The Last Reform: 'Regionalist Logic' for a New UN Security Council

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ABSTRACT   The United Nations Security Council, the UN's most powerful body tasked to maintain international peace and security, is failing in its mandate. Its rigid institutional setting, the privileged status of core UN members, and the continuing lack of voice of many countries, have increased the risk of dramatic and systemic failures and shaken the legitimacy and centrality of the UN in the international system. This paper proposes a new solution in the stalled reform debate: a system of collective representation in the Council with nine total seats for all the UN members. States themselves would be able to group autonomously in an expected regional logic, all of them free to discipline themselves. The veto power will be retained by the group that is subject to a resolution, on a case-by-case basis. This potentially lasting reform brings flexibility and new political responsibility to the UNSC, compelling countries to act through more positive regional dynamics.

INTRODUCTION: A GLOBAL WAKEUP CALL

The United Nations, turning 70, has increasingly failed to maintain international peace and security. Under the watch of the UN's accountable organ, the UN Security Council (UNSC), the world has witnessed more than enough cases of the body's systematic failure to keep peace.[1] The 1994 Rwanda genocide, for example, resulted in the massacre of some 800,000 Tutsi and moderate Hutu, by members of the Hutu majority; as many as three-quarters of the Tutsi populations were wiped out in the carnage.[2] A UN Peace keeping mission was, in fact, in place in the African country since October 1993. It was helpless, however, and its limited mandate was merely renewed in the midst of the crisis in April 1994 and finally, reinforced in May when most of the atrocities have already been committed.[3] The genocide would also lead to the Great Lakes refugee crisis, which counts amongst the causes of the First Congo War as militias among the 1.5

million people that were displaced in the then Zaire began launching attacks against the local government.[4] This case may be the best example of the UNSC's inability to respond to a domestic crisis which had international repercussions—not because of active opposition from UN members, but rather for their passivity and unwillingness to engage. The most telling fact may be that, at the time of the crisis, Rwanda was seated as a non-permanent member to the UNSC, represented by the very government that was perpetuating the massacre, while the neighbours of Rwanda, who were affected the worst, were not represented in the Council.[5]

The ongoing crisis in Syria, where efforts to end the tragic events through the UN have failed, accounts for more than 200,000 casualties over the four and a half years of the crisis.[6] Since 2011, four UNSC resolutions on Syria have been vetoed by permanent members, Russia and China, both of which are thousands of kilometers away from the conflict area. Such is a clear demonstration of how the clout of a few privileged actors affects the crisis resolution process in the UN.[7]

On average, the number of resolutions passed by the UNSC per year has increased notably compared to the Cold War period.[8] The incidence of vetoed proposals, meanwhile, has even relatively declined.[9] However, it is important to stress the role played by self-censorship in the tabling of proposals at the UNSC, showing the huge hidden cost of this increasingly consensual system, and proving that the quantity of proposals does not necessarily translate to their quality. Evidence of the difficulty of achieving concrete results is the trend of member states bypassing the UNSC. In 2003, for example, the so-called 'Coalition of the Willing' invaded Iraq without explicit UN mandate.[10] In 2014, perhaps unsurprisingly, Syria witnessed the Anglo, French, American and Russian interventions, among others, in its territory.[11] Every such time that states themselves—and in particular, core UN members—seek to use force to settle a crisis, the UN system is shaken, and its legitimacy and legality, contested.

It is not within the scope of this research to elaborate on UN failures and make yet another case for the already universally recognised need for reforms in the UN system. This paper simply highlights the institutional rigidity, issues of representation, and the special status granted to the core members in the UNSC as detrimental factors at the root of the UN's diverse failures in the maintenance of international security.

The world has changed in the last 70 years and so, too, should the UN. Membership, to begin with, has almost quadrupled since the UN's inception, from 50 to 193 States. Further, new powers have emerged around the globe over these many decades, changing the geopolitical equilibrium and calling for a keen appreciation of the evolving landscapes. If the UN has to stand up to the new nature of conflicts, often domestic or transnational, and return to the heart of the multilateral system—then new solutions are needed. In a historic session of the General Assembly in September 2015, nearly all the UN members agreed that over the following year they will negotiate a document that will call for reforming the Security Council.[12] This year will thus prove crucial—as it is also the year when a new Secretary General will be elected—in the move forward in the long-drawn reform debate.

THE REFORM DEBATE: REPEATING OLD MISTAKES

The reform of the UNSC has been in the docket since the foundation of the UN, as proved by the presence in the Charter itself of a pledge to call a conference to review the Charter no later than ten years after its promulgation.[13] In practice, the only reform of the UNSC that has taken place was in 1963, when the number of non-permanent members was merely increased from six to ten.[14] A more comprehensive reform debate started only in 1991 with the Accra Declaration. This was adopted by the 103 nation-strong, non-aligned group, sparking a movement and various reactions during the 1990s and up to the present, where the pattern remains stubbornly the same:

both Africa and Latin America still lack a permanent seat in the Council, Asia is underrepresented, while Europe is overrepresented.[15]

All the UNSC reform plans revolve around two concepts: membership and veto. Expanding the Security Council seems like one of the more reasonable ways to answer to critics of the body's lack of representative character, but competition among countries to obtain a seat, the resistance by permanent members and difficulties in designing the new seats—such as whether or not to make them permanent or to extend the veto power to new members—has characterised the ongoing stalemate.

Among the latest and most significant reform plans is the document, *In Larger Freedom*, written in 2005 by then UN Secretary General Kofi Annan.[16] Annan went on the record to state that access to the Council should be granted to those members who contribute the most to the United Nations financially, militarily and diplomatically, as well as countries more representative in the developing world, without impairing the effectiveness of the Council, while increasing its democratic and accountable nature.[17]

The question, as anticipated, is not limited to the expansion of the Council, but whether an extended Council should further extend, or eliminate, its veto privilege. Various scholars have suggested that the veto power is vital in the interest of the permanent members and that its removal or extension could undermine their participation in the UN or the survival of the UN itself.[18]

A problem with the current debate about expansion of the UNSC is that no matter how many new seats are created—and in the best-case scenario it would amount to a total of 24 seats—some countries are still going to be left out and not represented in the Council. This is a major issue, considering that a consistent number of countries, presently around 70, have never had a seat in the UNSC.[19] If a good number of countries continues to be denied a voice, the non-representativeness of the Council will not be resolved and with it, a main reason for the UN's failure: crises being overlooked because core members of the UNSC were simply not engaged enough. The countries more prone to crises, and their neighbours, are probably not the ones that contribute the most and therefore not the ones that would see themselves heard in the traditional reform plans. Another problem is that any expansion of the UNSC towards member states that represent the current main actors of the international realm only delays the resolution of the problem of representativeness. Indeed, as the world continues to change, the countries that contribute the most today may no longer be the powers of tomorrow. Once that day comes, even the new asset of the Council will appear once again outdated and see its authority diminished and challenged, exposing the world to other avoidable failures. Further, any simple expansion, either in the membership or in the veto system, will first of all be contrasted by the still-excluded UN members and most importantly, extend the risk of deadlocks as reaching decisions will become exponentially more difficult. Finally, the reform debates do not answer the most fundamental hidden weakness of the UN: the absence of incentives to regional cooperation, because rogue states always manage to get shielded by veto-carrying members, usually distant and untouched by regional instability, and persist in their destabilising conduct—as the world witnesses in Syria. The veto system has been devised to defend the interests of the core members of the UN, and as such remains the condition to safeguard for any reform plans. However, its use to project power around the globe is beyond its intended scope.

The present reform debate does not only fail to change the decision-making structures in the UNSC, and keep voiceless the dozens of the most critical countries; the debate also remains confined to a rigid institutional framework solution. The present highly legalised setting of the UNSC has guaranteed predictability in the processes which, though valuable, comes at the price of political flexibility in finding solutions to

crises; moreover, member states shielded themselves from the responsibility to take action behind institutional rigidity.

A NEW 'REGIONALIST' SOLUTION

In light of the above debate it is necessary to strive for reforms that not only address these flaws in the structure, but also provide answers to real-world incentives and disincentives to which states actually respond. A solution may be the creation of a total of nine seats in the UNSC, each of them representing a group of states.

As geopolitics is a controversial science, any attempt to define *a priori* these groups would only provoke infinite objections. And while a regional configuration is expected to naturally emerge, each member state would be free to form or apply for the group which best represents it until the nine seats are filled. Indeed, the regional logic is not alien to the UN system that since July 2011 has provided that UN member states are voluntarily divided into five geopolitical regional groups and to ensure equitable geographical distribution of the representation in the UNSC.[20]

In a projection, the Big Five should be able to accommodate themselves at ease and without conflict in the different groups. Logically, given the choice of belonging to a group, the US and Russia, for instance, should be inclined to go in a group without the other. A possible configuration could see the US in a North America group, Russia in a Central Asia one, China in North East Asia and exceptionally UK and France, or Germany for that matter, should not have trouble co-existing in a Europe group. Other areas should please the parties in today's debate around the UNSC: India could prevail in a South Asia grouping, Brazil in a Latin America one, and the African Union, the ASEAN and Arab League would likely see their regions awarded with one seat each—thus completing the nine seats configuration.

Countries like Israel, Pakistan, Japan and other exceptions may not find themselves at ease with their 'natural' region or find themselves at the border between two, so countries will not only

be able to select freely their group, but also to change their preference over time. This is consistent with the practices in the regional system already in place in the UN described earlier, as Israel, which was denied membership in the Asia Grouping due to refusal by the Arab League has resorted to participation in the Western Europe Grouping.[21] A multi-annual transition is envisioned to discourage opportunistic behaviours as well as the requirement of permission to accede of the members of the new group to avoid disturbances. Countries that choose not to belong to any group will merely continue to be not represented in the UNSC. However, as countries have a choice they will also face the political weight of such decision, to justify domestically and internationally why, for instance, Japan would choose to be part of an America grouping. This should discourage, and reduce over time, the exceptions to the anticipated, but not mandatory, regional configurations.

The membership of the Council is exclusive to member states, thus individual countries, at least formally, will continue to chair the meetings. Still, each group in a self-rule exercise shall define the mechanisms that will result in the selection of the actual representative seating in the Council.[22] In Europe, members may decide to be represented by the European Union, and could opt to select a small country, such as Luxembourg, to be the physical representative in the UNSC with a mixed diplomatic corps. Other regions, like Latin America for instance, could opt for a system of rotation, while others again could resolve to give the representation to the member with the greater economic, military or demographic mass. Presently, a main opposition force to a simple enlargement of the UNSC with the above mentioned ascending leading parties is represented by their very neighbours: for example, Pakistan opposes India, Germany is opposed by Italy, and Mexico opposes Brazil.[23] These oppositions should be mitigated by the shared representation in the UNSC and by their freedom in selecting the common representative.

Furthermore, small and less wealthy nations in a bloc should not fear marginalisation, and should embrace their ability, before denied, to be represented in the Council with magnified capacities due to the information- and burden-sharing inside their bloc.

Another key aspect of the reform is related to decision-making in the UNSC. Current UN rules state that a majority of nine out of 15 is necessary to enforce resolutions, with the concurring votes of the permanent members. In the proposed plan, the majority should be of six out of nine, a slightly higher threshold than today's, and with the possibility of veto only for the regional bloc which is the subject of the UNSC resolution. Therefore, the veto will still exist in its more genuine function of defence of oneself when directly threatened by other groups, and it will encourage states to cooperate with their neighbours.

In practical terms, through an amendment procedure (Art. 108) or a review procedure (Art. 109, with two-thirds favorable votes of the members of the General Assembly or of the review conference the Charter is amended, however, the ratification of the decision is required by the permanent members of the UNSC in order to have the adoption, as it has been done in the 1963 extension of the UNSC.[24] This reform proposal would simply set a total of nine seats for the UNSC, each to be occupied by a country connected to one group to which UN members can apply. As a transitory regime, UN members are given a specified set of time to freely populate the groups with at least three members, following which each group will freely proceed to set its own functioning rules, specifying those for accession and secession of UN member states, election and removal of the representative in the UNSC as well as the rules for internal arbitration and modification of these rules to be deposited in the UN Treaty Collection office, including an updated list of the members of the group in order to activate the connected seat. Further, as said earlier, it is set that the new UNSC adopts its decisions by a majority of six out of nine, including the concurring vote of the seat where

the party or parties directly interested by the decision is/are grouped. Decisions can be temporarily suspended if the majority of one group presents a motion to the UNSC within 24 hours, to be expected in case the majority does not feel represented by the decision adopted by their representative in the UNSC. In this scenario the UNSC will re-take the same vote no later than 48 hours from their first vote, according the principle of urgency of the UNSC, during which the group, according to its own rules of procedure, may have had the chance to change its representative. Groups with less than three members are, with their corresponding seat in the UNSC, temporally deactivated, leaving their members free to apply to another group; the majority voting system is proportionally adjusted to reflect the new number of active seats in the UNSC, if only two seats are active the decision is to be taken by consensus. These latter provisions are aimed to avoid that one UN member state can take permanent control of one group/seat and to take into account the unlikely, but possible and even desirable, condition of increased harmony and reduced fragmentation in the international system.

AN ALTERNATIVE SYRIA

When looking at Syria as a case study, which is causing the present deadlock in the UNSC, it can be inferred that under the proposed system the deadlock would have been overcome and the crisis possibly even prevented. Countries under the present system seek, when the necessity arises, for patronage from one or more veto members of the UNSC. However, under the proposed reform the choice of field has to be made typically in advance and reflect stable conditions rather than a sudden crisis. Further, the choice is charged with regional political connotations which would discourage Syria, an Arab League member, to be part of distant groupings. Therefore, at the outbreak of the crisis Syria would have likely been part of an Arab/NEMA grouping and therefore the only veto that could stop the UNSC from

acting would have been the one of this very group. The actual development of events in the region, the position of the Arab League on the Assad regime, would suggest that such veto would have not been used.[25] More interestingly, if the reform was in place, Syria would have been much more careful in upsetting its neighbours, because they would have been the only ones that could shield the country from international action, and because of their geographical proximity, the Syrian government would have preferred a course of action that would limit disturbance in the regions. Today, Syria does not have such positive incentives as it is able to count on the support of distantly placed allies which do not have to come to terms with the instability that it creates, for example with refugees. The case shows that this reform can correct a major dysfunction in the UNSC by putting in place a system that values regional relations and, therefore, stability.

However, intra-regional crises are not diminished by default, rather, external influence on such crisis is reduced as result of the monopoly of the veto power by the affected region itself. The reform only assigns responsibility to the members of a group by empowering them and removing external justification for inaction. The proposed reform leaves full margins of political manoeuvre as it is built on the principle of flexibility, which, in turn, makes predictions extremely difficult. Formally, there is no actual geographical regional tie for countries to group—and Syria for instance could have chosen to be in a Russia grouping or in a group built on the very purpose to shield its members from any international intervention, maybe composed by the almost totality of the UN members as there is, again consciously, no provision for maximum size or balance between groups. Further, as groups are given absolute freedom of self-rule, the group, for instance, in which Syria belongs could have opted for consensus decisions, in which case they would have to veto an international intervention in Syria. These are examples to show how reforms cannot solve problems that do not want to be solved by the international community. The UN,

even under the proposed reform, will remain, as a condition for the very feasibility of the proposal, a system that cannot impose decisions against the direct interest of the core members. A reform can only remove institutional obstacles, allowing solutions to be found—and this potential gain should not be underestimated. Presently, countries can blame the UN system in the form of the Big Five, their own absence in the UNSC or the voting system for instance which are hard institutional limits. Shifting the crisis resolution process from legal to political, empowering countries to organise the system, and to update it in the course of time, brings political weight and responsibility on how the groups determine their composition, rule and finally act in the UNSC. Groupings, especially if made on a regional base—which seems to be the more spontaneous and consistent method of members states—can bring further positive political incentives to crisis prevention and resolutions through multilateral dynamics. As radical as it may sounds, the reform is self-implementing and explainable in political science terms; offering a solution different from any in the current debate and the real potential for a new UN which might retake its position at the core of the international system.

CONCLUSION

Every year that passes by increases the pressure for reform of the UNSC as every other year where the status quo prevails, increases the risks of episodic and systematic failure of the UN to occur. Although this pressure and these tragic risks have not compelled the core UN members to act towards reform, it is more striking that the long-drawn reform debates have not yet matured to a point where real solutions have been proffered to address the underlying problems of the Council. The calls for more representativeness and the need for effectiveness, the calls for a more responsible use of the veto power and the need to guarantee the core UN members' interests, are at the foundation of the reform project presented in this paper.

A total of nine seats in the UNSC should offer sufficient diversity to allocate numerous world powers without conflicting with each other's space and the potential to introduce collective regional positive cooperation dynamics in the UN system. Every UN member, by being free to choose its own grouping and to change its preference over time, will be empowered by the access to the UNSC and by being given a responsibility towards all the members in its grouping. These co-members will be the ones expected to shield a state from unfavourable international action, with the use of a defensive veto. This is also instrumental for the present permanent members. The proposed mechanism is radical, political, and admittedly short of legal guarantees at the UN level, leaving member states to self-organise and self-rule in subgroups.

The key in this proposal is that it turns the current dysfunctional UN system—beset by various problems, among them being prone to individualistic and crony behaviours—towards a new system that is more accountable to collective responsibility. It may yet herald more peace and stability, at least at the regional level. It is not a simple reform. It may yet be the last major reform that the UN will face as it has the potential to change and adapt with the world, up to extreme scenarios in which some seats might be left empty as countries might find that less groups can accommodate their interests. While reforming the UN will not change the world, it will change the game-setting rules, according states with potentially greater power to find solutions through the UNSC in the pursuit of maintaining peace and security. **ORF**

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