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Reforming the UN Security Council Membership

The illusion of representativeness

Sabine Hassler



ROUTLEDGE

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Preface

The United Nations Security Council must be reformed. This is the mantra of tireless proponents for whom the Security Council in its current form is untenable. With its release from the stasis imposed by the Cold War, increased activity and involvement was initially welcomed. However, this also highlighted inadequacies in procedure and impact, so much so that calls for reform became ever more demanding; and few issues engage as passionate an advocacy as the scramble for Security Council seats. Post-Cold War activity may have borne proof that collective action can be successful, but it also made calls for reform more urgent to incorporate states that desire greater recognition as major players. The failure to reflect the changing power realities directly affects the perception of legitimacy of Security Council decisions and actions. Increasingly, the Security Council is seen as run by, and for the benefit of, a handful of elite states.

With this in mind, I embarked on writing my thesis in 2003 always keenly aware that my efforts could at any time be overtaken by real reform events. As it turned out, I need not have worried; and, as time has passed without any progress being made, I was asked to think about publishing my thoughts on Security Council reform. Routledge welcomed my proposal and encouraged me to pursue this project. Thanks to the support from both my family and the very kind anonymous reviewers of the draft, I decided to brave the waters and turn my thesis into a monograph.

This work reflects my opinions on the topic and any errors, mistakes, points of view and misinterpretations are mine alone.

Sabine Hassler
July 2012

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Abbreviations

ASEAN	Association of Southeast Asian Nations
AU	African Union
CIS	Commonwealth of Independent States
DPRK	Democratic People's Republic of Korea
DRC	Democratic Republic of the Congo
ECOSOC	Economic and Social Council
EU	European Union
GNP	Gross National Product
GRULAC	Group of Latin America and Caribbean Countries
High Level Panel	High Level Panel on Threats, Challenges and Change
ICC	International Criminal Court
ICJ	International Court of Justice
ICRC	International Committee of the Red Cross
ICTY	International Criminal Tribunal for the Former Yugoslavia
IMF	International Monetary Fund
ISAF	International Security Assistance Force in Afghanistan
KFOR	Kosovo Force
MAD	Mutually Assured Destruction
MNC	Multinational Corporation
MONUC	United Nations Organization Mission in the Democratic Republic of the Congo
NAM	Non-Aligned Movement
NATO	North Atlantic Treaty Organization
NGO	non-governmental organization
OAS	Organization of American States
OAU	Organization of African Unity
ODA	Official Development Assistance
OIC	Organization of Islamic Conference
SFOR	Stabilization Force in Bosnia and Herzegovina
TCN	Top Contributing Nation
UN	United Nations
UNAMIR	United Nations Assistance Mission for Rwanda
US	United States of America

WEOG	Western European and Other States Group
Working Group	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
WTO	World Trade Organization

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Introduction

Even if we were to create a perfect Security Council we would still have far from a perfect United Nations.¹

Recent history has shown that the collective security system of the United Nations (UN), ostensibly under Security Council ('Council') guard, is far from working satisfactorily. Discussions on the subject received particular momentum following the events triggered by the terrorist attacks on US soil on 11 September 2001. The aftermath had a tremendous impact upon the global perception of the Council as a result of the unilateral actions taken by the United States and its allies in Iraq in 2003. The Council appeared as powerless to prevent its members from taking unilateral action in this instance as it had when it failed to intervene effectively, due to internal bickering, in the former Yugoslavia in the 1990s, or as it has failed to mediate successfully in one of the longest-lasting conflicts: the situation in the Middle East. In both Kosovo and Iraq irreconcilable splits among the five permanent members meant that military action was taken without the formal sanction of the whole body, undermining its overall legitimacy. As former US Secretary of Defence William Cohen said about Council authorization for the Kosovo intervention: 'It's desirable, not imperative.'² This is to be contrasted with a statement that, at one point in time, that contended that '[T]he Security Council is not a body that merely enforces agreed law: It is a law unto itself'.³

Although the Cold War had all but suspended effective Council activity, once freed from that stasis, the surge in post-Cold War activity, marked most notably by the reaction to Iraq's invasion of Kuwait in 1990, bore proof that collective action can, to a certain extent, be successful. Yet the increased activity of the Council highlighted its inadequacies, so much so that calls for reform became ever more demanding. In fact, a virtual consensus had emerged that a fundamentally altered climate of international relations and the growing demands on the UN required a critical examination of the composition, structure and functions of all main UN organs. This was evidenced by a surge in reform proposals, not least comprehensive submissions by UN member states, to be found in Resolution A/48/264 and Addenda as well as the successive

2 *Introduction*

reports of the specialized Open-Ended Working Group.⁴ A total of 81 member states submitted their views, and few issues evoked as passionate an advocacy as the scramble for Council seats. With the Council occupying the central position in terms of international peace and security, it is little wonder that membership of it is highly sought after.

Created as one of the principal organs of the UN, the Council's permanent members represented the victors of World War II and are enshrined in Article 23(1). Even though its non-permanent membership has been enlarged once, the status quo with regard to the permanent members has remained unchanged – although not unchallenged. The Council's composition is perceived as unrepresentative and obsolete, the permanent seats as undemocratic impediments. The failure to reflect the changing power realities directly affects the perception of the legitimacy of Council decisions and actions. Increasingly, the Council is seen as being run by, and for the benefit of, a handful of states. The willingness to accept its decisions as authoritative may erode further.

In its history, the Council has projected images that have ranged from idealistic visions of a body that will ensure international peace and security and bring democracy, to the impression of a secretive society of a few powerful nations manipulating this organ to further their ends. The Cold War had highlighted the latter by rendering the Council virtually ineffective through the application of the veto power. Hence, demands for restrictions upon the use of the veto, or its complete elimination, have been made. However, none of the permanent members would benefit from such reform and therefore they are averse to any diminution of their voting powers; but then, any reform faces resistance from parties enjoying vested interests. Voting powers, and therefore the veto, also play an important role in the discussion of membership enlargement. Aspiring new permanent members expect that permanent membership includes the power of veto.

Council reform has remained in a state of 'suspended animation'⁵ and attracted increased interest after the end of the Cold War. Since then, a wealth of proposals has been put forward. In fact, the UN has never lacked proposals for reform, rather the problem has always been the absence of political will on the part of those for whom change could spell a loss of status and thus privileges. The UN's fiftieth anniversary had been seen as a historic opportunity to use the lessons of the past to forge a better framework for the future.⁶ However, the opportunity came and went without any progress having been made. The initial momentum elicited a plethora of proposals, which was followed, inevitably, by deadlock. Practically every nation has voiced its opinion. In addition to the UN's internal processes of criticism and quests for improvement, external influences on the discussion are as pertinent. Non-governmental organizations (NGOs) play key roles, notably the Global Policy Forum, which organizes under its umbrella conferences on international issues and thus unites many NGO leaders for discussion, and the United Nations Association.

The proposals put forward and discussed so far differ on almost every critical point, but all, more or less, agree that only constitutional reform would do. However, there is surprisingly little discussion on the practicalities and the overall desirability of reform. Although no one can seriously believe that a Council with 24 members can be more effective than one with 15, it has become politically incorrect to point this out.⁷ Few therefore consider the question of whether it is reform that should be aimed for, or whether better use should be made of the Council in its present form. Moreover, while appraising the subject matter, it must not be forgotten that the Council is an acting and active organ, and, despite all calls for reform, it remains its primary responsibility to maintain international peace and security. Reform, to whatever extent and whatever form it takes, would have to accommodate that fact.

Against the above background, this research aims to offer an inquiry into the Council's constitutional set-up and how far that set-up still reflects the expectations and intentions of the founding nations, while remaining flexible enough to satisfy today's, and possibly tomorrow's, membership. However, an extensive historical analysis of the Council is not attempted, also bearing in mind the limits of this work, and the reader is referred to David L. Bosco's *Five to Rule Them All* (Oxford University Press) of 2009, which charts the Council's perilous journey from inception into the twenty-first century.

Increasing dissatisfaction with the status quo calls for an inquiry into whether issues of composition and membership, voting powers and procedures constitute fundamental weaknesses that necessitate reform through UN Charter amendment or whether adjustment in practice would be more constructive. The research will explore both possibilities: first, by questioning whether constitutional reform could leave sufficient flexibility for future changes, how extensive such reform would have to be, the processes and technicalities of UN Charter amendment, and how far such reform is desirable, practicable, and would be beneficial to the overall working and effectiveness of the Council; and second, by appraising whether the UN Charter's inherent flexibility can be maximized to adjust to the times, and how that could be accomplished to the satisfaction of all interested parties.

The main hypothesis of the reform process is that only a Council that is adequately representative of the UN membership can claim to legitimately act on the members' behalf. To attract the committed political will of the members to adhere to Council decisions, it needs to be credible. Thus, if the Council's composition were reformed and its membership made more representative, it would become once more credible and thus effective. The present work is necessarily limited in scope and will concentrate on examining different proposals made in that regard by the different stakeholders, analysing their objectives and examining whether the implementation of their proposals would actually create a representative and thus more effective Council. This research is therefore concerned with representation in the

broader perspective of representative democracy and does not engage in any depth with the emerging notion that democracy is as much about legal as political principles.

The different reports and proposals on the reform of the Council are all widely scattered and have been subject to piecemeal analyses. To the best of my knowledge, however, there is no up-to-date research on the subject. Bringing the relevant issues in the different reports and proposals together provides an important and critical reference point that facilitates a more focused academic and policy exchange on the subject. This work, to some extent, carries on from the excellent research carried out by Dimitris Bourantonis, *The History and Politics of UN Security Council Reform* (Routledge, 2005). However, his work 'only' includes the reform discussions up to 2000, which is where the present work can provide an update on some of the developments since then.

From the outset, it has to be remarked that the issue of Council reform is more than purely law; it occupies, rather, the agenda of international law, relations and politics. The goals of the present inquiry take account of prevailing conditions and, in particular, the perspectives of the relevant participants. Any conflicting claims are identified, as they are conditioned by the perspective of the respective claimants. Assessment of past trends in decisions helps to identify how the community has so far responded to conflicting claims, supporting the task of projecting future trends. The development, evaluation and selection of alternatives build on the previous results to arrive at a solution in the global common interest.

The following nine chapters will chart whether Council reform is on track. Chapter 1 introduces the legal framework within which the Council was mandated with the maintenance of international peace and security. Increasingly, the question is asked whether it does enough in view of its mandate and whether expectations are met. To be able to appreciate the issues that have arisen, it is imperative to take into account its origins and the limitations placed on its powers. Thus, the historical division of its composition into two membership categories is considered in Chapter 2. Some change is inevitable and it remains to be seen how far the Council will be amenable to changes in its membership structure and composition in that regard. Chapter 3 provides an overview of what reform, especially in an institutional context, implies. The UN's own efforts are slow at best and often cumbersome. Yet, with the Council's composition, and thus its membership, having come under increasingly heavy criticism, the UN finally took the step to engage in reform discussions. One of the central charges against the Council is that it is unrepresentative of the UN membership and cannot, therefore, speak on its behalf. Chapter 4 consequently deals with the central issue of representation. It is the perceived lack of 'representativeness' that undermines the legitimacy of decisions taken by the Council and risks their legitimacy in the long term. Yet, reform proponents find themselves faced with major obstacles to progress. Although they want to achieve