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ENHANCING DIVERSITY AND REPRESENTATION WITHIN THE UNITED NATIONS SECURITY COUNCIL: THE DILEMMAS OF REFORM

Abstract

There is a broad consensus upon the need for reform to the composition of the United Nations Security Council, largely driven by perceptions of its unrepresentative nature and domination by a small group of permanent members whose status stems from the geopolitical realities which existed in 1945. However, there is little agreement upon the exact form which such reform should take, evidenced by the numerous reform proposals advanced over several decades without any resulting change. This paper considers some options for enhancing diversity and representation within the Council and suggests that the principal reason for failure to advance these objectives lies in the very diversity of the international community. Thus, Security Council reform is likely to remain a problem that can never be resolved with any lasting success to the satisfaction of the international community at large. It is suggested that efforts to enhance perceptions of the Council's legitimacy instead focus upon more realistic means of effecting change to its working methods and broadening opportunities for more states to contribute to its decision-making processes through alternative mechanisms.

Keywords: Security Council Reform – Representation – Permanent Membership

INTRODUCTION

The subject of Security Council reform has featured on the UN agenda for several decades. Driven by claims that the Council's membership is unrepresentative of the international community which it serves, in turn undermining its perceived legitimacy, various proposals

have been advanced for reform by individual states, groups of states, and regional and international bodies. While numerous suggestions have been made for changes to the Council's composition, there appears to be consensus for the proposition that the Council's size must be increased in order to extend membership, in particular permanent membership, with a view to enhancing its capacity to reflect the diversity of the international community at large. However, notwithstanding consensus upon the need for reform, reaching agreement upon the form which it ought to take has proven a barrier to its implementation.

This article explores the difficulties inherent in attempts to effect Security Council reform. We begin by briefly explaining the background to the present membership of the Council and the special status of its permanent members, before considering the factors underpinning the case for reform. Common trends and features of Security Council reform proposals are then outlined. The remainder of the article is then given over to exploring the barriers to agreement on reform. We end by pointing the way towards more realistic and achievable means through which the perceived legitimacy of the Council's composition, procedures, and decisions might be improved.

THE ORIGINS AND COMPOSITION OF THE SECURITY COUNCIL

The United Nation's founders envisaged a concert system of collective security in which the primary responsibility for the maintenance of international peace and security would be conferred upon an executive Security Council, within which the major international powers would enjoy special status in recognition of the contribution which they would be expected to make towards the organisation's work. The Council was never intended to operate purely in accordance with democratic principles, but in a manner which would permit effective action to be taken. This marked a firm departure from the system of collective security attempted by

the discredited League of Nations, in which all member states essentially enjoyed an equal status in decision-making.¹ The Security Council's privileged position was underlined by its endowment with mandatory powers under Articles 41 and 42 of the UN Charter to decide upon the imposition of military and non-military measures, in response to any threat to the peace, breach of the peace, or act of aggression which it had determined to exist under Article 39. It must be recalled that the UN Charter adopted at the San Francisco conference in 1945 was largely modelled upon proposals drafted by the major allied powers at Dumbarton Oaks the previous year, who conceived for themselves a dominant role within the new organisation predicated upon the continuation of their wartime unity.

Originally the Security Council comprised eleven members, six elected to two year terms, with permanent membership being conferred upon the US, UK, USSR, France, and China. Significantly, decisions on non-procedural matters required the assent of all five permanent members (Article 27 (3) UN Charter), effectively granting each a power of veto over any proposed action. The veto power was justified on the grounds that, 'In view of the primary responsibilities of the permanent members, they could not be expected...to assume the obligation to act in so serious a matter as the maintenance of international peace and security in consequence of a decision in which they had not concurred.'² By 1988 the veto had been exercised 121 times by the USSR and 57 by the US (Bailey, 1988: 209), causing a near permanent state of deadlock in the Council. However, its usage declined considerably in the post-Cold War era, there being just 31 vetoes in the period 1990-July 2015. The US exercised 16, Russia 13 and China 8.

The Council's composition has only altered once, when four new non-permanent seats were created in 1963 to take its overall membership to fifteen,³ to reflect the doubling of UN membership, from 51 to 114. At the same time, the General Assembly prescribed regional quotas by which non-permanent members would be elected, in order to ensure all regions of

the world would be proportionately represented.⁴ UN membership has further grown considerably since, standing today at 193. Whereas 22% of the UN's membership sat on the Security Council in 1946, even following the 1963 changes, this had dropped to 13%, and currently no more than 8% of UN member states sit on the Council at any one time.

LEGITIMACY, DIVERSITY AND REPRESENTATION: THE CASE FOR REFORM

Although the case for reform to the composition of the Security Council might be made on several grounds, essentially these all underpin the claim that its present composition undermines its perceived legitimacy. A detailed theoretical exploration of the concept of legitimacy is beyond this paper's remit,⁵ although Caron (1993: 557) has suggested that 'perceptions that [something] is "illegitimate" are difficult to describe because they reflect subjective conclusions, perhaps based on unarticulated notions about what is fair and just...At a minimum, allegations of illegitimacy manifest dissatisfaction with an organization.' Widespread dissatisfaction with the Council's present composition is certainly apparent, and the resulting perceptions that it lacks legitimacy may serve to undermine international support for its decisions and actions. A common theme of the work of the UN's working group on Security Council Reform has been support for the view that to address its legitimacy deficit, the Council needs to become more democratic, representative, accountable and effective.⁶

Three related claims may be advanced which cast doubt upon the continuing legitimacy of the Council as presently constituted. These concern the fact that the Council's composition, in particular that of its permanent membership, is essentially based on a state of affairs existing in 1945 but not reflecting contemporary geopolitical realities; that, in consequence, the Council is not sufficiently representative of the diverse interests of the international

community; and that in consequence, its approach to situations of international concern has been inconsistent and even partial.

The Council's permanent membership is a reflection of the political realities of 1945. The centrality of the USSR, US and UK built upon the victorious wartime alliance. The addition of France and China sought to add to this 'select club' key states, which would be expected to act as a counter-balance to a potentially resurgent Germany or Japan, a key concern of the time. These five states were the key players in the formation of the United Nations and the special status afforded to them at that time is perfectly understandable. However, whereas other states have subsequently emerged as global powers – including most notably Germany and Japan, the very states regarded as potential threats in 1945 (Bourantonis, 1998: 191) – the international standing of the likes of the UK and France has declined. Indeed, the UN's High-level panel, established to recommend reforms to respond to changing threats and challenges to international peace and security, itself noted (2004: para.246) that, 'the financial and military contributions to the United Nations of some of the five permanent members are modest compared to their special status.' In consequence, Winkelmann (1997: 37) has noted that the Council 'excludes member states whose global and political economic influence makes them almost natural members of the Council.' Given the Council's primary responsibility for the maintenance of international peace and security, this is a legitimate cause for concern.

More broadly, the Security Council is subject to criticism on the grounds of its unrepresentative nature. As the High-level panel (2004: para.245) noted, 'the paucity of representation from the broad membership diminishes support for Security Council decisions.' Similarly, Thakur (2004: 70) argues that the Council's 'legitimacy is increasingly clouded as it becomes less and less representative of the international community.' Just 15 of 193 member states are represented at any one time, and although the non-permanent members

are elected in accordance with a system of allocating a number of seats per region, the dominance of the permanent members skews the balance in favour of Western and European powers (Winkelmann, 1997: 37), as well as reinforcing the perception of dominance by a small number of states. This must be understood within the context of the increased attention afforded to the promotion of democracy within international affairs (Fox & Roth, 2000). It has therefore been suggested by Caron (1993: 561) that the Council's 'integrity may be promoted by providing the opportunity for representative participation.'

The purpose of a collective security system is to engender collective responses on the part of the international community of states to threats posed to any of its number, irrespective of the sources of those threats. Its success is dependent upon states' acceptance of the principle of the 'indivisibility of peace,' the idea that any threat to any other state is of concern to the international community as a whole (Claude, 1964: 229-232). Any narrow perceptions of national self-interest are sacrificed for the sake of upholding the norms enshrined within the collective security system in place, essentially those found within the provisions of the UN Charter. According to the collective security ideal, the composition of the Security Council should be irrelevant to its discharge of its functions as all UN members should be equally committed to collective action to address threats to international peace and security wherever they arise. However, in practice, it is widely felt that the Council's practice fails to live up to the ideal of collective security.

Although the power of veto enjoyed by the permanent members has been a major source of grievance on grounds of its unfairness and undemocratic nature, the Council's actions and decisions more generally – or sometimes its failure to take them – have come under attack for their inconsistency, believed to stem in large part from the body's narrow composition. This criticism was openly acknowledged by the High-level panel (2004), which suggested that 'the credibility of any system of collective security...depends on how well it promotes security

for all its members, without regard to the nature of would be beneficiaries, their location, resources or relationship to great Powers (para.40).’ However, in the panel’s view, ‘too often...Member States have discriminated in responding to threats to international security (para.41).’ For example, while it felt that the Security Council had devoted significant attention to the events of 9/11, the Rwandan genocide had been neglected. The panel went on to argue that the Council had ‘not always been equitable in its actions...[and] the ability of the five permanent members to keep critical issues of peace and security off the Security Council’s agenda has further undermined confidence in the body’s work (para.246).’ Similarly, White (2004: 14) has noted with particular reference to the Rwandan episode, that ‘There has been an unwillingness to initiate or contribute to effective action in certain conflicts...Clearly the selectivity of the Council is a major issue for its continued credibility.’ In a recent debate on Security Council reform, the representative of St Kitts & Nevis referred to the ‘bizarre situation’, whereby despite the fact that many of the current situations posing threats to international peace and security concern Africa, there is no permanent member from that continent on the Council.⁷ It is understandable that proponents of Security Council reform would envisage a more broadly constituted Council as being likely to adopt a more balanced approach to situations which threaten international peace and security. As Weiss (2005: 15) points out, ‘the imbalance in resolutions by region reflects the logic of calls for reform from some members of the Global South.’

A CATALOGUE OF REFORM PROPOSALS

Six decades of attempts at reform

Pressure for Security Council reform is not a recent phenomenon. Proposals for change date back to the early UN era (Weiss, 2005: 8-12, Winkelmann, 1997: 38-41), Padelford noting in 1960 (31-32) that in light of the organisation's growth in membership, 'substantial imbalance has developed in the representation of the various political and geographical groupings in the major elective organs...it can hardly be said that there now is an "equitable" distribution of Council seats.' This statement could just as easily have been made today. Notwithstanding the increase in non-permanent members in 1963, pressures for reform have only gathered further momentum, especially in the post-Cold War era. In 1992, members were invited by the General Assembly to submit comments on possible reform to the UN Secretary-General,⁸ an opportunity which 79 states availed themselves of.⁹ Another significant development ensued when the Assembly established an open-ended working group on Security Council reform in 1993.¹⁰ The working group has produced reports at various intervals since,¹¹ cataloguing the reform proposals advanced and identifying common themes within them. However, these have only reinforced the extent to which there remains a lack of consensus on the road to reform, leading Thomas Weiss (2005: 17) to almost sarcastically suggest of the working group that 'the entity with the lengthiest name in the annals of multilateral deliberations...risks also setting a record for continuing to go nowhere for the longest period of time.' Nonetheless, the desire for reform has not abated. In their Millennium declaration the UN membership resolved 'to intensify our efforts to achieve a comprehensive reform of the Security Council in all its aspects,'¹² and in 2004 the High-level Panel on Threats, Challenges and Change (2004: paras.249-253) weighed in on the debate by arguing for greater involvement in decision-making for those who contribute most financially, militarily and diplomatically to the UN's work. Noting the need to incorporate countries more representative of the broader membership, some specific models for possible reform were advanced by the panel (Weiss & Young, 2005: 141-144). More recently, lengthy discussion

on routes to reform took place within the General Assembly in 2013,¹³ and in 2016 widespread support for reform was again reiterated by the UN membership at large.¹⁴ However, it certainly appears to be the case that ‘while there is consensus on the need for reform in theory, the agreement breaks down as soon as any one particular formula or package is proposed (Thakur, 2004 : 71).

Major themes within reform proposals

There have been far too many Security Council reform proposals to catalogue here, but they share a number of common themes. There is virtually universal support for the expansion of the Council (Winkelmann, 1997: 45-48). While its proposed size varies across proposals, most models place this somewhere in the twenties,¹⁵ the High-level panel report (2004: paras.252-3) for example envisaging 24 members. The main divergence of views has been over the creation of new permanent seats (Fassbender, 2003: 196-206). Although some states have opposed the expansion of the permanent membership, such as the ‘Uniting for Consensus’ group, most appear supportive of the addition of a number of new permanent members to diversify representation at this level.¹⁶ There are, however, differing views as to which states should assume any newly created permanent seats. From the beginning of the post-Cold War period, Germany and Japan have been favoured for permanent membership by several western powers, in particular the US and UK, because of their substantial financial contributions to the UN. The wider membership would appear likely to concede membership to these states as a quid pro quo for the simultaneous extension of permanent membership to major powers in the currently under-represented regions of Latin America, Africa and Asia.¹⁷ It is on this basis that in 2008 the UK and France jointly declared support for new permanent seats for Brazil, India and an African state as part of a programme for expansion of the

permanent membership which would also incorporate the addition of Germany and Japan.¹⁸ Not atypical of the various reform models is one proposed by the High-level panel, envisaging six new permanent members comprising two African, two Asian, one European and one America state (2004: para.252). However, competing claims for permanent membership have been staked by several key players within these regions, making a satisfactory outcome to this process all the more difficult.

The veto power has also generated much discussion, but while there appears to be much support in principle for its abolition, there is also recognition of the fact that such a reform is unrealistic in the face of the opposition of the current P5. The High-level panel report concluded that there was no practical way of reforming the power of veto, but suggested that it should not be extended to any future permanent members (2004: para.256), a view which commands wide support.¹⁹ Reform proposals have centred instead on ways in which it may be possible to limit the extent to which the veto power is exercised (Wouters & Ruys, 2005: 21-24). Recognising the seemingly insurmountable obstacles to genuine reform of the veto, this issue is not given any real attention in the present paper, which focuses instead upon addressing questions of representation and diversity within the Security Council.

While debate has focused largely upon the expansion of permanent membership, a number of other reform proposals have generated some support. A new category of 'semi-permanent' membership of the Council has been mooted, which would entail membership exceeding the current two year term, and eight seats of four-year terms were among the proposals put forward by the High-level panel (2004: para.253). Permanent rotating regional seats have also been suggested as a means of broadening opportunities for major states within a region to participate on a rotating basis in the Council's discussions (Hassler, 2013: 152-157). It has also more radically been suggested that groups of states might be represented collectively by

regional organisations to which they belong, through the conferment of permanent seats upon the likes of the European Union and African Union (Hassler, 2013: 159-161).

THE PROBLEMS INHERENT IN DELIVERING REFORM TO FURTHER DIVERSITY AND REPRESENTATION

The effectiveness/legitimacy tension

Achieving substantive reform of the UN Security Council is a process beset by numerous difficulties. As Weiss (2003: 149) has written, although ‘most governments rhetorically support the mindless call for equity, specifically by increasing membership and eliminating the veto...no progress has been made...because absolutely no consensus exists about the exact shape of the Security Council...’ The assumption is often made in the context of discourse on possible reform, that there exists a tension between the objectives of legitimacy and effectiveness. While the former militates in favour of comprehensive reform to broaden the representative nature of the Council through its expansion, the latter cautions against the creation of a large and unwieldy body which might compromise the effectiveness of its power of action. The point was implicitly made by Russia during recent debates on reform, when suggesting that membership should not exceed twenty as the more voting members on the Council the more complex decision-making would become.²⁰

However, the goal of effectiveness should not be seen as sitting at odds with the enhancement of the Council’s perceived legitimacy, but rather a characteristic of it. As the High-level panel report (2004: paras.244-248) noted, the Council ‘was created to be not just a representative but a responsible body, one that had the capacity for decisive action...the challenge for any

reform is 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.’

Fairness, derived through diverse representation, and effectiveness are thus both fundamental elements of legitimacy. The central question to be addressed by successful reform proposals has been well articulated by Caron (1993: 567), who asks ‘how should the decision-making authority of the Security Council be allocated so as to maximize the effective use of its authority and the perceived legitimacy of that use?’ Member states face ‘the difficulty of maintaining a fragile balance between representation, legitimacy and efficiency (Bourantonis, 2005: 10).’ Achieving this balance becomes all the more problematic due to several obstacles which continue to undermine the prospects for meaningful reform.

The UN Charter framework for reform

Regardless of the obstacles to reform caused by a lack of consensus on the part of states, even broadly supported proposals may fall foul of procedural hurdles which act as barriers to change. Any reform must take place in accordance with the UN Charter’s legal framework (Fitzgerald, 2000: 338-339). Central to the process are Articles 23 and 108, which govern Council membership and Charter amendments respectively. Article 23 defines the composition of the Council and any enlargement would require amendment being made to this provision to reflect the change in size. The revised provision would need to detail the identity of any new permanent members, as well as making explicit any distinction between the status of the current P5 and new permanent members, especially if the latter class are not to be conferred with the power of veto (Zimmermann, 2012: 872-3) and/or have their status subject to review at some future date.

Article 23 (1) further requires that in the election of non-permanent members, ‘due regard [is] specifically paid...to the contribution of Members of the United Nations to the maintenance of international peace and security...and also to equitable geographical distribution’ (Geiger, 2012). Although this criterion is only to be applied by the General Assembly when electing non-permanent members, it would not seem unreasonable to suggest that it ought also be central to the allocation of any new permanent seats. Certainly the conferment of permanent membership upon the current holders of this status was driven by the belief in the immediate aftermath of World War Two that they were best placed to maintain international peace and security (Hassler, 2013: 164-167). The continued relevance of this criteria has recently been reaffirmed, the US stressing that the identity of new permanent members should take into account their ability and willingness to contribute to the maintenance of international peace and security.²¹ Having regard to states’ contributions in this regard cannot, however, be measured objectively and will always leave some scope for individual judgments to be made. For this reason, while relevant as a tool of evaluation, it can never serve as a strict legal requirement applicable to the determination of new members of the Council.

By contrast, Article 108 does impose a clear legal process to be complied with in any process of reform to the membership of the Security Council (Witschel, 2012). Under its terms, any UN Charter amendment is dependent upon the agreement of two thirds of the General Assembly membership – entailing 129 of the 193 member states – and all of the Council’s permanent members. The threshold to satisfy, therefore, is quite high. While any reform proposal will need to receive the support of a qualified majority of the international community, the backing of the P5 is even more crucial, the opposition of just one of these states meaning it will not be possible. Any package of reform will require sensitive trade-offs and compromises to stand any possibility of successful implementation, the achievability of which must be in doubt for reasons which will become apparent.

Assessing contributions to the maintenance of international peace and security

Assessments of both states' contributions to the maintenance of international peace and security and the enhancement of equitable geographical representation are difficult to make. At the outset of the UN era, the identification of the permanent members of the Security Council was largely a foregone conclusion. As the three victorious allied powers, the organisation's principal founders believed that they would be required to play the biggest role in protecting the world against a resurgent aggressor state. The addition of France and China to the permanent membership to offset a resurgent Germany or Japan can also be seen in this light. However, to ascertain 'which set of states today constitutes "great powers" ... is more difficult to specify or defend than it was in 1945 (Hassler, 2013: 168).' Arguably, three considerations are of particular relevance in this respect: (i) financial contributions to the UN budget; (ii) participation in UN peacekeeping operations; and (iii) possession of substantial military capabilities. The importance of these considerations does not require lengthy explanation, but all were emphasised in the High-level panel's report as factors which ought to inform the greater involvement of particular states in the Security Council's work (2004: para.249). Financial contributions to the UN are critical as it is its' budgetary capacity which substantially informs the scale of activities which it is able to undertake. Peacekeeping is the UN's largest resource intensive and most visibly prominent activity undertaken in support of its peace and security function. The possession of substantial military capabilities identify states as important players where military enforcement action is called for under chapter VII, the UN being reliant on the willingness of suitably able states to lead and participate in such operations.

Depending upon the emphasis placed on each of these three considerations, conclusions as to the most suitable candidates for permanent membership will differ. However, all appear to have been central to the regular election of certain states to non-permanent membership of the Council (Schrijver, 2007: 131-2). On the basis of their financial contributions to the United Nations, Germany and Japan undoubtedly have strong cases for permanent membership, Japan being the second biggest contributor to the UN budget, and Germany the fourth. However, when other considerations are taken into account their case for permanent membership does not appear as overwhelming. Their levels of participation in UN peacekeeping operations are far more modest, as are those of the current permanent members, although major financial contributors to the UN budget do essentially bear a heavy share of the costs of funding peacekeeping.²² By contrast, several medium sized and smaller powers, in Africa and Asia especially, contribute significant personnel to peacekeeping operations although many of these – for example, Ethiopia, Bangladesh, Rwanda or Nepal, the first, fourth, fifth and sixth biggest contributors of peacekeeping forces as of June 2017 – would not be considered as likely candidates for permanent membership. Of those often touted as potential new permanent members of the Security Council, however, India, Pakistan, Nigeria and Egypt all make notable contributions to UN peacekeeping, being among the top fifteen contributors. The less robust nature of peacekeeping as a projection of military power, however, means that a state's level of participation cannot serve as an indicator of its capacity to project global power and influence in respect of major crises which demand significant international pressure reinforced by a strong military capacity. Assessing an individual state's military capacity is difficult, although one indicator is arguably annual military expenditure. On recent SIPRI figures,²³ the P5 are among the top seven current spenders, followed by aspiring permanent members such as Germany and Japan in eighth and ninth place. Taken with their sizeable contributions to the UN budget, this may bolster the case for German and

Japanese permanent membership, although it must be recalled that neither state has evidenced much physical military leadership on a global level to date. The foregoing analysis demonstrates that any assessment of states' ability to contribute to the advancement of the UN's primary purpose, the maintenance of international peace and security, is fraught with a myriad of difficulties which can only lead to arbitrary judgments made on the basis of convenient political considerations rather than any objective criteria.

Measuring 'representation'

Settling on a package of reform which promotes the diversification of and opportunities for representation within the Security Council is also problematic as it requires difficult assessments to be made about the basis upon which the addition of different states will further these objectives. A number of factors can be cited which may be relevant to such assessments – the size of a state's population; its regional standing; its cultural, religious or linguistic character; and its political system (Thakur, 2004: 71-2) – yet all are problematic as indicators of the suitability of candidates for permanent membership of the Security Council. The possession of a large population might be said to add legitimacy to a state's representative credentials, and indeed most aspirant permanent members are among the most populous states (UNFPA, 2015: 120-126). India has a strong claim on this basis, being the second most populous state (Schlichtmann, 1999: 515), while Brazil, Nigeria and Japan are all among the ten most populous states. However, this does not necessarily mean that a state is particularly representative of a significant section of international society. It is often suggested that the major powers within each region could be afforded permanent membership in order to broaden its representative character, but this has two main pitfalls. Firstly, as will be seen, within all regions there are competing claims to be the most deserving candidate for

permanent membership. Additionally, a regional power will not always necessarily be representative of its region. For example, while regarded as one of the strongest claimants from Latin America, Brazil is unusual in that region as the only Portuguese speaking state in a continent of Spanish speakers. Reference to a candidate's cultural, religious or linguistic character may provide a useful basis for strengthening the diversity of the permanent membership. For example, there is currently no permanent member that has a predominantly Muslim population, notwithstanding the fact that Islam is the second biggest global religion, adhered to by almost a quarter of the world population (Pew Research Center, 2012: 21). However, this would still leave open the question of which states are best placed to serve as a voice of those populations characterised by cultural, linguistic or religious features currently underrepresented within the Council. A state's candidacy for permanent membership might arguably enjoy greater perceived legitimacy where it is a democracy. To embolden the international credentials of a state whose government does not represent its population as part of a process designed to enhance the representative character of the Security Council is likely to meet with widespread opposition. However, most aspiring permanent members satisfy this criterion, so it has limited value as a factor in reducing the number of competing claims to permanent membership. It has also been suggested that a state's economic level of development might be relevant to its aspirant permanent member credentials, China having argued that it should be a priority to increase the representation of developing countries, in particular those from Africa.²⁴ The addition of leading regional powers might be regarded as insufficient to further this objective.

Political rivalries

A genuine obstacle to determining the beneficiaries of newly created permanent seats on the Security Council lies in the fact that, 'proposals to promote certain countries to permanent membership are quickly enmeshed in political objections (Kennedy and Russett, 1995: 61).' As Stedman (2007: 936) notes, 'For each country that gains, another loses.' Disagreement arises especially where two or more aspirant permanent members from the same region have strong competing claims grounded in some of the criteria cited above. For example, while India can stake a solid claim for permanent membership by reference to both its sizeable population, regional standing within South Asia and its significant contribution to UN peacekeeping operations, it faces a regional rival in Pakistan which also contributes considerably to UN peacekeeping while promising to bolster the representation of Muslim states within the Security Council. As African powers, Nigeria and South Africa both make considerable contributions to UN peacekeeping, although they represent interests associated with different blocs of states in the western and southern regions of the continent respectively, neither being particularly representative of the African continent as a whole. Brazil may logically appear to be Latin America's strongest candidate for permanent membership based on its financial contribution to the UN budget, and large population, but may find it difficult to gain the support of many of its neighbours from which it is distinguished in linguistic terms (Bourantonis, 1998: 93-97). Some reform proposals have suggested that the recipients of new permanent seats are determined by states within the regions to which they are allocated.²⁵ While prima facie a convenient way of resolving regional squabbles, such a process would probably do little to satisfy the unsuccessful candidates that the outcome was appropriate, particularly where they enjoy the support of a significant bloc of states within the region and continue to feel that important sections of opinion remain unrepresented in the Council. The addition and identity of new permanent members cannot possibly satisfy everyone, making it difficult to disagree with Italy's

observation that more permanent seats will only benefit a few states, rather than constituting a genuine step towards a more democratic Council.²⁶

Recalling also that amendments to the UN Charter require the assent of the current P5, the addition of new permanent members will prove difficult to accomplish where intended beneficiaries are opposed by an existing permanent member. Even those states enjoying considerable support for permanent membership may struggle to overcome this barrier, perhaps especially Japan which in recent years has enjoyed a frosty relationship with China, which opposes its prospective permanent membership (Panda, 2011: 27, Qiu, 2006).

The effects of time

Assuming that any reform package could generate sufficient support from the UN membership to be implemented, the danger of any move to create new permanent members is that just as the composition of the current permanent membership is criticised on the grounds that it no longer reflects geopolitical realities, the same might equally be said at some future point of permanent members created in the present moment. Such concerns are evident in the logic of the High-level panel's proposal that any changes made to the composition of the Security Council are subject to periodic review (2004: para.255), a recommendation also made in other studies of reform prospects.²⁷ The UN's founders envisaged the possibility of periodic review of the Charter's provisions, Article 109 outlining a process for convening a conference of the membership to consider Charter amendments.²⁸ Based on the assumption that the current P5 are unlikely to relinquish their permanent member status or power of veto, any newly created permanent members are likely to represent a new status of Council member, essentially permanent but without any power of veto, situated somewhere between the existing P5 and the non-permanent members. It would not seem, therefore, particularly

radical to further condition this new status of Council membership by making new permanent seats in fact ‘long term’ seats requiring re-approval at a fixed interval, albeit one some distance into the future. As Hassler (2013: 186) has argued, ‘No change to the composition of the Council should...be regarded as permanent or unchallengeable in the future.’ Furthermore, the requirement for periodic approval of the Council’s membership arrangements is ‘arguably the strongest means to promote accountability...Only through [this] process could members of the Council be held accountable to the general membership (Hassler, 2013: 186).’ The alternative is to effectively create an ever expanding permanent membership, the legitimacy of which is called into question at periodic intervals following which yet further new permanent members are created in response to changing geopolitical realities, making the Council all the more unwieldy and ineffective.

CHANGING THE QUESTION: REALISTIC ROUTES TO REFORM

When the various obstacles to Security Council reform are considered, it should be of little surprise that despite decades of discussion and overwhelming consensus on the desirability of reform, its actual implementation has not proved possible. This begs the question as to whether the traditional parameters of reform discourse – which focus to a large extent upon the expansion of the permanent membership – need to be reconsidered. It is evident that the crux of the obstacles to reform lies in the inability of the international community to agree upon who the beneficiaries of any newly created permanent seats should be, perhaps not surprising given the various political interests at stake. As a consequence, some contributors to the reform debate have begun to focus their attention upon more realistic initiatives for starting to address the perceived ‘representation problem’ within the Security Council,²⁹ Weiss and Young (2005: 132) arguing, for example, that ‘The best hope for meaningful

change in the Security Council...lies in reinforcing pragmatic adaptations in working methods and in exploring new ones.’ It is suggested that greater attention be given to less radical, yet more realistic routes for enhancing currently under-represented voices in Security Council decision-making processes. The two main alternative approaches which might further this objective are steps to provide greater opportunities to participate as Council members for key regional powers which avoid the difficulties inherent in any proposals to create new permanent members and reforms to the Council’s working methods.

Enhanced membership of the Council

An alternative to the creation of more permanent members within the Security Council would be to afford longer terms of non-permanent membership to key states in order to improve their ability to make a greater contribution to the Council’s business. This might be effected if member states ‘consider amending the stipulation that a retiring member of the Security Council shall not be eligible for immediate re-election (Padelford, 1960: 399).’ As Stedman (2007: 937) has argued, the possibility of immediate re-election may confer de facto permanent membership on key powers who officially remain non-permanent members. Formal amendment of the UN Charter would, however, be required as the current bar to longer continuous membership for non-permanent members is found within Article 23 (2). Although this revision would hinge on garnering the support of the P5 and two thirds of the whole UN membership under the terms of Article 108 of the UN Charter, nonetheless, longer term seats may be a more realistic and achievable objective than the addition of new permanent members. Whereas the latter option becomes immediately embroiled in debates over the identity of the beneficiaries of new permanent seats, the creation of longer term seats involves a process that can be implemented purely by reference to principle. The reception of

aspirant permanent members to proposals for longer term non-permanent seats as an alternative to their preferred outcome has not been particularly encouraging, the likes of Germany, Japan, India and Brazil having rejected this middling category of membership (Stedman, 2007: 936-7). However, the benefits of an enhanced form of non-permanent membership of the Council should not be dismissed as agreement on new permanent members continues to be elusive, and those currently pushing for the acquisition of permanent member status may be ultimately persuaded of the merits of this compromise. As any new permanent members appear unlikely to be conferred with the power of veto, the benefits of permanent membership would largely derive from the ability to contribute to the Council's discussions on an ongoing basis. Longer terms of membership would go some way towards furthering this objective, if major states were able to enjoy significant uninterrupted stints on the Council.

A difficulty may arise, however, when determining which states will be entitled to serve longer terms on the Council. Although removal of the bar on re-election of non-permanent members would simply open up the possibility of immediate re-election to all member states, it would defeat the objective of accommodating the demands of major regional powers for greater status within the UN machinery if they did not benefit from election to longer spells on the Security Council. One posited solution would be to create a class of seats which rotate among a small number of major powers on a regional basis (Winkelmann, 1997: 64-66; Fassbender, 2003: 200-210). This is not without its difficulties, given that some states excluded from this class may oppose its creation, whereas aspirant permanent members may still feel it fails to confer upon them the status which they believe they deserve. Seats which rotate between two or more regional powers between which there are significant political differences may be opposed by all for the perceived advantage which they confer upon one another. While permanent representation by regional organisations has been mooted in some

circles, this gives rise to a myriad of legal and political problems which arguably makes it a non-starter (Hassler, 2013: 159-60).³⁰

Prima facie, an enhanced form of Security Council membership allowing key regional powers to make a greater contribution to the Council's work seems almost as problematic as does expansion of the permanent membership. However, given the smaller stakes involved, it may prove easier to reach some form of consensus among the UN membership on steps towards an enhanced form of non-permanent membership. As permanent membership continues to prove yet still unobtainable, those states which crave such status may be persuaded to settle for this compromise as a means of giving them the greater voice which they feel they ought have. It should be noted also that longer terms on the Council for some states may need to be delivered in conjunction with an expansion in the size of its non-permanent membership, in the absence of which there are likely to arise charges from smaller and middle size powers that they are given fewer opportunities to sit on the Council if newer or emerging major powers see the duration of their membership extended.

The Council's working methods

The difficulties posed by many of the more substantive proposals for reform to the membership of the Security Council are exacerbated by the fact that these would necessitate formal amendment of the UN Charter, a process likely to flounder in the face of the sharp divisions of opinion which exist not only upon the form which reform should take, but more significantly its intended beneficiaries. However, other means exist for extending the influence of key regional powers over the Council's activities which do not call for Charter amendment and are thus theoretically more feasible to realise (Caron, 1993: 574, Krisch, 2011). Such opportunities can be found within the working methods utilised by the Council,

given that the Council itself determines the rules of procedure by which it operates (Dolzer and Kreuter-Kirchhof, 2012).

Article 31 of the UN Charter actually permits a state that is not a member of the Security Council to participate in its debates. This only applies where the Council considers that state's interests to be 'specially affected' by matters under discussion. However, while this *prima facie* would appear to permit the input of non-members in only limited circumstances, it would be possible to interpret Article 31 to warrant the participation within Council discussions of any state with a perspective to bear on the situation at hand and potentially able and willing to play some part in the UN's response to it. In practice, Article 31 has been applied with considerable flexibility. Dolzer & Kreuter-Kirchhof (2012: 1056), in their comprehensive study of the provision, have noted that its 'practical application...has been extraordinarily liberal in the past decades. The mere application by a UN member state has almost always been deemed a sufficient reason for extending a right to participate in the discussions of the SC.' It is surely not beyond the realms of the Security Council's capacity to develop its mechanisms and processes in such a manner as to afford influential states greater opportunities to become involved within its activities on an ongoing basis.

One perception of critics of the Security Council's current functioning has been that it operates all too often in secret, with decisions being reached by its permanent members behind closed doors. The perceived illegitimacy stemming from its lack of a democratic mandate or representative character is made all the worse by the accompanying absence of transparency or accountability in its workings. The addition of new permanent members will not in itself address this shortcoming, Schrivjer (2007: 135) noting that 'It tends to be overlooked that an expanded Council will not be more democratic and representative unless its working methods provide for more transparency, accountability and inclusiveness.' From the 1990s onwards the Council has undertaken initiatives to generate greater transparency to

its activities. Significantly, in 2006 it formally agreed to make greater use of open meetings.³¹ Although unlikely to placate those states aspiring to permanent membership from continuing to pursue this goal, continued efforts to improve the degree of openness attached to the Council's business might nonetheless go some way towards weakening the overall momentum of the cause of reform to its permanent membership. Arguably, in some respects greater transparency to the workings of the Council is more critical than attainment of membership of it. While the latter outcome may serve to satisfy the aspirations of a small number of states, by enabling the UN membership as a whole an insight into the Council's decision-making processes, their opportunity to influence its agenda and the perceived legitimacy of the Security Council more generally is strengthened.

CONCLUSION

To assert that there is much consensus on the view that Security Council reform is necessary, but yet not achievable, appears somewhat simplistic. However, this is essentially a statement of fact. There is considerable agreement upon the core general features which reform ought to take on – the expansion of the Council's permanent membership, broadly in order to add new members from unrepresented regions – but the barriers to progress in the realization of this outcome appear currently insurmountable. Determining the criteria which should govern the selection of new permanent members is problematic, and deciding which states might best satisfy any such criteria even more so. Although any reform programme is never likely to satisfy everyone, where proposals for reform to the composition of the Security Council are concerned, the real fear must be that they satisfy hardly anyone. The UN Working Group itself noted in 2008 that, 'the task force has concluded that none of the written contributions

offered thus far have gathered sufficient support as a basis for launching intergovernmental negotiations.³² The working group went even further, alluding to the genuine prospect of failure in its mission, adding that ‘We could eventually conclude, therefore, that there is simply not sufficient common ground to move the process forward towards fruitful intergovernmental negotiations.’³³

Arguably, the current debate on Security Council reform attaches too much importance to the wrong questions, centred as they are upon competing claims to permanent membership. The issues which these questions give rise to appear unresolvable, and in any event, the restructuring of the Council would be likely to produce fresh criticisms in time as geopolitical realities shift yet again, as they have already since 1945. The possible compromises on reform all seem unlikely to appease the demands of those major international and regional powers to have emerged since the time of the UN’s creation.

This does not mean that realistic and worthwhile reforms to the Security Council cannot be pursued on other levels. At the outset, this paper demonstrated that the effect of the various charges levelled at the Council was essentially to call into question its’ legitimacy. It is possible to enhance perceptions of the Council’s legitimacy through various initiatives which do not necessarily require wholesale changes to its permanent membership. While this paper has not been able to point in detail to the specific steps which should be followed by way of meaningful reform, it has hopefully indicated why the more radical reform typically canvassed might be put on hold in favour of more realistic initiatives which might nonetheless serve to enhance the transparency of the Council’s workings, improve its accountability to the wider UN membership, and provide that larger membership – in particular, the biggest contributors to the UN’s activities in the maintenance of international peace and security – with greater opportunities to participate in its decision-making processes. Such efforts can go a long way towards enhancing the Council’s perceived

legitimacy in the eyes of the UN membership as a whole, and while this will not necessarily end the aspirations to permanent membership of a small handful of states, the root causes of much of the support for reform may dissipate.

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¹ This was a consequence of the League's Assembly and Council enjoying equal powers (Articles 3-4, Covenant of the League of Nations) and unanimity being required for decisions to be taken (Article 5).

² UNCIO XI Pt.I, para.9. For discussion, see Gross, 1953: 259-170.

³ GA Res 1991 (XVIII).

⁴ GA Res 1991. The Council's non-permanent membership was to comprise 5 African or Asian states, 2 Latin American states, 2 Western European or other states, and 1 Eastern European state.

⁵ For such a treatment, see Franck, 1990.

⁶ See, eg., UN Doc. GA/11450, of 7 November 2013.

⁷ UN Doc. GA/11450.

⁸ GA Res 47/62 (11 December 1992).

⁹ GA Res 48/264 (29 July 1994), Add.1, Add.2, Add.2/Corr.1, Add.3-10.

¹⁰ GA Res 48/26 (1993). The group was given the convoluted title 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.'

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- ¹¹ See, eg., the Working Group's 1996, 2001, 2004 and 2008 reports, UN Docs. A/50/47, A/55/47, A/58/47, and A/62/47.
- ¹² GA Res 55/2 (2000), para.30.
- ¹³ UN Doc. GA/11450.
- ¹⁴ UN Doc. GA/11854, 7 November 2016.
- ¹⁵ UN Doc. A/AC.247/2001/CRP.2/Add.2.
- ¹⁶ See, eg., UN Doc. A/AC.247/2001/CRP.2/Add.3.
- ¹⁷ See UN Doc. A/62/47, pp.10-12. Among the various proposals advanced in the working group's 2008 deliberations there was considerable support for the addition of two permanent members from Africa and Asia.
- ¹⁸ See UN Doc. A/62/47, at 13.
- ¹⁹ UN Doc. A/AC.247/2001/CRP.2. However, in 2008 African states argued for the extension of the veto to new permanent members. See UN Doc. A/60/L.41, para.10.
- ²⁰ UN Doc. GA/11450.
- ²¹ UN Doc. GA/11450.
- ²² On current contributions to peacekeeping operations by state, see http://www.un.org/en/peacekeeping/contributors/2017/jun17_1.pdf. As of 30 June 2017, the current P5 contributions were respectively: China: 2515 personnel, France 804, Russia 95, UK 700, US 74. Germany contributed 804 personnel, while Japan contributed a mere 4.
- ²³ For 2016 spending figures, see http://www.sipri.org/research/armaments/milex/milex_database
- ²⁴ UN Doc. GA/11450.
- ²⁵ See, eg., the proposals of the Uniting for Consensus group, UN Doc. A/59/L.68.
- ²⁶ UN Doc. GA/11450.
- ²⁷ Eg., UN Doc. A/AC.247/2001/CRP.2/Add.5
- ²⁸ Article 109. See the Razali paper, UN Doc. GA/9228. 20 March 1997, para.8.
- ²⁹ See, eg., UN Doc. A/55/47, Cluster II, which considered issues related to the Council's working methods and transparency, such as the use of public meetings, participation of non-members, meetings with troop-contributors, consultations pursuant to Article 50, and relations with other UN organs.
- ³⁰ Essentially, these concern the fact that UN membership is only open to states, which such organisations are not; regional organisations, unlike member states, do not contribute to the UN budget; only some regional organisations actually have a security remit; and there is little political support such a move.
- ³¹ UN Doc. S/2006/507, of 19 July 2006.
- ³² UN Doc. A/62/47, para.8.
- ³³ UN Doc. A/62/47, para.23.