

United Nations Security Council (UNSC) reform and international political decision making: A theoretical approximation.

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Summary: *The present paper discusses a theoretical approach to policy making, with emphasis on the dynamic and ongoing process of reform undertaken to review the United Nations Security Council (UNSC). The model suggests that all proposals, in its rush to increase participation, affects the efficiency of the Council. However, recognizing that participation is a necessary condition to guarantee democracy in the international arena, any proposal should seek to minimize the negative effects through a continuous and comprehensive review of the working methods and the elimination of veto rights .*

Resumen: *En el presente trabajo se discute una aproximación teórica a la toma de decisiones políticas, con énfasis en la dinámica y actual proceso de reforma emprendido para revisar el Consejo de Seguridad de Naciones Unidas (CSNU). El modelo sugiere que todas las propuestas, en su prisa por aumentar la participación, afectan la eficiencia del Consejo. No obstante, reconociendo que la participación es una condición necesaria para garantizar la democracia en el escenario internacional, toda propuesta debe tratar de minimizar los efectos negativos a través de una revisión continua e integral de los métodos de trabajo y de la eliminación de derechos de veto.*

Introduction.

The present paper will discuss a simple theoretical approximation to international political decision making, with emphasis on the dynamics and current reform process undertaken to overhaul the UNSC. In any case, international political decision making displays higher transaction costs for effective negotiations than related national processes, especially when confronted against the principle of sovereignty, still the functional cornerstone of the international system. This straightforward model suggests that all proposals will only deepen deadweight losses in efficiency in their rush to increase participation at the council. Nonetheless, duly recognizing that participation is a much needed social prerequisite for a more democratic international arena, any pro-

posed plans must then attempt to minimize those deadweight losses through a comprehensive overhaul of day-to-day working methods and the elimination of veto rights.

International political decision making: Some theoretical considerations.

Unlike local political decision making, international bargaining suffers added difficulties. The main two issues in this regard are the enforceability of bargains (through international law) in addition to the nature and number of actors involved in their negotiation.

With respect to international actors, the United Nations Charter (UNC) in its first article details their objectives in the field of international affairs:

The Purposes of the United Nations are:

1. To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;
2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;
3. To achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and
4. To be a center for harmonizing the actions of nations in the attainment of these common ends.

Indeed, these issues involve the resolution of threats to peace and security, the strengthening of friendly relations between nations, the intensification of international cooperation and the harmonization of concerted actions through diplomacy. At a general level, we can rightfully assume the international community as an aggregate of rational actors with the same formal weight in the decision making process. In this sense, when the United Nations (UN) was first designed at the Dumbarton Oaks Conference in Washington DC, the delegates

attending the meetings were keen to recognize the underlying principles for an effective system of international decision making¹:

The juridical equality of States.

States enjoy the rights inherent in their full sovereignty.

The personality of the State is respected, as well as its territorial integrity and political independence.

The State should, under international order, comply faithfully with international duties and obligations.

These underlying principles supply the foundation of the international system and serve as its key assumptions². The aforesaid list takes for granted the prohibition of unilateral action carried out by countries, either based on the grossly unequal distribution of power or on irrational considerations.

However, geopolitical considerations did in fact weaken these assumptions. In a matter of decades, we attested a transformation in the international system. The clout of medium sized powers who dominated the international stage after the fall of Napoleon suddenly disappeared in the midst of two World Wars, giving rise to the sometimes not-so-quiet struggle between two rival superpowers.

No place exemplified better this power struggle than the United Nations, especially within the closed chambers of the Security Council (SC). For the most part of its history, the SC was paralyzed due to the veto rights exercised by its five permanent members (P5: United States, United Kingdom, France, Russia, China), especially the United States and Russia. Undeniably, their irreconcilable positions turned the UN into an inefficient forum to deal with some of the most grave and notorious conflicts during the Cold War. As pointed out by Céline Nahory of the Global Policy Forum “[...] The five permanent members cast 199 vetoes between 1946 and 1989 - well over four per year - preventing the Council from taking action on many important matters”³. In stark contrast to the guiding principles of the UNSC, many infamous clashes with critical international ramifications like the Vietnam conflict, the Soviet invasion of Afghanistan and the Nicaraguan-Contra conflict were not effectively brought under its direct oversight. And even when the UN General Assembly (GA) still served as a powerful resonance box from where to launch declarations of support to either

1. Russell, Ruth B; 1958; *A History of the United Nations Charter: The Role of the United States 1940-1945*. Washington, DC; USA: Brookings Institution Press p. 672

2. Similarly, these principles are formally consigned in Article 2 of the UNC.

3. Nahory, Celine; May 2004; *The Hidden Veto* in *Global Policy Forum* <http://globalpolicy.igc.org/security/veto/2004/0519hiddenveto.htm>

side, these conflicts were mainly resolved through other sorts of multilateral arrangements and conferences, in addition to the direct bilateral talks held across the Iron Curtain.

Within the GA, we could attest a greater degree of equality in respect to the rights and privileges given by the UNC to the national delegations. The *one country, one vote principle* is the norm for the discussion of resolutions at the assembly, even when the nature of these outcomes are still subject to capricious circumstances. In addition to that, voting blocs within the assembly do not fulfill the indirect roles attributed to their national counterparts. Unlike political parties, regional blocs do not bargain commonly as a group and when they do, the possibility of defection remains high. The principle of sovereignty renders null the enforcement of voting discipline, even more when voting behavior is also contingent to the mercurial configuration of national governments and their international alignment.

Furthermore, unlike national jurisdictions, international law is not backed by compulsory sanctions. The perennial anxiety to consider sovereignty above international law is well known, and this apprehension permeates contemporary legal discussions -- especially when it comes to define the *responsibility to protect* populations from genocide when States are deemed incapable or unwilling to do so.

Without much forethought on the prickly discussion on what constitutes the definitive justification of international law, we must side with an interpretation that awards it the power to guide and legitimize actions, but insofar applied *effectively* by a willing actor or group of actors. We must do so if we are to assume an economical (and consequently, empirical) perspective to circumscribe its scope to the observable results of its application. In this regard, and duly recognizing the theoretical mishaps of this traditional formulation⁴, a

4. For a brief review of Kelsen's theoretical weaknesses pertaining to international law, see Stanford Encyclopedia of Philosophy; 2002; *Pure Theory of Law*: <http://plato.stanford.edu/entries/lawphil-theory/> : "In the first edition of the *Pure Theory of Law*, [Kelsen] suggests the solution to this problem by introducing international law as the source of validity for changes in the basic norms of municipal legal systems. It follows from the basic norm of international law, Kelsen maintains, that state sovereignty is determined by successful control over a given territory. Therefore, the changes in the basic norm which stem from successful revolutions can be accounted for in legalistic terms, relying on the dogmas of international law. [...] The price Kelsen had to pay for this solution, however, is rather high: he was compelled to claim that all municipal legal systems derive their validity from international law, and this entails that there is only one Basic Norm in the entire world, namely, the Basic Norm of public international law. Although this solution is repeated in the second edition of the *Pure Theory of Law* [...], Kelsen presented it there with much more hesitation, perhaps just as an option which would make sense. It is not quite clear whether Kelsen really adhered to it. The hesitation is understandable; after all, the idea that municipal legal systems derive their legal validity from international law would strike most jurists and legal historians as rather fanciful and anachronistic".

Kelsenian framework is better suited for this analysis since as Kelsen himself explained “[for] a legal order [to be] regarded as valid, [...] its norms [must be] *by and large* effective (that is, actually applied and obeyed).”⁵ Under this guise, international law adopts strong Coasian undertones. “By expanding ‘transaction costs’ to encompass all impediments to bargaining, Coase concluded that bargaining tends to succeed as transaction costs reach zero [...] The Coase Theorem asserts that private parties will bargain to an efficient allocation of legal entitlements provided that transaction costs do not impede the process”⁶.

In the international arena, these transaction costs prove to be almost insurmountable, chiefly when we factor in an ever increasing number of States that must juggle their international affairs amid electoral pressures, economic interests and regional stresses. These difficulties for effective bargaining are particularly dire in the absence of an international foundational framework that keeps transaction costs at a minimum.

Additionally, since the ultimate and definite possibility of force and coercion (the commonly known *ultima ratio regnum* or *last resort of kings*) is not mechanically dispensed by a higher authority, actors do not fear the concentration of institutional power. Therefore, no incentives are available to push for the dilution of power through its classical dismemberment. Without much trouble, any observer might even dissect three distinct branches of judicial, legislative and executive powers within the UN system. Nonetheless these are fictitious in nature and subject to overlapping competencies, whimsical enforcement and procedural caveats, and just feed more transaction costs into the international system. For instance, the International Court of Justice (ICJ) and the International Criminal Court (ICC) can refer non-compliant parties to the UNSC for direct international sanction. However, in the 1986 case before the ICJ, *Nicaragua v. The United States of America*, a US veto voided the resolution asking for enforcement of the verdict against the latter. More recently, the decision of the ICC to indict high ranking members of the Lord’s Resistance Army in Uganda is putting stress on the negotiations carried out between the government and guerrilla movement. The same can be said about the indictment by the ICC of President Omar Al-Bashir of Sudan, and the ongoing political negotiations on the status of Darfurian refugees and about the deployment of the United Nations Mission in Darfur (UNAMID).

This sad fact pitches the basic characteristics of any overarching international organization as a multiplicity of intergovernmental bodies and conferences working within the empty spaces of collegiate multilateral arrangements. Thus we attest the delegation of irrelevant or difficult issues by the larger multi-

5. Kelsen, Hans; 1967; *Pure Theory of Law*. Los Angeles, California: UC Berkeley Press p. 212.

6. Cooter, Robert D; 2000; *The Strategic Constitution*. Princeton, New Jersey: Princeton University Press p. 53

lateral bodies to select committees, elite groups and international agencies with minimal marginal contributions to the transformation of issues brought before them⁷.

This evident lack of efficiency is a key for understanding the nature and function of these international bodies. After all, Member States at an international level value representation and a voice in world issues more than over-optimism in difficult issues. Such timing (or lack thereof) provides a scenario where to benefit from marginal defections while ensuring adaptation to the new set of circumstances. Concretely, these actions can be translated in the rightful emphasis of developing countries, which compose the largest voting bloc at the UN, for increased democratization of the UNSC. In that same note, some member countries of the developing world free-ride on their membership and use their political influence to curtail needed reforms for the efficient provision of international assistance, especially when it pertains to transparency and accountability. These tensions within international political negotiations, especially between representation and efficiency in the UN, are pivotal to the future of international bargaining within the structure of the UNSC as we will see in a following section.

The reform of the UNSC.

An overview of the UNSC.

The UNSC is an integral part of the United Nations international system. Chapter V of the UNC designates it as the caretaker of international peace and security, one the main purposes of the organization. As Article 24.1 states:

Members confer in the Security Council [the] primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf.

Nonetheless, when it comes to pondering about the nature of the UNSC, we encounter a few stumbling blocks in its definition. We can crudely frame

7. The international community's involvement in the Middle East peace process by means of several mechanisms - The Quartet (US, EU, UN and Russia), numerous UN bodies involved in negotiations (like the United Nations Special Commission on Palestine or UNSCOM, the United Nations Special Coordinator or UNSCO, etc.), the numerous multilateral conferences (Annapolis, Oslo, Camp David, etc) validates this fact in respect to structurally difficult political issues. Regarding issues of economic and development character please refer to an interesting analysis by Easterly, William; Summer 2003; *Can Foreign Aid buy growth?* in *Journal of Economic Perspectives*. Vol. 17 No. 3 p. 34-39.

the UNSC as an executive body if we deem it as a body which brokers deals, implement agreements and enforces laws through decisive action⁸. Even more so, the definition will be reasonable if we consider it as a continuously functioning body⁹. However, the whimsical characteristics of international law pointed out earlier¹⁰ are a massive loophole to this outline of reference, even when the charter explicitly refers to the binding nature of UNSC Resolutions¹¹.

Under Chapter VI of the UNC, the council can broker deals between parties in conflict or subscribe recommendations and procedures to these ends¹². In close partnership with the UN Secretariat, the UNSC strategically mandates a wide range of special envoys and representatives to pursue political maneuvers to strengthen peace processes or start dialogue in war-torn regions. As Connie Peck explains:

A mission is mandated through a Security Council resolution that sets out the objectives it is to fulfill, the components of the mission, and the resources that will be sought for each component. [...] Mandates are provided for a given period specified by the Council. The Secretary General is responsible for reporting to the Council on the progress of each peace mission and for making recommendations for action when deemed necessary¹³.

When these political efforts fail, the UNSC can resort to decisive action to implement agreements and enforce international law under Chapter VII of the UNC. In the past, the UNSC has resorted to great flexibility to fulfill these ends. The establishment of special courts in Sierra Leone and Lebanon and the international tribunals to investigate and punish those responsible for genocides in the former republic of Yugoslavia and Rwanda invoked their powers under these dispositions. Additionally, the UNSC can also impose limited or general sanctions to States that fail to fulfill their responsibilities. And as a last resort, the UNSC can also recommend direct military action to punish a State or a group of States responsible for acts of aggression and breaches of peace, like

8. Cooter; Robert D. *Op. cit.* p. 173

9. Article 28.1 of the United Nations Charter

10. Supra p. 6

11. United Nations Charter, Article 25. For a more comprehensive view on the binding nature of UNSC Resolutions refer to International Court of Justice; Advisory Opinion of June 21, 1971; *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)* par. 113.

12. Explicitly, Article 34 & 36 of the United Nations Charter.

13. Peck, Connie; 2004; *Special Representatives of the Secretary General* in Malone, David M. (ed.); 2004; *The UN Security Council: From the Cold War to the 21st Century*. Boulder, Colorado: International Peace Academy p. 326.

when it did in Korea (1950) and the first Iraq War (1991).

After the collapse of the Soviet Union, UNSC responsibilities increased exponentially. For the most part of the Cold War, direct military enforcement actions by the UNSC were kept in strategic stalemate, Korea being the noteworthy exception due to a miscalculation of the Soviet leadership at the time. After the Soviet demise, increased assertiveness by the Council was evident. Moreover, the evolving nature of the type of conflicts for which peacekeeping services were sought also became an important factor for consideration. The UN was bold enough to get involved in conflicts of internal nature whose possibilities of international escalation were not evident at first glance. According to Edward Luck and the UN Department of Peacekeeping Operations:

The result was a rapid growth in the size and complexity of the peacekeeping burden. In 1991, the UN peacekeeping budget was about \$490 million and the number of deployed blue helmets about 15 300. Just two years later, those figures had grown to \$3 059 billion and 78 500, increases of more than six-fold in spending and five-fold in troop strength¹⁴

This exponential increase accelerated the need for reform to the UNSC, especially to open the participation of Member States concerned with the mounting activism of UN. Without a doubt the growing complexity of a dimly defined post-Cold War world is forcefully pushing an agenda of democratization of international decision making, especially to countervail the volatile mix of unilateral exceptionalism and international terrorism.

Since its inception, the UNSC has only known one modification to its composition, mainly catalyzed by the increased number of Member States accepted to the UN after the independence of regions under international trusteeship. In 1965, amendments to Articles 25 and 27 of the UNC increased the elected members from six to ten. However, the basic premise remained the same: A two tier classification of membership composed by the P5 with veto rights to any substantive decision before the Council. Next to them stood ten elected members chosen by their respective regional blocs, pending final confirmation by the General Assembly to serve two year terms, with five replaced yearly.

The proposed plans for UNSC reform.

Once again, there is a consensus on the need to reform the UNSC. Mainly, four proposals have captivated the spotlight. The major overhaul plan

14. Luck, Edward; 2006; Global Institutions - UN Security Council: Practice and Promise. New York, New York: Routledge p. 37.

for the UN called forth by former Secretary General Kofi Annan in his report *In Larger Freedom* proposed an enlarged council of 24. Here, he distinguished two alternatives: Plan A intends for six new permanent members, plus three new nonpermanent members while Plan B recommends the creation of eight new seats in a new class of membership, who would serve for four years, subject to renewal, alongside one non-permanent seat for the same grand total.

The second draft proposal was brought to the General Assembly by Argentina, Italy, Canada, Colombia and Pakistan representing a larger caucus of countries called *Uniting for Consensus*¹⁵. They propose to maintain the five permanent members while raising the number of non-permanent members to 20, bestowing upon all elected members the right of re-election. For their part, the African countries put forward a draft plan¹⁶ where two countries of the continent elected by the African Union would be entitled two out of five new permanent seats with all the privileges corresponding to traditional members (namely, the right to veto) while also increasing non-permanent seats to twenty for a grand total of 26 members.

Finally, the G4 (composed by Brazil, Germany, India and Japan) recommends¹⁷ ten new members to the Council and 6 permanent seats which would include as expected the group membership plus two African States (without right to veto) and four non-permanent seats.

Even when these plans may appear to be very different, theoretically they encompass the same denominators. All agree that an enlarged and more representative council membership is necessary. Also, all these proposals place special emphasis on representation of African States before the UNSC. Historically, developing countries have been underrepresented at the council when compared to European and other Western counterparts: Africa, Latin America and the Caribbean only send five members to represent 66 countries, accruing a membership ratio of 13.2 per Member State at the Council. In the same note, Asia, by far the most populous continent and with 50 countries under its umbrella, only has one permanent member next to two non-permanent members for a membership ratio of 16.6 countries per Member State before the UNSC. Conversely, the European and Western group (including Russia) has a surprisingly high membership ratio of 7.14¹⁸ countries per Member State before the council.

15. United Nations General Assembly Draft Resolution (2005) A/59/L.68

16. United Nations General Assembly Draft Resolution (2005) A/60/L.41

17. United Nations General Assembly Draft Resolution (2005) A/59/L.64

18. It is very difficult to construct an objective representation ratio due to the overlapping membership of countries to regional groups and the arbitrariness of the categories needed for such an exercise. But even for the naked eye and solely for the purposes of demonstration, the disparity is evident.

Analysis of the proposed reform.

Indeed, given the array of powers available to the UNSC for the maintenance of peace and security, we can consider it to be a peculiar sort of executive organ. According to a renowned scholar of the United Nations:

Already in the early planning stages in the establishment of a new international organization for the maintenance of international peace and for securing close international co-operation in economic, social and cultural matters, the problem of how to organize an effective executive organ and to delineate [its] functions and powers [...] ¹⁹

However, as a collegiate executive body, its operation presented several complexities. The catalogue of actions Cooter attributes to any executive body (namely, the brokerage of deals, the implementation of agreements and the enforcement of laws) can be assumed to be performed efficiently as long as transactions costs are kept at a minimum. In an ideal scenario, that supposition therefore presupposes an executive body that acts as a single, internally coherent organ.

In traditional presidential models, foundational law almost without exception concentrates executive mandate under one person who may or may not exercise its powers with the collaboration of several ministers or secretaries. Historically we can see some examples of deviations from the norm, like in Uruguay at the beginning of the 20th Century or during the French Consulate in the aftermath of the Revolution. Nonetheless, these attempts have been uncommon and transient due to factors that Alexander Hamilton, with his usual incisiveness, stressed on the subject in the Federalist No. 70:

Decision, activity, secrecy, and dispatch will generally characterize the proceedings of one man in a much eminent degree than the proceedings of any greater number, and in proportion as the number is increased, these qualities will be diminished. [...] This unity may be destroyed in two ways: either by vesting the power in two or more magistrates of equal dignity and authority; or by vesting it ostensibly in one man, subject in whole or in part, to the control and cooperation of others [...]

The UNSC exhibits the characteristics indicated by Hamilton in his second example. After the Cold War, there has been a silent yet pervasive process of cooperation between the Great Powers and the non-elected members in

19. Simma, Bruce; 2002; The Charter of the United Nations: A Commentary. New York, New York: Oxford University Press p. 444

the discussion of measures and resolutions undertaken by the UNSC. Member States at the council press for consensus when matters reach their foreign desks in New York. Indeed, the diminished use of the veto after the 1990's demonstrates a somewhat uneasy thrust for cooperation, with notable exceptions due in part to the increased assertiveness of Russia and China in the international stage.

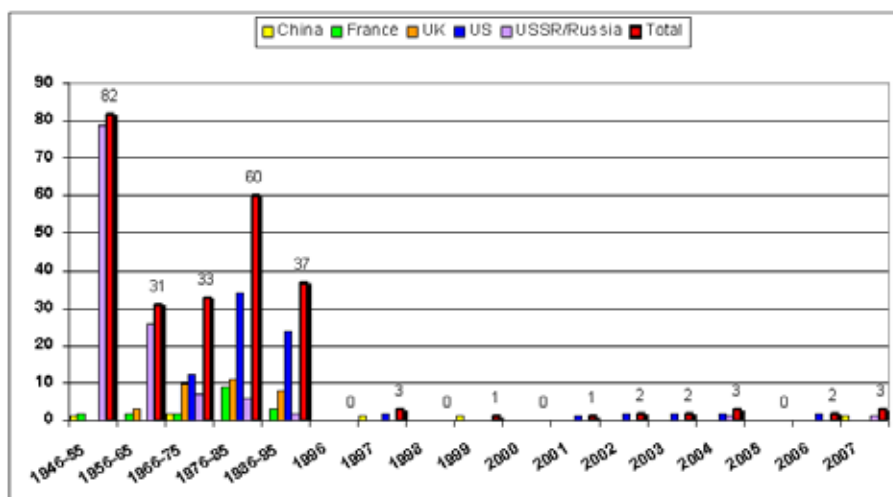


Figure 1: Changing patterns in the use of the veto in the Security Council - Global policy.org.

Therefore, any simple model postulating an increase in the number of members to this executive body will diminish its effectiveness and increase transaction costs. However, we noted earlier that tension for reform stems nowadays from centrifugal forces wedged between the pressure for increased UNSC efficiency and equitable representation of all regional blocs at the UN. Given that representation is valued more than efficiency at this point in time, the objective of any sensible UNSC reform process will be how to minimize the adverse effects that will go in hand with increased council membership. Based on the above mentioned assumptions, we can construct a simple model for UNSC work.

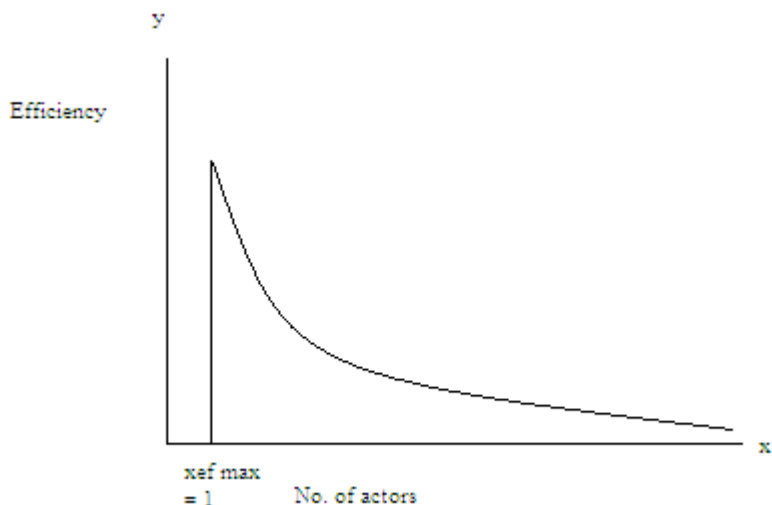


Figure 2: Efficiency losses due to marginal increases in actors in the current UNSC.

The model presented is based on strong assumptions, yet it incorporates some details which are not as evident. For instance, its convexity incorporates the increased costs due to the veto power of the P5, with lesser marginal decreases provided for the elected, non-permanent membership. In a veto-free UNSC, the model would appear to be more concave-like, with somewhat constant, lesser marginal decreases at the outset as the number of the UNSC membership increases. Also, any reform to the UNSC working methods would be also represented, increasing its concavity and buffering against marginal decreases in efficiency.

In addition to this, we must incorporate the utility indifference curves that best describe the trade-off between efficiency and participation, and in doing so, depict the preferences of the UN membership. As we have stated earlier, negotiations at this point do favor increased participation despite decreases in working efficiency.

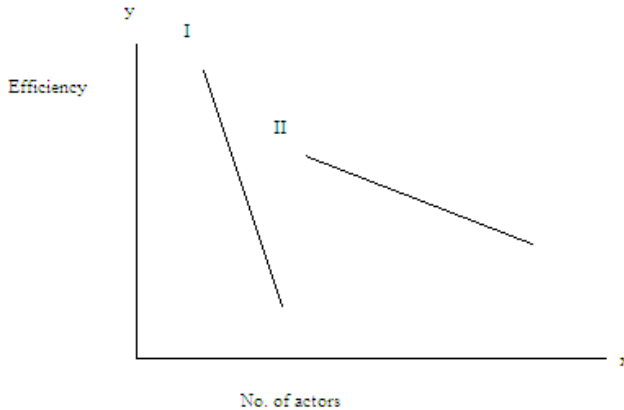


Figure 3: Types of utility preferences.

Steeper utility indifference curves (as in I) will incorporate preferences for a greater number of Member States to the UNSC alongside veto prerogatives to some of the new inductees. Smaller slopes would capture positions that seek to lessen the adverse impacts of increased participation, for example: better working methods and reelection rights instead of new permanent memberships.

Hence, the optimum in any working model will be given by the intersection of these indifference curves and Figure 2. As mentioned earlier, from the proposed scenarios, the best possible situation would be a reform proposal that minimizes transaction costs -- especially the veto prerogative, a right that sometimes favors obdurate positions at the UNSC. This will radically change the graph function: coupled to flatter curves, both would minimize the losses in negotiation and bargaining efficiency as shown below.

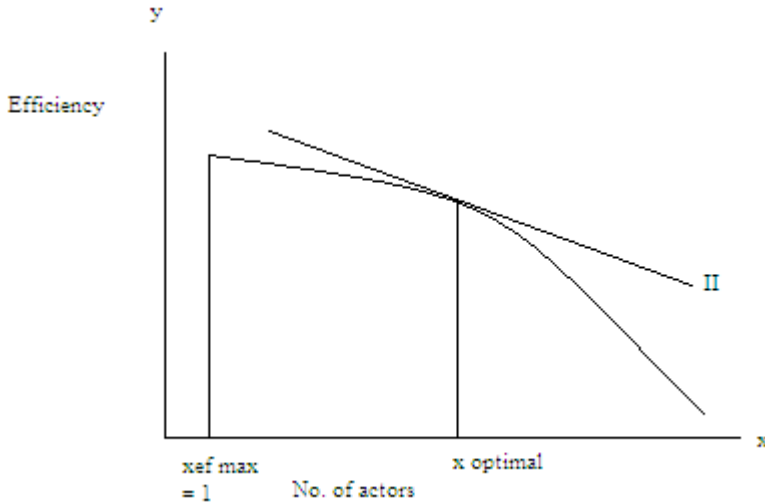


Figure 4: An optimal model of UNSC Reform.

Conclusion.

Regretfully, the model advocated above is not politically feasible due to entrenched bargaining positions of all sides involved. The P5 will not forgo their veto power since it was, after all, a compromise: to forgo a repeat of the League of Nations' failures, it sought to achieve a middle ground between the rule of strict unanimity (which had proved so difficult for the League's own council) and assure the P5 a preeminent role at the organization. However, the African group's insistence on the veto proves that other countries wish for the right, but objectively their petition will prove detrimental to the delicate relationship between efficiency and greater participation at the UNSC.

In this sense, if an acceptable compromise is not reached on a proposal that would minimize the deadweight loss in efficiency, the UNSC could suffer a diminished role in the international arena. This will undoubtedly favor an increased usage of "outlier diplomacy" – or the transfer of even more issues related to the maintenance of international peace and security away from the median international membership to other *petit comités* and small groups comprised of powerful States. We cannot know in advance whether these groups will be more efficient in the treatment of crises, but we can forecast that the international community as a whole will not be pleased with this situation.

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