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## Informal Consultations

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**Unless it decides otherwise, the Security Council shall meet in public.**  
***Rule 48 of the provisional rules of procedure***

The rules of procedure of the Security Council of the United Nations, decided upon in 1946 and revised little since, make only one provision for a meeting of the Council. Since the procedural rules put in place over fifty years ago have never been replaced by a 'permanent' set, the Council has never "decided otherwise", and a formal public meeting remains the only official gathering of the fifteen-member body. In the context of the post-war birth of the United Nations, the need was felt to mark a rupture from the (failed) international relations of the past, including its discredited practice of secret diplomacy. Yet as early as 1946, in the debate on the rules in the Preparatory Commission, the representative from Norway seemed to warn that if the Council could not hold closed meetings, it would resort to informal meetings and that even greater secrecy would be the result. (1) That warning has proved to be prophetic.

A burst of activity in the Security Council has accompanied the end of the Cold War. There has been a spurt in the rate of production of resolutions and presidential statements. More peacekeeping missions were authorized in the last decade than in the previous four decades of the existence of the United Nations. Following the Iraqi invasion of Kuwait and the war that ensued, Council-authorized sanctions have become one of the principal means of expressing the displeasure of international society with certain violations of international law. This increase in the official activity of the Council, accomplished in formal meetings that now rarely last more than an hour, has been far outstripped by the rise in the number of informal consultations in which the Council meets. In recent years, (in the context of the reform of the United Nations and its most powerful organ) these meetings have become the focus of much criticism and a few efforts at reform.

While there are several different types of informal gatherings of members of the Council (and though all are at one time or another referred to as 'informal consultations'), there is one essential defining characteristic of an informal consultation, and two main categories of informal meetings. First, there is only one meeting of the Security Council—the formal public meeting described in provisional rule 48. All others are informal gatherings of members of the Security Council, and are neither bound by the same rules of procedure nor required to be recorded in any way. (2) Second, the two main types of informal meetings, simply enough, are informal consultations of the whole and consultations other than informal consultations of the whole.(3) Within this second category, the meetings or meeting groups which have attracted the most attention have been the 'Group of Friends' and the 'Contact Group'.

### **Secrecy and Informal Consultations of the Whole**

Informal consultations of the whole, otherwise known as 'global consultations', 'informals' or 'formal informals',(4) are perhaps the single most important procedural loophole in the functioning of the Security Council. As the representative from France said in 1994: "[i]nformal meetings are not even real Council meetings; they have no official existence, and are assigned no number. Yet it is in these meetings that all the Council's work is carried out." There are no written records, and only Council members and certain Secretariat staff may attend.

This purportedly informal gathering of all the members of the Council has in fact become increasingly formalized over the years, and it is in the informal consultation chamber, next to the Security Council chamber, that the travaux préparatoires of the Council (working papers, draft resolutions etc.) are completed. While formal meetings do not last very long, an informal consultation of the whole can last for several hours and may run into several sessions. When a given resolution or action has been agreed upon, the consultation is adjourned and the members move next door to open a formal session of the Council, in which non-members may be invited to participate. After a few introductory remarks and the reading of prepared statements, a vote is taken and the resolution is adopted.(5) This means that such statements, often the only opportunity for non-state actors to interact with the Council, are presented too late to have any effect on the resolution about to be voted upon.

As supporters of informal consultation never tire of pointing out, this rapid production of resolutions is a far cry from the way the Council functioned for most of its existence. A professor of international law describes the moribund Cold-War Council: During the first forty years of the United Nations (1946-86), the Council made only two determinations of "breach of the peace" under Article 39. In that same time span, only two states (Israel and South Africa) had their

acts labeled "aggression" while the Council recognized the existence of a "threat to international peace and security" seven times. During the first forty-five years of the United Nations' history, the Council had resorted to military force three times, and to binding non-military sanctions twice. In light of the perhaps seventy-three inter-state wars that broke out during this same period, the data clearly shows the dramatic extent of the Council's paralysis.(6)

As with other aspects of international relations, the Security Council was the veto-bound victim of its era—the tool of the superpowers, the playground of their disputes and the ultimate symbol of the shortcomings of the UN system. Since the five permanent members did not start regular consultations amongst themselves until 1987,(7) any disagreement that was allowed to reach the resolution stage was settled by the exercise of the veto. Between 1946 and 1990, the permanent members resorted to the veto 238 times, of which 185 were exercised either by the United States or the Soviet Union.(8)

Things have changed since 1990. In 1993 alone, one of the most active years in Security Council history, ninety-three resolutions were passed. Between 1990 and 1996, nineteen resolutions authorized the use of force in five separate cases. In over forty years of Cold War, there were only eighteen peacekeeping missions. Since 1990, thirty new missions of various scopes and mandates have been authorized, of which eleven are still ongoing and more are in the offing.(9) In 1994, the high point of UN deployment, there were seventeen missions in the field at once.(10) Through all this action, after all that inaction, the members of the Security Council met more often than they ever had before. In 1988, there were fifty-five formal meetings of the Council and sixty-two informal consultations of the whole. Almost ten years later, in 1997, there were 123 'formals' and 229 formal informals—and those numbers have declined from the historic numbers of 1993-1994. (11)

The argument is thus that the frequency of formal informals permits all the members of the Council to consult each other in an unofficial setting that is conducive to negotiation and compromise.(12) The possibility of a veto is therefore decreased and the incidence of over-dilution of draft resolutions in order to avoid a veto is reduced. The Council runs more efficiently than it ever has before, thanks in no small part to informal consultations.

Yet critics of the practice remain, and the aspect of the formal informal to which they object most is its secrecy. With the reform-oriented emphasis on the term 'transparency', this privacy—the closed-door nature of informal consultations—has been diplomatically termed 'opacity'. There are two elements of opacity with which the critics of informal consultations take issue: the near-total absence of official records (the one counter-example being the brief agendas printed in the daily UN Journal), and the fact that they are completely closed to non-members.

In 1984, the first study of informal consultations was completed by Loie Feuerle while she was an intern at the United Nations Institute for Training and Research (UNITAR). It remains to date the only published academic research on the topic and is an essential reference for anyone interested in the subject. While the article is not particularly critical of either the practice of or the rationale behind informal consultations, the research and personal interviews conducted by the author provide valuable insight on the behind-doors workings of the Council:

No official record is kept for any informal consultation. In global consultations, while the Secretary General has notes taken for his own use, each delegation must take its own personal notes, in order to keep the atmosphere of privacy. The Security Council President and his assistants usually take notes, although one source stated that this practice may inhibit Council members from speaking freely. Some delegations have apparently recorded the discussions during informal consultations. (13)

The principal criticism offered by Member States is that this insistence on informal privacy inhibits the creation and maintenance of institutional memory. If there are no records of the meetings in which the essential work of the executive organ of the United Nations system is done, not only are 'outsiders' unaware of how decisions were reached, they are also uninformed about the status of some situations that do not result in either a presidential statement or a resolution. (14) What this means in practical terms is an extension of the institutional influence of the permanent members of the Council: with the constant replacement of non-permanent members, (15) it is the non-elected members of the Council who both provide continuity and serve as reference. And as the past fifty years of international relations have shown, the Permanent Five are not impartial arbiters, neither as a group nor individually.

Another complaint is that the atmosphere of secrecy in which informals are shrouded means that there is a further loss of accountability, in that there is no way of knowing the positions that have been taken by members of the Council prior to the formal meeting. Essentially, this is an argument for the openness of debate, with emphasis placed on the right of Member States not represented on the Council to be apprised of its decision-making. In recent years, the relationship between the Council-especially the permanent members-and the General Assembly has been somewhat strained over this point, with the former insisting upon the benefits of privacy for negotiation and compromise and the latter insisting upon regular dialogue. The logic of the requests for dialogue proved hard to resist, especially in the area of peacekeeping missions-it is, after all, often non-members of the Council who are asked to provide human, material and financial support. In 1994, following a proposal by Argentina and New Zealand, a new procedure was introduced, whereby members of the Council would have regular meetings with troop-contributing countries to discuss the formulation, implementation, review and renewal of peacekeeping mandates.

While final decision power remains with the Security Council, this process assures that these states at least feel more involved in the planning of the tasks they are asked to undertake.

But what of the other Member States of the United Nations? What is their relationship to the new efficient Security Council? Where do they stand? The answer, almost crude in its simplicity, is outside the door. Quite literally. There is a lounge outside the Informal Consultation Chamber at UN Headquarters where representatives of delegations who are not members of the Security Council (i.e. 170 of 185 countries) may sit and wait for Council members to come out of consultations. As can be expected, there are often several different interpretations of the recently concluded deliberations, depending on the speaker, and even the President of the Security Council (16) has been known to present views that are more of his or her individual mission than those of the entire Council.

There are three main criticisms of this system for relaying information. First, it is discretionary, in that Council members may decide how much (if anything) they divulge to other Member States. Furthermore, word-of-mouth recounting is unreliable, and markedly inferior to an impartial written record. Second, the very size of a mission may put it at a disadvantage, as it simply might not have the diplomatic personnel to spare for this information-collecting process. There are 131 permanent missions to the United Nations with fewer than ten diplomatic employees, (17) and it seems fair to conclude that the larger a mission is, the better access to this sort of information it would have. Third, many missions argue that the true centre of gravity of decision-making has shifted away from the informal consultation of the whole, and that the most important phases of deliberation and planning often take place in even smaller groupings, which have no such provisions for reporting. It is to these important groups to which we now turn our attention.

### **Exclusivity and 'Other than' groupings**

The United Nations is a grouping of sovereign states that contains within it several sub-groups, often constituted on regional and/or political bases.(18) Regional groups are sometimes represented by separate institutions—the Organization of American States, the Organization of African Unity, the Arab League—membership in which is more or less decided by geography. While the issues of voluntary accession, withdrawal or exclusion of certain states from these organizations have proven to be intensely political questions within a specific region, membership is not normally an issue for countries outside the area. Political groupings, especially in the context of the Security Council, are another matter. A few are 'objectively' created—for example, no state that is not a permanent member of the Council can within reason demand to be privy to

private P-5 meetings (19). Membership in the Non-Aligned Movement is slightly more nuanced, as a few of its members do not fit the general 'developing-world' profile. By and large, however, the issue of the exclusivity of sub-groups does not become problematic until one discusses two relatively new types of grouping: the Group of Friends and the Contact Group.

Each group is usually formed around a specific issue, often a country, a territory or a region in crisis, and may include permanent or current elected members of the Security Council. The primary difference between the two is that a Contact Group will take an active role in the implementation of Council decisions that affect the region on which it focuses. Membership in both groupings is very informal, being generally on the basis of an invitation extended by a founding member of the Group (20), while meetings are ad hoc, coming in response to developments in its area of interest or after the release of a report relevant to its concerns. Of more interest in the Council context, Groups of Friends will often meet before the issue in which they are interested is introduced in an informal consultation of the whole, or will hold their meetings at the same time as the relevant global consultations. It has been suggested that the issue-driven links between states represented by these Groups also exist on a higher capital-to-capital level between the foreign ministries of the member governments. While communication in this case must of necessity be much more formal, it is also more distant and separate from the UN, and will therefore be just as vulnerable to criticisms of exclusivity.

There are many arguments in favor of the 'Group of Friends' approach. First among them is the question of efficiency: points of disagreement that might crop up in larger, more formal meetings can often be resolved within these groups, saving time and shortening the entire consultation process. Furthermore, many diplomats argue that any potential UN action will only benefit from the kind of focused attention an issue-oriented group could afford it. Group members are seen as having a 'natural' role in the region, whether it be diplomatic, economic, socio-cultural or political, and so will often include former colonial powers, major trading partners, and states with a significant diplomatic presence as well as neighbors of the region or territory in question. As such, it is posited, these states would be instrumental in monitoring the area and/or the implementation of any Council decisions.

The principal criticisms of this practice are evident. If "there comes a point where it is convenient for countries to continue with informal consultations because of their confidentiality", at least in part because "what transpires in informal consultations is not subject to the scrutiny of public opinion" (21), this is even more true of the smaller non-global consultations. As they are more informal than the (increasingly formalized) global consultation, non-members of these Groups who are also non-members of the Council have even less of an idea how

certain decisions are reached. Non-state actors outside of the United Nations system are worse off than these 'outsider' Member States, as the possibility of contributing to the decision-making process is further reduced. While it is argued that these unofficial groups are easier to join and/or influence than the closed Security Council, or that they represent those Members most interested in the issue anyway, the fact remains that there is no guaranteed procedure for the recording or reporting of their meetings. This fact would not be so important were not claims of the central role of these Groups in deciding the action of the Council so prevalent.

And the importance of their role is not to be underestimated. In a recent article in the Washington Post(22) , the journalists referred to the Contact Group on Yugoslavia-which consists of three to four of the permanent members and two other European states-as the group "involved in Balkan policymaking"(23) . UN envoy Richard Holbrooke presented Yugoslav president Slobodan Milosevic with "detailed demands drawn up by the contact group demands based on a vaguely worded U.N. Security Council resolution." This is not mere facilitation of Council decisions; it is active participation in the specific implementation of those decisions, including deciding what form such implementation should take.

### **The Question of Formality**

The question, then, is why has there been this shift in decision-making away from the global consultation and towards smaller groups? The answer, many believe, lies in the growing institutionalization of the informal consultation of the whole. Writing in 1985, Feuerle cites several reasons for the increasing use of the informal consultation process, including "détente, the enlargement of the Council [and] the establishment of permanent missions at U.N. headquarters"(24) . As the statistics cited above show, however, informal consultations have become even more important since 1990 than they ever were before. From this viewpoint, there are three main steps in the gradual institutionalization of these meetings.

The first step towards today's formal informal came in 1978 with the construction of a separate Chamber for informal consultations, adjacent to the Security Council Chamber. Prior to the completion of this project, informal consultations were irregular, and usually held at the mission of one of the members, or in the existing cramped space at UN Headquarters. Bailey and Daws credit this implausible factor-the provision of a convenient, attractive space for informal meetings-with setting in motion the 'institutional' trend. The move into a quasi-official space introduced the quasi-official status of the global consultation, one which is now confirmed by a quasi-official format-the meetings are chaired by the President of the Council, and all members are expected to be represented, as is the Secretary-General. Indeed, the only major differences between the formal

meeting and the informal consultation on a functional level are that the latter has no official records, and is closed to non-members of the Council.

Not surprisingly, the second step towards formality was the end of the Cold War. As has previously been discussed, the close of hostilities between two of the five permanent members, closely followed by the precedent-setting Gulf War allowed the Council to emerge from its habitual paralysis and take up a role in matters of international peace and security befitting its position in the UN system. With the Council producing more resolutions on more issues than ever before, informal consultations were seen as a means of ensuring that the body would not become overwhelmed with its unaccustomed responsibilities. It is interesting to note that many diplomats also cite this reason for the increased importance of the "other than" groupings, for many of the reasons given above i.e. efficiency and the concentration of interested parties. These Groups have taken the casual format previously used by the informal consultation, often meeting in the Delegates' Lounge or at the mission of one of the members.

But the third step is by far the most important in this context. It is the sometimes grudging, yet growing, transparency of the global consultation that has led to both its de facto institutionalization and the move towards even more informal fora. The statement by the French delegate referred to in the introduction, that informal consultations do not even officially exist, is no longer strictly true. While they are not provided for in the regulations that govern the administrative procedure of the Council, they are given a certain official recognition. Their agendas are printed in the Journal, as is mention of the consultations with troop-contributors. Reference is made to them in formal meetings. Furthermore, the Presidential Statement, an expression of consensus on a particular topic, is an explicit product of the informal consultation process, as it often translates the inability of the Council to agree on an action or its reluctance to produce a resolution. Other changes introduced in response to criticism, like the information relaying process in the lounge outside the Informal Consultation Chamber, have further increased both the institutionalization and the transparency of the formal informal.

So even as the global consultation has become more important in the procedural framework of the Security Council, it has gradually lost its initial defining characteristics-true informality and a practice of non-disclosure. Parallel to that loss, it is argued that more and more of the actual decision-making process takes place before the relevant consultation of the whole is even opened, in even more informal settings with little chance for outside actors to participate. In contrast, a diplomat could say as far back as 1984 that "official meetings are like theater, performing a play written and conceived in informal consultations beforehand"(25). Cognizant of this trend and of its attendant criticisms, some

members of the Council have proposed alternate formats for official Council meetings.

In a memorandum dated 22 December 1997 and addressed to the then-President of the Council, all ten of the elected members (26) set out a series of proposals for increasing the transparency of the Security Council. In particular, they make three specific proposals with relevance to informal consultations of the whole. First, they argue that open public meetings should be held instead of global consultations "at any stage of the consideration of a subject". Second, the Council could meet in private formal sessions, the distinction being that while such meetings would be restricted to the fifteen members, official written records would be kept. Informal consultations would continue, but they would no longer be the principal means by which the Council conducted its business. Third, orientation debates open to all Member States of the United Nations should be held prior to the Council taking any substantive decision. This provision is intended to replace the present practice whereby non-members may read prepared statements in the formal meetings of the Council, yet may not officially participate in any of its deliberations.

While this proposal and the manner in which it was introduced may imply a rift between the permanent and non-permanent members of the Council on this topic, this is not entirely accurate. The French proposal introduced in November 1994 in the course of discussions on Council reform was an effort to reconcile the desire for quiet diplomacy with the need for openness, stating that "the time has come to allow for fuller public debate on [the Council's] work." By the end of the year, the Council announced that it would meet more often in open meetings, in order to facilitate the exchange of information and ideas between Council members and other Member States. But the number of formal meetings actually declined after 1994. While the principal reason for this change was probably the withdrawal of UN peacekeepers from the former Yugoslavia<sup>(27)</sup>, this drop in formal meetings was in greater proportion than the corresponding decline in informal consultations of the whole. Indeed, after 1994, the ratio of global consultations to formal meetings increased from roughly 1.65 to over 1.8, and has remained there ever since<sup>(28)</sup>. To date, no other permanent member has presented a similar proposal.

For all its importance, the practice of informal consultations (on all levels) is virtually absent from academic discussion of the Security Council, and is but one target of attempts to reform this UN body. In contrast, it is one of the points on which most of the permanent members are least willing to compromise, second perhaps only to the issue of membership itself. Consequently, any further moves to increase the transparency of the global consultation might (as has been warned) result in an even greater shift to more informal 'informals', with the

concomitant problems of greater secrecy, loss of accountability, and lack of outside input.

It would be harmful if it came to appear that meetings of the Security Council were simply rubber-stamping agreements that had been reached behind the scenes in a secret process. A minimum of discussion and debate in the formal meetings is essential to enable the public and the media to understand not only the full significance of the action taken, but also the essentials of how the consensus was achieved.---Kurt Waldheim in Davidson Nicol (ed.), *Paths to Peace*, 1981; p. xi.

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1. Sydney D. Bailey and Sam Daws, *The Procedure of the UN Security Council* (3rd ed.), Oxford: Clarendon Press, 1998; p.10
  2. It must be noted that confidential minutes of informal consultations of the whole are kept by Secretariat staff, as well as unofficial notes taken by the delegations themselves. These neither meet the standard for written records nor are intended to do so.
  3. This formula, despite its deceptive oversimplicity, has in fact been settled upon by both the practice of the Security Council and the distinctions made by authors such as Bruno Simma, Davidson Nicol and Bailey and Daws.
  4. To be distinguished from other informal meetings: informal consultations, informal meetings of members of the Council, consultations, and informal informals.
  5. Except in the case of a veto by one of the Permanent members. The last veto to date was exercised by the United States in March of 1997.
  6. Martti Koskenniemi, "The Place of Law in Collective Security", *Michigan Journal of International Law*, Winter 1996, vol.17, pp.455 et seq.
  7. Edward J. Perkins, "An international agenda for change", *American Behavioural Scientist*, January 1997, vol. 40(3), pp.354 et seq.
  8. security/data/vetotab.htm. From data researched and prepared by Solange Habib, Senior Research Assistant, Office of the Assistant Secretary General for Security Council.
  9. cf.data from United Nations Department of Public Information (UN DPI), [http://www.un.org/Depts/dpko/c\\_miss.htm](http://www.un.org/Depts/dpko/c_miss.htm), [http://www.un.org/Depts/dpko/p\\_miss.htm](http://www.un.org/Depts/dpko/p_miss.htm).
  10. Koskenniemi, op.cit.
  11. Security/data/secmgtab.htm. From data reserached and prepared by Solange Habib, Senior Research Assistant, Office of the Assistant Secretary for Security Council. In 1993, there were 171 formals and 252 informals; in 1994, there were 165 formals and 273 informals.
  12. For more on the advantages of the informality of such consultations, see Loie Feuerle, "Informal Consultations: A Mechanism in Security Council Decision-Making", *International Law and Politics* 18, 1985, p.267.
  13. Feuerle, p.280.
  14. Cf. for example the debate over the *Arria* formula.
  15. There are ten elected (non-permanent) members of the Security Council, each for a two-year term. Elections are staggered, however, with five of the non-permanent seats being vacated every year. This means that at any one time, only half of the elected members were seated on the Council the previous year.
  16. A position, held for one month that rotates among Council members in alphabetical order.
  17. Cf. *Permanent Missions to the United Nations*, 1998
  18. Econmic groupings, while important, do not normally figure prominently in issues of peace and security--those with which the Council is seized--and so are not treated here.
  19. The particular history of the United Nations has also created sub-groups within the P-5: the P-4, ie. all the members except China; and the P-3, all the non-Communist members of the Council. Since the late eighties, however, and especially since the end of the Cold War, there have been more meetings with all

permanent members represented.

20. In some cases, such as the Guatemalan peace process, the parties to the conflict choose the members of the Group of Friends at the UN.

21. Cited in Feuerle, p.212.

22. R. Jeffrey Smith and George Lardner Jr., "Accord on Kosovo Remains Elusive", October 12, 1998; p. A14.

23. Neither is it a coincidence that all five of the current members of the Contact group--France, Germany, Italy, the United Kingdom and the United States--are also members of the NATO alliance.

24. Feuerle, p.285.

25. Cited in Feuerle, p. 267.

26. Chile, Costa Rica, Egypt, Guinea-Bissau, Japan, Kenya, Portugal, Republic of Korea and Sweden. For the full text of the memorandum, see [security/docs/memo1297.htm](http://security/docs/memo1297.htm)

27. And the consequent slowing of the Council's pace, also reflected in a drop in the number of resolutions produced; cf. [security/data/resolutn.htm](http://security/data/resolutn.htm).

28. Cf. data table at [security/data/secmgtab.htm](http://security/data/secmgtab.htm)