

The Penholder System



Ambassador Kacou Houadja Léon Adom (Côte d'Ivoire), president of the Security Council for the month of December, chairs the 13 December 2018 meeting on UN peacekeeping operations. (UN Photo/ Manuel Elias)

2018, No. 3
21 December 2018

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The Penholder System - What it is and How it Works

The issue of who drafts Security Council outcomes (including resolutions, presidential statements and press statements) is little-discussed beyond Council members themselves. Within this group, however, there is animated debate around the so-called penholder system.

With few exceptions, Council outcomes on specific conflict-related situations are drafted by one of the P3 (France, the UK and the US) as the self-appointed penholders.

When Security Council activity increased dramatically after the end of the Cold War, the P3 were collectively responsible for producing most drafts. But there were no firm arrangements to allocate drafting or convening responsibilities for particular country situations. Different delegations, both permanent and non-permanent, would take the lead on a particular issue.

The system of continuous leadership by specific Council members on specific issues seems to have developed around 2008-2009 and taken root firmly by 2010. The P3, as the most

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legislatively active permanent members, informally shared among themselves the role they termed “penholder” for most country situations and some thematic issues on the Council’s agenda. Each country situation that has become a focus of Council attention since 2010 (Libya, Yemen, South Sudan, Mali and Colombia) has also had a P3 member as the penholder.

Even though penholder assignments have been informal and unwritten, they have continued unchanged and largely unchallenged, reflecting the permanent positions of these nations on the Council.

Permanent members China and Russia have in recent years occasionally served as co-penholders with the US on non-proliferation issues in the Democratic People’s Republic of Korea (DPRK) and the Golan Heights, respectively. Elected members have served as penholders on Afghanistan, Guinea-Bissau and some thematic issues (see Annex for details).

Reports from the annual “Hitting the Ground Running” workshop, organised by Finland since 2003 for current and incoming Council members, provide a record of the changing practices and dynamics in this context. The first workshop’s opening session, in November 2003, focused on the “Role of the elected ten (E10)”. The report noted:

The E10 likewise had been able to influence the shaping of draft resolutions. Outgoing members sought to dispel a commonly held perception that the role of elected members was a very limited one, confined to endorsing the positions of the P5. They maintained that that did not reflect the reality on the ground. On the contrary, the E10 always had their say, particularly if the matter concerned their geographical area or was of particular significance. Their views were given due consideration because they mattered. Equally, if any of the P5 were considering casting a veto, it would usually look first for a compromise and seek as much support from the E10 as possible. The P5 could not put draft resolutions to a vote without first considering the views of the elected members. In that way, the E10 played an important role in shaping not only how the Council voted but on what texts it voted (S/2004/135).

A year later, during the 2004 workshop, a permanent representative who had served on

the Council in 1993-1994 and was on the Council again for the 2004-2005 term, noted that chairing the negotiations had shifted from the president of the Council to the drafter. In his comments during a session he moderated, he said, as conveyed by the report:

In the early 1990s, the moderator recalled, much of the negotiation of resolutions had been conducted under the chairmanship of the President in informal consultations. The President, in turn, had encouraged participation from all Council members, including the E-10, in the negotiating process. Now, however, the Member States that put forward a draft text tended to lead the negotiations that followed, diminishing the President’s role in this area. States that sponsored a resolution, moreover, tended to confer primarily with States that could veto their draft resolution, giving the E-10 less voice in the process. (S/2005/228)

The practice of the P5 discussing a draft amongst themselves, sometimes for weeks, before circulating it to the elected members, had appeared occasionally since the early 1990s, usually with respect to issues of particular importance to one or several permanent members.

Possibly the most prominent early example of this drafting and negotiating trend, applied to an issue in a recurring fashion, came in 2006 during the lengthy process leading to the adoption of the Council’s first decisions on nuclear non-proliferation in the DPRK and Iran. The way it worked was that one of the P3 would draft the text, agree it with the other two, and the draft would then be negotiated with China and Russia. Only after that was the agreed text circulated to the elected members, often close to the intended adoption date. The elected members were discouraged from making amendments because this might disturb the sometimes painstakingly achieved consensus among the P5.

When this approach was used only for non-proliferation issues, elected members generally accepted it because of the specific P5 interests inherent in the nature of the threat, though some pushed back. For example, in 2008, the adoption of a resolution on Iran had to be delayed by several days because South Africa requested time for its capital to study the text.

In the following year or two, this drafting and negotiating trend gradually extended to

more situation-specific issues on the Council’s agenda, with one of the P3 assuming the penholdership on nearly all conflict-specific agenda items. Also around that time, the name “penholder” entered the vernacular of the Security Council.

The term “penholder” is misleading, as the function goes beyond drafting an outcome text and chairing the subsequent negotiations. With rare exceptions, the penholder takes the initiative on all Council activities concerning that situation, such as holding emergency meetings, organising open debates, and leading visiting missions. The penholder speaks first whenever the Council discusses the issue. That Council member also tends to share its draft with the full Council quite late, usually close to the adoption date, leaving little time for full Council negotiations. The chairpersons of the 14 Council sanctions committees (all of whom are currently elected members) are generally not brought in to the drafting of resolutions on “their” country situations, even when the draft deals with sanctions issues, and are rarely shown early drafts by the penholder.

Attempts at Modifying the Penholder System

Council elected members have questioned the penholder system, as has the UN membership at large, because of concerns about the deepening gap between the permanent and elected members. During an open debate on the Council’s working methods on 30 November 2011, Ambassador Hardeep Singh Puri (India) apparently used the term “penholder” for the first time in a public Council discussion, saying:

Insofar as the working methods of the Security Council are concerned, the first and foremost necessity is to make them transparent. ... We then have the issue of “pen holders”. Quite apart from the fact that it takes quite a while to understand what the concept of a pen holder is and which member is holding which pen for which issue, it is difficult to understand why pen holding should basically be a monopoly of permanent members, with concentration in even fewer fingers. (S/PV.6672).

Since then, more and more elected members of the Council as well as other UN members have raised concerns about the penholder arrangements during the

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annual open debate on working methods. Several elected Council members pointed to the negative impact of the penholder system on the Council's ability to fulfil its Charter-mandated responsibility and on its dynamics.

During the three most recent open debates on working methods, in 2015, 2016 and 2018, the penholder system was one of the topics brought up most often. In 2015, the permanent representative of Angola, Ambassador Ismael Gaspar Martins, speaking on behalf of six elected member states—his own, Chile, Jordan, Malaysia, New Zealand and Spain— noted that the penholder system diminished the opportunity for wider Council engagement, especially by the elected members, and significantly increased the risk of Council products being crafted in a way that serves only the interests of the permanent members. He also said:

In those respects, the system cuts across the principle of collective responsibility that underpins the Charter. We should all feel a sense of ownership over the Council's work, and we should not preclude others from offering their drafting ideas for texts (S/PV.7539).

The permanent representative of New Zealand, Ambassador Gerard van Bohemen, speaking during the 2016 open debate on working methods, said:

[p]enholders routinely take zero drafts straight to meetings of so-called experts. This precludes any real effort at building genuine consensus on the key policy questions to be considered. Non-penholders must choose between accepting a text largely as presented, or risk being accused of torpedoing important documents if they wish to make substantive policy proposals. Those practices are neither effective, sustainable nor respectful of the perspectives of other Council members (S/PV.7740).

The remaining two permanent members, China and Russia, have over the years signalled their misgivings regarding the penholder system. Russia in particular has been critical of the system in all open debates on working methods since 2012. Speaking at the 26 November 2012 debate, Russian permanent representative, Ambassador Vitaly Churkin said:

We are convinced that the aim of improving both the transparency and the democratic

nature of the Council would be furthered by a better division of responsibilities of the informal leadership of the so-called penholders (S/PV.6870).

During the 2016 open debate on working methods, his last before his death in 2017, Churkin stated:

We note that, in recent years, the activities of non-permanent members have increased significantly—a development that we fully welcome. Many of our non-permanent colleagues are not only making contributions to resolving pressing issues on the Council's agenda; in fact, they are also providing substantive initiatives and taking the lead in enhancing important areas of the Council's work. We are convinced that the Security Council would benefit from the further democratization of its work. In line with that would be a more equitable distribution of duties in informal leadership on country-specific and thematic issues—the so-called penholdership. Certain Council members should not regard countries or even regions as their tutees and act as mentors on certain issues. This is a vestige of a bygone era, entirely out of place in the twenty-first century. (S/PV.7740)

In the 2018 open debate on working methods, Churkin's successor as Russia's permanent representative, Ambassador Vassily Nebenzia, also raised the issue of penholders, arguing, among other things:

We should expand the circle of penholders and do so particularly by using non-permanent members (S/PV.8175).

China, while not referring to the penholder system explicitly, has in several open debates on working methods consistently raised concerns about insufficient time given to negotiations and the occasionally overt, forceful pushing of drafts toward adoption. Speaking during the 2012 open debate, China's permanent representative at the time, Ambassador Li Baodong, said:

...the Council should carry out, in a full and patient manner, negotiations and consultations so as to reach extensive and broad consensus. ...[i]t is important that all Council members be given adequate time to consider and study texts. The Council should avoid forcing through texts over which there remain serious differences, so as to safeguard the solidarity of the Council (S/PV.6870).

During the 2018 open debate on working methods, China's permanent representative, Ambassador Ma Zhaoxu, used similar terms, cautioning against “steamrolling divisive draft resolutions” and urging that the Council's “authority and unity” be safeguarded (S/PV.8175).

Within the Informal Working Group on Documentation and Other Procedural Questions (IWG), the subsidiary body of the Council set up in 1993 to focus on its working methods, initial efforts to agree on any document referring to the practice were unsuccessful. In mid-2012, Portugal, the IWG chair that year, circulated a draft presidential note outlining a system under which all members would have an opportunity to be penholders or co-penholders. After nearly six months of negotiations, no consensus was reached, the proposal was dropped, and Portugal completed its term on the Council.

Argentina assumed the chairmanship of the IWG for 2013-2014. After many months of work at the IWG level, members reached consensus on what would be the first Council-produced document mentioning the term “penholder”. In April 2014, the Council issued a note by the president (S/2014/268) saying that members of the Council agreed to support “where appropriate, the informal arrangement whereby one or more Council members (as ‘penholder(s)’) initiate and chair the informal drafting process” of documents, including resolutions, presidential statements and press statements of the Council. The note specified that any member of the Council could be a penholder. The document also emphasised Council members' commitment to enhancing the participation of all members in the drafting process, including through early and timely exchanges and consultations, while continuing to consult informally with non-Council members. The note brought no changes to the practice. Three years later, when the IWG embarked on revising its comprehensive compendium of agreed working methods and practices (commonly referred to as “Note 507”) in early 2017, the penholder system remained unchanged.

Following several months of negotiations led by Japan, the 2016-2017 chair of the IWG, the Council issued document S/2017/507 on 30 August 2017. The penholder system had been the focus of particularly complex discussions. In addition to wanting to expand the

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pool of penholders, elected members pressed for changes in the negotiating practices leading up to the adoption of various types of outcomes. Providing some new guidelines in this respect, the updated Note 507:

- stressed the desirability of at least one round of discussions with all members of the Council on all drafts and of providing reasonably sufficient time for consideration;
- referred to “silence procedure”, a relatively new and now widely used practice that had never before been articulated in writing, whereby a draft is circulated by email with a deadline for raising objections, in the absence of which the draft becomes final, recognising “that any Council member may request extension of and/or break silence if further consideration is required”; and
- acknowledged that for some open debates, the adoption of an outcome might take place at a later date to allow the outcome to reflect more fully matters raised during the debate.

Furthermore, it restated, as previously articulated in the April 2014 note, that “[a]ny member of the Security Council may be a penholder”, adding that “[m]ore than one Council member may act as co-penholders, when it is deemed to add value, taking into account as appropriate the expertise and/or contributions of Council members on the subjects”.

Yet more than one year later, penholder distribution remains unchanged, with the P3 holding the pen on nearly all situation-specific issues, while overall dissatisfaction with the system continues to grow. In June 2018, Russia circulated a draft note by the president proposing changes to the penholder system with the stated aim of enhancing Council effectiveness. The Russian draft said that all Council members should serve as penholders or co-penholders and proposed that the process of designating penholders should be similar to that of appointing chairs of Council subsidiary bodies and should ideally be completed by 1 October.

The process of appointing chairs of Council subsidiary bodies took considerably longer than expected in 2018 and generated a new dynamic among the ten elected members and the five member states joining the Council in January 2019. The permanent representatives of the 15 countries—Belgium, Bolivia,

Côte d’Ivoire, Dominican Republic, Ethiopia, Equatorial Guinea, Germany, Indonesia, Kazakhstan, Kuwait, the Netherlands, Peru, Poland, Sweden and South Africa—co-signed a letter to the president of the Security Council in which they stated their shared position on the need for fair burden-sharing and an equal distribution of work among all Council members. Among other points, the letter said:

... the Security Council should make better use of the expertise that the Chairs of sanctions committees develop on the situations discussed in their respective committees, and should consider promoting their role as penholders and the automaticity of their role as co-penholders on the related dossiers (S/2018/1024).

Recent Examples of Elected Members Assuming the Functions of Penholders

At various points over the last five years, elected members succeeded in becoming the drafters of important Council outcomes. In each case, this was done by taking the initiative rather than seeking prior consent, and the examples show considerable tactical thinking.

The most prominent and longest-standing example concerns the penholdership on humanitarian aspects of the conflict in Syria. In 2013, Australia and Luxembourg, both of which served on the Council in 2013–2014, began jointly drafting Council decisions on the topic, with a presidential statement on humanitarian access in Syria issued in October that year, a resolution adopted unanimously in February 2014, and then several other outcomes. Jordan served on the Council in 2014–2015 and at the outset of its term joined Australia and Luxembourg as the third penholder. When the initial two member states completed their terms, New Zealand and Spain took their places. Egypt took the place of Jordan in 2016, and in 2017, Japan and Sweden stepped in after New Zealand and Spain rotated out of the Council. In 2018, Kuwait succeeded Egypt and has served as a co-penholder with Sweden.

In February 2016, Venezuela took the initiative of organising a Council debate on the politically sensitive issue of the Council’s approach to the use of sanctions, which resulted in agreement on a note from the president on the topic (S/2016/170). The interesting aspect of the process was that Venezuela, with the help of New Zealand, began

by circulating its draft to the ten elected members and negotiating it first within that group before bringing it to the full Council.

In May 2016, the Council adopted unanimously resolution 2286 on healthcare in armed conflict. It had been drafted jointly by five elected members—Egypt, Japan, New Zealand, Uruguay and Venezuela—that led all the negotiations on the draft and secured co-sponsorship by most Council members and by several member states not on the Council.

In addition to these examples of outcomes, elected members Bolivia and Kazakhstan organised and led visiting missions in 2017 and 2018 to countries in their regions (Haiti and Afghanistan, for which the pens were held by the US and the Netherlands respectively) despite the fact that since the emergence of the penholder system, the visiting missions have tended to be led or co-led by the penholders.

Possibly starting a new trend of the Council presidency co-leading visiting missions undertaken during its presidency, Bolivia co-led a visiting mission to the Democratic Republic of the Congo during its October 2018 presidency with the penholder, France.

The Impact of the Penholder System on the Council’s Effectiveness

Although the penholder system may seem efficient, there are side effects that detract from the Council’s effectiveness.

The system creates an unspoken default in which the other members defer to the penholder. If a crisis arises and the penholder is either unwilling or unable to take the initiative (for example, because it is already managing one or two other crises), the Council may seem paralysed or act with delay. This “default” situation has quite possibly affected Council effectiveness in addressing conflicts.

Elected members are left out of the drafting process altogether and are brought into negotiations only at the very end, at which stage they are often discouraged from making meaningful amendments because they might disturb the wording agreed to among the P5, sometimes after painstaking negotiations. Thus, the Council as a whole may be missing the new ideas and approaches that the elected members often bring, whereas the penholders, after years of mandate renewals and report reviews, occasionally seem to develop “penholder fatigue”.

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The drafting of nearly all outcomes by just three delegations means that while the Council is busier than ever, there is less burden-sharing than in the past.

The Council and Burden-Sharing

Drafting resolutions has been among the principal tasks of the Council since, following the end of the Cold War, its level of activity grew dramatically; and the number of resolutions adopted annually swelled from 20 in 1988 and 1989 to 37 in 1990, 42 in 1991 and 74 in 1992. In the period since, activity has continued to grow: during the decade 2008-2017, the average number of resolutions adopted annually has been 60. At the same time, the numbers of peace operations and sanctions regimes requiring regular Council attention and “maintenance” have increased significantly compared to the early 1990s, meaning the Council is now busier than in the early post-Cold War period. During that period, resolutions would often be drafted by whichever member took the initiative to produce a text. Specific, recurring topics did not “belong” to a particular Council member. Sometimes, members with an interest in a given situation would join forces or would compete to produce a draft. Both permanent

and elected members routinely undertook the drafting, and negotiations were usually chaired by the Council presidency. The practice that the drafter automatically chairs negotiations seems to have emerged only in the early 2000s.

With more crisis situations on the Council agenda, a more structured division of labour seemed necessary, and a system of Groups of Friends emerged within the Council. Starting in the early 1990s, the Secretary-General began to enlist a set of states interested in a given conflict—often for a range of reasons—to assist his good offices efforts as Groups of Friends. At the Council, members with a stake in, or a commitment to, an issue, would come together to draft resolutions with both elected and permanent members playing a leadership role (for example, Canada on Haiti or Norway on the Horn of Africa). These groups often included non-Council members that had expertise, specific commitments or a stake in the situations (such as Spain on Western Sahara, Germany on Georgia and Iran, or Australia and New Zealand on East Timor) or had maintained an involvement beyond their stay on the Council (for example, Canada with respect to Haiti).

Council outcomes would be discussed first within the group and circulated to the full Council considerably later. This provoked pushback within the Council, with complaints that member states not on the Council became part of the decision-making processes before members of the Council.

During the past decade, the emergence of the penholder system has been paralleled by the diminished use of Groups of Friends. The net effect appears to be that while the demand for Council action is higher than ever, burden-sharing within the 15-member body is probably at a historical low.

In their 13 November 2018 letter, referred to above, the elected and incoming Council members stressed their conviction that a more equal distribution of work among all members would positively affect the overall effectiveness of the Council. They also pointed out that the Council should make better use of the expertise that the chairs of sanctions committees develop on the situations discussed in their respective committees and urged that chairs of sanctions committees become co-penholders on those dossiers. The impact of and follow up to this letter are not yet clear.

Annex

PENHOLDER ARRANGEMENTS AS OF DECEMBER 2018

COUNTRY OR SITUATION	CURRENT PENHOLDER IN THE COUNCIL
Afghanistan	The Netherlands
Bosnia and Herzegovina	Rotates monthly among members of the contact and drafting group (currently France, Germany, Italy, the Netherlands, Poland, Russia, the UK, and the US)
Burundi	France
Central Africa (UNOCA/LRA)	UK
Central African Republic	France
Colombia	UK
Cyprus	UK
Democratic Republic of the Congo	France
DPRK (Non-proliferation)	US

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COUNTRY OR SITUATION	CURRENT PENHOLDER IN THE COUNCIL
Golan Heights (UNDOF)	Russia and the US
Guinea-Bissau	Côte d'Ivoire
Haiti	US in consultation with the Group of Friends of Haiti (Argentina, Brazil, Canada, Chile, Colombia, France, Guatemala, Peru, the US, Uruguay and Venezuela)
Iran (Non-Proliferation)	US
Iraq	US on Iraq; UK on Iraq/Kuwait
Lebanon	France
Liberia	US
Libya	UK
Mali	France
Middle East (Israel/Palestine)	The US is often seen as the lead, but recent proposals on this issue have been drafted by various other Council members
Somalia	UK; US on piracy
Sudan	UK
South Sudan	US
Syria	Kuwait and Sweden lead on humanitarian issues
Ukraine	There is no clear penholder for Ukraine. France, Russia and the US have drafted texts and other members have been active in calling for meetings on the issue
West Africa, including the Sahel	Côte d'Ivoire and Sweden
Western Sahara	US
Yemen	UK

UN DOCUMENTS ON PENHOLDERS

Notes by the President of the Security Council

[S/2017/507](#) (30 August 2017) was the updated version of the Council's working methods compendium which, among other things, restated and elaborated on the previous penholder-related Council understandings, contained in document [S/2014/268](#).

[S/2014/268](#) (14 April 2014) was the first Council-agreed document mentioning the term "penholder".

Open debates on working methods

[S/PV.8175](#) (6 February 2018)

[S/PV.7740](#) (19 July 2016)

[S/PV.7539](#) and [Resumption 1](#) (20 October 2015)

[S/PV.7285](#) and [Resumption 1](#) (23 October 2014)

[S/PV.7052](#) and [Resumption 1](#) (29 October 2013)

[S/PV.6870](#) and [Resumption 1](#) (26 November 2012)

[S/PV.6672](#) and [Resumption 1](#) (30 November 2011)

Letters to the President of the Security Council

[S/2018/1024](#) (13 November 2018) was a letter from the 10 elected Council members and five incoming ones expressing their views on burden-sharing within the Council.

[S/2018/399](#) (4 May 2018) was a letter from the Permanent Representative of Kuwait addressed to the Secretary-General and the President of the Security Council requesting that the attached summary from the 6 February 2018 open debate on working methods be circulated as a document of the General

Assembly and of the Security Council.

[S/2016/35](#) (15 January 2016) was a letter from the Permanent Representative of Spain to the Secretary-General requesting that the attached summary from the 20 October 2015 open debate on working methods be circulated as a document of the General Assembly and of the Security Council.

Reports from the "Hitting the ground running" workshops organised by Finland in which the penholder issue was discussed

[S/2018/404](#) (3 May 2018) was the report from the 2-3 November 2017 workshop.

[S/2017/468](#) (1 June 2017) was the report from the 3-4 November 2016 workshop.

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[S/2016/506](#) (2 June 2016) was the report from the 5-6 November 2015 workshop.

[S/2015/292](#) (27 April 2015) was the report from the 13-14 November 2014 workshop.

[S/2014/213](#) (24 March 2014) was the report from the 21-22 November 2013 workshop.

[S/2013/280](#) (9 May 2013) was the report from the 15-15 November 2012 workshop.

[S/2012/190](#) (4 April 2012) was the report from the

17--18 November 2011 workshop.

[S/2011/484](#) (1 August 2011) was the report from the 18-19 November 2010 workshop.

[S/2010/177](#) (8 April 2010) was the report from the 19-20 November 2009 workshop.

[S/2009/193](#) (8 April 2009) was the report from the 20-21 November 2008 workshop.

[S/2008/195](#) (20 March 2008) was the report from the 15-16 November 2007 workshop.

[S/2007/137](#) (9 March 2007) was the report from the 29-30 November 2006 workshop.

[S/2006/483](#) (26 June 2006) was the report from the 28-29 November 2005 workshop.

[S/2005/228](#) (31 March 2005) was the report from the 9-10 December 2004 workshop.

[S/2004/135](#) (19 February 2004) was the report from the 13-14 November 2003 workshop.

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