concrete ways to ensure that non-permanent have the opportunity to hold the rotating presidency at least once during their tenure continue to be discussed,

6.4 Enhancing the opportunities of non-members of the Council to participate in and contribute to the work of the Council and its subsidiary bodies, e.g. by ensuring the timely availability of the Council's working documents to the UN membership,

6.5 Undertaking a revision of the Council's Provisional Rules of Procedure to reflect these measures and further considering the formal adoption of its Provisional Rules of Procedure.

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[8] Examples:
- If an enlarged Council consists of 21 members, 12 votes would be required
- If an enlarged Council consists of 22 members, 12 votes would be required
- If an enlarged Council consists of 23 members, 13 votes would be required
- If an enlarged Council consists of 24 members, 13 votes would be required
- If an enlarged Council consists of 25 members, 14 votes would be required
- If an enlarged Council consists of 26 members, 14 votes would be required
- If an enlarged Council consists of 27 members, 15 votes would be required

[9] This would, at a minimum, entail amendments to Article 27 (2) and 27 (3) and to Article 109 (1) of the UN Charter.

Divergences

1) While there is a convergence on the need to ensure a balance between the representativeness and effectiveness of an enlarged Council, Member States continue discuss different methods to ensure this.

3. Categories of membership

Convergences

1) In an enlarged Security Council, the expansion of the category of 2-year term non-permanent members is accepted by all Member States as part of a comprehensive Security Council reform.

Divergences

1) During the IGN meetings, the following options in a reformed Security Council have been presented by Member States:

   a. Enlargement of the Security Council in both the permanent and 2-year non-permanent categories; and

   b. Enlargement of the Security Council with non-permanent seats only; either with 2-year term non-permanent seats only or 2-year term non-permanent seats and/or the possibility of immediate re-election and/or longer term non-permanent seats.

2) While there are different views on the categories of membership in a reformed Council, a significant number of delegations argue that the enlargement should include expansion in both the permanent and non-permanent categories.

3) Whether the possibility of creating longer-term non-permanent seats or permanent seats without veto would classify as the creation of a new category of membership or not remains to be deliberated.

4) While bearing in mind the close connections between all five key issues, categories of membership might be discussed in parallel with regional representation, the size of the Security Council, and the question of veto.

4. The question of the veto

Convergences

1) The question of the veto is a key element of Security Council reform.

2) A significant, growing number of Member States support limitations to the scope and use of the veto.

3) There is a strong and growing support among Member States for voluntarily refrain from the use of the veto in cases of mass atrocity crimes. Initiatives in this regard include (1) the "Political statement on the suspension of the veto in case of mass atrocities" presented by France and Mexico during the 70th session of the GA[10] and (2) the "Code of Conduct regarding Security Council action against genocide, crimes against humanity and war crimes"[11] by the Accountability, Coherence and Transparency (ACT) Group.

Divergences

1) More in-depth discussions are needed to explore how the veto would further impact the work and the effectiveness of an enlarged Security Council.

2) The following options in regards to the veto are being discussed by Member States:

   a. In the case of enlargement of the Security Council in the permanent category:

      i. Extension of the veto to all new permanent members; or
      ii. No extension of the veto; or
      iii. Extension of the veto to be decided on in the framework of a review.

   b. Abolition of the veto,

   c. Opposition in principle to the veto but with the caveat that as long as it exists, it should be made available to all permanent members of the Security Council, including any potential permanent members from Africa - based on the common African position reflected in the Ezulwini Consensus and the Sirte Declaration adopted by the African Union in March 2005.

   d. Limiting the scope and use of the veto. Further ways to do this continue to be explored.

5. Regional representation

Convergences

1) Enlargement of the Security Council should serve to improve the representation of the underrepresented and unrepresented regions and groups.

2) An increase in membership should allow for fair and equitable representation of all regional groups, as well as cross regional balances, while maintaining an effective and operational character of the Council.

3) There has been overall agreement to the need for an equitable representation of developing countries, small states, cross-regional groups such as Small Island Developing States, and

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[10] A/68/PV.5
[11] A/70/621

Arab States. In this regard, there is significant support for the creation of a rotating cross-regional seat for Small Island Developing States (SIDS). However, more in-depth discussions are needed to clarify questions pertaining to the specific mechanics of nomination and rotation for cross-regional groups.

4) There has been overall agreement that Africa should be equitably represented in a reformed Security Council.

5) Africa reserves its right to select Africa's representatives in the Security Council, based on its criteria for selection, as reflected in the Ezulwini Consensus and the Sirte Declaration. Candidates would then be considered for election by the General Assembly.

6) Members States have expressed different views with regard to the distribution of additional seats among the regional groups, but the majority of proposals call for the distribution of additional seats, whether non-permanent or permanent, to entail no less than 3 additional seats for African States, 3 for Asia-Pacific States, 2 for Latin American and Caribbean States, 1 for Western European and Other States, 1 for Eastern European States, and 1 for Arab States.

Divergences

1) The appropriate ratio between the number of non-permanent members and the number of countries in regional groups continues to be discussed.

2) The question of whether a country represents only itself in the Council, its region, or the whole of UN membership continues to be discussed. Member States' views on this issue differ depending also on the category of membership in question. The UN Charter, in Article 24(1) states: "*In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf*".

3) In relation with equitable representation, further clarification is needed on the distinction between the concepts of "equitable geographic distribution" and "regional representation".

4) In seeking a solution that can garner the widest possible political acceptance by Member States for an enlarged Security Council, ways should be sought to ensure consistency between the principles listed in paragraph d) of GA decision 62/557 with Article 23 (1) of the UN Charter which refers to "*the contribution of Members of the United Nations to the maintenance of international peace and security and to the other purposes of the Organization, and also to equitable geographical distribution*".

5) Proposals put forward during IGN GA76 meetings as well as previously reflected in the text and its annex circulated on 31 July 2015 (known as the Framework Document) on the distribution of additional seats under various reform models include, but are not limited to:

5.1 In case of expansion of non-permanent seats, including with a longer term, some Member States, including the Uniting for Consensus group, proposed:

    5.1.1   African States: 3 longer-term seats; Asia-Pacific States: 3 longer-term seats; Latin American and Caribbean States: 2 longer-term seats; Western European and Other States: 1 longer-term seat; Eastern European States: 1 two-year term seat; Small States, including Small Island Developing States [SIDS]: 1 two-year rotating seat across all regions.

5.2 In case of expansion of both permanent and non-permanent seats, some Member States, including the African Group, the Arab Group, CARICOM, the Group of 4, and the L.69 Group, proposed:

    5.2.1   New/additional permanent seats for: African States: no less than 2 or 2; Asia-Pacific States: 2; Latin American and Caribbean States: l; Western European and Other States: l; Arab States: 1.

    5.2.2   Additional two-year non-permanent seats for: African States: no less than 2, 1, 1-2, 2; Asia-Pacific States: l; Eastern European States: 1; Latin American and Caribbean States: 1; Western European and Other States: 1; Small Island Developing States [SIDS] across all regions that contain SIDS: 1; Arab States across regions: proportionate representation.