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SOME PERSPECTIVES ON THE UN SECURITY COUNCIL REFORM PROPOSALS

-Abstract-

The calls for reform of the UN Security Council, which are as old as the organization itself, have been in the international spotlight again with the wars in Syria and Ukraine and the vetoes that Russia (and China) used to block any measure regarding them. In this paper, I will briefly present and critically discuss the three groups of proposals that are mostly given for reforming the Council: the enlargement proposals, the proposals for reforms of the working methods of the Council, and the proposals for reforms of the veto. All of these proposals have some merit (albeit different) and try to address some deficiency in the functioning or design of the Council. Therefore, despite the low likelihood of success, all of these reform proposals should be pursued because they (at the very least) serve as a tool for putting pressure on the permanent members to uphold their responsibilities that to the UN and the international community as a whole.

Keywords: UN Security Council, reform, enlargement, working methods, veto

I. INTRODUCTION

The wars in Syria and Ukraine and the vetoes used in these two conflicts by Russia (and China) in the UN Security Council have again brought the calls to reform the international community's primary authority for peace and security to the fore.[1] Some of the key problems that have been noticed in the design and functioning of the Security Council are related to its lack of representativeness, lack of transparency, selectivity in engagement, the veto and the manner in which the veto has been used by the permanent five (P5), the lack of political will by the P5, the lack of permanent UN capacities for rapid deployment in conflicts and crises, the relationship with regional organizations, and many others. Thus, given the importance of the Security Council for international peace and security and the variety of proposals that have been made in this regard throughout the years, in this paper I will briefly outline and critically discuss some of these proposals. I will start by explaining the Security Council's design and powers. Then, I will deal with the question of reform in the context of the UN Security Council. Lastly, I will present the three types of reform proposals, namely the enlargement proposals, the proposals for reforms of the working methods

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[1] See for example, Kemal Dervis, José Antonio Ocampo, *Will Ukraine's tragedy spur UN Security Council Reform?,* Brookings, 3 March 2022, available at https://www.brookings.edu/opinions/will-ukraines-tragedy-spur-un-security-council-reform/

of the Council, and the proposals for reforms of the veto, and offer my thoughts on them.

II. UN SECURITY COUNCIL IN A NUTSHELL

The Security Council is one of the six principal organs of the UN, which is conferred with the "primary responsibility for the maintenance of international peace and security".[2] All UN member-states agree to "accept and carry out the decisions of the Security Council",[3] including those who have voted against a decision or those who are not members of the Council.[4] The Council's main powers regarding the maintenance of international peace are regulated in Chapter VII of the UN Charter. According to the provisions in this Chapter, the Council shall determine which situations constitute a threat to peace, a breach of peace, or an act of aggression (article 39), and may subsequently decide to authorize measures that do not involve the use of force (article 41), or, if these would be or have already proven to be inadequate, measures which involve the use of force that are "necessary to maintain and restore international peace and security" (article 42).[5] In addition to this, the Council has powers related to the pacific settlement of disputes (Chapter VI) and may cooperate with and utilize regional organizations for enforcement actions and for peaceful dispute resolution (Chapter VIII). Finally, the Council has other functions, such recommending admission of new states to or suspension of current states from the UN (art. 4(2), art.5), recommending for the appointment of the Secretary-General (art.97), or electing (together with the General Assembly) the judges of the International Court of Justice.[6]

The Security Council, as the guardian of international peace and security, is constantly engaged and is the "master of its own procedure", meaning it decides for itself about the procedural rules under which it will work.[7] The Council has adopted, on its first meeting in 1945, the "Provisional Rules of Procedure",[8] which, with the exception of one small change in 1982, have remained the same until today.[9] In practice, though, "[new] procedural measures, however minor, are constantly being introduced".[10]

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[2] Charter of the United Nations, 24 October 1945, 1 UNTS XVI, ('UN Charter') article 24.

[3] *Ibid, article 25.*

[4] *Legal Consequences for States of the Contitiued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, Advisory Opinion, I.C.J. Reports 1971, p.42, par.116. ('*Namibia* Advisory Opinion')

[5] UN Charter, article 39, 41 42.

[6] Statute of the International Court of Justice, 24 October 1945, articles 4, 8, 12.

[7] UN Charter, articles 28-30. Loraine Sievers, Sam Daws, *The Procedure of the UN Security Council*, Oxford University Press, 4th ed., Oxford, 2014, p.12.

[8] UN Doc. S/96/Rev.7, 21 December 1982.

[9] Jonas von Freiesleben, 'Reform of the Security Council: 1945-2008', in Center for UN Reform Education, *Governing and Managing Change at the United Nations: Reform of the Security Council from 1945 to September 2013*, available at https://centerforunreform.org/wp-content/uploads/2015/07/Governing-and-Managing-Change-Whole-Book.pdf p.2.

[10] Loraine Sievers, Sam Daws, *The Procedure of the UN Security Council*, p.15. For instance, the Council has introduced various forms of meeting which may include actors that are not members of the Council in that particular moment, or are not even (member) states, such as "Arria-formula meetings, "informal consultations of the whole", "informal interactive dialogues", etc. For these and many more see *Ibid,* pp. 19-110.

In terms of its composition, the Council today has 15 member-states (formerly eleven), out of which five are permanent members[11] and ten (formerly seven) are non-permanent members elected by the General Assembly (GA) for a two year term without the possibility of immediate re-election.[12] Two criteria should be taken into consideration when electing the non-permanent members – the contribution of the candidate country to the maintenance of international peace and security and equitable geographical distribution.[13] The distribution of the (now) ten non-permanent seats is done in accordance with General Assembly resolution 1991A, and includes five seats for states from Africa and Asia,[14] two seats for Latin America and Caribbean, two seats for Western Europe and other states,[15] and one seat for Eastern Europe.[16]

Finally, when it comes to the voting in the Security Council, each Council member has one vote and a decision on procedural matters will be adopted if there is an affirmative vote of at least nine (formerly seven) members of the Council.[17] For "all other matters", meaning for "substantive" decision[18] such as those regarding the maintenance of international peace and security, an affirmative vote of al least nine is required, but here, unlike in the procedural decisions, the concurring votes of all permanent members must be included as well.[19] In other words, for substantive matters each permanent member holds a veto power and can block the adoption of a measure by the Council, even though the veto is not explicitly mentioned in the Charter.

III. DEFINING REFORM AND THE TYPES OF REFORM OF THE COUNCIL

The calls for UN reform, and especially for UN Security Council reform, are practically as old as the organization itself. The main reason for this is the ultimatum posed by the P5 during the initial negotiations of the UN concerning the veto and their privileged status, which the other (smaller) states had to accept in order for the organization to come into being.[20] So, it is not surprise that the "mere mentioning of

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[11] USA, Russia, China, UK and France.

[12] UN Charter, article 23.

[13] *Ibid.*

[14] These states have agreed that out of these five seats, three would go to Africa and 2 to Asia (because China is also a member from Asia), and that one of these five seats would go to an Arab state (the so-called 'Arab swing state'). James Raymond Vreeland, Axel Dreher, *The Political Economy of the United Nations Security Council: Money and Influence,* Cambridge University Press, New York, 2014, p.98. Loraine Sievers, Sam Daws, *The Procedure of the UN Security Council*, p. 127.

[15] 'Other states' include Australia, New Zealand, Canada and Israel. Rudolf Geiger, 'Article 23'*, in* Bruno Simma, Daniel-Erasmus Khan, Georg Nolte, Andreas Paulus, Nikolai Wessendorf, *The Charter of the United Nations: A Commentary*, Vol. I, Oxford University Press, 2012, p.755.

[16] UN Doc. A/RES/1991 A (XVIII) 17 December 1963.

[17] UN Charter, article 27.

[18] Loraine Sievers, Sam Daws, *The Procedure of the UN Security Council*, p. 295.

[19] UN Charter, article 27.

[20] Hans Köchelr, *The Voting Procedure in the United Nations Security Council: Examining a Normative Contradiction in the UN Charter and its Consequences on International Relations,* Studies in International Relations, XVII, Vienna, International Progress Organization, 1991, p.10; David Bosco, *Five to Rule Them All: The UN Security Council and the Making of the Modern World,* Oxford University Press, Oxford, 2009, p. 36.

Security Council reform triggers strong reactions even among the most hardened UN diplomats, ranging from eye-rolling to outright sarcasm."[21]

But what exactly is 'reform'? In the context of the UN, the notion of 'reform' comprises "planned, purposive transformation aimed at strengthening the effectiveness and efficiency of the Organization".[22] In this regard, while the goal of reforming the UN is essentially progressive, it is also conservative and evolutionary because "it does not seek total revision but improvements within a given framework".[23] When it comes to the UN Security Council more specifically, the term 'reform' is connected to and used in different contexts and has several possible understandings. Hence, 'reform' may be used to describe some continuous process of transformation and adaptation, or some concrete, individual changes that have happened during this process. It may also refer to former reforms but also to proposals for future reforms.[24] Lastly, the term 'reform' embraces and may refer to (proposals for) formal as well as informal reforms of the Security Council.

Formal reforms of the Security Council are those that are done in accordance with the requirements of the UN Charter. Under article 108 of the Charter, the process of formal reform (or amendment) of the Charter unfolds in two phases: firstly, a proposal for amending should be adopted by the General Assembly (in a resolution) with a two thirds majority, and secondly, in order for this still not formally binding decision to come into force, it should be individually ratified by two thirds of the UN member states, including the P5.[25] In the almost 80-year history of the UN, the Charter has been formally amended only three times, with changes coming into force in 1965, 1968 and 1973.[26] The first of these amendments, which was initiated by a GA resolution 1991 in 1963, proposed the enlargement of the Council's membership from eleven to fifteen (so, four new non-permanent) members, and the required majority for adopting decisions by the Council to increase from seven to nine votes.[27]

In the first phase, the resolution was adopted in the GA with ninety-six votes for, eleven against (including permanent members France and the USSR) and four abstentions (including permanent members USA and UK).[28] Nevertheless, by the recommended deadline for ratification noted in the resolution, 95 out of the then 114 UN member states, including all permanent five, have ratified the resolution and the amendment came into force in September 1965.[29]

In addition to the formal reforms of the UN Charter, there are also informal or de facto reforms of the UN. These reforms include "reforms through practice" of the UN organs, "reforms through (re-)interpretation" of the Charter or "reform through informal Charter amendment".[30] So, informal reforms could take two forms: 1) non-intentional practice of individual acts that have been repeated and have accumulated

[21] Christian Wenaweser, 'Working Methods: The Ugly Ducking of Security Council Reform', in Sebastian von Einsiedel, David M. Malone and Bruno Stagno Ugarte, *The UN Security Council in the 21st Century*, Lynne Rinner Publishers, London, 2016, p.175.

[22] Thilo Rensmann, "Reform', in *The Charter of the United Nations: A Commentary*, p.27.

[23] *Ibid*.

[24] *Ibid,* p.28.

[25] UN Charter, article 108; Georg Witschel, 'Amendments, Article 108', in *The Charter of the United Nations: A Commentary,* pp.2206-2210.

[26] *Ibid*.

[27] The proposal in the resolution also contained the enlargement of ECOSOC from eighteen to twenty-seven members. *Ibid*, 2218.

[28] *Ibid;* Andreas Zimmermann, 'Article 27', in *The Charter of the United Nations: A Commentary,* p.883.

[29] *Ibid*.

[30] Thilo Rensmann, 'Reform', pp.30-33.

over time which has then become a de facto reform; or 2) an intentional practice that is not a formal reform as required by article 108, but is nonetheless an agreed-upon factual amendment.[31]

The best-known example of the first type of informal reform, or reform through non-intentional practice of accumulated individual acts, is the meaning of the phrase "concurring votes" of the permanent members required for the adoption of substantive decisions under article 27(3) of the Charter. During the San Francisco Conference, the expression "concurring votes" was used synonymously with "unanimity", and although it was never formally addressed, the prevailing view at the time was that the voluntary abstention of one of the permanent members would not be sufficient to fulfill the requirement of article 27(3).[32] However, in the practice of the Council, starting from 1946 when a resolution for the Spanish question was adopted and the USSR abstained from voting,[33] a different interpretation of this article has been endorsed. Namely, an abstention of a permanent member could be considered a "disguised form of consent" of that member,[34] or, at least, as not objecting to a given proposal, and this is sufficient for a decision to be adopted. Therefore, only an explicit negative vote of a permanent member could prevent a decision from being adopted. Thus, this interpretation of article 27(3), which takes into consideration the subsequent practice of the application of the UN Charter[35] and has been upheld by the International Court of Justice,[36] is one example of de facto or informal "reform through practice" and is "today recognized as having become an integral part of the constitutional *acquis* of the UN".[37]

An example of the second type of informal reform, or an intentionally agreed change but without a formal amendment of the Charter, is the recent UN General Assembly resolution entitled: "Standing mandate for a General Assembly debate when a veto is cast in the Security Council".[38] According to this resolution, which was adopted without a vote, if a veto is cast by a P5 in the Security Council, the General Assembly shall automatically meet within ten working days following that veto in order to hold a debate on the situation on which the veto was cast. During this debate, the permanent member(s) that had cast a veto would, "on an exceptional basis", be accorded precedence in the list of speakers to explain and justify its/their veto, and the Security Council as an organ is invited, pursuant to article 24(3) of the Charter, to submit a special report to the General Assembly on the use of the veto at least 72 hours before the debate in the Assembly.[39] Certainly, the General Assembly may discuss even questions of peace and security (art.10-12), but this discussion is not automatically activated, nor is there in the Charter any (procedural) mechanism or consequence when a P5 is exercising its veto. Therefore, this resolution is an example

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[31] Jan Klabbers, 'General Principles and Theories of UN Reform', in Ralph Wilde, ed., *United Nations Reform Through Practice:* Report of the International Law Association Study Group on United Nations Reform, December 2011, p. 9.

[32] Andreas Zimmermann, 'Article 27', p.881.

[33] Security Council Report, *The Veto*, Research Report, no.3, 2015, p.2, available at https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/research_report_3_the_veto_2015.pdf; Loraine Sievers, Sam Daws, *The Procedure of the UN Security Council*, p. 339.

[34] Andreas Zimmermann, 'Article 27', p.913.

[35] In accordance with article 31(3)(b) of the Vienna Convention on the Law of Treaties. Vienna Convention on the Law of Treaties, 1155 U.N.T.S. 331, 8 I.L.M. 679, 1969.

[36] *Namibia* Advisory Opinion, p.10, par.22.

[37] Thilo Rensmann, 'Reform', p. 35.

[38] UN Doc. A/76/L.52, 20 April 2022.

[39] Ibid.

of an intentionally agreed-upon change but without a formal amendment of the Charter. Certainly, for this, or any other type of informal reform to be (legally) acceptable, it must respect the basic postulates and rules of the UN, like the separation of powers and the primary and secondary responsibility of the Security Council and the General Assembly in maintaining international peace,[40] which this resolution does.[41]

IV. REFORM PROPOSALS

Throughout the years, many different proposals for reform of the Council, both formal and informal, by scholars and practitioners, have been offered. In the sections that follow, these different proposals, which are usually contained in a single proposition, for theoretical purposes will be divided into three general categories: reforms about the enlargement of the Council; reforms about the Council's working methods; and reforms about the veto.

1. Enlargement of the Council

The proposals for enlarging the Council are the most frequent ones. The main reason given in support of these proposals is that the Council today is an unrepresentative institution, which can be evidenced from several different perspectives. Firstly, the total number of Security Council members (15) is inadequate in relation to the total UN membership today (193 countries), which was not the case when the UN were founded when there were only 50 countries. Secondly, there is an imbalanced regional distribution of seats in the Council. Finally, the privileges enjoyed by the P5 are based on the power relations that were in place at the end of the Second World War, which, however, are not an adequate reflection of today's power relations, and consequently, the composition of the (permanent) membership should change.

The enlargement proposals have a long history. During the Cold War and following the formal change in membership in 1965, the question of enlargement of the Council was put before the UN General Assembly on the request of several non-Aligned States in 1979.[42] Shortly after the end of the Cold War, in December 1992, the General Assembly adopted Resolution 47/62 with which it placed on its agenda the "Question of equitable representation and increase in the membership of the Council".[43] The following year, the Assembly adopted Resolution 48/26 where it decided to establish an Open-ended Working Group with the goal "to consider all aspects of the question of an increase in the membership of the Security Council and other matters related to the Council."[44] In March 1994, the Group announced a list of topics that it plans to address, grouping them in two "clusters". The first cluster concerned the "equitable representation on and increase in the membership of the Security Council", while the second referred to the relationship of the Council with

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[40] Jan Klabbers, 'General Principles and Theories of UN Reform', p. 10
[41] See the preamble of the Resolution.
[42] J Thomas G. Weiss, *Overcoming the Security Council Reform Impasse: The Implausible versus the Plausible,* Friedrich Ebert Stiftung, no.14, January 2005, p. 8.
[43] UN. Doc. A/RES/47/62, 10 February1993.
[44] UN. Doc. A/RES/48/26, 29 November 1993

the General Assembly and other UN bodies and organizations, as well as reform of the working methods and procedures of the Council.[45]

Of the numerous enlargement proposals that have been given throughout the years, the two proposals included in the Report by the High Panel of Threats, Challenges and Change should be highlighted.[46] These two proposals were regarded as official proposals for reform that UN member-states considered at the 2005 World Summit and later became the bases for new proposals. According to the first proposal (Model A), the Council's membership should be increased to 24 member-states, organized in three categories: the current five permanent members with a veto power, new six permanent members without a veto, and thirteen elected members – meaning three more elected members than the current ten – with a two-year mandate without a right of immediate re-election. Model B also suggested the Council to be composed of 24 members, but with three different categories – the current five permanent members, eleven elected members with a two-year mandate without a right of immediate re-election and eight elected members with a four-year mandate with a possibility to be re-elected.[47] In both models, the new category of members would not have a veto power, which would still be a privilege reserved only for the (old) permanent five. To address the problem of the veto, however, the Panel recommended the P5 to limit their use of the veto only for situations when their national interests were genuinely threatened, and further suggested a system of "indicative voting". [48] In this voting system, a Council member "could call for a public indication of positions on a proposed action" and a potential negative vote for such action in this (first) instance would not have the effect of a veto. For a veto to have legal effect, a second, formal vote on the proposed action would be needed.[49]

In addition to these two proposals, many other enlargement reforms of the Council have been suggested and supported by different groups of states, such as the proposals by the G4 group,[50] the African Union,[51] the "United for Consensus" group,[52] the "L.69" group,[53] and many others.[54]

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[45] Cited in Bardo Fassbender, *All Illusions Shattered? Looking Back on a Decade of Failed Attempts to Reform the UN Security Council,* Max Planck Yearbook of United Nations Law, vol.7, 2003, 183-218, p.191.

[46] UN Doc. A/59/565, High Level Panel on Threats, Challenges and Change, *A More Secure World: Our Shared Responsibility*, 2 December 2004.

[47] *Ibid,* pp.66-69.

[48] *Ibid,* p. 68.

[49] *Ibid.*

[50] The G4 or the "Group of four" states (Germany, India, Brazil and Japan, together with other countries supporting their proposal) have proposed the Council to have 25 members. Out of the ten new members, six would be new permanent members and four would be elected. The G4 proposal emphasizes that there is no final decision whether the new permanent members would have a veto power and that this question would be settled on a revision meeting (conference) that would take place fifteen years after the proposed reform would come into force. In the meantime, the new permanent members would not exercise a right to veto. See UN Doc. A/59/L.64, 6 July 2005.

[51] The African Union (AU) proposal included 26 total members for the Council, and the eleven new members would be distributed in the following way: two permanent and two elected seats for countries from Africa; two permanent and one elected seat for countries from Asia; one permanent and one elected seat for countries from Latin America and the Caribbean; one permanent seat for Western Europe and the rest; one elected seat for countries from Eastern Europe. Under this proposal, the new permanent members would have the same rights and privileges like the old ones, meaning also the right to veto. See UN Doc. A/59/L.67, 18 July 2005.

[52] This group, which includes states like Argentina, Canada, Mexico, Italy, Spain, Türkiye and others, suggested that the reformed Council should consist of 25 members. The ten new members that would

The enlargement proposals seem to enjoy broad support among all UN member-states, at least publicly, even though there is disagreement about how large the increase of the membership should be and whether it should include only elected members or also new permanent members (or even some third category of members) and whether, if there are new permanent members, they should have a veto power.[55] Privately, however, the P5 have never been keen on adding new permanent members to the Council (with or without a veto) or on limiting their own veto powers.[56] While some of them reluctantly gave positive signals to the claims for enlargement made by their close allies during the discussions in the Open-ended Working Group, they "preferred to let the supporters and the opponents of a reform exhaust and neutralize themselves, and this is exactly what [has been happening]."[57] Furthermore, not only do the P5 capitalize on the discord among states, especially the aspirants for seats in the Council, but some of them actively (though in the background) sabotage the enlargement efforts. In 2005, for example, the USA and China, jointly and separately undertook actions to make sure that the G4 proposal would fail.[58]

If the P5 do not want and if they are doing everything to prevent an enlargement of the Council, it is worth asking how did a formal enlargement reform succeed in 1965, in the midst of the Cold War? Some authors claim that this was because states from Africa and Asia were able to agree on one enlargement proposal (for which they were supported by Latin-American and Western countries) and because the P5 at that time did not have a firm stand against enlargement.[59] Weiss, likewise, thinks that the reasons for success were pragmatic. Namely, there was an "obvious numerical imbalance in the United Nations" following the decolonization which caused pressure for change, but this change did not call for the addition of any new permanent members.[60] Luck agrees that decolonization was a factor in success because the political costs of opposing the enlargement reform – and thus the will of the now larger number of UN member states – would have been too great for any superpower

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be elected would have the same rights and mandate as the current elected members – two years without a right of re-election and without a veto. See UN Doc. A/59/L.68, 21 July 2005.

[53] The L.69 group advocated for an enlarged Council that would have 27 members and out of the twelve new members there would be both six permanent and six elected members. The distribution of seats is like the aforementioned AU proposal, with the one extra elected seat reserved for "small islands developing states across all regions". The six new permanent members would have the right to veto just like the old ones. For this proposal, see Center for UN Reform Education, *Governing and Managing Change at the United Nations: Reform of the Security Council from 1945 to September 2013*, available at https://centerforunreform.org/wp-content/uploads/2015/07/Governing-and-Managing-Change-Whole-Book.pdf pp. 86-88.

[54] For a chronological account to the reform proposals, see *Ibid;* Lydia Swart, *Timeline UN Security Council Reform: 1992 - November 2015,* Center for UN Reform Education, available at http://centerforunreform.org/sites/default/files/Timeline%20November%202015%20final.pdf.

[55] *Ibid*; Thomas G. Weiss, *Overcoming the Security Council Reform Impasse: The Implausible versus the Plausible,* Friedrich Ebert Stiftung, no.14, January 2005, p. 7.

[56] Bardo Fassbender, *On the Boulevard of Broken Dreams: The Project of a Reform of the UN Security Council after the 2005 World Summit*, International Organizations Law Review, vol.2, iss.2, January 2005, pp.391-402, p. 394.

[57] *Ibid.*

[58] Jonas von Freiesleben, 'Reform of the Security Council: 1945-2008', p. 8.

[59] Dimitris Bourantonis, *The History and Politics of UN Security Council Reform*, Routledge, London, New York, 2005, p. 76, 77.

[60] Thomas G. Weiss, *Overcoming the Security Council Reform Impasse: The Implausible versus the Plausible,* Friedrich Ebert Stiftung, no.14, January 2005, p. 10, 11.

to bear.[61] To this, he adds the fear of the USA of a potential dissolution of the UN because the USSR, among others, was not paying its UN contribution and could have potentially lost its vote in the General Assembly. The USSR threatened to leave the UN if this happened, and in order to avoid this scenario, the Johnson administration changed course and ratified the proposed enlargement amendment.[62] Therefore, an agreement for reform is possible, provided that certain conditions fall into place, even during a period of high antagonism between great powers.

The question of the chances of success of these enlargement proposals aside, what is also important to consider is whether these reform proposals actually make the Council a better institution than it is. There is probably no doubt that it would be a more representative institution, but the question is whether this will be sufficient and, more importantly, whether an increase in membership will affect its effectiveness. At first glance, it seems that an enlarged Council "would not only be too big for serious negotiations but also remain too small to truly represent the membership as a whole."[63] It is much more likely that a bigger Council would increase the likelihood of its paralysis "because of the inertia resulting from larger numbers",[64] and because statistically it would be generally much more difficult to adopt a resolution or presidential statement than it is now.[65] For example, an enlargement with (permanent or non-permanent) members that have a traditional understanding of sovereignty would make (at least initially) the adoption of decisions related to the use of force with regard to the protection of civilian population or 'responsibility to protect' (R2P) much more difficult.[66] Thus, an enlargement of the Council may (partially) address one of the Council's deficiencies – its unrepresentativeness – but it may contribute to another – its ineffectiveness.

2. Reform of the Working Methods of the Council

The main problems that the proposals concerning the working methods of the Council attempt to address are the Council's transparency, accountability, and inclusiveness, as well as the communication it has with states that are not members of the Council and with states which are contributing troops to UN peace missions. These proposals are also trying to improve the communication between the permanent and the elected members of the Council, the decision-making process in the Council and the management and coordination of different subsidiary bodies of the Council. Unlike the reforms for enlarging the Council, which require a formal amendment of the UN Charter, the reform proposals of the working methods may be effectuated as (and are usually only calling for) an informal (intentionally agreed) reform of the Council. This may include a series of comprehensive generic decisions adopted by the Council

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[61] Edward C. Luck, *UN Security Council: Practice and Promise*, Routledge, London, New York, 2006, p.114.
[62] *Ibid.*
[63] Thomas G. Weiss, *Overcoming the Security Council Reform Impasse: The Implausible versus the Plausible,* Friedrich Ebert Stiftung, no.14, January 2005, p.16.
[64] *Ibid,* p.30.
[65] Nadia Banteka, *Dangerous Liaisons: The Responsibility to Protect and a Reform of the UN Security Counci*l, Columbia Journal of Transnational Law, vol. 54, no.2, 2016, pp. 408-413.
[66] *Ibid,* pp. 413-422.

that would formally reset its working methods,[67] or an evolutionary change in the working methods, which would be driven by the needs of each specific situation.[68]

The need to address the working methods of the Council emerged especially after the end of the Cold War, when the Council became proactive, its workload increased and the working methods in place started to appear as inadequate. The Council's working methods are regulated, as it was mentioned above, with the Provisional Rules of Procedure for which the Council decides for itself. However, the tension between the provisional (and, thus, less formal) character of the procedural rules on the one hand, and the demands for greater clarity and transparency in the working of the Council on the other, resulted in two new developments. Firstly, in 1993 the Security Council established the "Informal Working Group on Documentation and Other Procedural Questions" as a subsidiary body where discussion and analyses of the Council's working method took place.[69] Secondly, also beginning in 1993, the Council developed a new practice where it started to publish its new or modified working methods in Presidential Notes. In 2006, the Council adopted Presidential Note 507, where it practically published, for the first time, a collection of its working methods in practice.[70] This Note was updated and revised in 2010[71] and in 2017.[72]

One concrete proposal for improving the working methods of the Security Council that deserves attention is the proposal advanced by the S5 ("small five") group of states,[73] which in 2006 submitted a draft resolution calling for a more accountable and transparent Council.[74] This includes recommendations about, *inter alia,* more frequent and inclusive communication and consultation by the Council with non-member states of the Council, with the General Assembly, and with regional organizations, calls for analyzing the extent to which the Council's decisions have been implemented, as well as for the P5 to explain their veto.[75] The proposal of the S5 "led to some greater movement" in the Council and the reactivation of, by now already dormant, Informal Working Group on Documentation and Other Procedural Questions.[76] Ultimately, however, the proposal did not succeed because the P5 made it clear that they do not want any interference in how they conduct "their business", and demonstrated readiness to oppose any proposals that would regulate that.[77]

In 2013, the S5 joined with twenty-two other small and middle-size countries and formed the ACT group – Accountability, Coherence, Transparency – which also tried to address the working methods of the Council as well as the relationship with the

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[67] A so-called "thematic reform" approach to reform of the working methods. See Security Council Report, *Security Council Working Methods – A Work in Progress?*, No.1, 30 March 2010, available at https://archive.globalpolicy.org/images/pdfs/Research_Report_Working_Methods_2010.pdf p.1

[68] The so-called "incremental case specific" approach. See *Ibid.*

[69] Security Council Report, *Security Council Working Methods: Provisional Progress*, No.1, 22 January 2018, available at https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/research_report_working_methods_2018.pdf pp. 3-8,

[70] UN Doc. S/2006/507, 19 July 2006.

[71] UN Doc. S/2010/507, 26 July 2010.

[72] UN Doc. S/2017/507, 30 August 2017.

[73] Costa Rica, Jordan, Liechtenstein, Singapore and Switzerland.

[74] UN Doc. A/60/L.49, 17 March 2006, *Improving the working methods of the Security Council.*

[75] *Ibid.*

[76] Jonas von Freiesleben, 'Reform of the Security Council: 1945-2008', p.10.

[77] *Ibid,* p.19,20. To see how far the P5 are ready to go to disrupt the efforts to reform (the working methods of) the Council, see the personal account of Liechtenstein's ambassador to the UN Christian Wenaweser, of the fate of the S5 proposal in Christian Wenaweser, 'Working Methods: The Ugly Ducking of Security Council Reform' p.186, 187.

broader UN membership.[78] The ACT initiative does not focus on the enlargement of the Council but tries to improve the "internal functioning" of the Council as it is currently composed. Some of the measures proposed to make the Security Council more accountable, transparent and inclusive include: more public/open sessions of the Council, regular briefings of the wider UN membership about the consultation in the Council, more consultation with the wider UN membership, more Arria formula meetings, etc.[79]

The proposals for improving the working methods of the Council have good intentions and are steps in the right direction. But one should be mindful here because, with the current design of the Council and the privileges of the P5, these proposals can sometimes contribute to the opposite effect of the one they have intended. For instance, the calls for openness of the discussions of the Council may (further) deter the P5 from genuinely expressing their positions (and interests) and hide the real discussion away from the eyes of the public – sometimes even away from the eyes of the elected members. Former Australian ambassador to the UN Richard Butler stresses that the majority of what is happening in the Council, in his estimates around 98%, is out of reach for the public and takes place in private rooms.[80] Furthermore, since 1996, a practice has developed in the Council of not putting the draft resolutions directly to (public) vote, but negotiating the text of the resolutions beforehand.[81] As a consequence of this, the use of the veto has become rarer because the text is either already agreed, or, if an agreement cannot be reached, the draft resolution would not be placed on the Council's agenda at all. The rare situations in which a permanent member uses the veto today can be explained in two ways. Either the sponsors of the resolution have miscalculated the support they have and were hoping that even though a permanent member is not quite content with the text, it would still not oppose it; or, which is more often the case, the sponsors are completely aware (after private consultations) that the resolution will be vetoed but nevertheless decide to put the draft on public vote in order to expose (and shame) the vetoing country.[82] In this regard, one could agree with Keating in saying that "[in] many respects, on major issues, the Council has become either a vehicle for political theater, when the P5 cannot agree, or a tool for the ratification and formalization of decisions already taken privately by the P5."[83] Therefore, insisting on more openness may, paradoxically, contribute to more public farce in the Council, or it may push the real discussion even further in the background.

3. Reform of the veto

The final group of reform proposals are those that concern the permanent five's veto power. These proposals call for either the complete elimination of the veto or for a limitation of its use in some way. The rationale for these proposals is based on several arguments. Namely, the veto is anachronistic, especially in today's world of close

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[78] fACT Sheet, The Accountability, Coherence and Transparency Group*, Better Working Methods for today's UN Security Council* available at https://www.peacewomen.org/resource/accountability-coherence-and-transparency-group-%E2%80%93-better-working-methods-today%E2%80%99s-un
[79] *ibid.*
[80] Richard Butler AC, *Reform of the United Nations Security Council,* Penn State Journal of Law & International Affairs, vol.1, iss.1, April 2012, p.30.
[81] Loraine Sievers, Sam Daws, *The Procedure of the UN Security Council*, p. 299.
[82] Loraine Sievers, Sam Daws, *The Procedure of the UN Security Council*, p.299.
[83] Colin Keating, 'Power Dynamics Between Permanent and Elected Members,' at Sebastian von Einsiedel, David M. Malone and Bruno Stagno Ugarte, *The UN Security Council in the 21st Century,* p.145.

cooperation and interdependence; the veto is contrary to the principle of sovereign equality of states in the UN where each state should have an equal voice; the veto is an undemocratic tool; the veto should not be used "unreasonably", meaning not for the promotion of a country's national interests but on behalf of the interests of the international community; the veto should not be used in R2P situations, i.e. situations of mass atrocities such as genocide, war crimes, crimes against humanity; etc.

The proposals that call for a complete elimination of the veto, recommend its replacement with voting alternatives such as the use of "the simple majority, the special majority (of the entire Council), the composite majority (a majority of both permanent and non-permanent members), and the double majority (a majority of the permanent members as well as of the entire Council)."[84] Those reform proposals that advocate for the restructuring of the use of the veto, suggest firstly, that the subject matter where the veto can be used should be limited. Secondly, there should be a doubling of the veto requirement, namely, there should be a veto by (at least) two permanent members for a proposal and a single veto should be overruled.[85] Some concrete proposals in this direction include, for instance, the proposal of the non-Aligned States that calls for the veto to be used only in relation to Chapter VII decisions of the Council; the proposal by the Organization of African Union according to which a veto would have effect only if it is exercised by at least two permanent members; and the proposal by Ukraine in 1993, which states that a veto by one permanent member may be disregarded if there is a majority supporting that proposal either in the Council or in the General Assembly.[86]

The first thing that should be emphasized regarding these reforms is that they should not be aiming at eliminating the veto completely, as some recommend,[87] but at limiting its use. While it is indeed problematic, the veto is also "a recognition of the hard reality that great powers will not consent to put their power at the disposal of a sheer majority for the implementation of decisions which they do not agree with. It is a safety valve that prevents the UN from undertaking commitments which they do not agree with."[88] This being said, it does not mean that the P5 should use the veto unreasonably and not in good faith. There are rare occasions when it is evident that the use is unreasonable because the reason for blocking (or threatening to block) a measure in the Council is not related to the situation itself but to some narrow national interest of the permanent member. China's veto of the extension of UNPREDEP mission in Macedonia in 1999 because of the latter recognition of Taiwan that year, or the threat of veto by the USA on UNMIBH mission in Bosnia in 2001 if the Council did not approve for its nationals a blanket exemption from investigation and prosecution by International Criminal Court, are some examples of an unreasonable

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[84] Michael J.Kelly, *U.N. Security Council Permanent Membership: A New Proposal for a Twenty-First Century Council,* Seton Hall Law Review, vol.31, 2000, 319-399, p.340, refering to Keith L. Sellen.

[85] *Ibid,* p.340, 341.

[86] See these proposals and the respective documents where they were extended in Bardo Fassbender, *All Illusions Shattered? Looking Back on a Decade of Failed Attempts to Reform the UN Security Council,* pp. 212, 213.

[87] See for example, Hans Köchler, *The Voting Procedure in the United Nations Security Council: Examining a Normative Contradiction in the UN Charter and its Consequences on International Relations*, p.11, 13, 29-33.

[88] Speech by the Minister of Foreign Affairs of Singapore, delivered at 6 October 1993, cited in Bardo Fassbender, *All Illusions Shattered? Looking Back on a Decade of Failed Attempts to Reform the UN Security Council,* Max Planck Yearbook of United Nations Law, vol.7, 2003, 183-218, p. 213, 214.

use of the veto.[89] Granted, these situations are rare and it is difficult to establish whether a veto is used unreasonably in every situation. The point remains, however, that the veto was not granted and should not be used by the P5 to pursue their national policies to the detriment of international peace and security. Hence, reform proposals that try to limit the use of the veto should be encouraged.[90]

In the context of regulating the veto, one should also welcome the proposals that call for a mandatory explanation of the veto.[91] According to the supporters of these proposals, while offering a public justification in written form for each use of their veto – for which they do not have an obligation under the UN Charter nor under the Provisional Rules of Procedure – would perhaps not reveal the P5's "true motives and may lead to empty rhetoric", it may nonetheless "force the permanent members into a hypocrisy with at least some civilizing force".[92] To be sure, even if states are required to explain their veto, nothing could prevent them from lying or misleading the public. But there does not seem to be any harm in this proposal, and it could even offer some form of pressure on the P5 to act more responsibly, so it should therefore be pursued.

V. CONCLUSION

The first thing that can be concluded about the Security Council reform and the proposals presented and discussed in this paper, is that all three reform proposals have little chance of succeeding. It is obvious that the permanent five have placed a high bar against reforming the Council to the point where it seems like they have "reached a tacit agreement and adopted a common stance on the reform issue: to resist claims for reform and to do their utmost to prevent [even] discussion on the subject in the UN."[93] Nonetheless, despite the low probability of success, the calls for reform should continue, not only in the hope that they might eventually succeed (like the amendment during the Cold war) but also because they serve as a tool for pressure on the P5 to act responsibly and honor their privileged status and commitment to other states and the international community as a whole.

What is also noticeable is that a big part of the Council's problems, which were mentioned at the beginning of the paper, are not addressed by these reform proposals. The lack of political will for action, the lack of rapid reactionary force, the relationship with the regional organizations, the selective engagement and many other issues have not been included in the reform proposals.

Thus, it can be concluded that these reform proposals have been "principally pragmatic".[94] In other words, they appear more as fire-fighting measures rather than a

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[89] Ian Johnstone, 'When the Security Council is Divided: Imprecise Authorizations, Implied Mandates, and the 'Unreasonable Veto'' in Marc Weller (ed.), *The Oxford Handbook of the Use of Force in International Law,* Oxford University Press, Oxford, 2015, pp. 245-248, p.246.

[90] See for example the "Responsibility not to veto" initiatives. Ljupcho Stojkovski, "The Importance of the Responsibility not to Veto Debate", in Vasilka Sancin, ed., *"Are we "Manifestly Failing" R2P"*, 2017, Faculty of Law, University of Ljubljana, Litteralis Ltd, pp. 87-110.

[91] Proposal given by Germany in 1999. See Loraine Sievers, Sam Daws, *The Procedure of the UN Security Council*, p.316; Michael J. Kelly, *U.N. Security Council Permanent Membership: A New Proposal for a Twenty-First Century Council,* Seton Hall Law Review, vol.31, 2000, p.23.

[92] Nico Krisch, 'Informal Reform in the Security Council', in Ralph Wilde, ed., *United Nations Reform Through Practice:* Report of the International Law Association Study Group on United Nations Reform, December 2011, p.46.

[93] Dimitris Bourantonis, *The History and Politics of UN Security Council Reform*, p.30.

[94] Thilo Rensmann, 'Reform', p. 69.

product of some grand design.[95] However, as Rensmann points out, a reform in the proper sense should be more than just "a technique for survival. It should be a change for the better, a proactive strategy for realizing the ideals of the Charter".[96] The reform proposals should always have in mind "what common purpose the Council should serve" for the international community.[97] Therefore, the aim of any reform proposal should be "to increase both the effectiveness and the credibility of the Security Council and, most importantly, to enhance its capacity and willingness to act in the face of threats [to international peace]."[98]

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[95] *Ibid.*

[96] *Ibid.*

[97] Bart M.J. Szewczyk, *Variable Multipolarity and UN Security Council Reform*, Harvard International Law Journal, vol.53, iss. 2, 2012, 449-504, p.452.

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