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**REPORT OF THE CHAIRPERSON OF THE COMMITTEE TO
TEN ON THE UN REFORMS**

Interim Report of the International Negotiations on the Question of the Equitable Representation on and Increase in the Membership of the Security Council and Other Related Matters

1. INTRODUCTION

1.1 The present report is submitted pursuant to the decision of the Assembly of the 12th Ordinary Session of African Union /AU/Dec.230 adopted by the Heads of State and Government directing the Permanent Representatives of the Committee of Ten to “actively engage in the Intergovernmental Negotiations on the *Question of the Equitable Representation on and Increase in the Membership of the Security Council and Other Related Matters* and to report back to the Assembly on the developments.

1.2 In accordance with United Nations General Assembly Decision 62/557 of 15th of September 2008, the General Assembly commenced the Intergovernmental Negotiations in the informal plenary of 29th February to consider the following: Category of Membership, Question of Veto, Regional Representation, Size of an enlarged Council and Working Methods and the Relationship between the Council and the General Assembly.

1.3 Throughout the negotiations, the Committee held regular consultations with the African Group of the Whole. The Committee held thirteen meetings in preparation for the negotiations. At every stage of the negotiations, a state member of the Committee of Ten prepared a lead paper to guide each of the Committee’s meetings ahead of the negotiations in order to make the case for the common African position on each cluster. Thereafter, the Committee shared its views with the African Group of the Whole to elicit more views from them and ensure that issues raised by the Coordinator during negotiations were truly consensual and representative of the group’s common position.

1.4 Pursuant to the decision reached at the meeting of February 29th by the informal plenary of the General Assembly, the first round of the intergovernmental negotiations on the reform of the Security Council began as scheduled on March 4 2009. Seventeen sessions were held from March 4 through April 20 when the last cluster was considered.

1.5 The first round of negotiations proceeded on a very cautious note with the interest groups, including Africa essentially restating their ‘*maximalist*’ or well-known positions on the reform process. Despite calls for flexibility in the negotiations no delegation appeared to have moved from the respective positions.

2. CATEGORIES OF THE MEMBERSHIP

2.1 The first round of Intergovernmental Negotiations on the *Question of the*

Equitable Representation on and Increase in the Membership of the Security Council and Other Related Matters addressed the cluster of Categories of Membership. Over sixty delegations participated actively in the deliberations and presented their perspectives on this cluster.

2.2 The key interest groups, namely the African Group, the Group of Four (G-4), Uniting for Consensus (UFC), the Group of (Five) Small States (S-5) and the five Permanent members (P-5) re-stated their well known positions with assurances that they were prepared to negotiate with candour, in good faith and with mutual respect. There were calls for flexibility but it was unclear who should demonstrate or was prepared to show that flexibility.

2.3 The following issues emerged from the ensuing negotiations on the cluster of Categories of Membership:

- i. There was general agreement on the need for expanding the Security Council and for reviewing its working methods in a way that will further strengthen its capacity, enhance its representative character, improve its effectiveness and efficiency and transparency and above all, making it a democratic and legitimate global norm setting body and authority.
- ii. All member states contributing to the debate reiterated their call for a meaningful reform of the Council. The majority underscored that any such reform measures should include increase in both categories of membership - permanent and non-permanent. A few member states particularly the UFC maintained that the increase should only be effected in the non-permanent category
- iii. The Coordinator of the Committee of Ten in New York, the Permanent Representative of Sierra Leone, articulated the common African position on the cluster contained in the *Ezulwini Consensus* and *Sirte Declaration* – demanding an increase in the two categories, two Permanent seats with all the privileges and prerogatives and five non-Permanent seats.
- iv. African delegations taking the floor in support of the statement by the C-10 Coordinator reiterated that the present composition of the Council does not reflect today's realities and thus, it negates the spirit of the Charter on the principle of equitable geographical representation (Art 23.1) which has culminated in the over-representation of one continent - Europe.
- v. Most delegations taking the floor on the cluster echoed support for Africa's demand to address the historical injustice emanating from the continent's non-representation and under-representation in the permanent and non-permanent categories respectively.

- vi. The UFC in a bid to garner support for their position introduced the concept of the need for due representation of 'small' and 'medium' states. They also highlighted the need for respect of diversity of cultures and civilizations
- vii. A number of delegations cautioned that despite the attempt at clustering the five negotiating elements, it should be borne in mind that the clusters are inextricably inter-related and should be approached in a comprehensive or integrated manner.
- viii. Some delegations put forward a so-called intermediary or transitional approach. While some expressed themselves on the option as worth putting on the table, the African Group opposed any attempt to introduce an undefined concept or option at the very beginning of the intergovernmental negotiations before even considering positions presented by the various groups.

3. THE QUESTION OF VETO

3.1 With the exception of the five Permanent Members of the Security Council, delegations taking the floor on the question of the veto right condemned its existence and pre-eminence in decision-making by the Security Council as anachronistic, exclusive, unrepresentative and undemocratic that represents a post-second World War environment.

3.2 Another important shortcoming that was highlighted about the veto was its abuse by the wielding powers. Countless examples of misuse were cited as countermanding the intended purpose of maintaining international peace and security, for which UN members agreed to hold part of their sovereignty 'in trust' with the Security Council. Those examples revealed instances of the use of veto to further national, group or allied interests. And in most cases, where there has been a lull in the application of the veto right, the hidden or pocket veto has been often used to influence decisions or texts of resolutions. Thus, Africa and many delegations, if not all but five, called for the abolition of the veto right.

3.3 In the view of Africa, there can be no meaningful reform if the Security Council, particularly the permanent category, remains un-addressed. Therefore, in accordance with the Ezulwini Consensus, Africa made it clear that so long as the veto exists, it should be extended to new permanent members as a matter of common justice and in the interest of democracy. Of the more than 90 delegations that took the floor, two-thirds concurred with Africa's stance on the extension of the veto right to new permanent members.

3.4 On the issue of the veto, the members of the G4 advocated for a new category of permanent membership in the Security Council without the right of veto until a review is conducted to assess the maturity of institutional knowledge and the soundness of judgment to judiciously apply the veto.

3.5 On the other hand, though the P-5 members do also concur with the enlargement of the Security Council in the permanent category by bringing in very few member states, arguing ostensibly for the need to ensure the effectiveness and efficiency of the Council, they are however not prepared to share their veto right with new members.

3.6 The UfC and several other delegations also opposed the extension of the veto to new members because they believe that any addition to the category of permanent members with right to veto would merely entrench the institution and further complicate the reform process.

3.7 Given the very close link between the veto and working methods of the Council, the following proposals have been tabled to keep the use of the veto right in check:

- i. Establish rules or appropriate measures to exercise the right of veto;
- ii. Extend veto to new permanent members but not to use until after a review;
- iii. That any negative veto cast by a permanent member be explained to the general membership and ensure that at least a double veto is required before any decision in the Security Council is influenced;
- iv. That provision be made for the General Assembly to overturn the veto right with a two-thirds majority vote as well as generally restricting the use of the veto;
- v. The none use of the veto particularly in instances where genocide, war crimes, ethnic cleansing and crimes against humanity are imminent;
- vi. Exclude the election of the Secretary-General from the sanctions of veto right;
- vii. Restricting the use of the veto to Chapter VII of the Charter.

4. THE ISSUE OF REGIONAL REPRESENTATION

4.1 Regional Representation presented different meaning to different delegations:

- i. On its part, the African Group interpreted the notion of regional representation to mean equitable geographical representation with the right to select its representatives to the Security Council for presentation to the General Assembly for election. The historical injustice from the under-representation and no representation of the continent in the non-permanent and permanent categories respectively underscores the high ground for Africa's demand for equitable geographical representation in both categories in accordance with *Ezulwini Consensus* and the *Sirte Declaration*.

- ii. The proponents of Charter provision for national seats are of the firm conviction that membership to the Security Council is purely a matter of national responsibility. States hold their membership in their national capacities, citing Chapter 23.1 of the Charter as spelling out the criteria for non-permanent membership as well as the specific mention of the P-5 members by their names as justification for their claims.
- iii. A number of Member States argued that allocation of seats to regions would not be feasible because, unlike Africa, other regions in their organizational frameworks do not have the necessary mechanisms to elect members to the Council. Thus, they all agree that Africa is easier to define as a region and invariably what is applicable for Africa does not work for others.
- iv. Given the current geo-political configuration within the organization, the argument that has continued is the allocation of seats on the basis of equitable geographical distribution – a method that could be used to reform the permanent category of the Security Council as was applied in the case of the non-permanent category, when it expanded in 1965.

4.2 Despite the divergence of views on definition in relation to this cluster, there was a general agreement on the need to reform the Security Council and to take it beyond its current anachronistic, exclusive, unrepresentative and undemocratic state, which, for an overwhelming majority, if not all but five members represents nothing better than a post-second World War scenario.

4.3 The many questions that remained unanswered during the discussions include among others, the notion of enlargement based on the existing regional framework. Alternatively, should the plenary devise a mechanism by which seats can be allocated to member states on the basis of certain geo-political and economic configurations? Or should the current regional representation within the Council be revised in a manner to address inequitable geographical representation of member states to enable them participate effectively as sovereign members of the United Nations? Or still as many delegations queried; should membership to Council be based entirely on national rather than regional consideration of vice-versa? Also intriguing is the question of addressing concerns of 'smaller' and 'medium' states as well as civilizations and cultures within the context of regional representation.

4.4 The UfC, who are against any expansion in the permanent category, advocate for an allocation of seats to regions rather than to individual Member States and on rotational basis. Their position is in direct opposition to that of the G-4 members, who are purely seeking to go into the permanent category of the Security Council and, on their own merit as sovereign states. These justified their claims on grounds of their economic circumstances and contribution to the maintenance of international peace and security as being equivalent to those of the P-5 members.

4.5 The common point of convergence between the African Group and the UfC is their belief in the principles of transparency and accountability within the context of the regional arrangement. By this arrangement, member states are presumed to hold their seats in the Security Council for and on behalf of their regions in order to make them more responsive to the concerns and interests of their regions as well as being accountable for their actions.

4.6 Proponents of Security Council membership on the basis of national seat have out-rightly dismissed the regional accountability on grounds that in practice member states have more responded to instructions from their capitals instead of the broader regional concerns. They also argued that membership to the elected seats is subject to accountability to the wider membership of the United Nations rather than regions. Thus, for them, the question of accountability and how it works within the existing voting pattern vis-à-vis new seats on the Council to be assigned to regions begs further clarification.

5. SIZE AND WORKING METHODS

5.1 SIZE

5.1.1 Member states recognized that despite the exponential increase in members of the United Nations, the size of a principal decision making organ; the Security Council was inversely proportional to that of the General Assembly. Thus, the need for democratizing and making the Security Council more representative, legitimate and transparent was key to the reasons advanced for an expanded Security Council.

5.1.2 Clearly, most delegations voiced support for Africa's claim for not less than two seats in the permanent category and two additional seats in the non-permanent category. Overall support for an expanded Council range from 21-31. While Africa advocates for 26, the G-4 and UfC root for 25. Views however vary on the complex issue of categories of seats. Whereas the UfC only seeks to add 10 more non-permanent members, the G-4 is asking for at least six more permanent and four non-permanent seats in the Council. Africa wants 11 more seats added, with two permanent and overall five non-permanent seats allocated to continent.

5.1.3 The Caribbean Community (CARICOM), did not come up with a specific number, but they emphasized that CARICOM is "in favor of dedicated SIDS [small islands developing states] representation," on a reformed Security Council and that "...in any computation or provision for new seats, strong recognition and careful consideration and support must be given to the African position."

5.1.4 Some P-5 members, notably the United Kingdom and France, expressed preference for expanding the Council with permanent members, which should include Brazil, Germany, India and Japan as well as Africa's representation. France also advocates that an Arab state may also be considered for a permanent seat.

5.1.5 A large number of countries reiterated their support for enlargement in both the permanent and non-permanent categories, bearing in mind the current under-representation of Africa, the Caribbean and Latin America in the Council, but refrained from giving specific numbers.

5.1.6 The issue of 'medium' and 'small' states as well as the question of national and regional seats was also voiced as a potent element of the negotiations. Some member states argued that since access to Council has most often eluded smaller states, a more sober focus should be given to the improvement of working methods of the Council to make it more transparent, accountable and responsive to the needs of member states.

5.2 Working Methods

5.2.1 On this issue, many countries made concrete suggestions on how to improve the transparency and access to the Security Council, including through improving and adopting its rules of procedure which are still provisional.

5.2.2 Proposals by the Small Five (S5) Group, which has devoted more of its energies to reforming the way the Council works have been largely endorsed by states. In presenting the position of the S-5, the Swiss delegation stated that "If the Council expects member states to be real partners in the sharing of this burden, it should be ready to become more transparent, accessible and accountable to non-members and further enhance the adherence to standards of rule of law and due process in its decision making."

5.2.3 The general membership also called for the convening of more formal meetings as well as more involvement of interested parties in Council's consultations prior to the adoption of decisions to allow for wider participation.

5.2.3 Despite calls for improving the working methods, the permanent five members of the Security Council are of the view that it is not for the General Assembly to decide on how the Council should conduct its internal business.

6. THE RELATIONSHIP BETWEEN THE SECURITY COUNCIL AND THE GENERAL ASSEMBLY.

6.1 During the negotiations of the last cluster, like the African Group, all delegations stressed the need for the following:

- i. To maintain a positive balance among the principal organs of the United Nations, especially between the Security Council and the General Assembly to strengthen the confidence of its members and to enhance the legitimacy of the Council's actions;

- ii. To improve upon the balance of competence between the General Assembly and the Security Council, which has often tended to lead to clashes in competence between these two principal organs due to attempt by each organ to assume a larger role than that which the Charter would ex-facie suggest;
- iii. To examine the respective functions of the General Assembly and the Security Council with respect to the maintenance of international peace and security in order to enhance the effectiveness of the General Assembly's role in this regard, given that the Security Council's primary responsibility in this domain is not synonymous with an exclusive authority;
- iv. To strengthen the leadership of the General Assembly with a view to enabling it play its proper role as the most representative, democratic and chief deliberative body of the United Nations in accordance with the relevant provisions of the Charter;
- v. To ensure Council's accountability to the General Assembly and as a regular source of information about the work of the Council.

6.2 Specific questions were raised about the need to strengthen the leadership of the General Assembly by calling for the full implementation of relevant Charter provision in such Articles as 11.2, 15 and 24 as well as GA resolutions such as 51/193 and 58/126 to address such issues and to foster a more cooperative and collaborative interface between the two organs and, to also maintain intergovernmental nature of the General Assembly.

6.3 Some practical measures proposed included:

- i. Submitting to the General Assembly comprehensive and analytical reports containing assessment of Council's work and views expressed by its members on pertinent issues as these reports have generally been procedural narrative of events lacking analytical depth.;
- ii. Allowing for effective and timely flow and exchange of information between the two organs particularly through frequent and regular consultations between the Presidents of the General Assembly and the Security Council to review work plans and consult on specific issues of mutual concern with a view to enhancing more direct and dynamic exchanges between the two organs to work in a more inclusive, collaborative and transparent manner.

7. CONCLUSION AND RECOMMENDATIONS

7.1 In terms of process, this first round of negotiations was largely conducted in the form of prepared statements. Delegations were largely restating their known position in carefully crafted language giving an impression of flexibility without trade-offs. The

interactive phase was brief, intermittent and limited to exchanges between the rival interest groups, mainly the G-4 and UfC advocates.

7.2 In relation to the common African position, there was an overall support for Africa's demand for an expanded Security Council addressing the continent's non-representation and under-representation in the permanent and non-permanent categories respectively. However, pronouncements in support of the African position were more general but this has to be viewed with cautious optimism as we approach the second round of negotiations. Assuming that the next round of negotiations could involve a more intense interaction, the African group should now be engaged in a more strategic thinking in this regard and be prepared to determine its best alternatives.

7.3 On the way forward, there was a general agreement on the inextricable link between the various clusters. Some argue the need to narrow them in order to facilitate a more interactive and fruitful discussion on the respective positions on the reform. Whereas, the working methods seem to be resonating more favourably with almost all delegations, the veto and the categories of membership appear to be the likely sticky point.

7.4 The next round of negotiations has been scheduled late in May following the release of the Facilitator's Summary or Composite Paper.

7.5 **In conclusion**, there is imperative need for the Committee of Ten to intensify their efforts in promoting, canvassing and advocating the common African position and for Africa to continue to speak with one voice.

New York, May 11 2009

Assembly/AU/9(XIII)
Annex

**SUPPLEMENT TO THE INTERIM REPORT OF THE COMMITTEE OF
TEN PERMANENT REPRESENTATIVES TO THE UNITED NATIONS**

***On the Intergovernmental Negotiations on the Question of the
Equitable Representation on an Increase in the Membership
of the Security Council and Other Related Matters***

SUPPLEMENT to the INTERIM REPORT of the COMMITTEE OF TEN PERMANENT REPRESENTATIVES TO THE UNITED NATIONS

On the Intergovernmental Negotiations on the *Question of the Equitable Representation on an Increase in the Membership of the Security Council and Other Related Matters*

NEW YORK, June 26th, 2009

1. This is the Committee's Supplementary Report to its Interim Report following the presentation of the Facilitator's Overview of the First Round of the Intergovernmental Negotiations on *the Question of the Equitable Representation on and an Increase in the Membership of the Security Council and Others Related to the Security Council* and the three Exchanges that ensued in the Second round from May 22 through June 23 2009.
2. The Facilitator's Overview of the First Round was intended to provide a sound basis for the second round of the negotiations. Much as it did not entirely fail in doing so, it however generated heated exchanges from two spectra - the few that considered it a fair and balance summary of the first round and the broader section that saw it as grossly under-representative of the discussions that sustained that round.
3. There were fundamental shortcomings of the overview; perhaps honestly intended by the Facilitator to move the process towards the path of decisive progress as he saw it and done not out of bad faith ; but oblivious of the fact that the reform process is member driven and based on the proposals and positions of member states:-
 - i. The Facilitator was believed to have deliberately attempted to select aspects of views presented by the negotiating groups and was found to be wanting in reflecting an honest and comprehensive summary of the process. Views widely different were artificially put together under pretext of some convergence and some other proposals canvassed by member states simply excluded in the Facilitator's Overview eg. the African position of the veto for its abolition was omitted and its availability otherwise to all new permanent members, which enjoyed wide support was submerged in other proposals to lose its real integrity;
 - ii. New and unexplained concepts such as challenge and review were introduced as concepts linking the various proposals under the 5 clusters for reform. This was obliquely intended to give a greater visibility to the so-called multifaceted *Intermediate/Intermediary or Transitional* approach, which required some aspects of review in the future and challenge by way of periodic elections, at the expense of other positions including the common African position. The emphasis on these concepts when in fact nothing has been agreed on in substance to form the basis

for review and challenge made the Facilitator's motive suspect. It was opposed by many delegations as putting the cart before the horse;

- iii. The introduction of a new approach and reclustered that was seen to be in contradiction to the tenets of Decision 62/557 - failure to go in strict conformity with the GA decision;
- iv. Accordingly, the Coordinator of C-10 in an initial response to the Overview addressed a letter to the Facilitator of the Intergovernmental Negotiations expressing misgivings about the overview, on behalf of the African Group for the following reasons:
 - Firstly, that the overview was not likely to facilitate the process of negotiations to the extent of building on the momentum developed in the first round despite earlier reservations on the sequencing of clusters in that round as some delegations including the African Group would have preferred and;
 - Secondly, in spite of assurances by the facilitator that he was going in strict conformity with decision 62/557, which he described as the lodestar, what emerged from the overview was an attempt in the opposite direction to undermine *the substantive underpinning of the intergovernmental negotiations defined in 62/557*.
- v. Many delegations and interest groups were dissatisfied with the omissions and/or partially reflection of their positions in a first round.

4. The African Group, especially, expressed reservations about the Facilitator's Overview for the above stated reasons and put simply, its failure to bring out a comprehensive summary encompassing all positions with a view to presenting a balanced picture for next round of negotiations on the basis of points or areas of convergence and variations in order to move the process in a more positive direction.

5. The orientation of the Overview betrayed the Facilitator's intention of giving undue prominence to a middle course or compromise, which although lacking clarity at this stage is referred to as Intermediate/ Intermediary/Interim/Transitional Approach viewed by the African Group as opposed to the elements of the Ezulwini Consensus and Sirte Declaration but more important for reasons of its susceptibility to numerous interpretations or rendering.

6. The treatment of the issue of the veto in the new approach of clustering under Chap V of the UN Charter and subsumed under "Voting procedures" raised some questions in the mind of the African Group.

7. By way of assessment, the three Exchanges of the Second Round of the intergovernmental negotiations were no different from the first round, as member states and groups were merely going over in a different way of their well-known positions on size of the enlarged Security Council, the veto, categories of membership and regional representation. On the relationship between the Security Council and the General Assembly and the Working Methods, there has been consistent improvement in discussions around these subjects and a seeming meeting of minds on the way forward with some feeble resistance from the P-5. Despite the dynamism shown on all the key issues, there are still clear differences in existence with a penumbra of convergence in some aspects.

8. On Size - there appears to be broad agreement that the size of the SC should be measured against its effectiveness, representativeness, legitimacy and accountability. Issues however are: whether expansion should be limited to 20/21, to mid-20s or to low 30s? How to correlate proportionality and fair ratio between SC size and overall size of UN membership? What about size in consideration with rendering the SC's effectiveness? There appears to be growing support that expansion to mid-20s will take care of all these concerns. The African position calling for 26 may well falls within this convergence.

9. On Veto - this is closely tied up with the other clusters and particularly, Categories of membership. Wide differences abound on both Veto and Categories. That notwithstanding, there is clearly emerging a wide consensus although resisted by the P5s, to find ways and means of limiting the Veto of the current permanent members as a way of improving the decision making. Various views suggested include limiting use of Veto to Chap VII decisions, its inapplicability to serious violations of International humanitarian law, requirement of a double veto to block resolutions, explanation and accountability for use of veto, and making veto subject to revision by the GA which can overturn it.

10. On Categories - there is wide divergence of views. Those who opt for the creation of a new category of national permanent seats without use of the veto as supported by some delegations including the G4; the African Group asking for two permanent seats with veto as long as it exists and three additional non-permanent seats as supported by countries from other regions; and those who seek expansion only in non-permanent members. Alternatives do exist even within each of the options. Many delegations belonging to various groups are expressing interest in support of an Intermediate/Interim option; but the proposers are yet to come forward with a complete proposal, some have expressed the need to convene a special session devoted to this option as a compromise. There is also a recognised need for better representation of small states, cross regional on the SC. They represent almost a quarter of the membership and are involved in maintenance of peace and security and also seriously exposed to both old and new threats to security such as climate change.

11. On Regional Representation - here too there are divergent views as to what should be involved: is it a case for equitable geographical distribution as in Art 23(1) of the Charter? Or equitable regional representation? Or Regional seats? Or seats allocated to member states of a region on a rotational basis as is in practice for the regular two-year non-permanent seats ? Or seats allocated to Regional institutions. The first round emphasise the need for clarity in the use and meaning of this terminology. The second round did no better. The African common position as expounded in Sirte speaks of the African Union" selecting its representatives on SC to act in its name and on its behalf." This seems to fall between a Regional seat and seats allocated to Regional institution and require further clarification. In any case the majority view is That once elected a member of the SC represents the interest of the entire membership. This gives legitimacy to actions of the SC. However a member is free to be sensitive to the interest of any regional group it belongs to but must keep in mind that the membership of the SC or indeed of the UN itself is composed of nation states.

12. On Working Methods - there is general support only resisted by P5s, for improving working methods to ensure more transparency, access to information and meetings, more open meetings and informal consultations, right to participate and right to be heard, and adoption and circulation of formal rules of procedure of SC.

13. On Relationship of SC and GA and other Organs- broad interest has been shown here with same resistance from P5s. They include improvement on annual and special reports of SC to GA; regular consultations and cooperation and adequate exchange of information; and expansion of consultation and cooperation with regional organisations.

14. There has been an indication of willingness on the part of the P-5 to now engage in negotiation by their welcoming expansion in the two categories to include Africa but on the clear understanding that admission to the permanent category has to be country specific and, also on the basis of addressing the issues of cultural diversity and that of the small and medium sized states. That besides they, headed by the UK and France, now seem to espouse the Intermediate/interim/transitional approach as a compromise solution.

15. In conclusion it can safely be said that this round witnessed a scaled down momentum on engagement as compared to the interest generated in earlier discussions on the *Question of the Equitable Representation on and Enlargement in the Membership of the Security Council and Others Related to the Security Council*. The need for clarity in the African position on Regional Representation and the growing emerging interest in an intermediate or compromise approach also lacking clarity should be given due consideration vis a vis the African common position.

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Report of the Chairperson of the Committee to Ten on the UN Reforms

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