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Background Paper

Reforming and innovating the United Nations Security Council

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Abstract

There is almost universal recognition that Security Council membership and working methods are obsolete and that there is a need for reform. However, the process of reform has been dragging on with very little achievements since the 1965 expansion of the Council's membership. This paper undertakes an historical voyage through the previous attempts to reform the Council, and after assessing the current proposals on the table, it ends by summing up some recommendations. These include expanding the membership, allowing members to be re-elected immediately for consecutive terms, and restricting the use of veto.

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1. Introduction

"*Why not Italy? We also lost the Second World War* [like Germany and Japan]" (Paolo Fulci, Italian Ambassador to UN on adding new permanent members of the Security Council (La Stampa, Feb. 15, 1997)

The dilemma between representativeness and efficiency is not unknown in any system of governance, both in domestic and in international constitutions. It is however remarkably visible when comparing the General Assembly (GA) and the Security Council (SC). The GA is praised for its global comprehensiveness and legitimacy, but faces justifiable criticism for its inefficiency and limited impact. The SC suffers from obsolete membership, lack of representativeness, anachronism in working methods and the veto, but still maintains a considerable global political leverage. An increased membership can make the SC more legitimate, but as Hurd argued, this would not be automatic.[1]

The SC is, ironically, both a very powerful and a very weak organ. It can authorize the use of military force, it can penetrate domestic jurisdictions of states, demand changes in domestic laws and constitutions, impose and implement sanctions, however its decisions can also be easily blocked by a single permanent member's veto. While the Permanent Five (P5) as a distinct product of history and chief victors of World War II continue to assume an unrivaled status and influence in the world on issues of international peace and security, the veto power remains a source of great consternation among the broader UN membership and civil society, as well as a main reason for the SC paralysis when its leadership has been most needed to prevent or halt the outbreak of violence or mass atrocities.

A successful reform is not without precedent: in 1965 the Council expanded from eleven to fifteen members. Since then the GA membership has grown by 65% from 117 to 193, so it is time to enlarge the SC in line with present-day realities, and create opportunities for countries with significant peacemaking, peacekeeping and peacebuilding resources to contribute to the maintenance of international peace and security and fill the gap in representative legitimacy of the SC. There is a voice that an increased SC might be less efficient and result in more burdensome decision-making, but I would counter-argue that no such evidence exists from the 1965 expansion, to the opposite – the enlarged 15-members body was efficient and unified imposing sanctions on Southern Rhodesia and South Africa. If the Council has 24 members instead of 15, and if 23 of them endorse action to prevent or halt atrocities, this may increase the pressure on a veto-wielding P5 member to acquiesce and abstain from veto.

In the last two decades the SC has innovated, deliberated and adopted thematic resolutions on generic global issues such as terrorism, proliferation of weapons, protection of civilians,[2] children in armed conflicts, role of women in peace and security, piracy and others.[3] By doing so, the SC acted as a 'global legislator' addressing global threats to the peace, in parallel with its role of a 'global policeman' addressing only country-specific threats and sanctioning wrong-doers. Complementing its traditional approach of reacting only when a clear threat to the peace emerges from a particular country, the SC created international regimes on counter-terrorism (SC Res. 1267, 1373) and non-proliferation (SC Res. 1540) and such activism brings new energy in developing international law,

1 See Ian Hurd, "Myths of membership: The politics of legitimation in UN Security Council reform," *Global Governance* 14 (2008):199-217.
2 There were rare earlier attempts, for example in 1985 a short SC resolution 579 addressed hostage-taking as a generic threat, not specific to a particular country situation.
3 Full analysis in Vesselin Popovski, "The Legislative Role of the Security Council's Thematic Resolutions," in *The Security Council as Global Legislator*, ed. Vesselin Popovski and Trudy Fraser (Abingdon: Routledge, 2014), 1-11.

overcoming its historical slowness and dependency on member-states. The establishment of two *ad hoc* criminal tribunals (ICTY and ICTR) in the early 1990s expediently filled a deep gap in international criminal law, and few years later the member-states, following up from this SC activism and utilizing the good work done already to draft and adopt the statutes of the two *ad hoc* tribunals, successfully negotiated and adopted the 1998 Rome Statute for the ICC. The SC can swiftly impose regimes obligatory for all member-states and such law making could be useful in time of emergency or when there are significant gaps in international law. The legislative role of the SC does not need to be in the form of adopting hard law and binding obligations, it can also have an impact through generic proclamations, using soft law and power of deliberation and persuasion, not necessarily power of force and coercion.[4] The role of a global legislator is less controversial and more transparent - the SC can invite to its thematic debates other member states, NGOs, experts. The fact of the matter is that all thematic resolutions of the SC are adopted with consensus, and this helps building a more co-operative environment. To illustrate: the SC has been adopting regularly resolutions on protection of civilians and on children in armed conflict over many years, but when in a particular country situation – Syria - many civilians and children were killed, there has been no agreement within the P5. It is almost unthinkable to use a veto on a thematic resolution, whereas on a country-specific resolution the political interests of the P5 may easily diverge. The way ahead is to utilize the existing volume of thematic resolutions consistently and robustly and remind states when it comes to a threat in a specific country context, that the SC has already agreed to condemn targeting of civilians, recruiting child soldiers, proliferating weapons etc. and urge them not to depart from such commitments.

There should be more synergy between thematic and country-specific resolutions and we see this already happening – some country-specific resolutions began referring in their preambles to thematic resolutions. *Vice versa* some thematic resolutions developed after the SC had already imposed country-specific measures on individual states: the global counter-terrorism regime inherited from previous SC resolutions against states supporting terrorism (Libya, Sudan, Afghanistan); the 1540 non-proliferation regime also evolved from previous work to contain country-specific development of weapons of mass destruction (Iraq, North Korea). On 15 September 2014 the SC Res 2176 raised serious concerns with the outbreak of Ebola in Liberia; but three days later the SC, regarding Ebola already no longer as simply problem of Liberia, but of the whole Africa, adopted a thematic resolution 2177 under the theme 'peace and security in Africa'. The ISIS terrorist activities resulted in a series of SC Res 2170, 2178, 2195, 2199 that can be defined as 'hybrids' between thematic and country-specific resolutions - in addition to references to Iraq and Syria, they regarded the threat from ISIS as regional and global. Another hybridization between thematic and country-specific resolutions can be seen on piracy – the resolutions 1816, 1838 did not specify the coasts of Somalia, rather addressed piracy as a global problem in need of global solutions. The record of the SC dealing with terrorism, non-proliferation, piracy, protection of civilians, children in armed conflict, role of women in peace and security, has indeed been significant, indicating that the SC can perform well when its members are united behind a common global theme and not disunited by their interests in a particular country.

If the SC remains disunited and fails to reform, more and more peace and security issues will be taken by temporary coalitions of states. One can see this happening already with France and Germany working with Russia and Ukraine on hostilities in East Ukraine, a group of Arab states addressing the conflict in Yemen, the Six-Party Talks on North Korea, etc. Also regional organizations have assumed a larger role, for example the African Union (AU) has deployed separate

[4] Ian Johnstone, *The Power of Deliberation: International Law, Politics and Organization* (Oxford: Oxford University Press, 2011); Ian Johnstone, "Legislation and Adjudication in the UN Security Council: Bringing down the Deliberative Deficit," *American Journal of International Law* 102 (2008): 2.

troops in some peace operations in Africa (Sudan), the EU acted in Kosovo separately from the UN, etc. The reform therefore is vital, if the SC does not want to be paralyzed and embarrassed by further groups of states plagiarizing its primary role to maintain international peace and security.

This background paper addresses the question where does the SC reform stand 70 years after San Francisco conference. It undertakes an historical *voyage* through the previous attempts to reform the SC, and examines more recent reform efforts, including the Intergovernmental Negotiations (IGN), and the Elders' proposal 'UN Fit for Purpose'. Through learning the necessary lessons from the past and the present, the paper ends by summing up some recommendations for future reform.

2. 1965 Expansion of the SC

With the process of decolonization the UN membership reached 115 in 1963 and the newly independent countries from Africa and Asia together with many supporting states demanded an increase of the SC from 11 to 15 adding four non-permanent members. Interestingly, the expansion was achieved even if four out of the P5 had initial serious reservations. African, Asian and Latin American countries drafted a resolution, pushed it through the GA, where France and Soviet Union voted against, the UK and US abstained and only Republic of China (Taiwan) among the P5 voted in favor. All P5 however, to avoid being seen as dissenters, obtained ratifications in their parliaments, the first one ironically coming from the Soviet Union initially voting against in the GA. On 31 August 1965 the SC membership increased to 15.[5]

3. 1995 Commission on Global Governance

The Commission on Global Governance, comprising 28 eminent individuals, published its Report in 1995 'Our Global Neighborhood', stressing the need to address the lack of legitimacy, representativeness and deficiencies in accountability and transparency as major problems of the SC. It proposed a two-stage reform: the first to be set in motion in 1995, and a second stage to start in 2005 after member states develop confidence in the process. The Commission emphasized that increase in the membership should improve the representation of developing countries and greater involvement in the decision-making of those who "contribute most" (Art. 23 of the UN Charter). It opposed the addition of new vetoes and insisted that broadening the membership should not impair the effectiveness. The Commission proposed an increase to 23 members: five new permanent members, one from Asia and Europe (Japan and Germany in mind) and one from Asia, Africa, and Latin America, plus three additional non-permanent members. The Commission also suggested to limit the use of private consultations among the P5, to increase the transparency of the decision making and to invite to its debates troop contributing countries, communities at risk, and other stakeholders affected by the SC decisions. The Commission suggested that if the P5 can agree to limit the use of veto in only exceptional circumstances and to become accustomed to this, longer-term they might be willing to give it up entirely. The Commission proposed also the setting up of an 'Economic Security Council' to provide political leadership and promote consensus on international economic issues that may pose threats to peace and security.

[5] Not surprisingly, as the Soviet Parliament would do anything that the Communist leader would ask.

4. Razali, Butler and Fulci Initiatives (1996-97)

The President of the GA (PGA) Ismail Razali starting his term in September 1996 initiated a three-stage plan: (a) adopt a framework resolution with unnamed five new permanent and two non-permanent members of the SC; (b) second framework resolution listing the names of the five new permanent members; (c) implementation through a Charter amendment. This proposal was blocked by the Non-Aligned Movement, which suspected a threat to its cohesion.

In January 1997 the Australian Ambassador to the UN Richard Butler convened a special consultative group to discuss the SC reform. The Butler group pretended to be widely representative, however one can see among its members mostly those who were candidates for permanent seats or their close supporters: Germany, Japan, India, Brazil, Egypt, South Africa, Indonesia. The group included also Austria, Slovenia and Hungary (supporters of Germany's bid) and few states, that expressed support for new permanent seats, such as Malaysia, Tunisia, Norway, Chile, Kenya and Guyana. The Butler group met four times, but its members could not agree on the permanent seats for the global South and whether these can have the same privileges as Germany and Japan.

Italy opposed both Razali and Butler initiatives and its Ambassador Paolo Fulci put a different proposal, rejecting more permanent members in favour of a special category of intermediate states that would be elected periodically by the GA and would rotate in and out of the SC. The Italian initiative however also failed to win backing from the two-thirds of the member states. The common lowest denominator between the three proposals remained the increase of non-permanent members only – what in fact happened in 1965.

One constitutional question that emerged at that time was how many votes would be needed to increase the SC membership. Article 18 of the Charter stipulates that important decisions by the GA shall be taken by a two-thirds majority of the members present and voting. However, Article 108 of the Charter, stipulating also two-thirds majority for UN Charter amendments, does not specify 'of the members present and voting.' Should it be two-thirds of those present and voting, or two-thirds of all UN members? The issue was debated and clarified by GA Resolution 53/30 (23 November 1998), which raised the bar to two-thirds of all UN members, and not simply those present and voting. This means that to amend the Charter now when we have 193 members, there should be 129 'yes' votes - not an easy target to achieve.

5. Models A and B (2005)

The divergence remained over the next years and gradually led to two coalitions of opinions: one group comprising Germany, Japan, India and Brazil (G4) and African states asking for new permanent members with right of veto; and another group comprising Italy, Pakistan, Mexico, Egypt and others forming the 'Uniting for Consensus' (UfC) or 'Coffee Club', insisting on expansion with non-permanent, but longer and renewable seats. A fresh oxygen has been injected in December 2004 when a High-Level Panel on Threats, Challenges and Change produced its report 'A More Secure World', and the UN Secretary General (SG) issued in March 2005 his Report 'In Larger Freedom', proposing a broad package, including SC reform in two scenarios: 'Model A' suggesting six new permanent and three additional non-permanent members, and 'Model B' creating a new category of eight renewable after four years seats and one new non-permanent, non-renewable seat. Both models aimed at 24 members in total (a good number as every state could act as a President of the SC once during 24 months) and to 'sweeten' the proposal, no new veto powers were envisaged. Model A aimed to satisfy G4 and the African countries (with two new permanent seats for Africa),

while Model B was meant to fit the desires of the UfC group. Neither model could achieve success in 2005, one opposition came from China primarily against the permanent membership of Japan, and also Africa insisted on the right to veto of its two new permanent members (Ewulzini Consensus). The G4 and its allies missed the chance to negotiate with the UfC on the length of the Model B seats, being confident their draft resolution would pass, but later when it became clear it would not pass, the UfC lost interest in a compromise.

The reform effort failed also because of tensions after the US-led invasion of Iraq in 2003 and the US administration, represented in the UN by anti-multilateralist Permanent Representative John Bolton, was not interested in an enlarged SC. In a special issue in 'Global Governance' journal (vol. 11, issue 4) some sceptics predicted that dust will cover the SC reform and it will be forgotten, but others counter-argued that this will be a 'fruitful dust' that one day can be re-utilized.[6] The debate continued broadly between those who believe that an enlarged Council would fill the democratic deficit and serve as a signal for effective multilateralism, based on democratically-evolved global consensus and more skeptical voices who think that new permanent members would add inequality and would capture anti-democratic sentiment.[7] Another question is whether getting the regional powers (the largest countries in terms of economy, population and military power) in the room will improve the efficiency of the SC work. This was the original rationale for the institutionalized privilege afforded to the P5, but there is also an argument for creativity and imagination to ensure more contextually sensitive resolutions, and herein lies the counter-argument: if you allow the so-called 'heavy lifters' in the room they will throw their weight for the sake of it, rather than acting in a more creative and constructive manner. In the past many small countries have been the real innovators, because they understand their limitations and are not trying to run the world, they tend to carve out a niche in the agenda and often contribute through the power of the better argument. The Arria formula, the refinement of the Panel of Experts, the concept of peacekeeping were all suggestions of smaller powers. India, Brazil, Japan and Germany are all global economic heavyweights, but that does not necessarily mean they are the creative heavyweights that the SC needs to function more effectively. The old adage "whether elephants make love or make war, the grass gets trampled" is a concern of many, fearing that the six new permanent members will behave like the current P5 and will also cut out of decision-making smaller countries, losing the oxygen of creativity.

One outcome of the 2005 effort was the development of regional and other group dynamics. The G4 initially demanded veto power, but gradually shifted to compromising suggestions, one being to leave the issue for a review after 15 years. The African Union (AU) remained determined to increase the African representation in the SC with two new permanent members and two non-permanent seats, but internal divisions emerged between self-nominated candidates (South Africa, Nigeria); those that oppose them, including competing large countries; between those that insist on the veto and others that are willing to compromise; between those who want the African permanent members to be accountable to the AU, and those who see this is an obstacle as every SC decision can face the veto of any AU member. There are some that prefer longer-term rotating seats rather than new permanent seats; and others, that have little to gain and prefer either simple expansion of non-permanent seats, or are indifferent at this point. South Africa and Nigeria tried to foster a convergence with the G4 that would allow the decision on veto rights to be postponed until a future review, but the resistance to this idea from parts of the AU remained.

[6] See various articles in *Global Governance*, vol. 11, no. 4 (2005).
[7] India statement in Open-Ended Working Group

6. Inter-Governmental Negotiations

On 15 September 2008 the GA adopted a decision (62/557) opening the inter-governmental negotiations (IGN) on the SC reform in informal plenary, listing five issues of substance to be part of the SC reform: (1) categories of membership, (2) the question of the veto, (3) regional representation, (4) size of the SC and working methods, and (5) the relationship of the SC with the GA,[8] plus some cross-cutting procedural issues, i.e. whether amendments to the Charter are required, whether there should be a review after some period of time. The GA did not accept the pressure of some powerful countries to make the reform possible only through consensus, and agreed in the resolution 62/557 to reform the SC upon 'widest possible political acceptance'.

The positions of various groups developed further with the start of the IGN. On 20 April 2009, Colombia and Italy on behalf of the UfC proposed creating a new category of non-permanent seats, elected for an extended duration without immediate re-elections. This new category would not be allocated to single countries, but rather to regional groups on a rotational basis. Later the UfC developed the position proposing the longer-term seats to be three or four years with immediate renewal possible without an interval. Like the other groupings UfC experiences internal divisions, with some being more flexible than others. Besides the core group of the UfC, 20-30 other member states privately endorse the idea of longer-term and/or renewable seats, but some of them don't like the strategies the UfC employs in the IGN process. Potentially, as long as the G4 overplays its cards or when it would renege on promises made thus far, support for longer-term and renewable seats may significantly increase.

The efforts towards convergence materialized in creating a new group of developing countries, meeting regularly in the Indian mission in New York, named L69 after the draft resolution that forced the IGN to start. L69 consists of 40 member states: among them G4 members Brazil and India, 11 African countries, small island states, CARICOM and some Latin American states.

A Committee of 10 African countries (C10) was established to act as the African focal point on the SC reform and explore convergence and co-operation with other groups. The C10 consists of Algeria, Republic of the Congo, Equatorial Guinea, Kenya, Libya, Namibia, Senegal, Sierra Leone, Uganda, and Zambia and represents the five African regions. The C10 has not felt so far the need to name the African choice for permanent members, despite the US insistence, because real negotiations have not yet taken place and there is always a risk that the solution of longer-term and/or renewable seats would turn out to be the only viable outcome. Hybrid options, such as one permanent seat for Africa plus longer-term and/or renewable seats for Africa has not yet being enough explored. Besides the above groupings, the Arab group has proposed having its own permanent seat, the East Europeans have advocated for a second dedicated non-permanent seat for themselves, and small island states would like a cross-regional non-permanent seat.

On the question of the veto, since 2012 a growing convergence between the C10 and L69 took place after the L69 agreed to extend immediately the veto right for new permanent members. However, efforts to agree on a common resolution fell through - suspicions remained that L69 agreed to extension of the veto merely to break up the African unity and just as an effort to create momentum. It seems that most of the 11 African members in L69 are willing to be flexible about the veto and there have been efforts to reconsider the Ezulwini deadlock on the veto with South Africa trying to bring about a high-level retreat, and more recently the C10 recommending a special summit to reconsider the issue.

[8] Included also under the GA agenda item '*Revitalization of the General Assembly*'

France in 2013 proposed a voluntary code of conduct where the P5 refrain from using the veto in situations of mass atrocities. Interestingly, the AU's founding principles include the notion of interference in situations involving genocide, war crimes, and crimes against humanity and one can expect that, if the French proposal is accepted, member states might not be so reluctant to afford veto to new permanent members.

On the working methods, a group called ACT (Accountability, Coherence, and Transparency) was created with 20 countries initially joining the group by invitation, with Switzerland as focal point. It concentrates on the working methods of the current - not expanded - Council, reflecting widespread skepticism that the reform will happen anytime soon. Arguably, some pressure from ACT has contributed to improved working methods, but much still remains to be achieved. As a group it is not currently active in the IGN and ACT is believed to experience internal divisions similar to the other groupings.

6.1 Zahir Tanin's efforts

At the outset of the 65th session in September 2010 the PGA Joseph Deiss appointed Zahir Tanin, Ambassador of Afghanistan to the UN, as chair of the IGN. Tanin served remarkably long, having in mind that no chair of the Open Ended Working Group (OEWG) since 2005 has continued beyond one session. Completing his term in 2014 Tanin produced a concise final assessment, which, disappointingly for the G4, did not say that a strong majority favored expansion in both categories: new permanent and new non-permanent seats. Tanin, instead, listed all possible versions of expansion (1) new permanent members with immediate veto rights; or (2) with veto rights frozen until a review takes place; (3) permanent seats without veto rights; (4) longer-term seats that could become permanent seats after a review; (5) longer-term seats that could be renewable through re-elections (semi-permanent seats); (6) longer-term seats that could be immediately renewable only once; (7) longer-term seats that would not be immediately renewable; (8) non-permanent seats that could be renewable; (9) additional two-year non-permanent seats besides new permanent seats, or (10) only adding non-permanent seats. Those ten scenarios kept all options alive, and some member states who publicly supported one position, privately indicated they could consider other options depending on how the reform process goes. Questions remained as to whether veto rights should be limited in some way, whether new permanent seats should be nominated by regions - and represent these regions - rather than serve in their national capacities.

6.2 John Ashe's Advisory Group and Non-Paper

John Ashe, becoming the PGA of the 68th session in September 2013, did his best to activate the work of the IGN, by establishing an Advisory Group (AG) on the SC reform to further revise the two compilation texts (Rev 2 & Rev 3). The AG came up with a shorter Non Paper, and although it had no ambition to become a negotiating text, nor to replace the existing official documents, some countries consider it to be a good basis for negotiations. John Ashe, reflecting on the intensity of disagreement that he experienced, noted that the SC reform might not happen anytime soon at the closing plenary on 7 September 2014 and a roll-over GA resolution simply to continue the IGN was adopted without making any reference to the Non Paper, confirming the widespread understanding that Ashe did not really regard it as his Non Paper. However the G4 continue to call it '*Ashe Non Paper*', with Brazil promoting it as a possible negotiation text.

6.3 Courtenay Rattray: Text-Based Negotiations

Sam Kutesa from Uganda as PGA of the 69th session, approached several Permanent Reps to replace Zahir Tanin as IGN chair, but each politely declined, until the Ambassador of Jamaica Courtenay Rattray, who earned respect for the efficient way in which he chaired the GA First Committee, accepted the challenge. It is worth noting that Jamaica is part of the L69 group and had played a very active role in the IGN. Rattray therefore faces the task to distance himself from the formulated goals of the L69 group and act as a neutral chair. Also Kutesa, one of the coordinators of the African position in the C10, has a particular stake in the outcome as he advocated to move to text-based negotiations and to re-consider the Ezulwini Consensus.

In a letter from 17 December 2014 to all member states, Rattray invited all who would like to meet to come and discuss next steps, though it is likely that as soon as he formulates the steps forward, he will run into the same scenarios and obstacles seen before. Creating fresh approaches while also appearing neutral will be a challenge. At this time it is unclear, if Kutesa will try to push Rattray in a particular direction, or will be a relatively hands-off PGA. Some recent PGAs have started out with an enthusiastic desire to find a compromise, but lost interest later in the term because of the complexities and intense pressures from various groups.

The text-based negotiations is not a new idea, in December 2009 a group of 138 countries, 30 among them African, signed a letter requesting the IGN chair to present member states with a text with options to serve as a basis for negotiations. The UfC agreed to a document for the continuation of the IGN, and the text distributed on 10 May 2010 was actually called "negotiation text" by Tanin. But the opposition from other groups - including strong reservations from China and Russia about any negotiation text – transformed it into a compilation of positions. If Rattray would draft his own shorter text - by abridging Rev 2 or Rev 3, or by creating a synthesis from existing texts and new information received - there is a danger that many member states - apart from outright rejection - would insist on having their original positions put back in, even in an integral manner again rather than re-arranged in sections as was done for Rev 3. Key questions to ask are: Can a shorter text facilitate the negotiations, or not? Is there presently enough political will to bring about convergence among member states for a particular outcome to be reached, following give-and-take negotiations? Can convergence be efficiently pursued without an agreed text?

7. The Elders

A group of distinguished leaders 'The Elders', created by Nelson Mandela in 2007 to work together for peace and human rights, consisting of Kofi Annan, Gro Bruntland, Mary Robinson and others, in February 2015 issued an appeal 'A UN Fit for Purpose' with four recommendations:

- "*Instead of new permanent members, to have a new category of members serving a longer term and eligible for immediate re-election. They could be de facto permanent, provided they retained the confidence of other member states.*"

Not a new idea, the 2005 Model B proposed a category of renewable members over four years. This requires amending Art. 23 of the Charter, adding the longer terms and deleting the last sentence of Art. 27: 'A retiring member shall not be eligible for immediate re-election'.

- "*The five existing permanent members promise never to use the veto to defend their national interests, but only when they genuinely fear that the proposed action will do more harm than good to world peace and to people. If veto is used, the permanent member(s) should give a full and clear explanation, but also should offer an alternative resolution, pointing why it would be a more credible and efficient way to protect victims. If a resolution is vetoed, the others in the*

SC should not abandon the search for common ground, but work even harder to find a new effective solution."

This does not require UN Charter amendment and reminds the 2013 French proposal for self-imposed code of conduct to refrain from veto in mass atrocities. Previous suggestions still on the table are to limit the veto to Chapter VII decisions and only if a second P5 member supports it, or when there is a clear regional support. P5 can show disagreements by using non-concurring vote (abstentions) short of veto.

- "*The SC should not work behind closed doors, but listen carefully those affected by its decisions. NGOs, delegations representing people in zones of conflict should be allowed to make representations in front of the SC to inform and influence their decisions.*"

Attention has been given to improve the working methods (ACT group) urging for more open meetings, inviting civil society and academic community. It seems the easiest from the four proposals to agree upon and implement, as there has been already opening of the doors for various stakeholders. There cannot to be a major opposition to this, apart from that the meetings should not become bazaars for debates and long speeches from many.

- "*The choice of the SG should be based on the best qualified candidate, irrespective of gender or region. The SC should recommend more than one candidate for the vote in the GA. The SG is appointed for one non-renewable term of seven years, and must not be under pressure to give jobs or concessions to any member state in return for support.*"

This is not a new proposal, but it has never been tested and it needs immediate attention as the next elections of a new SG are coming in 2016.[9]

8. Recommendations for the Global Commission

The SC reform has been long and painful with many efforts being made, but little achievements. What is still missing is the need to change the perception of the SC membership from a 'Club of Privileged' to 'Burden-Sharing Servants'. We call the Secretary General a 'Servant of the Member States', but the same should apply to the SC members, who act on behalf of all other member states, serving global needs, not narrow national interests. The Art. 24 of the UN Charter clearly requires the SC to act on behalf of all UN member-states. The states' compliance with the SC decisions should be based on the understanding that the SC acts on behalf of the member-states. Naturally, member-states comply and carry out the decisions of the SC (Art. 25) taken on their behalf (Art. 24) in the same way as the citizens of a country would comply with the laws imposed by a parliament or a monarch, knowing that these are acted on their behalf. However, not only we see how the P5 take decisions irrespective of the expectations of the member states, but also how the candidates for permanent membership point 'privileges from the past', rather than 'responsibility for the future' and there are genuine concerns that the six new permanent members will simply continue to do what the current P5 do, acting primarily guided by national interests, not by the interests of the world at-large.

Adding SC reform to the agenda of the Special Summit on Sustainable Development in September 2015 is met with considerable resistance and the idea of convening a separate high-level meeting on SC reform at the same time has not gathered support. China already spoke against it, but even if some meeting is scheduled and capitals are re-engaged, it would most probably be a replay of

[9] Brian Urquhart and Erskine Childers, *A World in Need of Leadership: Tomorrow's United Nations* (Uppsala: Dag Hammarskjöld Foundation, 1990).

efforts made already without outcomes. Compared to Kofi Annan, it seems that Ban ki-Moon, is considerably less keen to mix a wide variety of agenda items to be resolved at the same time, especially for a Summit intended to determine the post-2015 development agenda and his legacy. To help this, Richard Gowan and Nora Gordon (CIC) recommended to 'conduct outreach in order to advance SC reform' and to appoint a Special Envoy or High Level Panel.[10] The first would have "the versatility to speak more freely to high-ranking government officials to share perspectives on what could help facilitate reform." It would further help bridge the gap between member state capitals and what is going on in the negotiations, diminishing the problem of outdated, strict instructions. The second would similarly help to bring governments together on this topic. Also, they could help raise attention and sustain momentum for SC reform, building trust and moving towards more serious negotiations.

To sum up the current standing on the five issues of the SC reform:

- **Categories of membership**. Adding a third category of longer terms members, re-elected to consecutive terms, is a possibility that the UfC can try and will need two-thirds of the GA members (129) in agreement, a high target. The Elders raised their voice supporting such a new category. The argument is that the permanent membership with veto rights in the SC has been already problematic over the decades and not only with regard of the veto, but also with regard of the permanency. The G4 and the African candidates for permanent seats might be willing to compromise on the veto, but still demand permanency and so far fail to persuade two-thirds of the GA, which is more sympathetic to constantly renewable seats.
- **Veto**: The French-Mexican proposal and the 'Elders' variation for voluntary code of conduct, restraining P5 from use of veto in R2P situations, does not require UN Charter amendment as the new category of seats. There are also other suggestions – casting a dissenting vote which does not rise formally to a veto (a fourth possible vote, situated between 'Abstention' and 'No' vote, giving a chance to speak against a decision, but without opposing the measure to go ahead); use veto only jointly with another permanent member or with a strong regional support; veto-using members should offer an alternative draft resolution - are not unreasonable. If one looks at cases of veto in the past very often indeed there were two of the P5 members vetoing a resolution, and these vetoing members had alternative suggestions. The veto power slows down or prevents important decisions being made on matters of international peace and security. A further argument to restrain the veto is that it is detrimental to balanced political decisions, as any draft text needs to be approved of by each permanent member before any decision can possibly be made. Indeed, proposed draft resolutions are never formally presented to the Council for a vote owing to the knowledge that a permanent member would vote against (the so-called 'pocket veto'). Debate also exists over the potential use of the veto power to provide 'diplomatic cover' to a permanent member's allies.
- **Regional representation**: Extra SC members will add fairness in representation of African, Arab States; Islam Ummah, small islands, Eastern Europe. However, the idea that regions should be represented collectively or rotationally is problematic.
- **Size and working methods**: A good size of the SC would be 24 members, not too many (burdening the meetings and logistics) and not too little and each presiding the SC once over 24 months.[11] If there are more than 24 members, the P5 may agree to preside less often than

[10] Richard Gowan and Nora Gordon, Pathways to Security Council Reform (New York: Center on International Cooperation, New York University, May 2014), 22.
[11] Not a recent idea, see Keith Suter, "Reforming the United Nations", in *Past Imperfect, Future Uncertain: United Nations at Fifty*, ed. Ramesh Thakur (Otago: Palgrave Macmillan, 1995), 250.

once in two years, giving all non-permanent members the chance to serve once. A larger Council would be efficient, if the working methods (accountability, coherence, transparency) improve. Larger size does not necessarily mean less efficiency, on the opposite, creative suggestions may come from unexpected corner, and also a P5 member might find it more difficult to cast a veto against 23 states sitting around, instead of 14 states sitting around the table.

- **Relationship with the General Assembly (GA).** Regular and more analytical annual report from the SC to the GA and also more special reports when necessary. The SC important decisions and all the vetoes should be properly explained to the GA in these reports.

9. Concrete recommendations

- GA (Art. 108) resolution allowing immediate re-election of retiring SC members by removing the last line of Article 23 (paragraph 2) reading "A retiring member shall not be eligible for immediate re-election". Removing this short sentence form the UN Charter would allow for the growing number of countries with a deep commitment to the maintenance of international peace and security to be re-elected and, therefore, have the potential to remain on the Council for an indefinite period. As with current arrangements, this would not entail any kind of veto authority, and such a reform would also be made more palatable to smaller states if combined with recommendation 2 below. Importantly, it would encourage a healthy competition among countries to regularly make the case that they are a major contributor to international peace and security. Equally important, this straightforward measure would remove the need for endless counterproductive debates about which new countries deserve permanent status.
- GA resolution expanding the membership to 24: In 1965, the UN Charter was amended to expand the Security Council's membership from 11 to 15. It is time to further expand the Council to 24 members. Combined with the previous measure, this would create more opportunities for large countries with significant peacekeeping and peacebuilding resources to stay on the SC for consecutive terms, but also for smaller countries to engage in the SC. Such an expansion is critical to countering the claims that the SC lacks representativeness and legitimacy. It will endow the SC with more champions to build consensus in the broader UN membership on sensitive matters; provide political, financial, troops, police, and material support to the next generation of peace operations; and strengthen ties to civil society and business. When 23 SC members strongly endorse action to prevent or halt the outbreak of violent atrocities, a single veto-wielding P5 member would be more reluctant to go against such a broader collective opinion.
- SC Presidential Statement containing a Code of Conduct. The P5 agree to refrain from veto in serious situations where innocent lives are at massive and deadly risk (R2P situations). The code can also oblige the P5 to defend publicly their vetoes in the SC chamber and to offer an alternative draft resolution every time they use veto.
- A GA resolution reviving the 'Uniting for Peace' interpretations of the GA powers that became customary international law. By adopting A/RES/377 A, on 3 November 1950, over two-thirds of the UN member states declared that the P5 cannot and should not prevent the GA from taking any action necessary to restore international peace and security, in cases where the SC has failed to exercise its primary responsibility for maintaining peace. Such an interpretation sees the GA as being awarded ultimate responsibility —rather than secondary responsibility—for matters of international peace and security. Various official

UN reports make explicit reference to the 'Uniting for Peace' resolution as providing a mechanism for the GA to act in cases of SC vetoes should there be two-thirds of the Assembly agreeing that action is necessary.

- Periodic Consultations with Civil Society and Business: Although historically, the SC has shunned attempts to allow a space for non-state actors, with the growing contributions of civil society and business sector to prevention, peacemaking, peacekeeping and peacebuilding, it is time to institute a new consultative mechanism for periodic dialogues between the President of the SC and representatives of the business community and civil society. This is all the more crucial given the SC focus on non-traditional security threats including HIV-AIDS (2000), climate change (2007), Ebola virus (2014). Facilitation and oversight of the periodic dialogues could occur through the UN Global Partnership platform. Besides creating a new channel for dialogue and exchange of ideas with civil society and business, this new consultative mechanism could lend much-needed support and political pressure to the wider SC reform agenda outlined above.

10. Conclusion

A final word, some view Security Council Reform as the 'Holy Grail' of UN reform, whereas others treat it as an unattainable goal that diverts intellectual energy and political capital away from other more pressing global governance objectives. The truth is between the two extremes. Noting that the SC was last reformed at the height of the Cold War and during a period of dramatic growth in the world organization's membership, this paper argues that by adopting a spirit of unconventional pragmatism and by looking at SC reform together with other reform strategies, the unimaginable becomes possible and a potential SC reform can actually serve to reinforce, rather than hinder, a broader agenda for change.

Box 2: Policy implications

An enlarged Security Council would be more representative of the world of the 21st century, it will reflect the modern realities and allow states with large peacemaking, peacekeeping and peacebuilding capacities a closer role in the decision-making maintaining international peace and security;

The legitimacy gap will be filled not simply by enlarging the membership, but also by reforming the working methods towards accountability, consistency and transparency and allowing more inclusive participation of the global civil society and business sector;

A reform of the Security Council would be both a result and a signal for deeper multilateralism and can trigger reforms in other parts of the UN System that also need transformative changes.

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