

## IN SEARCH OF A SOUTHERN AGENDA TOWARD THE IMPERATIVE OF U.N. SECURITY COUNCIL REFORM

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### I. INTRODUCTION

The overriding purpose of the United Nations is the maintenance of international peace and security.<sup>1</sup> In turn, primary responsibility therefor has been entrusted to the Security Council, confirming its status as the premier organ of the world body.<sup>2</sup> Unlike any other organ, its decisions are binding on all member states; all members agree to accept and carry out its decisions,<sup>3</sup> particularly those taken under Chapter VII of the UN Charter.<sup>4</sup> Having authority to define its own jurisdictional competence, the Council has the investigative power to determine whether any situation or dispute is likely to endanger the maintenance of international peace and security,<sup>5</sup> or determine "the existence of any threat to the peace, breach of the peace, or act of aggression and . . . decide what measures shall be taken . . . to maintain or restore international peace and security."<sup>6</sup> For practical

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<sup>1</sup> The purposes of the United Nations are (1) to maintain international peace and security, (2) to develop friendly relations among nations, (3) to achieve international cooperation in solving international problems of an economic, social, cultural or humanitarian character, and (4) to be a center for harmonizing the actions of nations in the attainment of these common ends. CHARTER OF THE UNITED NATIONS, 59 Stat. 1031, T.I.A.S. 993 (1945), art. 1.

<sup>2</sup> UN CHARTER, art. 24, par. 1. Three chapters of the UN Charter -- Chapters V, VI, VII, -- confirm the Council's special place as an institution of concentrated power. The other five organs of the General Assembly, the Secretariat, the Economic and Social Council, the Trusteeship Council, and the International Court of Justice. A brief description of the mandate of each organ may be found in KAREN A. MINGST & MARGARET P. KARNS, *THE UNITED NATIONS IN THE POST-COLD WAR ERA* 29-38 (2d., Westview Press 2000).

<sup>3</sup> UN CHARTER, art. 25, provides that all member states are obligated "to accept [its] decisions xxx in accordance with the present Charter." The Council's legitimacy thus derives from the special responsibility conferred upon it by the UN membership as a whole pursuant to article 24(1). Under article 43, UN member states undertake to make available to the Council armed forces, assistance, and facilities necessary to maintain international peace and security.

<sup>4</sup> According to the International Court of Justice, the binding character of Council decisions is not limited to Chapter VII enforcement measures. *Namibia Advisory Opinion*, 1971 I.C.J. at 53, par. 113.

<sup>5</sup> UN CHARTER, art. 34.

<sup>6</sup> UN CHARTER, art. 39. Determining whether any situation is a threat to peace is key to the almost limitless powers of the Council under Chapter VII, and its tendency to "expand" the meaning of "threat to peace" continues to rankle developing countries. INGER ÖSTERDAHL, *THREAT TO PEACE: THE*

reasons, overriding policy considerations favoring flexibility in its decision-making place the Security Council beyond the reach of judicial review, not even by the International Court of Justice.<sup>7</sup> Apart from articles 1 and 2 of the UN Charter, the Council may not even be bound when it is otherwise exercising its quasi-judicial authority, which binds it not to change the applicable law for its duration.<sup>8</sup> Whether it considers "world publication" is more difficult to answer.

The fifteen member of the Council collectively act on behalf of the entire UN membership. Of them, five are permanent members with the power of veto,<sup>9</sup> while the remaining ten are elected by the General Assembly for staggered two-year terms.<sup>10</sup> The five permanent members are the People's Republic of China (replacing the Kuomintang Government in 1971), France, Russia (as successor to the former Soviet Union), the United Kingdom and the United States.<sup>11</sup>

With the end of Cold War creating new international political dynamics that appear to enable the Council to reach wider agreement on authorizing peacekeeping and enforcement measures more quickly,<sup>12</sup> interest in its work has heightened. But at the same time, others believe that, as a result, the Council may have unwittingly allowed itself to be embroiled in new seemingly intractable national

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INTERPRETATION BY THE SECURITY COUNCIL OF ARTICLE 39 OF THE UN CHARTER 9 (Swedish Institute of International Law 1998).

<sup>7</sup> The World Court appears to have confirmed this in the *Lockerbie Aerial Incident* case (Libya v. U.S.), 1992 I.C.J. 114. See also *Certain Expenses of the United Nations* (Adv. Op.), 192 I.C.J. 151, 18; DAVIDE SCHWEIGMAN, *THE AUTHORITY OF THE SECURITY COUNCIL UNDER CHAPTER VII OF THE UN CHARTER: LEGAL LIMITS AND THE ROLE OF INTERNATIONAL COURT OF JUSTICE* 267 et seq. (Kluwer Law Int'l 2001); DEBORAH D'ANGELO, *The Review of Security Council Resolutions*, 23 SUFFOLK TRANSNAT'L L. REV. 561 (2000) (contending that ICJ review would only encumber if not arrest the Council's duty to quickly and efficiently eliminate threats to world peace, and thus impede its effectiveness).

<sup>8</sup> SCHWEIGMAN, *supra* note 7, at 202-3. See also MOHAMMED BEDJAOU, *THE NEW WORLD ORDER AND THE SECURITY COUNCIL: TESTING THE LEGALITY OF ITS ACTS* (Martinus Nijhoff, 1994) on the Council's Freedom to interpret the UN Charter.

<sup>9</sup> The word "veto" itself does not appear in the UN Charter. The effect of article 27, paragraph 3, requiring the affirmative vote of all five permanent members in support of any substantive Council decision implies that any one permanent could block such decision.

<sup>10</sup> Until 1965, the Council consisted of six non-permanent members. Thereafter, there were ten such members, none of which is eligible for immediate reelection. For their selection, the first criterion under article 23 on contribution to the maintenance of international peace and security and to the other purposes of the UN was largely ignored in favor of the second consideration for equitable geographic distribution. JAMES S. SUTTERLIN, *The Past as Prologue*, in *THE ONCE AND FUTURE SECURITY COUNCIL* 5 (Bruce Russett ed., St. Martin's Press 1997).

<sup>11</sup> UN Charter, art. 23, par. 1; SYDNEY D. BAILEY & SAM DAWES, *THE PROCEDURE OF THE UN SECURITY COUNCIL* 152-3 (3d ed. 1998).

<sup>12</sup> DAVID MALONE, *DECISION-MAKING IN THE UN SECURITY COUNCIL: THE CASE OF HAITI 1990-1997*, 173 (Oxford U. Press 1998). Others believe that the peak of the Council's active period had already passed in 1995 with the conclusion of the war in Bosnia-Herzegovina. ÖSTERDAHL, *supra* note , at 128 et seq.

and regional disputes which carry a high risk of failure.<sup>13</sup> This interest has given fresh impetus to discussions on one of the most contentious issues in contemporary international politics, namely, the reform of the Security Council. Essentially, proponents of reform argue that the Council today no longer substantially reflects the UN membership nor the distribution of power in the international system, resulting in a legitimacy deficit that undermines its decisions.<sup>14</sup> Different proposals have accordingly emerged.<sup>15</sup> Unfortunately, despite the momentum generated by the UN's 50th anniversary in 1995, opposing interests brought the discussions to an impasse.<sup>16</sup>

There have been two enlargement debates in Council's history. The first was a logical result of the decolonization process when scores of newly independent states were admitted into UN membership. This culminated in 1965 with the increase of its present membership to fifteen, the determination and distribution of the ten non-permanent seats among the different regional groups, and the redefinition of the quorum for purpose of decision-making.<sup>17</sup> Following a second wave in the increase of the UN's membership, India initiated the second enlargement debate in 1979 for the purpose of restoring the initial numerical balance between the Council and the General Assembly and thus benefit the developing world.<sup>18</sup> The permanent members ignored this initiative, however, and the issue would not be formally discussed in the UN until 1991 when member states were asked to submit their written views on reforming both the composition and procedure of the Council. To study these views, the General Assembly in 1993

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<sup>13</sup> Where the Council takes no action, however, as in the case of the conflicts ravaging the African continent, the "cynical explanation" is that the permanent members feel that their own security is far from being threatened or affected. ÖSTERDAHL, *supra* note 6, at 113.

<sup>14</sup> BARDO FASSBENDER, UN SECURITY COUNCIL REFORM AND THE RIGHT OF VETO: A CONSTITUTIONAL PERSPECTIVE 237, 315-8, (Kluwer Law Int'l 1998); P.M. DUPUY, *The Constitutional Dimension of the Charter of the UN Revisited*, in 1 MAX PLANCK YEARBOOK OF UN LAW 1, 28-30 (1991); HELEN LEIGH-PHIPARD, *Remaking the Security Council: The Options*, in DOCUMENTS ON REFORM OF THE UNITED NATIONS 420 (Paul Taylor et al. eds., Dartmouth Publishing Co. Ltd. 1997).

<sup>15</sup> The following objectives underlie such proposals: (1) to make the Council more representative of the UN membership, (2) to achieve greater international status for certain states or their representatives, (3) to augment the power of the countries of the Southern hemisphere, and (4) to lessen, through the Council's expansion, the perceived monopoly of power by the present permanent members. BRUCE RUSSETT et al., *Breaking the Restructuring Logjam*, in THE ONCE AND FUTURE SECURITY COUNCIL 154 (Bruce Russett ed., St. Martin's Press 1997).

<sup>16</sup> The consensus on the need for reform *per se* does not yet extend on the concrete details thereof. *Id.*, at vii.

<sup>17</sup> G.A. Res. 1991 (XVIII). The 1963 reform allowed two possibilities. First, seven non-permanent members could defeat any resolution, including procedural ones, sponsored by any permanent member. Second, non-permanent members now had sufficient votes between them to pass a resolution without the support of any permanent member as long as the veto power was not used. Thus, the veto power of the permanent members over substantive decisions remained challenged.

<sup>18</sup> M.H. ANSARI, *Democratizing the Security Council*, in THE NATIONS AT 50: AN INDIAN VIEW 205, 207 (Satish Kumar ed., 1995).

created the Open-Ended Working Group on the Question of Equitable Representation on and Increase in the Membership of the Security Council and Other Matters Related to the Security Council.<sup>19</sup> In its first report in 1994, the Working Group revealed that views converged on the need to expand the Council.<sup>20</sup>

Despite the nearly impossible diversity of their historical experience, political systems, cultural backgrounds and even levels of economic development, the developing countries of Asia, Africa and Latin America found common ground in defending their newly won independence and protecting the right to pursue their own development agenda. Whether banded together formally as the Group of 77 and the Non-Aligned Movement or less so as the Global South, developing countries have, since the late 1960s, demonstrated formidable political unity and cohesion on common issues in the General Assembly, flexing their electoral muscle by churning out a series of resolutions affirming their right to development, their sovereignty over their natural resources, and the need to handle environmental policies at the national level.<sup>21</sup> All these were in the context of a "New International Economic Order", which they hoped would reverse the South to North resource flow and introduce greater equity in the world economy.<sup>22</sup>

The Security Council, however, is an entirely different arena. While developing countries also share common interests in limiting its powers, particularly that of the five permanent members, and increasing opportunities for themselves, the so-called "Southern veto" requires such a high degree of consensus that Council members from the South do not realistically possess any similar voting power either to block or mobilize Council action.<sup>23</sup> Instead, through the practice of regular consultations, such Council members have served as conduit between the Council and developing countries not otherwise represented in the Council.<sup>24</sup> Despite the constraints of the Charter, the Council has accordingly had to evolve its practice to adapt to a changing international environment. According to Hurd,

With the non-aligned states holding an ever increasing share of votes in the General Assembly, their collective capacity to obstruct, delegitimize, and otherwise complicate the operation of the Security Council has increased, and

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<sup>19</sup> G.A. Res. 48/26.

<sup>20</sup> SAM DAWS, *The Reform of the UN Security Council: Introduction*, in DOCUMENTS ON REFORM OF THE UNITED NATIONS 415-418 (Paul Taylor et al. eds., Dartmouth Publishing Co. Ltd. 1997).

<sup>21</sup> DAVID HUNTER, JAMES SALZMAN & DURWOOD AELKE, INTERNATIONAL ENVIRONMENTAL LAW AND POLICY 281 (Foundation Press 1998); MINGST & KARNS, *supra* note 2, at 60, 63, 135-8.

<sup>22</sup> HUNTER et al, *supra* note 21.

<sup>23</sup> IAN HURD, *Security Council Reform: Informal Membership and Practice*, in THE ONCE AND FUTURE SECURITY COUNCIL 145 (Bruce Russett ed., St. Martin's Press 1997).

<sup>24</sup> *Id.* Insofar as its interests would allow, China has taken upon itself to "represent" the non-aligned view within the permanent five and, since 1992, has gained observer status at NAM conferences.

in response the permanent five have had to increase their sensitivity to NAM [Non-Aligned Movement] views in the Council.<sup>25</sup>

However, as the argument of Council reform proponents would bear out, a rightful place at the table is not merely symbolic or simply a matter of prestige. Cognizant of the inherent complexity and controversy of the subject matter, this paper attempts to explore the political and organizational dynamics of this very important question as it relates to the collective interest of the developing countries of the Global South. Have they achieved a measure of consensus on key interrelated issues? If not, what are the underlying reasons for the actual, as opposed to apparent, differences and how may these be addressed? Part II of this paper starts from the beginning by tracing the history of the present system and outlining the powers and functions of the Council. Part III summarizes the arguments for and against Council reform. Part IV identifies the key issues of the reform process and discusses the current positions of the different countries, regional groups and other persuasions, including the countries of the South. Part V concludes with a few observations on the prospects of the issue.

## II. THE HISTORICAL MOMENT AND THE DICTATES OF POWER

### A. IN THE BEGINNING

The creation of the United Nations -- and of the Security Council -- drew lessons from the failure of the League of Nations. For Sutterlin, the League was plagued with serious weaknesses which undermined its capacity to maintain peace. First, the rule of consensus made it difficult to adopt decisions. Secondly, the lack of clear demarcation between the Assembly and the Council on matters of security sowed confusion and delay that often led to inaction. Finally, provisions in the League Covenant for enforcement measures were inadequate and ineffective as interpreted by the membership.<sup>26</sup> To avoid these mistakes, the victorious Allies of the Second World War sought to muster consensus on balancing the principle of sovereign equality with their predominant responsibility as great powers on matters of peace and security. In their view, the key to the success of any international organization would be their unity as permanent members of a supreme council.<sup>27</sup> It was assumed, in planning the UN, that the great powers would provide most of the

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<sup>25</sup> *Id.*, at 144.

<sup>26</sup> SUTTERLIN, *supra* note 10, at 2.

<sup>27</sup> BRUCE RUSSETT, *Ten Balances for Weighing UN Reform Proposals*, in *THE ONCE AND FUTURE SECURITY COUNCIL* 18-21 (Bruce Russett ed., St. Martin's Press 1997).

troops and equipment for enforcement actions under Chapter VII of the UN Charter.<sup>28</sup>

Hardly had the Second World War begun when the Allies started to coordinate in mapping out the postwar international system. With much of Europe under German invasion, representatives from nine European governments took the first step by meeting in London where they adopted the Inter-Allied Declaration, pledging to work for a free world where people could live in peace and security.<sup>29</sup> In August 1941, United States President Roosevelt and British Prime Minister Churchill signed the Atlantic Charter, expressing their hope for a world where everybody could live free from fear and need and declaring their intention to seek eventual disarmament and economic cooperation for the benefit of all. On 01 January 1942, representatives of twenty-six nations gathered in Washington D.C. to sign the UN Declaration which approved the aims of the Atlantic Charter, the first time the phrase "United Nations" -- inspired by Roosevelt -- was used officially.<sup>30</sup> On 30 October 1943, representatives of China, Britain, the Soviet Union and the United States signed the Moscow Declaration on General Security, agreeing on the concept of an international organization that would preserve world peace based on, but envisioned to be more effective than, the League of Nations. From August to October 1944, representatives from these four countries gathered at Dumbarton Oaks in Washington D.C. to outline the plan. Its main feature was a Security Council on which these four countries together with France were to be permanently represented.<sup>31</sup> Following their meeting in Tehran in November 1943, Roosevelt, Churchill and Soviet Leader Stalin met again in February 1945 at Yalta, where they announced that the conference for the creation of the United Nations would open in San Francisco on 25 April 1945 using the Dumbarton Oaks plan.<sup>32</sup>

Not expectedly, the veto, conceived as the means of protecting the security interests of those powers that, it was thought, would bear the greatest responsibility in ensuring world peace through the use of their military strength, became the most contentious issue that threatened the success of the San Francisco conference. Disagreement ensued between Britain, the Soviet Union and the United States, on the one hand, and the other smaller less powerful nations, on the other.<sup>33</sup> The

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<sup>28</sup> SUTTERLIN, *supra* note 10, at 3. For the United States delegation to the San Francisco conference, the US Senate would not, as in the case of the League of Nations Charter, ratify the UN Charter unless the US retained clear control of US military forces lest, the US Senate feared, the latter might be called for duty contrary to US interests.

<sup>29</sup> ANJALI V. PATIL, *THE UN VETO IN WORLD AFFAIRS 1946-1990: A COMPLETE RECORD AND CASE HISTORIES OF THE SECURITY COUNCIL'S VETO 4-5* (UNIFO Publishers, Inc. 1992).

<sup>30</sup> *Id.* at 5.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

former argued that realities dictated their continued political and military cooperation -- their unanimity -- which resulted in their victorious wartime alliance as essential to guaranteeing world peace. Without the same unanimity, any proposed UN Charter would be useless. In the context of postwar international system, they insisted that this should be translated into their permanent membership in the Security Council, with each having the power to veto the Council's actions. Together with the concurrence rule, each of them could thus prevent the UN from taking any measure contrary to their vital interests, otherwise, they are argued that the organization would simply break down.<sup>34</sup> Accordingly, in the face of the stalemate following their rejection of various compromise proposals on the voting procedure ranging from the complete elimination of the unanimity rule and the substitution of various types of qualified majorities to minor changes meant to clarify the application of the formula, the collective tone of the five powers clearly underscored a "no veto, no charter" ultimatum. For them, it was a necessary condition for the creation of the world body.<sup>35</sup> To assuage the smaller countries, the would-be permanent members promised to use their veto power only "in situations having the most serious impact on their basic interests."<sup>36</sup>

By force of historical circumstance, therefore, the smaller countries could not argue on the basis of the majority rule and were essentially compelled to accept the postwar political reality.<sup>37</sup> Their consolation was in propping up the importance of the other UN organs such as the General Assembly and the Economic and Social Council, where responsibilities would be shared more equally.<sup>38</sup> On June 26, 1945, all fifty nations present voted to accept the draft UN Charter, which was then approved by the five permanent members and the majority of the nations that signed it. The Charter entered into the force on 24 October 1945. With the membership of the Soviet Union and the United States, the United Nations heralded a significant improvement from the League of Nations.<sup>39</sup>

## B. THE SECURITY COUNCIL: POWER, FUNCTIONS AND THE VETO

In the Security Council, each member has one vote. Its decisions may either be matters of procedure or matters of substance. While decisions on matters

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<sup>34</sup> RONALD DORE, *The Restructuring and Strengthening of the UN: A Survey of the Issues*, in DOCUMENTS ON REFORM OF THE UNITED NATIONS 446 (Paul Taylor et. al. eds., Dartmouth Publishing Co. Ltd. 1997)

<sup>35</sup> PATIL, *supra* note 29, at 13.

<sup>36</sup> T.M. FRANCK, THE POWER OF LEGITIMACY AMONG NATIONS 177 (1990).

<sup>37</sup> FASSBENDER, *supra* note 14, at 163-170; L.B. SOHN, *Modernizing the Structure and Procedure of the Security Council*, in THE DEVELOPMENT OF THE ROLE OF THE SECURITY COUNCIL 385-397 (J.R. Dupuy ed., 1993)

<sup>38</sup> PATIL, *supra* note 29, at 5.

<sup>39</sup> *Id.*, at 6.

of procedure require the affirmative vote of at least any nine members, decisions on substantive matters require nine votes including the concurring votes of all five permanent members. Known as the rule of "great power unanimity", this latter voting rule is the basis for the special privilege of power which has come to be termed as the "veto" -- a word which does not itself appear in the Charter -- conferring upon the permanent members awesome power in the maintenance of international peace and security by defeating a draft resolution.<sup>40</sup> If a permanent member does not support a decision but does not feel so strongly opposed as to use its veto, it may abstain in the spirit of compromise. Abstention is not regarded as a veto<sup>41</sup>, rather, it amounts to a concurring vote.<sup>42</sup>

It is settled that the competence of the Security Council extends from powers expressly enumerated in the Charter to those which may be reasonably implied in the exercise of its responsibility.<sup>43</sup> Essentially, its specific powers may be conveniently grouped into those that it may exercise to bring about peaceful settlement or adjustment of a dispute or situation (peacekeeping or peace-building under Chapter VI of the UN Charter), and those that it may exercise to maintain or restore international peace and security once peace has been threatened or breached (enforcement measures under Chapter VII).<sup>44</sup> When a dispute leads to open hostilities, the Council's primary duty is to end it soonest. Throughout history it has, in the first instance, issued numerous cease-fire directives that proved essential in containing hostilities.<sup>45</sup> Otherwise, it can authorize enforcement measures ranging from economic sanctions<sup>46</sup>, or if they prove inadequate, to collective military action<sup>47</sup>, whereby it sends peacekeeping forces to help reduce tensions, keep opposing forces apart, and create conditions of calm to foster the peaceful settlement of disputes.<sup>48</sup> It may properly authorize regional arrangements or agencies to implement these enforcement measures.<sup>49</sup> Subject to its rules of

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<sup>40</sup> UN CHARTER, art. 27, par. 3.

<sup>41</sup> PATIL, *supra* note 29, at 16-17.

<sup>42</sup> SCHWEIGMAN, *supra* note 7, at 49.

<sup>43</sup> *Reparations for Injuries Case* (Adv. Op.), 1949 I.C.J. at 182; *Legality of the Use by a State of Nuclear Weapons in Armed Conflict* (Adv. Op.), 1996 I.C.J. par. 25 at 78.

<sup>44</sup> UN CHARTER, art. 39. In addition, since the regulation of national armaments helps maintain international peace and security, article 26 mandates the Council to formulate, with the assistance of the Military Staff Committee, plans for "the establishment of a system for the regulation of armaments," to be submitted to the members of the UN for their acceptance. See also SCHWEIGMAN, *supra* note 7, at 26 *et seq.*; ÖSTERDAHL, *supra* note 6, at 23 *et seq.*

<sup>45</sup> PATIL, *supra* note 6, at 23 *et seq.*

<sup>46</sup> UN CHARTER, art. 41.

<sup>47</sup> UN CHARTER, art. 42.

<sup>48</sup> While article 34 obligates member states to provide troops for this purpose, no such agreement has ever been concluded. Instead, peacekeeping operations have depended on *ad hoc* troop contributions to carry out measures pursuant to article 42. SCHWEIGMAN, *supra* note 7, at 49.

<sup>49</sup> UN CHARTER, art. 53, par. 1.



procedure, a UN member state not part of the Council may participate in the latter's discussions when its interests are specifically affected.<sup>50</sup>

Apart from questions of international peace and security, the Security Council also exercises the UN's trusteeship functions in strategic areas.<sup>51</sup> Together with the General Assembly, it also elects the judges of the World Court.<sup>52</sup> Finally, it makes "recommendations" to the General Assembly on (1) the suspension of the exercise of the rights and privileges of membership of a member state against which preventive or enforcement action has been taken<sup>53</sup>, (2) the expulsion from the UN of a member state that has persistently violated the principles contained in the Charter<sup>54</sup>, (3) the admission of new members to the UN and the terms on which they become parties to the Statute of the World Court<sup>55</sup>, and (4) the appointment of the Secretary-General.<sup>56</sup>

In studying the use of the veto, Patil notes that on several occasions draft resolutions were tabled as a means of compelling a vetoing power to change or at least publicly explain its position. These took the form of drafts which failed to reflect the actual nature of the situation or tended to single out a party to a conflict despite the fact that the draft's sponsors already knew the positions of a concerned permanent member.<sup>57</sup> In the end, Patil argues that while the veto has aided the major powers in maintaining their global political and economic advantages, it has also benefited the UN, sparing it from involvement in the essentially domestic problems of certain countries. It has frequently prevented the escalation of regional problems into major international conflicts. A major power with vested interests in the disputing parties could use the veto rather than commit itself and the UN to tremendous responsibilities that could later only spell greater danger.<sup>58</sup> Moreover, it has protected newly independent states from the influence and control of their former colonizers.<sup>59</sup> Yet rare instances demonstrate that the veto is not entirely sacrosanct.<sup>60</sup>

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<sup>50</sup> UN CHARTER, art. 31; Rule 37 of the Provisional Rules of Procedure of the Security Council, reprinted in PATIL, *supra* note 29, at 545 *et seq.*

<sup>51</sup> UN CHARTER, art. 83.

<sup>52</sup> STATUTE OF THE INTERNATIONAL COURT OF JUSTICE, 59 Stat. 1055, T.I.A.S. 993 (1945), art. 4 par. 1.

<sup>53</sup> UN CHARTER, art. 5.

<sup>54</sup> UN CHARTER, art. 6.

<sup>55</sup> UN CHARTER, art. 4, par. 2.

<sup>56</sup> UN CHARTER, art. 97 in relation to art. 27.

<sup>57</sup> PATIL, *supra* note 29, at 459.

<sup>58</sup> ROBERT S. SNYDER, *Reforming the Security Council for the Post-Cold War World*, 14 INT'L J. ON WORLD PEACE 3, 13 (1997).

<sup>59</sup> PATIL, *supra* note 29, at 459-60.

<sup>60</sup> The Korean War, the only major military action conducted pursuant to the Council's authorization between 1950 and 1990, provided an early example of a Council immobilized by the lack of unity among the permanent members. Faced with a possible veto from the Soviet Union, the United States turned

### III. THE ARGUMENTS

#### A. TO REFORM ...

Present criticisms of the Security Council are not entirely new. As the previous section indicates, they refer back to the San Francisco conference.<sup>61</sup> For purposes of clarity, such criticisms may be summarized in five arguments.<sup>62</sup>

The *first* is the historical argument. Fifty-seven long years have passed since 1945, when only fifty-one countries signed the UN Charter as founding members. Today there are some 190 UN members, reflecting the profound changes in modern world history since then.<sup>63</sup> As an evolving phenomenon, the concrete manifestations of multilateralism must periodically undergo processes of change in order to remain relevant.<sup>64</sup> Thus, the continuing arrangement is an "historical anachronism,"<sup>65</sup> the Council remaining as "a condominium of the victorious major Allies who would jointly keep the rest in order."<sup>66</sup> Despite their judicious use of the veto,<sup>67</sup> to critics including even their European neighbors,<sup>68</sup> the permanent seats occupied by France and the United Kingdom are "anomalous," becoming increasingly more difficult to justify politically and economically since, having fallen from great to middle powers, they no longer reflect their actual effective power in the contemporary international system.<sup>69</sup> In support of this argument, proponents

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to an idea it rejected at San Francisco by giving the General Assembly a greater voice through the Uniting for Peace resolution, under which a security question can be transferred to it for its recommendation in case the Council is prevented from taking action by a veto. SUTTERLIN, *supra* note 10, at 2.

<sup>61</sup> W.M. REISMAN, *The Constitutional Crisis in the United Nations*, 87 AM. J. INT'L L. 83-4 (1993).

<sup>62</sup> According to Sutterlin, current reform proposals are remarkably similar in intent to suggestions made at the San Francisco conference. There was no quarrel over the concept of the Council itself, of enforcement measures, its mandate to take decisions on behalf of UN membership in matters of peace and security, nor the requirement that members comply with its decisions for action under Chapter VII. The principal objection concerned its size, the representative nature of its membership, its relationship to other UN organs and to regional organizations and, of course, the veto. SUTTERLIN, *supra* note 10, at 2.

<sup>63</sup> FASSBENDER, *supra* note 14, at 170-6.

<sup>64</sup> ADAPTING THE UNITED NATIONS TO A POSTMODERN ERA: LESSONS LEARNED 1 (W. Andy Knight ed., Palgrave 2001).

<sup>65</sup> LEIGH-PHIPARD, *supra* note 14, at 420.

<sup>66</sup> *Id.*, citing MICHAEL HOWARD, *The UN and International Society*, in UNITED NATIONS, DIVIDED WORLD (A. Roberts and B. Kingsbury, eds., Oxford, 1989).

<sup>67</sup> Between 1945 and 1997, France exercised the veto 18 times, the United Kingdom 30, the Soviet Union 116, and the United States 72. BAILEY & DAWES, *supra* note 11, at 239.

<sup>68</sup> In the debates leading to the Maastricht Treaty in 1992, fellow member states demanded that they express their readiness to give up their permanent seats as the European Community moves toward greater political unification, in favor of a single permanent seat to be occupied by whichever country held the rotating presidency. MICHAEL J. KELLY, *U.N. Security Council Permanent Membership: A New Proposal for a Twenty-First Century Council*, 31 SETON HALL L. REV. 319, 333 n. 109 (2000).

<sup>69</sup> HURD, *supra* note 23, at 141-2. Neither Britain nor France, however, is expected to either (1) give up its seat to Germany or accept its own removal and replacement by Japan while the other stays, or even

assert that even the UN founders clearly anticipated a possible future need for Charter reform, which a reform of the Security Council would essentially require.<sup>70</sup>

The *second* argument concerns the notion of legitimacy, an ill-defined concept that can refer to many things.<sup>71</sup> To Schweigman, legitimacy could be legal, following the standard provided by the UN Charter itself, or political, which has to do with a sense of fairness or justness in matters both procedural and substantive.<sup>72</sup> In the context of the reform debate, it has been linked to the desire for greater representativeness. Proponents argue that the Council's legitimacy depends on the respect in which it is held by the member states. For them, present cooperation in the UN between North and South suffers in general from the disaffection of the Southern states which feel vulnerable to the domination of the small Northern minority through the one UN organ authorized to take action on behalf of international peace and security, particularly at a time when more of the Council's action entail involvement in internal conflicts that tend to be within smaller states that constitute the majority of UN members. The argument goes that if the interests of the majority are not more adequately represented, it may be possible that they will, in the long run, refuse to comply with the Council's decisions, in the process jeopardizing its authority.<sup>73</sup>

The *third* argument, closely intertwined with the second, deals with effectiveness. It is believed that the UN would gain substantially from the additional strength and resources that potential Japanese and German permanent membership would bring.<sup>74</sup> Critics of the Japanese bid, however, claim that, in contrast to the

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(2) give up both their seats in favor of Japan and a seat for the European Union. Following reunification in 1990 Germany has become the strongest state in the European Union where it has the biggest population and economy (third in the world after the United States and Japan). See also GUY ARNOLD, *WORLD GOVERNMENT BY STEALTH: THE FUTURE OF THE UNITED NATIONS* 160-2 (1997).

<sup>70</sup> For instance, the Charter amendments to implement reforms in the Security Council and the Economic and Social Council came into force in 1965 following ratification by two-thirds of UN membership, including all the permanent members, in accordance with article 108. While implicit in article 109 is the expectation that an amendment would at least be worthy of consideration ten years after the charter entered into force, and several proposals for Charter review conferences have thus been tabled in the General Assembly since the UN's creation, none has ever been held. Pessimists fear that the very prerogative of the veto is the weapon available to defeat any proposal having the effect of diluting or eliminating that prerogative. In addition, article 18 of the UN Charter continues to protect the permanent members from what they perceive as an "unacceptable" tampering with this privilege. LEIGH-PHIPPARD, *supra* note 14, at 427.

<sup>71</sup> D. BODANSKY, *The Legitimacy of International Governance: A Coming Challenge for International Environmental Law*, 93 AM. J. INT'L L. 596, 600 (1996).

<sup>72</sup> SCHWEIGMAN, *supra* note 7, at 288.

<sup>73</sup> See SUTTERLIN, *supra* note 10.

<sup>74</sup> Permanent membership would automatically bring their financial contributions to peacekeeping operations. Japan's present contribution to the UN budget of 12.5 percent is greater than that of the United Kingdom, France and China combined, while Germany's at nine percent exceeds the contribution of any of these three. Moreover, Japan is the largest provider of foreign aid, topping \$13 billion annually in recent years.

relative German assertiveness, Japan's record in multilateral diplomacy is not yet on par with its economic power.<sup>75</sup> It lacks the international experience shared by France and the United Kingdom, and its multilateral policies tend to be "reactive and unimaginative" so as to incur only a minimum of hostility from other nations.<sup>76</sup> In the case of Germany, Italy has argued against European overrepresentation to the detriment of the developing world.<sup>77</sup>

The fourth argument draws, again, from historical experience. Reformists claim that the permanent members have acted largely pursuant to their respective national interests rather than their commitment to international peace and security *per se* and the ideals and aspirations expressed in UN Charter; they would act only if their national interests coincide with the wider interests of the other Council members and perhaps of the international community as a whole.<sup>78</sup> For instance, it is asserted that the United States would prefer acting through the United Nations "in order that its actions be perceived as reflecting community interests,"<sup>79</sup> but when it is unable to sway the Council to its position, it would not hesitate to project its power in a manner that compromises the integrity of the system.<sup>80</sup> In the post-Cold War era, the United States has inspired the delegation of enforcement powers to member states, particularly to itself given its traditional reluctance to place its troops under the Council's direction,<sup>81</sup> or otherwise shift the action to the North Atlantic Treaty Organization even absent definite Council authorization, as in the case of Kosovo.<sup>82</sup>

The *final* argument seems forward-looking. A case can be made for overall Council reform that would empower it to actively pursue a human security agenda,

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RONALD DORE, *The Restructuring and Strengthening of the UN: A Survey of the Issues*, in DOCUMENTS ON REFORM OF THE UNITED NATIONS 446 (Paul Taylor et al eds., Dartmouth Publishing Co. Ltd. 1997).

<sup>75</sup> Its performance in the Council perhaps constrained by its bid, Japan has been described as a "successful follower" rather than a leader, "playing it safe," in order to maintain U.S. and Third World support. However, the bid remains popular with African countries which appreciate Japan's initiative in helping the continent much more than the current permanent members after the Cold War era. REINHARD DRIFTE, JAPAN'S QUEST FOR A PERMANENT SECURITY COUNCIL SEAT: A MATTER OF PRIDE OR JUSTICE? 111, 186, 192 (Macmillan press Ltd. 2000).

<sup>76</sup> *Id.*, at 191, 194.

<sup>77</sup> GABRIELLA VENTURINI, *Italy and the United Nations: Membership, Contribution and Proposals for Reform*, 20 HAMLINE L. REV. 627 (1997).

<sup>78</sup> It is certainly a misuse of the veto to prevent action that has no real relevance to security, such as the blocking of a country's application for UN membership simply because that country was allied with one of the permanent members hostile to another. SUTTERLIN, *supra* note 10, at 7, 421-2.

<sup>79</sup> JOHN QUIGLEY, *The United Nations Security Council: Promethean Protector or Helpless Hostage?*, 35 TEX. INT'L L.J. 129, 168 (2000).

<sup>80</sup> The delegation technique has allowed the United States to act in the name of the United Nations without being controlled by it. *Id.*, at 156 *et seq.*

<sup>81</sup> *Id.*, at 172.

<sup>82</sup> *Id.*, at 169. See also ÖSTERDAHL, *supra* note 6, at 129 *et seq.* on the possibility of NATO increasingly undermining and upstaging the Council.

which sees security issues primarily in terms of human needs as opposed to traditional state security.<sup>83</sup> It was not until the 1990s that the Council began to consciously demonstrate an interest in human rights issues.<sup>84</sup> However, constrained by its jurisdictional mandate under the Charter, the Council has had to "couch its language in cautious terms and ensure that its resolution could be tagged on to some threat to broader international peace," in order to justify its actions in support of human rights and "leaving many major human rights situations unaddressed because of its uncertain role."<sup>85</sup> On the other hand, it has been suggested that the Council has seized the human rights angle in seeking to expand its powers merely to meet particular occasions.<sup>86</sup> At the behest of the United States and in an unprecedented move, the Council in fact mandated forcible action in support of democratic restoration in Haiti, a matter that was hardly a threat to international peace and security.<sup>87</sup> In any event, a further impetus to the human security agenda is the fact that, at a time when intra-state rather than inter-state conflicts have become more predominant, the Council risks becoming increasingly irrelevant if it acts otherwise.<sup>88</sup>

#### B. . . . OR NOT TO REFORM

On the other hand, opponents have proffered four discernable arguments against reform. *Firstly*, they assert on the basis of *realpolitik* that the international system is inherently unequal and that the distribution of power in the UN must accordingly reflect that reality.<sup>89</sup> Thus, the composition of the Security Council is and should continue to be linked with the ability to exercise international responsibility which, they say, only a few select countries are genuinely capable of.<sup>90</sup> *Secondly*, the wide recognition that the Council is now working more efficiently and

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<sup>83</sup> DWIGHT NEWMAN, *A Human Security Council? Applying a "Human Security" Agenda to Security Council Reform*, 31 OTTAWA L. REV. 213, 215-6 (2000). The article traces the development of the concept of human security, as distinguished from human development, beginning with the 1994 Human Development Report. See also ROGER A. COATE, et al., *Requirements of Multilateral Governance for Promoting Human Security in a Postmodern Era*, in ADAPTING THE UNITED NATIONS TO A POSTMODERN ERA: LESSONS LEARNED 11 *et seq.* (W. Andy Knight ed., Palgrave 2001).

<sup>84</sup> ÖSTERDAHL, *supra* note 6, at 14, 134 (noting that the increase in the Council's activity corresponded with rising global interest in human rights and democracy; MALONE, *supra* note 12, at 2).

<sup>85</sup> While the Council has condemned the apartheid policy in South Africa and addressed some humanitarian issues, these were exceptions to the rule. NEWMAN, *supra* note 83, at 225 *et seq.* (comparing the Council's action in Iraq, Somalia, Haiti, the former Yugoslavia and Bosnia, Rwanda and Kosovo).

<sup>86</sup> QUIGLEY, *supra* note 79, at 164 (citing FREDERIC L. KIRGIS, JR., *The Security Council's First Fifty Years*, 89 AM. J. INT'L L. 506, 516 (1995)).

<sup>87</sup> MALONE, *supra* note 12, at 183.

<sup>88</sup> BOUTROS BOUTROS-GHALI, AN AGENDA FOR PEACE 1995, 7-8 (2d ed., United Nations 1995).

<sup>89</sup> SNYDER, *supra* note 58, at 7.

<sup>90</sup> UN CHARTER, art. 23. par. 1. As far as non-permanent membership is concerned, this criterion has, in practice, been subordinated to geographical considerations on the basis of G.A. Res. 1991A of 1963. In any event, the argument *per se* is not against reform but is simply a condition that may govern actual reform.

effectively than ever before should obviate the need to reform it.<sup>91</sup> *Thirdly*, and in contrast to their *realpolitik* argument, they suggest that even if the permanent members decide to act with unanimity, any seven non-permanent members acting in concert and with unanimity can defeat draft resolutions notwithstanding the veto.<sup>92</sup>

*Finally*, they contend that mustering political will in observance of the principle of collective decision-making, rather than reform, may present a more practical alternative in making the Council more effective.<sup>93</sup> If at all, the Council's weakness results not from its unrepresentative composition or from the use of the veto, but rather from (1) its inadequate capacity to ensure the proper execution of its decisions, (2) its inadequate access to resources for peacekeeping and its inability to bring together the various resources available elsewhere in the system for the objectives of conflict prevention and peace-building, and (3) the inadequate understanding of its members of the circumstances surrounding potential conflicts and of the conditions faced in the field by UN peacekeeping and peace enforcement operations.<sup>94</sup> A more representative Council might alleviate, but hardly cure, these weaknesses. Moreover, enlarging it by increasing the geographic representation among the permanent members would only render the decision-making process more cumbersome.<sup>95</sup>

#### IV. ISSUES AND POSITIONS

The present reform debate was inspired by the initiative of the Non-Aligned Movement (NAM), which called for a thorough review of the Security Council's composition as well as the scope and application of the veto.<sup>96</sup> The General Assembly then reactivated the item on "The Question of Equitable Representation on and Increase in the Membership of the Security Council" with the creation of the open-ended Working Group for the purpose.<sup>97</sup> With the assistance of outside groups,<sup>98</sup> the debate draws from the detailed proposals and

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<sup>91</sup> They cite, for instance, that the veto, used 190 times from 1946 to 1990, has only been used once in three years following the end of the Cold War. LEIGH-PHIPPARD, *supra* note 14, at 421; HURD, *supra* note 23, at 137 suggests that informal membership and practice may be preferable to formal reform.

<sup>92</sup> BAILEY & DAWS, *supra* note 11, at 137; PATIL, *supra* note 29, at 16-17.

<sup>93</sup> LEIGH-PHIPPARD, *supra* note 14, at 422.

<sup>94</sup> SUTTERLIN, *supra* note 10, at 9.

<sup>95</sup> *Id.*; FASSBENDER, *supra* note 14, at 235-7; SNYDER, *supra* note 58, at 8.

<sup>96</sup> SAM DAWS, *The Reform of the Security Council: Introduction*, in DOCUMENTS ON REFORM OF THE UNITED NATIONS 415 *et seq.* (Paul Taylor et al. eds., Dartmouth Publishing Co. Ltd. 1997).

<sup>97</sup> G.A. Res. 48/26 (1992).

<sup>98</sup> To stimulate discussions and clarify some of the issues being considered by the Working Group, the International Peace Academy and the Stanley Foundation offered their written observations in May 1994. International Peace Academy and Stanley Foundation, *Reform of the Security Council: Memorandum Submitted to the*

recommendations of states, regional governmental and international non-governmental organizations, and academics. It has agreed on the desirability of early and comprehensive reform focusing on the key issues of the Council's ideal size, its composition, voting procedures and veto reform, and the transparency and accountability of its working methods.<sup>99</sup> Owing to constraints of time and space, this paper attempts to summarize the debate by clustering the positions of the major proposals based on these key issues. Despite high hopes, it is apparent that opposing interests, even within the developing world, have inevitably unraveled,<sup>100</sup> specifically when discussions turn to the concrete and inevitable details.<sup>101</sup>

### A. SIZE

As to ideal size, the primary consideration is finding the appropriate balance between a Council large enough to be representative of the entire UN membership and small enough to function efficiently.<sup>102</sup> Proponents of the former argue that while a larger Council might make decisions less rapidly, such decisions would have more authority and legitimacy and, thus, would be more effective. On the other hand, those who contend that the existing arrangement is already balanced suggest that there is an optimum size beyond which the Council should not grow.<sup>103</sup> This debate necessarily ties into, and must be balanced further against, a secondary consideration, namely the gap between political realities and the "democratic ideal," in order to make for an effective Council, one whose decisions are timely,

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*President of the UN General Assembly*, in DOCUMENTS ON REFORM OF THE UNITED NATIONS 440-3 (Paul Taylor et al. eds., Dartmouth Publishing Co. Ltd. 1997).

<sup>99</sup> DAWS, *supra* note 96, at 16. The Working Group's Discussion initially focused on two issues, namely, how to increase Council membership and to what extent, and the scope of the veto and its extension to new permanent members.

<sup>100</sup> The difficulty of the questions involved was such that the three-stage reform proposal advanced by the president of the 51<sup>st</sup> General Assembly, Ismail Razali, was rejected by NAM. The first stage would require a General Assembly resolution enlarging the Council with the addition of five new permanent members and four new non-permanent members. In the second stage, specific states would be chosen to fill the permanent seats through a two-thirds vote of the General Assembly. Finally, the amendments thereby made in the UN Charter would be considered in a review conference. By 1998 the discussions reached an impasse, retarding into the repetitive debates of the past. MINGST & KARNS, *supra* note 2, at 203. FASSBENDER, *supra* note 14, at 233. In similarly proposing a multi-stage reform process, the Commission on Global Governance assumes that those who now hold power would not block the gradual removal of that power. OUR GLOBAL NEIGHBORHOOD: THE REPORT OF THE COMMISSION ON GLOBAL GOVERNANCE 239 (Oxford: Oxford University Press, 1995). But considering that the opportunity of reforming the Council is the rarest of events, the better option is drawing a comprehensive reform package commanding broad support, NEWMAN, *supra* note 83, at 232.

<sup>101</sup> BRUCE RUSSETT et al., *Breaking the Restructuring Logjam*, in THE ONCE AND FUTURE SECURITY COUNCIL 154 (Bruce Russett ed., St. Martin's Press 1997).

<sup>102</sup> MINGST & KARNS, *supra* note 2, at 202.

<sup>103</sup> International Peace Academy and the Stanley Foundation Memorandum, *supra* note 98, at 434.

responsive to the demands of a crisis, capable of implementation, and widely supported by the international community.<sup>104</sup>

While some propose as many as thirty Council members to preserve a reasonable balance between the various categories of membership being proposed, such a size could be unwieldy and prone to domination by a small inner group. Consensus on optimum size converges on twenty to twenty-five seats mainly to benefit the developing world and with a view toward equitable distribution.<sup>105</sup> On behalf of NAM, Egypt in February 1995 presented a position paper emphasizing the striking under-representation of the South on the Council and calling for an increase in its membership by adding eleven new seats. As a fallback position, the paper suggested expanding the number of non-permanent seats should agreement fail on expansion in the permanent category. In 1969, the Working Group's report suggested support for "more equitable representation" through the enlargement of the Council from twenty to twenty-six members, possibly with a change in the veto structure.<sup>106</sup>

## B. COMPOSITION

The issue of composition is far more contentious, replete with the concrete nuts and bolts questions like: Should new permanent members be added at all? If so, what should be the criteria therefor? Should new permanent members be entitled to the veto? Should there be more permanent or non-permanent members? Should the ban against the immediate reelection of a non-permanent member under article 27, paragraph 2, of the UN Charter be lifted, in the process creating a new category of *de facto* permanent membership without the veto for particular regional powers? What about semi-permanent members from each region sharing seats on a rotating basis? Or membership extending beyond two years? Are seats for regional organizations like the European Union and the Arab League desirable, as opposed to traditional geographical groupings? All these continue to be floated.<sup>107</sup>

According to the paper of the International Peace Academy and the Stanley Foundation, there are two approaches on the matter. The first is the regional approach, which seeks to correct the imbalance resulting from the North's overrepresentation by adding more developing countries. This would also ensure

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<sup>104</sup> *Id.*

<sup>105</sup> The United States would accept 21 as the limit. KELLY, *supra* note 68, at 331; FASSBENDER, *supra* note 14, at 237, n. 243.

<sup>106</sup> Report of the Open-Ended Working Group on the Question of Equitable Representation on and Increase in the Membership of the Security Council and Other Matters Related to the Security Council, UN GAOR, 53d Sess., UN Doc. A/53/47 (5 August 1999).

<sup>107</sup> International Peace Academy and the Stanley Foundation Memorandum, *supra* note 98.



that at least some key states in any given region would become engaged in the decision making process, thus promoting good regional citizenship by providing states with an incentive to play a constructive role in maintaining regional peace and security. On the other hand, the global approach downplays geographic proximity by stressing good global citizenship. It is anchored on the universal character of the UN and the reality of global interdependence.<sup>108</sup>

Japan and Germany are largely acknowledged to be the most logical candidates for permanent membership.<sup>109</sup> Their promotion to permanent member status would formally provide them the long-awaited closure of their wartime atrocities.<sup>110</sup> Together with the other pretenders, they anchor their claim on, first, their "contribution . . . to the maintenance of international peace and security and to the other purposes of the organization" under article 23, paragraph 1, of the UN Charter, and second, their large share in the UN budget, easily eclipsing those of some permanent members.<sup>111</sup> They have persistently reiterated their preparedness to assume the duties of permanent membership and are very active in the field of development aid and development cooperation. However, not only the developing countries of the South, which base their arguments on the "equitable geographic distribution" criterion of the same article, have misgivings on these two countries' bids. In addition to the sovereign equality argument, Italy, the only former Axis country left out of serious contention, agrees that this would further aggravate the present imbalance to the disadvantage of the South.<sup>112</sup> In view of the strong common foreign and security policy of the European Union, Italy suggests that future-oriented reform should foresee only one European seat.<sup>113</sup> Moreover, Turkey and Italy proposed in 1993 a rotation mechanism whereby ten new non-permanent seats which could be considered "semi-permanent" would rotate among thirty big countries,<sup>114</sup> each of which could return to Council after only four years following its previous membership. This proposal would maintain the ban on immediate reelection under article 23, paragraph 2.<sup>115</sup>

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<sup>108</sup> *Id.*, at 436.

<sup>109</sup> Over 50 states including the United States, France and the United Kingdom support their bids. However, the United States is mum on whether they should be similarly entitled to the veto, limiting its comment to opposing infringement of its own either expressly or as a result of a significant alteration on the voting requirement. KELLY, *supra* note 68, at 331; FASSBENDER, *supra* note 14, at 245, 247.

<sup>110</sup> The institutional bias against them as "enemy states" remains by implication of article 53 and 107.

<sup>111</sup> *See* note 74.

<sup>112</sup> FASSBENDER, *supra* note 14, at 244-5.

<sup>113</sup> *See* notes 67-69.

<sup>114</sup> Proposed criteria include population size, geopolitical situation, military capacity, economic potential, history of working with the UN Charter, record of contribution to the maintenance of international peace and security, and equitable distribution. FASSBENDER, *supra* note 14, at 259.

<sup>115</sup> *Id.*

More than anything, the discussions play out the competing interests within the different regional group themselves. The South does not appear to have a unified position. For Africa, the Organization of Africa Unity (OAU) at its 30th Summit in Tunis in 1994 formulated a claim to two permanent seats to be filled in accordance with a mechanism for permanent rotating regional seats.<sup>116</sup> This would depart from the traditional understanding of permanent membership by implying a transfer of responsibility for the maintenance of international peace and security from the individual UN member to the entire region. While the proposal called for the gradual limitation and eventual elimination of the veto, it nonetheless sought for these two seats the same prerogatives of the permanent members. On June 1997, following its summit in Harare, OAU called for five non-permanent African seats in an enlarged Security Council composed of twenty-six members.<sup>117</sup>

Nonetheless, individual claims continue. Nigeria seeks permanent membership in the traditional sense. Egypt, which has committed to abide with the OAU's positions, would inject as a criterion a country's degree of economic development, history, and the geographic location and size of its population. Egypt would then claim as its qualifications for permanent membership its regional and international contributions in Africa, the Arab and Islamic worlds, the Middle East as a region and, in general, its leadership in the developing world.<sup>118</sup> For its part, South Africa is still in the process of gaining the confidence of the larger OAU membership as a young member thereof and following its readmission to the UN General Assembly. It supports common positions while exercising restraint on its own individual ambitions.<sup>119</sup>

After Japan, India is the next logical candidate for Asia,<sup>120</sup> while in Latin America, Argentina and Brazil loom.<sup>121</sup> However, Brazil and India would reject the African rotation model for their respective regions as a discriminatory attempt by

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<sup>116</sup> *Id.*, at 250; KELLY, *supra* note 68, at 346.

<sup>117</sup> *Id.*

<sup>118</sup> As a member of NAM, OAU, OIC, the Arab Group and the African Group in the UN, Egypt has been playing an important role in formulating the reform positions of the different groups.

<sup>119</sup> The choice between Egypt and South Africa bridges the division of the continent between Saharan and Sub-Saharan, Arab and Black, Muslim and non-Muslim. Both are democratic countries with considerable economic capabilities. The third candidate for Africa would either be Nigeria or Kenya, depending on who has better democratic traditions, respect for the rule of law, capacity to stem official corruption, and social stability. KELLY, *supra* note 68, at 353.

<sup>120</sup> The third priority for Asia is a toss-up between Indonesia and Pakistan. Aside from being the world's fourth most populous country, Indonesia is the world's largest Muslim country. In addition, it has let go of East Timor and is in the process of democratic political reform. On the other hand, Pakistan like its arch rival India has attained nuclear power status. It has demonstrated a serious commitment to its UN responsibilities by its consistent participation in UN peacekeeping effort. Its downside is the recent failure of its democratization effort, raising questions on its stability. KELLY, *supra* note 68, at 353.

<sup>121</sup> Long considered a candidate for a permanent seat, Brazil was in fact promised one by the United States during World War II. ARNOLD, *supra* note 69

the North at speeding up the reform process, giving Germany and Japan permanent membership while lumping developing countries into permanent seats for their respective regions.<sup>122</sup> In the case of Asia, where easily over half of the world population lives, it is so big and diverse that there is no comparable regional organization for the whole continent.<sup>123</sup> For Argentina, Brazil's ambition could be potentially disruptive for political balance in the region. Mexico could be another contender from Latin America, but for its continued opposition to permanent membership and the veto ever since the San Francisco conference. In India's case, Pakistan is expected to oppose its ambitions.<sup>124</sup>

For the Arab Group, Syria has argued on the basis of ethnicity, contending that since it comprises twelve percent of the UN membership, it should be entitled to two permanent seats in the event of an increase in permanent membership, or otherwise to two non-permanent seats. However, it would be difficult to agree on ethnic divisions as a basis for Council representation.<sup>125</sup>

### C. VETO REFORM

Veto reform is as controversial as the issue of composition. Besides adjusting voting requirements in an enlarged Council, the big question is whether to abolish, retain, modify or otherwise extend the veto to new permanent members. There is little support for granting the veto to new permanent members, lest the same aggravate the imbalance.<sup>126</sup> In fact, critics want the veto abolished entirely which, however, is politically impractical.<sup>127</sup> Yet assuming that the permanent members agree to give up their veto, they might consequently lose interest in the UN thus raising serious concerns on the world body's political and financial future.

Requiring two or more negative votes to exercise a veto has been suggested as a middle ground, as are the concept of a "regional veto" and the adaptation of the

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<sup>122</sup> This could be tempered by the proposed single seat for the European Union. FASSBENDER, *supra* note 14, at 260. Recently, however, Brazil has indicated a willingness to give up its campaign for an individual permanent seat in favor of a single, shared Latin American regional seat. KELLY, *supra* note 68, at 353.

<sup>123</sup> China alone could not claim to represent the vast continent's myriad complexities. KELLY, *supra* note 68, at 351.

<sup>124</sup> In any event, the regional permanent membership rotation model, devolving upon regional rather than national interests, finds increasing acceptance even without the veto. FASSBENDER, *supra* note 14, at 256. N. 309; KELLY, *supra* note 68, at 333.

<sup>125</sup> KELLY, *supra* note 68, at 334.

<sup>126</sup> KELLY, *supra* note 68, at 336, 341; FASSBENDER, *supra* note 14, at 256 (citing the position of the Commission on Global Governance).

<sup>127</sup> KELLY, *supra* note 68, at 340-1. Save for France, the current permanent members continue to firmly oppose any restriction of their veto privilege even by voluntary constraint.

weighed voting practice of the Bretton Woods institutions.<sup>128</sup> However, maintaining the status quo seems most likely. In that case, the permanent members should be constantly pressured into narrowing the range of the veto's application,<sup>129</sup> and must justify their exercise thereof in each instance.<sup>130</sup>

Secondly, the permanent members must adhere most strictly to article 27 which removes procedural matters from the reach of the veto. Thirdly, and relatedly, the range of matters which are treated as procedural should be expanded. It follows, fourthly, that more substantive limitations could be considered. Kelly has proposed a Council of seven permanent members, with four (China, Russia, the United States and the European Union) retaining their substantive veto power and the other three (Asia, Africa and Latin America) limited to procedural veto which, however, could refer its subject matter to a special session of the General Assembly.<sup>131</sup> In the last analysis, it is feared that any or all of the current permanent members, might, unfortunately, only choose to veto these suggestions.<sup>132</sup>

A second NAM document dated March 1996 contained its observations on the limitations of the scope and application of the veto. It had a rather ambivalent position. It regards the veto as anachronistic, undemocratic and discriminatory, thus arguing for the limitation of its scope and eventual elimination. In the first instance, the Southern majority strictly opposes any extension of the veto to new permanent members. Yet on the other hand, a crucial stumbling block in reaching consensus on this issue is the fact that pretenders for permanent membership would want the same rights – essentially the prerogative of the veto – as the current permanent members. Japan and Germany consider permanent membership without the right of veto as “second class permanent membership.”<sup>133</sup> NAM, especially Nigeria, Brazil and India, would insist on equal treatment should Germany and Japan get the prerogative.<sup>134</sup>

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<sup>128</sup> *Id.*

<sup>129</sup> *Id.*

<sup>130</sup> *Id.* (citing the German proposal).

<sup>131</sup> *Id.* at 342-3, 351. For Kelly, proposed permanent regional rotating members should not insist on claiming the same veto privilege as the current permanent members especially in the event France and the United Kingdom agree on a single European Union permanent seat.

<sup>132</sup> Examples could be the non-application of the veto (1) to the election of Secretary General, (2) to any UN Charter Chapter VI when no Chapter VII action is contemplated nor vital interests at stake. International Peace Academy and the Stanley Foundation Memorandum, *supra* note 98, at 438-439.

<sup>133</sup> FASSBENDER, *supra* note 14, at 261.

<sup>134</sup> MINGST & KARNS, *supra* note 2, at 204.

#### D. TRANSPARENCY AND ACCOUNTABILITY

An essential motivation for Council reform is due to its lack of accountability or secretive decision-making processes. Its practice of informal consultations outside of formal meetings while at times facilitating compromise, tends to enhance the concentration of power and further makes its business secretive and exclusionary.<sup>135</sup> Quite apart from the issue of composition, the matter of transparency addresses the challenge of promoting wider participation and more transparent decision making in the Council, which has yet to acquire a "reporting culture" while, at the same time, facilitating its prompt and effective action.<sup>136</sup> To ensure that important information is readily available to all Council members and those UN members directly affected by its measures, suggestions have been made towards, *inter alia*, the institutionalization of regional briefings between non-permanent members and their respective regional groups,<sup>137</sup> consultation with specially affected countries thus enabling them to directly raise their concerns,<sup>138</sup> allowing other states wishing to express substantive views on an off-the-record basis in a non-public setting before the Council makes any final decision, and creating subsidiary committees under article 29 to assist the Council, like the sanctions committees on South Africa and Iraq and the fact finding missions to Bosnia in 1993 and Angola in 1992.<sup>139</sup> Unlike the earlier issues, improving the Council's working methods is the easiest to handle since it would not require an amendment of the Charter or even of the Council's own Rules of Procedure.<sup>140</sup> Despite this, however, there are fears that its elitist, closed-room decision-making behavior will most probably continue to characterize the Council's future work.<sup>141</sup>

On accountability, some argue that since the Council acts on behalf of all UN member states, a mechanism is needed to oversee the legitimacy of its decisions, particularly on the authorized use of force. They suggest a role for the

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<sup>135</sup> SUTTERLIN, *supra* note 10, at 9; N. WOODS, *Good Governance in International Organizations*, 5 GLOBAL GOVERNANCE 39-61, 50 (1999).

<sup>136</sup> BAILEY & DAWS, *supra* note 11, at 61, 291.

<sup>137</sup> Recall discussion in introduction on NAM consultations mechanisms.

<sup>138</sup> Some countries feel that the Council does not genuinely heed Article 31 of the UN Charter for this purpose.

<sup>139</sup> International Peace Academy and the Stanley Foundation Memorandum, *supra* note 98. To its credit the Council has since 1993 pursued useful suggestions on its procedure like making its draft resolutions available to all UN members at the same time that Council members receive them, meetings between the Council, troop-contributing countries and the Secretariat, and increased transparency in its sanctions committee. *See also* BAILEY & DAWS, *supra* note 11, at 291.

<sup>140</sup> SCHWEIGMAN, *supra* note 7, at 296-7.; M.C. WOOD, *Security Council Working Methods and Procedure: Recent Developments*, 45 INT'L & COMP. L. Q. 151, 161 (1996).

<sup>141</sup> KARIN PROIDL, *The Reform of the Security Council*, in THE UNITED NATIONS: LAW AND PRACTICE 303-312 (Franz Cede & Lilly Sucharipa-Behrmann eds., Kluwer Law Int'l 2001).

World Court in this regard.<sup>142</sup> Less contentious proposals include merely expanding the Council's reporting mechanism to the General Assembly, as earlier indicated.

## V. CONCLUSION

Despite the predictions of the doomsayers that the United Nations will eventually go the way of the League of Nations, the fact that the world body has survived into the third millennium speaks volumes on its singular importance in the international system. The United Nations is irreplaceable; it is the only existing mechanism for preserving world peace and pursuing international cooperation to build on that peace. Without a doubt, it is far from perfect. But efforts to reform it, not the least including the Security Council, only attest to the desire to make the system work and bring us closer to the vision so eloquently expressed in the aftermath of that terrible human tragedy in 1945. Change is, therefore, inevitable. Neither the United Nations nor the Security Council can remain unmoved in a different new world.

Because of its place at the center of the United Nations, the Security Council remains the single most important international political institution in the world. Its sheer power is largely tempered only by its members' sense of what is good for the international community. Its actions and decisions affect both the most and the least powerful of states. Accordingly, it must serve its entire constituency, especially the peoples of the poorer developing countries for whom participation in international affairs has become much more necessary.

The determination of the developing countries of the South to formally table the reform of the Security Council in the United Nations is a testament to their continuing political cohesion and leadership. It is a rare event; in fact, it happened only once before. Indeed, despite changes in their own respective national circumstances, they have come a long way from their achievements in multilateralism since the late 1960s. It has taken such a long struggle for the South to earn the respect and be considered as the political equal of the major powers. Clearly, arguments against Security Council reform are no longer sustainable, if not downright incredulous. Cosmetic changes in its working methods alone will not suffice. Only a formal place at the table will genuinely guarantee that the voice of the South is heard. Even the permanent members appear to have joined the consensus on the necessity of reform.

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<sup>142</sup> But recall introduction on the practical impossibility of this proposal.

The South has made considerable progress in this regard, and this progress should be guarded against the possibility of the key concrete issues, particularly the Council's composition and the exercise of the veto, becoming deal-breakers. While most of the developing world can accept the fact that they probably cannot attain permanent membership material, those who would be so deserving and fortunate enough should understand that they would be representing not only their own countries nor even of their own respective regions, but the entire developing world itself without whose support the new permanent seats would not have been realized in the first place. In respect of the veto, judging from the failure of the League of Nations, which romanticized the ideal of achieving consensus over life-or-death situations, it should be accepted as a practical reality that the veto will remain for a very long time.

While it has yet to reach consensus on the details of a comprehensive and rational reform package, the South must lead in untangling the Gordian knot by bridging the gaps among them and by preparing to compromise. Unanimity is impossible and only compromise points the way. Only then will the major powers of the North realize the credibility of the Southern agenda and themselves prepare to move toward the center. In any event, whatever formula gathers the broadest consensus should achieve a workable balance between the goals of legitimacy and effectiveness.

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