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REFORM OF THE UNITED NATIONS SECURITY COUNCIL

*Ambassador Richard Butler AC**

This essay begins by analyzing the historical development and conceptual basis of the United Nations Security Council. The essay then discusses the role and importance of the Security Council's five Permanent Members and the application, influence, and abuse of the Permanent Members' veto. The essay then explores and proposes a plan of reform for the future role and operation of the Security Council.

INTRODUCTION

The United Nations Security Council is of unique importance and authority in efforts by nations to maintain international peace and security, yet it is widely viewed as having had a mixed track record. The Council urgently needs to be reformed. Such reform is hemmed-in by: entrenched privileges, dynamic and competing interests, and a lamentable lack of imagination. The failure to reform the Council raises one of history's abiding and most dangerous questions: must we await a serious breakdown before wisdom, which is available now, is acted upon? There is a way ahead, especially in the crucial field of stopping the spread of weapons of mass destruction; however, a little courage will be required.

The Security Council of the United Nations has been central in the conduct of global political relations since the end of the Second World War. However, while the global community has undergone massive change during that period, principally

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through decolonization and then the breakup of the Soviet Union, the Security Council has remained virtually unaltered.¹

For a number of years now, there have been calls for the Security Council to be modified, modernized, and reformed. The five Permanent Members of the Security Council have resisted these calls strenuously and successfully. This paper will discuss the nature and role of the Security Council, the problems that its role has raised, and make suggestions for their solution.

I. THE CONCEPT OF THE UNITED NATIONS

To begin, imagine a significant organization, any organization or club, with the following characteristics.

First, the club is a voluntary association. No one is obliged to join it.

Second, the club's members are self-determined and sovereign. The members fully represent themselves. The members do not masquerade as anything other than what they are, and all of these members are formally and solemnly deemed to be equal.

Third, by virtue of their voluntary association, members are granted rights and immunities. They are able to behave in ways and achieve things, which it is asserted they otherwise would not be able to do. This liberty, of course, makes membership in this club attractive.

Fourth, membership has its costs. In addition to the rights and immunities that members are granted, they are assigned some obligations. Perhaps, this restriction is a less attractive feature of membership in the organization.

For example, members are expected to cooperate with one another. Above all, they are expected to observe the rules of the game and the rules of the club – or the law.

Fifth, the members are called upon to harmonize their actions in order to achieve the common ends of the organization.²

What I have described, in a broad yet accurate way, is the United Nations. However, let us extend this analogy a little further and make it even more specific to the rules and customs of the U.N.

A moment ago I referred to the harmonizing of actions towards the achievement of common ends. What are the common ends of the U.N.?

¹ U.N. Charter introductory note: U.N. Charter art. 23. Article 23 of the U.N. Charter, which concerns the composition of the Security Council, was amended on August 23, 1965. This provision enlarged the council from eleven to fifteen members.

² U.N. Charter art. 1, para. 4.

The common ends of the U.N. include: to “save succeeding generations from the scourge of war;” to “maintain international peace and security;” to “promote social progress and better standards of life in larger freedom” and to defend and guarantee the rights of all human beings.³

These are lofty, large, and challenging goals. Therefore, it is important to ask, how will this association be organized to achieve these goals? What arrangements are made for deciding upon the agenda and the actions to be taken to ensure that members of the club behave properly? Does a system exist to ensure that the members neither exceed their privileges, nor fail to fulfill their obligations? How will these aims be made to work?

The answer given in the U.N. Charter has two parts.

First, and above all, the Charter identifies, from among the membership, a small, privileged group of members. These members are given unique powers. In fact, these members determine every issue of importance and are themselves virtually above the law. These are the Permanent Members of the Security Council, often referred to as the “Permanent Five.”

Second, the Charter creates an objective Secretariat to provide advice, information, and recommendations on what might be the best course of action to follow with respect to any given matter. Clearly, this Secretariat needs to be led by a Chief Executive Officer (CEO). This CEO is called the Secretary General of the U.N., and he or she should be a person of outstanding ability and objectivity. On the latter, the Charter requires that the “Secretary General and the staff shall not seek or receive instructions from any government or from any other authority external to the organization.”⁴

The Charter provides a contradicting set of circumstances. On the one hand, there is a notion of egalitarianism among member states, common purpose and commitment, and the accompanying notion that this political commitment will be supported by a truly objective, fair, and capable bureaucracy.

On the other hand, in the midst of this extraordinary set of circumstances, a group with astonishing privileges is established, and specifically enabled to play an all-pervasive and dominant role -- the Permanent Five.

These circumstances may sound like a bit of a mess, some would say befitting the definition of a camel as “a horse designed by a committee.” In some ways it is and in some important ways it is not.

Overall, the testimony of the past is that the U.N. has performed essential services for human kind and the world seems to agree. For example, public opinion surveys routinely show that people consider the U.N. essential. Also, another

³ *Id.* at pmb1.

⁴ *Id.* at art. 100, para. 1.

important indicator of its character is that the U.N.'s strongest critics routinely appeal to it for assistance when they find themselves in trouble and needing help.

To complete this picture, and without wishing to offer a gross characterization, those voices which are consistently raised against the U.N. and indeed wish it ill, are typically people whose character could be politely called fundamentalist nationalists. In other words, such people have zero interest in any concept of cooperation among nations; their focus is upon the achievement by their nation, of whatever they want, in any given field.

II. THE CENTRALITY OF THE SECURITY COUNCIL

I turn now to the phenomenon of the centrality of the Security Council in the Charter of the U.N.

That extraordinary document, a milestone in the history of international law and cooperation, was negotiated in San Francisco during May and June of 1945. The conference, called the Charter for an International Organization, was participated in by fifty nations and signed by the participants as the Charter of the U.N. on June 26, 1945.

In order to understand the centrality of the Security Council in the Charter, it is of elemental importance to understand the time at which the Charter was drafted.

As is indicated in its opening words, twice in the twentieth century, the world had experienced a hideous war. The number of lives lost is unknown; however, it is widely believed that the number was at least 100 million. The League of Nations was the first attempt to remedy such a loss of life and seek to avoid war in the future. The League was established after the end of the First World War, but failed, and then was overtaken by the onset of the Second World War, a mere twenty years later.⁵

Hence, the minds in San Francisco were heavily concentrated upon what was defined in the Charter as "the maintenance of international peace and security."⁶ The focus on peace and security led to placement of the organ of the U.N. responsible for that task at the center of virtually all of its activities. The Security Council was given "primary responsibility" "for the maintenance of international peace and security."⁷ No better testament is given to the authority it was granted than to call attention to Article 25 of the Charter.

"The members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter."⁸

⁵ See E.H. CARR, *THE TWENTY YEARS' CRISIS, 1919-1939: AN INTRODUCTION TO THE STUDY OF INTERNATIONAL RELATIONS* (Michael Cox ed. Palgrave 2001) (1939). Although now 72 years old, Carr's seminal book on the nature of international relations remains relevant.

⁶ U.N. Charter art. 43, para. 1.

⁷ *Id.* at art. 24, para. 1.

⁸ *Id.* at art. 25.

While this language is simple, its weight cannot be exaggerated. The Security Council is the only organ of the U.N. whose decisions are binding upon all members. The Security Council's decisions have the authority of law.

Many people believe that the same is true of the General Assembly; however, this is not the case. The resolutions and decisions of the General Assembly are recommendations, not binding decisions. The Security Council alone has binding authority.

The gravity of the subject matter, for which the Security Council is given primary responsibility, leads to Articles 41 and 42 of the Charter.

The first of these, Article 41, has the Security Council attempting to bring about the settlement of disputes by peaceful, non-military means. The second, Article 42, provides for action when that first activity has not borne fruit. Article 42 authorizes the Security Council "to take action, by air, sea or land forces as may be necessary to maintain or restore international peace and security."⁹

In sum, under the Charter, States are enjoined to cooperate with each other, to harmonize their actions, and to settle all of their disputes by peaceful means. States are deemed to be sovereign, self-determined, independent, and inviolable. Violation of the territorial integrity of any state is simply against the law. States are also required to accept all decisions of the Security Council, including when the Council's decisions may include the exercise of armed force to bring about conformity with decisions.

This package amounts to nothing less than an attempt, at San Francisco, to outlaw war and to provide a collective mechanism for enforcing the settlement of disputes, which the Charter wisely assumes, are bound to occur.

The Charter is why Iraq's invasion of Kuwait in 1990 and the U.S./U.K. invasion of Iraq in 2003 were both illegal actions. Neither actions were approved or undertaken on behalf of the Security Council under the rubric of "the maintenance of international peace and security."¹⁰

In contrast, the expulsion of Iraq from Kuwait in 1991, by a U.N. mandated force, comprising twenty-nine countries, but led militarily by the United States, was legal.

The Security Council itself does not have an armed force, but the Charter calls upon member States to make available to the Council military forces for use as directed by it.

⁹ *Id.* at art. 42.

¹⁰ *Id.* at art. 24, para. 4.

III. THE PERMANENT FIVE AND THE VETO

A crucial aspect of the privileged and responsible position assigned, in the Charter, to the Permanent Members of the Security Council, is the veto power. Each of them has the power to block any substantive decision of the Council.

The Security Council established in San Francisco was to be made up of eleven members – five permanent and six elected. The Five Permanent members were the United States, the United Kingdom, France, the Republic of China, and the Union of Soviet Socialist Republics.¹¹ These were the so-called victor powers of World War II. The elected members would serve on the Council for a term of two years. In 1965, the Charter was amended to expand the number of elected members of the Council to ten.

The Permanent Five were given their permanency, and the extraordinary power of the veto, because they were able to argue successfully against strenuous opposition, that unless these powers were given to them, there would be no new Organization.

The representative of the United States, at San Francisco, stated that,

the great powers could preserve the peace of the world if united....they could not do so if dissention were sowed among them. The great powers had every reason to exercise the requirement of unanimity for high and noble purposes, because they would not want again to expend millions in wealth and lives in another war.¹²

He warned that killing the veto would kill the Charter.

The representative of the Soviet Union said, “the agreement on a joint interpretation [that is of the veto power] would facilitate the creation of a truly effective and efficient international organization for the maintenance of peace.”¹³

The representatives of France and China adopted similar positions, but the position of the representative of the United Kingdom deserves particular attention. He said,

¹¹ The Republic of China (Taiwan) was replaced by the People’s Republic of China in 1972, the General Assembly having adopted a resolution on “the restoration of the lawful rights of the People’s Republic of China,” and in 1991 it was acknowledged that the Successor State to the U.S.S.R. was the Russian Federation. The collapse of the Soviet Union saw fifteen new states gain membership in the U.N.

¹² Document 936, III/1/45, June 12, 1945 (also found in Summary Report of Eighteenth Meeting of Committee III/1, Document 936 III/1/45, *compiled in Documents of the United Nations Conference on International Organization, San Francisco, 1945, Vol. XI*, at 474).

¹³ *Id.* at 475.

The present voting provisions were in the interest of all states and not merely of the permanent members of the Security Council. Peace must rest on the unanimity of the great powers for without it whatever was built would be built upon shifting sands, or no more value than the paper upon which it was written. The unanimity of the great powers was a hard fact, but an inescapable one. The veto power was a means of preserving that unanimity, and far from being a menace to the small powers, it was their essential safeguard. Without that unanimity all countries, large and small, would fall victims to the establishment of gigantic rival blocs which might clash in some future Armageddon. Cooperation among the great powers was the only escape from this peril; nothing was of comparable importance.¹⁴

The English of course do have a way with words, but as this posturing showed, also an occasional breathtaking capacity for self-serving rhetoric. What was the Cold War? The Cold War began immediately after the use of the atomic bombs over Japan, one month after the conclusion of the Charter conference, and endured for almost 50 years. The Cold War was the establishment of a “gigantic rivalry of blocs” with its associated capacity for Armageddon -- the nuclear arms race.

The arguments of the Permanent Five prevailed and the United Nations was born in the curious form already described. The U.N. is a community of equals, but within which, without doing too much violence to George Orwell, there clearly were Five who were vastly more equal than their equals.¹⁵

Before turning to the issues of reform, but because the veto is such an important subject itself and in the context of possible reform, a few comments need to be made on what has proven to be the reality of this heavily weighted decision making system.

In the first instance, the Permanent Five members of the Security Council have at their disposal, imbedded in the Charter, four vetoes, not one.

The veto that I have been mainly addressing, so far, is that over the adoption by the Security Council of any substantive and binding decisions pursuant to Article 25. This is the first of the Security Council’s vetoes. The others include a veto over the recommendation to the General Assembly of a person to be appointed Secretary-General of the U.N.;¹⁶ a veto over applications for membership of the U.N.,¹⁷ and possibly, and perhaps crucially, a veto over any amendment to the Charter.¹⁸

¹⁴ *See id.*

¹⁵ GEORGE ORWELL, *ANIMAL FARM* (50th Anniversary ed., Penguin Books 1996) (1945). In this political allegory, using animals as representative of human types, it is observed that “all animals are equal but some are more equal than others.”

¹⁶ U.N. Charter art. 97.

Accordingly, any attempt to alter their positions and powers must, itself, be agreed to by all of the Five Permanent members.

There are a few other aspects of the veto power, within the Security Council, which are worth brief mention. In addition to the open or clearly visible veto, that is the rejection of a substantive proposal in the Security Council, there has been what has been known as the “double veto.” The “double veto” arises in the context of a possible difference of opinion within the Council on whether or not a proposed decision is of a procedural or substantive character. The procedural decision, at least in theory and according to the Charter, requires a simple majority. If the President of the Security Council makes a ruling on such a matter, to which there is then a challenge, he is obliged to put this immediately to a decision by a vote of the Council. In this context, it has become accepted that Permanent Members can exercise a veto. That is, if any one of them disagrees with the vote then taken in the Council on whether or not a matter is procedural or substantive, the Permanent Members can veto that outcome.

Interestingly, on June 26, 1945, the Representative of Australia said of the proposed Permanent Members that they would have a double veto. He said such a member, “can say not only I can veto the decision of the Council, but I will determine the question which I will veto.”¹⁹

There is also the threatened veto. It would simply be impossible to calculate how many times the decision making process of the Security Council, in an informal, private session, has been shaped by the threat of a veto to be cast in a formal session by one of the Permanent Members.

This distinction between private and public sessions is an important one. Having taken part in meetings of the Security Council for almost three years, I can affirm that the great proportion of what takes place in the Council is not seen publicly. If I were to put a percentage on the amount of time I spent in the Security Council private meeting room, as against in the public chamber, I suspect it would come out in the order of ninety-eight percent to two percent, respectively.

Of course, I have no knowledge of how much time the Permanent Five spent elsewhere determining what they wanted or did not want from the Security Council.

There is also the veto delivered on behalf of a non-permanent member. This veto became a dominant feature of the first fifty years of the life of the Security Council.

¹⁷ *Id.* at art. 4. The application for membership by Palestine is the latest case in point.

¹⁸ *Id.* at art. 108.

¹⁹ U.N. SCOR, 1st Sess., 49th mtg. at 425, U.N. Doc. S/PV.49 (June 26, 1946). An interesting indicator of the profound difficulty of securing political agreement within and with respect to the conduct of the work of the Security Council is the fact that its rules of procedure, published, are entitled “Provisional Rules of Procedure.” The rules have never been agreed upon finally, even with an amendment process incorporated within them.

Since the beginning of its work, there have been 265 vetoes cast in the Security Council. The U.S.S.R./Russia Federation has cast 126, the United States 82, the United Kingdom 32, France 18, and China 7.

The vetoes cast by Russia and the United States were cast largely in the period of the Cold War, and by each of them in defense of their client states. For example, Russia would veto on behalf of Eastern European clients and the United States would often veto for Israel.

Finally, the existence of permanent membership on the Security Council and the associated veto power has had what has come to be known as the “cascade effect.” This ludicrously benign term seeks to describe the very real phenomenon of the extension of effective permanent membership rights to the Five in virtually all other U.N. agencies, Commissions, and Committees.

At most U.N. elections it is simply considered unquestionable that those Five will automatically be on the committee, on the Board of Governors, or on whatever instrumentality is involved. By extension, even though there is no formal veto anywhere other than the Security Council, the language of veto is freely spoken and threatened and very often shapes outcomes in such bodies.

It is clear, that as a matter of history, the massive conflicts of the 20th century authored a mind-set, which gave assent to the notion of great victor powers that alone may be able to provide for security in the future.

It is now beyond any doubt that the great privilege given to the Permanent Five - of course they would call it the great responsibility -- has come to be appropriated by them as a right.

The Permanent Five have behaved and continue to behave in ways that suggest that they see the power that they hold as rightful and free, to be exercised by them in whatever manner they choose. The notion that this power was given to them, over strenuous objections, but for the reason of the good that it might do in preserving the peace, has been substantially replaced by the idea that they have a power that they can use to protect and extend their own individual national interests. This selfish outlook is often not consistent with the purposes and principles of the Charter.

The extent to which this misinterpretation of their power – some indeed have called it abuse of their power – has been applied, has varied. In some instances, the actions of the Permanent Five have seemed minor and at other times a flagrant abuse of power.

IV. THE POST-COLD WAR WORLD

What must be recognized now is that since the end of the Cold War, the Permanent Five have become more cautious in their use of the veto. Nevertheless,

the interest in the international community in bringing about reform of the Security Council has risen steadily. In my view, the call for reform is now irresistible.

So much has changed since the original formulation of the functions of the Security Council. The fifty states in San Francisco have now been replaced by 193 member states of the U.N. That growth reflects the phenomenon of decolonization, and more recently, the disintegration of the Soviet Union and the end of bipolarity.

A good number of newly independent states have now been independent for a considerable number of years, some for half a century. Moreover, these new independent states have significant populations, economic prospects, the ability to contribute to the life of the U.N. and the international community, and represent cultural diversity and historical experience.

For these reasons, but also for the reason of hardheaded political sense, it is time to recognize that this Council, with its five permanent and ten elected members, is simply unrepresentative of the contemporary world.

There is also considerable doubt now that the original reasons for establishing permanent membership and giving the extraordinary veto power to those Five any longer has relevance. The only possible exception is that the veto does enable them to defend themselves against any decision by the Security Council to take enforcement action against them, pursuant to Article 42 of the charter. However, there is no possibility of that ever happening because there would be no point.

V. REFORM OF THE SECURITY COUNCIL

Let us turn now to the hard business of reform of the Security Council. My ideas are shaped, from among other things, by the fact that as Australian Ambassador, I sat for five years on a committee to reform the Security Council and a host of other related informal discussion groups at U.N. headquarters. As such, I have become deeply familiar with the organization's politics and substance. I also was elected as Chairman of Preparatory Commission for the 50th Anniversary of the U.N. and served in that capacity from 1993-1995. I chaired the interminable negotiations over the Declaration for the 50th anniversary, a key part of which was the possibility that we might, at that time, be able to implement some measure of Security Council reform. Unfortunately, reform proved to be impossible.

I identify three main issues in the reform of the Security Council.

The first issue is the constituency of the Security Council; this would include the number of members on the Council and how they should be elected or selected.

The second matter is the decision-making methodology of the Security Council; this would include the distinction between substantive and procedural matters, the voting and decision-making methodology, which will be applied to each of them, and whether or not there should be vetoes.

The third issue is the overall role of the Security Council in the U.N. in the global management of international peace and security. I do not mean to suggest here a fundamental revision of the primary responsibility of the Council. However, I do believe the question of the so-called “cascade effect” needs to be addressed.

Finally, I will raise one other very specific question in the context of the Security Council’s role - the enforcement of the weapons of mass destruction treaties.

VI. THE CONSTITUENCY

In addition to the five Permanent Members named in the Charter, the present system for forming the Security Council is as follows.

Four regional electoral groups have been designated and allocated a number of elected seats each for two year terms:

Africa and Asia: 5
East Europe: 1
Latin America and the Caribbean: 2
Western European and Others group: 2

These somewhat curious electoral groups caucus and decide among themselves their candidate for any given election. If they cannot reach agreement and have an excess of candidates, then all of the candidates will be put to the vote of the General Assembly. However, only the number allotted to each group will be elected. For example, assume Africa and Asia had seven candidates. These countries are only allowed to have five candidates. If the countries cannot settle the issue within their caucus, then seven candidates may indeed be put to the vote of the General Assembly. However, the first five of those able to achieve a two-thirds majority will be elected. This rarely happens because, on the whole, the electoral groups work it out and submit a number of candidates equal to the number to which they are entitled. Those candidates are then duly elected by the General Assembly.

The current process raises some important questions. For example, whether this allocation of places is sufficient, given the growth that has taken place in the membership of the organization. Also, whether this is an efficient way of ensuring that the Security Council has a broadly representative character, accurately reflecting today’s world.

There is also the issue of relative weight. For example, is two seats for the Latin American and Caribbean group an adequate number given the size of that region’s populations in comparison, for example, with the Western European and Others Group (WEOG)?

On the WEOG, “the others” in that group include: Canada, Australia, New Zealand, and Israel. The United States does not participate in this group, the only one of which it could, conceivably, be a member.

Moreover, when one adds the permanent members to these regional groups Africa and Asia and Eastern Europe receive one, Latin America and Caribbean receive none, and Western European and Others Group obtain three.²⁰

This latter figure has been the source of some attention in recent years, specifically, the possibility that Western Europe is overrepresented. The region has both the United Kingdom and France as Permanent Members and two elected members. There is no longer a reason for the U.K. and France to have permanent membership in their own right, unless of course membership in the U.N. is based on the continuation of the Battle of Agincourt of 1452. Given modern realities, why not one permanent European Union seat in their place?

VII. REFORM OF DECISION MAKING METHODOLOGY

The decision-making methodology is a deeply vexing issue because it affects all aspects of the Security Council's work. One of the criticisms that has been heard increasingly, and I believe with justification, is that the Security Council's agenda is itself often skewed towards the interest of the Permanent Members and other larger powers. Many are simply uncomprehending as to the differential treatment that is given to humanitarian or political emergencies in Africa as against those that have occurred in Europe, or in parts of the world where there is oil. This type of unfair treatment can attract political attention.

The case can be made that the Security Council has failed in its job of addressing important issues of international peace and security in a relevant, fair, or balanced way.

When one moves from the agenda to the track record of the Security Council in taking decisions, we are confronted with what has possibly been its greatest failure. The Council has had successes, but its record is more distinguished by its repeated failure to reach agreement on how to adequately deal with threats to peace and security. A principal reason for this has been the refusal of one or another of the Permanent Members to set aside their own interests.

Vetoing U.N. action against a state that is clearly in violation of international law and practice because that state is an ally should not be acceptable. This practice was never intended in San Francisco and it should not be acceptable in practical, political reality. Yet, this position has been accepted repeatedly. Using votes as favors is possibly the most significant instance of abuse of permanent privilege.

Any serious, substantive review of the decision-making methodology to be employed in a reformed Security Council, with a modern constituency, would need to address the question of whether or not there should be vetoes. If there are vetoes, then there needs to be a new and different understanding of the circumstances under which the veto can be legitimately used.

²⁰ This number includes the United States.

In particular, for example, I would propose that the veto should not be used for procedural or agenda related matters. Specifically, the failure of one Permanent Member to agree to a substantive proposition should not, in itself, block that proposition. There should, for example, be the need for two or three such states to be in agreement to negate a proposition.

VIII. DOMINANCE OF THE PERMANENT FIVE

The third area in which reform is necessary is a little more amorphous, but it has to do with the elemental notion of the dominance of the Permanent Members of the Security Council.

Sixty years ago, it was far easier to see where this idea came from. It rested essentially on the possession of great military power. That consideration is not irrelevant today, but many relevant threats to global peace and security cannot be defeated by the use of a gun. These threats affect all, irrespective of their military power.

The global challenges posed by climate change, global health problems, mass movements of people, arms trade, and criminalities are threats of a truly serious nature that require collective action. These issues are not simply the derivative of or able to be cured by the application of great military power.

Many have argued that what is essentially required in support of a modernized or revised Security Council is a new understanding of what constitutes international security. Recall the fundamental notion at issue is “the maintenance of international peace and security.”²¹ What constitutes security today, or threatens it, is very different, more complex, and more difficult to handle than the rather more traditional straightforward threats that were seen in the 20th century.²²

IX. WEAPONS OF MASS DESTRUCTION

I mentioned earlier that I would address a particular set of circumstances. Specifically, this is the Security Council’s role in the enforcement of the treaties on weapons of mass destruction, in particular, the Nuclear Non-Proliferation Treaty.

The current political structure refers any violations of the Nuclear Non-Proliferation Treaty or the Chemical Weapons Convention to the Security Council. The Council is then asked to make a decision on what action should be taken to rectify or deal with this transgression.

There have been instances in the past where, even though a good case appears to have been made that such a transgression is occurring, a Permanent Member of the Security Council has blocked proposed remedial action.

²¹ U.N. Charter art. 24, para. 4.

²² U.N. General Assembly, Follow-up to the outcome of the Millennium Summit, U.N. Doc. A/59/565 (Dec. 2, 2004).

Currently, there are questions of Iran and North Korea in the area of their nuclear programs. There have rarely been straight out vetoes, but vetoes have been threatened with respect to various proposals to remedy these situations.

There is very great concern in the international community that the responsibility the Security Council holds for enforcing the weapons of mass destruction (WMD) treaties are incompatible with the idea that any of the Permanent Five could block such enforcement action.

In this context, it is relevant that the Permanent Five are themselves, holders of weapons of mass destruction. This nexus between permanent membership and nuclear weapons power status was perhaps not intended, but it is the fact and it is one that does not go unnoticed.

The nexus is why elsewhere²³ I proposed that a new instrument called the Council on Weapons of Mass Destruction (WMD Council) should be established. The WMD Council would liberate the enforcement of weapons of mass destruction from the usual politics of the Security Council. Unless the Security Council can be adequately reformed, or some new understanding reached on the uses to which the veto may be put, a WMD Council must be created.

This WMD Council would have a membership of an appropriate constituency and size as I describe below.

The WMD Council's sole job would be to deal with violations of the WMD treaties. The WMD Council would reach a judgment on reports furnished to it of non-compliance, and then mobilize international action to remedy the situation. Clearly it could not be a council on which individual members had a veto and were able to stop action on which, for example, two-thirds of those present and voting were agreed.

I believe this argument is highly practical. This notion recognizes firstly, that WMD constitute a special and devastating subject. These weapons are different. The WMD threat to humanity is on a scale that is unacceptable and the political action and institutional arrangements needed to manage the problem should themselves be special. The arrangements should be purpose-built for the task.

Secondly, it is possible for these issues to be separated out from politics as usual -- the politics of national self-interest, of vetoes, and of proxy voting by a large country on behalf of one of its clients. This kind of politics has always characterized the work of the Security Council.

I am practical enough to recognize that to seek to wish away politics as usual would be a bit like King Canute telling the sea to go back. There is a place for politics as usual, shabby as they sometimes may be, because it is fairly normal and the

²³ RICHARD BUTLER, *FATAL CHOICE: NUCLEAR WEAPONS AND THE ILLUSION OF MISSILE DEFENSE* 134-38 (2001).

negotiation of conflicting, and sometimes mutually beneficial, political interests can often be the way in which tension is released and conflict avoided.

Therefore, let there be politics as usual, but let them be played out in a renewed and refreshed Security Council without Permanent Members with veto powers, or certainly one with a new and much more reasonable decision-making methodology. However, WMD must be placed in a separate category. The frantic search to reduce the danger posed by these weapons must be dealt with separately from politics as usual.

I mentioned earlier that I had taken part for some five years in discussions at the U.N. on reform of the Security Council. It would probably not be surprising that one of the abiding features of those discussions was not so much a question of principle, but the grab for seats. The questions of who would be additional permanent members or which parts of the world would get more seats received as much attention as any other matter.

On one occasion, I confess I had a very serious argument with my own immensely able foreign minister. The argument was about the issue of principles versus personalities. He had been persuaded by some of his foreign ministerial colleagues to support their aspirations for a new permanent seat on the Security Council. I explained that we were approaching the problem from the wrong direction. We were putting the cart before the horse. I said, "Let's get settled first on the key questions of the representational character of the Council as a whole and then move to its decision-making methodology before getting down to the issue of the names of those who would get a new place in the sun."

As was his right, he swept me aside saying something like, "the representation that had been made to him has been persuasive and he had therefore given some undertakings to his foreign ministerial colleagues and that was that."

To complete this picture, let me reference one of the more fatuous events I witnessed. It was when the ambassador of Italy, in an informal meeting on reform of the Security Council, made an outburst in response to a proposal made by Germany. Germany wanted to be made a permanent member of the Council. The ambassador of Italy exclaimed that his country had an equal right to such a position because after all "it too had also lost the war."

X. A NEW COUNCIL

I have recalled these stories as a way of illustrating how difficult it is to compose a new council. Nevertheless, I am going to make an attempt at a solution because it puts a little flesh on the bones.

First, there need to be nine electoral regions rather than the current four. Each electoral region would be able to designate a "Permanent Member." The identity of that permanent member could itself change. For example, the permanent member from the Latin American and Caribbean group for three years could be Brazil. Following agreement within the regional group, the subsequent three years

could see that same seat occupied by Argentina. The nine permanent members would each have a veto defined as follows: for the adoption of any proposition at least seven of them would have to vote in the affirmative. In other words, a proposition could be vetoed if three of them agreed to vote in the negative.

In addition to these nine permanent members, each of the electoral groups would be allocated to a number of seats as follows:

Western Europe: 2
 Eastern Europe: 1
 Mediterranean Africa/Arabia: 1
 Southern Africa: 2
 Central/Southern Asia: 2
 North Asia: 1
 Southeast Asia and Pacific: 3
 North America: 1
 Latin America and the Caribbean: 3

The overall outcome would be a Security Council composed of 27 members – nine permanent and eighteen elected.

XI. A MODEST PROPOSAL²⁴

I am going to conclude this paper with what some would consider a naïve, wild, or even foolish proposal, but I think in a spirit of inquiry and creative thinking, it is worth mentioning.

In a world beginning to move with determination toward the elimination of nuclear weapons,²⁵ an ambitious United States foreign policy, would adopt a stance reflecting contemporary realities instead of clinging to the past. The United States needs to concede that the Security Council has played an important role, but, in its present form, has passed its use-by date. It is time for the United States to lead the way in modernization by declaring to the world that it will give up its veto.

²⁴ JONATHAN SWIFT, *MODEST PROPOSAL FOR PREVENTING THE CHILDREN OF POOR PEOPLE IN IRELAND FROM BEING A BURDEN ON THEIR PARENTS OR COUNTRY, AND FOR MAKING THEM BENEFICIAL TO THE PUBLICK* (1730). The Irish satirist wrote his “modest” proposal that a solution to the problem of famine in Ireland could be for people to eat their babies, of which the Irish, he observed, seemed to be able to produce somewhat abundant numbers. *See id.* My proposals for reform of the Security Council and steps the United States might consider taking, may well be considered satire, on a par with Swift’s. I lack his wit, and I mean mine seriously.

²⁵ *See* S.C. Res. 64/28, U.N. Doc. S/RES/1887 (Sept. 24, 2009). *See also* 2010 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, New York, Final Document, May 2010, NPT/CONF.2010/50 (expresses unanimous agreement of States party to “seek a secure world without nuclear weapons”). *See also* Barack Obama, U.S. President, Prague Speech to Call for Nuclear Abolition (Apr. 5, 2009). President Obama stated, “I state clearly and with conviction America’s commitment to seek the peace and security of a world without nuclear weapons.” *Id.*

The United States would want to remain on the Security Council, presumably permanently, because of its size and importance and the contribution the Council believes the United States can and wants to make. However, today's world of complex global challenges necessitates change. The United States knows that it can defend itself and does not need the protections offered by Article 42 of the Charter. Hence, the United States could, with impunity, consider the abolition of the veto. The United States could then seek to establish a decision-making methodology, in the Security Council based on a two-thirds majority vote for the passage of any substantive decisions. The United States would then call upon all Permanent Members to do the same and make the fulfillment of its offer conditional upon the other four following suit.

What substantive American interests, as against past notions of prestige, would be harmed by such a move? Truly, does the prospect of a Security Council resolution criticizing the United States or its friends, especially coming from today's Security Council, seem particularly frightening or disturbing? Absolutely not.

The point I am making is that this crucial instrument, the U.N. Security Council, is well motivated, but is erroneously put together in the face of today's world and has ceased to do the job it was intended to do.

The Security Council needs to be changed. I ask for serious consideration of the idea that, one of the ways to lead that change, would be for the United States to give up its veto and propose a new decision making methodology.

Giving up the veto would represent the "U.S. leadership," that is so often proclaimed by patriots of all stripes, as being essential to a stable and successful world. This act of leadership would be profound, imaginative, and graceful.

What I envisage, in the future, is a Security Council that truly represents each of the regions of the world and the great cultures of the world. For example, it is preposterous that too often the Council has passed through a period of years without having among its members a significant Islamic country.

In short, we need a Security Council with universally accepted authority. This is not what we have today.