

Australia and the UN Security Council

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Preface

The Australian Institute of International Affairs (AIIA) was established in 1924 as an independent, non-profit organisation seeking to promote interest in, and understanding of, international affairs in Australia.

The AIIA provides a wide range of opportunities for the dissemination of information and free expression of views on these matters through discussion and publication. Precluded by its constitution from expressing any opinion of its own on international affairs, the AIIA provides a forum for the presentation, discussion and dissemination of a wide range of views.

The AIIA's series of Policy Commentaries aims to provide informed opinion and useful source documents on issues of topical concern to encourage debate among AIIA members, the media and the general public.

The Commentaries are edited by Melissa Conley Tyler, National Executive Director in the AIIA National Office, Canberra. I hope that you will find the current commentary timely and informative.

Associate Professor Shirley Scott
Research Chair
Australian Institute of International Affairs
Series Editor 2012-2013

Editorial

Australia's bid for a non-permanent seat on the United Nations Security Council in 2013-2014 has attracted much debate with strong views expressed by proponents and detractors alike. Less attention has been paid to the important question of Australia's role and contribution to the Security Council if it is elected.

This AIIA policy commentary seeks to fill this gap.

In this commentary, former UN Assistant Secretary-General and Australian National University Professor Ramesh Thakur outlines the importance of the United Nations and the potential for Australia to contribute creatively and effectively through the UN.

UNSW legal academic Christopher Michaelsen gives an overview of the responsibilities and powers of the Security Council with a focus on its operations and current agenda.

Thom Woodroffe examines what Australia should seek to achieve during a term on the Security Council if elected and looks at the other countries likely to be on the Council during 2013-14.

Finally, the Deputy Head of Mission of the Embassy of Mexico Guillermo Puente Ordorica looks back at Mexico's experiences on the Security Council during its term in 2009-10 to provide lessons for other countries to draw on.

Together they provide valuable insights for Australians interested in the United Nations and its key organ, the Security Council.

Melissa H. Conley Tyler
National Executive Director
Australian Institute of International Affairs

Press Conference by Prime Minister Kevin Rudd
United Nations, New York
30 March 2008 *

I informed the Secretary-General of the United Nations today that Australia will be seeking election to the United Nations Security Council for 2013-2014. That will be a ballot which will be held in 2012. The reason for indicating our interest in proceeding with a candidature for the UN Security Council is that the pre-balloting processes begin very early and that's why it's important to declare Australia's intention at this stage.

If Australia is elected to the UN Security Council at that time, it will nearly be 30 years since Australia was last on the Security Council. We were last there in 1986. Australia was a member of the Security Council in the 1940s, in the 1950s and then again in 1973, and then again in 1986.

It's been a long time between drinks, and therefore the time has come to put our best foot forward and we believe that to be a fully effective member of the United Nations you need, on a regular basis, also to be an effective member of the Security Council as well. This will be a difficult candidature because there are also two states which have put their name forward and I imagine there will also be others.

There is no guarantee whatsoever of success of this particular bid, but I believe, very simply, if you are serious about wanting to become a non-permanent member of the Security Council you have to declare your intention and run like fury, and that's what we intend to do.

The second reason for putting our name for the UN Security Council was that the Australian Government is a strong supporter of the United Nations system. Many people criticise the United Nations for its

* Available online (accessed 16 October 2012)
http://pandora.nla.gov.au/pan/79983/20080812-0001/www.pm.gov.au/media/Interview/2008/interview_0154.html

failings. I believe it's important to see the cup as being half full, rather than half empty, and for people of good will to support the activities of the United Nations around the world.

We need to enhance the United Nations activities in terms of multilateral security, multilateral economic engagement, and also in the area of social policy and human rights as well. And on top of that, climate change and the environment. To be fully effective in that, we have to be fully engaged with the United Nations, and that is what we intend to do. [...]

**Speech by Prime Minister Julia Gillard
to the United Nations General Assembly, New York
26 September 2012***

[...] The story of the United Nations is a truly global story encompassing all the people of the world – a story of the progress of small and medium-sized countries, not just great powers.

It's a story of reconstruction after world war and resettlement of massing millions. A story of navigating the “winds of change”, the end of colonialism, bringing self-determination to the world's great majority, the billions of the global south. A story of harnessing new sources of wealth and new resources through a revolution of rising expectations and during decades of dictatorship, famine and war. A story of bringing justice to the perpetrators of the worst international crimes – and preventing the worst of human atrocities. Now, extending freedom and harnessing new markets, lifting billions more out of poverty and oppression.

This has been the work of the United Nations for seven decades.

This year we assemble, in the knowledge born of these years: neither expecting perfection nor accepting the status quo – understanding that there is much we can do together that we could never do alone.

The UN articulates humanity's highest ideals; but more, the UN makes practical progress towards realising those ideals in the world.

There is no better example of this than the Millennium Development Goals. Specific, measurable targets of the highest human importance – goals now familiar to us all. Twelve years on from 2000, three years out from 2015, the progress we have made must be just as familiar. The global economy has grown – hundreds of millions of people have lifted themselves up.

* Available online (accessed 11 October 2012):
<http://www.pm.gov.au/press-office/speech-United-Nations-General-Assembly-%E2%80%9Cpractical-progress-towards-realising-those-idea>

And that first, fundamental Goal – to halve the proportion of the world’s population living in extreme poverty – is now achieved. One billion human lives transformed.

A decade ago 100 million children did not get to go to school. This number has been reduced by fully one third. 33 million human futures entirely remade.

But we must all acknowledge that there are vital areas where the international community is failing to achieve change.

This is why I accepted the Secretary-General’s invitation to co-chair the Millennium Development Goal Advocacy Group alongside Rwanda: to advocate for practical progress in the coming three years.

Where the world has fallen short of ambitious goals, our response must be action, not disillusion.

This is what Australia will do. We will act.

We will help improve education. Australia’s development spending on education has doubled in the past five years – we will be among the world’s largest education donors by 2015. I am especially pleased to join as an “education champion” in support of the Secretary-General’s Education First initiative to mobilise global support to help achieve education for all children by 2015. I am honoured to lend it Australia’s support.

We will help increase gender equality. I was proud to announce at the Pacific Islands Forum last month that Australia will work alongside our partners in the Pacific on an unprecedented gender initiative: Pacific Women Shaping Pacific Development. Australia will provide \$320 million over 10 years: to support women’s political participation, to expand women’s leadership, to spread economic and social opportunities in the Pacific. This is a principle underpinning every Australian aid intervention and initiative: empowering women and girls.

We will help fight drug resistant malaria. The Secretary-General has made malaria one of his key priorities for his second term. It is a priority we share. Since 2000, the world has cut the number of deaths from malaria by 26 per cent. Without these advances, 330 000 more people would have died of malaria last year – the great majority in Africa. But malaria itself is fighting back – now, drug resistance in malaria must be overcome.

Later this year, Australia will hold Malaria 2012, bringing together political leaders, civil society and the private sector to accelerate efforts to control and eliminate malaria and combat growing drug resistance.

While we are working hard to realize the MDGs in the next three years, Australia is looking further ahead. 2015 is a goal but it is not a destination – rather it must be a new point of departure for much new work. Australia pledges to contribute to the important work of the High Level Panel on the Post-2015 Development Agenda.

Australia brings considerable national experience in working with conflict-affected states and least developed countries – especially in our own region. And we will seek to apply what we have learned in our work since 2000 to the world's plans for beyond 2015.

First, that peace is an essential foundation to development – and building peace is vital to the progress of societies recovering from conflict. Peacekeepers today must be peacebuilders – not just stopping conflict but enabling development.

Second, that there can be no poverty alleviation without the creation of wealth and jobs. Growth alone is never sufficient – but to achieve development in the interests of all people we must create jobs and wealth.

Third, that we cannot make poverty history until we also consign to history the argument that environmental protection and human development are conflicting global goals. Climate change threatens the secure food supply which guarantees development – new clean sources of energy deliver a new source of economic growth.

Australia is one of the world's most successful multicultural and multi-faith nations. The Australian experience proves a deeply important fact. There is nothing natural or inevitable about violent conflict over religious belief. We must reaffirm this again today. Denigration of religious beliefs is never acceptable. Australia seeks to be an example of freedom for all faiths – and we support this in the wider world. However, our tolerance must never extend to tolerating religious hatred and incitement to violence.

Whether these lead to attacks against members of religious minorities or diplomats, attacks against houses of worship or diplomatic missions the perpetrators of all such violence must be brought to justice and all such incitement must be condemned.

Mr President, Australia condemns violence and we work for peace. We proudly take our full part in the work of the United Nations for peace and security. We stringently observe Security Council resolutions aimed at curtailing weapons proliferation activities like those of North Korea. We take the leading role in the UN-mandated mission in Timor-Leste. We lead the regional assistance mission to Solomon Islands which operates with the UN's endorsement. And we have been the largest non-NATO contributor to the UN-mandated International Security Assistance Force in Afghanistan.

Australia will bring this record of service to the international community to our service on the UN Security Council should we have the privilege to be elected by the UN membership in October. There and beyond, our work and the work of every nation for peace must continue.

As we meet, the Syrian Government is turning the instruments of state power against the very people who state power ought to protect. Employing heavy weapons and ground-attack aircraft against civilians ... engaging in systematic human rights abuses. Syria's neighbours – in particular Jordan, Turkey, Lebanon and Iraq – are burdened by growing numbers of refugees and are delivering vital help to desperate people.

The UN has done important work already. Australia is playing our part to help through our humanitarian aid. We must do everything we can to end the suffering of the Syrian people. And to rebuild Syrian society, those who are committing crimes against humanity must be held accountable. The

international community must unite behind Lakhdar Brahimi, the Joint Special Representative for Syria. We urge the members of the Security Council to do so and to act decisively.

The international community must also unite in guarding against proliferation of weapons of mass destruction. It is now six years since the Security Council first expressed concern about Iran's nuclear program. Iran still refuses to take the urgent steps necessary to build confidence that its nuclear program is exclusively peaceful. In contravention of successive IAEA and UN Security Council resolutions, Iran moves closer to having the capacity to produce weapons-grade material.

So we stand with the world, united in sending a strong signal – through Security Council sanctions – that Iran must change its behaviour now. A nuclear armed Iran would be a major threat to regional and global security: especially given the shocking and aggressive statements about Israel by Iran's leadership. There remains the opportunity for diplomacy, backed up by robust sanctions, to persuade Iran to change its course. Iran must take this opportunity for change and the nations of this Assembly must press Iran to do so.

There must also be change in the Middle East process for peace. Australia shares the frustration of the parties at the current impasse. We understand the strong desire of the Palestinian people for national self-determination.

Australia is resolutely committed to the establishment of a Palestinian state which is both independent and viable. This is why we provide significant support to the foundations of a future Palestinian state and build its infrastructure and economy – more than \$300m in aid from 2011 to 2016. We commend the genuine progress President Abbas and Prime Minister Fayyad have made in building the institutions and infrastructure for statehood.

And no one can doubt Australia's close and continuing friendship with Israel. Our support for the right of Israel and its people to exist in security and peace is an historic commitment in Australian policy and it will endure.

We urge a return to direct negotiations – the only durable basis for achieving a two-state solution. The present impasse must be overcome. Both sides need to make compromises – and avoid provocations.

It will take sacrifice on both sides to settle complex and difficult issues such as settlements, borders, security and Jerusalem. The Israeli and Palestinian people deserve no less.

Australia's ideals in the world are those of the UN – and Australians know the practical value of the UN's work. This is why Australia seeks to serve – in all the work of the UN – and on the Security Council.

We are a strong democracy, welcoming all the people, languages and religions of the world.

We are a country of the Asia-Pacific, a neighbour to developing countries, with a perspective of both the North and South.

We are a state with a decades-long tradition of capable and committed work in the United Nations.

We contributed to the first UN peacekeeping force in 1947 – and we lead contemporary peace building in our own region.

We support the development of new norms to enable the UN and its member states to act to prevent atrocities and to make the perpetrators of the worst crimes accountable for them.

We act as a first responder to humanitarian need – as a donor who stays the course – as a partner in rebuilding after conflict.

Mr President, Australia embraces the high ideals of the United Nations and takes a practical approach to achieving change.

The work of the United Nations is an historic task in which Australia wholeheartedly joins.

Charter of the United Nations[†]

CHAPTER V: THE SECURITY COUNCIL

Composition

Article 23

1. The Security Council shall consist of fifteen Members of the United Nations. The Republic of China, France, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and the United States of America shall be permanent members of the Security Council. The General Assembly shall elect ten other Members of the United Nations to be non-permanent members of the Security Council, due regard being specially paid, in the first instance to the contribution of Members of the United Nations to the maintenance of international peace and security and to the other purposes of the Organization, and also to equitable geographical distribution.
2. The non-permanent members of the Security Council shall be elected for a term of two years. In the first election of the non-permanent members after the increase of the membership of the Security Council from eleven to fifteen, two of the four additional members shall be chosen for a term of one year. A retiring member shall not be eligible for immediate re-election.
3. Each member of the Security Council shall have one representative.

Functions and Powers

Article 24

1. In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and

[†] Available online: <http://www.un.org/en/documents/charter/> (accessed 13 October 2012).

security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf.

2. In discharging these duties the Security Council shall act in accordance with the Purposes and Principles of the United Nations. The specific powers granted to the Security Council for the discharge of these duties are laid down in Chapters VI, VII, VIII, and XII.
3. The Security Council shall submit annual and, when necessary, special reports to the General Assembly for its consideration.

Article 25

The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter.

Article 26

In order to promote the establishment and maintenance of international peace and security with the least diversion for armaments of the world's human and economic resources, the Security Council shall be responsible for formulating, with the assistance of the Military Staff Committee referred to in Article 47, plans to be submitted to the Members of the United Nations for the establishment of a system for the regulation of armaments.

Voting

Article 27

1. Each member of the Security Council shall have one vote.
2. Decisions of the Security Council on procedural matters shall be made by an affirmative vote of nine members.
3. Decisions of the Security Council on all other 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, and under paragraph 3 of Article 52, a party to a dispute shall abstain from voting.

Procedure

Article 28

1. The Security Council shall be so organized as to be able to function continuously. Each member of the Security Council shall for this purpose be represented at all times at the seat of the Organization.
2. The Security Council shall hold periodic meetings at which each of its members may, if it so desires, be represented by a member of the government or by some other specially designated representative.
3. The Security Council may hold meetings at such places other than the seat of the Organization as in its judgment will best facilitate its work.

Article 29

The Security Council may establish such subsidiary organs as it deems necessary for the performance of its functions.

Article 30

The Security Council shall adopt its own rules of procedure, including the method of selecting its President.

Article 31

Any Member of the United Nations which is not a member of the Security Council may participate, without vote, in the discussion of any question brought before the Security Council whenever the latter considers that the interests of that Member are specially affected.

Article 32

Any Member of the United Nations which is not a member of the Security Council or any state which is not a Member of the United Nations, if it is a party to a dispute under consideration by the Security Council, shall be invited to participate, without vote, in the discussion relating to the dispute. The Security Council shall lay down such conditions as it deems just for the participation of a state which is not a Member of the United Nations.

CHAPTER VI: PACIFIC SETTLEMENT OF DISPUTES

Article 33

1. The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.
2. The Security Council shall, when it deems necessary, call upon the parties to settle their dispute by such means.

Article 34

The Security Council may investigate any dispute, or any situation which might lead to international friction or give rise to a dispute, in order to determine whether the continuance of the dispute or situation is likely to endanger the maintenance of international peace and security.

Article 35

1. Any Member of the United Nations may bring any dispute, or any situation of the nature referred to in Article 34, to the attention of the Security Council or of the General Assembly.
2. A state which is not a Member of the United Nations may bring to the attention of the Security Council or of the General Assembly any dispute to which it is a party if it accepts in advance, for the purposes of the dispute, the obligations of pacific settlement provided in the present Charter.
3. The proceedings of the General Assembly in respect of matters brought to its attention under this Article will be subject to the provisions of Articles 11 and 12.

Article 36

1. The Security Council may, at any stage of a dispute of the nature referred to in Article 33 or of a situation of like nature, recommend appropriate procedures or methods of adjustment.

2. The Security Council should take into consideration any procedures for the settlement of the dispute which have already been adopted by the parties.
3. In making recommendations under this Article the Security Council should also take into consideration that legal disputes should as a general rule be referred by the parties to the International Court of Justice in accordance with the provisions of the Statute of the Court.

Article 37

1. Should the parties to a dispute of the nature referred to in Article 33 fail to settle it by the means indicated in that Article, they shall refer it to the Security Council.
2. If the Security Council deems that the continuance of the dispute is in fact likely to endanger the maintenance of international peace and security, it shall decide whether to take action under Article 36 or to recommend such terms of settlement as it may consider appropriate.

Article 38

Without prejudice to the provisions of Articles 33 to 37, the Security Council may, if all the parties to any dispute so request, make recommendations to the parties with a view to a pacific settlement of the dispute.

CHAPTER VII: ACTION WITH RESPECT TO THREATS TO THE PEACE, BREACHES OF THE PEACE, AND ACTS OF AGGRESSION

Article 39

The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.

Article 40

In order to prevent an aggravation of the situation, the Security Council may, before making the recommendations or deciding upon the measures provided for in Article 39, call upon the parties concerned to comply with such provisional measures as it deems necessary or desirable. Such provisional measures shall be without prejudice to the rights, claims, or position of the parties concerned. The Security Council shall duly take account of failure to comply with such provisional measures.

Article 41

The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.

Article 42

Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.

Australia and the United Nations

Professor Ramesh Thakur*¹

In the last couple of years, one of the most prominent Australian newsmakers in the world has been Julian Assange. Earlier this year, his London-based Australian lawyer, Jennifer Robinson, on her way back to Sydney to attend a Commonwealth Lawyers Association (CLA) conference, faced some difficulty because she was on an ‘inhibited travel list’, though how she got on the list remains a mystery. The CLA pointed out that article 13 of the United Nations Principles on the Role of Lawyers says that ‘lawyers shall not be identified with their clients or their clients’ causes as a result of discharging their functions’.²

This is a small yet telling example of how the UN system works in myriad mysterious ways to shape our daily lives, mainly for the good, without most of us realising its ubiquitous and pervasive influence. On balance, albeit not without serious qualifications, the world is a better place because the United Nations exists, because of what it does and how. The UN system is the biggest incubator bar none of global rules to govern the world, from trade, refugees and the law of the sea to the use of force and the regulation of armaments. With far-flung civilisational, commercial, strategic and environmental interests and links, Australia has a large and direct stake in the rules-based global order governed by this system. Why would Australia not want, and why should Australia not be given, a periodic voice and vote in the deliberations and decisions that have such a profound effect on Australia’s security and prosperity?

Australia has served on the UN Security Council four times so far: in 1946–47, 1956–57, 1973–74 and 1985–86. More than a quarter century has gone by since Australia was last on the Council. It is competing this year with Finland and Luxembourg for two vacancies in the West European and Others Group (WEOG). Win or lose, after the vote on 18 October,

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Australia must mount a serious and sustained campaign to realign the UN's geographical groupings to contemporary realities.³

In this paper I will first discuss the United Nations itself: what it does, why that matters, its faults and failings, but also its strengths and accomplishments.⁴ Second, I'll discuss what Australia can contribute to the UN in the context of Australia as a UN member state.

The United Nations

The United Nations is two things: an idea, and an actual organisation with structures, procedures and personnel. As a symbol, which is the most powerful element that explains its enduring attraction, the UN is the world's only body that houses the divided fragments of humanity. Transcending national borders and based on global solidarity, it symbolises a world in which those condemned to die in fear are given the chance to live with hope again, want gives way to dignity, and apprehensions are turned into aspirations. This symbolism finds expression in the three overarching normative mandates of security, development and human rights. The power of the symbolism of the UN was very much in evidence with the poignant and emotional scenes when Kofi Annan and his wife visited East Timor in February 2000. As BBC correspondent Matt Frei observed from Dili, 'Annan's visit could provide emotional support to a people still coming to terms with the events of last year'.⁵

As an organisation, the UN's performance shows both problems and achievements. Few if any Australians know more about UN problems and shortcomings than me. It is an international bureaucracy with many flaws and a forum often used for finger-pointing rather than problem-solving. Too often it fails to tackle urgent problems owing to timidity and political divisions. As a house divided against itself, it struggles sometimes to stand for anything.

Yet the UN remains indispensable. The world is interdependent in areas as diverse as financial markets, infectious diseases, climate change, terrorism, nuclear peace and safety, product safety, food supply and water tables, fish stocks and ecosystem resources. Any of these can provoke military conflict and are also drivers of human insecurity. All require joint action to enhance

national, international and human security, improve welfare, reduce costs and bring order and regularity to international affairs.

At the centre of this interdependent, globalised and networked multilateral order is the UN. Through it, a growing number of public policy decisions and practices have been transferred from the state to the international level. In the theatre of world politics, the United Nations has often had lead star billing in:

- Preventing and managing conflicts;
- Regulating armaments;
- Championing human rights, international humanitarian law and international criminal justice with the accompanying end to sovereign impunity;
- Liberating the colonised;
- Providing economic and technical aid in the newly liberated countries;
- Organising elections;
- Empowering women;
- Educating children;
- Feeding the hungry;
- Sheltering the dispossessed and displaced;
- Housing refugees;
- Tending to the sick;
- Promulgating global health norms and regulations;
- Coordinating disaster relief and assistance.

This is not always done well, efficiently, cost-effectively or in time. However no other body can tackle the world's accumulating pathologies more effectively, with greater legitimacy, lower transaction and compliance costs and higher comfort levels for most countries.

Consider the use of force, within the broader context of changing systemic factors like the nature, location and victims of war and armed conflict, the nature of security and threats to international security, and the global norms that regulate the international behaviour of state and nonstate actors alike. Until the First World War, going to war was an accepted right of sovereign states. The only deterrent was the military might of the opponent, based on

national strength and alliances with others, which increased both the risk of defeat and the cost of victory. Since 1945, the UN has spawned a robust norm against going to war except in self-defence against armed attack or when authorised by the organisation itself. The UNSC is the core of the international law enforcement system, the world's sole duly sworn sheriff, with the legal competence to make the great decisions on war and peace that are binding on all countries, even non-members and those who voted against the decisions. As we know, Australians have an instinctive wish to play deputy sheriff. It is better to be the world's duly-elected than the region's self-appointed deputy sheriff.

Australia and the UN Security Council

It is more than a quarter century since Australia was last on the UNSC. Periodic presence at the world's top table of serious decision-making is important to preserve institutional memory in Australia's foreign service so that Australia can contribute creatively and effectively to solutions to some of the world's most intractable problems. By any objective assessment, Australia should be an elected member of the UNSC once every 10-15 years. This is true with respect to the metrics of state attributes (GDP, military capacity, etc.), and also with respect to Australia's manifold contributions to the UN system, which include peacekeeping contributions, development assistance and humanitarian and disaster relief.

Australia has a unique set of knowledge, experience and skills to offer the international community through the UN. Australia has successfully leveraged European heritage and political values and the gravitational pull of an Asia-Pacific geographical setting to create a vibrant, multicultural, orderly and peaceful society that is the envy of much of the world. Australia and Canada were the two advanced countries to withstand the shock of the global financial crisis without too much damage. Australia's membership of the G20, and its contributions to the first successful baby steps taken by the G20 in 2008–09, registered its global profile and role. Australia is also a significant regional power in the Asia-Pacific, as seen in the leadership role it has played in the South Pacific, and especially in the East Timor crisis in 1999 and the international efforts at stabilisation and development after that date. The energising mix of Asia-Pacific dynamism

and rich European heritage ensures that Australia normally offers high-quality yet practical and relevant ideas for improving world governance.

By way of illustration, one can look at Australia's contribution to international law on the use of force. Since 1945, the United Nations has functioned as a *funnel* for processing ideas on how best to limit the use of violence for settling disputes; a *forum* for debating the norms and rules to govern the use of force both within and across borders; and a *font* for authorising the use of force in the name of the international community.

In response to the challenge of preventing mass atrocities, a particularly innovative and influential answer has been the principle-cum-norm of the responsibility to protect, or R2P, which requires every state to bear the responsibility to protect its population and to take collective action where national authorities are failing to protect their populations.⁶ Several commentators have described R2P as one of the most important norm shifts since 1945, with eminent British historian, Sir Martin Gilbert, going so far as to call it 'the most significant adjustment to national sovereignty in 360 years', that is, since the Treaty of Westphalia in 1648.⁷

The UN played a central role in the formation and advocacy of R2P and Australians have been deeply involved in its formulation and advocacy. Secretary-General Kofi Annan famously issued a challenge to the international community in 1999, saying that the existing paradigm had snapped and a new consensus on 'humanitarian intervention' was needed. In response, Canada set up an independent international commission which submitted its report recommending R2P to Annan in December 2001.⁸ This was unanimously endorsed by world leaders at the UN summit in 2005 and Secretary-General Ban Ki-moon has since presented three special reports to sustain and deepen this consensus while clarifying the principle. International consensus on R2P as a principle and norm will be developed and reshaped in the UN General Assembly and its military application determined by the UNSC.

Where does Australia come into this story? It so happens that one of the two co-chairs of the international commission that promulgated the principle, two of the three principal authors of its ground-breaking report and the two main promoters who have helped transform the 2001 principle

into a global norm are Australians: Gareth Evans and myself. Australia also provides significant funding for civil society organisations engaged in promoting R2P norm socialisation, notably the New York-based Global Centre for R2P and the Asia-Pacific Centre for R2P at the University of Queensland. The Executive Director of the Global Centre, Professor Simon Adams, is an Australian, and the world's leading academic expert on R2P outside the UN and the original international commission, Professor Alex Bellamy, is at Griffith University.

In February-March 2011, the United Nations for the first time invoked R2P under the coercive chapter VII of the UN Charter. By 2012, there was no substantial opposition to R2P as a principle or norm among UN member states. Instead, there is striking depth of consensus in support of R2P principles and a broadly shared understanding of the responsibilities. Yet there is also deep disquiet among many, verging on outright distrust in some key countries like Brazil, China, Germany, India and Russia, about how far UN authorisation for the Libyan operation was stretched. As a result, over the next few years, a priority on the UN agenda will be to formulate a set of criteria to guide UNSC debate around authorising an R2P military intervention, and monitoring mechanisms to ensure that the Council exercises supervisory control over operations during implementation. Australia's contribution to this debate will be the greater for being on rather than outside the UNSC.

In the meantime, the main contribution to clarifying the normative, institutional and operational overlaps and differences between R2P and the protection of civilians is likely to come from Australian efforts. The Australian Civil-Military Centre in Queanbeyan, the Institute of Ethics, Governance and Law at Griffith University and the United Nations University are engaged in a joint study to that effect, whose results will be presented to the UN community in New York. This is world-leading, policy-changing research with an applied bent.

Australia has a proven track record of full-spectrum contributions to UN peace operations. Australia has a proud, historic and continuing engagement with peacekeeping, with more than 65,000 Australians having served with great distinction in over 50 multilateral peace operations. Australia brings to peace operations a professional and disciplined military

force that has a commitment to civil-military integration and an exemplary history of subordination to civil authority and the rule of law. Yet it can be postured for high-end operations should circumstances deteriorate into armed challenges, as was the case in East Timor. On the civilian side, Australia has a permanent group of around 600 in the International Deployment Group including police officers who are swiftly deployable; an Australian Civilian Corps currently of 341 registered members; and the Australian Civil–Military Centre to help develop doctrine and provide technical assistance.

Furthermore, Australia can point to a proud and bipartisan record of leadership in resolving critical conflicts in its neighbourhood and around the region, including Cambodia in the 1980s under Labor and East Timor in a decade later under a Coalition government. Australian troops operate, fight and die in Afghanistan under a UN mandate. In all three cases, the toll in lives and legitimacy would have been hugely greater without UN blessing.

In the conceptual vocabulary of Gareth Evans, whose name is as familiar in UN circles as it is here, Australia, under Coalition and Labor governments alike, has traditionally pursued good international citizenship as the third element of an enlightened definition of the national interest, the others being security and trade.

In conclusion, the United Nations remains our best and only hope for unity-in-diversity in a world in which global problems require multilateral answers: solutions without passports for problems without passports. For better or worse, the key forum for addressing almost all the world's critical challenges in the foreseeable future will be the United Nations, whose peak body is the Security Council. Australia can stand aside and join the nattering nabobs of international negativism in complaining that UN decisions are always for the worse. Or it can take its rightful seat at the high table to help ensure that UN decisions are mostly for the better.

¹ Based on a talk delivered to the National Conference of the United Nations Association of Australia, Brisbane, 24 August 2012.

² Chris Merritt, 'Airport fracas opens a can of worms', *Australian*, 20 April 2012.

³ See Ramesh Thakur, 'Overhauling the anachronistic U.N. groupings', *Japan Times*, 20 July 2012.

⁴ For a full discussion, see Ramesh Thakur, *The United Nations, Peace and Security: From Collective Security to the Responsibility to Protect* (Cambridge: Cambridge University Press, 2006).

⁵ 'Annan offers East Timor hope', *BBC News*, 17 February 2000, <http://news.bbc.co.uk/2/hi/asia-pacific/645815.stm>.

⁶ See Gareth Evans, *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and for All* (Washington: Brookings Institution, 2008); Ramesh Thakur, *The Responsibility to Protect: Norms, Laws and the Use of Force in International Politics* (London: Routledge, 2011); and Alex J. Bellamy, *Responsibility to Protect: The Global Effort to End Mass Atrocities* (Cambridge: Polity, 2009).

⁷ Martin Gilbert, 'The Terrible 20th Century', *The Globe and Mail* (Toronto), 31 January 2007.

⁸ *The Responsibility to Protect*. Report of the International Commission on Intervention and State Sovereignty. (Ottawa: International Development Research Centre for ICISS, 2001).

The Contemporary Role of the UN Security Council

Dr Christopher Michaelsen*

As the principal organ of the United Nations charged with the maintenance of international peace and security, the Security Council enjoys greater powers than any other international body in history. Its powers are far-reaching and allow for the adoption of a wide range of enforcement measures including authorisation of the use of force. Security Council measures are binding on all UN Member States if the Council so decides. Because of its prominent and powerful role, the Council has often been described as an ‘executive of the international community’ or as an ‘international government’.¹ Writing in 1950, the American statesman John Foster Dulles even claimed that ‘the Security Council is not a body that merely enforces agreed law; it is a law unto itself.’²

While the powers of the Security Council are extensive, its legal authority stems from the UN Charter. The principle of legality requires that Security Council measures have a clear legal basis in the Charter. This means that any discretionary power of the Security Council must be derived from specific authorisations under the Charter and cannot be presumed. The Charter provides for the peaceful settlement of disputes in Chapter VI under which the Council can make non-binding recommendations. Legally binding enforcement powers are contained in Chapter VII which bestows responsibility upon the Council for taking measures to maintain or restore international peace and security.

Threats to International Peace and Security

The Security Council can only take enforcement measures under Chapter VII if it invokes Article 39 of the Charter. This article provides that the ‘Security Council shall determine the existence of any threat to the peace,

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breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.’ The Charter does not define ‘threat to the peace’, ‘breach of the peace’, or ‘act of aggression’ as the drafters aimed to give the Security Council maximum flexibility in determining when it was necessary to respond to a particular situation. At the same time, most observers would have predicted that a ‘breach of the peace’ would represent a serious conflict between states, whereas as an ‘act of aggression’ would describe military intervention by one state against another. The express incorporation of ‘threat to the peace’ demonstrates, however, that Article 39 can come into play long before an armed conflict breaks out.

In practice the Council has almost exclusively used determinations of a ‘threat to the peace’ to invoke its Chapter VII powers. A range of situations have been determined to give rise to such threats including inter- and intra-state conflicts and internal conflicts with a regional or sub-regional dimension.

The Council has also identified some potential or generic threats as threats to international peace and security, including acts of terrorism, the proliferation of weapons of mass destruction and the proliferation and illicit trafficking of small arms and light weapons. Most recently, the Security Council has also held topical debates on a range of issues such as the rule of law and impunity; women; peace and security; children in armed conflict; climate change and natural resources and HIV/AIDS (albeit as part of a broader debate on the role of UN peace missions). However, these issues have not yet been found to constitute a threat to the peace in its technical meaning. Indeed, there is considerable debate as to whether, and to what extent, global challenges like climate change and HIV/AIDS should be addressed in the framework of the Security Council.

Non-Military Measures

Once the Security Council has determined the existence of a threat to the peace, breach of the peace or act of aggression, it has the power to authorise both military and non-military measures in order to give effect to its decisions. The power to adopt measures not involving the use of force

flows from Article 41 of the Charter which provides that the ‘Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.’

The text and history of the peculiar (and arguably outdated) formulation of Article 41 suggest that the enumeration of non-military measures is not exhaustive. Indeed, in practice the Council has employed a wide range of non-military measures including arms embargos, trade restrictions, travel bans and the freezing of assets.³ The Council has also taken atypical measures such as the establishment of interim administrations of territories and the creation of international criminal tribunals such as International Criminal Tribunals for the former Yugoslavia (ICTY) and for Rwanda. These measures sparked considerable debate and the competence of the Council to establish the ICTY was (unsuccessfully) challenged in the *Tadic* case. In this case, the ICTY’s Appeal Chamber acknowledged that the discretion of the Council under Chapter VII was ‘not unfettered’, but that it had ‘a very wide margin of discretion under Article 39 to choose the appropriate course of action and to evaluate the suitability of the measures chosen, as well as their potential contribution to the restoration or maintenance of peace.’⁴

The most common tool of the Council adopting enforcement measures short of military force is sanctions. These can take the form of comprehensive economic and trade sanctions and/or more targeted measures such as arms embargoes, asset freezing, travel bans or diplomatic restrictions, sometimes referred to as ‘smart sanctions’. The Council currently imposes sanctions measures relating to Cote d’Ivoire, the Democratic People’s Republic of Korea, the Democratic Republic of the Congo, Eritrea, Guinea-Bissau, Iran, Iraq, Lebanon, Liberia, Libya, Somalia, Sudan as well as Al-Qaeda and the Taliban. Most UN sanction regimes have targeted states and/or state representatives. However, in recent times, the Security Council has increasingly adopted sanctions targeting private individuals, including those who do not necessarily have any links to states, governments or ‘traditional’ non-state actors like rebel

groups or civil war factions. The Al-Qaeda sanctions regime is a case in point.

The Security Council's evolving practice raises a number of important legal problems. These stem mainly from the fact that international organisations developed as elements of a system of international law designed to regulate the relations between states and to organise their cooperation. Conceptually these organisations were not developed to address individuals, at least not directly. Yet it is precisely private individuals who have been the target of recent Security Council sanctions regimes. Due to the primacy of the UN Charter under international law, however, targeted entities and individuals have faced significant obstacles in challenging their inclusion in the Council's sanctions list in domestic or international courts. As a consequence, recent individualised sanctions regimes have been criticised for failing to provide fair and clear procedures for the listing and de-listing of targeted individuals or entities.⁵

Military Measures

While the overwhelming majority of Chapter VII enforcement measures have been non-military in nature, the Charter also provides for enforcement measures involving the use of military force. In particular, Article 42 stipulates that 'should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.'

A prominent recent example of the authorisation of the use of force was the NATO-led military intervention in Libya. Adopting Resolution 1973 (2011), the Security Council authorised UN Member States, acting nationally or through regional organisations, 'to take all necessary measures (...) to protect civilians and civilian populated areas under threat of attack in the Libyan Arab Jamahiriya.'⁶ The 'all necessary measures' terminology closely resembled the 'all necessary means' formula used by the Council in late 1990 to authorise military operations to expel Iraqi troops from Kuwait.

As is well known, two days after the adoption of Resolution 1973, a multi-state coalition began a military intervention in Libya. Commentators have since hailed the military operations as the first successful test-case of the Responsibility to Protect doctrine (R2P). This doctrine was first developed by the International Commission on Intervention and State Sovereignty (ICISS) in 2001 and later included, in somewhat modified form, in the Outcome Document of the World Summit in 2005. R2P proposes the notion that states have a responsibility to protect their own citizens from avoidable humanitarian atrocities and mass crimes, but that when they are unwilling or unable to do so, that responsibility must be borne by the broader community of states. For Ramesh Thakur, one of the authors of the ICISS report, the Security Council's authorisation of military action by international forces in Libya marked 'the first instance of the implementation of the sharp edge of the new norm of the responsibility to protect'.⁷ Similarly, Gareth Evans, the former co-chair of ICISS, regarded the Libyan intervention as 'a textbook case of the RtoP norm working exactly as it was supposed to, with nothing else in issue but stopping continuing and imminent mass atrocity crimes.'⁸

Current Debates

However, the excitement among R2P advocates was both misplaced and premature. In fact, a review of the text of the relevant Security Council resolutions provides little evidence to suggest that the pre-existing scepticism among UN Member States (including China and Russia) towards R2P had been overcome or that the Libyan intervention marked the beginning of a new era of Security Council enthusiasm for military intervention for humanitarian protection purposes. In fact, an express invocation of R2P – as opposed to vague references in the preambles of Resolutions 1970 and 1973 – would likely have resulted in Russia and China exercising their veto power and preventing rather than enabling the Council from taking action to avoid a large-scale humanitarian catastrophe in Libya.

The implementation of Resolution 1973 and the expansion of the intervention which effectively led to regime change in Libya have since been denounced by Russia and other Security Council members who

abstained from voting on Resolution 1973. The Libyan experience has significantly poisoned the climate in the Security Council and prevented progress in relation to other pressing security challenges, including the crisis in Syria.

On 4 October 2011, for instance, France, Germany, Portugal and the United Kingdom tabled a draft resolution on Syria that demanded ‘an immediate end to all violence’ and urged ‘all sides to reject violence and extremism.’⁹ This draft resolution did not include any references to possible enforcement measures and warned only of the Council’s ‘intention to review Syria’s implementation... within 30 days and to consider its options, including measures under Article 41 of the Charter of the United Nations.’¹⁰ Yet, in spite of the weak wording of the draft resolution, both China and the Russian Federation exercised their veto power.

Explaining his vote, the representative of the Russian Federation, Vitaly Churkin, described a clash between the resolution’s sponsors’ ‘philosophy of confrontation’ and the respect for sovereignty and non-intervention expressed by Russia and China, as well as Brazil, India, and South Africa which all abstained on the resolution.¹¹ Churkin noted that the situation in Syria could not be considered separately from the Libyan experience and that the international community was ‘alarmed’ by statements that ‘the NATO interpretation’ of compliance with Security Council resolutions on Libya was a ‘model for the future actions of NATO in implementing the responsibility to protect.’¹² He noted that the Russian Federation was troubled also by the possibility that any resolution initiating Security Council involvement in Syria could be interpreted in the same way as Libya where the no-fly zone ‘has morphed into the bombing of oil refineries, television stations and other civilian sites.’¹³

One year later, nothing much has changed. Both Russia and China continue to block efforts in the Council to adopt Chapter VII measures relating to the crisis in Syria. While the Council condemned the recent Syrian mortar fire on a Turkish village as a ‘violation of international law’ and called on the Syrian Government to ‘fully respect the sovereignty and territorial integrity of its neighbours,’ the prospects for a broader consensus on the Syrian crisis continue to be dismal.¹⁴

What remains to be seen is whether, and to what extent, the rift in the Security Council following the crises in Libya and Syria will have a lasting impact on its broader work. The month of October 2012 alone will see important Council sessions on Afghanistan, Mali, Cote d'Ivoire, Lebanon and Sudan/Darfur as well as an open debate on the role of the International Criminal Court and its relation to the Security Council. It is clear that whoever gets elected to the Council for a two-year term starting in January 2013 will face complex political challenges which continue to be dominated by the ever-changing dynamics between the Council's permanent five.

¹Jochen A. Frowein and Nico Krisch, 'Introduction to Chapter VII', in Bruno Simma et al (eds.), *The Charter of the United Nations: A Commentary*, Vol. I, 2nd ed. (New York: OUP, 2002), p. 702 citing Hans Morgenthau and P.-M. Dupuy respectively.

²John Foster Dulles, *War or Peace* (New York: Macmillan, 1950), p. 194.

³For an overview on the different measures applied, see, e.g., David Cortright and George A. López (eds.), *The Sanctions Decade: Assessing UN Strategies in the 1990s* (Boulder, CO: Lynne Rienner, 2000), pp. 205-7.

⁴*Prosecutor v. Dusko Tadic aka 'Dule'*, Case No. IT-94-I-AR72, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995, (1995) I ICTY JR 293, paras 29 and 32.

⁵See, e.g., Christopher Michaelsen, "The Security Council's Practice of Blacklisting Alleged Terrorists and Associates: Rule of Law Concerns and Prospects for Reform," 8(1) *New Zealand Journal of Public and International Law* (2010) pp. 71-90.

⁶SC Res. 1973, UN Doc. S/RES/1973 (17 March 2011).

⁷Ramesh Thakur, "Libya and the Responsibility to Protect: Between Opportunistic Humanitarianism and Value-Free Pragmatism," 7(4) *Security Challenges* (2011) p. 13.

⁸Gareth Evans, "Interview: The "RtoP" Balance Sheet After Libya", available at: <<http://www.gevans.org/speeches/speech448%20interview%20RtoP.html>> (accessed 10 October 2012).

⁹UN Doc. S/2011/612, para. 2.

¹⁰*Ibid.*, para. 11.

¹¹UN Doc. S/PV.6627, p. 3.

¹²*Ibid.*, p. 4.

¹³*Ibid.*

¹⁴“UN chief, Security Council urge restraint amid rising tensions along Syrian-Turkish border,” *UN News Centre*, 4 October 2012, available at: <<http://www.un.org/apps/news/story.asp?NewsID=43214#.UHZGdlERZ8G>> (accessed 11 October 2012).

Australia's Two Years on the UN Security Council

Thom Woodroffe*

On New Year's Day, if all goes to plan, Australia will walk into the Security Council as a member of the world's most important body for international peace and security for the first time in almost thirty years.

While Australia's campaign was short by recent standards – only lasting a mere four and a half years – planning for this moment began some time ago.

Earlier this year, a small but dedicated team was convened in the Department of Foreign Affairs and Trade parallel to the campaign bunker to begin brainstorming how Australia could best utilise a term on the Security Council and the issues it would likely confront.

But while securing a seat on the Security Council is considered the diplomatic equivalent of winning the Olympics, actually holding a seat is a very different prospect.

Around The Table

The first element of utilising a term on the Security Council is working with the other countries around the table.

In recent years, the Security Council has experienced a rare and coincidental elevation in concentrated power with many of the world's most important countries securing overlapping temporary seats. In 2011, all of the world's rapidly industrialising countries or 'BRICS' – Brazil, Russia, India, China and South Africa – found themselves in the same room when Brasilia, New Delhi and Pretoria secured election to the Council. Brazil and India were also joined that year by Germany, with Japan on the Security

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Council the previous year. Together they represent the so-called ‘G4’ expansion bloc as the strongest contenders for any new permanent seats.

If elected, Australia will take its seat around the table with Azerbaijan, Guatemala, Morocco, Pakistan and Togo, serving out their final year on the Council, plus Argentina, Rwanda, probably Finland and either South Korea or Cambodia (Bhutan is also competing) who are up for election.¹

Understanding the dynamics, personalities and priorities of this diverse and eclectic group will be essential to Australia maximising the utility of its time on the Security Council.

For example, Morocco is well known for leveraging its role on the Council to exercise power and influence in domestic and regional disagreements, particularly regarding Western Sahara. Morocco is also known for its interest in the Middle East Peace Process, its position as one of the world’s top twenty peacekeeping contributors and its voting alignment with the United States.

By contrast, the small western African state of Togo has taken a strong focus on the concerns of the Global South, including supporting calls for a permanent seat to be established on the Security Council to ensure representation of their voices. Togo has also made standing up for other small countries in the world a hallmark of its membership. This is something that Australia made a strong theme of its campaign, particularly in order to appeal to the Pacific and Caribbean communities.

For its part, Guatemala has staked its inaugural membership on helping improve the working procedures of the Council with a focus on fostering heightened discussion and input from the member states around the table. Against the backdrop of an increasing profile in worldwide peacekeeping operations – from its own backyard in Haiti to the far-flung rainforests of the Democratic Republic of Congo – it also has expressed a desire to ensure more realistic and pragmatic peacekeeping mandates. Of all continuing members, Guatemala is the most strongly aligned with the United States.

Pakistan is perhaps the most interesting non-permanent member Australia will encounter; it is a regional neighbour with which Australia has poor

existing links. Many commentators inaccurately labeled Pakistan's candidacy as a balance to India's membership, but the reality is that Islamabad was more motivated by the prospect of rallying against Washington. One Pakistani newspaper wrote in the wake of its election that the country's two major priorities will be combating terrorism and interference in smaller countries.² The newspaper also mentioned a focus on economic slowdown, human rights violations, environmental degradation as well as hunger and disease. At times, Pakistan has sided with China and Russia in resisting pressure from the United States and European powers.

Thanks to alphabetical assignment, Australia will spend its first year if elected sitting next to Azerbaijan, a country located at the crossroads of Eastern Europe and Western Asia that is serving its first term on the Council. This democratic outpost of the region has built ever-stronger ties with the United States in recent years and is supporting the US voting pattern. As a young state, Azerbaijan has stated its desire to ensure greater transparency in the workings of the Council and foster greater consultation with member states in a similar vein to Guatemala. Azerbaijan may seek to use its position as a source of power and influence over its neighbour Armenia. The two countries have fought two wars over the Nagorno-Karabakh region, most recently from 1988 to 1994, and have no formal diplomatic relations.

On the other side of Australia will be Argentina, another widely-respected middle power and a colleague in the G20. Argentina was last a member of the Security Council as recently as seven years ago. It has asserted that it will pursue an independent-minded approach focused on transparency and consultation this time around. The country is well-known as one of the most constructive temporary members. In 1994 it established better communication between troop-contributing countries and the Security Council governing their operations. Argentina is likely, alongside Guatemala, to take a keen interest in Haiti where seventy percent of its peacekeepers are deployed.

The other shoo-in to serve on the Council is the tiny African state of Rwanda, standing uncontested for a rotational regional seat. Given its past, Rwanda sees a strong connection between security and development and

has focused elsewhere on promoting the transition from peacekeeping to state-building. Rwanda is also expected to push for a renewed focus on women, particularly around combating sexual violence, and on improving the Council's working methods.

If successful, Australia will also encounter either the Republic of Korea or Cambodia, both competing for the Asian seat along with the unlikely Bhutan. Korea, like Argentina and Australia, is a respected middle power and a member of the G20 and would likely push the Council for a stronger focus on dealing with North Korea. Cambodia for its part has the endorsement of the Association of South East Asian Nations (ASEAN) which it chaired this year. Both countries bring compelling historical narratives to their candidacies, with Cambodia emerging from civil war under a UN mandate and Korea transforming itself from a developing country to a developed one with the support of international aid.

Also around the table, of course, will be the Permanent Five (P5): the United States, the United Kingdom, France, Russia and China. This point was seemingly lost on those who argued during Australia's campaign that Canberra should instead be investing in its relations with Beijing and Washington; of course they will work intimately with both for the two years of membership if successful. Australia's term will also represent a chance to continue to work closely with London and invest further in its ever-developing relations with Moscow and Paris.

Learning From Others

While it has become fashionable in recent times to mock the role of the Security Council's temporary members compared with the power of the veto-wielding P5, it is important to remember the procedural power that these countries have.

For example, during the period leading up to the Iraq War it was not the threat of a French veto that forced President Bush and Prime Minister Blair to withdraw their draft resolution. Instead, it was the fact that any resolution passed by the Security Council requires nine affirmative votes to succeed. Many of the non-permanent members at the time, including Mexico, rallied hard against the draft resolution.

In preparing for a period on the Council, Australia should invest significant time talking to and learning from the positive experiences of other non-permanent members in recent years. Of particular note are comparable middle power countries such as New Zealand (1993-94), Canada (1999-2000), Norway (2001-02) and Mexico (2002-03 and 2009-10).

In New Zealand's case, while the refusal to support the 1994 intervention in Haiti and its early activism around the Rwandan genocide and the situation in Bosnia put it at odds with members of the P5 at different times, it in fact established newfound respect among them for doing so. As their then Permanent Representative Colin Keating has explained:

for a medium sized state like Australia, which does its homework, which is professional and focussed, which is balanced and fair minded and transparently applies the same standards to each of the P5 and all of the regional groups, which shuns grandstanding but is always unafraid to speak the truth as it sees it, will get much more respect from the P5, from friends and allies and from wider constituencies such as the NGOs, than a Council member which chooses the passive option.³

Former US Secretary of State Madeleine Albright is said to have remarked at one point that it was admirable that a country whose population was less than the Washington Beltway had played such an influential role on the Council.⁴

Another hallmark of New Zealand's time on the Council in the 1990s was its desire to build relations and alliances with other temporary members, particularly with Argentina but also with the Czech Republic and Djibouti.

Setting The Priorities

While Australia is likely to play an active and constructive role across the breadth of the Security Council's agenda, it would undoubtedly place a strong focus on several key issues.

Among these will be Afghanistan, where Australian troops are deployed as members of the International Security Assistance Force under Security Council Resolution 1386.

Australia is also likely to play an active role on non-proliferation issues, particularly concerning North Korea but also Iran. These efforts will likely be strongly supported by the Republic of Korea. Between 2008 and 2010 the Australian Government co-sponsored the International Commission on Nuclear Non-proliferation and Disarmament.

The Australia Government has also stated that it will place a focus on ensuring the effectiveness of various sanction regimes, including those specifically targeted at individuals involved with Al-Qaeda (which may prove difficult with the presence of Pakistan on the Council).

Australia's campaign also placed a strong emphasis on representing the interests of the small and medium countries of the world. This will likely find a friendly ear with Togo and Guatemala.

Finally, it is expected Australia will continue to champion the Responsibility To Protect (R2P) doctrine developed by former foreign minister Gareth Evans. Argentina, Cambodia, the Republic of Korea and Rwanda are also strong supporters of this initiative.

An Opportunity To Shape The Agenda

Like all members of the Security Council, Australia will chair the gathering as President for at least one month during its two-year term. This represents a profound opportunity to shape the agenda.

Operating through alphabetical rotation, Australia looks set to assume this mantle in August or September of 2013 depending on the outcome of the elections for the other temporary members.

It is likely the Prime Minister of the day would use this opportunity to chair the gathering in person, pushing his or her own personal themes and initiatives. For example, in 1999 Canada used its presidency to highlight

the theme of ‘Civilians in War’ resulting in two lively debates focussing on such issues as small arms proliferation.⁵

If this does fall during September, it will align with the high-powered opening of the UN’s General Assembly bringing more than one hundred world leaders to town. In September 2009, US President Barack Obama utilised a similar opportunity to chair a historical meeting of the Security Council on nuclear non-proliferation and disarmament.

The early nature of this Presidency will also mean that Australia will get a rare opportunity to assume this role again in either November or December 2014 immediately before it concludes its two year term.

Keeping It Relevant

Given the temporary nature of the role and the process prior to the election, one of the greatest challenges for Australia’s public diplomacy during its term on the Security Council would be ensuring that it continually demonstrates benefit and relevance to Australia’s population.

During its campaign, Canberra would often mention that during 2013-14 the Security Council is scheduled to discuss UN mandates in both Afghanistan and East Timor. Australia has a vested interest in these debates with personnel serving in both countries.

On matters of more loose connection, it will be important for Australia to ensure that it develops a strong narrative around the importance of its middle power diplomacy and place in the world, exemplified in recent years on debates around Libya and regional architecture.

A strong focus should also be placed on building linkages with civil society back home to report on the work of the Security Council and Australia’s contributions and priorities. One idea may be to convene regular meetings of stakeholders in a fashion similar to that which occurs with Australia’s delegation to various UN meetings on a regular basis in the lead-up to the gatherings.

That said, while it is important to understand that the views and interests of various humanitarian and aid lobby groups largely remain static they are likely to take on a renewed level of intensity during Australia's term. For example, the call for Australia to increase its overseas development assistance in line with the Millennium Development Goals and for Australia to honour various UN covenants.

Some Australian non-governmental organisations such as Oxfam and the United Nations Association of Australia have already spent some time considering the possible opportunities and their priorities during a term on the Security Council.

Conclusion

For a country like Australia, a two-year term on the Security Council is no small thing. It has only happened four times before.

But running a campaign for the Security Council – as complex and entrepreneurial as that is – is very different to actually *being* a successful non-permanent member.

If Australia is to be recognised internationally as a constructive and proactive member of the Security Council it must invest in understanding the dynamics of the grouping, the experience of previous temporary members, its own priorities and how to shape the Council's agenda – while at the same time ensuring that it continually informs domestic constituencies of the relevance and importance of its work.

¹ Security Council Report, *Special Research Report: Security Council Elections 2012*, 25 September 2012 and *Special Research Report: Security Council Elections 2011*, 21 September 2011. Available online: <http://www.securitycouncilreport.org/special-research-report/> (accessed 17 October 2012).

² 'Agenda for two-year UNSC term', *Pakistan Observer*, 23 October 2011. Available online: <http://pakobserver.net/201110/23/detailnews.asp?id=121250> (accessed 17 October 2012).

³ Colin Keating, "Australia's bid for Election to the UN Security Council: Risks and Opportunities", *Lowy Institute for International Policy*, Sydney, 7 October 2009.

⁴ *Ibid.*

⁵ David Malone, "Eyes on the Prize: The Quest for Non-Permanent Seats on the UN Security Council", *Global Governance*, Vol. 6, Issue 1, pp 3-21.

Mexico's Experience on the UN Security Council 2009-2010

Guillermo Puente Ordorica*

When Mexico was elected to the United Nations Security Council for a two year period in 2009-2010 it was only the fourth time that Mexico had participated in the Security Council (UNSC). The previous ones were in 1946, 1980-1981 and 2002-2003. However, this opportunity was just the second time in which a Mexican Government decided to do so: the first two were 'accidents' in the sense that Mexico appeared and was accepted as a compromise candidate after several unsuccessful rounds of voting. The decision to seek a seat is a reflection of the political and democratic changes that have taken place in Mexico since 2000.

With all its failures, the UNSC continues to be an important body in political terms with regard to the maintenance of peace and security. It is not a coincidence that the only reform that has not been materialised so far within the international system is reform of the UNSC.

Mexico's Aims

It is worth noting that Mexico decided to participate within the UNSC with no hidden agenda and determined to play a responsible role as a major player in global affairs. In more than one way such a position helped deeply to the aim of building trust in Mexico's proposals and its approach to the maintenance of international peace and security. This was true both for those subjects closer to Mexico's interests like the situation in Haiti (the only Latin American and Caribbean topic on the UNSC agenda) and for Western Sahara (related to one of the core principles of Mexican foreign policy: self-determination). Even in those situations, the contribution of Mexico aimed to be constructive and bridge different positions so as to bring balance to the proposals in order to find solutions.

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It is important to stress that Mexico tried in all situations to contribute to finding a negotiated solution and to promote dialogue among parties in order to create the conditions for conducting a political process rather than force being used to bring problems to an end. To walk in that direction, Mexico stressed from the beginning that the country was ready to assume its global commitments, and underscored that the responsibility of the maintenance of international peace and security is indeed a collective responsibility and not the monopoly or the exclusive privilege of some countries.

The core of the Mexican position in the UNSC was its traditional advocacy of respect for international law, as well as to the principles of foreign policy contained in the Mexican Constitution (non-interference, self-determination, peaceful settlement of disputes, proscription of the threat or use of force, legal equality among states, international cooperation for development and the struggle for international peace and security).

Furthermore, Mexico's traditional positions were complemented with new priorities of Mexican foreign policy such as the promotion and respect of human rights, international humanitarian law and the protection of civilians.

It is important to stress that Mexico does not participate directly in peacekeeping operations for different internal, historical and political reasons, though the country is the 10th largest contributor to the regular budget of the UN. For a country like Mexico, which is very active within the multilateral system but with this sort of limitation, to promote respect for international law and human rights is of the outmost importance.

Composition of the Council

Mexico was elected onto the United Nations Security Council in October 2008 for a two year period along with Austria, Japan, Turkey and Uganda. At this time the non-permanent members which were already on the SC were Burkina Faso, Costa Rica, Croatia, Libya and Vietnam. In 2010, after the General Assembly elections in October 2009 these were replaced by Brazil, Bosnia Herzegovina, Gabon, Lebanon and Nigeria.¹

During the years in which Mexico served on the UNSC it is possible to observe a consensual Council, working from the different individual perspectives to address difficult issues. In this period, no veto power was exercised by the P5 and the UNSC adopted more than 200 resolutions as well as several Presidential Statements and press releases, among other decisions. Another interesting tendency was the will of the members of the UNSC to listen to regional voices in order to find solutions and lend broader legitimacy to its decisions. Perhaps with the exception of Sudan and the ICC indictment against President Al Bashir, the UNSC relied on regional voices to guide its decisions.

Another important fact to be considered is that beyond acronyms and regional representation, countries on the SC are guided foremost by national interest and concern. This, of course, does not mean that the members are at all times pursuing accomplishments under the narrow framework of the national interest, but the fact is that within the UNSC it is indeed possible to witness all sorts of partnerships and combinations in making decisions on international situations.

Presidency of the Council

Mexico had the chance to preside over the UNSC on two occasions: the first in April 2009 and the second in June 2010. This enabled the country to promote, from the highest formal position a member can perform during its tenure, several subjects dear to Mexican foreign policy.

In April 2009, Mexico organised three thematic open debates on core issues on the national agenda: Haiti; mediation and peaceful settlement of disputes; and children and armed conflicts (CAAC). The latter two subjects allowed the Mexican delegation to build further on their results for the next Mexican presidency. This allowed Mexico in the second year of its membership to organise a thematic open debate on rule of law, plus another one on CAAC. In the case of CAAC, Mexico led the negotiation for adoption of resolution 1882 (2009), which reinforced the international political and legal framework for the protection of children in armed conflicts.

Additionally, in November 2009, the Mexican delegation organised an ‘Arria Formula’ meeting regarding respect of human rights in fighting terrorism during which the Panel of Eminent Jurists presented its report (‘Assessing Damage, Urging Action’). The session was chaired by Ambassador Claude Heller, Mexico’s Permanent Representative to the UN, and members of the Panel briefed the UNSC – among them Mary Robinson, former President of Ireland. An important fact to bear in mind is that the initiative sent a clear message of the will of the UNSC to tackle the issue – the fight against terrorism – in a different manner, in comparison to the recent past. It helped as well to pave the way for the next thematic debate in June 2010 on strengthening the rule of law.

In June 2010, in the second Mexican presidency of the UNSC, it launched an initiative for a debate on rule of law and submitted a concept paper to guide negotiations among UNSC members. This in turn, allowed members to adopt a Presidential Statement on the Rule of Law. This thematic debate had three basic aims. Firstly, to take stock of the issue bearing in mind that the UNSC had not examined the issue since since 2006. Secondly, to focus on the ways and actions needed to foster rule of law. Thirdly, to contribute to identify areas in which the SC needed to pay more attention and strengthen actions on the rule of law, including peacekeeping operations and their mandates and sanctions regimes. For Mexico the basic idea behind the debate was to send the clear message that those who promote the rule of law have the obligation to respect it. The UNSC requested the UN Secretary General to prepare a report on the matter as one of the outcomes of the session.²

Chairing Subsidiary Organs

During its mandate as an elected member, Mexico had the chance to chair different subsidiary organs, namely the Working Group on Children and Armed Conflict, the Committee on Non Proliferation regarding resolution 1540, and Sanctions Committees on Cote d’Ivoire, Somalia and Eritrea.

It is up to elected members to decide how far and how deep they want to contribute to serving as chair of the various committees. It takes quite some time to create confidence among UNSC members, and only through

responsible comprehensive initiatives can a country make thorough contributions to the international agenda of peace and security.

I have explained already Mexico's contributions in regard to Children and Armed Conflicts, which is a very good example of the interconnection among the UNSC and its subsidiary organs. Another good example is Mexico's presidency of the Sanctions Committee on Somalia and Eritrea.

In 2010, the mandate of the Committee on Somalia, chaired by Mexico since 2009, was expanded to cover the arms embargo on Eritrea according to the UNSC resolution 1907 (2009). Such a decision added to the complexity of its work and the necessity for a better coordination, bearing in mind the regional scope of the conflict.

Overall the Committee adopted 40 decisions on embargo exemptions and invited different stakeholders and relevant actors to brief it, such as the Special Representative for Somalia (SRSG), high representatives of the Transitional Federal Government of Somalia, the Monitoring Group, the Coordinator of Humanitarian Affairs (OCHA), the World Food Program and UNICEF. As part of its efforts to ensure dialogue, understanding and transparency, the Mexican delegation organised meetings with authorities from Djibouti and Ethiopia, as well as developing a permanent dialogue with the SRSG and the UN Department of Political Affairs.

In 2010 the Committee adopted 15 exemptions to the arms embargo, received 10 reports from UN Member States regarding the implementation of the arms embargo in Somalia and received 32 reports on the same issue in regard to Eritrea. The Mexican Ambassador, in his capacity as President of the Committee, reported to UNSC members during full sessions on the Committees' work and achievements at four opportunities.

Perhaps one of the most interesting developments within the Committee took place during April 2010. During this time the Mexican Ambassador led a delegation of members of the Committee (US, Turkey, Uganda and members of the Secretariat) to visit the region, including countries like Yemen, Eritrea and Kenya, with the purpose of raising awareness about sanctions and enhancing implementation of the provisions of resolutions 1844 and 1907.

It is worth noting that this was the first time in about 10 years that a UN Ambassador was invited by the Government of Eritrea to its territory, in order to hold interviews and to explain the purpose of the arms embargo, as well as to listen to its views. It was a serious effort by the Mexican presidency to engage one of the main regional actors, viewed by many as the spoiler and indeed a destabilising factor in the Horn of Africa.

The intention of Mexico during its chairmanship of the Committee was to imprint on its work a transparent and clear decision-making process, keeping UNSC members, other countries in the region and other relevant actors informed about the Committee's work and its implications. Mexico's initiatives were aimed at trying to elevate the role of the sanctions regime as a tool of control, but more importantly as an incentive for the various regional actors to engage into a process leading to the stability of the region. Mexico suggested that the UNSC should always 'leave the door open' for the possibility of sanctions being lifted in case of positive developments and that the SC should be ready at all times not only to monitor but to react positively to any favorable development. Sanctions should not be limited to playing a punitive role, as they can have a more proactive approach if understood as an incentive.

Maximising Effectiveness

From a practical perspective it seems to be clear that the effectiveness of the UNSC is closely related to the problem of political will, and therefore to the legitimacy of its action and decisions. However, to build consensus and political agreement within the UNSC is quite a complex process.

It is possible to suggest that this political phenomenon is closely attached to the quality of the membership of the UNSC, in the sense of the priorities the members have, on an individual basis, and under the assumption that the SC work is, in fact, about dealing with *realpolitik*. This in turn means that the UNSC capacity has a threshold with more or less clear boundaries. There is a myriad of different national interests, in complex scenarios; this means that sometimes good will might not be enough to find solutions. Furthermore, there are five countries with permanent representation and a more favourable position in comparison to the ten elected members with a

more limited participation. Furthermore, countries are keen to show what they are capable of doing and to give assurances of the weight they think they have in world politics, especially those seeking to gain full membership in a reformed UNSC.

Given this complexity it is of the outmost importance to build on partnerships in order to ensure the widest possible acceptance, respect and confidence on national positions. Against the idea that within the SC there is a constant dynamic of the P5 (five permanent members) versus the E10 (10 elected members), the reality is that according to different issues a number of combinations are possible.

In the case of Mexico, it was clear since the very first moment in 2009, with the crisis in Gaza and subsequent Resolution 1860, that the newly elected members at that time (Austria, Japan, Mexico, Turkey and Uganda) were in a position to contribute to the UNSC, both in terms of quality and quantity, and to create consensus in order to leave their own imprint. There were many examples of the constructive participation of these five countries individually and as a whole working together with the P5 or different combinations of the P5 as it was obvious that it is not a homogenous block at all times, so as with the other elected members.

Finally, it is worth noting that the political contribution from an independent position, without having a preconceived agenda in respect to the conflicts and its regional dynamics, is perhaps the most important aspect for an elected member to observe and envisage when presiding over a subsidiary organ. From the very beginning, the Mexican approach leading the Sanctions Committee on Somalia and Eritrea was focused on ensuring a clear decision-making process, to provide timely and relevant information to the Committee members as well as regional countries and other relevant actors inside and outside the UN, about the work of the Committee and its implications. All the initiatives that Mexico launched were aimed at raising the level of compliance of the sanctions regime and its impact, trying to promote the use of sanctions both as a tool of control and providing incentives for the regional actors to join a political process conducive to Mexico's wider aims of promoting peace and stability.

¹ In regard to the Latin American and Caribbean region, Brazil and Mexico coincided in 2010 for the first time since 1946, which for specialised commentators was a fact to be underscored bearing in mind that both countries are usually identified as the two biggest countries in the region and hold different positions on certain relevant international issues such as UNSC reform.

² Unfortunately, as far as the author is aware, no delegation to date has taken that report to call for a new session, but it represented a Mexican contribution for the future of the UNSC.

Biographies of Contributors

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