



## A DRAFT ON SECURITY COUNCIL REFORM

by Klaus Schlichtmann

The article investigates why UN Security Council reform efforts failed in 1997-98, when after much preparation the issue should have been resolved. It argues that the System of Collective Security, which the founders of the United Nations had envisioned, must be put into effect, to achieve disarmament and lasting peace. This requires that member states "confer on the Security Council primary responsibility for the maintenance of international peace and security," following Article 24 of the UN Charter. To give the article effect, however, national lawmakers must pass legislation, giving the Security Council the power to do its job (and a much wanted code of conduct), by delegating sovereign powers to it.

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*"Nuclear-weapon states would give up their hegemony, and nuclear holocaust cease to be a threat, when there is a definite move to establish the rule of law among nations."*

? Author unknown

After the relative success of creating the International Criminal Court (ICC), the question of founding a global authority with enforcement powers to do away with and "transcend" the institution of war may be the most important single issue that needs to be addressed by lawmakers, nongovernmental organizations (NGOs), academics, peace researchers<sup>1</sup> and activists. The United Nations has no sovereignty of its own. Vital provisions of the UN system concerning security and disarmament, which would require the United Nations to obtain some "security"-sovereignty of its own, have not been in force as the founders had intended it in 1945. Not only the comprehensive "system for the regulation of armaments" (Article 26, U.N. Charter), but also the system of collective security, have so far remained on paper only<sup>2</sup>. War has not been abolished. Under these circumstances, if in the dealings of states with one another the institution of war is not abolished and replaced by an equally powerful and persuasive system, it is unlikely that the world's political, social and economic problems will be solved. It is reasonable, therefore, to assume that the United Nations should soon [p. 506] become the sole power allowed to keep arma-

ments and operate an international police force for the purpose of maintaining international law and order and monitor disarmament. Under Articles 24 and 26 of the Charter, this can be accomplished.

### THE QUESTION OF NATIONAL SOVEREIGNTY

There is almost universal agreement on the basic assumptions made in this essay. As Anatol Rapoport has pointed out: "An indispensable item on any reform agenda is restriction of nation state sovereignty. It is also the most important item, since without this restriction no other reforms designed to make the UN more effective in realizing its professed goals can be meaningful."<sup>3</sup> The same realization was expressed in the famous Russell-Einstein-Manifest of 1955, the starting point for the Pugwash movement: "The abolition of war will demand distasteful limitations of national sovereignty..."<sup>4</sup> However, if nation-states agree to limitations of their national sovereignty, according to the Manifest, "there lies before us, if we choose, continual progress in happiness, knowledge and wisdom. Shall we instead, choose death, because we cannot forget our quarrels?"<sup>4</sup>

The realization is not confined to the West. The late Indian president and philosopher, Professor Sarvepalli Radhakrishnan, expressed the same idea:

We must surrender a part of our sovereignty, work together for the elimination of every kind of injustice... The United Nations is the first step towards the creation of an authoritative world order. It has not got the power to enforce the rule of law... Military solutions to political problems are good for nothing. Ultimately they will leave bitterness behind... The challenge that is open to us is survival or annihilation... but what are we doing to bring about that survival? Are we prepared to surrender a fraction of our national sovereignty for the sake of a world order? Are we prepared to submit our disputes and quarrels to arbitration, to negotiation and settlement by peaceful methods? Have we set up a machinery by which peaceful changes could be easily brought about in this world? So long as we do not have it, it is no use merely talking<sup>5</sup>

Not only in India, with its distinct pacifist tradition, but also in neighboring Pakistan a similar sentiment had been expressed. At the Conference of the Interparliamentary Union (IPU) in 1952, the Pakistani diplomat Ahmed E.H. Jaffer said: [p. 507]

The evils of the sovereign state and its incapacity to maintain peace are increasingly felt... In my opinion time is ripe for beginning to plan and shape organizations which will ultimately form the nucleus of world federation... in connection with the question of limits to state sovereignty discussed at this conference it has been made amply clear that one of the greatest impediments to real political and economic cooperation between the states is the sovereignty of states and that the remedy for the sufferings of mankind lies in curtailing and limiting that sovereignty.<sup>6</sup>

Even a realist such as Robert Strausz-Hupe, a founding member of the U.S. Foreign Research Institute, in 1992 made the following statement before the U.S. Commission on Improvement of the Effectiveness of the United Nations:

What is needed first and foremost in order to make the United Nations more effective and viable is candor. The peoples of the world need to be told that a more effective United Nations comes at a price and that this price is the delegation of national sovereignty; in the beginning, not all of it, but as the process continues, more and more of it.<sup>7</sup>

The main feature of the famous "war-abolishing" clause in the Japanese Constitution, Article 9, is its limiting state sovereignty.<sup>8</sup> Collective security remains on paper only, as long as nationstates do not agree to pool their sovereign powers with regard to the right to go to war. The "Article-24 provisions" in national constitutions are an instrument toward this aim. In addition to the system of collective security, organizations such as the Economic and Social Council (ECOSOC), which has been given far-reaching responsibilities in the U.N. Charter, cannot work without the member states giving it the power to do its job. ECOSOC's reform must be part of a comprehensive effort at U.N. reform.<sup>9</sup>

As an increasing number of scholars realize, the foremost concern should be to replace the institution of war with an equally powerful and persuasive system. In this system the minimum requirement would be for the United Nations to have a monopoly of power to bring about disarmament and maintain peace and security.

## THE CONSENSUS PRINCIPLE AND THE

## "PERMANENT FIVE"

In some ways, the veto power is the reverse side of the consensus principle, as far as the UN's most powerful institute, the Pentarchy, is concerned. A [p. 508] consensus is required with respect to Chapter VII of the U.N. Charter, i.e. "military" enforcement action.<sup>10</sup> Any permanent Security Council member that is not party to a dispute should be able to veto military action. This may need some clarification. Because important provisions in the Charter of the United Nations have not been in force since the U.N.'s foundation, whether the system would work was never tested. In the early nineties ad-hoc U.N. peace-keeping operations (PKO) sanctioned by the United Nations Security Council (UNSC) were taken as having fulfilled test conditions,<sup>11</sup> even though they were not conducted under the premise of a disarmed and organized world under the rule of law, as ideally they should have been. Members failed to bear the necessary consequences, to bring the UNSC under the rule of law, and disillusionment set in soon after.

While it still seems that the system would work, if the consensus principle is upheld, it is also clear that the consensus principle will only work if the UN Security Council has no more than five permanent members with veto. Unfortunately, partly due to the five members' inscrutability and the cold war confrontation after World War II, the veto had become a tool of power politics and been discredited. Yet, it may also not be too far-fetched to say that the veto has contributed to averting a military showdown between the United States and Soviet Russia in the past half-century, perhaps as much as, if not more, than the policy of nuclear deterrence.<sup>12</sup> Thus, only the number five, and not the composition of the permanent members, was meant to be permanent.

## THE COMPOSITION OF THE PERMANENT MEMBERS

The present composition of the five permanent members of the Security Council is not in accordance with the conditions stipulated in the United Nations Charter, i.e. the principles of equal rights (Article 1, No 2), sovereign equality (Article 2, No 1) and equitable geographical representation (Article 23, No 1). Criticism rightly focuses on the fact that (1) Europe is overrepresented, and (2) the South is not represented at all. This is not only a moral but also a legal question. There is a consensus that this imbalance needs to be

remedied.

The composition of the permanent members of the UNSC Pentarchy was not considered permanent at the time of the foundation of the United Nations. By stipulating the right of self-determination of the nations, however, the UN Charter set up some of the colonial powers as "quasi-proxies". As early as 1947 a European Security Council seat had been the goal of American foreign policy.<sup>13</sup> Fifty years ago, nobody thought that decolonization would be accomplished in this century.<sup>14</sup> Because in 1947 Albert Einstein's half-official world [p. 509] government proposal to the Soviet Academy of Sciences<sup>15</sup> was rejected, it was subsequently thought convenient to assume that the UN member states had already delegated primary responsibilities to a permanent Council, to maintain at least the semblance of a functioning global security system, promised to the peoples of the United Nations. This "convention", however, neglected the constitutional provisions for lawmaking, with regard to the empowerment of the UNSC and a system of comprehensive collective security. Little known in this respect is the history of constitutional law concerning the "harmonization" of domestic, constitutional law with the international law of peace.<sup>16</sup> Especially during the interwar period, international lawyers and national lawmakers had been working closely together toward this end. Since the failure of the Hague Peace Conferences it had been the most promising approach, laying the foundations of an internationally enforceable order of peace in the precincts of domestic law.

The composition of the permanent members, which reflected the political environment after the Second World War and rewarded the victorious powers, was never planned to be permanent so it was also not planned that the UNSC was to be permanently handicapped and impotent or, conversely, "a law unto itself", above the law, and with "no principles of law... laid down to guide it".<sup>17</sup> However, the number five was meant to be permanent because it is important for the functioning of the consensus principle within the Pentarchy, making it nearly for them to war among themselves. It would not be desirable to "enforce peace" (Chapter VII of the Charter) by a majority vote. In a certain situation, in a global confrontation, whatever the qualification of that majority, the Security Council could end up with one forth or more of humanity up against the majority who decided on that action. The result would be war

between the two opposed voting parties.<sup>18</sup>

## THE OPEN-ENDED-WORKING GROUP

While UN reform has been overdue for a long time,<sup>19</sup> in 1993, on the initiative of India, a number of non-aligned countries and others, an official working group (the Open-ended Working Group on the Question of Equitable Representation on and Increase in the Membership of the Security Council and Other Matters Related to the Security Council) was established within the U.N. to look into the question of reform. Subsequently, General Assembly Resolution 48/26 of December 3, 1993, stipulated that any proposal for UNSC reform was to be in accordance with the conditions of more "equitable representation on and increase in the membership of the [p. 510] Security Council." In addition, the Declaration on the 50th anniversary of the United Nations, unanimously adopted by the General Assembly on October 24, 1995, made it clear that the UNSC "should inter alia be expanded and its working methods continue to be reviewed in a way that will further strengthen its capacity and effectiveness, enhance its representative character, and improve its working efficiency and transparency".

The wording of Res. 48/26 suggests that, for all practical purposes, a distinction is to be made between the reshuffling in the composition of the permanent members and an increase in membership. Obviously, before attempting anything else, focus should be on achieving equitable representation among the "Permanent Five", the most powerful decision-making body on earth.

## WHAT HAS BEEN PROPOSED SO FAR

There may be good reasons for the United States to insist on an increase of not more than five or six members altogether, making the total number a maximum of twenty or twenty-one. Why, if nine permanent members, as this author proposes (see pp. 568ff), already represent two thirds of the world population, should there be more? However, some countries, including Germany, accept twenty-four and others accept up to thirty. Following the peace initiative by French president François Mitterand in January 1992, when no German response was forthcoming, the United States in March of the next year announced that it was "prepared to support Japan and Germany

[in that order] in their bid to obtain permanent seats on the U.N. Security Council.”<sup>20</sup>

Three world regions which unrepresented or underrepresented among the permanent membership – namely Africa, Asia and Latin America – have also been named and accepted in principle as deserving to be included. However, quite obviously it is not possible to have equitable representation, keep the number small, and maintain the present composition among the permanent members, all at the same time. The American position, proposing Japan and Germany, is simplistic,<sup>21</sup> and more likely intended to stimulate the imagination of diplomats from European countries who have traditionally opposed or rejected the international organization of peace. A rotating EU permanent representation could have Germany take the seat for the first two years, to make the establishment in the Foreign Ministry happy.<sup>22</sup> The so-called “fall-back” position of the non-aligned countries, on the other hand, envisaged an increase in the number of non-permanent seats, but no increase in permanent members. The position of Italy is most interesting. Without actually wanting to change the number of the veto powers, Italy [p. 511] envisages “semi-permanent seats” without veto power following regional criteria (Italian Proposal of May 1996), and opts for a European permanent seat<sup>23</sup> - a position France also seems to be taking. Canada likewise opposes the extension of the veto. As the “least common denominator”, these positions are of continuing relevance. However, rather than the least common denominator, what is needed is imagination, adherence to the legal propositions and the aims of the Charter, and decisive action.

## GERMAN AMBIVALENCE

If Germany claims to be aiming at permanent representation for a “single European Union”, it has done little to bring it about, in spite of French President François Mitterand's broad hint in January 1992 that France was willing to share nuclear responsibility in Europe, and his complementary proposal on January 31, 1992, at the “first-ever” UN Security Council summit in New York, for a rapid deployment (police?) force, offering 1,000 French troops as a start.<sup>24</sup>

While such uncooperative attitude is not limited to Germany, the following two statements, one by an eminent statesman and the other by a top military man, illustrate the dilemma. The military man first. On May 12,

1992, following of united Germany's military reorganization, at a function in Leipzig, German defense forces' chief military inspector General Klaus Naumann, said:

In this world of change, while we will have to solve considerable ecological problems of a global dimension as well as problems of an ever increasing gap between North and South, still [unfortunately] the mechanics of an organization, which could go beyond the ideas of the 19th century nation-state system, are lacking; [even] the political vision of a universally realizable goal (is missing).<sup>25</sup>

In spite of the widely perceived, destabilizing impact the “military-industrial complex” (so named by Dwight D. Eisenhower) has on a durable peace, enlightened military leaders have a keen understanding of the issues at stake. General Naumann's statement suggests the Kantian concept of an international organization based on law, a global “federation of free states,” upon which a universal “law of nations” must “be founded”.<sup>26</sup> It is unlikely that military establishments would oppose a United Nations monopoly of power. As most countries' military establishments today are under civilian control, it is political leaders who are to blame if the institution of war and defense [p. 512] continues to occupy such a prominent, prestigious, dangerous and cost-intensive position.

The statement by former German Chancellor Helmut Kohl at the same event is diametrically opposite: “Even the world of tomorrow will not be as Kant imagined in his book on ‘Perpetual Peace’. Every country has to make its own provisions for defense.” Perhaps this was meant to be provocative. However, the sentiment corresponds to the political reality of a predominantly Hegelian approach to politics and foreign affairs in Germany (and not only there) after World War II. It gives the (wrong) impression that Germany had to be especially cautious because its unflinching commitment to international organization in this century had been betrayed by a reality not of its own making and externally imposed. To give an example: The largely government-controlled (West) German United Nations Association stated on the UNSC, reflecting the majority opinion among politicians: “A peaceful settlement [of international disputes] through an international obligatory procedure of regulations is neither possible nor desirable... the United Nations are essentially different from a world federation. Nor can the Charter

be seen as a first step toward such a goal.”<sup>27</sup>

This opinion may have changed. Among academics such opinion is hardly reflected any more,<sup>28</sup> although conservative views continue to be influential in advisory bodies and committees within the foreign ministry, as well as in the prestigious “Deutsche Gesellschaft für Auswärtige Politik”, the German Society for Foreign Policy, now in Berlin.<sup>29</sup>

## FAILURE TO ACHIEVE THE PROJECTED TARGET

In 1997, with deliberations on and publication of a number of statements, negotiating texts, documents, and reports, it was thought that an agreement “on principle” could be reached by November of that year, followed by a four-months candidature. After that the new permanent members would be elected, and the result of the charter revision would be confirmed by a two-thirds majority vote in the General Assembly. Then the agreement should be ratified by two-thirds of the member states, including the present permanent members, in accordance with Article 108 of the Charter. This process, it was thought, would take two to three years, after which the reform would be in force. The official Open-ended Working Group had originally envisaged a vote to be taken on this question by February 28, 1998 in the General Assembly. However, by November 21 it became clear that the decision to expand the UNSC was being delayed.<sup>30</sup> A month later, the Associated Press reported: “Proposals for council restructuring have been relegated to [p. 513] further committee studies - where they may languish indefinitely.”<sup>31</sup> It was again delayed the following year (1998).

A permanent seat for the European Union in the UNSC was considered an option even in Germany. In spite of French president François Mitterand’s initiative in January 1992, proposing that France “share its (nuclear) bomb”, and its permanent seat on the UN Security Council,<sup>32</sup> nothing came of it, because already on March 1, 1993, former German Foreign Minister, Dr. Klaus Kinkel had declared that “it would be unrealistic to imagine the European Community taking a seat on behalf of Europe on the council.”<sup>33</sup> Does this make sense? Wasn’t the European Union created “with a view to the achievement of political union”? The Treaty on European Union (Treaty of Maastricht) stipulates that the European Union “shall define and implement a common foreign and security policy ... to preserve peace and strengthen international security, in accordance with the principles of the United Nations

Charter... ”<sup>34</sup> Although the European Union is not a “state,” it has been considered possible to have regional representation on a rotational basis—for Africa, which has already agreed to a rotation scheme with two seats, for the Group of Arab States, and for some other regions. There is no reason to assume that a similar arrangement would not be possible for Europe. Until Europe becomes a political union — and even if it does not — a legal construction can be found. It seems dear that France, more than any other member, aims not only the political union of Europe but also UNSC seat for the EU.

## THE “SKILLFUL SURGEON” APPROACH

*“It appears less acceptable than ever that sovereign States should have created an international organization equipped with broad powers of control and sanction vis-à-vis themselves but itself exempted from the duty to respect both the Charter which gave it birth and international law.”*

? Mohammed Bedjaoui

The U.N. Charter should be the basic document for some time to come.<sup>35</sup> The necessary global paradigm shift can be accomplished within its scope. A skillful surgeon will try to obtain the maximum result with the least effort; he will keep to a minimum the incisions required to remove the affected parts or make implants and cure the patient. Thus, analyzing the deficiencies of the UN, one could usefully discuss revision of Article 7 (principal and subsidiary organs)<sup>36</sup> and of course Article 23 (Composition of the Security Council) of [p. 514] the U.N. Charter. By just adding to the wording of these texts, a major breakthrough could be achieved.

Ultimately, this author believes, all UN members will have to accept that reform hinges on the “three musts”: (1) more popular representation and controls (democratization) of the world body, to “enhance U.N. peace keeping,” which could be most easily implemented by adding a few words to Article 7 of the U.N. Charter; (2) Reforming the UNSC and bringing it under the rule of law, enhancing its legitimacy, equitable representation, and effectiveness, which no doubt implies that nation-states agree to some essential cuts in their sovereign powers; and (3) that member states “declare that they recognize as compulsory ... the jurisdiction of the Court”, that is, the International Court of Justice (ICJ) at The Hague.<sup>37</sup> Unfortunately, during the Cold War era, some big nations lost interest in supporting the ICJ and preferred to rely on their own instruments and mechanisms, partly because

the European situation did not allow for anything else. The legitimacy of the International Criminal Court would also be greatly enhanced if the Charter provisions, provided in Article 36, II of the Statute of the ICJ, were implemented.

#### SUPPOSE...

To put the U.N. charter fully into effect and abolish war, suppose an initial agreement could be obtained on the following priorities: (1) to keep the veto but bring the UNSC progressively under the rule of law (veto restricted to five members, and qualified to apply to action under Chapter VII of the Charter),<sup>38</sup> (2) to establish a European Union permanent representation in the UNSC, and (3) to have a prominent member of the South take on a major role and responsibility in world affairs. Then the question will be which country would qualify to become one of the 'permanent five'. Looking beyond mere animosities and apparent rivalries, one should be able to find some common ground, keeping in mind the goal, simply stated: a peaceful, disarmed, orderly world. Each candidate nation's case would have to be considered seriously, reckoning the pros and cons. A team of experts should very conscientiously record, for each of the possible countries, its history, including pacifist traditions, its social, political and economic conditions, with a view to its contributions to the United Nations, and its regional role and future prospects. In all likelihood, India will get the highest scores. [p. 515]

#### CRITERIA

Let us therefore take India as an example. India is the world's most populous democracy,<sup>39</sup> comprising almost one sixth of the world population. Its Muslim population is a factor to be reckoned with. According to an estimate, "more than half of the world's citizens living under democratic rule are to be found in South Asia".<sup>40</sup> Historically, India has been the country credited most frequently with a tradition of non-violence. It has been a propounder of universalist principles and philosophy,<sup>41</sup> and had a leading role among the developing and non-aligned countries.

India, allegedly possessing the world's third largest army and the fourth-largest navy,<sup>42</sup> is a "troop-contributing country" to the United Nations. She is a factor of stability, because she is basically self-contained. While Pakistan, a

major arms exporter, poses a problem in the region, there also seem to be a number of convergent interests and issues, as reflected in SAARC. Cooperation between India and other Asian countries, such as Japan, on issues of disarmament, monitoring, and the abolition of war would have a positive impact on the region. This in turn might positively affect China, which has traditionally posed a threat to India, and is perceived as a major potential security threat in the Far East and the world in the future, if it is not contained.<sup>43</sup> Concerning Pakistan had for a long time attempted to acquire nuclear capability, much of it with German know-how and aid,<sup>44</sup> and apparently possessed nuclear weapons for some time before India,<sup>45</sup> which had for a long time been a proponent of nuclear disarmament. If India follows up on Japan's Article 9, Japan should support India's wish for a permanent seat in the UNSC<sup>46</sup>

In the past India has advocated a world federal authority,<sup>47</sup> complementing some idealistic American foreign policy objectives in this century.<sup>48</sup> Mainly because of the European situation, these could not be followed through in the past. These precedents illustrate that there is a basic readiness in democracies to submit to the rule of law on a global scale. If India were included as one of the five permanent member of the S.C., there would be two logical options: (1) it could have veto power, or (2) it would not have a veto. It is difficult to find the best strategy. Perhaps from the start all new members should agree to forego the veto right, and avoid unnecessary and time-consuming discussions and fruitless competition on the issue. But India may very well, on the grounds of the "colonial substitute" thesis, insist on maintaining equal rights with the other four members. The main criterion, however, will be the country's willingness to adopt a gesture of defenselessness, even if on condition of [p. 516] reciprocity. If India wants to be permanently represented on the UN Security Council, it holds the key for becoming a permanent member in its own hands.

#### THE NUCLEAR PREDICAMENT AND SOUTH ASIA

Does the fact that India has become a nuclear power mean that India is no longer eligible? Or does it mean that India has abandoned its basic philosophy of and disposition toward nonviolence and U.N. support? What are the chances that Pakistan and neighboring countries will support the cause of abolishing war? Let us take Japan, for example, which during the

interwar period was not trusted or taken seriously (e.g., when the conciliatory Shidehara Kijūrō was foreign minister in the twenties), and chances for cooperation and peace were squandered and missed.<sup>49</sup> Similarly, there is a danger of misunderstanding India and its intentions, just because it is following its own reason. Of course, there are causes for misunderstanding India. From an Indian point of view, a durable peace requires justice. The present state of “warlessness simply means the indefinite postponement of a nuclear war”, although “in a generic sense the term ‘warlessness’” should refer to a “world situation in which disarmament has been achieved, decisions of the International Court of Justice are enforceable, an international police force has been established effectively, and the veto has been abolished in the Security Council”.<sup>50</sup> In any case, this author believes that India should not have gone nuclear; it should have taken legal action instead.<sup>51</sup>

India seed the commitment under Article VI of the Nuclear Non-Proliferation Treaty (NPT) as a strict “bargain of disarmament and non-proliferation ... [which] continues to remain unfulfilled.” It was even “argued ... that Article VI only requires negotiations and not necessarily the conclusion of a treaty to abolish nuclear weapons.”<sup>52</sup> According to Jasjit Singh, director of New Delhi’s renowned Institute for Defense Studies and Analyses (IDSA), this “misperception and misinterpretation was set at rest” by the ICJ’s 1996 ruling concerning the legality of nuclear weapons, in which the judges unanimously agreed that “there exists an obligation to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control.”<sup>53</sup> Singh states that under these circumstances India’s strategy was “to keep the nuclear option open as long as feasible, not weaponize, and work for disarmament which would eliminate the roots of the security dilemma.”<sup>54</sup> Whether one believes it or not, it is likely that India did not assemble a weapon or stockpile until some time between 1997 and May 1998, when it first exploded a nuclear device.<sup>55</sup> [p. 517]

India seems to be engaged in a power pursuit for what it perceives as a just cause, partly over the nuclear disarmament issue, and prompted by Pakistan’s decades-long attempts to undermine its legitimate rights in Kashmir.<sup>56</sup> Pakistan’s attempts to assemble a nuclear device did not help. It is a dangerous game,<sup>57</sup> but if Indian and Pakistani politicians could couple power with wisdom, adopting —and not only advocating —concrete measures to strengthen the international legal order, this would have lasting and

positive effects worldwide. At least “in the short run,” one authority observed, “India and Pakistan may be able to expand their peacekeeping and stabilizing role in regions adjacent to South Asia”.<sup>58</sup> The implementation of a practical policy of peace and disarmament in the area would then become feasible. India could greatly advance her aspirations and cause, if she would take such responsibility upon herself, for the sake of world peace, as the Article-24 provisions provide. This idea could find its fulfillment in an initiative, initially involving India and Japan, to bring about a process leading to a world governance under law.<sup>59</sup>

## THE NEW SECURITY COUNCIL

The “pragmatic dream”<sup>60</sup> of an effective global foundation of peace requires a feasible plan. It must include a comprehensive package for UNSC Reform, with a “real” vision for the future. A strong Muslim participation is necessary to bind potential “rogue” states into the framework of a world under the rule of law. The UNSC must be restructured, and the permanent members should immediately take up their responsibilities to formulate “plans for the establishment of a system for the regulation of armaments” (Article 26, in connection with Article 47, U.N. Charter), with a view to achieving UN-controlled “general and complete disarmament”.<sup>61</sup> New permanent or semipermanent members could forego the veto right, not with a view to eventually abolish the veto altogether, but to keep the number small.<sup>62</sup> Africa, the Group of Arab States and Europe could operate on a rotational basis.<sup>63</sup> This solution may not be appropriate for other areas.<sup>64</sup> Japan, as the most advanced Asian country and a top-financial contributor to the UN budget, with its basic philosophy of pacifism, should also obtain a permanent seat and, rather than contributing militarily, should be a chief actor in monitoring disarmament.

How representative would such a reformed UNSC be? As Robert McNamara has pointed out some time ago, an “important element in a global collective security system would be strengthening existing regional organizations such as the Organization of American States and the Organization of African Unity, as well as the creation of such groups in Asia and the Middle [p. 518] East. These bodies would eventually function as regional arms of the UNSC.”<sup>65</sup> If people matter, then, with an expected world population of 6 billion people in 1999, the UNSC’s nine permanent members

would together represent 4.082 billion. the United States' 274 million inhabitants, the European Union's (15 states) 374 million inhabitants, the Russian Federation's 147 million inhabitants, Japan's 126,2 million inhabitants, the Peoples' Republic of China's 1.255 billion inhabitants, the Republic of India's 982,2 million inhabitants, Latin America's (about) 482,5 million inhabitants (including Cuba and Mexico), the Arab League's (22 states, including Palestine) 255,8 million inhabitants, and the Organization of African Unity's (54 states) roughly 750 million inhabitants.<sup>66</sup> More than two thirds of the world population would be permanently represented! Some increase in the non-permanent membership could adequately represent the remaining one-third of world population.

The reform package could – and, in my humble opinion, should – include a bid for establishing a Second Assembly, besides the General Assembly and the Security Council, as a new principal organ to be added under Article 7 of the Charter, that would be directly accountable to the countries' electorate. It could – and, in my opinion, it should – call for a World Constituent Assembly, to be convened at an early date. (There was a bill to this effect in the Indian Parliament for many years, first introduced in 1973 by MP Hari Vishnu Kamath. In 1981 an almost identical bill was before the Indian Upper House, the Rajya Sabha, introduced by Mulka Govinda Reddy.)<sup>67</sup> The Constituent Assembly could adopt a constitution for the Second Assembly to define its function in relation to the UN Security Council and the General Assembly. It could have provisions to make it eventually and gradually into a real world parliament, which is the original aim of the Interparliamentary Union, founded in 1889. The minimum that must be achieved immediately would be the establishment of an NGO forum as a subsidiary organ under Article 22 of the Charter. Democratization of the U.N. means more NGO participation.<sup>68</sup>

#### HOW? LIMITATIONS OF NATIONAL SOVEREIGNTY

As one keen observer noted, this proposal “opens a door in a concrete/realist way on possibilities usually thought of as beyond consideration”. The reason why the end of the Cold War had not more quickly “opened the way to a cooperative security system that would minimize the role of armed force in international affairs”<sup>69</sup> is to be found in the inability of nation-states to pool their interests in areas where this is vital. Naturally, this

requires a break from traditional military security and jumping over the national shadow. [p. 519] Friedrich Nietzsche, in his *Human, All too Human*, in the Chapter “The Wanderer and his Shadow,” points out “the means to real peace”:

No government nowadays admits that it maintains an army so as to satisfy occasional thirsts for conquest; the army is supposed to be for defence. That morality which sanctions self-protection is called upon to be its advocate. But that means to reserve morality to oneself and to accuse one's neighbour of immorality... This is how all states now confront one another: they presuppose an evil disposition in their neighbour and a benevolent disposition in themselves. This presupposition, however, is a piece of *inhumanity* as bad as, if not worse than, a war would be; indeed, fundamentally it already constitutes an invitation to and cause of wars... The doctrine of the army as a means of self-defence must be renounced just as completely as the thirst for conquest... –As is well known, our liberal representatives of the people lack the time to reflect on the nature of man: otherwise they would know that they labour in vain when they work for a gradual reduction of the military burden.<sup>70</sup>

Limitation of national sovereignty with regards to the right to go to war addresses the root cause of the problem. If war is to be abolished—which seems to be the aim of the Hague movement, “Appeal for Peace 1999,” and of Pugwash,<sup>71</sup> among others – this means that nation states must delegate sovereign powers to the United Nations Security Council, to give the United Nations the power to do its job as intended by the founders. Reviewing the legality of the Council's actions, as suggested in some quarters, to “help build up a body of rules concerning the question of competence [of the UNSC], based on the opinion of the highest legal authority under the Charter,”<sup>72</sup> would be desirable. The method most likely to succeed, however, would be to pass a bill in the Parliament of some (powerful) country, defining the Council's powers by transferring sovereignty. It is for the community to give the Council a basic law. In this way, a kind of irrefutable law-making “motion” would be introduced in the Council (though it would need to be seconded, and eventually adopted) which at the same time aiming at putting into force the system of collective security. In Germany for example, parliament may pass such bill with simple majority under Article 24 of the Federal Republic of Germany's Basic Law.<sup>73</sup>

The argument that individual nations could not “surrender their right of self-defense to a supranational organization and submit to the superior

will of [p. 520] the family of nations," because "great powers" would never "submit to the will of a central power,"<sup>74</sup> does not hold. It can easily be refuted, because the UN Charter took this fact into account by already making the great powers themselves the permanent and hard core of the central power. By transferring sovereign powers to it in a legislative act, the "family of nations" may create an effective world organization. Not "the creation of a unified will" is the precondition for achieving this aim, but the "intention of peace" in a single nation that would render itself defenseless and would be followed up by others, thereby giving the UN the power to do its job.

Although it is commonly assumed that under Article 24 of the UN Charter member nations have already transferred powers to the UNSC "to achieve prompt and effective action by the United Nations," there is an obvious gap between the reality and the idea. On close scrutiny this proposition is lacking credibility, performance (at least during the first 45 years of the UN), and legitimacy or legality. Credibility concerns the moral underpinning or obligation of nation states to do what they have promised in principle. The fact is that governments are deceiving themselves and the peoples of the world, arguing that they have already delegated responsibilities when in fact they are doing everything to avoid making a definite commitment. Performance is low, and the legality of the acts of the Council may be questionable. World peace as a stable condition is non-existent. As far as the legality or legal effectiveness and significance of Article 24 of the UN Charter is concerned, it is doubtful that acceding to such an international pact or treaty is sufficient ground for justifying such a far-reaching delegation of sovereign powers as Article 24 seems to imply, and on which presumption the UNSC seems to act.

#### ARTICLE 9 AND THE "ARTICLE-24 PROVISIONS," THE WAY TO BANISH WAR

The abolition of war had become a major foreign policy objective with and after the First World War. Shidehara Kijūrō (1872-1951), who had been following a conciliatory policy toward China and other powers as Foreign Minister between 1924 and 1932, was one of the chief players in the international political arena. He was known as an internationalist

and a pacifist, had been on the list of judges to the Permanent Court of Arbitration at The Hague from 1918-24, and prior to that had closely monitored the Hague peace conferences. There is sufficient reason to believe, that Article 9 of the Japanese Constitution (JC) was suggested to General Douglas MacArthur on January 24, 1946 by the then Prime Minister Shidehara.<sup>75</sup> The origin of Article 9 and [p. 521] other constitutional provisions limiting state sovereignty can be traced to a Resolution by the 22nd Conference of the Interparliamentary Union (IPU) held in Bern in 1924. The Resolution stated:

The XXII<sup>nd</sup> Inter-Parliamentary Conference [1924] endorses the stipulation... voted at the Fourth Assembly of the League of Nations, by the terms of which war of aggression is described as *an international crime*, and recommends that proposals be submitted... to... parliaments for *amendments to the Constitution*, such proposals a) *to forbid resort to war...* [and] b) *to make arbitration or other amicable or judicial means obligatory.*<sup>76</sup>

The proposal engaged lawmakers around the world, when Shidehara, Aristide Briand, Frank Kellogg and Gustav Stresemann were foreign ministers. Subsequently, progressive international lawyers and some governments worked to "harmonize" international and constitutional law.<sup>77</sup> The following provision in the Danish constitution was based on recommendations by an IPU Conference held in Bern from August 28 to September 2 1952:

Art. 20. Powers which according to this constitution rest with the authorities of the kingdom, can, through a bill, to a specifically defined extent, be transferred to international authorities, which are instituted by mutual agreement with other states to promote international legal order and cooperation.<sup>78</sup>

Japanese scholars proposing to revise Article 9 in the past have considered amendments to the Japanese Constitution along similar lines, suggesting that its limitation of sovereignty be based on conditions of *reciprocity*, as in the Argentine, Danish, French, Greek and Italian constitutions.<sup>79</sup>

Although in the Japanese Constitution it has not been specified, who the "international authority" is to which the sovereign right is relinquished, we must consider the United Nations to be that international authority and the abolition of war to be its chief aim. Then Article 9 becomes a cornerstone of the "international legal order and cooperation" in the future. If Article 9 is seen as a "motion" to abolish war among nations, which awaits "seconding"

by some other conscientious power, its ulterior purpose becomes clear. There is no need for other countries to write such article into their constitutions. The follow-up would be for another country to pass a bill in its national assembly transferring "security sovereignty" (as Professor Ian Tinbergen once [p. 522] labeled it)<sup>80</sup> to the world organization. This would trigger the process, and bring the issue of the abolition of war into open debate.

Corresponding to the Danish Article 20 and to Article 9 of the Japanese Constitution, the following constitutions limiting national sovereignty should be listed. They are (in alphabetical order): Argentina, Austria, Belgium, Burundi, Congo, Costa Rica, Denmark, France, Germany, Greece, Guatemala, India, Ireland, Italy, Japan, Luxembourg, Netherlands, Norway, The Philippines, Portugal, Singapore, Spain, Sweden, Switzerland, and Zaire.<sup>81</sup> The frequency of these provisions in the constitutions of Europe suggests that law-makers anticipated that the problem of European integration into the world community was primarily of a legal and organizational order, and that the solution of this problem was given high priority. Application of these provisions would almost automatically result in an EU seat in the UNSC.

We must think carefully about how to most effectively strengthen world organization, if there is not to be another great war. Regional integration and international organization must go hand in hand. The approach of only strengthening regional organization, as a step towards a more effective international order, is rather short-sighted and one-sided. Quite to the contrary, there is ample ground for assuming that regional integration will be much enhanced by strengthening the international legal order first, as some had been seen clearly early in this century.<sup>82</sup> At the Inter-Parliamentary Union conference in 1952 at Berne, some Asian participants rightly pointed out that

The two world wars have taught Europe that national sovereign states could not be the last word in the evolution of human civilization... What we require now is a world organization which will be authorized with the rights surrendered by other states. ... The civilized nations have failed in the case of the League of Nations, and I may not be quite wrong if I say the Locarno Pact was the first step leading to that failure. I have my own misgivings as to whether many of these European political organizations are not in a way neutralizing the effectiveness of the United Nations.<sup>83</sup>

The Pakistani delegate concurred:

I personally feel that regional confederation of states or the creation of regional representative assemblies would have the effect of delaying the process of establishing a world Parliament or a world State, because regional superstates or assemblies would in the nature of things develop a sense of rivalry among themselves, and instead of co-operating with [p. 523] each other would run into conflict, very much like the modern sovereign state.<sup>84</sup>

It is an illusion to think that divergent national or regional military establishments will by themselves be able to maintain effective international peace and security in the twenty-first century. If the military establishment is not abolished, the best scenario (short of another world war) is George Orwell's *1984*, a warning for all of us. Action should be taken quickly. "Every year that the Security Council continues with its present structure, the UN suffers because the increasingly apparent lack of representativeness of the council membership diminishes its credibility and weakens its capacity for conflict prevention."<sup>85</sup>

## NOTES

1 Recently, in Germany there have been several publications forwarding a positive approach to world organization, even to the point of calling for strengthening the United Nations to become a world federation. See Ulrich Beck, *Was ist Globalisierung?* [What is Globalization?] (Frankfurt: Suhrkamp, 1997), which advocates a "transnational federalism"; Ulrich Menzel, *Globalisierung versus Fragmentierung* [Globalization versus Fragmentation] (Frankfurt: Suhrkamp, 1998), calling for a democratically controlled "international monopoly of power", a Kantian project; Ernst-Otto Czempel also seems to go in this direction.

2 See the "Information Statement" by the NGO Working Group on the Security Council (Revised, June, 1997): "people need a more effective institution of collective security..." <[http://www.globalpolicy.org/SECURITY\\_COUNCIL/](http://www.globalpolicy.org/SECURITY_COUNCIL/)> or write to Global Policy Forum, PO Box 20022, New York 10025, USA. See also Sir Brian Urquhart and Robert McNamara, *Toward Collective Security: Two Views*, The Thomas J. Watson Jr. Institute of International Studies, Brown University (Occasional Papers Number 5).

3 "Foreword", in: Eric Fawcett and Hanna Newcombe, eds., *United Nations Reform - looking ahead after fifty years* (Toronto: Science for Peace, Dundurn Series, 1995), xi.

4 For the Russell/Einstein Manifesto, commonly known as the Pugwash Manifesto, see <<http://www.grp.mtu.edu/pugwash/manifest.html>>.

5 Sarvepalli Radhakrishnan, *Towards a New World* (New Delhi, Bombay: Orient

Paperbacks 1980), 14, 45, 52, 135.

6 Statement of the Pakistani delegate Mr. Ahmed E.H. Jaffer, XL1st Inter-Parliamentary Conference, *Compte Rendu de la XL1e Conférence tenue à Berne du 26 août au 2 septembre 1952* (Geneva: Bureau Interparlementaire, 1952), 777-79. [p. 524]

7 Quoted by John Logue, "Introduction", in: Mortimer J. Adler, *How to Think About War and Peace* (1944; reprint, New York: Fordham University Press, 1995), xxvi-xxvii. As good example for progress in this direction is the near-success of the Association to Unite the Democracies (AUD) at "getting the U.S. government to sponsor a meeting of the NATO nations to discuss the possibility of federating. The Senate passed the enabling bill unanimously, Richard Nixon and his State Department upheld it, the Foreign Affairs Committee of the House of Representatives approved it, but the Rules Committee which had a 9 to 6 majority in favor of it, took the vote when 4 of those favoring it were absent, thus killing the bill 5 to 6." Communication from the President of the AUD, Captain Tom Hudgens, attachment to his personal letter of May 19, 1997.

8 See Klaus Schlichtmann, "Artikel 9 im Normenkontext der Staatsverfassungen - Souveränitätsbeschränkung und Kriegsverhütung im 20. Jahrhundert" [Article 9 in context - limitations of national sovereignty and the prevention of war in the twentieth century], in *Gewollt oder Geworden*, ed. Werner Schaumann (Munich: iudicium, 1996), 129-150.

9 ECOSOC's "reform has repeatedly failed because it was attempted piecemeal." Erskine Childers with Brian Urquhart, *Reviewing the United Nations System* (Uppsala: Dag Hammarskjöld Foundation, 1994), 119.

10 "When I joined the United Nations in 1945, Chapter VII was the showpiece of the Charter. It was called the 'teeth' of the Charter..." Brian Urquhart, "After the Cold War: Learning from the Gulf", in *Toward Collective Security: Two Views* (Note 2), p. 13.

11 „We are celebrating... the actual application of the principle of collective security against aggression.“ Brian Urquhart, "After the Cold War: Learning from the Gulf", 9.

12 "There is no direct evidence that nuclear weapons prevented a world war. Conversely, it is known that they nearly caused one... As for the assertion that nuclear weapons prevent wars, how many wars are needed to refute this argument?" Joseph Rotblat, "Remember Your Humanity" (speech on the occasion of receiving the Nobel Peace Prize), 1995. Available on-line at <<http://www.pugwash.org/archive/Rotblatnobel.htm>>.

13 See *Congressional Record*, April 22, 1947, A1905, for "identical resolutions... introduced by Messrs. Fulbright and Thomas in the Senate and Hale Boggs in the House, the substance of which was that America favored the creation of a United States of Europe within the framework of the United Nations Charter (emphasis added). That resolution was subsequently adopted." Quoted in Arnold J. Zurcher, *The Struggle to Unite*

*Europe 1940 - 1958* (New York University Press 1958), 24.

14 "When the UN was founded, few envisaged complete decolonization even in this century." Childers and Urquhart, "Reviewing the United Nations System," 123. [p. 525]

15 See the *Bulletin of the Atomic Scientists*, February 1948, for a copy of Einstein's letter. Also see Otto Nathan and Heiny Norden, eds., *Einstein on Peace* (New York: Schocken, 1972), 449-55, and 443 for the negative response by four members of the Soviet Academy of Sciences, in the *New Times* of November 26, 1948. Interestingly, a *New Times* (Soviet) edition in April 1988 published a belated response by Russian scientists stating that Einstein's world-government ideas "wonderfully correspond to the needs of the present times."

16 The first such article was introduced by Robbespierre into the French Constitution of the First Republic on 22 May 1790, and read: "The French nation gives up the undertaking of any war aimed at making conquests, and will never employ its forces against the freedom of any people." See Boris Mirkine-Guetzevitch, "Le droit constitutionnel et l'organisation de la paix (droit constitutionnel de la paix)", *Recueil des Cours*, 3, 45 (1933), 676-773.

17 This "impotence" may be one reason for the arms dilemma; if not powerful within an effective world security system, at least the "permanent five" would be powerful individually in military terms. According to Boutros Boutros-Ghali, "during the whole cold war period, the question centered around the need to shore up the weak authority of the Council... Today, the question has been turned on its head." Boutros Boutros-Ghali, "Preface", in: Mohammed Bedjaoui, *The New World Order and the Security Council, Testing the Legality of Its Acts* (Dordrecht, Boston and London: Martinus Nijhoff, 1994), xvii. That the Security Council was not intended to be "a law unto itself" was articulated by John Foster Dulles, *War or Peace* (New York: Macmillan, 1950), 194, quoted in Bedjaoui, 1.

18 This problem was clearly realized by some authors after the war. Every Reves wrote: "If in a given situation, three of the major powers voted for a certain military intervention, while the other two voted against such a measure, these two powers could scarcely be pictured taking up arms and undertaking military action contrary to what they regard as their own national interests, and contrary to their votes. So the whole debate on unanimous vote versus majority vote... is irrelevant." Every Reves, *The Anatomy of Peace* (London and Toronto: Cassell, 1950), 213.

19 Article 109 foresaw a "General Conference" to be held "before the tenth annual session of the General Assembly" following the adoption of the Charter, for the purpose of review and possible amendments of the Charter under Article 108.

20 The *Daily Yomiuri*, March 6, 1993. This was revealed "during a testimony in a

public hearing of the Senate's Foreign Relations Committee."

21 "Granted, in adding a permanent German seat, Europe would be lopsidedly overrepresented." "A Larger Security Council", *New York Times* editorial, August 15, 1997.

22 According to the German system, the ambassadors and staff in the Foreign Ministry are not replaced after an election. [p. 526]

23 On February 2, 1998, in a personal letter to the author, Paolo Fulci, the Italian U.N. Ambassador, wrote: "The topics of restructuring the Security Council and transferring powers to international organizations are indeed in many ways connected. Your vision of a single European representation is very interesting. It is an idea which the Italian Parliament recently discussed and promoted..."

24 See Ted Daley, "Can the U.N. Stretch to Fit the Future?", *The Bulletin of the Atomic Scientists*, April 1992, 38-42. After the last war, James T. Shotwell, who had been consultant to the U.S. State Department in the planning of its proposals for the United Nations Organization made it quite clear that to distinguish "between the action of police and that of the military establishment of nations" was "of the utmost importance in any planning for the international system of peace enforcement." James T. Shotwell, *The Great Decision* (New York: MacMillan, 1945), 128.

25 This quote and the one from Dr. Helmut Kohl are in *Europa-Archiv*, Folge 13 (1992), Dokumente, pp. D 449 and D446, respectively.

26 Immanuel Kant, *Perpetual Peace: A Philosophical Sketch*, "The Law of Nations Shall be Founded on a Federation of Free States," Königsberg 1795.

27 Hilmar Werner Schlüter, *Der Sicherheitsrat der Vereinten Nationen* [The United Nations Security Council] (Bonn: Deutsche Gesellschaft für die Vereinten Nationen, 1977), UN-Texte 22, pp. 14 and 15 respectively (translation added).

28 See for example Volker Rittberger, Martin Mogler and Bernhard Zangl, *Vereinte Nationen und Weltordnung* [United Nations and World Order] (Opladen: Leske & Budrich, 1997), 63: "The proposal for development of a 'public monopoly' [of the United Nations] promises an establishment of a system of Separation of Powers within the U.N. This would serve to fulfill the criterion of an institutionally guaranteed public control of the Security Council. Already, in view of the considerable increase in activities of the Security Council, today the formation of U.N. organs [reflecting and implementing the principle] of Separation of Powers is desirable. The more the role of the U.N. as a world (federal) statelike actor is evident, the more urgent would this [its implementation] become" (translation added).

29 Why did the German government in December 1991 not make recognition of the newly emerging states of Croatia and Slovenia conditional on their accepting the compulsory jurisdiction of the International Court, as had been suggested in some

quarters? With the end of the cold war there had been a definite drive to recognize the compulsory jurisdiction of the ICJ and reactivate the institution, after Cyprus, Guinea-Bissau, Nauru, Poland, Spain, Hungary and Zaire had made declarations under Article 36, II of the Statute of the ICJ, just prior to the Yugoslav crisis. At the same time, enacting a 1987 proposal of President Mikhail Gorbachev, the U.S. State Department and Soviet Foreign Ministry had been negotiating a far-reaching agreement to accept binding arbitration and ask other permanent members of the Security Council to agree. Had Germany taken action, this would have had a signal effect. [p. 527]

30 Farhan Haq, "Plans Dim for Security Council Expansion", InterPress Service, United Nations, 21 November 1997. According to the report, Ambassador Tono Eitel of Germany said: "We have not been able to get our act together... Security Council reform, like U.N. reform, is extremely difficult, I give it a 50 percent chance in the foreseeable future." On November 27, *The Daily Yomiuri* published a story titled "U.N. delays decision to expand UNSC".

31 *The Daily Yomiuri*, December 31, 1997.

32 See the now historical article with the cartoon by Plantu in *Le Monde*, January 13, 1992, front page.

33 "Germany to push for UNSC Seat", *The Japan Times*, March 1, 1993. According to the paper, foreign minister Kinkel thought that "Germany would have to amend its constitution", in this case. On March 6 *The Daily Yomiuri* had an article stating that the U.S. government was "prepared to support Japan and Germany in their bid to obtain permanent seats on the U.N. Security Council."

34 Treaty on European Union of January 1, 1993, Final Act and Title I, Common Provisions, Article B. Similarly, the German Constitution, in its Preamble, stipulates the purpose "to serve the peace of the world as an equal part in a unified Europe."

35 "The U.N. Charter offers a far more appropriate framework for relations among nations ... than does the doctrine of power politics." Robert McNamara, "The Post-Cold War World and Its Implications for Military Expenditures in Developing Countries", *Toward Collective Security*, 28.

36 Article 7 would be revised to establish a permanent NGO forum or "United Nations Second Assembly" to make the UN democratic, and directly relate to its "constituency".

37 See the very enlightening article by M. Chemillier-Gendreau, in *Le Monde Diplomatique*, No. 5079, of November 15, 1996, on the International Court of Justice, and the "urgent necessity" to strengthen the international judicial system, making the Court's jurisdiction compulsory for all states. See the same at <<http://www.global-policy.org/wldcourt/icj.htm>>. See also, for example, Robert C. Johansen, "Enhancing United Nations peace-keeping," Chadwick C. Alger, *The Future of the United Nations*

*the United Nations System: Potential for the Twenty-first Century* (Tokyo, New York, Paris: United Nations University Press, 1998), 112; Childers and Urquhart, *Reviewing the United Nations System*, 171ff; Erskine Childers, "Empowering the Peoples in their United Nations", paper presented at the Hesburgh Centre for International Studies, Symposium on the United Nations at Fifty: Creating a More Democratic and Effective UN, December 2, 1994, claimed that the proposal has been endorsed "by the European Parliament, and [that] Canada's House of Commons foreign affairs committee is offering to host a first preparatory conference." Dieter Heinrich, "A United Nations Parliamentary [p. 528] Assembly", in: Eric Fawcett and Hanna Newcombe, *United Nations Reform* (Toronto: Science for Peace, 1995), 95-99.

38 And if for "security reasons" the Council should consider curtailing basic human rights and liberties, this could be vetoed.

39 Unfortunately, the Association to Unite the Democracies (AUD) supports the stance of "Freedom House" in New York City, which does not list India among the free, democratic nations. India, a member of the League of Nations, participated in the activities of the International Council for Intellectual Cooperation (ICIC), the predecessor to UNESCO, and thus participated in the discourse on the future of international organization, before and during the founding of the UNO.

40 Stephen Philip Cohen, *The United States, India, and Pakistan: Retrospect and Prospect*, ACDIS Occasional Paper, July 1997, 1.

41 Amartya Sen claims that "a tendency towards unity and a broad synthesizing priority are very special characteristics of Indian culture." Amartya Sen, *On Interpreting India's Past* (Calcutta: The Asiatic Society, 1996), 15.

42 Ernst-Otto Czempiel, *Weltpolitik im Umbruch. Das internationale System nach dem Ende des Ost-West-Konflikts* [World politics in transition. The international system after the end of the East-West conflict] (Munich: C.H. Beck 1993), 82.

43 "Should it [the United States] seek an alliance with India to help counter growing Chinese influence...?" Stephen Philip Cohen, *The United States, India, and Pakistan*, 9.

44 See *Congressional Record*, "Nuclear and Missile Proliferation" (Senate - May 16, 1989), S5437-S5449; see <<http://www.fas.org/spp/starwars/congress/1989/890516-cr.htm>> for full pages in the *Record*.

45 Apparently already in 1993 its nuclear weapons program had been developed to the point of enabling Pakistan to assemble a nuclear weapon. See Robert McNamara, "The Post-Cold War World and Its Implications for Military Expenditures in Developing Countries", *Toward Collective Security*, 40: "the Indo-Pakistani rivalry was unquestionably a central motive in Pakistan's acquisition of a nuclear weapons capability."

46 Professor Kimitada Miwa, an eminent historian of Sophia University, Tokyo,

recounts his visit to India in spring 1997. Before a lecture at Madras, in South India, he, the Japanese Consul General and the editor of the well-known English daily *The Hindu*, had a private chat over a cup of tea. The patriotic *Hindu* editor impressed the two Japanese gentlemen with his opinion on India becoming a strong "leader" among nations, and obtaining a permanent seat in the UNSC "But to be a leader you have to have followers!" countered the Japanese Consul General, to Professor Miwa's embarrassment. What, if the *Hindu* editor had replied: "Well, how many followers do you have, of your Article 9, abolishing war? Why don't we join our peaceful efforts?" This is where the thinking starts. Why wouldn't Japan support India to obtain a permanent seat in the Council, while India would "second" and [p. 529] support Japan's abolition of war, expressed in Article 9 of Japan's constitution, triggering a process that would lead to implementing the provisions of the UN Charter not yet in force?

47 For example, Prime Minister Jawaharlal Nehru stated in a speech broadcast in the United States: "I have no doubt that world government must and will come, for there is no other remedy for the world's sickness. The machinery for it is not difficult to devise. It can be an extension of the federal principle, a growth of the idea underlying the United Nations, giving each national unit freedom to fashion its destiny according to its genius." See also the chapter on "World Federation" in the Indian National Congress's famous "Quit-India Resolution" of August 8, 1942.

48 See the Resolution in both Houses, H.Con.Res.64 and S.Con.Res.56, of June 7, and July 26, 1949 respectively, calling for the "development" of the United Nations "into a world federation open to all nations with defined and limited powers."

49 See Klaus Schlichtmann, "Perceptions on Japan and the 'Versailles-Washington System' [Berusaiyu-Washinton taisei] with Comments on Japan among Imperialist Powers in Asia/Pacific and Her Experiment with the Universal Principle of Racial Equality", *Sophia International Review* (Tokyo), 20 (1998), 83-90; and Klaus Schlichtmann, "Japan, Germany and Shidehara Diplomacy", *Journal of International Studies*, Institute of International Relations, Tokyo, January 1998, 1-19.

50 Mahendra Kumar, *Current Peace Research and India* (Varanasi: Gandhian Institute of Studies, 1968), 6.

51 However, with Western (dominant) legal scholars not very keen on recognizing the validity, practicability and applicability of the Article-24 provisions, and in fact ignoring them altogether, it might not have had the desired effect.

52 Jasjit Singh, "India, Europe and Non-Proliferation: Pokhran II and After", *Strategic Analysis* (New Delhi: ISDA, 1998), 22:8, 1112.

53 *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion*, Communiqué No. 96/23, July 8, 1966, International Court of Justice, The Hague. In the Preamble to the Non-Proliferation Treaty "the cessation of the manufacture of nuclear weapons," and

“the liquidation of all existing stockpiles” are stipulated.

54 Jasjit Singh, “India, Europe and Non-Proliferation”, continuing: “It was mostly ignored or not understood in the Western world that an open option was a policy of restraint” ( emphasis added).

55 This does not mean that India had not collected enough fissible material to build a bomb any time it wanted. See William Walker, “International nuclear relations after the Indian and Pakistani test explosions”, *International Affairs*, 74:3 (1998), 505-528, and Rodney W. Jones, Mark G. McDonough, with Toby F. Dalton and Gregory D. Koblenz, “INDIA, from Tracking Nuclear Proliferation 1998”, [p. 530] Washington: Carnegie Endowment for International Peace, <<http://www.ceip.org/programs/npp/nppindis.htm>>.

56 See R. S. Saini, “Is the Right to Self-determination Relevant to Jammu & Kashmir?”, *The Indian Journal of International Law* (1998), vol.38:2, 157-181.

57 “The Indian and Pakistani explosions present exceptional dangers.” Walker, “International Nuclear Relations,” 506.

58 Stephen Philip Cohen, *The United States, India, and Pakistan: Retrospect and Prospect*, 10.

59 See for example the balanced article by Selig S. Harrison, “India’s Muscle Flexing Is Over. Let the Bargaining Begin,” *Washington Post*, May 17, 1998.

60 Urquhart, “After the Cold War,” 15.

61 The President of the Nuclear Age Peace Foundation, David Krieger, has pointed out, that “the regulation of armaments [under Article 26 of the U.N. Charter] is not optional for the Security Council. The Article says unambiguously that the Security Council ‘shall’ formulate such a plan. The members of the Security Council have breached a solemn duty to the people of the world... the United Nations can succeed only if the nations that are its members live up to their legal duties under the Charter.” David Krieger, May 20, 1996, <[http://www.globalpolicy.org/SECURITY\\_COUNCIL](http://www.globalpolicy.org/SECURITY_COUNCIL)>.

62 General Assembly President Razali Ismail of Malaysia on March 20, 1997 proposed that new permanent members should have no veto power. “They are elected,” Razali said, arguing that their powers were not “inherited ... as a result of 1945.” United Nations Press Release GA/9228, March 20, 1997. Abolition of the veto power was suggested in the Declaration on Security Council Reform by the foreign ministers of the Non-Aligned Movement in New Delhi, on April 8, 1997.

63 Latin America apparently seeks a different arrangement; Argentina and Brazil are competing for permanent seats.

64 See for example the statement by Ambassador Bilahari Kausikan of Singapore, in a speech presented on May 5, 1997, saying that “permanent regional rotational seats may work for Africa... Africa already has established a system for rotation of candidatures.

We do not see how it can work for any other region where it will only lead to permanent stress and conflict.” <[http://www.globalpolicy.org/SECURITY\\_COUNCIL](http://www.globalpolicy.org/SECURITY_COUNCIL)> (emphasis added).

65 McNamara, “The Post-Cold War World,” 38.

66 In this figure, the total combined population of 179, 449 million inhabitants of the ten states who hold a double membership, i.e. both in the OAU and the Arab League – Algeria, the Comores, Djibouti, Egypt, Libya, Mauritania, Morocco, Somalia, the Sudan and Tunisia – has been subtracted. Figures in this paragraph have been taken mainly from the UN Population Division, Department of Economic and Social Affairs. [p. 531]

67 *World Peace News* published about this in several issues of vol. 12 (1981/2), and vol. 13 (1982/3) (ed. by Tom Liggett, United Nations, 4th floor PO Press Boxes, New York, N.Y. 10017.

68 See website of Japanese Foreign Ministry, <[http://www.mofa.go.jp/policy/un/pamph96/0\\_un.html](http://www.mofa.go.jp/policy/un/pamph96/0_un.html)>.

69 Randell Forsberg, “Keep Peace by Pooling Armies”, *The Bulletin of the Atomic Scientists*, March 1992, 41.

70 Friedrich Nietzsche, *Human, All too Human, A Book for Free Spirits*, trans. R.J. Hollingdale, “The Wanderer and his Shadow,” vol. II, part two, 284 (Cambridge: Cambridge University Press, 1996), 380-81.

71 “The only way to prevent it (the ultimate nuclear catastrophe) is to abolish war altogether.” Joseph Rotblat in his speech on the occasion of receiving the Nobel Peace Prize on behalf of Pugwash.

72 Mohammed Bedjaoui, *The New World Order and the Security Council*, 17-18.

73 Article 24, 1 of the German constitution stipulates: “The Federation may by legislation transfer sovereign powers to international organizations.” The chairman at the constitutional convention in 1948, dealing with questions of the international law of peace, Professor Carlo Schmid, stated that this stipulation referred to the United Nations. “We must come to such organizations, otherwise we will be ruined,” Carlo Schmid said. Twelfth session, October 15, 1948, *Der Parlamentarische Rat 1948-1949, Akten und Protokolle, Bd.2 - Der Verfassungskonvent auf Herrenchiemsee* [Documents and protocols, vol.2 - The Constitutional Convention at Herrenchiemsee] (Bonn: Deutscher Bundestag und Bundesarchiv, 1975/1981), 454.

74 This is what the Swiss theologian Emil Brunner stated in 1943 in his *Justice and the Social Order* (1943, reprint, New York and London: Harper & Row, 1945), 235ff.

75 See Klaus Schlichtmann, *Shidehara Kijūrō, Staatsmann und Pazifist (1872-1951) - Eine politische Biographie* [Shidehara Kijūrō, Statesman and Pacifist (1872-1951) – A Political Biography] (Hamburg: Veröffentlichungen der Deutsch-Japanischen Juristenvereinigung,

vol.8, October 1998) and Ph.D.diss., Kiel University 1997. See also Schlichtmann, "The Ethics of Peace: Shidehara Kijūrō and Article 9 of the Constitution", *Japan Forum*, 7 (April/spring 1995), 43-67; Schlichtmann, "A Statesman for The Twenty-First Century? The Life and Diplomacy of Shidehara Kijūrō (1872-1951)", *Transactions of the Asiatic Society of Japan*, ser. 4, 10 (1995), 33-67; and Schlichtmann, "Artikel 9 JV, Ursprung, Auslegung und Kontroverse" [Article 9, Origin, Interpretation and Controversy], *Verfassung und Recht in Übersee*, Hamburg (in preparation).

76 English text in: Union Interparlementaire, *Compte rendu de la XXIIe Conférence tenue à Berne et Genève du 22 au 28 Août 1924* (Lausanne, Genève, etc., Librairie Payot 1925), 666. [p. 532]

77 See Boris Mirkine-Guetzevitch, "Le droit constitutionnel et l'organisation de la paix," 676-773, for the most comprehensive account of this trend, which found its expression in post-World-War II constitutional law. See also, by the same author, "La Renonciation à la Guerre dans le Droit Constitutionnel moderne," *Revue Hellenique de Droit International*, 4 (July-December 1951), 1-16.

78 See for example Stanley V. Anderson, "Article Twenty of Denmark's New Constitution", *The American Journal of International Law*, 50:3 (1956), 654-659.

79 In the 1950s, when discussions on constitutional revision took place on a large scale in Japan, the question of limitations of national sovereignty was carefully studied. The proposal of the Association for Constitutional Studies (kempō kenkyū-kai), for example, published on May 23, 1956, contained the following revised Article 9 (Article 117): "Japan, under condition of reciprocity with other states, agrees to limitations of its sovereignty, which are necessary for the organization of international peace and its safeguarding." Wilhelm RÖHL, *Die japanische Verfassung* [The Japanese Constitution] (Frankfurt and Berlin, 1963), 246. See also the proposal of the "Reform Party" (Kaishintō), published on November 10, 1954, (II. Renunciation of War), 201 and 203, which also refer to "the example of many countries."

80 Professor Jan Tinbergen in a personal letter to the author on June 7, 1985: "I thin it is an excellent idea to have transferred security sovereignty from national governments to the Security Council of the United Nations... "

81. ARGENTINA: The Nation ... approve[s] integrated treaties which delegate competencies and jurisdiction to interstate organizations concerned with reciprocal and equal conditions and which respect the democratic order and human rights. Any standards dictated pursuant thereto are to supersede laws... (Article 75, 24, of the Constitution of August 22, 1994). AUSTRIA: By law or by a State Treaty which must be ratified in accordance with Article 50 (1), specific sovereign rights of the Bund can be transferred to intergovernmental institutions and their organs and the activity of organs of foreign status in Austria as well as the activity of Austrian organs abroad can be

regulated within the framework of International Law. (Article 9, paragraph 2, of the Constitution as amended July 1, 1981). BELGIUM: The exercises of given powers may be conferred by a pact or law on institutions coming under international civil law. (Article 25 bis, of September 29, 1971). BURUNDI: The Republic of Burundi may create with other States international organizations of common administration, coordination and of free cooperation. The Republic may conclude accords of association or community with other states. (Article 172, of March 13, 1992 - almost identical Art. 73 of November 18, 1981). CONGO: The Republic of the Congo... shall accept to create intergovernmental organizations of common administration, coordination, free cooperation and integration with other states. (Article 177, 2nd sentence, of March 15, 1992 - almost identical Art. 107 of July 8, 1979). CONGO: The Republic of the Congo... shall accept to create intergovernmental organizations of common administration, coordination, free cooperation and integration with other states. (Article 177, 2nd sentence, of March 15, 1992 - almost identical Art. 107 of July 8, 1979). COSTA RICA: Public treaties and international conventions extending or [p. 533] transferring certain jurisdictional powers to a communitarian juridical order for the purpose of realizing common regional objectives shall require the approval of the Legislative Assembly by a vote of not less than two thirds of its entire membership. (Article 121, No.4, paragraph 2 of the Constitution of November 7, 1949, as amended on May 31, 1968). DENMARK: Powers which according to this constitution rest with the authorities of the kingdom, can, through a bill, to a specifically defined extent, be transferred to international authorities, which are instituted by mutual agreement with other states to promote international legal order and cooperation. (Art. 20, of June 5, 1953). FRANCE: On condition of reciprocity, France accepts the limitations of sovereignty necessary for the organization and defense of peace. (Preamble of the Constitution of October 27, 1946, stands reconfirmed in Constitution of 4 October 1958). GERMANY: (1) The Federation may by legislation transfer sovereign powers to international organizations. (2) With a view to maintaining peace the Federation may become a party to a system of collective security; in doing so it shall consent to such limitations upon its sovereign powers as will bring about and secure a peaceful and lasting order in Europe and among the nations of the world. (Article 24 of the Constitution of May 23, 1949). GREECE: To serve an important national interest and promote cooperation with other states authorities may be vested by a convention or agreement in agencies of an international organization. A majority of three fifth of the total number of members of Parliament shall be necessary to vote the law sanctioning the treaty or agreement. III. Greece shall freely proceed by law voted by the absolute majority of the total number of members of Parliament, to limit the exercise of national sovereignty, insofar as this is dictated by an important national interest, does not infringe upon the rights of man and the



foundations of democratic government and is affected on the basis of the principles of equality and under condition of reciprocity. (Article 28 II., Constitution of June 7, 1975). GUATEMALA: Guatemala will regulate its relations with other states in accordance with the international principles, rules, and practices with the purpose of contributing to the maintenance of peace and freedom with respect to and in defense of human rights, the strengthening of the democratic processes and international institutions that may guarantee the mutual and equitable interests between the states. (Article 149 of the Constitution of May 31, 1985). INDIA: The State shall endeavor to - (a) promote international peace and security; (b) maintain just and honorable relations between nations; foster respect for international law and treaty obligations in the dealings of organizes people with one another; (d) encourage settlement of international disputes by arbitration. ... Parliament has exclusive power to make laws with respect to ... Participation in international conferences, associations, and other bodies and implementing of decisions thereat. (Articles 51, 246, Constitution of 1949). IRELAND: For the purpose of the exercise of any executive function of the State in or in connection with its external relations, the Government may to such extent and subject to such conditions, if any, [p. 534] as may be determined by law, avail or adopt any organ, instrument or method of procedure used or adopted for the like purpose by the members of any group or league of nations with which the State is or becomes associated for the purpose of international cooperation in matters of common concern. (Article 29 IV, 20, originally of July 1, 1937). ITALY: Italy renounces war as an instrument of offense to the liberty of other peoples or as a means of settlement in international disputes, and, on conditions of equality with other states, agrees to the limitations of her sovereignty necessary to an organization which will ensure peace and justice among nations, and promotes and encourages international organizations constituted for this purpose. (Article 11 of Constitution of January 1, 1948). JAPAN: Aspiring sincerely to an international peace based on justice and order, the Japanese people forever renounce war as a sovereign right of the nation and the threat or use of force as a means for settling international disputes. In order to accomplish the aim of the preceding paragraph, land, sea, and air forces, as well as other war potential will never be maintained. The right of belligerency of the state will not be recognized. (Article 9 of the Constitution of May 3, 1947). LUXEMBOURG: The exercise of the powers reserved by the Constitution to the legislative, executive and judiciary may be temporarily vested by treaty in institutions governed by international law. (Article 49 A., of Constitution of October 17, 1968, as amended on July 10, 1973). THE NETHERLANDS: The Government shall promote the development of the international rule of law. ... Legislative, executive and judicial powers may be conferred on international institutions by or pursuant to a treaty. (Articles 90, 92 of the Constitution of February 17, 1983).

NORWAY: In order to secure international peace and security, or in order to promote international law and order and cooperation between nations, the Storting may, by a three-fourth majority, consent that an international organization, of which Norway is or becomes a member, shall have the right, within a functionally limited field, to exercise powers which in accordance with this Constitution are normally vested in the Norwegian authorities, exclusive of the power to alter this Constitution. For such consent as is required for changes in or amendments to this Constitution - shall be present and voting... (Article 93 of the Constitution of May 17, 1814 as revised on 18 September 1905). THE PHILIPPINES: The Philippines renounces war as an instrument of national policy, adopts the generally accepted principles of international law as part of the law of the land, and adheres to the policy of peace, equality, justice, freedom, co-operation and amity with all nations. (Article II, Section 3, of the Constitution of 1973). PORTUGAL: Portugal commends the abolition of all forms of imperialism, colonialism and aggression; general, simultaneous and controlled disarmament; the dissolution of political-military blocs and the establishment of a system of collective security, in order to create an international order capable of assuring peace and justice in relations among peoples. (Article 7 II., of April 25, 1976). SINGAPORE: Nothing [p. 535] ... shall be construed as precluding Singapore or any association, body or organization therein from ... (b) entering into a treaty, agreement, contract, pact or other arrangement with any other sovereign state or with any Federation, confederation, country or countries or any association, body or organization therein, where such treaty, agreement, contract, pact or arrangement provides for mutual or collective security or any other object or purpose whatever which is, or appears to be, beneficial or advantageous to Singapore in any way. (Article 7, of the Constitution of March 31, 1980). SPAIN: By means of an organic law, authorization may be established for the conclusion of treaties which attribute to an international organization or institution the exercise of competencies derived from the constitution. It is the responsibility of the Cortes Generales or the Government, depending on the cases, to guarantee compliance with these treaties and the resolutions emanating from the international or supranational organizations who have been entitled by this cession. (Article 93 of Constitution of December 29, 1978). SWEDEN: The right to make decisions which under the present Instrument of Government devolves o the Riksdag, on the Government, or on any other organ referred to in the Instrument of Government, may be entrusted, to a limited extent, to an international organization for peaceful cooperation of which Sweden is to become a member, or to an International Tribunal. No right to make decisions in matters regarding the enactment, amendment, or repeal of a fundamental law or [to restrict] any of the freedoms and rights referred to in Chapter 2 may thus be transferred. The

Riksdag shall decide on a transfer of the right to make decisions in the manner prescribed for the fundamental laws, or, if a decision in accordance with such procedure cannot be abided, by way of a decision agreed upon by not less than five-sixth of those present and voting and by not less than three-fourths of the Riksdag members. (Chapter 10, Article 5, of 1809 as amended in 1976). SWITZERLAND: The entry into organizations of collective security or supranational entities is subject to a vote by the people and the Cantons. (Article 89 V., of 1982). ZAIRE: In order to promote African unity, the Republic may conclude treaties and agreements of association which involve partial abandonment of its sovereignty. (Article 110 of the Constitution of July 5, 1990 - same as Article 108 of February 15, 1978)

82 "In 1912 the German jurist Schücking was perhaps the first to emphasize that the European powers... had extra-European interests that were too important to permit them to establish a union that was limited to Europe." Francis Harry Hinsley, *Power and the Pursuit of Peace. Theory and Practice in the History of Relations between States* (Cambridge, Cambridge University Press 1963), 142.

83 XLIst Inter-Parliamentary Conference, *Compte Rendu*, 652, 654.

84 XLIst Inter-Parliamentary Conference, 1952, 778.

85 *Preventing Deadly Conflict, Final Report*, Carnegie Commission on Preventing Deadly Conflict (New York: Carnegie Corporation, December 1997), 142.,