

UN Executive Council: Beyond an Outdated Paradigm

The proposition, incredible as it may seem, is that any one of the Big Five may, by its sole fiat, paralyze the whole world organization.

Grenville Clark, 1944¹

Perhaps the greatest weakness in the present UN Charter – with respect to its essential function to maintain peace and security in the world – is the Security Council as currently configured, and in particular the right of veto maintained by the five permanent members, the “P5” (China, France, Russia, the United Kingdom, and the United States).² The Security Council is the only UN organ whose decisions are legally binding on all member states, and which can authorize military action and other invasive measures to enforce its decisions.³ Yet it is unfairly constituted, and its essential legitimacy is increasingly called into question. Moreover, the type of geopolitical “power politics” that have often been channeled through the Security Council (incarnated in the very notion of a “P5” group of military/economic powers) is a troubling anachronism. Rather, international solidarity and intensive *cooperation* among states with disproportionate economic and other resources – such as China and the US – are crucially needed to confront our global challenges.⁴

Older and outdated definitions of sovereignty assert the right to make war to defend “national interests” or to extend power or territory by force. The UN Charter

¹ Clark, Grenville. 1944. “Dumbarton Oaks Plans Held in Need of Modification: Viewed as Repeating Essential Errors of League of Nations and Offering No Assurance of International Security – some Remedies Suggested.” *New York Times*, October 15.

² For further historical background see Chapter 2.

³ Art. 2(7) of the Charter notes that the application of enforcement measures determined by the Security Council under Chapter VII are not subject to the general rule of UN nonintervention in “matters which are essentially within the domestic jurisdiction” of states.

⁴ See, e.g., Rubin, Robert. 2019. “Why the World Needs America and China to Get Along.” *The New York Times*, January 2.

consciously sought to put an end to these aspects of state behavior. However, the five victors at the end of World War II (and in particular the core “Big Three”) insisted on maintaining a type of “absolute” national sovereignty over the new global body with their veto power, inserting a fatal flaw into UN implementation of the concept of collective security, and throughout Charter architecture.

Subsequent rivalries and ideological differences between the permanent members have frequently paralyzed Security Council action when this was deemed to be in the interest of one or more of the P5.⁵ The desire to maintain hegemony, to protect or further self-interest, to destabilize others, to avoid criticism or accountability, have all prevented action for collective security or on other important matters, allowing too many conflicts to flourish and undermining the international rule of law. Fifth High Commissioner for Human Rights Navi Pillay has noted of the Security Council that: “[s]hort-term geopolitical considerations and national interest, narrowly defined, have repeatedly taken precedence over intolerable human suffering and grave breaches of – and long-term threats to – international peace and security,” noting crises in Afghanistan, Central African Republic, Democratic Republic of Congo, Iraq, Libya, Mali, Gaza, Somalia, South Sudan, and Sudan, as illustrating the international community’s systemic failure to prevent conflict. Speaking directly to the Security Council, Pillay noted: “I firmly believe that greater responsiveness by this council would have saved hundreds of thousands of lives.”⁶

The blockage has extended to denying the Security Council (and hence the UN as a whole) effective means to enforce its decisions through adequate international forces ready to respond rapidly to defuse a crisis or to keep the peace. Agreements under Article 43 of the Charter, where all members of the UN were meant to make available to the Security Council armed forces, assistance, facilities and other support to ensure the even-handed maintenance of international peace and security, were never completed: it was the responsibility of the Security Council to lead and facilitate the negotiation of these agreements “as soon as possible.” Hence, “one of the most important innovations of the UN Charter, as compared to the Covenant of the League,” remains unrealized.⁷

⁵ See, e.g., the summary provided at: Council on Foreign Relations. 2018. *The UN Security Council*. www.cfr.org/background/un-security-council

⁶ “UN Human Rights Chief Rebukes Security Council.” *Al Jazeera America*, August 21, 2014. <http://alj.am/amsfyFF>.

⁷ See Chapter 8, proposing the establishment of a UN International Peace Force to remedy this situation. The Security Council was also responsible for drafting a plan for the regulation of armaments under Article 26, which was not actualized (see Chapter 9). Nico Kirsch, “Ch. VII: Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression, Article 43,” in Simma, Bruno, Daniel-Erasmus Khan, Georg Nolte, Andreas Paulus, and Nikolai Wessendorf (eds.). 2012. *The Charter of the United Nations: A Commentary*, Oxford Commentaries on International Law series, 3rd ed., 2 vols. Oxford, Oxford University Press, Vol. II, p. 1356.

As described in discussion of the General Assembly (see Chapter 4), the veto has often been used and misused throughout the history of the UN. For a time in the 1990s it looked as though the permanent members might begin a new pattern of focused collaboration and voluntarily restrain their use of the veto as a first step forward.⁸ There have also been recent initiatives to request the P5 to voluntarily abstain from using their veto power in the context of addressing situations of mass atrocity; a proposal that has been supported by one of the P5 veto-bearing members, France.⁹ UN observers have recently noted, however, that China, Russia, and the United States have shown signs of renewed efforts at geopolitical dominance, with commentators speculating as to a new “Cold War” and/or a possible “Thucydides Trap” (between China and the US),¹⁰ with these countries again beginning to use their veto more frequently, to advance individual agendas or to counter each other.¹¹ There is no sign of this attitude changing in the immediate future.¹² Indeed, a recent Security Council resolution on Syria, calling for a 30-day ceasefire, was ignored with impunity even by members who voted for it, discrediting the Council further.¹³

Any amendments or alterations to the Charter under Articles 108 or Article 109 require ratification by all the permanent members of the Security Council, ensuring that they can block the removal of their right of veto as well as improvements to the UN Charter architecture itself. This ensures that the P5 may regularly give primacy to perceived national interests over the most essential collective

⁸ Katirai, Foad. 2001. *Global Governance and the Lesser Peace*, Oxford, George Ronald.

⁹ Prominent civil society groups have also been very active on this issue. For example, at an event involving the governments of France and Mexico, as well as Amnesty International, Human Rights Watch, the World Federalist Movement, and the Global Centre for the Responsibility to Protect, Dr. Simon Adams delivered the following joint statement: “[I]t is an unfortunate reality that the veto has sometimes been used, not to defend against ‘the scourge of war,’ or to ‘reaffirm faith in fundamental human rights,’ but to shield perpetrators of mass atrocities from accountability. In one of the most tragic examples from our times, on four occasions since October 2011 the veto has been exercised by Russia and China to protect the government of the Syrian Arab Republic from resolutions meant to address crimes against humanity and war crimes committed against the Syrian people.” *Remarks at Ministerial Side-Event: Regulating the Veto in the Event of Mass Atrocities*, September 25, 2014, New York, United Nations Headquarters. www.globalr2p.org/publications/337.

¹⁰ See, e.g., Allison, Graham. 2017. “The Thucydides Trap: When One Great Power Threatens to Displace Another, War Is Almost Always the Result – but It Doesn’t Have to Be.” *Foreign Policy*, June 9.

¹¹ China has historically used its veto the least of the P5, but its veto use has risen markedly in recent years. See: Council on Foreign Relations. 2018. *The UN Security Council*. www.cfr.org/backgrounder/un-security-council.

¹² Wouters, Jan and Tom Ruys. 2005. *Security Council Reform: A Veto for a New Century*. Working Paper No. 78, June. Leuven, Institute for International Law, K.U. Leuven, www.law.kuleuven.be/iir/nl/onderzoek/working-papers/WP78e.pdf.

¹³ Security Council resolution 2401 of 24 February 2018 called for a nationwide ceasefire in Syria for 30 days starting from February 24, with little effect on fighting.

responsibilities owed to the United Nations and to the international community generally.

The special status of the permanent, veto-bearing members of the Security Council in fact is in tension with the principle of “sovereign equality” of states as equal subjects of international law, bearing rights and responsibilities, as set out in Article 2(1) of the Charter. This notion was an important and largely novel concept introduced with the establishment of the UN, transcending classical notions of sovereignty founded on unfettered and relative (military) power among states, coexisting or colliding in an essentially anarchic environment. This apparent contradiction within the Charter’s own terms, with the unique position accorded to the P5, has been justified by some on the basis that “states bearing the greatest institutional responsibility should also have the greatest say in critical disputes,” as they undertake exceptional responsibilities in service of the whole international community.¹⁴ Unfortunately, the ideal of impartial service to the international community by a unified P5, in accordance with the purposes and principles of the Charter, has been upheld all too infrequently; the inherent contradiction within the UN system represented by this privileged status has led to an eroded legitimacy and faith in the collective mechanisms established by the Charter, and in the UN itself.

Related to the issue of the legitimacy of the current permanent members of the Security Council are the criteria that have been or might be applied to determine which “special” nations should be part of this narrow group, as shown in the lengthy debates around the potential expansion of the Security Council and its permanent members that have occurred since 1945. The “Big Three” victors of World War II initially formed the nucleus of permanent members, after which an invitation was extended to China (as one of the envisioned “Four Policemen”) and then additionally to France, in a process showing the largely negotiated/ad hoc nature of the Council’s original composition. The precursor League of Nations Council, while consisting of representatives of the Principal Allied and Associated Powers emerging from World War I (France, the UK, Italy, and Japan), allowed for the addition of permanent members according to shifting political circumstances on the international landscape. It would be helpful if such contingent or impressionistic criteria, based on historical events¹⁵ or notions of perceived shifts of sovereign power and influence, were to be replaced with more modern and objective standards of

¹⁴ Franck, Tom. 1990. *The Power and Legitimacy among Nations*. Oxford, Oxford University Press, p. 177. More realistically, it seemed simply the only way to entice and to keep such states at the table at the time of Charter adoption.

¹⁵ While it is of course of historical importance that the victors/allies of WWII ushered in the UN system, it is telling that the “enemy states” clauses in the Charter are now regarded as obsolete, with suggestions that they should be deleted from the text. According to the Charter, all members of the UN must be “peace-loving” states and must commit fully to the goals and rules of the organization, by virtue of ratifying the Charter (see Art. 4).

membership (see the proposals below). This evolution would move the international community further beyond an era characterized by fluctuating alliances and anarchic state competition, consonant with a rule-based international order and with the significant enhancements of UN machinery such as those suggested in this book. The goal should be to ensure a principles-based international architecture with checks and balances and strong international institutions to protect against abuses of power by *any* actor. Brute force has been discredited as a basis of influence or claims to special international privileges,¹⁶ and this norm should be clearly reflected in international institutions.

The origins of this critical flaw in the Security Council have been discussed in detail in the historical Chapter 2 of this book. Only such a weakness at the heart of the system would allow for US Senate approval and satisfy the exigencies of Stalin, whose endorsements of the Charter were essential. However, the vocal opposition to such a configuration was clear among the majority of states at negotiations in San Francisco, and states only agreed to the arrangement based on the inclusion of Article 109(3), which promised a general Charter review conference within ten years of its adoption.¹⁷ Such a general review conference has, of course, never been held. Three quarters of a century later, it is irresponsible to allow such a central flaw to persist in any system of global governance, in particular given the legislative history of this compromise. If it is left as it is, the international community runs a risk – particularly given current trends – of enabling a further regression in international power politics to a more primitive time, giving tacit acquiescence to an outdated paradigm that undermines the rules-based international order that we are meant to be building.

THE SECURITY COUNCIL AT PRESENT

Under the UN Charter as it stands, the enumerated functions and powers of the Security Council are:

- to maintain international peace and security in accordance with the principles and purposes of the United Nations;
- to investigate any dispute or situation that might lead to international friction;

¹⁶ See Article 2(4) of the Charter on the prohibition of the threat or use of force; a fundament of the contemporary international legal order.

¹⁷ Witschel notes that “the significance of Art. 109 has been more in the political-psychological sphere, as it was a major factor in overcoming the resistance of many small and medium-sized States to the ‘Yalta formula’ stating the right to veto in San Francisco. The prospect of a review conference in the foreseeable future, when the cards would be reshuffled, gave them consolation and hope.” Georg Witschel, “Ch. XVIII Amendments, Article 108,” in Simma et al. *The Charter of the United Nations*, p. 2234.

- to recommend methods of adjusting such disputes or the terms of settlement;
- to formulate plans for the establishment of a system to regulate armaments;
- to determine the existence of a threat to the peace or act of aggression and to recommend what action should be taken;
- to call on members to apply economic sanctions and other measures not involving the use of force to prevent or stop aggression;
- to take military action against an aggressor;
- to recommend the admission of new members;
- to exercise the trusteeship functions of the United Nations in “strategic areas”;
- to recommend to the General Assembly the appointment of the Secretary General and, together with the Assembly, to elect the Judges of the International Court of Justice.¹⁸

It is precisely in these areas of proactively maintaining peace and security, resolving disputes, regulating armaments, applying sanctions and taking military action if necessary, that the UN system has so frequently failed to take action when needed, as crises today around the world illustrate only too well.¹⁹ We will elaborate on these issues in the Chapter 8, where we discuss the extent to which the UN has succeeded (or not) in fulfilling its peace and security mandate.

PAST PROPOSALS FOR SECURITY COUNCIL REFORM

Everyone, it seems, except those most interested, have acknowledged this fatal flaw in the UN Charter. The configuration of the UN Security Council and its permanent members has been a frequent subject of reform efforts within the organization since 1945, with more recommendations for Council reform than any other UN body.²⁰ As the Security Council is a significant central power in the UN, states outside the permanent members have been struggling for many years to acquire similar prerogatives, preferably with permanent seats and possibly with a veto, to acknowledge their importance as contributors to the UN budget or as the most powerful states in their region. This fight for power and prestige, seemingly far from

¹⁸ United Nations Security Council. (n.d.). www.un.org/en/sc/about/functions.shtml (accessed July 30, 2018).

¹⁹ Council on Foreign Relations. 2018. *The UN Security Council*. www.cfr.org/backgrounder/un-security-council

²⁰ Schwartzberg, Joseph E. 2013. *Transforming the United Nations System: Designs for a Workable World*, Tokyo, United Nations University Press. www.brookings.edu/book/transforming-the-united-nations-system/

a motivation to create an effective body for the UN's most important and sensitive function, is fueled by the injustice in the present unbalanced membership.²¹

Calls for reform have been raised, for example, in the General Assembly citing Article 2(5) of the Charter, where all members of the UN are obligated to give the organization "every assistance in any action it takes in accordance with the [...] Charter," with states noting that "the effectiveness, credibility and legitimacy of the work of the Security Council will be enhanced by its improved representative character, its better ability to discharge its primary responsibility and to carry out its duties on behalf of all members," citing the "special responsibility" of the P5 to further the principles of the UN.²² The General Assembly has similarly expressed frustration with deadlock in the Security Council and its inaction in fulfilling international responsibilities in specific situations, for example, in its 1950 "Uniting for Peace" resolution (see Chapter 4). In this resolution it took the unprecedented step of suggesting that the GA make "appropriate recommendations to Members for collective measures, including . . . the use of armed force," due to lack of unanimity of the permanent members of the Council and thus their failure to act in response to the situation on the Korean Peninsula.²³

The most significant reflection on the issue of Security Council reform within the UN began in 1993, when the General Assembly established an Open-Ended Working Group on the Question of Equitable Representation on and Increase in the Membership of the Security Council. After a lack of progress, the UN Secretary General appointed the High-level Panel on Threats, Challenges and Change in 2003, which proposed two possible reform options in 2004. Various groups of states, pushing their own agendas, have also made proposals, but their conflicting priorities have always prevented consensus on changes and led to the repeated failure of reform efforts.²⁴ For example, a group of African countries (representing the African Union) advocated for two permanent seats with the veto (just like Europe) and consistently refused any compromise, including in 2005 and 2013.²⁵ It has been observed that "[e]ver since the Great Powers gave birth to the United Nations, the

²¹ Security Council membership expanded in 1965 from 11 to 15 members. Since then membership in the UN has risen from 117 to 193 countries, leading to a substantial drop in the proportional presence in the Council of nonpermanent members, thus further undermining its representative legitimacy.

²² UNGA "Draft Resolution Introduced by Afghanistan, Belgium, Bhutan, Brazil, Czech Republic, Denmark, Fiji, France, Georgia, Germany, Greece, Haiti, Honduras, Iceland, India, Japan, Kiribati, Latvia, Maldives, Nauru, Palau, Paraguay, Poland, Portugal, Solomon Islands, Tuvalu and Ukraine," July 6, 2005, UN Doc A/59/L.64. See also UGA "Draft Resolution," January 5, 2006, UN Doc A/60/L.46.

²³ UNGA Res 377 (V), November 3, 1950. UN Doc A/RES/377(V).

²⁴ Swart, Lydia and Jonas von Freiesleben J. 2013. *Security Council Reform from 1945 to September 2013*, New York, Center for UN Reform Education. <http://centerforunreform.org/?q=node/604>.

²⁵ Ibid. The original request of the Africa Group was two seats with veto (p. 4) and the G4 (Brazil, India, Japan and Germany) resolution in 2005 also included seats with veto (p. 7). The Africa Group has continued to insist on the veto through 2013 (p. 45).

veto debate has been extremely emotionally charged. Often the debates have resembled those of a squabbling couple, with both parties – the P5 and other UN Member States – presenting their views and not giving much attention to the validity of the other's arguments."²⁶ Between regional rivalries, political disputes, inflexible positions, and the preference of the five permanent members for the status quo, none of these proposals have gone anywhere, leaving five states with blocking power over the whole UN system. A new paradigm, with a principles-based approach, is needed in order to break the impasse, and to ensure an effective UN executive body.

Among the more recent proposals emanating from an academic, Schwartzberg has devoted substantial attention to reforming the Security Council.²⁷ His carefully reasoned proposals focus on a revised Council membership comprising representatives from 12 regions, in which each regional representative casts an objective, mathematically determined weighted vote. He carefully composes regions by both geographic and political/cultural interests, seeking both demographic and economic balance, aiming to increase the attractiveness of his proposals to most, if not all countries, to overcome their resistance to change. He aims to see delegates more democratically elected, with a greater focus on meritocracy and legitimacy.

He also proposes to circumscribe and even phase out the veto, while acknowledging the difficulty in doing so. For example, in a transition period over the first five years, two negative votes by permanent members would be required for a veto, then three for the next five years, and four for the last five years. Another suggestion would be to narrow the range of issues subject to a veto, also progressing over time. This could start by prohibiting the use of a veto when a permanent member is a principal party to any issue, extending then to egregious human rights violations including genocide and ethnic cleansing (following on recent similar proposals), the use of inspection teams and monitors, the application of economic sanctions, and finally, authorization of armed intervention in an area of actual or impending military conflict.

The resistance to change by permanent members of the Security Council with a veto will likely continue to be a stumbling block to the proposals made here, which is why we discuss as a possible alternative the replacement of the UN Charter with a new Charter for a successor organization, by a process escaping from the veto and the paralysis it has engendered (see Chapter 21). While it might be difficult to ignore all the present permanent members in implementing such a change, moving forward without one or two in the short term might be sufficient to bring them to the table. A severe crisis might also catalyze an acknowledgment that the advantages of a legitimate, representative and functional UN executive body outweigh those of

²⁶ Wouters, Jan and Tom Ruys. 2005. *Security Council Reform: A Veto for a New Century*. Working Paper No. 78. Leuven, Institute for International Law, K.U. Leuven, p. 34. www.law.kuleuven.be/iir/nl/onderzoek/working-papers/WP78e.pdf.

²⁷ Schwartzberg, *Transforming the United Nations System*.

current anachronistic privileges, which breeds deadlock and dissatisfaction within the international community.

Another argument for fundamental reform of the Security Council provisions of the UN Charter relates to the overall systemic reform proposals set forth in this book, which seek to adapt the UN institutions to the challenges of the 21st century. The permanent need for a Security Council as the central authority in the UN system assumes that nations will always want to make war, and that the most important role of global governance will always be to prevent war between nations. The other mechanisms proposed in this book seek to create the conditions necessary for effective governance, with binding legislation that is commonly accepted, a judiciary able to resolve differences and impose its decisions on disputing parties, and an executive with sufficient force at its disposal to employ proportionate coercive measures against a recalcitrant government. With these measures in place the threat of interstate war will gradually fade even further, to be replaced by a new wave of positive efforts to build a prosperous, cooperative international order. The notion of a Security Council as currently incarnated should become as obsolete as the Trusteeship Council is now, although its functions will likely need to be retained for a transitional period. We therefore suggest that a renewed UN system do away with the Security Council in its name and current form and implement a set of adjusted executive functions, eliminating the concept of permanent members and the veto at the same time.

SUCCESSOR ORGAN: UN EXECUTIVE COUNCIL

Our proposed Charter reform would replace the Security Council with an Executive Council composed of 24 members. As the General Assembly would itself be reformed to become a more balanced and representative body of all the governments and peoples of the world, it would become the main seat of power in the reformed UN. The Executive Council, in a range of matters, would operate in cooperation with and under the jurisdiction of the General Assembly, and its main focus would be shifted to implementation, management and effective operation of the United Nations, with collective security implementation as only one of a range of executive functions.

The composition and organization of the Executive Council would reflect the principles used in determining the national composition and representation of the reformed General Assembly (see Chapter 4). This means that each country's voting power in the Executive Council would be determined as the arithmetic average of three factors: its share in total world population, its share in world gross domestic product (GDP) and a membership share that is the same for all countries, set at 1/193 percent. Membership in the Executive Council would therefore be of two types: the United States, China, India, the European Union and Russia each would be allotted one seat. The other 19 seats would be allocated to the other

161 members, clustered regionally and consulting among themselves on an on-going basis in relation to the matters before the Executive Council. Each seat would have the same weighted voting power as its governments have in the reformed General Assembly. So, for instance, drawing from the data in Table 4.1 in Chapter 4 and Annex Table 1, the United States would have a voting power of 8.283 percent, China's would be 11.993 percent, Russia's would be 1.680 percent and the European Union's would be set at 14.374 percent. These weights would be revised every ten years, to reflect changes in world population and a country's relative GDP share, as noted in the revised Article 9(3) presented in Chapter 4.²⁸ All governments would therefore have a voice in the Executive Council.²⁹

Other proposals for representation on the UN's apex executive body have been put forward for consideration, such as the elaborate representation by regions proposed by Schwartzberg for the Security Council, as described above.³⁰ An election of Council members by the General Assembly was also proposed by Clark and Sohn at a time when the UN was much smaller, with the three most populous states being continuing members and eight of the next 16 largest nations represented in rotations of four years.³¹ The remaining 13 members would be chosen by the Assembly from the other member nations, also in 4-year rotations. Whatever the formula chosen for a re-constituted UN Executive Council, careful thought should be given to ensure depoliticization, fairness and functionality.

The paralyzing veto of the five permanent members of the Security Council should be eliminated.³² Instead, decisions of the Executive Council on important

²⁸ We are not uncomfortable with the wide disparity in voting shares between Russia and the EU in the single-chair constituency. First, increasingly, on a variety of issues, EU members are speaking with a single voice on foreign policy matters. Indeed, the Lisbon Treaty provided for a foreign minister for the EU and that role has been filled for the past decade. Second, Russia having a single chair is largely a symbolic move, in recognition of its erstwhile status as a member of the P5. In our proposals, Russia's voting power is, as noted above, 1.680 percent, or roughly 8.5 times less than that of the European Union.

²⁹ A hypothetical example of how voting would take place within the Executive Council will be useful. Let's assume, for argument's sake, that Argentina, Bolivia, Chile, Paraguay, Peru and Uruguay, the Southern Cone constituency, are allocated one of the 24 chairs. The voting power of this chair would be equal to the sum of the voting power of all 6 members, as determined in Chapter 4 and shown in Annex Table 1. They would rotate among themselves which country sits at the table representing the group and would have to work out internally how they vote as a group. These rotations could be for two-year periods. In the event of disagreements among the six on a particular issue, the representatives seated at the time on behalf of the six would have the final word. As noted elsewhere, the World Bank and the IMF were established under a scheme of weighted voting and decision-making has generally worked well under a system that allocates voting power differentially across the membership. (For further discussion see Chapter 15.)

³⁰ Schwartzberg, *Transforming the United Nations System*.

³¹ Clark and Sohn, p. xxi.

³² Grenville Clark had noted in 1944 that the "combination of a nearly impotent Assembly, on the one hand, and, on the other, a Council that is hamstrung, or at best hampered, by the right of any one of the Big Five to veto sanctions must be a weak reed to support the peace of the world." Clark, "Dumbarton Oaks Plans Held in Need of Modification."

matters as defined in an amended second paragraph to Article 27 of the UN Charter, would be by a two-thirds majority of the voting power of all members, possibly including a majority of the eight members of the Council with the highest populations, and a majority of the 16 other members of the Council. For normal business, decisions would be taken by consensus or by majority vote, as necessary. Subject to its ultimate responsibility to the General Assembly, the Executive Council, as the executive arm of the new United Nations, would have broad authority to monitor, supervise and direct various aspects of the work program in the areas of security, conflict prevention and management of the global environment in particular, as well as other areas of priority identified by the General Assembly. The Secretary General could serve as the chair of the Executive Council, to provide coherence and continuity within the UN system, and to link to the UN Secretariat.

The Executive Council could take over certain specific current functions of the Security Council, such as recommending the admission of new members (as appropriate) and recommending to the General Assembly the appointment of the Secretary General. Its primary function, however, would be general organizational oversight and ensuring good governance, transparency, efficiency and coherence of an effective new UN system, including through administrative and other system-wide reforms. As one of its first tasks, it could conduct an executive review of the present multiplication of specialized agencies and convention secretariats, and propose consolidation or coordination, where necessary, while ensuring continuity in functions.

A related specific issue for the Executive Council could be to review (in consultation with relevant UN specialized agencies and other bodies) and, where appropriate, consolidate or replace the many different intergovernmental meetings, governing councils, conferences of the parties, and commissions that have proliferated across the intergovernmental system.³³ The latter has led, among other things, to the same governments sometimes taking incoherent and even contradictory decisions in different bodies with equal standing. There is clearly a place for regional debate, and a need for technical intergovernmental expertise and guidance in specific areas, but, where possible, the form and mandate of these intergovernmental mechanisms should be rationalized, along with the legislation that underlies them. Based on such reviews, the Executive Council could also recommend any necessary legislative changes to the General Assembly in its narrowly defined areas of responsibility for international security and the environment, aiming for coherent/consolidated global legislation to replace present ad hoc measures, international conventions and other multilateral

³³ For example, the Basel, Stockholm, Rotterdam, and Minamata Conventions all deal with international risks from chemicals and hazardous wastes. It would be logical to replace them with a single legislative text on international chemical management that could be extended to other hazardous chemicals as needed.

agreements.³⁴ Some functions of intergovernmental debate and decision-making in these areas could be folded into the General Assembly's own responsibility, and others continued in well-defined contexts through subsidiary bodies and mechanisms. Particularly small and developing states are disadvantaged with the requirement to be represented at so many meetings and would benefit greatly from systemic reforms to the present intergovernmental machinery.

As the Executive Council will focus on management of the UN System and the implementation of programs and policies as determined by the legislative branch, a transition should be organized to transfer the Security Council's primary functions for peace and security to the General Assembly. The reformed General Assembly as a legislative body may be too cumbersome, especially at the outset, to respond rapidly in a crisis,³⁵ and even the Executive Council may not initially be well adapted to this role, requiring strong subsidiary, supporting bodies building on those already existing under the current Security Council and within the UN Secretariat.

The usual channel of governments bringing issues of peace and security to the Security Council has too often been framed by political or ideological biases that make consensus difficult. To improve management and the capacity for neutral response, initial review of security issues by the Executive Council could be supplemented by a smaller, expert-centered body (at arm's length from political actors), within which no party to a conflict would have a decision-making role, in order to preserve its neutrality and to be able to make swift and transparent recommendations for rapid intervention for collective security or humanitarian protection in nascent conflicts before they get out of hand—just as police intervene to prevent or stop illegal acts within nations and communities. Such a body could

³⁴ The initial GA areas of responsibility for international security and the environment already provide ample scope for consolidation, with over 500 multilateral environmental agreements. Success in this area could create sufficient trust to extend the GA mandate to other areas.

³⁵ Under the current Charter, the General Assembly has subordinated yet complementary responsibility (see Arts. 11 and 12) with the Security Council for the maintenance of international peace and security (however, see, e.g., above on the proactive General Assembly Uniting for Peace Resolution when it considered that the Security Council was not fulfilling its primary responsibility). The historical use of the “war powers,” allotted by the US Constitution to Congress, but in practice in the modern era often wielded by the executive, may be an interesting case study in exploring a suitable model to employ at the international level for collective security action or other urgent measures for the maintenance of peace and security. The American Founders were keen to ensure civilian oversight of military powers, and mistrustful of standing armies, executive control over the military, and concentration of this power in any one branch of government. As then-Congressman Abraham Lincoln wrote in 1848, “Kings had always been involving and impoverishing their people in wars, pretending generally, if not always, that the good of the people was the object. This, our [Constitutional] Convention understood to be the most oppressive of all Kingly oppressions and they resolved to so frame the Constitution that no one man should hold the power of bringing this oppression upon us.” Abraham Lincoln to William H. Herndon, February 15, 1848, *Collected Works of Abraham Lincoln*, Vol. 1. <http://quod.lib.umich.edu/l/lincoln/lincoln1:458.1?rgn=div2;view=fulltext>.

have at its disposal powers to recommend or oblige a range of means of conflict resolution according to particular circumstances, from regional engagement/cooperation, investigation and trust-building, through binding judicial resolution or arbitration, to sanctions and enforcement by collective use of force.³⁶ This could be in addition to active supervision of the enforcement of decisions of the Executive Council, including those ensuring the enforcement of rulings of the International Court of Justice or other conflict-resolution bodies.

This could, for example, be the role of a new, consolidated Office for Peace and Security within the Secretariat with independent powers of investigation and reporting to ensure that the Executive Council has access to the best neutral information concerning any dispute. It would operate under the overall supervision of the Executive Council, and within the context of any additional legislation for this purpose adopted by the General Assembly. It could include restructured peace-keeping and peace-building functions as well as investigative and observer capacities and could manage the International Peace Force discussed in Chapter 8, with another branch of the Secretariat allotted the specific responsibility to formulate plans for the establishment of a system to regulate armaments (see Chapter 9).

In reassessing the current Security Council's peace and security function, as defined under the present UN Charter, consideration could be given to creating a number of specialized offices for security to advise the Executive Council beyond the Office for Peace and Security. These offices would address other priority global responsibilities of the renewed United Nations: one for environmental security³⁷ and the other for social justice and security, including mass human rights violations, where intervention within or between states, according to strict criteria, may be required in the global common interest.³⁸ Although there may be overlap in these issue areas in practice and in specific situations, the three areas require quite

³⁶ The use of force in the collective interest, or other interventions and international measures/missions, should be subject to clearer protocols based on technical and well-established criteria and principles, as already exist under international law, or to be further elaborated. Moreover, such offices and functions should be grounded in research-based and cross-disciplinary expertise to ensure the greatest efficacy of international operations. See, for example, the critique and analysis of the success of peacekeeping operations to date offered in: Autesserre, Séverine. 2019. "The Crisis of Peacekeeping: Why the UN Can't End Wars." *Foreign Affairs*, January/February.

³⁷ Elliott, Lorraine. 2002. *Expanding the Mandate of the UN Security Council to Account for Environmental Issues*. UN University Position Paper. <http://archive.unu.edu/inter-linkages/docs/IEG/Elliott.pdf>. Issues that might be considered could include an environmental accident with significant transboundary impacts (Chernobyl, Fukushima) or chemicals discovered to represent major threats to human health or biodiversity (endocrine disruptors, neonicotinoids).

³⁸ Subedi has recently argued for the elevation of the current UN Human Rights Council to a principal organ of the UN with powers to refer matters, inter alia, to the Security Council and the International Criminal Court, also entrusting it with "powers to take some measures not involving the use of force to ensure compliance" (see: Subedi, Surya P. 2017. *The Effectiveness of the UN Human Rights System: Reform and the Judicialisation of Human Rights*, London and New York, Taylor & Francis, pp. 247–248).

different knowledge bases and technical responsibilities, and could each provide the action arm for a major global component of the UN, at least during a transitional period while interstate conflicts, cross-boundary impacts, and recalcitrant actors continue to contribute to international crises. Each would be able to either make authoritative recommendations, and/or to take certain binding decisions with relevant means of enforcement, subject to review as necessary by the Executive Council in consultation with the General Assembly. The possibility to submit a dispute to binding arbitration/adjudication, or to appeal to the International Court of Justice on legal questions, would be assured, but would not be suspensive in cases of urgency. It would be anticipated that the level of international conflicts would gradually decline under the new international system, rendering the security function progressively less necessary.

Well-known history (see Chapter 2) highlights the concerns already expressed at the time of the creation of the UN, by Grenville Clark and by many other influential political actors and commentators, that the concept of the Security Council as it currently stands was fundamentally flawed from the outset, only embraced in order to protect the prerogatives of the great powers, but leaving the organization itself hamstrung. The troubled history of unaddressed conflict, unimplemented provisions of the UN Charter under Security Council responsibility, and international deadlock on a range of humanitarian crises since the founding of the United Nations is a warning to correct this flaw and to create a more rational, coherent international executive body.