Security Council Reform: Towards Ad Hoc Security Councils

Richard Clements
LLM Candidate, Public International Law
Leiden University

Word count: 2,034
‘The trouble with socialism is that it takes too many evenings’
- Oscar Wilde

1. INTRODUCTION

That same charge that Wilde leveled against socialism could equally apply to efforts to reform the United Nations Security Council (‘SC’). 21 years after the General Assembly (‘GA’) established the aptly-title ‘Open-ended Working Group’ on SC reform, minimal change has been effected. Statement and restatement of current positions as well as campaigns from those most eager to enter the SC inner circle have also done little to build momentum on this issue. The inherent difficulty with reform is one put succinctly by van Staden who notes that ‘proposals to reform the UN are either radical but not feasible or attainable but not bold and imaginative’. Unfortunately, what this dichotomy does not account for is the present situation in which the proposals are both feasible and unattainable. This paper is therefore obliged to go beyond traditional approaches to SC reform. In so doing, it considers the contradiction between enhanced representation and effectiveness as well as motivations for reform. The second part of the paper outlines the alternative of Ad Hoc Security Councils as a means to ensuring greater representation whilst avoiding inefficacy as well as ensuring that actors’ motivations accord with the underlying purpose of the SC in the 21st century.

2. EFFORTS TOWARDS REFORM

The history and inception of the SC are well known and require no further elucidation here. Suffice it to say that the only substantial reform of the SC was secured in 1963 when the number of non-permanent members was increased from six to ten. As a result, the SC is presently composed of 15 members, five of whom – the US, Russia, China, France and the UK (‘P-5’) – hold a permanent seat on the SC as well as a veto on any substantive issue under discussion, with the remaining ten members each rotating on a biennial basis. Since the expansion came into effect in 1965 minimal change has been secured although this is not from a lack of trying. GA Resolution 48/26 of 1993, initiating the ongoing round of consultations

---

2 Art. 27(3), Charter of the United Nations, 26 June 1945.
which have yet to bear any fruit, focus on three main aspects of reform: representation, the veto power of the P-5, and the SC-GA relationship.\textsuperscript{4} The following paragraphs will not only address the contradictions that lie between such issues and the SC’s purpose, but also considers the objectives sought by reform and how these can be regulated in the process.

### 3. REPRESENTATION VS. EFFECTIVENESS

Resolution 60/1 proposes to make the SC ‘more broadly representative, efficient and transparent’ in order to ‘enhance its effectiveness’ and ‘legitimacy’.\textsuperscript{5} After a moment’s consideration, it is clear that representation and efficacy have two very different outcomes. Creating a more representative SC would in no way enhance the ‘prompt and effective’ making of decisions during times of crisis nor would it necessitate the ‘maintenance of international peace and security’.\textsuperscript{6} Admittedly, those Member States most likely to benefit from enhanced representation – Germany, Japan, Brazil and India (the ‘G4’) – have sizeable armies that can be utilized for the purposes of Article 24(1). However, the idea of widening representation to include permanent representatives from Latin America and from the African continent (a proposal that has gained support under the ‘Ezulmini consensus’) begins to reflect the rationale behind judicial appointments to the International Court of Justice. Needless to say, the SC is not the ICJ, having as it does effectiveness in the maintenance of international peace and security as its central goal. Any reference by reformists to enhanced legitimacy via. representation, therefore, misunderstands the role of the SC. The issue of representation in certain cases is addressed in the proposal as a way to resolve such a problem.

### 4. MOTIVATIONS FOR REFORM

A question that is rarely asked is where the impetus for reform originates other than from generic statements of legitimacy and efficacy. Issues recently addressed by the SC such as the use of chemical weapons in Syria and the outcome of the Crimean referendum exemplify the West’s frustration in the apparent abuse of the veto power by Russia and China. This pertains to a deeper reality, however, which is that reform is being advocated as a way to circumvent such ‘problems’ and by counteracting nuisance vetoing within the SC, the UN will be able to

\begin{itemize}
\item\textsuperscript{4} UN Doc. A/RES/48/26 (1993).
\item\textsuperscript{5} UN Doc. A/RES/60/1 (2005) World Summit Outcome, para. 153.
\item\textsuperscript{6} Supra note 2, at Art. 24(1).
\end{itemize}
utilize its Chapter VII powers more frequently during times of international or even internal conflict. Such an approach to reform, as a Trojan horse for ostensibly Western foreign policy, is ill-advised in light of its imperial flavour. Indeed, the principle of Article 24(1) does not translate into replacing one volatile situation with another if only because the latter puts paid to the guilt of having done nothing. Empirically speaking, humanitarian intervention has not yet proven to be effective given the lack of multi-disciplinary coordination and a long-term strategy from those involved.\(^7\) As a result, any move towards reform must give effect to the primary responsibility of the SC without allowing the US (or any other dominant power) to veil regime change and other abuses of Article 24(1) and the ‘Responsibility to Protect’ doctrine in the language of humanitarian intervention. The solution of Ad Hoc Security Councils outlined below potentially guards against such an outcome as well as ensuring democratic legitimacy through a representative function.

5. **AD HOC SECURITY COUNCILS**

Much of the discussion surrounding institutional reform, including that of the SC, focuses on its ‘democratic deficit’ as well as its ‘imperial character’.\(^8\) One concern that often boils beneath the surface is the perceived re-emergence of colonialism by the Western powers, in relation to African nations or the Middle East and the idea that neither the P-5 nor the SC more generally are sufficiently interested or expert enough to enforce a ‘just peace’.\(^9\) Therefore, to bring together regionally-affected Member States and UN organs such as the UNHRC, UNHCR, WHO and the ICRC (with region-specific input such as the EU in the Crimean situation or the Arab League in Syria), states would have the resources and expertise needed to pursue an effective military strategy followed by long-term assistance. Ad Hoc Councils could be ascribed the same powers as the existing SC, insofar as they relate to issues under the consideration of that particular Council. Such a move would also prevent accusations of Western interference in regional or domestic affairs and would likely lead to a more bespoke response given cultural similarities within regions. Indeed, any criticism that such a body could easily fall into regional squabbling cannot refute the interests of such

---

\(^7\) This conclusion is reached in light of operations in Lebanon (1978), Somalia (1992-95), Ethiopia and Eritrea (2000-08) and most recently Libya (2011-) in which military and other actors have proven to be incapable of effectively managing internal factors and of establishing and implementing lasting peacebuilding mechanisms. I broadly agree with Schrijver et al in their book *The Security Council and the Use of Force* (2005) who outline the dangers in broadening the exceptions to the use of force, advocating instead more effective non-military solutions.


powers in ensuring stability for the region as well as for their own territory, particularly when issues of mass displacement or refugees are considered.

This proposal addresses the call of many unrepresented states and actors that ‘those who are bound should be heard’ and resolves the oft-repeated notion that simply by virtue of membership, Member States do not absolve the SC from justifying its ‘exercise of political authority in a particular case’. In such instances which call for regional cooperation, the SC will defer to the UN Secretariat in order to avoid proxy appointments by any of the P-5. In establishing an Ad Hoc Council, the Secretary-General would consider factors such as:

(1) composition of the Council;
(2) necessity for particular organs to assist with its work;
(3) extent of the Council’s powers; and
(4) regional specificities.

It might be noted by critics that the length of time for an Ad Hoc Council to be established ignores the fluctuating reality of international conflict. Unfortunately, however, the status quo lies somewhere between the goodwill of the existing SC and its futility in taking collective action, exemplified recently by its failure to render assistance to the people of Syria. Obsolescence cannot be an option for any part of the UN given it is ‘the main [if not the only] source of collective legitimacy’ on the international plane. Consequently, dominant states must give way to those whose territorial integrity depends on swift and concerted resolution.

There is also no doubt that Ad Hoc Councils would go some way towards addressing the representation shortfall in high-level discussions on matters of peace and security directly concerning smaller nations. It would be wrong to ‘mythologiz[e] domestic democratic governance’, the shortcomings of representation having already been addressed. Nevertheless, Ad Hoc Councils would represent ‘global deliberative equality’ where anyone who has a stake in the issues concerned has a seat at the table. It therefore resolves the ‘horizontal complaint’ of inequality between states that is epitomized by the inner circle of the...
P-5 at the SC.\textsuperscript{15} If ‘the opinion of civil society’ cannot be obtained through a Parliamentary Assembly or global elections, the next best thing places responsibility in the hands of regional actors who have their own national security at heart.\textsuperscript{16} Such a proposal arguably constitutes utopianism but it is not a proposal based on what the UN \textit{ought} to be. It is a solution based on what the UN and its associated organs \textit{can} be given their political constraints. A balance is therefore struck, as Koskenniemmi would have us do, between law as apology for State practice and law as starry-eyed moralizing, a charge frequently laid at the feet of international lawyers.\textsuperscript{17} Imagination and attainability are thus combined in the hope of refuting van Staden’s dichotomy.

\section*{6. CONCLUSION}

The reality of international institutional reform is that ‘answers are reflective of merely temporary perceptions’.\textsuperscript{18} For this reason, any solution must be qualified with the concession that the challenges faced by the SC tomorrow may lead either to concerted action or fragmented \textit{impasse}. Undeniably, there is a clear market for moving away from traditional institutions and power structures and towards ‘horizontal’ policy networks that are capable of harnessing resources, expertise and the interests of Member States.\textsuperscript{19} This does not mean, however, that the UN should be sidelined or undermined (as much as this might have already been done by non-treaty based bodies such as the G20). This paper has assessed the two most significant concerns of SC reform: representation and motivation. In presenting the concept of \textit{Ad Hoc} Security Councils, the former is secured and concerns about the latter are dispelled. In such a changing international sphere, the SC can and must continue to provide leadership and maintain international peace and security as it was originally tasked to do. This can be achieved by recognizing the occasional limitations of the existing model while seeking to overcome these via the alternative proposed in this paper.

\textsuperscript{15} \textit{Supra} note 11, at 16
\textsuperscript{17} M. Koskenniemmi, \textit{From Apology to Utopia: The Structure of International Legal Argument} (2005).
\textsuperscript{18} L. Hammer, \textit{A Foucauldian Approach to International Law} (2007).
\textsuperscript{19} A. Slaughter, \textit{A New World Order} (2004) 13.