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Question of equitable representation on and increase in the membership of the Security Council and related matters

Follow-up to the outcome of the Millennium Summit

Note verbale dated 20 July 2005 from the Permanent Mission of Costa Rica to the United Nations addressed to the Secretary-General

The Permanent Mission of Costa Rica presents its compliments to the Secretary-General of the United Nations and has the honour to enclose a document, entitled "Elections by fatigue: some considerations on the proposed election procedure for new permanent members of the Security Council", prepared by the Government of Costa Rica as a contribution to the current efforts to reform and revitalize the Security Council and the United Nations at large.

The Permanent Mission of Costa Rica would like to request that the document enclosed be distributed as a document of the General Assembly under agenda items 53 and 55.

Annex to the note verbale dated 20 July 2005 from the Permanent Mission of Costa Rica to the United Nations addressed to the Secretary-General

Elections by fatigue: some considerations on the proposed election procedure for new permanent members of the Security Council

As noted by the High-Level Panel on Threats, Challenges and Change, “the effectiveness of the global collective security system, as with any other legal order, depends ultimately not only on the legality of decisions but also on the common perception of their legitimacy ...”. In this context, the overriding goal of all efforts to reform the Security Council must be to make the Council more legitimate and, therefore, more effective. Therefore, when we consider proposals for the expansion of the Security Council and, in particular, proposals for the possible creation of new permanent members (for example A/59/L.64 and A/59/L.67), we must examine whether those initiatives would enhance the legitimacy of the Security Council.

If there were a broad agreement to enlarge the Security Council in the category of permanent members, the selection of the new permanent members would not be contentious: their names would arise naturally from the general and overwhelming agreement that one or more States are qualified to contribute to the maintenance of international peace and security to such a high degree that their continuous presence in the Council is not only desirable but indispensable. Conversely, a contentious electoral process, with aggressive and even negative campaigning, lobbying and secret bilateral deals, could jeopardize the legitimacy of the Council as a whole and weaken the collective security mechanism on which we all depend.

The legitimacy of new permanent members would be open to even more question if they are elected after many rounds of voting, increasing their support slowly, round by round, not because of their inherent merits but due to the exhaustion of the General Assembly. This scenario, the election of new permanent members by fatigue, is, in fact, quite likely to occur under some of the proposals currently under consideration, that foresee an open-ended electoral process — a process without any limits on the maximum number of rounds permissible.

Statistical evidence on the elections to fill non-permanent seats in the Security Council throws some light on the proposed procedure to select new permanent members, even though the stakes in those elections are much lower. The evidence shows, specifically, that elections by fatigue are in fact quite common. Out of the 60 elections for non-permanent seats held in the period from 1946 to 2004, in only 28 elections were the available seats filled in the first round of voting. In the other 32 elections, the General Assembly held an average of 13 rounds of votes. Some elections were particularly dramatic. The 1955 election required 36 rounds of votes and took over two months, from 14 October to 20 December. The 1959 election required 52 rounds of voting, scattered from 12 October to 12 December. These two elections concluded when the candidates agreed to share the mandate, so that each one occupied the non-permanent seat for one year.^a The 1979 election saw an

^a In commenting on a “gentlemen’s agreement” to share the mandate in the Security Council, Mr. Mishra, Permanent Representative of India, stressed that such an agreement “is a private arrangement between two delegations and that it cannot, under the Charter, bind the Assembly”. (General Assembly, 1245th meeting, eighteenth session, 1 November 1963).

unprecedented 155 rounds of voting. The General Assembly was forced to continue the election the following year, after the date at which the new member was supposed to have taken its seat in the Council. Eventually, both candidates withdrew in favour of a third State, which was endorsed to occupy the seat in question (see table attached).

Elections by fatigue can take a heavy toll on the legitimacy and effectiveness of the Security Council. Commenting on this situation, and to cite an earlier example, Sir Pierson Dixon, the Permanent Representative of the United Kingdom of Great Britain and Northern Ireland said at the eleventh session of the General Assembly:

“We all remember with discomfort the protracted difficulties with which we met at the tenth session in filling one of the non-permanent seats on the Security Council. That was an unpleasant experience and led to much criticism of the United Nations. (...) Of course we do not want anything of the kind to happen again. However, I believe that it probably will unless some remedial action is taken. And conceivably the difficulties that have in the past applied to only one of the non-permanent seats might spill over to others of them. That is a very disquieting prospect.” (General Assembly, 622nd meeting, eleventh session, 17 December 1956)

The discomfort and disquieting prospects mentioned by Sir Pierson would be even greater if what it is at stake in a protracted election is the unusual privilege of occupying a permanent seat in the Security Council.

Furthermore, it should be noted that, under the proposed rules for the election of new permanent members, a protracted electoral process might occur even if there is only one candidate running for each available seat. Even if they do not face any opposition, the candidates might, for one reason or another, be unable to obtain the required majority of two thirds of the Member States of the United Nations.

The open-ended character of the electoral process creates another problem: that there is no pre-established workable agreement that could serve to end an otherwise protracted electoral process. Unlike the elections for non-permanent seats, in which the candidates may agree to share the mandate, taking one year each, a permanent seat, by its nature, cannot be divided, even if candidates wish to do so. Moreover, the candidates cannot withdraw in favour of a consensus third State because, as contemplated in some proposals, only those States that submit their candidature at the start of the process are eligible. Under these conditions, the General Assembly might be faced with a difficult choice: either to elect by fatigue a State that most would prefer not to see as a permanent member, thus eroding the legitimacy of the Security Council as a whole, or leaving empty one of the new permanent seats, thus calling into question the validity of the whole exercise.

Costa Rica is convinced that the threat of elections by fatigue to the legitimacy of an enlarged Security Council is of such magnitude that it is indispensable to adopt proper safeguards to ensure that, if the General Assembly decides to create new permanent members, there would be a minimum number of rounds and that only those States that enjoy the support of the overwhelming majority of Member States would ever become permanent members.

In raising the need for proper safeguards, Costa Rica is not endorsing the proposed enlargement of the Security Council in the permanent member category, but simply seeking to ensure that the proposed election procedure be as credible and as legitimate as possible.

Enclosure

Elections for non-permanent members of the Security Council: a comprehensive review 1946-2004

The following table contains 3 columns: the first column chronologically orders the elections for non-permanent members by General Assembly session and meeting [General Assembly sessions are identified in bold type as UNGA followed by the respective number; meetings are identified by the corresponding number and date]. The second column contains the total number of rounds of voting for each election and details each election round, with the number of valid votes, the number of abstentions and an indication as to whether the round of voting was restricted or unrestricted. The third column lists the results by number of votes received, with those Member States that receive the required two-thirds majority or more identified in bold type. In some cases, additional information is offered, such as withdrawal of candidatures, agreements between candidates to share the two-year term and other information that was considered relevant.