



# Reforming the Working Methods of the UN Security Council

The Next ACT

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- ACT is a new group of 22 UN member states that is pressing for reform of the working methods of the UN Security Council in order to improve its accountability, coherence and transparency.
- To achieve its aims, ACT will have to avoid being caught up in the stalled debate over Council membership reform. The group, currently dominated by small states, will also need new partners from different geographical regions, and with more political weight. Moreover, if ACT wants to involve the permanent members of the Security Council, it may have to limit its emphasis on the role of the veto.
- ACT aims to encourage UN member states to dedicate energy and political capital to reform of the Council's working methods. The overwhelming majority of them would also profit from the body's improved functioning at times when they are not in the Council as non-permanent members, which is most of the time.
- ACT's seemingly technical and modest proposals cut to the highly-political core issues of who controls representation of member states interests and who controls the reform agenda at the UN.

## Introduction

On 2 May 2013 a group of just over 20 UN member states launched a new initiative to improve the working methods of the UN Security Council. The group chose the acronym ACT to highlight its goal of pressing for greater Accountability, Coherence and Transparency in the Council's activities. To achieve this, ACT aims to increase both the involvement of non-Council members and the accountability of the Council to the entire UN membership. The group currently comprises 22 members from various regions: Austria, Chile, Costa Rica, Estonia, Finland, Gabon, Hungary, Ireland, Jordan, Liechtenstein, Maldives, New Zealand, Norway, Papua New Guinea, Peru, Portugal, Saudi Arabia, Slovenia, Sweden, Switzerland, Tanzania (observer) and Uruguay.

This publication investigates the opportunities and the political challenges that lie ahead for this new initiative, especially against the backdrop of two processes: firstly, the currently stalled attempts to reform the composition and membership of the Council. Secondly, the failure of the so-called S-5 group, whose efforts to reform working methods crumbled in 2012 under the joint pressure exercised by the permanent five (P5) members of the UN Security Council.

### Security Council Membership Reform: Stalled Again

The debate about reforming the UN Security Council is about as old as the UN itself. This is mainly due to the fact that from the very beginning in 1945 the dominance of the five permanent members (the so-called P5 countries: China, France, Russia, the United Kingdom and the United States) was enshrined in the UN Charter when they assigned themselves the prerogative of the veto<sup>1</sup>. Back then, in addition to the P5, the Council was composed of six non-permanent members that were elected for a two-year term and did not have veto power. In 1965, the number of elected, non-permanent seats without veto power was extended from six to ten, bringing the Council up to its current configuration. This remains the only Security Council reform involving an amendment of the Charter that has ever been adopted.

1. For the historic overview see Kugel (2009): Reform of the Security Council – a new approach? FES Briefing Paper No. 12. Retrieved 22 July 2013 from: <http://library.fes.de/pdf-files/iez/global/06696.pdf>.

Yet as the increase in UN membership due to decolonization continued, so too did calls for increased regional representation and further reform of the Council. In 1992, this led to the establishment 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«: a cumbersome term even by UN standards. However, this informal Working Group quickly became deadlocked in its reform efforts, as it had to operate on the basis of consensus. The disagreement over the extension of the Council was also reflected in the 2005 UN World Summit Outcome Document (A/RES/60/1). On the one hand, there were membership groupings such as the Africa Group at the UN and the Group of Four (G4), comprising Brazil, Germany, India and Japan, which sought an increase in the number of permanent seats on the Council. On the other, the Uniting for Consensus group (UfC) was formed by regional counterweights to the G4 (including, among others, Argentina, Italy, Pakistan, South Korea) and advocates only an extension of non-permanent seats.

The stalemate lingered on until 2008 when member states agreed to upgrade the issue and enter into intergovernmental negotiations under the auspices of the General Assembly. This also meant that decisions could be taken by a two-thirds majority vote. Led by the Afghan Ambassador to the UN, Zahir Tanin, eight rounds of negotiations on a text to reform the Council were conducted. But they were called off in May 2013 when the differences seemed too insurmountable to continue the debate. Tanin concluded that, for the time being, it would be better to »put the negotiations on strategic hold.«<sup>2</sup> But his position as negotiation leader also seemed to be weakened because of an ongoing tussle with the incumbent President of the General Assembly, Vuk Jeremic<sup>3</sup>. Once again it appears that when it comes to efforts to reform Security Council membership, inertia is gaining momentum.

2. A comprehensive review of the dynamic of these intergovernmental negotiations can be found at Swart, Lydia (2013): Reform of the Security Council: September 2007 – May 2013. Retrieved 1 July 2013 from <http://www.centerforunreform.org/system/files/1b+June+2013+for+website.pdf>.

3. See »A New Low Point in the Security Council Reform Process: Serious Clashes between the President of the General Assembly and Chair«, Center for UN Reform Education, June 2013, retrieved 22 July 2013 from <http://www.centerforunreform.org/node/501>.

## S-5: Chronicle of a Death Foretold

What does this stalemate imply for reforming the Council's working methods? Article 30 of the UN Charter stipulates that the Security Council shall adopt its own rules of procedure. The Council did so in 1946, when it adopted its Provisional Rules of Procedure (S/96), which, while having undergone some changes, continue to be provisional. Throughout the Cold War, the Council was not inclined to improve either its working methods or its transparency. Yet by the early 1990s, the Security Council was being called into action more frequently, for instance when it came to devising sanctions regimes and mandates for peacekeeping operations. As the Council's workload grew, so too did demands from the wider UN membership for the Council to become more effective and efficient. Although the Council did make some progressive changes to its working methods and practices, a considerable level of dissatisfaction remained. As a result, the 2005 UN World Summit Outcome Document, while not agreeing on membership reform, did recommend that the Council improve its working methods to become more accountable to the membership and more transparent.

To follow up on these recommendations, in late 2005 five small countries (Costa Rica, Jordan, Liechtenstein, Singapore and Switzerland) formed a cross-regional group, the so-called »S-5«. From the beginning, the S-5 emphasized that its initiative was by no means revolutionary, but that it was an invitation to the Council to consider some significant recommendations. Avoiding far-reaching matters such as changing the Council's composition, for which a two-thirds majority of UN member states in the General Assembly would have to agree on an amendment of the UN Charter, the group came up with proposals that could be passed by a simple majority. In May 2012 the S-5 initiative led to a draft resolution (A/66/L.42/Rev.2)<sup>4</sup>, which contained several recommendations for the Security Council with regards to its relationship with the General Assembly; the effectiveness of decisions; the relationship with subsidiary bodies; the operations mandated by the Council; governance and accountability; and the appointment of the UN Secretary-General (SG).

In addition, and most importantly, the draft resolution called on the P5 to reassess their use of the veto: firstly,

by requiring them to explain why a veto is employed, or even considered. Secondly, by refraining from employing a veto when Council actions are intended to prevent mass atrocity crimes. It was this last proposition in particular that divided the P5 from the rest of the non-permanent members. Reiterating that the Council should decide on its own working methods, the P5 let it be known that this was a decision they alone would take.

Behind closed doors, the P5 undertook concerted action to prevent member states from casting a positive vote on the proposal. China, for instance, was highly instrumental in the division of labor among the P5 by putting pressure on African countries. This unified approach behind the scenes is all the more remarkable as it coincided with the much-publicized confrontation between Russia (and in its tailwind China) on the one side and the Western permanent members on the other over the Council's response to the civil war in Syria.

In addition, the Western P3 put pressure on the UN's Under-Secretary-General for Legal Affairs and UN Legal Counsel, Patricia O'Brien. O'Brien took a somewhat legalistic but ultimately highly political decision that the S-5 draft resolution was important enough to require a two-thirds majority in the General Assembly. But even this higher bar would not have been enough to tilt enough UN member states against the proposal. This happened only after a tactical maneuver by the UfC group in the run-up to the vote. The UfC had initially been sympathetic to the S-5 initiative and considered working methods reform to be an indivisible element of its own comprehensive reform proposals. As it became clear that G4 countries supported a vote on the S-5 initiative as a useful test for their own efforts to bring Council reform resolutions to the General Assembly, the UfC tactically reversed their previous support for the S-5, taking along enough member states to prevent a successful vote.

As a result, the S-5 finally withdrew their draft resolution before a vote. Leading the S-5 initiative, Switzerland's UN Ambassador Paul Seger deplored what he saw as the absence of common sense and the fact that the draft resolution had turned into such a divisive issue for UN member states<sup>5</sup>. Moreover, the retreat was also seen as

4. Retrieved 22 July 2013 from <http://www.un.org/Docs/journal/asp/ws.asp?m=a/66/l.42/rev.2>.

5. »Switzerland withdraws draft resolution in General Assembly aimed at improving Security Council's working methods to avoid 'politically complex' wrangling.« UN Department of Public Information, 16 May 2012, retrieved 8 July 2013 from <http://www.un.org/News/Press/docs/2012/ga11234.doc.htm>.

necessary to prevent the precedent being established that any future resolution on Security Council working methods would be considered to require a two-thirds majority. Such tactical and long-term strategic considerations aside, the failure of the S-5 was first and foremost a show of force on the part of a P5 determined to maintain their control over the representation of member states interests and the reform agenda at the UN.

## ACT – A Cautious Trajectory

Over the last year, ACT has emerged as a new formation that aims to address the ongoing challenges posed by the Council's working methods. ACT, which consists of four of the S-5 countries<sup>6</sup>, states as its mission that: »[t]he UN Security Council (UNSC), in its present composition, shall work in a more transparent, efficient, inclusive, coherent, legitimate and accountable way, both within its own structure, but also in relationship with the wider membership.«<sup>7</sup> Improvements are meant to be concrete and pragmatic. Similar to the S-5 initiative, ACT wants to stay outside the debate on reforming and extending the membership of the Council. Neither does it intend to intervene as a group in the intergovernmental process for Council membership reform.

The reform topics that ACT wants to address have a large overlap with the agenda of the S-5 – including the much-contested proposal that the P5 should refrain from employing their veto in cases of mass atrocities. But ACT is also focusing on new topics, such as the role of the Council in conflict prevention (according to the Chapter VI of the UN Charter) and the Council's relationship with regional organizations (Chapter VIII). Due to its larger membership, ACT aims to work on a range of topics in parallel, involving smaller teams led by different countries. For instance, Liechtenstein will focus on the relationship of the Council with the International Criminal Court and the International Criminal Tribunal for the former Yugoslavia, while Uruguay will address the participation in the work of the Council of troop-contributing countries to UN peacekeeping operations. In addition to topical and regional coordination, there will

6. Singapore decided to no longer be part of this reform initiative, caused also by the run-in with the United States.

7. ACT Fact Sheet, Permanent Mission of Switzerland to the UN, May 2013, retrieved 22 July 2013 from <http://www.eda.admin.ch/etc/medialib/downloads/edazen/topics/intorg/un/missny/other.Par.0165.File.tmp/ACT%20Fact%20Sheet.pdf>.

be one coordinating mission, currently Switzerland, for the entire group.

In sum, ACT is not intended to lead to another show-down on a comprehensive working-methods related resolution in the UN General Assembly: a resolution that would again run the risk of an unclear majority. Instead, ACT will be a much more issues-based work-in-progress operating in different venues (the General Assembly and the Security Council), on different occasions (thematic GA resolutions, open debates in the Council), and with different interlocutors (Council members, non-members, civil society and research organizations).

## Political Challenges and Opportunities

Despite its modest, pragmatic, and non-confrontational approach, ACT will still have to overcome a number of hurdles and explore a range of political opportunities if it is to have an impact on the Council's working methods.

### Steer clear of the membership reform debate

One of the main political challenges will be to keep the issue of working methods separate from the Council membership reform debate. The inertia in the case of the latter is not likely to go away any time soon as different groupings have hardened their positions. An extension of the veto to new permanent members is completely out of the question for the P5 – no matter what their political disagreements are otherwise. In part as a reaction to this, the G4 have signaled some flexibility on this issue. But at their latest summit in May 2013, African Union leaders reiterated the Ezulwini Consensus of 2005, which demands for Africa two permanent seats with veto power and five non-permanent seats. In this, the African Group is not alone. The L69 Group, which also includes the G4 members India and Brazil, now takes a position that dovetails with the African demands. Another regional grouping, CARICOM, has also come out in favor of the veto for the new seats<sup>8</sup>. In other words, the membership reform debate seems to be more entrenched than ever.

8. »Draft Resolutions on Security Council Reform: Growing Convergence among Developing Countries?« Swart, L. retrieved 15 July 2013 from <http://www.centerforunreform.org/node/496>

### Exploit the small countries advantage

ACT may turn out to be another example of how small UN countries are in a better position to drive the UN agenda in an innovative way. Seventeen of ACT's twenty-two members also belong to the Forum of Small States, an informal grouping of UN member countries with populations under 10 million.<sup>9</sup> Small states are more dependent than larger countries on international law being upheld. As has been seen with both the establishment of the International Criminal Court and the initiative for a recently adopted Arms Trade Treaty, small countries that pursue flexible, light-touch diplomacy can become effective players in international cooperation. After all, the overwhelming majority of UN Member States are small or medium-sized countries who only infrequently serve on the Council. For instance, 10 of the 22 ACT members are currently vying for a non-permanent seat on the Council. But for them and the majority of other states a reform of working methods could potentially have a far more significant impact than any change in the number of Council seats.

### Extend ACT membership

Despite the diplomatic dexterity of ACT's current members, the imbalance in the grouping's overall composition needs to be addressed. This applies first of all to the uneven geographical distribution. For instance, among the twenty-two countries that currently make up the ACT group, there are only two states representing Asia (Maldives and Papua New Guinea) and just two African countries (Guinea, and Tanzania as an observer). Secondly, relying on »small is beautiful« may not be enough in the long run: the inclusion of larger, medium-sized powers would be one logical next step. At the same time, ACT would be well advised not to include any of the ringleaders of the different SC membership reform groupings (UfC, the G4 or the Ezulwini consensus) if it is to avoid being associated with their respective membership reform proposals.

9. See »Small States Bring Big Ideas to the United Nations« by Andrea Ó Súilleabháin; IPI Global Observatory, 11 June 2013, retrieved 10 July 2013 from <http://theglobalobservatory.org/component/myblog/small-states-bring-big-ideas-to-the-united-nations/blogger/osuilleabhain/>

### Improve dialogue with the P5

An even more difficult task, though ultimately more rewarding, would be winning the commitment of a permanent member of the Council to this working methods reform project. For the first time since May 2012, when the S-5 initiative was subdued by a coordinated joint effort of all five permanent members, there seems to be some movement. The UK (which participated in the launch of the ACT initiative) and France appear to be most sympathetic. In December 2012 France announced its support for the proposal that

permanent Council members voluntarily forego the use of their veto in reaction to mass atrocity crimes. This shift is in line with the country's recent engagement in Ivory Coast and Libya – interventions that were both justified with reference to the responsibility to protect (RtoP) doctrine – while there has been frustration in Paris over the absence of similar action in the case of the Syria conflict. By breaking ranks in this way on the previously held united front, France may convince other P5 members to follow its example on the issue of the veto. Meanwhile, pressure is likely to mount on the US, given that the incoming UN Ambassador, Samantha Power, is a prominent advocate of mass atrocity prevention. Despite these considerations, the goal of entering into a dialogue with all P5 members looks likely to prevent ACT from focusing on the issue of the veto alone.

### Take the lead on selection procedure for the Secretary-General

While the S-5 initiative has put the role played by the Council in the appointment of the UN Secretary-General prominently on its agenda, this topic is currently only of secondary significance for ACT. Nevertheless, ACT could still emerge as a platform for UN member states to address the privileged role of the P5 in the selection of the next SG. Although Ban-Ki Moon will be in office until 2017, the positioning of likely successors will be in full swing much sooner. ACT could urge for a more transparent and merit-based selection of a new Secretary-General rather than a secretive deal leading to the appointment of the lowest common denominator acceptable to the P5. This would however require strong leadership from one or more ACT members – something that is so far lacking.



## Conclusions

If the ACT recommendations were taken up by the Council, what difference would it make in the real world? It is important to keep in mind that although most debates on the reform of working methods focus on the Council as a whole, it is mainly the P5 who act as gatekeeper. A case in point is the inability of the Council to respond to the civil war in Syria, which has little to do with the functioning of the Council as such, and much more to do with exploitation of the veto power. This has undoubtedly damaged the reputation of the Council as a whole, and, by extension, that of the entire UN. Yet their inactivity does not seem to have harmed the P5 in any substantial way. Nor has it prevented other countries from campaigning to be elected as non-permanent Council members: countries that might be better off dedicating at least some of their energy and political capital to the question of working methods. After all, they would also profit from the body's improved functioning when they are not in the Council, which is most of the time.

To conclude, as with everything else at the UN, a seemingly technical issue such as the working methods employed by the Security Council is highly politicized. ACT has formulated several sets of concrete reform proposals and is modest in its aspirations. Yet it is putting the spotlight on highly political issues: who controls representation of member states interests at the UN? And who controls the reform agenda? Consequently, the group's recommendations are likely to face an uphill battle for which a long time horizon is needed. But, if implemented, the proposals could lead to substantive changes in the way that the Security Council functions. What is at stake here is not just the Council's reputation. The UN as a whole, indeed the world as a whole, could profit.



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