Citation

Patel, B. N. (2015, May 21). *The state practice of India and the development of international
law : selected areas*. Retrieved from https://hdl.handle.net/1887/33019

Cover Page

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Title: The state practice of India and the development of international law : selected areas
Issue Date: 2015-05-21

CHAPTER IX

INDIA AND THE UNITED NATIONS REFORM (2005-2012)

9.1.   Introduction

As an original member and staunch supporter of the United Nations, it was the natural expectation that India would play an active part in the reform exercise which began in 2005. A majority of the members were actively pursuing this and some progress in this direction has been seen. It is likely that some more results will appear in the due course of time. This chapter examines the following questions: (i) what has been India's position on various reform issues? (ii) what are the reasons for forwarding these proposals and what have been the challenges and prospects in their implementation? (iii) which strategies has India employed and what have been its public relations campaigns to achieve the stated objectives of its proposals?[805] (iv) which proposals India should have made but has not made and why? It appears that no other country has received as much attention as India in the reform exercise, especially in the context of the reforms of the Security Council. This chapter is an attempt to create a balance sheet for India showing where it has made concrete achievements and where it has failed. Although the entire analysis is based on India's proposals since 2005, some earlier proposals, if these continue to be significantly relevant, are also analyzed.[806] This chapter aims to provide analytical insights and examine how true ideals of international law have been reflected in the reform proposals of India.

9.2.   Linkage between UN Reforms and International Law in General and Laws of International Organisations in particular

The United Nations reforms have been subjected to variety of analyses at various levels.[807] In fact, as early as 1947, the US Senate Expenditure Committee examined and found that the UN is having serious problems of overlap, duplication of efforts, weak coordination, proliferating mandates and overly generous compensation for the international civil service. Hence, the Senate suggested various institutional, administrative and financial

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[805] Abdul Nafey, "Permanent Membership in the Security Council: India's Diplomatic Initiatives and Strategies", 61 *India Quarterly* 4, 1-38 (2005).

[806] M. S. Rajan, "India and the Making of the UN Charter – II (from British sources)", 36 *International Studies* 1 (1999), 3-16; C. S. Jha, "Fifty Years of UN and the Future", 53 *India Quarterly* 1-2, 1-20 (1997); M. L. Sondhi, "Reshaping India's Agenda in the UN System in the post-Cold-War Era", In 53 *India Quarterly* 3-4, 1-8 (1997); Hari Mohan Mathur, "India in the United Nations and United Nations in India", Kruase, Keith and Andy Knight W. (ed.) *State, Society and the UN System: Changing Perspectives on Multilateralism* 61-97 (1995); Arthu Lall, "Problems and Prospects of the UN Charter", 31 *India Quarterly* 111-120 (1975); S. J. R. Bilgrami, *India's Role in the United Nations: with special reference to trust and non-self-governing territories*, (New Delhi: Jamia Milia, 1969).

[807] Although a very few complete volumes have been dedicated to exclusively to the reform of the UN topic, a considerable number of work exists and still being produced discussing individual topics concerning the UN reform. Joy Hyvarinen, "The 2005 World Summit: UN Reform, Security, Environment and Development", 15 *Review of European Community and International Environmental Law* 1, 1-10 (2006); Thomas Giegrich, " A Fork in the Road: Constitutional Challenges, Chances and the Lacunae of UN Reform", 48 In *German Yearbook of International Law*, 29-76 (2006); Vesselin Popovski, "UN Reform Process and Multi-Stake Holders", Report of the Third Tokyo Colloquium edited by Tatsuro Kunugi, *Towards a New Partnership of the United Nations System and Global Civil Society*, 28-33 (2006); Kunio Katakura, "The Significance of US-Canada-Japan Trilateral Research on UN Reform", Kunugi (ed.), p. 95; Dimitris Bourantonis, *The History and Politics of UN Security Council Reform*, Routledge (2005); Luk, Edward C., The UN Reform Commissions: Is Anyone Listening? In Thakur, Cooper and English (eds.), *International Commissions and the Power of Ideas*, 277-287 (2005).

reforms, which the then Secretary-General, Lie, was expected to carry out.[808] Since then, calls for reform and exercises have been doing rounds of the UN. It is important and vital that international organizations (IOs), like any governmental institution or corporate body, undergo reforms. While large-scale reforms have been initiated after every eight years on an average, smaller reform measures have been undertaken each year throughout the UN system. In order to analyze the current topic in proper context, it is useful to have a brief evaluation of all the major reform exercises. The second Secretary-General, Dag Hammarskjold, established a Group of Eight Experts in 1960 to define what should be the future of the UN Secretariat.[809] The third Secretary-General, U Thant, during his tenure, formed a Committee of Experts to study the ways of increasing the efficiency and effectiveness of the UN whose recommendations were acted upon and implemented by the General Assembly.[810] In 1975, the Group of Experts presented a report on the New UN Structure for Global Economic Cooperation in wake of the adoption of the new international economic order resolutions in the UN General Assembly. During the tenure of the fourth Secretary-General, Kurt Waldheim, the General Assembly established a rather high-sounding Committee of government experts to evaluate the Secretariat structure in the administrative, financial and personnel areas.[811] Throughout the term of the fifth Secretary-General Javier Perez de Cuellar, economic development featured in all small and big reform-oriented exercises.[812] While all these reform proposals were subjected to fierce opposition by the Cold War structure, the sixth Secretary-General, Boutros Boutros-Ghali, seized the opportunity to propose two important reform exercises when the Cold War started to disappear: *Agenda for Peace* and towards the end of his tenure, *Agenda for Development*[813] and the *Agenda for*

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[808] Lie, Trygve, *Measures for International Economic Stability: Report by a Group of Experts Appointed by the Secretary-General* [Trygve Lie], (United Nations, 1951); Lie, Trygve, *Public Papers of the Secretaries-General of the United Nations*, (Columbia University Press, 1969-1978); Anthony Gaglione, *The United Nations under Trygve Lie1949-1953*, (Lanham: MD: Scarecrow Press, 2001); James Barros, "Trygve Lie and the Cold War: The UN Secretary-General Pursues Peace, 1946-1953", 24 *Canadian Journal of Political Science* 1, 208-209 (1991).

[809] Mark Zacher, *Dag Hammarskjold's United Nations* (Columbia University Press, 1970); The Hague Academy of International Law, *Séminaire Dag Hammarskjold*, 1963-66; Richard Miller, *Dag Hammarskjold and Crisis Diplomacy* (Oceana, 1961); Urquhart, Brian, *Hammarskjold*, (New York: Norton 1994); A. P. Vijapur, *The Dynamic Conception of the UN Purposes: The Relevance of Dag Hammarskjold's Model* (1985); _____, *Dag Hammarskjold's Conception of the United Nations: A Study of the Significance, Potentialities and Limitations of the World Organisation* (1981); Goodrich, L.M., "Hammarskjold, the UN and the Office of the Secretary-General" 28 *International Organization* 467-483 (1974).

[810] Bernard Firestone, *The United Nations under U Thant, 1961-1971* (Scarecrow Press, 2001).

[811] James Daniel Ryan, *The United Nations under Kurt Waldheim, 1972-1982*, (Scarecrow Press, 2001); Kurt Waldheim, *The Challenge of Peace* (London: Weidenfeld and Nicolson, 1980); Sydney Bailey, *The Secretariat of the United Nations* (Pall Mall Press, 1964).

[812] George Lankevich, *The United Nations under Perez de Cuellar, 1982-1991*, (Scarecrow Press, 2001).

[813] Boutros Boutros-Ghali, *The Papers of United Nations Secretary-General, Boutros Boutros-Ghali* (Yale University Press, 2003); Stephen Burgess, *The United Nations under Boutros Boutros-Ghali, 1992-1997* (Scarecrow Press, 2001); James D. Wolfensohn, "Boutros Boutros-Ghali: diplomat for development", 1 *Boutros Boutros-Ghali: Amicorum discipulorumque liber*, 75-77 (1998); David Hamburg and Karen Ballentine, "Boutros-Ghali's Agenda for Peace: the Foundation for a Renewed United Nations", 1 *Boutros Boutros-Ghali: Amicorum discipulorumque liber*, 489-509 (1998); Ismail Serageldin, "The Formation of a Global Development Agenda", 2 *Boutros Boutros-Ghali: Amicorum discipulorumque liber*, 1345-1368 (1998); Yogesh K. Tyagi, "The United Nations in the New World Order: A Critique of an Agenda for Peace", 31 *International Studies* 3, 265-286 (1994); Boutros Boutros-Ghali, *An Agenda for Peace 1995*, 2nd edition (United Nations, 1995); Maurice Bertrand, "The United Nations as a Core Structure of International Peace and Security", Hufner Klaus, *Agenda for Change: New Tasks for the United Nations*, 199-208 (1995); Anne-Marie Slaughter, "The Liberal Agenda for Peace: International Relations Theory and the Future of the United Nations", 4 *Transnational Law and Contemporary Problems* 2, 377-419 (1994); Yves Daudet, "An

Democratization.[814] All these exercises generated a huge interest among governments and civil society institutions throughout the world. The previous Secretary-General Kofi Annan largely based his reform exercise on his predecessor and during his first term, came up with the *Renewing the United Nations: The Need for Reforms* in 1997, the *Agenda for Democratization* in 2000, the *In Larger Freedom* reform exercise in wake of the 60th anniversary of the UN.[815] The current reform exercise is largely an outcome of the work of the five working groups, which the General Assembly established in 1993 during the tenure of Boutros Boutros-Ghali. These were the:

a) Working Group on the Questions of Equitable Representation on and Increase in the Membership of the Security Council[816] and other matters related to the Security Council - This group has been examining proposals for increase in the permanent and non-permanent seats in the Security Council, the regional rotation of permanent seats and the use of veto.

b) Working Group on Agenda for Development[817] - This *ad hoc* open-ended working group, which was created in 1994, has been able to come up with some consensus on how the UN should proceed with work on the agenda for development report, which was presented by Secretary-General Boutros Boutros-Ghali.

c) Working Group on Agenda for Peace – This Group has been reviewing suggestions for strengthening the UN peacekeeping capacities and has submitted resolutions to the General Assembly to improve preventive diplomacy and early warning capabilities. This group consisted of subgroups, which focused on the issues of post-conflict peace building and use of sanctions. The recent establishment of the Peace Building Commission (PBC) should be largely credited to the work of this group, which has been working since early 1990s.

d) Working Group on the financial situation of the UN[818] – This group has been addressing long standing financial crisis caused by non-payment of dues by several member states.

Agenda for Peace as a New Means of Settling Conflicts", Yves Daudet (et. al) *Conflict Resolution: New Approaches and Methods*, 21-46 (2000).

[814] Agenda for Democratisation was presented to the General Assembly by Boutros Boutros-Ghali and supplemented his earlier two reports on the Democratisation. This was circulated as an official document – Support by the United Nations System of the Efforts of Governments to Promote and Consolidate New or Restored Democracies, A/51/761.

[815] Kofi A. Annan, ""In Larger Freedom": Decision Time at the UN", 84 *Foreign Affairs* 3, 63-74 (2005); _____, *In Larger Freedom: Towards Development, Freedom and Security for All: Report of the Secretary-General*, (United Nations, 2005); Joachim Muller, *Reforming the United Nations: The Struggle for Legitimacy and Effectiveness* (Leiden: Nijhoff, 2006). The UNSG's Report "In Larger Freedom", is considered to be the "most far-reaching and comprehensive, in the series". See also, J. Muller (ed.), *Reforming the United Nations: New Initiatives and Past* Efforts, The Hague, 1997, vols. I-III; *Reforming the United Nations: the Quiet* Revolution, The Hague, 2001, vol. IV. Described in the Board of Editors, "Reforming the United Nations: A Closer Look at the Annan Report", NILR, p. 319.

[816] See General Assembly Plenary Meeting Official Records, 48th Session (1993), 49th Session (1994), 50th Session (1995), 51st Session (1996).

[817] Jorge Heine, "A UN Agenda for Development: Reflections on the Social Questions in the South", Ramesh Thakur, *Past Imperfect, Future Uncertain*: *The United Nations at Fifty*, MacMillan, 85-92 (1998); Sumitra Chisti, "UN: An Agenda for Development: A Critique", 35 *IJIL*, 45-50 (1995).

[818] Secretary-General Calls for the 1996 Special Assembly Session on UN Finances in Statement to High-Level Group on UN Financial Situation, ST/DPI/Press/SG/SM/5892, GA/9060; Position Paper of the G-77 and China on the Financial Situation of the UN, A/WGFS/33; The Financial Situation of the Organization, ST/SGB/278; The Financial Situation of the Organization, ST/SGB/215 (1986).

e) Working Group on Strengthening of the UN in general[819] – This group's focus has been to review mandates and functioning of various bodies and propose measures to strengthen the UN.

Thus, starting with the first General Assembly session in 1946, we have seen the proposals for restructuring[820] and streamlining of the organization and that every Secretary-General, the chief facilitator of these exercises, had to contend with these exercises to some degree or other. The notable aspect of the last reform exercise can be traced back to the 1986 financial crisis of the UN. Since late 1986, the need for UN reforms has intensively occupied the minds of the UN leadership as well as its critics and supporters. The current round of reforms is a response to the "increased demands…from the multiple expectations of a role of the United Nations in maintaining or restoring peace and security, combating international terrorism,[821] fighting poverty and promoting sustainable development and respect for human rights."[822]

9.2.1. UN Reforms: Definition and Meaning

While evaluating the UN reforms, it is imperative to bear in mind what we mean by reforms in general and the UN in particular, as the whole analysis should be seen in the framework of what we mean by the UN reform.

Reform may mean improving the existing processes, structures, functions, etc. and in that sense, reform implies a continuous process. On the other hand, reforms can be seen as a broad concept that includes an alteration, if necessary, in the very premise and institutional structure of the UN itself. Reforms in the UN system are important as, "[R]eform is an essential ingredient in the process of the evolution of any institution, be it local, national, regional or international like the United Nations. Reform is an inevitable process of readjustment, repositioning, renewal and reinvigoration of an institution….for an international organization like UN, it is also important to adjust to the emerging power equations and power play in the international arena."[823] According to the Oxford dictionary, reform means make or become better.[824] In this light, reform can be considered as a way to enhance the organization's capabilities to meet its objectives. This chapter considers that the UN reforms mean changes in the political, legal, administrative and financial functioning of the organization to deliver the

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[819] Venkata Raman, "Strengthening the United Nations on the Eve of Twenty-First Century: the Imperatives of the Legal Perspective", 35 *IJIL*, 1-15 (1995); Erskine Childers, *In a Time Beyond Warnings: Strengthening the United Nations System* (London: Catholic Institute of International Relations, 1993); Joseph Baratta, *Strengthening the United Nations: A Bibliography on UN Reform* (New York: Greenwood, 1987); T. T. B. Koh, "The Non-Aligned and Strengthening the United Nations", M. S. Rajan, V. S. Mani and C. S. R. Murthy, *The Nonaligned and the United Nations* 287-293 (New Delhi: Oceana, 1987); Edward Thomas Rowe, *Strengthening the United Nations: A Study of the Evolution of the Member States Commitments* (London: Sage, 1974).

[820] Vijay K. Nambiar, "Strengthening and Restructuring the United Nations", Banerjee, Dipankar, *Rethinking Security: UN and the New Threats*, 71-78 (New Delhi: India Research Press, 2005); Jan Woroniecki, "Restructuring the United Nations: A Response to New Tasks or a Substitute for Action?", 59-84 Hufner (1995); Walter Hoffmann, *United Nations Security Council Reform and Restructuring* (Livingstone: Centre for UN Reform Education, 1994); R. I. Meltzer, "Restructuring the United Nations System: Institutional Reform Efforts in the Context of North-South Relations", 993-1018, *International Organization* (1978).

[821] Faiza Patel-King and Swaak-Goldman, The applicability of international humanitarian law to the "war against terrorism," In 15 *Hague Yearbook of International Law* 39-49 (2010).

[822] Board of Editors, "Reforming the United Nations: A Closer Look at the Annan Report", *Netherlands International Law Review*, 317-344 (2005) at p. 317.

[823] Muchkund Dubey, "Reform of the UN System and India", Atish Sinha & Madhup Mohta (eds.), *Indian Foreign Policy: Challenges and Opportunities*, 139-92 (New Delhi: Foreign Service Institute, Academic Foundation, 2007).

[824] The Little Oxford Dictionary of Current English, 1992.

mandate in a more effective and efficient manner and should be seen as such by all stakeholders. The UN reforms need to be seen as a sum of what all member states wanted it to be. UN reforms may also mean the substance, which the UN delivers, and the way it delivers, which takes into account the contemporary needs and caters to the perceived future needs, interests, and aspirations of all member states and their populations *together*. The UN was not so much in limelight during the Cold War. However, since 1992, due to the end of Cold War, environmental agenda, invasion of Kuwait, civil wars in Africa and Europe, rise of Non-Governmental Organizations (NGOs) and Multinational Corporation lobbies, the civil society has started taking an active interest into the UN work and conversely the UN is also looking to the civil society institutions for inspiration and cooperation.

Reform ideas can be broadly classified as those contained in and generated from within the UN (for example, the General Assembly, Joint Inspection Unit,[825] ECOSOC, Secretary-General) and outside the UN (for example countries like Nordic Project,[826] United Kingdom, USA, Canada, Japan etc.) and also from individuals and agencies.

Generally, developed countries have taken lead in the reform process of the UN and developing countries have been on defensive or reactive to such proposals.[827] The UN reforms are also seen by the developing nations as a continuing threat to their position and interests in the UN. Whether these assertions remain true in the current round of reforms which started in 2005?

9.3. India's role in the reform exercise - Understanding the aspirations of a rising global power

Against this broad background on fundamental requirements and practice on the UN reforms, this chapter focuses on India's role in the current reform exercise of the UN and how Indian proposals aim to contribute, through these proposals, to the progressive development of international law. In order to put India's contribution into a proper context, it is imperative to be aware of her current position in the contemporary world affairs. This could help us to see why India has proposed particular reforms. There have been fundamental changes in the polity and economy of India. India is emerging, and to an extent has emerged in certain sectors, as an important global power,[828] especially after its successful nuclear tests and economic boom.[829] The economic boost and

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[825] Wolfgang Munch, "The Joint Inspection Unit of the United Nations and the Specialized Agencies: The Role and Working Methods of a Comprehensive Oversight Institution in the United Nations System", 2 *Max Planck Yearbook of International Law* , 287-306 (1998).

[826] Nordic UN Project, *The United Nations in Development: Reform Issues in the Economic and Social Fields: A Nordic Perspective* (Stockholm:Almqvist & Wiksell International, 1991); _____, *Perspectives on Multilateral Assistance* (1990); _____, *The United Nations: Issues and Options: Five Studies on the Role of the UN in the Economic and Social* Fields (1991); Chadwick Alger, Gene Lyons and John Trent (et. al) *The United Nations System: The Policies of Member States* (Tokyo: United Nations University Press, 1995).

[827] Muchkund Dube, *Reform of the UN System and India*, p. 140.

[828] Ashley J. Tellis, *India as a New Global Power: An Action Agenda for the United States* (Carnegie Endowment, 2006); "India: A Rising Power", *Power and Interest News Report*, 18 August 2004; "India as a Global Power", *Deutsche Bank Research* Report, 16 December 2005; "Will India become a Global Power", *Council on Foreign Relations* debate, 19 June 2006.

[829] Shashi Shukla, "Humanitarian Intervention: Power Politics and Global Responsibility", 57 *India Quarterly* 3, 79-96 (2001); Ross Babbage, *India's Strategic Future: Regional State or Global Power?* (Basingstoke: MacMillan, 1992); Baldev Raj Nayar, *India in the World Order: Searching for Major Power Status* (Cambridge University Press, 2003); Jyotirmoy Banerjee, "Power on the Sea: India's Power Projections in the Indian Ocean", Rao, P.V., *India and Indian Ocean: In the Twilight of the Millennium: Essays in Honour*

economic independence of the nation, together with its enhanced and proven abilities to provide assistance to other developing countries[830] have given its political structure a new confidence that it should exercise more leverage at the international level, through multilateral forums, especially the United Nations. In the areas of environment and development, it has been felt that India could be on the receiving end in the long run; it is, therefore using its developing country status and *a chief spokesperson of developing countries* card to call upon the industrialized countries to live up to the legitimate expectations of the developing countries. In the UN peacekeeping operations, its strength has stretched all areas of functioning of the operations,[831] hence, it is in a sound position to propose far-reaching reforms in this area. The Indian media is also playing an important role in this respect.[832] It has created a strong perception among the Indian masses and the international fraternity that the world body should embrace the proposals of India.[833] Internationally, in the context of the Security Council reform, India has effectively aligned itself with Japan, Brazil, and Germany and has been seen as a permanent friend of the African countries. Worth a mention is the Indian initiative since 1995 for a global anti-terrorism agenda. India has been under the siege of terrorist attacks under various causes, such as political causes in the North Eastern States of India, Assam and Tripura, economic causes Andhra Pradesh, Madhya Pradesh, Odisha and Bihar and religious causes, Punjab and Jammu and Kashmir, much before 2001. 9/11 and other terrorists events have played an important role in favor of India.[834] Ever since the world in general and the Western countries in particular, are paying significant attention to the long pending calls of India for elimination of terrorism supported by governmental or any machineries. It has been realized that no reform measures in the UN, can succeed without the complete and active involvement of India.

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of Professor Satish Chandra, 50-70 (2003); Mira Kamdar, "India and the New American Hegemony", 19 *Connecticut Journal of International Law* 2, 335-344 (2004).

[830] Government of India has a dedicated department called Indian Technical and Cooperation and Assistance Division which provides bilateral assistance to other developing countries. It spends about Rupees 500 million annually on ITEC activities. Since 1964 (its inception), India has provided over USD 2 billion worth of technical assistance to developing countries. See http://itec.nic.in/about.htm (accessed 20 July 2007); See Statement by Mr Lal Dingliana, Joint Secretary (Technical Cooperation), Ministry of External Affairs on *South-South Cooperation for Development* at the 14th Session of High Level Committee on South-South Cooperation.

[831] www.indianembassy.org/policy/Peace_Keeping/history_india_UN_peace_keeping (accessed 20 July 2013); Since 1948, UN Peacekeepers have undertaken 64 Field missions. There are approximately 93,368 personnel serving on 14 peace operations led by UNDPKO, in four continents. This represents a nine fold increase since 1999. A total of 114 countries have contributed military and police personnel to UN peacekeeping. Currently more than 80,879 of those serving are troops and military observers and about 12,489 are police personnel. So far India has taken part in 43 Peacekeeping missions with a total contribution exceeding 1,60,000 troops and a significant number of police personnel having been deployed Secretary-General Praises India's Peacekeeping Contributions in Remarks at New Delhi Training Centre, SG/SM/7741, 16 March 2001.

[832] The continuous economic growth and enhanced military capacity has generated a peculiar sense of sustained confidence in the Indian population and the successive governments have been too pleased to exploit this mass appeal as far as UN reforms are concerned, especially India's membership in the expanded Security Council. The writings in Indian media too have contributed to government's increased confidence to confront the major powers in this regard. Sustained economic growth has created huge economic, political and even social expectations of India's population for India's success and more effective achievement during the latest round of UN reforms.

[833] "India and the Problem of UN Reform", *The Hindu*, 26 April 2005; "UN Reform Useless without UNSC Expansion, warns India", *International Business Times,* 19 April 2007; "India Proposes Panel of 3 Names for Choosing Next UN Sec Gen", *Global Policy Forum*, 18 May 2006.

[834] Much before 2001, India had suffered from the first large scale terrorist attacks in 1993, when 13 bombs in Mumbai were blasted in series and killed 257 people. Mumbai alone has witnessed 9 incidents directly related to spread of terrorism in the city.

9.3.1   Why India views the current reform exercise an extremely important one?

The general analysis above paints a bright picture of India and leads us to the next question of why India argues that the current reform exercise is extremely important and what contribution an effectively reformed UN would make to the peace, security and development of the world?

The UN, like any IO, is subject to critical assessment, and needs changes and renewal to retain its relevance and vitality.[835] India views the current reform process in these broad terms. The Indian case convincingly argues that unless the UN, in a time bound manner, caters to the interests and aspirations of the developing countries, the reformed UN is bound to have significantly lost its credibility and relevance. Hence, India seized the 60th anniversary opportunity to add life into the overall reform exercise. Reform of the Security Council has been in sharper focus than any other areas. The ambitious nature of the Security Council mandate, together with its power-sharing arrangements and its accomplishments at any point in time has seriously disappointed the world community. In view of the absence of any strong alliance or force, India together with Brazil, Germany, and Japan have taken up a much-needed lead in this regard.[836] It is this persistent disappointment of disenfranchisement, which has led to the demand of a point of no return for the expansion of the Council. In addition to the Council reform, India has proposed that issues of concerns to developing countries like financial flows, the multilateral trading system, and external debt should be at the heart of the renewed UN. The reformed UN should be addressing these issues with new vigor and commitment. India has also underlined the importance of enhancing the voice and participation of developing countries in the decision-making processes in global trade, financial and monetary institutions that need to be urgently addressed.[837] Thus, the Indian proposals address the substantive mandates delivered by the UN and call upon the measures within the UN and inter-organizational relations to fill in the democratic deficits in the decision-making processes.[838] These proposals reflect all critical elements of the progressive development of international law, which aim to respond the contemporary and future needs of international affairs.

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[835] Reform in a timely manner is essential for retaining relevance and vitality. In case of the UN, as "skepticism as to the relevance of the Organisations results from its failure to act timely and decisively in situations such as Rwanda, former Yugoslavia and Darfur.", Board of Editors, Netherlands Int Law Review, *Reforming the United Nations*, p. 317.

[836] Ricardo Sennes and A. Barbosa, "Brazil's Multiple Forms of External Engagement: Foreign Policy Dilemmas", John English, Ramesh Thakur and Andrew Cooper (ed.), *Reforming from the Top: A Leader's 20 Summit*, Tokyo: UNU Press, 201-29 (2005); Celso Amorim, "Current Challenges to Multilateralism and the United Nations: A View from Brazil" In Uday Bhaskar, *United Nations: Multilateralism and International Security*, New Delhi: IDSA 29-36 (2005).

[837] The conflict is due to the fact that the developing nations wish that UN have a decisive influence in determining the shape and structure of the emerging international financial architecture which is becoming more discretionary and less regulatory and rule-based. While on the other hand, the IMF, World Bank, the WTO would not like to have any reduced effectiveness of their role of intervention and intermediation in the international monetary and financial systems. Developing countries wish further that the ECOSOC becomes a main forum for discussing the coordination of the global macroeconomic policies of member states, which developed countries obviously would not like to concede.

[838] "Bridging the Democratic Deficit: Double Majority Decision Making in IMF", *Bretton Woods Project*, 2 February 2007; Shairi Mathur, "Voting for the Veto: India in a Reformed UN", *Foreign Policy Centre 2005;* Prime Minister of India, Mr Manmohan Singh, Address delivered at the Commonwealth Meet on Development and Democracy, 25 August 2005

9.4.   India's proposals in the current reform exercise

In the past, India actively participated in almost all of the UN reform exercises. Its notable contributions are seen in the permanent establishment of the UNICEF,[839] UNDP,[840] and restructuring of the economic and social agenda of the UN since 1952.[841] In the current round, India has called upon the UN to identify concrete goals for the promotion of development, cooperation, disarmament and financing of the UN so that the UN is able to effectively deliver its mandate. It has called upon the UN member states that principles of transparency, non-discrimination, consensus, and equal respect for the dignity of all individuals, societies, and nations, are fully adhered to by the comity of nations. Furthermore, these principles should guide the world community in the issues of trade,[842] environment, development, debt crisis, and economic assistance for the poorest members. However, the focus of the Indian proposal is centered on the reform of the Security Council.

9.4.1.   India's proposals rooted in outdated and contemporary theories of international relations

How Indian proposals are rooted in various international relations theories? It is instructive to see how India has used various theories of international relations during the current reform exercise. The Indian response to environment and development is based on two theories: pluralism and structuralism. Talking of pluralism,[843] India has launched an offensive that all international treaties need to be abided by. India pointed to the large number of comprehensive and binding multilateral treaties, which already serve to maintain environmental quality. The Indian standpoint has been to drive home the point of the industrialized countries abiding by the provisions, especially those that favor the development of developing countries (like India). In fact, statements by India at various forums concerning the UN reform have emphasized the need for implementation of various existing hard law (international treaties, conventions, protocols) and soft law (resolutions, declarations) instruments. On the one hand, India has sought to ensure that industrialized countries maintain their Overseas

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[839] UNICEF was created in December 1946 by the United Nations to provide food, clothing and health care to children, after the World War II, as the European children faced famine and diseases. UNICEF became permanent part of the UN in 1953.

[840] M. K. Kamala, *The UN development co-operation and the Third World: a study with special reference to the UNDP and India*, New Delhi: Manak, 257-71 (2002).

[841] UN Report on the "Measures for the Economic Development of Under-Developed Countries", May 1951. This Report is also termed as UN Primer for Development. The report elaborates on the concept of progress, the cure for unemployment, development planning, need for external capital, private investment, government landing and intergovernmental grants. S. H. Frankel, "United Nations Primer for Development" LXVI *Quarterly Journal of Economics* 2, August 1952, p. 301. In 1949, Mr V. K. R. V. Rao of India, came up with a proposal for UN Economic Development which would finance basic economic development. India played an important role in the 1950s in influencing the norms and policies of the Expanded Program of Technical Assistance (EPTA). It may be noted that, between 1959 and 1965, India made significant contribution on development funding issues and made substantial contributions too, owing to its high political profile.

[842] Hardeep Puri, "How and under what conditions can developing countries be enabled to receive a better share of a benefit of trade facilitation?," In United Nations Economic Commission for Europe (ed.) *Sharing the gains of globalization in the new security environment*, 29-35 (2010).

[843] India has a strong civilisational history of pluralism. India is a pluralist state, having people from different backgrounds and cultures, different religions and languages. India advocates a more plural international order which will make global governance structures of the UN more effective by providing a greater variety of solutions to the diverse problems facing states. Stephen Chen, *Theories of International Relations: Volume II: Approaches to International Relations: Pluralism,* London: Sage (2006); William W. Burke-White, "International Legal Pluralism", 25 *Michigan JIL* 4, 965-979 (2004); Oriol Casanovas, *Unity and Pluralism in Public International Law,* (Leiden: Nijhoff, 2001); Gardiol van Niekerk, "State Initiatives to incorporate Non-State Laws into the Official Legal Order: A Definition of Legal Pluralism?", 34 *Comparative and International Law Journal of Southern Africa* 3, 349-361 (2001).

Development Assistance (ODA) at the rate of 0.7% of the GDP (soft rule) and on the other, attempted to secure limits to the greenhouse gas emissions level (Kyoto protocol) by the industrialized countries. What India has also sought is to set clear priorities in the environmental agenda at the UN.[844] It has been observed that the overall Indian approach has been laid out in the theory of structuralism,[845] in the sense that it has always viewed environmental degradation as an inevitable characteristic of the capitalist world system. From this perspective, India has viewed poverty, racism and neo-colonialism as products of imperialism, which has created an unequal world.

India has envisaged a further expansion of competence for international organizations, both as forums for the negotiation of agreements and as executive agencies for administration in the functionalist manner in the technical areas such as environment, development, and cooperation. In the current reform exercise, India has continued to reiterate the importance of the implementation of functionalist theories and delivery of goods by international organizations as main vehicles (implementation of fundamental elements of neo-functionalist theories[846]) for realizing the aims and objectives of this theory.[847]

As far as realism[848] is concerned, it is hardly deniable that the Indian approach to the Security Council reform fully reflects the basic tenets of this theory. India has viewed that the Council tends to behave in a manner wherein the P5 try to maximize their national interests. By becoming a permanent member of the Council, the new status would also offer India an opportunity to maximize its own national interests. Evaluating in terms of the Rational Choice Model,[849] what India has tried to do is to take advantage of opportunities to overcome challenges posed by the existing international environment. The 60th anniversary and few years thereafter was an ideal opportunity to take advantage and this opportunity, which became a good platform to generate the necessary political will necessary for forwarding far-reaching proposals. For example, concerning the expansion

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[844] Indian stand on insistence of pluraslim is essential for the meaningful reforms of the UN system, as developed countries' real purpose for reforms has been "to maintain the *status quo* in international economic relations, *eliminate pluralisam* (emphasis added), and stem dissent inconvenient to them, tighten their control over UN institutions, and restrict the democratic functioning of the UN institutions." Muchkund Dubey argues that "reforms have also been used to dilute the pluralistic and democratic character of the UN." Muchkund Dubey, *Reform of the UN System and India*, p. 141.

[845] S. P. Sathe, "India: From Positivism to Structuralism", Goldsworthy, Jeffrey *Interpreting Constitutions: A Comparative Study*, 215-265 (2006); Stephen Chen, *Theories of International Relations: Volume III: Approaches to International Relations: Structuralism*, (London: Sage, 2006).

[846] Thomas Gehring, *Integrating Integration Theory: Neofunctionalism and International Regimes,* San Domenico: European University Institute, (1995).

[847] Voting strength of developing countries is one of the important assets in the reform process. However, this strength has severe limitations too. For example, their calls for conferences focusing on development issues have been realized, but they have been far from successful in achieving the aims. Similarly, the developing nations would like to achieve structural changes by way of legislating such changes in the field of trade, development assistance and finance, however, such changes are impossible to be materialized. See, Vincente Blanco-Gaspar, "Differential voting strength", In T. Buergenthal (ed.) *Contemporary Issues in International Law: Essays in Honour of Louis B. Sohn*, Kehl: N. P. Engel, 313-23 (1984).

[848] Adriaan Bos and Hugo Siblesz, Hugo (eds.), *Realism in Law-Making : Essays on International Law in Honour of Willem Riphagen* (Martinus Nijhoff, 1986); Charles Hobbes Covell, *Realism and the Tradition of International Law*, Palgrave MacMillan (2004); Pieter H. Kooijmans, "International Law: Placebo or Medication?", Willem van Genugten (ed.), *Realism and Moralism in International Relations: Essays in Honour of Frans A.M.Alting von Geusau*, 87-92 (the Hague: Kluwer Law International, 1999); Jack Goldsmith and Stephen D. Krasner, "The Limits of Idealism In Berman Paul Schiff", *The Globalization of International Law*, London: Asghate, 2005; Wilfred Jenks, "Idealism in International Law", Momtaz Nawaz and Krishna K. Rao, *Essays on International Law in Honour of K. Krishna Rao*, (Leiden: Sijthoff, 1976).

[849] D. P. O'Conell, "Rationalism and Voluntarism in the fathers of International Law", 13 *The Indian Yearbook of International Affairs* 2, 3-32 (1964).

of the Security Council permanent membership, if it would have been the sole proponent, it would have also easily lost the battle half way through. However, by aligning with three other countries, it has tried to overcome the challenges, which would otherwise have been difficult to handle alone.

9.5. India & Reform of the Security Council - Essence of various proposals and justifications thereof

Unlike the 1960s, there is widely held consensus among all countries that reform, especially of the composition of the Security Council, with or without the veto power is necessary. The Security Council increased its membership in 1963-65, from 11 to 15. It should be noted that India's proposal in 1979 to increase the non-permanent members from 10 to 14 got nowhere.[850] Italy's idea[851] to replace France and UK with Japan and the EC has been clearly unacceptable to France and the UK.[852] Brazil's 1989 proposal to create an additional category of membership (that of permanent members, but not with veto powers) has not been accepted universally; and the developing countries' demand for the gradual withdrawal of the veto power is a dead-on-

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[850] UN Doc. A/34/246 (14 November 1979).

[851] Uniting for Consensus, *Draft resolution on the Reform of the Security Council*, 21 June 2005, In his introduction, Marcello Spatafora (Italy) said that the G-4 model was structured in such a way as to benefit just six "happy few", at the detriment of all the other 180 Member States, and with a tremendous divisive impact on the membership. He was sure that Member States would not accept "to be taken for a ride". Arrogance never paid. No reform would be able to enhance the effectiveness and efficiency of the Organization if it was not rooted in the principle of fair and equal opportunities to be granted to all its Members. Only then would they be able to strengthen and enhance their sense of ownership of the United Nations, their sense of belonging to an organization of which they could be proud. It was along those lines that the Uniting for Consensus draft resolution intended to offer a constructive non-divisive platform for discussion and decision, a platform extremely flexible and centred on a strong regional empowerment. Continuing, he approached "a very delicate issue" that risked -- if not addressed properly -- to "bring shame upon this house" and to destabilize the whole process of reform. That ethical issue related to the G-4 resorting to financial leverage and financial pressures in order to induce a government to align or not to align itself with a certain position, or to co-sponsor or vote in favour of a certain draft, he said. Not later than yesterday morning -– and that was just the latest example -- a G-4 donor country had informed a government that had co-sponsored the Uniting for Consensus resolution that, because of that, the donor would put an end to a development project already in place in that country and would never start another important infrastructural project that had already been decided. Such improper and unethical behaviour was a shame. After the "oil-for-food" scandal, the Organization could not afford the luxury of another scandal, much more serious and destabilizing than oil-for-food, he said. Here, it was not a question of pocketing money. It was a question of ethics and moral values. It was a question of blackmailing some sectors of the membership, taking undue advantages from others' vital needs. "Enough is enough", he said. "In the United Nations, we should promote a public culture in which responsible political advocacy, with no distortions or abuses, becomes the operative norm; a culture in which legitimate political advocacy or lobbying does not trespass an undoubtedly thin borderline, and becomes blackmail and corruptive practice." He was sure that Member States and the Secretary-General would not turn their heads, he continued. They would not want to be responsible in front of the international community "in deciding to sweep the dust under the carpet" and not to go into an in-depth assessment of the situation through an independent committee of inquiry, or any other initiative deemed appropriate. At stake was the credibility of the Organization and of its process of reform. Reforms could not be dictated by power or money. They had to be dictated by principles, and it was the Assembly's duty to strengthen the hand of those Member States who relied on the Organization and who must know that they would be able to say "no" to improper and unethical requests without fear or suffering financial consequences. UN Press Release GA/10371 dated 26 July 2005, 59th GA Plenary , 115th Meeting, "Uniting for Consensus' Group of State Introduces Text on Security Council Reform to General Assembly" proposes maintaining permanent 5 with 20 Elected Members.

[852] See generally, Gabriella Venturini, "Italy and the United Nations: Membership, Contribution and Proposals for Reform", 20 *Hamline Law Review* 3, 627-639 (1997); Ando Salvo, "The New International Situation and Its Implications for the Italian Defence Policy", 28 *International Spectator* 3, 23-32 (1993); Italian Society for International Organization, *Italy and the United Nations*, (New York: Manhattan, 1959).

arrival proposal. Thus, what are the prospects and challenges to the current efforts of India to succeed with the expansion of the permanent members of the Security Council?

The focus of India on the Security Council reform has centered on the composition of the Council and its working methods, use of veto and relations with other principal organs, such as the General Assembly.[853] Why did India stake a claim for permanent membership of the Security Council? What did it want to achieve by the reform of the composition and relational issues? How did it pursue this specific goal? These questions are analyzed in the following sections.

9.5.1.   Expansion of the Composition of the Permanent Membership of the Security Council

While there are various debatable reasons for the expansion of the Council's composition, as professed world over, the Indian claim focuses on manifold issues. India has strongly contended that the Council, the size of which was expanded in 1965 from 11 to 15, without any expansion in the permanent members' category, has remained frozen. Secondly, developing countries constitute an overwhelming majority of the principal plenary organ of the UN, namely, the General Assembly and it is these countries, which are also most often the objects of the Council's actions. Hence, they must have a role in shaping those decisions, which affect them. The present composition, especially the permanent membership of the Security Council category, is weighted heavily in favor of industrialized countries. This imbalance must be redressed by an expansion of the Council, through enhancing the representation of developing countries in both permanent members and non-permanent members' categories. Thirdly, the success of the Council's actions depends on political support of the international community, thus, the restructuring of the Council should be broadly based. Members of the Council must feel that their stakes in global peace and prosperity are factored into the UN decision-making process.[854] The fourth reason is that the expansion of the membership is a relevant and important, albeit indirect, factor in bringing about changes and improvements in the Council's working methods. That is because its impacts would no doubt being felt, including breathing a new life into its *modus operandi*.

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[853] Dimitris Bourantonis, *The Politics and History of UN Security Council Reform* (Routledge, 2005); Karel van Kestern, "Reform of the Security Council: A No-Win Situation?", Niels Blokker and Nico Schrijver, *The Security Council and the Use of Force: Theory and Reality: A Need for Change?* 261-268 (Leiden: Nijhoff, 2005); Yehuda Blum, "The Proposals for the Security Council Reform", 99 *AJIL* 3, 632-649 (2005); Jan Wouters and Tom Ruys, "Security Council Reform: A New Veto for New Century?", 44 *Revue de droit militaire et de droit de la guerre* 1-2, 139-174 (2005); Mark W. Zacher, "The Conundrums of International Power Sharing: The Politics of Security Council Reform", Richard Price and Mark W. Zacherm *The United Nations and Global Security,* Palgrave MacMillan, 211-226 (2004); Igor Bailenm "In Search of a Southern Agenda toward the Imperative of UN Security Council Reform", 77 *Philippine Law Journal* 2, 158-190 (2002); Morris, Justin. "UN Security Council Reform: A Council for the 21st Century", 31 *Security Dialogue* 3, 265-277 (2000); Fitzgerald, Amber, "Security Council Reform: Creating a More Representative Body of the Entire UN Membership", 12 *Pace International Law Review* 2, 319-365 (2000); Bardo Fassbender, *UN Security Council and the Right of Veto: A Constitutional Perspective* Kluwer Law International, 1998); Ingo Winkelmann, "Bringing the Security Council into a New Era: Recent Developments in the Discussion on the Reform of the Security Council", 1 *Max Planck Yearbook of International Law*, 35-90 (1997).

[854] Paul C. Szasz, The Security Council starts legislating, 96 *AJIL* 4, 901-905 (2002); Peter Hulsroj, "The legal function of the Security Council", 1 *Chinese JIL* 1, 59-93 (2002).

9.5.2.   Why India would like to become a permanent member of the Security Council?

In addition to the above reasons, there are several critical factors, which should be counted in understanding the Indian claim.[855] First, since the Council is the first among the principal organs of the UN and enjoys preeminence in all peace and security matters, India, as a rising global power, obviously would like to have a seat, so that its interests and aspirations are catered to. India, in its new status, is likely to face enormous political challenges; hence, by becoming a permanent member of the Security Council, it could very well do what other permanent members have done so far.[856] Secondly, there is a broad consensus the world over that India, by any measurement whether objective criteria or global credentials, appears to be more or less the only UN member, which would be easily accepted by the world community as a new permanent member of the Security Council.[857] India has been the only member, which has successfully garnered support of several EU member states, the entire African union,[858] and key Asian and Latin American states. US President Obama affirmed that, "in the years ahead, the United States looks forward to a reformed UN Security Council that includes India as a permanent member."[859] Thirdly, in addition to a broad universal support, India possesses political, military, and economic influences on a global scale, which allows it to take up an important role in the Council. Last but not the least, India has categorically emphasized and agreed to assume new obligations and responsibilities,

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[855] Right from the days of San Francisco Conference, India has been vehemently arguing for the proper composition of the Security Council. For example, one of the India sponsored amendments to Dumbarton Oak Proposals related to the criteria for the selection of the non-permanent members in the Security Council and inclusion of observers in the Security Council. The Indian delegation was quite concerned about the selection of states to sit on the council which, it argued, should be based, inter alia,, on population, industrial potential, willingness and ability to contribute to international security arrangements and past performance. It supported the Yalta formula regarding the veto, but suggested that the provision should be open to revision after 10 years. A. Lall, "The Asian Nations and the United Nations" in N. Padelford and L. Goodrich (eds.), *The United Nations in the Balance* (1965) at 365.

[856] The underlying interests, for obviously understandable reasons are clear: UN is not facing the crisis to adjust to the existing global power structure nor the crisis is due to the non-consensus on the nature of the threats to international security or on the methods to meet these threats. "The real crisis is that the more powerful among the member states now want to go back on this body of international law and on the common values and are bent upon perpetuating the obvious inequities and imbalances in the rules and regime which govern international relations." Muchkund Dubey, *Reform of the UN System and India* above at p. 156. Indian position and ideological fighting heavily depends on these tenets.

[857] It is well known that all permanent member candidates face strong rivalries. For example, Japan and Germany, despite their post-World War II credentials and records, industrial status and contribution to the world peace and stability would not be easily accommodated unless there is sufficient addition of new permanent members from Asia, Africa and Latin America. India is likely to get opposition from its regional rival, Pakistan, while Japan is likely to be opposed by China and Korea. Similarly, Brazil faces rivalry of Argentina and to an extent Mexico, and Italy opposes Germany. Three candidates from Africa, namely, South Africa, Nigeria and Egypt, do not have easy ride within Africa. However, despite the presence of these rivalries, it is safely assumed that India does enjoy broad support and there is no real public statement from Pakistan explicitly opposing India's candidature.

[858] The annual report of the MEA of India, various statements of visiting foreign leaders leave no doubt that India, among all the aspirants enjoy the full support for its membership. In fact, it can be said that the world community has realized that India should have been a permanent members much earlier. It was stated by the Minister of State in the MEA (Mr. Sharma) on 10 May 2006 that there has been a steady accretion of support to India's candidature since it was announced in 1994. Support for India's candidature has been expressed in various forms and fora. Some countries have expressed support confidentially in bilateral discussions with Government of India. The Government continues its engagement with other member states of the UN on the issue of reform and expansion of the Security Council. In both permanent and non-permanent categories of membership and its efforts to mobilize further support for India's candidature for a permanent seat in the UN Security Council.

[859] The Joint Statement by US President Obama and Indian Prime Minister Singh of 8 November 2010, New Delhi.

including financial obligations, if it is made a permanent member of the Council. This is in line with the long pending proposals reiterating that the permanent members should bear heavier burdens than what they are carrying. Summing up, in the current international environment, the legitimate claim is bound to ensure that India is the first natural candidate of an expanded permanent member category of the Security Council.

The words of the ex-Foreign Secretary of India, Shyam Saran, summarize India's legitimacy of claim for a permanent position in the Council, "We believe that India, with its large population, dynamic economy, long history of contribution to international peace-keeping operations and other regional and international causes, deserves to be a permanent member of the Security Council. At the same time, we also realize that there is a resistance to change among several powerful countries. However, this is the first time in many years that a certain momentum has been built up for a comprehensive reform of the UN, which should not be allowed to wither away".[860]

9.5.3.   Use of Strategy to justify the Claim and thus achieve the Objective

Which strategies has India employed to garner the support and overcome challenges to its candidature for the permanent membership of the Security Council? India employed bilateral, regional, and multilateral strategies to promote its claim. It has continued to utilize bilateral meetings with different countries to mobilize further support besides participating actively in the Security Council reform debates. India has also shown flexibility over the use of veto power.[861] As regards the issue of veto power, India believed that the existing and new permanent members of the Council should have the same responsibilities and rights. This principle is underlined in the G4 Framework Resolution. However, based on extensive consultations and keeping in view the wide divergence of views on the issue of veto, the G4 resolution provides for a decision on this issue at a review, which is envisaged 15 years after the entry into force of the amendments to the UN Charter for the expansion of the Security Council.[862] Thus, one could conclude that the first target of India is to ensure its membership in the permanent members' category. India's alignment with other aspirants of the Council's permanent membership has also helped boost its claim further.

India has vehemently opposed the idea of immediate re-election of non-permanent members because such a situation would not address the long held grievances against the Council by the world community. In the view of India, the re-election of the non-permanent members would …(i) not address the issue of the accountability deficit which is existing in the Council, (ii) not be able to prevent continuous encroachment by the Security Council led by current permanent members of the General Assembly, (iii) be seen as reforms for the sake of reforms, (iv) not address the problems of the working methods, (v) not ensure access of small and

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[860] This was a straightforward proposal by the highest Indian diplomat in an academic think tank forum of P5 but not same in other P5 members. Why India did not do the same in other countries. (11 Jan 2006, Ambassador Shyam Saran talking "Present dimensions of the Indian Foreign Policy – at Shanghai Institute of International Studies, Shanghai).

[861] A suggestion has been made and analysed to make agree the permanent members to apply veto only to peacekeeping and enforcement measures. "The United Nations in its Second Half Century", *The Report of the Independent Working Group on the Future of the United Nations*, Yale University Press, (1995).

[862] Statement of Minister of State for External Affairs of India, Mr. Anand Sharma, in the Parliament of India on 10 August 2006.

vulnerable states to the Council and their participation in its subsidiary bodies, and (vi) would also anyhow require a Charter Amendment,[863] among other issues.

9.5.4.   Indian proposals on Security Council Reform and Strengthening of International Law

What is the position of India on the holding of veto by the current permanent members[864] as well as possibility of introduction of the same to the new permanent members, working methods and its relations to international law? This analysis would help us see whether the suggestions forwarded by India are likely to contribute to the strengthening of international law.

On the working methods of the Council,[865] the Indian stand clearly points at the strengthening of international law.[866] It has expressed disappointment that even after 60 years, the Council has not been able to adopt rules of procedure.[867] India has strongly opposed the fact that the Council continues to encroach upon the General Assembly. Thus, the Indian position has strongly advocated the concerns of the world community about the rule of law within the Security Council. By not having the rule of law followed, the Indian position suggests that the Council has continued to fail to deliver its main mandate, namely, maintenance of international peace and security. It is expected that one of the tasks of India, if it becomes a permanent member, would be to ensure that it works with the other permanent members to have definite rules of procedure in place, which would allow the world to hold the Security Council.

Another major concern of India, which reflects the eminence of the plenary organ of the UN, namely, the General Assembly vis-à-vis the Security Council, is regarding the reporting method and content of the Council to the Assembly. It has been observed that the reports of the Council to the Assembly are trite in language, lack analysis of its work, and are obscure in content. Furthermore, the reports hardly allow an understanding of how a particular decision of the Council has been reached and does not mention disagreement, if any, between the members. These reports are questionable in the context of working methods.

Thus, India has made a comprehensive proposal which would cover all aspects of reforming the Security Council, namely, new permanent members, more restrained and effective Security Council, balance

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[863] Article 27 of the UN Charter reads as follows: (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.

[864] "Forget the Veto Power, Kofi Annan tells India", *The Times of India*, 29 April 2005; "Putin Votes Veto Power for India", *The Times of India*, 4 December 2004; "No Veto Power for You", http://varnam.org/blog/archives/2005/04/no_veto_power_for_you.php (accessed 12 January 2007); "India should have Veto Power", *The Hindu*, 27 January 2005; "Why West don't Want to give Veto Power to India in UN Security Council?", http://intellibriefs.blogspot.com/2004/12/why-west-dont-want-to-give-veto-power.html (accessed on 12 January 2007); "India Refuses to Accept Permanent UN Security Council Membership Without Veto Power", *India Daily*, 20 May 2005; "UNSC Aspirants Drop Veto Right", http://www.vetoright.com/VetoRecht/unsc-aspirants-drop-veto-right-p-4.html (accessed 12 January 2007).

[865] "Security Council Reform", http://www.globalpolicy.org/security/reform/ (accessed several times in 2006 and 2007); "Debate on Security Council Reform Continues", *Centre for UN Reform Education*, 15 March 2007.

[866] An expansion of the Council will make it much more difficult for getting decisions in the Council taken under bilateral pressure or other coercive means which will contribute to restoring the letter and spirit of the UN Charter to maintain international peace and security as per the Charter's philosophy.

[867] Bailey and Daws provide excellent analysis on the topic of the procedure of the Security Council. See Sydney Bailey and Sam Daws, *The Procedure of the UN Security Council*, 3rd edition, (Oxford: Oxford University Press, 1998).

between the principal organs of the UN, definite rules of procedures - a Security Council which is accountable to the General Assembly,[868] transparent and without veto (although ambiguously stated). Thus, the Indian proposal pleaded a strong case for an institutional balance of power, an important yardstick of accountability of IOs, a contemporary topic of international law and global governance.[869]

In conclusion, India has advocated such Security Council reforms, which would strengthen UN in general and the Security Council in particular, and international law broadly. It has employed diplomatic strategies, including forming alliance, which was otherwise outcast in its idealistic philosophy, which has given worldwide support towards its candidature. It has shown flexibility concerning the final number of permanent members and veto, has shown leadership in the sense to work for a consensus so that reforms would be accepted by the international community and will be adhered to by all the members. At the same time, it has not shied away from condemning the misuse of veto power and categorically rejecting the fact that the idea of non-permanent members getting immediately re-elected would defeat the very purpose of the reforms. And this would in no way contribute to alleviate the democratic deficiency of the Security Council.[870] India's reform proposals were well-articulated, logical, result oriented, and practical. This has further enhanced its international standing. India reiterated its traditional viewpoints, which it has held since 1979 and even before.

9.6.   Economic Development

India seized the reform year to put enormous pressure on industrialized countries to accept its proposals in the areas of trade, environment, and overall economic development. Befitting its role of a leading member of the developing countries groups, such as, Non Alligned Movement (NAM) and the Group of 77 (G77), it made a number of proposals, which attracted significant focus in the debates. It has made significant and sustained attempts to see that most pressing concerns of developing countries, like India are reflected in the reformed UN. Although one could see the qualitative imbalance in the statements of the government machineries and media between its calls for reforms of the Security Council and proposals on trade, environment, and development, its proposals touched virtually all the elements of concern to the developing countries.[871]

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[868] Statement by Mr. Ajit Malhotra, Permanent Mission of India to UN (New York), 61st Session, 13 December 2006, 6 April 2006, , Statement by Mr. Tariq Anwar, Member of Parliament of India, 61st Session, 16 October 2006, Statement by Ambassador Sen, Permanent Mission of India, 19 April 2006, 16 March 2006, 16 February 2006.

[869] Razali Plan of the UN Security Council proposed, among others, an extension by nine further members (of 5 permanent and 4 non-permanent); permanent seats are to be allotted as one seat for Africa, Asia and Latin America/Caribbean each, two further seats is not to be supposed by industrial nations to be occupied; non-permanent seats on regions to be distributed (Africa, Asia, Eastern Europe and Latin America/Caribbean); new permanent members receives right of veto, and the changes of Charter to be made by a conference after 10 years of functioning. Razali Reform Paper, Paper by the Chairman of the Open-Ended Working Group on the Question of Equitable Representation on and Increase in the Membership of the Security Council and Other Matters Related to the Security Council; General Assembly Official Records, Fifty-First Session, Supplement No. 47, A/51/47.

[870] N. White, "Accountability and Democracy within the UN: A Legal Perspective", 6 *International Relations* 13, 1-17 (1997); C. Bellman and R. Gerster, "Accountability in the World Trade Organisation*"*, 30 *Journal of World Trade Law,* 31-74, (1996); S. Brown and L. Fabian, "Toward Mutual Accountability in the Non-Terrestrial Realms", 29 *International Organisations*, 877-892, (1975); S. Williams, "Sovereignty and Accountability in the European Community", In R. Keohane and S. Hoffmann (ed.) *The New European Community,* 155-176 (1991).

[871] Veena Jha, "Trade and environment: Doha and beyond," In Aaditya Mattoo and Robert M. Stern (ed.) *India and the WTO*, World Bank, 299-325 (2003).

India did not fail to point out, wherever possible, to the failure of industrialized countries in living up to their promises, be it in the area of overseas development assistance, technology transfer, additional financing for development, capacity building, and so on. To redress this malaise, it has demanded a non-discriminatory, open, transparent, and equitable financial, monetary, and trading system and full and effective participation of developing countries in the international norm-setting and rule-making processes. However, these demands have been on the plates of developing countries for a long time already, so one hardly can distinguish between earlier and current calls and does not see any value added calls by India during the current round of reforms.

9.6.1 Rationale of the Indian position on reforms on economic issues

Since the area of economic and social affairs in the UN is being increasingly marginalized, India has pushed for reforms in this area.[872] In its view, the UN is marginalized when it comes to matters that are economic. In that context, then, the question of international security is being divorced from that of its social and economic context. What India wants to reinforce is the link between maintenance of peace and security and the development of developing countries.

Realizing, that by merely calling for greater cooperation between the ECOSOC and the Bretton Woods institutions (BWIs), but not actually concretizing particular efforts, the previous Secretary-General Annan's agenda has not really contributed much to the development function of the UN reforms. India has tried to address the democratic decision-making deficiency of the BWIs. Within the BWIs, it called upon for the removal of conditions imposed by the International Monetary Fund (IMF) (which are even found in the Policy Support Instrument of 2005), addressed how it has failed to address the imbalance at the core of the current financial and economic instability. The Indian proposition has reinforced that accelerated development is a right and a legitimate expectation of the developing countries. At the institutional level, India has proposed, together with G77, that the UN Secretariat work focuses more on social and economic development.

Overseas Development Assistance (ODA) and debt cancellation were the most important demands of India, especially to reduce the poverty to half by 2015, which was the first goal of the Millennium Development Goals (MDG). In the view of India, the MDGs[873] cannot be achieved without implementing the 0.7% ODA target in a time-bound manner and innovative financing, deeper debt relief, enhanced market access and improved global economic governance. This call of India is worth noticing in view of the fact that even though the aggregate ODA has reached a record high of US $ 106 billion in 2005, only a small fraction of this nominal increase has actually represented additional finances to support real investments in the neediest of countries. Thanks to efforts coordinated by India, an agreement has been reached to monitor the fulfillment of commitments made to provide development assistance. Furthermore, Indian efforts have had favorable results on the efforts by industrialized countries to offer deeper debt relief and cancellation to various countries in Africa, which has been complemented, with the sharp increases in ODA.

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[872] "Dialogue on Globalisation", http://www.fes-globalization.org/ (accessed on 12 July 2007); "UN Reform, Regional Security and HIV/AIDS Top Subjects of Annan's Talks in India", *UN News Center*, 27 April 2005; "South Fights for a Fairer UN System", *Third World Network*, 5 June 2006; "New G77 Ministers Voice Concerns on UN Reform", http://www.choike.org/nuevo_eng/informes/4473.html (accessed 12 January 2007); Address by Defence Minister of India Mr Pranab Mukherjee at the Institute for Defense Studies and Analyses, New Delhi, 3 June 2006.

[873] "India and the Millennium Development Goals", empowerpoor.com/backgrounder.asp, accessed on 12 July 2007.

9.6.2. Deficit of democracy in Bretton Woods Institutions (BWIs) and role of the UN in addressing this deficit

Although the elements of some of India's initiatives have had positive effects, especially in the area of new agreements on financing for development, Indian proposals are nowhere close to consideration as far as addressing the democratic deficit in international finance architecture is concerned. It continually believes that by redressing the international finance architecture, a lot can be achieved. For this to happen, it has demanded a fundamental reform of the quota structure,[874] an absolute necessity for the credibility and legitimacy of international financial institutions, UN encouraged implementation of the second stage of the IMF quota reform, subsequent increase of quotas for all under-represented countries and amendment to the Articles of the IMF. These proposals, which are echoed by several other developing countries, face stiff opposition from industrialized countries and it may not be an exaggeration to assume that there will be hardly any improvements in this regard. This assumption is reinforced in view of the fact that the latest discussion between the UN Secretary-General and the executive heads of the Chief Executive Board of the World Bank Institutions, to proactively engage the WBIs on these issues has failed to reach any understanding between the executive heads of the WBIs on the one hand and the UN leadership on the other.

9.6.3   Trade and development

Although outside the immediate jurisdiction of the UN, the Indian position on suspension of the Doha Round for Development[875] talks is unlikely to lead to any improvement in the negotiations, at least in the immediate future. This is caused by the continuous distortion in agriculture production and trade, due to high-levels of subsidies and production by the industrialized countries. Furthermore, its demand to provide additional resources to the United Nations Conference on Trade and Development (UNCTAD), so that the International Task Force on Commodities works on to build consensus on commodity-related issues, has gone unheeded.[876]

India wished that the World Trade Organization (WTO) should focus, with the UN encouragement, favorably on natural movement of persons in view of the welfare gains, which developing countries accrue from liberalization of the temporary movement of natural persons, which is in the range of 150 to 200 billion USD.[877] Effective and commercially meaningful access to the developed countries under Mode 4 framework, for the suppliers of services from the developing countries,[878] is the area where the largest gain is expected and would

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[874] "IMF Quota Reform Needs to be Hastened: Chidambaram", *The Hindu*, 14 September 2006; "IMF Quota Reform Poses Risks to Developing Countries", http://www.brettonwoodsproject.org/art.shtml?x=545872 (accessed 12 July 2007); "Quota Formula of IMF Flawed: Chidambaram", *The Tribune*, 14 September 2006.

[875] Aditya Matoo and Arvind Subramaniyam, "India as User and Creator of Intellectual Property: The Challenges Post-Doha", Aditya Matoo and Robert M. Stern, *India and the WTO*, Washington: World Bank, 327-366 (2003); Veena Jha, "Trade and Environment: Doha and Beyond", Matoo and Stern (eds). *India and the WTO*; Pradeep R. Mehta, *WTO and India: An Agenda for Action in Post Doha Scenario* (Jaipur: CUTS Centre for International Trade, Economics and Environment, 2002).

[876] Nill Lante Wallace-Bruce, "Global trade and sustainable development: two steps forward in the WTO?", 35 *Comparative International Law Journal of South Africa* 2, 236-255 (2002).

[877] Suggestions have been made that the WTO should be brought under association with the UN according to Article 57 of the Charter. Dubey, Muchkund Reform of the UN System and India above at p. 157.

[878] The GATS defines four modes of trade in services. Mode 4 refers to the temporary migration of workers, to provide services or fulfill a service contract. Because the current framework of Mode 4 allows for only temporary movement of workers across borders to provide services, and their visa as well as their right to stay and work are tied to their original terms of employment or contract and to their employer. Although India has taken a consistent position on various issues, the actual practice of implementation on this subject

contribute to the achievement of MDGs. It could be a win-win situation as restricting the movement of professionals across the world is un-natural and ultimately detrimental for the industrialized countries themselves.

India has also called for the implementation of the International Conference on Financing for Development's results. The Conference, which was held from March 18 to 22, 2002, in Monterrey, Mexico, following the General Assembly resolution 54/196 of December 1999; was mandated to promote international cooperation in six key areas. These are mobilizing the domestic resources, increasing private international investments, strengthening ODA, increasing market access and ensuring fair trade and solving the debt burden. The sixth one being improvement in the coherence of global and regional financial structures and promotion of fair representation of developing countries in global decision-making.[879] However, an analysis of Indian achievements in shows that proposals by developing countries like India are far from being implemented in the period starting from 2002. In fact, the failure of the Doha Round is one such telling example.[880] While acknowledging the fact that the ODA has been increasing, it has fallen far short of the estimated US$ 150 billion needed for the developing countries to attain the MDGs. In this regard, India has welcomed the progress made in finding innovative sources of financing and demanded a robust and efficient mechanism to track ODA flows, especially in the context of debt relief initiative. On a positive note, a monitoring mechanism has been mooted to monitor these flows.[881] One of the Indian proposals to scale up the aid level at the conference has found affirmative results as well as the debt relief programmes announced by the industrialized countries, but its proposal that these programmes should be condition-free has not been accepted.

In relation to India's wish that UN be more proactively engaged in the international finance structures, it must be noted that an agreement has been reached in the context of strengthening of the ECOSOC taking lead

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has remained illusory. It has been seen that the actual history of implementation since the conclusion of the Uruguay Round Agreements does not evidence the extension of favourable treatment to the developing countries. In particular, the commitments made by the developed countries in the area of temporary movement of natural persons are far from satisfactory. It is suggested that an assessment by the Council for Trade in Services (CTS) under Article XIX should be mandatory before embarking on negotiating guidelines for the new round of negotiations. With regard to the temporary movement of natural persons, it has been advocated that there is a need for making substantially higher commitments by the developed countries in this area if the balance of benefits under GATS is to be preserved. Verma, S. K. "Trade in Services, World Trade Organisation and India", in Bimal N. Patel (ed.), *India and International Law*, vol. 1, Nijhoff-Kluwer Law International, 2005, p. 90.

[879] UN A/RES/61/191: *Follow-Up and Implementation of the Outcome of the International Conference on Financing for Development;* A/59/826: *Implementation of the Monterrey Consensus: A Regional Perspective*, Note by the Secretary-General (2005); United Nations Department of Public Information, *Financing for Development: Monterrey Consensus of the International Conference on Financing for Development: The Final Text of the Agreements and Commitments Adopted at the International Conference on Financing for Development, Monterrey, Mexico, 18-22 March 2002.* See also United Nations Intellectual History Project, Ralph Bunche Institute for International Studies. The Project contains among others interviews with those individuals who have made significant contributions to UN history and ideas. In interview called, *UN Voices: The Struggle for Development and Social Justice*, with Virendra Dayal, the Project records the UN's contribution to global economic and social policy and development discourse and practices across the developing nations. Virendra Dayal served at the UN from 1965 to 1993 and served as *Chef de Cabinet* for two Secretary-Generals, Pérez de Cuéllar and Boutros Boutros-Ghali.

[880] Rajesh Chadha, "Computational analysis of the impact on India of the Uruguay Round and the Doha development agenda negotiations" In Aaditya Mattoo and Robert M. Stern (ed.), *India and the WTO,* World Bank, 13-46 (2003).

[881] India emphatically suggested that a mechanism to track these flows is vital in the context of debt relief initiative. Statement by Permanent Representative of India to the UN, Mr Sen, 10 October 2005.

in this matter.[882] Thus, a long pending call of developing countries, including countries like India, that ECOSOC periodically evaluates the international economic policies which include the policies of the BWI institutions under the guidance of the General Assembly, have found a positive response during the reform year. By emphasizing the significant shift from the Security Council to the General Assembly in most pressing issues facing the world as seen by developing countries, India has tried to ensure that the plenary organs become more vital in leading the UN reforms. This is one of the concrete areas where India's contribution has been remarkable and has ushered in several positive changes. India has highlighted the need for enhanced allocation for developmental activities of the UN in the regular budget.[883] Indian advocacy focuses on curtailing the progressive replacement of funding through the assessed budget by funding through voluntary contributions.[884]

The overall conclusion India wishes is that the UN takes lead in the coordination of economic and trade matters with the close cooperation from the BWIs, and thus remains valid in its suggestions on the reform of BWIs. By reinforcing the importance of the UN in these matters, India has obviously addressed the problem of democratic deficit in the financial architectures and has tried to ensure that the UN decision-making, which is based on sovereign equality of members (against weighted voting of the BWIs), guides these institutions. By doing so, the Indian position has been to ensure that the letter and spirit of the relationship agreements between the UN and the WB, especially, are lived up to by the respective memberships.[885]

The above analysis offers a mixed picture as far as the impact of India's voice is concerned in issues related to trade, economic assistance and development and its eventual contribution to the achievement of the MDG. This has become quite evident in the statements made by the Indian representative at the UN.

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[882] Commission on Global Governance proposes that the ECOSOC shall be replaced to become an Economic Security Council with the mandate to: (a) continuously assess the overall state of the world economy and the interaction between major policy areas; (b) provide a long-term strategic policy framework in order to promote stable, balanced and sustained development; (c) secure consistency between the policy goals of the major IOs, particularly the World Bank, IMF and the WTO; (d) give political leadership and promote consensus on international economic issues. Commission on Global Governance (1995), *Our Global Neighbourhood*, The Report of the Commission on Global Governance, Oxford University Press, pp. 155-156.

[883] Jose Antonio Ocampo, "Rethinking the Development Agenda", 26 *Cambridge Journal of Economics* 3, 393-407 (2002); Neil Gardiner, "Reform the United Nations", *The Heritage Foundation Leadership for America*, 27 October 2003; Isabelle Grunberg and Sarbuland Khan (ed.) "Globalisation: The United Nations Development Dialogue: Finance, Trade, Poverty, Peace-Building", *UNU Policy Perspective* 4 (2000).

[884] While in 1960s and till mid-1970s, assessed contributions provided more than 80% of funding of development related organizations/agencies and programs, the trend have reversed since mid-1970s. Majority of the UN Specialised Agencies, Regional Economic Commissions and Development Programs are becoming donor dependent as voluntary contributions now account as much as 80% of the funding of these institutions. The objectives of these agencies are mainly to contribute to the overall social, economic development of the developing nations.

[885] Although India did not refer to it but the Relationship Agreement between the International Bank for Reconstruction and Development (IBRD) and UN clearly require consultations between the two organizations. It is well known that consultations between the two have remained far from satisfactory. The Bank's relationship was finally and grudgingly approved by the ECOSOC after prolonged negotiations (according to Richard Demuth who drafted the document later remarked that it was more a declaration of Bank independence from than cooperation with the UN). Demuth, Richard H., *Relations with Other Multilateral Agencies* In John P. Lewis and Ishan Kapur (eds.) The World Bank Group, Multilateral Aid in the 1970s (1973). Patel, Bimal N., *The Regime of Legal Obligations between International Organisations: An Integral Part of Framework of the Responsibility of International Organisations (unpublished research study of the author).* On the other side, there is a need for these agreements with the IMF and the World Bank to be brought in line with those concluded with other Specialised Agencies. Such an approach can further partially contribute to fill the deficit in democratic structures and decision-making.

Highlighting success in some areas of UN reforms, Mr. Sen, Permanent Representative of India to the UN (New York) had to say,

> "if we are honest, we have to acknowledge that significant unfulfilled tasks and challenges lie ahead, particularly, in unaddressed issues, including reform of the architecture of our multilateral bodies that oversee security, trade, financial flows, and development. Without this reform, the discontents of globalization would only deepen. Without it, there cannot be substantially enhanced and assured resource and technology flows to developing countries, necessary for real economic development and to achieve the MDGs."[886]

9.6.4 A critique

Unlike its position on the Security Council reform, India has not proposed a concrete plan of action to realize its reform proposals. Most, if not all, of these proposals were already on the agenda since the adoption of the new international economic order resolution in early 1970s. Hence, one is led to conclude that the Indian position was a ritual call rather than being a concerted and determined attempt to seize the opportunity to realize some of the expected gains from the spin of the reform exercise.

It is well known that the flow of aid and investment from the industrialized countries to the developing countries has been more than reversed by the flow of interest and capital repayments by developing countries on their previously acquired debts. At the bilateral level (direct aid between a developed and ODA recipient country), the aggregate of ODA extended by the Organization for Economic Cooperation and Development countries in 2012 was 125.6 billion dollars, representing 0.29% of their gross national income 874. The financial crisis and euro zone turmoil led many governments to implement austerity measures and to reduce their aid budgets. However, despite the current fiscal pressures, some countries have maintained or increased their ODA budgets in order to reach the targets they have set.[887] However, it is clear that ODA alone is not a sufficient answer to the linked problems of debt and environmental degradation, the failure of development and the intractability of many countries' security dilemma. India's overall position should be seen against this background. India has argued that such an aid would significantly help developing countries to achieve their environmental solutions and development links. India has proposed that poverty, compounded by the burden of repayment, directly impacts on numerous aspects of environmental quality. Hence, India demanded that restoring the ODA, poverty level could be reduced, which in turn, would enhance the overall environmental quality in the developing countries.[888]

It would have been a welcome development for her, if India had pressed for reforms and provided concrete measures in environment and development on a number of issues, most obviously debt relief, action on desertification, technology transfer, non-discriminatory environmental practices,[889] and standards, improved

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[886] See the Statements of Permanent Representative of India, Ambassador Sen, www.un.int/india.

[887] Aid to poor countries slips further as governments tighten budgets, OECD analysis on ODA for 2012 and forecast for future. Visit www.oecd.org/dac/stats.

[888] Against the commitment of 0.7% of national income for the overseas development assistance aid, only 0.3% of the developed-country combined national income as of 2008 was given as ODA by these nations. UN has recommended and urged these nations to meet the intermediate target of 0.5% by 2010, and to increase the aid to 0.7% by 2015. UN document, End Poverty Millennium Development Goals 2015, Make it Happen. UN Dept. of Public Information, September 2009.

[889] S. P. Godrej, *Ecological Imbalances and Environmental Issues: Issues of the Cultural Development of India and the World Civilization* (Indian Council of World Affairs, 1998); India Book House, *External Debt of*

terms of trade, preferential access for semi-manufacturers, and compensation funds for the best available technologies. The issues of democratic deficit of BWIs, lack of increase of ODA, UN encouraged coordination of international financial policies are the cornerstones and these issues are equally important for the sustainable growth of most of the developing countries. Concrete proposals by India could have done better job in the reform year.

9.6.5 Balance of power and division of tasks between principal organs, accountability, and good governance

One of the far-reaching contributions of India in the current reform process has been its emphatic and consistent proposals in the area of balance of power between the principal organs,[890] prevention of encroachment into jurisdiction by one organ or the other, infusion of principles of accountability and good governance throughout the UN System.[891] In this regard, its focus on the sole plenary organ of the UN, namely, the General Assembly and revitalization thereof needs analysis.

The essence of the Indian proposals is that the General Assembly cannot be revitalized by mere rationalization of its agenda or meetings, but by focusing only through action, through taking decisions according to the approved rules of procedure, through asserting control over long term questions of peace and security, including arms control and disarmament (Articles 11 and 14 of the Charter), by elaborating international law and human rights, including oversight of all human rights machinery (Art 13.1), by controlling Secretariat restructuring, including finance, personnel and management,[892] by setting the international economic agenda and by establishing the principles of oversight and accountability through actually selecting the heads of the UN and its bodies. It is not surprising that India argued for the intertwined problems of revitalization of the General Assembly with the Security Council reform and that its frustrations are noticed in both areas. India has contested that the resort to thematic debates in the Security Council on issues that very often fall within the purview of the General Assembly or the ECOSOC remains an area of concern to many delegations. Hence, India

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Developing Countries: A Case Study of India (1995); Burra Srinivas, "Foreign Direct Investment and Foreign Debt: Experience of India and China", 49 *Economia Internazionale* 2, 275-292 (1996); Elizabeth Hoddy, "From Debt Bondage to Self-Reliance", 1 *D and C: Development and Cooperation* Jan-Feb 21-23 (1985); Nirvika Singh and Sujata Marjit (eds.), *Joint Ventures, International Investments and Technology Transfer* (Oxford: Oxford University Press, 2003); UNCTAD, *Transfer of Technology for the Successful Integration into the World Economy* (2003); Vijay Ramchandran, "Contractual Arrangements for the Transfer of Technology: Evidence from India in the 1970s", 12 *Development Policy Review* 3, 303-317 (1994); P. S. Sangal, "Intellectual Property: Transfer of Technology to Asia and Pacific with the Special Reference to India", 42 *Foreign Affairs Reports* 8/9, (1993).

[890] Edward McWhinney, "Separation of Complementarity of Constitutionality of Law-Making Powers of the United Nations Security Council, General Assembly and International Court of Justice", Gaetano Aranguio-Ruiz, *Studi di diritto internazionale in onore di Gaetano Aranguio-Ruiz*, Napoli: Ed Scientifica, 339-354 (2003).

[891] Mikoto Usui, "Corporate Accountability and UN Norms: Are We Moving Towards a "Mecca" Pathway?", Tatsuro Kunugi, *Towards a New Partnership of the United Nations System and Global Civil Society: Report of the Third Tokyo Colloquium*, 16 March 2006, Osaka: International Cooperation Research Association, 45-46 (2006); Marten Zwanenburg, *Accountability of Peace Support Operations*, (Leiden: Nijhoff, 2005); _____, "Accountability under International Humanitarian Law for United Nations and North Atlantic Treaty Organization Peace Support Operations", *Meijers Instituut, Instituut voor Rechtwetenschaplijk Onderzoek*, 2004; Karl Theodor Pasche. "Accountability and the Role of Internal Oversight in the United Nations", Yassin El-Ayouty, Kevin Ford, and Mark Davies (eds.), *Government Ethics and Law Enforcement: Towards Global Guidelines*, Westport: Praeger, 3-20 (2000); Amnesty International Publications, *The UN Human Rights Norms for Business: Towards Legal Accountability*, London, (2004).

[892] "Menon Discusses UN Reforms with Ban", *The Hindu*, 28 February 2007.

proposed that thematic debates should be held by General Assembly instead of the Security Council, but the most important thematic debates are held by the Council. The General Assembly's role and institutional balance is highlighted, because in the new world order, while the Security Council becomes more important, the General Assembly cannot be left to see the results post-facto.

9.7.   Peacekeeping operations

9.7.1   Consultations with the Troop-Contributing Countries

As mentioned in the introduction, India's involvement in the peacekeeping operations has been found in almost all areas pertaining to peacekeeping requirements. As a leading contributor of the peacekeeping troops,[893] it is obvious that India would propose certain reform measures in this vital area of the UN work too.[894] This section briefly examines India's main concerns, proposals, successes, and failures, as achieved so far on these proposals.[895]

India's concerns have been mainly related to the chronic cash deficits faced by some PKOs missions and predictability of troop cost and contingent-owned equipment reimbursements to member states. Furthermore, it has echoed its frustrations over the lack of filtering down of information gathering, assessment and sharing by the Joint Operations Centers and Joint Mission Analysis Centers (JOC/JMAC). It has emphasized that the information should not be lost in the jungle of the cohesive integrated headquarters, which is far remote from the actual places of events. India's emphasis was on regionalization of the mechanisms instead of integration at one place, namely, the HQs. India has expressed these concerns, because despite being one of the largest contingent contributing countries, the troop contributing countries are not fully involved in all aspects and in all stages of mission planning. This concern has been expressed by other troop contributing countries too. It has been rightly claimed that the Security Council, which normally decides on the mandate, has its members, especially the P5, with the exception of France and the UK, infrequently participate in their implementation (UK often in UNFYCYP and West Africa, France in UNIFIL, Chad and Mali etc.), because it is not their troops who have to translate the Council's words into action or endure the most of criticisms if things go wrong. In recent years, there have been several improvements noted in the peacekeeping operations, especially after the

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[893] In 2012, India was the third largest troop contributor with 8093 troops located in 10 peacekeeping missions in Democratic Republic of Congo (MONUSCO) which is India's largest peacekeeping mission with 4026 troops, Lebanon (UNIFIL), Golan Heights on Syria-Israel Border (UNDOF), Liberia (UNMIL), Cote d' Ivore (UNOCI), Cyprus (UNFICYP), East Timor (UNMIT), Haiti (MINUSTAH), Abyei (UNISFA) and the latest being in South Sudan (UNMISS), where India is contributing 2244 troops. MEA Annual Report 2012-13, p. 96.

[894] Prakash Shah, "Strengthening UN Role in Peace Keeping Operations", Banerjee, Dipankar, *Rethinking Security*, 55-60 (2005); Rup Hingorani, "United Nations Peace Keeping Operations: An Overview", 53 *India Quarterly* 3-4, 9-38 (1997).

[895] "Future Role of the United Nations within the Framework of Global Security: Japan's Perspective", Address delivered by Professor Tatsuo Arima at *Munich Conference on Security Policy*, 13 February 2005; "Responsibility to Rebuild: Challenges faced in Capacity Building of State Institutions and Security Agencies in a Post Conflict Country", Address by Sukehiro Hasegawa at the *International Conference on Emerging Challenges in Peacekeeping Operations*, New Delhi, 6-8 February 2005; Joint Statement issued by India-US Joint Working Group on UN Peacekeeping Operations, Press Release, Embassy of India, Washington D.C, 2 November 2000.

deployment of forces in East Timor and Bosnia.[896] First, the UN has been paying more attention to conflict prevention by addressing the causes of conflict and attempting to fix these problems before they result in further escalation of conflict. Secondly, improvements are also seen in giving more clear mandates and goals, and the military and financial resources to match the goals. Thirdly, the UN gives more attention to define the peacekeeping mission, bring the force needed for the purpose, and do what is required to get the job done. [897] It is important to remember that when it comes to peacekeeping itself,[898] it should be underlined that UN operates in the context of a multi-actor system encompassing the NATO and regional organisations.[899] While the Cold War started to end during the last years in the office of Mr Perez de Cuellar, Mr Boutros-Boutros Ghali was at the helm of the UN, when the Cold War ended in a significant way. In view of this, he proposed a vigorous role for regional organizations. He believed that it is better that local disputes be solved in a local or a regional framework. He also suggested that through the regional organizations, the UN could implement certain sanctions against an aggressor. He clearly identified a need for division of labour between the regional organizations and the UN, in that the former pursues the political aspects of a problem, i.e. peacemaking, while the UN's mandate is limited to peacekeeping operations to maintain the cease-fire. Finally, he suggested that since the UN may be overtaxed by the very many conflicts it may be called upon to deal with, regional organizations should be encouraged to help in the solution of the problem.[900] To realise this aim in an effective manner, he strongly emphasised the need for decentralising the responsibilities for peacekeeping and peacemaking to the regional

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[896] Hugo Dobson, *Japan and United Nations peacekeeping: new pressures, new responses*, (Routledge: Curzon, 2003); Michael Smith and Moreen Dee, "Peacekeeping in East Timor: the path to independence" (Rienner, International Peace Academy occasional paper series, 2003).

[897] Albrecht Schnabel and Ramesh Thakur. "Cascading Generations of Peacekeeping: Across the Mogadishu line to Kosovo and Timor," In *United Nations Peacekeeping Operations*. Ed. Albrecht Schnabel and Ramesh Thakur 3-25 (ed.), (Tokyo: United Nations University Press, 2001)

[898] Practice relating to peacekeeping forces is particularly significant in the present context because of the control that the contributing State retains over disciplinary and criminal matters. This may have consequences with regard to attribution of conduct." *ILC Commentary on RIO* 2009, at p. 64.

[899] Two sets of partnerships look most likely to deepen in coming years. The first is with the European Union, which is building its rapidly deployable security capacity and has plans to develop its civilian capacity. The EU has a structured relationship with the UN over peacekeeping, based on a 2004 joint declaration, and the two have cooperated in military, police and civilian missions (most obviously in Chad, DRC and Kosovo). The EU can often provide resources the UN lacks, but the 2008 DRC crisis – when the European Council chose not to fulfill a request for reinforcements by the UN Secretary-General – is a reminder that the UN cannot expect *automatic* support from European forces. This creates a degree of uncertainty for the UN in planning and sustaining missions where it might need high-order capabilities. Close cooperation between the two organizations in Kosovo threw up technical differences, which may complicate future collaboration. Second is the African Union. Though the UN still deploys eight times more soldiers on the African continent than does the AU, the AU has taken on a new importance for two broad reasons: political legitimacy on the continent, during a period when UN legitimacy was strained due to divisions over Iraq; and willingness to act, during a period when western states have shown modest will at best to act – at least through the deployment of their own forces – on the African continent. Two factors currently constrain the relationship and will have to be worked through if this potential partnership will prosper. The first is predictability. The UN Security Council has felt boxed in when the AU has deployed operations and signaled that it is counting on UN operations to replace them – but without prior negotiations with the Security Council. The flip side of this argument is a different version of predictability: the AU has felt that the UN has been unreliable in terms of its willingness to authorize forces, or adequate forces, to meet some of the continent's most traumatic challenges – to wit, Darfur and Somalia, and before that Rwanda. The question of predictability can only be resolved by the UN Security Council – AU Peace and Security Council negotiations or discussions, which will start in later 2009. *Building on Brahimi- Peacekeeping in an era of Strategic Uncertainty,* A report by the New York University Centre on International Cooperation, April 2009.

[900] B. Rivlin, B., "Regional Arrangements and the UN System for Collective Security and Conflict Resolution: A New Road Ahead?" 111 *Foreign Relations*, 95-107 (1992).

organizations. His interest was combined with some caution because regional organizations had almost no experience and lack the necessary structures and procedures.[901] At another occasion, he emphasised that the new division of labour should enable the UN to retain its primacy in the maintenance of international peace and security, while its burden is lightened and its mission reinforced and underlined by the active involvement of appropriate regional agencies. The exact modalities of this division of labour remain to be worked out, as regional organizations, no less than the UN itself, redefine their missions in the post-Cold War period.[902]

9.7.2   Conduct and discipline of the Peacekeeping Troops

One important issue, that has become a serious problem, is the conduct and discipline of PKO troops.[903] The PKO troops of the reformed UN cannot be accepted to violate the basic conduct and discipline; otherwise the credibility of the UN forces in particular, and the role of the PKO in general, can be lost. Hence, this issue has been one of the important issues in the reform process of the PKOs. India, being one of the largest contingent providers, is ought to raise its concerns.[904] It should be noted, however, that there has not been any incident related to sexual exploitation by Indian troops. In this background, India has supported the establishment and implementation of a policy of zero tolerance and proposed that careful preparatory training in terms of a multi-cultural, pluralistic, and tolerant outlook is as important as is subsequent swift punitive action, once culpability is established.

9.7.3   Structural reforms

India has also addressed structural reforms in the PKOs.[905] The in-depth planning and lack of availability of equipment are major problems faced in the recent years by the troops. Therefore, India has underlined the strategic priorities, especially the focus on reform, resources, training, modernization, and accountability, i.e. the need for improving communication technologies and IT capacities to enhance the safety and security of personnel in the field. India has further underlined the importance of the mechanism of triangular consultations between troop-contributing countries, the Security Council and the UN Secretariat with a view to partially resolving the problem. Furthermore, it has asked for an early and full involvement of the Troop Contributing Countries (TCC) in all aspects and stages of mission planning to contribute to further enhancing the design, execution, and effectiveness of PKOs.

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[901] UN document: SG/SM/4718 of 10 April 1992.

[902] An Agenda for Peace, A/47/277-S/24111, New York, June 1992.

[903] Stanislas Horvat, "Causes of Violence against Local Populations by Western Soldiers of Peace Keeping Operations", 40 *Revue de droit militaire et de droit de la guerre* 1-2, 87-113 (2001); Michael Doyle, *Keeping the Peace: Multidimensional UN Operations in Cambodia and El Salvador* (Cambridge University Press, 1997); Jasgit Singh, "United Nations Peace-Keeping Operations: The Challenge of Change", M. S. Rajan, *United Nations at Fifty beyond*, 139-157 (New Delhi: Lancer Books, 1996); I. J. Rikhye, *United Nations Peace-Keeping Operations Higher-Conduct* (International Information Centre on Peace-Keeping Operations, 1967); Anthony Miller, "Legal Aspects of Stopping Sexual Exploitation and Abuse in UN Peace-Keeping Operations", 39 *Cornell International Law Journal* 1, 71-96 (2006).

[904] India is among the longest serving and largest troop contributors to UN's peacekeeping activities. More than 85,000 Indian troops, military observers and civilian police officers have participated in 42 out of the 60 peacekeeping missions established since the inception of the UN. 116 Indian soldiers have made the supreme sacrifice while serving in UN peacekeeping operations, and have been awarded the Dag Hammarskjöld Medals.

[905] Statement by Mr Anil Basu, Member of Parliament of India, 61st Session, 23 October 2006; Statement by Ambassador Sen, Permanent Mission of India, 27 February 2006.

A new element of PKOs is the role of civilian police in the recent years.[906] The role of Civilian Police in peacekeeping has grown substantially.[907] The role of civilian police elements within UN peacekeeping and peace building operations is crucial.[908] Almost one-fifth of the men and women currently serving in UN operations now are police officers. They play a key role in both peacekeeping and peace building activities and in institution building, *inter alia*, by training national police and by monitoring respect for law enforcement standards, criminal justice standards, and human rights. Given the Organization's wide experience in the field, the UN is considered as being the primary institution for civilian police missions and long-term institution building. There has been growing support for a strong CIVPOL capacity in DPKO. In addition, Member States are firmly encouraged to provide well-qualified and trained personnel and the importance of enhanced cooperation among Member States in the area of civilian police has been stressed.[909] India has supported the UN Secretary-General's proposal on the creation of a Standing Police Capacity[910] and has been actively participating in facilitating the task of the Police Adviser[911] and Department of PKO to get it operational. Although the standing police capacity is not to be equated with the standing military force, the versatile role of the standing police force in the emerging conflict situations will become far more important than the military forces. To avoid these competitions and coordination problems, it emphasized that due attention be paid to the coordination between the police and military components of the UN Peacekeeping Missions on field.[912] India is among the top three troop contributing countries with around 9,000 troops deployed in 2010, in nine peacekeeping missions and it has continued its contribution and participation in UN Peacekeeping.[913]

As far as the overall role of the Security Council in PKOs is concerned, India has once again challenged the monopoly exercised by the Council in setting up and running of PKOs. It emphasized that a peacekeeping operation instrument is jointly invented and perfected by the Council and the General Assembly and not just an

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[906] Nassrine Azimi, *The Role and Functions of Civilian Police in United Nations Peace-Keeping Operations; Debriefing and Lessons¸* Report and Recommendations of the International Conference, Singapore, December 1995, (the Hague: Kluwer Law International, 1995).

[907] Dominick Donald, "Neutrality, impartiality and UN peacekeeping at the beginning of the 21st century", 9 *International Peacekeeping*, 4, 21-38 (2002).

[908] Ho-Won Jeong (ed.), "Approaches to peacebuilding, Basingstoke [etc.]: Palgrave Macmillan (2002); Albrecht Schnabel Post-conflict peacebuilding and second-generation preventive action", 9 *International Peacekeeping* 2, 7-30 (2002).

[909] For more analysis and facts and figures, see www.un.org/Depts/dpko

[910] This initiative was proposed at the World Summit in September 2005.

[911] Ms Kiran Bedi, a renowned police officer of India was appointed as the Police Advisor of the SG. India has contributed significant number of police forces in various operations. These forces are performing those functions some of which were earlier performed by the military forces. In view of the evolving nature of conflicts, the reinforcement of civilian component, especially the police forces, is one of the important welcome developments in the UN PKO in the recent years.

[912] Ramesh Thakur, *United Nations Peacekeeping Operations: Ad Hoc Missions, Permanent Engagement* (United Nations University Press, 2001); Rocky Williams, "From Peacekeeping to Peacemaking? South African Policy and Practice in Missions", 6 *International Peacekeeping* 2-3, 77-83 (2000); Alexandre S. Kamarotos, "Building Peace, Democracy and Human Rights: International Civilian Missions at the End of the Millennium", 2 *International Peacekeeping* 4, 483-509 (1995).

[913] India continues to be one of the largest and consistent contributors to the UN peacekeeping operations. As of 28 June 2011, India was the third largest troop contributor with 8,691 personnel deployed with nine UN Peacekeeping missions in Lebanon (UNIFIL), Democratic Republic of Congo (MONUSCO), Golan Heights on the Syria-Israel border (UNDOF), Liberia (UNMIL), Sudan (UNMIS), Ivory Coast (UNOCI), Cyprus (UNFICYP), East Timor (UNMIT) and Haiti (MINUSTAH). The largest Indian presence was in the UN Mission in Democratic Republic of Congo (4,248), followed by the UN Mission in Sudan (2,636). Opening Remarks by Nirupama Rao, Foreign Secretary of India, on "Key Priorities for India's Foreign Policy", International Institute for Strategic Studies, 27 June 2011, p. 4.

attribute of power given to the Council by the Charter. In the view of India, it should be the General Assembly, a plenary organ that ought to be responsible for the setting up and running of the operations in an overall sense. Basing its arguments on the famous *Certain Expenses* advisory opinion of the International Court of Justice, it has suggested that the General Assembly is "competent to organize peacekeeping operations at the request or with the consent of the States concerned" under Article 11 (2) of the Charter.[914]

9.8.   Peace Building Commission (PBC)

Although a supporter to the PBC, India has vehemently opposed, although unsuccessfully, the creation of the PBC under the aegis of the Security Council and the General Assembly.[915] The Peace Building Commission (PBC) was established in 2006 as an intergovernmental advisory body to support peace efforts in countries emerging from conflict, and as a key addition to the capacity of the international community in the broad peace agenda. The Peace Building Commission plays a unique role in (1) bringing together all of the relevant actors, including international donors, the international financial institutions, national governments, troop contributing countries; (2) marshaling resources and (3) advising on and proposing integrated strategies for post-conflict peace building and recovery and where appropriate, highlighting any gaps that threaten to undermine peace. India would have preferred that the PBC, like the Human Rights Council[916], be responsible to the General Assembly instead of to the Security Council. The Indian concern was based on the fact that the establishment process of the PBC took refuge in technical legality of the Council, in terms of the spirit of the matter and illegality went against the will of the General Assembly (in inserting the definite article "the" in the notorious resolution of 1646 on the P5 being permanent members of the Commission). It has criticized that the permanent members have instituted dualism by making the Commission subsidiary to the Security Council and by ensuring that, only with their approval, would any country on their agenda approach the Commission for assistance. It is clear from this criticism and concern that all this clearly undermines, from the beginning, the Commission's capacity for optimal advice, and it's functioning.

India has also addressed concerns that the Commission should not be spending disproportionate time on "housekeeping issues", that the PBC should not continue to keep indefinitely discussing preliminary issues such as reporting responsibilities, participation, and operational matters to the detriment of the larger goal of assisting in the consolidation of peace in post-conflict societies. India's important contribution can be seen in its efforts to harmonize the two important areas of work, namely, how the work of the organizational committee and the country-specific configurations can be harmonized and made more complementary. The Indian position has been

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[914] International Court of Justice, *Certain Expenses of the United Nations (Article 17, paragraph 2 of the Charter): Advisory Opinion of 20 July 1962* (1962); A Donat Pharand, "Analysis of the Opinion of the International Court of Justice on Certain Expenses of the United Nations", 1 *The Canadian Yearbook of International Law* 272-297 (1963).

[915] C. S. R. Murthy, "New Phase in UN Reforms: Establishment of the Peacebuilding Commission and Human Rights Council", 44 *International Studies* 1, 39-56 (2007); Giuseppe Nesi, "The UN Peacebuilding Commission", 15 *Italian Yearbook of International Law*, 43-52 (2006); Carsten Stahn, "Institutionalizing Brahimi's Light Footprint: A Comment on the Role and Mandate of the Peacebuilding Commission", 2 *International Organizations Law Review* 2, 403-415 (2006).

[916] Nazila Ghanea, "From UN Commission on Human Rights to UN Human Rights Council: One Step Forwards or Two Steps Sideways?", 55 *The International and Comparative Law Quarterly* 3, 697-705 (2006); Manoj Kumar Sinha, "Commission on Human Rights to Human Rights Council: A Long Journey", 46 *Indian JIL* 2, 267-271 (2006); Manfred Nowak, "How Shall UN Human Rights Council Deal with Country Situations?", 31 *NJCM Bulletin* 6, 812-822 (2006); Christopher Le Mon, "Security Council Action in the Name of Human Rights", 11 *African Yearbook of International Law* 263-298 (2005).

to assist candidate countries with funding, mobilize donor support, and design policies that would consolidate peace. It has emphasized that to really contribute fundamentally and be truly relevant, the PBC should examine in depth and advise on the most urgent problems. Such as, how to promote understanding among a country's regional and ethnic leaders, assess the pace of economic reform or elections, which, if embarked upon too early or at the wrong time, may actually retard institution-building and plunge a country back into a civil war. On the other hand, one size clearly does not fit all and what works in a small and more homogeneous country may not work in a large and fractured State. Above all, it has emphasized the concentration of the resources in the institution building of the candidate countries. These are some of the eminent challenges, which India believes PBC is facing while delivering its mandate.

The Commission is a dedicated advisory organ that brings together the government of a specific country together with all the relevant international and national actors to discuss and decide on critical priorities to be addressed and a long-term peacebuilding strategy with the aim of preventing a relapse into conflict. Over the past eight years since its inception, the Peacebuilding Commission has gained experience from engaging countries on its agenda that are at different stages of their peacebuilding process, facing different challenges and emphasizing different priorities. That experience has further focused the Commission's activities around three main functions, namely: (a) political accompaniment, advocacy and support; (b) resource mobilization; and (c) fostering coherence. However, the Commission is also facing serious challenges mainly because of its very nature as a non-operational and advisory body based in New York. The challenges include (a) working through operational actors in the field who are deriving their respective mandates from different legislative sources; (b) non-existence of quantifiable peacebuilding outcomes; and (c) difficulty to assess the credibility of peacebuilding processes within a limited time frame. In order to ensure its effectiveness, the 2012 Report suggests that the success of the Commission will "critically depend on its ability to leverage the unique composition of its membership, offer an international political framework within which national actors could lead a peacebuilding process, bring coherence and elicit sustained support from operational actors and partners. To this end, the Commission needs to continue and develop its substantive focus, instruments and organizational structures in order to bridge the divide between its potential valued added, on one hand, and its limitations, on the other hand."[917]

India has made a pledge of USD 2 million to the PBC. Similarly, it has also contributed USD 10 million to the UN Democracy Fund. This shows that India has taken concrete measures to strengthen the UN machinery, especially during the reform period.

9.9. Humanitarian intervention and relief

Humanitarian relief is perhaps the most sensitive area of the UN operation, as it has to continuously strike a delicate balance between the need to assist war-torn or disaster-struck countries and their political sensitivities.[918]

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[917] UN Security Council Document: S/2012/511 – Post-conflict peacebuilding: report of the Peacebuilding Commission, p. 3.

[918] Rex Martin, "Walzer and Rawls on Just Wars and Humanitarian Interventions", Lee, Steven, *Intervention, Terrorism and Torture: Contemporary Challenges to Just Wars Theory*, Berlin: Springer, 75-88 (2007); Taylor B. Seybolt, *Humanitarian Military Intervention: The Conditions for Success and Failure*, Oxford University Press (2007); Fischer David, "Humanitarian Intervention" Reed, Charles and Ryall, David, *The Price of Peace: Just War in the Twenty-First Century,* Cambridge University Press, 101-17 (2007); Terry Nardin, *Humanitarian Intervention,* (New York University Press, 2006); Pratap Bhanu Mehta, "From State

Hence, it is not surprising that the reform year would have elapsed without witnessing calls for reform, which place high importance to the sovereignty, territorial integrity, and national unity of states in the humanitarian relief operations.

India has called upon the Emergency Relief Coordinator to continue efforts to address the issues of administrative delays and streamline application processes.[919] This streamlining of process, in its view, should not create an excessive burden of paper work on developing countries especially when the capacities of their authorities are stretched in coping with the aftermath of a disaster. The concerns of field level coordination abound, hence, it called for improved coordination of UN activities at the field level. Wary of the cluster lead approach, it has demanded that perspectives of developing countries (recipient countries) where this approach has been implemented so far should be heeded. In keeping with the basic principles that guide the work of the UN at the country level, it has underlined the importance of implementing it locally with the consent and under the leadership of the national government of the affected state.

Humanitarian interventions: About the humanitarian interventions, it has recalled that guiding fundamental principle should be that sovereignty, territorial integrity, and national unity of states[920] must be fully respected and that humanitarian assistance should be provided with the consent of the affected country, and in principle, based on an appeal by the affected country. In this context, it has expressed concern at the recommendations of the report on humanitarian access, which are not in line with the scope of the guiding principles of resolution 46/182, in the aftermath of humanitarian relief efforts to Somalia and Sudan. By emphasizing that the UN only can retain the credibility of achievements in this area by retaining the neutrality and non-political character of UN humanitarian assistance, it has seized the UN reform year to reinforce its consistent rejection of unilateral intervention in internal affairs of a country, under the pretext of the humanitarian assistance to its population.[921]

Sovereignty to Human Security (via Institutions)?" Nardin Terry, *Humanitarian Intervention*, 259-285 (2006).

[919] Statement by Ms Reva Nayyar, Secretary, Dept of Women and Child, Government of India, Ministry of Human Resources Development at Plenary Session, 18 January 2006, Statement by Ambassador Sen, Permanent Mission of India of 13 November 2006, Statement by Mr Mufti Mohammed Syed, Member of Parliament of India, 61st Session, 8 November 2006, Statement by Mr. Ravi Shankar Prasad, Member of Parliament, 61st Session, 9 October 2006.

[920] Helen Stacy, "Humanitarian Intervention and Regional Sovereignty", Lee, Steven, *Intervention, Terrorism and Torture: Contemporary Challenges to Just War Theory,* 89-104 (2007); Henry Shue, "Limiting Sovereignty", Welsh, Jennifer, *Humanitarian Intervention and International Relations*, 11-28 (2006); Robert O Keohane, "Political Authority After Intervention: Gradations in Sovereignty", J. L. Holzgrefe and Robert Keohane, *Humanitarian Intervention: Ethical, Legal and Political Dimensions*, 275-298 (2003); Jennifer Czernecki, "The United Nations' Paradox: The Battle between Humanitarian Intervention and State Sovereignty", 41 *Duquesne Law Review* 2, 391-407 (2003): Michael Davis, "The Emerging World Order: State Sovereignty and Humanitarian Intervention", Michael Davis, *International Intervention in the Post-Cold-War World: Moral Responsibility and Power Politics*, 3-19 (2003); Thomas Nicolas, "The Utility of Human Security: Sovereignty and Humanitarian Intervention", 33 *Security Dialogue* 2, 177-192 (2002).

[921] The UN High-Level Panel has promulgated "the emerging norm that there is a collective international 'responsibility to protect', exercisable by the Security Council authorizing military intervention, as a last resort in the event of genocide and other large scale killings, ethnic cleansing or serious violation of international humanitarian law which sovereign governments have proved powerless or unwilling to prevent". India has objected to such approach, especially viewing a possible use of the norm by powerful nations for the purposes of political convenience and national interests. Although Indian stand is appreciable vis-à-vis the world community, it is difficult to reconcile India's own experience in dealing with Sri Lanka and Bangladesh in the wake of internal conflicts there and the new position. Ispahani Mahnaz, "India's Role in Sri Lanka's Ethnic Conflict", Ariel E. Levite, Bruce Jentleson and Larry Berman (eds.), *Foreign Military*

9.10. Terrorism

India has been a strong supporter of multilateral efforts to eliminate the scourge of terrorism.[922] What opportunity better than a combination of terrorist attacks and 60th anniversary of the UN could provide a platform to India to make its concerns loudly heard? It addressed the issues of human rights and its linkage with its long pending calls for the Comprehensive Convention on International Terrorism (CCIT). The CCIT is a foremost foreign policy weapon having strong international legal dimensions, which was used during the UN reform process.[923]

India, being a victim of terrorism to its innocent civilizations,[924] has been in the forefront to suggest that the UN focuses on the human rights victims of terrorism,[925] and the need to provide them protection and assistance, the relationship of terrorism to other threats, such as organized crime, proliferation of weapons of mass destruction, extremism and tolerance.[926] Despite its repeated calls, especially in the reform year, India, once again, has failed to have its long standing demand for the CCIT to be adopted by the UN General Assembly. In

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[922] *Intervention: The Dynamics of Protracted Conflict*, 209-239 (New York: Columbia University Press, 1992); Sumantra Bose, *States, Nations, Sovereignty: Sri Lanka, India and the Tamil Eelam Movement*, (New Delhi: Sage, 1994); Neil De Votta, "When Individuals, States and Systems Collide: India's Foreign Policy Towards Sri Lanka", Sumit Ganguli, *India's Foreign Policy: Retrospect and Prospect*, 32-61 (New Delhi: Oxford University Press, 2010).

[922] India has signed/ratified all 13 major international legal instruments dealing with terrorism. Despite its criticisms of various acts by the Security Council, where the Council fails to ensure democratic character in decision-making and consulting all concerned states, India has deposited 5 national reports till today to the UN Counter Terrorism Committee. India also has in place legal, regulatory and administrative framework to address the causes and effects of terrorism. India has also constituted Joint Working Groups with 25 States, and regional organizations including EU and BIMSTEC, for coordinating and cooperating in counter-terrorism efforts. At regional level, India is a party to the SAARC Regional Convention on Suppression of Terrorism which provides for extradition of persons accused of terrorist activities. Similarly, India has concluded bilateral treaties with several nations to extradite terrorists.

[923] Hmoud Mahmoud, "Negotiating the Draft Comprehensive Convention on International Terrorism: Major Bones of Contention", 4 *Journal of International Criminal Justice* 5, 1031-1043 (2006); P. Rietjens, "The Role and Attitude of the EU Regarding a Comprehensive Terrorism Convention", Fijnaut, C (ed)., *Legal Instruments in the Fight Against International Terrorism: A Trans-Atlantic Dialogue*, Nijhoff, 589-602 (2004); Arunabha Bhoumik, "Democratic Responses to Terrorism: A Comparative Study of the United States, Israel and India; Halberstam, Malvina, "The Evolution of United Nations Position on Terrorism: From Exempting National Liberal Movements to Criminalizing Terrorism Wherever and by Whomever Committed", 41 *Columbia Journal of International Law* 3, 573-584 (2003); Nilendra Kumar, "The Role of Indian Judge Advocates in the War on Terrorism", 3 *Amity Law Review* 1, 16-26 (2002); Suman Lata and Sameer Saran. "A Critical Analysis of International Terrorism", 7 *M.D.U Law Journal* 1-2, 109-126 (2002); V. S. Mani, "Future Strategies in the War against Terrorism and Proliferation of Weapons of Mass Destruction: An Indian Perception", 44 *IJIL* 2, 221-259 (2004).

[924] Joshua Kastenberg, "The Use of Conventional International Law in Combating Terrorism: A Maginot Line for Modern Civilization Employing the Principles of Anticipatory Self-Defence (and) Preemption", 55 *Air Force Law Review* 87-125 (2004); Yoshikazu Sakamoto, "The Politics of Terrorism and "Civilization": How to Respond as Human Being", Gokay, Bulent and Walker, R.B.J, *War, Terrorism and Judgment*, 30-45 (London: Cass, 2003).

[925] Steve Tsang, "Stopping Global Terrorism and Protecting Rights", Tsang, Steve, *Intelligence and Human Rights in the Era of Global Terrorism*, Praeger Security International, 1-14 (2007); Luban David, "The War on Terrorism and the End of Human Rights", Larry May and Eric Rovie (eds.), *The Morality of War: Classical and Contemporary Readings*, 413-421 (New York: Pearson Prentice Hall, 2006); Pojmans Louis, *Terrorism, Human Rights and the Case for World Government* (Rowman and Littlefield, 2006).

[926] It is fair to say and observe that most of the literature, scholarly and non-scholarly originating from India, analyzing the issue of terrorism, including international terrorism, somehow tends to have a narrow focus and over obsession with terrorism and Pakistan. This narrowness can very well hinder the global perspective and corresponding efforts on the issue. Afsir Karim, "International Terrorism: the Indian Response", *Indian Foreign Policy: Challenges and Opportunities*, 955-979 (New Delhi: Foreign Service Institute, 2007).

view of this and keeping in mind the importance of flexibility, it has gone along with the Global Counter Terrorism Strategy (GCTS).[927] One could say that it had no option but to go along. In its view, the CCIT could provide requisite legal framework to the GCTS.[928] India has been a chair of the UN Counter Terrorism Committee and the Working Group concerning threat to international peace and security by terrorist acts. India could play an important role, in its capacity as a Chair of the Committee, in the adoption of a document which has called for 'zero tolerance' of terrorism and terrorist acts in the Security Council. India while critically analyzing and also appreciating the role played by the UN at international and regional level in dealing with the menace of the terrorism reiterated its long pending call for the adoption of the CCIT.[929]

India's opposition to the establishment of Counter Terrorism Committee (CTC) is known for a fact.[930] Nevertheless, its compliance has been well noted. Here, it has demanded that the CTC should have an effective monitoring mechanism of member states' compliance with the provisions of Security Council Resolution 1373.[931] India is opposed, however, to Counter Terrorism Executive Directorate (CTED) within the Security Council. It has lodged its serious concerns in this respect as regards to the precedence set by creating the Directorate within the Security Council (a non-plenary organ), rational for a separate structure within the UN secretariat, the effectiveness of a large body of 20 experts in terms of costs and performance. Besides there are concerns about the accountability of the CTED, its institutionalized accessibility, appropriate consultation with

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[927] Statement by Mr. Malhotra, Permanent Mission of India, 8 September 2006, 30 June 2006, 11 May 2006.

[928] India had to take satisfaction with the 2006 UN Global Counter Terrorism Strategy which identified the need to express solidarity with innocent victims and specifically addressed terrorism victims.

[929] Statement by Ambassador Hardeep Singh Puri, Permanent Representative, Briefing on Threats to peace and security by terrorist acts, at the United Nations Security Council, on May 04, 2012

[930] The definition of terrorism itself is full of conflicts between developed and developing nations, not least to say the divergence of opinion among the developing countries themselves because divergent national and strategic interests of various countries, communities and ethnic groups frustrate all attempts of defining terrorism in precise terms. Eric Donnelly, "Raising Global Counter-Terrorism Capacity: The Work of Security Council's Counter-Terrorism Committee", Paul Eden and Therese O'Donnell, *September 11, 2011: A Turning Point in International and Domestic Law*, 757-779 (2005); Ward A. Curtis, "The Counter-Terrorism Committee: Its Relevance for Implementing Targeted Sanctions", Peter Wallensteen and Carino Staibano (eds.), *International Sanctions: Between Words and Wars in the Global System*, 167-180 (2005); Walter Gehr, "The Counter-Terrorism Committee and Security Council Resolution 1373 (2001)", Wolfgang Benedek and Alice Yotopoulos (eds.), *Anti-Terrorist Measures and Human* Rights, 41-44 (2004); Rosand Eric, "Security Council Resolution 1373, the Counter-Terrorism Committee and the Fight Against Terrorism", 97 *AJIL* 2, 333-341 (2003).

[931] Resolution 1373 established the Counter-Terrorism Committee (the CTC), made up of all 15 members of the Security Council. The CTC monitors the implementation of resolution 1373 by all States and tries to increase the capability of States to fight terrorism. The CTC has asked all States to report to the Committee on steps taken or planned to implement resolution 1373. All reports received by the CTC are considered in one of the CTC's three Sub-Committees. Each of these is chaired by one of the three Vice-chairmen. As part of the review process, the relevant Sub-Committees have also invited the States concerned to attend part of the Sub-Committee's discussion of the report. The Sub-Committees are advised on the technical aspects of States' reports by a group of independent Expert Advisers appointed to support the work of the CTC with expertise in the legislative, finance; customs, immigration, extradition, police, illegal arms laws and practice. Based on its analysis of reports and any other available information, the CTC assesses States' compliance with resolution 1373. The CTC then sends a letter to each State, prepared with guidance from its Experts. These letters ask further questions of States on issues considered in their reports, and any other matters the CTC may consider relevant to the implementation of resolution 1373. States are requested to respond to the CTC in a further report, within three months. Implementation of resolution 1373 is an ongoing process. Eric Rosand, "Security Council Resolution 1373, the Counter-Terrorism Committee, and the fight against terrorism", 97 *American Journal of International Law* 2, 333-341; Sreekantan Nair, R., "Terrorism and strategic options for India", G. Gopa Kumar (ed.) International terrorism and global order in the twenty first century, 241-249; E. Sudhakar, "War on terrorism and its impact on South Asia" In G. Gopa Kumar (ed.) *International terrorism and global order in the twenty first century*, 225-240 (2003).

member states on their concerns and priorities, the financial implications of the establishment of the CTED over a period of three years, and the need for its consistency with regular budgetary, administrative and financial practices.

Thus, one could see that although its strategy on terrorism has been marked with a certain flexibility and harmony, its long-term demand is not being materialized. The only parallel one could draw is its incessant failure to garner support for a Comprehensive Convention on Elimination of Nuclear Weapons.[932] The UN Counter-Terrorism Strategy,[933] which was adopted by the UN General Assembly in September 2006,[934] has four main pillars; addressing the conditions conducive to the spread of terrorism; preventing and combating terrorism; building states' capacity to prevent and combat terrorism and to strengthen the role of the UN system in this regard; and ensuring respect for human rights for all and the rule of law as the fundamental basis of the fight against terrorism.[935] Despite the repeated calls of the UN Secretary-General, the UN has been unable to appoint a central coordinator who could contribute to enhancing the efficiency and coordination of the efforts and avoid overlapping. [936]

9.11. Administrative and inter-institutional reforms

It is quite interesting to note that the core of the former Secretary-General's (Mr Kofi Annan) agenda focused on the reform of the UN Secretariat[937] and the Western states have also demanded the same,[938] while India's

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[932] Anurag Deep and Namrta Rastogi, "Conceptual Contour of Terrorism "vis-a-vis"Armed Conflict: A Perspective" In 46 *Civil & Military law journal on Rule of Law, Military Jurisprudence and Legal Aid* 4, 32-32 (2010); Jeet Singh Mann, Global War against Terrorism : Need for a Global Anti-Terrorism Agency for Fighting Terrorists In 46 *Civil & Military law journal on Rule of Law, Military Jurisprudence and Legal Aid* 3, 179-318 (2010); Karthika Sasikumar, State Agency in the Time of the Global War on Terror: India and the Counter-Terrorism Regime in 36 *Review of international Studies* 3, 615-638 (2010).

[933] India pushed several activities in the area of counter-terrorism efforts during its term as a non-permanent member of the Security Council from 2011 to 2012, such as, imparting a renewed momentum to global counter-terrorism efforts as the Chairperson of the Counter-Terrorism Committee, special meeting of the Security Council on suppression of terrorist financing (November 2012), open debate of the Council on maritime piracy, which resulted in the adoption of a Presidential Statement that "stressed the need for a comprehensive response to suppress piracy and called for all States to cooperate to secure an early release of hostages including through sharing of information and intelligence". MEA Annual Report 2012-13, p. ix.

[934] A/66/L.53; A/66/762; GA/11259; GA/11261.

[935] Third Biennial Review of the UN Global Counter Terrorism Strategy, 28-29 June 2012.

[936] The appointment of the central coordinator has been facing several issues, namely, the rank in the UN Secretariat, its impact on the UN Counter-Terrorism Committee Executive Directorate and Counter-Terrorism Implementation Task Force (CTITF) and the balance on the issues between the Security Council and the General Assembly. It may be noted that the UN appointed David Scharia as the Legal Coordinator for the CTCED. http://www.thejc.com/news/world-news/70199/israeli-appointed-un-counter-terrorism-body accessed on 27 August 2012.

[937] Sumihiro Kuyama, "UN Reform and Institutional Governance", Tatsuro Kunugi (ed.), *Towards a New Partnership of the United Nations*, 71-72 (2006); S. Verhoeven, "The UN High-Level Panel Report and the Proposed Institutional Reform of the UN: Would the UN Be Ready to Face the New Challenges", 7 *International Law Forum du droit International* 2, 101-107 (2005). A close reading of this article leads to a cynical conclusion that the High-Level Panel Report and its Terms of Reference are often becoming the white-wash to the developing nations, as developed nations determine the terms of reference which pay negligible attention to substantive reform proposals which address the developing countries concerns.

[938] The history of the UN Reforms since mid-1950s shows that "most of these reforms have related to organizational structure, content, policies and method of carrying out operational activities." Muchkund Dubey, *Reform of the UN System and India* above at p. 146. However, these reforms have success in one common area – administrative and financial procedural reforms, which are driven by developed countries.

proposal has centered around the reforms of the Security Council and other subject areas, which were not the foremost preoccupation for these states.[939]

The main concerns of India, which are also shared by other members, concern improving the efficiency, avoidance of duplication, and the minimization of waste in the functioning of the entire UN system. Furthermore, it has emphasized the intensification of efforts to achieve these objectives and payment of arrears by all countries in full and within time, without any conditions. India, however, has not presented a comprehensive paper on the reforms in the bureaucratization and politicization of recruitments. In contrast, the United States and a number of Western European members worked hard through to press reforms on these issues.[940] Why India did not raise these issues in a comprehensive manner, begs a question. An immediate explanation could be that India has focused on few areas (namely the reform of the Security Council and the economic agenda) and has employed concentrated efforts to press reforms in these areas. With its limited political and financial influence, it would not have been able to garner reasonable support in all areas. Another explanation is the scarcity of literature showing the link between the bureaucratization and UN reforms and its impact on the delivery of substantial mandate.

Nevertheless, India's preoccupation and emphasis on retaining the plenary decision-making has remained evident, as it has continued to emphasize the importance of the existing structure of administrative and budgetary decision-making based on the primacy of the General Assembly and its fifth Committee. It rejected the proposal by Western states to alter the all-inclusive character of the fifth Committee.[941] What is meant by this – participation of all members? The underlying reasons for this rejection were to ensure the inter-governmental character of the UN and respect the sovereign equality of all member States to participate in the decision-making process of the UN. In view of the strong opposition of the developing countries, including India, it is unlikely that the plenary decision-making character of the fifth Committee will alter towards a system in which the major financial contributors will have a larger say. In the area of recruitment, procurement and administration of justice, India did not have any specific concrete proposals except reiterating the need for a fair, transparent and rule-based selection process based on equitable geographical representation and with due regard for gender balance. One would have expected a strong Indian call to ensure a balance between developing and developed countries at the executive management level positions in the UN organs, sub-organs, and affiliated organizations. Similar calls were also made by other leading developing countries. It should be noted that the composition of the current UN Secretary-General Senior Management Group consists of 14 members from developing countries[942] out of a total of 30 members.

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[939] Statement by Ambassador Sen, Permanent Mission of India, 7 February 2006, 25 January 2006.

[940] Statement by Ambassador Mark Wallace, US Representative for UN Management and Reform, 10 October 2006, 16 June 2006, 3 April 2006; Statement by Ambassador Sir Emyr Jones Parry, Reforming the UN: Challenges for the 21st Century, UK Mission to UN, Statement dated 13 February 2007; Statement by Ambassador Perry at John F Kennedy School, 20 October 2005; Statement by Ambassador Kenzo Oshima of Japan, Permanent Mission of Japan to UN, 15 February 2006; 7 February 2006, 30 January 2006, 25 January 2006, ; Fact Sheet: US Priorities for a Stronger, More Effective United Nations, 17 June 2005.

[941] It should be noted that India has been the Vice-Chair of the ACABQ (5th Committee) in 2004-2005 and Chair in 2006-2007.

[942] Ramesh Thakur, former Senior Official of UN demonstrates how Western countries occupy almost all powerful and big-budget posts in the organisation, and sadly developing countries, despite their numbers, have allowed the bias to persist. Out of 94 special representatives and envoys of the UN Secretary-General 16% are from Asia, 30% Africa, 2% from Latin America and the Caribbean and 52% from Europe, North America and Australia. He argues, "Why, with numbers to put a stop to it, do developing countries put up

An important contribution of India could also be found in its demand for the selection process of the Secretary-General.[943] Despite India's and other developing countries' call for greater involvement of the General Assembly in the selection process of the Secretary-General, no concrete step has been taken, especially the amendment of General Assembly Resolution 11(1) of 1946.[944] It is quite evident that the Indian proposal was nowhere heeded in the selection process of the current Secretary General. It is purely a speculative assumption, but had the Indian proposal been heeded, its candidate (Dr Shashi Tharoor, who was serving as the UN Under Secretary-General and stood as a candidate for the election as the UN Secretary-General) for the Secretary-General's position in 2006 would perhaps have stood a remote but better chance of being elected.[945]

9.12. UN Outreach

Expectations of the developing countries for overall growth and development from the UN have remained always high. The work, successes, and failures of the UN need to be seen by the entire world population, not only the privileged masses. Hence, India's proposal that the public information machinery of the UN must intensify its efforts to meet the concerns and special needs of developing countries in the field of information and communication technology.[946] Furthermore, its demand for this machinery to expand its partnership with local and national broadcasters, especially in the developing world should also be seen in this context. Highlighting the importance of priority issues of her concern such as HIV/AIDS, human rights, new partnership for Africa's development, the millennium development goals, Palestine, etc.; India has demanded that public information machinery continues to focus on these issues and work of the UN in addressing them. Hence, India's proposal on

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with such clear and heavy bias and permit it to persist? One dispiriting answer might be that a particularly insidious consequence of the century of European colonialism is that non-westerners have themselves internalised the sense of racial superiority of westerners. My own extensive experience suggests that the immigration, customs and security officials in developing countries are more obviously racist than in the West. Part of India's national identity is the self-belief in being a champion of developing countries. Is it prepared to take the lead in demanding an explanation-cum-correction of this anomaly in the U.N. system?" Ramesh Thakur, "Is the United Nations racist?" in The Hindu 19 July 2013; http://www.thehindu.com/opinion/lead/is-the-united-nations-racist/article4928624.ece accessed on 20 July 2013.

[943] Statement by Ambassador Kenzo Oshima, Permanent Mission of Japan to UN New York, 19 April 2006; Statement by Ambassador Sen, Permanent Mission of India, 19 April 2006; Joseph R. McCarthy, "The Third United Nations World Conference on the least developed countries: a global agenda for the new millennium", 18 *New York Law School Journal of Human Rights*, 3, 487-97 (2002).

[944] UN General Assembly Resolution 11(1) of 24 January 1946 provides for the Terms of Appointment and Selection Process of the UN Secretary-General.

[945] Several Indians were elected or appointed in various UN organs, bodies and mechanisms in 2012. Justice Dalveer Bhandari, former Judge, Supreme Court of India, as a member of the International Court of Justice; Narinder Singh, Member, International Law Commission; S. Rajan, Member, Committee on the Limits of Continental Shelf (CLCS); Ishita Roy, as Secretary-General of the International Sericulture Commission. India was elected to the Governing Council of the UN-Habitat, the Commission on Sustainable Development and International Sea-Bed Authority (ISBA). India was re-elected to the Councils of Universal Postal Union i.e Council of Administration and Postal Operations Council. As of October 2012, India was represented in all the major UN bodies - UN Security Council, Human Rights Council (HRC), Economic and Social Council (ECOSOC) and the International Court of Justice (ICJ). In the area of human rights, several Indian, in personal capacity or nominee of the Government, as appropriate have been recently serving, such as, Dilip Lahiri (Member, CERD); Indira Jaisingh (Member, CEDAW); Chandrashekhar Dasgupta (Member, CESC), Anand Grover, as the Special Rapporteur on the Right of Everyone to the enjoyment of the Highest Attainable Standard of Physical and Mental Health; and Kishore Singh as the Special Rapporteur on the Right to Education. MEA Annual Report 2012-13, p. 102.

[946] India co-sponsored the UNHRC resolution on the Promotion, Protection and Enjoyment of Human Rights on the Internet. UNHRC - A/HRC/20/L.13 of 5 July 2012.

the intensification of UN efforts to meet the concerns and special needs of developing countries in the field of information and communication technology should be seen in this light.

Although sharing views on the UN financial crisis, India has proposed adequate resources to secure effective functioning of the UN Information Centers (UNICs) in developing countries. It has wished for the consolidation of the UN Department of Public Information (DPI) with the network of the UNICs and that the development of websites in local languages must remain a primary DPI concern. It also suggested that the subscription to the UN News Centre email service from the UN home page should be worth considered.[947] There are several indicators, which enable one to see the extent of accommodation of Indian proposals. The UN website, UN Chronicle, the Press Events organized in the last five years have significantly focused on these issues and problems and how the partnership between the UN and the civil-society especially could contribute to the resolution thereof.

9.13.   Use of strategies and public relations campaign to achieve the objectives: A critical appraisal

This section analyses the strategies and platforms that India has employed to convey its reform proposals. The focus is on prioritization of the reform proposals, employment of machineries and resources, bilateral and diplomatic efforts and role of media and civil society institutions. The main methodology employed is comparative analysis, namely, how India has gone about pursuing the efforts as compared with another potential contender of the permanent membership of the Security Council also an Asian state, namely, Japan.

9.13.1   Overall approach of India

The Indian approach was partly conservative and partly radical, especially, as far as the reform of the Security Council was concerned. The conservative view can be summarized, as there is nothing wrong with the way the UN is structured and as such, is supposed to focus on revitalizing, rather than restructuring the organization. We have seen that India has emphatically called for the revitalization of the organization. The moderate approach indicates that there should be efforts to do away with some of the structural shortcomings and mismanagement in the organization. Whereas the radical approach believes in substantive and meaningful structural and functional changes to keep the institute effective in maintaining international peace and security, a key component of which is the economic development of the developing countries.

9.13.2. Importance of UN Reform as a Priority – A comparison of Mission and Execution Plan between India and Japan: It is perhaps more relevant to compare the Indian example vis-à-vis Japan, although the size and economic factors cannot give any objective comparison. It has been seen that Japan has prioritized its reform proposals in a systematic and coherent manner and has tried to pursue them accordingly.[948] Institutional reforms

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[947] India has been active in promoting Hindi as an official language. In the words of Mr Anand Sharma, Minister of State for External Affairs, "Hindi should be included in the United Nations. A substantial percentage of world population uses this language." The Ministry of External Affairs has launched a website in Hindi as part of an effort to make available the country's foreign policy to a much wider populace. *The Times of India*, 20 August 2006.

[948] Kiyotaka Takahashi, "The Public Forum in Japan for Accountable UN Reform – NGOs Input", Kunugi Tatsuro (ed.), *Towards a New Partnership of the United Nations System and Global Civil Society – Report of the Third Tokyo Colloquium, 16 March 2006*, International Christian University Center of Excellence and International Cooperation Research Association, Tokyo, 90-91(2006); Ian Taylor, "South Africa: Beyond the Impasse of Global Governance", John English, Ramesh Thakur and Andrew Cooper (ed.), *Reforming from*

have remained at the highest priority level, in the order of priority, followed by the development, security, and human rights, in case of Japan.

In the area of institutional reforms, Japan has concerned itself with the Security Council, management issues, equitable and fair scale of assessments and system-wide coherence. As shown above, Indian efforts focused heavily and solely on the first subject. Most of the Indian proposals were hard to measure in terms of success or failure. For example, Japan submitted a proposal to introduce minimum assessment for permanent members of the Security Council of either 3 or 5 percent, in view of their special status and responsibilities. Indian proposals could have very well employed such a detailed approach.

In the area of development, Japan has made concrete proposals in the area of MDGs, assistance for Africa, health, and disaster reduction. India simply adhered to the subject of increase of 0.7% ODA in a time-bound manner, and a traditional argument of linking environment with sustainable development. A concrete proposal, outlining clearly the expectations of developing countries, time-frame, concentration of assistance, etc., would have been more welcome, as far as the measurement of achievement of these objectives are concerned.

In the area of security, Japan had concrete proposals on the Peace Building Commission, disarmament and non-proliferation and counter terrorism measures.[949] Similarly, in the area of human rights, its priorities were well organized: Human Rights Council, human security,[950] and restructuring of humanitarian assistance mechanism.

9.13.3. Structural proliferation and inadequacies

It is quite interesting to note that India has not made any substantive proposal on this issue. As an emerging global power, one could have expected the country to make comprehensive reform proposals instead of sticking to a very few.[951] Although one would agree that, any system-wide comprehensive reform would have sounded too ambitious and therefore, a focused approach had more chances of obtaining the results, in this sense, Indian strategy was very calculative.

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the *Top: A Leader's 20 Summit*, 230-259 (Tokyo: UNU Press, 2005); Scarlett Cornelissen, "Displaced Multilateralism? South Africa's Participation at the United Nations: Disjunctures, Continuities, and Contrasts", In Donna Lee, *The New Multilateralism in South African Diplomacy*, 26-50 (Basingstoke: Palgrave MacMillan, 2006).

[949] Michael N. Schmitt, "Counter-terrorism and the use of force in international law," In 32 *Israel Yearbook of Human Rights,* 53-116 (2003).

[950] Japanese position focused on enabling the UN institutions to play a positive pro-active leadership role in the area of human security. The Commission on Human Security was established in January 2001 through the initiative of the Government of Japan and in response to the UN Secretary-General's call at the 2000 Millennium Summit for a world "free of want" and "free of fear." The HSU was established in September 2004 in the United Nations Secretariat at the Office for the Coordination of Humanitarian Affairs (OCHA). The overall objective of the HSU is to place human security in the mainstream of UN activities. Currently, Ambassador Yukio Takasu of Japan serves as the Special Advisor on Human Security to the UN Secretary-General. Mrs Sadako Ogata, former UN High Commissioner for Refugees, serves as the Chair of the UN Advisory Board on Human Security. Rojas, Aravena F, "Human security: emerging concept of security in the twenty-first century", 2 *Disarmament Forum*, 5-14 (2002); Thomas, Nicholas and Tow William T., "The utility of human security: sovereignty and humanitarian intervention," In 33 *Security dialogue* 2, 177-192 International Peace Research Institute, Oslo (PRIO) (2002).

[951] A serious global power may not always been seeking to maximize its rights and minimise its responsibilities. Only through exercising this regime state policy over a long duration of period, one could think of considering a state as a serious global power. In this context, whether India is able as well as is willing to live up to this global political reality requires a detailed analysis.

The problem of lack of coordination is a serious weakness of the UN. This not only means duplication of efforts, wastage of funds but a serious inability of the organization to deliver the mandates, the fundamental purpose for which it has been created. Bertrand cites the examples of lack of communication between FAO and UNESCO in relation to agriculture education, or between IMF, ILO, and UNICEF in relation to social impacts of structural adjustment policies.[952] These are the issues at the heart of India's growth and development in the end. Thus, India should have made some proposals in this regard.

9.13.4   Lack of strong institutional and systematic scholarly attempts to study the subject

No national institution of stature organized debates in the late 1990s or years since 2000, focusing exclusively on UN reforms. For example, one would have expected that the Indian Council of World Affairs (ICWA), Indian Society of International Law (ISIL), or the UN Institute would have taken a lead in this regard. In contrast, in Japan and the USA, there were systematic efforts, such as the US-UN Association and Japan Economic Research Council which published in April 1992 a report *To think about a Grand Design of the World: In Search of a Better Human Survival (Uchida 1999: 81).*[953] Thus, one can see the lack of systematic effort at the institutional level in India to put forward the UN reform proposals. In fact, as far as the media was concerned, it focused exclusively on the inclusion of India in the expanded Security Council. Nor are there any significant documents available on the Ministry of External Affairs of India webpage on the topic, except the website of the permanent mission of India to the UN, which contains all statements made by India at the UN.[954]

Nor the Indian Government brought together a group of eminent people to recommend the government as to how it should go about pursuing the objective of its UN reform proposals. Japanese Government established an Eminent Persons' Group on UN reform, which delivered its report on 28 June 2004, entitled the *Role of the UN in the 21st Century*, and approaches to strengthening the UN. The Group focused on four main issues, Security Council reform, the removal of the enemy state clause from the Charter, assessed contribution to the UN and increasing the number of Japanese staff in the UN Secretariat. The Group was composed of professors, editors of newspaper, President of the Japan Foundation, President of the Confederation of Japan Automobile Workers Union, a member of the board and senior corporate advisor of Mitsubishi Corporation, and the Director of the UNDP Tokyo office. This group believed that reforming the UN, with a more active role of Japan in the Organization, would heighten the effectiveness of the UN in the region and would also lead to strengthening of the framework of the Japan-US security treaty, which is the basis of Japan's peace and security as well of that of the Asia pacific region as a whole.

The Group proposed that it is necessary to add a limited number of countries that are willing and able to assume global responsibility for the maintenance of international peace and security as permanent members of the Security Council.[955] In particular, it is necessary to add non-nuclear states in order to enhance the legitimacy

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[952] Bertrand, Maurice, *The United Nations: Past, Present and Future*, The Hague: Kluwer (1997) at p. 80.

[953] Takeo Uchida, "Some Reflections on the Leadership of the UN System", *Towards a New Partnership of the United Nations System and Global Civil Society: Report of the Third Tokyo Colloquium*, 16 March 2006, 41-42 (Osaka: International Cooperation Research Association, 2006).

[954] On the MEA website, just over 100 documents referred to the term 'UN reforms' as of 6 July 2011.

[955] The analysis of various chapters shows that India is definitely able to assume more international responsibilities as a rising global power, however, these responsibilities will have to be commensurate with India's core interests in a relatively narrow sense. For example, one would be quite yet reluctant to imagine India deploying its military and economic resources, unilaterally or in consortium with a few states, in distant regions such as Latin America or the Caribbean or Balkans.

of the UN.[956] Several of the recommendations of the Group reflected upon the policy documents and speeches of the Government of Japan. Perhaps the Indian government machinery does not recognize the role of these types of actors as significantly important and relevant in achieving the governmental aims at the UN level.

In case of the USA, several foundations and societies were active, for example, the Heritage Foundation, Stanley Foundation, and the US-UN Association. However, none so in India. Not only this, but the Government did not organize even a single conference to exclusively discuss the issue of the UN reforms.

At the diplomatic level, India could have learnt from Japan's example. The Government of Japan, learning from the Group's recommendations that a post should be established at ambassador level in charge of strengthening of the United Nations, established six envoys. Japan appointed a special envoy for UN reforms and six other envoys; their appointments were made in view of the need to work more closely with the regions concerned in gathering as much support and cooperation as possible from each country for the UN and the Security Council reform, to which Japan attached the highest priority in its diplomacy. Whether India attaches the highest priority in its diplomacy remains a question. Furthermore, India could have well employed its full force in the area of development, environment, debt relief, health, by dispatching envoys to work out specific plans in these areas. Of course, no other country went to the extent of the Japanese public relations and strategy, but it showed full and complete commitment of Japan for the UN reforms.

The Foreign Ministry of Japan's webpage has devoted a full section to UN reforms with analyses and information, whereas, the Ministry of External Affairs website of India, has no such dedicated section. It is quite interesting to note that even the telephonic talks between the Japanese establishments and the UN Secretary-General were released to the media. India's Public Relations Division of the Ministry of External Affairs did not go to this level of detail. It is important to note that such approach can create public awareness, which is a vital tool in the current world.

9.13.5   Regional diplomacy

While it was clear that India faced strong challenges within the immediate region, it employed regional strategies to pursue the matter, especially in its case for the permanent membership of the Security Council. India, believing in the strength of regional organizations and regional machineries, attempted to mobilize as much political support as possible. It is to be noted that India garnered good support from Latin America and Africa regarding its permanent membership of the Security Council. This was part of the Indian strategy. ECOWAS provided support strongly to India. The visiting delegation of ECOWAS said clearly on April 5, 2006, "in the African Union there is no country that is opposed to the candidature of India for a permanent position in the Security Council."[957]

9.13.6   Regime change in India

One should also keep in mind that during the reform process, two governments have been formed in India, one by the Bharatiya Janata Party and its allies as National Democratic Alliance – NDA and the other one by Congress as United Progressive Alliance – UPA. Thus, while the groundwork and initial thinking were done

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[956] Despite the fact that history will record that, Japan could not achieve all suggestions, but its efforts would be fully recognized and emulated by countries in the future.

[957] Joint Press Conference by Minister of State for External Affairs and the Leader of ECOWAS Delegation, New Delhi of 5 April 2006.

during the BJP regime, the actual playing has been done during the Congress regime. Intensive diplomatic activities took place especially in case of the Security Council reforms issue. During the NDA regime, the world came to see India as a nuclear power, thus, the Indian position on the reform process was driven by its newly acquired nuclear power capacity too, despite one's immediate inclination to reject this link.

9.14.   Limitations of India

Unfortunately, India has no tools to use as weapons to make sure that its reform proposals are fully accepted. Concerning the individual international instrument or membership to an individual organization, it can play hardball but as far as overall reforms are concerned, it does not have the resources and means to ensure results. This has also been the case as far as the overall reforms of the UN are concerned.

India has played a marginal and tactical role in utilizing various actors such as regional organizations, but not influential Indian multinational corporations and NGOs. Since the partnership between the governmental machinery and multinational corporations and NGOs is not as intense as in the industrialized countries, the government machinery could not employ these agencies to promote the Indian cause at the UN level. This approach applies for all other organizations. In order to achieve more voice, India should have intensified the relations with these actors, which can use their resources and platforms to propagate the Indian cause in reforms.

9.15.   Achievements

India reiterated the proposal on the Comprehensive Convention on Terrorism and also on nuclear disarmament. These were the two biggest contributions at the 60th anniversary and the world community should have embraced them *in toto*. Both the proposals directly and indirectly contribute to the resolution of the number of contemporary problems in the world. India garnered support from developing countries and virtually all the five permanent members of the Security Council that India should be a member of the Security Council. This was a clear and strong victory for India as far as its efforts to obtain permanent membership of the Security Council is concerned. India's abiding commitment to democracy is amply reflected in its support to the UN Democracy Fund, which was set up at the UN General Assembly's 59th session. India wished that the UNDF would help nations to build and strengthen democratic institutions and practices to result into fruits of globalization for the betterment of their people. This is certainly a very strong contribution to the progressive development of international law within the context of UN reforms. In fact, India was the donor that paid huge sums in the establishment of the fund.[958]

9.16 Indian state practice on international law in wake of functioning of Group of 20 (G20)

Before concluding the chapter on India and UN Reforms, it is very useful to explain and understand India's state practice with relation to the newly emerging G20 group of countries.[959] As argued above, India has always

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[958] Indian contribution is USD 10 million. Japan has also contributed the same amount, while the US contribution is USD 17 million.

[959] India's inclusion owes to its capacity to pump money in the global economy which has been useful in creating an economic stimulus package created by the G20. India's faster economic growth with a continuous political stability and effective functioning of the strong democratic institutions can be considered another important reason for its inclusion. India could deploy its enormous state capacity to ensure a sustained economic growth despite global economic crisis. In addition to bring immediate benefits in the global economy, the Indian political-economic system itself may perhaps be considered as an effective model for these nations which also directly consolidate India's claim as a major power.

preferred multilateral forum in addressing global issues. This research also takes the same position, however, the establishment and functioning of G20 and India's role thereto is proving anti-thesis. G20 is a non-treaty based association of 20 nations and international organizations including India. Despite the fact that the legitimacy of G20 remains challenged, India has adopted a state practice of convenience and is contributing to the legitimacy of the Group in international law. Neither India nor other members are considering legitimacy as a challenge let alone a problem. The problem of the G20 legitimacy as an international institution and its actions is not a priority either for G20 itself, its member states, global business community or for public opinion.

As Steven Slaughter argues, "while the G20 is important to contemporary global governance and efforts to create a common framework of rules for global capitalism, the legitimacy of the G20 is fundamentally uncertain and problematic because the G20's membership and connection to existing forms of multilateralism remain contentious... G20 leaders need to consider these issues in light of the prevailing expectations of states in contemporary international society".[960] From law of international organization perspective, G20 is an association of certain governments which have proclaimed self-assumed role to restore the wrongs of economic and financial crisis generated in 2008. As mentioned above, G20 fails to meet any criteria of a classic intergovernmental organization. Neither it is a treaty-based organization, nor does it have a secretariat and it possesses no independent capacity to work outside the member states. The sole criterion for its creation is effective global economic response as desired and coordinated by G20 nations. Through the dynamism of "right shape that combines the efficiency and capacity for action with inclusiveness", G20 can achieve the stated goals in current format", as said by President Obama during G8 Meeting in 2009. The absolute freedom of states to create and deal with one another is not questioned, however, the acceptability of the decisions taken by them at G20 forum needs credibility and legitimacy which may be less forthcoming. While the criticism towards the legitimacy is acknowledged, there is nothing wrong for these states to act in the way they are acting. As we move from nation-state to a market-state economy, such forces at global and regional level are bound to emerge and may be desired too. Otherwise, a very formalistic approach will never allow such global missions to function and in fact it may prevent them from meeting with the expectations of the world community as a whole.

G8 was not deemed legitimate in terms of membership. As Slaughter argues, the G system is adaptable to changing dynamics in the global economy.[961] The same may be said for various mini-arrangements in areas of disarmament, trade and energy. G system's management of global integration encompasses both the policy coordination of its political leaders and efforts to publicly legitimise economic globalization.[962] Although other countries resent with the functioning and composition of G20, some of these groups also wish for inclusion of their concerns in the deliberations of G20. For example, the Global Governance Group, led by Singapore, has urged for systematic consideration and representation of that group.

Statistically speaking G20 comprises 90 per cent of the global GDP, 80 per cent of world trade and 66 per cent of the world population and therefore it is bound to fail in meeting expectations of non-members. It is similar to what India has been arguing about democratic deficit of the Security Council and its legitimacy. To counter the legitimate challenge of G20, Nikolai Kosopalov anticipates, "the G20 establishment at the Finance Ministers level and its further upgrading to the heads of states and governments' status complies with the

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[960] S. Slaughter, "Debating the International Legitimacy of the G20", Global Policymaking and Contemporary International Society. *Global Policy*, 4 43–52 (2013).

[961] Slaughter at p. 45.

[962] *Ibid.*

international law and does not in any way impair the status and authority of previously established intergovernmental international organizations. In a long run, the legitimacy problem of the G20 decisions and its activities is likely to acquire more significance." G20 needs to take decisions and set examples that would help create the fundamentals of legitimacy for the emerging system of global self-government. Unless, G20 functions in accordance with the international law, its global executive economic and financial authority will remain substantively challenged.

The G system is considered to be complimentary to 'universal' multilateralism. In fact it is a true multilateralism of limited scale, size and scope. It can be argued that G20, like many other arrangements, is simply a 'coalition of the willing'. G20 can also be seen as a response to inability of the entire UN membership to agree on an Economic and Social Security Council making the ECOSOC more effective and dissolving the outdated Trusteeship Council. It can also be said that G20 presents a blow to UN's efforts to coordinate, in harmony with the Bretton Woods Institutions (BWIs), economic and financial stability and development in the world. With G20 playing an active role, the UN machineries focusing on financial and economic development agenda are ought to become moribund and less effective. Challenges like Climate change and economic and financial crisis, are looming large and due to multilateral approach and need for all countries to join the consensus, is another major development which perhaps has led to powerful influential countries to avoid the lesson while dealing with economic issues. Whether India will be willing to accept this evolving reality in long run is an interesting question? The question whether G20 can influence, shape and implement emerging norms of international law is irrelevant so long as the G20 countries deliberate, negotiate, agree and execute financial and economic norms. No challenge can be posed to the international legal capacity of states to decide on the issues which matter them the most.

Against this challenge to the legitimacy of G20, the fundamental question that arises is the logic for G-20. Why, India, which has criticized arrangements parallel to multilateral treaties or organization like the OPCW, has become a willing member of G20? Furthermore, although India is a member of G20, it is important to note that there persists within G20 a discriminatory attitude among more powerful nations vis-à-vis India. For example, despite India's track record on peaceful uses of nuclear technology, Australia denied to sell enriched Uranium for uses in nuclear reactors to India while it gave a deal to the Russian Federation. From nuclear non-proliferation and climate change (carbon emission target), India would have been better off with such deals as it could have made further contribution on both important global issues. While India let this happen in the sidelines of Seoul Summit in 2010, will India be able to tolerate such discriminatory treatment in G20 summits in the long-run?

How India is practicing its membership of G20 and thus contributing to the legitimacy of G20 regime in some form? As G20 has emerged as the premier international forum of economic cooperation, support structure in the Government of India has also been strengthened with the establishment of a separate secretariat to provide secretarial and technical support on all G20 matters. G20 India Secretariat also provides secretarial and technical support to the Apex Council on G20 Issues, under the Chairmanship of the Finance Minister, established to provide direction to the preparation of policy and country response to issues contemplated in the G20 and to advice the Prime Minister as required; and to consider any other issues of international economic relations or issues that may have wide policy ramifications that may be referred to the Apex Council by the Department of

Economic Affairs.[963] India's position on the G20 platform is formulated through discussions and involvement of all Government of India Ministries and Departments. Inputs from external experts are also taken on various issues. The Secretariat also coordinates the work of other Ministries involved in specific areas of work under G20 Agenda in which they represent India in the G20 Ministerial meetings and Working Groups. G20 India Secretariat also receives inputs from external expertise on various issues through Advisory Groups of eminent scholars and also through DEA Research Programme on the G20 Issues currently undertaken with the Indian Council for Research on International Economic Relations (ICRIER).[964]

G20 has moved towards more long-term agenda including infrastructure, job creation, food security and financial inclusion. This inclusion of new items demand that G20 is ought to be extremely careful in ensuring some form of legitimacy and including the sensitiveness of all states, civil society and business actors, in order to infuse confidence in the global community. G20 India Dialogue Series, while appreciating the issues concerning legitimacy, keeps hope that the G20 shall deal with important issues such as trade, agriculture, climate change and investment. Similarly, it also hopes that the G20 can push the conclusion of Doha Round of development.[965] This platform also believes that the G20 can offer a better solution to stop hunger and price swings than the UN FAO and WFP as neither has authority nor the resources, to respond adequately to the cause of global food crises.[966]

In addition to above, as the former Foreign Secretary Nirupama Rao said, "[W]e see the G-20 process as a move towards a more representative mechanism to manage global economic and financial issues. The Group has taken some positive steps in this direction, for instance by committing a shift in the IMF quota share to dynamic emerging markets and developing countries. Simultaneously, the new global realities require that we revisit and reorganize existing governance models which were put in place over six decades ago."[967] The sentiments and hopes for G20 playing a more important role in overall global governance were couched by Mr Mukherjee, then Finance Minister of India and currently the President of India.[968] In the wake of G20 Toronto

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[963] India and Its Foreign Relations, Annual Report of the Ministry of External Affairs, Government of India (2010).

[964] It is interesting to note that India did not have a dedicated webpage for its efforts on the UN Reforms, however, the Government of India has created a separate webpage on its website for the G20, www.g20india.gov.in.

[965] With regards to climate change, COP-18 concluded at Doha in December 2012 achieved an important milestone which was amendments to the Kyoto Protocol to operationalise the 2nd commitment period, a key demand of developing countries.

[966] www.youthpolicy.in/india-g20-dialogue series 3 accessed in July and August 2013.

[967] Address by Foreign Secretary Smt. Nirupama Rao at South Asia Initiative, Harvard University on "India's Global Role". Boston, September 20, 2010.

[968] In the words of then Finance Minister, "the designation of the G20 as the premier forum for international economic cooperation has brought together advanced and emerging market economies at the same table on an equal footing. This has been a major step in the direction of improving global governance and shared responsibility for larger public good. We welcome this and commend the US and other developed nations in taking and supporting this step. Indeed, it is not surprising that the G20 could concert the decisive response to enable the world economy to move on the path to recovery. The G20 spearheaded a commitment to implement coordinated macroeconomic policies, including fiscal expansion of US $ 5 trillion and the use of unconventional monetary policy instruments. It took the initiative to significantly enhance financial regulations, notably by the establishment of the Financial Stability Board and strengthened the International Financial Institutions, including the expansion of resources and the improvement of precautionary lending facilities. We need to persist with and strengthen this mechanism as we move forward to create a more dynamic and equitable economic architecture for global trade and sustained growth." Address of the Finance Minister Pranab Mukherjee at the Woodrow Wilson Centre for Scholars. Washington (D. C.), 8 October 2010.

Summit, the former Prime Minister Mr Singh observed in 2009 that "the G20 framework or mechanism had helped overcome the immediate financial crisis, but had now to move ahead to deal with the larger issue of global imbalances and reforms of the international financial institutions". [969] This shows that India believes that G20 is going to last long and will play more important role in other areas of foreign policy and international governance issues too. During the same time, the former Indian Prime Minister and Singaporean President Lee agreed for the need for meeting not just to take decisions but to have a system of systematic implementation of those decisions so that they are carried forward over several years. The G20 Finance Ministers at St Pittsburgh in 2009 reiterated their support for the G20 as the premier forum for international economic cooperation and welcomed the decisions of the G20 summit in Seoul including on IMF quota reform. They reiterated that the goal of the reform of international financial institutions was to achieve, step by step, equitable distribution of voting power between developed and developing countries. This development suggests that the economic cooperation is going to be taken over by the G20 and the G20 may eventually replace in a different form, similar economic and financial institutions. [970] These developments and commitments, some of which are made at the highest level of decision-making, reinforce that the G20 is and will become a forum to contribute towards sustainable development and that decisions taken at the G20 will be earnestly implemented too. Whether those decisions are in form of declarations or communiqué, these declarations will be given effect in domestic setting suggests that India is ready and willing to read soft law declarations in giving effect to the principles and preamble of the Indian Constitution, especially in the areas of the Directive Principles.

9.17. Does the G20 impose obligations and what is the reaction of the G20 members to implement the same?

The G20 Summits have moved from simple forum discussing the global issues to a Summit where Heads of the States or Governments make statements committing their respective nations to implement the obligations undertaken at the G20 summits. As Indian Foreign Secretary mentioned at the G20 Summit in 2010, "[B]ut generally speaking, the G20 have declared that they should cut their fiscal deficits by half, by the end of 2013. Most countries have committed to this and are sure that they will be able to do this. We have independently, even prior to the G20 coming to this understanding, (created) a roadmap which is designed to cut our fiscal deficit, Indian fiscal deficit, to half by 2013-14". This shows that the G20 members, including India, are taking obligations flowing from the G20 declarations to implement certain domestic measures. G20 members plan to legislate norms which would be required for implementation by various sectors of world economic community as it appears from the declarations and their proceedings. This becomes quite clear from the statement of the former Indian Foreign Secretary Rao, who said at Toronto Summit that "[I]t is working together even in the area of regulations, where, as they decided over the last few summits; there would be international benchmarks and regulations, but to be enforced, to be implemented, and to be supervised nationally".

As Foreign Secretary Rao said at the Toronto Summit, said, "[O]ne issue which engaged the attention of the G20 and the financial community has been the proposal to levy some kind of tax on financial institutions and banks so that the burden is not borne by the governments or the taxpayers if such crises occur in future. There

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[969] Media Briefing by National Security Advisor Shivshankar Menon on Prime Minister's bilateral meetings on the sidelines of the India-ASEAN Summit. Hanoi, October 29, 2010.
[970] Joint Communiqué issued at the conclusion of the 10th Russia-India-China (RIC) Ministerial Meeting. Wuhan (China), November 15, 2010.

were divergent views on this even prior to the Summit. What has come out in the Summit is that this is something which some countries will do, some will take other steps or continue with the kind of steps that they have, which need not necessarily involve specific levies of taxes."[971] It plans to create permanent structures of governance such as fund for small and medium enterprises, called SME Financial Challenge. The commitments declared at the G20 summits have even specified timelines, in other words, members are undertaking obligations as well as ensuring the fulfillment by certain specified dates, such as, raising of no trade barriers by the G20 members at least through end of 2013 to contribute to the conclusion of the Doha Round. However, a note of caution overstating the qualification of commitment as obligation is to be observed.[972] For example, the Foreign Secretary at the same Toronto Summit said, "[B]ut the spirit of cooperation, the spirit of working in coordination - coordination does not necessarily mean that they will align their policies with each other or with what the G20 would want to do - the spirit of coordination continues."

The growth and evolution of the G20 as a latest entrant in global organizations raises some important questions. First, whether the question of legitimacy is too premature? Should we not allow the G20 to function for some substantial duration and then depending upon its functioning and ability to take care of global financial and economic problems, pose the question of legitimacy? By overestimating the value of legitimacy at this nascent stage, the world community might be missing a chance to let a unique institution emerge consisting of North-South states with the resemblance of global representation and dealing with the urgent problems. We shall wait and watch. It can be argued that once the global financial crisis is over, the G20 may take back seat. However, an emergence and effective handling of such a global problem may inspire States and IOs in future to come up with temporary solution-forum which is legitimate and expected from them. Except the issue of legitimacy and participation of civil society, the G20 remains immune from severe attacks from intellectual community at this stage.

9.18. Concluding remarks

A most important conclusion emerging from the analysis is that the reform proposals of India were invariably formulated in broad philosophical terms: India wished that the principle of multilateralism was strengthened, the interest of the developing countries is safeguarded, and the development returns as a central item on the UN agenda. UN reforms are seen as the capacity of the UN to meet with new challenges. The current international environment is conducive to undertake far-reaching UN reform, especially when there is absence of tension between the great powers. The general trend is towards greater multipolarity in the world. The trend is towards a peaceful environment. India should use this opportunity before it is lost.

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[971] Briefing by Foreign Secretary Mrs. Nirupama Rao, Finance Secretary Ashok Chawla and Secretary (West) Vivek Katju on the G-20 Summit. Toronto, June 27, 2010.

[972] In this regard, US position concerning non-binding international agreement between states is worth noting, according to which, "it has long been recognised in international practice that governments may agree on joint statements of policy or intention that do not establish legal obligations. In recent decades, this has become a common means of announcing the results of diplomatic exchanges, stating common positions on policy issues, recording their intended course of action on matters of mutual concern, or making political commitments to one another. These documents are sometimes referred to as non-binding agreements, gentlemen's agreements, joint statements or declarations." See Memorandum of the Assistant Legal Adviser for Treaty Affairs, US State Department, quoted in 88 American JIL 1994, p. 515.

India and UN reforms provide a good basis to understand why India has attempted to contribute to broader goals of international law through the only universal forum the world community has.[973] India's role in the current round of UN reforms is an example of excellent mixture of the contribution to the ideals of international law and promotion of national interest in the most affirmative manner. India used both assertive and nationalistic position in pursuing its core interests and has even been able to effectively use popular sentiments in the negotiating forums. The main aim for India was to seize the opportunity of the 60th anniversary, as a platform, to advocate its permanent membership in the Security Council, with the help of the favourable environment of alliance with three other Member States and its increasing political, economic and military influence in world affairs. As we all know, India has failed in achieving this aim so far.

The Indian proposals have reflected broad ideals of international law, based on natural law and its civilisational values, and underlined the fundamental philosophy that the only multilateral and universal forum needs to be governed by rule of law in the 21st century. However, with the emergence of the G20 and the Indian state practice thereto has started giving ambivalent signals and showing a dichotomy in its fundamental approach to the laws of international organisations. In the area of the Security Council reforms, the principles of balance of power and division of responsibility between the Security Council and the General Assembly, need for definite rules of procedure, representative character of the Council, abolition of the veto power, accountability of the Council towards the Assembly, were highlighted. In the area of economic development, India tried to emphasise the importance of the UN taking lead in the economic matters and UN encouraged reforms in the Bretton Woods Institutions as well as the accountability of these organisations towards the UN, increase of Overseas Development Assistance in a systematic and timely manner. In the Peacekeeping operations, it highlighted the principle of active involvement of troops contributing countries in the planning and execution of the operations, consultation between the troop-contributing countries, the Security Council and the UN Secretariat. Consensus building on substantive and procedural issues on all issues of disarmament and arms control and call for complete nuclear disarmament were the major proposals in the areas of disarmament and the arms control. While underlining the necessity of multilateral intervention only under the UN authority, it reiterated the old age principles of sovereignty, territorial integrity, and national unity of states. It emphatically rejected the unilateral intervention under any reason of humanitarian assistance. In the area of terrorism, its call for a Comprehensive Convention on International Terrorism reflected her desire of the entire international community. However, it is beyond any comprehension, why this Convention is subjected to refusal by a few members. The principles of transparency in the recruitment and procurement process, better representation of developing countries at senior management level, were among the most important ones which it propounded during the reform year. In a nutshell, as far as international law was concerned, all the proposals and demands were truly in line with the broad ideals of international law and supported the rule of law in the 21st century.

The balance sheet of India's participation shows that it has achieved some long-term goals in the economic and trade areas, however, no significant achievements are seen in the political and security areas.[974]

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[973] Bimal N. Patel, "International Court of Justice and India" in Bimal N. Patel (ed.), *India and International Law*, 289-319 (2005) at p. 313.

[974] While India has remained relatively less active in the previous rounds of reforms, its activism since 2005 has been more prominent. In fact, since 2005, a more concerted approach of developing countries to the UN reforms has been seen, although with mix result of success. This disproves a widely held perception that these countries "do not see any possibility of reversing the trend and, therefore, they have not taken any initiative in this direction." Muchkund Dubey, *Reform of the UN System and India* above at 141.

Two important achievements which could be attributed to India led efforts are – the UN encouraged implementation of the second stage of the IMF quota reform and promise of the increased ODA from developed to developing countries. India's disappointments are clearly noted in the Security Council reform, the Peace Building Commission, Peacekeeping Operations and last but not the least, terrorism. Although India has outlined substantive and procedural reforms of the Council, in a comprehensive manner, none of the proposals have been accepted. With regards to the Peace Building Commission and the Human Rights Council, India has to remain content with the fact that the Peace Building Commission is responsible to Security Council while the Human Rights Council is accountable to the General Assembly.[975] As mentioned in the analysis, India's clarion call for the Comprehensive Convention on International Terrorism is yet to find the full support of the international community. Nor its proposal for the Elimination of Nuclear Weapons has been accepted.

Why India could not achieve results on its proposals? It is not surprising that some of the disappointing results were due to the fact India did not employ full machinery and resources to garner the support of the international community as done by Japan. Lack of concentrated and focussed efforts, lack of sufficient political and economic clout, absence of systematic discussion involving all actors influential in the reforms process, heavy focus on the Security Council reforms, are some of the glaring weaknesses which could be considered as responsible reasons for the outcome.

The chapter demonstrates that the reform momentum has been largely lost within the UN Secretariat, within the few active Member States, within the civil society institutions and perhaps most importantly within the media.[976] The few big achievements of the UN Reforms have already been known. These achievements in terms of creation of new institutions are creation of the Peace Building Commission, the Human Rights Council and the UN Democracy Fund. In terms of restructuring, there would be restructuring of the Disarmament machinery (from Department of Disarmament to the High Representative of the Secretary-General on Disarmament,[977] a large reduction of importance of the subject), Peacekeeping Department, in terms of management, employment of more women and attempt to balance the representation of developed and developing countries in the senior management group.

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[975] The expectations of nations like India to put the new Council on a higher pedestal of the UN institutional hierarchy have been well reasoned. As Nico Schrijver puts, "[T]he founding Resolution 60/251 has certainly endowed the Council with a somewhat higher institutional status within the UN system, being a subsidiary organ of the General Assembly, the mother organ of the United Nations which is politically more prominent than ECOSOC. After all, the General Assembly has a Charter duty of 'assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion". Nico Schrijver, "The UN Human Rights Council: A New 'Society of the Committed' or Just Old Wine in New Bottles? 20 *Leiden Journal of International Law,* 809-823 (2007) at p. 822.

[976] The Security Council expansion seems impossible: perhaps, this is the case. Japan, for example, has demanded that the enemy clause be deleted from the Charter as a part of its comprehensive strategy to achieve its national goals. Since the Security Council expansion entails amendment to the Charter, it proves to be extremely difficult; because Japan would like to have the enemy clause deleted, so there may be some radical suggestions and the entire momentum can be lost.

[977] This round of reform reinforces a general conclusion about the history of the UN Reform which suggests that each round of reform brings in "the proliferation of bodies and institutions to control, monitor, and do internal surveillance at the cost of those designed to harmonise policies, negotiate agreements and find common grounds on substantive issues of global concern." Muchkund Dubey, *Reform of the UN System and India above* at p. 141.