



# Preparing for a Twenty-Four-Month Sprint: A Primer for Prospective and New Elected Members of the United Nations Security Council,

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**PREPARING FOR A TWENTY-FOUR-MONTH SPRINT:  
A PRIMER FOR PROSPECTIVE AND NEW ELECTED MEMBERS  
OF THE UNITED NATIONS SECURITY COUNCIL**

**Will Ossoff, Naz K. Modirzadeh, and Dustin A. Lewis**

**Harvard Law School Program on International Law and Armed Conflict**

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**Preparing for a Twenty-Four-Month Sprint:  
A Primer for Prospective and New Elected Members  
of the United Nations Security Council**

Will Ossoff, Naz K. Modirzadeh, and Dustin A. Lewis

Harvard Law School Program on International Law and Armed Conflict (HLS PILAC)

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# Contents

<b>Executive Summary</b> .....	<b>ii</b>
<b>Front Matter</b> .....	<b>iv</b>
<b>1. Introduction</b> .....	<b>1</b>
<b>2. How are the Security Council’s Functions and Powers Set Out in the U.N. Charter?</b> .....	<b>2</b>
2.1. What are the Purposes of the U.N.?.....	2
2.2. What are the Functions and Powers of the Security Council?.....	3
2.3. What is the Council’s Relationship to Other U.N. Principal Organs? .....	4
2.4. What Security Council Procedures Are Set Out in the Charter? .....	7
2.5. In relation to What Areas May the Functions and Powers of the Security Council Arise?.....	10
<b>3. How May Elected Members Influence Security Council Decision-Making?</b> .....	<b>14</b>
3.1. What Are the Formats of Council Decisions? .....	14
3.1.1. Resolutions and “Penholding” .....	14
3.1.2. Presidential Statements.....	16
3.1.3. Letters by the President .....	18
3.1.4. Notes by the President .....	18
3.1.5. Press Statements .....	19
3.2. What Leadership Roles Offer Additional Opportunities for Impact? .....	20
3.2.1. Chairing Sanctions Committees and Other Subsidiary Organs.....	20
3.2.2. Chairing the Presidency .....	22
3.3. How Can Members Influence the Debates of the Council? .....	23
<b>4. What Specific Initiatives Have Elected Members Championed?</b> .....	<b>26</b>
4.1. What are Some Initiatives That Have Been Championed by a Single Elected Member? .....	27
4.2. What are Some Initiatives That Have Been Led by Groups of Elected Members?.....	30
4.3. What Are Examples of Elected Members “Passing the Baton” to Their Successors?.....	31
<b>5. What Guidance Might Prospective Elected Members Discern From the Experiences of Previous Elected Members?</b> .....	<b>32</b>
<b>6. Conclusion</b> .....	<b>33</b>
<b>Annex — Glossary</b> .....	<b>35</b>

## **Executive Summary**

Under the United Nations Charter, the U.N. Security Council has several important functions and powers, not least with regard to taking binding actions to maintain international peace and security. The ten elected members have the opportunity to influence this area and others during their two-year terms on the Council. In this paper, we aim to illustrate some of these opportunities, identify potential guidance from prior elected members' experiences, and outline the key procedures that incoming elected members should be aware of as they prepare to join the Council. In doing so, we seek in part to summarize the current state of scholarship and policy analysis in an effort to make this material more accessible to States and, particularly, to States' legal advisers. We drafted this paper with a view towards States that have been elected and are preparing to join the Council, as well as for those States that are considering bidding for a seat on the Council.

As a starting point, it may be warranted to dedicate resources for personnel at home in the capital and at the Mission in New York to become deeply familiar with the language, structure, and content of the relevant provisions of the U.N. Charter. That is because it is through those provisions that Council members engage in the diverse forms of political contestation and cooperation at the center of the Council's work.

In both the Charter itself and the Council's practices and procedures, there are structural impediments that may hinder the influence of elected members on the Security Council. These include the permanent members' veto power over decisions on matters not characterized as procedural and the short preparation time for newly elected members. Nevertheless, elected members have found creative ways to have an impact. Many of the Council's "procedures" — such as the "penholder" system for drafting resolutions — are informal practices that can be navigated by resourceful and well-prepared elected members.

Mechanisms through which elected members can exert influence include the following:

- Drafting resolutions;
- Drafting Presidential Statements, which might serve as a prelude to future resolutions;
- Drafting Notes by the President, which can be used, among other things, to change Council working methods;
- Chairing subsidiary bodies, such as sanctions committees;
- Chairing the Presidency;
- Introducing new substantive topics onto the Council's agenda; and
- Undertaking "Arria-formula" meetings, which allow for broader participation from outside the Council.

Case studies help illustrate the types and degrees of impact that elected members can have through their own initiative. Examples include the following undertakings:

- Canada’s emphasis in 1999–2000 on civilian protection, which led to numerous resolutions and the establishment of civilian protection as a topic on which the Council remains “seized” and continues to have regular debates;
- Belgium’s effort in 2007 to clarify the Council’s strategy around addressing natural resources and armed conflict, which resulted in a Presidential Statement;
- Australia’s efforts in 2014 resulting in the placing of the North Korean human rights situation on the Council’s agenda for the first time; and
- Brazil’s “Responsibility while Protecting” 2011 concept note, which helped shape debate around the Responsibility to Protect concept.

Elected members have also influenced Council processes by working together in diverse coalitions. Examples include the following instances:

- Egypt, Japan, New Zealand, Spain, and Uruguay drafted a resolution that was adopted in 2016 on the protection of health-care workers in armed conflict;
- Cote d’Ivoire, Kuwait, the Netherlands, and Sweden drafted a resolution that was adopted in 2018 condemning the use of famine as an instrument of warfare;
- Malaysia, New Zealand, Senegal, and Venezuela tabled a 2016 resolution, which was ultimately adopted, condemning Israeli settlements in Palestinian territory; and
- A group of successive elected members helped reform the process around the imposition of sanctions against al-Qaeda and associated entities (later including the Islamic State of Iraq and the Levant), including by establishing an Ombudsperson.

Past elected members’ experiences may offer some specific pieces of guidance for new members preparing to take their seats on the Council. For example, prospective, new, and current members might seek to take the following measures:

- Increase the size of and support for the staff of the Mission to the U.N., both in New York and in home capitals;
- Deploy high-level officials to help gain support for initiatives;
- Partner with members of the P5 who are the informal “penholder” on certain topics, as this may offer more opportunities to draft resolutions;
- Build support for initiatives from U.N. Member States that do not currently sit on the Council; and
- Leave enough time to see initiatives through to completion and continue to follow up after leaving the Council.

## **About HLS PILAC**

The Harvard Law School Program on International Law and Armed Conflict (HLS PILAC) provides a space for research on critical challenges facing the various fields of public international law related to armed conflict. The Program's mode is critical, independent, and rigorous. While its contributors may express a range of views on contentious legal and policy debates, HLS PILAC does not take institutional positions on such matters.

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# 1. Introduction

Despite composing two-thirds of the Security Council’s membership, the ten elected members of the Council (E10) face several impediments to making a significant impact during their two-year terms. With just a few months to prepare after being elected to the Council, non-permanent members must quickly get up to speed on a tremendous amount of information, despite lacking the institutional knowledge and resources of the five permanent members (P5) — namely, China, France, Russia, the United Kingdom, and the United States. One individual in the Australian delegation described the experience of being an elected Member as “akin to arriving at a dinner party where there were forty-four separate, intense conversations taking place and needing to intervene in every conversation in a coherent and informed way.”<sup>1</sup> Non-permanent members also must contend with the P5’s power to veto decisions on non-procedural matters and the P5’s influence over the process of drafting resolutions. Nonetheless, numerous elected members have found ways to navigate these procedural issues and to make substantive impacts during their terms on the Council.

In this paper, we aim to illustrate some of these initiatives, identify potential guidance from prior elected members’ experiences, and outline key procedures that incoming elected members should be aware of as they prepare to join the Council. We will not assess proposed reforms to the Security Council’s structure. Rather, we seek to outline the current structure as it is and the ways that the Council makes decisions and takes action within that structure.

We attempt to summarize the current state of scholarship and policy analysis on relevant issues in an effort to make this material more accessible to States and, particularly, States’ legal advisers. In so doing, we aim to provide a resource for States that have been elected and are preparing to join the Council, as well as for those States that are considering bidding for a seat on the Council.<sup>2</sup> Although other analyses have been written about the structure and procedures of the Council, few have focused specifically on those procedural aspects that would be most relevant to a prospective candidate for a non-permanent seat on the Council.

In section 2, we sketch an overview of the provisions in the U.N. Charter pertaining to the Security Council and the Council’s relationships with certain U.N. entities. Relevant excerpts from the Charter are elaborated at the outset because it is through the language, structure, and content of those provisions that Council members engage in the diverse forms of political contestation and cooperation at the center of the Council’s work. In

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<sup>1</sup> Ian Martin, *Elected Members Today: Overcoming the Handicaps*, in ELECTED MEMBERS OF THE SECURITY COUNCIL: LAME DUCKS OR KEY PLAYERS? 46 (Nico Schrijver & Niels Blokker eds., 2020).

<sup>2</sup> For additional resources that provide an overview of Council procedures and practice, see, e.g., SECURITY COUNCIL REPORT, THE U.N. SECURITY COUNCIL HANDBOOK: A USER’S GUIDE TO PRACTICE AND PROCEDURE (2019), <https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/the-un-security-council-handbook-by-scr-1.pdf> [<https://perma.cc/ZG5J-TRMU>]; LORAINIE SIEVERS & SAM DAWS, THE PROCEDURE OF THE UN SECURITY COUNCIL (4th ed., 2014).



section 3, we highlight the primary modalities through which the Security Council makes its decisions, outline some of the leadership roles that members of the Council can hold, and identify some of the ways in which Council members can influence the course of debates outside of the adoption of decisions and the chairing of the presidency or committees. In section 4, we elaborate on a few examples of initiatives for which elected members have attempted to gather support during their terms on the Council. These case studies illustrate how certain elected members have navigated the Council's procedure to advocate for particular outcomes. In section 5, we briefly explore particular forms of guidance that might be discerned from elected members' experiences. We briefly conclude in section 6. Finally, the annex contains a glossary.

## 2. How are the Security Council's Functions and Powers Set Out in the U.N. Charter?

In this section, we provide an overview of the provisions in the U.N. Charter pertaining to the Security Council. We cover the areas of the Security Council's functions and powers as laid down in the Charter. We also sketch the Charter's provisions concerning the relationships between the Council and other principal organs of the U.N. Organization.

Through this legal framework, the parameters through which elected members can seek to have an impact are laid down. With respect to the Security Council, as in so many other areas, international law arguably provides the only "shared surface ... on which political adversaries recognize each other as such and pursue their adversity in terms of something shared..."<sup>3</sup> In that sense, sufficient knowledge of relevant Charter provisions may be considered a prerequisite for an impactful tenure on the Council.

### 2.1. What are the Purposes of the U.N.?

Article 1 of the U.N. Charter defines the "Purposes of the United Nations." One of those enumerated purposes is "[t]o maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach

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<sup>3</sup> Martti Koskenniemi, *What is International Law For?*, in *INTERNATIONAL LAW* 48 (Malcolm D. Evans ed., 4th ed. 2014) ("In the absence of agreement over, or knowledge of, the 'true' objectives of political community—that is to say, in an agnostic world—the pure form of international law provides the shared surface—the *only* such surface—on which political adversaries recognize each other as such and pursue their adversity in terms of something shared, instead of seeking to attain full exclusion—'outlawry'—of the other. In this sense, international law's value and its misery lie in its being the fragile surface of political community among social agents—States, other communities, individuals—who disagree about their preferences but do so within a structure that invites them to argue in terms of an assumed universality.") (emphasis original).

of the peace.”<sup>4</sup> Other enumerated purposes pertain to developing friendly relations among nations and taking appropriate measures to strengthen universal peace; to achieving international cooperation both in solving certain international problems and in promoting and encouraging respect for human rights and fundamental freedoms; and to being a center for harmonizing the actions of nations in the attainment of these common ends.<sup>5</sup>

## 2.2. What are the Functions and Powers of the Security Council?

Under Article 24.1, U.N. Members, “[i]n order to ensure prompt and effective action by the United Nations, ... confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf.”<sup>6</sup> Article 24.2 provides that, “[i]n discharging these duties the Security Council shall act in accordance with the Purposes and Principles of the United Nations. The specific powers granted to the Security Council for the discharge of these duties are laid down in Chapters VI, VII, VIII, and XII [of the Charter].”<sup>7</sup> Per Article 24.3, “[t]he Security Council shall submit annual and, when necessary, special reports to the General Assembly for its consideration.”<sup>8</sup>

Pursuant to Article 25, “[t]he Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the ... Charter.”<sup>9</sup> According to the International Court of Justice, determining whether a particular text adopted by the Security Council is a “decision” in the sense of Article 25 requires a case-specific assessment. In an advisory opinion, the ICJ mentioned specific criteria to make that assessment, namely the act’s wording, its genesis, its legal basis, and the context of its adoption.<sup>10</sup> Also in that advisory opinion, the Court expressed the view that “Article 25 is not confined to decisions in regard to enforcement action but applies to ‘the decisions of the Security Council’ adopted in accordance with the Charter.”<sup>11</sup> In line with that reasoning, according to scholarly writings, the Security Council may make decisions in the sense of Article 25 in respect of (at least) Chapter VI (concerning peaceful settlement of disputes) and Chapter VII (concerning action with respect to threats to the peace, breaches of the peace, and acts of aggression). In line with that understanding, both consensus procedures and formal voting procedures can lead to a binding decision in the sense of Article 25.<sup>12</sup> It has even been said that it is “typical[]” for

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<sup>4</sup> U.N. Charter art. 1, ¶ 1.

<sup>5</sup> *Id.* art. 1, ¶¶ 2–4.

<sup>6</sup> *Id.* art. 24, ¶ 1.

<sup>7</sup> *Id.* art. 24, ¶ 2.

<sup>8</sup> *Id.* art. 24, ¶ 3.

<sup>9</sup> *Id.* art. 25.

<sup>10</sup> Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276, Advisory Opinion, 1971 I.C.J. 16, 53.

<sup>11</sup> *Id.*

<sup>12</sup> See Anne Peters, *Article 25*, in THE CHARTER OF THE UNITED NATIONS: A COMMENTARY 793–94 (Bruno Simma et

different types of legal acts — both decisions and recommendations — to be contained side by side in a single Security Council resolution.<sup>13</sup> In terms of legal consequences, according to the ICJ *Namibia* advisory opinion, “when the Security Council adopts a decision under Article 25 in accordance with the Charter, it is for member States to comply with that decision, including those members [if any] of the Security Council which voted against it and those Members of the United Nations who are not members of the Council.”<sup>14</sup> In contrast, it has been asserted, “the legal effect of a Council recommendation is that members retain discretion whether or not to act, but that they must ‘exercise that discretion *bona fide*’ and ‘consider the recommendation in that sense’.”<sup>15</sup>

According to Article 26, “[i]n order to promote the establishment and maintenance of international peace and security with the least diversion for armaments of the world’s human and economic resources, the Security Council shall be responsible for formulating, with the assistance of the Military Staff Committee referred to in Article 47, plans to be submitted to the Members of the United Nations for the establishment of a system for the regulation of armaments.”<sup>16</sup>

### 2.3. What is the Council’s Relationship to Other U.N. Principal Organs?

Article 7.1 establishes the “principal organs of the United Nations: a General Assembly, a Security Council, an Economic and Social Council, a Trusteeship Council, an International Court of Justice and a Secretariat.”<sup>17</sup> Article 7.2 provides that “[s]uch subsidiary organs as may be found necessary may be established in accordance with the present Charter.”<sup>18</sup> Per Article 29, which relates to Security Council procedure, the Council “may establish such subsidiary organs as it deems necessary for the performance of its functions.”<sup>19</sup> These “Article 29” organs, which include certain sanctions committees and working groups that are primarily chaired by elected members, will be discussed in more detail later in this paper.<sup>20</sup>

Certain aspects of the relationship between the Security Council and the General Assembly, including with respect to the maintenance of international peace and security, are set out in the Charter. Pursuant to Article 9.1, the General Assembly, in contrast to the fifteen-member Council, shall consist of all of the Members of the U.N.<sup>21</sup> Under Article

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al. eds., 3rd ed. 2012).

<sup>13</sup> *Id.* at 793 (citation omitted).

<sup>14</sup> Legal Consequences for States of the Continued Presence of South Africa in Namibia, 1971 I.C.J. at 54.

<sup>15</sup> See Peters, *supra* note 12, at 793 (quoting Jochen A. Frowein, *Implementation of Security Council Resolutions Taken under Chapter VII in Germany*, in UNITED NATIONS SANCTIONS AND INTERNATIONAL LAW 253, 263 (Vera Gowlland-Debbas ed., 2001)).

<sup>16</sup> U.N. Charter art. 26.

<sup>17</sup> *Id.* art. 7, ¶ 1.

<sup>18</sup> *Id.* art. 7, ¶ 2.

<sup>19</sup> *Id.* art. 29.

<sup>20</sup> See *infra* notes 59–64 and accompanying text.

<sup>21</sup> U.N. Charter art. 9, ¶ 1.

18.1, “[e]ach member of the General Assembly shall have one vote.”<sup>22</sup> Article 10 provides that the General Assembly “may discuss any questions or any matters within the scope of the present Charter” and “except as provided in Article 12, may make recommendations to the Members of the United Nations or to the Security Council or to both on any such questions or matters.”<sup>23</sup> Under Article 11.1, “[t]he General Assembly may consider the general principles of cooperation in the maintenance of international peace and security, including the principles governing disarmament and the regulation of armaments, and may make recommendations with regard to such principles to the Members or to the Security Council or to both.”<sup>24</sup> The first sentence of Article 11.2 provides that the General Assembly “may discuss any questions relating to the maintenance of international peace and security brought before it by any Member of the United Nations, or by the Security Council,” and, “except as provided in Article 12, may make recommendations with regard to any such questions to the state or states concerned or to the Security Council or to both.”<sup>25</sup> Pursuant to the second sentence of Article 11.2, “[a]ny such question on which action is necessary shall be referred to the Security Council by the General Assembly either before or after discussion.”<sup>26</sup> Under Article 11.3, “[t]he General Assembly may call the attention of the Security Council to situations which are likely to endanger international peace and security.”<sup>27</sup> However, Article 12.1 lays down that, “[w]hile the Security Council is exercising in respect of any dispute or situation the functions assigned to it in the present Charter, the General Assembly shall not make any recommendation with regard to that dispute or situation unless the Security Council so requests.”<sup>28</sup>

Under Article 13.1, the General Assembly “shall initiate studies and make recommendations” for certain purposes, namely “promoting international co-operation in the political field and encouraging the progressive development of international law and its codification” and “promoting international co-operation in the economic, social, cultural, educational, and health fields, and assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.”<sup>29</sup> Article 15.1 provides that the General Assembly “shall receive and consider annual and special reports from the Security Council” and that “these reports shall include an account of

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<sup>22</sup> *Id.* art. 18, ¶ 1.

<sup>23</sup> *Id.* art. 10.

<sup>24</sup> *Id.* art. 11, ¶ 1.

<sup>25</sup> *Id.* art. 11, ¶ 2.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* art. 11, ¶ 3. Under Article 11.4, “[t]he powers of the General Assembly set forth in this Article shall not limit the general scope of Article 10.” *Id.* art. 11, ¶ 4.

<sup>28</sup> *Id.* art. 12, ¶ 1. Pursuant to Article 12.2, “[t]he Secretary-General, with the consent of the Security Council, shall notify the General Assembly at each session of any matters relative to the maintenance of international peace and security which are being dealt with by the Security Council and shall similarly notify the General Assembly, or the Members of the United Nations if the General Assembly is not in session, immediately the Security Council ceases to deal with such matters.” *Id.* art. 12, ¶ 2.

<sup>29</sup> *Id.* art. 13, ¶ 1.

the measures that the Security Council has decided upon or taken to maintain international peace and security.”<sup>30</sup>

The Economic and Social Council, commonly known as ECOSOC, consists of fifty-four members elected by the General Assembly.<sup>31</sup> Under Article 62.1, ECOSOC “may make or initiate studies and reports with respect to international economic, social, cultural, educational, health, and related matters and may make recommendations with respect to any such matters to the General Assembly, to the Members of the United Nations, and to the specialized agencies concerned.”<sup>32</sup> Under Article 65, “[t]he Economic and Social Council may furnish information to the Security Council and shall assist the Security Council upon its request.”<sup>33</sup>

The Trusteeship Council was established for the purpose of “administering trust territories” of the U.N.<sup>34</sup> Under Article 83.3, “[t]he Security Council shall, subject to the provisions of the trusteeship agreements and without prejudice to security considerations, avail itself of the assistance of the Trusteeship Council to perform those functions of the United Nations under the trusteeship system relating to political, economic, social, and educational matters in the strategic areas.”<sup>35</sup> Following Palau’s independence and its joining the U.N., there were no more Territories left in the Trusteeship Council’s agenda; accordingly, the Trusteeship Council suspended its operations on November 1, 1994. Nevertheless, “the Trusteeship Council continues to exist as an organ of the United Nations, and meets as and where occasion requires it.”<sup>36</sup>

Under the first sentence of Article 92, the International Court of Justice is “the principal judicial organ of the United Nations.”<sup>37</sup> Article 94.1 provides that “[e]ach Member of the United Nations undertakes to comply with the decision of the International Court of Justice in any case to which it is a party.”<sup>38</sup> Pursuant to Article 94.2, “[i]f any party to a case fails to perform the obligations incumbent upon it under a judgment rendered by the Court, the other party may have recourse to the Security Council, which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment.”<sup>39</sup>

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<sup>30</sup> *Id.* art. 15, ¶ 1.

<sup>31</sup> *Id.* art. 61, ¶ 1. Article 61.1 has been amended twice, changing the size of ECOSOC from 18 to 27 in 1963, *see* G.A. Res. 1991 B (XVIII) (Dec. 17, 1963), and then from 27 to 54 in 1971, *see* G.A. Res. 2847 (XXVI) (Dec. 20, 1971).

<sup>32</sup> U.N. Charter art. 62, ¶ 1. Furthermore, according to Article 62.2, ECOSOC “may make recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all.” *Id.* art. 62, ¶ 2.

<sup>33</sup> *Id.* art. 65.

<sup>34</sup> *Id.* art. 86, ¶ 1.

<sup>35</sup> *Id.* art. 83, ¶ 3.

<sup>36</sup> *International Trusteeship System*, UNITED NATIONS, <https://www.un.org/dppa/decolonization/en/history/international-trusteeship-system-and-trust-territories> [<https://perma.cc/MT9Y-H32K>].

<sup>37</sup> U.N. Charter art. 92.

<sup>38</sup> *Id.* art. 94, ¶ 1.

<sup>39</sup> *Id.* art. 94, ¶ 2.

Per the first sentence of Article 97, the U.N. Secretariat “shall comprise a Secretary-General and such staff as the Organization may require.”<sup>40</sup> Under the second sentence of Article 97, “[t]he Secretary-General shall be appointed by the General Assembly upon the recommendation of the Security Council.”<sup>41</sup> Pursuant to Article 99, “[t]he Secretary-General may bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security.”<sup>42</sup>

## 2.4. What Security Council Procedures Are Set Out in the Charter?

Since its size was expanded in 1963 from eleven to fifteen members, the Security Council has included ten non-permanent, elected members, in addition to the five permanent members.<sup>43</sup> Article 23 outlines the process of electing members to the Security Council. Under the third sentence of Article 23.1, “[t]he General Assembly shall elect ten other Members of the United Nations [that is, other than China, France, Russia, the United Kingdom, and the United States] to be non-permanent members of the Security Council, due regard being specially paid, in the first instance to the contribution of Members of the United Nations to the maintenance of international peace and security and to the other purposes of the Organization, and also to equitable geographical distribution.”<sup>44</sup> In 1963, the General Assembly passed a resolution “deciding that the ten non-permanent members of the Security Council shall be elected according to the following pattern”: five from African and Asian States; one from Eastern Europe States; two from Latin American States; and two from Western Europe and other States.<sup>45</sup> The first sentence of Article 23.1 (as amended) provides that members “shall be elected for a term of two years,” and the third sentence of that article provides that “[a] retiring member shall not be eligible for immediate re-election.”<sup>46</sup> Under the Rules of Procedures of the General Assembly, to win a seat on the Council, a Member must gain the votes of two-thirds of the Member States of the General Assembly present and voting.<sup>47</sup>

Before 2015, new members were elected in October of the year prior to the beginning of their term. But elected members protested that this hindered their ability to prepare for membership on the Council.<sup>48</sup> The General Assembly passed a Resolution in September of

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<sup>40</sup> *Id.* art. 97.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.* art. 99.

<sup>43</sup> See SIEVERS & DAWS, *supra* note 2, at 127.

<sup>44</sup> U.N. Charter art. 23, ¶ 1.

<sup>45</sup> See G.A. Res. 1991, ¶ A.1.3 (XVIII) (Dec. 17, 1963).

<sup>46</sup> U.N. Charter art. 23, ¶ 2.

<sup>47</sup> Rules of Procedure of the General Assembly, U.N. Doc. A/520/Rev.18\*, 23 (Feb. 21, 2017) (“Decisions of the General Assembly on important questions shall be made by a two-thirds majority of the members present and voting. These questions shall include: ... the election of the non-permanent members of the Security Council...”).

<sup>48</sup> See Martin, *supra* note 1, at 45.

2014 to move forward the date of elections from October to June of the previous year.<sup>49</sup> The Security Council also issued a Presidential Note in 2016 outlining the decision to move forward, from December 1 to October 1, the date at which it invites new members to observe meetings.<sup>50</sup>

Article 27 concerns voting in the Security Council. Article 27.1 provides that “[e]ach member of the Security Council shall have one vote.”<sup>51</sup> Under Article 27.1 (as amended to account for the increase in the size of the Council from eleven to fifteen members), “[d]ecisions of the Security Council on procedural matters shall be made by an affirmative vote of nine members.”<sup>52</sup> At least according to a scholarly account, the concept of “decisions” as used in that provision is broader than the concept of “decisions” in respect of Article 25: whereas Article 25 refers to legally binding decisions, Article 27 is said to also include procedural matters and other recommendations considered non-binding.<sup>53</sup> Per Article 27.3, “[d]ecisions 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.”<sup>54</sup> This provision reflects the so-called “veto power” of the five permanent members. Following the position expressed by the ICJ in an advisory opinion, a negative vote from any of the permanent members will bar a resolution from being adopted, whereas an abstention will not block the resolution from being adopted.<sup>55</sup>

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<sup>49</sup> See G.A. Res. 68/307 (Sept. 10, 2014) (noting the decision “to conduct the elections of the non-permanent members of the Security Council and the members of the Economic and Social Council about six months before the elected members assume their responsibilities”).

<sup>50</sup> See Note by the President of the Security Council, U.N. Doc. S/2016/619 (July 15, 2016) (“The Security Council invites the newly elected members of the Council to observe all meetings of the Council and its subsidiary organs and the informal consultations of the whole for a period of three months, as from 1 October immediately preceding their term of membership.”).

<sup>51</sup> U.N. Charter art. 27, ¶ 1.

<sup>52</sup> *Id.* art. 27, ¶ 2.

<sup>53</sup> See Andreas Zimmerman, *Article 27*, in *THE CHARTER OF THE UNITED NATIONS: A COMMENTARY*, *supra* note 12, at 888 (“[T]he notion of ‘decision’, as used in Art. 27, is a broad term encompassing more than just legally binding decisions contemplated by Art. 25, or measures taken under Chapter VII of the Charter. This broad understanding of the notion of ‘decisions’ is further confirmed by the drafting history of Art. 27: an attempt during the drafting to narrow down the notion of ‘decision’ was rejected, and the San Francisco Declaration, too, used an extensive concept of ‘decisions.’”).

<sup>54</sup> U.N. Charter art. 27, ¶ 3.

<sup>55</sup> *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276*, Advisory Opinion, 1971 I.C.J. 16, 22 (“[T]he proceedings of the Security Council extending over a long period supply abundant evidence that presidential rulings and the positions taken by members of the Council, in particular its permanent members, have consistently and uniformly interpreted the practice of voluntary abstention by a permanent member as not constituting a bar to the adoption of resolutions. By abstaining, a member does not signify its objection to the approval of what is being proposed; in order to prevent the adoption of a resolution requiring unanimity of the permanent members, a permanent member has only to cast a negative vote. This procedure followed by the Security Council, which has continued unchanged after the amendment in 1965 of Article 27 of the Charter, has been generally accepted by Members of the United Nations and evidences a general practice of that Organization.”)

Articles 28 to 32 set out provisions concerning certain other aspects of Security Council procedure. Article 28.1 provides that the Council “shall be so organized as to be able to function continuously. Each member of the Security Council shall for this purpose be represented at all times at the seat of the Organization.”<sup>56</sup> Under Article 28.2, the Council “shall hold periodic meetings at which each of its members may, if it so desires, be represented by a member of the government or by some other specially designated representative.”<sup>57</sup> Per Article 28.3, “[t]he Security Council may hold meetings at such places other than the seat of the Organization as in its judgment will best facilitate its work.”<sup>58</sup> Article 29, as noted above, lays down that “[t]he Security Council may establish such subsidiary organs as it deems necessary for the performance of its functions.”<sup>59</sup> These subsidiary organs have been said to include standing committees, such as the Committee on Admission of New Members, and ad hoc committees established to carry out a particular mandate to maintain international peace and security, including sanctions committees.<sup>60</sup> (While some scholars have suggested that working groups are too informal to be considered subsidiary organs under Article 29,<sup>61</sup> others have suggested that there is no formal legal difference between working groups and committees.<sup>62</sup> At least in certain seemingly relevant practice, these working groups are discussed as falling within the broad category of subsidiary organs, including on the U.N. website.<sup>63</sup>) According to international scholarly discourse, such subsidiary organs may be empowered by the Council to perform the Council’s own functions, including with respect to the power to make binding decisions.<sup>64</sup>

Under Article 30, “[t]he Security Council shall adopt its own rules of procedure, including the method of selecting its President.”<sup>65</sup> The Provisional Rules of Procedure were created in 1946 and have been modified a handful of times, most recently on December 21, 1980.<sup>66</sup> They cover such issues as calling meetings and record-keeping. However, many of the Council’s working methods discussed below, including Presidential Statements and informal consultations of the whole, are not expressly

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<sup>56</sup> U.N. Charter art. 28, ¶ 1.

<sup>57</sup> *Id.* art. 28, ¶ 2.

<sup>58</sup> *Id.* art. 28, ¶ 3.

<sup>59</sup> *Id.* art. 29.

<sup>60</sup> See Andreas Paulus, *Article 29*, in *THE CHARTER OF THE UNITED NATIONS: A COMMENTARY*, *supra* note 12, at 997–99.

<sup>61</sup> See *id.* at 996.

<sup>62</sup> See SIEVERS & DAWS, *supra* note 2, at 463; OPPENHEIM’S INTERNATIONAL LAW: UNITED NATIONS 209 (Rosalyn Higgins et al. eds., 2017).

<sup>63</sup> See *Working Groups*, UNITED NATIONS, <https://www.un.org/securitycouncil/content/repertoire/working-groups> [<https://perma.cc/Z9K7-73LS>].

<sup>64</sup> See Paulus, *supra* note 60, at 995.

<sup>65</sup> U.N. Charter art. 30.

<sup>66</sup> See Provisional Rules of Procedure of the Security Council, UN Doc. S/96/Rev.7. (1983) (hereinafter *Provisional Rules of Procedure*); see also Ingrid Jahn-Koch, *Article 30*, in *THE CHARTER OF THE UNITED NATIONS: A COMMENTARY*, *supra* note 12, at 1029.



mentioned in the Provisional Rules.<sup>67</sup> The organization Security Council Report has asserted that “informal procedures and practices in effect now govern much of the way that the Council operates in practice.”<sup>68</sup> Some of these informal procedures have been set out in Notes by the President, which will also be discussed later in this paper.

Articles 31 and 32 relate to participation in Security Council debates by parties not on the Council. Article 31 provides that “[a]ny Member of the United Nations which is not a member of the Security Council may participate, without vote, in the discussion of any question brought before the Security Council whenever the latter considers that the interests of that Member are specially affected.”<sup>69</sup> Under the first sentence of Article 32, “[a]ny Member of the United Nations which is not a member of the Security Council or any state which is not a Member of the United Nations, if it is a party to a dispute under consideration by the Security Council, shall be invited to participate, without vote, in the discussion relating to the dispute.”<sup>70</sup>

Articles 108 and 109 concern amendments to the Charter. Article 108 provides that an amendment shall come into force for all U.N. Members when two-thirds of Member States have voted to adopt the amendment and ratify it according to their respective constitutional processes.<sup>71</sup> This two-thirds must include “all the permanent members of the Security Council.”<sup>72</sup> The first sentence of Article 109.1 provides that a “General Conference of the Members of the United Nations for the purpose of reviewing the present Charter may be held at a date and place to be fixed by a two-thirds vote of the members of the General Assembly and by a vote of any nine members of the Security Council.”<sup>73</sup> Under Article 109.2, “[a]ny alteration of the ... Charter recommended by a two-thirds vote of the conference shall take effect when ratified in accordance with their respective constitutional processes by two thirds of the Members of the United Nations including all the permanent members of the Security Council.”<sup>74</sup>

## 2.5. In relation to What Areas May the Functions and Powers of the Security Council Arise?

The powers and functions of the Security Council may arise in relation to (among other areas) pacific settlement of disputes; action with respect to threats to the peace, breaches of the peace, and acts of aggression; and regional arrangements. Each of those three areas has its own chapter.

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<sup>67</sup> See Jahn-Koch, *supra* note 66, at 1036–41.

<sup>68</sup> *Special Research Report No. 3: Security Council Transparency, Legitimacy and Effectiveness*, SECURITY COUNCIL REP. 2 (2007).

<sup>69</sup> U.N. Charter art. 31.

<sup>70</sup> *Id.* art. 32.

<sup>71</sup> *Id.* art. 108.

<sup>72</sup> *Id.*

<sup>73</sup> *Id.* art. 109.

<sup>74</sup> *Id.* art. 109, ¶ 2.

Chapter VI of the Charter (Article 33–38) concerns pacific settlement of disputes. Article 33.1 provides that “[t]he parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.”<sup>75</sup> Under Article 33.2, “[t]he Security Council shall, when it deems necessary, call upon the parties to settle their dispute by such means.”<sup>76</sup> Per Article 34, “[t]he Security Council may investigate any dispute, or any situation which might lead to international friction or give rise to a dispute, in order to determine whether the continuance of the dispute or situation is likely to endanger the maintenance of international peace and security.”<sup>77</sup>

Article 36.1 provides that “[t]he Security Council may, at any stage of a dispute of the nature referred to in Article 33 [that is, a dispute the continuance of which is likely to endanger the maintenance of international peace and security] or of a situation of like nature, recommend appropriate procedures or methods of adjustment.”<sup>78</sup> Per Article 37.1, “[s]hould the parties to a dispute of the nature referred to in Article 33 fail to settle it by the means indicated in that Article, they shall refer it to the Security Council.”<sup>79</sup> Under Article 37.2, “[i]f the Security Council deems that the continuance of the dispute is in fact likely to endanger the maintenance of international peace and security, it shall decide whether to take action under Article 36 or to recommend such terms of settlement as it may consider appropriate.”<sup>80</sup> Finally, pursuant to Article 38, “[w]ithout prejudice to the provisions of Articles 33 to 37, the Security Council may, if all the parties to any dispute so request, make recommendations to the parties with a view to a pacific settlement of the dispute.”<sup>81</sup>

According to its title, Chapter VII concerns action with respect to threats to the peace, breaches of the peace, and acts of aggression. Pursuant to Article 39, “[t]he Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.”<sup>82</sup> Under Article 40, “[i]n order to prevent an aggravation of the situation, the Security Council may, before making the recommendations or deciding upon the measures provided for in Article 39, call upon the parties concerned to comply with such provisional measures as it deems necessary or desirable. Such provisional measures shall be without prejudice to the rights, claims, or position of the parties concerned. The Security Council

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<sup>75</sup> *Id.* art. 33, ¶ 1.

<sup>76</sup> *Id.* art. 33, ¶ 2.

<sup>77</sup> *Id.* art. 34.

<sup>78</sup> *Id.* art. 36, ¶ 1.

<sup>79</sup> *Id.* art. 37, ¶ 1.

<sup>80</sup> *Id.* art. 37, ¶ 2.

<sup>81</sup> *Id.* art. 38.

<sup>82</sup> *Id.* art. 39.

shall duly take account of failure to comply with such provisional measures.”<sup>83</sup> The first sentence of Article 41 lays down that “[t]he Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures.”<sup>84</sup> The second sentence of Article 41 provides that “[t]hese [measures] may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.”<sup>85</sup> Under the first sentence of Article 42, “[s]hould the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security.”<sup>86</sup> The second sentence of Article 42 provides that “[s]uch action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.”<sup>87</sup>

Drafters of the Charter envisioned the possibility that military operations could be carried out, at least in part, by armed forces made available to the Security Council by Member States. Pursuant to Article 43.1, “[a]ll Members of the United Nations, ..., undertake to make available to the Security Council, on its call and in accordance with a special agreement or agreements, armed forces, assistance, and facilities, including rights of passage, necessary for the purpose of maintaining international peace and security.”<sup>88</sup> The first sentence of Article 45 lays down in part that “Members shall hold immediately available national air-force contingents for combined international enforcement action.”<sup>89</sup> Under Article 46, “[p]lans for the application of armed force shall be made by the Security Council with the assistance of the Military Staff Committee.”<sup>90</sup> Article 47.1 provides that “[t]here shall be established a Military Staff Committee to advise and assist the Security Council on all questions relating to the Security Council’s military requirements for the maintenance of international peace and security, the employment and command of forces placed at its disposal, the regulation of armaments, and possible disarmament.”<sup>91</sup> However, while the Military Staff Committee was established and continues to meet, the military arrangements contemplated in these provisions of the Charter have never been instituted, due in part to tensions between certain permanent members of the Council. In practice, action taken by air, sea, or land forces as considered necessary by the Security Council to

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<sup>83</sup> *Id.* art. 40.

<sup>84</sup> *Id.* art. 41.

<sup>85</sup> *Id.*

<sup>86</sup> *Id.* art. 42.

<sup>87</sup> *Id.*

<sup>88</sup> *Id.* art. 43, ¶ 1.

<sup>89</sup> *Id.* art. 45.

<sup>90</sup> *Id.* art. 46.

<sup>91</sup> *Id.* art. 47, ¶ 1.

maintain or restore international peace and security has been carried out by various collections of national contingents.<sup>92</sup>

Under Article 48.1, “[t]he action required to carry out the decisions of the Security Council for the maintenance of international peace and security shall be taken by all the Members of the United Nations or by some of them, as the Security Council may determine.”<sup>93</sup> Per Article 48.2, “[s]uch decisions shall be carried out by the Members of the United Nations directly and through their action in the appropriate international agencies of which they are members.”<sup>94</sup> Pursuant to Article 49, “[t]he Members of the United Nations shall join in affording mutual assistance in carrying out the measures decided upon by the Security Council.”<sup>95</sup> Article 50 provides that “[i]f preventive or enforcement measures against any state are taken by the Security Council, any other state, whether a Member of the United Nations or not, which finds itself confronted with special economic problems arising from the carrying out of those measures shall have the right to consult the Security Council with regard to a solution of those problems.”<sup>96</sup>

Article 51 pertains to self-defense measures, including reporting them to the Security Council. The first sentence of Article 51 provides that “[n]othing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security.”<sup>97</sup> The second sentence of Article 51 lays down that “[m]easures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.”<sup>98</sup>

Chapter VIII (Articles 52 to 54) concerns regional arrangements. Article 52.1 emphasizes that “regional arrangements or agencies” can also address “matters relating to the maintenance of international peace and security” so long as “such arrangements and agencies and their activities are consistent with the Purposes and Principles of the United Nations.”<sup>99</sup> Paragraph 52.2 provides that Members who enter into such arrangements or constituting such agencies should “make every effort to achieve pacific settlement of local disputes through such regional arrangements or by such regional agencies before referring them to the Security Council.”<sup>100</sup> Article 52.3 states that “[t]he Security Council shall

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<sup>92</sup> See Nico Krisch, *Article 42*, in *THE CHARTER OF THE UNITED NATIONS: A COMMENTARY*, *supra* note 12, at 1333.

<sup>93</sup> U.N. Charter art. 48, ¶ 1.

<sup>94</sup> *Id.* art. 48, ¶ 2.

<sup>95</sup> *Id.* art. 49.

<sup>96</sup> *Id.* art. 50.

<sup>97</sup> *Id.* art. 51.

<sup>98</sup> *Id.*

<sup>99</sup> *Id.* art. 52, ¶ 1.

<sup>100</sup> *Id.* art. 52, ¶ 2.

encourage the development of pacific settlement of local disputes through such regional arrangements or by such regional agencies either on the initiative of the states concerned or by reference from the Security Council.”<sup>101</sup> Pursuant to the first sentence of Article 53.1, “[t]he Security Council shall, where appropriate, utilize such regional arrangements or agencies for enforcement action under its authority.”<sup>102</sup> Yet, under the second sentence of Article 53.1, “no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council, with the exception of measures against any enemy state, as defined in paragraph 2 of this Article, provided for pursuant to Article 107 or in regional arrangements directed against renewal of aggressive policy on the part of any such state, until such time as the Organization may, on request of the Governments concerned, be charged with the responsibility for preventing further aggression by such a state.”<sup>103</sup> In turn, per Article 53.2, “[t]he term enemy state as used in paragraph 1 of this Article applies to any state which during the Second World War has been an enemy of any signatory of the present Charter.”<sup>104</sup> Article 54 lays down that “[t]he Security Council shall at all times be kept fully informed of activities undertaken or in contemplation under regional arrangements or by regional agencies for the maintenance of international peace and security.”<sup>105</sup>

### 3. How May Elected Members Influence Security Council Decision-Making?

In this section, we highlight the primary modalities — including resolutions, Presidential Statements, and Notes by the President — through which the Security Council makes its decisions on various matters. We also outline some of the leadership roles that members of the Council can hold, which provide another avenue for elected members to influence Council decision-making. Finally, we note some of the ways in which Council members can influence the course of debates outside of the adoption of decisions and the chairing of the presidency or committees.

#### 3.1. What Are the Formats of Council Decisions?

##### 3.1.1. Resolutions and “Penholding”

According to a scholarly assessment, most of the Security Council’s decisions are made in the format of a resolution.<sup>106</sup> To be adopted, resolutions reflecting decisions on procedural matters require an affirmative vote of at least nine Council members.

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<sup>101</sup> *Id.* art. 52, ¶ 3.

<sup>102</sup> *Id.* art. 53, ¶ 1.

<sup>103</sup> *Id.*

<sup>104</sup> *Id.* art. 53, ¶ 2.

<sup>105</sup> *Id.* art. 54.

<sup>106</sup> See SIEVERS & DAWS, *supra* note 2, at 378.

Resolutions reflecting decisions on all other matters require not only an affirmative vote of nine members but also the concurring votes of all five of the permanent members.<sup>107</sup> Notably, this process gives the E10 a functional veto if they unite in opposition to a resolution drafted by a Member of the P5 or if even seven of the ten decide not to adopt the resolution.

Something of a custom has developed through which resolutions are often drafted by the Member State that is the de facto “lead” drafter of resolutions for that topic — a process known as “penholding.”<sup>108</sup> This practice is a relatively recent development, having apparently emerged as a consistent practice only in the 2000s.<sup>109</sup> Two Notes by the President (described further below), one in 2014 and another in 2017, have contributed to the practice’s current institutionalization.<sup>110</sup> Apparently, a penholder may choose to serve as the lead drafter of a resolution on a topic on which it “holds the pen” or it may collaborate with other Council members or, occasionally, with non-members.<sup>111</sup> Elected members have complained that the five permanent members, particularly the so-called P3 (France, the United Kingdom, and the United States), dominate the penholding process in practice by serving as the lead drafters of resolutions on a wide range of thematic and country-specific issues. Nonetheless, elected members have taken the lead on certain issues. In 2020, for example, elected members are the penholders at least for issues related to Afghanistan, Guinea-Bissau, Timor-Leste, West Africa, children and armed conflict, non-proliferation of WMDs, criminal tribunals, and working methods.<sup>112</sup> Elected members have also joined permanent members as co-penholders on certain issues. For example, Germany joined the United Kingdom as penholder for issues related to Libya sanctions in 2019–2020 and Darfur.<sup>113</sup>

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<sup>107</sup> Provided that, in decisions under Chapter VI, and under Article 52.3, a party to a dispute shall abstain from voting. U.N. Charter art. 27, ¶ 3.

<sup>108</sup> See Émilie Max, *Room for Manoeuvre? Promoting International Humanitarian Law and Accountability While at the United Nations Security Council: A Reflection on the Role of Elected Members*, GENEVA ACADEMY OF INT’L HUMANITARIAN L. & HUM. RIGHTS, Briefing No. 17 (Oct. 2020), <https://www.geneva-academy.ch/joomlatools-files/docman-files/Briefing%2017.pdf> [<https://perma.cc/3DJF-G7JP>] (stating, with respect to situations of armed conflict in particular, that “[i]f the permanent members do not chair subsidiary organs, the P3 (the United States, United Kingdom and France) hold the pen on many – if not most – of the Security Council’s recurring items linked to specific situations of armed conflict. And this is even the case for situations covered by the work of a subsidiary organ. Importantly, such an informal system, referred to as ‘penholdership’, entails not only the negotiation and drafting of outcomes but also the authority to call meetings and to organise field visits. In other words, holding the pen amounts to controlling the substantive input necessary to the formation of Security Council decisions”) (emphasis added; citations omitted).

<sup>109</sup> See *Lead Roles Within the Council in 2020: Penholders and Chairs of Subsidiary Bodies*, SECURITY COUNCIL REP. (Jan. 31, 2020), <https://www.securitycouncilreport.org/monthly-forecast/2020-02/lead-roles-within-the-council-in-2020-penholders-and-chairs-of-subsiary-bodies.php> [<https://perma.cc/WAG4-MVLT>].

<sup>110</sup> See Martin, *supra* note 1, at 49.

<sup>111</sup> See SIEVERS & DAWES, *supra* note 2, at 394.

<sup>112</sup> See *2020 Chairs of Subsidiary Bodies and Penholders*, SECURITY COUNCIL REP. (2020), [https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/penholders\\_and\\_chairs\\_2020.pdf](https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/penholders_and_chairs_2020.pdf) [<https://perma.cc/5SZ3-UXSA>].

<sup>113</sup> See *Lead Roles Within the Council in 2020*, *supra* note 109.

Certain elected members have argued that the penholder system has reduced leadership opportunities for elected members. A 2015 statement from six elected members from six regions asserted that the penholder system “has diminished the opportunity for wider Council engagement, especially by the elected members.”<sup>114</sup> In 2016, the permanent representative of New Zealand, which was at the time an elected member, stated that “[p]enholders routinely take zero drafts straight to meetings of so-called experts. This precludes any real effort at building genuine consensus on the key policy questions to be considered. Non-penholders have to choose between accepting a text largely as presented, or risk being accused of torpedoing important documents if they wish to make substantive policy proposals.”<sup>115</sup> Some elected members have also expressed reluctance to make significant changes to resolutions, particularly those that have been drafted through a painstaking negotiation among the P5.<sup>116</sup>

However, there is no legal requirement that texts adopted by the Security Council be drafted by the penholder for that particular topic. As the Security Council Report puts it, “it is an informal system, with nothing preventing other Council members from ‘grabbing the pen’ and drafting outcomes on any issue.”<sup>117</sup> In recent years, elected members have challenged the (current) dominance of the penholder process by putting forth draft resolutions on issues on which they had not been designated the penholders. Examples include resolutions on the use of famine as an instrument of warfare and healthcare in armed conflict, both of which were subsequently adopted, as described in more detail below.<sup>118</sup>

### 3.1.2. Presidential Statements

As a general matter, the label given to a text adopted by the Security Council is inconclusive regarding whether or not the text or a portion thereof constitutes a decision in the sense of Article 25.<sup>119</sup> For their part, “Presidential Statements” — which have arisen through informal practice — are texts apparently adopted by consensus and issued in the President’s name on behalf of the Security Council.<sup>120</sup> There is no legal hierarchy in general between the types of texts adopted by the Council that are capable of containing a decision in the sense of Article 25. However, resolutions are typically seen as a more appropriate type of text in which to make a decision of greater gravity, such as decisions made under Chapter VII of the U.N. Charter. Presidential Statements seem to be used for decisions or

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<sup>114</sup> Martin, *supra* note 1, at 49.

<sup>115</sup> *Id.* at 49–50.

<sup>116</sup> See Jan Wouters & Nina Pineau, *Belgium in the UN Security Council: Responsibility Without Power?*, in ELECTED MEMBERS OF THE SECURITY COUNCIL, *supra* note 1, at 135.

<sup>117</sup> *Lead Roles Within the Council in 2020*, *supra* note 109.

<sup>118</sup> See Gerard van Bohemen, *The Role of Elected Members on the UN Security Council: The New Zealand Experience 2015–16*, in ELECTED MEMBERS OF THE SECURITY COUNCIL, *supra* note 1, at 107.

<sup>119</sup> See Peters, *supra* note 12, at 792 fn. 18.

<sup>120</sup> See SIEVERS & DAWES, *supra* note 2, at 398.

recommendations (or both) of intermediate magnitude, often of lesser gravity than resolutions but of a higher gravity than Notes by the President and letters by the President.<sup>121</sup> The legal status of (parts of) texts labeled Presidential Statements has also been contested. On the one hand, some scholars argue that Presidential Statements do not constitute legally binding decisions in the sense of Article 25 of the Charter.<sup>122</sup> On the other hand, it has been argued that “there is no a priori reason why a presidential statement or other decision format cannot convey a mandatory decision by the Council.”<sup>123</sup>

Irrespective of the legal status of (a part of) its text, Presidential Statements may serve a number of important functions. For example, Presidential Statements have been used to lay out the Council’s general position on a developing issue without committing to binding courses of actions, such as sanctions or a referral to the International Criminal Court. This modality also allows the Council to express views on contentious issues on which it might not agree on a particular binding action. For example, Australia and Luxembourg drafted a Presidential Statement on the humanitarian crisis in Syria in October of 2013 that, as compared to earlier resolutions adopted by the Council on the Syrian conflict, called upon Syrian authorities to take more specific steps to “facilitate the expansion of humanitarian relief operations,” including “expediting the approval of further domestic and international Non-Governmental Organizations” and “easing and expediting the procedures for the operationalization of further humanitarian hubs.”<sup>124</sup> Australia and Luxembourg reportedly chose to draft a Presidential Statement due to the concern that Russia might veto any resolution on Syria that was too critical of President Bashar al-Assad’s government.<sup>125</sup>

Presidential Statements might also serve as a prelude to resolutions. For example, a Presidential Statement was issued during the presidency of the Netherlands on strengthening the rule of law in peacekeeping operations in May of 2018;<sup>126</sup> this Statement ultimately led to the unanimous adoption of Resolution 2447 in December of 2018, which “[r]equests the Secretary-General to examine ways to strengthen United Nations assistance to police, justice and corrections institutions to host countries.”<sup>127</sup> In 1999, the Council, following a debate chaired by Canadian Foreign Minister Lloyd Axworthy, adopted a Presidential Statement affirming “the need for the international community to assist and protect civilian populations affected by armed conflict.”<sup>128</sup> As a follow-up, the Security

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<sup>121</sup> See *id.* at 402.

<sup>122</sup> See OPPENHEIM’S INTERNATIONAL LAW, *supra* note 62, at 94 n.242.

<sup>123</sup> SIEVERS & DAWES, *supra* note 2, at 381.

<sup>124</sup> S.C. Pres. Statement 2013/15, ¶ 14 (Oct. 2, 2013).

<sup>125</sup> See *Syria: Addressing the Humanitarian Crisis*, WHAT’S IN BLUE (Oct. 2, 2013), <https://www.whatsinblue.org/2013/10/syria-addressing-the-humanitarian-crisis.php#> [<https://perma.cc/8UC2-YP4P>].

<sup>126</sup> See S.C. Pres. Statement 2018/10 (2018).

<sup>127</sup> S.C. Res. 2447, ¶ 12 (Dec. 13, 2018); see also Nico Schrijver, *The Dutch Approach of Promoting the International Rule of Law and Constructive Multilateralism on the Security Council*, in ELECTED MEMBERS OF THE SECURITY COUNCIL, *supra* note 1, at 130.

<sup>128</sup> S.C. Pres. Statement 1999/6 (Feb. 12, 1999); see also Alistair Edgar, *Pursuing Peace and Justice on the Security Council: The Canadian Experience*, in ELECTED MEMBERS OF THE SECURITY COUNCIL, *supra* note 1, at 94.



Council requested a report from the Secretary-General, which ultimately led to the adoption of Resolutions 1265 (1999) and 1296 (2000), the first two in a series of resolutions on the protection of civilians in armed conflict.<sup>129</sup>

Presidential Statements can also be used to formulate broader priorities for the Council, even if they do not result in a resolution. In 2007, Belgium convened an open debate on natural resources and armed conflict, which resulted in a Presidential Statement.<sup>130</sup> The Statement laid down a number of principles, including “the need for the private sector to contribute to the good governance and avoidance of illegal exploitation of natural resources in countries in conflict” and “the important role...of transparent and effective national security and customs structures.”<sup>131</sup> These principles have then been applied in country-specific resolutions, including through the imposition of sanctions on private sector entities that contribute to armed conflicts through the trade of natural resources.<sup>132</sup>

### 3.1.3. Letters by the President

Like Presidential Statements, letters by the President are apparently consensus documents adopted by the entire Council. According to a scholarly account, letters are typically issued in the form of a letter from the Council to convey a decision to the Secretary-General.<sup>133</sup> For example, letters by the President have been used to expand or extend peacekeeping missions.<sup>134</sup> Today, letters by the President are frequently used to (among other things) respond to the appointment of new envoys of the Secretary-General and new peacekeeping commanders.<sup>135</sup> While most of these letters are formalities noting that the Council has “taken note” of the Secretary-General’s decision, some letters include requests for more information about the appointments.<sup>136</sup>

### 3.1.4. Notes by the President

Notes by the President are also consensus statements apparently adopted on behalf of the Council. Whereas resolutions, Presidential Statements, and presidential letters often pertain to matters of a substantive nature, Notes by the President, such as Note 507 discussed below,

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<sup>129</sup> See Daniëlla Dam-de Jong, *Elected Members and Agenda-Setting: The Security Council as Peace Broker*, in ELECTED MEMBERS OF THE SECURITY COUNCIL, *supra* note 1, at 203 (“[T]he normative framework that the Security Council built in these thematic resolutions has also impacted its country-specific resolutions.”).

<sup>130</sup> See S.C. Pres. Statement 2007/22 (June 25, 2007).

<sup>131</sup> *Id.*

<sup>132</sup> See, e.g., S.C. Res. 1857, ¶ 4(g) (Dec. 22, 2008) (imposing sanctions on “[i]ndividuals or entities supporting the illegal armed groups in the eastern part of the Democratic Republic of the Congo through illicit trade of natural resources”). For more examples along these lines, see Dam-de Jong, *supra* note 129, at 206–07.

<sup>133</sup> See SIEVERS & DAWES, *supra* note 2, at 426.

<sup>134</sup> See, e.g., U.N. President of the S.C., Letter dated Apr. 10, 1995 from the President of the Security Council to the Secretary-General, U.N. Doc. S/1995/280 (Apr. 10, 1995) (“I have the honour to inform you that the members of the Council concur with your recommendation that UNIKOM be maintained.”).

<sup>135</sup> See SIEVERS & DAWES, *supra* note 2, at 427.

<sup>136</sup> *Id.* at 427–28.

are more commonly used to institute changes regarding Council-related procedures. They are usually developed in the Informal Working Group on Documentation and Other Procedural Questions (IWG), which is chaired by elected members.<sup>137</sup> Notes by the President thus provide an opportunity for leadership by elected members.

One of the most influential Notes by the President is Note 507, which was adopted in 2006 and which serves — in the terminology of one scholar — as the “chief working methods instrument” of the Security Council.<sup>138</sup> Note 507 has been updated multiple times, most recently under Japan’s leadership, as head of the IWG, in 2017. In the latest update to Note 507, additional guidelines were formulated for the appointments of penholders and heads of subsidiary bodies.<sup>139</sup> For example, in an effort to increase the input of elected members on resolution drafting, the update stressed that penholders should “present and discuss the draft with all members of the Security Council in at least one round of informal consultations or informal-informals,” as well as “provide a reasonably sufficient time for consideration by all Council,” depending on “the subject as well as the urgency of the situation on the ground.”<sup>140</sup> Note 507 also stated that, to give elected members more time to prepare for their role in leading subsidiary bodies,<sup>141</sup> the Council “should make every effort to agree provisionally on the appointment of the Chairs of the subsidiary bodies for the following year no later than 1 October.”<sup>142</sup> In this respect, in its role as head of one of the Council’s subsidiary organs (IWG), Japan worked to increase elected members’ ability to make a difference in the Council’s other subsidiary organs.

### 3.1.5. Press Statements

Unlike the above categories of texts adopted by the Council, press statements apparently are seen as conveying the views of “members of the Council” but not the Council itself.<sup>143</sup> Press statements might serve several functions. For example, they might be used to indicate that the Council has “begun to watch a situation” that “might be taken up more formally by the Council” at a later date.<sup>144</sup> They may also provide a modality for the Council to respond more rapidly to current events, such as terrorist attacks or natural disasters. Press statements are delivered by the President of the Council, and thus may afford the State holding the presidency — including, where applicable, elected members — the opportunity to speak on an issue, particularly if the President is authorized to answer questions in a

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<sup>137</sup> See Joanna Harrington, *The Working Methods of the United Nations Security Council: Maintaining the Implementation of Change*, 66 INT’L & COMP. L. Q. 39, 58 (2017).

<sup>138</sup> Isobel Roele, *Around Arendt’s Table: Bureaucracy and the Non-Permanent Members of the UN Security Council*, 33 LEIDEN J. INT’L L. 117, 128 (2020).

<sup>139</sup> See *Lead Roles Within the Council in 2020*, *supra* note 109.

<sup>140</sup> Note by the President of the Security Council, U.N. Doc. S/2017/507, ¶¶ 81–82 (Aug. 30, 2017).

<sup>141</sup> It appears that the terms “subsidiary bodies” and “subsidiary organs” are used more or less interchangeably in this area.

<sup>142</sup> Note by the President of the Security Council, U.N. Doc. S/2017/507, ¶ 111 (Aug. 30, 2017).

<sup>143</sup> See SIEVERS & DAWS, *supra* note 2, at 431; see also Zimmerman, *supra* note 53, at 889.

<sup>144</sup> SIEVERS & DAWS, *supra* note 2, at 433.

press conference.<sup>145</sup> However, press statements are typically drafted by the penholder on a given issue, which may diminish the ability of elected members to influence the content of press statements addressing the many issues on which the P3, in particular, hold the pen.<sup>146</sup>

## 3.2. What Leadership Roles Offer Additional Opportunities for Impact?

### 3.2.1. Chairing Sanctions Committees and Other Subsidiary Organs

In the fall before they take office, elected members are appointed to positions as chairs of subsidiary organs, such as sanctions committees. Currently, all subsidiary organs other than the Military Staff Committee are headed by elected members.<sup>147</sup> One scholar has argued that “[i]t suits the permanent members to have elected members take on the considerable burden of chairing sanctions committees and other subsidiary bodies (while consensus decision-making ensures that there is no loss of control by the permanent members).”<sup>148</sup> Before 2016, permanent members simply allocated the chairs of subsidiary organs on their own. Following a push by elected members, the new process for selection involves cooperation between the elected member chairing the IWG and one permanent member.<sup>149</sup> While the deadline for determining chairs of subsidiary organs is supposed to be October 1, according to the 2017 revision of Presidential Note 507,<sup>150</sup> that deadline reportedly has been missed every year since the new process has been used.<sup>151</sup> As of July of 2020, the Council has fourteen sanctions committees covering various situations, including regarding the Democratic Republic of the Congo (DRC), North Korea, Libya, and Al-Qaeda/ISIL.<sup>152</sup> The Council also has working groups on children and armed conflict; conflict prevention and resolution in Africa; peacekeeping operations; international tribunals; weapons of mass destruction proliferation; protection of civilians; women, peace, and security; and working methods.<sup>153</sup>

Chairing these committees and working groups offers elected members opportunities for leadership on the Council. Rule 28 of the Provision Rules of Procedure states that the “[t]he Chairman of a commission or committee, or the rapporteur appointed by the

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<sup>145</sup> See *id.* at 434.

<sup>146</sup> See *id.* at 433.

<sup>147</sup> See *In Hindsight: Chairing the Security Council’s Subsidiary Bodies*, SECURITY COUNCIL REP. (Mar. 29, 2019), <https://www.securitycouncilreport.org/monthly-forecast/2019-04/in-hindsight-chairing-the-security-councils-subsubsidiary-bodies.php> [<https://perma.cc/4T2X-VQF5>].

<sup>148</sup> Martin, *supra* note 1, at 45.

<sup>149</sup> See *id.* at 45–46.

<sup>150</sup> See Note by the President of the Security Council, U.N. Doc. S/2017/507, ¶ 111 (Aug. 30, 2017) (“The members of the Security Council should make every effort to agree provisionally on the appointment of the Chairs of the subsidiary bodies for the following year no later than 1 October.”).

<sup>151</sup> See *In Hindsight: Chairing the Security Council’s Subsidiary Bodies*, *supra* note 147.

<sup>152</sup> See *2020 Chairs of Subsidiary Bodies and Penholders*, *supra* note 112.

<sup>153</sup> See *id.*

commission or committee to present its report, may be accorded precedence for the purpose of explaining the report.”<sup>154</sup> Following this rule, the chairs of subsidiary organs have primary responsibility for briefing the rest of the Council. In addition, chairs of subsidiary organs—particularly those whose mandates involve specific countries—often travel to those countries on behalf of the committee.<sup>155</sup>

However, there are limitations on the degree of influence that subsidiary-organ chairs can have. It is Council practice that subsidiary organs make decisions by consensus; that, in turn, gives each Council member an effective veto.<sup>156</sup> One Permanent Representative of an elected member argued that subsidiary-organ chairs “should be entrusted with a higher degree of independence, without being hamstrung or micromanaged in the discharge of their mandates” by the rest of the Council — particularly permanent members who veto their initiatives.<sup>157</sup> Elected members have also noted that chairing subsidiary organs, particularly those like sanctions committees that can require highly technical knowledge, may come with a substantial learning curve.<sup>158</sup>

Nonetheless, as chairs of subsidiary organs, many elected members have worked to influence the policy direction of those organs. For example, elected members have sought to introduce substantive and procedural reforms in sanctions regimes. As successive chairs of the so-called 1267 sanctions committee, which currently covers al-Qaeda, ISIS, and associated groups, Germany and Sweden advocated for the committee to adopt the concept of so-called “smart” sanctions.<sup>159</sup> These are measures designed to more specifically target a State’s leadership rather than its citizens, including asset freezes and travel bans. The smart-sanctions movement led to the adoption of some innovations, including sunset clauses and humanitarian-impact assessments.<sup>160</sup>

Elected members also helped to reform the procedure of the 1267 sanctions committee. In its 2008 *Kadi* decision, the European Court of Justice concluded that the 1267 sanctions committee and the European Community’s regulation implementing Resolution 1267 failed to respect the due-process rights of individuals designated for sanctions, noting that “an applicant submitting a request for removal from the list may in no way assert his rights himself during the procedure before the Sanctions Committee or be represented for that purpose, the Government of his State of residence or of citizenship alone having the right to submit observations on that request.”<sup>161</sup> Austria advocated for the establishment of a

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<sup>154</sup> Provisional Rules of Procedure, *supra* note 66, at Rule 28.

<sup>155</sup> See U.N. SCOR, 73d Sess., 8428th mtg. at 11, U.N. Doc. S/PV.8428 (Dec. 17, 2018).

<sup>156</sup> See *id.*

<sup>157</sup> *Id.*

<sup>158</sup> See *id.* at 12.

<sup>159</sup> Jeremy Farrall & Christopher Michaelsen, *Managing the Ebb and Flow of Sanctions Reform: An Important Role for Non-Permanent Members*, in ELECTED MEMBERS OF THE SECURITY COUNCIL, *supra* note 1, at 223.

<sup>160</sup> See *id.* at 224.

<sup>161</sup> Joined Cases C-402/05P & C-415/05P, *Kadi & Al Barakaat v. Comm’n*, 2008 E.C.R. I-6352, ¶ 324.

1267 Ombudsperson who would impartially review the designations.<sup>162</sup> The role was ultimately established in Resolution 1904 (2009).<sup>163</sup> Germany, Australia, and New Zealand subsequently helped to oversee the implementation of the Ombudsperson role.<sup>164</sup> These efforts included a reform under which any “recommendation” from the Ombudsperson can be overturned only through consensus of the Council, which gives the E10 significant power as they outnumber the P5 2–1.<sup>165</sup> Regarding the Ombudsperson role, Kimberly Prost, who once held the position, argues that “[m]uch of what has been attained, and the sustained support which has been generated for the Office, has been due to efforts from, and through, the elected members of the Security Council.”<sup>166</sup>

Elected members can also use their positions as chairs of working groups to push for substantive reforms in a range of areas. For example, Giuseppe Nesi, a former legal advisor at the Permanent Mission of Italy to the United Nations, has argued that the Informal Working Group on International Tribunals (IWGIT) could catalyze reforms in international criminal justice.<sup>167</sup> Nesi argues that laying down a broader mandate for the IWGIT, and thereby giving greater acknowledgment to the Security Council’s role in international criminal justice, could “contribute to increasing the deterrent effect towards the commission of international crimes and favor the rule of law at the national and international level.”<sup>168</sup>

### 3.2.2. Chairing the Presidency

The Security Council presidency rotates monthly in English alphabetical order.<sup>169</sup> This practice allows elected members to chair the council at least once, and perhaps twice, in their two-year tenure. The Council’s Provisional Rules of Procedure set out the President’s duties, which include convening meetings “at any time he deems necessary” or at the request of other members, approving the agenda for meetings as drawn up by the Secretary-General, and presiding over meetings.<sup>170</sup> The representative of the State holding the presidency thus serves a dual-hatted role during that time, serving variously as the “neutral” presiding officer or the representative of her State.

Given the President’s role in approving meeting agendas, the Member holding the Council’s presidency has some degree of influence over the Council’s agenda for that

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<sup>162</sup> See Kimberly Prost, *The Office of the Ombudsperson and the Elected Members of the Security Council*, in ELECTED MEMBERS OF THE SECURITY COUNCIL, *supra* note 1, at 241–243.

<sup>163</sup> See S.C. Res. 1904 (Dec. 17, 2009); see also Jeremy Farrall et al., *Elected Member Influence in the United Nations Security Council*, 33 LEIDEN J. INT’L L. 101, 109 (2020)

<sup>164</sup> See Farrall et al., *supra* note 163, at 109.

<sup>165</sup> See Prost, *supra* note 162, at 245.

<sup>166</sup> *Id.* at 237.

<sup>167</sup> See Giuseppe Nesi, *Non-Permanent Members of the Security Council and International Criminal Justice: A Proposal for Revitalization*, in ELECTED MEMBERS OF THE SECURITY COUNCIL, *supra* note 1, at 276.

<sup>168</sup> *Id.* at 278.

<sup>169</sup> See Provisional Rules of Procedure, *supra* note 66, at Rule 18.

<sup>170</sup> *Id.* at Rule 1, 7, 19.

month. Members will often prepare a proposed agenda before taking over as President, and typically the agenda will be announced in advance of that country's presidency.<sup>171</sup> For example, during its presidency in February of 2020, Belgium held an open debate on transitional justice and a high-level briefing on "integrating child protection into peace processes to resolve conflict and sustain peace."<sup>172</sup> Presidents will occasionally produce a "concept paper" or "concept note" before those meetings to brief other Member States, a process reportedly started by the Netherlands in 2000 for a meeting on peace operations.<sup>173</sup> These concept notes allow the President to influence the direction of debates on a particular topic.<sup>174</sup> Furthermore, by providing this background for the discussion, concept notes can help facilitate genuine debate on a topic by encouraging Council members to respond to the note itself, rather than just relying on pre-written statements.<sup>175</sup> A 2012 Note by the President encouraged the use of concept papers to help focus discussion during debates.<sup>176</sup>

### 3.3. How Can Members Influence the Debates of the Council?

While Council members have the most influence over the agenda during their time as President, they can also raise issues for discussion during Council meetings and debates. The aforementioned Presidential Note 507 clarified the distinctions between different types of Council debates.<sup>177</sup> The Note outlined four different types of "public meetings": (a) "open debate," in which Council members may make statements and non-Council members "may also be invited to participate in the discussion upon their request"; (b) "debate," in which Council members may make statements and non-Council members "that are directly concerned or affected or have special interest in the matter under consideration may be invited to participate in the discussion upon their request"; (c) "briefing," in which Council members may make statements; and (d) "adoption," in which Council members may make statements before the adoption of a resolution or Presidential Statement and non-Council members "may or may not be invited to participate in the discussion upon their request."<sup>178</sup> The Note also laid out two different types of "private meetings": (a) "private meeting," in which Council members may give statements and non-Council members "may be invited to be present or to participate in the discussion, upon their request"; and (b) "TCC meeting," or meetings with "troop-contributing countries" to peacekeeping missions, in which Council

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<sup>171</sup> See, e.g., *February 2020 Monthly Forecast*, SECURITY COUNCIL REP. (Jan. 31, 2020), <https://www.securitycouncilreport.org/monthly-forecast/2020-02/overview-16.php> [<https://perma.cc/ZZ2H-QZZG>].

<sup>172</sup> *Id.*

<sup>173</sup> See SIEVERS & DAWS, *supra* note 2, at 118.

<sup>174</sup> See Alejandro Rodiles, *Non-Permanent Members of the United Nations Security Council and the Promotion of the Rule of Law*, 5 GOETTINGEN J. INT'L L. 333, 367 (2013).

<sup>175</sup> See John Langmore & Jeremy Farrall, *Can Elected Members Make a Difference in the UN Security Council? Australia's Experience in 2013–2014*, 22 GLOB. GOVERNANCE 59, 70 (2016).

<sup>176</sup> See SIEVERS & DAWS, *supra* note 2, at 118.

<sup>177</sup> See Note by the President of the Security Council, U.N. Doc. S/2017/507 (Aug. 30, 2017).

<sup>178</sup> *Id.* ¶ 21.

members may give statements and troop-contributing countries, as well as host countries to peacekeeping missions and other relevant U.N. agencies specified in Resolution 1353 (2001), “are invited to participate in the discussion.”<sup>179</sup> Although the “official record” of public meetings is published,<sup>180</sup> the Council “may decide that for a private meeting the record shall be made in a single copy alone... by the Secretary-General.”<sup>181</sup>

Separate from these formally outlined “public meetings” and “private meetings” are “informal consultations of the whole,” also known as “closed meetings.”<sup>182</sup> Reportedly, the Council has increasingly conducted its business in such a format since the end of the Cold War.<sup>183</sup> For example, debates about the content of resolutions typically occur during informal consultations of the whole, rather than public meetings.<sup>184</sup>

For those types of “public meetings” or “private meetings” set out in Presidential Note 507, the Provisional Rules of Procedure outline a formal process of approving the agenda. As noted above, the President of the Council approves the “provisional agenda” before each meeting, according to Rule 7 of the Provisional Rules.<sup>185</sup> For an item to be added to the provisional agenda, it must be “brought to the attention of the representatives of the Security Council” through a communication to the Secretary-General,<sup>186</sup> who, under Rule 6 of the Provisional Rules, “shall immediately bring to the attention of all representatives on the Security Council all communications from States, organs of the United Nations, or the Secretary-General concerning any matter for the consideration of the Security Council in accordance with the provisions of the Charter.”<sup>187</sup> This “provisional agenda” is then circulated to all Council members at least twenty-one days in advance of the meeting.<sup>188</sup> If an agenda item is contested, a Council member may request a procedural vote; according to Article 27.2 of the Charter, such procedural votes are not subject to the veto of the five permanent members.<sup>189</sup>

In contemporary practice, there are several recurring country-specific and thematic topics on the Council’s agenda. These topics are outlined in a weekly “summary statement of matters of which the Security Council is seized,” issued by the Secretary-General following Rule 11 of the Provisional Rules.<sup>190</sup> Presidential Note 507 states that this “summary

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<sup>179</sup> *Id.*; see also S.C. Res. 1353 (June 13, 2001).

<sup>180</sup> Provisional Rules of Procedure, *supra* note 66, at Rule 54.

<sup>181</sup> *Id.* at Rule 51.

<sup>182</sup> Oppenheim’s International Law, *supra* note 62, at 77.

<sup>183</sup> See *id.*

<sup>184</sup> See *id.*

<sup>185</sup> Provisional Rules of Procedure, *supra* note 66, at Rule 7.

<sup>186</sup> *Id.*

<sup>187</sup> *Id.* at Rule 6.

<sup>188</sup> *Id.* at Rule 12.

<sup>189</sup> See U.N. Charter art. 27, § 2; see also *Procedural Vote*, SECURITY COUNCIL REP. (Mar. 7, 2020), <https://www.securitycouncilreport.org/un-security-council-working-methods/procedural-vote.php> [<https://perma.cc/8RX7-LY5P>].

<sup>190</sup> Provisional Rules of Procedure, *supra* note 66, at Rule 11.

statement” should include “items which have been considered by the Security Council at a formal meeting during the preceding three-year period”; items that have not been discussed in the preceding three years are removed from the statement unless “the Security Council has decided to retain” that topic “at the request of a Member State.”<sup>191</sup> The first “summary statement” of each month includes the full list of items, whereas statements released after the first week of each month include only those topics on which the Council has taken action in the preceding week.<sup>192</sup>

These “matters of which the Security Council is seized” include both country-specific and thematic topics. Thematic topics of which the Council is currently seized include (among others) protection of civilians in armed conflict, children and armed conflict, small arms, and non-proliferation of weapons of mass destruction.<sup>193</sup> In some cases, elected members have succeeded in introducing new thematic topics that have then been repeatedly discussed in subsequent Council meetings. For example, during its term on the Council in 1999–2000, Canada was instrumental in adding protection of civilians to the Council’s agenda,<sup>194</sup> a topic of which the Council remains “seized.”<sup>195</sup> In certain other cases, while the thematic topic did not become an area of frequent subsequent discussion by the Council, elected members organized meetings on new issues at the intersection of commonly discussed thematic issues, as Belgium did in 2007 on the issue of natural resources and armed conflict.<sup>196</sup> Groups of non-permanent members from the same region have used thematic debates to make joint statements as a showing of unity. For example, during thematic debates in 2019, the three African members of the Council (A3)—Cote d’Ivoire, Equatorial Guinea, and South Africa—made 16 joint statements.<sup>197</sup> One scholar suggests that “[d]ebates on particular themes—either because these are genuinely cross-cutting in terms of the Council’s practice or because of their (future) implications for international peace and security—can be an effective format for elected members to ensure a more lasting effect on the Security Council’s practice.”<sup>198</sup> However, in recent years, about 70 percent of debates have related to country-specific issues, which might curtail elected members’ efforts to add broader substantive issues to the agenda.<sup>199</sup>

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<sup>191</sup> Note by the President of the Security Council, U.N. Doc. S/2017/507, ¶ 18 (Aug. 30, 2017).

<sup>192</sup> *Id.* ¶ 19.

<sup>193</sup> See U.N. Security Council, Summary Statement by the Secretary-General of Matters of which the Security Council is Seized and of the Stage Reached in their Consideration, U.N. Doc. S/2020/10 (Jan. 2, 2020).

<sup>194</sup> See Alex Bellamy, *Elected Security Council Members: Power, Process, Purpose*, ETHICS & INT’L AFF. (Oct. 2012), <https://www.ethicsandinternationalaffairs.org/2012/elected-security-council-members-power-process-purpose/> [<https://perma.cc/P6WT-KCD8>].

<sup>195</sup> See U.N. Security Council, Summary Statement by the Secretary-General of Matters of which the Security Council is Seized and of the Stage Reached in their Consideration, U.N. Doc. S/2020/10 (Jan. 2, 2020).

<sup>196</sup> See Dam-de Jong, *supra* note 129, at 205.

<sup>197</sup> See Gustavo de Carvalho & Daniel Forti, *How Can African States Become More Influential in the UN Security Council?*, IPI GLOBAL OBSERVATORY (Mar. 12, 2020), <https://theglobalobservatory.org/2020/03/how-can-african-states-become-more-influential-un-security-council/> [<https://perma.cc/F5CQ-WPQZ>].

<sup>198</sup> Dam-de Jong, *supra* note 129, at 208.

<sup>199</sup> See Schrijver, *supra* note 127, at 126.



Informal meetings, such as “Arria-formula” meetings, offer an additional avenue for elected members to raise new issues for consideration. Named after Venezuelan Ambassador Diego Arria, “Arria-formula” meetings occur outside of the Council’s Consultation Room and are not formally considered an “activity” of the Council.<sup>200</sup> As such, they allow for conversations with other stakeholders (including non-state actors) who otherwise may not be “invited” to speak in one of the public or private meeting formats outlined in Note 507, as discussed above.<sup>201</sup> For example, the Council’s first discussion of the humanitarian crisis in Darfur took place in an “Arria-formula” meeting.<sup>202</sup> “Arria-formula” meetings also provide elected members with the opportunity to discuss and promote issues that permanent members might try to prevent from being discussed in the types of public or private meetings outlined above. In 2014, Australia organized an “Arria-formula” meeting to initiate a debate around DPRK human-rights abuses, bringing two former DPRK detainees to the meeting.<sup>203</sup> The “Arria-formula” setting was reportedly crucial to Australia’s successful effort to gain support from eleven States for putting “the situation in the Democratic People’s Republic of Korea” on the Council’s agenda<sup>204</sup> (as noted above, under Article 27.2 of the U.N. Charter, votes on procedural matters, such as the adoption of an agenda item, are not subject to a P5 veto<sup>205</sup>). The meeting centered on a letter issued by ten States, including Australia, which emphasized “the scale and gravity of human rights violations” in North Korea.<sup>206</sup> It was reportedly the first Security Council meeting to focus specifically on this topic.<sup>207</sup>

#### 4. What Specific Initiatives Have Elected Members Championed?

In this section, we seek to elaborate on a few examples of initiatives for which elected members have attempted to gather support during their terms on the Council. These case studies illustrate how elected members have navigated the procedure of the Council to advocate for particular outcomes. In some cases, elected members have done so on their own initiative, while in others, they have worked in coalitions with fellow Council members and their successors. The limited nature and results of some of these initiatives also illustrate the difficulties that elected members might face in seeking to substantially influence Council decision-making, not least without the support of the P5.

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<sup>200</sup> See OPPENHEIM’S INTERNATIONAL LAW, *supra* note 62, at 79.

<sup>201</sup> See Rodiles, *supra* note 174, at 370.

<sup>202</sup> See Bellamy, *supra* note 194.

<sup>203</sup> See Farrall et al., *supra* note 163, at 107.

<sup>204</sup> See *id.*; U.N. SCOR, 69th Sess., 7353d mtg., U.N. Doc. S/PV.7353 at 1 (Dec. 22, 2014).

<sup>205</sup> See U.N. Charter art. 27, ¶ 2.

<sup>206</sup> See U.N. SCOR, 69th Sess., 7353d mtg., U.N. Doc. S/PV.7353 at 2 (Dec. 22, 2014).

<sup>207</sup> See Farrall et al., *supra* note 163, at 109.

#### 4.1. What are Some Initiatives That Have Been Championed by a Single Elected Member?

As noted above, during its 1999–2000 term, Canada advocated for the establishment of civilian protection as a new thematic agenda item. Alex Bellamy argues that, in making civilian protection a regular topic of discussion on the Council, Canada “helped prompt the UN to mainstream protection in its peacekeeping and humanitarian missions and place demands on combatants.”<sup>208</sup> Canada initiated such discussions during its presidency in February of 1999 by holding an open debate on the protection of civilians in armed conflict.<sup>209</sup> Foreign Minister Lloyd Axworthy personally chaired the session, and the heads of the International Committee of the Red Cross and UNICEF both spoke at the session.<sup>210</sup> The Council then adopted a Presidential Statement in which it “condemn[ed] the deliberate targeting by combatants of civilians in armed conflict and demand[ed] that all concerned put an end to such violations of international humanitarian and human rights law.”<sup>211</sup> The Council also asked the Secretary-General to “submit a report containing concrete recommendations to the Council by September 1999 on ways the Council, acting within its sphere of responsibility, could improve the physical and legal protection of civilians in situations of armed conflict.”<sup>212</sup> Following this report, the Council adopted two resolutions on the protection of civilians: Resolution 1265 (1999) and 1296 (2000).<sup>213</sup> Resolution 1265 “expresses [the Security Council’s] willingness to respond to situations of armed conflict where civilians are being targeted or humanitarian assistance to civilians is being deliberately obstructed....”<sup>214</sup> In Resolution 1296, the Council noted that “the deliberate targeting of civilian populations or other protected persons and the committing of systematic, flagrant and widespread violations of international humanitarian and human rights law in situations of armed conflict may constitute a threat to international peace and security....”<sup>215</sup> These were the first in a series of thematic resolutions on protection of civilians, which is now a (quasi-)regular topic of discussion on the Council.<sup>216</sup> However, as Secretary-General Antonio Guterres stated in a 2019 briefing to the Council, while a “culture of protection has taken root” and the “normative framework” for civilian protection “has been strengthened, compliance has deteriorated” as “civilians continue to make up the vast majority of casualties in conflict.”<sup>217</sup>

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<sup>208</sup> Bellamy, *supra* note 194.

<sup>209</sup> See Edgar, *supra* note 128, at 93.

<sup>210</sup> See *id.* at 93–94.

<sup>211</sup> S.C. Pres. Statement 1999/6 (Feb. 12, 1999).

<sup>212</sup> *Id.*

<sup>213</sup> See Dam-de Jong, *supra* note 129, at 203.

<sup>214</sup> S.C. Res. 1265, ¶ 10 (Sept. 17, 1999).

<sup>215</sup> S.C. Res. 1296, ¶ 5 (Apr. 19, 2000).

<sup>216</sup> See Dam-de Jong, *supra* note 129, at 203.

<sup>217</sup> See U.N. SCOR, 74th Sess., 8534th mtg. at 2–3, U.N. Doc. S/PV.8534 (May 23, 2019).

In 2007, Belgium sought to introduce a new topic into the Security Council agenda: the nexus of armed conflict and natural resources. While there have been only a few subsequent debates about this topic on the Council and the Council has not remained “seized” of the issue (in contradistinction to protection of civilians),<sup>218</sup> the debate resulted in a Presidential Statement that helped to consolidate what had previously been a series of disparate country-specific initiatives into a more coherent set of policy approaches for addressing the connection between natural resources and armed conflict.<sup>219</sup> The Presidential Statement noted the role of peacekeepers in helping governments prevent the use of natural resources for armed conflict, the importance of cooperation between countries to prevent illicit trade, and the role of the private sector in avoiding such exploitation.<sup>220</sup> Furthermore, the Council has applied these principles in country-specific contexts, including by expanding the MONUSCO peacekeeping mandate in the DRC to focus more on improving governmental management of natural resources.<sup>221</sup> The Council’s success in addressing the nexus of natural resources and armed conflict has been limited, however, as evidenced by ongoing resource-based conflicts in the DRC and elsewhere.

Council members have also used creative procedural methods to navigate possible roadblocks posed by certain P5 members, as shown by Australia’s efforts to subject North Korean human-rights abuses to Council scrutiny. As noted above, Australia organized an “Arria-formula” meeting on North Korean human rights in March of 2014, shortly after the U.N. Commission of Inquiry released a report finding that North Korea had committed “systematic, widespread and gross human rights violations.”<sup>222</sup> Thirteen Council members attended the meeting (all but China and Russia), at which the Chair of the Commission of Inquiry and two former DPRK detainees presented a report.<sup>223</sup> Australia then drafted a letter, signed by nine other countries, requesting a Council meeting on the topic, and the proposed agenda item was submitted to a rare procedural vote (most agendas are uncontested).<sup>224</sup> Per Article 27.2 of the Charter, permanent members cannot subject a vote on procedural matters to a veto,<sup>225</sup> and eleven countries ultimately voted in favor of Australia’s initiative.<sup>226</sup> It was reportedly the first time that human-rights abuses in North Korea were discussed in a public meeting of the Council,

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<sup>218</sup> See U.N. Security Council, Summary Statement by the Secretary-General of Matters of which the Security Council is Seized and of the Stage Reached in their Consideration, U.N. Doc. S/2020/10 (Jan. 2, 2020).

<sup>219</sup> See Dam-de Jong, *supra* note 129, at 206–07.

<sup>220</sup> See S.C. Pres. Statement 2007/22 (June 25, 2007).

<sup>221</sup> See S.C. Res. 1952, ¶¶ 15–16 (Nov. 29, 2010).

<sup>222</sup> U.N. Human Rights Council, Report of the Commission of Inquiry on Human Rights in the Democratic People’s Republic of Korea, U.N. Doc. A/HRC/25/63 (Feb. 7, 2014).

<sup>223</sup> See Farrall et al., *supra* note 163, at 108.

<sup>224</sup> See *id.*

<sup>225</sup> U.N. Charter art. 27, ¶ 2.

<sup>226</sup> See Farrall et al., *supra* note 163, at 108–09.

and the first time that the Council had added an agenda item “on the sole basis that human rights violations arising outside a conflict constituted a threat to international peace and security.”<sup>227</sup> However, the practical impact of the debate itself remains limited, as China still has the power to veto any decisions by the Council on the issue of North Korean human-rights abuses.

In other cases, elected members have sought not to introduce new topics but, instead, to reframe aspects of a debate on existing matters. For example, while on the Council in 2010–11, Brazil introduced the notion of “Responsibility While Protecting” (RWP) as a response to the Responsibility to Protect (R2P) concept. R2P, which was unanimously endorsed by the U.N. General Assembly in the 2005 World Summit Outcome,<sup>228</sup> describes the responsibility of the international community “to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity,” including with measures under Chapter VII of the Charter “should peaceful means be inadequate and [if] national authorities are manifestly failing to protect their populations” from such mass atrocities.<sup>229</sup> RWP was meant in part to voice the concern held by Brazil and certain other States that R2P could lead to an increase in military interventions in developing countries,<sup>230</sup> particularly after the Security Council authorized Member States to take “all necessary measures...to protect civilians” in Libya in March of 2011.<sup>231</sup> As such, Brazil sought to limit the scope of R2P through the RWP concept. RWP aimed to impose stricter limitations on the use of force and more active oversight by the Council of deployed R2P operations.<sup>232</sup> President of Brazil Dilma Rousseff referenced the notion in her speech to the U.N. General Assembly in September of 2011, and Brazil introduced RWP in a concept note, which Foreign Minister Antonio Patriota played a lead role in drafting, during its time as Council President in November of 2011.<sup>233</sup> It has been argued that “[w]hile the RWP initiative did not lead to a formal change in decision-making processes, it prompted debate on the need for the Council to reassure UN members that its collective security mechanisms to implement R2P would not be misused or abused.”<sup>234</sup> However, Brazil’s time on the Council ended shortly after it introduced this note, so it did not have an opportunity to advocate further for the notion at the Council. Furthermore, no other State assumed Brazil’s mantle as a norm entrepreneur on the issue, and discussions about RWP on the Council were thus short-lived.<sup>235</sup>

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<sup>227</sup> *Id.* at 108.

<sup>228</sup> G.A. Res. 60/1, 2005 World Summit Outcome (Sept. 16, 2005).

<sup>229</sup> *Id.* ¶¶ 138–39.

<sup>230</sup> See Kai Michael Kenkel & Cristina G. Stefan, *Brazil and the Responsibility While Protecting Initiative: Norms and the Timing of Diplomatic Support*, 22 GLOBAL GOVERNANCE 41, 44 (2016).

<sup>231</sup> S.C. Res. 1973 ¶ 4 (Mar. 17, 2011).

<sup>232</sup> See Kenkel & Stefan, *supra* note 230, at 49.

<sup>233</sup> See Farrall et al., *supra* note 163, at 106.

<sup>234</sup> *Id.*

<sup>235</sup> See Kenkel & Stefan, *supra* note 230, at 52.

## 4.2. What are Some Initiatives That Have Been Led by Groups of Elected Members?

In some recent cases, diverse assemblages of elected members have collaborated — outside of the traditional penholder process — to draft resolutions that the Council ultimately adopted. For example, in 2016, five elected members — Egypt, Japan, New Zealand, Spain, and Uruguay — jointly drafted Resolution 2286 on the protection of health-care and health-care workers in armed conflict; this is now a topic of (quasi-)frequent discussion on the Council.<sup>236</sup> A similarly diverse group of members — Cote d'Ivoire, Kuwait, the Netherlands, and Sweden — drafted Resolution 2417 (2018), in which the Council condemned the use of famine as an instrument of warfare.<sup>237</sup> Both of these resolutions were adopted unanimously. In December of 2016, a group of E10 members helped adopt a more contested resolution concerning Israeli settlements. After Israel pressured Egypt to withdraw its draft resolution, four elected members — Malaysia, New Zealand, Senegal, and Venezuela — cooperated to secure its adoption as Resolution 2334 (2016).<sup>238</sup> The resolution was notable in part because the United States did not conform to its longstanding policy of shielding Israel's settlements in Palestinian territory from Security Council condemnations, abstaining rather than vetoing the resolution.<sup>239</sup>

At least according to one analysis, the E10 — “driven by dissatisfaction with being sidelined on key Council decisions and a shared desire to improve the effectiveness of the Council, especially in the face of P5 paralysis” — has started to act more like a cohesive coalition than before.<sup>240</sup> For example, the E10 now meets on a monthly basis at the level of both the permanent representative and political coordinator; at these meetings, E10 members discuss ways to improve the working methods of the Council, particularly the process of determining penholders and subsidiary body chairs.<sup>241</sup> In 2018, the E10 members adopted a document titled “Ten Elements for Enhanced E10 Coordination and Joint Action.”<sup>242</sup> Included among the enumerated elements were provisions on (among other elements) sharing resolutions and Presidential Statements early to broaden support, increasing interaction with the Secretary-General, and inviting newly elected members for meetings upon their election.<sup>243</sup>

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<sup>236</sup> See *In Hindsight: Emergence of the E10*, SECURITY COUNCIL REP. (Sept. 28, 2018), [https://www.securitycouncilreport.org/monthly-forecast/2018-10/in\\_hindsight\\_emergence\\_of\\_the\\_e10.php](https://www.securitycouncilreport.org/monthly-forecast/2018-10/in_hindsight_emergence_of_the_e10.php) [<https://perma.cc/4PXX-DQNE>]; see also S.C. Res. 2286 (May 3, 2016).

<sup>237</sup> See Schrijver, *supra* note 127, at 128; see also S.C. Res. 2417 (May 24, 2018).

<sup>238</sup> See *In Hindsight: Emergence of the E10*, *supra* note 236; see also S.C. Res. 2334 (Dec. 23, 2016).

<sup>239</sup> See Somini Sengupta & Rick Gladstone, *Rebuffing Israel, U.S. Allows Censure Over Settlements*, N.Y. TIMES (Dec. 23, 2016), <https://www.nytimes.com/2016/12/23/world/middleeast/israel-settlements-un-vote.html> [<https://perma.cc/FPG4-BEWX>].

<sup>240</sup> *In Hindsight: Emergence of the E10*, *supra* note 236.

<sup>241</sup> See *id.*

<sup>242</sup> Martin, *supra* note 1, at 54.

<sup>243</sup> See *id.* The text of the document is reproduced in Jenny T. G. Nortvedt, “Punching Above Their Weight”: An Analysis of Small States’ Leverage in the Case of Syria in the UN Security Council, Master’s Thesis, Univ. Oslo, Appendix 4 (Spring 2019), [https://www.duo.uio.no/bitstream/handle/10852/69745/Nortvedt\\_-MastersThesis\\_2019.pdf?sequence=1&isAllowed=y](https://www.duo.uio.no/bitstream/handle/10852/69745/Nortvedt_-MastersThesis_2019.pdf?sequence=1&isAllowed=y)

### 4.3. What Are Examples of Elected Members “Passing the Baton” to Their Successors?

Figuratively speaking, in certain cases, elected members have “passed the baton” to their successors on the Council to complete ongoing initiatives. It is logistically challenging to plan for this “hand off,” given that the members of the E10 only have a few months after elections to plan for their successor and even less time after the chairs of subsidiary bodies have been chosen. Yet some instances may nevertheless be identified.

This “passing of the baton” is perhaps best illustrated by examples from certain sanctions contexts. The initiative to reform the 1267 sanctions process, particularly the establishment of the Ombudsperson role, involved a succession of elected members. As noted above, the Ombudsperson role was established by Resolution 1904 (2009). Consistent advocacy by a series of elected members — including Austria, Belgium, Costa Rica, and Denmark — helped make this possible.<sup>244</sup> As Council President in 2006, Denmark hosted a thematic debate on the rule of law that emphasized the need for greater efficiency and credibility in the sanctions regime.<sup>245</sup> During its Council Presidency in 2008, Belgium produced a concept note stressing the need for further transparency.<sup>246</sup> Upon lobbying from outside the Council by Switzerland and Liechtenstein, Costa Rica called for an independent review process concerning the 1267 sanctions regime to improve due process.<sup>247</sup> Resolution 1904 (2009) was adopted shortly after that. Scholars have formed the view that this initiative resulted in reform because “[d]eparting elected members that championed reform passed the baton to incoming members, and, in many instances, remained involved afterwards.”<sup>248</sup>

Elected members have also “passed the baton” to successive penholders on certain issues. For example, a series of elected members — including Turkey, Japan, Germany, Australia, Spain, the Netherlands, and Indonesia — have served as penholder on Afghanistan.<sup>249</sup> In some cases, successive penholders have directly collaborated. After leading an initiative on humanitarian issues concerning Syria in 2013–14, Australia and Luxembourg passed the pen to Jordan in 2015.<sup>250</sup> The pen on that set of issues has subsequently been held by Egypt, New Zealand, Spain, Japan, Sweden, and Kuwait.<sup>251</sup>

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[<https://perma.cc/W459-QERE>].

<sup>244</sup> See Farrall et al., *supra* note 163, at 109.

<sup>245</sup> See *id.*

<sup>246</sup> See *id.*

<sup>247</sup> See *id.*

<sup>248</sup> *Id.*

<sup>249</sup> LORAINIE SIEVERS & SAM DAWS, THE PROCEDURE OF THE U.N. SECURITY COUNCIL (updated website for 4th ed. 2019), <https://www.scprocedure.org/chapter-5-section-6b> [<https://perma.cc/4M9P-KJZ5>].

<sup>250</sup> See Roele, *supra* note 138, at 133.

<sup>251</sup> See *id.* (“States worked together to relieve the humanitarian crisis in Syria, their successive and imbricated efforts were more like a workshop than a conveyer-belt, with new states apprenticed to retiring ones.”).

## 5. What Guidance Might Prospective Elected Members Discern From the Experiences of Previous Elected Members?

Future elected members might discern insights from the experiences of previous and current elected members. In some cases, representatives and scholars from elected member States have offered advice for future members directly. Australian experts emphasized the importance of building a large team at the U.N. Mission in New York and supporting that team with resources back home. Between mid-2012, in the lead-up to its election to the Council, and mid-2013, its first year on the Council, Australia doubled the size of the staff in its New York Mission.<sup>252</sup> It deployed experienced and high-quality staff, from the ambassador-level down.<sup>253</sup> It also created a dedicated task force of about ten full-time staff in Canberra to support its Security Council team.<sup>254</sup> That said, it bears emphasis this approach is more likely to be available for wealthier countries with the resources to spend on such support teams.

In light of the enormous amount of information that new Council members need to learn, elected members have also emphasized the importance of using every available external resource to prepare for “forty-four, separate intense conversations.”<sup>255</sup> Some elected members — not least missions with smaller teams — might be overwhelmed just with keeping up and may not have the capacity to advance their own initiatives effectively.<sup>256</sup> Resources such as the “Hitting the Ground Running” workshop organized by Finland every December and the capacity-development sessions organized by Security Council Report can help elected members navigate the immense array of substance and procedure before they take office in January.<sup>257</sup> A former Permanent Representative from New Zealand suggested that “influence is enhanced significantly if an elected member demonstrates competence by being well informed, sufficiently resourced, and having perspectives and proposals worth listening to.”<sup>258</sup>

Many initiatives that elected members have pursued involved high-level officials, such as heads of State and foreign ministers. For example, Canada’s Foreign Minister Lloyd Axworthy played an active role in building support for Canada’s 1999 civilian-protection initiative, including chairing the Council’s relevant thematic meeting.<sup>259</sup> Brazilian President Dilma Rousseff and Foreign Minister Antonio Patriota worked to

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<sup>252</sup> See Jeremy Farrall & Jochen Prantl, *Leveraging Diplomatic Power and Influence on the UN Security Council: The Case of Australia*, 70 AUST. J. INT’L AFF. 601, 604 (2016).

<sup>253</sup> See *id.*

<sup>254</sup> See *id.*

<sup>255</sup> Martin, *supra* note 1, at 46.

<sup>256</sup> See Farrall & Prantl, *supra* note 252, at 604.

<sup>257</sup> See Martin, *supra* note 1, at 46.

<sup>258</sup> Van Bohemen, *supra* note 118, at 108.

<sup>259</sup> See Edgar, *supra* note 128, at 93–94.

help build support for Brazil's RWP initiative, as Patriota drafted the RWP concept paper and Rousseff introduced the concept in a General Assembly speech two months earlier.<sup>260</sup> In addition, the Danish Foreign Minister helped advance Denmark's agenda aimed at creating a 1267 Ombudsperson.<sup>261</sup>

Elected members have also emphasized the usefulness of building support for initiatives from non-Council members. As the example of the establishment of the 1267 Ombudsperson — in which Switzerland and other non-Council members played a key role — demonstrates, such intra-and-extra-Council coalitions can help build momentum. Input from non-Council States, as well as academics and NGOs, can also help improve the quality of the initiatives by, for example, providing technical expertise.<sup>262</sup> “Arria-formula” meetings serve as one relatively common mechanism through which a wide array of stakeholders can be engaged. Building relationships with members of the New York media and UN-focused NGOs, such as Security Council Report, can also amplify elected members' work and enhance their credibility.<sup>263</sup>

Timing is also a key element in the relative success or failure of elected members' initiatives. Initiatives undertaken at the end of an elected member's term are less likely to be adopted. Those members that hold the Presidency twice in their terms are at a structural advantage. Still, every Council member will have at least nine months after serving as President to seek to secure support for their initiative. Brazil's RWP initiative, while having introduced a new concept, also illustrates the importance of timing. Brazil introduced its RWP concept note a month before its tenure on the Council ended, which did not leave enough time to build support for the adoption of a more formal decision of the Council.

Finally, the Charter forms the binding framework through which the work of the Council is undertaken. New Council members may seek to devote sufficient education, training, and resources to ensure that relevant personnel are sufficiently knowledgeable about the language, structure, and content of the Charter. Endowing leadership and staff with the capability to fluently “speak” and negotiate in the Charter's language may help an elected member achieve its objectives.

## 6. Conclusion

Elected members face a substantial learning curve upon joining the Security Council, with its vast array of existing agenda items, working groups, committees, and procedures. Nonetheless, as the examples above illustrate, elected members have had substantive

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<sup>260</sup> See Farrall et al., *supra* note 163, at 106.

<sup>261</sup> See *id.* at 114. (“[T]he clout of particular individuals deployed by elected members can be a significant driver of influence.”).

<sup>262</sup> See *id.*

<sup>263</sup> See Van Bohemen, *supra* note 118, at 109.



impacts on the Council's business. Ian Martin has argued that, given the seemingly growing political divide between certain members of the P5 and the roadblock to further cooperation that this often poses, "it is the quality and determination of ten elected members on which some incremental improvement in performance most depends."<sup>264</sup> Well-prepared elected members can help bridge this divide and fulfill the Council's primary responsibility to maintain international peace and security.

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<sup>264</sup> Ian Martin, *In Hindsight: What's Wrong with the Security Council*, SECURITY COUNCIL REP. (Apr. 2018), [https://www.securitycouncilreport.org/monthly-forecast/2018-04/in\\_hindsight\\_whats\\_wrong\\_with\\_the\\_security\\_council.php](https://www.securitycouncilreport.org/monthly-forecast/2018-04/in_hindsight_whats_wrong_with_the_security_council.php) [<https://perma.cc/8XHP-Z46>].

## Annex — Glossary

**“Arria-formula” Meeting:** A convening that occurs outside of the Council’s Consultation Room and that is not considered a meeting of the Council in the sense of Article 28 of the U.N. Charter. This format allows for conversations with other stakeholders (including non-state actors) who otherwise may not be invited to speak in the public or private meeting formats set out in Presidential Note 507.

**Decision (in the sense of Article 25 of the U.N. Charter):** A binding act adopted by the Security Council (or by a subsidiary organ or body of the Council) in accordance with the U.N. Charter. All U.N. Member States are obliged to carry out such a decision. Under the U.N. Charter, decisions of the Security Council on procedural matters shall be made by an affirmative vote of nine members, whereas 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.<sup>265</sup> A decision may be juxtaposed with a recommendation, which is not binding in the sense of Article 25.

**E10:** An informal abbreviation used to refer to the ten elected, non-permanent members of the Security Council, each of which serves a two-year term. It was previously referred to as the “E6” before Council membership was expanded from 11 to 15 in 1963.

**Informal Consultations of the Whole:** Private, closed meetings in which only Council members can participate. They can be contrasted with the “public meetings” and “private meetings” set out more formally in Presidential Note 507.<sup>266</sup> Negotiations over the text of resolutions often occur during such informal consultations.

**IWG:** The Informal Working Group on Documentation and Other Procedural Methods. This is the subsidiary organ (or body) that debates and helps facilitate decisions concerning the working methods of the Council.

**Letters by the President:** A category of text that is apparently adopted by the Security Council by consensus, that is issued in the name of the current President of the Security Council, and that evidently communicates the Council’s position(s) on a topic, typically to the Secretary-General of the United Nations. This format is most commonly used to respond to the appointment of new envoys of the Secretary-General and peacekeeping commanders.

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<sup>265</sup> Provided that, in decisions under Chapter VI, and under Article 52.3, a party to a dispute shall abstain from voting. U.N. Charter art. 27, ¶ 3.

<sup>266</sup> See Note by the President of the Security Council, U.N. Doc. S/2017/507, ¶ 21 (Aug. 30, 2017).

**Notes by the President:** A category of text that is apparently adopted by the Security Council by consensus, that is issued in the name of the current President of the Security Council, and that evidently expresses one or more positions of the Council. As compared to resolutions, Presidential Statements, and letters by the President, Notes by the President are more commonly adopted to address Security Council procedures.

**P3:** An informal abbreviation used to refer to France, the United Kingdom, and the United States, three permanent members of the Security Council that often cooperate on various issues. These three States also serve as “penholders,” or the lead drafters of resolutions, on the vast majority of topics currently on the Council’s agenda that have designated penholders.

**P5:** An informal abbreviation used to refer to the five permanent members of the Security Council (China, France, Russia, the United Kingdom, and the United States), each of which may veto resolutions that are not on procedural matters.

**Penholding:** An informal system, developed in the early 2000s, by which Council members are assigned the lead role for drafting resolutions on certain topics. The members of the so-called P3 (namely, France, the United Kingdom, and the United States) serve as penholders for 75% (30 out of 40) of the topics currently on the Council’s agenda that have designated penholders.<sup>267</sup>

**Presidential Statement:** A category of text that is apparently adopted by the Security Council by consensus, that is issued in the name of the current President of the Security Council, and that evidently expresses one or more of the Council’s position(s) on a matter. This format is often used for matters of lesser gravity than those addressed in a resolution, as a prelude to a resolution, or as a more symbolic statement (for example, for issues on which individual members of the so-called P5 are divided).

**Press Statement:** A less formal category of text that is typically issued by the President and that expresses one or more views of certain members of the Security Council but not of the Council itself. Because it does not necessarily reflect the Security Council’s position, this category of text — which is typically used to respond to current events — is apparently not capable of reflecting a binding decision of the Council in the sense of Article 25 of the U.N. Charter.

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<sup>267</sup> See *Lead Roles Within the Council in 2020*, *supra* note 109.

**Private Meetings:** Meetings of the Security Council for which an official record may not be made publicly available but, rather, is kept as a single copy with the Secretary-General.<sup>268</sup> According to Presidential Note 507, private meetings can take the form of a “private debate” or “TCC [troop-contributing countries] meeting.”<sup>269</sup> Non-Council members may be invited to participate in either type of private meeting in certain circumstances.

**Provisional Rules of Procedure:** A text — adopted by the Security Council in 1946 and updated most recently in 1982 — that sets out operating practices and processes, following from the provision in Article 30 of the Charter according to which the Council shall adopt its own rules of procedure.

**Public Meetings:** Meetings of the Security Council for which an official, publicly available record is created. According to Presidential Note 507, public meetings can take the form of an “open debate,” “debate,” “briefing,” or “adoption.”<sup>270</sup> Non-Council members may be invited to participate at any of these types of meetings, except briefings.

**Resolution:** A category of text that is adopted by the Security Council. Each resolution may contain binding (in the sense of reflecting a decision in terms of Article 25 of the U.N. Charter), hortatory, or recommendatory provisions (or some combination of such provisions).

**Sanctions Committees:** Subsidiary organs (or bodies) of the Security Council that the Council has established to administer particular Council-decided sanctions regimes. As of July of 2020, the Council has fourteen sanctions committees.<sup>271</sup>

**Subsidiary Organ:** Under the U.N. Charter, in general, subsidiary organs may be established “as may be found necessary.”<sup>272</sup> More specifically, “[t]he Security Council may establish such subsidiary organs as it deems necessary for the performance of its functions.”<sup>273</sup> Current subsidiary organs (or bodies) of the Security Council apparently include sanctions committees and working groups.

**United Nations General Assembly:** One of the principal organs of the United Nations. It is composed of every Member State in the Organization, each of which shall have one

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<sup>268</sup> See Provisional Rules of Procedure, *supra* note 66, at Rule 51.

<sup>269</sup> See Note by the President of the Security Council, U.N. Doc. S/2017/507, ¶ 21 (Aug. 30, 2017).

<sup>270</sup> *Id.*

<sup>271</sup> See *Sanctions and Other Committees*, UNITED NATIONS, <https://www.un.org/securitycouncil/content/repertoire/sanctions-and-other-committees> [<https://perma.cc/D9HN-LMJB>]; *Lead Roles Within the Council in 2020*, *supra* note 109.

<sup>272</sup> U.N. Charter art. 7, ¶ 2.

<sup>273</sup> *Id.* art. 29; see also *id.* art. 22 (“The General Assembly may establish such subsidiary organs as it deems necessary for the performance of its function.”).

vote.<sup>274</sup> Decisions of the General Assembly on important questions shall be made by a two-thirds majority of the members present and voting, whereas decisions on other questions shall be made by a majority of the members present and voting.<sup>275</sup>

**United Nations Organization:** The entire intergovernmental body of 193 Member States (as of July of 2020) established by the U.N. Charter, which includes (among other things) the Security Council, General Assembly, Secretariat, and other principal and subsidiary organs.

**United Nations Security Council:** One of the six principal organs of the United Nations. According to the U.N. Charter, the Council has the primary responsibility for the maintenance of international peace and security and can make decisions that all Member States are obliged to carry out. It comprises 15 members: five permanent members (China, France, Russia, the United Kingdom, and the United States) and ten non-permanent, elected members that serve two-year terms.

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<sup>274</sup> U.N. Charter art. 18, ¶ 1.

<sup>275</sup> U.N. Charter art. 18, ¶¶ 2–3.

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