The Reform of the UN Security Council

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Abstract

This paper aims to review the proposals for reform of the UN Security Council (SC) put forward since the 1950s and evaluate the most recent ones in order to see whether reform is desirable and/or feasible. The author analyses key issues at the centre of the current debate on SC reform (size of an enlarged Council, categories of membership and regional representation, the veto, SC's working methods, relations with the General Assembly). He also examines the future role of the European Union in the SC, and such issues as closer coordination among EU members and the Lisbon Treaty's safeguards for the rights of permanent members, including the veto. The paper was prepared for the second meeting of Working Group I on "The Reform of the UN Security Council: What Role for the EU?", held in Rome on 14 May 2010, in the framework of the IAI-University of Kiel project on "The European Union and the Reform of the United Nations" (Effective Multilateralism).

Keywords: _UN Security Council Reform / European Union / G8/G20_

The Reform of the UN Security Council

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1. Introduction

An impressive body of literature has been produced on the reform of the Security Council (SC) since the latest attempts made with the creation by the General Assembly (GA), in 1993, of the "Open-ended working group on the question of equitable representation and increase in the membership of the Security Council and related matters".

These attempts are still on-going and it is not possible to predict their outcome, notwithstanding the efforts of the former Secretary General (SG) Kofi Annan and the High Level Panel. The reform of the SC cannot be confined to permanent membership and the right of veto. But it is understandable that States strive to obtain a permanent seat. Their power, prestige and influence will grow if the permanent seat is endowed with the power of veto.

The aim of this paper is to review the proposals put forward thus far and to evaluate new ones in order to see whether a reform is desirable and/or feasible.

It is a goal which requires a brief explanation of the mechanisms embodied in the UN Charter for amending its provisions. A brief reminder of the category of subjects under international law which may become UN members is also necessary in order to clarify the meaning of regional membership within the UN.

2. UN membership

Membership of the UN is a *condicio sine qua non* to become a full member of any main UN bodies. Since SC reform includes proposals designed to include subjects other than States as members of that body, it is worth recalling a few notes on UN membership. According to Article 3 of the Charter, the original members of the UN are those States that, having taken part in the San Francisco Conference or having signed the 1942 Declaration on the United Nations, have signed and ratified the UN Charter. In addition to the very small number of original members, the UN is open, according to Article 4, to peace-loving States which accept the obligations set out in the Charter and in the view of the UN itself are able and willing to carry out those obligations.[1] Is thus

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[1] See Thomas D. Grant, *Admission to the United Nations. Charter Article 4 and the Rise of Universal Organization*, Leyden and Boston, Martinus Nijhoff, 2009.

clear that only States may be parties to the Organisation, whether original members or States that have subsequently acquired their membership through the admission process, which is carried out through a decision by the General Assembly (GA) at the recommendation of the SC. As to the notion of State, we must to refer to the meaning of this word under international law. The form of State is not relevant, for instance if the entity in question is a unitary or a federal State. On the contrary: a confederation of States whose components maintain a distinct legal personality is not a State under Article 4. Belarus and Ukraine's status as original members of the UN, when they were members of the Soviet Union, is an accident of history arising from the political conditions existing at the time of the San Francisco Conference. Switzerland, which was recently admitted to the United Nations, is a confederation. However, its cantons are not international persons and from that perspective they are no different from the German Länder. Entities other than States may acquire a different status from full membership. For instance, international Organisations or liberation movements have observer status within the GA. The SC's provisional rules of procedure recognise that entities other than States may be invited to the meetings of the SC.

As for the composition of the SC, its members are States either originally named at the San Francisco Conference (permanent members with the right of veto) or elected by the GA. The non-permanent members are chosen from the members of the Organisation. To be elected, therefore, they have to be States.

3. The amendment of the UN Charter

Any modification of the United Nations Security Council membership involves an amendment of the UN Charter being improbable to foresee a modification operated by the practice giving origin to a kind of customary revision.

The Charter sets out two mechanisms: an amendment procedure (Art. 108) and a review procedure (Art. 109). From a formal standpoint there is no difference between the two procedures as far as amending the Charter is concerned. Any modification must obtain two-thirds of the votes of the GA or of the Review Conference and must be ratified by two-thirds of the UN's members, including the permanent members of the SC. Permanent members do not enjoy any right of veto for the adoption of the GA or Review Conference decision. They may vote against the decision or abstain; the decision is adopted if it meets the two-thirds criterion. However, the permanent member must ratify the decision when it is submitted to its national parliament. If not, the amendment or decision is not adopted.

A problem of interpretation arises as to the meaning of two-thirds of the GA. Should it be two-thirds of those present and voting or two-thirds of all GA members? While Charter Article 18 on the vote by the GA states that Resolutions on important questions shall be taken by a two-thirds majority of the members present and voting, Article 108 on the amendment procedure does not qualify "two-thirds majority". The issue was clarified by GA Resolution 53/30 of 23 November 1998, which states that the two-thirds

majority for adopting a Resolution on amending the provisions governing the SC refers to two-thirds of the UN members and not two-thirds of members present and voting[2].

The Review Conference was never held, even though Article 109 envisaged that it should have been placed on the GA agenda 10 years after the UN Charter entered into force. The Charter's tenth anniversary took place in 1955, when the Cold War was at its peak and such a Conference was inconceivable.

Article 108 and 109 do not set out any limit to the Charter amendment/review. They only regulate the procedure for amending the Charter and thus do not take any position on the substantive reform of the SC, whether this takes the form of an increase in the number of permanent or non-permanent members or a change in the veto system[3].

4. The increase in the number of SC members in 1963

Until now, the only reform of the SC took place in 1963, when the number of the non-permanent members was increased from 6 to 10 under Resolution 1991-XVIII. The amendment was approved in the GA with France and the Soviet Union voting against, the UK and US abstaining and China (Taiwan) voting in favour. All permanent members eventually ratified the amendment; if they had not, it would never have entered into force, which it did in 1965. Resolution 1991-XVIII also increased the number of ECOSOC members from 18 to 27. A second increase from 27 to 54 was approved with Resolution 2847-XXVI, with the amendment entering into force in 1973.

The reason for increasing the number of SC members was the growth in membership numbers compared with the membership existing at the time of its foundation. In 1945 the UN counted only 50 members, while by 1963 its membership had risen to 115. This was due to the admission of several European States in 1955 and the entry of Asian and African countries as a result of decolonisation. However, in 1963 the decolonisation process was not yet complete. The birth of new countries with the completion of the process, the split-up of the Soviet Empire and the dissolution of Yugoslavia would dramatically increase the UN's membership, which now stands at 192 States.

And this happened even though no new reform of the SC took place after the Resolution voted in 1963.

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[2] "*The General Assembly*, *Mindful* of Chapter XVIII of the Charter of the United Nations and of the importance of reaching general agreement as referred to in Resolution 48/26 of 3 December 1993, *determines* not to adopt any Resolution or decision on the question of equitable representation on and increase in the membership of the Security Council and related matters, without the affirmative vote of at least two thirds of the Members of the General Assembly." See *Resolution adopted by the General Assembly. Question of equitable representation on and increase in the membership of the Security Council and related matters*, A/RES/53/30, 1 December 1998**.**
[3] See Bardo Fassbender, *The United Nations Charter as the Constitution of the International Community*, Leiden and Boston, Martinus Nijhoff, 2009, pp. 184-185. According to this author, the constitutional quality of the UN Charter sets out limits to amendments of its basic principles and leaves little room for any change via customary law: Bardo Fassbender, *UN Security Council Reform and the Right of Veto. A Constitutional Perspective*, The Hague/London/Boston, Kluwer Law International, 1998, pp.138-147.

Non-permanent members are elected for two years by the GA and cannot be immediately re-elected once their mandate expires. They are chosen taking into account a geographical distribution initially established by Resolution 1991-XVIII and since then unchanged: 5 members from African and Asian countries, 1 from Eastern European countries, 2 from Latin America and 2 from the Western European and Others Group (WEOG).

5. SC decision-making and the right of veto

According to Article 27 of the Charter, SC decisions require a different majority depending of their nature: decisions on procedural matters are taken with an affirmative vote of 9 members, while substantive decisions require an affirmative vote of 9 countries, including the concurring vote of the permanent members. If a permanent member votes against, the decision cannot be adopted. The abstention of a permanent member is not equivalent to a veto, as long-standing practice shows.[4] The veto has also been cast to determine if the issue before the Council should be considered as having a procedural or substantive nature.

The problem of the veto continued to be considered a taboo for many years. As stated by historian Paul Kennedy, "[....] to any reasonable person nowadays, it is outrageous that a mere 5 of the 191 sovereign States that make up the United Nations have special powers and privileges. Five countries [...] are permanently sited at the core of the UN Security Council, which [...] itself is the heart of our global security system. Upon what they do, or decide not to do, and upon what they agree to, or veto, lies the fate of our efforts to achieve peace through international covenants"[5].

From its foundation until the seventies, the veto record belonged to the Soviet Union. The UK and France made recourse to the veto to block a Resolution during the 1956 Suez crisis. The US first adopted the veto in March 1970 on the occasion of a Resolution on Southern Rhodesia. Thereafter, the US made increasing use of the veto. As Paul Kennedy reminds us, between 1985 and 1990 the Soviet Union did not cast any vetoes, while the US used it twenty-seven times.[6]

Since a Resolution does not come out of the blue but is the outcome of a negotiating process, it is often the case that a draft Resolution running the risk of being vetoed is not even put to the vote. For instance, the US and UK did not table a draft Resolution authorising the use of force against Iraq in 2003, because of the opposition of the Russian Federation and France, another European veto holder**.**

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[4] We could also say that the practice of non-equivalence of abstention with veto gave rise to a modification of the Charter (see International Court of Justice, *Advisory Opinion on Namibia (South West Africa)*, ICJ *Report*, 16, 22, para. 22). It is obvious that amendments through subsequent practice cannot impinge upon the number of SC members. It is also difficult to conceive of a practice giving rise to a custom limiting the right of veto.
[5] See Paul Kennedy, *The Parliament of Man. The Past, Present, and Future of the United Nations*, New York, Random House, 2006, pp. 51-52.
[6] *Ibidem*, p. 54.

6. Cold War SC

During the Cold War the SC functioned more as a forum for hatred-fuelled discussion than as a true decision-making body. This is proven by the paucity of Resolutions adopted in comparison with what happened after the fall of the Berlin wall. The first major post-war conflict, i.e. the Korean War, saw a SC paralysed by the Soviet opposition. As a result, the Western Powers tried to shift the balance from the SC to the GA by adopting the Uniting for Peace Resolution (377-V) in 1950. The Soviet Union viewed the Resolution as contrary to the Charter and it could be utilised until the West had the majority in the GA. An illusion that vanished very soon with the advance of decolonisation and the rise of the non-aligned movement. Major crises proved to be intractable for the SC, for instance the Cuban missile crisis in the sixties or the Vietnam War – which was played out almost beyond the confines of the SC. The Cold War also influenced the UN membership and the quest for universality. For a long period the admission of former enemy countries was held back by the Soviet Union, which also opposed the entry of a few Asian and African countries considered too close to the US. The Cold War also hindered the SC from adopting mandatory sanctions. The first such sanctions passed by the UN were those against Southern Rhodesia, while the weapons embargo against South Africa was initially only recommended, before it became mandatory.

7. Reasons for reforming SC

There are a number of reasons for reforming the SC. They may be enumerated as follows: (a) the birth of new States and the transformation of the international community; (b) the increase of the SC's role after the end of the Cold War; (c) the SC as legislator; (d) the new threats; and (e) the use of force by States.

(a) As mentioned earlier, at San Francisco the Charter was signed by only 50 States. The UN's membership was more than double that number when the amendment on the increase in non-permanent members of the SC entered into force. Nowadays, **the number of UN members has increased almost fourfold since its foundation**. Since its birth, the international community has completely changed. At the beginning the UN was composed of Western and Eastern European countries plus a number of Latin America countries. Nowadays the majority of members belong to African and Asian countries.

(b) **The SC's increased role after the end of the Cold War.** The role of the SC has dramatically increased since the end of the Cold War. While during the Cold War the SC was the place where the two superpowers engaged in verbal confrontation and was virtually paralyzed, after the fall of the Berlin wall its policy changed. The SC started to become the place where effective decisions were taken. This is demonstrated, for instance, by the number of peacekeeping operations put in place and by the crises solved, such as the Timor Leste case. The SC has also taken on an important territorial administration function, for example in Kosovo before its independence.

(c) **The SC as legislator**. The Charter attributes to the Council the power to take decisions on measures to be carried out by member States (Art. 25). Mandatory

sanctions fall within this framework. They are a kind of administrative regulation adopted to cope with concrete situations such as threats to peace. Since 9/11 the SC has started to adopt "legislative Resolutions", i.e. Resolutions taken to address hypothetical situations such as the threat arising from international terrorism or WMD proliferation. Take for instance SC Resolutions 1373 (2001) and 1540 (2004). The former was adopted after the attack on the Twin Towers in New York on 11 September 2001. The latter defines the proliferation of WMD as a threat to peace and, like Resolution 1373, lays down provisions that oblige States to enact legislation to address proliferation and to ensure that they fulfil their duty to prevent the production of WMD. The Resolution declares that States should also adopt measures to prevent WMD and their means of delivery from falling into the hands of non-State actors. The creation of the two *ad hoc* criminal tribunals should also be remembered, i.e. the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (SC Resolutions 808-1993 and 995-1994).

(d) **The new threats**. The international community is facing new and dangerous threats, stemming from international terrorism, WMD proliferation and failed States. Nuclear proliferation has required action by the SC vis-à-vis those States that have withdrawn from the Non-Proliferation Treaty (NPT) or have been accused of failing to comply with the obligation to produce fissile material only for peaceful purposes. North Korea and Iran are cases in point. North Korea and the sanctions policy show how the freedom of States to withdraw from the NPT has been curtailed and the principle of consent to enter into international obligations has been reduced.

(e) **The use of force by States**. According to the Charter, States are allowed to use armed force only in self-defence. The principle is enshrined in Article 51 and the main moot point is whether anticipatory self-defence is lawful or, on the contrary, may only be exercised after an armed attack has occurred. Contemporary international law doctrine has construed Chapter VII as giving the SC the power to authorize States to resort to armed force whenever a threat to peace occurs. For instance, States may be authorised to use force to prevent or put an end to genocide or to meet a latent threat stemming from an accumulation of WMD.

8. Attempts to SC reform

The first attempts to reform the Charter, and in particular to change voting arrangements and the composition of the SC, date from the 1950s and Argentina and Cuba's initiative to discuss the right of veto. One opportunity for reform should have been the tenth anniversary of the UN, since Article 109 envisages a Review Conference at that point if no earlier date had been set. However, 1955 passed without change. Indeed, if a Review Conference had taken place in the middle of the Cold War, it would have been a failure. The tenth session of the GA took the decision to call a Review Conference when more appropriate conditions came to prevail on the world stage.

As said before, the first (and only) reform of the SC took place in 1963, when the Council's non-permanent members were increased from 6 to 10. The number of ECOSOC members has been increased twice (in 1963 and 1971).

Attempts to reform the UN resumed in 1974. A special committee was created and given the task of studying the problem and in 1975 was named the "Special Committee for the United Nations Charter and for strengthening the role of the Organisation". In the Nineties the question of SC reform became paramount and in 1993 the GA passed Resolution 48/267, which established the "Open-ended working group on the question of equitable representation and increase in the membership of the Security Council and other Security Council matters".

It was immediately clear that the number of permanent members was the more important question and a group of countries, led by Germany, pressed for a vote to obtain a Resolution proposing an increase in the number of permanent members (so called Quick Fix). These ambitions were temporarily defeated by those countries which would have remained outside the Council. They were able to put a procedural Resolution to the vote, according to which the two-thirds majority for adopting a GA Resolution on the reform of the SC would have required two-thirds of the UN's members to vote in favour.

The new Secretary General (SG), Kofi Annan, had ambitions for a more general UN reform. He appointed a panel of 16 "eminent persons" to study current threats to international peace and security. The "High Level Panel (HLP) on Threats, Challenges and Change", as it was named, prepared a Report [7] dealing not only with the reform of the SC but involving all important UN Chapters. As for the SC reform, the HLP did not reach agreement and was obliged to indicate two ways to expand SC membership. The two proposals agreed that the total number of SC members should be 24. However they differed in that model A envisaged 6 new permanent seats with no power of veto and three more two-year non-renewable seats. Model B, on the other hand, called for no new permanent seats, but rather a new category of 8 four-year renewable seats and one new two-year non-permanent and non-renewable seat. It was also proposed that the situation should be reviewed in 2020.

The HLP report was followed by the SG Report "In Larger Freedom – Towards Development, Security and Human Rights for All" [8]. The SG proposed that the UN should be structured around the work of three councils: the Security Council, ECOSOC and the newly created Human Rights Council. As regards the composition of the SC, the SG endorsed the HLP's two models, which were composed as set out in the following box:

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[7] UN High-level Panel on Threats, Challenges and Change, *A More Secure World: Our Shared Responsibility* (A/59/565), 2 December 2004, available at http://www.un.org/secureworld/.
[8] UN Secretary General, *In Larger Freedom. Towards Development, Security and Human Rights for All* (A/59/2005), 21 March 2005, available at http://www.un.org/largerfreedom/contents.htm.

Security Council reform: models A and B

Model A provides for six new permanent seats, with no veto being created, and three new two-year non-permanent seats, divided among the major regional areas as follows:

Regional area	No. of States	Permanent seats (continuing)	Proposed new permanent seats	Proposed two-year seats (non-renewable)	Total
Africa	53	0	2	4	6
Asia and Pacific	56	1	2	3	6
Europe	47	3	1	2	6
Americas	35	1	1	4	6
Totals model A	**191**	**5**	**6**	**13**	**24**

Model B does not envisages any new permanent seats but creates a new category of eight four-year renewable-term seats and one new two-year non-permanent (and non-renewable) seat, divided among the major regional areas as follows:

Regional area	No. of States	Permanent seats (continuing)	Proposed new permanent seats	Proposed two-year seats (non-renewable)	Total
Africa	53	0	2	4	6
Asia and Pacific	56	1	2	3	6
Europe	47	3	2	1	6
Americas	35	1	2	3	6
Totals model B	**191**	**5**	**8**	**11**	**24**

Source: UNSG Report *In Larger Freedom*, p. 43 (Box 5)

The 2005 GA summit, at Heads of States and Government level, did not take a stance on the SC reform. The three short paragraphs dedicated to the subject (152-154, A/RES/60/1) express support for an early reform of the SC, which would make it "more broadly representative, efficient and transparent", thus enhancing its effectiveness and legitimacy, the better to implement its decisions.

At the end of 2005 the positions were as follows. The G4 (Brazil, Germany, India and Japan) tabled a draft Resolution aiming to increase to 25 the members of the SC: 6 new permanent members, with the possibility of a veto right after 15 years, plus 4 non-permanent members. The African Union (AU) position was that the total number should be 26, i.e. adding 6 permanent members with a right of veto and 5 non-permanent members. Italy and a group of other countries formulated the "Uniting for Consensus "(UfC) proposal 10 new non-permanent members, with the possibility of immediate re-election after the expiry of their mandate. However, no proposal was put to the vote.

The following years marked a deadlock in the work of the Open-ended Working Group, until its proceedings were given a renewed impetus by the decision (GA Res. 62/557 of September 2008) to discuss the SC reform in an informal plenary of the GA. This

entrusted Ambassador Zahir Tanin (Afghanistan) to chair the intergovernmental negotiations. The overview submitted by Ambassador Tanin (18 May 2009) covered 5 issues that had been identified as necessary for true SC reform: categories of membership, veto, regional representation, size and working methods of the SC, relations between SC and GA.

This new round of negotiations did not bring about any real change in the positions tabled in past years. The G4, supported by France and the UK, reiterated its proposal of having new permanent members. The AU pressed for a more equitable representation of developing countries within the SC, with at least three African permanent seats endowed with the right of veto. The UfC stuck with its original proposal to have only new non-permanent seats, this time with the option of having a number of non-permanent members with an extended duration (3 to 5 years) but with no possibility of re-election.

It appears that the on-going work on the SC reform offers no prospect (for the moment) of reaching a positive outcome, notwithstanding the attempts to identify new solutions. For instance, France and the UK proposed an intermediate reform, consisting of having a number of temporary seats that would become permanent if the members so wished. The AU and members of the UfC rejected the proposal for a temporary solution given the danger, as they saw it, of the category of temporary members in effect being transformed into one of permanent membership.

9. The content of the proposals

The following are the five key cluster areas illustrated by the President of the GA, Sheikha Al Khalila, in 2007. The current debate on the SC reform is centred around these five issues: 1) size of an enlarged Council, 2) categories of membership and regional representation, 3) the veto, 4) the amelioration of the SC's working methods, 5) relations between the SC and the GA. [9]

9.1. Size of an enlarged SC

There is a general agreement that the SC should be enlarged. The expansion goes from a low-twenties option (five-to-seven non-permanent members or a mix of permanent and non-permanent members), mid-twenties (six permanent members and four non-permanent) to a high-twenties option (a wider geographical representation would allow a better representation of African, Latin American and small island countries).

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[9] See Jacob Silas Lund, *Pros and Cons of Security Council Reform,* Center for UN Reform Education, 19 January 2010, available at http//www.centereforunreform.org. The author is grateful to Ms. Elisabetta Martini for writing the section on the content of the latest SC reform proposals.

9.2. Membership categories and regional representation

9.2.1. Membership categories

The question of categories is by far the most crucial issue. An enlargement of the Council has been accepted by all counterparts but proposals range from "low twenties" to "mid-twenties", without considering Gaddafi's proposal[10] to open the Council to all UN membership.

Expansion of both permanent and non-permanent categories:

- **African group:** 2 permanent and 5 non-permanent seats to African States, selected by the African Union;
- **G4:** 6 permanent (2 for African States, 2 for Asian States, 1 for Latin America and Caribbean, 1 for Western Europe and other States) and 4 non-permanent seats (1 African, 1 Asian, 1 Eastern European, 1 Latin American or Caribbean);
- **France and UK:** permanent seats to Brazil, Germany, India and Japan along with representation of Africa;
- **Slovenia**[11]**:** 6 permanent (2 for Africa, 2 for Asia, 1 for Latin America and Caribbean, 1 for Western Europe and other States) and 4 non-permanent.

The four new non-permanent seats, added to the existing number of non-permanent members, would increase the number of non-permanent seats to 14. These 14 seats should be divided into 2 groups: a group of 6 seats with more frequent rotation, eligible for re-election every second two-year term over a period of twelve years, with the other 8 seats following the existing rules.
Expansion only in the non-permanent category:

- **Italy and Colombia**[12]**:** longer-term seats allocated to the regional groups (Africa, Asia, Asia/Africa on a rotating basis, Group of Latin American and Caribbean States, Western European and Others Group/Eastern European Group on a rotating basis). Regular non-permanent seats for a two-year term, without the possibility of immediate re-election, for the following groups: small States (population below 1 million), medium-size States (population between 1 million and 10 million), Africa, Asia, Group of Latin American and Caribbean States, Eastern European Group. They proposed 2 options for the duration of longer-term seats: a) from 3 to 5 years without the possibility of immediate re-election, or b) 2-year term with the possibility of up to 2 immediate re-elections.
- **The UfC** re-proposed the 2005 document but declared that it backed the Italo-Colombian proposal.

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[10] See UN General Assembly, *Statement by Libyan Arab Jamahiriya H.E. Colonel Muammar Al-Qadhafi, Leader of the Revolution*, General Debate of the 64th Session, 23 September 2009, available at http://www.un.org/ga/64/generaldebate/LY.shtml.
[11] See Statement on Security Council reform, sent by Ambassador Sanja Štiglic, Permanent Representative of Slovenia to the United Nations, to Zahir Tanin on 9 February 2010, available at http://www.reformtheun.org/index.php?module=uploads&func=download&fileId=4330.
[12] See *UfC platform on Security Council reform*, 20 April 2009, available at http://www.italyun.esteri.it/NR/rdonlyres/C37FC89F-8132-4CA8-A2F9-149515B37BD1/0/2009_04_17screform.pdf.

- **The UK, France, Russia, Germany, Liechtenstein and the Republic of Korea** underlined the need for an intermediate solution in order to bypass the stall in the negotiations. However, different proposals were submitted within this framework:

  1. **UK and France**[13]**:** creation of a new category of seats with a longer mandate than that of currently elected members. On completion of this intermediate period a review should take place to "<u>convert these new seats into permanent seats</u>";
  2. **Russia** did not specify its idea of an interim model but underlined in its non-paper of 2 March 2010 that "so far none of the existing models of reforming the Council enjoys prevailing support in the UN"; this ran counter to the commonly held idea of an overwhelming majority in favour of the G4 proposal.
  3. **The US** took a stance in favour of a limited expansion of both permanent and non-permanent members. New permanent members should be identified by name (country-specific). Only the current permanent members (P5) should have the right of veto, i.e. they should continue to enjoy a right conferred by the Charter since its entry into force.
  4. **China** is for increasing the number of SC members with priority for developing countries, especially African ones. In its Statement of 6 October 2009, however, China did not specify the number or categories of new members and was silent on the right of veto.
  5. **Germany** finally clarified its idea of an intermediate solution on 12 November 2009. Like the UK and France, Germany states firmly that this kind of solution "must be constructed in such a fashion as <u>to pave the way for an expansion of both categories</u>", allowing member States to make the transition to a permanent expansion of both categories at the review conference, <u>in no less than fifteen years</u>.
  6. While the Korean proposal is closely linked to that of Italy and Colombia, **Liechtenstein**'s document[14] contains some new points. It envisages the creation of a new category of seats with a longer mandate of 8/10 years with the possibility of re-election (2 for Africa, 2 for Asia, 1 for Latin America and Caribbean, 1 for Western Europe and Other States). After 16/20 years a review conference should take place, where the member States would have <u>the possibility</u> of converting these seats into permanent ones.

9.2.2. Regional representation

During the negotiations, when countries address the issue of regional representation they mainly tend to refer to "geographical representation", following Article 23.1 of the Charter which endorses the criterion of equitable geographical distribution. As a result, when additional member States are proposed in the models put forth by negotiators,

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[13] See UK-French Summit *Declaration on Global Governance and Development*, 6 July 2009, available at http://www.franceonu.org/spip.php?Article4052. This joint declaration has been reproposed as the *UK/French Position on Reform of the United Nations Security Council*, sent by Mark Lyall Grant and Gerard Araud, Permanent Representatives of United Kingdom and France, to Zahir Tanin on 1 March 2010, available at http://www.reformtheun.org/index.php?module=uploads&func=download&fileId=4324.
[14] See *Liechtenstein proposal on Security Council reform: elements for the intermediate model*, 26 February 2010, available at http://www.liechtenstein.li/en/fl-aussenstelle-newyork/fl-aussenstelle-newyork-dokumente/fl-aussenstelle-newyork-dokumente-un.htm.

countries are divided into blocks like "African States", "Asian States", "Latin American and Caribbean States", "Western European States", or "Group of Eastern European States". These blocks reflect a mere geographical distribution of the seats and do not imply that a given country could represent anyone other than itself.

It should be noted that the **League of Arab States** claims a permanent "Arab representation" in any future expansion – a request echoed by France, and a regional definition not provided by the UN Resolution on groupings but of undisputed importance in the XXI century.

Differing from the League of Arab States, the **Organisation of the Islamic Conference** proposes an "adequate representation of major civilisations"[15], including the Islamic *Ummah,* in any membership categories in an expanded Security Council, so as to improve the dialogue among civilisations.

The **African Union**, stressing the historical injustice suffered by the African continent, claims two permanent seats and five non-permanent, retaining for itself the right to appoint countries from among its members. As the African countries underline in almost every intervention made, these seats would not imply a regional representation that, in their opinion, would not fit the outstanding principle of sovereign equality among States. However, even this – low-profile – interpretation of "regional representation" is rejected by **permanent members**, namely the US and Russia, which only envisage "country-specific"[16] admissions to the Security Council.

During these last rounds of negotiations, Italy did not present anew its proposal for a European Union (EU) seat. However, both **Italy and Portugal** underlined the great change effected by the entry into force of the Lisbon Treaty. In the opinion of both countries this new reality should be translated "in the manner in which the EU interacts with the Security Council"[17], and according to Italy must be taken into account in any further development of the SC's reform.

Germany, while campaigning for its own permanent seat, has stated that the final goal – in an unforeseeable future – would be the creation of a European seat.

9.3. Veto

The question of the veto remains one of the dividing issues that continues to stall the reform process. But the P5, in principle all the other countries seem to be keen to

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[15] OIC, *Resolution on Reform of the United Nations and Expansion of the UN Security Council's Membership* (RES.20/36-POL), Damascus, 23-25 May 2009, available at http://www.oic-oci.org/36cfm/w/en/res/36CFM-POL-RES-FINAL.pdf.

[16] See the Statement by Ambassador Alejandro Wolff, U.S. Deputy Permanent Representative, in the General Assembly, on the Security Council Report and Security Council Reform, New York, 13 November 2009, http://usun.state.gov/briefing/statements/2009/131936.htm.

[17] See the Statement by Ambassador José Filipe Moraes Cabral, Permanent Representative of Portugal, at the informal meeting of the plenary on the intergovernmental negotiations on "The Question of Equitable Representation on and Increase in the Membership of the Security Council and related matters", New York, 8 December 2009, avalilable at
http://www.reformtheun.org/index.php?module=uploads&func=download&fileId=4152.

abolish this tool, which is broadly considered an unjust and undemocratic legacy of the past. In practice, this aspect of the reform is more closely linked to the outcome of the question of the Council's enlargement.

The **G4** is campaigning to enlarge both categories of members and to equip the new permanent members with the same prerogatives as the P5. However, this group is no longer a block and some countries are more likely to compromise. While India and Brazil strongly reaffirm their right to be fully accepted into the control room as booming emerging countries, Japan and Germany are more prudent. The situation of these two countries is greatly different from fifteen years ago, when the Security Council's reform negotiations started, and they no longer seem like fully fledged candidates for permanent seats. As a result, Germany and Japan seem keener to compromise on a number of issues, including the right of veto to new permanent members.

The **African group** states that African countries back the total abolition of the veto. However, if the power of veto outlives the reform and other countries join the group of permanent members, they must be invested with all the responsibilities and tools that being a permanent member entails. Given that the African group is asking for two permanent seats, it goes without saying that it wants these permanent seats to have the power of veto. During the 14th African Union summit[18] in late January, the Heads of State reaffirmed this proposal as spelled out in the Ezulwini Consensus and failed to soften it, as the UN negotiators had expected.

In its latest proposal, set forth in April 2009 by Italy and Colombia, the **UfC** does not envisage the possibility of enlarging the permanent category. It does, however, care about the veto question, and has presented two possible options: the complete abolition of, or limitations to the scope of, the veto, i.e. allowing the use of the veto only on Chapter VII matters. However, the UfC does not intend to tackle these issues separately since a comprehensive reform is needed.

Given their size, the **Small Five** (S5: Costa Rica, Jordan, Liechtenstein, Switzerland, Singapore) are not interested in Council enlargement. They stress that reforming the Council's working methods and revitalising the General Assembly – enhancing relations between the two – would make it more acceptable for some countries not to be part of the SC.

As regards the power of veto, the S5 urge the permanent members to refrain from using the veto in cases of genocide, crimes against humanity and mass violations of international humanitarian law. But, as the recent problems over the Goldstone report show, definitions of what constitutes a serious violation of human rights law are indeed divergent.

The risk exists that all this talk will be in vain, since the **P5** are adamant that the standing prerogatives of the existing permanent members must not be changed by the reform.

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[18] See Final Declarations of the 14th African Union Summit, Addis Ababa, 25 January-2 February 2010, available at http://www.africa-union.org/root/AU/Conferences/2010/january/summit/14thsummit.html.

Russia has underlined that only when – if – the new composition of the Council is decided should the question of the veto be discussed.

9.4. The SC's working methods

While countries like **Russia** are discouraging negotiators from addressing the "working methods issue", this is one subject where most of their counterparts have managed to find areas of convergence, inasmuch as some countries have expressed a wish to separate the five issues and to come up with an early partial reform. This would focus on the Security Council's working methods and the relations between the Council and the General Assembly.

The points for a broad reform of the Council's working methods were spelled out in the Note by the President of the Security Council (S/2006/507)[19] on the "perception of the transparency, efficiency and inclusiveness" of the Security Council's activity. In April 2009 the **Small Five** presented their proposal on this subject in the wake of the 2006 Presidency document. Early in March 2010, the S5 stressed once again the importance of not leaving to any compromise document the "working methods issue", in spite of the mounting interest in the issue of categories.

First of all, interaction and dialogue with SC non-members, especially when they are contributors of troops to UN missions, should be enhanced, as should cooperation with regional and sub-regional Organisations. This could be achieved by ensuring that these "stakeholders" participate in the Council's public and private meetings and by implementing Articles 31 and 32 of the Charter.

The **Italian-Colombian** proposal of April 2009 addressed the question of working methods in some depth, also asking for better access to information through open briefings, timely availability of draft Resolutions and Presidential Statements, and qualitative briefing for non-Council members.

This subject recently returned to the main floor, thank to **Japan's** new engagement on this matter and a debate held at the end of April 2010 on the implementation of the 2006 Note.

On this occasion it is noteworthy that the **US** intervention focused on conveying the improvements already made with respect to open meetings, transparency and efficiency.

9.5. Relations between the SC and the General Assembly

During the debate on the latest Report on Security Council activity, all the States harshly criticised the report's failure, in its traditional format, to serve the purpose of accountability. These reports are a mere description of what has been done and lack a full political analysis of the work of the Council. As many countries stated, the importance of the SC's report to the GA on its work is demonstrated by the fact that the

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[19] See UN Security Council, *Note by the President of the Security Council* (S/2006/507), 19 July 2006, http://www.un.org/en/sc/repertoire/Notes/s-2006-507.pdf.

UN Charter devotes a specific article to it. Consultations between the two organs should be strengthened by scheduling regular and formalised meetings between their Chairpersons with a view to sharing information and improving cooperation.

Once again, while divergences between negotiators have been ironed out, **Russia** admonished all creeping "attempts to redistribute the powers of the main bodies of the Organisation to the advantage of the General Assembly, compromising the prerogatives of the Security Council"[20].

It seems an endless work! A new round of negotiations started on 2 June 2010 on the basis of a document released on 10 May and prepared by Ambassador Tanin according to positions and proposals submitted by member States.

10. What role for the EU in the SC?

Is EU membership of the Security Council legally feasible? The answer is clearly in the negative, since to be a member of the SC an entity must be a member of the UN. The Organisation is open only to States, as set out by Article 4 of the Charter. The legal personality of the EU, as formally embodied in the Lisbon Treaty (Art. 47 of the Treaty on European Union), does not open up any new prospects. Among other things, the EU, like other international Organisations, already had a legal personality even though this was not formally stated previously. For instance the EU, as a subject under international law, entered international agreements and was subject to international responsibility if it committed any international offence. EU membership may be seen as a goal, to be pursued in the long term, only if the unification process gives rise to a federal State.

According to a number of scholars the EU is a federation *in fieri* (in the making). However, this is not sufficient to comply with the statehood criterion required by Article 4 of the Charter. One possible way out would be to change Article 4 and include international Organisations as potential UN members. However, this proposal would open up a real Pandora's box and other Organisations, for instance the AU or the OSA and the Arab League, would apply for membership. The EU's presence in the SC is for the time being unrealistic, as Mr. Alexander Graf, rapporteur on UN questions to the European Parliament, admitted before the start of the 65th Session of the UN GA.

The European Union already has a presence in the UN, in the form of two permanent members (France and the UK) and of two or three non-permanent members elected from the WEOG (usually two members) and often a member from the Eastern or Asia Group. For the electoral process, the Groups are still those set forth in GA Res. 1991 (XVIII) of 17 December 1963. Following the EU's enlargement, 16 EU members belong to the WEOG, 8 to the Eastern Group and 1 (Cyprus) to Asia.

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[20] See *Position of the Russian Federation on the UN Security Council reform*, non-paper sent by Vitaly Churkin, Permanent Representative of the Russian Federation to the United Nations, to Zahir Tanin on 2 March 2010, available at
http://www.reformtheun.org/index.php?module=uploads&func=download&fileId=4323.

There are two possible courses of action:

- The first is to have a non-permanent member seat attributed on a rotating basis to an EU member. This member should represent the EU and a machinery establishing a connection with the EU should be set out;
- The second is a correct implementation of Article 34 (former Article 19) of the Treaty on European Union in order to defend the positions and the interests of the Union and to enable the High Representative to present the EU's position.

The High Representative could explain the EU position, provided that a common position does exist. And this, as shown by the 2003 Iraq war, is not always the case. However, closer and better coordination of the EU members when they operate in the UN is the only viable solution. This coordination should involve not only the SC but also the GA and all other organs, for instance the newly created Human Rights Council. The European Parliament recommended this to the EU Council, which adopted a Resolution on 25 March 2010 in light of the 65th Session of the GA. The Resolution also points out that an EU seat in an enlarged SC is a long-term objective that should be pursued.

Coordination, however, has its limits: Article 34 expressly safeguards the responsibility attributed by the UN Charter to the SC members. This means that the interests of the permanent members are protected, including the right of veto.

11. Is a reform of the SC really necessary and/or feasible?

There are a number of reasons for reforming the SC. First of all, its expansion in membership. The UN now counts 192 members. A situation quite different from its foundation and from that existing in 1963 when the Council was expanded from 11 to 15 members. There are several reasons for reforming the SC. The main ones, which have often been pointed out, are its:

- lack of democracy;
- insufficient geographical representation;
- lack of legitimacy for ensuring global governance;
- poor representation of the international community if compared with its increased powers.

Are there reasons that militate against a reform of the SC? If so, they are difficult to find. The main such reason is that a streamlined SC functions better than a large, expanded body. This is particularly true when important decisions must be taken, involving a long process of consultations among its members. But experience proves that even a lean SC is often stalemated when it has to respond to major crises.

The conclusion must be that the reasons in favour of a SC reform outweigh those against.

Whether a real reform is feasible is quite another question. The reform should involve not only the SC members, but also the right of veto. Other "reforms" may be achieved through day-to-day practice, without amending the Charter. At most, one may conceive of one or more amendments to the Council's rules of procedure, for instance regarding its working methods. As Jacobs Silas Lund pointed out, "allowing things to remain as they are [...] may be a much more realistic option than one might assume". He points out, mentioning an insider's opinion, that even the G4 countries fear that the non-expansion option might be a possible outcome of the current negotiating effort. Nor is the reform of the right of veto gaining currency. On the other hand it is almost impossible to circumvent the amendment formal procedure by having recourse to a kind of customary amendment through practice. This would be impossible for reforming UN organs. The conclusion is very pessimistic, since "some of the P5 countries are more than happy to see reform moving at near-zero-velocity speed".[21]

12. Is there any alternative to SC reform?

The Security Council reform should take place within the UN framework. Is it conceivable to indicate alternative forums? The structures most often considered are not institutions in the proper sense, with a set of fully fledged organs. They are political consultation groupings which meet once a year (or more in the best of cases), although the intervening periods are taken up with preparatory meetings, consultations and the work of the sherpas. The most appropriate forums are the G8, G14 and G20.

The advantage of the G8 is that it includes countries which aspire (or were aspiring) to become permanent SC members, such as Germany, Japan and Italy. The G8, born as an economic coalition, has become a political body and has been enlarged to include the Russian Federation, transforming the former G7 into the G8.

Unlike the G8, the G14 includes emerging economies. It is an enlarged G8 (G8 plus), since it also encompasses Brazil, China, India, Mexico, South Africa and Egypt. Its comparative advantage with respect to the G8 is that China is a G14 member, meaning that it includes all of the permanent members of the Security Council. However it seems that G14 vision did not materialize or, at least, was not a vital idea.

The G20 is more representative than the above two groupings, since it encompasses countries like Indonesia and Turkey. The EU too is member. However, the G20 is merely an economic forum even though African, Asian and Latin America partners are pressing for turning it in a political forum.

Thus, only the G8 is a political forum and it remains to be seen whether it can be enlarged to new partners. The idea to transform it in G14 is no more viable.

Be that as it may, the problem with groupings is that they may act as a temporary *directorium* in laying down principles. However, they are not suitable for managing daily business and meeting to cope with extraordinary situations requiring rapid decisions. In addition, they cannot be empowered with the task of making deliberations that States

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[21] See Jacob Silas Lund, *Pros and Cons of Security Council Reform*, op. cit.

are obliged to implement and which may be sanctioned by a court of law. How would it be possible to ask non-member States to implement decisions made by this group if there is no formal treaty obliging them to do so?

The UN is a system where the SC interacts with the GA or vice-versa, even if imperfectly. The GA represents all States belonging to the international community. The UN has a Court – the International Court of Justice – to which States may apply to solve their disputes and to which the main UN organs may apply for legal opinions on important questions.

The UN's popularity depends on many factors: the personality of its SG, its members' respect for the principles enshrined in the Charter and – last but not the least – the mood of the US administration. Thus far, nobody has found a real substitute and a viable alternative to the United Nations. Informal structures, for instance the G 20, may be conceived not as a substitute for the SC reform, but only as problem solving bodies. They have the comparative advantage to set the political agenda, a task that usually is not carried out by the UN.

13. Conclusion

There is no need to dwell any further on the necessity of a SC reform. A broad consensus exists on the issue. The major criticism on the current composition of the SC is not so much its lack of efficiency as the deficit of its representation and an indefinite stalemate risks of de-legitimizing the SC. The real problem is the scope and the content of the reform. A further point is how that reform might be achieved.

It seems that the majority of UN members share the opinion that the SC should be enlarged. This opinion is also gaining currency within the P5, in spite of their fear that an enlarged SC might diminish their role. A better representation of the international community is requested for other forums such as the G8 and its expansion towards G14 and G20. This is a trend that should not be overlooked.

As to the number of non-permanent seats, opinions vary. However, a SC made up of 20 members (permanent and non-permanent) seems a realistic expectation

There are still differences of opinion on the duration of non-permanent seats and whether the reform should be for an intermediate span of time. There is no consensus either on the category of the new seats (permanent and/or non-permanent).

The increase in the number of seats may be achieved only by triggering the amendment procedure, as the 1963 precedent shows. This makes it difficult to propose a change in the composition of the SC that is valid only for a fixed period of time. It would mean reopening Pandora's box.

The right of veto is a contentious item. The only stumbling block is that the right of veto now held by the P5 is not up for discussion. Nobody can conceive of this right being eliminated. On this point the Charter cannot be amended, since the amendment abolishing the right of veto for all or part of the P5 must also be ratified by the veto-

holders. The point here is whether there will be any new SC members endowed with the right of veto. The discussion goes hand in hand with the question of new permanent seats, since the right of veto should be given only to the new permanent seat-holders. Nobody has proposed the right of veto for non-permanent members!

The changes outlined above require the amendment procedure to be set in motion. The work of the UN may be improved in other respects without changing the Charter. This is true, first of all, of improving the SC's working methods and making them more transparent. The Charter allows the SC to adopt (and change) its rules of procedure (Article 30) and to establish subsidiary bodies (Article 29).

The exercise of the right of veto cannot be limited without amending the Charter. However, it may be politically limited, since a Resolution is the result of a negotiating process and the veto may become a permanent member's last resort when its vital interests are at stake.

Limiting the SC's powers? The current trend is to increase them, as shown by the SC legislative Resolution. A more representative SC would avert any criticism of its exercising powers not conferred by the Charter. The SC would be made more effective in coping with current threats such as terrorism and nuclear proliferation.

Relations with the General Assembly might be improved by making the annual and special reports submitted by the Security Council, as envisaged by Arts 15 and 24.3 of the Charter, more analytical. But it is difficult to see a change in the delicate balance between the General Assembly and the Security Council as set out in Chapter IV of the Charter, unless we wished to undermine the Security Council's powers and effectiveness. The United Nations are not a constitutional superpower with a parliament (the General Assembly) and a government (the Security Council) accountable to the parliament. Like other international Organisations, the UN were structured to function (for vital issues) around an executive body whose composition is inevitably narrower that the one representing all members of the international community.

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