

The Third Side – An effective response to the problems of the Security Council?

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The credibility of the United Nations is currently at stake. Its most important institution, the Security Council faces serious challenges. Its response to them may well determine whether nation states continue to view the United Nations as the most significant body for the maintenance of international order in the 21st Century.

North Korea's recent atomic test and the humanitarian crisis in Darfur symbolise the kind of challenges that face a world where politically and economically backward states fail, and the spread of deadly technology puts everyone in danger. It is for this reason that I believe the Security Council requires reform and a 21st Century makeover.

The nature of this reform will be discussed shortly but first let us look at where the current institutional weaknesses lie. Most intergovernmental decision-making bodies are prone to disagreement. The Security Council is especially problematic given the gravity of the issues it deals with and the competing interests of the 192 states eligible to participate in these discussions. In conversation with Sir Jeremy Greenstock, former UK Ambassador to the Council, he noted that the political climate of the Council is regularly in flux, with 33% of the members leaving at the end of every year. So, not only do countries with very divergent interests have to do business, but they also have only a matter of months to establish productive working relationships. It might then be tempting to characterise the working environment of the Council as completely adversarial, but this would be unfair. A number of important issues have seen coalitions of Council members form over the years to produce Resolutions and implement actions. Saddam Hussein's invasion of Kuwait for example saw a plethora of nations rally in support of the small state.

Such a positive and proactive response by the Council has been rare however. More often than not the Council has been bogged down in diplomatic wrangling while security situations, in the developing world, have spiralled out of control - the genocide in Rwanda being arguably the most poignant example of Council failure.

The fact that decision-making and implementation of Council resolutions has been difficult, even in the post Cold War decades, is not then surprising. It is important however that these inherent institutional issues are responsibly addressed; the solution I propose is the introduction of the *Third Side* to the Council.

William Ury one of the foremost thinkers on conflict and negotiation, describes the Third Side as, "people using a certain kind of power – the power of peers – from a certain perspective – of common ground – supporting a certain process – of dialogue and non-violence – and aiming for a certain product – a

triple win.” More specifically, I believe that this Third Side should take the form of a structured mediation procedure for the use of Council members.

The essence then of this proposal is simple. Where Council members disagree on a course of action they call upon an experienced and impartial mediator to preside over a confidential negotiation. The mediator can then help to facilitate the parties towards a written agreement that both can sign up to. It is not my intention here, in this short article, to outline all the details of what this procedure involves. The methods of the mediator and the procedure itself are well documented. It is worth noting however that mediation can provide successful resolutions to certain types of disputes in up to 75% of cases and that it has a history of affecting a radical shift in the positions of the parties involved.

This proposal represents a fundamental change to the dynamic of communication between Council members. At present, Sir Jeremy Greenstock noted that where disagreement exists, diplomats from third countries may try to act as mediators. This is however quite a different response to disputes, as while Council diplomats may in fact be skilled mediators, their impartiality to the situation is intuitively questionable. Studies show mediator impartiality as a key variable in determining a successful mediation outcome. It is also an informal and ad hoc response to the problem. For this procedure to be truly beneficial it must be institutionalised. John Sturrock QC –one of Scotland’s foremost mediators - is of the opinion that institutionalising the procedure and setting out clear guidelines for its implementation makes it far more likely to be used.

What shape should this administrative tool take then? In discussion with Lord Douglas Hurd, a former UK diplomat at the UN and UK Foreign Secretary, he suggested that a panel of mediators should be established. The panel should be free from the political bias of the Council Presidency and accordingly placed under the administrative responsibility of the Secretariat. Mediators, with a proven track record, could then be requested from the panel if the Council deemed them necessary. If such a panel were to be successful, John Sturrock QC believed that it would be absolutely essential that this panel were given the resources necessary to ensure that mediation efforts taking place between Council members were of the highest possible quality.

If such a procedure could be foreseen to produce benefits, why has such reform not occurred? Or, for that matter, why has there not been any substantial reform of the Council over the past sixty years! In the realm of international relations, interest and fear for one’s own security are often said to be the prime motivators upon international actors. The major powers on the Council, the Permanent Five members, have proved reluctant to accept changes that may adversely affect their relative power to other nations. Kofi Annan’s 2005 report *in larger freedom* provides a clear example. In this document he asked the Council to adopt a resolution setting out the conditions under which the Council should agree to authorise force against governments who subjugate the human rights of their citizens. The Council set aside time to address this issue but nothing substantial was agreed upon.

In this case both China and Russia were said to be reluctant to codify conditions for force that could potentially be used against them and their own human rights records.

Perhaps more damaging however, was Sir Jeremy's insistence that the USA would never accept a permanent panel of mediators for the Council. Its existence would mean that the USA tacitly accepted the need to negotiate with smaller powers on what he called the "ultimate world council." While Sir Jeremy's knowledge of the Council makes his opinion difficult to dismiss, it is worthwhile examining the institutional precedent of mediation in other international institutions, in particular the World Trade Organisation.

At the WTO a Dispute Settlement Understanding has been in place for some time. If a country believes that the trade policy of another member state is impeding the flow of benefits to them then they can initiate this procedure. Looking at the basic components of this mechanism reveals that it consists of two basic stages, a consultation/mediation stage and a more legalistic arbitration/adjudication stage. The success of the consultation/mediation phase is significant, of the 350 cases with which it has dealt; over 200 of them have been resolved here. The vast majority of these cases are dealt with by the countries themselves without the help of the WTO's Director-General and his mediation skills. The fact that the opportunity exists for the countries to mediate is however significant.

I think what should be concluded from the WTO's Dispute Settlement Understanding is that given a confidential, structured dispute resolution environment; states can be empowered to discuss their differences openly and productively. Over recent years powerful trading blocs such as the USA and European Union who one might think of as capable of ignoring these procedures have accepted the outcomes of consultations and mediations that have not been in their favour. Intuitively, if states are willing to accept mediation here, where trade disputes are often worth hundreds of millions of dollars, then states should be capable of accepting mediation at the Security Council.

I believe that the benefits of a similar procedure to the Security Council would be primarily fourfold.

- 1) Consensus – the Council's ability to draft resolutions and to then implement them depends largely upon the goodwill of the nations involved. A mediation procedure can ensure that the decisions of the Council are collectively supported.
- 2) Legitimacy – if Council decision-making is shown to be as participatory as possible, it makes it far more difficult for nations such as North Korea or Iran to dismiss the Council as an imperialist or corrupt.
- 3) Reconciliation – five of the Council's members must work continuously with one another. Confidential mediation, allows these states to

reconcile their differences with one another instead of letting underlying tensions fester.

- 4) Efficiency – a mediation procedure allows states to get to the heart of disagreements in a very short time with the key decision makers present.

While Sir Jeremy was generally sceptical about the proposition posed by this article, he suggested that if it were to be implemented it would have to be personally associated with the Secretary General. Ban Ki Moon has all but sealed his position as the next Secretary General due to start in January 2007. He has an opportunity to use the momentum of his arrival to insist upon reform and to consider propositions such as this one. Whether he will grasp this opportunity is uncertain, what is sure however is that the UN needs to address the problems posed by the 21st Century, this can only happen if the Security Council seriously addresses its inherent institutional difficulties.