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The Security Council's Enlargement Issue

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Abstract
Created in a post-crisis context, the Security Council is considered as the window through which United Nations' activities are evaluated. As the main body in charge of maintaining international peace and security, the Council must be characterized by both effectiveness and legitimacy. Therefore, new requirements of the international scene have to be taken into account, including improving its representativeness. Legitimacy of the Council is permanently challenged due to, among others, its old composition, make it necessary to engage a reform in order to guarantee its effectiveness. This is the wish of almost all States and even the doctrine, but the institution is still facing the problem of its feasibility. It seems illusory to consider that a collective security system designed to guarantee security of a constantly changing world can be effective while remaining totally faithful to its very first conception.
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1. Introduction

The Security Council as the main organ of collective security system is at the heart of the unprecedented normative structure established by the United Nations Charter during the Second World War aftermath. Indeed, at the beginning, the Security Council was conceived and designed as responsibility and capacity organ whose primary responsibility is maintaining international peace and security according to Article 24 of the Charter. The Council is an exceptional body as far as its prerogatives are concerned, and has a special place in the institutional framework of collective security as provided by the Charter. The Council is much more than an actor since it is the last guarantor or even the institutional police in charge of bringing lost sheep back on the right path, namely, a peaceful cohabitation.

In this respect, the Security Council's role is vital due to its competence fragility on the one hand and its pre-eminence concerning decisions involving the use of force at the international level on the other hand. At the structural level, the Council is based on the necessary agreement between the five permanent members when a threat to peace arises (Article 23(1) of the Charter). But after the short euphoria following its creation, the Security Council faced the advent of new issues not specifically provided by the Charter. Its legitimacy issue is currently a major concern, among many others, on the international scene and constitutes the showcase through which researchers, from various scientific backgrounds, assess or evaluate order effectiveness as provided by the United Nations Charter and even international laws. This issue shall primarily focus the attention of the lawyer in general and the internationalist especially as far as the need to improve both action and authority of this body are concerned.

As concern since long time ago, the issue of reforming the Security Council and more precisely its composition falls within the general framework of that of the United Nations. This can therefore lead to the question of its opportunity, stated as, "Why shall we continue reflecting on an issue for which no attempt has been made since its first attempts? Is it not succumbing to a simple fashion trend, to alterglobalization rhetoric or technocratic chimeraism, to the pleasure of paper architecture and imaginary cities? "(Hubert Védrine, 2004, p. 125). Through these multiple questions, the author was already revealing the relatively original nature of an analysis based on United Nations reform in general and that of the Security Council in parallel. But it is still relevant considering conceptual limitations and functional failures observed since 1945 as well as the need for this body to respond to ever-increasing demands of international society. The gap or the obvious gap between San Francisco ideal and subsequent practice of the Council call for, beyond innovation thereto related, a real need for "conventionalization".

This imperative is related to the impact of time on the institution. Indeed, "there is no unchallengeable constitution. Any constitution must adapt to the changing conditions of the Society it governs; whether national or international, any constitution must be revised», (Emile Giraud, 1956, p. 341). Its topicality is thus linked to the constancy of expectations and the permanence of certain difficulties. This need for reform is seen as the solution or even the precondition to compensate for the gap that is gradually being created between the 1945

Charter and the current world. However, the leap towards modernity goes far beyond a simple wish motivated by a legally pre-established procedural framework to incorporate considerations that escape the internationalist lawyer. Indeed, it seems illusory to consider that a collective security system designed to guarantee the security of a constantly changing world can be effective if it remains totally faithful to its original conception. Indeed, while "it is obvious that a strengthening international community needs a forum for dialogue and decision-making to

resolve community problems" (Yves Sandoz, 2003, p. 326), it is equally important that such a platform be covered by a certain legitimacy that consolidates its authority.

Legitimacy of the Security Council is essentially based on the United Nations Charter, which establishes its competence and provide necessary powers as well as prerogatives for exercising its functions. Therefore, as a constitutive charter, it can organise the process or conditions and modalities of any provisions' modification. There is therefore no specific procedure for Security Council reform other than that defined by the Charter. The on-going challenge to legitimacy of the Council due to a number of cumulative factors underlies the need for a reform in order to ensure its effectiveness. If it is the wish of almost all States and even the doctrine, it raises the issue of its feasibility. It is rather the question of its enlargement that has not been unanimously accepted since the only reform in 1965 because of the formalism it requires. So how can we understand this difficulty in moving from intention to action? This interrogation once again highlights the famous dialectic between law and politics. In practical terms, this means that the legal framework is favourable to enlargement and early implementation or operationalization.

2. Malleability of the legal framework for Security Council's enlargement

Exercising secondary constituent power is fundamentally governed by the Charter, which sets out procedure for exercising it. An analysis of the said legal framework makes it possible to affirm the malleability of the substantial reform framework. Any reform of the Security Council requires amendment and review of United Nations Charter provisions. While the need to review Security Council composition is not in dispute in principle, it is important to know what the Charter allows and what it does not. The reform of a system is related to its standards (decisions) and organs. It is therefore important to analyse here the "constitutional" organization of Security Council reform. Based on the analysis, it appears that there is some flexibility in this legal framework, which fluctuates between restrictive clauses absence and a formal modification procedure.

2.1 The absence of unchangeable clauses as a guarantee for an expansion of the Security Council

Generally, it is noticed that the mode of reviewing constitutions of States and even of some international organizations constitutive charters set substantial limits to any possible modification. The main purpose is to exempt certain provisions from any initiative or reform attempt. Constitutions themselves set limits to their revision. These limits are either material or temporal. It appears that failure to exempt certain provisions of the Charter from possible amendment is a clear indication of this constitutive treaty as compare to domestic law to which it is frequently assimilated (Sandra Szurek, 2005 p. 36) and even from some international organizations.

2.1.1 Demarcation of the Charter as compare to domestic law on constitutional review

Procedure for revising constitution is not uniform in all States and it is the proof of States' sovereignty, if not the main one. As such, it is freely elaborated by each State. Constitutional review principle is preserved in all modern constitutions. Depending on the flexibility of the revision procedure, the flexible constitution traditionally contrasted with the so-called rigid one. It therefore presupposes the existence of a written constitution. Beyond certain traditional theoretical considerations, each State defines the legal framework for the revision of the constitution by providing, among other things, for material limits, a kind of "intransgressible norms" or rules that are not subject to any revision.

In an analysis of constitutional provisions of some States, K. Gözler draws up a non- exhaustive list of various intangibility clauses envisaged. Thus, for the author, these insubstantial reform provisions are related to: prohibition to review the republican form of government, the monarchical form of the State, the federal structure of the State, the unitary character of the State, prohibition to review ideological foundations of the State, human rights, integrity of the territory of the State (K. Gözler, 1997). Thus, the statement according to which "a good Constitution is not just a set of rules and institutions. It must be a living body able to adapt to transformations of the society it governs" (J-L. Quermonne, 2004) is therefore relevant in principle but subject to adaptation according to each context, (Jean-Louis Atangana-Amougou, 2007, p. 583).

Considering the relevance of States that have adopted, it is clear that prohibition on reforming the republican form of government seems to be one of irreconcilable clauses mostly considered by States. Moreover, as a sovereign prerogative, each State freely defines the scope of these intangible clauses. They may be extensive as in Germany and Portugal (see Articles 1 and 20 of the German Constitution and Article 288 of the Portuguese Constitution). This need to make sacred some constitutional law provisions sometimes goes beyond the substantial framework to include temporal limitations (the French Constitution of 1791); constitutions prohibit any revision before a certain period of time. This internal state practice may aim to guarantee some stability in state legal order fundamentals. In this context, there would be final achievements that are not subject to requirements of time evolution.

Still concerning derived constituent power limitation, some constitutions prohibit any revision in some circumstances. Thus, some constitutions prohibit their revision when the integrity of the territory is compromised as well as during the interim presidency of the republic (the 1958 French Constitution (art. 89, para. 4). A similar prohibition is also adopted by some African States (Mali, art. 76; Côte d'Ivoire, art. 73; Gabon, art. 84; Togo, art.

53); some monarchical constitutions prohibit the revision of the constitution during regency periods (art. 197 of the new Belgian Constitution of 17 February 1994) and revision prohibition of the constitution during exceptional states (article 289 of the Portuguese Constitution, art. 196 of the new Belgian Constitution of 17 February 1994). The power to review constitutions therefore remains, in general, limited and subject to constitutional requirements of each State. This gives rise to a kind of restrictive custom in terms of amending constitutions, since it seems rare to find a constitution that authorises, in absolute terms, amendment of all its fundamental law provisions. In international law, the legal regime for amending international conventions is relatively flexible and open as compared to that of domestic law.

2.1.2 Demarcation of the Charter as compared to constitutive treaties of other international organizations

In general, it is the Vienna Convention of 23 May 1969 on the Law of Treaties which sets out general rules of customary origin governing the modification of treaties in international law (articles 39 to 41 of the Vienna Convention on the Law of Treaties of 23 May 1969). However, these measures have an indicative and supplementary function as the parties and therefore agreements that freely organise procedures and define procedure for amending their content by including revision clauses in practice. In determining how they should be revised, some organizational constitutions are fundamentally similar to the model for revising national constitutions, while others differ in some respects.

Material limitations hypothesis stated by general law is explicitly enshrined in some multilateral treaties. Thus, Article 155§2 of the Montego Bay Convention provides that: "The Review Conference shall ensure that common heritage of humanity principle, international regime for its equitable exploitation for the benefit of all countries, in particular developing States, and existence of an authority in charge of organizing, conducting and controlling activities in the area are maintained. It shall also ensure that some principles indicated here are maintained with respect to exclusion of any claim and exercise of sovereignty over any part of the Area, (...). The subjects thus listed are excluded from any revision procedure. It therefore seems that the regulations relating to these areas have been in force for life and therefore not subject to any change. The UN Charter, for its part, does not subscribe to this restrictive practice of the power of modification.

The Charter of the World Organization does not provide fixed provisions, in other words, provisions are exempted from any attempt to modify their content or legal effect. Nevertheless, absence of an exception to amendment procedure provided for in Article 108 of the Charter means that "no provision, even fundamental one, shall escape the virtual scope of amendments" (J. Dehaussy, 2005, p. 2194). It is in line with the idea that "adaptation of treaty relations is a political necessity, and desire to maintain existing rules as they stand may mask the need to preserve undue privileges and advantages". Revision clauses contained in Articles 108 and 109 are basically concerned with defining the procedure and determining modalities for adoption, ratification and entry into force of any amendments to Constituent Treaty. Consequently, in absence of provisions exempting articles from any amendment, it appears that the whole of this normative mechanism may be amended (; ICJ, Case on Military and Paramilitary Activities in and against Nicaragua, Reports, 1986, p. 45). Legal framework malleability for revision thus established is extended beyond substantive field to the procedural aspect.

2.2 An enlargement subject to a relatively rigid procedure

Analysing the Security Council legal framework reform is undoubtedly about the legal framework for amending the UN Charter. Indeed, any change in the structure and functioning of the Security Council necessarily requires an amendment and revision of the constituent treaty. These legal precautions are for both the preparatory phase and the final phase of this process, which is ratification.

2.2.1 Preparatory Phase Conditions: adoption of the enlargement project

The general legal framework for revising the Charter provided by Articles 108 and 109. The start-up phase can be described as the preparatory or "pre-constituent" phase. As for this study, the latter corresponds to amendment initiative and draft amendment preparation.

As far as the amendment initiative is concerned, it is dual insofar as it may be made by two separate bodies: either by the General Assembly or by a Conference convened for that purpose. However, nothing is said about elaboration of the text submitted later. Competence sharing between the General Assembly and the Conference results from a distinction made by the Charter between amendment and revision. By this practice, the Charter differs from the general rule on the amendment of the constituent instruments of international organizations.

Generally speaking, in international law, a convention adoption is made by a more or less qualified majority, in absence of acceptance by all, according to the voting rule giving each State one vote. These procedures for adopting draft amendments to a treaty may be defined by the internal provisions of each convention and thus vary from one convention to another. From the outset, practice shows that, with regard to the adoption of the amendment, the unanimity rule is almost exclusively waived. The latter now only applies to treaties concluded between a small number of States (Article 48(1) of the TEU applicable to all Community treaties or Protocol No 11 to the European Convention on Human Rights). In addition, some multilateral treaties provide for rather atypical ways of adopting possible amendments (Article 313 § 3 of the United Nations Convention on the Law of the Sea).

In fact, States vote constitutes, considering a constant practice, the main method of adopting amendments to a treaty. And as a general rule, it is the majority principle that serves as the applicable standard and the organs of international organizations play a leading role in this regard. Thus, with regard to the Charter, the majority required for the adoption of any amendments is "two thirds of the members of the General Assembly" (Article 108). With regard to the revision, Article 109 refers to "any amendment to this Charter recommended by the Conference by a two-thirds majority". The cumulative analysis of these provisions shows that amendments made in accordance with article 108 require the intervention of the General Assembly only, while the second means of revision is with the approval of the Security Council.

Indeed, there are no fundamental major differences between the procedure under Articles 108 and 109. In practice, the co-owners of the derived constituent power have the same composition and cannot therefore vote under different conditions. In addition, the use of traditional treaty adoption law as enshrined in the Vienna Convention may constitute an additional source of analysis. Indeed, the latter provides that " text adoption of a treaty at an international conference shall be effected by a two-thirds majority of the States present and voting, unless those States decide by the same majority, a different rule" (Article 9, § 2 of the Vienna Convention on the Law of Treaties of 23 May 1969). This rule applies equally to the adoption of a new treaty and to an amendment to a pre-existing treaty. However, the General Assembly will definitively dispel all ambiguities and procedural uncertainties that are the source of many controversies.

In a resolution of 23 November 1998, the General Assembly expressed its determination to "adopt no resolution or decision on the question of equitable representation on and increase in the membership of the Security Council... without a vote of at least two thirds of the members". This is two thirds of the members, which is obviously even more binding than the two thirds majority of those present and voting, provided for important matters under Rule 18. The scope of this provision seems to be limited to the specific issue of Security Council reform. This can be justified by the sensitivity of this issue and, above all, by the real implication, on the functioning of the Organization, of any modification of the Security Council.

Moreover, a draft amendment adoption is not subject to a favourable vote by all permanent members. Indeed, the abstention or negative vote of one of the permanent members cannot prevent its adoption as soon as the necessary quota of votes is reached. Thus, when the 1963 draft reform of the Security Council was adopted, only China voted for the rest of the permanent members who either abstained or voted against. But the number of positive votes (96 votes) allowed the project to be adopted and the ratification phase to begin. This did not prevent the ratification of this text by all permanent members. In view of the above, it seems excessive to consider the requirement for ratification of the draft amendment by all members as one of the obstacles to the implementation of Council reform. This is all the more significant as no reform project of this body has since then reached the stage of ratification and has been blocked due to a negative vote by one of the permanent members. The requirement of unanimity of the permanent members is not a systematic limitation. Through this approach, the Charter tends to emphasize the transitional and not final nature of adoption and its status as a step in a process culminating in ratification.

2.2.2 The final stage of the Charter amendment procedure: ratification and its legal impacts

Ratification is the legally decisive phase that transforms the draft treaty into a final and written commitment. Theoretically, the treaty is considered to be hybrid because it is simultaneously governed by domestic and international legal systems, especially in terms of its drafting or conclusion. Therefore, the ratification of a treaty at the international level, by which the State indicates to the international community its intention to respect the terms of the treaty, should not be confused with the ratification at the national level, which a State must sometimes proceed to, in accordance with its constitutional provisions, before expressing its consent to be bound at the international level.

Procedure for amending the Charter, as well as that required for its institution, has not set a deadline for States to send their instruments of ratification to the depositary. However, this silence cannot be interpreted as excluding or prohibiting such a possibility. Thus, much more than a hypothesis, the possibility for the General Assembly to subject ratification to a time limit was a reality in the context of the amendments to articles 23, 27 and 61 of the Charter made by resolutions 1991 (XVIII) of 17 December 1963. This non-traditional practice should, in its development, which is certainly always expected, take into account a number of factors, in particular the diversity and scope of the constitutional procedures for ratification. While ratification is the final step in the amendment procedure, it is subject, under the Charter, to additional conditions that make it difficult its entry into force and undermine the amendment procedure.

The entry into force of any amendments to the Charter is the last legal modality that definitively regulates the formal attachment of Member States to the "new" convention. As such, it is subject to some classic procedural requirements for its implementation.

Broadly speaking, an amendment enters into force according to provisions of the Treaty relating to amendments, for example: upon expiry of a certain period after submitting a certain number or percentage of ratification instruments, acceptance, etc.; or within a certain period after its publication, provided that none of the

parties to the Treaty objects (Article 20(4) of the Kyoto Protocol to the United Nations Framework Convention on Climate Change (1997). This principle is for both to the original text and to any amendments that may be made to it. To this end, the Charter provides that any amendment shall enter into force "when it has been ratified, according to their respective constitutional processes, by two thirds of United Nations Members, including all Security Council permanent members". In accordance with this provision, it appears that two cumulative conditions are required for an amendment to have legal effects on Member States. This concerns adopted text ratification by a two-thirds majority of members, but also and above all unanimous vote of the five permanent members. Indeed, by a discretionary refusal of ratification, each of the five great Powers can prevent the entry into force of any amendment to the Charter (Paul De Visscher, 1966-2).

Failure to ratify, a permanent member can impact the work done, perhaps in its absence, from the preparatory phase to reach agreement. Moreover, its assistance is not required for the adoption of text submitted for ratification, if any. Thus, when amendments to Articles 23 and 27 were adopted, increasing the number of non-permanent members of the Security Council from six to ten, France and the USSR voted against them, while the United Kingdom and the United States abstained. However, this "negative" vote of the permanent members did not prevent the adoption of the draft resolution to amend the Charter. However, they had all ratified these amendments, which entered into force on 31 August 1965, date of their ratification by the United States. The Charter has opted for a more binding and less flexible approach. Practice will be more informative if new amendments are adopted in the future, especially since there has been a constant need to reform World Organization's Constitutive Charter since adoption of first ones.

3. A politically unstable implementation

Many attempts to reform the Organization, as evidenced by various reports, make it possible to consider, on an indicative basis, the extent of disagreement areas. P. Tavernier refers to it as "Loch Ness monster" (P. Tavernier, 2005). Security Council inconsistent authority when facing threats flexibility makes it imperative and timeless this need for change (D. Colard, 2000). Convergence of views on Security Council democratization by improving its representativeness attests the permanent and inevitable nature of this issue in international law. However, this is a new requirement for this body, which was originally built around other priorities. Indeed, as J. P. Colin points out, "When United Nations founders entrusted the Security Council with maintaining international peace and security its primary responsibility..., it was not intended to become a purely representative entity, it was intended to become a responsible body, a decision maker and actor" (J. P. Colin, 1991). The Security Council has therefore been established based on logic of responsibility and capacity, but States now consider that its authority requires better representation (Alexandra Novosseloff, 2006). In other words, much more than a simple increase in the number of board members, the problem is fundamentally related to the veto right that is the main issue.

3.1 Flowering of proposals as obstacle to the Security Council's enlargement

Improving the way this body is composed is, almost unanimously accepted by doctrine, States and various reports thereto related. However, this agreement on improving the Council's composition has never occurred due to persistent disagreement on the exact number of members who should legitimately compose this body. Diversity of formulas proposed both by various reports and by States illustrates the difficulty of making this necessity a reality.

3.1.1 Diversity of approaches proposed by various reports on Security Council reform

Since representativeness is at the base of legitimacy, almost all votes are in favour of enlarging the Council. Since the 1980s, many reform projects have been launched to enlarge the Security Council into two components composing it: permanent members with veto power and non-permanent members. Reports submitted by working groups require a chronological breakdown that makes it possible to consider proposals made first during the 1990s, which were characterised by a kind of renewal of the Council following the end of the Cold War and then those following 11 September 2001 attacks.

The first proposals for an improved composition of this body actually emerged during the 1990s. This was first the case with reports of two groups of independent experts, one funded by Ford Foundation and another by the Commission on Global Governance (A/50/79 and S/1995/106, 6 February 1995). The first recommends Security Council enlargements to 23 members, including no more than five new permanent members. In addition, it was recommended that the veto right shall only be limited to United Nations peacekeeping issues and peace enforcement operations. The second, for its part, recommends the Council's enlargement to 5 new standing members without veto power in a first step, while the number of non-permanent members would increase from 10 to 13. As for the voting procedure for obtaining a decision from the Council, it is suggested that the number of votes required shall be increased from 9 to 14 of the non-permanent members (A. Legault, 1996). But these reports, like most of those that follow, have been working on composing again the Council without necessarily addressing the eligibility criteria for each other or the guarantees of the Council's effectiveness. The creation by the General Assembly of a working group specifically dedicated to reflect on the Council's enlargement has made it possible

to consider an alternative approach.

The issue related to Security Council's equitable representation, which has been included as item on the General Assembly's agenda on several occasions, has made considerable progress with creation by this plenary body of a working group entirely devoted to Security Council reform. This group effectively began its work in 1994 and proposed to address the issue related to Security Council's enlargement over time. This group becomes "the main - but not the only - receiver of Security Council's reform proposals. It allows States to organize themselves in terms of pressure groups, influence groups, proposals" (Alexandra Novosseloff, 2015). A working group open to all Member States of the Organization, it produced the "Razali Plan" in 1997, which advocated the expansion of the Council's membership.

The Working Group had proposed in its report to increase the membership of this body from 15 to 24 members (General Assembly draft resolution A/ACg.247/1997/CRP.1, 20 March 1997). In A/51/47 (8 August 1997). Thus, five new members would be granted permanent status and four members would be non-permanent. This report has the merit of having substantially considered proposals for improving the composition of the Council. As such, it constitutes the basis on which all the schemes subsequently proposed were based in response to failure to complete these proposals (See, A/50/47/Rev. 1, 31 January 1997, §36, p. 10; A/51/47, 8 August 1997, § 10, p. 4; A/52/47, 24 August 1998, § 24, p. 7; A/53/47, 5 August 1999, § 28, p. 7; A/54/47, 5 July 2000, § 31, p. 5).

Former UN Secretary-General K. Annan had assigned a working group of international experts to reflect on the security challenges posed by the events of the early 21st century. This Panel of Eminent Persons issued a report on 2 December 2004 in which it made proposals for a more effective organization of the United Nations (A/59/565 of 2 December 2004,"A more secure world: our shared responsibility").

This panel proposes an increase of 9 additional members, i.e. a Council of 24 members. Two options were adopted and subsequently included in the Secretary-General's report (A/59/2005 of 21 March 2005,"In larger freedom: towards development, security and human rights for all"). In absence of a consensus on a single formula, those reports have proposed two options for States to reform the Security Council: A and B. New members would be added to the current 15 members of the Council: some of them could be permanent or semi-permanent members, but would not have the right of veto. Under formula A, six permanent seats with no veto power and three new non-permanent seats with a two-year mandate would be created. Formula B, on the other hand, involves creation not of new permanent seats, but of a new category of seats with a four-year renewable term: there would be eight, plus a new seat with a two-year non-renewable term. This is similar to the current configuration of this organ (Paul Tavernier, 2005). Both formulas separate the problem of permanence from that of the right of veto. With regard to these proposals, it can be seen that they have a certain relationship with the Razali plan. This diversity of approaches is also perceptible in all proposals made by States.

3.1.2 Heterogeneity of proposals made by States

Consensus of States on the need to reform the Security Council is a structure that has evolved over time. Thus, some States which were formally opposed to it eventually changed their minds and proposed an increase in both permanent and non-permanent members. This was the case in particular for Italy, Mexico and Turkey (A/51/47, 8 August 1997, § 2 and 6, pp. 64 and 67; A/49/965, 15 September 1995, pp. 94 and 112). In view of the flourishing positions of States taken individually or in groups (A/49/965, §7, p. 67; A/51/47 §5, p. 12), it seems difficult or even illusory to make a full inventory here. Only those made in groups will be analysed in this context. These include the G-4, a major group called Uniting for Consensus (UFC) and the African Union's position.

Led by main candidates for permanent membership (Brazil, India, Germany, Japan and India), the G-4 is considered to be the most structured and determined group. This group is clearly leader as far as Security Council's enlargement is concerned (Alexandra Novosseloff, 2006). It opts for an increase of 10 additional members, including six new permanent seats without veto power for at least 15 years and four non-permanent seats (A/59/L.64). In addition, G-4 mentioned that new members should not use a veto right until the issue of extending the veto to new members is decided as part of a review. Thus, aware of the difficulty in getting a proposal to increase the number of permanent members with veto power accepted, the Group of 4 believes that it would already be an achievement and a great step forward to simply become a permanent member. This single presence can be the beginning of conciliation between their significant contribution to United Nations activities and their relative participation in major decisions that engage the international community.

Like the "G4", the African Union has made a proposal in favour of enlarging the Security Council. One of the main features of this approach is that this is the work of a regional organization that therefore acts on behalf of the whole region and has a common position. Thus, on 7 and 8 March 2005, Member States of the African Union adopted a common position on United Nations reform, known as the "Ezulwini Consensus". It provides that full representation of Africa to the Security Council means at least two permanent seats with all privileges and prerogatives of permanent members, including the veto right; five non-permanent seats. In general, the African Union proposes a reformed Security Council of 26 members, that is, an increase of 11 members.

Following the "G 4" and the African Group position, "United for Consensus" group is a counter-proposal to the "G 4". Known in English as Uniting for Consensus (UFC), this group includes countries such as Canada,

Pakistan, Italy, Spain, South Korea, Argentina and Turkey. It stands out from the G-4 on the issue of new member category. Indeed, this group only proposes the addition of non-permanent members to the Security Council. These countries also proposed an enlarged Council of 25 members, but with a doubling of non- permanent seats from 10 to 20. This lack of consensus on a formula also appears among the permanent members of the board.

France and the United Kingdom have almost identical positions on Security Council reform. They formally support an expansion of the Council in order to increase its representativeness, but to a limited extent, in order to preserve its effectiveness. Of all the proposals put forward on this reform, France and the United Kingdom are in favour of expanding the Council in both categories of membership: permanent and non-permanent. They support the G-4 and an African representation for new permanent seats on the Council that advocates an expansion to twenty-five members for both categories. Due to difficulties in reaching an agreement at United Nations, the Franco-British position has changed somewhat (on the occasion of the 30th Franco-British Summit in March 2010). On the other hand, the positions of the United States and Russia seem less flexible and less accommodating.

First, Russia states that the Council must remain compact and supports an enlargement limited to about 20 seats. About the veto issue, Russia does not want any changes at this time. At the 68th session of the United Nations General Assembly, they stated that the country was in favour of changes that would make the Council more representative without compromising its efficiency, productivity and speed of decision-making. For the United States, which had long been shy on the subject, the country has broken its silence to formulate a modest reform proposal. They advocate a comprehensive reform of the UN system and less a restrictive approach that only focuses on improving legitimacy of the Security Council. For China, developed countries are over-represented at the Security Council and therefore new ones should not be admitted as permanent members. In order to preserve its regional leadership, China is therefore against Japan or India joining the Security Council as permanent members, as it considers that Asia is already represented enough in this body. Thus, only the entry of developing countries into the Security Council can make this body more credible and representative.

Diversity of States' positions and proposals for Council reform reflect the complexity of the reform field. This goes beyond the aspect of numerical composition and the identity of new members to include the highly controversial issue of whether or not to grant veto power to permanent members.

3.2 Ambiguity of various positions on the future of veto power in case of Security Council reform

Veto is continuously considered anachronistic, undemocratic and above all to principle of sovereign equality of States on which the World Organization is based. The current geopolitical situation would no longer justify recognition of such a right for some States. But after more than 20 years of work, including about 10 rounds of intergovernmental negotiations and General Assembly debates on Security Council reform, a "comprehensive and reasonably timed" draft is still not on the agenda (Abdelwahab Biad, 2015). This reality is fundamentally due to incompatibility of various proposals involved. These are improbable removal of veto right and improbable "success" of formulas without veto right.

3.2.1 Finding that veto right is unlikely to be abolished

Security Council reform focuses all attention on the need to adapt UN structures. As such, it is mainly the prerogative of veto right which is the most problematic. For N. Andersson, "this right does not serve equality between large and small nations nor protect peoples from the scourge of war, as proven, but serves geopolitical interests of holders. This is an illegitimate right that must be abolished, another balance of power in the world would make it possible to consider it" (N. Andersson, 2015). This apprehension of veto right raises questions about its relevance in a democratic international system where the five permanent members no longer represent realities of the world on their own. Thus, some States and even some authors (Mr. Zambelli, 2005) have considered the possibility of abolishing the veto right as part of improving Security Council representativeness. For the large majority of States, veto right can be the antithesis of equality principle and democratization of UN bodies (P. Tavernier, 2005). This controversy surrounding the use of the veto right raises the question of its abolition, which ultimately seems impracticable and illusory.

Indeed, there is a kind of consensus concerning the near impossibility of removing this privilege inherent in the Charter. This is implicitly affirmed by High-level Personalities Report when it emphasizes that "we do not see any practical way to change the power that the veto right confers to that hold it" (A/59/565, § 256). Those in favour of removing veto right have been strongly opposed by the refusal of permanent members to waive this privilege that defines them. Rejection of the veto right seems inconceivable since it would require a State to renounce a right that is crucial in terms of international recognition and protection of its interests, as demonstrated by the use made of it.

In response to States that have consistently argued for the removal or limitation of the veto, members have repeatedly expressed the view that Security Council reform should not change the status of the current permanent members. Thus, none of the five permanent members wishes to relinquish their seats. This permanent reluctance of veto holders to waive them puts affirmation A into perspective. Novosseloff according to which the real added value of a permanent seat on the Security Council is permanence, much less the right of (Alexandra Novosseloff,

2006). Indeed, if permanence alone guaranteed the same prerogatives to the current permanent members as the veto right offers them, they would not be so opposed to its rejection. It appears that if members are willing to make concessions to improve representativeness of the Security Council, they exclude the possibility of abandoning the veto. But beyond the refusal of the "P 5", it raises some questions about its scope. Indeed, there is no real guarantee that the removal of the veto right would be more beneficial to the legitimacy of the Security Council than maintaining it.

The question of vacating the veto therefore seems very hypothetical in the sense that, in case this is accepted, it could make the Security Council even more ineffective than it is today. Indeed, lacking resources of any kind (military, financial, etc.), the Council depends on States and in particular; the major powers for the implementation of measures it decides. As such, it is unlikely that permanent members will commit themselves to implementing decisions to which they have not consented. This is therefore ultimately an improbable and risky (E. Pomes, 2017) or even unrealistic possibility. Thus, in a realistic way, H. Védrine concludes that "it is obviously a waste of time to advocate the end of permanent membership or veto right " (H. Védrine, 2004). Therefore, the question of maintaining and current modalities of veto does not seem to arise. Only the extension of the latter to possible new permanent members is negotiable. This observation can also be extended to proposals for enlargement of the Council, excluding granting this privilege to new permanent members.

3.2.2 Improbable "success" of enlargement proposals without veto power

Specifically, in the context Security Council enlargement, it is a matter of not granting this privilege to new members. Indeed, almost all various reports on this subject observed an increase in various components of the Security Council without veto granting (this is the case, in particular, of the Razali report). However, while they can be perceived as realistic, they do not incorporate fairness requirement that underlies any claim for Security Council reform.

Indeed, these various proposals consolidate the regional imbalance among the permanent members of the Security Council. The African continent's disagreement is clear on the designation of States that may sit as permanent members and not on the desirability and relevance of granting such a privilege. In other words, there is a consensus among States on the imperative need for their presence in this "privileged club". They have also made this clear in a common position known as the Ezulwini Consensus, in which they provide that Africa's full representation on the Security Council will depend on allocation of two seats of permanent members with veto power and five non-permanent seats (Doc. Assembly/AU/6 (XVII), Decision on the report of Ten Heads of State and Government Committee on the reform of the United Nations Security Council, § 3, page 1). Thus, for Africa, much more than a simple numerical enlargement of the Council, the aim is to make this body more equitable by specifically addressing approximate representation of this continent. For A. Vallières, however, Africa no longer intends to be satisfied with a folding seat in the theatre of universal decisions (A. Vallières, 2006).

The possible extension of only non-permanent members of the Council while maintaining existing veto rights is largely caricatured by doctrine in order to highlight its illusory nature. Thus, for Mr. Zambelli, one could say that this approach consists in wanting to treat a patient suffering from a serious illness with cough syrup (M. Zambelli, 2005). In the same vein, P. Dougbo Abel states that granting "a permanent seat without this veto power prerogative is the same as giving a weapon without ammunition" (P. Dougbo Abel 2014). Similarly, criticizing the working group's proposal for the creation of permanent seats at the Council without veto power, Zimbabwe's Foreign Minister Stan Mudenge said that "a permanent member without veto power will be an ox, not a bull, at the Security Council level". Thus, this flowering of caricatures on a proposal to expand the Security Council without veto power tends to demonstrate its relatively implausible and difficult to accept character. Moreover, continuing to strengthen the current position of the permanent members' means "maintaining the status quo at all costs, ignoring radical changes in the state of the world and, as a result, exposing the Council to greater mistrust, mistrust and criticism". At this stage of negotiations, such a possibility seems unlikely, mainly for reasons of equity. All these various improbabilities have led States and other reports on law reform to consider its framework more carefully.

4. Conclusion

Formally envisaged and organized by the Charter, the Security Council reform is part of this pre-established legal framework. The analysis revealed the ambivalent nature of this normative mechanism, which finally vacillates between a kind of permeability and procedural rigidity. Moreover, the complexity of such an operation, materialized by the absence of a formal agreement, underscores the fundamentally political nature of this body and difficulties it poses for a follower of formalism. It also appears that this is an inseparable factor from any analysis of any aspect of the Security Council.

Thus, beyond objectively legal considerations, it is mainly political considerations that regulate the outcome of this project, which has paradoxically become both ancestral and of constant relevance. Such a reality cannot ipso facto be synonymous to impossible achievement of this. Indeed, it should not be related to the myth of Sisyphus. It remains, although it depends on the will of the Member States, it is not necessarily impossible to meet

despite conciliation difficulties that it may raise, as attested by proposals multiplication made to this end (Maurice Kamto, 2004).

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