

UNITED NATIONS SECURITY COUNCIL: REFORM
(IM)POSSIBLE?

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Abstract: *It is beyond dispute that the current configuration of the UN Security Council represents a snapshot, or even a daguerreotype, of an international political and legal vision that has moved away from the one first consolidated at the end of the Cold War, under the banner of the US unipolarity. In the current context, this vision is more fragmented than multipolar, with a scenario of more than two or three poles and their respective spheres of influence. The international community has therefore been confronted with the issue of Security Council reform since the 1990s. This is due to two key factors: firstly, the dissolution of the socialist bloc; and secondly, the emergence of new powers and their alliances. These developments have made the need to redraw the balance of power within the Council, established in Yalta in 1945, even more urgent. Given that the necessity for reform remains unfulfilled, this paper seeks to reconstruct the various scenarios for achieving this enlargement. The only point on which most UN members agree is that the need to change the Council's representation should be met by increasing the number of states that make up the body entrusted with the power to act to maintain international peace and security. The extensive debate on this profile also encompasses the question of whether the new members should be granted the right of veto. In light of the challenges inherent in aligning these two trajectories, the conclusions put forth a de lege lata approach as a provisional measure, contingent upon the eventual realisation of a comprehensive reform of the Security Council.*

Key words: *Security Council; United Nations; Reform; Veto Power; International Public Law*

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1. INTRODUCTION

The recent spate of international crises has underscored the imperative for the Security Council to assume a more proactive and assertive stance in order to maintain or restore international peace and security. Nevertheless, while the diagnosis is clear, the cure is not. The system of cross-vetoes not only impedes the Council's action on specific cases, but also hinders reform hypotheses aimed at enhancing the procedural dynamics of the Council. Indeed, with regard to the functioning of the United Nations (UN) apex body, the underlying problem is the stalemate between the opposing positions of the reformers and the (potential) reformed, given that all reforms of substance necessarily entail the end of privileges. This paper will present a historical reconstruction of the composition of the Security Council and its implications for the procedures for the adoption of Chapter VII resolutions of the San Francisco Charter. Subsequently, the principal proposals for reforming the Council that have been formulated in recent decades will be elucidated, with a reconstruction of the various scenarios that were envisaged in the 1990s and 2000s. The conclusions will present an account of the most

procedural developments, with a particular focus on the so-called 'veto initiative' and the US self-restraint. While these developments may not represent the hoped-for renewal, they do contribute to the erosion of the rent-seeking position of those in the Security Council, which protects its manifestly anachronistic votes. Finally, potential strategies will be proposed to circumvent the paralysis of vetoes based on articles of the UN Charter that are somewhat neglected in practice, from a perspective that seeks to align with the reality principle.

2. HISTORICAL ORIGINS, COMPOSITION, AND DECISION-MAKING PROCEDURES OF THE SECURITY COUNCIL

On 1 January 1942, the twenty-six newly proclaimed United Nations (UN) members signed the Washington Declaration, thereby accepting the principles and objectives set forth in the Atlantic Charter. This document outlined a common programme for their respective national policies, with the common aim of building a better world. Subsequently, as a result of the negotiations conducted at Dumbarton Oaks and the Yalta Conference, the UN Charter was adopted by acclamation at the 9th plenary session of the San Francisco Conference on 26 June 1945. It delineated the objectives, tenets, and institutional framework of the global organisation that had formally superseded the League of Nations in 1939. In particular, the institutional structure was based on a binary system. The General Assembly, whose functions are defined in Chapter V according to the principle of 'one state, one vote', and the Security Council, which is set out in Chapter VII as a restricted body of eleven members, four of which are permanent members (China, the United Kingdom, Russia, and the United States), later joined by France, constitute the two principal organs of the UN. In essence, this system is designed to facilitate the contribution and active participation of all countries while ensuring that the Great Powers retain their decisive say, both *de jure* and *de facto* (Hurd, 2007). The paradox was thus outlined: an organisation that claims to be representative of the entire international *societas* but in fact centralises decision-making powers in a body paralysed by the veto power of five permanent members, not *primi inter pares*, but *primi super pares* (Bargiacchi, 2005).

The number of non-permanent members was increased to ten by an amendment to Article 23 of the Statute, which was adopted by the General Assembly on 17 December 1963 and entered into force on 31 August 1965. They are elected for a two-year term by the General Assembly by a two-thirds majority, considering, on the one hand, their contribution to the maintenance of international peace and security and to the other purposes of the Organisation and, on the other hand, the criterion of equitable geographical distribution.

However, the distinction between permanent and non-permanent members is mainly relevant for the voting procedure, which is governed by Article 27 of the Charter. Although the principle expressed in Art. 2(1) of the Charter that «the Organisation shall be founded on the principle of the sovereign equality of all its Members», ex Art. 27, each member of the Council has one vote. Article 27 is in fact the mere transposition of the so-called 'Yalta formula' into the San Francisco Charter: Protocol of Proceedings at the Yalta Conference, Yalta (Crimea), 11 February 1945 «C. Voting: [...] 3. Decisions of the Security Council on all other matters should be made by an affirmative vote of seven members including the concurring votes of the permanent members; provided that, in decisions under Chapter VIII, Section A and under the second sentence of paragraph 1 of Chapter VIII, Section C, a party to a dispute should abstain from voting». However, while decisions of the body on procedural matters are taken by the affirmative vote of nine members,

decisions on «any other matter» require the affirmative vote of nine members, including the votes of the permanent members. Indeed, given the concrete modalities of participation in the work of the Security Council, the ten elected members of the Council say they feel like "tourists or short-term passengers on a long distance train" (Paul and Nahory, 2005, p. 5).

In fact, on the basis of the 'veto power' of the permanent members of the Security Council, a negative vote by one of these five countries can prevent a decision by the body. Even sometimes a silent veto (*i.e.*, the mere fear of opposition) is enough to restrain and silence the Council on matters that should otherwise have its firm and authoritative voice (the so-called 'prenatal effect of the veto') (Wilcox and Marcy, 1955). Although this phenomenon was particularly evident during the Cold War, mainly due to the obstructive attitude of the Soviet Union, its importance has not diminished since then: suffice it to think, on the one hand, of the 1999 intervention in Kosovo, which took place outside the United Nations without even a formal vote in the Council, due to the notorious opposition of Russia and China to interventions that can undermine national sovereignty, and, on the other hand, of the 2003 war in Iraq, where there was no vote in the Council due to the notorious opposition of France, China and Russia.

In any case, from a legal point of view, it should be noted that this is not a veto in the technical sense. Indeed, a *stricto sensu* veto consists of a formal act that prevents the carrying out of an administrative, legislative or political deliberation, *i.e.*, it prevents a perfect deliberation from producing its legal effects. In the event of a silent veto it prevents the Security Council's will from being formed in the bud, blocking the completion of the collegial *voluntas*.

From a statistical point of view, it is also important to emphasise that the veto has in fact been used mainly not to protect the vital interests of the five powers, as they had assured the small countries in San Francisco, but for heterogeneous reasons. The range of cases spans from preventing the accession of undesirable countries to preventing the election of an undesirable Secretary General, from blocking the accession of a country to the Statute of the International Court of Justice to opposing the expulsion of a country from the Organisation, according to the propaganda and hegemonic logic typical of the Cold War.¹

It is also important to note that the UN Charter does not provide any clarification to distinguish between questions of procedure and other types of questions. The distinction between procedural decisions and decisions of the Council on matters involving measures that could potentially lead the Security Council to consider action under Chapter VII of the Charter is only made in the Declaration of 7 June 1945, which was adopted in San Francisco by the four inviting powers (to which France was associated). The Declaration eliminates any ambiguity regarding the procedure to be followed on matters of great importance by enshrining the principle of the double veto. In cases of doubt, the preliminary question is to be decided by a qualified majority, including the vote of the permanent members. Despite the growing practice of *consensus*, which has developed on the basis of negotiations between members with the aim of avoiding a formal vote, the veto power of the permanent members remains firmly anchored in the primary peacekeeping responsibilities of these states, particularly in light of the events of the Second World War. The current configuration of the UN Security Council thus represents a snapshot of an international legal and political vision that is different both from that consolidated at the end of the Cold War under the banner of US

¹ The list of vetoes can be found at: <https://research.un.org/en/docs/sc/quick>.

unipolarism and from that which characterises the current context, which is in fact more fragmented than multipolar, reflecting a scenario in which there are more than two or three poles and their respective spheres of influence.

In light of the shifts in the international order, it is evident that there are mounting calls from various quarters for a review, if not the complete overhaul, of the current system that has become a *de facto* hegemonic privilege of the five powers. Such calls are further reinforced when, as in the case of the conflict in Ukraine, the veto of one of the permanent members prevents the United Nations from intervening in a manner that many on the international stage would prefer.

The international community has thus been confronted with the question of reforming the Security Council since the 1990s. This has been a period of significant geopolitical change, marked by the dissolution of the bloc of socialist countries and the emergence of new powers and their alliances, as evidenced by the formation of the BRICS. This urgency remains unfulfilled, as the only point on which there is consensus among UN members is that the Council's representation deficit must be addressed by increasing the number of members of the body entrusted with the power to act to maintain international peace and security. Nevertheless, the question of how this enlargement should be conducted is a topic of considerable debate, which coincides with the issue of whether new members should be granted the right of veto. Furthermore, it is notable that Article 5 of the UN Charter does not provide for a veto, which serves to further undermine the democratic nature of the Security Council. Additionally, it is important to consider that Article 23 of the Charter, which outlines the criteria for identifying the ten other members of the United Nations as non-permanent members of the Security Council, refers to an equitable geographical distribution rather than an equitable representation. This further contributes to the perceived weakness in the democratic nature of the Security Council. The first term denotes a purely geographical distribution of seats, whereas the second suggests that those elected to the Council are selected by the various groupings to represent them and safeguard their interests. Consequently, it can be inferred that the groups express a commonality of interests, if not a common identity. This compartmentalisation and fragmentation of the non-permanent members, whose decision-making autonomy is already questionable, serve to reinforce and impoverish the gentlemen's agreements that determine the electoral groups to which seats are allocated. Furthermore, it hinders the development of a process of regionalisation at the social level and regionalism at the political level. Specifically, the 1946 Gentlemen's Agreement originally allocated two seats to Latin America and one each to the British Commonwealth, Eastern Europe, the Middle East and Western Europe; the 1965 Gentlemen's Agreement allocated three. Seats were allocated to the African Group, two to the Asian Group, two to the Latin American and Caribbean Group, two to the Western European and Other Group, and one to the Eastern European Group (Geiger, 2002).

3. THE REFORM HYPOTHESES

3.1 *The 1990s*

Despite the fact that countries such as the Philippines and India had already expressed their discontent at Asia's under-representation in the Security Council during

the San Francisco Conference,² the positive development of demands for reform began in 1992 with the acceptance of the proposal by India and other 'non-aligned' countries to place the 'issue of equitable representation in the Security Council and the increase of its membership' on the provisional agenda of the General Assembly.³ Consequently, an *ad hoc* working group, the so-called 'Open-Ended Working Group',⁴ was established in 1993 with the objective of examining the various proposals for increasing the membership of the Council and the Council's working methods, with particular reference to the interaction between its members and those of the General Assembly.

Early speculation has focused on the 'quick fix' request by Japan and Germany for a permanent seat with veto power in view of their involvement in the Gulf War and increased contributions to the UN budget, a request supported by both the United States, interested in its greater political and financial involvement in the management of international security, and the proposal by the Group of Eight,⁵ which, favouring the demands of economic and geopolitical power, supports their entry as permanent members, together with three other countries from Asia, Africa and Latin America, with a parallel expansion of the list of non-permanent members. Despite the support of the UK and France, this proposal is opposed by most member States.⁶

Concurrently, India, on account of its considerable population size and active participation in UN peacekeeping operations, Brazil, in view of its pivotal economic position within the South American context, and a number of African countries (Nigeria, South Africa and Egypt), were similarly pursuing the objective of obtaining permanent membership.

A second proposal is that of the so-called Coffee Club, created on the initiative of Italy, together with Pakistan, Mexico, and Egypt. This proposal opposes the hypothesis of extending permanent membership and instead supports the extension of non-permanent seats. The group, which will gain the support of other states over time until it includes approximately 50 countries in Asia, Africa, and Latin America, proposes the creation of a new category of ten semi-permanent seats, which would be reserved for a group of thirty states. These states would be selected based on objective parameters, including geographical area of membership, demographic level, participation in peacekeeping activities, economic development, and protection of human rights. It is proposed that each group would be reviewed every ten or fifteen years to avoid the creation of new privileged statuses. In accordance with this proposal, each seat would be apportioned to three states, which would assume the role in rotation for a period of six years.

² Francis Orlando Wilcox and Carl M. Marcy (1955, at 303) recall how Philippine Ambassador Carlos Romulo, who was not present in San Francisco because his Country was not invited, would prove to be the most tenacious challenger to the Council's balances that marginalised the Asian continent. For a reconstruction of the role and aspirations of India see Akbaruddin (2023).

³ A/RES/47/62, December 11, 1992. The initiative was launched on November 23, 1992 (A/47/L.26), when India, together with 23 Countries of the Non-Aligned Movement, sponsored a draft resolution on equitable representation in the Security Council. In particular, the Countries involved in the initiative are Algeria, Bhutan, Brazil, Egypt, Guyana, Honduras, Indonesia, Japan, Liberia, Libyan Arab Jamahiriya, Lebanon, Lithuania, Malaysia, Mali, Mauritius, Mexico, Nepal, Nigeria, Paraguay, Senegal, Tunisia, Venezuela, Vietnam, Zimbabwe. In December, the partially revised proposal (A/47/L.26/Rev.1) was put forward with the support of 35 States: the new Countries associated with the initiative were Barbados, Chile, Colombia, Cuba, Gabon, Jamaica, Jordan, Nicaragua, Pakistan, Peru, Togo, Uganda.

⁴ Full name is 'Open-Ended Working Group on the Question of Equitable Representation on and increase in the membership of the Security Council and other matters related to the Security Council': UN General Assembly, A/RES/48/26, December 3, 1993.

⁵ Austria, Belgium, Czech Republic, Estonia, Hungary, Ireland, Portugal, Slovenia.

⁶ A/48/264, July 20, 1993.

The initial reform hypotheses can be identified in the Third Report of the Open-ended Working Group of 1996, which provided a systematic overview of the issues pertaining to membership and the regulation of the veto.

In regard to the first profile, which excluded mixed models and ideas that had not yet been incorporated into the political process but which had not yet been rejected by the academic community either, the proposed scenarios included the following: 1) 'status quo' proposals, also known as 'zero models' (referring to the positions of Italy, Turkey and Mexico), 2) 'plus models': parallel enlargement solutions, 3) 'regional models': modified parallel enlargement projects.

With regard to the second profile, namely the regulation of the veto power, this can be further subdivided into two distinct categories: firstly, the veto area, which concerns the potential amendments to the manner in which the power is exercised by the states that currently hold it; and secondly, the extension of the veto to the new permanent members. In particular, in the event that the power would also be extended to the new permanent members, the various alternatives that have been put forth include the following: 1) unanimity in the Council to define the subjects excluded from the veto, also known as the "double veto"; 2) a reduction in the scope of the veto; 3) an increase in the number of vetoes required to block a UN action (at least two, according to the Italian proposal); 4) the suspension of the veto on certain occasions defined by a qualified majority of the General Assembly.

In 1997, the plan, subsequently designated the 'Razali Plan', was first proposed. The 'Razali Plan', devised by the then President of the Assembly, Ambassador Ismail Razali of Malaysia, was presented as a draft resolution but was never put to a vote. It proposed an increase in the number of members of the Security Council to 24 (with the addition of five permanent and four non-permanent members) on the basis of a fair geographical distribution. Furthermore, it included the important clarification that the right of veto would be limited exclusively to resolutions to be adopted under Chapter VII and would not be extended to the new permanent members.⁷

In addition to its intrinsic material content, Razali's proposal was notably innovative (and potentially pernicious) from a procedural standpoint. Indeed, the proposal outlined three distinct stages for its implementation. The initial stage would have entailed the General Assembly passing, by a simple majority, a resolution delineating the particulars of the proposed reform, based on Razali's recommendations. In the second phase, a new resolution would have been passed by a two-thirds majority of the members present and voting in the General Assembly, thereby identifying the names of the countries involved. Ultimately, a third resolution would be required to enact the preceding two resolutions as formal amendments to the UN Charter. In accordance with Article 108 of the Charter, the resolution would have had to be passed by two-thirds of the UN membership. Subsequently, it would have been subject to the requisite ratifications by two-thirds of the members, including those of the five permanent members. By taking these three steps, with increasingly narrow majorities, but beginning with a simple majority, Razali sought to create a cumulative effect that, through successive steps, would result in the 124 affirmative votes required to pass the reform.

This domino effect would have exploited the so-called 'lavatory factor', whereby countries wishing to support a proposal or another country, without openly taking sides, go to the toilet before the roll-call vote, thus reducing the *quorum*. Indeed, the provision of a two-thirds majority of those present and voting for the second stage, as set forth in Article 18 of the Charter for 'important matters', would reduce the *quorum* required for

⁷ A/AC.247/1997/crp.1, A/51/47 Annex II.

approval, effectively circumventing the exclusion of this route in the case of Statutory amendments, which require a two-thirds majority of the members (as expressly provided for in Article 108), despite the fact that Razali has reserved this only for the third and final stage, with mere ratification functions. The Razali plan, which was met with controversy both in terms of its merits and its methodology, ultimately failed after a lengthy and complex diplomatic and procedural battle spearheaded by Italy. Many parties considered the proposed role of the President of the Assembly, which would have seen them shift from a primarily impartial referee-like position to a more active and involved player, to be untenable and implausible. In particular, Resolution A/52/L.7 established that any decision by the Security Council, even if only preparatory to a real structural reform, even on marginal aspects, must be subject to the procedure laid down in Article 108 of the Charter. This decision, which was taken in order to circumvent any potential undue influence, has, in fact, according to a heterogenesis of ends, ultimately served to impede the prospects of success for any proposed reform of the Security Council.

3.2 The 2000s

The new millennium commenced with a growing awareness of the necessity for a novel paradigm of values to inform the conduct of international relations. This awareness was catalysed by the 2001 report of the International Commission on State Intervention and Sovereignty, entitled 'The Responsibility to Protect',⁸ which denounced «the capricious use of the veto»,⁹ and called for the establishment of a gentlemen's agreement to prohibit its use in matters of vital interest. Furthermore, it recommended the convening of an emergency special session of the General Assembly, to be conducted in accordance with the 'Uniting for Peace' procedure.¹⁰

The responsibility was subsequently assumed by the then-Secretary-General, Kofi Annan, who constituted a new working group, the High-Level Panel on Threats, Challenges and Change, comprising 16 distinguished personalities. The panel was tasked with, *inter alia*, reforming the functioning of the 'largest organ of the United Nations'. In the report, entitled 'A Safer World: Our Shared Responsibility', was presented to the Secretary-General on December 2, 2004, marking the conclusion of the Working Group's work. It proposed two models for making the Security Council more 'proactive' through greater involvement of the states most closely involved in the UN budget, volunteering and/or sending troops for peacekeeping missions. In both models, the seats would be distributed among the four principal regional groups, *i.e.*, Africa, Asia and the Pacific,

⁸ *The Responsibility to Protect, Report of the International Commission on Intervention and State Sovereignty*, Published by the International Development Research Centre, Canada, 2001 Available at: https://walterdorn.net/pdf/Responsibility-to-Protect_ICISS-Report_Dec2001.pdf (accessed on 25.06.2025).

⁹ *Ivi*, p. 51.

¹⁰ *Ivi*, § 6.7: «The Security Council has the "primary" but not the sole or exclusive responsibility under the Charter for peace and security matters. Article 10 gives a general responsibility to the UN General Assembly with regard to any matter within the scope of UN authority, and Article 11 gives the General Assembly a fallback responsibility with regard specifically to the maintenance of international peace and security – albeit only to make recommendations, not binding decisions. The only caveat, meant to prevent a split between the UN's two major organs, is that the Security Council must not be discussing that issue at the same time (Article 12). To these Charter bases for General Assembly action must be added the 'Uniting for Peace' resolution of 1950, creating an Emergency Special Session procedure that was used as the basis for operations in Korea that year and subsequently in Egypt in 1956 and the Congo in 1960. It is evident that, even in the absence of Security Council endorsement and with the General Assembly's power only recommendatory, an intervention which took place with the backing of a two-thirds vote in the General Assembly would clearly have powerful moral and political support».

Europe and the Americas. In particular, «Model A provides for six new permanent seats, with no veto, and three new non-permanent seats with a two-year term, divided among the major regional areas...» and «Model B provides for no new permanent seats, but creates a new category of eight four-year renewable seats and one new non-permanent (and non-renewable) two-year seat, divided among the major regional areas...».¹¹

In the (utopian) aspirations of the report 'In larger freedom: towards development, security and human rights for all', published by Secretary General Kofi Annan in March 2005,¹² the Security Council renewal issue was to be addressed at the New York Summit scheduled for September of that same year, which was to be the largest gathering of world leaders ever. However, the only outcome of the meeting was the confirmation of the impasse between the three main groups, each with distinct positions:

- The G4 (comprising Japan, Germany, Brazil and India) sought to expand the Security Council from 15 to 25 members, creating six new permanent seats and four non-renewable, non-permanent seats (distributed as follows: Africa: two permanent seats and one non-permanent seat; Asia: two permanent seats and one non-permanent seat; Latin America: one permanent seat and one non-permanent seat; Western Europe: one permanent seat and Eastern Europe: one non-permanent seat);¹³
- The African Group, comprising 53 countries, expressed concern about their under-representation, despite being sought after for the majority of the Council's work. They also highlighted that they were the only continent without permanent representation. They hoped to play a leading role in the Security Council through the allocation of two permanent seats and three new non-permanent seats, as agreed in the 'Ezulwini Consensus' and the 'Sirte Declaration';¹⁴
- The Uniting for Consensus (UfC) group, established in 2005 by the Italian initiative to unite members of the Coffee Club, while maintaining opposition to the enlargement of the permanent membership, proposed an alternative plan. The proposal entails the addition of 20 non-permanent members to the existing five permanent members of the Security Council, with a two-year mandate. The distribution of these members is as follows: six for Africa, four for Latin America and the Caribbean, three for Western Europe, and two for Eastern Europe.¹⁵ In truth, there were a plethora of disparate positions within the UfC group, each resulting from its own position on the geopolitical chessboard. In particular, the following countries held opposing views:
 - Argentina, Colombia, Mexico: against Brazil's seat,
 - Italy, San Marino, Malta, the Netherlands, and Spain: against Germany's seat,
 - South Korea: against Japan's seat,
 - Pakistan: against India's seat,
 - Canada and Turkey: against the principle of increasing the number of permanent members of the Council (Fassbender, 2005).

As previously stated, the summit ultimately failed due to two primary factors. Firstly, internal conflicts within the African continent contributed to the failure, with Egypt, Nigeria and South Africa each seeking a permanent seat on the Council. Secondly,

¹¹ *Ivi*, at 81.

¹² A/59/2005/Add.1.

¹³ A/59/L.64.

¹⁴ A/59/L.67. In a critical sense see Mbara, Gopal, Ehiane and Olayiwola Patrick (2021).

¹⁵ A/59/L.68.

tensions between the United States and Germany over the 2003 Iraq War further complicated the situation.

Apart from a few informal meetings and a proposal by the group of the so-called 'Small Five' (S5: Switzerland, Singapore, Jordan, Costa Rica and Liechtenstein) to improve the Council's working methods through the double requirement that the Council consult all member states of the organisation on its resolutions and that the five permanent members justify any vetoes in the General Assembly,¹⁶ official work on Security Council reform resumed in 2007. Earlier that year, in fact, a round of consultations initiated by the President of the General Assembly, Bahraini lawyer and diplomat Sheikh Haya Rashed Al Khalifa, commenced. Countries were invited to participate in discussions on five key issues: the size of an enlarged Security Council; membership categories; the issue of regional representation; the veto issue; and the Security Council's working methods and the relationship between the Security Council and the General Assembly.¹⁷

The conclusions reached by the five permanent representatives appointed by the President, in their personal capacity as facilitators, were summarised in the report 'Notions on the Way Forward'.¹⁸ Based on the assumption that the way out of the impasse would have to pass through interim and temporary solutions, a four-pronged transitional approach was outlined: «1. Extended seats that could be allocated for the full duration of the intermediary arrangement, including the possibility of recall. 2. Extended seats, which would be for a longer period than the regular two-year term, but with the possibility of re-election. The length of the terms as well as the re-election modalities should be decided in negotiations. 3. Extended seats, which would be for a longer period than the regular two-year term, but without the possibility of re-election. The length of the term should be decided in the negotiations. 4. Non-permanent two-year seats with the possibility of immediate re-election». ¹⁹ In order to further develop the reform process, two additional facilitators were appointed in May 2007.

In light of the assumption that negotiations should be initiated on the basis of a text delineating all the elements under consideration and introducing beneficial reforms for the involvement of non-permanent members in the decision-making process without revising the Charter, intergovernmental negotiations on Security Council reform resumed in New York on 15 September 2008. This occurred within the context of the 62nd session of the General Assembly, which addressed the subject of 'Question of equitable representation in the Security Council, increase in the membership of the Security Council and related matters'.²⁰

The two pivotal issues of enlargement and the right of veto were thus placed on the agenda. In attempting to synthesise the positions articulated during the intergovernmental negotiations, which bear resemblance to those presented at the 2005

¹⁶ A/60/L.49.

¹⁷ Letter regarding the meeting of the Open-ended Working Group on the Question of Equitable Representation on and Increase in the Membership of the Security Council, January 24, 2007. Available at: <https://www.un.org/en/ga/president/61/pdf/letters/20070124-seccouncil.pdf> (accessed on 25.06.2025).

¹⁸ Letter regarding the Report of the Facilitators on the consultations regarding the Question of Equitable Representation on and Increase in the Membership of the Security Council and other matters related to the Security Council, A/61/47, SUP-Annex I, April 20, 2007. Available at: <https://www.un.org/en/ga/president/61/pdf/letters/20070420-seccouncil.pdf> (accessed on 25.06.2025).

¹⁹ *Ivi*, § 9, at 7.

²⁰ General Assembly Decision 62/557 'To commence intergovernmental negotiations (IGN) in informal plenary of the General Assembly', available at: <https://www.securitycouncilreport.org/un-documents/document/decision-62-557.php> (accessed on 25.06.2025).

New York Summit, we can delineate them as follows, with respect to the two primary issues, namely (a) enlargement and (b) the right of veto:

- G4:
 - a) Enlargement: envisaged for both categories of membership (permanent and non-permanent);
 - b) Right of veto: limited to permanent members for a period of at least 15 years, after which an extension could be considered;
- African Group:
 - a) Enlargement: The Group supports an increase in the number of members of the Security Council to 26, including 11 permanent and 15 non-permanent members, with distribution on a regional basis.
 - b) Right of veto: The Group is not in favour of the veto but is willing to consider a compromise that would allow each of the permanent members to have a veto.
- P5 (Group of 5 Permanent Members):
 - a) Enlargement: The United States has indicated its support for the allocation of one or two permanent seats. France has proposed enlargement to the G4, with the temporary creation of non-permanent seats, particularly for the benefit of African countries. The United Kingdom has advocated a gradual approach. China has identified three key priorities: strengthening the efficiency of the Security Council, achieving the widest possible consensus, and including currently under-represented countries. The Russian Federation has proposed limited enlargement, with a maximum of 20 members.
 - b) Right of veto: The United States has proposed the convening of a subsequent *ad hoc* conference for the purpose of discussing the right of veto with regard to the new permanent members. In contrast, the Russian Federation has also postponed consideration of the extension of the right of veto until after enlargement, and has categorically ruled out the abolition of the power in the hands of the current permanent members.
- UfC:
 - a) Enlargement: greater regional representation, but clear opposition to the creation of new permanent seats;
 - b) Right of veto: gradual restriction along several lines, as follows:
 1. Exclude it in the case of a "double veto" on the admission of new members, humanitarian interventions and actions under Chapter VI of the Statute (i.e., peaceful settlement of disputes).
 2. Make it effective only when exercised by two permanent members.
 3. Justify its use on specific issues to both the Security Council and the General Assembly.
 4. In light of the practice of the so-called "hidden veto," where the veto is not formally exercised because it is effectively prevented before an issue is placed on the agenda, it is recommended that an immediate moratorium on the use of the veto be put in place, allowing all states sitting in the General Assembly to express their views on the reform of the Security Council.

- L69 (Group of UN members from developing regions):²¹
 - a) Enlargement: It is proposed that the number of seats be increased to at least 27, with two permanent and two non-permanent seats allocated to Africa, two permanent and one non-permanent seat to Asia, one permanent and one non-permanent seat to the Latin American and Caribbean group, one permanent seat to the Western European and other group, one non-permanent seat to Eastern Europe, and one non-permanent seat to the 'small island developing States of all regions'.
 - b) Right of veto: Each new permanent seat would be endowed with veto power.

Subsequently, based on the 2008 negotiations, and precisely to circumvent the complex web of prescribed voting percentages, the General Assembly, as early as September 2015, planned cycles of intergovernmental negotiations and placed the 'Question of equitable representation on and increase in the membership of the Security Council and related matters,'²² on the agenda, with the convening of an Open-ended Working Group.²³

In a recent resolution, the Assembly resolved to pursue further intergovernmental negotiations on Security Council reform through the Assembly's informal plenary at its seventy-seventh session. This decision is a consequence of the preceding informal meetings held during the seventy-sixth session of the Assembly, as evidenced in the Co-Chairs' letter dated 16 May. Furthermore, the document entitled 'Revised Elements Document of the Co-Chairs on Convergences and Divergences on the Issue of Equal Representation and Increased Membership of the Security Council and Related Matters', which was distributed on 19 May 2022,²⁴ was also considered. This document authorised the convening of the Open-Ended Working Group on the question of equitable representation and the enlargement of the membership of the Security Council and other issues related to the Security Council during the seventy-seventh session of the Assembly. It also authorised the General Assembly to provide real-time updates on the debate and information on informal plenary meetings on intergovernmental negotiations on the question of equitable representation and the enlargement of the membership of the Security Council and other issues related to the Council through an *ad hoc* website, starting in March 2023.²⁵ This recent innovation has undoubtedly facilitated maximum transparency of the ongoing debate, allowing smaller Permanent Missions and all interested parties to participate. However, an examination of the published documents

²¹ Originally composed of 25 members from Africa, Asia and the Pacific, Latin America, and the Caribbean, it now has more than 40 members and the support of more than 80 States. The proposal is contained in Document A/61/L69 of September 14, 2007, from which the group takes its name.

²² Question of equitable representation on and increase in the membership of the Security Council and related matters: draft decision / submitted by the President of the General Assembly, A/69/L.92. Available at: <https://digitallibrary.un.org/record/802160> (accessed on 25.06.2025).

²³ After intergovernmental negotiations, the General Assembly has taken a decision at each session (decisions 63/565 B, 64/568, 65/554, 66/566, 67/561, 68/557, 69/560, 70/559, 71/553, 72/557, 73/554, 74/569, 75/569 and 76/572). The summary of positions can be found in the text that forms the basis for the Intergovernmental Negotiations on Security Council reform, which is the result of a consultative, inclusive and transparent process, the product of Member States' submissions and discussions in the IGN during the 69th session, July 31, 2015. Available at: <https://www.un.org/en/ga/screform/pdf/2015-07-31-screform-ign.pdf> (accessed on 25.06.2025).

²⁴ Letter from the President of the General Assembly – IGN Co-Chairs' Letter. Available at: <https://www.un.org/pga/76/2022/05/18/letter-from-the-president-of-the-general-assembly-ign-co-chairs-letter/> (accessed on 25.06.2025).

²⁵ Available at: <https://www.un.org/en/ga/screform/> (accessed on 25.06.2025).

shows that the positions of the various groups of members of the Organisation, with the exception of minor nuances, have been consolidated as those clearly expressed for decades, as summarised in the preceding paragraphs.

4. CURRENT DEVELOPMENTS AND CONCLUDING REMARKS

In this context of stagnation, two recent procedural innovations appear to have introduced a certain degree of dynamism.

Firstly, on 26 April 2022, in response to Russia's aggression against Ukraine two months earlier, the UN General Assembly adopted the so-called 'veto initiative'.²⁶ Resolution GA 262/76, which was co-sponsored by 83 countries, including the three Western permanent members of the Security Council, establishes that the President of the General Assembly shall «convene a formal meeting of the General Assembly within 10 working days of the casting of a veto by one or more permanent members of the Security Council, to hold a debate on the situation as to which the veto was cast, provided that the Assembly does not meet in an emergency special session on the same situation».²⁷ In accordance with the established procedure, the member holding the veto power will have the initial opportunity to speak during the forthcoming debate in the General Assembly.²⁸

Moreover, the General Assembly requests that the Security Council submit a special report on the use of the veto in question to the General Assembly at least 72 hours before the relevant discussion in the Assembly. This is contingent upon the subsequent meeting of the General Assembly²⁹ including a provisional agenda item entitled 'Use of the veto',³⁰ as stipulated in the resolution. In essence, this resolution effectively grants a permanent mandate to all Member States to engage in public discourse and critique of any veto in the pertinent forum, namely the General Assembly.

Secondly, on 8 September 2022, the United States, reacting to the Russian invasion, pledged to «refrain from the use of the veto except in rare, extraordinary situations».³¹ This self-restraint evinces an awareness of, though does not explicitly mention, two earlier initiatives to limit the veto power of permanent members. On the one hand, the Code of Conduct of the Accountability, Coherence and Transparency Group, signed by 121 UN countries, including the two permanent members France and the United Kingdom, in which the signatories «pledge in particular not to vote against a credible draft resolution before the Security Council on timely and decisive action to end the commission of genocide, crimes against humanity or war crimes, or to prevent such crimes».³² On the other hand, the Franco-Mexican initiative was initially proposed by

²⁶ A/RES/76/262, 'Standing mandate for a General Assembly debate when a veto is cast in the Security Council', April 26, 2022, adopted by consensus. See Barber (2023) and Peters (2023, pp. 87-93).

²⁷ *Ivi*, n 16, para 1.

²⁸ *Ibid.*, para 2.

²⁹ *Ibid.*, para 3.

³⁰ *Ibid.*, para 4.

³¹ Remarks by ambassador Linda Thomas-Greenfield on the future of the United Nations, September 8, 2022 Available at: <https://usun.usmission.gov/remarks-by-ambassador-linda-thomas-greenfield-on-the-future-of-the-united-nations/> (accessed on 25.06.2025); comment by Raphael Schäfer (2022).

³² Accountability, Coherence and Transparency Group, Submission to the United Nations, 'Code of Conduct regarding Security Council action against genocide, crimes against humanity or war crimes' of October 23, 2015, Annex I to the letter dated December 14, 2015 from the Permanent Representative of Liechtenstein to the United Nations addressed to the Secretary-General (A/70/621-S/2015/978).

French state representatives in the press in 2013³³ and subsequently presented at the 70th General Assembly in 2015 as the 'Political Declaration on the Suspension of the Veto in Cases of Mass Atrocities'.³⁴ This Declaration was signed by 104 UN member states and two observers, but only by France among the permanent members.³⁵ In particular, the Declaration proposed «a collective and voluntary agreement among the permanent members of the Security Council to the effect that the permanent members would refrain from using the veto in case of mass atrocities».³⁶

From a legal standpoint, it is important to note that the new mechanism established by Resolution GA 262/76 has already been activated on three occasions. In addition, the new mechanism has been activated in response to the vetoes by Russia and China of a draft Security Council resolution condemning intercontinental ballistic missile launches and nuclear tests by the Democratic People's Republic of Korea;³⁷ the Russian veto against cross-border humanitarian assistance in Syria;³⁸ and the Russian veto of 30 September 2022 on the draft resolution introduced by Albania and the United States condemning and invalidating the referendums held at the end of that month in the occupied territories of Donetsk, Luhansk, Kherson and Zaporizhzhya.³⁹ In all three cases, the debate in the General Assembly demonstrated, with the exception of a few isolated voices, that this development towards greater transparency of the UN's actions (and omissions) is a step in the right direction.

With regard to the self-imposed limitations on vetoes, it is accurate to conclude that these self-restraints do not constitute a legally binding commitment. This is because the titles of the documents in which they are set forth (code of conduct, declaration, observations) precisely reproduce the terminology of soft law acts. It is also accurate to note that both the Franco-Mexican initiative and the United States' observations include a form of self-defence clause. The former provides for an exception for "vital national interests", while the latter allows for "rare and exceptional situations", which are, however, rather undefined. Nevertheless, it is possible to posit that the legal terms of these acts fall within the scope of the aforementioned promise, which possesses binding value as a commitment made to the international community. Furthermore, it is essential to acknowledge that consistent behaviour over time, driven by a conviction in its necessity, the aforementioned provisions could thus be transformed from an act of performance

³³ Statement by Mr. François Hollande, President of the Republic, 24 September 2013 (Opening of the 68th Session of the United Nations General Assembly, available at: https://gadebate.un.org/sites/default/files/gastatements/68/FR_en.pdf (accessed on 25.06.2025); Laurent Fabius, Foreign Minister of France, 'A Call for Self-Restraint at the U.N.', New York Times of October 4, 2013. Available at: <https://www.nytimes.com/2013/10/04/opinion/a-call-for-self-restraint-at-the-un.html> (accessed on 25.06.2025).

³⁴ Signatory list, status of 13 July 2022 (not updated as of 1 April 2023), available at: <https://www.globalr2p.org/resources/list-of-supporters-of-the-political-declaration-on-suspension-of-veto/> (accessed on 25.06.2025).

³⁵ 70th General Assembly of the United Nations, 'Political statement on the suspension of the veto in case of mass atrocities', Presented by France and Mexico. Open to signature to the members of the United Nations', 2015. Available at: <https://www.globalr2p.org/wp-content/uploads/2020/01/2015-Political-Declaration-on-the-Suspension-of-the-Veto-En.pdf> (accessed on 25.06.2025).

³⁶ *Ibid.*

³⁷ Draft resolution of the Security Council proposed by the US on 26 May 2022 (UN Doc S/2022/431); vetoes by Russia and China (UN SC, 9048th meeting, May 26, 2022, S/PV.9048, 3).

³⁸ The Russian Veto was cast on July 8, 2022, in 9087th meeting of the Security Council under agenda item 'The Situation in Middle East' (UN Doc. S/PV.9087) on the Security Council draft resolution sponsored by Ireland and Norway (UN Doc. S/2022/538) of July 8, 2022.

³⁹ Draft Security Council resolution 'Maintenance of Peace and Security of Ukraine' (UN Doc. No. S/2022/720) of September 30, 2022.

and voluntary adhesion into a proper and obligatory behaviour, as a result of the classic elements of *diuturnitas et repetitio facti* and *opinio iuris ac sive necessitatis*. In light of these considerations and the potential reputational consequences of any breach of such self-restraint, it is encouraging to observe a shift in stance among the three permanent members of the Western bloc.

In conclusion, it seems that if the principal avenue for a substantial reform of the Security Council appears to be obstructed, procedural innovations may offer a viable alternative, in accordance with a rationale that duly considers the principle of reality. Indeed, recent initiatives in this direction appear to offer partial and imperfect solutions to the legitimacy issues of the Security Council, including its lack of representativeness and transparency, as well as the lack of a uniform standard of action, which results in similar situations being treated inconsistently and, in some cases, not at all. Additionally, the perverse dynamic of crossed vetoes, which often prevents the Security Council from intervening and turns it into a gendarme with blunt weapons, contributes to the Council's lack of efficiency. In the event that the requisite votes cannot be obtained for genuine reform, it is nevertheless possible to challenge the undivided authority of the veto, which is still exercised by the permanent members with the same absolute power as that of an absolute monarch.

The most convincing hypothesis is therefore to eschew utopian reform proposals (with the exception of the outcome of the 'Future Summit' scheduled for 2024, concerning the anticipated political and legal advances on the issue of representation), and instead utilise existing instruments that can circumvent the substantive obstacles through procedural approaches. In this sense, articles of the Charter that have been somewhat neglected in practice could be employed, if not indeed should be employed, such as Article 27(3) (on the compulsory abstention of a member that is a party to a decision to be taken by the Council under Chapter VI); Article 94 (allowing any party to refer the matter to the Council if a party to a case before the International Court of Justice fails to comply with a judgment); Article 99 (allowing the Secretary-General to bring to the attention of the Council any matter that he considers may threaten the maintenance of international peace and security). The full operation of these somewhat neglected articles could prompt the Security Council to reconsider its stance and provide an account of its positions to the international community and civil society at large.

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