Reforming the United Nations Security Council: Challenges and Prospects

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ABSTRACT

The United Nations Security Council (UNSC) is the principal organ responsible for the maintenance of international peace and security. Despite its importance, the structure and operations of the Council have been widely criticized for not reflecting current global political realities. Since its establishment in 1945, the dominance of the five permanent members with veto power has raised issues of inequality, lack of fair representation, and inefficiency in decision-making. This study examines the challenges associated with reforming the United Nations Security Council, including political opposition from powerful states, conflicting national interests, and the legal difficulties involved in amending the United Nations Charter. The study also discusses the prospects of reform by analyzing major reform proposals such as the expansion of membership, improved regional representation, and the regulation of veto power. The research concludes that reforming the UNSC is necessary to enhance its effectiveness, legitimacy, and relevance in addressing contemporary global peace and security challenges.

REFORMING THE UNITED NATIONS SECURITY COUNCIL: CHALLENGES AND PROSPECTS

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List of Acronyms

AU_ African Union
ECOSOC_ Economic and Social Council
ICJ_ International Court of Justice
UFC_ Uniting for Consensus
UN_ United Nations

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Abstract

This study examines the prospects for and challenges against reforming the UN Security Council based on the 2005 Reform Proposal and the three main reactions that followed (the G4, the UFC and the AU Proposals). The findings are based on review and analysis of relevant secondary sources in the main. The study found that the Security Council is in need of reform since it lacks representativeness in its membership, accountability, transparency and democracy in its working methods compounded by the anachronistic nature of veto power. Almost all member states of the UN agreed on the need for reform so as to enable the Council to reflect the 21st century realties rather than the period right after the end of the WWII. However, they could not come up with one common proposal to this end. Countries give precedence to their national interests rather than genuinely striving to bring about changes in the Council's mode of operation. It is due to this that three major proposals came to the fore following the 2005 Reform Proposal.

All the proposals examined by this study advanced their respective positions on how to reform the membership and working methods of the Council and veto power. This lack of unanimity greatly hampers the effort of reforming the Council. The study showed that bringing changes in the membership and veto power of the Council require amending the UN Charter, which is really impossible even to go beyond the first step of gaining two-thirds majority in the General Assembly (128 out of the current 192 UN member states) under a condition in which member states are divided on the issue. In addition, the position of the Permanent Five is an insurmountable impediment in the attempt to amend the Charter since the opposition of one permanent member curtails the effort. This indicates that the position of the permanent members is a cornerstone in reforming the Security Council. Even if the permanent

members support to reform the Council, it is nominal since they put various criteria on how to bring about reform so as to keep their own interests. In this respect, the feasibility of the proposals which call for reforming membership category and veto power is farfetched. Meanwhile, there is the possibility to effect changes in the working methods of the Council since doing so does not require the awkward process of amending the UN Charter. Finally, the study comes up with the conclusion that it is unlikely to reform the membership of the Council particularly the permanent category and veto power in the near future.

CHAPTER ONE

INTRODUCTION

1.1 Background of the Study

The United Nations (UN) was setup after the end of the Second World War (WWII) in 1945 to replace its ill-fated predecessor, the League of Nations. It was founded with the aim of protecting succeeding generations from the scourge of war on the basis of the principle of collective security. Unlike the League of Nations which collapsed after existing for two decades, the UN stayed more than half a century without serious threat through out these years (Khanna, 2004:390).

The Charter of UN, which was signed in San Francisco on June 26, 1945 (came to force on
October 24, 1945), provided six principal organs. These are: the General Assembly, the
Security Council, the Economic and Social Council (ECOSOC), the International Court of Justice (ICJ), the Secretariat, and the Trusteeship Council. The Trusteeship Council lost its relevance after the process of decolonization was completed (Ibid: 383 and UN Charter, Article 7(1)).

Among the organs of UN, the Security Council is the most powerful organ. It has the responsibility for maintenance of international peace and security and it passes resolutions binding on member states. The Permanent Five, namely China, France, Russia, the United Kingdom (UK) and the United States (US) wield significant power through their exercise of veto, which includes other privileges such as filling positions in the major UN Secretariat posts, the ICJ, and other decision making bodies of the organization (Kugel, 2009:2).

The Security Council suffers from a quadruple legitimacy deficit in terms of perfor-

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mance, representation, procedural arrangements and accountability. Its performance legitimacy suffers from two angles like an uneven and selective track record. It is unrepresentative from almost any point of view, since only few members of the organization play leading roles. Its procedural legitimacy is suspected on grounds of lack of democratization and transparency in decision making. The Security Council is not answerable to either the General Assembly or the ICJ and hence is not seriously accountable. The five permanent members, with their vetoes and many special privileges, now face widespread criticism as self-appointed oligarchy (Thakur, 2006:302). Due to these and other illegitimacies, there is a need to reform the Security Council. Though none is practical yet, different proposals have been made to redress inadequacies in this respect.

The call to reform the Security Council began in the early 1990s, in response to the Council's controversial action and inaction (with regard to Iraq and Rwanda for example) and the shortfall in its performance in the post- Cold War period. Critics made demands that the Council should be more representative, accountable, legitimate, democratic, transparent, effective, fair and even handed. Such demands seem reasonable, but they are not easily compatible and achievable (Paul and Nahory, 2005:1).

Responding to the demands for reforming the structure and mode of operation of the Security
Council, the General Assembly, in December 1993, decided to establish what is known as the
Open Ended Working Group on the Question of Equitable Representation and Increase in the
Membership of the Security Council and Other Security Council Matters (the Working Group for short) (Muller, 1997:188). In 2004, the High- Level Panel on Threats, Challenges and Change, which is a panel of sixteen eminent persons appointed by

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the then Secretary General Kofi Annan, presented its Report. Among the recommendations made by the HighLevel Panel, the recommendation concerning the enlargement of the Security Council has attracted the greatest attention internationally. The High- Level Panel Report was followed by the Annan Report called In Larger Freedom: Towards Development, Security and Human Rights for All. This Report consisted of the 2005 Reform Proposal of the Security Council (Blum, 2005:632).

After the 2005 Reform Proposal was submitted, different reactions came from members states of the UN and three major proposals were brought to the fore. The Group of Four (G4) (Germany, Brazil, India and Japan) presented their option of reforming the Security Council.
Another alternative was brought by a group called Uniting for Consensus (UFC), that was opposed to the one forwarded by the G4. The African Union (AU) also presented its position regarding the need for reforming the Council. However, no proposal was tabled for vote and the issue continued to linger (Ronzitti, 2010:9).

1.2. Statement of the Problem

As written in the article, Theses towards a Democratic Reform of the UN Security Council, by James Paul and Celine Nahory, reforming the Council has been sought since the aftermath of the end of the Cold War. It was argued that the structure of the Council is a result of the world of 1945 and its composition is not suited for the challenges facing international peace and security at present. Its controversial action compounded by its inaction in handling different situations has strengthened the voices for reform. As Paul and Nahory state the Council "too often seems the captive of great power politics with little connection to the needs of the world's people. The Council remains inflexible, oligarchic and out of touch of the world" (ibid).
The Security Council's current membership, particularly in the permanent category, clearly does not provide for equitable geographical representation and does not re-

flect today's shifting geopolitical realities. In addition, the Council has to make great strides in order for it to become more democratic in its functioning and more transparent and accountable to the public and UN member states (Kugel, 2009:2). Most countries support the move for reforming the Security Council and they agree that it lacks legitimacy, effectiveness, representativeness, accountability and transparency in its working methods. However, they failed to come up with one solution to bring the aforementioned issues that reforming the Council requires. Hence advocates of reform could not reach consensus with regard to the issue.

It is a fact that countries give precedence to their national interests and prestige in their aspiration to qualify as members of the Security Council rather than striving to bring about the required changes that the Council lacks. It is also true that the Permanent Five often tend to block any change in the structure and mode of operation of the Council. It is due to this divergence in the position of member states of the UN that different reactions came to the fore following the 2005 reform proposal. These include the proposal by the G4, the position relating to the UFC group, and the AU position on the issue of reforming the Council.

This study focuses on the 2005 Reform Proposal and the three responses that followed (the G4, UFC and AU positions).

1.3 Objectives

The study seeks to address the following general and specific objectives.

1.3.1. General Objective

To assess the challenges and prospects of reforming the UN Security Council focusing on the 2005 Reform Proposal and the three main reactions that followed.

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1.3.2 Specific Objectives

- Evaluating the feasibility of reforming the Council
- Explaining the reasons behind the need for reforming the Security council
- Reviewing the attempts made so far to reform the Council
- Describing the proposals made for reforming the Council and examining the challenges facing efforts to this end, and
- Analyzing the different proposals made aimed at reforming the Council and discussing the prospects in this regard

1.4 Research Questions

The following research questions are posed to address the issues raised as objectives of the study.

- What are the major reasons behind the quest for reforming the Council?
- Which are the most pertinent and feasible proposals advanced for reforming the Council?
- Which criteria should be used to ensure the selection of regions/countries to qualify as permanent or non-permanent members of the Council? Why?
- Which of the structures and procedures of the Council should be reformed? Why?
- What are the prospects for and possible challenges against reforming the Council?

1.5 Methodology and Methods of Data Collection

1.5.1 Methodology

The methodology that the researcher employed in conducting the study relates to the qualitative approach that is informed by the data collected on the theme of the study. The qualitative approach is a general way of conducting qualitative research

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in which the data are often expressed in the form of descriptions. The qualitative approach attempts to increase understanding of why of things are, the way they are in the social world and why people act the way they do (Marshall and Rossman, 1999). The study is more of descriptive so as to establish an understanding of the problem and the approach could be more suitable to address the objectives of dealing with the stated problem and the research questions. According to Thomas (2005), the aim of the qualitative approach is to describe certain aspects of a phenomenon with a view to explain the subject under study so as to broaden the understanding of the issue involved. The qualitative approach is important for a research that is based on written documents such as books, journal articles, letters, official reports and historical documents (Ambert, et al, 1995 and Patton, 1990).

1.5.2 Methods of Data Collection

Data that informs the study is based on secondary sources (books, journal articles, seminar and workshop reports, and the UN documents and publications) relevant to the subject examined. Moreover, the Secretary of the AU Peace and Security Council was solicited through unstructured interviews.

1.6 Scope of the Study

The Study is delimited to the challenges and prospects to reform the UN Security Council based on the 2005 Reform Proposal and the three responses that followed.

1.7 Significance of the Study

The necessity of Security Council reform gained currency since the last two decades. Broad consensuses exist among most members of the UN that the Security Council should be reformed, though they did not agree how the reform might be achieved.

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This study seeks to provide information about challenges against and prospects for reforming the UN Security Council relying on the 2005 Reform Proposal and the three responses that followed. It is hoped that the study could contribute to the existing body of knowledge on the subject and serve as a reference material for those who may be interested to conduct further research on the matter.

1.8 Limitations of the Study

Time constraint was the main limitation of the study. The study requires reviewing several articles, resolutions, reports and books and this entailed pressure on the available time. Lack of recent books and journals on the issue examined coupled with interruption of internet connection to download journals and related documents were also a serious limitation in conducting the study. Moreover, the inability to collect primary data through interview, questionnaire and/or observation was the other problem that faced the researcher. In view of this, the researcher strived to fill this gap by using the resolutions of the UN and the reports of the permanent missions of member states of the UN. Delays in accessing the allocated funds for conducting the study compounded by shortage entailed additional constraint.

1.9 Structure of the Study

The paper consists of five chapters. Chapter one is the introductory section highlighting the background, statement of the problem, objectives, research questions, methodology and methods of data collection, scope of the study, significance of the study, limitations and structure of the study. Chapter two is literature review. This chapter provides an overview of the Security Council followed by its powers and functions. The chapter also deals about the reasons behind the need to reform

the Council. Moreover, the chapter focuses on the different proposals submitted to reform the Security Council. Chapter three is major findings and analysis part by raising the issues of: expansion of the Council's membership, reforming its working methods and veto power. Chapter four focuses on the prospects for and challenges against reforming the Security Council where as chapter five is the concluding section.

Chapter II Literature Review

This chapter consists of four sections. The first is overview of the Security Council highlighting the historical background of the Council followed by functions and powers of the Security Council in the second part of the chapter. The third section deals about reforming the Security Council basically reviewing the main problems that caused the need for reforming the Council raising the background of the Council, veto power, non- participation of UN member states in the Council's decision making, lack of transparency in the Council's meetings and US hegemony. The fourth portion which is the last part of the chapter reviews the proposals submitted to reform the Security Council within two sub- sections: the 2005 Reform Proposal and UN member states reactions.



Figure 1_ Typical Photo of UN Security Council_

Source: http://www.un.org/Docs/sc/images/sc-small.jpg

2.1 Overview of the Security Council

When the UN Charter was being drafted, the end of the WWII was still anticipated with easily discernible winners and losers. The intention of the victorious states was to manage the international system through a global organization. It was also perceived that the international order inaugurated in 1945 could be better sustained by a variety of international organizations. In the realm of global peace and security, this objective could be more effectively served by the creation of a universal organization, through the institutional framework of which cooperation among the allies would continue uninterrupted. Hence, the UN was setup with the Security Council, the General Assembly, the Secretariat, the ECOSOC, the ICJ and the Trusteeship Council(565) as its principal organs and an array of other specialized agencies dealing with specific issues (Boyd, 1946, Hiscocks, 1973 and Libal, 2007).

The draft of the UN Charter (worked out in September, 1944 by the representatives of China, Great Britain, the Soviet Union, and the US at Dumbarton Oaks in Washington, D.C) fixed the number of members of the Security Council at eleven- five permanent and six non- permanent, amounting to a deliberately slight preponderance of the non- permanent members and the general shape of veto power for the permanent members was agreed upon (Katzin, 1959:5 and Hurd, 2007:86). This was enshrined in the UN Charter providing that the Security Council was to be composed of eleven members of which five would be permanent members- the US, the Soviet Union, Britain, France(566) and China, all of which have the power of veto and

(565) The Trusteeship Council suspended its formal operation since November one 1994 (Libal, 2007:23).

(566) France, having surrendered to the Nazi– Germany in 1940, was not among the participants in the Dumbarton Oaks Conference of September 1944; nor was it one of the sponsoring powers of the San Francisco Conference of April- June 1945, which adopted the Charter and established the UN. Its eventual inclusion among the Permanent Five was apparently prompted more by the nostalgia of Western statesmen than by considerations of real politik (Blum, 2005: 636).

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the other six would be non- permanent members elected by a two – third majority of the General Assembly[567]. To this end, due regard was given to the contribution of members of the UN to the maintenance of international peace and security and to other purposes of the organizations and to equitable geographical distribution (Article 23).

The voting procedures of the Security Council were agreed on the basis of the tripartite Yalta
Conference between Roosevelt (USA), Churchill (UK) and Stalin (Union of Soviet Socialist Republics (USSR)) in a meeting that took place between February 3 and 11, 1945. The agreement stipulated that each member of the Security Council should have one vote (Bhuinya, 1970:62). This was enshrined in Article 27 of the Charter, as adopted in San Francisco on June 26, 1945. Under this article, all decisions of the Council required seven affirmative votes (until 1965) on substantive matters[568] including the concurring votes of the permanent members (ibid).

The dramatic increase in the number of African and Asian members of the UN in the period that lasted between 1960 and 1963 made the group of Afro- Asian states,

(567) The General Assembly faced considerable problems in filling a vacancy on the Security Council on two occasions. The first time was in 1979, when Cuba and Colombia competed for the non– permanent seat, but neither of them was able to secure a majority in the General assembly. Only after the two contenders withdrew from their candidature in early 1980, Mexico was elected to the vacant seat. Nonetheless, the Security Council, for the first time commenced its meeting in January 1980 short of its fill complement, whereby a number of questions about the competence of the not– fully composed Council were raised. See, W. Michael, Reisman, (1980), "The Case of the Non–Permanent Vacancy", The American Journal of International Law, vol. 74, pp.–907913. The story repeated itself in 2006 (and interestingly again in relation to the Latin American seat), when the two contenders, Guatemala and Venezuela eventually after 48 ballots had to resign in favour of Panama, which was elected as a consensus candidate to represent the region (GA/10528).

(568) Veto Power of the permanent members does not apply for procedural matters .There is only a need to have seven votes before the year 1965 and nine votes since this year. However, the question of how one distinguishes between procedural and substantive matters has been a highly controversial issue. In the statement of the sponsoring powers at San Francisco, it was declared that the issue of whether or not a matter is procedural is itself subject to veto (Shaw, 2008). The distinction between procedural and substantive matters implies that permanent members are entitled to double veto–one veto to determine whether an issue is substantive or procedural and another to decide the fate of the issue itself if it is decided to be substantive. Furthermore, although permanent members are technically not supposed to vote on disputes in which they are involved, in reality, they invariably exercise the veto power under such circumstances (Afoaku and Ukaga, 2001).

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which by 1963 constituted more than half the UN's membership, more assertive and demanding to have change in the composition of the Security Council. Accordingly, they tabled their own proposal, which called for an increase of the non- permanent seats from six to ten and a change in the number of votes required for the Security Council decisions from seven to nine. Their proposal also called for the replacement of the earlier gentlemen's agreement(569) of 1946 and the election of non- permanent members possibly on the basis of a newly agreed formula by considering regional distribution. According to this formula, the ten non- permanent seats would be allocated as follows: five would be drawn from African and Asian states, two from Latin American and Caribbean states, two from Western Europe and others and one from Eastern Europe. Their proposal, which was tabled in the form of a draft resolution in the General Assembly, was approved by an overwhelming majority in 1963[6], while France and the Soviet Union voted against, UK and US abstained and China (Taiwan) voted in favour.

The amendment eventually came into effect in 1965 when all permanent members of the

Council and two- thirds of the members of the UN ratified according to the requirements of Article 108 of the UN Charter (Ronzitti, 2010: 4, Bourantonis, 2005:22 and Voeten, 2005:189).

In addition to the dissatisfaction with the size of the Council and its composition regarding the non- permanent seats, some reservation was aired concerning the permanent seats. Various critics claimed that the Permanent Five no longer reflected the real power relations of the 1960s and 70s directing their challenges especially

The first session of the General Assembly was held in London from January 10 to February 14, 1946. (569) The agreement reached on the distribution of non– permanent seats was called the Gentlemen's Agreement. Accordingly, the non– permanent seats were allocated to five regions: one to each of the Commonwealth, Western Europe, Eastern Europe, Arab and two for Latin America. There was no Asian seat nor was a seat for the African members of the UN. Though, Egypt was elected as non–permanent member, it was representing the Arab region (Laves and Wilcox, 1946 and Kelly, 2000:327). [6] Resolution 1991 A (XVIII) (17 December, 1963

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against the Republic of China (ROC) (Taiwan) (Lee, 1993:43). As a result, Taiwan's[570] seat at the UN including the permanent seat at the Security Council was taken by People's Republic of China (PRC)[571] in 1971.

A de facto reform of the Security Council occurred in 1991 when Russia occupied the Soviet seat. In 1991, the existence of USSR as subject of international law came to an end due to its disintegration. On December 24, 1991, the Russian Federation, with the consent of the other republics of the former Soviet Union and other UN member states, took over the Soviet seat at the UN including the permanent seat on the Security Council (Blum, 1992a: 356).

2.2 Functions and Powers of the Security Council

The overriding role of the Security Council reflected the strong desire of the founders of the UN to see the UN play an increasingly central role as the leading world forum for managing threats to international order (Weiss and Kalbacher, 2008 and Cassese, 2005). To this end, the UN Charter[572] recognized the Security Council as the organ with the primary responsibility for maintenance of international peace and security (Article 24), the maintenance of which would be realized in three ways. As outlined in Article 26 of the UN Charter, the first concern is the formulation of plans for the regulation of armaments. Second , international disputes or situations which were likely to endanger international peace and security would be settled in

(570) The question of PRC's membership of the UN is not a question of admission. China has been a member of the UN since its foundation. It is a question of representation; of which government should represent the country in the organization. The scenario lingers for more than two decades. The issue gained solution in 1971 during Nixon's administration (president of US from 1969–74). Particularly, the step taken by the Secretary of state Henry Kissinger by visiting China in 1971 ensured expulsion of ROC and secured representation of PRC. In addition, the proposed visit of Nixon to China (he visited in February 1972) encouraged members of UN to vote in favour of PRC (Luard, 1971, Bailey, 1971 and Khanna, 2004).

(571) (Resolution 2758 (XXVI) (25 October,1971

(572) The Charter, however, doesn't expressly state which entities the Council can use in its effort to ensure the maintenance or restoration of international peace and security. In the vast majority of cases where the Council has imposed economic or military sanctions against a state or non- state entity, the Council has attempted implementation delegating its Chapter VI powers to UN principal organs, UN subsidiary organs, UN member states and regional arrangements or agencies with an enforcement capacity which the Council at present lacks; in particular the Security Council lacks a military force which it can use directly to carry out military enforcement action. But, the Council is proscribed from delegating two types of

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a peaceful manner following methods set out in chapter VI of the Charter, although decisions of the Security Council would be framed as recommendations and as such could have no legally binding effect on the members of UN.

Third, the Security Council was empowered to take enforcement action to deal with threats to peace, breaches to peace agreements and acts of aggression. According to Chapter VII, two distinct forms of enforcement measures are available namely those stipulated in Article 40 and 41, not involving the use of armed force, and those described in articles -4245 involving military action by air, land and sea forces. The Security Council would have a monopoly on enforcement measures subject to two exceptions: first, the exercise of individual or collective self- defense (Article 51) and second, enforcement action taken by regional arrangements or agencies authorized by the Security Council (Article 53).

Chapter VII of the UN Charter provides for a system of collective security (centered on
Security Council) for the enforcement of peace, which was more advanced than that of the League of Nations. Evidently, the clear conviction of the UN founders was that the UN, as an international security organization should have teeth, which means increased power of enforcement against states violating peace. The experience of the League of Nations in the inter war period had shown that international bodies which lack muscle and which are confined only to passing resolutions and issuing condemnations against aggressors are doomed to loose their credibility and legitimacy (Schweigman, 2001 and Shaw, 2008). Decisions of the Security Council acting under Chapter VII were framed as resolutions in the sense that they were to be binding on all the member states regardless of their own vote or of their participation in the Council. The provision for the binding character of the Security

Chapter VII discretionary powers. First, the determination that a threat to, or breach of the peace has come into existence or has ceased to exist. Second, the delegation of an unrestricted power of command and control over a military enforcement force (Sarooshi, 1999).

Council's decision was inserted in to the Charter with a view to increasing the moral pressure on member states to implement the decision of the Council (Bourantonis, 2005:4 and Schweigman, 2001). Finally, there is another function of the Security Council that was not foreseen in the UN Charter but which was developed later in practice: to authorize the launching of peace keeping operations[573] which were not viewed as the pure military enforcement action envisaged under Chapter VII (Libal, 2007, Schrijver, 2007 and Darrow, 1995:290).

Apart from the aforementioned primary functions bearing on international peace and security, the Security Council was given the responsibility to carry out jointly with the General Assembly a number of important functions related to the internal operation of the UN. On certain important matters, the General Assembly can not make a decision without a favorable recommendation from the Security Council (Hanhimaki, 2008). Such issues include the process of electing the Secretary General (Article 97); the admission of new states to the UN (Article 4); the suspension of the exercise of the right and privileges of membership (Article 5); the expulsion of member states from the UN (Article 6), and the accession of non- members of UN to the statute of ICJ (Article 93).

(573) For further elaboration, see Mats Berdal, (2008), 'The Security Council and Peacekeeping', in Vaughan, Lowe, Adam Roberts, Jennifer Welsh and Dominik, Zaum, eds, The UN Security Council and War: The Evolution of Thought and Practice Since 1945, Oxford: Oxford University Press, pp. 175-204.

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2.3 Reforming the Security Council: The Main Problems

2.3.1 Background

The Charter of UN was signed in San Francisco by only 50 states[574]. As the UN is open, according to Article 4, to all peace- loving states which accept the obligations set out in the Charter and in the view of the UN itself are able and willing to carry out those obligations, the number of members increase from time to time. The culmination of the process of decolonization in the 1960s and the consequent admission to the UN of a large number of newly independent states, mostly from Africa and other parts of the developing world, led to exponential growth of UN membership that culminates in significant alteration of the organization's geopolitical synthesis. The break up of the Soviet Union and Yugoslavia during the immediate post- cold war period led to the creation of a host of new states that entailed significant increase in the membership of the UN. At the dawn of the 21st century, the UN comprises nearly every country of the planet. One hundred ninety two states are members, a number which is nearly four- fold of the original members in 1945 (Blum, 1992b, Weiss and Kalbacher, 2008 and Cassese, 2005:318).

The demise of the Soviet Union drastically diminished the military might as well as the economic and political capabilities of one of the victors of WWII, thus putting into question its international influence. Today Russia as well as China (becoming economic super power since recently compounded by military might) can justify their seats as permanent member of the Security Council mainly on account of population and territorial size including their nuclear capability. On similar grounds some countries from the developing world, such as India, have based their claim to become permanent members. Furthermore, with the end of the Cold War, Britain

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Poland did not attend the San Francisco Conference, because the composition of its new government (574) was not announced until June −28 too late for the conference. A space, however, was left for the signature of Poland as one of the original signatories of the Declaration by UN. Poland signed the Charter on October 15, 1945 thus becoming one of the original members as the 51st member (Katzin, 1959:6).

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and France saw their power further diminished. The British and French claims to a permanent seat in 1945 by dint of their colonial possessions, or as a result of their experience in resolving post- colonial disputes, could hardly be justified in the 1990s, since colonial disputes had become a thing of the past. On the other hand, on the basis of their economic and political prowess, Germany (especially after its unification) and Japan[575] have made a come back as major powers. Due to these dramatic changes, the Security Council as a political agency has come under pressure to adapt to the new situation (Blum, 2005 and Bourantonis, 2005).

2.3.2 Veto Power

The veto[576] (a Latin term to mean forbid or authoritative prohibition) is a guarantor of a certain balance within the Security Council. It ensures that no decisions can be taken against the will of the permanent members (Luck, 2008). The UN Charter grants the Permanent Five veto power in three main areas namely Security Council decision making (Article 27), appointment of the Secretary General (Article 97), and Charter amendment (Article 108 &109). The Charter no where obliges the Permanent Five to provide explanation for any veto the may cast.

In theory the non-permanent members of the Security Council also hold a collective veto power: if at least seven of them vote collectively against a resolution (whether procedural or substantive) they can block a resolution even if all the permanent members vote for it. Although the Permanent Five members have used their veto power repeatedly, the sixth veto has yet to be employed (Hanhimaki, 2008:52).

(575) Japan and Germany provide much more to the UN budget than any of the permanent members other than the USA

(576) The initial proposal for veto arose at the request of the Soviet Union. Stalin insisted to have it included in the Charter because he thought the other Security Council members could continuously out vote his country's initiatives. The US demanded the veto power arguing that the senate would not otherwise consent to its UN membership. A large number of member states that participated in the San Francisco Conference were against the inclusion of the veto power, but the five powers were in unison on their determination to have this right. They assured other states that they would not abuse their veto power, but this proved otherwise (Nicholas, 1975 and Fitzgerlad, 2000: 333).

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The issue of veto power prompted much criticism since the UN's early days. The major critic is based in the fact that it can block the Council's procedures and delay decisions. Hence, when the veto is used by any of the Permanent- Five, it will immediately jeopardize a possible resolution. For instance, it is thought to be the main reason why the Council failed to respond adequately to humanitarian crisis such as in Rwanda in 1994 and Darfur in 2004 (Wouters and Ruys, 2005:3, Corell, 2007:267 and Melvern, 2001).

The actual use of veto power, however, declined since the end of the Cold War. The veto was used 261 times between 1946 and 2008 of which 194 were used before 1990. In the years between 1946 and 2008, USSR/ Russia used its veto 123 times (120 during the Cold War). The US vetoed 82 proposals. Whereas Britain has used its veto power 32 times, France 18 times, and China[577] only 6 times (Global Policy Forum, 2008).

2.3.3 Non-Participation of UN Members in the Security Council Decision Making

The UN Charter and the Security Council's own Provisional Rules of Procedure provide for participation of UN members in the Council's decision making process when they are affected or when they have legitimate interest in the Council's actions. Article 31 of the UN Carter provides: "Any member of the UN which is not a member of the Security Council may participate, without vote, in the discussion of any question brought before the Security Council whenever the latter considers that the interests of that member are specially affected." Article 32 provides that any member or non-member of UN, that is a party to the dispute shall be invited to participate, without vote, in the discussion relating to the dispute. The

(577) From 19451971–, the Chinese seat at the Security Council was occupied by the ROC, which used its veto only once (to block Mongolia's application for membership in 1955). The first veto exercised by the present occupant, the PRC, was therefore not until 25 august, 1972 (Global Policy Forum, 2008).

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Security Council shall lay down such conditions as it deems just for the participation of a state which is not a member of the UN. Article 50 provides that those third party states affected by the Security Council's actions shall have the right to consult the Council.

The Security Council's Provisional Rules of Procedure also contain similar provisions giving member states the right to be heard (S/96/Rev.7). Rule 37 provides:

Any member of the UN which is not a member of the Security Council may be invited, as a result of a decision of the Security Council, to participate without vote, in the discussion of any question brought before the Security Council when the Security Council considers that the interests of that member are specially affected, or when a member brings a matter to the attention of the Council in accordance with article 35 of the Charter.

The inherent problem with both articles 31 of the Charter and the Security Council's Provisional Rule 37 is that the discretion to allow participation of a member state lies in the hands of the Security Council itself. Both articles 32 and 50, however, seem to create the right of participation when a member state's interests are affected. Contrary to these, decisions are frequently made without any input from the countries involved. Resolutions are often taken without involving non- Security Council members and without hearing the points of view of outsiders (Fitzgerald, 2000:336).

2.3.4 Lack of Transparency of Security Council Meetings

In the early years, most of the Security Council's meetings were held in public, and verbatim records were maintained, including records on procedural debates and votes. To day, the records are scant and offer little indication of the proceedings actually held before a resolution is adopted. Private informal consultations are now the norm. In fact, nearly all the Security Council's work occurs in informal consultation

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from which member states are excluded and only the Security Council members or the Secretariat at times may attend. It is usually agreed in these consultations that no debate will take place in the official meeting and that no non- Security Council members shall speak. In other words, the official public meetings of the Security Council have generally become very much a prearranged affair. Closed consultations are also held by sub- groups of the Security Council, such as the five permanent members alone (Fitzgerald, 2000:337 and Otunnu and Doyle, 1998).

2.3.5 US Hegemony

During the Cold War the Security Council functioned more as a forum of hatred-fuelled discussion than as a true decision-making body. This was proven by the paucity of resolutions adopted in comparison with what happened after the fall of the Berlin wall. The first major post- WWII conflict, the Korean War, saw the Security Council paralyzed by the Soviet opposition. As a result, the Western Powers tried to shift the balance from the Security

Council to the General Assembly by adopting the Uniting for Peace Resolution (-377V) on 3 November, 1950. The Soviet Union viewed the resolution as contrary to the Charter and it could be utilized until the West had the majority in the General Assembly. Major crises proved to be intractable for the Security Council, for instance the Cuban missile crisis and the

Vietnam War – which were played out almost beyond the confines of the Security Council. The Cold War also hindered the Security Council from adopting mandatory sanctions. The first such sanctions passed by the UN were those against Southern Rhodesia, while the weapons embargo against South Africa was initially only recommended, before it became mandatory. All these were caused due to the super powers (the then USSR and USA) competition (Ronzitti, 2010: 6, Cassese, 2005:351 and Malone, 2004:10).

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The end of the Cold War facilitated Security Council actions, but the switch from a bi-polar to a uni-polar world left the US unchallenged as the remaining super power(578). With military expenditures[16] equal to the rest of the world combined, US hegemony meant that Washington's approval or at least acquiescence is essential to the functioning of the world body in the security arena. The reality of asymmetric US power is that a hegemon may indeed choose to go alone, which generates legitimacy crisis to the Security Council. The US- led invasion of Iraq in 2003 without the Council approval and in the face of world opposition is a vivid illustration. The George W. Bush administration in fact returned to the Security Council for its blessing in rebuilding Iraq, showing that even the lone super power needs the world body in occasion (Weiss and Kalbacher, 2008:332, Chesterman, 2006:5, and Glennon, 2003:17).

2.4 Proposals Submitted to Reform the Security Council

While there is a general agreement that the Security Council needs to be reformed, there is extensive disagreement on how to reform it, making the issue both extremely divisive and contentious. To many, the reform of the Security Council is a question of legitimacy. Expansion of the membership could help enhance their authority. A review of the working methods could make it more transparent, and agreeing to limit the use of the veto power in cases of jus cogens[17] crimes, or at least explaining a cast veto, could broaden its appeal. To others, reforming the Security Council is mainly about increasing their own power; a seat at the table could potentially translate into greatly increased influence over much of the UN system, including the Bretton Woods institutions (World Bank[18] and International Monetary Fund[19]) and the ICJ (Freiesleben, 2008).

(578) For further information, see Hans Kochler, (2007), "Security Council Reform: A Requirement of International Democracy", Lecture delivered at the International Seminar on Reforming the UN: Democracy, Justice and Security in the Age of Globalization, Turin, Italy, 8 June 2007.

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16 As Thomas G. Weiss (2003) stated in his article, "The Illusion of UN Security Council Reform", The Washington Quarterly - volume 26 (4), pp. -147161, "The obstacle to the Security Council credibility go beyond issues of process – exclusive permanent membership and the right to veto- to include unparalleled US military might."

17 Jus cogens (Latin term for compelling law) is a principle of international law. In brief, jus cogens refers to crimes generally accepted by the international community as unlawful, and from which no derogation is ever permitted. Although no clear cut definition exists what constitutes jus cogens, it is generally accepted that the term includes the prohibition of genocide, piracy, slavery, torture, and wars of territorial aggrandizement.

18 See Axel Dreher, Jan-Egbert Sturm and James Raymond Vreeland, (2009), "Development aid and international politics: Does membership on the UN Security Council influence World Bank decisions?", Journal of Development Economics, vol.88, pp. -118 for further information.

19 See Axel Dreher, Jan-Egbert Sturm and James Raymond Vreeland, (2008), "Global Horse Trading: International Monetary Fund loans for votes in the United Nations Security Council", Paper Presented at Yale University, July 2008 for further information.

2.4.1 The 2005 Reform Proposal

In 2003, the then Secretary- General, Kofi Annan told the General Assembly (A /58/ PV.7):

I respectfully suggest to you, Excellencies, that in the eyes of your peoples the difficulty of
reaching agreement does not excuse your failure to do so. If you want the Council and the Council's decisions to command greater respect, particularly in the developing world, you need to address the issue of its composition with greater urgency.

Later, that year, on November 3, Annan announced a group called High- Level Panel on Threats, Challenges, and Change, (a group consisting of 16 eminent persons[20]) by a letter addressed to the then president of the General Assembly, Julian Robert Hunte (Saint Lucia). The Panel was given a three- fold task: to examine the major threats and challenges the world faces in peace and security, to prepare a rigorous assessment of the contribution that collective action can make in meeting these threats, and to recommend the changes needed to make the UN an effective instrument for collective response (Thakur, 2006 and Freiesleben, 2008).

In December 2004, the Panel released its report A More Secure World: Our Shared Responsibility (A/59/565). The report is comprehensive presenting a total of 101 recommendations. The Panel's recommendations address central issues of contemporary international relations as the use force and self defense (A/59/565: -5358), peacekeeping and peace enforcement (ibid: -5860), terrorism and transnational organized crime (ibid: -4551), weapons of mass destruction (ibid: -3845) and poverty, diseases and environmental issues (ibid: -2631). Moreover, the Panel not only recommended overhauling the work of some of the UN organs, but also suggested some amendments to the UN Charter. These are the deletion of Chapter 13 of the Charter (dealing with the Trusteeship Council) (ibid: 77), Article 17 (the Military Staff Committee), and related provisions in other articles (ibid), and the revision of the enemy states provisions in Articles 107 and 53 of the Charter (ibid). Of these all, the recommendation concerning the enlargement of the Security Council has

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[20] The Panel members were Anand Panyarachun (Thailand- chairman of High- Level Panel), Robert Badinter (France), Joao
Clemente Baena Soares (Brazil), Gro Harlem Brundtland (Norway) , Mary Chinery-Hesse (Ghana), Gareth Evans
(Australia), David Hannay (UK), Enrique Iglesias (Uruguay), Amre Moussa (Egypt), Satish Nambiar (India), Sadak Ogata
(Japan), Yevgeny Primakov (Russia), Qian Qichen (China), Nafis Sadik (Pakistan), Salim Ahmed Salim (United Republic Tanzania), and Brent Scowcroft (US) attracted the greatest attention internationally (ibid: -6669, Blum, 2005:632, Slaughter, 2005:619 and Malone, 2005:370).

The Panel brought two alternative models (Models A and B) for enlargement of the Council.
These models were later endorsed when Kofi Annan, presented the report In Larger Freedom: Towards Development, Security and Human Rights for All(579), on 21 March 2005, which is his follow up report to the High- Level Panel's report (A/59/2005). Thematically, this report focuses on development, security, human rights and their relationship to one another. The report consists of UN institutional reform proposals. The proposal which is about expansion of the Security Council is called the 2005 Reform Proposal (Ronzitti, 2010).

The two suggestions presented by Annan in the 2005 Reform Proposal, Model A and B emerged from the analysis made by the High- Level Panel Report. Both models suggested expanding the Council to 24 members. Model A proposed adding six permanent seats, but with no veto power, and three new two – year term elected seats. The permanent members of today would maintain their right to use the veto.

The follow up report is nominally, a progress report on the implementation of the Millennium Declaration (579) (2000) ahead of its 5 year review in September 2005, but Annan has taken the chance to propose significant reform, as well. It endorsed the Panel's report and recommended the most comprehensive reform proposals and policy agendas of Annan's term, addressing such issues of financing for development, terrorism, replacing .the Human Rights Commission and reform of the Security Council

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On the other hand, Model B would not enlarge the number of permanent members to the Council, instead a new category is created. Accordingly, eight so- called semi- permanent members would sit in the Council for a four- year period and they are re- electable. In addition, one two- year non- renewable seat would be provided (A/59/565: -6768).

The seats would be administered geographically; the regional areas would be Africa, Asia and the Pacific, Europe and the Americas. The permanent members from Model A are to be two from Africa, two from Asia- Pacific, one from Europe and one from the Americas. The renewable seats of Model B will be distributed as follows: two each from Africa, Asia- pacific, Europe, and the Americas. No candidates were identified in the report. But, according to Blum (2005:641), it is not hard to identify which states are suggested for the new seats. The proposed allocation of those seats among the various regions leaves little for conjecture. Germany form European, Japan and India from Asia- Pacific, Brazil from the Americas and two namely Nigeria and either Egypt or South Africa from Africa would get the permanent seat suggested by Model A.

Table 1_ Model A

Regional area	Number of seats in UN	Permanent seats (continuing)	Proposed new permanent seats	Proposed 2 year non-renewable) (sects	Total
Africa	53	0	2	4	6
Asia and Pacific	56	1	2	3	6
Europe	47	3	1	2	6
Americas	35	1	1	4	6
Total	191	5	6	13	24

Source: A More Secure World, UN. Doc. A/59/565 (2004), PP. 67

Table 2_ Model B

Regional area	Number of seats	Permanent seat (continuing)	Proposed –4 year renew–able seats	Pro–posed 2 years non–renew–able seats	Total
Africa	53	0	2	4	6
Asia and Pacific	56	1	2	3	6
Europe	47	3	2	1	6
Americas	35	1	2	3	6
Total	191	5	8	11	24

Source: A More Secure World, UN. Doc. A/59/565 (2004), PP. 68

2.4.2 The UN Member States Reactions

In his report, In Larger Freedom, Kofi Annan called on member states to reach a consensus on expanding the Security Council to 24 members, and recycled the two proposals by the High- Level Panel, which are endorsed by his report. Without specifying which proposal he favored, he asked the members states to make a decision quickly, stating that "... this important issue has been discussed for too long. I believe members states should agree to take a decision on it – preferably by consensus, but in any case before the 2005 summit making use of one or other of the options presented in the report of High- Level Panel" (A/59/PV.83). However, Annan's report

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was greeted by a host of objections from the membership, which immediately began to regroup and position itself for a new power struggle (Freiesleben, 2008: 6). Three larger groups emerged with their own proposals for reforming the Security Council.

The Group of Four (G4) Proposal



Figure 2_ 21 September 2004, Indian Prime Minister Manmohan Singh, Japanese Prime Minister Junichiro Koizumi,
Brazil's President Luiz Inacio Lula da Silva and
Germany Foreign Minister Joschka Fischer meet in
New York to discuss potential membership of the UN Security Council, respectively from left to right. Source: Associated Press (AP) cited in Ward, 2005:1

The influential middle powers namely Japan, India, Brazil and Germany came together on 6
July, 2005 presenting a draft resolution to the General Assembly in their effort to reform the Security Council. The draft called for an expansion of the Council by adding six permanent seats and four non- permanent seats. The permanent seats were to be distributed as follows: two seats each for Africa and Asia, one for West-

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ern states and one for Latin America and the Caribbean states. The non- permanent seats would be one each for Africa, Asia, Eastern Europe and Latin America and Caribbean states. The new permanent members shall not exercise the right of veto for at least fifteen years until the question of the extension of the right of veto[580] to new permanent members is decided by amendment of the UN Charter and review (A/59/L.64).

The Uniting for Consensus (UFC) Proposal

UFC (nicknamed Coffee Club), is a movement consisting of approximately 40 states that was developed in the 1990s in opposition to any possible expansion of the Security Council. Recently, it was revived to counter the G4 proposal, whose leaders include Italy, Pakistan, South Korea, Argentina and Mexico, which are regional rivals of members of the G4. The reasons underlying this opposition are easily understandable, since each of these states are fiercely opposed to what they call an unjust reduction of their international political relevance provided that the G4 proposal gets acceptance (Martin, 2009). After having agreed with the need to increase the representativeness of the Council, in 2005 the UFC made draft proposal that centers on an enlargement of the number of non- permanent members from ten to twenty. The non- permanent members would be elected by the General Assembly for a two- year term and would be eligible for immediate reelection, subject to the decision of their respective geographical groups (A/59/L.68).

The African Union (AU) Proposal

The AU, in January 2005, decided to consider the recommendations contained in the Report of the High- Level Panel. A committee of 15 foreign ministers was delegated to elaborate on the existing African common position, and a month later they

The proposal initially granted new permanent members with the right of veto (proposal of 13 May, 2005), (580) but in an attempt to secure the support of the current permanent members, the G4 accepted to forgo this for at least 15 years.

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presented their joint proposal known as the Ezulwini Consensus (Spies, 2008: 104). The Ezulwini Consensus was formally endorsed by the AU summit in July 2005 called the Sirte Declaration on the Reform of the UN(581) and was presented to the UN General Assembly that same month as the official African position (A/59/L.67).

In essence, the Ezulwini Consensus[24] rejected both of the models proposed by the High- Level Panel, insisting that Africa has a claim to no fewer than five non- permanent and two permanent seats, and if offered would take up the permanent seats only if granted exactly the same prerogatives and privileges (including the right of veto) as the Permanent Five as a matter of common justice. The AU proposal claimed this due to the fact that in the year 1945, when the UN was being formed, most of Africa was not represented (except Egypt, Ethiopia, Liberia and South Africa (called Union of South Africa at that time)) compounded by its population around one billion, Africa remains to this day the continent without a permanent seat in the Security Council (A/59/L.67 and Kufour, 2006:4). Significantly, it avoided formulating any eligibility criteria, stating merely that the AU would be responsible for the selection of Africa's representatives and that the question of the criteria for the selection of African members should be a matter for the AU to determine, taking into consideration the representative nature and capacity of those chosen. But, there are political obstacles linked to the identification of the two African countries which are candidates for the permanent seats. A committee of ten Heads of State is created to resolve this matter. Nonetheless, the AU is still far from choosing which of its member states it would endorse for permanent seats. In addition, it has yet to establish the criteria for selecting countries to serve on the reformed Security Council (Martini, 2009:5 and Alli, 2006:9).

(Assembly /Au/ Decl. 2 (V) [24] Ext/ EX.CL/ 2 (VII (581)

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This chapter consists of three sections. The first part deals about expansion of membership of the Security Council divided in to sub- topics: size of an enlarged Security Council, membership categories and the criteria to be used for new admissions. The second portion is about reforming the workings of the Security Council which analyzes general themes under the background followed by cooperation between the Council and other UN bodies, meetings and voting. The last section of the chapter is devoted to veto power

3.1 Expansion of Membership of the Security Council

Historically the issue of increase in the membership of the Security Council dated back to the early days of UN. Except the initial increase in the non- permanent members following an amendment of the UN Charter in 1965, no other change took place yet. But, the issue was raised at different times since then. The issue of equitable representation on and increase in the membership of the Security Council has been on the agenda of the General assembly since its 34th session in 1979, with very little progress made to date. Further impetus to the discussions followed during the first-ever meeting of the Security Council at the level of heads of state and government in January 1992 and the summit of the Non- Aligned Movement held in Jakarta in September 1992. The process went a step further with the adoption of resolution 48/26 on 3 December 1993, by which the General Assembly established 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 (Mbuende, 2008, Malone, 2003 and Bourantonis and Magliveras, 2002). Through such developments, it could be said that expansion of the Security

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Council has been always placed in the fore of the reform agenda of the Council.

However, the process gained more momentum with the presentation of Kofi Annan's report In Larger Freedom: Towards Development, Security and Human Rights for All (A/59/2005), based on the report of High- Level Panel (A/59 /565) along with the results of the Millennium Project from January 2005 (Fassbender, 2005:11).

3.1.1 Size of an Enlarged Security Council

The enlargement of the Security Council is a necessary measure for reinforcement of its legitimacy. However, the degree of expansion is vigorously debated. The debate touches on another crucial concern over the democratic nature and transparency of the Council (Papadopoulou, 2005).The push for democratization in the world has been led by the three Western members of the Permanent Five (Britain, France and USA, the Permanent Three). Yet, the Permanent Three have been fiercely resistant with regard to lending transparency to the workings of the Security Council through reforms. Afoaku and Ukaga (2001) in their article entitled UN Security Council reform: A critical analysis of enlargement options strengthened this stating: "those who urged democratization at the national levels should be at the forefront of efforts to democratize international institutions, including the Security Council." Democratization in this sense would require that all permanent members be democratic states and the work of the Security Council becomes transparent at all stages. However, neither of these conditions are satisfied yet and furthermore, a democratic institution should strive for wider representation. Yet, the Permanent Five seek to limit the number of both permanent and non- permanent members of the Security Council. They want to limit an increase in the overall membership of the Security Council since any such increase may diminish their influence and, so goes official reasoning, impede the Council's ability to fulfill its mission speedily and effectively (Mikhailtchenko, 2004:10).

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The expansion of the Council goes from low- twenties option (five to seven non-permanent members or a mix of permanent and non- permanent members), mid-twenties (nine to eleven members) to high- twenties option (a wider geographical representation would allow a better representation of African, Asian, Latin American and small island countries). The different proposals currently on the table belong to the mid- twenties option (Lund, 2010). The High- Level Panels report, which was later endorsed by Annan's report In Larger Freedom, in both Models (A and B) fix the size of the Council at twenty four (A/59/565). The three draft resolutions which were submitted in response to the former set the number of states in the Security Council as follows: According to the G4 proposal, the membership of the Council shall be increased to twenty five (A/59/L.64). Similarly, the UFC proposal calls for increasing the members of the Council to twenty five (A/59/L.68). On the other hand, the AU submitted a proposal requesting a twenty six seat Security Council (A/59/L.67).

3.1.2 Membership Categories

The bulk of the debate on the Security Council reform has focused on the permanent and/or the non-permanent membership of the Council. Expansion in the permanent category is strongly promoted or opposed for exactly the same reason that can be summarized in one word: permanency. For some, it would provide for a more just representation of the world, in which all parts of the globe would be included in the decision- making process of the Security Council responsible for ensuring international peace and security. But for others, it would mean increased injustice, enabling more countries to wield the veto power and stay on the Council for all eternity without any restrictive measures of accountability. Rather than increasing democratic representation, granting permanent seats in the Council to the current front runners, most often highlighting their economic weight as reasons for their

candidacy, would amount to rewarding economic might with political power (Thakur, 1999). In the debate on Security Council at the 63rd session of the General Assembly, representative of Germany said that expanding the Council with only non- permanent members would merely add more voices to the "choir" rather than change the "song" of the Council. It is argued that by adding only non- permanent members, the basic power structure will prevail and no substantial change will have been obtained (Lund, 2010:4).

The Annan Report (the 2005 Reform Proposal) has not achieved a break through, in this regard. It accepts the dominant role of the current five permanent members as a real political fact unlikely to be changed by any reform proposals. The report presents two Models (A and B) for the expansion of the Council, which reflects the positions of the two antagonistic main camps - namely the supporters and opponents of new permanent seats. The Panel was unable to agree on a unified proposal regarding changing the permanent and/or the non-permanent members of the Security Council (Fassbender, 2005:20 and Russet, 2005:154).
The Transmittal Letter from the Panel chair to the then UN Secretary – General refers specifically to this division (A/59/565:6):

The members of the Panel disagree about the models put forth for Security Council expansion and the method for determining criteria for Security Council membership. Some members of the Panel believe strongly that only the model involving expansion of permanent membership, albeit without a veto, will equip the Security Council to deal with the new century's threats. Others believe equally strongly that the alternative model involving elected, long-tern but non- permanent members is the better way to proceed.

Model A would bring change in both the permanent and non- permanent categories. Six of the nine additional seats would become permanent, raising the total

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permanent membership to eleven, and the remaining three seats would be added to the non- permanent category, for a total of thirteen non-permanent members (A/59/565: 67). On the other hand, Model B would leave the permanent membership unchanged. It would create a new category of four- year term seat comprising eight members , which is renewable and it adds one non- permanent member of two- year term, on non- renewable basis (ibid: 68).

The G4 proposal calling for adding six permanent and four non- permanent members is more or less similar to Model A. What makes it different is only the former increases the non- permanent category by four (A/59/L.64). The AU position is also similar except that it calls for five new non- permanent seats (A/59/L.67). The UFC group calls for reform only in the non- permanent category and hence is similar to Model B. However, there is difference between them, in which the UFC proposal adds ten non- permanent seats all to serve for two- year term, those would be eligible for immediate re-election, subject to the decision of their respective geographical groups (A/59/L.68).

3.1.3 What Criteria should be used for New Admissions?

Since the formation of UN, the election of the non- permanent members of the Security Council is based on Article 23 of the UN Charter which states:

"... the General Assembly shall elect ten members of the UN to be non- permanent members[582] of the Security Council, due regard being paid , in the first instance to

(582) Each year, five non– permanent members join the Security Council and five members leave. The election occurs approximately three months before the term starts on January one, though countries may make their candidacy known well before hand. Five of the ten non– permanent members are typically from Africa and Asia (three for the former and two for the latter), one is from Eastern Europe, two from Latin America and the Caribbean, and two from Western Europe, Canada, Australia and New Zealand (Western Europe and others group). Each regional caucus can devise its own procedure for deciding which nation(s) to nominate but is still constrained to choose nations that will ultimately gain the two– thirds majority approval required in the

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the contribution of the maintenance of international peace and security and to the other purposes of the organization, and also to equitable geographical distribution."

Equitable distribution is mostly confused with equitable representation, even though there is substantive difference between the two. To begin with a brief reflection of the term equitable, it is an evaluative term, meaning different things to different people. It could be argued that the founders of the UN had in mind the notion of fair or reasonable opportunity for UN member states to participate in managing the UN systems, not necessarily equal opportunity for all states. For most member states, equitable simply means the right and opportunity to participate directly in the decision- making process of the UN through election. With very few exceptions, such as the African Group, which practices a fair and equitable rotational system, all other regional groups do not offer their members a fair and equitable opportunity to participate in the decision making of the UN. In the Asian Group, for instance, the legitimate aspirations of the smaller member states have not been adequately met (Daws, 1999). The principle of equitable representation is intrinsically linked to the important principle of the sovereign equality of states as enshrined in Article 2 of the UN Charter, which is the basis for membership of states to the organization. The principle of equitable representation has more to do with the rights and benefits of member states and not necessarily their ability to contribute and it exists as a major driving force in the quest for positions in the UN system (Agam, 1999:41).
Article 23 of the Charter actually talks about geographical distribution (not representation), and gives priority to consideration of the contribution member states, are able to make to the UN. In practice, this has meant that regional powers such as Japan(583) and Brazil(584) tend to serve more frequently than less influential states

General Assembly (A/RES /1991 (XVIII), Kuziemko and Werker, 2006: 909 and Kelly, 2000:328)

(583) Japan served as non–permanent member of the Security Council for ten times including the term which terminates in 2010.

.Brazil was/is in the Security Council for ten times including its present seat till the end of 2011 (584)

such as Laos(585) or Paraguay[29]. The proposition could be made that in expanding the notion of equity in the UN context, greater attentions would be given not only to the rights and benefits derived by member states, but also to their responsibilities and commitments. Indeed, it is unlikely to be persuasive to most member states when it comes to the question of the need for fair and equitable representation in the UN system (Lia and Lefler, 2009).

The High- Level Panel report states that, the Security Council was designed to enable the world body to act decisively to prevent and remove threats. It was created to be not just a representative but a responsible body with the capacity for decisive action. According to the High- Level Panel Report, any reform in the Security Council is to increase the effectiveness and credibility of the Council and, most importantly, to enhance its capability and willingness to act in the face of threats. This requires greater involvement in the Security Council decision making by those who contribute most, greater contribution from those with special decision making authority and greater contribution with those who must implement its decisions (A/59/565, para. 244).

The reform of the Security Council should meet the following principles as constituted in the 2005 Reform Proposal, which are derived from the Panel report (A/59/565, para. 249):

1) In honoring Article 23 of the Charter of the UN, increase the involvement in decision making of those who contribute most to the UN financially, militarily and diplomatically- specifically in terms of contributions to UN assessed budgets, participation in mandated peace operations, contributions to voluntary activities of the UN in the areas of security and development, and diplomatic activities in support of UN

(585) Laos, being in the same regional group (Asia) with Japan, was never become non–permanent member of the Council. [29] Paraguay is in the regional group of the Latin America and the Caribbean states to which Brazil also belongs. However, it was non–permanent member of the Council only once, from 1968 – 1969.

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objectives and mandates. Regarding the developed countries, achieving or making substantial progress towards the internationally agreed level of 0.7 percent of Gross National Product (GNP) for Official Development Assistance (ODA) should be considered an important criterion of contribution;

2) The reform should bring into the decision- making process countries more representative of the broader membership, especially of the developing world;

3) The reform should not impair the effectiveness of the Security Council;

4) The reform should increase the democratic and accountable nature of the Council.

The above criteria set by the Panel for new admissions of the Security Council are not different from the current criteria used by the General Assembly to elect the non- permanent members of the Council. Article 23 remains untouched, in the sense of giving priority to the countries' contributions to the UN. In addition, the criteria do not comply with each other. For instance, the first criterion contradicts the second in the sense that the former inclines to the developed world, while the latter emphasizes the interest of the developing world. In a nutshell, the first principle is about distribution while the second is about representation (Luck, 2005a:130 and Russet, 2005:153).

For the purpose of the reform proposals regarding the distribution of the Security Council seats, the Panel identified four major regional areas(586): Africa, Asia and

(586) There has been a tendency on the part of many members of UN to interpret the term geographical distribution as meaning regional representation. Blum (2005: 639) quote the prescient warming, issued by the Chinese representative as early as the first session of the General Assembly, that "there are states which belong to a given region but not necessarily to a particular group in that region, then some states would always be excluded from obtaining a place on the Council. This would obviously be detrimental to the best interests of the organization".

Israel is a case in point. Because of Arab opposition, it was excluded from the regional group of Asia to which it geographically belongs. Secretary General Annan, in a speech in Jerusalem on March 25, 1998, termed this practice "an anomaly which means Israel has no chance of being elected to serve on the main organs of UN" (UN press release SG/SM/6504/Rev.1 (March 25, 1998). Israel was co-opted to the Western European and other group of states in 2000, on a temporary basis, on the understanding that it would not seek a seat on such organs, which only perpetuated this major aspect of the anomaly. Moreover, as ever this arrangement was not applied out side New York (e.g., in Geneva), Israel is not a member of any regional group else where (Blum, 2005:639).

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Pacific, Europe and
America as distinct from the current regional groups, which are Eastern Europe, Western Europe and other states, Latin America and the Caribbean, Asia and Africa. The Panel explained that “we see these descriptions as helpful in making and implementing judgments about composition of the Security Council, but make no recommendation about changing the composition of the current regional groups for general electoral and other UN purposes” (A/59/565, para.251 and Daws, 1999: 24).

This approach is problematic since it certainly makes any assessment of the merits of each of the two alternative models more complex. Since the majority of the UN membership can be expected to continue to adhere to the customary and more politically colored regional group concept, rather than embracing the Panel’s strictly geographical regional area approach (Blum, 2005: 640). Some members of the Panel, in particular the Latin Americans, expressed a preference for basing any distribution of seats on the current regional groups (A/59/565, para.251).

The G4 proposal acknowledges Article 23(1) of the UN Charter, by adding expansion of the membership of the Security Council to better reflect contemporary world realities, thereby shaping a balance of forces capable of enhancing the Council’s responsiveness to the views and needs of all member states in particular those of the developing countries. It calls for distribution on the basis of the current regional groupings (A/59/L.64). The financial and military contributions to the UN of some of the five permanent members are modest compared to their special status and can not be compared with some other non-members of the Security Council (Luck, 2005a: 130). This can be vividly understood from the following table.

Table 3_ The current Permanent Five and the candidates for permanent membership by G4 proposal

Country	Share of Global Gross National (%) Income	Share of world (%) population	Contribution to regular UN budget for the year (%) 2005
USA	32.7	4.6	22.00
Japan	12.6	2.0	19.47
Germany	6.2	1.3	8.66
Britain	4.9	0.9	6.13
France	4.5	1.0	6.03
China	4.0	20.4	2.05
India	1.6	16.7	0.42
Brazil	1.4	2.9	1.52
Russia	1.1	2.3	1.10
South Africa	0.3	0.7	0.29
Egypt	0.3	1.2	0.12
Nigeria	0.1	2.1	0.04

Source: Fassbender, 2005:22

The contribution of Japan, a member of the UN since 1956, to the organization's regular budget is the second only to that of the US at 22 percent (the maximum permitted individual contribution, known as the ceiling)(587) (Blum, 2005: 638).

(587) See, General Assembly Resolution 55/5B (Dec. 23, 2000), which was also reaffirmed by General Assembly Resolution 58/1B (Dec 23, 2003). The same resolution fixed the floor at 0.001% of the regular

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The UFC proposal adopts the current criteria mentioned in Article 23(1) of the UN Charter like that of the G4, that is, due regard being paid, in the first instance to the contribution of members of UN to the maintenance of international peace and security and other purposes of the organization, and also to equitable geographical distribution. In distribution of seats, the UFC complies with the current regional groups(588) (A/59/L.68).

Unlike the above, the AU proposal emphasizes on representation not distribution. The proposal states the following (A/59/L.67):

Acknowledging the need for the Security Council to reflect present world realities and be more responsive to the aspirations of all member states of the UN, bearing in mind the undeniable fact that in the year 1945, when the UN was being formed, most of Africa was not represented(589) and that, as a result, Africa remains to this day the continent without a permanent seat in the Council, which is the primary organ of the UN addressing matters of international peace and security.

According to Admore Mupoki Kampudzi, the Secretary of the AU Peace and Security Council, claiming permanent seat in the Security Council based on the criterion of representation is unlikely to succeed in the current international system in which real politik works (Interview on 20 December 2010).

budget. The individual calculated percentage is determined every three years by the General Assembly and its 5th Committee (Administrative and Budgetary).

(588) The twenty non- permanent members of the Security Council shall be elected according to the following pattern: six from Africa, five from Asia, four from Latin America and Caribbean states, three from Western European and other stats and two from Eastern Europe states.

(589) The original African members of the UN were only four: Egypt, Ethiopia, Liberia and South Africa (that time called Union of South Africa under apartheid rule). The reason was that most African countries were under European colony by the time UN was formed (Bourantonis, 2005:93 and Kufour, 2006:288). Note that Ethiopia was the only African country which attended the San Francisco Conference (Alli, 2006:4).

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The AU proposal, similar to the G4 and UFC proposals, is based on the current regional groups[590] (A/59/L.67).

Professor Richard Hartwig (2008) advocates a radical restructuring of the Security Council called the Regional/ Economic Proposal[591], which would entail revising the Charter. Change from uni- polar to a multi- polar world would be required for his proposal to become politically feasible. In his view, the required conditions may be present by 2020 (a year in which review of the composition of the Security Council should be held according to the High- Level Panel report). The Regional/Economic Proposal suggests that representation in the Security Council should be determined by objectively balancing the claims of legitimacy, power/wealth and mutual advantage. The three contributions in some respects represent different positions. But they concur on central issues: the approach is anti- hegemonic. They moreover have an imperative common denominator: the case for regional representation[592].

3.2. Reforming the Workings of the Security Council

Reforming the working methods is one aspect of the reform of the Security Council that has not enjoyed the attention it deserves. It has been a preoccupation of those countries that do not support the enlargement of the Security Council but that would like to see an improvement in the operations of the Council[593]. But enlargement of

(590) The additional eleven seats proposed by AU to be distributed as follows: two permanent and two non-permanent seats for Africa, two permanent seats and one non-permanent seat for Asia, one non-permanent seat for Eastern European states, one permanent and one non-permanent seat for Latin America and Caribbean and one permanent seat for Western Europe and other states.

(591) The researcher raised this only to share the point about regional representation. Otherwise the Regional/ Economic Proposal is not a concern of the study.

(592) See, for further information, Richard Hartwig (2008), 'Squaring the Circle: a Regional/ Economic Proposal for Reform of the United Nations Security Council', in Volker Weyel (ed.), "the Quest for Regional Representation: Reforming the United Nations Security Council", Dag Hammarskjold Foundation Occasional Paper Series, Critical Currents no. 4, May 2008, pp.-4075.

(593) In 2006, a group of small states commonly known as the Small Five Costa Rica, Jordan, Liechtenstein, Switzerland and Singapore in an amusing reference to the Permanent Five, proposed a draft resolution inviting the Security Council to consider 19 measures to improve its working methods, notably its relationship with the General Assembly rather than enlargement of the Council (see the draft resolution, A/60/L.49, submitted to the General Assembly on 17 March, 2006).

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the Council and reforming its working methods are not mutually exclusive. Reform in the working methods of the Council will not bring about equitable representation. At the same time, enlargement without reform in the working methods of the Council will perpetuate the status quo of dominance relations except that the number of dominant powers prevailing over an unaccountable system would increase (Mbuende, 2008:26 and Kugel, 2009:3).

3.2.1 Background

Improving the working methods of the Council would institute checks and balances, improving efficiency and effectiveness, transparency, accountability and legitimacy (Mbuende, 2008:26).

Key to ensuring the accountability of the Security Council is its relationship with the General Assembly, which is the representative and principal legislative organ of the UN. The interaction between the General Assembly and members of the Security Council leaves much to be desired (Eitel, 2000). Nevertheless, much needs to be done. The former Malaysian Prime Minister, Dr. Mahathir Mohamed spoke at the UN General Assembly's annual session which was held in September 2003, that "the General Assembly is unfortunately subservient to the Security Council, which in turn is subservient to any single one of the five victors in the war fought more than half a century ago" (Lund,2010).

According to Article 24(1) of the UN Charter, the Security Council acts on behalf of all UN member states. Article 24(3) provides for the Council's submission of reports to the General Assembly for its consideration on issues of current international concerns such as peacekeeping operations, imposition of sanctions and other enforcement measures and any other matter of interest to the membership as a whole. The matter of accountability of the Security Council is also raised, when the Council

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abuses its powers (Kirgis, 1995).

Transparency is required in the Security Council so that reform in the working methods of the Council should be visible. This element is essential to many member states of UN since it opens ways of participation in relevant parts of the Council's work (Otunnu and Doyle, 1998:314, Fassbender, 2002:288 and Schweigman, 2001:293). Transparency comprises the following types: general transparency (improved information for all member states about the Council's work), individual transparency (enhanced status of member states particularly affected) and collective transparency (improved cooperation with group of interested member states) (Winkelmann, 1997:51).

The High- Level Panel report under paragraph 258 acknowledges as many informal improvements have been made to the transparency and accountability of the Security Council's deliberative and decision- making procedures, so far. The report reminded the Council that troop contributor countries have rights under Article 44 of the Charter to be fully consulted concerning the deployment of troops to the Council mandated operations. The report also recommended that the process to improve transparency and accountability of the Security Council be incorporated and formalized in the Council's rules of procedure(594). Greater civil society engagement in the work of the Security Council should be welcomed, according to the Panel report (A/59/565, para.260).

Efforts to have the Security Council enlarged by the international community also aim at increasing and ensuring democracy in the decision making process of the Council. The increase in membership of the Council is synonymous with the partic-

(594) Article 30 of the UN Charter gives the right for the Security Council to adopt its own rules of procedures. The Council now is using the Provisional Rules of Procedure, which was amended in 1983 consisting of 61 rules (S/96/Rev.7) Paul and Nahory, (2008) recommended "the Council must close the chapter on the famous provisional rules of procedure and adopt standing rules".

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ipation of more countries or more representatives of the international community in the decision making of the Council. That means, before a decision is made, the Security Council should hold consultations with all members of the Council, conduct hearings in the presence of even non- members of the Security Council as well as parties involved (Paul and Nahory, 2008 and Kochler, 2007).

Efficacy in the Security Council's work is another important requirement. This is closely linked to the authority and legitimacy of the Council. Many decisions and resolutions issued by the Council over the past several years were never enforced. If it is the case, it is difficult for the Security Council to protect the weak state. This deficiency in performance of the Council creates lack of confidence and trust by other organs and member states of UN (Sohn, 1993 and Davidsson, 2003:543).

3.2.2 Cooperation between the Security Council and other UN Bodies

Efforts to improve cooperation between the Security Council and the General Assembly have aimed at strengthening the latter. Accordingly, the General Assembly should get leverage regarding issues relating to international peace and security as enshrined in the Charter (Articles 10, 11, 12 and 14) and the establishment of subsidiary organs (e.g. Chapter VII Consultation Committees[595]) to consider issues affecting international peace and security. The reporting of the Council to the Assembly, in accordance with Articles 15(1) and 24(3) are also regarded as an area where improvements are needed. Other efforts should direct towards strengthening the position of the president of the Assembly through regular consultations with the president of the Council, more active roles for both presidents and a stronger involvement of the president of the Assembly in matters relating to the Council. All these are important for revitalization of the General Assembly (Winkelmann, 1997:57

(595) See W. Michael, Reismann, (1993), "The Constitutional Crisis of the UN", The American Journal of International Law, vol. 87(1), pp.99

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and Papadopoulou, 2005:5). Given the connection between peace and security and economic development, the Security Council should interact in a systematic fashion with the ECOSOC, another main organ of the UN (Mbuende, 2008:27 and Manusama, 2005:609).

The G4 proposal urges the Security Council for holding regular consultations with the presidents of the General Assembly and the ECOSOC and for submission of comprehensive annual report and special reports, when necessary, to the General Assembly pursuant to Articles 15(1) and 24(3) of the UN Charter (A/59/L.64, para.8). Similarly, the UFC proposal calls the Security Council for having consultation, cooperation and adequate exchange of information with the General Assembly and the ECOSOC (A/59/L.68, para.7). The draft resolution of the AU also states as there is a need to strengthen the General Assembly (A/59/L.67).

3.2.3. Meetings

Article 28(2) of the UN Charter stipulates that the Security Council shall hold periodic meetings at which each of its members may, if it so desires, be represented by a member of their government or by some other specially designated representative. In 1970, members of the Security Council, guided by this provision and proposals by other UN members with the support of the General Assembly, reached a consensus that periodic meetings could enhance the authority of the Council and make it a more effective instrument for the maintenance of international peace and security. They reaffirmed that periodic meetings, the purpose of which would be to enable the Security Council to discharge more effectively its responsibilities under the Charter, would provide members with an opportunity for a general exchange of views on the international situation, rather than dealing with any particular question (Aust, 1993). According to Rule 4 in the Provisional Rules of Procedure of the Council, periodic meetings of the Security Council called for Article 28(2) of the Charter shall be held twice a year, during which the Security Council may decide. Meetings of the Coun-

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cil other than periodic meetings referred to Rule 4, shall be held at the call of the President of the Council at any time that deems necessary, in not more than fourteen days interval between meetings as stated under Rule 1. Rule 48 of the Council provides that unless it decides otherwise, the Security Council shall meet in public (S/96/Rev.7). However, contrary to this the Security Council held numerous meetings privately in closed sessions. Apart from this, there is also absence of official records of meetings among the Security Council members (Aral, 2010:165). Thus, the Council should conduct meetings that tend to be more open and makes participation attractive in order to respond to the requirement by the international community to know what and how the Council is doing behind its chamber rooms (ibid).

The G4 draft resolution calls for the Security Council to meet in a public forum open to all member states of the UN except conditions decided by the Security Council to meet in private. It adds for consulting with non- members of Security Council, in accordance with Articles 31 and 32 of the UN Charter, especially with those countries having a special interest in the matter under consideration by the Council. The proposal also calls for holding briefings for non- members on the matters discussed in the Security Council and its subsidiary organs (A/59/L.64, para.8). In this regard, the UFC proposal under paragraph seven provides for open briefings and interaction with interested parties so as to guarantee transparency in decision making and accountability in performance of the Security Council (A/59/L.68).

3.2.4. Voting

Article 39 of the UN Charter prescribes the authority of the Security Council to determine the existence of any threat to peace, breaches of peace agreements, or act of aggression... to maintain or restore international peace and security. If this provision is merely interpreted as a reaffirmation of the role of the Council, it can not fully reflect the meaning of responsibility of the Security Council in acting on behalf of all

UN members. Rather, this is the cornerstone of the voting procedure of the Council. With this provision it can be construed in a broader sense that the Security Council can decide the destiny and future of countries by maintaining international peace and security. However, to come to a final decision or resolution relating to peace and security, it could not help getting support or agreement of a required number of the Council's members by casting vote. Therefore, voting is an indispensable procedure to guarantee the legitimacy of any decision made the Council (Aust, 1993:370).

There are different types of voting: Affirmative vote- it is required that decisions are made by nine votes of the Council for procedural and substantive matters. The concurring vote of the permanent members is required for the latter (Article 27(2 and 3). Abstentions[596]- it is advisable and safe method for any one member who wants to be neutral or does not wish to vote either for or against a matter. This is known as a voluntary abstention. But this might be arguably abused for the sake of interests as well. Under Articles 27(3) and 52(3) of the UN Charter, a party to dispute shall abstain from voting. This is an obligatory abstention. Absence- it might be a force- maneuvered/objective reason, but also a deliberative/ subjective reason. The first argument is justified by problems as out of control, while the second expresses disagreement by being absent (Winter, 1996, Stavropoulos, 1967 and Bailey, 1974).Voting is one of the procedures in the working methods of the Security Council that needs to be reformed, making it more representative and democratic.

The 2005 Reform Proposal says the following, as constituted in the High- Level Panel's report. The system of indicative voting is proposed to be introduced, where by formal votes would be preceded by non- binding votes, during which all members of the Security Council would be equal (no vetoes) (A/59/565, para.257).

(596) Abstention of a permanent member(s) does/ do not forbid the adoption of a decision. There is faint possibility that nine of the ten non-permanent members might adopt a decision, with out any votes of permanent members, as long as these members abstain (Sohn, 1993:386).

3.3. Veto power

During the negotiations at the San Francisco conference (25 April-26 June) numerous small and medium sized states protested against the privileged status of the five permanent members as a form of victors' justice and an unacceptable infringement on the sovereign equality of states. Nevertheless, the Permanent Five made it clear that the complete and unconditional acceptance of the permanent membership and the veto power was mandatory for their participation in the creation of the new world organization (Luck, 2008 and Caron, 1993). At the end, the founding members were forced to accept the codification of the proposed balance of power through the insertion of Article 27 of the UN Charter. According to the third paragraph of this Article, decisions on all other matters (to mean other than procedural) require an affirmative vote of nine members 'including the concurring votes of the permanent members…'. Article 27 (3) which carefully avoids the term veto was adopted with 30 votes in favour, 2 against and 15 abstentions (Wouters and Ruys, 2005:6)

The right to veto was introduced in the UN Charter to ensure the victorious powers of the

WWII speak one voice in maintaining international peace and security and the Permanent Five pledged the countries at the an Francisco conference as they would not abuse the veto power. But the practice later is by far different from this. The Permanent Five used their veto power in meeting their own interest. In the era of the east- west conflict during the Cold War, the right to veto played a mostly negative role, which of course incapacitated the Security Council (Weiss, 2003, Boyd, 1971:59, Alli, 2006:4 and Schweigman, 2001: 287).

The permanent members use the privilege of veto power to shield friendly states with whom they maintained close economic and diplomatic relations from condemnation or the imposition of economic sanctions. This sends out the manifestly wrong

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signal that states that stand close to one of the Permanent Five can get away with recurrent human right volitions and/ or unlawful military incursions into neighboring states (Leigh-Phippard, 1994, Thakur, 2006). In 1964 for instance, Malaysia complained to the Council of aggression by Indonesia, as the latter country had dropped armed paratroopers on its territory. The Soviet Union however vetoed a draft resolution that deplored the incident and called upon the parties to refrain from a threat or use of force. More well known cases are also the Council's deliberations regarding the apartheid regime in South Africa (and Southern Rhodesia), and human rights violations by Israel. With regard to South Africa, no less than 56 votes were cast (26 by UK, 20 by US and 10 by France). In 1986 for example, UK and US blocked draft resolution that condemned South African attacks against Angola, Zambia, Botswana and Zimbabwe. In 1987 and 1988 the same permanent members vetoed the imposition of economic sanctions against the apartheid regime of South Africa, despite persistent human rights violations. The Israeli/ Palestinian situation on the other hand accounts for nearly half of all vetoes exercised by the US. This particularly holds true for the post- Cold War period: of 18 US vetoes casts since 1989 to 2005, 14 relate to the Middle East conflict (Wouters and Ruys, 2005:-1415 and Uji, 2008:8) Permanent members have not only exerted their prerogatives to shield friendly states from condemnation or economic sanctions, they have also used it to stall peacekeeping or peace enforcement operations. China impeded UN peacekeeping missions in order to penalise UN member states maintaining close relations with Taiwan. In 1997 and 1999 for example, China vetoed draft resolutions to establish an observer mission in Guatemala and to renew the UN mission in Macedonia, on the grounds that these countries had engaged in diplomatic relations with Taiwan, which China considers to be part of its territory (Malone, 2004:14, Chan, 2003 and Butler, 1999:10).

More importantly, the threat of permanent members to use the veto is responsible for some of the most tragic failures in the history of the UN. The most obvious ex-

ample is the 1994 Rwandan Genocide. When the Security Council considered the possibility of intervening to halt the massacres, two permanent members, France and the US blocked the establishment of a robust intervention force. The two countries, moreover, used their hidden veto to weaken the definition of the crisis under international law, carefully avoiding the term genocide (Frederking, 2007, Meisler, 2007: 98, Nahory, 2004 and Barnett, 1997). Five years after the event, the Report of the UN Independent Inquiry on Rwandan Genocide concluded that a force numbering 2,500 would have been able to stop or at least limit the massacres which took place following the shooting of the Rwanda president's airplane. Nevertheless, the Security Council members deliberately limited the mandate and size of the existing peacekeeping operation and delayed the establishment of a new mission. In other words of the report: "the Security Council itself bears responsibility for the hesitance to support new peacekeeping operation and for lack of political will to stop the killing" (S/1999/1257).

A similar situation was present in 1998 and 1999, when a large- scale fighting between Serbs and ethnic Albanese Kosovars in the Federal Republic of Yugoslavia turned into ethnic cleaning of the latter population group causing hundred thousands of people flee their homes. Despite the situation on the ground, China and Russia made it clear that, they would veto any authorization to use armed force by the UN (Hanhimaki, 2008, Morris and Wheeler, 2007:220 and Pellet, 2000: 388). In addition, in 2004, Russia and China threatened to use their veto with regard to the Sudanese region of Darfur, where Arab Janjaweed militias committed large-scale killing and raping of civilians aided and abetted by government officials. The motives of the two countries position were apparently commercial: China and Russia were both involved in a lucrative arms trade with Sudan. China moreover owned some 40 percent share of Sudan's main oil field. These show the most problematic use of veto power and of course pushing factor as the veto power should be reformed

(Williamson, 2009, Gardiner, 2008:41 and Roque and Alden, 2008:3).

In reforming the Security Council, one of the stumbling blocks which is difficult to overcome relates to the veto power. The 2005 Reform Proposal and the three major responses have their own positions in this regard.

The High- Level Panel report clearly stipulates that, there should be no expansion of the veto.

Neither Model involves any expansion of the veto or any Charter modification for the Security Council's existing powers. According to the report, there is no practical way of changing the existing members' veto powers. But, it requests the permanent members, in their individual capacities, to pledge themselves to refrain from the use of the veto in cases of genocide and large scale human rights abuses. The report adds, as a whole the veto power has an anachronistic character that is unsuitable for the UN in an increasingly democratic age and it urges the veto use to be limited to matters where vital interests are genuinely at stake and it proposes indicative voting to reduce the use of veto (A/59/565, para. 256 and 257).

The UFC proposal does not call for any change in the veto power of the Permanent Five, as it proposes change only in the non- permanent category of the Council. However, it recommends for having restraints on the use of the veto (though the restraints are not mentioned in the draft resolution) (A/59/L. 68, para.7).

The proposals brought by the G4 and the AU call for extending the veto power to new permanent members, despite they differ on whether the veto power to be given as soon as admission or not.

The draft resolution of the G4 under paragraph five states that, the new permanent members should have the same responsibilities and obligations as the current

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permanent members. But, the new permanent members shall not exercise the right of veto for at least fifteen years since their entry to the Council (A/59/L.64). This paragraph contradicts with each other. How can the new permanent members play similar responsibilities as the current permanent members with out having veto? Even it is difficult to say a permanent member unless they have veto power since it is the main prerogative of permanency.

The AU proposal, submitted to the General Assembly on 18 July, 2005, clearly states that the new permanent members should get the same prerogatives and privileges as those of the current permanent members, including the right of veto[597] (A/59/L.67). According to Kampudzi, as far as permanent seats are given to new entrants, veto power and all other privileges should be granted to those states since not doing so brings two groups of permanent membership in the Council. He added also it is problematic to say permanent seats are given to new entrants without having similar privileges with the current Permanent Five (Interview).

Chapter IV Prospects for and Challenges against Reforming the Security Council

This chapter consists of two major sections. The first part is about prospects for reforming the Security Council raising the following themes: proposals for improvement in the functioning of the Security Council, the support of the permanent members of the Security Council and contemporary realities. The second portion of the

[597] The Ezulwini consensus says, even though Africa is opposed to the veto, it is of the view that so long as it exists, and as matter of common justice, it should be made available to all permanent members of the Security Council (Ext/ EX. CL/ 2 (VII)).

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chapter deals about challenges against reforming the Security Council paying due emphasis to: the requirement to amend the UN Charter, lack of unanimity among UN member states and the position of the permanent members of the Security Council.

4.1 Prospects for Reforming the Security Council

The end of the Cold War opened a new chapter for reforming the Security Council. The end of the Cold War also opened a new opportunity for revitalization of the Council's performance. Its engagement became visible in various parts of the world as signified by the unity among the Council's members in their stern response to Iraq's invasion of Kuwait in 1991, which indicated that the Security Council could perform the role assigned to it by the founding states 45 years ago. Although the Council functioned relatively better when compared to the Cold War period, it remains characterized by allegations of ineffectiveness (Rwanda and Kosovo for instance) and lack of representativeness in its composition. Hence, reforming the Council has been the concern of the international community (Geeraets, Zhimin, et al, 2007: 2 and Malone, 2007:613). Different impediments are facing attempts made to reform the Council in spite of possibilities for action to this end.

4.1.1 Proposals for Improvement in the Functioning of the Security Council

The various proposals submitted to reform the Security Council emphasized on aspects relating to composition[598], veto, and the mode of operation of the Council. While changing the Security Council's membership and veto power requires the cumbersome process of amendment of the UN Charter, reforming the working methods of the Council do not call for such a move in which there is opportunity for

(598) The division of the ten non-permanent member seats of the Council based on regional groups is at the discretion of the General Assembly, and can be changed at any time by a two- thirds majority of the members present and vote. The current distribution : five from Africa and Asia, one from Eastern European states, two from Latin America, and two from Western Europe and other states was agreed in 1963 by resolution 1991A (XVIII). At any time, the General Assembly can agree on a

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consideration of such proposals in order to provide more transparency in the Council's decision making (Schrijver, 2006:13&27 and Birenbaum, 2007:16). Some progress has already been made towards making the work of the
Security Council more transparent. Under pressure from members who provide many of the UN's peace-keepers, the Council has gone from being incredibly hermetic to being relatively open. For example, the Council publishes agendas in advance of its meetings, allowing nonmembers to lobby on specific issues. Direct meetings are being held between the President of the Security Council and troop contributing countries allowing the latter to convey their opinions to the Council (Weiss, 2005b:5 and Malone, 2003:503).

As the level of activity within the Council dramatically increased, a decision was made to make information more readily available to member states not sitting on the Council. The Council also established the Informal Working Group on Documentation and other
Procedural Questions, which deals with issues related to working methods within the Council. It was agreed that the President of the Council should regularly provide reports to the General Assembly. To publish the Council's agendas, a UN Journal was created (Bourantonis, 2005:46). Most member states were more interested in actually being present at the Council's meetings rather than receiving information about what had been discussed in the Council. In response to this, the Council adopted a Presidential Statement affirming that the Council had heard the views of those demanding more openness and promised increased recourse to open meetings[43] (S/PRST/1994/81). Moreover, following the submission of different proposals to reform the workings of the Council in 2006, it came out with a Presidential Statement reaffirming the promise to expand consultation and cooperation with regional and sub- regional organizations, including invitation of relevant organizations to participate in the Council's public and private meetings. The Council also underlined

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the importance of transparency and communication with the broader UN membership

different mode of distribution of seats without amending the UN Charter. See Louis B. Sohn, (1997), "Important Improvements in the Functioning of the Principal Organs of the UN that can be made without Charter Revision", The American Journal of International Law, vol.91 (4). pp.652_662.

[43] See also, UN Doc. S/PRST/1994/22, statement by the President of the Security Council dated 3 May 1994, and UN Doc. S/PRST/1994/62, statement by the President of the Security Council dated 4 November 1994 (S/2006/507). In 2008, at the Security Council's 5968th meeting , the Belgian President of the Council at the time stated that the trend of systematically moving away from public meetings in favor of private consultations had been stemmed (S/PV.5968).

Although the frequency of open meetings has increased, there is still considerable dissatisfaction with the limited possibility for non-Council members to take part in or to have access to the decision-making process of the Council. The Council has increased the frequency of its so-called Arria Formula meetings(599), to which outsiders can be invited. Complaints have been voiced, however, that Arria meetings are not formalized and that it continues to be entirely up to the Council regarding whom it wants to invite and when to do so. In other words, member states have not gained any formal rights from the increased frequency of the Arria meetings. This is an issue that exemplifies the dynamic in the Council where the Permanent Five generally averts formalizing anything regarding the Council's working methods (Sohn, 1997, Wood, 1996 and Weiss and Young, 2005:135). Hence even if useful reforms are to be undertaken, the problem is that they are not institutionalized yet and they are

(599) The Arria Formula was devised by Ambassador Diego Arria of Venezuela when he, in the midst of the war in the Balkans in 1992, invited all Council members to meet with a Bosnian priest in the UN Delegates' Lounge rather than formally inviting the priest to address the Council in the chamber. The formula has gained popularity and is today frequently used as a way for the Council to be briefed on matters of international peace and security by outside actors, although they are no longer convened at the Delegate's Lounge.

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at the mercy and will of the Council and, therefore, there is a need for further improvements (Birenbaum, 2007:17). That is why the proposals submitted for reforming the Security Council has included the improvement of the working methods of the Council. The G4 proposal did so under paragraph eight of its resolution (A/59/L.64) to which the UFC group concurred under paragraph seven (A/59/L.68). Unlike these, the AU proposal in its' draft resolution, A/59/L.67, did not include the working method as one component for reforming. Kampudzi criticized the AU proposal for not doing so in an interview made with him. He added that the reform of the Security Council can not be full exclusive of improving its working methods.

4.1.2 The Support of the Permanent Members of the Security Council

Reforming the composition and veto power of the Security Council requires amendment of the UN Charter. Hence, the support of the Permanent Five is indispensable for the feasibility of the calls for reform since the disagreement of even one permanent member could be a major stumbling block. In this regard, even if the permanent members fail to agree on how big the Council should become, which country should join and whether other nations should be given veto powers, all permanent members agree on the need for reform. This by itself is a leverage in an attempt to reform the Council, though it requires serious negotiations (Weiss, 2005a). Of all the permanent members(600), France showed great interest in reforming the Security Council including its permanent membership (GA/10367).

4.1.3 Contemporary Realities

The work of the Security Council is increasingly becoming essential now- a days since humanity is afflicted by countless threats to peace and security(601). Sources of

(600) See, the position of the Permanent Five regarding Security Council reform under sub-section two (challenges against reforming the Security Council) of this chapter.

(601) For further elaboration, see Edward C. Luck, (2008), 'A Council for All Seasons: The Creation of the Security Council and its Relevance', in Vaughan Lowe, Adam Roberts, Jennifer Welsh and Dominik Zaum, eds, The UN Security Council and War: The Evolution of Thought and Practice since 1945, Oxford: Oxford University Press, pp.-6185.

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instability are abundant: dispute over resources or along ethnic lines, international terrorism, the proliferation of weapons of mass destruction, massive human rights violations resulting from failed governance, and poverty especially in post-conflict situations. The Security Council is in need of adapting to these realities and effect a swift and decisive response to various challenges so that peace may ultimately prevail (Matarazzo and Rebasti, 2006:7, Reus-Smit, 2004:1&2, Hanson, 2004:6 and Thakur, 2004). On the contrary, the Security Council remains unchanged reflecting the world of 1945 rather than the 21st century's distribution of power (Weiss, 2005c:368).

The Charter of UN confers on the permanent members the responsibility of maintaining international peace and security acting on behalf of UN member states (Article 24(1)). Paradoxically, the permanent members could not live up to expectations since they tend to jealously guard their own interests (Krisch, 2008, Morris, 2003:9 and Taubman, 2004:211).

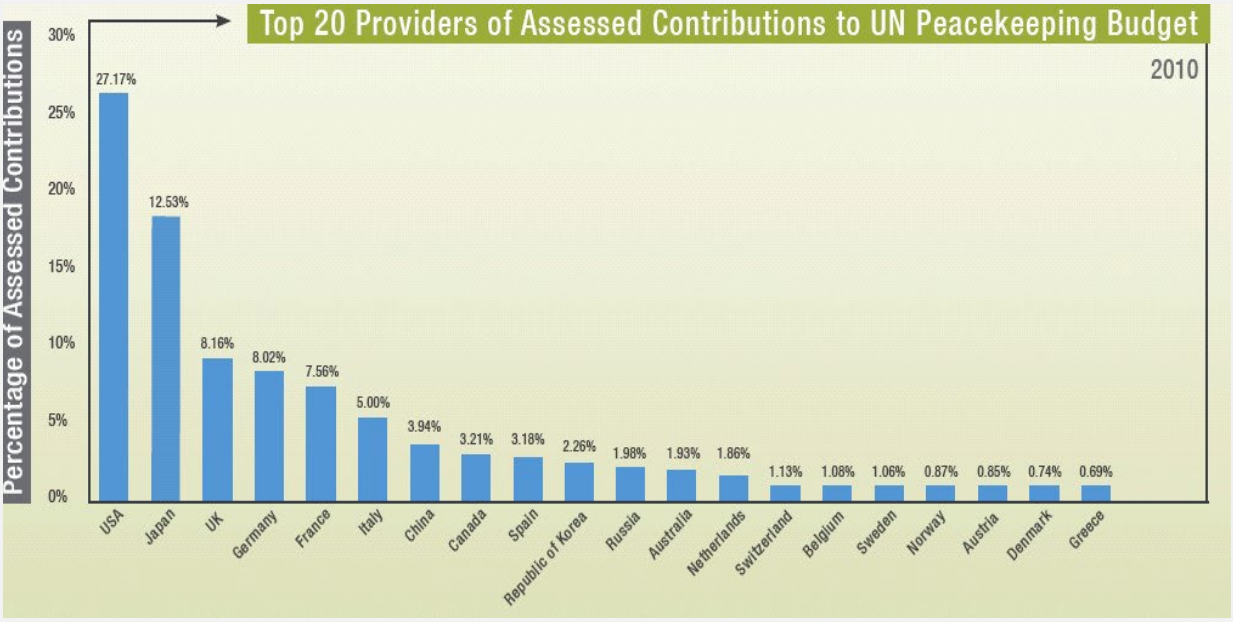
Furthermore, permanency and privileges in the Security Council are no longer justified for some permanent members. On the other hand, developing countries are playing an increasingly more vital role in international affairs and in the establishment of a just and rational new international political and economic order. For instance, India is the world's second most populous country, possesses nuclear power, and is one of the world's largest contributors of UN peacekeeping personnel(602). Japan remains an economic superpower, and is the world's largest aid donor. In addition, developing countries constitute a majority in the 192 UN member countries. On the contrary, developed countries hold a disproportionate number of permanent seats in the Security Council (Krisch, 2008, Blum, 2005 and Weiss, 2003). The following graph helps in readily understanding how some permanent members are not

(602) For the year 2010 India contributed 8,783 Uniformed Personnel to UN Peacekeeping Operations, which is third of all UN members. See, DPI/2429/Rev.7, UN Peacekeeping Fact Sheet, Prepared by the UN Department of Peacekeeping Operations in cooperation with the UN Department of Public Information, March 2010, for further information

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doing what is expected of them in the area of UN peacekeeping budget.

Figure 3



Source: DPI/2429/Rev.7, (March,2010)

Like contributions to the regular budget, making contributions to peacekeeping operations are mandatory. The poorest countries shoulder an effective rate of 0.0001% of the budget of peacekeeping operations. The other developing countries pay 20% of their mandatory contribution. The industrialized countries pay the same contribution rate as they do to the regular budget. Only the five permanent members of the Security Council have an additional burden on top of their normal contribution, which underlines their special responsibility as permanent members and compensates for the lower dues from the developing countries (Weisser, 2009). However, the above illustration indicates that in reality not all permanent members are doing what is normally expected of them.

In the address made to the UN General Assembly at the 59th session (September, 2004) by the prime minister of Japan, Junichiro Koizumi, entitled "A New UN for the New Era", it is stated that:

The reform of the Security Council must be the core of changes in the UN system. In recent years, the role of the Security Council has expanded dramatically in scope and nature. The Security Council must fulfill such expanded roles with the maximum cooperation and participation of the international community. For that purpose, the Security Council must improve its representation to better reflect today's world. In addition, the Security Council must be provided with adequate resources to address the challenges effectively. Countries with the will and resources to play a major role in the international peace and security must always take part in the Council's decision-making process. The Security Council therefore needs to be expanded, both in its permanent and non-permanent categories, adding new members from both developing and developed countries.

4.2 Challenges against Reforming the Security Council

Reforming the Security Council has been a bone of contention for nearly twenty years in the face of the renewed interest of countries like Japan and Germany to become permanent members in the 1990s. The latest effort for reforming the Security Council is contained in the Report of the High-Level Panel on Threats, Challenges and Change (A/59/565), which was later reinforced by Annan's Report In Larger Freedom: Towards Development, Security and Human Rights for All (A/59/2005). This was followed by three major responses: the G4, the
UFC group and the AU proposal. Despite the submission of these proposals, the issue has been dragging on without any breakthrough. Neither of these was tabled for vote, yet due to obstructions by the following factors (Trachsler, 2010: 2, Reisman and Washburn, 1994: 110, Schlichtmann, 1999 and Malone, 1997: 402).

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4.2.1 The Requirement to Amend the UN Charter

The proposals submitted to reform the Security Council focused primarily on increasing the Council's membership and modifying the exercise of veto power as well. For the feasibility of these issues there is a need for amendment of the UN Charter[603] (O'Connell, 2005:108). The founders of the UN provided two avenues for amendment of the UN Charter under chapter XVIII: Article 108 Amendments Procedure and Article 109, Review the Charter through a General Conference.

Article 108 States:

Amendments to the present Charter shall come into force for all members of the UN when adopted by a vote of two- thirds of the members of the General Assembly and ratified in accordance with their respective constitutional processes by two-thirds of the members of the UN, including all the permanent members of the Security Council.

The criteria of two- thirds of UN members for voting and ratifying a proposed amendment requires 128 out of the current 192 members of the UN. In addition, all the permanent members of the Security Council must also ratify before the amendment goes into force. This requirement for unanimous concurrence of the Permanent-Five[604] is the biggest challenge to adopt any amendment to the UN Charter,

(603) The Charter of the UN had its origins in Churchill's and Roosevelt's planning for post-war settlement, and can trace elements as far back as the Atlantic Charter of 1941. The Charter was negotiated during 1944–5 at Dumbarton Oaks, a mansion-house in Washington DC. Its prime architects– the US, the UK and the USSR – were joined by De Gaulle and Chiang Kaishek who are one great liberal, one sentimental imperialist, one murderous dictator, an exile and a losing civilwar faction crafted the text. Given these antecedents it is perhaps curious that subsequent generations have looked to the Charter to provide legitimacy as opposed to an expedient rationale for the use, or non-use, of force. It is a testament to the enduring and flexible language of the Charter that a document with such diverse origins has attained this transcendent status. The UN reconstructed the League's unworkable unanimity procedures around a more vigorous recognition and deference to the great powers' roles. The five powers which wrote the Charter not only granted themselves permanent seats with veto powers, they also granted themselves a veto over the amendment of the Charter (Imber, 2006:329).

(604) The Council's permanent members do not enjoy any right of veto for the adoption of the General Assembly or Review

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particularly if the interest of any member of the Permanent- Five is threatened (Sharei, 2010:8 and Voeten, 2005:189)

Problem of interpretation arises as regards the meaning of two-thirds majority in the General Assembly in the sense that whether it should it be two-thirds of those present and voting or two-thirds of all General Assembly members. While Article 18 of the UN Charter on vote by the General Assembly states that resolutions on important questions shall be taken by a twothirds majority of the members present and voting, Article 108 on the amendment procedure does not qualify what is meant by a two-thirds majority (Ronzitti, 2010:3). The issue was clarified by General Assembly resolution[50] made on 23 November 1998, which states that the two-thirds majority for adopting a resolution on amending the provisions governing the Security Council refers to two-thirds of the UN members and not two-thirds of members present and voting (A/RES/53/30).

These rigid requirements have made any substantive amendment of the Charter almost impossible (Sharei, 2010:8 and Bydoon, 2010:170). Throughout the UN's sixty-five year history, the Charter has been amended only three times and only once with regard to the Security Council: in 1963, an amendment to Article 23, going into force in 1965, increased its members from eleven to fifteen but without any addition to the number of permanent members or modifications to the veto right (A/RES/ 1991A (XVIII)). The other two amendments were related to membership enlargement in the ECOSOC: the first enlarges ECOSOC members from eighteen to twenty- seven in the year 1963, implemented in 1965 (A/RES/1991B (XVIII)), and the second amendment was in 1971 which came in to force in 1973 increasing ECOSOC members to fifty- four (A/RES/ 2847 (XXVI)).

Conference decision. They may vote against the decision or abstain; the decision is adopted if it meets the two-thirds

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majority criterion. However, the permanent members must ratify the decision when it is submitted to its legislative body. If not the amendment or the decision can not be implemented (Ronzitti, 2010:3).

[50] The General Assembly, mindful of Chapter XVIII of the Charter of the UN and of the importance of reaching general agreement as referred to in Resolution 48/26 of 3 December 1993, determines not to adopt any resolution or decision on the question of equitable representation on and increase in the membership of the Security Council and related matters, without the affirmative vote of at least two thirds of the Members of the General Assembly. See, Resolution adopted by the General Assembly, Question of Equitable Representation on and Increase in the Membership of the Security Council and Related Matters, A/RES/53/30, 1 December 1998.

Article 109 is the second path for changing to the UN Charter, which is stated as follows:

1) A General Conference of the members of the UN for the purpose of reviewing the present Charter may be held at a date and place to be fixed by a two- thirds vote of the members of the General Assembly and by a vote of any nine members of the Security Council. Each member of the UN shall have one vote in the conference.

2) Any alteration of the present Charter recommended by a two- thirds vote of the conference shall take effect when ratified in accordance with their respective constitutional processes by two- thirds of the members of the UN including all the permanent members of the Security Council.

The first paragraph of Article 109, calling for a General Conference of the members of the UN for the Purpose of Reviewing the Present Charter and its second paragraph on requiring ratification of two- thirds of the members of the UN including all the permanent members of the Security Council in effect put the same requirements as Article 108. Article 109 assumed a conference outside of the usual General

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Assembly meetings and for the purpose of a comprehensive review of the Charter for presumably major revisions rather than just a few amendments. The Review Conference has never been held yet. The methods of amendments provided for in Articles 108 and 109 differ procedurally but not substantively (Willson, 1996: 116 and Ronzitti, 2010: 4)

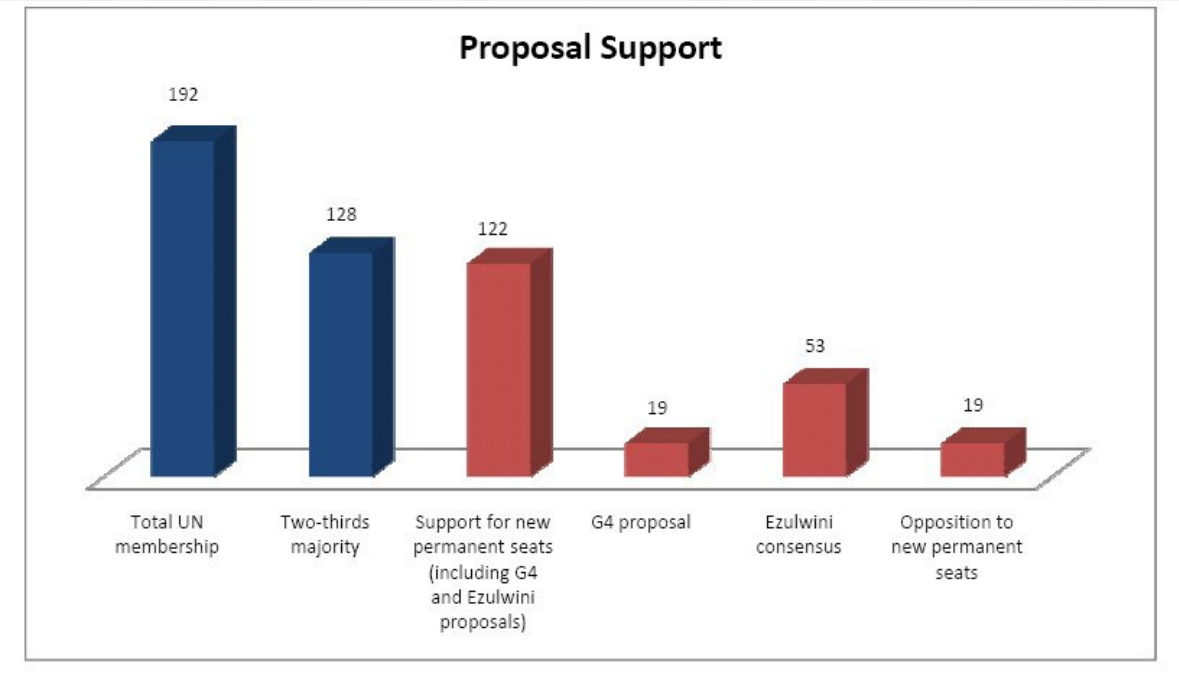
4.2.2 Lack of Unanimity among UN Member States

The call for reforming the Security Council is aimed at recognizing the changed world by increasing the number of members and reforming the exercise of veto to reflect the new geopolitical world. But, the cacophony of views of UN member states debilitates the proposals submitted so far. The lack of agreement on this issue is due to the fact that individual states do not relinquish their ambitions and the associated prestige that would be gained by being a member of the Security Council. This brought various competing models. Three major proposals were introduced (G4, UFC and the AU) following the 2005 Reform Proposal (Trachsler, 2010: 2, Malone, 2005: 370 and Corell, 2005:381).

The disparities in the interests of UN member states never enabled any proposal to be submitted to the General Assembly for vote. If they were submitted, none got the required two- third majority of the General Assembly (Malik, 2005: 19, Voicu, 2005:15 and Schrijver, 2006:27). This scenario is easily understandable from the following illustration.

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Figure 4



Source: Emanuel Evans from Center for UN Reform Education (last updated on December 8, 2008)

There is political paralysis over the exact candidates for non- permanent and/or permanent members, the later with or without vetoes. A more serious difficulty rests upon the new permanent members. If the problem is regarding too many industrialized countries, why are Germany and Japan obvious candidates? Would Italy not be more or less in a similar position in this regard? How do Argentine and Mexico feel about Brazil's (the only Portuguese speaking country in Latin America) candidacy? How do Pakistan, Indonesia (a country having the biggest number of Muslim populations in the world) and South Korea view India's and Japan's candidacy for permanent membership? Most proposals do not single out the Arab world, and is the case regarding the most powerful Arab states like Egypt as part of Africa considered? And if so, would its inclusion display the interests of Sub- Saharan Africa and how do South Africa and Nigeria(605) look at this? Similarly there is no agreement whether

(605) According to Alden and Soko (2005) Obasanjo, the previous Nigerian president, proclaimed at the AU

the veto should be retained, modified, or eliminated; how decisions should be made; and which working methods of the Council should be further refined. All these questions remain unanswered and indicate how much there is lack of consensus among UN member states regarding reforming the Security Council (Weiss, 2005a: 16 & 17, Weiss and Young, 2005:
140, Cassel, 2005: 2 and Luck, 2005b:410).

The lack of consensus is due to the fact that, each UN member state has its own political agenda and foreign policy goals, which leads to providing its own definition of Security Council reform. As a result, member states often uphold differing views on how best to implement reform and how to measure the success or failure of a given initiative. Some member states package their policy priorities as Security Council reform to further their own policy goals. This causes distrust among member states as countries question whether reform proposals by other member states are based on self-interest or a genuine desire to improve the mode of operation of the Security Council (Blanchfield, 2009:22). The complex relationships that exist among member states outside of the UN system is also another challenge causing incongruence among member states. These relationships are entirely independent of the UN system but can affect how countries work together within the UN framework to achieve reform objectives. Military conflict, religious and ethnic differences, political conflict, trade and economic issues, and geography can all potentially impact on cooperation among UN member states (ibid: 24).

4.2.3 The Position of the Permanent Members of the Security Council

Though the permanent members of the Security Council have their respective positions on the need for reform, they are reluctant towards immediate changes and their support in this regard is nominal. The Permanent Five are guarding their cur-

summit that South Africa and Egypt are not qualified to represent Africa on a reformed UN Security Council because they are not black enough.

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rent status so as to meet their own interests[606] and they put various criteria on how to bring about reform in the Council (Malone, 2005).

The Position of the United States of America (USA)

The US has chosen to focus on a UN-wide reform rather than focusing primarily on the Security Council. The focus on overall problems of the UN represents the desire to increase the effectiveness of the organization, but also illustrates US uncertainty on completely restructuring the Council. The US has publicly presented seven areas of reform regarding the UN including the Security Council in the list without putting the Council overhaul at the forefront of reform initiatives. The number one priority in any reform that includes the Security Council remains the effectiveness of the Council and its ability to make and implement decisions in a timely manner. According to the 2005 State Department publication, "US Priorities for a Stronger, More Effective UN," the seven areas of the proposed reform include: Security Council reform, Budget, Management and Administration, Peace Building Commission, Human Rights Council, Democracy Initiatives and the UN Democracy Fund, Comprehensive Convention on Terrorism, and Development.

Regarding Security Council reform, overall effectiveness of the Council is of the utmost importance for the US government, and forms the basis of its line of thinking regarding any sort of reform of the Council (GA/10368). The US stresses the importance of a sound human rights and counterterrorism record as a prerequisite for any new member of the Security Council, but does not believe that any of the Permanent Five should be removed from the Security Council. The US Department of State issued the following statement in 2005 expressing its position on the subject as follows:

(606) See, Mats, Berdal, (2003), "The UN Security Council: Ineffective but Indispensable", Survival, vol.45 (2), pp. -730 for further information.

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The US is open to UN Security Council reform and expansion, as one element of an overall agenda for UN reform. We advocate a criteria-based approach under which potential members must be supremely well qualified, based on factors such as: economic size, population, military capacity, commitment to democracy and human rights, financial contributions to the UN, contributions to UN peacekeeping, and record on counterterrorism and non-proliferation. We have to look, of course, at the overall geographic balance of the Council, but effectiveness remains the benchmark for any reform.

The State Department has clearly expressed that the US is open to Security Council reform and expansion including potentially 2 or 3 new permanent members and 2 or 3 non permanent members. Specifically, the US has expressed its support for immediate inclusion of Japan (also India[607] very recently) as a permanent member of the Security Council and possibility for considering more long-term renewable seats. However, the US government continues to push for overall reform of the UN, not just of the Security Council and attempted to discourage other members of the Council and the General Assembly from focusing on the Security Council as solely subject to reform. In order to improve the efficiency and legitimacy of the UN, reform must not be isolated to one institution within the overall organization. The US reform proposal is a comprehensive one that includes issues of management and economic development, terrorism and peace building efforts, human rights and the prevention of weapons of mass distraction proliferation (GA/10368). US reluctance to focus on Security Council reform without addressing other areas that it views as important could significantly hamper the attempts of other nations to reform the Council unless they are willing to accept the conditions of the US (Blanchfield, 2009).

(607) In remarks by the President of US, Barack Obama, to the Joint Session of the Indian Parliament in New Delhi, India in his official visit to the country in 2010, he said, "we salute India's long history as a leading contributor to UN peacekeeping missions so as to fulfill UN's founding ideals of preserving peace and security promoting global cooperation and advancing human rights. And we welcome India as it prepares to get a seat on UN Security Council."

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The Position of the United Kingdom (UK)

UK supported expansion of the Council in both categories in the sense that an enlarged and strengthened Council would be more representative of the membership of the UN and moreover, it enables to meet the challenges of today's world (GA/10368). UK also favoured a Council which is more transparent could be engaged better with other UN bodies with more effective rapport with the wider membership. Besides, greater openness would enable the Council to perform its Charter responsibilities better and in view of this the UK welcomed the request of permanent membership for India, Brazil, Germany and Japan. UK also supported permanent membership for Africa but never believed that the extension of the veto beyond the current five permanent members is neither necessary, nor would it be in the wider interests of the UN (ibid).

The Position of the Russian Federation

The Russian Federation supported the Council's enlargement based on the widest possible agreement within the UN adding that voting in the Assembly should not cause a split among member states and should not lead to the weakening of the UN and the Council. Russia stated that the Security Council reform should aim at increasing the effectiveness of the Council on the one hand and provide for a better balance of the Council's membership through the inclusion of major and influential developing states on the other. Russia insisted that enlarging the number of members in a new Council should not exceed twenty so as not to undermine the effectiveness of the Council in the name of representativeness. Russia argued that there should not be any priori granting of the veto right before the list of new permanent members of the Council was defined. In case of a decision in favour of the Council's enlargement in both categories, any dilution of the status of the five current permanent members, including the right of veto, remains to be unacceptable. Russia also opposes forcing any decisions through voting in the General Assembly or setting timeframes to adopt such decisions (GA/10368).

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The Position of France

For France the Security Council reform remains to be a very important part of the overall UN reform process since it is indispensable to enhance the effectiveness of the Council and that its membership should better reflect the realities of today's world (GA/10367). France upheld the position that the Council needs to be enlarged in both the permanent and the nonpermanent categories understanding the necessity to include other powers that could make a major contribution to global peace and security. The French government welcomed the draft resolution of the G4. Similarly, France insisted that Africa should get seat in the Council claiming that, Africa had been able to establish a fruitful partnership with the Council in managing crises situations (ibid).

In his speech at the 13th Francophone summit in Montreux, Switzerland, held between 22 and 24, October 2010, the French president, Nicolas Sarkozy, stated that African countries need a seat on the Security Council by saying that it is "scandalous that Africa, accounting for around one billion people, is not represented on the Security Council". He also added that South America and other emerging countries, such as India, also deserve a seat on the

Council (The Daily Monitor, October 25, 2010). Meanwhile in his address to the AU at its 16th Ordinary Session held at Addis Ababa on 30 and 31 January 2011, Sarkozy reiterate the call for representation of African Countries in the Security Council by saying that "Africa has not occupied the right full place at international forums". He also urged the UN Secretary General, Ban Ki-moon, to reform the Security Council this year stressing immediate action to be taken to make African Countries permanent members (Capital,

February 6, 2011).

The Position of the People's Republic of China (PRC)

PRC was of the view that the reform should be multifaceted, including both the enlargement of the membership and the improvement of working methods without sacrificing the Council's authority and efficiency (GA/10367). The Council's enlargement must give priority to increasing the representation of the developing countries as they constituted over two- thirds of the organization's membership in spite of which they were seriously underrepresented in the Council. Hence, China firmly supported the increase of the representation of African countries in the Council. In addition, it called for any enlargement formula to ensure that small and medium-sized countries had more opportunities to serve as members of the Council and participate in its decision-making processes. Furthermore, the Council's enlargement must uphold the principle of geographical balance and reflect the representation of different cultures and civilizations. China strongly opposed to setting a timeframe for the Council reform, and rejected a forcible vote on any formula on which there exists significant differences. It added that the Council's enlargement should not undermine consultations on other important reform proposals (ibid). Besides, China accepts reform in the Security Council should keep intact the rights and numbers of the current permanent members of the Council (Malik, 2005:25). The Chinese government believed that the status of permanent membership is deeply rooted in the historical evolution of the early days of the founding of the UN and is in the fundamental interests of the UN, and advocated that the veto mechanism should remain as it is. No more countries should be granted the power of veto, since it becomes conducive to efficient and smooth running of the Security Council itself as long as not given to others (ibid).

The study revealed

The UN, which was formed after the end of the WWII, came with six principal organs

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as provided for in its Charter. Among the organs, the Security Council is the most powerful. It was agreed at Dumbarton Oaks conference that members of the Security Council would be eleven, five of them (USA, UK, France, USSR and China) being permanent ones with veto power and the rest six were designated as non-permanent which are elected within two years. The number of the non- permanent members was increased to ten in 1963, which is the only reform of the Council that took place in its history that occurred due to the increment in the number of UN members. ROC (Taiwan) was replaced by PRC by a UN resolution of 1971. Similarly, Russia took over the seat of USSR in 1991 following its disintegration. The UN Charter granted the Security Council the primary responsibility to maintain international peace and security which was the strong justification for forming the organization. It was agreed that the Council resorts to peaceful means like negotiation, mediation, conciliation and arbitration in the first instance, but if there is threat to peace, breach of peace agreements and acts of aggression take place, the Security Council is empowered to resort to enforcement measures.

Reforming the Security Council remains to be at the forefront of UN member states' agenda especially since the 1990s. The call to reform the Council was intensified by the following factors. The dramatic increase in the number of the UN member states was one push factor. There were only 51 countries at the San Francisco conference convened to establish the UN, whereas this has reached 192 at present. The problem is not only the exponential increment of members but the question of from which continents were the original founders was also one of the sources of the dilemma. For instance, the original African members of the UN were only four since the others were under colonial rule, whereas at present 53 of 192 UN members are African countries. Thus by the time of its formation, the UN did not resemble a robust and full-fledged international organization in its composition. Veto power is another controversial issue, which was opposed since the founding conference. The proponents of veto power argued that its lack curtails the Council's actions in different scenarios that could have serious effects in dealing with grave crises situations. The inability of

UN members to participate in the Council's decision making and lack of transparency in its meetings are also problems of the Council which in turn provoked the need for reforming this UN organ. The Council also remains impotent in curbing actions taken without its agreement as clearly shown in the US invasion of Iraq.

In all the proposals submitted to reform the Security Council, expansion of membership is at the forefront of the reform agenda. The proposals contained respective views on size, membership category and criteria for new entrants. In relation to size of an enlarged Security Council, the High- Level Panel in both models fixes the size at twenty four whereas the G4 and UFC proposals call for increasing the size of the Council to twenty five. On the other hand, the AU proposal suggested a Council with twenty six seats, which is the largest number of all proposals examined by this study.

Membership category of the Council proposed to be reformed (the permanent and/or the non- permanent membership of the Council) is another dividing factor exhibited in the proposals submitted. In this respect, the High- Level Panel could not come out with a single model indicating lack of clarity and consistency. In the Panel's Model A both the permanent and non- permanent members are to be changed. This model adds nine additional seats, six of which would be permanent members and the rest three to be non- permanent. On the other hand, Model B be leaves the permanent category intact. Rather, it creates a new category of four- year term seat consisting of eight members on renewable basis and it adds also one non- permanent member of a two- year term, which is non- renewable. The G4 and the AU proposals call for change in both categories of membership. Both call for adding six permanent members despite their difference on the number of non- permanent members. In this regard, the former suggests four whereas the latter advocates adding five non- permanent members. On the other hand, the UFC group requests to have change only in the non- permanent category adding ten additional members on a two- year term basis eligible for immediate reelection, subject to the decision of

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their respective geographical groups.

In relation to the criteria to be used for new admissions, the Panel report vividly states that, the Security Council was created to be not just representative, but a responsible body with the capacity for decisive action. From this, it is possible to conclude that the Panel focuses on the contribution of states, that is, distribution of seats not just representation. In doing so, the Panel came with four major regional geographic areas: Africa, Asia and Pacific, Europe and

America which is different from the current regional groupings consisting of Eastern Europe,

Western Europe and other States, Latin America and the Caribbean, Asia and Africa. The Panel's purely geographical regional approach is unlikely to be accepted by UN member states. For instance, Latin Americas resented it. The G4 proposal calls for including states which are influential in the contemporary world without ignoring the views and needs of developing states that is in accord with the current regional groupings of the UN. Similarly, the UFC proposal gives priority to the contribution of member states to the maintenance of international peace and security without neglecting the need for equitable geographical distribution. Unlike the other proposals, the AU proposal insists on representation claiming that Africa was under- represented when the UN was being formed.

It is to be recalled that, the Panel report calls for consulting troop contributing states since they have the right as stated under Article 46 of the UN Charter and recommended to improve transparency and accountability in the Council's working methods adding calling for greater civil society engagement. Similarly, the G4 and UFC proposals call for improving transparency, inclusiveness and legitimacy of the Council's work to strengthen the support and understanding of its decisions by the members of the organization, there by increasing the Council's effectiveness. These two proposals included a series of issues in their respective draft resolutions to be improved. Unlike these, the AU proposal says noting about reforming the working methods of the Council. Simply, it calls to enlarge the Security Council in both the

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permanent and non- permanent categories and improve on its working methods. Which working methods are not mentioned in the draft resolution. In this regard, it is possible to argue that the AU proposal is weak since expanding the membership of the Council without improving its working methods cannot bring about the required changes in the Council.

Veto power remains another major stumbling block on how to reform the Security Council. The Panel report seeks to maintain the status quo. It requests the permanent members, in their individual capacities, to pledge themselves to refrain from using veto in cases of genocide and large- scale human rights abuses. Similarly, the UFC proposal does not call for any change in the veto power arrangement despite the need for restraint in its use. On the other hand, the G4 proposal calls for granting the veto power after fifteen years following the joining of the new members. The AU proposal is different in this respect since it insists that the new members must enjoy the same prerogatives and privileges as those of the current permanent members including the right of veto following their admission into the Council.

Reforming the membership of the Council, particularly the permanent category and the veto power is highly problematic. This is due to the fact that amending these call for amending the UN Charter, which requires the unanimous support of all permanent members. This is unlikely to happen under a condition where the Permanent Five cited an array of criteria on how to reform the Security Council despite the support of France to reform the Council including concerns related to permanent membership. Thus, the feasibility of proposals which call for reforming the permanent membership and the veto power is farfetched. In addition, it is important to note here that members of the UN, except the permanent members, are not united and couldn't come up with one common proposal whose lack curtails the progress in reforming the Council. In the light of this, a proposal which needs Charter amendment cannot pass even the first step since it requires a two- third majority in the General Assembly. Finally this study concludes that it is unlikely to see changes in

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the Security Council which requires amending the UN Charter, especially the provisions dealing with veto power and permanent membership in the near future since the challenges outweigh the prospects in this regard.

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Interview

Unstructured interview with Admore Mupoki Kampudzi (Ph.D.), the Secretary of the African Union Peace and Security Council.

Appendix

Interview Guidelines

1) Different proposals brought their own criteria to be used for new admissions and they insist on representation and/or distribution. How do you see this?

2) On the issue of veto power, proposals are divided on whether it should be granted to the new admissions or not. How do you see this?

3) Regarding reforming the working methods of the Council, the Group of Four and Uniting for Consensus proposals included series of methods to be improved while the African Union proposal is not doing this. How do you evaluate this?

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