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Untied Nations? Saving the UN Security Council

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The United Nations Security Council is often criticized for being unrepresentative, paralysed by the veto, and impotent in the face of major conflicts. Yet beneath these familiar complaints lies a more profound dilemma: whether international society still believes in the desirability, let alone the possibility, of a global legal order anchored in the Council. This essay situates contemporary reform debates against that larger question. It explores how proposals for modest procedural and working-methods reforms collide with the political reality of entrenched permanent members; how expansion schemes risk draining attention from more feasible fixes; and how normative disagreements expose the fissure between Kelsenian faith in rules and Schmittian insistence on power. Alongside geopolitical tension, the Council must now contend with new existential threats — from climate change to artificial intelligence — that test its mandate and legitimacy. The deeper problem, however, may not be the Council's structure or procedures, but the mismatch between the expectations placed upon it and what member states are prepared to deliver.

Review Essay

Mona Ali Khalil & Floriane Lavaud, *Empowering the UN Security Council: Reforms to Address Modern Threats* (Oxford University Press, 2024)

* Vice Provost and David Marshall Professor, Faculty of Law, National University of Singapore. Many thanks to Tony Anghie, Charalampos Giannakopoulos, and Tan Hsien-Li for comments on an earlier draft. Some of these ideas were first explored at an American Society of International Law 'ASIL Abroad' meeting held in Singapore on 3 September 2025, on a panel with Charis Tan, Olufemi Elias, and Akiko Ito. Errors are attributable to the author alone.

Congyan Cai, Larissa van den Herik & Tiyanjana Maluwa (with Anne Peters and Christian Marxsen), *The UN Security Council and the Maintenance of Peace in a Changing World* (Max Planck Trialogues, Cambridge University Press, 2024)

It is now more than two decades since the 2003 invasion of Iraq. Led by the United States — still reeling from the September 11 attacks on New York and Washington, DC; willing to operate on the 'dark side', even if that meant countenancing torture — this was part of a war on terror that appeared to be without limits and without end.[1] As the war unfolded, the annual meeting of the American Society of International Law proceeded on schedule during cherry blossom season in the nation's capital, prompting James Crawford to archly propose that the learned society, the 'invisible college',[2] might consider rebranding itself as the 'American Society of International What?'[3]

At the United Nations these were dark days. Addressing the General Assembly, US President George W. Bush had presented the march to war with Iraq as a test for the UN: 'Are Security Council resolutions to be honoured and enforced, or cast aside without consequence? Will the United Nations serve the purpose of its founding, or will it be irrelevant?'[4] When the Secretary-General himself agreed with a reporter that the subsequent military action — conducted without Council authorization — was illegal, it plunged relations with the sole-remaining superpower to a new low.[5]

Yet all the drama that ensued was, in essence, a political crisis, of a kind not uncommon when power and principle clash. The UN has historically struggled to be relevant in such

[1] J. Mayer, *The Dark Side: The Inside Story of How the War on Terror Turned Into a War on American Ideals* (2008); L. Moir, *Reappraising the Resort to Force: International Law, Jus ad Bellum, and the War on Terror* (2010); H. Duffy, *The 'War on Terror' and the Framework of International Law* (2nd ed., 2014); L. Oette, *The Transformation of the Prohibition of Torture in International Law* (2024).

[2] O. Schachter, 'The Invisible College of International Lawyers', 72(2) *Northwestern University Law Review* (1977) 217.

[3] P. Sands, 'An Australian in England', in C.M. Chinkin and F. Baetens eds, *Sovereignty, Statehood, and State Responsibility: Essays in Honour of James Crawford* (2015) xx, at xxiii.

[4] G.W. Bush, *President's Remarks at the United Nations General Assembly* (New York, 12 September 2002).

[5] J. Cockayne and D.M. Malone, 'Relations with the Security Council', in S. Chesterman ed. *Secretary or General? The UN Secretary General in World Politics* (2007) 69, at 82.

times: some of the most consequential conflicts of the late twentieth century — Hungary, Vietnam, Afghanistan — never reached the agenda of the Security Council, or were frustrated by the use or threat of a veto by one of its permanent members.[6]

There is, today, a more fundamental challenge underway to both the structure and the content of international law and institutions. In terms of structure, the twentieth century saw the emergence of multilateralism from its bilateral precursor, including the first international organizations recognizable as such.[7] That structure is now buckling with the rise of technology companies whose power and influence rival that of the East India Company in the mid-nineteenth century, when it controlled half of global trade and maintained its own army.[8] But it is also being threatened by a superpower that appears bent on burning down the international order at the apex of which it sits.[9] The United States has long vacillated between isolationism and engagement with the world,[10] though there is something qualitatively different between George W. Bush's questioning of the UN's relevance in 2003 and President Donald Trump's 2025 declamation at the General Assembly that 'your countries are going to hell'.[11] More generally, his 'America First' rhetoric appears to be part of a larger loss of faith in institutions of global order in key parts of the globe.[12]

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[6] A.V. Patil, *The UN Veto in World Affairs, 1946-1990: A Complete Record and Case Histories of the Security Council's Veto* (1992); B. Fassbender, *UN Security Council Reform and the Right of Veto: A Constitutional Perspective* (2023).

[7] J.H.H. Weiler, 'The Geology of International Law: Governance, Democracy and Legitimacy', 64 *Heidelberg Journal of International Law* (2004) 547; S. Chesterman, D.M. Malone, and S. Villalpando, 'Introduction', in S. Chesterman, D.M. Malone, and S. Villalpando eds, *The Oxford Handbook of United Nations Treaties* (2019) 1.

[8] H.V. Bowen, *The Business of Empire: The East India Company and Imperial Britain, 1756-1833* (2006); E. Erikson, *Between Monopoly and Free Trade: The English East India Company, 1600-1757* (2017). See S. Chesterman, 'Silicon Sovereigns: Artificial Intelligence, International Law, and the Tech-Industrial Complex', *American Journal of International Law* (2025) forthcoming.

[9] M. Hakimi and J.K. Cogan, 'The End of the U.S.-Backed International Order and the Future of International Law', 119(2) *American Journal of International Law* (2025) 279.

[10] K.D. Rose, *American Isolationism Between the World Wars: The Search for a Nation's Identity* (2021); C.M. Nichols, *Promise and Peril: America at the Dawn of a Global Age* (2011).

[11] L. Broadwater, '"Your Countries Are Going to Hell": Trump Airs His Grievances at the UN', *New York Times*, 23 September 2025.

[12] D. Sloss (ed.) *Is the International Legal Order Unraveling?* (2022); A. Cooley and D. Nexon, 'Trump's Antiliberal Order: How America First Undercuts America's Advantage', 104(1) *Foreign Affairs* (2025) 16.

The challenge is also evident at the level of content. The twentieth century was remarkable for the development of norms prohibiting the use of force,[13] ending colonialism,[14] and establishing a rules-based trading system.[15] Ongoing crises in Ukraine and Gaza, as well as casual talk about the US annexing Greenland,[16] the Panama Canal,[17] or the entirety of Canada[18] challenged the first two of those norms. Yet it was the defenestration of rules-based trade that was most striking, as international economic law had long been seen as the least controversial and most widely accepted aspect of the international legal system.[19]

The cynical response to all this might be to concede that the realists were right: international law isn't really 'law', just a convenient rhetorical cover for what states were going to do anyway. Eric Posner once argued that international law appears to be law only because its 'obligations' are so trivial. He posited a society in which people are bound by law to eat at least once a day and wear clothes when it is cold. People in this society might be said to obey the law, but that observation is of little value.[20]

The exception to such dismissive claims was long thought to be the UN Security Council. A rare entity within the pantheon of international organizations, it was given teeth and (in theory) resources. On paper, it might be considered a kind of military dictatorship formed in the twilight of the Second World War. The Charter of the United Nations still bears the scars of that conflict: it refers to enemy states five times, meaning the enemies of those signing the document.[21] The Council was envisaged as having forces at its disposal, offered under

[13] I. Brownlie, *International Law and the Use of Force by States* (1963).

[14] A. Anghie, *Imperialism, Sovereignty, and the Making of International Law* (2005).

[15] J.H. Jackson, *The World Trading System: Law and Policy of International Economic Relations* (2nd ed., 1997).

[16] J. Gettleman and M. Tekeli, 'Denmark Summons US Envoy Over a Reported 'Influence Operation' in Greenland', *New York Times*, 27 August 2025.

[17] W. Freeman, 'Trump's Dangerous Obsession With the Panama Canal', *New York Times*, 22 May 2025.

[18] G. Martin, 'Trump, Canada and "the 51st State"', 114(2) *Round Table* (2025) 145.

[19] K. Hopewell, 'Unravelling of the Trade Legal Order: Enforcement, Defection and the Crisis of the WTO Dispute Settlement System', 101(3) *International Affairs* (2025) 1103; S. Chesterman, 'Asia's Ambivalence About International Law and Institutions: Past, Present and Futures', 27 *European Journal of International Law* (2016) 945, at 959-60.

[20] E.A. Posner, 'Do States Have a Moral Obligation to Obey International Law?', 55 *Stanford Law Review* (2003) 1901, at 1914.

[21] M. Wood, 'United Nations Charter, Enemy States Clauses', in A. Peters ed. *Max Planck Encyclopedia of International Law* (2006).

Article 43 of the Charter. At another meeting of the American Society of International Law, in 1952, there were surprisingly detailed debates over whether those forces need bother themselves with the laws of war, given that they would have the blessing of the UN itself and thus hold a 'superior legal and moral position' to any state.[22]

Almost immediately, the system failed. Paralysed by the Cold War and the return to diplomatic horse-trading, no state ever agreed to put forces under the command of the Council.[23] Then rapprochement during the 1980s culminated in the irrational exuberance of the 1990s, as Saddam Hussein's Iraq inspired a world to unite behind an American president promising that the rule of law would supplant the rule of the jungle.[24] Within hours, the Council condemned Iraq's August 1990 invasion,[25] later authorizing a coalition of the willing to use 'all necessary means' to reverse the aggression.[26]

For the decade after this first Iraq war, a revivified Council was active both in words — adopting as many resolutions as it had in the previous half century — and deeds.[27] The number of Council-authorized actions was matched by the increasingly flexible way in which the threshold 'threat to international peace and security' was interpreted.[28] Procedurally, however, it was also clear that such Council authorizations were contingent on the prior willingness of a state or group of states to lead action in its name. By the end of that decade, Kosovo in 1999 laid bare the underlying tensions: the humanitarian crisis appeared to satisfy

[22] W.J. Bivens et al., 'Report of Committee on the Study of the Legal Problems of the United Nations, Should the Laws of War Apply to United Nations Enforcement Action?', 46 *American Society of International Law Proceedings* (1952) 216, at 217. The application of international humanitarian law to UN forces was only settled in 1999 with the issuance of a bulletin by the Secretary-General affirming that it did, indeed, apply. See Secretary-General's Bulletin: Observance by United Nations Forces of International Humanitarian Law, UN Doc. ST/SGB/1999/13 (1999).

[23] N. Krisch and E. de Wet, 'Article 43', in B. Simma, et al. eds, *The Charter of the United Nations: A Commentary* (2024) 1713.

[24] See generally D.M. Malone, *The International Struggle for Iraq: Politics in the UN Security Council, 1980-2005* (2006).

[25] SC Res. 660, 2 August 1990.

[26] SC Res. 678, 29 November 1990.

[27] J. Mayall (ed.) *The New Interventionism 1991-1994: United Nations Experience in Cambodia, Former Yugoslavia and Somalia* (1996); M.R. Berdal and S. Economides (eds) *United Nations Interventionism, 1991-2004* (2007).

[28] R. Cryer, 'The Security Council and Article 39: A Threat to Coherence?', 1(2) *Journal of Armed Conflict Law* (1996) 161.

the newly flexible mandate of the Council and a group of states — in this case NATO — was primed to act. When a resolution was not forthcoming, due to Russian and Chinese reservations that were characterized as more political than principled, the intervention proceeded anyway.[29]

The attacks of 11 September 2001, the 2003 Iraq war, and a more general breakdown in relations among the permanent members threw sand in the gears of the Council's activism. Normatively, Vladimir Putin's meretricious invocation of Kosovo as precedent for his own military adventures[30] increased cynicism and diminished enthusiasm for the emerging idea of a 'responsibility to protect'.[31] Politically, the 2011 action against Libya highlighted the diverse positions on the Council's use of force, with some states heralding the ability to bring down a murderous dictator while others decried efforts at regime change disguised in the garb of humanitarian action.[32]

By the time the world was grappling with the twin horrors of the wars in Ukraine (2022—) and Gaza (2023—), the Council's impotence to address multi-year crises was not just a political problem but an existential one.[33] Speaking to the UN Human Rights Council, Secretary-General António Guterres lamented the Council's inability to act, warning that it 'has severely — perhaps fatally — undermined its authority.'[34] In the next sentence, he went on, as is customary, to say that the solution was reform in the Council's composition and its working methods. But what reforms might actually make a difference, and what prospects are there for implementing them?

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[29] S. Chesterman, *Just War or Just Peace? Humanitarian Intervention and International Law* (2001), at 207-13.

[30] M. Milanovic, 'Crimea, Kosovo, Hobgoblins and Hypocrisy', *EJIL: Talk*, 20 March 2014; M. Fisher, 'Putin's Case for War, Annotated', *New York Times*, 24 February 2022.

[31] A. Reichwein, M. Hansel, and SpringerLink (eds) *Rethinking the Responsibility to Protect: Challenged or Confirmed?* (2023); N.I. Erameh, V. Ojakorotu, and SpringerLink (eds) *Africa's Engagement with the Responsibility to Protect in the 21st Century* (2024); M.J. Butler, *Reconstructing the Responsibility to Protect: From Humanitarian Intervention to Human Security* (2025); T.C. Neth, *ASEAN and the Responsibility to Protect : An Ambivalent Relationship* (2025).

[32] M. Nuruzzaman, '"Responsibility to Protect" and the BRICS: A Decade after the Intervention in Libya', 2(4) *Global Studies Quarterly* (2022).

[33] The Council has also failed to act on drawn out conflicts in Syria, Myanmar, Sudan, and elsewhere.

[34] A. Guterres, Secretary-General's remarks to the Human Rights Council (United Nations, Geneva, 26 February 2024).

This essay considers two volumes that seek to answer those questions. *Empowering the Security Council*, edited by Mona Ali Khalil and Floriane Lavaud, brings together a dozen scholar-practitioners: former Secretariat officials, a former judge on the International Court of Justice (ICJ) and a prosecutor at the International Criminal Court (ICC), and several diplomats who served in New York as non-permanent members of the Council itself.[35] *The UN Security Council and the Maintenance of Peace in a Changing World* is a more 'academic' work, the fifth in a series of trialogues convened by the Max Planck Institute and overseen by Anne Peters and Christian Marxsen. Cai Congyan is a professor at Fudan University and a leading expert and exponent on China and international law;[36] Larissa van den Herik is a professor at Leiden and a scholar of international peace and security law; Tiyanjana Maluwa is a professor at Penn State who previously served as Legal Counsel to the Organization of African Unity, what is now the African Union.[37]

The problems facing the Council are reasonably clear, but these volumes contribute diverse voices to the challenge of addressing them. A key question flagged by this long introduction, however, is whether the Council's malaise is something to be addressed at the level of procedures and practices of the institution itself, or if it heralds a more troubling lack of faith in the possibility — and desirability — of a global legal order in the first place.

1 Representation

Khalil and Lavaud, in their own introduction, highlight three issues that echo recurring criticisms of the Council. First, the composition of the Council is not representative of the broader membership of the UN, nor of current geopolitical reality. Secondly, the P5 have abused their veto power in a manner inconsistent with the spirit of the Charter and letter of international law. Thirdly, its failure to prevent and resolve conflict or even enforce its own resolutions fundamentally undermines its credibility.[38]

[35] M.A. Khalil and F. Lavaud (eds) *Empowering the UN Security Council: Reforms to Address Modern Threats* (2024).

[36] I reviewed his 2019 book, *The Rise of China and International Law*, in these pages: S. Chesterman, 'Can International Law Survive a Rising China?', 31 *European Journal of International Law* (2020) 1507.

[37] C. Cai, L. van den Herik, and T. Maluwa, *The UN Security Council and the Maintenance of Peace in a Changing World* (2024). The volume is presented as jointly written, but sections are attributed to distinct authors, who will be indicated in parentheses.

[38] Khalil and Lavaud, *supra* note 35, at 1-4.

There is no serious argument that the Council is representative. A better question is whether it needs to be, or whether any increased legitimacy based on representativeness would come at the cost of its effectiveness.[39] One reason for scepticism is that membership reform sucks the oxygen out of discussions about other kinds of reform because it is too easy and too hard: too easy to form an opinion, too hard to get anything implemented. Anyone can have a view on whether Germany or Japan should get a seat on the Council, for example. (A witty Italian ambassador once piped up in such a discussion that perhaps Italy should get a seat as well, since 'we also lost the Second World War'.[40]) More seriously, Asia is severely underrepresented relative to its population and economy; neither Africa nor Latin America have a permanent seat. The 'Western Europe and Others' group at the UN makes up about a seventh of global population but holds a full one-third of the Council's 15 seats.

There are many ongoing proposals for membership reform, known as the G4,[41] the L69 group,[42] Uniting for Consensus,[43] the Ezulwini Consensus,[44] among others. But an illustration of the political difficulty is that the United States has, at various points, publicly affirmed its support for an additional individual permanent seat for Japan and Germany since 2000,[45] for India since 2010,[46] and more, ambiguously, for Brazil as part of the 'G4'.[47] Yet it has never

[39] S. Chesterman, 'Reforming the United Nations: Legitimacy, Effectiveness, and Power After Iraq', 10 *Singapore Year Book of International Law* (2006) 59.

[40] V. Popovski, Reforming and Innovating the United Nations Security Council (Commission on Global Security, Justice & Governance, The Hague, 2015) (quoting Italian ambassador Paolo Fulci in 1997).

[41] J.N. Rolf, N.J. Janssen, and M. Liedtke, 'Projecting General Assembly Voting Records onto an Enlarged Security Council: An Analysis of the G4 Reform Proposal', 12(3) *Global Policy* (2021) 313.

[42] I. Gonsalves, 'Small, Young, and Female: Saint Vincent and the Grenadines on the United Nations Security Council from the Perspective of the Political Coordinator', 28(3) *Global Governance* (2022) 295.

[43] A. Volacu, 'A Priori Voting Power Distribution Under Contemporary Security Council Reform Proposals', 21(2) *Journal of International Relations and Development* (2018) 247, at 253-54.

[44] G.C. Mbara et al., 'Re-evaluating the African Union's Ezulwini Consensus in the Reform of the United Nations' Security Council', 10(1) *Journal of African Union Studies* (2021) 53.

[45] B. Crossette, 'Japan Asks for an End to Debate on UN Security Council's Shape', *New York Times*, 17 November 2000.

[46] S.G. Stolberg and J. Yardley, 'Countering China, Obama Backs India for UN Council', *New York Times*, 8 November 2010.

[47] 'US Reaffirms Longstanding Support for Permanent UNSC Seats for India, Japan, Germany', *Economic Times*, 13 September 2024 (quoting US Ambassador Linda Thomas-Greenfield stating that 'On the G4, we have expressed our support for Japan and Germany and India. We have not explicitly expressed support for Brazil.')

supported any formal proposal nor articulated what a complete Council might look like. As with many other states, the US position has long appeared to be that it supports Council expansion in theory, while opposing any specific action in practice. In another example of UN gallows humour, the 'Open-Ended Working Group' on these reform issues was long known as the 'Never-Ending Working Group'.[48]

An optimist might push back against such cynicism, pointing out that the Charter was adopted and the Council was expanded from 11 to 15 members in 1965.[49] The cynic would respond that this was only possible because the Charter was negotiated while the bombs of the Second World War were still falling, driving states to make compromises — like the veto — that they would never countenance in times of peace, and that the previous expansion was driven by decolonization and the near-doubling of the membership of the UN.[50]

2 The Veto

Turning to Khalil and Lavaud's second *bête noire*, the veto was the Faustian bargain that made the UN possible.[51] Yet it was supposed to be limited. Most notably, parties to a dispute — permanent member or not — are enjoined to abstain from voting on decisions under Chapter VI, which covers pacific dispute settlement, and under article 52(3), which addresses such settlements under regional arrangements.[52] (It was accepted as unrealistic to apply the same measure to enforcement powers under Chapter VII.) Despite reasonably clear text, permanent members have participated in debates, voted on, and even vetoed resolutions under Chapter VI.[53] Many reform initiatives launched at the UN squarely target

[48] E.C. Luck, 'Prospects for UN Renovation and Reform', in T.G. Weiss and S. Daws eds, *The Oxford Handbook on the United Nations* (2018) 797, at 810-11.

[49] GA Res. 1991(XVIII), 17 December 1963 (entered into force 31 August 1965).

[50] Cf. D. Bosco, *Five to Rule Them All: The UN Security Council and the Making of the Modern World* (2009).

[51] F.O. Wilcox, 'The Yalta Voting Formula', 39(5) *American Political Science Review* (1945) 943. On the drafting history, see A. Zimmerman, 'Article 27', in B. Simma, et al. eds, *The Charter of the United Nations: A Commentary* (2024) 1161, at 1168-69.

[52] UN Charter, Art. 27(3).

[53] Article 27(3) and Parties to a Dispute: An Abridged History (Security Council Report, New York, April 2014).

use of the veto, though typically founder on the prospect that any change to it would require the consent of all the veto-wielders themselves.[54]

Those who would reform the Council therefore tend to focus on the impact of the veto, both as it is wielded and as it is threatened. Lofty language once framed it as a sober responsibility of the victors of the Second World War, rather than a privilege.[55] Today, of course, it is routinely exercised as of right and often as of whim. Law school classes and Jessup Moot problems explore potential legal limits in the case of, say, a veto explicitly intended to prevent action to stop a genocide — raising the possibility of a *jus cogens* norm trumping provisions of the Charter. These are interesting questions, but recall the 1989 treaty outlawing mercenaries, defined as someone 'motivated to take part in the hostilities essentially by the desire for private gain'.[56] The practical challenges of proving such motivation led Geoffrey Best to suggest that anyone convicted of an offence under the Convention should be shot — as should his lawyer.[57]

More energy tends to be invested in political efforts to *limit* the exercise of the veto — or to increase the cost of its use. These include the Accountability, Coherence and Transparency Group (ACT) code of conduct and the French-Mexican initiative on the voluntary restriction of the veto.[58] In April 2022, the General Assembly adopted a resolution calling for a formal meeting and debate within ten days of a veto being cast by one or more permanent members.[59] Permanent members, for their part, wax and wane in their enthusiasm for restraint. The United States, for example, committed later that same year to using the veto only in 'rare, extraordinary situations', noting that since 2009 Russia had cast 26 vetoes and China 12, in comparison to 'only' four by the US itself.[60] In the wake of the October 2023

[54] T.P. Paige, 'Mission: Impossible? Reforming the UN Charter to Limit the Veto', 25(2) *Journal of International Peacekeeping* (2022) 187.

[55] See, e.g., 'Statement by the Delegations of the Four Sponsoring Governments on Voting Procedure in the Security Council,' UNCIO 11 (1945), 713.

[56] International Convention Against the Recruitment, Use, Financing, and Training of Mercenaries (Convention on Mercenaries), 4 December 1989 (in force 20 October 2001).

[57] Quoted in D. Shearer, *Private Armies and Military Intervention* (1998), at 18.

[58] J. Trahan, *Existing Legal Limits to Security Council Veto Power in the Face of Atrocity Crimes* (2020), at 139-40.

[59] GA Res. 76/262, 26 April 2022. See further R. Barber, 'An Early Assessment of the General Assembly's 2022 Veto Initiative', 29(3) *Global Governance* (2023) 346.

[60] Remarks by Ambassador Linda Thomas-Greenfield on the Future of the United Nations (US Mission to the United Nations, Geneva, 8 September 2022).

attacks on Israel by Hamas and Israel's ongoing military campaign in Gaza, any compromise seemed remote, with the United States using the veto at least six times in respect of the Gaza crisis alone.[61] Surveying such developments, Juan Manuel Gómez-Robledo and Pablo Arrocha Olabuenaga somewhat optimistically conclude that they hope the P5 will 'exercise restraint' and choose the path of responsibility, recommitting themselves to the purposes and principles of the UN Charter.[62]

Clarity on this is not helped by the ambivalence of those seeking permanent seats for themselves, epitomized by the Ezulwini Consensus, the 2005 position adopted by the African Union on reform of the UN. Despite stating its opposition in principle to the existence of the veto, the AU effort to secure two permanent seats comes with a call that, 'as a matter of common justice', those seats should enjoy veto powers also.[63]

3 A Bigger Tent

Khalil and Lavaud may be idealists in their international relations framing, but they are clear-eyed about the challenges of reform. Most of their volume seeks to address the Council's faults without magical thinking about its politics. The focus is on gathering diverse voices from around the world to focus on what measures — short of amending the Charter — would 'restore the legitimacy of Security Council action' and reimagine partnerships that could 'uphold the international rule of law'.[64]

Chapters by Tareq Albanai and Syed Akbaruddin focus on the ten non-permanent members, reframed as the 'elected 10' or 'E10'. (Wags in the UN Delegates Lounge are known to extend this metaphor on occasion, referring to the P5 as the 'hereditary 5'.) It is often assumed that the main advantage wielded by the P5 is the veto, but permanency and institutional memory are more significant in the day-to-day functioning of the Council in their relations with the E10. Secretariat staff provide support to the non-permanent members, but it takes time to learn how the Council functions and navigate the politics at

[61] M. Nichols, 'US Casts 6th Veto at United Nations over War in Gaza', *Reuters*, 19 September 2025.

[62] J.M. Gómez-Robledo and P. Arrocha Olabuenaga, 'Restraining the Use of the Veto', in Khalil and Lavaud, *supra* note 35, 91, at 105.

[63] The Common African Position on the Proposed Reform of the United Nations (the 'Ezulwini Consensus') (African Union, Addis Ababa, 8 March 2005).

[64] Khalil and Lavaud, *supra* note 35, at 4.

work. It has been nearly eight decades, but the Council's rules of procedure even today remain 'provisional' — though codification has at last addressed the unwritten conventions and 'gentlemen's [*sic*] agreements' that long perplexed and frustrated many an ambassador.[65] As for the E10 as a group, the possibility of collective action to boycott the Council is interesting in theory, but in practice assumes both that unity would be possible and that the P5 actually wish for the Council to function.[66]

Similarly, horizon scanning and other measures to encourage the Council to be proactive rather than reactive are worthy, but echo past efforts — all frustrated — to give the UN something resembling an intelligence capacity.[67] As Guterres knew better than most, his frustration with the Council — which later prompted him to invoke Article 99 of the Charter for the first time and force Gaza onto its agenda[68] — did not come from the member states being unaware of the crisis, but precisely from the fact that they were aware but unwilling to act. For the time being, modest changes like earlier elections and greater coordination mean that the E10 are more than mere 'birds of passage', but the structural challenges in the Council remain.

Another set of authors seeks to broaden the frame further, including actors outside the Council itself. Early in the history of the UN, paralysis of the Council was seized by the General Assembly as an opportunity to act. The 'Uniting for Peace' resolution[69] has since provided a forum to discuss matters of peace and security where P5 interests render the Council impotent. Though the Assembly cannot impose binding obligations, its emergency sessions provide a forum and platform for topics such as Gaza and Ukraine — the focus of the tenth and eleventh such sessions, both ongoing at the time of writing.[70] Khalil argues that the Assembly should be more ambitious and use its powers to do more than condemn, including deploying peacekeeping missions as it did (controversially[71]) in the 1960s.[72]

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[65] S. Akbaruddin, 'Empowering the Elected Members', in Khalil and Lavaud, *supra* note 35, 23, at 35.

[66] T. Albanai, 'Respecting the UN Charter', in Khalil and Lavaud, *supra* note 35, 9, at 13-14.

[67] S. Chesterman, *Shared Secrets: Intelligence and Collective Security* (2006); P.P. Obuobi, 'Prospects for United Nations Strategic Intelligence', 38(3) *International Journal of Intelligence and Counterintelligence* (2025) 935.

[68] Letter dated 6 December 2023 from the Secretary-General addressed to the President of the Security Council, UN Doc. S/2023/962 (2023).

[69] GA Res. 377(V), 3 November 1950.

[70] M.P. Scharf, 'Power Shift: The Return of the Uniting for Peace Resolution', 55(1-2) *Case Western Reserve Journal of International Law* (2023) 217.

[71] *Certain Expenses of the United Nations* (Advisory Opinion), [1962] ICJ Rep 151 (1962).

An alternative approach, if global institutions are unable to marshal political will to act, is to rely on regional arrangements. This is provided for in Chapter VIII of the Charter, though the most powerful such regional organization — NATO — has long resisted characterization as such.[73] As Boštjan Malovrh concedes, the interests of regional actors that might increase the willingness to act comes with important caveats: those interests wax and wane; the ability to act varies with the credibility and effectiveness of available forces.[74] Nonetheless, some of the most effective international enforcement actions undertaken by the Security Council have been through regional arrangements. In his New Agenda for Peace, Secretary-General Guterres called such partnerships critical building blocks for 'networked multilateralism'.[75]

There is also the possibility of turning to the courts, with chapters by Catherine Amirfar and Lavaud on the ICJ and by Fatou Bensouda on the ICC. There is much parsing of precedent — the *Lockerbie* case in particular launched a thousand articles, despite ultimately being settled more than a decade after provisional measures were first issued.[76] Both contributions stress that the judicial bodies could supplement the Council's legitimacy and effectiveness.[77] Though there is precedent for this also — the Council referred the Namibia situation to the ICJ in 1970,[78] and Darfur and Libya to the ICC in 2005[79] and 2011[80] — it is telling that, of the P5, only the United Kingdom currently accepts the compulsory jurisdiction of the ICJ (with significant reservations) and only the UK and France are parties to the Rome Statute of the ICC.

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[72] M.A. Khalil, 'Tapping the Full Potential of the General Assembly', in Khalil and Lavaud, *supra* note 35, 109.

[73] C. Walter, 'Article 52', in B. Simma, et al. eds, *The Charter of the United Nations: A Commentary* (2024) 1841, at 1854-55.

[74] B. Malovrh, 'Strengthening Regional Cooperation', in Khalil and Lavaud, *supra* note 35, 161, at 168-71.

[75] Our Common Agenda Policy Brief 9: A New Agenda for Peace (United Nations, New York, July 2023), at 12.

[76] See, e.g., K. Renehan, 'Revisiting "Lockerbie": How a General Principle of Judicial Review Could Promote United Nations Security Council Reform', 38 *Australian Year Book of International Law* (2021) 287.

[77] C. Amirfar and F. Lavaud, 'Reinforcing the International Court of Justice', in Khalil and Lavaud, *supra* note 35, 127, at 143; F. Bensouda, 'Enforcing the Rome Statute and the Geneva Conventions', in Khalil and Lavaud, *supra* note 35, 145, at 159.

[78] SC Res. 284, 29 July 1970.

[79] SC Res. 1593, 31 March 2005.

[80] SC Res. 1970, 26 February 2011.

Axel Marschik and Adama Dieng focus more narrowly on the Council's role in preventing and responding to threats to the peace, including through greater recourse to rule of law bodies like the ICJ and ICC.[81] Marschik, who served as deputy permanent representative of Austria at UN Headquarters in New York from 2003 to 2006, when Austria led an effort to promote the rule of law at the international level,[82] offers up an intriguing proposal to make certain consequences automatic upon finding that a state has committed a gross violation of the Charter: withholding financial assistance and preventing election to UN bodies, limits on international flights or access to the global internet.[83] The aim would be to change the political calculus of both the wrongdoer and those who might sanction them. He draws an analogy with Article 16 of the Covenant of the League of Nations, which provided that bilateral measures could be imposed against a member that resorted to war in violation of the Covenant. Another comparison might be past practice of the Council itself with regard to Haiti, notably resolution 841 (1993) in which the Council itself pre-authorized sanctions that would come into force at a specified time unless the Secretary-General reported that they were not necessary, and could snap into action at a later date if he reported that the coup leaders 'failed to comply in good faith with their undertakings'.[84] Controversy over the reimposition of sanctions in Iran in late 2025 through the application of a similar 'snapback' measure,[85] suggests that it might be challenging to get Council members to agree on such provisions in future.[86]

4 Underlying Causes

If Khalil and Lavaud's book focuses on relieving the symptoms of the Council's present malaise through actionable steps short of amending the Charter, the conceit of Cai, van den Herik, and Maluwa's trialogue is that they might diagnose the underlying disease. The aim is

[81] A. Dieng, 'Ensuring Criminal Accountability', in Khalil and Lavaud, *supra* note 35, 55.

[82] I served as rapporteur for this project, culminating in the report: The UN Security Council and the Rule of Law, UN Doc. A/63/69-S/2008/270 (2008).

[83] A. Marschik, 'Improving the UN Response to Aggression and Mass Atrocities', in Khalil and Lavaud, *supra* note 35, 41, at 52-53.

[84] SC Res. 841 (1993), paras. 3-4.

[85] SC Res. 2231 (2015), paras. 11-12.

[86] P. Baskar, 'Russia and China Fail to Delay UN "Snapback" Sanctions Against Iran', *New York Times*, 26 September 2025.

to employ 'multiperspectivism', the better to understand where international law is truly 'international',[87] and where it is essentially contested and depends on diverging preconceptions (*Vorverständnisse*) and interests.[88]

Van den Herik takes up the baton of the smaller states, focusing on the E10 and developing an 'institutionalist perspective' that seeks to show that the Council is 'not entirely unbounded'.[89] Stressing the importance of procedural legitimacy, she argues that inclusiveness,[90] transparency,[91] and deliberation will safeguard member states from the excesses of the P5, even as it staves off critiques that the Council has become '*permanently* and *fully* dysfunctional' and a potential slide into irrelevance.[92] She is, despite this, the most optimistic of the three, concluding that there remains 'a certain expectation that the Security Council will remain the world's primary organ for peace in the near future and that it is worthwhile investing in it'.[93] She goes further, arguing that the Council should expand its remit to embrace unconventional threats from pandemics to climate change to cyber-security.[94] Failure to do so would mean that 'the gaze will shift elsewhere';[95] more than anything else, she argues, 'a spiralling world needs structure'.[96]

One possible target of that gaze is regional organizations, the focus of Maluwa's contribution to the trialogue, in particular the AU, where he sees a 'reconfiguration of regionalism'.[97] At its best, this can complement and augment the Council's authority, bringing voices from the periphery to the centre.[98] At its worst, however, it can lead to outsourcing and the reduction

[87] Cf. A. Roberts, *Is International Law International?* (2017).

[88] Cai, van den Herik, and Maluwa, *supra* note 37, at 15 (Marxsen).

[89] *Ibid*. at 112 (van den Herik).

[90] *Ibid*. at 123 (van den Herik).

[91] *Ibid*. at 134 (van den Herik).

[92] *Ibid*. at 184 (van den Herik) (emphasis in original).

[93] *Ibid*. (van den Herik).

[94] *Ibid*. at 175-81 (van den Herik).

[95] *Ibid*. at 185 (van den Herik).

[96] *Ibid*. at 182 (van den Herik).

[97] *Ibid*. at 274 (Maluwa).

[98] *Ibid*. (Maluwa).

of the Council to what Richard Falk once described as a 'law laundering service', providing a veneer of legitimacy to what is ultimately *realpolitik*.[99] Maluwa is not so pessimistic, describing the relationship as a division of labour and a 'partnership' between centre and periphery.[100] Though questions remain as to whether the Council 'remains the unrivalled centre of global decision-making',[101] he argues that recent practice has reaffirmed its 'primacy'.[102] Like van den Herik, this a decidedly glass-half-full analysis, emphasizing the opportunities and being clear-eyed about the risks of inaction, most prominently the failure to act in response to the 1994 Rwandan genocide.[103]

In the end, however, there is more divergence than convergence. Cai situates the Council precisely in the realm of *realpolitik* 'whether we like it or not',[104] grimly concluding that the so-called New World Order is being displaced by a 'new Cold War'.[105] He is particularly interested in the role of China, which has the potential to prevent the Council being dominated by Western hegemony through a more 'aggressive' international posture.[106] This instrumental view of international law is not unique to China — Ian Hurd has also argued that the Council does not displace power politics but institutionalizes it.[107] In her conclusion, Peters disputes Cai's claim, which boils down to a 'fundamental distinction between international and domestic society', and how law and politics inter-relate in each.[108] Peters argues that the difference between the domestic and the international is a matter of degree and not of kind,[109] analogous perhaps to another serving of the 'standard sherry party

[99] R.A. Falk, 'The United Nations and the Rule of Law', 4 *Transnational Law and Contemporary Problems* (1994) 611, at 628.

[100] Cai, van den Herik, and Maluwa, *supra* note 37, at 274 (Maluwa).

[101] *Ibid*. at 275 (Maluwa).

[102] *Ibid*. at 189 (Maluwa).

[103] *Ibid*. at 264 (Maluwa).

[104] *Ibid*. at 22 (Cai).

[105] *Ibid*. at 108 (Cai).

[106] *Ibid*. at 81 (Cai).

[107] I. Hurd, *After Anarchy: Legitimacy and Power at the United Nations* (2007), at 133.

[108] Cai, van den Herik, and Maluwa, *supra* note 37, at 27 (Cai).

[109] *Ibid*. at 284 (Peters).

question' of whether international law is really 'law' — something that D.J. Harris long ago blamed on John Austin.[110]

Cai is polite but dismissive of such quibbles. He argues that the Council is deeply embedded in power politics and that its functioning depends on the P5 — he does not use the word, but clearly thinks it naïve to expect the E10 to play a 'significant role'.[111] He goes on to argue, nonetheless, that China has the potential to transform the Council as a defender of norms, a taker of norms, a norm 'antipreneur', and as a norm entrepreneur. As a norm-defender, its position is a traditional Westphalian one: sovereign equality; non-interference in internal affairs. Considering the criticism that this would limit the Council's ability to act — as China ensured with respect to Syria, and tried with respect to Kosovo — Cai counters that smaller states have good reason to fear the actions of the great powers, and that inaction can be the lesser evil.[112] As a norm-taker, he offers the responsibility to protect (R2P)[113] as an example of how China 'continues to be internationally socialised to embrace international law'.[114] It is true that China has evolved from staunch opposition even to use of the language of R2P, but only on the basis that R2P remains a 'concept' and not, in fact, a 'norm'.[115] The term 'norm antipreneur' was coined to refer to states that resist those advocating for new norms;[116] Cai embraces the language, citing China's efforts to resist Council actions that would explicitly or implicitly bring about regime change.[117] All three examples reflect a conservative position on the Charter and international law more generally. To the extent that China has advanced a positive agenda — as a 'norm entrepreneur' — it has largely been with regard to economic affairs.[118] Cai argues that this might expand into peace and security, though his example of

[110] D.J. Harris, *Cases and Materials on International Law* (5th ed., 1998), at 6.

[111] Cai, van den Herik, and Maluwa, *supra* note 37, at 24 (Cai).

[112] *Ibid*. at 88-89 (Cai).

[113] International Commission on Intervention and State Sovereignty, The Responsibility to Protect (International Development Research Centre, Ottawa, December 2001).

[114] Cai, van den Herik, and Maluwa, *supra* note 37, at 89 (Cai).

[115] *Ibid*. at 91 (Cai).

[116] A. Bloomfield, 'Norm Antipreneurs and Theorising Resistance to Normative Change', 42(2) *Review of International Studies* (2016) 310; A. Bloomfield and S.V. Scott (eds) *Norm Antipreneurs and the Politics of Resistance to Global Normative Change* (2017).

[117] Cai, van den Herik, and Maluwa, *supra* note 37, at 95 (Cai).

[118] See, e.g., D.C.K. Chow, 'Why China Established the Asia Infrastructure Investment Bank', 49(5) *Vanderbilt Journal of Transnational Law* (2016) 1255.

'counter-extremism' is largely an extension of domestic powers, accompanied by a rejection of international criticism for excesses in their application.[119]

Underlying the debates over the flaws of the Council is a larger tension as to whether international law itself is worth preserving. Cai is the writer who gets closest to this question. At one point, he cites Hans Kelsen as authority for the proposition that the Council may act in a manner that is 'not in conformity with existing law' if it finds that law unsatisfactory.[120] Yet Kelsen maintained that such acts nonetheless remained within the bounds of law, through the creation of 'new law for the concrete case'.[121]

Cai's political analysis is more suited to another German legal philosopher: Carl Schmitt. Schmitt rejected Kelsen's normativism, which posited law as a hierarchical system of norms, with international law holding primacy over national or domestic law as part of a universal legal order.[122] Schmitt, like Cai, saw law in general and international law in particular as having its foundation in political struggle, rather than anything resembling a *Grundnorm.* This manifests in how exceptions are treated, which Schmitt notoriously regarded as more important than rules:

> The exception is more interesting than the rule. The rule proves nothing; the exception proves everything: It confirms not only the rule but also its existence, which derives only from the exception. In the exception the power of real life breaks through the crust of a mechanism that has become torpid by repetition.[123]

For Cai, rules at the international level are means rather than ends. States 'are not capable of developing, and seemingly have no wish to develop', structures analogous to the nation-state to implement at the international level. 'People may dislike this phenomenon,' he concludes, 'but they cannot ignore it.'[124] China's rise might therefore see some normative

[119] Cai, van den Herik, and Maluwa, *supra* note 37, at 95-98 (Cai) (citing, *inter alia*, China's involvement in the Convention of the Shanghai Cooperation Organization on Combating Extremism, done at Astana, 9 June 2017 (in force 12 October 2019)). Cf. Cai, van den Herik, and Maluwa, *supra* note 37, at 169-75 (van den Herik).

[120] Cai, van den Herik, and Maluwa, *supra* note 37, at 35 (Cai), citing H. Kelsen, *The Law of the United Nations* (1950), at 295.

[121] Kelsen, *supra* note 120, at 294.

[122] See, e.g., H. Kelsen, *Pure Theory of Law* (2nd ed., [1960] 1967).

[123] C. Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty* ([1922] 1985), at 15.

[124] Cai, van den Herik, and Maluwa, *supra* note 37, at 107 (Cai).

developments, but the history being written is 'a new chapter in the book of power politics.'[125]

5 The Once and Future Council

It is striking that some of the words most frequently associated with the UN are not found in the Charter. 'Peacekeeping' was an entrepreneurial way to advance peace and security, mischievously located by former Secretary-General Dag Hammarskjöld in 'Chapter VI½' of the Charter.[126] 'Veto', now seen as a barrier to achieving the Charter's objectives, does not appear in the text at all. And yet this document, drafted in 1945 and largely unchanged, remains our best hope to save succeeding generations from the scourge of war, to reaffirm faith in human rights, and to promote better standards of life in larger freedom.[127]

Today, that project faces multiple challenges. Geopolitical tensions have been the focus of this essay, but climate change and emerging technologies like artificial intelligence could equally pose existential threats. Ideally, these forces could be mutually reinforcing: global cooperation could see the world unite to achieve sustainable development through the responsible deployment of new technologies. In reality, however, they are colliding: a global arms race for AI supremacy is already prompting states to retreat from their net-zero commitments.[128]

Despite all this *Sturm und Drang*, those who work for the United Nations or write about it tend to remain relentlessly optimistic. The dedication in Khalil and Lavaud's volume wears its idealism on its sleeve: 'To all those who believe in the Charter of the United Nations'.[129] Indeed, it risks comparison to Peter Pan's Tinkerbell, the fairy whose existence depended on the belief of the children reading the tale.[130]

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[125] *Ibid*. at 108 (Cai).

[126] See generally H. Dorussen (ed.) *Handbook on Peacekeeping and International Relations* (2022).

[127] UN Charter, preamble.

[128] K. Crawford, *The Atlas of AI: Power, Politics, and the Planetary Costs of Artificial Intelligence* (2021).

[129] Khalil and Lavaud, *supra* note 35, at v.

[130] J.M. Barrie, *Peter Pan [Peter and Wendy]* (1911), ch xiii.

In his chapter, Ian Johnstone taps into that idealism by examining the legitimacy of the Council, arguing that this goes far beyond whether the Council is representative. His broader conception of the Council's legitimacy encompasses procedure as well as performance: the quality of deliberations and the process by which the Council takes decisions, as well as its effectiveness in achieving its stated function of maintaining international peace and security. Greater participation in decision-making by the E10, both as a group and as delegates appointed by the rest of the UN member states, might increase leverage and, perhaps, cause the P5 to 'think harder about unpopular positions'.[131] More talk and increased publicity about Council activities — more open meetings, requiring explanations of vetoes — may seem like thin gruel as compared to structural reforms. Yet if the P5 do not want a dysfunctional Council, such measure might slow or halt the current drift towards irrelevance.

That 'if' is doing some heavy lifting. For all their bluster, however, a key lesson embraced by the P5 is that the only thing worse than the Council is all the alternatives. Russia's absence during the early days of the Korean war in 1950 was never repeated; China came in from the cold in 1971 at the expense of Taiwan and has only increased its engagement, as Cai's work demonstrates.[132] For its part, the United States periodically bickers about the UN and proposes alternative forums — concerts, leagues, or communities of democracies, among other formulations[133] — but ultimately concludes each time that the UN with its imperfect Council is worth preserving. That, in turn, requires that member states also see the Council as worthy of support. For without it, Council decisions are little more than wishful thinking.[134]

At base, the greatest problem confronting the Security Council might not be its structure, nor its procedures, nor even the tension between its political and legal aspects. Rather, the problem may be the unrealistic expectations placed on it to maintain international peace and security in the first place.[135] Those expectations, raised when the United Nations transitioned from the plural states at war against the Axis powers to the singular institution

[131] I. Johnstone, 'Restoring the Legitimacy of the Security Council', in Khalil and Lavaud, *supra* note 35, 73, at 86.

[132] C. Cai, *The Rise of China and International Law: Taking Chinese Exceptionalism Seriously* (2019).

[133] See, e.g., I. Daalder and J. Lindsay, 'Democracies, of the World Unite', 14(1) *Public Policy Research* (2007) 47; J.J. Davenport, *A League of Democracies: Cosmopolitanism, Consolidation Arguments, and Global Public Goods* (2019).

[134] Security Council and the Rule of Law, *supra* note 82, at 19.

[135] Cf. Bosco, *supra* note 50, at 253.

whose building rose alongside Manhattan's East River, were swiftly lowered by the Cold War. The end of that conflict and the opportunity presented by Iraq's ill-advised invasion of Kuwait saw new hope for a world governed by the rule of law. That irrational exuberance has now faded, at a time when the UN faces not only political and military but real financial crisis.

Not long after James Crawford's appearance at the American Society of International Law in 2003, he penned a foreword to Gerry Simpson's monograph offering a sociology of international law that embraced, rather than denied, the interplay between equality and inequality, between the great powers and the outlaws.[136] Failing to accept the reality of power, Simpson argued, risked being trapped in a kind of 'sterile formalism, an international law of small places.' Crawford wrote that he found the analysis compelling, but that he hoped it was not true. For the struggle for equality itself has a constraining value, even as the failure to achieve it forces us to reassess our own mental models, the stereotypes that enable us to navigate the world.[137]

Another oft-quoted line of Hammarskjöld's is that the UN was not created to take us to heaven, but to save us from hell.[138] The Security Council, for all its theoretical power, depends on a suspension of disbelief about where that power comes from, and how this impacts the legitimacy of what it does today. Paraphrasing the US Secretary of Defense around the time of the 2003 Iraq war, you strive for peace with the Security Council you have, not the Council you might want or wish to have at a later time.[139]

[136] G.J. Simpson, *Great Powers and Outlaw States: Unequal Sovereigns in the International Legal Order* (2004).

[137] *Ibid*. at vii-viii (foreword by James Crawford).

[138] D. Hammarskjöld, Address by Secretary-General Dag Hammarskjöld at University of California Convocation (University of California, Berkeley, 13 May 1954).

[139] E. Schmitt, 'Troops' Queries Leave Rumsfeld on the Defensive', *New York Times*, 9 December 2004. Cf. D. Rumsfeld, *Known and Unknown: A Memoir* (2011), at 644.