

**Security Council Reform: An assessment of Article 23 and 27.3 of the Charter of the  
United Nations**

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**Declaration**

I, ADRIAN KANTILAL SHAH, do hereby declare that this research is my original work and that to the best of my knowledge and belief, it has not been previously, in its entirety or in part, been submitted to any other university for a degree or diploma. Other works cited or referred to are accordingly acknowledged.

Signed:  .....  
Date: 04-05-2018 .....

This Dissertation has been submitted for examination with my approval as University Supervisor.

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Date: 5<sup>th</sup> May 2018 .....

Mr. Allan Mukuki

## **Acknowledgement**

I wish to thank my Supervisor Mr. Allan Mukuki for his continued support and guidance in my preparation of this Dissertation.

## **Dedication**

I dedicate this Dissertation to my Mother, Father and Brother for their unrelenting belief and support in me.

## **Abbreviation Page**

UN- United Nations

G-4 – Group of Four

UNSC- United Nations Security Council

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## Chapter One: Introduction

### 1.0 Introduction

This dissertation is geared towards providing an analytical study of the reform of the Security Council. This Chapter of the dissertation lays out an initial introduction. In addition, it illuminates on the problems which will be tackled in the dissertation as well as highlighting the research questions.

Though this is a well-documented debate a justification for this particular study will also be provided. As a result of the wealth of literature in this particular area, a sample of the views held by certain authors will be given. The study which follows in the subsequent Chapters operates on certain hypothesis and assumptions which are highlighted below. Furthermore, the methods which were used in the study as well as the limitations which may arise have been outlined. Furthermore, this Chapter provides a succinct chapter breakdown of the dissertation.

In totality, this dissertation aims to address two legal problems regarding the Security Council. The first of these is whether or not Article 23.1 of the Charter reflects the desires of the member-states that are party to the Charter. If not what is the most suitable solution. The second theme is whether or not the voting system, with respect to matters which are not procedural (Article 27.3), is the most ideal and if not what needs to be adjusted.

### 1.1 Background information

The Security Council, from its inception in 1945 to the 21<sup>st</sup> Century, has evolved in its composition as well as in the manner in which it carries out its business. However, it is also during this period that it has undergone intense scrutiny and criticism on its representative nature as well as its working methods.

Security Council reform has been a common area of discussion within the United Nations itself as well as throughout the world generally. Although the original composition of the

Council from its creation at the Dumbarton Oaks Conference<sup>1</sup> was one which reflected the world of a few great powers amongst many small states, the advent of decolonisation led to a sharp increase in member-states of the UN which in turn led to many member states questioning the composition of the Security Council.

It is this kind of tension imposed by member-states that led to the first reforms of the Security Council which took place in the 1960's<sup>2</sup>. Thereafter, there has been continuing debates and discussions on further reforming this sub-body in the hopes that it can become more representative of current realities in the international sphere.

The debate on Security Council reform involves very intricate challenges that touches on aspects of political alliances between member-states, economical positions of member-states and the protection of regional interests amongst other factors. It is perhaps because of these elements that 'after twenty years of debate, the composition of the council remains unaltered'<sup>3</sup>. Yet, although much time has passed with little change an eagerness still exists amongst member-states to come up with a more representative Security Council.

This dissertation explores key reform proposals which have been suggested, from the G-4 recommendations of new-permanency and the Uniting for Consensus proposal to the Ezulwini Consensus made by the African bloc of nations, amongst others.

This dissertation aims to explore the underlying arguments and belief systems that proponents for reform commonly espouse in this debate, for example, the idea that a restructuring of the Security Council is necessary in order to reboot the Council's 'legitimacy' in the eyes of other member-states. In addition many member-states who are eyeing seats in the Council argue that their contributions to the body reflect their worthiness to be part of the Security Council. An example of this is the situation of Japan. With the third largest economy (\$4.90 trillion GDP)<sup>4</sup> in the world Japan made a contribution to the United Nations regular budget for the year 2016 in the amount of '\$241,855,692'<sup>5</sup>. This is a contribution which surpasses

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<sup>1</sup> This conference, formally known as the 'Washington Conversations on International Peace and Security Organization', took place from August 1944 to October 1944. It preceded the 'San Francisco Conference', where the UN Charter was formally adopted.

<sup>2</sup> The Amendment of Article 23, which was adopted by the General Assembly on 17<sup>th</sup> December 1963, increased the membership of the Security Council from eleven to fifteen members. The amendment created four non-permanent seats.

<sup>3</sup> Nadin P, 'UN Security Council Reform', *Global Institutions* (2016) Routledge, 67.

<sup>4</sup> Nadin P, 'UN Security Council Reform', *Global Institutions* (2016) Routledge, 55.

<sup>5</sup> UN Secretariat, *Assessment of Member States' Advances to the Working Capital Fund for the Biennium 2016-2017 and contributions to the UN regular budget for 2016*, ST/ADM/SER.B/932, 28<sup>th</sup> December 2015, 11.

those made by four of the five current permanent members of the Security Council (China, United Kingdom of Great Britain and Northern Ireland, France and the Russian Federation).

This dissertation also explores the belief structures of those who feel threatened by further reform and who argue that an increased membership may jeopardize the efficiency of the Council as it stands currently. Such sentiments have been expressed by both the Russian Federation and the United States of America who have 'repeatedly signalled their preference for a compact council to insure against rampant inefficiency'<sup>6</sup>.

Therefore, there exists a need to clearly understand, from a legal standpoint, what the various proposals consist of as well as what their underlying rationales are. It is from this point that an assessment can be made on whether the legal composition of the Council under Article 23.1 of the Charter is ideal for meeting the demands that the Security Council faces today.

In addition, the voting methods of the Council, in particular the use of the Veto, has been subjected to constant debate. This constant challenging has led to an amendment, but this amendment was made to reflect the enlargement of the Council<sup>7</sup> and thus left the status of the veto-wielding states intact.

The voting structure has been criticized on the basis that it has created a class system within the Council with the permanent members arguably holding a weighty vote when it comes to all matters which are not procedural<sup>8</sup>. The current status quo with respect to voting has led some commentators to suggest that 'noting has done more to lessen public confidence in the United Nations than the frequent use, or abuse, of the veto in the Security Council'<sup>9</sup>. Therefore, this dissertation looks into the intricacies surrounding the voting structure as it stands and whether any of the alternatives would result in a more legitimate Council.

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<sup>6</sup> Nadin P, 'UN Security Council Reform', *Global Institutions* (2016) Routledge, 66.

<sup>7</sup> An amendment to Article 27, which was adopted by the General Assembly on 17<sup>th</sup> December 1963, provided that decisions of the Council on procedural matters shall be made by an affirmative vote of nine members (formerly seven) whilst for other matters an affirmative vote of nine members (formerly seven) was required.

<sup>8</sup> Article 27.3, *Charter of The United Nations and Statute of the International Court of Justice* (26<sup>th</sup> June 1945), Department of Public Information United Nations, DPI/511, Reprint (2006).

<sup>9</sup> A Singh S, 'The Veto Problem in the UN', *The Indian Journal of Political Science* (April-June 1958) Vol. 19, No. 2, 129-133.

## 1.2 Statement of the Problem

This dissertation examines, investigates and assesses the structure of the Security Council as it stands under Article 23.1 of the UN Charter taking into account the proposals of reform and make a determination on which proposal, if any, is the most suitable. Furthermore, the study also seeks to evaluate the voting system, in particular that prescribed for under Article 27.3 of the UN Charter and make a determination on whether a change is desirable and if so what that change should entail.

## 1.3 Justification of the Study

A study into the suitability of Article 23.1 of the UN Charter can engage the various proposals which have been made by different member-states, groups of member-states and non-member state proposals (an example being civil society proposals) and seek to make a determination on which proposals would lead to a better constructed Security Council which maintains its efficiency and representativeness. This kind of a study is relevant in order to provide better clarity on the question of structural reform. Such a study is necessary because as of yet no solution has been found to the immense challenge of reconstructing this sub-body of the UN.

In addition to the above it is necessary to explore the current structure of the Security Council as laid out in Article 23.1 of the UN Charter in order to understand how this structure relates to concepts such as sovereign equality<sup>10</sup> of member-states and whether reform would result in better adherence to this principle, amongst others.

As well as investigating Article 23.1 a study of Article 27.3 is key in understanding what proposals to the voting structure would make the Council's work more efficient. It is evident over the past decades that the Council has been regarded as falling below the expectations that many had of it. These kinds of sentiments are perhaps what drove the General Assembly of the United Nations to pass the 'Uniting for Peace' resolution. The resolution highlights that if the Security Council were unable to take action with regard to a situation involving the use of force, this did not 'deprive the General Assembly of its rights or relieve it of its

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<sup>10</sup> Article 2.1, *Charter of The United Nations and Statute of the International Court of Justice* (26<sup>th</sup> June 1945), Department of Public Information United Nations, DPI/511, Reprint (2006).

responsibilities under the Charter in regard to the maintenance of international peace and security'<sup>11</sup>.

Therefore, although much has been discussed around this area, there remains a need to add to these discussions by analysing which of the avenues proposed will lead to a more efficient Security Council which can take on the security challenges that lie ahead with the confidence of the rest of the UN community as well as the world at large.

## 1.4 Objectives

### 1.4.1 Main Objective

This dissertation seeks to examine the suitability of Article 23.1 and Article 27.3 of the UN Charter to determine whether any amendment is required.

### 1.4.2 Specific Objectives

The specific objectives of this dissertation are as follows;

- (a) To understand the technicalities of key reform proposals and their possible contribution to the efficiency and representativeness of the Security Council and based on this to assess whether the current structure of the Council is the most ideal in terms of efficiency and representation.
- (b) To understand the technicalities of the various options for alternative voting systems in the Council, with specific focus on the use of the Veto by the permanent members and thereafter to assess whether the current voting system is appropriate in ensuring efficiency of the Council and whether alternative systems may prove to be more efficient.

## 1.5 Research Questions

- (a) With all the variety of proposals of reform to the structure of the Council which have been made, are there any in particular which would ensure greater efficiency and provide a fairer representation of the world community making an amendment of Article 23.1 of the UN Charter plausible?
- (b) Taking into account that the five permanent members of the Council, who can use the 'veto' power, were the nations who initially worked to create the United Nations does it

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<sup>11</sup> UNGA, *Uniting for Peace*, UN A/RES/377(V) (3<sup>rd</sup> November 1950).

make sense to amend the voting system of the Security Council and which system can be used amongst those which have been suggested?

## 1.6 Literature Review

A vast amount has been written and debated upon with respect to the reformation of the Security Council. As such, this section aims to provide a snapshot of some of the views held by prominent authors in this field. This dissertation itself focuses on two main themes. The first being structural reform and the second being the voting system.

### 1.6.1 Structural Reform

With respect to structural reform, an adamant position for necessary reform has been made by Stephen Martin Walt. Professor Walt, has authored several books in the area of international affairs including titles such as 'The Origins of Alliances' and 'Revolution and War'. Currently engaged as a Professor of international affairs at Harvard University's John F. Kennedy's School of Government, Professor Walt has taken various positions with respect to a variety of issues, for example, the Syrian Crisis and also making comments on the case of Edward Snowden. One of these areas which Walt has commented on is the structure of the Security Council.

In one of his articles for the Foreign Policy publication, Professor Walt acknowledges that the reason why permanent seats exist in the Council and are filled by the P-5 is because these nations won World War Two. However, in spite of this, he comments that 'the present structure is one of the world's great anachronisms'<sup>12</sup>. He further acknowledges the reality that Germany has risen to the level of influence exerted by both France and the United Kingdom and that other nations, such as India, Japan, Brazil and South Africa are worthy candidates of permanent seats in a newly restructured Council. Therefore, it seems that Professor Walt's sentiments prescribe for a more representative composition of the Council with him admitting that 'the present structure makes no sense'<sup>13</sup>.

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<sup>12</sup> Walt S, 'The U.N Security Council. What's up with that?', *The Foreign Policy Magazine*, (7<sup>th</sup> April 2015) <<http://foreignpolicy.com/2015/04/07/the-u-n-security-council-whats-up-with-that/>> last accessed 21<sup>st</sup> January 2017.

<sup>13</sup> Walt S, 'The U.N Security Council. What's up with that?', *The Foreign Policy Magazine*, (7<sup>th</sup> April 2015) <<http://foreignpolicy.com/2015/04/07/the-u-n-security-council-whats-up-with-that/>> last accessed 21<sup>st</sup> January 2017.

In addition to Professor Walt's position on the structure of the Security Council, Robert Snyder has also made interesting points on reform. Mr. Snyder had stated in his writings that although he was pessimistic with regard to increasing the size of the Council, it would be reasonable if the Council was enlarged to accommodate States that had become powerful, to the same level as States like the United Kingdom. He gives the example of Germany and Japan<sup>14</sup>.

However, there are other authors who believe that no reform on structure is needed or that such reform should be minimal. One example is Thomas G. Weiss. Professor Weiss is a Presidential Professor of Political Science at the City University of New York's Graduate Centre. In an occasional paper commissioned by 'Friedrich-Ebert-Stiftung' Professor Weiss explains that although reorganizing the structure may make the Council more legitimate, it will negatively impact its effectiveness. He states that the best way to make a change is to 'reinforce pragmatic adaptations in working methods and in exploring new ones'<sup>15</sup> instead of focusing on the structure.

In addition, Ambassador Matthew Rycroft, UK Permanent Representative to the United Nations, made a statement in which he outlined the challenges and downfalls of enlarging the structure of the Council. He explained that 'too great an increase in size risks a cumbersome and slow decision-making process'<sup>16</sup>.

#### 1.6.2 Voting System Reform

A wealth of observation have also been made on whether reforming the voting structure is necessary. On the one hand a band of authors suggest that voting reform is a must. Sushil Chandra Singh, an author in the Indian Journal of Political Science, argued that the use of the Veto, in particular the use by Russia, has damaged the operation of the Council. He argued that 'unless some solution is found to soften the effect of veto the Security Council cannot work effectively'<sup>17</sup>. In addition to this Richard Butler has made worthy comments on changing the system by curtailing the use of the veto. Mr Butler, has served as Diplomat in

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<sup>14</sup> Snyder R, 'Reforming the Security Council for the Post-Cold War World', *International Journal on World Peace*, (March 1997), Vol. 14 No. 1, 14.

<sup>15</sup> Weiss T, 'Overcoming the Security Council Reform Impasse the Implausible versus the Plausible', *Dialogue on Globalization*, (January 2005), Occasional Papers New York No. 14, 5.

<sup>16</sup> Statement by Ambassador Matthew Rycroft, UK Permanent Representative to the United Nations, on UN Security Council Reform, (7<sup>th</sup> November 2016) UN General Assembly <<https://www.gov.uk/government/speeches/>> last accessed 22<sup>nd</sup> January 2017.

<sup>17</sup> Singh S, 'The Veto Problem in the UN', *The Indian Journal of Political Science*, (April-June 1958) Vol. 19, No.2, 133.

Residence at the Council on Foreign Affairs as well as being the executive Chairman of the United Nations Special Commission (the body charged with disarming Iraq). He explains that in order to fix the issues of the Council, the veto must be curtailed. However, although realizing that such a move may be unlikely, as it would disturb the status quo enjoyed by the P-5 its benefits would be many, 'including a long overdue revitalization of the Security Council's rigid and tired political environment'<sup>18</sup>.

On the other hand, various critics of reforming the voting system believe that at present, it serves its purpose. Robert Snyder has had a viewpoint on the current system. He suggests that the veto is suitable as it 'gives a derisible leadership role to the big powers'<sup>19</sup>. He bases this argument on the position that the principal of one State one vote should not be applied to all sub-bodies of the United Nations. In addition to Snyder's views on retaining the veto, Dr. Philip C. Jessup has also expressed his opinion that the veto is not the cause of all failures in the Council. Jessup, was a scholar, diplomat and jurist from New York City. He espoused the view that although the veto is a symptom (but not a cause) of the failure of the voting system, it acts as a 'safety-valve that prevents the UN from undertaking commitments...which it presently lacks the power to fulfil'<sup>20</sup>.

Therefore, it can be seen that divergent opinions exist on both issues of reform, namely the structural question and the voting system.

### 1.7 Theoretical Framework

This dissertation is informed by the natural law legal theory. In particular, attention is paid to the views espoused by John Finnis.

The natural law legal theory is one of the key theories which underpins legal discussion. It espouses the general view that there is a close relationship between the law and morals. As such laws should always be informed by moral principles. One of the main theorists that developed this theory is John Finnis. John Finnis, an Australian legal scholar, has authored a variety of works including his seminal piece, *Natural Law and Natural Rights*. He has proposed his viewpoint that there exist 'fundamental goods' which everyone should seek to

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<sup>18</sup> Butler R, 'Bewitched, Bothered and Bewildered: Repairing the Security Council', *Foreign Affairs* (Sept-Oct 1999) Vol. 78, No. 5, 11.

<sup>19</sup> Snyder R, 'Reforming the Security Council for the Post-Cold War World', *International Journal on World Peace*, (March 1997), Vol. 14 No. 1, 13.

<sup>20</sup> Singh S, 'The Veto Problem in the UN', *The Indian Journal of Political Science*, (April-June 1958) Vol. 19, No.2, 131.

pursue. In addition he has reflected on how the law should promote the exercise of these goods by individuals who are subject to the law.

In his work Finnis has commented on the types of obligation that exists in observing laws. He proposes that individuals have a legal obligation and a moral obligation in following laws. Moreover, if the law seeks to promote the common good (by guiding the community to achieve the fundamental goods) then the moral and legal obligation exists. However, an issue arises as to how a 'morally wrong law' should be treated. In response to this, Finnis argues that if a law is morally wrong it would be legally binding but not morally binding. That is individuals would have to obey it, to the extent of keeping the legal system stable but it would not have that moral impact.

This theory is important to the discussion on reforming the Security Council because it can be argued that the current composition and voting structure must be observed, legally, but questions arise as to whether it is morally ideal. Various emerging powers (Japan and India) argue that they deserve better representation and perhaps these claims are valid. John Finnis's theory on the relationship of law and morals could assist in studying the Security Council.

## 1.8 Assumptions

The hypothesis indicated below has been reached on the following assumptions:

- 1) That an increase in the number of seats in the Security Council will complicate the work of the Council.
- 2) That all the members of the UN Community will be pleased if there is an increase in the number of seats in the Council.
- 3) That some of the proposals to the voting system can either make the Council more efficient or less efficient.

## 1.9 Hypothesis

This research operates on the following hypothesis. That if any of the proposals made to alter the structure of the Security Council as envisioned in Article 23 of the United Nations Charter prove to be suitable this will have a negative impact on the efficiency of the Council's work. Even though the efficiency may drop, the sub-body will become more representative of the UN community. Additionally, if any of the proposals to change the voting system, as currently laid out in Article 27 of the United Nations Charter, are suitable,

this may either make the work of the Council efficient or less efficient depending on the precise change.

## 2.0 Methodology

This research primarily adopted a qualitative method of study. Desktop research formed the core of the research undertaken on this particular topic. The desktop research involves visiting various databases that can provide information on the various proposals which have been made, for example, the United Nations official website and subsidiary databases such as JStor and Cambridge University Press.

In addition, whilst carrying out the research archiving (searching for relevant books on the subject of international organizations and the reform of such bodies) was also used as a tool to gain a better understanding of the situation on reform. Moreover, the research was bolstered with informal discussions with those who have worked in the United Nations as well as those who have written about this area of international law.

### 2.1 Limitations of the Study

It is possible that in carrying out this study certain limitations will be encountered. The first of these is that a variety of the articles, books and related material may adopt one-sided arguments in assessing the question of reform. An additional limitation may be getting access to individuals who work or are part of the UN community who can give their opinions on the situation of reform. Moreover, it may so happen that reform does actually take place in the time in which this dissertation will be written and as such this current study may not provide a fresh take on reform of the Council.

### 2.2 Chapter Breakdown

The following Chapters of this Dissertation are broken down as follows. The second chapter focuses on the structure of the Security Council. This part aims to address the research questions which focus on this particular area of reform. The third chapter deals with the voting systems of the Council. This part aims to answer the research questions on voting reform. The final chapter provides a conclusion and recommendations with respect to the statement of the problem which will form the basis of this dissertation.

## Chapter Two: Structural Reform of the Security Council: An analysis of five key Proposals

### 1.0 Introduction

The reform of the Security Council is perhaps one of the most intensely debated issues that has dominated discussions which involve the United Nations as an international organization. Since the early reforms of the 1960's<sup>21</sup> which altered the structure of the Council there has been a variety of proposals which have been made to re-alter the structure of the Council for purposes of making it more representative of the entire UN community of nations. The following part of this dissertation involves a rigorous study of the various proposals which have been made by various parties in an attempt to determine what the most suitable answer to the Security Council's structural dilemma is.

The increase in the membership of the United Nations encouraged discussions on reformation of the Security Council. Since the initial change to the structure of the Council which came into force in 1965 there has been a variety of proposals which have been tabled before the UN community. These proposals include major-State sponsored proposals, minor-State sponsored proposals and academic proposals<sup>22</sup>. In order to identify the most suitable structure, if indeed one is attainable in the changing dynamics of international relations, these proposals must be examined.

### 1.1 The Group of Four Proposal

International efforts to establish an organization which creates a platform for discussion and cooperation between States can be traced to the League of Nations, an organization which precedes the United Nations. The League of Nations, one of the products of the Paris Peace Conference, was intended to promote and maintain world peace. Although the Organization

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<sup>21</sup> The Security Council underwent Structural Reform to increase the size of the Council from eleven members to fifteen. This change came into force on 31<sup>st</sup> August 1965. This is reflected in the *Introductory Note in the Charter of the United Nations*, Published by the United Nations Department of Public Information, December 2006.

<sup>22</sup> Cox B, 'United Nations Security Council Reform: Collected Proposals and Possible Consequences', *South Carolina Journal on International Law and Business* (2009).

was a great step towards fostering international cooperation, its potential was short-lived as it lasted twenty-six years. The league's dissolution can be attributed to a variety of elements, *inter alia*, the absence of the USA from its members and a lack of worldwide representation<sup>23</sup>.

It is during the lifetime of the League of Nations that World War Two erupted causing a breakdown in international relations. The impact of World War Two on various States and their citizens invoked further discussion amongst the Allied powers on how best to prevent these events from taking place in the future. As a result of defeating Germany, Italy and Japan during World War Two the Allied Powers came together to instigate the formation of the world body which today is known as the United Nations. It can be argued that the aftermath of World War One and the lessons learned from the League of Nation's demise ensured the Allied powers commitment to make the new body sustainable.

Because of the major role which the allied powers played in the World War, namely, the United States of America, China, France, the United Kingdom and the Russian Federation it was considered that these States should similarly assume major roles within the newly formed body. These nations, commonly referred to as the 'P5' occupy permanent seats within the Security Council<sup>24</sup>. The agreement that these nations would be permanent members was premised on many factors including the fact that ever since the formation of the United Nations these States possess the most powerful military forces and had cooperated with each other to defeat the rise of Nazi Germany and its allies. However, although these States have large militaries and extensive powers other states have emerged as contenders for permanent seats within the Council. These include India, Japan, Germany and Brazil. Together they form the 'Group of Four'. This perspective of Council reform can be traced to a draft General Assembly resolution which was tabled before the General Assembly on 6<sup>th</sup> July 2005<sup>25</sup>. In it the proposing member states recommended an additional six permanent seats and four non-permanent seats.

The additional permanent seats would be distributed regionally with Africa and Asia receiving two seats and Latin America and Western Europe receiving one seat. Whereas, with

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<sup>23</sup> Between 1920 and 1939 a total of sixty-three States became Members however many others either revoked their membership e.g. Japan and Germany or never joined the League during its lifetime.

<sup>24</sup> Article 23.1, *Charter of The United Nations and Statute of the International Court of Justice* (26<sup>th</sup> June 1945), Department of Public Information United Nations, DPI/511, Reprint (2006).

<sup>25</sup> UNGA, *Question of Equitable Representation on and increase in the membership of the Security Council and related matters*, UN Res A/59/L.64 (6<sup>th</sup> July 2005).

respect to the non-permanent seats, Africa, Asia, Eastern Europe and Latin America would each receive one seat. The drive for an expansion, in the context of the Group of Four Proposal, is due to the scale of growth of the four nations, namely, Germany, India, Brazil and Japan. These states have emerged as major global players with two of the four countries also forming part of the BRIC group of states which has been argued will have a 'major impact on the global economy during the coming decades'<sup>26</sup>. When considering India's economic rise over the past decades it is arguable that its international influence will continue to rise as its 'economy is the 10<sup>th</sup> or 11<sup>th</sup> biggest in the world and is forecast to reach third, after the US and China, in less than fifteen years'<sup>27</sup>.

Therefore, it seems as though the Group of Four proposal would be an ideal plan for the structural expansion of the Security Council, however this plan has received its criticism from various member States, some of them being permanent members in the Council itself. A key example of this is the relationship between China and Japan. Although the United States of America has indicated its support for Japan to receive a permanent seat if reform does take place, China has on many occasions signalled its disapproval. This disapproval stems from the Chinese Government itself to the grassroots where 'a campaign to keep Japan out of the Security Council has gathered some 22 million signatures, increasing the chances that China will block Japan's bid to join the group'<sup>28</sup>. This tension demonstrates the political climate in which Security Council reform is being debated.

This kind of tension introduces into the structural debate the relationship that exists between member States. In the case of Japan and China, there remain constant challenges, for example, both States assert sovereignty over the Senkaku Islands<sup>29</sup>. It therefore makes Japan's bid more difficult and arguably creates more tension between China and the USA, a State that wishes to foster better relations with both States. Therefore, this Proposal suffers from the inherent tension that exists between competing States that are from the same region.

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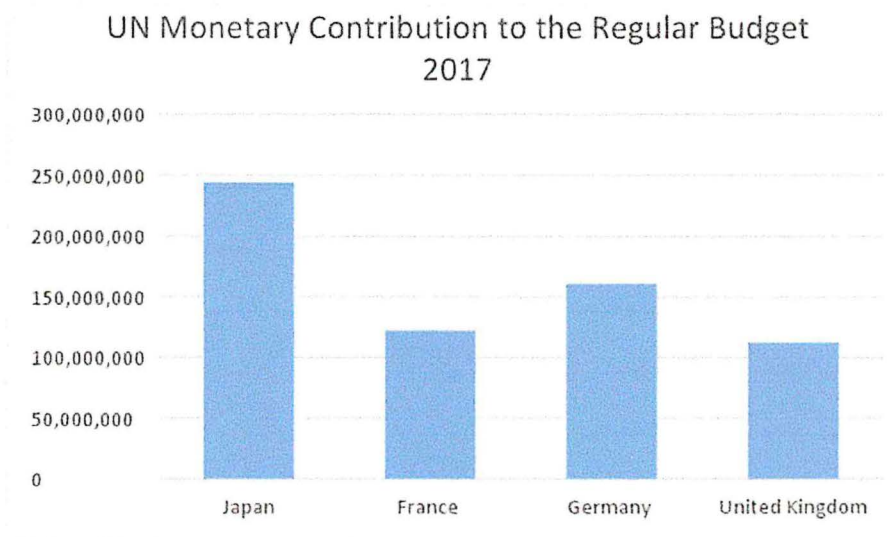
<sup>26</sup> Groot S & Others, 'The Rise of the BRIC Countries and its impact on the Dutch Economy', *CPB Background Document on Request by the Ministry of Economic Affairs, Agriculture and Innovation* (2011).

<sup>27</sup> Burke J, 'Now India is Growing fast it's time to update our tired image of the country' (14<sup>th</sup> February 2016), <<https://www.theguardian.com/commentisfree/2016/feb/14/india-economy-growth-west>> last accessed 30<sup>th</sup> July 2017.

<sup>28</sup> '22 Million Chinese seek to Block Japan's bid to join U.N Council', *The New York Times* (31<sup>st</sup> March 2005), <<http://www.nytimes.com/2005/03/31/international/asia/22-million-chinese-seek-to-block-japans-bid-to-join-un.html>> last accessed 30<sup>th</sup> July 2017.

<sup>29</sup> These Islands have been a source of conflict between China and Japan since the 1970's. It is claimed that they are rich in gas and oil resources.

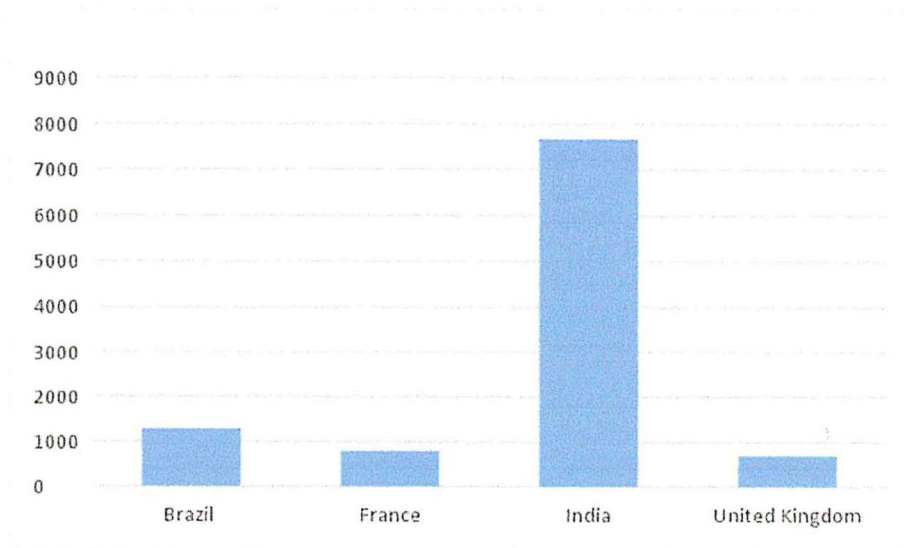
A crucial ground on which all the four members namely, Germany, Japan, India and Brazil seek permanent seats is with respect to United Nations monetary contribution. When comparing the contributions made by the Group of four members to those made by some of the permanent members it is evident that the Group of four, at certain periods, are contributing more. The table below demonstrates that when comparing the contributions of Japan and Germany vis-à-vis the United Kingdom and France, the States who do not have permanent seats are contributing more to the United Nations regular budget<sup>30</sup>.



In addition to United Nations monetary contributions to the regular budget it is arguable that in certain periods member States of the Group of Four contribute more in terms of UN Military Experts on mission, Staff Officers and military troops. The table below illustrates that as of 30<sup>th</sup> June 2017 both Brazil and India have made more contribution in this area when compared to France and the United Kingdom<sup>31</sup>.

<sup>30</sup> *Assessment of Member States' Advances to the Working Capital Fund for the Biennium 2016-2017 and Contributions to the United Nations Regular Budget for 2016*, UN Secretariat, 28<sup>th</sup> December 2015, ST/ADM/SER.B/932.

<sup>31</sup> *Contributors to UN Peacekeeping Operations by Country and Post, Police, UN Military Experts on Mission, Staff Officers and Troops*, 30<sup>th</sup> June 2017.



The above demonstrates that the Group of Four proposal has emerged at a time when the four nations are growing economically and therefore there is pressure from these nations to be considered in any reform package. This Proposal is progressive as it reflects the reality that Japan, India, Brazil and Germany are just as influential on the international platform as the other permanent members. In addition, it is a great reform package as it guarantees more seats for regions, which in the past have been arguably marginalized, for example, giving Africa three seats (two permanent and one non-permanent seat).

## 1.2 The Uniting for Consensus Proposal

Although the Group of Four Proposal seems to be suitable by distributing the new permanent seats amongst four regional areas (Africa, Asia, Latin America, Western Europe and Other States) there has been disagreement between the Group of Four and another group of States referred to as Uniting for Consensus, but also termed the 'Coffee Club'. This disagreement is evident, for example, a meeting in 2005 convened by former Secretary General Kofi Annan proved to be 'a futile exercise with the two sides failing to find a meeting ground'<sup>32</sup>. Initially led by Italy, this group of nations argue that the Group of Four proposal adds to the 'class' system of the Security Council. The Uniting for Consensus Proposal focuses on increasing

<sup>32</sup> 'Differences between G-4, Coffee Club over UN seat remain', 24<sup>th</sup> May 2005 <<https://www.outlookindia.com/newswire/story/differences-between-g-4-coffee-club-over-un-seat-remain/300109>> last accessed 16<sup>th</sup> August 2017.

non-permanent membership from the current ten members to twenty members<sup>33</sup>. The non-permanent section of the Council, under this proposal, have a tenure of two years with the possibility of immediate re-election.

This perspective of focusing on increasing non-permanent seats instead of creating permanent seats is based on better representation. Allan Rock, former Canadian Ambassador to the United Nations, when presenting the Uniting for Consensus Proposal argued that ‘widening the permanent circle for the few who sought special status, would make the Council less accountable for its conduct, more remote from the membership and less representative of the world’s regions’<sup>34</sup>. Moreover, Marcello Spatafora, former Italian Ambassador to the United Nations also argued that the ‘G-4 model was structured in a way to benefit just six ‘happy few’, at the detriment of all the other 180 member States, and with a tremendous divisive impact on the membership’<sup>35</sup>. This demonstrates that the deliberations between the ‘Coffee Club’ States was geared towards creating a reform package which did not favour a handful of States but would give the larger majority the chance to serve more frequently and for longer periods depending on their popularity within a particular region when it comes to contributing to the maintenance of international peace and security.

It would seem that like the Group of Four proposal the Uniting for Consensus Proposal has its critics and supporters. However, it is arguable that support of this proposal amongst the current permanent membership is stronger than that of the Group of Four proposal. This is so with respect to China. China has openly disapproved of Japan’s lobbying for a permanent seat on the Council however, remarks made by Ambassador Wang Guangya in 2005 at a meeting of the Uniting for Consensus Group suggests China’s support of the Uniting for Consensus initiative. This is so as he stated that ‘China embraces this initiative and supports all efforts made in this regard.’<sup>36</sup> This Proposal can be seen as a backlash from a group of States which are said to be ‘rivals’ to the Group of Four.

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<sup>33</sup> UNGA, *Question on equitable representation on and increase in the membership of the Security Council and related matters*, UN A/59/L.68 (21<sup>st</sup> July 2005).

<sup>34</sup> ‘Uniting for Consensus’ Group of States Introduces Text on Security Council Reform to General Assembly, 26<sup>th</sup> July 2005, GA/10371 <<https://www.un.org/press/en/2005/ga10371.doc.htm>> last accessed 16<sup>th</sup> August 2017.

<sup>35</sup> Uniting for Consensus’ Group of States Introduces Text on Security Council Reform to General Assembly, 26<sup>th</sup> July 2005, GA/10371 <<https://www.un.org/press/en/2005/ga10371.doc.htm>> last accessed 16<sup>th</sup> August 2017.

<sup>36</sup> Remarks by Ambassador Wang Guangya at meeting on ‘Uniting for Consensus’, 11<sup>th</sup> April 2005, <<http://www.china-un.org/eng/chinaandun/zzhgg/t191026.htm>> last accessed 30<sup>th</sup> July 2017.

The Uniting for Consensus Proposal, in theory, provides a great opportunity for a larger and more representative Council. However, it can be argued that by simply increasing the non-permanent section of the Council there would still remain the dominance which is exercised by the permanent five members. This drawback is less evident under the Group of Four proposal because under that proposal there would be an increase in permanent members to include emerging nations in regions which have arguably not been represented adequately, for example, Africa.

### 1.3 The Ezulwini Consensus

Another interesting Proposal which has been made for structural reform takes into account the perspective of States in Africa. This perspective focuses on the creation of both permanent and non-permanent seats. This would seem more in line with the Group of Four Proposal as opposed to the Uniting for Consensus Proposal which focuses primarily on the creation of new non-permanent seats.

The Ezulwini Consensus is a proposal which has grown from the drive of African nations for a more representative Council. This is evident as the African Union Heads of State meetings are a common forum where such discussions are held. For example, Heads of State at the 53-nation African Union Summit in Abuja, Nigeria were 'seeking ways to ensure progress for the continent and better representation at the United Nations Security Council'<sup>37</sup>. The Proposal views a more representative Council as having an additional six permanent seats as well as five non-permanent seats. When considering the new permanent seats Africa and Asia would each receive two whereas Latin America and Western Europe would each receive one. With respect to non-permanent seats Africa would receive two whereas Asia, Eastern Europe and Latin America would each receive one seat.

The Ezulwini Consensus leans more towards giving greater representation to the African region. This would seem ideal because as of the 30<sup>th</sup> June 2017 there is a total of sixteen peacekeeping operations taking place. Out of this total number nine are taking place in the African Region<sup>38</sup>. This raises the argument that the Security Council would be able to properly discharge its primary responsibility of the maintenance of international peace and

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<sup>37</sup> 'African Leaders seek progress, Better Representation', 27<sup>th</sup> October 2009 <<https://www.voanews.com/a/a-13-2005-01-30-voa28-66362452/546360.html>> last accessed 17<sup>th</sup> August 2017.

<sup>38</sup> United Nations Peacekeeping Operations, Fact Sheet (30<sup>th</sup> June 2017).

security if there was more representation from the region where peacekeeping missions are more predominant. It is arguable that with more representation on the Council from African States the Council may be able to respond more effectively towards conflict that may arise in this region.

This proposal, it can be argued, stems from the growth and influence of African States in international relations. Indeed it has been commented that ‘No one at San Francisco in 1945 could in their wildest dreams have imagined that Africa would have a major role in the United Nations, let alone imagine that its meetings would be filled with representatives from thirty-four independent African States, the largest continental representation in the organization’<sup>39</sup>. However, this viewpoint is no longer applicable as the African region now constitutes the majority of states in the General Assembly of the United Nations. In addition, the economies of various African States have boomed with ‘six of the ten fastest growing economies in the world being in Sub-Saharan Africa: Mozambique, Rwanda, Angola, Nigeria, Chad and Ethiopia’<sup>40</sup>.

Furthermore, there are certain African states which have played a significant role in international affairs, for example, Nigeria. ‘Nigeria has participated in various UN peacekeeping operations in Congo, Lebanon, Angola, Yugoslavia, Somalia and Rwanda’<sup>41</sup>. Therefore, this proposal is a great step forward as it expressly recognizes the need for Africa to be better represented on the Council. In addition, it brings to light the political as well as economic rise of African States in the international sphere and their need to be better represented on the Security Council. However, this proposal can arguably be criticized on the basis that it leans more in favour of Africa whilst neglecting other regions such as Eastern Europe. Whilst under this plan Eastern Europe would only receive one non-permanent seat, under the Uniting for Consensus Plan Eastern Europe would receive two seats and Africa would receive six seats. Therefore, when comparing these two proposals the latter seems to provide better representation to both regions as opposed to one over the other.

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<sup>39</sup> Hovet T, ‘The Role of Africa in the United Nations’, *The Annals of the American Academy of Political and Social Science*, Vol 354, July 1964, 124.

<sup>40</sup> Akyeampong E & Fofack H, ‘Five Centuries ago Africa was Booming: it can rise again’, 9<sup>th</sup> September 2015 <<https://www.theguardian.com/commentisfree/2015/sep/09/africa-rising-people-economies>> last accessed 1<sup>st</sup> August 2017.

<sup>41</sup> Nwosu N, ‘Nigeria and the Quest for Security Council’s Permanent Membership: Problems and Prospects’, *Pakistan Institute of International Affairs*, Vol 49, No. 3 July 1996, 42.

## 1.4 The Italian Proposal

As well as their being major state proposals there have also been proposals made by independent member States. Although it can be argued that Italy spearheaded the Uniting for Consensus Proposal in order to challenge the Group of Four Proposal there is also an initial independent Proposal made by Italy. This perspective differs from the others which have been explored.

Under this perspective, rather than being a sub-body which is made up of member-states the Security Council would accommodate 'regional seats'. That is to say that each seat would represent one of the various regions adopted in the workings of the United Nations. The idea behind this approach is to give member states more access to the Security Council as the regions would be able to rotate member states in and out of the Council. This perspective on Security Council reform has gathered support within and outside the United Nations community as 'regional associations could then be expected to deepen their common security and foreign policy in order to ensure their representativeness for the region concerned as well as the effectiveness of the Council'<sup>42</sup>.

However, it is worthy to note that although regional seats may foster solidarity and better represent regional interests rather than individual state interests, such a structure may lead to inefficiency if disagreement exists within particular regions.

## 1.5 Model X – An Academic Proposal

A further perspective of structural reformation is what is referred to as the 'Model X' plan. This plan builds on Plan A and B which was set out in the United Nations report entitled 'A more secure world: Our shared responsibility'.

This Proposal differs from others as it seeks to keep the membership number low by adding only five new seats in the Council. However, these would be four- year renewable seats. From these seats there would be 'two four-year renewable seats for Africa, two for Asia and

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<sup>42</sup> Schrijver N, 'Reforming the UN Security Council in Pursuance of Collective Security', *Journal of Conflict and Security Law*, Issue 1 March 2007, 135.

one for the Americas and the Pacific'<sup>43</sup>. Such an outlook on the structure of the Council creates what can be referred to as 'semi-permanent' members. Although some may argue that it creates another 'class' within the Council it could be equally argued that such a structure would give greater representation to regions which until recently have not been adequately represented.

## 1.6 Analysis of Competing Proposals

The various proposals to the structure of the Security Council encompass different variations of making the sub-body more representative whilst attempting to maintain and perhaps improve its efficiency. Each of the discussed Proposals have their individual merits and drawbacks.

By way of example, the Uniting for Consensus Proposal would highly benefit the image which the Security Council has of being in an 'anachronistic state'<sup>44</sup>. By focusing primarily on the expansion of non-permanent seats the Proposal does not contribute to the 'class-system' which would continue to exist if additional permanent seats are created.

Conversely, it has been argued that enlarging the non-permanent section further complicates the situation. Germany, through its representatives, stated in the reform debate of the 63<sup>rd</sup> session of the General Assembly 'that expanding the Council with only non-permanent members would merely add more voices to the 'Choir' rather than change the 'song' of the Council'<sup>45</sup>. Thus, a Proposal which adds more permanent and non-permanent seats would seem ideal. This is what the Group of Four Proposal recommends.

In addition to the above the Ezulwini Consensus raises legitimate concerns of African Nations for better representation on the Council. This Proposal, unlike the other four leans in favour of a region that has the highest population of States in the world and in the UN Community of States.

A key element of the debate on structural reform is the fear amongst many stakeholders that an increase in Council membership will decrease efficiency. For example, James D Fearon, Professor of Political Science at Stanford University, expressed his viewpoint in his

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<sup>43</sup> Cox B, 'United Nations Security Council Reform: Collected Proposals and Possible Consequences', *South Carolina Journal of International Law and Business*, Volume 6, Issue 1 Fall, 114.

<sup>44</sup> Mishra M, 'The United Nations Security Council: Need for a Structural Change?', *The Indian Journal of Political Science*, Vol. 68, No. 1 (January- March 2007), 145.

<sup>45</sup> Lund J, 'Pros and Cons of Security Council Reform', 19<sup>th</sup> January 2010, Centre for UN Reform Education <<http://www.centerforunreform.org/?q=node/414>> last accessed 17<sup>th</sup> August 2017.

comments of the Report of the High-Level Panel on Threats, Challenges and Change. He argues that ‘the overall impact on effectiveness could actually be negative if increasing the size of the Council makes it harder to get good resolutions passed in the first place’<sup>46</sup>. Although these viewpoints exist a study carried out by Aris Alexopoulos and Dimitris Bourantonis found that increasing membership of the Council would not decrease efficiency. In their study, the authors suggest that ‘if policy-makers’ goal is to expand the UNSC, in order to make it more representative, they could proceed without losing in efficiency’<sup>47</sup>.

The above demonstrates that all the Proposals analysed above have their merits. They each propose an increase in membership although with a variance of focus on different regions in the World. Therefore, it can be concluded that each of the Proposals have made a beneficial contribution to the continuing debate on possible structural reform of the Security Council.

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<sup>46</sup> ‘Reforming the United Nations for Peace and Security, Proceedings of a Workshop to Analyse the Report of the High-level Panel on Threats, Challenges and Change’, Yale Centre for the Study of Globalization, March 2005, 101.

<sup>47</sup> Alexopoulos A & Bourantonis D, ‘Can Expansion lead to a more efficient UN Security Council? A Veto Players Analysis’, 24.

# Chapter Three: An analysis of the Voting System of the United Nations Security Council

## 1.0 Introduction

Any Organization's performance depends on the internal system which is used to allow it to make decisions and act when presented with challenges. The Security Council is no exception to this. Since its inception the Council has evolved in its methods of operation and working methods in order to meet the needs of world affairs at a particular point in time. Such progress has been recognized by many including H.E Ambassador Dr. Ion Jinga who remarked in a statement that, 'significant progress has been achieved in the last couple of years in adapting the methods of work to the new global realities'<sup>48</sup>.

This Chapter of the Dissertation will focus on studying the evolution of the working methods of the Council in order to determine the plausibility of the system as it currently stands. Additionally, this Chapter will also consider the use of the 'Veto' power which is granted to permanent members under the Charter of the United Nations<sup>49</sup>. Certain proposals to the Veto's reform and questions of its complete abolition will also be explored.

## 1.1 Analysis of the Working Methods

The improvement on the working methods of the Council has been an ongoing process since the Council began its work. This has been a necessary step for this body to take because as there has been a growth in conflicts following the end of the Cold War there has been a growth in the workload of the Council. As such 'from a body that for decades met only sporadically, ranging from a few times a year to a few times a month, the Council in 1993 turned into one that held 153 formal meetings and 252 sessions of informal consultations'<sup>50</sup>.

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<sup>48</sup> H.E Ambassador Dr. Ion Jinga, *Statement at the Security Council Open Debate on the Working Methods of the UN Security Council*, 19<sup>th</sup> July 2016 <<https://mpnewyork.mae.ro/en/node/1914>> last accessed 17<sup>th</sup> September 2017.

<sup>49</sup> Article 27.3, *Charter of The United Nations and Statute of the International Court of Justice* (26<sup>th</sup> June 1945), Department of Public Information United Nations, DPI/511, Reprint (2006).

<sup>50</sup> 'Security Council Transparency, Legitimacy and Effectiveness: Efforts to Reform Council Working Methods 1993-2007', *Security Council Report, Special Research Report 2007 No. 3*, 18<sup>th</sup> October 2007.

The procedure which the Security Council was to adopt was to always be formed by the Council itself<sup>51</sup>. As such, in its early years the Executive Committee of the UN Preparatory Mission was tasked with forming the initial Provisional Rules of Procedure. The work of this Commission resulted in the document S/96/Rev.7 which outlined the Procedural Rules to be followed by the Council Members. Since its initial adoption the Rules have been amended a further eleven times as the circumstances of the Council's work has changed.

The initial Provisional Rules of Procedure were a positive foundation on which the Council could begin its work. It covers various key areas such as the Agenda, the Presidency and publicity of meetings. With respect to the Agenda the Rules provided that the Secretary-General would produce a provisional agenda which would be used in an upcoming Council meeting upon the approval of the President of the Council<sup>52</sup>. Additionally, the Rules also specified that the Presidency would rotate monthly amongst all the members of the Council according to the order in which the first letter of the Member States' name appeared in the English alphabet<sup>53</sup>.

Despite its ability to allow the Council to carry out its work it was discovered that further changes to the working methods would be required. An important move in this direction of change was the Note issued by the President of the Security Council in 2006 recorded in the UN document S/2006/507. This document provided various amendments to the previous Rules which the Council used. When comparing the new measures under this document with the Provisional Rules various elements differ. Firstly, the 2006 edition prescribes that the 'provisional agenda for formal meetings of the Council should be included in *the Journal of the United Nations*'<sup>54</sup>. This is different from what previously existed where the Agenda would be set amongst the Council members. This provision is in line with the call of observers and non-Council members encouraging transparency and accountability in the working methods of the Council.

Moreover, under the 2006 edition there is express recognition of the members of the Council's intent to 'intensify their efforts to publicize decisions and other relevant information of the Council and its subsidiary bodies to the Member-States and other

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<sup>51</sup> Article 30, *Charter of The United Nations and Statute of the International Court of Justice* (26<sup>th</sup> June 1945), Department of Public Information United Nations, DPI/511, Reprint (2006).

<sup>52</sup> Rule 7, *Provisional Rules of Procedure of the Security Council, S/96/Rev.7, United Nations Publications, Sales No. E.83.I.4.*

<sup>53</sup> Rule 18, *Provisional Rules of Procedure of the Security Council, S/96/Rev.7, United Nations Publications, Sales No. E.83.I.4.*

<sup>54</sup> Article I.1, *Note by the President of the Security Council, S/2006/506, 19<sup>th</sup> July 2006.*

Organizations through correspondence, websites, outreach activities and other means, when appropriate<sup>55</sup>. In comparison the Provisional Rules lacked this access to documentation. By way of example, the previous Rules indicated that upon receiving all documents that were considered confidential from the Secretary-General the Security Council would decide ‘which of these shall be made available to other members of the United Nations; which shall be made public and which shall continue to remain confidential’<sup>56</sup>.

However, the adaptation of the Council’s working methods did not stop in 2006. The Informal Working Group on Documentation and Other Procedural Questions (A working group set up to assist in streamlining the methods of the Council) updated the 2006 measures which resulted in the President’s Note S/2010/507. Under this note further amendments were made to the working methods with the aim of improving the efficiency, transparency and accountability of the Security Council.

Under the 2010 edition of the working methods it specifies that Council members ‘intend to invite the Chairs of Country-specific configurations of the Peacebuilding Commission to participate in formal Security Council meetings at which the situation concerning the Country in question is considered’<sup>57</sup>. This is a new measure which the Council developed which was not present under the 2006 Presidential Note. Additionally, the 2010 edition makes provision for Security Council Missions. It prescribes that ‘members of the Security Council will designate a member or members to coordinate a particular Security Council mission’<sup>58</sup>.

In addition to the above developments of the working methods of this body another key measure which has grown in popularity is the use of ‘Arria-Formula’ meetings. Initiated by Ambassador Diego Arria of Venezuela, these are ‘very informal, confidential gatherings which enable Security Council members to have a frank and private exchange of views with persons whom the inviting member or members of the Council believe it would be beneficial to hear and/or to whom they may wish to convey a message’<sup>59</sup>.

The above demonstrates that the Security Council has undergone significant change with respect to its working methods. These changes are arguably positive as they seek to make the

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<sup>55</sup> Article III.10, *Note by the President of the Security Council, S/2006/506*, 19<sup>th</sup> July 2006.

<sup>56</sup> Rule 57, *Provisional Rules of Procedure of the Security Council, S/96/Rev.7, United Nations Publications, Sales No. E.83.I.4*.

<sup>57</sup> Article X.61, *Note by the President of the Security Council, S/2010/507*, 26<sup>th</sup> July 2010.

<sup>58</sup> Article XI.66, *Note by the President of the Security Council, S/2010/507*, 26<sup>th</sup> July 2010.

<sup>59</sup> Informal Non-Paper of 25<sup>th</sup> October 2002, prepared by the United Nations Secretariat <<http://www.un.org/en/sc/about/methods/bgarriaformula.shtml>> last accessed 17<sup>th</sup> September 2017.

work of the Council more transparent and inclusive with respect to the general public as well as the wider UN Community.

## 1.2 Analysis of the ‘Veto’

In addition to the working methods of the Council another key area which is hotly debated regards the voting powers which five out of the fifteen Council-members have. The permanent members of the Security Council which include the USA, the Russian Federation, China, UK and France all possess what is referred to as the ‘veto’ power. That is to say that in order for a non-procedural matter to pass in the Council it requires the affirmative vote of nine members ‘including the concurrent votes of the permanent members’<sup>60</sup>. As such this state of affairs has been described by a diplomat as being one in which ‘the Security Council is a club and the P5 is club within a club’<sup>61</sup>. However, it is worthy to note that when procedural matters are being voted upon, there must be nine affirmative votes. Therefore, it is possible for procedural resolutions to pass despite a lack of affirmative votes from all of the five permanent members.

Despite the vast criticism which has been levelled against this aspect of the Security Council there are arguments which exist for maintaining the voting powers of the permanent five Council members. It is argued that ‘overall use of the veto has declined markedly since the end of the Cold War’<sup>62</sup>. To a certain extent this assessment is accurate especially with respect to two permanent members namely, the UK and France. The first table below indicates the number of times both these members have used their veto power in two periods. The first period being between the years 1980-2000 and the second period being between the years 2000 to 2017. The first table illustrates that between the years 1980 to 2000 the UK and France used the veto power 14 times and 7 times respectively. However, from the years 2000 to 2017 both member States have not used the veto power.

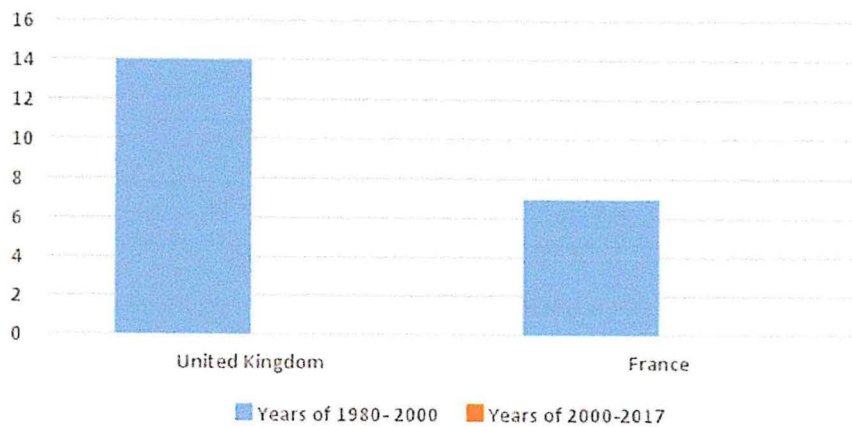
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<sup>60</sup> Article 27.3, *Charter of The United Nations and Statute of the International Court of Justice* (26<sup>th</sup> June 1945), Department of Public Information United Nations, DPI/511, Reprint (2006).

<sup>61</sup> Okhovat S, *The United Nations Security Council: Its Veto Power and Its Reform*, CPACS Working Paper No. 15/1, December 2011.

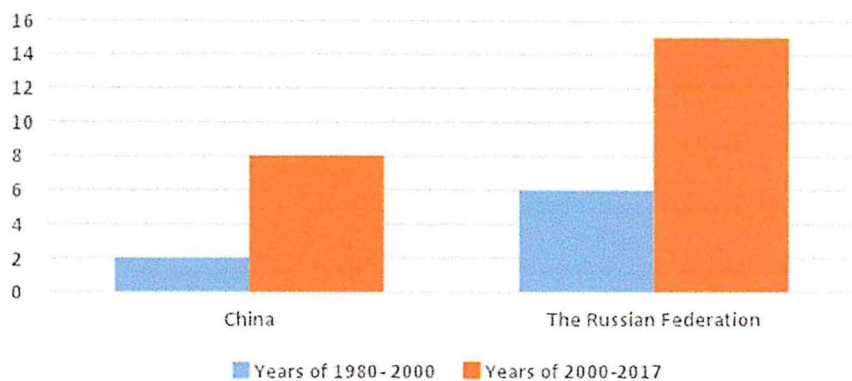
<sup>62</sup> Bosco D, ‘In Defence of the Veto Power’, 31<sup>st</sup> January 2012, <<http://foreignpolicy.com/2012/01/31/in-defense-of-the-veto-power/>> last accessed 18<sup>th</sup> September 2017.

Total Number of Vetoes Cast by UK and France in two different time periods



Conversely, it can be argued that there has been an increase in the use of the Veto with respect to two other permanent members namely, China and Russia. The table below demonstrates that from the years of 1980 to 2000 China and Russia used the veto power twice and six times respectively. However, from the years 2000 to 2017 China and Russia used the veto power eight and fifteen times respectively<sup>63</sup>.

Total Number of Vetoes Cast by China and The Russian Federation in two different time periods



In addition to the reasoning that the veto is used sparingly in more recent times it has been argued that without the existence of this voting power to defeat any resolution dealing with a substantive matter there would not be a Security Council to speak of. When the United Nations was formed in 1945 it was agreed that the five victors of the Second World War

<sup>63</sup> Security Council- Veto List, <<http://research.un.org/en/docs/sc/quick>> last accessed 18<sup>th</sup> September 2017.

would receive permanent membership in the Security Council along with the power to cast a negative vote which would defeat any resolution except for one dealing with a procedural matter. This was an assurance which did not exist under the United Nations' predecessor, the League of Nations and which it can be argued, *inter alia*, led to its failure. Additionally, it has been argued by some that 'the veto allows Security Council members, to set aside those issues on which they cannot agree but to remain engaged on those others- the great majority of cases- where they can'<sup>64</sup>.

However, although it seems ideal that the power to use the veto exists so as to entice the permanent members, who all have nuclear capabilities, to stay focused on maintaining international peace and security there has been a growth in discussion to either dispel with the veto power altogether or to limit its use to certain areas of international affairs. With respect to its limitation there are those who argue that the veto's use should not be adopted in events which result in mass-atrocities, crimes against humanity and genocide. As such 'the moral argument that the veto should not be used in cases of mass-atrocity crimes in overwhelming'<sup>65</sup>.

Instead of limiting the Veto's use in the above instances there are others who support the argument that this privilege which is held by five out of fifteen Council members should be disbanded altogether. It is argued that 'the use of the veto throughout the UN's history has been responsible for the body's failure to act during many of the worst crises'<sup>66</sup>. However, this proposition would remain hard to achieve. This is so because any amendment to the Charter requires the agreement of 'all the permanent members of the Security Council'<sup>67</sup>. Despite the obvious challenge in changing this state of affairs there is still strong dissent over the veto's existence in current times. In a dialogue on UN Reform which took place in the New York Times one commentator argued that the veto is 'a relic of World War II subject to

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<sup>64</sup> Davies S & Bellamy A, 'Don't be too quick to condemn the UN Security Council power of Veto', 12<sup>th</sup> August 2014, <<https://theconversation.com/dont-be-too-quick-to-condemn-the-un-security-council-power-of-veto-29980>> last accessed 18<sup>th</sup> September 2017.

<sup>65</sup> Evans G, 'Should the UN Security Council veto be limited?' 5<sup>th</sup> February 2015, <<https://www.weforum.org/agenda/2015/02/should-the-un-security-council-veto-be-limited/>> last accessed 18<sup>th</sup> September 2017.

<sup>66</sup> Petiya S, 'Abolish the Veto Power in the United Nations Security Council', 6<sup>th</sup> July 2009, <<https://guardianddc.wordpress.com/2009/07/06/abolish-the-veto-power-in-the-united-nations-security-council/>> last accessed 18<sup>th</sup> September 2017.

<sup>67</sup> Article 109, *Charter of The United Nations and Statute of the International Court of Justice* (26<sup>th</sup> June 1945), Department of Public Information United Nations, DPI/511, Reprint (2006).

abuse, it is largely responsible for the Council's impotence<sup>68</sup>. As such the commentator argued that 'the veto should be replaced by majority or supermajority vote, on either a state or population basis'<sup>69</sup>.

Additionally, there are arguments that the special voting powers of the permanent five should be limited as a result of the use of what is termed the 'unreasonable veto'. The unreasonable veto is the use of the special voting privileges by either of the permanent five in order to prevent or impede the Council from taking a certain course of action. The use of this term by member-states and Commentators was very popular with respect to Security Council Resolution 1441. By way of example, Tony Blair, the former British Prime Minister, stated that the UK would take action if another Council member 'imposed an unreasonable veto in the Security Council'<sup>70</sup>. This remark was made in response to France's disapproval of the USA and UK's assessment that an interpretation of Security Council Resolution 1441 permitted the use of force in Iraq. Therefore, France was inclined to use its Veto on any further resolution giving permission for the use of force and such a use would have been considered 'unreasonable' by France's allies in the Security Council.

Moreover, there has been an emerging trend by permanent members of the Council to abstain when resolutions are being voted upon. This trend was given recognition by the International Court of Justice in its Advisory Opinion regarding the occupation of Namibian territory by South Africa<sup>71</sup>. The Court expressed the viewpoint that 'by abstaining, a member does not signify its objection to the approval of what is being proposed; in order to prevent the adoption of a resolution requiring unanimity of the permanent members, a permanent member has only to cast a negative vote'<sup>72</sup>. Therefore, the International Court of Justice interpreted an abstention as a 'concurring vote' rather than a negative vote. As such an abstention would not be counted as a vote in the Security Council whereas in comparison an abstention made by a Member State in the General Assembly would be counted as a vote. This practise by the permanent members, it can be argued, is more beneficial for the

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<sup>68</sup> Nabaum A, 'Creating a Stronger U.N', *New York Times*, 13<sup>th</sup> December 2014, <<https://www.nytimes.com/2014/12/14/opinion/creating-a-stronger-un.html>> last accessed 18<sup>th</sup> September 2017.

<sup>69</sup> Nabaum A, 'Creating a Stronger U.N', *New York Times*, 13<sup>th</sup> December 2014, <<https://www.nytimes.com/2014/12/14/opinion/creating-a-stronger-un.html>> last accessed 18<sup>th</sup> September 2017.

<sup>70</sup> Tempest M, 'Blair: Vetoes, No obstacle to War', o War', *The Guardian*, 6<sup>th</sup> March 2003, <<https://www.theguardian.com/politics/2003/mar/06/foreignpolicy.uk>> last accessed 28<sup>th</sup> September 2017.

<sup>71</sup> Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, ICJ Reports 1971, 22.

<sup>72</sup> Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, ICJ Reports 1971, 22.

Council's work as opposed to the use of the 'Veto' power. A notable example of its use is with respect to Security Council Resolution 2334. This Resolution outlined Israeli's settlement construction as being 'flagrant' and contrary to international law. Although the USA is seen as a strong ally of Israel, the USA abstained in this case. As a result, 'loud applause was heard in the packed chamber when the US Ambassador, Samantha Power, abstained'<sup>73</sup>. Therefore, this option which is open to permanent members to abstain arguably provides a better alternative to the use of the 'Veto' power.

The above discussion demonstrates the complexities surrounding the debate on reform of the Security Council's working methods and use of the 'Veto' by the five permanent members. With respect to the working methods although there is constant debate on making the internal system of the Council more streamlined it is evident that progress has been made in making the Council's work more transparent, accountable and inclusive. Moreover, when considering the use of the 'veto' power there are arguments which protect its use as being a 'necessary evil' to ensure that the big powers in the world remain enticed to engage in discussion and take action to maintain international peace and security. On the other hand, there are dissenting views which hold that the veto no longer serves the world community but rather that it stifles many attempts to secure peace and security. Proponents of the view that the Veto is a hindrance to the Council's work argue that there should be agreed limitations on its use. However, there are many Member-States, for example Lithuania, and commentators alike that believe that the best alternative to limitation is to completely abolish the use of the 'veto'.

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<sup>73</sup> Beaumont P, 'US abstention allows UN to demand end to Israeli Settlements', *The Guardian*, 23rd December 2016, <<https://www.theguardian.com/world/2016/dec/23/us-abstention-allows-un-to-demand-end-to-israeli-settlements>> last accessed 28<sup>th</sup> September 2017.

## Chapter Four: Recommendations and Conclusion

### 1.0 Recommendations on Security Council Structural Reform

There is no doubt that discussions on Structural reform continue to provide unique challenges to various stakeholders involved in this area of debate in international law. These challenges include attempting to balance the various interests of Member States in the United Nations Community as well as other entities outside the United Nations Community, for example, the General Public. Despite these constant challenges various proposals have been made to attempt to make this organ of the United Nations better representative of the entire United Nations Community.

One of the Proposals as analysed in Chapter Two is the Uniting for Consensus Proposal. 'Uniting for Consensus Members argue that their solution makes the most logical sense from an unbiased perspective and is the only solution that will work in the long term'<sup>74</sup>. Although this Proposal is seen as one that attempts to create a Security Council which has been argued would be better a representative of the United Nations Community of Member-States, it allows the status and subsequent power of permanent membership to be left to only five Member-States. This position can change under the Group of Four proposal which looks at including Member-States which have acquired a large economic and military position in international affairs into acquiring permanent membership status, however, the position cannot change if the Uniting for Consensus Proposal is implemented. In addition to the Uniting for Consensus Proposal, another Proposal discussed in this dissertation is the Ezulwini Proposal.

This Proposal, within the context of the structural reform debate, is essential as it demonstrates the necessity for better representation of Africa in the Security Council. However, it can be argued that the Group of Four Proposal satisfies this necessity whilst achieving other objectives such as recognizing the emergence of other Member-States other than the current Permanent Five. The Ezulwini Consensus is very similar to the Group of

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<sup>74</sup> Minor A, 'Reform of the United Nations Security Council: A Rope of Sand', Fall 2010, SIT Digital Collections, <[http://digitalcollections.sit.edu/cgi/viewcontent.cgi?article=1974&context=isp\\_collection](http://digitalcollections.sit.edu/cgi/viewcontent.cgi?article=1974&context=isp_collection)> last accessed 18<sup>th</sup> December 2017, 27.

Four Proposal in terms of new seats (both permanent and non-permanent). The difference between the two is that the Ezulwini Consensus creates an extra non-permanent seat for an African State. As such although this Proposal is important and has certain strengths, an alternative Proposal (the Group of Four Proposal) achieves a similar outcome.

As well as the Uniting for Consensus Proposal and the Ezulwini Proposal, the Italian Proposal to structural reform was also analysed. This Proposal takes an alternative approach by advocating for 'regional seats' as opposed to individual 'Member-State' seats. This approach is justifiable taking into account that regional seats would encourage Member-States within a particular region to cooperate and work together. However, it can conversely be argued that such an approach may cause greater inefficiency in cases of disagreement between Member-States in a particular region. By way of example, Member-States within a particular region may disagree on which Member-State should hold a particular seat and for how many terms. This disagreement may then have a knock-on effect on the work of the Security Council.

The 'Model X' Proposal has also been examined under Chapter Two of this dissertation. This Proposal, as opposed to the others, creates a new class of membership wherein the new Member-States serve a four-year term which is renewable. Although this Proposal may seem justified it is arguable that by creating an additional class of membership as opposed to maintaining the current two-year tenure for non-permanent members, this may create inefficiency in the work of the Security Council as the rotation cycle of all the Member-States in the Council may become more complex. It is arguable that considering the five proposals to structural reform discussed in Chapter Two, the most ideal would be the Group of Four Proposal.

The Group of Four Proposal is the most suitable option on the restructuring of the Council, in that, the Proposal itself recognises the emergence of Member States which play a vital role on the international scene. The Group of Four are a group of nations which wield a high degree of influence through the four nations' economic and military growth. An example of this is India. An article in the Economist recognised that 'if it [India] had a permanent Security Council Seat (which it has earned by being one of the most consistent contributors to UN Peacekeeping operations) it would not instinctively excuse and defend brutal regimes.'<sup>75</sup> Additionally, Brazil is a Member-State which exercises substantial influence in the South

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<sup>75</sup> 'Can India Become a Great Power?', 30<sup>th</sup> March 2013, <<https://www.economist.com/news/leaders/21574511-indias-lack-strategic-culture-hobbles-its-ambition-be-force-world-can-india>> last accessed 18<sup>th</sup> December 2017.

American region. Therefore, 'their [India and Brazil] presence on the Security Council would greatly increase regional representation'<sup>76</sup>. As such this Proposal gives those Member States which have made substantial contributions in maintaining international peace and security an opportunity to continue doing so on a permanent basis. In addition to giving permanent seats to Japan, India, Brazil and Germany under this Proposal there would be two permanent seats allocated for African States. Moreover, there would be the creation of an additional four non-permanent seats. With respect to these seats one seat would be allocated to Africa, Asia, Eastern Europe and Latin America.

This aspect of the Proposal achieves the main goal of structural reform, which is to make the Council more representative. In addition to providing better representation to regions which have historically being underrepresented (for example, Africa and Asia) the Group of Four Proposal adds Member-States to the list of permanent seat holders. This is important because it acts as a buffer to the power and control which is currently exercised by the Permanent Five Member States. This element of this Proposal sets it apart from others, for example, the Uniting for Consensus Proposal which focuses specifically on creating new non-permanent seats which maintains the current 'class-system' within the Security Council.

However, it can conversely be argued that the Group of Four Proposal itself maintains the same 'class-system' by adding Member-States to the elite 'club' of permanent members. Therefore, with respect to the various Proposals discussed in Chapter two of this dissertation the Group of Four Proposal would, if adopted, transform the Council into a more representative organ which recognises the emergence of Member-States which have grown economically as well as militarily. Furthermore, this Proposal recognises the need to provide better representation to regions such as Africa, Asia and Latin America in a proportionate manner.

## 2.0 Recommendations on the Voting System of the Security Council

As well as considering various Proposals with respect to the restructuring of the Security Council, this dissertation has also aimed to address issues surrounding the debate on working

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<sup>76</sup> Minor A, 'Reform of the United Nations Security Council: A Rope of Sand', Fall 2010, SIT Digital Collections, <[http://digitalcollections.sit.edu/cgi/viewcontent.cgi?article=1974&context=isp\\_collection](http://digitalcollections.sit.edu/cgi/viewcontent.cgi?article=1974&context=isp_collection)> last accessed 18<sup>th</sup> December 2017, 24.

methods as well as the voting system of the Council. This is so because whilst 'the discussion on Security Council Reform primarily focuses on expansion of its membership, some countries maintain that reforming the way the Council conducts its work is much more relevant and significant for Member States'<sup>77</sup>. When considering the working methods of the Council there has been significant change since the Council began its work. The initial Provisional Rules of Procedure proved to be beneficial however as the workload of the Council increased these Rules were amended various times to respond to this change.

In addition to the Provisional Rules the issuance of two key President's Notes, the first being in 2006 and the second being in 2010, proved to be very important in evolving the working methods of the Security Council. These Notes encouraged the Council to become more transparent in its operations with respect to the wider United Nations Community. An example of this is with respect to the publication of the provisional agenda of formal Council meetings, which under the President's Note of 2006 was recommended to be published in the Journal of the United Nations. Prior to 2006 this kind of Agenda was agreed privately amongst the Security Council members. The approach of re-assessing and amending the working methods of the Council has made the Security Council more accountable and transparent. This approach is ideal as the Council's work will continue to present new challenges which will require the working methods to also change to handle those challenges.

As emerging threats to international peace and security continue to grab the Security Council's attention the best approach to such threats will be to constantly adapt the working methods to find solutions to such threats which also make the organ as accountable and transparent as possible. As well as considering the working methods, the use of the 'Veto' has also been of particular importance in this dissertation. This area of Security Council reform presents its own challenges.

The presence of the 'Veto' in the Council's work has historical significance which can be traced back to formation of the United Nations at the behest of the five victors of World War Two. Therefore, there are proponents that argue that the existence of this privileged position of voting is justifiable on certain grounds. By way of example an author of an article indicated that with respect to the question of whether the world would be a better place if the Permanent Five are stripped of their Veto Power 'the world will not be a better place, it will

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<sup>77</sup> Lund J, 'Reforming the Working Methods of the Security Council', 18<sup>th</sup> November, <<http://www.centerforunreform.org/?q=node/412>> last accessed 18<sup>th</sup> December 2017.

be a more unstable place<sup>78</sup>. Other grounds on why retaining this power would be beneficial have been discussed in Chapter three of this dissertation. However, there are other stakeholders that argue that there needs to be reformation of this reserved power which is currently only exercised by five out of fifteen Member States. It is arguable that if the current structure of the Security Council remains as it is going into the future then there is a need to limit to scope of the use of the 'Veto'. It would be justifiable for the current holders of this voting privilege to restrict the use of this voting power to certain key issues under international law. As such, disputes which involve genocide, crimes against humanity and mass atrocities should not be disputes in which the 'Veto' should be used.

However, the above recommendation becomes more complex in the event that the Security Council is re-structured to include additional permanent members. If the Group of Four Proposal is adopted it is uncertain whether the new permanent members would possess the same powers as the incumbent permanent members or whether the new permanent members would have restrictions on their voting powers. Despite these apparent uncertainties in the reformation of the Security Council the use of the 'Veto' should be restricted in order to permit the Council to carry out its work without adverse political influence, which it can be argued, has been a recurring challenge which the organ has had to deal with. A notable example of this being the Security Council's instability during the Cold War Period where disagreement existed between the United States of America and the Union of Soviet Socialist Republics.

### 3.0 Conclusion

In conclusion, this dissertation has sought to examine the debate on reform of the Security Council by investigating structural reform as well as voting and working methods reform. Chapter Two of this dissertation has investigated five Proposals to alter the structure of the Council. The above discussion has highlighted the strengths and weaknesses of these Proposals with the recommendation that the Group of Four Proposal would be the most ideal. Additionally, Chapter Three of this dissertation sought to analyse the evolution of the working methods as well as the voting system of the Council. This analysis resulted in the

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<sup>78</sup> Krastev I, 'UN Security Council: Veto Option does more Good than Bad', 7<sup>th</sup> October 2015, <<http://valdaiclub.com/a/highlights/un-security-council-veto-option-does-more-good-than-bad/>> last accessed 18<sup>th</sup> December 2017.

recommendation that the working methods of the Council should continuously be amended to satisfy the ever-changing challenges that the Security Council will face.

Moreover, a further recommendation was made that the use of the 'Veto' should be restricted and should not be invoked in situations which involve, inter alia, mass atrocities and crimes against humanity. The Security Council has come a long way in evolving in order to respond to the demands of maintaining international peace and security. This journey has involved amending the working methods as well as exploring possibilities in altering the voting system itself. Despite the progress which has been made, there is a need for the United Nations Community to come to a consensus to revamp the Security Council to better represent the entire United Nations Community as well as restore the legitimacy in an organ which plays such an influential role in international law.

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