



UNITED NATIONS SECURITY COUNCIL REFORM: A REVISIT OF THE AFRICAN POSITION

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ABSTRACT: *The Security Council of today is no longer representative of today's world politics, geography, population and even interest wise. Despite it being the world's most powerful organ, the developing nations that account for more than half of the world population are not adequately represented. This non-proportional representation of the non-P-5 member states in the Security Council gives them less ownership "in the maintenance of peace and international security". As a result, the African countries have argued that the UNSC is "undemocratic" in its functions and fails to capture the interests of the small countries who do not have the same rights and privileges as the P-5. In 2005, African countries came up with an 'African common position' on UNSC security council reform through what is known as the Ezulwini Consensus demanding two permanent seats with the same privileges as the permanent members and other five non-permanent rotational seats in the Security Council. The AU position has been viewed by many countries including some of the P-5 and some from the region as unrealistic and unachievable. The slow pace in the reform agenda has to some extent been blamed on the uncompromising position of the AU. Having examined the provisions of the Charter on amendments and the level of global support towards the African position, the author concluded that, AU must remodel its position and negotiate with the others with a view of reaching an acceptable and achievable position.*

KEYWORD: UNSC, African Union Common Position, Reform, Veto, Legitimacy, Effectiveness, United Nations, Security

INTRODUCTION

The Security Council has unique functions and it is the only organ of United Nations and the only institution in the world that can authorize the use of force against any members that threatens international peace and security. On matters of international peace and security, the UNSC is by no comparison the most powerful institution in the entire international legal order.¹ The primary responsibility of the Security Council is the maintenance of global peace and security² and the decisions of the Security Council are binding on all member states.³ Its lack of equitable geographic representation combined with exclusive veto power held by the five permanent members makes the Security Council less representative than desired by the many

¹ William R Pace, 'Introduction' in Lydia Swart and Estelle Perry (eds) *Governing and Managing Change at the United Nations: Security Council Reform from 1945 to September 2013* (Center for UN Reform Education Volume 1 2013)

<http://centerforunreform.org/sites/default/files/SC%20Reform%20Sept%202013%20publication.pdf>
accessed 12 August 2019

² United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI, Article 24 (1)

³ UN Charter, Article 25



in the organisation⁴ Today's Security Council is no longer representative of today's world politics, population, geography and interest wise. Despite the developing world accounting for more than half of the world population and Africa, in particular, having 54 countries in the UN they are not adequately represented in the Council. The non-adequate representation of the developing world gives them less ownership in the maintenance of peace and international security. The P-5 holds substantive power in the UNSC and geographically Africa and Asia and are underrepresented while Eastern Europe and Western European and Others Group are both heavily overrepresented, creating a representational imbalance between the North and the South.⁵ With the first amendment to the UN Charter article 23 having taken place in 1965 which saw the increase of the non-permanent members from 6 to 10,⁶ there have been growing calls to have another reform and now with a focus on the veto power and permanent membership to the UNSC. Many countries have called for reforming the veto powers as P-5 countries use it to protect their interests and those of their allies at the expense of international peace and security, they are not accountable to any authority and have some instances neglected international conflicts and humanitarian crisis.⁷ The veto power has been used in the name of allies while crimes against humanity and conflicts continues. The veto has prevented the UNSC from taking appropriate measures to put to an end or at least minimize the effects of such crimes and conflicts.

It has been widely acknowledged that the UNSC must now be reformed in line with the global changes that have taken place since 1945. Several countries and regions have shown interest and ambition to accede to the Council basing it on their population growth, contributions to the UN, economic growth, political status, fewer roles from their regions and how they have been side-lined from World peace and security matters. Some of the countries and regions to show interests are African, the G4 (Brazil, India, Japan and Germany) and Opposed to the G4 is the Uniting for Consensus group (UfC).⁸ In 2005 African countries met in Ezwulini and issued a position known as "The Ezwulini consensus", spelling out their position on the reform of the UN in general and UNSC in particular. Africa feels that 'when the UN was being formed, most of Africa was not represented and that in 1963, when the first reform took place, Africa was represented but not in a particularly strong position...(and it is now) in a position to influence the proposed UN reforms...'⁹ However, 'even though several well-prepared proposals have been put forward, so far no proposal has gained the required support.'¹⁰ There

⁴ Jonas von Freiesleben, 'Reform of the Security Council: 1945-2008' in Lydia Swart and Estelle Perry (eds) *Governing and Managing Change at the United Nations: Security Council Reform from 1945 to September 2013* (Center for UN Reform Education Volume 1 2013)

⁵ Matthew Gould and Matthew D Rablen, 'Reform of the United Nations Security Council: Equity and Efficiency' (2017) Public Choice.

<https://westminsterresearch.westminster.ac.uk/download/c1230ed3af83dce1b4a82ce28d1cb731244f3f72fb19a51dec5e2776de0ea5cf/818036/s11127-017-0468-2.pdf>

⁶ UNSC Res 1991 A (17 December 1963) (XVIII)

⁷ Georgia Papalia, 'A Critique of the Unqualified Veto Power' (2017) 2 PILJ 55

⁸ The other groupings are as follows, the G4, made up of Germany, Brazil, India and Japan each sought a permanent seat and enlargement of the Council to twenty-five seats. Uniting for Consensus (UfC), made up of middle and smaller powers including Italy, Pakistan, Turkey, South Korea, Mexico, Colombia, Argentina, Malta, San Marino, Costa Rica and Canada proposed that the Council should consist of twenty non-permanent members in addition to the P5.

⁹ African Union Executive Council, 7th Extraordinary Session. 'The Common African Position on the Proposed Reform of the United Nations: "The Ezulwini Consensus"' (Addis Ababa, Ethiopia. 2005), 2.

¹⁰ Madeleine Hosli and Thomas Dörfler, 'Why is change so slow? Assessing prospects for United Nations Security Council reform' (2019) 22 JEPR 35



is no consensus among the three groupings on how the UNSC should be reformed. Frantic efforts have been made to try and reach a consensus, but with no success. On the other hand, these grouping positions to some extent seem to clash with the interest of the P-5, who can veto any resolution to expand the Security Council. The African position has brought various complications and responses from different other interested regions and countries such as the G4 members, and the UfC. These differences coupled with the threats posed by the P-5 have delayed any meaningful progress towards the reform of the UNSC. Africa, being the region to have the most “controversial” demands has come under the spotlight, therefore this research seeks to have a look at the African position, gather the strength and weakness and offer possible solutions that might make Africa's position more acceptable.

United Nations Security Council

UNSC has 15 members, which consist of 5 permanent members (Russia, France, China, United Kingdom, and the United States) and the 10 non-permanent members' seats distributed on a regional basis as follows: five for African and Asian States; one for Eastern European States; two for the Latin American and Caribbean States; and two for Western European and other States. On matters of international peace and security, the Security Council is by no comparison the most powerful institution in the entire international legal order.¹¹ It has a responsibility, on behalf of the UN Members, to maintain international peace and security bestowed on it under article 24 of the Charter. Given Chapter VII, the UNSC enjoys the right to determine the necessary step that can be taken in maintaining or restoring international peace and security. In maintaining international peace and security, under Chapter VII, the UNSC ‘may call upon parties to settle their dispute...’ by peaceful means¹² impose sanctions¹³ or authorize the use of force.¹⁴ This decision upon agreed by the Security Council becomes effective and binding on all the members of the UN,¹⁵ even those who might have voted against it and members can not appeal the decision. This right has been on several instances abused by the very same members pushing their interests and unilateralism against the Purposes and Principles of UN. Many countries have accused the P-5 of failing to take strong action against unilateralism which has shaken the very same basis of collective security and role of the UNSC.¹⁶

According to article 34 of the Charter, the Council must ‘investigate any dispute or any situation which might lead to international friction or give rise to a dispute...’¹⁷ and the right to propose solutions to a threat.¹⁸ It has been argued that its lack of urgency has led to some members and regional organisations to bypass the UNSC ‘for instance, in 1999 NATO

¹¹ William R Pace, ‘Introduction’ in Lydia Swart and Estelle Perry (eds) *Governing and Managing Change at the United Nations: Security Council Reform from 1945 to September 2013* (Center for UN Reform Education Volume 1 2013) <http://centerforunreform.org/sites/default/files/SC%20Reform%20Sept%202013%20publication.pdf> accessed 12 August 2019

¹² UN Charter, Article 33

¹³ UN Charter, Article 41

¹⁴ UN Charter, Article 44

¹⁵ UN Charter, Article 25

¹⁶ Wolfgang Weiss, ‘Security Council Powers and the Exigencies of Justice after War’ (2008) 12 *Max Planck UNYB* 12 page 45

¹⁷ UN Charter, Article 34

¹⁸ UN Charter, Article 39



undertook military action in Kosovo without the UNSC mandate.¹⁹ According to the ICJ's *Bosnia V. Serbia*, based on their positions of influence and power, the P-5 has an obligation to try to prevent the commissioning crimes against humanity such as genocide. Its inability to promptly rise and deal with certain conflicts in Africa and other regions has led many to call for the reforms of the UNSC. The Security Council has to some instances failed to decisively deal with violent situation such as Rwanda, Bosnia-Srebrenica, Somalia, and Sudan-Darfur further making it clear that reform needs to take place. UNSC council members were accused of lacking interest possibly because they had little interest in Rwanda. What France could do was to 'Sen(d) in a humanitarian mission to pull out foreigners (without making the slightest effort to protect their Tutsi collaborators or other people close to them)²⁰ and did not want to act in a way that could push Rwanda away from its *la francophone* group.²¹ Furthermore, France and the USA threatened to veto any resolution containing the word 'genocide' and deploying forces to try to halt the genocide. While France and the USA blocked the establishment of a robust intervention to stop the 1994 Rwanda genocide, 800 000 lives were lost. This was a matter of omission, by the UNSC in discharging its responsibility as given to them by the generality of UN membership, which has been associated to both lack of interest and lack of touch of the happenings in that region. Whereas in such matters as the terrorist attack on the US (9/11), the UNSC was very quick to act.²²

The Security Council has been described by scholars and politicians as undemocratic and does not represent the views of the world equitably. Many have voiced their concerns over the continuation of the veto power, mainly based on the fact that the veto power has been abused to further national and international interest by the P-5. At the time of the UN's inception, the veto power was a necessary compromise to attract powerful countries in order to bring world peace and avoid unilateralism. With time the P-5 countries became very powerful in the organization and started advancing individual national interest and neglecting those which might not have a direct effect on them. As the saying goes "power corrupts but absolute power corrupts absolutely," self-ambitions and self-interest have corrupted the major powers triggering conflicts and the prolonging of conflicts. They have used the veto power largely following their own national or allies' interest rather than objectively and for the actual reason, the veto was introduced and instituted for. They have become unaccountable to the Council or UN putting them above the law, for instance, in 1976 France vetoed a resolution concerning itself and Comoros over the island of Mayotte, which was a violation of Article 27 (3) providing that 'a party to a dispute shall abstain from voting.'²³ Russia on the other hand on the Crimean question, 'violated Article 27 (3) by vetoing a draft resolution (S/2014/189), which would have nullified the referendum.'²⁴ The veto power has allowed the aggressors to go free with impunity even after violating article 2 of the Charter. Concerning Russian annexation of Crimea,

¹⁹ Matthew Gould Matthew D. Rablen, Reform of the United Nations Security Council: Equity and Efficiency' (2016) Sheffield Economic Research Paper Series SERPS no. 2016009 https://www.sheffield.ac.uk/polopoly_fs/1.667185!/file/paper_2016009.pdf accessed 11 September 2019

²⁰ Kovanda, Karel, 'The Czech Republic on the UN Security Council: The Rwandan Genocide' (2010) 5 *Genocide Studies and Prevention: An International Journal* 191

²¹ Kovanda, Karel, 'The Czech Republic on the UN Security Council: The Rwandan Genocide' (2010) 5 *Genocide Studies and Prevention: An International Journal* 191

²² UNSC Res 1373 (28 September 2001) UN Doc S/RES/1373

²³ UN Charter, Article 27(3)

²⁴ Florence Emmanuela Dallas, 'The Security Council's sine qua non: The Veto Power' (Rutgers Global Policy Roundtable occasional paper 8, 2018) <https://polisci.rutgers.edu/news-publications/occasional-paper-series/346-occasional-paper-8-florence-emmanuela-emmy-dallas/file> accessed 11 September 2019



addressing the UNGA, the Ukrainian President Petro Poroshenko said, ‘in every democratic country, if someone has stolen your property, an independent court will restore justice...in the 21st century our organization lacks an effective instrument to bring to justice an aggressor country that has stolen the territory of another sovereign state’²⁵ Most countries argue the veto has been used in a manner that violates sovereign equality of members. Further, the veto has been blamed for slow response or failure of the UNSC to respond to humanitarian crisis around the globe.²⁶ For instance, the Israel-Palestine conflict has claimed a lot of lives while the UNSC is failing to agree on the best way possible. Recently, the USA vetoed draft resolution S/2018/516 emphasizing the importance of international law in ending the Israel-Palestine conflicts.²⁷ The Syrian case is one other example to have exposed the UNSC's shortcomings in effectively dealing with grave crimes against humanity and has brought questions on the legitimacy and credibility of the UNSC's decision-making process.²⁸ In 2014 China and Russia also used the veto to block a resolution condemning ‘the widespread violations of human rights and international humanitarian law by the Syrian authorities and pro-government militias, as well as the human rights abuses and violations of international humanitarian law by non-State armed groups’²⁹

Legitimacy and the UNSC Effectiveness

The Security Council faces a legitimate crisis due to its failure to consistently apply the rules, failure to evolve and its inability to restrain the great powers particularly from using force and ‘has responded selectively to major humanitarian crises after the Cold War.’³⁰ The initial legitimacy of the council was derived from the war, the special status that was accorded to the then great powers and the general ‘assumption that an institutional hierarchy favouring the great powers was a legitimate feature of international society.’³¹ In international law, legitimacy comes from consent by the members of the organisation. Reforms to the general satisfaction of the majority of the UN members are likely to give more legitimacy to the Security Council. In 1945 members consented to Security Council that would objectively maintain ‘...international peace and security, and agreed that in carrying out its duties under this responsibility the Security Council acts on their behalf.’³² However, the P5 overstepped their limit thereby eroding both the council's legitimacy and reputation along the way. The UNSC fails the procedural legitimacy test, due to its lack of inclusiveness and equitable representation. Its decision-making process lacks transparency and accountability as there is no room allowing the members under whose name the Security Council take decisions on

²⁵ Florence Emmanuela Dallas, ‘The Security Council’s sine qua non: The Veto Power’ (Rutgers Global Policy Roundtable occasional paper 8, 2018) <https://polisci.rutgers.edu/news-publications/occasional-paper-series/346-occasional-paper-8-florence-emmanuela-emmy-dallas/file> accessed 11 September 2019

²⁶ Jan Wouters and Tom Ruys, ‘Security Council Reform: A New Veto for a new century?’ (Royal Institute for International Relations (IRRI-KIIB) BRUSSELS, August 2005) <http://aei.pitt.edu/8980/1/ep9.pdf> accessed 1 November 2019

²⁷ UNSC Resolution on Israel <https://undocs.org/en/S/2018/516>

²⁸ Graham Melling, Anne Dennett, ‘The Security Council veto and Syria: responding to mass atrocities through the ‘Uniting for Peace’ resolution’ (2017) 57 *IJIL* 285

²⁹ Security Council Resolution 348, UN Doc S/2014/348 (22 May 2014); This Resolution was Supported by the Sixty-Four Member States of the United Nations.

³⁰ Martin Binder and Monika Heupel, ‘The Legitimacy of the UN Security Council: Evidence from Recent General Assembly Debates’ (2015) 59 *ISQ* 238

³¹ Matthew Stephen ‘Legitimacy Deficits of International Organizations: Design, Drift, and Decoupling at the UN Security Council’ (2018) 31 *CRIA* 96

³² UN Charter, Article 24



behalf of and who are affected by these decisions, to hold it accountable. Africa, to which over 60 per cent of the Council decisions affect, is not equally represented and is excluded from the decision-making process. In the event of grievance or unfair decision, ‘there is no judicial or quasi-judicial body entitled to determine whether the Council has overstepped its competences or violated international law, nor is the General Assembly (GA) in a position to call the Council to account.’³³

Though the UNSC still enjoys a considerable level of legitimacy as its resolutions are still legally binding and there is still a moral obligation for all members to obey the law, in the eyes of many UN members, the organ is fast losing its legitimacy.³⁴ The diminishing power and influence of the P-5 have resulted in the Council failing to enforce its decisions, this affects the legitimacy of the UNSC as it is only left with the authority to make decisions but without the power and means of enforcing them. These shortcomings point towards the need to have other players with capacity and means to play a crucial role in carrying out certain tasks.³⁵ However, though Legitimacy is key to effective governance³⁶ these two are distinct concepts that do not necessarily go hand in hand, gaining legitimacy and being effective are not the same thing. Legitimacy comes from wider participation, acceptance and consent of UN members while effectiveness is the ability to deliver and perform as under Chapter VII of the Charter. The foundation of the UNSC is on responsibility and effectiveness not necessarily on democracy. In that regard, the High-Level panel reiterated 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 that had the capacity for decisive action.’³⁷ Increasing the UNSC membership will bring equitable representation and is likely to bring broader legitimacy but might create problems for effectiveness. A stronger Security Council is more beneficial to the world than a weaker and non-effective “legitimate” Council. It is, therefore, important when considering reforms ‘to bear in mind the simultaneous goals of legitimacy, representation, accountability, and effectiveness.’³⁸

Calls to Reform the Security Council

In 2004, The United Nations High-Level Panel on Threats, Challenges, and Change was appointed by the then UN Secretary-General to deliberate on the potential revisions to the UN Charter and the UNSC. The panel, concerning the UNSC, noted that ‘...the paucity of representation from the broad membership diminishes support for Security Council decisions.’³⁹ It further noted that the failure of the Security Council to decisively deal with

³³ Martin Binder and Monika Heupel, ‘The Legitimacy of the UN Security Council: Evidence from Recent General Assembly Debates’ (2015) 59 ISQ 238

³⁴ Martin Binder and Monika Heupel, ‘The Legitimacy of the UN Security Council: Evidence from Recent General Assembly Debates’

³⁵ Jacob Goodison Burgess, ‘Unlocking the Riddle of UN Reform for the 21st Century and Beyond: The Keys to Legitimate Governance’ (2018) (UCL Global Governance Institute Working Paper Series, 2018/4)

³⁶ Martin Binder and Monika Heupel, ‘The Legitimacy of the UN Security Council: Evidence from Recent General Assembly Debates’ (2015) 59 ISQ 238

³⁷ UN General Assembly, *Note [transmitting report of the High-level Panel on Threats, Challenges and Change, entitled "A more secure world: our shared responsibility"]*, 2 December 2004, A/59/565: <https://www.refworld.org/docid/47fdfb22d.html> [accessed 1 June 2019]

³⁸ Jean Krasno, ‘Legitimacy, Representation, and Accountability: A Proposal for UN Security Council Reform’ (2006) YJIA 93 <http://yalejournal.org/wp-content/uploads/2011/01/061208krasno.pdf>

³⁹ Report of the High-level Panel on Threats, Challenges and Change’



international peace and security matters has ‘gravely damaged its credibility.’⁴⁰ Therefore, to increase both its effectiveness, credibility and to enhance its capacity and willingness to act in face of threats to international peace and security matters, there is a greater need for the involvement in Security Council decision-making by those who contribute most in the implementation of the decisions.⁴¹ The Panel proposed the amendment of article 23 and suggested two possible models upon which the UNSC can potentially be reformed and expanded on. Model A proposed expansion of the UNSC from the current 15 to 24 members, with six new non-veto permanent seats distributed as follows, two each from Africa and the Asia-Pacific and one each from Europe and Latin America and three non-permanent new two-year term seats be added. Model B proposed a non-permanent membership category of 8 four-year renewable seats and one new two-year non-permanent and non-renewable seat.⁴² Both models proposed no veto extension to the newly added members, meaning the P-5 will maintain their higher status in the organisation. Not satisfied with any of these models, the Africa Union came up with its proposal, known as The Ezulwini Consensus in March 2005. Under the Consensus, the AU members agreed to call for the reform of the UNSC by increasing its seats from 15 to 26, with 6 of the 11 new members being permanent members enjoying the same privilege of veto and the other five being non-permanent rotating members.

UNSC Reform and the African Union Position

The UNSC has become more of an alliance of the great powers protecting only their interests at the expense of the smaller powers. As a result, the African countries have argued that the UNSC is “undemocratic” in its functions and fails to capture the interests of the small people who do not have the same rights and privileges as the P-5.⁴³ African opinion is that reforming the Council will bring legitimacy, improve the functions and address the imbalances between the great powers and the smaller powers in the Council. Though, affected by over 60 per cent of the UNSC cases,⁴⁴ the 54 countries of Africa, have only 3 non-veto and rotational positions in the UNSC, as a result of the manner of engagements between the council and Africa, African Union through the Ezulwini Consensus calls for UNSC reform and the inclusion of 2 African veto permanent members. African countries are of the view that since over 60 per cent of the Council work focuses on Africa, it is prudent that Africa is fully represented in the council. “Full representation” of Africa means: having no less than two permanent seats with all the rights and privileges of the existing P-5 members, including the veto, and five non-permanent seats. It further, stated that, although in principle it opposes the veto, it is convinced that as long as the veto remains, all new permanent members must enjoy all existing privileges and prerogatives as a matter of common justice.⁴⁵ And accordingly, the selection of Africa’s representatives and the criteria upon which its representatives would be chosen shall be a matter of the Continent to determine.⁴⁶

⁴⁰ Report of the High-level Panel on Threats, Challenges and Change'

⁴¹ Report of the High-level Panel on Threats, Challenges and Change'

⁴² Report of the High-level Panel on Threats, Challenges and Change'

⁴³ Brian Cox, 'United Nations Security Council Reform: Collected Proposals and Possible Consequences' (2009) 6 SCJILB 89

⁴⁴ Ville Lättilä and Alekski Ylönen, 'United Nations Security Council Reform Revisited: A Proposal' (2019) 30 Diplomacy and Statecraft 164

⁴⁵ Ezulwini Consensus

⁴⁶ Ezulwini Consensus



One of the reasons AU inserted article 4(h) on the responsibility to protect in its Constitutive Act is because ‘the General Assembly and the Security Council are often far from the scenes of conflicts and may not be in a position to undertake effectively a proper appreciation on the nature and development of conflict situations...’⁴⁷ The failures of the UNSC to deal with conflicts in Africa resulted in the AU devising a new regional collective security approach by establishing the Peace and Security Council (PSC)⁴⁸ and said the establishment ‘marks a historic watershed in Africa's progress towards resolving its conflicts and the building of a durable peace and security order.’⁴⁹ The PSC, according to article 2 (1) of the Protocol establishing the PSC, ‘shall be a collective security and early-warning arrangement to facilitate timely and efficient response to conflict and crisis situations in Africa.’⁵⁰ Further, the AU through article 4(h) of its constitutive act provides for a right to intervene on a humanitarian basis in its member states in certain grave circumstances, including genocide, crimes against humanity and the commission of various war crimes.⁵¹ This right according to Wyse Christian, ‘stands in stark contrast with the collective security system established by the UN Charter, under which neither states nor regional organizations may use force in the territory of another country, subject to only a few exceptions.’⁵² Though article 53 of the UN Charter forbids regional organisations from acting unilaterally, the Ezulwini Consensus, a document requesting UNSC reforms, provides that, ‘...in certain situations, such approval could be granted “after the fact” in circumstances requiring urgent attention. This decision could be reflective of the frustrations of African countries over the slow pace of reforms and the lack of attention from the Security Council on the continent’s peace and security matters.’⁵³ So far there have been visible tensions between the UNSC and the PSC of the AU on how to handle a political crisis on the African continent, the Libyan and Sudan crisis are some of the prominent examples. Currently, the AU has not invoked Article 4(h) but as the region is becoming well established and strong the possibility of AU invoking article 4 even without UNSC permission in grave circumstances is there and this will complicate the relationship between the UNSC and AU and will create precedence for other regional organizations.

a) Veto

The privilege under article 27 of veto power only enjoyed by the P-5⁵⁴ has come under heavy criticism, scrutiny and forms one of the bases upon which African and other countries are calling for reforms. One of the most contentious issues is the Veto power, which has been used by the P-5 to further their interests, to shield their allies from condemnation, the imposition of sanction or enforcement of peace operations or in other cases has been used to penalize

⁴⁷ Ezulwini Consensus

⁴⁸ The Peace and Security Council (PSC) is the standing decision-making organ of the AU for the prevention, management and resolution of conflicts. <https://au.int/en/psc>

⁴⁹ AU. 2004. ‘Statement of commitment to peace and security in Africa, issued by the Heads of State and Government of the Member States of the Peace and Security Council of the African Union’, AU doc. PSC/AHG/ST.(X) http://www.africa-union.org/News_Events/Calendar_of_%20Events/Lancement%20PSC/Statement.pdf.

⁵⁰ Protocol Relating to the Establishment of the Peace and Security Council of the African Union, Article 2(1) <http://www.peaceau.org/uploads/psc-protocol-en.pdf>

⁵¹ Constitutive Act of the African Union art. 4(h), July 11, 2000, 2158 U.N.T.S. 3. Article 4(h)

⁵² Christian Wyse, ‘The African Union’s Right of Humanitarian Intervention as Collective Self-Defense’ (2018) 19 CJIL 295

⁵³ Paul Williams, ‘The Peace and Security Council of the African Union: Evaluating an Embryonic International Institution’ (2009) 47 J. of Modern African Studies 603

⁵⁴ UN Charter, Article 27



countries threatening the interests of the P-5. With China accused of ‘temporarily impeded the continuation of UN peacekeeping missions in order to penalise the UN Member States maintaining close relations with Taiwan,’⁵⁵ while France and USA blocked the establishment of a robust intervention to stop the 1994 Rwanda genocide which claimed 800 000 lives. Furthermore, more than 40 vetoes have been cast by P-5 blocking the nominations for the post of Secretary-General under article 97. The veto, according to Ziabari is ‘the most unfair and inequitable law of the world which enables a powerful and authoritative minority to determine the fate of an indispensable and subjugated majority,’⁵⁶ by allowing an authoritative minority to decide on overturn the wishes of the majority only by one vote. The veto power undermines the principle of equality under Article 2 of the Charter. ‘It is thus not surprising that most States wish to abolish or restrain the veto,’⁵⁷ which according to article 108 they can not do without the concurring vote by all the P-5.

Africa is in principle opposed to the Veto power, but in the event of its continuation ‘...should be made available to all permanent members of the Security Council.’⁵⁸ The African union position is revolutionary and determined to have a complete change of the status quo, a position not likely to gain support from the P-5 and other UN members. Considering the realities of article 108 and to achieve possible reform, African Union must take a more “realist” and acceptable approach or it will riskily be failing to achieve meaningful reforms. Assuming the possibility of invoking Article 109 of the charter, the African Union position is still likely to fail to garner support from the other members. According to Madeleine and Dörfler, ‘it is about 37.5 times more difficult to agree on a UNGA resolution on the basis of a two-thirds majority vote when UN membership was 101 than it was when the UN was formed.’⁵⁹ It is presumably more difficult now for membership as large as 193 and even worse when the concurrent votes of the P-5 are taken into consideration.⁶⁰

The claim by Africa to have the veto power extended to the new members is meant at least to provide an equal opportunity to regions when the veto is used, the total removal of the veto will democratize the UN and equalise all members allowing them to all have one “equal” vote. However, the idea of extending the veto to all security council members was initially rejected in 1945 on the ground that it will paralyse the council in discharging its duties and functions. The idea then was if the veto is allocated to a few members it will guarantee its strength and effectiveness.⁶¹ This is, however, not to say the current veto holders have used it well, they

⁵⁵Jan Wouters and Tom Ruys, ‘Security Council Reform: A New Veto for a new century? (Royal Institute for International Relations (IRRI-KIIB) BRUSSELS, August 2005) <http://aei.pitt.edu/8980/1/ep9.pdf> accessed 1 November 2019

⁵⁶Ziabari Kouros, ‘The United Nations Security Council: An Organization for Injustice’ (Global Research: Center for Globalization, 20 January 2011) www.globalresearch.ca/the-united-nations-security-council-an-organization-for-injustice/22875

⁵⁷Jan Wouters and Tom Ruys, ‘Security Council Reform: A New Veto for a new century? (Royal Institute for International Relations (IRRI-KIIB) BRUSSELS, August 2005) <http://aei.pitt.edu/8980/1/ep9.pdf> accessed 1 November 2019

⁵⁸Ezulwini Consensus

⁵⁹Madeleine Hosli and Thomas Dörfler, ‘Why is change so slow? Assessing prospects for United Nations Security Council reform’ (2019) 22 JEPR 35

⁶⁰Madeleine Hosli and Thomas Dörfler, ‘Why is change so slow? Assessing prospects for United Nations Security Council reform’ (2019) 22 JEPR 35

⁶¹Jan Wouters and Tom Ruys, ‘Security Council Reform: A New Veto for a new century? (Royal Institute for International Relations (IRRI-KIIB) BRUSSELS, August 2005) <http://aei.pitt.edu/8980/1/ep9.pdf> accessed 1 November 2019



have greatly abused it, increasing such privilege holders might have greater consequences. On the other hand, the addition of new permanent members without a veto is not going to add any value, 'it would lead to the strange situation where a country such as... Brazil joins, why would it be treated differently from Russia, which has a comparable population and GDP?'⁶² From an African perspective, adding more non-permanent members into the Security Council will just reinforce the outdated philosophy of the authority and power of the 1945 "superpower". The idea of increased veto power is meant to bring equity or equalize countries as per regional representation. At the same time, 'the effect of Veto+ upon efficiency is deleterious: it reduces the a priori probability of a resolution being approved from 1% at present to just 0.2%. Veto+ also leads to a decline in overall equity.'⁶³ The possibility of a decision being vetoed is likely to double, resulting in reduced effectiveness further creating possibilities of countries bypassing the UNSC in favour of other either unilateral or multilateral actions, defeating the principles and objectives of the UN.

Due to the benefits, it presents to the P-5, the elimination or neutralization of the veto power is not likely to happen soon.⁶⁴ This reality has led other members to adopt a more realistic approach likely to be accepted by all the P-5. Currently, the possibility of removing the veto power completely seems an unachievable task as it is not likely that any of the P-5 members would like to give up its veto power, 'since it is one of the most privileged authorities in international affairs.'⁶⁵ 'Indeed, the permanent members, particularly Russia and the USA, have consistently stated that they will not accept any reform that will place limits on their right to veto,'⁶⁶ or expand the veto holders. The no veto for all or veto for all position by the African Union, though it pushes for a more equitable Security Council, is highly likely not to see the light of the day. Instead of pushing a no veto solution, Africa should for now push for the use of the veto to "be limited to matters where vital interests are genuinely at stake," and for the P-5 to refrain from using the veto in cases that contravene *jus cogens*.

b) Selection Criteria

Since the Charter does not provide for the expansion of the UNSC nor does it provide for a criterion that can be used to include members into the council. According to the AU, the responsibility and the criteria for the selection of the African representatives shall be left to the AU.⁶⁷ More than 10 years now, the AU is yet to choose its possible two candidates or to set the criteria for the selection of these two states. The inability or reluctance of the AU to set a criterion has created tensions, divided African countries and has weakened its position and bargaining power. Failure to have two countries it is backing or at least set the criteria is likely to continue creating tensions as the list of contenders within the continent is growing. Some have suggested that, amid such division and disagreement, the two vetoes be allocated to AU,

⁶² Mats Berdal, 'The Report of the High-level Panel on Threats, Challenges, and Change: A Preliminary Assessment' (2005) https://ycsg.yale.edu/sites/default/files/files/reforming_UN_for_peace_and_security.pdf accessed 28 July 2019

⁶³ Matthew Gould and Matthew D. Rablen, 'Reform of the United Nations Security Council: Equity and Efficiency' (2017) Public Choice <https://westminsterresearch.westminster.ac.uk/download/c1230ed3af83dce1b4a82ce28d1cb731244f3f72fb19a51dec5e2776de0ea5cf/818036/s11127-017-0468-2.pdf>

⁶⁴ Georgia Papalia, 'A Critique of the Unqualified Veto Power' (2017) 2 PILJ 55

⁶⁵ Şahin Eray Kırdım, 'Failed Efforts to Reform Humanitarian Intervention System in the United Nations' (2017) 19 JEAS 75

⁶⁶ Georgia Papalia, 'A Critique of the Unqualified Veto Power' (2017) 2 PILJ 55

⁶⁷ Ezulwini Consensus



though it can give the whole continent, on matters of continental interest, the right to participate. This has a possibility of further slowing the functions of the Security Council as it will have to wait for 54 countries to decide on how and when to use the veto.⁶⁸ Some have argued that 'rotating responsibility for the veto could help to do away with any problems arising out of permanent tenure.'⁶⁹ This might work but since council members sometimes depend on alliances and collaborations, rotational responsibility might create uncertainty, as other members will not be sure of the approach to be taken by incoming members. Further, this approach has a possibility of paralyzing the Security Council in terms of its duties and responsibility, not all the African countries are at the same level in terms of their contribution to the UN in terms of the criteria proposed by the United Nations High-Level Panel Report.⁷⁰

Security Council position must be viewed as a responsibility, not as a right. The High-level Panel on Threats, Challenges and Change had proposed '...the involvement in decision-making of those who contribute most to the United Nations financially, militarily and diplomatically...'⁷¹ The eligibility of members into the security council should not only be informed by equitable representation but also by the ability of such countries to contribute to the maintenance of international peace and security.⁷² Considering individual countries' interest chances of acceptability of the African position by other regions are high when they know the country or at least the likely countries. At the current level, it seems like AU does not have a clear plan about the Security Council reform apart from equitable representation. Lack of a clear plan has led other regions to second-guessing and approaching the possible suitors, creating divisions among the African countries. Any criteria to be used should fit into the principles and objectives of the Security Council, also taking into consideration their ability to respect and defend international law. Membership criteria to the Security Council have the likelihood of shifting the conversion from an entitlement approach to responsibility, putting pressure on the permanent members to deliver on their responsibility. 'In so doing, it would provide a baseline to assess candidates, grant greater transparency to the reform path, and encourage aspirants to exercise globally responsible behaviour in international institutions.'⁷³ This approach will strengthen the African position as they negotiate with other regions that share the same sentiments. Though it does not necessarily mean that countries when in Security Council will perform and fulfil their obligations as per the criteria, it will act as a benchmark to which countries will be judged on.

African Common Position and The Other Regions

There is a consensus on the need for reform of the Security Council, particularly on the equitable representation and the veto power, but there is no consensus on how the different grouping will proceed and on the substance of the reform proposals. Security Council reform has divided the world into regions and camps, all pushing for reforms but, the reform proposals

⁶⁸ Kofi Oteng Kufour, 'The African Union and the Reform of the Security Council: Some Matters Arising' (2006) 14 AJICL 288

⁶⁹ Kofi Oteng Kufour, 'The African Union and the Reform of the Security Council: Some Matters Arising' (2006) 14 AJICL 288

⁷⁰ Report of the High-level Panel on Threats, Challenges and Change'

⁷¹ Report of the High-level Panel on Threats, Challenges and Change'

⁷² UN Charter, Article 23

⁷³ Kara C. McDonald and Stewart M. Patrick, 'UN Security Council Enlargement and US Interests' (Council on Foreign Relations Council Special Report No. 59 December 2010 https://cfrd8-files.cfr.org/sites/default/files/pdf/2010/11/UNSC_CSR59.pdf accessed 11 September 2019



have been motivated by self-interest not a democracy, equitable representation or effectiveness, creating unnecessary divisions. Many proposals have come and none of them has been close to gaining the support needed to amend the Charter. Attempt to reform the Security Council has been frustrated by regional rivalries, disagreements and the reluctance of the P-5 to support or see the dilution of their power and authority. One of the major obstacles to the reform has been the nature of the reform itself.⁷⁴ While the other regions as the G4 have made compromises on the veto power, Africa has not, it has still maintained its position unchanged. Its unyielding position has been viewed by some 'as being the most difficult stumbling block for the G4 in their quest to include additional permanent seats in any Council expansion.'⁷⁵ Considering the restriction and requirements under articles 108 and 109 the success of position is unlikely any time soon, two of the P-5 members Russia and USA have already shown their strong opposition to any expansion of the veto and weakens their power and influence.

Africa as the only continent with a unified proposal with its 54 countries, makes almost 27 per cent of the UN members and has a chance of gaining 42 per cent of the UN two-thirds votes, which is still far short of the two-thirds threshold, but critical and important to any region wanting reforms. For its position to sail through, it needs the support of the others who are also coming with their interests and proposals. The major tensions between the AU position and that of the G4 are on the veto extension to the new permanent members, the proposed number of African permanent seats and the number of non-permanent seats.⁷⁶ For Africa, the goal is to be fully represented which means lack of veto power will still leave the current imbalances prevailing and the P-5 will continue to have and enjoy the unjust privileges.⁷⁷ Africa's main claim comes from lack of equitable representation and putting North and South America together is the only continent without a permanent seat in the Security Council, while the G4 countries are motivated by current contributions, power and status. They believe that they should be chosen because of their economic status a point that was once dismissed by the Former Chinese President Jiang Zemin when he said (in reference to Japan) 'the wealth of a country should not be the sole condition taken into consideration, and that the principle of fair regional distribution and the principle of unanimity in consultation should be fully honoured'⁷⁸ The G4 position was viewed as problematic to the AU, as it will help the G4 countries attain permanent membership, which will subsequently increase the regional imbalances. The G4 position will result in Asia having 3 Permanent members and Europe having 4 members against 2 for Africa. 'To Africa, this scenario does not provide sufficient representation especially given the incredible diversity of Africa and the fact that so many UN Security Council decisions affect the continent.'⁷⁹

⁷⁴ Seryon Lee, 'The Feasibility of Reforming the UN Security Council: Too Much Talk, Too Little Action?' (2011) 4 JEAİL 405

⁷⁵ Jakob Silas Lund, 'Pros and Cons of Security Council reform' (Center for UN Reform Education 19 January 2010) <https://www.centerforunreform.org/?q=node/414> accessed 11 October 2019

⁷⁶ Alice Minor, 'Reform of the United Nations Security Council: A Rope of Sand' (2010) Independent Study Project (ISP) Collection 958

⁷⁷ Ezulwini Consensus

⁷⁸ Seryon Lee, 'The Feasibility of Reforming the UN Security Council: Too Much Talk, Too Little Action?' (2011) 4 JEAİL 405

⁷⁹ Alice Minor, 'Reform of the United Nations Security Council: A Rope of Sand' (2010) Independent Study Project (ISP) Collection 958



Unity between the G4 and AU is likely to see them getting closer to 2/3 majority needed to reform the Security Council.⁸⁰ Attempts by the G4 to persuade the African Union to at least temporarily give up the veto has faced strong resistance from the African countries, leading to some divisions within the continent on the way forward. South Africa and Nigeria, leading contenders for the permanent memberships seemed to warm up to the proposal of the G4. In as much as the G4 and the African Union have been trying to gain support from each other, the possibility of reaching a deal, based on the current position on negotiations, is still far. So far the prospects of achieving a Security Council Reform seem to have reached an impasse which is unlikely to be overcome soon unless there is a compromise. Compromise does not mean weakness or they have to accept everything coming from the G4 or the P-5, based on reality Africa must build a proposal that can at least get wider support of the UN membership. Africa with its 54-member country makes almost 42 per cent of the required 129 votes to reform the Security Council. Together with like-minded countries stand a chance to possibly garner the required two-thirds majority. Considering some similarities between the AU position and that of the G4 who enjoys considerable support from some of the P-5, a joint proposal between the AU and the G4 has a possibility of bringing the much-needed two-thirds majority for the expansion of the UNSC using article 109. Vetoing a proposal supported by two-thirds is highly likely to erode the little legitimacy the UNSC is still holding to and will greatly lose greater support from its general membership.

RECOMMENDATIONS AND CONCLUSION

An unrealistic position has higher chances of creating division and fights. Claiming two vetoes is realistically impossible, instead, the African Union must reconsider its position on the veto to gain majority support from the other members and the P-5 who can veto any proposal likely to dilute their power in the council. African Union has consistently pushed its position thereby opening ‘...significant regional rivalries in the African Union. Some states... have been ready to join the G4 and forfeit the demand on the veto due to the perception that insisting on it as ‘morally defensible, but politically futile.’⁸¹ Two of the leading contenders for the two permanent membership South African and Nigeria are willing to, for now, abandon the veto claim, but other African countries are completely against compromise. Countries might be sympathetic to the African cause but as put by Putnam under the two-level game theory, ‘at the international level, national governments seek to maximize their ability to satisfy domestic pressures, while minimizing the adverse consequences of foreign developments.’⁸² Since international agreements are a product of negotiations, the success of such agreements depends upon rationality and the possible acceptability at home. For instance, amendments to the charter must according to articles 108 or 109 of the charter be ‘ratified in accordance with their (member state) respective constitutional processes...’⁸³ meaning the USA Congress must

⁸⁰ Lydia Swart and Cile Pace, ‘Changing the Composition of the Security Council: is there a Viable Solution?’ (1 March 2015, Center for UN Reform Education*)
<https://centerforunreform.org/sites/default/files/SCReform1March2015.pdf#overlay-context=> accessed 11 June 2019

⁸¹ Ille Lättilä and Aleksi Ylönen, ‘United Nations Security Council Reform Revisited: A Proposal’ (2019) 30 *Diplomacy and Statecraft* 164

⁸² Ille Lättilä and Aleksi Ylönen, ‘United Nations Security Council Reform Revisited: A Proposal’ (2019) 30 *Diplomacy and Statecraft* 164

⁸³ UN Charter, Article 109



approve any amendment to the charter. The adoption of a UNSC reform proposal with a possibility of passing and satisfying the domestic test in the majority of the UN members states has chances of positioning the African Union as an influential global player.

Apart from structural obstacle provided under article 108 of the convention that requires the P-5 to agree, the multiple proposals themselves have become a major impediment to reforms. Most proposals have been driven by self-interest and the desire to have a seat at the table, nothing focuses on the effectiveness of the UNSC in discharging its Chapter VII duties and responsibilities as provided for under article 24(2). Looking at the UNSC reform both from qualitative and quantitative analysis, the AU argues that the current arrangements of the Council do not reflect the broad membership of the UN;⁸⁴ “equitable geographical distribution” provided for under Article 23(1) of the Charter. African Union makes its claim basing on the fact that, despite having more than a quarter of the total membership of the UN, it does not have a permanent seat in the Security Council. On the other hand, AU does not address the qualitative side, which is emphasized and is the basis upon which their closest possible allies, the G4 claim their right to the Council. The G4 argues that the Council must reflect the contributions countries make towards the achievement of the Principles and Objectives of UN, that of maintenance of international peace and security. The AU's proposal is silent on effectiveness and the possible disadvantages of the extended veto and the enlarged Council. Szewczyk argues, that the main problem with the Security Council is not about insufficient resources or inadequate representativeness but it's the failure to agree on its purpose,⁸⁵ according to article 24 should be the maintenance of international peace and security. Reforms should also be able to put an emphasis and clarity on the duties and responsibilities of the Council.

The UNSC plays an important role in maintaining international peace and security, therefore, its effectiveness is of paramount importance in this regard. Though the effectiveness of the UNSC under the current setup has been questioned, it is by no means going to be improved by adding more veto power holders to it. The expansion will satisfy the equitable representation test and add more voices to addressing world challenges.⁸⁶ The foundation of the UNSC is on responsibility and effectiveness not necessarily on democracy. In that regard, the High-Level panel reiterated 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 that had the capacity for decisive action.’⁸⁷ Increasing the UNSC membership will bring equitable representation and is likely to bring broader legitimacy but might create problems for effectiveness. A stronger Security Council is more beneficial to the world than a legitimate weaker and non-effective Council. A mere expansion of the Council with or without veto might have little benefits in enhancing the Council's ability to ‘better fulfil its responsibility across all crises and would merely risk increased deadlock.’⁸⁸ An extended veto without necessary limitations is likely to have similar consequences, hence, there is a need for

⁸⁴ Kaire M. Mbuende, ‘Between Enlargement and Reform The UN Security Council: Choices for Change’ in Volker Weyel (eds) *The Quest for Regional Representation Reforming the United Nations Security Council* (Critical Currents N4 May 2008 http://www.daghammarskjold.se/wp-content/uploads/2014/08/cc4_web.pdf accessed 19 September 2019

⁸⁵ Bart M Szewczyk, ‘Variable Multipolarity and UN Security Council Reform’ (2012) 53 HILJ 459

⁸⁶ Jean Krasno, ‘Legitimacy, Representation, and Accountability: A Proposal for UN Security Council Reform’ (2006) YJIA 93 <http://yalejournal.org/wp-content/uploads/2011/01/061208krasno.pdf>

⁸⁷ Report of the High-level Panel on Threats, Challenges and Change'

⁸⁸ Bart M Szewczyk, ‘Variable Multipolarity and UN Security Council Reform’ (2012) 53 HILJ 459



the AU in their proposal to emphasise transparency, inclusivity, accountability and responsible usage of the veto. The current proposals if accepted will address the issues of equity but not necessarily improve the efficiency of the Council. AU must also emphasise on the need for the veto holders to exercise their power in a manner that upholds and respect international law, most importantly *jus cogens*. Lastly, the undeniable reality is that Africa is the only region that does not have a representation in the permanent membership, its voice is missing while more than 60 per cent of the Council work is on Africa. A possible, approach is for African to remodel its proposal, putting it in a more acceptable tone. Geographically, Africa is the only continent not equally represented in the Security Council, as a starting point, Africa can move a motion seeking a single veto power to make permanent members 6. A voice for the Africans in the Security Council will go a long way in encouraging AU to rally behind the UNSC initiatives and help to fill the gape that has been existing for over 70 years.