Reform of the UN

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First, I would like to thank the United Nations Association (UNA) Cardiff & District branch for the kind invitation to deliver this lecture.

1. Introduction

The reform of the United Nations (UN) is a popular buzz phrase within and without the United Nations. Officials of the UN, representatives of State members of the UN, relevant NGOs and other members of the civil society, as well as interested individuals are quite vociferous on the need to reform the UN and have proffered various suggestions on how this should be done. Malloch Brown, a former UN Deputy Secretary-General pointed out that:

> "UN reform is about politics in the sense that it is a response to the frustration of governments and the UN's other stakeholders with the organization's capacity to get results. People wanted more from the UN. Unable to deliver, the managers kept on trying to fix the machine. It became an occupational obsession." [1]

While this is so, I think it is important to note that the whole idea of UN reforms could be seen from two broad perspectives. In one sense, the whole debate on UN reform could be seen from the perspective that the organization was an imperfect organization from the onset and has to be radically overhauled to correct perceived blunders made by its initiators. In another sense, perhaps a more optimistic note, it may be argued that the talk about reform by States and other stakeholders, rather than an abandonment of the UN project, is a good sign. This could be said to be an affirmation that the UN is still regarded as an important tool in international relations and that it continues to play a crucial and relevant role. In the latter sense, the idea of reform is simply to make this significant organization

[1] Mark Malloch Brown, "The John W. Holmes Lecture: Can the UN Be Reformed?", (2008) 14(1) *Global Governance*, pp.1-12

more effective to tackle new challenges and situations that have arisen since it was set up in 1945.[2]

Undoubtedly, there is nothing new about the reform agenda of the UN. As far back as 1965 the need to reform the UN led to the increase of the membership of the Security Council from the original membership of 11 to the present number of 15. However, it would appear that since the end of the Cold war there has been an increase in the calls for reforms of the UN. There have been loads and loads of reform proposals and it would be an impossible task to identify and address all the proposals in a lecture of this nature. Fortunately, my remit for this evening is much simpler – I have been asked to mainly address certain proposals contained in a 112-page booklet I have been given which is titled – *Reform Proposals: For a Democratic United Nations and the Rule of Law (*a publication produced by the Dag Hammarskjold Foundation in cooperation with UNA Sweden) This booklet is a compilation of reform proposals by Erskine Barton Childers and some others and was compiled by Hanne Christensen. Even at that, I must point out that this booklet covers a wide-range of proposals and therefore we simply cannot, during our obviously limited time here today, cover all the proposals. I would therefore focus on some of the proposals in the booklet and a few other proposals that I believe would be of interest.

2. Membership

Perhaps, I should start off by looking at the membership of the UN. Although, there are no explicit proposals in the booklet on the reform of the membership of the UN, I have chosen to touch on this for two reasons. First, the booklet makes constant reference to roles that NGOs may play in some of the proposals that have been advocated. Second, because we are located in Wales and there have been suggestions in certain quarters about the possibility of Wales' membership of the UN. For e.g., Plaid Cymru (the Party of Wales) had at one time included as one of its aims the following: "To promote Wales's contribution to the global community and to attain membership of the United Nations."[3]

Membership is a particular important issue, since the UN, with a current membership of 193 States from the different regions of the world, representing diverse cultures, values and

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[2] See Justin Morris, "UN Security Council Reform: A Counsel for the 21st Century", (2000) 31 *Security Dialogue*, pp.265-277. See for instance, the Secretary-General's Report, *Renewing the United Nations: A Programme for Reform*, A/51/950 of 14 July 1997 and the Secretary-General's Report, *Strengthening the United Nations: an agenda for further change*, A/57/387 of 9 September 2002

[3] http://www.partyofwales.org/our-history/

religions, is undoubtedly the largest intergovernmental organization in the world. Article 4 of the United Nations Charter states:

> 1. Membership in the United Nations is open to all other peace-loving states which accept the obligations contained in the present Charter and, in the judgment of the Organization, are able and willing to carry out these obligations.
> 2. The admission of any such state to membership in the United Nations will be effected by a decision of the General Assembly upon the recommendation of the Security Council.

As we would note the current membership of the UN is limited to only 'peace-loving States.' Since, the end of the 2nd World War it would appear that all States are now regarded as 'peace-loving' for the purposes of admission to the UN. It really does not matter how big or small such a State is. There are States on both sides of the spectrum – big ones, such as China and small ones, as Nauru. For Wales to be considered for membership of the UN we need to examine the question - Is Wales a State under International Law? The relevant provision to start off from is the Montevideo Convention 1933, originally a Convention between some Latin American States, which over the years has been accepted as reflecting Customary International Law.[4] Article 1 of the Convention states that the criteria for Statehood is: permanent population, defined territory, government and capacity to enter into legal relations with other States (which connotes independence and sovereignty). Wales may clearly satisfy the first two criteria, and arguably may also be said to have a government, the Welsh Assembly Government (WAG), though the WAG has rather limited powers. However, it certainly does not satisfy the last requirement since it is an integral part of the UK. Devolution powers certainly does not give Wales the status of an independent Sovereign State and it has not at any time since the establishment of the UN been recognized by other States as such. Although, the strict interpretation of Article 4 of the Charter requires an entity to qualify as a State to be a member of the UN, there are nonetheless historical precedents where certain entities not technically States were admitted as members due to simple political exigencies. What I have in mind is the admission of Ukraine and Byelorussia (now Belarus) into membership at time of the establishment of the UN, when they could not strictly speaking be regarded as States because they were an integral part of the then USSR. This was done as a result of diplomatic horse trading between the bipolar powers – the USA and USSR. Using these precedents it is arguable that though Wales is not a State, technically it may be admitted to UN membership if such

[4] Edwin Egede and Peter Sutch, *The Politics of International Law and International Justice*, (Edinburgh University Press, 2013), p.101

membership is recommended by the Security Council and accepted by the General Assembly. However, it is doubtful if, in reality, this is likely a possibility because any such application is not likely to have the support of the P-5 members, a number of them who are unlikely to want to encourage such precedent, in view of the likely impact this may have on internal separatist movements within their borders. It also unlikely that the UK itself would support such application which in itself is contrary to the provisions of the Charter on membership and not in line with its national interest of keeping the UK as one.

The UN Charter obviously excludes international organizations, NGOs and other non-State entities from the membership of the UN. The question really is should the status quo of limiting UN membership to only States be retained in an international community composed not only by States, but also non-State actors. In a 1995 UN Declaration during the fiftieth anniversary of the UN, the General Assembly stated:

> "We recognize that our common work will be the more successful if it is supported by all concerned actors of the international community, including non-governmental organizations, multilateral financial institutions, regional organizations and all actors of the civil society." [5]

As we would recall, the United Nations was created in 1945 at a time where the focus was more on States. Things have since changed. While States still remain the main actors, there are certain non-state actors, such as international organisations and NGOs, which increasingly are playing vital roles in international politics. Should the membership of the UN be expanded to include such non-state actors? While a few modern international organisations actually permit other international organisations to be part of their membership (for e.g. the International Seabed Authority established under the Law of the Sea Convention 1982), NGOs cannot be members of the standard international organisation because they cannot be parties to treaties. In any event, to have non-State actors as part of the UN membership would, in my view, complicate things. At present the UN has a huge membership of 193 States and to add non-State actors to this would make it unwieldy and unmanageable. This would adversely affect the decision-making of the UN. I must say however that I support the present arrangement whereby States are the only members of the UN, and non-State actors, as NGOs, are merely given consultative status through bodies, such as the ECOSOC, which allows them to indirectly influence the UN and contribute to its progress.

[5] Para. 17, http://www.un.org/UN50/dec.htm

Further, I quite like the idea proposed in the booklet of some sort of consortium of NGOs with an interest in the UN, to provide such NGOs with a unified vehicle to seek to indirectly influence the direction of the UN (see pp.29-30 of the booklet).

2. General Assembly

The General Assembly is the most democratic organ of the UN with every State member being part of this plenary body. All States no matter how big or small have one vote a reflection of equality of States, an attribute of State Sovereignty (See Articles 2 [1] and 18[1] of the Charter) .

A. One of the proposals for reform in the booklet is the establishment of a sort of Parliamentary Assembly to function alongside the General Assembly. While membership of the General Assembly would be restricted to governments of member States as it presently operates, it is proposed that the so-called Parliamentary Assembly would be the 'voice global public opinion' (p.16 of the booklet). The members of the Parliamentary Assembly under this proposal would be elected by the world population as a whole. Although, this proposal appears to be good on paper, it is not, in my view, realistic. First, it appears to act on the assumption that all members of the UN are democratic States committed to promoting democratic values, which is certainly not the case. How would such election be conducted in non-democratic States? Second, it would be a logistic nightmare and very expensive to attempt to conduct an election for the world. Who would organise the elections - each of the member States of the UN, regional bodies or the UN itself? The situation in the EU where the European Parliament is elected must be distinguished from that of the UN. For one with the EU the member States share the similar democratic values as this is one of the core requirements for membership (Articles 2 and 49 of the Lisbon Treaty). Unfortunately, this is not so with the UN.
B. The proposals in the booklet appear in different places to emphasise on the need to more effectively use of the International Court of Justice advisory opinion jurisdiction. For instance, it proposes that the General Assembly should request the ICJ to provide an advisory opinion on whether Article 12(1) of the Charter (which prohibits the General Assembly from making any recommendations with regard to any dispute or situation that the Security Council is handling unless the latter so requests) takes precedence over that of Article 96(1)(which states that the General Assembly or the Security Council may request the ICJ to give an advisory opinion on any legal question)(see pp.12-13). I am not really clear on aim of such request for an ICJ advisory opinion on this issue. Anyway it suffices to say that the impact of an ICJ advisory opinion should not be exaggerated. While such advisory opinion would have some weight as an authoritative opinion on the

position of international law on an issue it certainly cannot amend the clear effect of the Charter and such advisory opinions are not legally binding.

C. Another proposal is that the General Assembly should condemn purchase and so-called extortion of votes in the General Assembly or Security by powerful States threatening for instance to cut aid, end debt relief or support the granting of loans by the World Bank to less powerful States. While it may be immoral for powerful States to use political and economic influence to pressurise other States to vote in support of the former States position in the General Assembly, Security Council and organs of the UN there is nothing illegal under international law about this. The General Assembly and Security Council, which are political bodies, are susceptible to situations whereby powerful States put pressure on less powerful States. Such so-called '[a]ttempts at purchase and extortion of votes' cannot be brought before the ICJ because it is not a legal issue, but merely a political one. See chapter II of the Statute of the ICJ. Further, the proposal requires that such attempts at purchase and extortion of votes should be 'indictable' at the ICJ and made public to the world population. First, I must point out that the ICJ cannot indict States because it is not a Criminal Court. Second, States under international law cannot be indicted for crimes, only individuals can. In the Nuremberg trial, the tribunal emphasised that States do not commit crimes; individuals do.[6] The option that is perhaps feasible is the proposed NGO watch list referred to name and shame States involved in such 'purchase and ex torsion' of votes. This would perhaps cause some of these States, at least, to desist from this due to the pressure of public opinion pressure.

3. Selecting the Secretary-General

The Secretary-General is to be appointed by the General Assembly upon the recommendation of the Security Council. (See Article 97 of the UN Charter). Technically, the proposal in the booklet is right that the General Assembly may reject the candidate recommended by the Security Council (p.18). However, it must be noted that the General Assembly cannot make the appointment without the Security Council. See in relation to the similar situation with regard to the admission of new members to the UN, the ICJ advisory opinion *in the Competence of the General Assembly for the Admission of a State to the United Nations*,[7] where the ICJ pointed out that the General Assembly could not admit a State to membership without the recommendation of the Security Council.

[6] See Philippe Kirsch, "Applying the Principles of Nuremberg in the International Criminal Court", (2007) 6 Washington University Global Studies Review, pp.501- 509 at 502

[7] [1950] ICJ Rep. 4

Further, the proposal appears to regard the S-G is the leader of the UN (see p.19). However, this does not really reflect the role of S-G as stated by the Charter. The S-G is more of an administrative head of the UN and certainly not the leader of the Organisation. The Charter states that the SG is 'the chief administrative officer of the Organisation.' (See Article 97 of UN Charter). Although, the S-G has multiple roles as an impartial arbitrator, a diplomat, spokesman etc. that led Trygve Lie the 1st S-G to describe it as '[t]he most impossible job on this earth', he is certainly not the leader of the UN. In my view, the real political leaders of the UN are the P-5 members of the Security Council, who have immense powers, notably the veto power, which enables them to determine the direction of the UN.

Further, the proposal is right that the General Assembly can adopt new rules on the search, selection and recommendation of the S-G. Although, the Charter does not go into specific details on this, the General Assembly had as far back as 1946 adopted Resolution 11(1) dealing with terms of appointment of the S-G. In this Resolution states that the S-G would serve for a renewal 5-year term. Over the years the practice has been for each S-G to serve a maximum of two terms (i.e. ten years). The proposal of a single term of 7 years in my view would be helpful in having a more independent S-G. With the current two term structure S-Gs who are too independent stand the risk of not being reappointed. An e.g. that readily comes to mind is S-G Boutros Boutros Ghali who was not reappointed for a second term because one of the P-5 vetoed his reappointment. It is said that this was because the P-5 member felt he was too independent during his first term.

Further, in relation to the suggestion in the booklet that the Security Council should submit three names to the General Assembly instead of one (p.19), it must be mentioned that the practice of submitting just one candidate is based on the 1946 General Assembly resolution. The General Assembly in this resolution indicated that it preferred that the Security Council recommends only one candidate to avoid a polarising debate in the General Assembly. Clearly such debate would weaken the legitimacy of any candidate who is eventually appointed. Further, I doubt that involving a wide range of actors, such as the NGO community and interested citizens, in the appointment process of the S-G, as put forward in the booklet, would be helpful(p.19). From the way the UN Charter is framed what is needed is a person of competence who the Security Council, especially the P-5 members, and the General Assembly are able and happy to work with, and not necessarily a person popular with NGOs and the so-called ‘citizens of the world.’ I do not see that there have been any major problems with public support of the S-G due to the non-involvement of NGOs and interested citizens in the appointment of the S-G.

I wholeheartedly agree with the proposal that the world is long overdue for a female S-G (p.20). The past 8 S-Gs have all been men. Although, the 1946 resolution states the candidate must be 'a man of eminence and high attainment'(Article 1) there is nothing under the Charter to suggest that this position should be limited to men. Limiting the post of S-G to only men would be contrary to one of the UN's core purpose of promoting and protecting human rights - prohibition of discrimination (see Article 1(3) and Article 8 of the Charter.

> Article 1(3)
>
> To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion;
>
> Article 8
>
> The United Nations shall place no restrictions on the eligibility of men and women to participate in any capacity and under conditions of equality in its principal and subsidiary organs.

4. Security Council

The Security Council, though listed in the UN Charter as the second principal organ is undoubtedly the most powerful of the six principal organs of the UN.[8] It has the primary responsibility for the maintenance of international peace and security, with binding powers to carry out this crucial role and may utilize non-military or military measures to do so.[9] As far as Kofi Annan, the erstwhile S-G of the UN, was concerned: “no reform of the United Nations would be complete without reform of the Security Council.”[10] This organ was originally composed of eleven States, but this has since been increased to fifteen States.[11] It is made up of five permanent members (P-5), who by virtue of the historical incidence of being the victorious powers at the end of the Second World War allotted to themselves this privileged position,[12] as well as ten non-permanent members who are elected for a term of two years.[13] The P-5 have immense powers to veto decisions of the Council on substantive matters. Although, the Charter does not specifically designate this power as the ‘veto’ power the provision of Article 27(3) of the Charter has that practical effect. Article 27(3) states that:

[8] Art.7 of the Charter lists the principal organs in the following order: The General Assembly, the Security Council, Economic and Social Council, Trusteeship Council, International Court of Justice and Secretariat.
[9] See Arts. 24, 25 and Chapter VII of the Charter
[10] Para.169 of the A/59/2005
[11] Art.23 of the Charter
[12] The five permanent members are China, France, Russia (successor to the USSR), the UK and the USA.
[13] Art.23 of the Charter

> "Decisions of the Security Council on all other matters [Non-procedural matters] shall be made by an affirmative vote of nine Members including the concurring votes of the permanent members; provided that, in decisions under Chapter VI [Pacific Settlement of Disputes], and under paragraph 3 of Article 52[regional arrangements for pacific settlement of disputes], a party to a dispute shall abstain from voting."

The debate on the reform of the Security Council has centered on three main areas – the veto, composition and improving working methods.

A. Veto

The issue of the veto of the P-5 of the UNSC, undoubtedly a significant issue in international law and international relations, has generated a lot of polemical arguments both for and against the retention of this power. Some have asked for the veto powers to be reformed to make the UNSC more effective. Various proposals have been made to reform the veto power. For instance, as far back as the San Francisco Conference Australia had proposed the waiving of the veto power in all proceedings arising under Chapter VI of the Charter i.e. pacific settlement of disputes. [14] This proposal was not accepted, however Article 27 of the Charter requires that in decisions under Chapter VI a party to the dispute shall abstain from voting. The Non-Aligned Movement (NAM) in 1998 proposed that the veto should be curtailed with a view to its elimination, and as a first step that the veto power should only apply to enforcement actions taken under Chapter VII.[15] Others, like the African Union, proposed the restriction on single P-5 member veto by stating that a veto should only prevent the Security Council from acting if cast by at least two or more P-5 members.[16] However, the constraint of Article 108 limits the extent of reform of the veto power that could realistically be achieved. It is unlikely that the P-5 members would consent to any reform of this immense power that would either withdraw this privileged power or water it down. The High Level Panel (HLP) report 2004 acknowledged this much by stating that they see no practical way of changing the existing members' veto power though in their view the veto power has "anachronistic character that is unsuitable for the institution in an increasingly democratic age."[17] In what appeared to be an indication of the Panel's sense of helplessness in this regard they urged that the veto power

[14] Wouters and Ruys, "Security Council Reform: A New Veto for a New Century," at p.21, http://www.law.kuleuven.be/iir/nl/onderzoek/wp/WP78e.pdf

[15] Ibid. See also Report of the Open-ended Working Group on the Question of Equitable Representation on and Increase in the Membership of the Security Council and Other Matters related to the Security Council, General Assembly, Official Records, Fifty-third Session, Supplement No.47 (A/53/47), p.34, http://www.undemocracy.com/A-53-47.pdf

[16] Wouters and Ruys, op.cit. at p.22

[17] HLP Report, A More Secure World: Our Shared Responsibility, para.256

should be limited to matters where the vital interests are genuinely at stake.[18] However, they were not clear on they meant by 'vital interests'. Who determines whether or not the vital interests are genuinely at stake? Further, the HLP pleaded rather helplessly with each individual P-5 member, in their individual capacities, to pledge themselves to refrain from using the veto in the cases of genocide and large-scale human rights abuses.[19] They however recommended that under any reform expanding the composition of the Security Council the veto power should not be extended to the new members. Basically this advocates for inequality as between P-5 members and other permanent members that may be selected in an expanded Security Council.[20] In the view of the African Union (AU), such inequality would be contrary to "common justice." Therefore, the AU while opposing the veto in principle advocated that it should be available also to new permanent members.[21]

There is also a proposal in the booklet that the Security Council should voluntarily relinquish their veto in respect of the appointment of the S-G and amendments of the Charter (p.36). This in my view is not likely to happen as the veto is a power-tool used by the P-5 members to secure what they perceive to be their national interest. It may be argued that though the veto power is sometimes used immorally, it is an important tool that keeps the P-5 members within the UN and probably explains the longevity of the UN. Without the veto would the P-5 members remain in the UN?

The HLP also recommended the introduction of a system of indicative voting whereby members of the Security Council could call for a public indication of positions on a proposed action. In this indicative vote, a 'no' vote by a P-5 member would not be regarded as a veto. Thereafter, a second formal vote would be held where the 'no' vote of such P-5 member would then be regarded as a veto. The Panel was of the view that such indicative voting system would increase accountability of the veto function.[22] The idea appears to be that an indicative 'no' vote would leave a P-5 member open to pressure from public opinion that would embarrass them to withdraw a 'no' vote which is against public opinion.[23] It is not clear upon what basis the Panel took the opinion that such indicative vote would make the veto system more accountable. If it is merely based on the pressure of public opinion, it is doubtful that this

[18] Ibid
[19] Ibid
[20] Ibid
[21] See African Union, The Common African Position on the Proposed Reform of the United Nations, "The Ezulwini Consensus," http://www.safpi.org/publications/common-african-position-proposed-reform-united-nations-ezulwini-consensus
[22] HLP Report, para.257
[23] Yehuda Blum, "Proposals for UN Security Council Reform" (2005)99(3) American Journal of International Law, pp.632-649 at 643-644

would dissuade a P-5 member, especially those that are non-democratic States, from pursuing a veto that is unpopular so long as the leadership of such P-5 member are of the view that it is in their national interest to do so.

B. Composition

Due to the exponential growth of the UN to the current membership of 193, there have been calls for the expansion of the Security Council from its current number. This is more so as some regions of the world, for e.g. Africa and Latin America, are not represented amongst the P-5.[24] Further, it was felt that since the "Security Council had originally been conceived and designed as a body encapsulating, and effectively institutionalizing, the global balance of power,"[25] there was a need for a reformed Security Council that would reflect the current power configuration, which has changed dramatically since 1945 when the Charter was adopted. However, although virtually everyone agrees that the composition of the Security Council should be reformed there is no agreement on how this should be done. Who should for instance be brought in as additional permanent members? Should there even be additional permanent members? How can the Security Council be reformed to make it more representative without making it too large and thereby affect adversely its effectiveness?

C Improving working methods

The HLP Report, the In Larger Freedom Report and the 2005 World Summit were all united on the need to improve the working methods of the Security Council in order to promote transparency and accountability, a reform that could be embarked upon without the need to amend the Charter.[26] Quite a bit of work has been done in this regard. The Security Council now has annual debates on certain matters to improve dialogue between the Security Council members and other member States of the UN. Since 2010 debates have become an annual practice (previously, only two such debates were held: in 1994 and 2008). It seeks to make more effective use of public meetings; maintaining regular communication with the Peacebuilding Commission and the chairs of its country-specific configurations; expanding consultation and cooperation with relevant regional and sub-regional organizations.[27]

D. Charter Sequence to Chapter VII

[24] The African and Latin America and Caribbean Grouping are not represented amongst the P-5.
[25] See Morris, "UN Security Council Reform: A Counsel for the 21st Century", op.cit. at p.266.
[26] Para.21 of Secretary-General's Report, Strengthening of the United Nations: an agenda for further change, A/57/387 of 9 September 2002. Para.258 of HLP Report, Para.168 of In Larger Freedom Report and Para.154 of World Summit outcome document.
[27] See Security Council Working Methods, http://www.securitycouncilreport.org/monthly-forecast/2013-10/security_council_working_methods.php

The booklet proposes that the Security Council should first and foremost have recourse to peaceful redress under Chapter VI before using enforcement measures under Chapter VII, such as sanctions, and as a last resort the use of military force (p.34). Ideally this may be the best way to go and the Security Council does try to promote peaceful settlement in appropriate cases. However there is no doubt that in cases of extreme emergency involving a massive loss of human lives it would be preferable for the Security Council to act promptly under Chapter VII, and in appropriate cases to use military force even if it is as a first resort. I think the sequence of Chapter VI before Chapter VII may be the general rule, but we have to recognize that in extreme and justifiable situations the Security Council must and should have the discretion to depart from any such sequence.

E. Should the Security Council have a Standing Army and Police Force?

Clearly some kind of standing military and police force would improve the efficiency of the UN in terms of deployment (See pp.40-41 and 44 of the booklet). However, I am rather skeptical about the practicality of this. The UN is not a State so cannot raise a Standing military or police force without the contribution of States. Would the big States that actually have a well-equipped military and police force be willing to commit their personnel to being permanently assigned to the UN? What about the cost of maintaining this standing military and police force? Would it not be too expensive to maintain such standing military? Who would bear the cost? Would this not imply that the UN is some sort of World government? Mr. Morrison, the Executive Director of the Canadian Institute of Strategic Studies, in his incisive article, raises, amongst other things, the following questions to illustrate the difficulties of having a Standing UN force:[28]

- Would the army have to be racially and geographically balanced?
- Who would exercise command control – the UN Secretary-General? The Security Council? The Military Staff Committee?
- Where would the troops have their base? Would it be centralised or decentralised?
- How would the troops be paid?
- Who would train the troops?

Would States be ready to commit long term to such standing army? I very much doubt this because of the cost, especially with pressing domestic issues that would require such scarce resources. Even, if the States are willing and able to provide resources to support such

[28] Alex Morrison, "The Fiction of a UN Standing Army", (1994) 18 Fletcher Forum of World Affairs, pp.83-96 at 95

standing army their deployment would still require Security Council authorization and of course this would still be subject to P-5 politics.

It has also been proposed in certain other quarters of the possibility that UN peace-keeping operations may be outsourced to Private Military Companies (PMCs).[29] Some arguments in favour are availability and relatively lower costs. However, arguments against in my view are quite weighty – Are PMCs not just merely 'corporate mercenaries' (Ballesteros, former UN Rapporteur on Mercenaries) since they are motivated primarily by profit? Do they have the ability to operate within basic principles of UN Peacekeeping? Are they really accountable? At least regular military and police force, in spite of shortcomings that have resulted in some scandals can be held accountable by their home State.[30]

5. Trusteeship Council

The Trusteeship Council, another principal organ of the UN, completed its assignment in 1994 when the last trust territory, Palau, gained independence.[31] Since then the issue has been what to do with this organ. Should it be deleted from the UN Charter as a principal organ or should it be given another remit? As far as the HLP Panel was concerned, the provisions of the Charter dealing with the Trusteeship Council should be deleted since it had completed its assignment of decolonization. The Panel appeared to be of the view that the deletion of the Trusteeship Council from the Charter would be an indication that the UN has turned its "back on any attempt to return to the mentalities and forms of colonialism."[32] They advocated, that the Human Rights Council (HRC) should eventual replace the Trusteeship Council as a principal organ.[33] The deletion of the Trusteeship Council from the UN Charter was endorsed by the 2005 World summit[34]and this appears to be implicit in the In Larger Freedom report.[35] It should be noted, however that previously in July 1997 the UN Secretary-General had

[29] See Oldrich Bures, "Private Military Companies: A Second Best Peacekeeping Option? (2005) 12(4) International Peacekeeping, pp.533-546 and Daphné Richemond, "The New Peacekeepers? Private Military Corporations and the Future of Peacekeeping Operations", ESIL Working Agora Series, December 2007, http://www.esil-sedi.eu/fichiers/en/Agora_Richemond_358.pdf

[3030] See Lindsey Cameron, "Private Military Companies: their status under International Humanitarian Law and its impact on their regulation", (2006) 88(863) International Review of the Red Cross, pp.573-598

[31] Trusteeship Council Res.2199 (LXI) (May 25, 1994). On the Trusteeship Council, see Chapter XIII of the UN Charter, Ralph Wilde, "Trusteeship Council" in Thomas G. Weiss and Sam Daws (eds.), *The Oxford Handbook on the United Nations*, op.cit, pp.149-159 and Egede and Sutch, *The Politics of International Law and International Justice*, op.cit. pp.147-148

[32] Para.299.

[33] Para 291

[34] Para.176

[35] Paras.165 and 166

proposed in his report to the General Assembly – *Renewing the UN: A programme for reform* – that the Trusteeship Council:

> "…be reconstituted as the forum through which Member States exercise their collective trusteeship for the integrity of the global environment and common areas such as the oceans, atmosphere and outer space. At the same time, it should serve to link the United Nations and civil society in addressing these areas of global concern, which require the active contribution of public, private and voluntary sectors."[36]

This proposal did not receive an enthusiastic response from the member States.[37] It is not clear how this proposal would be feasible in the case of global commons that already have an institutional framework by which States are able to exercise their collective trusteeship. For instance, in respect of the seabed and ocean floor and subsoil thereof beyond the limits of national jurisdiction (the Area), which together with the resources therein, are the common heritage of mankind, there is a comprehensive institutional framework. Here the International Seabed Authority (ISA) acts as a type of trustee on behalf of the States Parties to the Law of the Sea Convention (LOSC) 1982.[38] It is difficult to understand how the conventional role of the ISA would be reconciled with that of the Trusteeship Council if such proposal were accepted. Will it be the Trusteeship Council or the ISA that would act in respect of the Area? This would certainly raise complex issues. Some others have suggested that the Trusteeship Council be given a new remit as a "modern international clearing house for self-determination."[39] This is an interesting proposal, as it would amount to a 'collectivization' of the whole process of recognition of entities that seek to be admitted as States members of the international community and perhaps achieve some kind of certainty in the recognition process. It is not certain what the response of States have been to this proposal. Another suggestion is that the Trusteeship Council could be used to provide support and to administer 'failed States.' However, in view of the fact that a number of such States are located in Africa, some have argued that this would amount to reintroducing "benign colonialism" in parts of Africa.[40]

6. Financing the UN

An international Organization requires proper funding to effectively carry out its aims and objectives (See pp.59-63 of the booklet). Usually the financing of an international organization, including the UN, is derived mainly from the contributions of members. There is an important

[36] Para.85 of A/51/950 of 14 July 1997.
[37] Wilde, "Trusteeship Council", op.cit.at p.156
[38] Arts.1 (1), 136 and 137(2) of the LOSC 1982.
[39] Carolyn L. Wilson, "Changing the Charter: The United Nations Prepares for the Twenty-first Century."(1996) 90(1) *The American Journal of International Law*, p.115 at 122.
[40] Wilde, "Trusteeship Council", op.cit.at pp.155-156

nexus between financing of an international organization and influence. A State that is a major contributor of finance to an international organization may seek to have significant influence in the decision-making of such organization. This is not unusual, it is just the natural course of things – I believe the idiom is: 'He who pays the piper dictates the tune'. I am not too sure, as stated in the proposal, if introducing a limit on contributions would be the answer in the UN. The question is if other States members would be able or willing to absorb the difference, especially with competing domestic issues that require such scarce finances. The only way to reduce the influence of major contributor States is to look for alternative sources of income. Taxation in any form, in my view, is not likely to work. The UN is not a State and would have to rely on States Members to impose taxes. I doubt that member States would support this. Further, it is doubtful that a large number of individuals in member States who are currently paying what they regard as high domestic taxes would be happy to pay additional taxes to the UN. Another alternative source of funding is voluntary giving - perhaps through using, amongst other things, an online giving facility - by individuals and other non-State actors that support the aims and objectives of the UN. Would this raise a substantial amount of money to provide an alternate source of funds that would give the UN financially autonomy? It is very unlikely. It is doubtful that there would be that many Ted Turner type of donations.[41] However, this may bring in some non-State contribution income for the UN, and perhaps in some ways serve as a gauge for the UN to determine how much non-State actors are actually engaged with the UN. Arguable a significant financial contribution by non-State actors to the UN would be an indication of support for the UN going beyond just the States.

7. UN Charter – To Amend or not to Amend?

In exploring these initiatives, it is important to point out that there are two broad types of reform initiatives – one that necessarily involves amending the constituent instruments and that, which could be done without such amendment. Obviously, the former initiatives are usually more difficult to achieve because of the sometimes cumbersome amendment processes as contained in Article 108 of the UN Charter which states:

> "Amendments to the present Charter shall come into force for all Members of the United Nations when they have been adopted by a vote of two-thirds of the members of the General Assembly and ratified in accordance with their respective constitutional processes by two-thirds of the Members of the United Nations, including all the permanent Members of the Security Council."[42]

[41] In September 1997 Ted Turner announced a $1 billion dollar donation to the UN to aid their work, especially in areas such as the fight against global poverty, http://edition.cnn.com/US/9709/18/turner.gift/

[42] See also Art.109

The requirement that P-5 members concur to any amendment of the Charter makes reform of the UN involving the amendment of the Charter rather difficult to achieve. It has therefore been advocated that perhaps the focus of UN reforms should be that which would not necessarily entail Charter amendment.[43] While this may be a convenient way to obtain a more speedy reform of the UN system, to address the fundamental issues that affect the legitimacy of the UN there would be a need to amend the Charter. An almost impossible task if such amendment is not regarded by the P-5 members as aligning with their interest.

8. Conclusion

There has certainly not been a shortage of reform initiatives in respect of the UN. Reports and proposals abound in respect of UN reform. While some of the reforms have been adopted and implemented, a number of the reform initiatives remain 'lost' in the various report documents and archives. The bottom line is that unless there is political will on the part of the member States of the UN, notably the P-5 States, it is unlikely that substantial far-reaching reforms to make the UN more effective in the 21st century would be achieved. Although a number of the UN member States appear to subliminally accept the need for far-reaching reforms to make these institutions 'fit for purpose' for the 21st century, the lack of political will, the desire to protect selfish national interests and the feeling of not wanting to 'rock the boat,' would always result in the apathy of States in taking real action in achieving comprehensive and drastic reforms.

[43] See Louis Sohn, "Important Improvements in the Functioning of the Principal Organs of the United Nations that can be made without Charter Revision", (1997) 91 *American Journal of International Law*, pp.652-662 and Michael Reisman, "Amending the UN Charter: The Art of the Feasible," (1994) 88 *American Society of International Law Proceedings*,pp.108-115