9

The Structural Reform of the UN

The Need for the UN

- 9.1 The need for reform of the United Nations is widely accepted. The organisation has been in existence for over 50 years. In that time, the world has changed significantly: the Cold War strategic influences have declined; the membership of the UN has increased almost fourfold; and the expectations of what the UN might do have grown. Many of the changes that have affected the UN have been random, with systems and elements of the organisation growing like topsy and financial support for the activities largely remaining static. Particularly with the surge of activity in the early 1990s, the problems facing the UN have become stark with 'operations, hopes and expectations far exceeding the capabilities of the system as it is now constituted'.¹ It was clear from the submissions the committee received that in many areas the UN lacked public confidence. No submission to the inquiry disagreed with the need for reform; however submissions diverged radically on the question of the nature of reform.
- 9.2 At one extreme, the view was put that the organisation should be abolished or that at least Australia should withdraw.

... as to reform of the structure and financial arrangements for the United Nations, this writer advises abandonment and withdrawal from both.²

It is my will that Australia disengage from the United Nations and that all Treaties, Agreements, Declarations and Conventions with that Organisation and its Agencies be cancelled immediately.³

¹ Exhibit No 59, Kennedy, Paul & Russett, Bruce, Reforming the United Nations, in *Foreign Affairs, v74(5), September/October 1995,* p. 57.

² Morrow, Harley. Submission No. 28, p. 190.

Apart from United Nations inspired propaganda, the relationship with that Organisation and its (not so well defined & known) purpose, is and has been a onesided affairs from which Australia has gained nothing. Even worse, almost everything we held dear has been taken from us.⁴

- 9.3 Loss of sovereignty, fear of world government or accusations of corruption and inefficiency are generally the reasons given for these views. The first two matters have been addressed in Chapter 1 of the report. The last will be discussed in this chapter.
- 9.4 While recognising the need for reform, the committee was not persuaded by arguments for either abolition of the organisation or Australia's withdrawal from it. The work of the UN as discussed in Chapters 3 to 8 and even a superficial contemplation of the nature of the modern world would suggest that its existence is essential. Therefore, the committee believes that it is more productive to consider how it may be made to work better. It is the committee's view that, while scepticism about government is a healthy attitude for any people to have, the current cynicism is destructive. Government by a rule of law, with appropriate balances of power, whether nationally or internationally, is a civilising thing.
- 9.5 One submission stated that it believed that the fundamental issue before the UN was that of its *raison d'etre*. It went on to say, 'Before it can consider any modification to its operations, it must first address and redefine its own legitimacy, authority and control in a globalised world. Is the UN a diplomatic, geo-political or humanitarian body? Is it primarily a legislative, executive or judicial/mediating body? If it is all three, is there adequate separation of powers?'⁵
- 9.6 The committee believes that it does represent all three and that attention does need to be paid both to the balance of powers and to the separation of powers between the different organs of the UN the Security Council, the General Assembly and the International Court of Justice.⁶ Moreover, the capacity of the member states to scrutinise and hold the organisation accountable needs to be assured. At the same time, the performance of governments at the UN should be transparent to their domestic populations.

³ Bethage, W G. Submission No. 33, p. 209.

⁴ Bethage, W G. Submission No. 33, p. 210.

⁵ Key Centre for Ethics, Law, Justice and Governance. Submission No. 109, p. 1357.

⁶ See the arguments in Chapter 1, paragraph 1.44.

9.7 UN reform has been on the agenda for over 15 years under two previous Secretaries-General, Perez de Cuellar and Boutros-Boutros Ghali, and accelerated under the current Secretary-General, Kofi Annan. The program of reforms currently being considered is comprehensive. It involves administrative reform, which the Secretary-General can implement, and organisational and financial reform, much of it requiring either changes to the Charter or, at best, the broad consent of the members. It is clear that any changes that require the agreement of the member states will be slow. Some, affecting the entrenched power of the veto powers, may be unachievable.

Security Council Reform

Composition

- 9.8 The structure of the Security Council is an anachronism. It is made up of 15 members, five of which are permanent members with a power of veto, ten elected for two-year terms by the General Assembly.⁷ The permanent five, the countries with the power of veto in the Security Council - the United States, the United Kingdom, France, China, and the Russian Federation - hold their positions because they were victorious allies at the end of World War 11. They were the 'great powers' of their day and, in their privileged position⁸ in the Security Council, they took on special responsibility for the preservation of peace and security. They are arguably no longer an accurate reflection of the great powers of the world, as much for those that are left out as for those that are included. They do not reflect any geographic balance. They are North and Euro-centric. No country from Africa, the Middle East or South America is a permanent member of the Council. The rise in wealth and strength of both Germany and Japan give each a claim to permanent membership, although the inclusion of either or both of these countries would not spread the geographic balance.
- 9.9 A number of submissions to the inquiry addressed the question of Security Council Reform. All reflected dissatisfaction with its undemocratic structure and what were perceived to be its unresponsive and non-transparent procedures. The Australian Peace Council suggested a complete restructuring of the Council:

⁷ For details of the structure of the different organs of the UN see Chapter 2.

⁸ The committee believes that it is particularly shameful/unfortunate that two of the largest defaulters on their financial obligations to the UN are permanent members of the Security Council, the United States of America and the Russian Federation.

We believe that the only permanent positions on the Security Council should be one from each of the six main regions of the world (Europe, North America, Latin America and the Caribbean, Asia Pacific, West Asia and Africa) with Australia and New Zealand being part of the Asia Pacific group. We believe that these six representatives should be elected on a rotational basis with a time-span to be decided by the members of the General Assembly.⁹

9.10 Professor Johnson proposed a similar course:

Europe should lose at least one of its permanent memberships; and amend the Charter at article 27(3) to give a veto to six regions – Europe, North America, South America, Africa, Asia and Oceania.¹⁰

- 9.11 While there is logic to these arguments, they do not take account of the difficulties of achieving these changes.
- 9.12 The Australian Government argued for an expansion of the Security Council to 25, including the industrialised powers of Germany and Japan and a more balanced regional representation in the permanent seats, even if that needed to be on a rotational basis.¹¹ The Government also argued that an expansion in the non-permanent seats was also necessary to maintain the connection between the broad membership of the UN and the Security Council. The committee supports this position as moderate and realistic.

The long-standing view of the Australian Government is that expansion in both categories of membership is what is needed to restore balance and equity to the composition of the Council. New permanent seats should be assumed by the under-represented developing regions of the world: Asia, Africa, and Latin America and the Caribbean. Whether regional rotating arrangements would work in the case of some regions is an issue that Australia is ready to consider further.

Two new permanent seats should also be assumed by the major industrialised powers best able to contribute to the maintenance of international peace and security. Australia supports Japan and

⁹ Australian Peace Committee (SA Branch) Inc. Submission No. 42, p. 270.

¹⁰ Johnston, Stanley. Submission No. 59, p. 491.

¹¹ That is, the permanent seat would belong to the region rather than to an individual country, and the states of the region might occupy it on a rotational basis. It might be possible to apply this to new permanent members but it is unlikely that either Britain or France or even Russia would be willing to give up their permanent seats for a European seat to be shared with other European countries.

Germany in this regard. It is equally important that enhanced opportunity also be given to other members of the UN to contribute directly to the work of the Council through periodic participation as elected members. Expansion of the nonpermanent category is crucial not only so those countries who, like Australia, do not aspire to permanent membership but nonetheless can contribute to the Council, but also as a means of better ensuring that the Council genuinely acts on behalf of the whole membership, in accordance with the Charter. These considerations lead us to support an expanded Council of not more than 25 members.

Australia also maintains the importance of reviewing any new arrangements after ten years or so and the need to ensure that an expansion in the permanent membership of the Council does not provide for a similar expansion in the use or threat of use of the veto.¹²

9.13 In March 1997, the General Assembly considered a proposition to expand the Council by five non-permanent and four permanent members (without power of veto). The proposition was lost.¹³ As yet there is no agreement on whether the concept of permanent members should be entrenched by increasing its group and there is no agreement on which states might be selected to any new permanent positions.

Size

- 9.14 The proposals for expansion of the overall size of the Council have varied from 26 (an additional 11 seats, put forward by the Non Aligned Movement) to 20 or 21 (an additional five or six seats, put forward by the Permanent Five). In the early 1990s, the United States in particular insisted that it would not accept a Council of more than 20 or 21. This stance softened under the Clinton Administration. There was an announcement by the American Ambassador to the UN, Richard Holbrooke, on 2 April 2000, that the Americans no longer insisted that the expansion be limited to 20 or 21.¹⁴ Australia supports an increase in the size of the Council to 25.
- 9.15 This relatively simple question of expansion has brought no consensus. The larger number in the Security Council would increase the influence of the developing countries, although the continued existence of the veto power would limit this influence to moral pressure only. The argument of

¹² DFAT. Submission No. 107, pp. 1305-6.

¹³ Exhibit No 41 Daws, Sam, The United Nations in the Twenty-First Century, p. 29.

¹⁴ Key Centre for Ethics, Law, Justice and Governance. Submission No. 109, p. 1370.

developing countries for expansion reflects their demands for representation, rather than any concern with the workability of the Council. An expansion would have the effect of improving the legitimacy of the Council and its decisions, even if it made some decisions more difficult to achieve or less acceptable to the permanent members. However, as any change must carry the two-thirds majority of the General Assembly it must be acceptable to developing countries and yet not be vetoed by any of the Permanent Five.¹⁵

Recommendation 12

The committee recommends that the Australian Government continue to work for an expansion of the Security Council, including new permanent seats without veto power, for South America and the Caribbean, Africa and Asia.

Veto Power

- 9.16 The veto power itself is also contentious. For those countries that hold it, it gives them a powerful and privileged position in world affairs, which militates against the more democratic aspirations of the organisation. The veto was a matter that aroused strong opposition and frustration during the inquiry, with a number of submissions believing it should be abolished.
- 9.17 The General Assembly has an Open-ended Working Group on the Reform of the Security Council, co-chaired by HE John De Saram, the permanent representative for Sri Lanka. During its visit to the United Nations, Mr De Saram explained to the committee that the working group was considering a number of propositions in relation to the veto:
 - The veto should be abolished. This was considered an unlikely scenario. It would require countries that have the veto to relinquish it voluntarily as they have the capacity to veto any proposal that it be abolished. One suggestion to the inquiry was that two vetoes be required to defeat a majority resolution.¹⁶
 - An extension of the veto. If there are to be new permanent members, should they be given the veto power? This proposal is perceived by some members to add to the problems the UN already has in getting

¹⁵ Exhibit No 41, Daws, Sam, *The United Nations in the Twentieth-First Century*, Wilton Park Paper 135, May 1998, pp. 31-32.

¹⁶ Johnston, Stanley. Submission No. 59, p. 491.

agreement. However, to create new permanent members without the veto would create two classes of permanent members within the Council.

- Limitation of the use of the veto. It was suggested that it would be more possible to persuade the Permanent Five to limit its use than to abolish it. It might be limited to Chapter 7 enforcement decisions only. However, there is another significant area where the veto has been used and that is for the appointment of the Secretary General.¹⁷ The Permanent Five wish to keep this option. A further suggestion was that it might be limited to international purposes, not national interests.¹⁸
- Justification of the use of the veto. Germany has suggested that any use of the veto should require an explanation to the General Assembly.
- 9.18 Reform of the Security Council entails a change to the Charter of the UN. That requires approval by two-thirds of the members of the General Assembly and ratification of this vote by the Governments of two-thirds of the UN members, including the members of the Security Council.¹⁹ The veto powers are in a position to veto any change that disadvantages them. The committee believes that the Permanent Five should be put on notice that their action in using their power for narrow, national interest has the effect of alienating the members of the United Nations and undermines and damages the reputation of the organisation as a whole. Therefore, it appeared to the committee that the proposal that the veto should be limited and that its use should be justified to the General Assembly was the most effective way forward.

Recommendation 13

The committee recommends that the Australian Government support moves within the United Nations to limit the use of the veto power by the existing permanent members in the Security Council and that member states which use the veto should be required to justify its use to the General Assembly.

¹⁷ The United States used it to veto the reappointment of Boutros Boutros-Ghali as Secretary-General.

¹⁸ This issue arose out of the use of the veto by China in a matter relating to Taiwan.

¹⁹ Exhibit No 41, Daws, Sam, *The United Nations in the Twenty-First Century*, Wilton Park Paper No 135, 1997, p. 30.

Procedures

- 9.19 The issues of the composition of the Security Council, the increases in membership and the veto are clearly the intractable problems.
- 9.20 More amenable to reform are the procedural rules for the Security Council. These had never been defined as there was no agreement among the Permanent Five at the time of drafting the Charter. These are the Cluster Two issues that the Open Ended Working Group has been working on. In line with the demands for justification by any Security Council member of its use of the veto are proposals for greater transparency of decision making. The Department of Defence argued for this in relation to UN missions:

The Security Council itself also needs reform if it is to be more responsive in its decision-making in support of current and prospective UN missions. There are two aspects to this. First, Security Council decision-making process must be more transparent and timely and comprehensive information must be supplied to it to inform critical decisions on intervention. This has been raised in many of the Lessons Learned reports from previous UN operations. The second involves the decision-making process and the inter-relationship between the Secretary General, the Security Council and the UN DPKO. With particular reference to the Independent Inquiry into the Actions of the United Nations During the 1994 Genocide in Rwanda, reform at the highest levels of the chain of command is critical to ensure that the UN's effectiveness in the field during a crisis can be assured.²⁰

- 9.21 The committee believes that a greater level of transparency is needed in all the procedures of the Security Council. This view is consistent with the arguments put in Chapter 1 of this report. That is, as the powers of the UN increase, so should the responsibility and the accountability of the organisation. This should apply generally, but also within the organisation from one organ to another. In particular, it would appear to be time for the Security Council with its executive functions to be much more accountable to the general membership in the General Assembly. Various means towards greater accountability were proposed:
 - A voluntary restriction upon the exercise of the veto power, given the realities of the power as it exists and the extreme unliklihood of the current permanent members divesting their power, and the requirement that any use of veto power be publicly explained within the Security Council;

- The greater consultation [with] those Members States who are not members of the Council when their specific interests are directly effected;
- The institutionalism of a system whereby briefings on security matters are given to those Member States who are not members of the Council;
- More transparency in the work of sanctions committees;
- The giving of tentative forecasts of program of work to those Members States who are not members of the Council so they may better consult with regional representatives;
- The review by the General Assembly of the current distribution of functions and responsibilities between the General Assembly and the Security Council, with a view to dissolving the tension which exists between the organs and re-establishing the balance of functions as intended under the Charter.²¹
- 9.22 The Key Centre argued that decisions by the Security Council to intervene²² should also be scrutinised and monitored by the International Court of Justice (ICJ). It believed that proper accountability for great executive powers, such as deciding on war or peace, required the oversight of a judicial body capable of determining whether an action was within relevant international law. Such an oversight function should extend to questions on the meaning of the mandate and the monitoring of its implementation. The obvious oversight organ within the UN would be the ICJ.²³

Recommendation 14

The committee recommends that, in the absence of the Security Council giving any consideration to the abolition of the veto, the Australian Government support discussion in the relevant forums of the United Nations in order to establish:

- Process for greater involvement of the General Assembly in scrutinising the decisions of the Security Council;
- Standard mechanisms, with consideration of a role for the ICJ, for the scrutiny and monitoring of the legality of Security Council mandates governing UN intervention; and

23 Key Centre for Ethics, Law, Justice and Governance. Submission No. 109, p. 1369.

²¹ UNYA. Submission No. 47, pp. 325-6.

²² The whole question of reform of the peacekeeping function of the UN will be dealt with in Chapter 3.

 Greater consultation between the Security Council, the Department of Peacekeeping Operations and contributing powers in the course of the framing of mandates for peace operations.

Signs of Progress

9.23 It was put to the committee during its visit to the UN in New York that, while there was much to be pessimistic about regarding Security Council reform, there were positive signs, especially in the procedural areas. At the initiative of Canada, the Security Council has begun to go out into the field and that this has the potential to give the members a much more realistic understanding of the situation about which they are making decisions. For example, they have inspected the situation in Sierra Leone. They have agreed to more consultation with contributing nations on mandates. Australia and other countries that contributed to INTERFET were consulted on the mandate and it proved to be a sufficiently strong to deal with the situation. The Security Council is making more contact with non-state actors and has begun to conduct more open debates, at least on policy matters.²⁴

General Assembly

Role of the Assembly

- 9.24 There has been less discussion about the need for reform in the General Assembly, perhaps because it is already a democratic forum, if somewhat powerless. The Open Ended Working Group on Security Council reform is promoting the development of greater ties between the Security Council and the General Assembly.
- 9.25 Some submissions to the inquiry wished to see the Assembly assert itself more in relation to the Security Council. In particular, it was argued that, in elections to the Security Council, the Assembly should make judgements about the candidates on the basis of their contributions to peacekeeping and their willingness to accept the jurisdiction of the International Court of Justice. Professor Johnson told the committee, 'I find it unbearably hypocritical that states in the Security Council which do

not submit to that law, should presume to enforce that law on others'.²⁵ He further argued that the Assembly should use its budgetary power under Article 17 of the Charter²⁶ to shift the balance of power in its favour.

9.26 Criticism has also been levelled at the General Assembly because it represents governments and that not all governments are representative of their people. For some time there has been a suggestion that the UN should have a Parliamentary Assembly in addition to the General Assembly.²⁷ It is a proposal supported by the Inter Parliamentary Union (IPU). The view in New York on the proposal was that as yet it lacked structural and operational details and that, in the absence of a solution to the problem of resources for the UN, there could be no contemplation of new institutions.²⁸

Voting Blocs

9.27 Voting within the United Nations is conducted within regional, geographic groupings. All members of the United Nations (with the current exception of Israel and Estonia) are active members of an electoral group.²⁹ This process attempts to ensure that the requirement for geographic distribution of appointments can be met. For this purpose and since the groups were formalised in the 1960s, Australia has been a member of the Western European and Other Group (WEOG). Other members of this group are the EU and some non-EU European states, the United States, Canada and New Zealand. This has increasingly marginalised Australia, especially as the European powers become more consolidated and cohesive in their voting patterns. It was put to the committee that this position disadvantaged Australia in the recent elections to the Security Council.

One major weakness is that Australia lacks a clear regional identity within the UN, so we end up being tacked on Europe, rather than Asia, the Pacific or the Non-Aligned bloc. This worked against Australia when the government last made a bid for a seat

- 26 Charter of the United Nations, Article 17:
 - 1. The General Assembly shall consider and approve the budget of the Organization.
 - 2. The expenses of the Organization shall be borne by the Members as apportioned by the General Assembly.
 - 3. The General Assembly shall consider and approve any financial and budgetary arrangements with specialized agencies referred to in Article 57 and shall examine the administrative budgets of such specialized agencies with a view to making recommendations to the agencies concerned.
- 27 Mr Ernest Bevin, the Foreign Secretary for the United Kingdom, first suggested this in 1945.
- 28 Notes from the visit of the committee to New York, October 2000.
- 29 See Chapter 2 for details.

²⁵ Johnston, Stanley. Transcript, 6 July 2000, p. 286.

on the Security Council, competing against Sweden and Portugal, when other countries were aware of the negative history of the Australian Government's role in terms of condoning Indonesia's illegal occupation of East Timor.³⁰

9.28 It is the Australian Government's view that the electoral groups should be reviewed as part of the UN reform process. The Department of Foreign Affairs told the committee that:

Our situation within WEOG coincides with a growing disparity within many electoral groups in terms of cohesiveness and commonality of interest and between them in terms of size as a result of the dramatic growth in UN membership over the past forty years. Australia has therefore been pursuing a campaign in support of electoral group reform over recent years. We would see ourselves as ultimately belonging to a group more closely aligned with our geography.³¹

- 9.29 The committee commends the Government on its efforts to encourage reform of the system of voting blocs and it will continue to monitor progress in this area with interest.
- 9.30 It should be noted that 'informal' blocs have also developed for the purpose of canvassing issues within the General Assembly. Perhaps, the most significant of these is the G77 (which has 130 members) which meets daily during the session. These groupings can have a powerful influence on debates in the Assembly.

The Secretariat

Administrative Reform

9.31 The complaint has been made to the committee that the UN is a bloated bureaucracy. It is acknowledged at the UN that the administration had become complex and inefficient by the beginning of the nineties. The requirement that staff be recruited on the basis of geographical distribution has militated against efficiency. Management skills have been lacking and training non-existent. The structures of the various departments were uncoordinated so that duplication of effort was common and a waste of resources. Decision-making was complicated by

³⁰ Jones, Peter. Submission No. 69, p. 575.

³¹ DFAT. Submission No. 107, pp. 1306-7.

the overlapping functions and by the tendency in the secretariat to delegate decisions upwards.³²

- 9.32 However, reform in the administration of the UN is much more achievable than reform of the 'political' organs of the UN and it would seem that real reform has been considerable over the last ten years. In 1998, Kofi Annan established a Task Force of Human Resource Management. Its work is ongoing. Staff numbers have been reduced by 10 per cent at UN headquarters. The reform program of the administration encompasses:
 - processes of greater accountability, especially the institution of the Office of Internal Oversight Services, External Audit and the Joint Inspection Unit;
 - human resources planning, including a skills inventory;
 - a performance management system;
 - streamlined rules and procedures for work performance;
 - improved systems for recruitment, placement and promotion, emphasising merit;
 - mobility to ensure both flexibility for the organisation and varied career opportunities for the staff;
 - improvement in the competency of staff, and in conditions of service and the administration of workplace justice; and
 - simplified contractural arrangements.³³
- 9.33 Two areas of reform were noted during the committee's visit to the UN. Questions were raised about the need for a compulsory retiring age. This is a matter of flexibility and very valuable experience can be lost when compulsory retirement is rigidly applied. In most western countries the

- Short term up to six months, for seasonal work and short-term requirements and when-actually-employed contracts for episodic work. No change from present arrangements;
- Fixed term with extension up to a maximum total of five years (including appointments of limited duration);
- Continuing open-ended no specified termination date: service continues as long as it meets the Organisation's requirements for experience, skills and competencies, plus satisfactory performance, with separation benefits payable at the end of the contract. Exhibit No 43, United Nations, *Managing People not Posts:The Next Stage of Human Resources Management Reform*, pp. 21-22.

³² Exhibit No 41, Daws, Sam, The United Nations in the Twenty-First Century, p. 33.

³³ The status of permanent employees has been preserved. However, as the permanent employees leave they are being replaced by people under the new arrangements. There is a reduction in the 'multiplicity of types/conditions of contracts', thereby seeking greater flexibility, but also consistency and equity in employment. Three types of contracts have replaced the myriad of former arrangements:

compulsory retiring age is being abolished. Nevertheless, the contrary argument was put to the committee that the compulsory nature of the retiring age was a way of opening up the service to younger officers.

9.34 Concern was also expressed about the balance of emphasis between merit and geographical distribution of recruitment. The view was expressed to the committee that this balance had tipped too far in favour of the requirement for geographical distribution and that merit needed to be reasserted in order for the UN to be served by the best possible staff. Sam Daws, in his analysis of the reform program, also noted the difficulty experienced by the UN when member states intervened in recruitment or dismissal cases involving their nationals. This distorts the criteria for either. He commented that:

> Lobbying, by States from both the North and the South, has been the chief determinant of the placement of officials in the highest Secretariat positions. ... Member States, in turn, must recognise that a high quality, independent, international civil service is a more important accomplishment than the placement of their nationals in particular Secretariat posts.³⁴

9.35 Both Professor Charlesworth and the Women's International League for Peace and Freedom drew the committee's attention to what they perceived to be a bias within the secretariat against the employment of women in senior positions. Professor Charlesworth argued that, despite the presence of women in some very prominent positions, such as Mrs Mary Robinson, the Human Rights Commissioner, Mrs Ogata, who until this year had headed the UNHCR, Dr Gro Harlem Brundtland, Director-General of the World Health Organisation, Ms Thoraya Obaid, Executive Director of UNFPA and Ms Louise Freschette, the Deputy Secretary General, women constituted only one fifth of senior positions in the secretariat.

> The current Secretary-General is obviously quite conscious of these issues. However, ... I get the sense from career UN staff that it is very difficult to reach senior positions, unless you are parachuted into a top job because you have been a senior politician in your own country. ... At the career level, the picture is much more bleak.

Recommendation 15

The committee acknowledges the efforts of the Secretary-General to reform the administration of the UN and encourages Australia to continue to support the Secretary-General in the implementation of the program aimed at greater efficiency, accountability and independence in the Secretariat.