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SECOND REPORT on the APPOINTMENT OF THE UN SECRETARY-GENERAL

Introduction

On 16 February 2006 Security Council Report published a Special Research Report titled, *Appointment of a New Secretary-General*. It described the past history of appointments and discussed the processes used for appointing previous Secretary-Generals. It also described the decisions taken by the United Nations General Assembly in 1997 regarding the introduction of new appointment procedures when the time came to appoint a successor to Kofi Annan.

In the three months since February there have been a number of important developments, both in the Security Council and the General Assembly. There were even indications in May and early June that the General Assembly and the Security Council may have been on a collision path. At time of writing, however, it seems that the prospects of a contentious vote in the General Assembly have receded.

This Special Research Report looks at the issues that have arisen and what this means for the 2006 selection process which now seems set to commence in July.

The Canadian Initiative

Discussion in the General Assembly of the appointment process for the Secretary-General was initiated in February 2006 by Canada. The Canadian delegation circulated an informal paper calling for the General Assembly to revisit the appointment process. The paper called attention to the lack of transparency and inclusiveness of the selection process and raised the question of a possible role for the wider membership of the UN, including some actual participation in the selection process prior to receiving the Security Council recommendation.

In particular, the Canadian paper proposed:

1. The selection should be “anchored in agreed criteria/qualifications”.
2. A “search committee should be asked to identify potential candidates”.

3. There should be opportunities for candidates to meet with all Members of the General Assembly—perhaps through regional group meetings.
4. The Presidents of the General Assembly and the Security Council should organise some informal events, under their joint auspices to permit an “exploration of the perspectives and positions of the candidates”.

Some initial responses to the Canadian paper came at a meeting of the General Assembly *Ad Hoc Working Group on Revitalization of the General Assembly* on 16 February. The meeting was convened to discuss other issues, but there were a number of positive references to the Canadian draft.

However, there was relatively little attempt by other delegations at that meeting to develop the practical implications of either the Canadian proposals, or of the 1997 decisions of the General Assembly on the appointment process in resolution 51/241.

In this regard, it is worth noting that there are significant points in common between the Canadian proposals and the 1997 General Assembly decisions in resolution 51/241, especially on the issue of involving both the Presidents of the General Assembly and the Security Council in the appointment process.

Implications of Resolution 51/241

Resolution 51/241 was adopted by consensus—with the support of all the members of the United Nations, including the permanent members of the Security Council. Yet, curiously, there seems to have been little enthusiasm in 2006 for applying the mandates set out in that resolution.

Paragraph 58, which mandated a review of the term of office of the Secretary-General, seems to have been ignored, apart from a few references by delegations in interventions.

Paragraph 60, relating to the role of the President of the General Assembly, also seems to have been put to one side. Perhaps this is in part because, for some members of the General Assembly, it did not go far enough. And also it seems that many found it rather difficult to interpret. And certainly it would have required a degree of time on the part of the President of the General Assembly which seems not to have been available in light of his commitments in the wider UN reform exercise.

In practice, it seems as if the process agreed in 1997 would involve the following elements:

1. The President of the General Assembly would consult with members of the Assembly about names of candidates *before* the Council begins its consideration of names.
2. This process would produce a *list* of “potential candidates”.

3. The resolution speaks of these candidates being “*endorsed* by Member States”. (Presumably “endorsed” means candidates being nominated by individual states not actually approved by the Assembly as such.)
4. The net effect would be to *establish the broad slate* of candidates.
5. The implication seems to be that the President in establishing the list would *act informally*—probably via regional groups—because 51/241 goes on to say that once the president had completed the process he or she would then *inform all the members of the results* of the process.
6. The results would then be *forwarded* by the President to the President of the Security Council.
7. The process is without “prejudice to the prerogatives of the Security Council”—which recognises that under the Charter the *Council must produce the recommendation* and may imply that the *Council remains free to add further names to the list*.

These procedures seem largely consistent with some of the Canadian proposals and could have been integrated with them, without much difficulty. But given the timing pressures on delegations at this point, it now seems unlikely that this will be possible for the 2006 appointment. The fact that some elements of the reform of the appointment process would be deferred for consideration at a later stage is consistent with the Canadian proposals, which specifically envisaged that some of them would need to be elaborated by the General Assembly and applied for subsequent appointments.

Criteria and Qualifications for Appointment

A second major issue raised in the Canadian paper is the need for an agreed set of criteria and qualifications—in effect a job description. The issue of agreed criteria/qualifications has not previously been considered either by the Security Council or the General Assembly.

It is important to recall, however, that criteria/qualifications for appointment of the Secretary-General do exist. They were discussed at some length in 1945 and are set out in the report by the **United Nations Preparatory Commission**, PC/20, of 23 December 1945, in section 2B.

The Preparatory Commission identified the following qualities that would be required for appointment of a Secretary-General.

- Administrative and executive qualities to integrate the activity of the whole complex of United Nations organs. (para 12)
- Leadership qualities to determine the character and efficiency of the Secretariat. (para 15)
- Skills to lead a team recruited from many different countries and build the necessary team spirit. (para 15)
- Moral authority to model the independent role required by article 100 of the Charter. (para 15)

- Ability to play a role as a mediator. (para 16)
- Capacity to act as an informal adviser—or confidant—to many governments. (para 16) and (para 19)
- The highest qualities of political judgment, tact and integrity because of the need at times “...to take decisions which may justly be called political”, not only because of the political role that is expected, but also because of the power “to bring to the attention of the Security Council any matter (not merely any dispute or situation) which in his opinion may threaten international peace and security.”(para 16)
- Communications and representation skills to represent the United Nations to the public at large and secure the “active and steadfast support of the peoples of the world” without which “the United Nations cannot prosper nor its aims be realised.” (para 17)
- Overall qualities which demonstrate to the world at large that personally the candidate “embodies the principles and ideals of the Charter to which the Organisation seeks to give effect.” (para 17)

It is interesting to note from the list above, just how far sighted member states were in 1945 about the full range of skills which they expected to see associated with the role of the Secretary-General. The 1945 job description in effect mandates a very wide ranging political and representational role for the Secretary-General—way beyond the narrow confines of a pure administrator.

The fact that a statement of qualities and criteria was agreed in 1945 may be helpful in the present context. As indicated above, it seems clear, given the pressures on delegations flowing out of the reform debate, that there will be insufficient time for member states to begin addressing and negotiating an updated list of qualifications in time for the 2006 appointment.

Developments during March-May

The Canadian paper triggered not only a series of private meetings and discussions, but also a decision that the appointment issue should be the subject of a specific meeting of the General Assembly *Ad Hoc Working Group on Revitalization of the General Assembly*. The momentum for convening this meeting, however, developed quite slowly. The President of the General Assembly seemed reluctant to add this issue to the already difficult set of reform problems confronting the United Nations in 2006. Eventually, however, he requested the Co-Chairs of the Ad Hoc Working Group to convene a meeting of the group.

To the surprise of many, there were some quite quick indications of support for revising the appointment process from within the Security Council itself.

In March, under the presidency of Argentina, and again in April, under the presidency of China, the Security Council began a discussion of the possibility of some wider role in the selection process for the UN members not represented on the Council. China, Argentina, Japan, France and the United Kingdom all made public

statements during this period expressing openness to some review of the process. It seems that while there was wide support for the need for the Council to show greater openness, some P5 members, in particular Russia and the US were more cautious than others. Eventually, Council members agreed that the President of the Council should meet with the President of the General Assembly to discuss the issue.

The first substantive meeting between the two presidents was held on 18 April. At the meeting the following points were canvassed, on behalf of the Council, by its President, Ambassador Wang Guangya, Permanent Representative of China.

- Preliminary agreement had been reached to start the process in June/July with a view to completing the selection by September/October.
- Agreement had been reached on further increasing transparency and interactions with the General Assembly, but the Council would continue to recommend only one candidate.
- Measures which the Council *may* consider could include ongoing informal briefing meetings between the two presidents.
- Candidates *may* be encouraged to present to regional groups and/or to informal external events.

The President of the General Assembly, Swedish Foreign Minister Jan Eliasson, briefed the Co-Chairs of the Ad-Hoc Working Group and subsequently circulated informally a note of his conversation with the President of the Security Council.

On 19 April the meeting of the General Assembly *Ad Hoc Working Group on Revitalization of the General Assembly* was convened. Co-Chairs relayed to the members an oral account of the 18 April meeting between the two presidents.

The Working Group meeting itself was relatively low key. Interventions were for the most part cautious. However, a number of important opinion leaders, such as Canada and India, spoke forcefully of the need for real change in 2006. (India suggested repealing the 1946 General Assembly resolution 11(1) which requested that only one name be recommended by the Security Council. India proposed instead adopting a decision that three names should be recommended, thereby leaving the final choice to the General Assembly.)

It seems that the Working Group discussion left many delegations with a growing sense, after the debate, that much more was required than had been suggested by the Security Council.

Other developments included a formal position adopted by the Non-Aligned Movement (NAM) that the next Secretary-General should be selected from the Asian region. This was communicated to the Security Council in a letter from the Chair of the NAM Coordinating Bureau, Malaysia. (S/2006/252 of 21 April 2006).

In May, NAM delegations in New York met to discuss the Indian approach. Elements of a draft resolution were prepared. The most significant element envisaged was a proposed operative paragraph which would *decide* that the Security Council "...will proffer two or more well qualified candidates for the consideration of the General Assembly..."

Many observers have noted that there is a case for repealing resolution 11(1) and starting again. Most of it is now redundant and every paragraph has key provisions that are obsolete:

- para 1 assumes the SG will be a "man";
- para 2 sets a salary that has long since been overtaken by other decisions;
- resolution 51/241 mandates a review of para 3 before the appointment of Kofi Annan's successor, i.e. this year;
- para 4 no longer reflects the Charter in terms of the required majority to take decisions in the Council (due to the amendment of the Charter adopted in 1963);
- the practice of the Assembly regarding its meetings on appointments has evolved, they are now open; and
- the references to procedure are unnecessary since the Provisional Rules of Procedure of the Council now exist. (They did not exist when 11(1) was adopted.)

At time of writing it is unclear whether NAM intends to press the matter to a decision in the General Assembly. But there are indications that the prospects of a vote have receded. Instead it seems that the wider issue of how best to conduct the appointment, and the role of the General Assembly in it, may be rolled over for discussion in the future. The vehicle for achieving this seems likely to be in the report of the Co-Chairs of the General Assembly *Ad Hoc Working Group on Revitalization of the General Assembly*.

Action in the Security Council

The issues raised by the draft resolution, and the prospect of it being voted through the General Assembly by the 116 NAM members, led to a number of private discussions amongst Council members, including discussion at meetings of the P5.

While there seems still to be a range of views within the P5 regarding their respective willingness to accord a greater role for the General Assembly and greater transparency, a firm position seems to be shared by all five that the General Assembly cannot dictate to the Security Council whether it recommends one or more candidates.

The elected members of the Council, while generally more sympathetic to finding more effective options for wider involvement of the General Assembly, seem in many cases to sympathise with the P5 on this specific point.

It was not surprising, therefore, that at the end of May the Council developed the text of a draft letter which was agreed on 1 June and transmitted on 2 June to the President of the General Assembly.

The letter carefully signaled on the one hand a willingness to pursue cooperation—within certain parameters—but also, on the other hand, it demonstrated a degree of firmness and Council unity. The letter:

- underlined the fact that the Charter assigned different roles to the Council and the Assembly on the question of the selection of the Secretary-General;
- confirmed a desire to work closely with the General Assembly in the spirit of transparency and dialogue keeping the Assembly informed through its president;
- noted that member states may present candidates at any stage of the process; but
- emphasised that in early July the Council would “...start the process of consideration of candidacies...”.

Against this background it is also noteworthy that the Security Council seems to have agreed informally that prior to actually considering names, France, the president for July, should circulate a paper setting out the way the process will work. Council members expect this to be essentially a description of past practice. However it is likely that as a result of discussion it will evolve into a “guideline” for the process in 2006.

This could very well mirror the evolution in Council practice regarding the Secretary-General appointment which occurred in the lead up to the 1996 appointment. At that time an informal paper, prepared in November 1996 under the presidency of Indonesia, was drawn up and it became a private aide to members, setting out their common understandings as to how the process would work in practice that year. The paper was never published officially as a document. However, in December 1996, after the appointment decision had been made, a copy of the paper was unofficially distributed by Italy. In honour of the Indonesian Ambassador under whose presidency it had originally been agreed, they styled the paper as the “Wisnumurti Guidelines”.

The 1996 paper had no ongoing status. Nevertheless, in February 2006 the United Nations Secretariat made available an informal fact sheet describing the way the process had worked in the Security Council in the past. The fact sheet clearly drew in part on the 1996 paper.

Timing

Timing is important for a number of reasons.

First, the United Nations reform negotiations are coming to a climax. A major issue in that context is the need to decide before the end of June on the budget cap

agreed in December 2005. And there is a very important political backdrop to these negotiations. The UN reform debate has already triggered one particularly divisive vote in the General Assembly (the votes in the Fifth Committee on 28 April 2006 and in the General Assembly on 8 May 2006 adopting resolution 60/260 by 121-50-2, regarding proposed “management reforms”). The polarisation as a result of these issues does not create an atmosphere which is very conducive for resolving yet another important issue which will take considerable time—the roles of the various organs in the appointment of the Secretary-General.

Secondly, the Security Council agenda is also overloaded in the coming months. With this in mind, the Council has decided that it will resolve outstanding process questions in July and then move to considering actual names with a view to making its recommendation to the General Assembly by October at the latest.

Thirdly, there seemed at an earlier point to be a wide acceptance in both the General Assembly and the Security Council that there should be a period during which candidates would have the opportunity to present themselves to member states. Presentations to meetings of regional groups were often mentioned as a possibility. However, that option seems also to be receding in the face of other competing pressures on delegations at this time. Private meetings sponsored by permanent missions and by NGOs like the International Peace Academy and the Council on Foreign Relations have taken place or are scheduled.

Legal and Constitutional Aspects

An argument was raised, in response to the Indian initiative, that it would be contrary to the UN Charter for the General Assembly to adopt a resolution indicating that the Council should proffer more than one name.

In this regard it is worth recalling that the Charter itself provides little guidance in article 97 which simply states:

The Secretary-General shall be appointed by the General Assembly upon the recommendation of the Security Council.

There seems to be no disagreement that the Charter does impose some limits on the capacity of the General Assembly with respect to the appointment. For instance, the Assembly has no power (except perhaps in the emergency situation which it faced in 1950, when the Council was deadlocked due to vetoes and unable to make a recommendation):

- to act without a recommendation of the Council; or
- to appoint a person who had not been included in a recommendation of the Council.

However, article 97 of the Charter does not make clear what is meant by the differentiated roles of the Assembly and the Council or what is meant by the word “recommendation”.

In this regard it is useful to recall domestic analogies. Constitutional or statutory provisions exist in many countries which refer to appointments being made by one body on the recommendation of another body or person. In general such provisions are designed to establish a balance of power between various actors, and ensure that, while the party making the appointment has the final say, the selection of actual candidates is controlled. Under such systems one actor has the “power to propose”—the other has the “power to dispose”. Such systems often operate on the basis of one name being recommended. However systems involving selection and recommendation of a slate of names do exist.

In the United Nations context, the UN Preparatory Commission, in its report PC/20 of 23 December 1945 gave consideration to the practical implementation of the appointment provision in article 97. The Commission decided to recommend that:

It would be desirable for the Security Council to proffer one candidate only for the consideration of the General Assembly...

The use of the words “it would be desirable” suggests fairly conclusively that the Commission was not convinced that the Charter required the proffering of a single candidate.

The terms of General Assembly resolution 11(1) of 24 January 1946 do not take the issue any further. The resolution simply provided that the conclusions of the Preparatory Commission be “noted and approved”.

State practice since 1946 has been consistent. The Council has always followed the practice that it would be desirable for there to be only one candidate proffered. But it is hard to conclude that this practice has hardened into a rule of international law binding on the General Assembly.

It may be therefore that the Charter is open to the possibility of the Security Council proffering either one or multiple candidates in its recommendation.

The simple repeal by the General Assembly of resolution 11(1), which would remove the 1946 statement that a single candidate was “desirable”, would therefore seem to be possible and valid.

The more difficult legal issue—and it is a fundamental one in this context—is whether the General Assembly can not only reverse the decision in resolution 11(1) but also—in effect—go further and seek to bind the Security Council to produce a recommendation with multiple candidates.

The General Assembly is the plenary organ of the United Nations and is the body entrusted with the widest range of functions. Nevertheless, the Charter does give distinct roles to each of the UN organs. And it is also relevant that under article 10 of

the Charter, the General Assembly can only make “**recommendations**” to the member states or the Security Council.

The practical implication of the argument that the General Assembly could take a decision which obliged the Council to proffer multiple candidates would seem to be that each of the member states on the Council would be obliged to cast their votes in the Council in a manner that complied with the General Assembly resolution—even if they had voted against the General Assembly resolution. It is hard to see any members of the United Nations being comfortable with a view that their discretion as to how to cast their vote in one organ could be dictated by votes in another organ. And it seems that the permanent members would see this as a significant erosion of their power of veto.

Nevertheless, as indicated above, there do seem to be possibilities of valid General Assembly action short of seeking to impose a binding obligation on Council members. In this regard resolution 11(1) seems to establish an important precedent. As is evident in that resolution, in 1946 the General Assembly did consider that it was competent to make far reaching recommendations about institutional issues affecting the Security Council, including relating to the procedure and methods of work in the Security Council as they applied to the appointment decision. And the members of the Security Council seem to have concurred in this.

This precedent seems to be consistent with article 10 of the Charter. It would indicate that a resolution of the General Assembly could **recommend** a new practice to the Council, but not seek to **decide** the matter.

Practical and Political Considerations

One practical issue of which many delegations are conscious of is that if multiple names are included in the recommendation there is a risk that a new Secretary-General could be appointed after a closely fought election campaign in the General Assembly by a slim majority and then have to work with a polarised organisation many of whose members had voted against him or her.

On the other hand many others point out that most of the past Secretary-Generals have all had to deal with situations in which the Council has been polarised even to the point of prolonged exercise of the veto or the “red straw ballot” by permanent members. For instance, reports suggest that Kofi Annan in 1996 was “vetoed” at least seven times by one of the permanent members. And although the straw ballots are nominally secret the origin of the votes is well known. Yet despite this he (and his predecessors who had to deal with similar and even more polarised situations) managed to quickly develop effective working relationships with all of the permanent members in question.

A second practical point raised by some delegations is the thought that if multiple candidates are recommended the level of confidence which is thought desirable between the Secretary-General and the P5 would be diminished. On the other hand,

others point out that the process whereby the Council must affirmatively recommend the candidates, thus allowing the application of the veto to each name, must ensure that all of the P5 can satisfy their need to ensure that all of the candidates are ones that they can live with.

A third practical point raised by some delegations is the concern that, if the General Assembly is put in the position of making a choice, it would encourage bloc voting and that, thereafter, if there were a choice between candidates from multiple regions some regions could be permanently excluded from the opportunity to serve. Others note that this need not be true. Some point out that if the principle of rotation was adhered to and the Council only recommended candidates from the region whose turn it was, this would never be a problem.

Practical concerns are also raised regarding the timing. Some suggest that, if multiple candidates are recommended, a reasonable period of time between the Council decision and the voting in the General Assembly would be required, so that the successful candidates could lobby in 191 capitals—as opposed to the 15. Nevertheless, others point out that if the Council's recommendation is available in October a decision in the General Assembly in November would be achievable.

Finally, others raise the issue that a residual discretion needs to be left to the Council because there can be no guarantee in future selection processes that there will necessarily be sufficient candidates of sufficient quality that the Council would feel comfortable in endorsing more than one.

Key Issues/Options

The issue for the Council is whether it will take further steps to address the concerns raised in the General Assembly. The letter of 2 June seems to suggest that the Council has decided that further innovations in process in 2006 are now unrealistic. It seems determined—as the letter says to “...start the process...”.

However, other options would seem to include:

- The Council could agree that while it will strive to reach agreement on a single name it will leave open the possibility that, if it finds more than one candidate substantially equal in qualifications, it may include more than one name in its recommendation.
- Decide nothing further on this issue, but reserve it for a later stage. (It is possible—but probably unlikely—if the permanent members are unable to agree on a single name after the list of candidates has been established and a number of “straw ballots” have been conducted, that the option of recommending more than one candidate may seem more attractive.)

Prospects for Further Evolution of the Process

It seems that the prospects for significant further evolution of the appointment process in 2006 are now limited. The low level of interest in the issue at the meeting of the *Ad Hoc Working Group on Revitalization of the General Assembly* convened

on 6 June to consider the first draft of the report of the Co-Chairs, suggests that their final report, and the ultimate General Assembly resolution will only contain relatively uncontroversial references to the reform of the appointment process for the Secretary-General.

It seems likely, therefore, that the report of the Ad Hoc Working Group will become the vehicle for further discussion on reform of the process in 2007.

UN Documents

Selected General Assembly Resolutions

- A/RES/60/260 (8 May 2006) on management reforms
- A/RES/51/241 (31 July 1997) adopts decisions on strengthening the UN system.
- 11 (1) (24 January 1946) establishes terms and process for appointment.

Other

- PC/20 (23 December 1945) Report of the United Nations Preparatory Commission
 - S/2006/252 (21 April 2006) Letter from Malaysia, Chair of the NAM Coordinating Bureau, to the Security Council communicating NAM's formal position that the next Secretary-General should be from Asia.
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Useful Additional Sources

- *Selecting the Next UN Secretary-General*, UNA-USA, May 2006, www.unausa.org/nextsg
- UNSGselection, www.unsgselection.org
- One World Trust, <http://www.oneworldtrust.org>
- Statement by Ambassador Allan Rock, Permanent Representative of Canada to the UN, to the *Ad Hoc Working Group on Revitalization of the General Assembly* on 19 April 2006 http://www.international.gc.ca/canada_un/new_york

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